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**Congress of the United States  
House of Representatives  
Committee on Government Reform  
Subcommittee on Human Rights and Wellness**

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**The Role of the Government in Combating Trafficking in Persons - A Global Human  
Rights Approach**

Mr. Chairman, distinguished members of the Subcommittee, I am privileged to speak to you today on the global problem of trafficking in persons as a human rights violation and the role of governments in combating this problem.

I have prepared a written statement; however, my remarks will be a brief summary of that statement.

I have a number of issues, which I would like to address.

**1. Governments have the responsibility to respect the human rights of victims of trafficking in accordance with international conventional law.**

**The Prohibition of Trafficking in Accordance with International Conventional Law.** The basic duty of all states is to ensure the fundamental human rights of all citizens. Trafficking in persons is a grave human rights violation that constitutes a contemporary form of slavery, and international conventional law recognizes it as such.

**Slavery and Trafficking in International Conventional Law.** The Universal Declaration of Human Rights states that “no one shall be held in slavery or servitude” and that “slavery and slave trade shall be prohibited in all their forms.” Likewise, the 1956 Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery outlawed slavery practices including debt bondage, serfdom, bride price and exploitation of child labor. The 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others mandated that “through their public and private educational, health, social, economic and other related services, measures for the prevention of prostitution and for the rehabilitation and social adjustment of the victims of prostitution” [Article 16] should be taken by state parties. Further, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women explicitly prohibited "exploitation of prostitution of women" and "all forms of traffic in women" [Article 6], and the 1989 Convention on the Rights of the Child mandated that state parties must take all appropriate measures to prevent "the abduction of, the sale of or traffic in children for any purpose or in any form" [Article 35]. The 1999 Convention to Eliminate the

Worst Forms of Child Labour similarly prohibited "the use, procuring or offering of a child for prostitution..." [Article 3(c)]. The most recent international convention addressing slavery, the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which went into effect July 1, 2003, provides that "No migrant worker or member of his or her family shall be held in slavery or servitude" and "No migrant worker or member of his or her family shall be required to perform forced or compulsory labour." [Article 11(1)-(2)]. The International Criminal Court Statute, which became effective July 1, 2002, defines "enslavement" to mean "the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children."

**The 2000 United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.** However, it was the 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children [hereinafter the Protocol], Supplementing the United Nations Convention against Transnational International Crime that provided the first definition of trafficking in persons and stated that "exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs" [Article 3(a)]. The Protocol calls on state parties "to protect and assist the victims of such trafficking, with full respect for their human rights" [Article 2(b)].

**Failure to Recognize the Trafficked Person as a Victim.** However, our presence at this Hearing indicates that trafficking in persons as a form of slavery is indeed an "ongoing tragedy," and that the world has not yet done enough to provide the full protection of the human rights of victims of trafficking, as called upon by international law. There have been some efforts made by governments to shift the focus from treating the trafficked person as a criminal to recognizing such person as a victim. Unfortunately, many countries today still do not respect the human rights of victims of trafficking and instead treat them as criminals, charging them with immigration violations, detaining them in prisons, and deporting them.

**Staggering Numbers of Transnational and Domestic Trafficking: Routes and Forms of Trafficking.** Nor have we as a global community been able to effectively prevent trafficking. Today, in 2003, according to United States government estimates, between 800,000 and 900,000 people are trafficked annually, and this is just across international borders, with between 18,000 and 20,000 of these victims trafficked into the United States. Indicating the global nature of the crime of trafficking in persons, cases of trafficking into the United States include women and children who are trafficked from Honduras to Dallas and Ft. Worth, Texas; Latvia to Chicago; Mexico to Florida; Korea to Michigan; Japan to Hawaii; Cameroon to Maryland; Taiwan to Seattle; India to California; and Vietnam to Atlanta, Georgia. Importantly, the numbers cited above do not take into account the hundreds of thousands of women and children trafficked within their own countries, a staggering problem seen, for example, in many countries of Latin America and the Caribbean. For instance, there are reports that within the borders of Brazil alone, 100,000 women and children are estimated to be bought and sold every year. No country or region in the world is impervious to the problem, and all constitute either a country or region of origin, transit, or destination, and in many cases any combination of the three. As a whole, worldwide trafficking is estimated to be a \$7 billion dollar annual business. Therefore, it is

evident that traffickers are still able to operate at relatively low risk, with high profits, and utter contempt for the lives of those who are caught up in the trafficking web as victims. The global community has yet to reverse the trend and return to the victims of this modern form of slavery the full extent of the human rights that have been taken away from them.

**Forced Labor.** Across the borders of the countries in West and Central Africa, for example, UNICEF estimates indicate that over 200,000 children are trafficked into conditions of slavery, some as young as 8 years old, working in domestic and other forms of labor. It is also reported that in Gabon alone between 5,000 to 6,000 children are enslaved. Many are beaten, and receive no pay for their labor. Thousands of women and girls from South and Southeast Asia are trafficked to Saudi Arabia and forced into domestic labor. In South Asia, the problem of debt bondage has been particularly prevalent in the countries of India, Pakistan, Bangladesh, and Nepal. According to estimates of various human rights NGOs, between 15 and 20 million people are enslaved within the bonded labor systems of those four countries. Many young women from Asia have also fallen victim to indentured servitude in the Northern Mariana Island of Saipan, a United States Commonwealth, working for 12 hour days, seven days a week, in unsanitary conditions, all for pay below the U.S. minimum wage standards, for many well known brand name manufacturers. You are probably aware of the recent decision of a U.S. Federal Judge to approve the settlement of sweatshop lawsuits filed in Saipan in 1999, establishing a \$20 million fund to pay the 30,000 garment workers who are the plaintiffs in the lawsuit and who had been or still are working in such conditions.

