



**Testimony of Neha Misra
Senior Specialist, Migration and Human Trafficking
Solidarity Center**

**Before the Committee on Foreign Relations
Subcommittee on East Asian and Pacific Affairs
Of the United States Senate
July 8, 2014**

**Presented at a hearing entitled:
*Combating Forced Labor and Modern-Day in East Asia and the Pacific***

Mr. Chairman, Senator Rubio, and other distinguished members of the Senate Foreign Relations Subcommittee on East Asian and Pacific Affairs, thank you for the opportunity to present the Solidarity Center's perspective on the scope of human trafficking in East Asia and the Pacific. We appreciate the Committee's attention to this horrific human rights abuse and particularly its emphasis on the labor issues related to trafficking in the region. I ask that my full written statement be put into the Record, and I will summarize my main points now.

My name is Neha Misra. I am the Senior Specialist for Migration and Human Trafficking at the Solidarity Center. We are an international non-governmental organization (NGO) that promotes and protects worker rights globally, working in more than 60 countries through 26 field offices. The Solidarity Center is an allied organization of the AFL-CIO, and a member of the Alliance to End Slavery and Trafficking (ATEST). Building upon more than 20 years of experience in the areas of child labor, migrant worker exploitation, and supply chain accountability, the Solidarity Center raises awareness about the prevalence and underlying causes of forced labor and other forms of trafficking for labor exploitation, and implements programs with partners from myriad sectors to combat the problem. These programs include initiatives that address each of the four "Ps" that have become part of the anti-trafficking paradigm: prevention, protection of victims, prosecution (or as we prefer to describe it, "rule of law"), and partnerships. The Solidarity Center has the unique ability to work across borders, in both countries of origin and destination for trafficked workers, as we have long-term on the ground relationships with local partners. We have implemented anti-human trafficking programs in countries such as China (Hong Kong), India, Indonesia, Malaysia, Nepal, Pakistan, the Philippines, Sri Lanka, Thailand, Jordan, Kuwait, Qatar, Kenya, Sierra Leone, Moldova, and the Dominican Republic.

The Solidarity Center's anti-trafficking programs span the globe. And while each country we work in has its own set of unique circumstances and problems, we have found common themes. Human trafficking and forced labor have, at their core, violations of worker rights and lack of labor standards and protections for workers. Whether its low-wage workers in sectors such as domestic work or construction, migrant workers¹ toiling on palm oil plantations, or other marginalized groups such as poor women workers or child laborers, human trafficking is a worker rights issue because it is linked to various forms of labor exploitation. It is one of the worst forms of worker abuse. This link between worker rights violations and human trafficking is particularly acute in the three countries on which I will focus my testimony today: Thailand, Malaysia, and Cambodia.

Although U.S. and international definitions of human trafficking clearly include forced labor, many policymakers and much of the general public around the world associate trafficking only with forced prostitution or commercial sexual exploitation. We continue to struggle to get governments to respond adequately to the problem of labor trafficking. Victims of trafficking for labor exploitation frequently go unidentified. Immigration officials regularly categorize migrant workers who are trafficking victims as undocumented workers and deport them. Police and labor

¹ The term "migrant worker" is the internationally accepted term for a person who migrates for employment, whether temporary, seasonal, or permanent. In the United States, in everyday language, "migrant worker" may refer to a seasonal or temporary worker, and "immigrant worker" refers to someone who migrates for work on a more permanent basis, or who has residency rights. I will use the term "migrant worker" in my testimony to refer to all workers who migrate for work, regardless of their status or length of stay in the destination country.

inspectors often view involuntary servitude or debt bondage in sectors such as agriculture, construction, manual labor, and manufacturing as worker rights abuses that do not require their intervention. And governments have prosecuted shockingly few cases of forced labor globally. Thailand, Malaysia and Cambodia are prime examples of this.

We commend the U.S. Department of State for downgrading Thailand and Malaysia to Tier 3 in its annual *Trafficking in Persons Report*, and ranking Cambodia on the Tier 2 Watch List. After four years on the Tier 2 Watch List, U.S. law required that Thailand and Malaysia be either upgraded or downgraded. The Solidarity Center and ATEST are ardent supporters of the U.S. Department of State's *Office to Monitor and Combat Trafficking in Persons (J/TIP)* because we have witnessed the crucial global leadership role that J/TIP plays in promoting the eradication of trafficking and forced labor. We are also strong supporters of the annual *TIP Report*, which in recent years has documented an exponential increase in trafficking for forced labor, debt bondage and other severe forms of labor exploitation.