**Sexual Slavery.** The expansion of sex industries in Southeast Asia is well known. UNICEF reports that between 244,000-325,000 women and children are in commercial sexual exploitation in Thailand. In Cambodia, no less than 55,000 women and children are working as sex slaves, 35% of whom are younger than 18 years of age. Thousands of women and girls are trafficked to the United Arab Emirates for sexual exploitation from the countries of Eastern Europe. And in Western Europe, it is reported that between tens of thousands and hundreds of thousands of Eastern and Central European, African, Asian and Latin American women are trafficked into the sex trade to countries such as Germany and the Netherlands, Italy and Austria.

## **2. Governments have the responsibility to address the contributing factors to the trafficking infrastructure so they prevent acts of trafficking.**

**An International Obligation to Prevent Trafficking.** A state has an international responsibility to prevent trafficking. The Protocol provides that “state parties shall establish comprehensive policies, programmes and other measures: (a) to prevent and combat trafficking in persons....” [Article 9(1)(a)]. These measures should include measures “to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.” As a part of preventing trafficking, a state must also educate potential victims of trafficking as to the dangers of trafficking. It is my contention that any educational program warning about the dangers of trafficking should include also warning about the harm of prostitution itself. I would like to give members of the Subcommittee some examples of recent efforts to educate about the danger of trafficking and to prevent the acts of trafficking.

**Awareness-Raising Campaign Conducted by an NGO in Moldova.** For example, in Moldova, one of the most significant origin countries for the trafficking of women, the Center for the Prevention of Trafficking in Women (CPTW), a local NGO, uses a variety of media and training tools to educate the public in general, as well as to target the groups that are most at risk. It broadcasts radio programs, has created several TV documentaries, published newspaper articles, and trained youth volunteers across Moldova to conduct seminars with teenage youth, warning them not only about the dangers of trafficking, but also educating them about their rights under the law and how they can protect themselves against the possible violations of such rights. However, it is important that government themselves engage in similar efforts.

**Awareness-Raising Campaign Conducted by the Government of Uzbekistan.** Some governments have also taken steps to implement educational campaigns or to collaborate with NGOs in doing so. For example, on July 2, 2003, an Uzbek national TV station ran a twenty-minute documentary segment entitled “Dangerous Trade”, which featured stories of six women trafficked to the United Arab Emirates for the purposes of prostitution and warned the public about the increasing danger of trafficking for Uzbekistan. The Ministry of Education has also allowed some anti-trafficking NGOs to give trafficking awareness lectures in public schools.

**Monitoring Travel of Children as a Means of Preventing Child Trafficking by the Government of Burkina Faso.** Burkina Faso, a country with a severe lack of resources, has nevertheless responded to the problem of child trafficking that exists in the country. Public concern about commercial sexual exploitation of children in Burkina Faso exists, and to prevent the trafficking of children, the government of Burkina Faso along with five other West African countries, Benin, Côte d’Ivoire, Mali, Niger, and Togo, announced the launching of a new common travel document, which went into effect in July 2002, aimed at fighting child trafficking in the region. Schoolchildren were asked by the authorities to suspend possible travel to Côte d’Ivoire, a major point of destination, until such time as the travel document went into effect. The new travel document is to contain the names of the adult accompanying the traveling child, as well as the adult who is to shelter the child at his or her destination.

**Informing Domestic Servants about Their Rights in Destination Countries.** In the Philippines, the Migrant Workers and Overseas Filipinos Act provides for travel advisory and information dissemination, so that migrant workers can be aware of the dangers potentially involved in working in a foreign country, and prohibits the illegal recruitment of employees working in countries that do not fully protect the rights of migrant workers.

**Restrictions on Travel of Single Women to Countries of the Middle East.** The trafficking of women for domestic service to the Middle East is a growing problem, with women from South and Southeast Asia trafficked for this purpose. It has been reported for example, that Indonesian girls are trafficked from villages in Java, Sumatra, and other islands to Saudi Arabia, where they are forced into domestic labor. Women are also trafficked from Sri Lanka to work as maids. The government of Bangladesh, which is a country of origin for trafficking of women, in response to the growing problem of abuse of domestic servants in the countries of the Middle East, has banned single, unskilled females from traveling alone to most counties of the Middle East. The United Arab Emirates, which is a country of destination for many women who are trafficked for the purpose of prostitution, issued a special decree prohibiting single women from the Newly

Independent States of Central Asia under the age of 31 from entering the United Arab Emirates unless accompanied by male relatives or unless visiting the United Arab Emirates for business purposes. It is unclear, however, to what extent such a measure helps curb the trafficking of women.

**Confronting the Economic Vulnerability of Women and Children.** These are measures which may have some positive effect in preventing trafficking; however, governments need to enact economic reforms that take into account the special vulnerability of women and children, since traffickers supply human commodities by seeking the most vulnerable populations to lure into trafficking schemes. More women and children than men suffer from age and gender-based discrimination, poverty, lack of education, and economic desperation. Governments should take the necessary actions toward increased employment opportunities especially for women, access to education for all children, and creation of jobs within a particular country's borders to discourage nationals from having to seek migration to other countries as the sole economic opportunity.