Over the years, however, there have been specific country cases where political considerations rather than trafficking eradication were brought into play in the tier rankings. This undermines the credibility of the TIP Report. The State Department 2012 Inspector General's *Inspection of the Office to Monitor and Combat Trafficking in Persons* found: "...there is an inherent difference in perspective between J/TIP and the regional bureaus, which stems from J/TIP's mandated responsibility to implement the TVPA [Trafficking Victims Protection Act] and the regional bureaus' responsibilities for overall bilateral relations."² We are pleased to see, however, that the narratives and tier rankings for Thailand, Malaysia and Cambodia in the 2014 *TIP Report* reflect the reality that the Solidarity Center and our partners on the ground deal with every day—specifically, the lack of progress by the governments of these countries in the identification and protection of victims, prosecution of perpetrators (especially labor recruiters and employers), and prevention and deterrence of labor trafficking.³

As I will discuss below, we believe the tier rankings should be just the first step. The United States government and U.S. companies conducting business in these countries have additional tools at their disposal to push Thailand, Malaysia and Cambodia to implement concrete and effective initiatives to combat human trafficking for forced labor, debt bondage, and other forms of labor exploitation. It is past time to use these tools, as millions of workers continue to face vulnerability to human trafficking in the region.

Trafficking for labor exploitation is pervasive in all three countries. There are three main factors involved in labor trafficking in Thailand, Malaysia, and Cambodia I would like to highlight:

1. The high vulnerability of migrant workers to human trafficking, and the lack of political will among the governments to take serious measures to combat it.

² Office of Inspections, *Inspection of the Office to Monitor & Combat Trafficking in Persons*, Report Number ISP-I-12-37 (June 2012). Available online at <http://www.hsd.org/?view&did=716789>.

³ There were a few rankings in the 2014 TIP Report that advocates believe were based on political considerations – India and the Dominican Republic to name two; however, we can save that discussion for another hearing.

2. Lack of investigations, prosecutions, and convictions for forced labor (linked to corruption, complacency and even complicity of government officials in labor trafficking).
3. The lack of economic pressure by governments and businesses to eliminate forced labor (and other forms of labor trafficking) in the supply chains of products exported to the United States and other global destinations.

The High Vulnerability of Migrant Workers to Human Trafficking

A common element of the trafficking problem in Thailand, Malaysia and Cambodia is the particular vulnerability of migrant workers to forced labor, debt bondage, and involuntary servitude, and the lack of political will in the governments to do much about it. The potential profits to be made from the global labor migration business—by government officials, employers, employment agencies and labor recruiters—seem to trump initiatives to combat migrant workers vulnerability.

Unsafe migration processes and the lack of labor law and other legal protections for migrant workers make them an easy target for traffickers. Migrant workers are often explicitly excluded from the protection of labor and other laws—either because of their immigration status or because of the sector they work in (such as domestic work). Traffickers—in the form of labor recruiters and employers—take advantage of this exclusion and of the failure to enforce and monitor laws when they do exist, increasing the vulnerability of migrant workers to human trafficking.

Moreover, employers, businesses, and multi-national corporations increasingly rely on foreign labor recruiters or brokers to facilitate the movement of workers from one country to another (and even manage workers in the workplace after arrival). Recruiters are often complicit with or directly involved in trafficking of workers. They regularly charge exorbitant fees for their services, forcing workers into debt bondage, falsifying documents, and deceiving workers about their terms and conditions of work, increasing their vulnerability to human trafficking. Labor recruiters play a major role in the trafficking of migrant workers throughout Asia.

Thailand: The majority of human trafficking victims in Thailand are migrant workers. There are an estimated three to four million migrant workers in Thailand comprising about 10 percent of the country's workforce. Most come from neighboring countries, with the majority from Burma. Many, if not most, of these migrant workers are undocumented. Migrant workers in Thailand (men, women and children) toil in almost all sectors of the economy, but especially commercial fishing, fishing-related industries like seafood processing, low-end garment production, factories/manufacturing, and domestic work. They perform dangerous, difficult and dirty jobs—and there is high demand for their cheap labor among Thai employers.

In 2008, the Solidarity Center released a report as part of its *Degradation of Work* series entitled, *The True Cost of Shrimp: How Shrimp Industry Workers in Bangladesh and Thailand Pay the Price for Affordable Shrimp*. Thailand is one of the main exporters of shrimp to the United States. The report highlighted how companies in Thailand systematically use the lack of labor rights and weak labor law enforcement to exploit the mostly Burmese shrimp processing workers. The report uncovered major human rights abuses in the industry: unpaid wages, unsafe

and unhealthy workplaces, child labor, forced labor, physical intimidation, violence and sexual abuse of Burmese migrant workers. Six years later, little progress has been made to clean up the industry. Reports continue to surface about human trafficking of migrant workers in the seafood processing sector in Thailand.⁴ The Thai fishing industry has also received harsh criticism for the trafficking of migrant worker men, not only Burmese, but increasingly Cambodians and Rohingya refugees, onto fishing boats.⁵ This was a major factor in the downgrading of Thailand in the *2014 TIP Report*.⁶ Just this year, the *Guardian* newspaper conducted a six-month long investigation and found that a large number of migrant workers are bought and sold like slaves and held against their will on Thai fishing boats. The *Guardian* found that such forced labor plays an integral part in the production of shrimp sold in leading supermarkets around the world, including in the U.S. in stores such as Walmart, Costco, Carrefour, and Tesco.⁷

Despite the overwhelming evidence of a high vulnerability of migrant workers in Thailand to trafficking for forced labor and debt bondage, the Thai government has done very little to address the problem, and in fact has implemented measures that may actually increase migrant workers vulnerability to labor trafficking.

It is an established norm in the anti-trafficking field that providing documentation and legal status to migrant workers reduces their vulnerability to human trafficking. The Thai government, however, makes it difficult for migrant workers, and especially Burmese, to register and work legally in Thailand. As noted in a recent letter to Secretary of State Kerry from a global coalition of unions and human rights NGOs:

A complicated, expensive registration process that requires nationality verification and lack of a refugee law leaves stateless people (mostly Rohingya from Burma), migrant workers, and refugees at the mercy of labor recruiters to arrange for the documents they need to live in Thailand legally. Even through the official state process, brokers are not licensed or regulated, workers are responsible for paying the majority of the registration costs, and there is no state mechanism through which to apply for asylum outside the camps on the Thai-Burma border. Thus, many workers find themselves in some form of debt bondage to brokers...[R]egistration has expired for more than 250,000 workers who often paid several times more than the official rate to register under the National Verification System four years ago. As their documents expire, and official directives of how they must renew them remain in flux, more and more

⁴ See for example: “Trafficked into Slavery on Thai Trawlers to Catch Food for Prawns,” *The Guardian*, June 10, 2014, <http://www.theguardian.com/global-development/2014/jun/10/sp-migrant-workers-new-life-enslaved-thai-fishing>.

⁵ See “Special Report: “Thailand Secretly Supplies Myanmar Refugees to Trafficking Rings,” *Reuters*, December 4, 2014, <http://www.reuters.com/article/2013/12/05/us-thailand-rohingya-special-report-idUSBRE9B400320131205>.

⁶ <http://www.state.gov/j/tip/rls/tiprpt/countries/2014/226832.htm>

⁷ See “Revealed: Asian Slave Labour Producing Prawns for Supermarkets in US, UK,” *The Guardian*, June 10, 2014, <http://www.theguardian.com/global-development/2014/jun/10/supermarket-prawns-thailand-produced-slave-labour>. See also “Thailand’s seafood industry: a case of state-sanctioned slavery?” *The Guardian*, June 10, 2014, <http://www.theguardian.com/global-development/2014/jun/10/thailand-seafood-industry-state-sanctioned-slavery>.

migrant workers are going to find themselves in the country illegally and more vulnerable to trafficking.⁸

Migrant workers, ethnic minorities, and stateless persons in Thailand are the most vulnerable to human trafficking because they lack legal status. Lack of legal status, identity papers, and travel documents are major indicators for forced labor.