- 3. Governments have the responsibility to enact legislation to recognize all forms of sexual exploitation as a crime, including trafficking for the purpose of prostitution, trafficking for the purpose of pornography, trafficking for the purpose of mail-order brides, and sex tourism.**

**The United States Call for Recognition of All Forms of Sex Trade as a Crime: The Case of Sex Tourism.** President George W. Bush, in his speech to the United Nations in New York on September 23, 2003, stated that there is a need for establishing "clear standards and the certainty of punishment under the laws of every country" in order to put an end to the sex trade, including all forms of sexual exploitation it is associated with, such as sex tourism. President Bush said further that "today, some nations make it a crime to sexually abuse children abroad. Such conduct should be a crime in all nations. Governments should inform travelers of the harm this industry does, and the severe punishments that will fall on its patrons." The United States recognizes sex tourism as a serious crime. The United States Protect Act of 2003, Section 105, penalizes a person who enters the United States or travels abroad for the purpose of engaging in illicit sexual activity with a child. On the day following President Bush's speech at the United Nations, Michael Lewis Clark, a 69-year old retired United States army sergeant, was charged with sex tourism in one of the first indictments under the new law. Clark was indicted by a Seattle grand jury on 2 counts of traveling via foreign commerce to Cambodia to engage in illicit sexual conduct with a minor. He paid 2 young homeless boys, aged 10 and 13, \$2 each to have sex with him. Working with 2 NGOs to gain the prosecution of Clark, Cambodian and United States Customs officials will bring witnesses from Cambodia to the United States if the case goes to trial. Clark is unlikely to be offered a deal as the United States Attorney General, John Ashcroft, has discouraged plea-bargaining for trafficking-related offenses throughout the country. I believe that this is a good policy. I also believe that what the President mentioned regarding governments informing travelers of the harm of sex tourism is a good thing, and that is why I urge members of the House to pass H.R. 2620, the Trafficking Victims Protection Reauthorization Act of 2003, which requires airlines, organized or operating in the United States, to develop and disseminate information alerting travelers that sex tourism is a crime.

**Shortcomings in Child Sex Tourism Laws.** Unfortunately, other governments are not following the same approach. For example, under the Swedish law, in order for the Swedish courts to have jurisdiction over illicit sexual activities with children committed abroad, the act must be criminal both in Sweden and in the country where it was committed, thus requiring double criminality for prosecution. In addition, in Sweden, the sanction for such a crime may not exceed the maximum penalty prescribed for that crime under the law of the country where the crime was committed. So, the Swedish law has its shortcomings. Further, countries that are destinations for child sex tourists should also enact strict laws to prevent its occurrence. For example, in Honduras only the sexual abuse of a child under the age of 12 is considered a crime. Therefore, a sex tourist can be prosecuted for exploiting a minor between the ages of 12 and 18 only when the child or his parents have denounced the offense.

**Progress in Enacting Child Sex Tourism Laws.** At least 20 countries have enacted sex tourism legislation that applies on an extraterritorial basis, including Australia, Belgium, Canada, France, Germany, Japan, the Netherlands, Sweden (as mentioned) and Switzerland. Extraterritorial legislation should adopt a uniform age of consent and remove the double criminality and the double jeopardy requirements. Even more importantly, countries must enforce these laws.

**Measures to Prevent and Punish Sex Tourism: The Case of Brazil.** Some countries have taken steps to prevent sex tourism on their territory by targeting the general public and specifically, the customers – the sex tourists. For example, at the end of 2001, the local authorities of the city of Rio de Janeiro in Brazil launched a campaign against child sex tourism. This campaign aims to warn tourists to stay away from child prostitution, and is provided in several languages, Portuguese, Spanish, French, and English. In addition, Brazil has enacted laws targeting not only the sex tourists themselves, but also actors involved in facilitating their behavior. Law Number 8069-90 of 2000, in particular Article 244(a), imposes sanctions including fines and revocation of the license of a travel agency or hotel or other agency facilitating travel for the purpose of sex tourism. This is in addition to putting the tourist himself in jail for 10 years.

**Child Pornography as a Form of Sexual Exploitation.** Incidents of pornography, specifically child pornography, are largely cited in conjunction with prostitution or under the general guise of sex tourism, and are rarely addressed as a separate phenomenon in discussions of trafficking. This seems to arise out of the fact that pornography often accompanies other commercial sexual exploitation. Pornography is, however, a lucrative industry that has proliferated widely in some countries in Latin America and the Caribbean for example, with the help of the Internet and the growth of sex tourism in the region. Pornography also represents another layer of exploitation which victims trapped in the sex industry are often forced to endure. In many cases, women and girls are videotaped without their consent and the profits from the sales of such videotapes are kept entirely by the pimps and brothel owners. Children as young as 13 years old have been found in a pornography and prostitution ring in Antigua and Barbuda, and in Mexico, 5,000 minors have been reportedly engaged in prostitution or in pornographic activities. In Costa Rica, minors have reported being actively sought out for the purposes of production of pornographic material. Coercive mechanisms such as deception, sales and abductions are a common path to the procurement of minors for this purpose.

**Abuse of Non-Commercial Sex: The Case of Mail-Order Brides.** While the United States Trafficking Victims Protection Act narrowly defines sex trafficking as trafficking for the purpose of a commercial sex act, I would like to draw your attention to cases of non-commercial sex, which, if involves abuse, should also be considered a crime. One type of trafficking for non-commercial sex is that of mail-order brides. The popularity of mail-order bride agencies has greatly increased in recent years, with the increasing accessibility to the Internet, with increasing numbers of women from Eastern Europe arriving as mail-order brides to Western Europe, the United States, and other countries after the fall of the Soviet Union. The Council of Europe conducted an in-depth survey of 219 marriage agency websites during the summer of 2001, and found that close to 120,000 women from the former Soviet Union had been recruited as potential mail-order brides by these agencies, indicating the scope of the larger problem. The Philippines is also widely known as a significant origin country for mail-order brides. Women have been recruited into forced prostitution through mail-order bride agencies, and studies agree that incidents of abuse may be higher in such marriages. Women are often less likely to report such abuse due to their dependence on the husband to provide valid immigration status. And you may remember the tragic murder in Seattle of Anastasia Solovyova King from Kyrgyzstan, by her husband, Indle King Jr., whom she had married through a mail-order bride agency. Mail-order brides may be classified as trafficking for the purpose of labor or a case of sex trafficking. Section 652 of the United States Illegal Immigration Reform and Immigrant Responsibility Act of 1996 imposes upon the matchmaking organizations an obligation to inform the prospective bride "upon recruitment, such immigration and naturalization information as the Immigration and Naturalization Service deems appropriate, in the recruit's native language, including information regarding conditional permanent residence status and the battered spouse waiver under such status, permanent resident status, marriage fraud penalties, the unregulated nature of the business engaged in by such organizations." However, I want to draw your attention to the fact that this is merely a "disclosure law". Such a law does not address the issue of mail-order brides within the trafficking context.

#### **4. Governments have the responsibility to recognize trafficking as a serious crime.**

**Failure of Some Legal Systems to Recognize Trafficking as a Serious Crime.** The United Nations Convention Against Transnational Organized Crime, which has just come into force on September 26, 2003, states that "serious crime shall mean conduct constituting an offense punishable by a maximum deprivation of liberty of at least four years or a more serious penalty" [Article 2(b)]. Unfortunately, some countries still provide for a light sentence in cases of trafficking in persons. For instance, in Turkey, transporting a person under the age of twenty-one for the purpose of prostitution is punishable only by 1 to 3 years of imprisonment. Similarly, in Qatar, where the punishment for trafficking in persons, as an activity related to prostitution, is light, the Criminal Code states: "[A] person who leads a female or attempts to lead her to practice sex with another person or to entice her to reside in, or frequently go to, a prostitution establishment with the purpose of practicing prostitution, whether inside the country or outside, shall be subject to imprisonment for a period not to exceed three years, or a fine not to exceed three thousand Riyals, or both." And the punishment for bringing a person into Egypt for the purpose of prostitution, or for the facilitation of entry of a person into Egypt for such a purpose, is between no less than one year and no more than five years in prison and a fine from one to five hundred Pounds.

**Drawing a Distinction between Drug Trafficking and Trafficking in Persons.** Many countries, while recognizing trafficking in drugs as a serious crime that warrants serious punishment, provide for a much lesser sentence for the crime of trafficking in persons. For instance in Poland, while selling drugs to minors is punished by 5 to 15 years of imprisonment, an individual who induces a person under the 18 years of age into prostitution is punished only by 1 to 10 years of imprisonment. In the year 2000, only 19 cases of trafficking in persons were registered with the Polish police, while 19,649 cases of drug trafficking were registered during the same year. Similarly, while capital punishment is the sanction for drug trafficking in Tajikistan, recruitment for the purpose of exploitation may only be punished by a fine or two years imprisonment.

**A New Trend Enhancing the Penalty for Trafficking in Persons.** The Philippines, for example, has recently enacted severe penalties for the offense of trafficking in persons, calling for the imprisonment of between 15 years and a life sentence for persons engaging in trafficking in persons. Likewise, in Nigeria, which is a major country of origin for victims of trafficking for sexual exploitation, a new law signed in July 2003 imposes a life sentence on any individual engaged in trafficking in persons for such a purpose. Other countries have also enacted anti-trafficking legislation that criminalizes the act of trafficking and provides for a serious penalty, as I have testified on the status of anti-trafficking legislation in foreign countries before the House Committee on International Relations Subcommittee on International Terrorism, Nonproliferation and Human Rights, on June 25, 2003 Hearing entitled “Global Trends in Trafficking and the Trafficking in Persons Report”.

**5. Governments have the responsibility to enforce laws by prosecuting cases of trafficking.**

**Failure to Prosecute Cases of Trafficking.** Enacting legislation that makes trafficking in persons a serious crime alone is not enough. Without effective law enforcement and without publicized prosecutions of traffickers, traffickers are free to continue their criminal activities unhindered. To date, however, in many parts of the world the rates of prosecutions are rather low. For example, in Tajikistan in 2002, only four trafficking-related cases were prosecuted, which resulted in two convictions for kidnapping, exploitation for prostitution, and document and immigration fraud; while the traffickers in each case were sentenced to five years imprisonment, one of them was released under the amnesty act after serving only several weeks of the sentence. In Poland, it has been reported that although over 200 cases of trafficking have been investigated since 1997, when the last high-profile trafficking case was successfully prosecuted, prosecutions and convictions remain rare, and offenders are often released on lack of evidence against them. Likewise, according to the Organization for Security and Cooperation in Europe (OSCE) and reported by UNICEF, while 150 trafficking-related arrests were made between March and November 2001 in Albania, charges were pressed against only 10%. Only three persons were charged with trafficking and received sentences of 7 and 9 years in prison. The press in Indonesia has reported that local NGOs estimate that out of 286 cases of trafficking reported to the police between 1999 and 2001, only eight had gone to court, out of which offenders were convicted in only three cases. However, it is not only transition or developing countries that show such low instances of prosecutions of traffickers. Countries which have more