Moreover, the Thai government continues to make it difficult for migrant workers to obtain permits to work legally in the country. Only employers can apply for work permits and the permit binds the worker to that employer. Work permits also are tied to registration documents, so even legally registered workers can be immediately deported for leaving an abusive employer. Workers often face physical abuse and other forms of retaliation if employers find out they complained to the authorities to seek better treatment or to transfer to another employer.⁹

Through our programs in vulnerable work sectors around the world, the Solidarity Center has seen first-hand how a democratically elected and independent union in a workplace can help prevent trafficking. And yet, the Thai government has failed to amend its 1975 Labor Relations Act, which prohibits migrant workers from organizing labor unions, serving as leaders of a union, or participating in collective bargaining.

The recent military coup in Thailand also raises concerns. While it may be too early to tell how the current military government will respond to the human trafficking crisis, there have been reports of a crackdown on undocumented migrant workers, with hundreds of thousands of Cambodian workers fleeing over the border from Thailand back to Cambodia in early June 2014. We have seen in other countries where there is a forced mass exodus of migrant workers that workers face an increased vulnerability to exploitation as they cross the border back into their home country with few resources. (See example from Malaysia below). In recent days, the Thai and Cambodian governments announced new measures to streamline the process for Cambodian migrant workers to return to Thailand to work legally, promising to lower fees to workers and shifting some recruitment costs to agencies.¹⁰ While this sounds promising, whether it will actually help to reduce migrant workers vulnerability to forced labor and debt bondage remains to be seen.

Just last month, Thailand was the only government to vote against adoption of a new International Labor Organization (ILO) treaty on forced labor. I was a delegate on behalf of the AFL-CIO to the ILO Conference, which approved a key supplement to the 1930 Forced Labor Convention. The 2014 Forced Labor Protocol and Recommendation contain key provisions to help address the vulnerability of migrant workers to trafficking, such as the elimination of recruitment fees. Given Thailand's poor record on protecting migrant workers from human trafficking, its "no" vote was particularly troubling. Following the vote, after pressure from Thai

⁸ "Letter to Secretary of State John Kerry Regarding Human Trafficking in Thailand," May 9, 2014, <http://www.laborrights.org/publications/letter-secretary-state-john-kerry-regarding-human-trafficking-thailand>.

⁹ "Letter to Secretary of State John Kerry Regarding Human Trafficking in Thailand," May 9, 2014, <http://www.laborrights.org/publications/letter-secretary-state-john-kerry-regarding-human-trafficking-thailand>.

¹⁰ See "King Grants Pardon to Thai Activist Veera", *The Cambodia Daily*, July 2, 2014, <http://www.cambodiadaily.com/news/king-grants-pardon-to-thai-activist-veera-62931/>.

labor unions and others, the Thai government has indicated it will adopt the protocol. The United States and other governments should continue to exert pressure to ensure that the Thai government ratifies the instrument.

Malaysia: Migrant workers in Malaysia face a similar situation as migrant workers in Thailand. Malaysia is one of the largest destination countries for migrant workers in Asia. There are approximately two million documented and two million undocumented migrant workers, including Indonesians, Nepalese, Filipinos, Indians, Bangladeshis, Sri Lankans, and increasingly Vietnamese, Cambodians, Burmese and Laotians. These migrants comprise nearly 30 percent of the Malaysian workforce. While the Malaysian economy thrives on cheap migrant labor, foreign workers in sectors such as agriculture, construction, service, manufacturing, and domestic work often have their rights violated with little recourse under Malaysian laws, policies, and practices.

Despite the constant demand for cheap migrant labor, as well as an invariable influx of migrants, Malaysia does not have concrete policies and laws to protect migrant workers. The few existing policies protecting migrants are not enforced, or are enforced inconsistently, and tend to be short-term, temporary fixes. Malaysia has signed Memoranda of Understanding (MOUs) with several countries mentioned above, yet these agreements are often weak and difficult to enforce.

Migrant workers in Malaysia consistently face serious violations of internationally recognized labor and human rights. These violations include confiscation of passports, restrictions on movement, and deceit and fraud in wages (including nonpayment), forced labor, involuntary servitude, debt bondage and other forms of trafficking in persons. Physical and mental abuse, including sexual violence, is also a common phenomenon.