resources to take cases to trial still can show low rates of successful prosecutions of traffickers. For example in Japan, a significant country of destination and where the government acknowledges that trafficking is a problem, it has been reported that prosecutions of traffickers and facilitators remain rare, with offenders charged mainly on violations related to immigration and entertainment business laws.

**The Role of the United States in Training Foreign Prosecutors.** I would like to emphasize here the importance of training of prosecutors, lawyers, and judges on prosecuting cases of trafficking in persons and methods of investigation, submission of evidence and trial techniques. The United States Department of Justice conducts such training programs overseas, and I urge the Department of Justice to expand these programs in order to reach the countries where the rates of prosecutions are still very low, while the problem of trafficking is growing.

**6. Governments have the responsibility to punish all actors involved in the trafficking scheme, including the customer and the facilitators.**

**A Link between Demand and Trafficking: The International Law Perspective.** Article 9(5) of the Protocol addresses the issue of demand as an issue of prevention. It states that “states Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters exploitation of persons, especially women and children, that leads to trafficking.” Thus, the Protocol establishes a link between demand and trafficking.

**Legalization and Decriminalization of Prostitution.** Some legal systems do not go after the customer. The act of prostitution in many countries is legal. Only prostitution related activities constitute a crime and if the act of prostitution does not constitute a crime, why punish the customer who is obtaining a service, which is legal in nature. Sex in consideration for money is acceptable. Such countries include the majority of countries in Western Europe and Latin America. In some of these countries, prostitution is not only legal, but is legalized or decriminalized. Demand for sexual services tends to be highest in areas of legalized or decriminalized prostitution. In order to fulfill the needs of customers of prostitution, traffickers seek out vulnerable victims, and use deception and force to keep them in prostitution.

**Punishing the Customer and the Woman in Prostitution: The Islamic Law Approach.** Other legal systems penalize both the women in prostitution and the customer. That is the Islamic law approach in Muslim countries such as Saudi Arabia, Iran, Pakistan, Yemen, Mauritania, Jordan, Bahrain, Sudan, Tunisia, Malaysia, Brunei, and the United Arab Emirates, where the customer who buys sexual service from a woman in prostitution is considered to be committing adultery and that is a crime under Islamic law which punishes the adulterer and the adulteress.

**When Buying Sex but not Selling Sex Is a Crime: The Swedish Law.** A third approach is taken by the January 1, 1999 law of Sweden - that makes buying casual sexual services a crime. The Swedish Act “On Prohibiting Purchase of Sexual Services” provides that “a person who obtains casual sexual relations in exchange for payment shall be sentenced unless the act is punishable under the Swedish Penal Code – for the purchase of sexual services to a fine or imprisonment for at most six months.” Thus, buying sex is a crime but selling sex is not. Based

upon our findings at The Protection Project, I have the following statistics for you: in 1999, 94 cases were reported under this law, with 10 resulting in conviction; in 2000, 92 cases were tried under this law with 29 resulting in conviction; and in 2001, 86 cases were prosecuted; 38 resulted in conviction.

**Knowledge that the Women in Prostitution are Victims of Trafficking as Basis for Criminal Liability.** Yet another innovative approach has been introduced in a few legal systems, where knowledge of trafficking makes the customer liable. This approach is adopted by Art 41-A of the Criminal Code of Macedonia which provides that: “The one that uses or enables another person’s usage of sexual service from the person for whom he knows are victims of human trafficking will be punished with imprisonment from 6 months up to 5 years.” The new legislation of Croatia of May 2003 follows the Macedonian model in criminalizing the act to the customer if he has knowledge that the person in prostitution has been trafficked.

**The Law and the Functional Equivalent of the Law.** What is important here is not to only change the law itself, so that the law makes a customer liable, what is more important is to reform “the functional equivalent of the law”. By that I mean the customs, the traditions, and behavior. Countries that tolerate or accommodate or normalize prostitution should review their policies and inquire into whether such tolerance, accommodation, and normalization may contribute to rising numbers of victims of trafficking. It is also relevant here to note the importance of addressing traditional systems that may be contributing to the trafficking infrastructure not only for sexual exploitation, but also for labor. Bonded labor, or debt bondage, systems are prevalent in particular in many of the traditional societies of South Asia and in Africa. Under such systems, a person becomes a security against a debt or a small loan and must repay the debt through provision of personal services, often for his or her entire life. While many adults are exploited through such practices, child slavery appears to be more common, and some children are born into hereditary debt bondage. Thus, it is estimated that in India, approximately 5 million children are enslaved in bonded labor, even though India has a number of laws prohibiting slavery, debt bondage, and child labor, including the Constitution and the 1976 Bonded Labor System Abolition Act. However, these laws are poorly enforced, and traditional systems hold strong. In Africa, for example in Ghana, Benin, Nigeria and Togo, young girls may be given to priests as atonement for the sins of their male relatives, as part of the Trokosi (translated as “slaves of gods”) traditional religious practice. These girls are often exploited sexually by the priests, forced into domestic work and work in the field and local markets. Such servitude lasts anywhere from 3 to 5 years. Although the government of Ghana has condemned the practice of Trokosi and has outlawed it in 1998, many women remain enslaved and the law has been difficult to enforce. Such systems also indicate the importance of addressing traditional and customary practices and how they may be contributing to the trafficking and exploitation of women and children.

**Prosecution of United Nations Peacekeepers for Illicit Sexual Activities.** In the case of Bosnia, for instance, the demand for prostitution has risen significantly with the arrival of UN peacekeepers. Until the mid-1990s, the sex-slave industry barely existed in Bosnia, but after the signing of the Dayton Accord in 1995, and with the arrival of approximately 50,000 male peacekeepers, a sex-trade market has been created and is flourishing. Women from Belarus, Moldova, Ukraine, Romania, Hungary and Albania have been lured to Bosnia by offers of legal

work, but are enslaved in brothels. There are currently 15 UN peacekeeping missions operating around the world. Rule 4 of the UN General Assembly Code of Conduct of 1993 stipulates that UN Peacekeepers should “not indulge in immoral acts of sexual, physical or psychological abuse or exploitation of the local population or United Nations staff, especially women and children.” UN peacekeepers are under the exclusive criminal jurisdiction of their own national authorities and have immunity from local prosecution. It is up to the UN Board of Inquiry to find reasonable grounds for a charge of serious misconduct with a recommendation that the peacekeeper be repatriated for subsequent disciplinary action in his native country. Of only 24 officers repatriated to their countries for misconduct, none have been prosecuted for violating Rule 4 of the United Nations General Assembly Code of Conduct.

**Entertainment Sex and Punishing the Facilitators.** Any effective legal approach to combating trafficking, in my judgment, should target stripping, lap dancing, massage parlors, escort services and other forms of entertainment sex. It is not enough to follow a tort-nuisance approach, where such businesses are only be liable for zoning violations or disturbance of public order, public safety, or public tranquility. We should make these operators of entertainment sex criminally liable when they are involved in trafficking. But we have to be careful not to define any of these activities as a legitimate form of labor.

## **7. Governments have the responsibility to protect victims of trafficking.**

**State Responsibility in Protecting Victims of Trafficking: What Does It Mean?** Protection of the victims of trafficking is yet another obligation of the state under international law. While the Protocol does not use mandatory language in this respect and merely calls upon the state to “consider” and “endeavor to provide” for the protection of victims of trafficking “[i]n appropriate cases and to the extent possible under (its) domestic law,” the Protocol establishes state responsibility in protecting victims of trafficking. What does this mean? It means that states must treat a trafficked person as a victim, not a criminal. It means that states must not criminalize the act of the trafficked person and should not penalize the victim for illegal acts, such as illegal immigration or prostitution, as long as these acts have been committed in relation to the act of trafficking itself. It means that states should provide victims of trafficking with necessary services, such as health and legal services, as well as protective shelter. It also means that states should not deport victims of trafficking, but should consider granting them a residency status.

**Failure to Recognize the Principle of Non-Criminalization of the Acts of Victims of Trafficking.** Many countries do not follow the above-mentioned approach. For example, in August 2002 in Cambodia, 10 Vietnamese girls, ranging from ages 12 to 18, were arrested and convicted on immigration violations, even though the girls were trafficked into the country against their will and forced into prostitution. The girls were sentenced to three months in prison and subsequently deported, upon serving their sentence. According to estimates of the Greek government, close to 3,000 children are working in the country illegally. Most are trafficked Albanian children taken by foot across the mountains into Greece or in the backs of trucks across the Albanian-Greek border. However, although some progress to provide protection has been made in Greece, these children are still often treated as illegal immigrants by the Greek government and arrested pending deportation, with minimal or no access to social services. As

Terre des Hommes reports, those children that are under 12 are placed in detention centers until their families can be located. However, a significant percentage of children placed in such centers disappear from the detention centers before this takes place, and many of these children are re-trafficked.

**Provision of Health Care to Victims of Trafficking: The HIV/AIDS Cases.** It is important to mention here the significance of the provision of health care to victims of trafficking in light of the HIV/AIDS crisis that we are facing in many parts of the world. Trafficked women and children are forced into commercial sexual exploitation, exposing them to serious health risks, including HIV/AIDS. Trafficked women and children who are forced into prostitution are forced to service multiple clients a day, and are subject to rape and physical abuse from their traffickers. For example, 80% of HIV/AIDS cases in Thailand at the height of the HIV/AIDS epidemic were found in women working in the sex industry and their clients, many of whom are victims of trafficking from within Thailand and from places like Burma. Human Rights Watch has reported that 34% of the HIV cases in Japan throughout the 1990s were found among the non-Japanese (mostly Thai) women in Japan, many of which are thought to have been trafficked into Japan into the sex industry. According to the Special Rapporteur on the sale of children, child prostitution and child pornography of the United Nations Commission on Human Rights, “there are reports that young children are being targeted as sexual partners in order to reduce the risk of contracting HIV/AIDS. It is also reported that instances of child rape are being committed by individuals who believe that sex with a virgin will cure them from HIV/AIDS”. This link between HIV/AIDS and prostitution and trafficking needs further research. I want to make a reference here to a policy which I believe is a good policy, that is the recently passed United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, which states that “prostitution and other sexual victimization are degrading to women and children and it should be the policy of the United States to eradicate such practices. The sex industry, the trafficking of individuals into such industry, and sexual violence are additional causes of and factors in the spread of the HIV/AIDS epidemic” [Section 2(23)].