Debt bondage is a major problem for migrant workers in Malaysia. Employers increasingly rely on labor recruiters or employment agencies to recruit foreign workers. These recruiters/agencies charge high fees to migrant workers, often forcing workers to mortgage homes/land or to take out loans at exorbitant interest rates. Workers may end up in conditions of bondage, as they are unable to leave abusive employers because of the debt. The Malaysian government and the origin governments have failed to adequately address this problem. Moreover, Malaysian employers shift additional costs to workers that are the employer's responsibility, and use other economic coercion tactics to deny migrant workers their rights. The U.S. Department of State explains this well:

Many Malaysian recruitment companies, known as “outsourcing companies,” recruit workers from foreign countries. Contractor-based labor arrangements of this type—in which the worker may technically be employed by the recruiting company—create vulnerabilities for workers whose day-to-day employers generally are without legal responsibility for exploitative practices. In some cases, foreign workers’ vulnerability to exploitation is heightened when employers neglect to obtain proper documentation for workers or employ workers in sectors other than that for which they were granted an employment visa. In addition, a complex system of recruitment and contracting fees, often deducted from workers’ wages, makes workers vulnerable to debt bondage....¹¹

¹¹ <http://www.state.gov/j/tip/rls/tiprpt/countries/2014/226770.htm>

Rule of law for migrant workers in Malaysia is weak. Labor laws exempt migrant workers, or are weakly enforced. Many laws do not comply with international labor standards. For example, Malaysia excludes certain categories of workers, like domestic workers, from the protection of its 1955 Employment Act. There is little support for trafficked workers to access justice. Migrant workers are often put in detention centers or deported even if they are victims of worker rights violations, including forced labor.

Although it is lawful for migrant workers to join unions in Malaysia, they are prohibited from holding leadership positions, and may be banned from joining a union if they are contract employees, which most migrant workers are. Moreover, many employment contracts for foreign workers contain provisions banning workers from joining labor unions. Origin governments, such as Vietnam, also prohibit workers from joining unions in Malaysia. Further, employers routinely fire and blacklist migrant workers for trying to form unions with impunity. Such restrictions on freedom of association further prevent migrant workers from accessing justice for worker rights violations because they cannot access grievance procedures, or use collective bargaining to gain rights in the workplace.

Union leaders and migrant workers activists in Asia have criticized the 2007 Malaysian Anti-Trafficking in Persons Act (ATIP) for merging smuggling and trafficking offenses, “making trafficking victims more likely to be treated as undocumented migrants subject to immediate deportation, undermining government efforts to counter trafficking.”¹²

Similar to the Thai government, the Malaysian government has actually implemented policies recently that are increasing migrant workers vulnerability to forced labor rather than decreasing it. For example, a Malaysian government policy implemented in January 2013 places the burden of paying immigration and employment authorization fees on foreign workers, rather than on employers, increasing the risk of debt bondage. Moreover, the Malaysian government periodically implements crackdowns on undocumented migrants, most recently in January 2014, where they conducted massive operations to detain and deport hundreds of thousands of migrant workers. However, the Malaysian government does not have adequate screening procedures to ensure that trafficking victims are not also detained and deported. In addition, the deportations often involve leaving migrant workers literally just over the border in Indonesia without any resources or support. Indonesian NGOs report that these migrant workers are then vulnerable to traffickers who promise them new jobs or assistance in getting home.

Finally, the Malaysian Trade Union Congress (MTUC), which is active on the promotion of migrant worker rights and the eradication of labor trafficking, notes that the Malaysian government has been blocking the completion of the ASEAN Framework Instrument on the Protection and Promotion of Human Rights, which migrant worker rights activists have been pushing for since 2007.

¹² “More Bold Actions Need to be Done to Address Trafficking in Persons in Malaysia,” Statement by José Sonny G. Matula, National President, Federation of Free Workers-Philippines, to the 2014 International Labor Conference, June 2014.

Cambodia: Unlike Thailand and Malaysia, Cambodia is primarily an origin country for migrant workers traveling mostly within the ASEAN region (often to Thailand and Malaysia). Cambodian men, women and children have been subjected to forced labor, domestic servitude, and debt bondage, in sectors such as fishing, agriculture, manufacturing, and domestic work.