**Provision of Services to Victims of Forced Labor: The Case of Freed Slaves in Nepal.** In Nepal, where the traditional bonded labor system of Kamaiya was abolished in 2000, the former slaves who were released found themselves homeless and unemployed. In the years that have passed since the liberation of the former kamaiyas, the government of Nepal has failed to ensure their access to proper housing, land, education, and health facilities. As a result, many of them were forced to turn to begging and prostitution or return to their former enslavers.

**8. Governments have the responsibility to identify victims of trafficking and assist them to come forward without fear of punishment.**

**Absence of Reliable and Credible Statistics on the Number of Victims of Trafficking.** Efforts to prevent trafficking and to aid trafficking victims are inherently based on the knowledge of routes of trafficking, where the victims are coming from, how they are transported and where and how they can be identified in the countries of destination. In many cases, little information is available on the routes of trafficking and the numbers of victims, indicative of inability to effectively identify them. Many of the statistics provided by different organizations

lack credible foundation and there are few adequate statistics kept by either non-governmental or governmental organizations.

**Difficulty of Identifying Victims of Trafficking.** For instance, recent research of the Council on the Status of Women in Canada in Quebec indicates that the police and law enforcement officials find themselves unable to help women that are trafficked to Canada for sexual exploitation. One reason that has been cited for this problem is the lack of instruments to identify victims of trafficking. Since many victims of trafficking in Canada do not speak French or English and are in Canada illegally, they are unable to ask for help. Relatively little information is also available on the exact number of victims of trafficking in Canada and the nature of their plight within the country. Such information is necessary for law enforcement and the judicial system to be able to provide an adequate network of support for victims of trafficking. Such a lack of adequate statistics is a problem faced by many countries around the world.

**Where are the Victims of Trafficking in the United States?** The real challenge for us here in the United States is also to identify victims of trafficking, and reach them so we can help them. The Trafficking Victims Protection Act, for instance, provides for 5,000 visas for victims of trafficking annually. Unfortunately, very few victims have applied for these visas. The U.S. government has put in place various successful programs of assistance to victims of trafficking. But we need a specific program on identifying victims of trafficking around the country.

#### **9. Governments have the responsibility to facilitate the repatriation of victims of trafficking.**

**The Responsibility of Countries of Origin to Repatriate Victims of Trafficking.** Any assistance to victims of trafficking should not be limited to protection within the country of destination, but should also include repatriation, with dignity and respect, to their country of origin. This is what the Protocol calls for under Article 8, which provides that the country of origin “shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.” A country of origin “shall agree to issue...such travel documents or other authorization as may be necessary to enable the person to travel to and reenter its territory.” Consequently a state has the responsibility to ensure the safe return of the trafficked victim. This process includes the issuance of travel documents for such a person, since in most cases of trafficking the trafficker confiscates the travel document of the victim. Embassy staff and consular assistance must also be sensitive to the needs of victims of trafficking, which is often not the case.

**Obstacles in Accepting Victims of Trafficking into Their Communities.** Women returning back to their countries of origin often feel the shame of having worked in prostitution. For example, Azerbaijani women in rural areas are prevented by their relatives from speaking out about their experiences because of the burden of revealing the shame to others. Therefore, in countries of destination, the process of repatriation must also include reintegration services, since in many cases of trafficking the community may reject the victim of trafficking, who also faces threats of reprisals by the trafficker and the shame of having worked in prostitution.

**Reports of Government Failures to Repatriate Victims of Trafficking.** An Israeli NGO, The Hotline for Migrant Workers, has reported that “the consul of Moldova regularly notes on the women’s travel documents: “worked in Israel as a prostitute”, in order to “punish” the woman. The Hotline and Isha le’Isha have written to the Ministry of Foreign Affairs demanding that something is done to stop this degrading practice, but nevertheless, the Moldovan consul continues to insist on it.” In many countries, trafficked women and children are held in jails, shelters and detention centers awaiting repatriation, in the most severe cases, for many years. Also according to data provided by the Hotline in 2002, women from Uzbekistan wait for an average of 39 days in Israeli prisons and detention centers to receive the necessary travel papers to return home. One victim from Tajikistan spent 290 days in a prison in Israel awaiting documents, due to the lack of Tajik diplomatic presence in that country. Bangladeshi women and children, trafficked to Pakistan and to India, have reportedly been abused in jails in these countries, due to lack of action on the part of the Bangladeshi authorities, the embassies in particular. Such phenomena are not limited to these countries, and are a problem in many other countries of origin and destination around the world. It has even been reported that in some cases trafficked children have been held in the same jails as their traffickers.

**10. Governments have the responsibility to fight corruption and punish public officials who facilitate or participate in the trafficking enterprise.**

**The Role of Corruption in Facilitating Trafficking.** Corruption, a challenge especially in the context of trafficking in persons, undermines the effectiveness of government, leads to the misallocation of resources, harms development and thus, it has detrimental effects on the needy. As recognized by the United States Congress “trafficking [in persons] is often aided by official corruption in countries of origin, transit and destination, thereby threatening the rule of law.” [United States Trafficking Victims Protection Act, Section (102)(b)(8)]. Corruption hinders the government from using the countries’ resources to implement programs to prevent trafficking or protect victims of trafficking.

**International Obligation to Criminalize Corruption and Punish the Corruption of Public Officials.** Article 8 of the United Nations Convention against Transnational Organized Crime addresses the issue of corruption of public officials. It states that “Each state party shall adopt such legislative and other measures as may be necessary to establish as criminal offenses, when committed intentionally: (a) the promise, offering, or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties; (b) the solicitation or acceptance by a public officials, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.” Article 9 further requires that State Parties shall “adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.”

**Failure of Governments to Effectively Combat Corruption of Public Officials.** It has been reported that Bolivian police forces comply with persons known to exploit children. Reports further indicate that Dominican border officials are being bribed in exchange for allowing traffickers to bring Haitian children into the Dominican Republic. In a recent scandal, allegations

were brought in 2002 against the Dominican Consul in Argentina, as well as the Dominican Ambassador to Argentina regarding their involvement in the trafficking of Dominican women to Argentina for commercial sexual exploitation on the pretext of domestic work offers. You are also probably familiar with the recent news about a high-profile trafficking case in Montenegro, which has collapsed. In June 2003 the prosecutor's office in Podgorica, the capital of Montenegro decided to stop criminal proceedings against the deputy state prosecutor of Montenegro and others for their involvement in trafficking of a Moldovan woman, who alleged that she and other victims of trafficking for sexual exploitation in Montenegro had been patronized by members of the Montenegrin political elite and civil servants. Allegedly, the women were also repeatedly sold back to the brothels by members of the Montenegrin police force when trying to escape. Following international outrage over the Montenegrin government's alleged attempt to cover up the scandal, the international community called for reopening the criminal proceedings and sent an independent committee to investigate the case, represented by the OSCE. The committee has released its findings to the Montenegrin government on September 29, 2003, but the report has not yet been made public, and the future of the case is of now still unknown.

**11. Governments have the responsibility to cooperate with non-governmental organizations (NGOs), allow them the freedom to work, and consult with them in taking the necessary measures to combat trafficking in persons.**

**Failure of Governments to Cooperate with NGOs.** NGOs are critical in providing victims of trafficking with needed services. Unfortunately, governments do not always cooperate with NGOs. For example, it has been reported that in Togo NGOs have complained of poor coordination between the government and NGOs, sometimes disrupting the provision of needed services to repatriated children. In Russia, NGOs complain of the lack of support from the Federal Government and its failure to see NGOs as partners.

**An Emerging Trend of Cooperation.** However, many governments are beginning to open up to the resources of NGOs and to collaborate with them. We had seen some examples earlier from Central Asia where governments allow NGOs space on national television for anti-trafficking programming, and this has been the case in other regions as well. Studies show victims of trafficking are more willing to approach NGOs for assistance rather than government officials. Therefore, governments must support efforts made by NGOs to combat trafficking in persons. In many countries around the world NGOs are not allowed the freedom to function at all. I would like to see the United States playing a more active role in promoting human rights especially in such countries, and globally.

**12. Governments have the responsibility to cooperate, sharing information, allowing for extradition, and providing for mutual assistance in criminal matters.**

**The Significance of Transnational Measures in Combating Trafficking.** Because of the transnational nature of the crime of trafficking, combating trafficking requires transnational measures. This means that countries of origin, transit and destination must cooperate in fighting this crime. States must also recognize trafficking in persons as an extraditable offense, apply domestic anti-trafficking laws extraterritorially, and cooperate regionally.

**A Regional Initiative in the Commonwealth of Independent States (CIS).** One important development is that intergovernmental cooperation efforts are currently taking place within the CIS, of which many countries constitute significant areas of origin for trafficking in persons. Thus, a new Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters has been signed by the CIS countries in October 2002. Another recent intergovernmental agreement has been signed by the CIS Ministers of Interior on September 23, 2003. This latest agreement is the first to specifically address the issue of trafficking in persons in the CIS region. It provides for exchanging legal, operational and investigative information related to human trafficking between the police bodies of the participating countries.

**Collective Effort by the Governments of Southeastern Europe to Combat Trafficking in Persons.** I would like to remark on another recent success in international cooperation in anti-trafficking efforts. Twelve countries in Southeastern Europe and neighboring regions participated in a joint operation carried out by the Southeast European Cooperative Initiative headquartered in Romania. The operation targeted over 20,000 border crossings, bars, and nightclubs in the region, and identified a total of 696 victims of sex trafficking and 831 suspected traffickers. The operation took place throughout September 2003, and was assisted by the United States. The countries taking part included Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Greece, Hungary, Moldova, Romania, Serbia and Montenegro, Slovenia, and Ukraine. This is very encouraging news and I hope that other countries in other regions would cooperate in fighting the crime of trafficking in persons.

**In conclusion,** I would like to report to you today that the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children will become international law this coming December 2003. We needed, under Article 17, forty instruments of ratification for the Protocol to enter into force, and on September 26, 2003, we have reached our goal. And the Protocol will enter into force on the 90<sup>th</sup> day following this important date. Countries that ratified the Protocol must now comply with its mandates. I would urge the United States to ratify the Protocol. We have now created international consensus as to the recognition of trafficking in persons as a human rights violation. It is now time to take serious, effective, and comprehensive measures to eliminate this “ongoing tragedy of international slavery and human trafficking”.

Thank you.