Similar to the situation of its neighbors, recruitment agencies play a major role in the trafficking of Cambodian workers. Agencies, along with corrupt local government officials, falsify legal identification documents to facilitate the illegal migration of children. Labor recruiters also charge exorbitant fees to migrant workers. A Solidarity Center Cambodian partner NGO cited fees as high as \$600, which may be one year's salary for a low-wage migrant worker. Such fees often push Cambodian migrant workers into debt bondage. Corrupt Cambodian officials have also been implicated in cooperating with labor recruiters to facilitate the transport of victims across the border into Thailand.¹³

The Cambodian government's response to labor recruiter violations has been weak, and rife with corruption. For example, a local Cambodian newspaper reported:

[T]he appointment of General Sok Phal to head the Interior Ministry's newly formed department to monitor migrant workers has raised concerns over his close familial connection to a labor recruitment industry fraught with human rights abuses. Gen. Phal's sister, Ung Seang Rithy, is the owner of one of the biggest labor recruitment agencies sending Cambodian workers overseas . . . the Ung Rithy Group, which has been named by rights groups as a serial abuser of Cambodian migrant workers. Ms. Seang Rithy is also president of the Association of Cambodian Recruitment Agencies . . . "When I heard this news, I was concerned about the close relationships between high-ranking people in the government and in recruitment agencies," said Moeun Tola, head of the labor program at the Community Legal Education Center. "Since the Labor Ministry failed to properly manage and monitor [migrant workers], labor recruitment basically became human trafficking," Mr. Tola said. "The Ministry of Interior will now take on much more of the work, meaning Sok Phal will have even more influence than before."¹⁴

In response to harsh media reports of Cambodian women and girls being trafficked into domestic servitude in Malaysia,¹⁵ the Cambodian government instituted a ban on the migration of women to Malaysia for domestic work. The Cambodian government, however, lacks the infrastructure, capacity and resources to manage labor migration and there are reports that Cambodian women and girls continue to migrate to Malaysia through even more insecure channels and methods, increasing their vulnerability to trafficking. The Cambodian Ministry of Labor is currently finalizing a draft MOU with its Malaysian counterpart to facilitate the migration of domestic workers once again from Cambodia to Malaysia. Without effective enforcement measures,

¹³ See *Trafficking in Persons Report 2014*, <http://www.state.gov/j/tip/rls/tiprpt/countries/2014/226693.htm>.

¹⁴ "Concern over Migration Chief's Family Connections", *The Cambodia Daily*, April 24, 2014, <http://www.cambodiadaily.com/news/concern-over-migration-chiefs-family-connections-57202/>.

¹⁵ See, for example, "Cambodia: Trafficking Domestic Workers to Malaysia," IRIN, March 17, 2011, <http://www.irinnews.org/report/92210/cambodia-trafficking-domestic-workers-to-malaysia>.

however, activists are skeptical that the MOU will protect Cambodian domestic workers. Cambodian men have also been a large percentage of the victims of forced labor described above on Thai fishing boats.

The Cambodian government promotes labor migration as a way to increase national revenue (through remittances) and address high unemployment in the country. Yet the government fails to monitor the recruitment process, enforce labor recruiter regulations, and support Cambodian workers in destination countries. The government has not created the structures or infrastructure to support Cambodian workers abroad. It negotiates weak agreements with destination countries (the MOU with Malaysia in relation to domestic workers is a prime example). Cambodian Embassies abroad are ill-equipped to deal with the large numbers of exploited and trafficked Cambodian workers. There is very little accountability for corruption.

ASEAN: The planned ASEAN Economic Community (AEC), currently being developed by the 10 Association of Southeast Asian Nations (ASEAN) member states, will include initiatives related to labor mobility in the region. The proposed labor mobility negates the whole concept of "migrant workers" at least for citizens of member states, though high-skilled workers will have easier mobility than low-wage workers. The ASEAN labor mobility initiatives, however, are being developed without any accompanying safeguards or labor rights standards to ensure that migrant workers will be protected. Migrant worker rights activists in the region have serious concerns that without the proper infrastructure in place, including strong regulations, migrant workers' vulnerability to forced labor and human trafficking will likely increase. Cambodian labor rights activists are particularly concerned for Cambodian workers, who will be a large percentage of the low-wage workers leaving their homes to travel to other ASEAN countries (like Malaysia and Thailand) to work in the most dangerous jobs, and in jobs the most rife for exploitation.

Lack of investigations, prosecutions, and convictions for forced labor (linked to corruption, complacency and even complicity of government officials in labor trafficking)

Systematic abuse of migrant workers, rising to the level of forced labor and human trafficking, goes virtually unpunished throughout Asia. The *2014 TIP Report* country narratives for Thailand, Malaysia and Cambodia provide examples of these governments' reluctance to hold employers accountable for trafficking in their workplaces. Even in the rare cases when labor trafficking is identified and charges brought, the labor recruiter is blamed and not the employer who also perpetrates the exploitation. This lack of political will translates into pathetically few cases of human trafficking for forced labor or other forms of severe labor exploitation being prosecuted in the region. When cases are prosecuted, they often result in small fines and no jail time for the perpetrators—barely a deterrent for exploitative employers. Or cases get put on hold for years while perpetrators are out on bail.

While public awareness campaigns and education for at-risk groups are important tools for prevention, one of the key ways to prevent forced labor is to create an enabling environment through the rule of law that promotes transparency and accountability. Increasing prosecutions and convictions, and imposing harsh penalties (including long jail time and economic restitution) may be an even more effective prevention tool.

As mentioned above, corrupt officials in Thailand, Malaysia, and Cambodia are part of the problem. For example, Thai government officials have been implicated in the trafficking of Rohingya refugees on Thai fishing boats. Cambodian officials have been tied directly to working with labor recruiters to traffic workers over the border to Thailand, and Malaysian immigration officials have been linked to facilitating the transportation of trafficking victims. Human Rights Watch has reported that abuses of Cambodian migrant domestic workers by employers and recruiters “went unchecked due to connections between recruitment agencies and highly placed officials.”¹⁶

Moreover, whistleblowers, in the form of trade union or NGO activists, journalists, and migrant workers, have been retaliated against by all three governments for raising issues of forced labor and corruption linked to human trafficking. For example, late last year, Thai authorities charged two journalists with defamation for writing and publishing a report alleging that members of the Thai navy were involved in trafficking captured migrants from Burma. This not only raises concerns about the freedom of the press, but also concerns of how the Thai military will respond to trafficking abuses now that it is in charge of the government.

The Solidarity Center sees the low levels of forced labor prosecutions, lack of political will and impunity as evidence of these governments’ absolute disregard of forced labor as a serious issue. Labor migration is seen as a profit-making mechanism, for employers, owners of recruitment agencies, and government officials, and human trafficking as just an unfortunate consequence.

The lack of economic pressure by governments and businesses to eliminate forced labor and other forms of labor trafficking in the supply chains of products exported to the United States and other global destinations

Clearly, Thailand, Malaysia and Cambodia are important bilateral partners for the United States. They are also important trade partners. Malaysia is part of the Trans-Pacific Partnership (TPP) negotiations with the United States and 10 other countries. The U.S. and Cambodia negotiated the Trade and Investment Framework Agreement (TIFA) in 2006, which “facilitates and promotes greater trade and investment of the two countries and provides a forum to address bilateral trade and investment issues.”¹⁷ Thailand is one of the largest exporters of seafood to the United States. The AFL-CIO has filed a petition to suspend Generalized System of Preferences (GSP) status for Thailand with the U.S. Trade Representative (USTR). The AFL-CIO has called for a suspension of GSP as a way to incentivize the Thai government to effectively address forced labor and human trafficking, and other labor rights abuses of migrant and Thai workers. The U.S. is a major market for Malaysian and Cambodian ready-made garments. Given the significant problem of trafficking of migrant workers along the supply chains in these and other export sectors, it is likely the U.S. government is allowing imports of products made with forced labor into the United States.

¹⁶ “‘They Deceived Us at Every Step.’ Abuse of Cambodian Domestic Workers Migrating to Malaysia”, Human Rights Watch, 2011, <http://www.hrw.org/sites/default/files/reports/cambodia1111webwcover.pdf>.

¹⁷ <http://www.ustr.gov/tpp>

When the Solidarity Center issued its *True Cost of Shrimp* report in 2008, we were immediately attacked by Thai shrimp producers and industry associations, who all claimed that they had good labor practices and clean supply chains. The companies also made promises to be transparent and institute measures to ensure that there was no forced labor in fishing and seafood production in Thailand. Yet every year since, the media, unions, and NGOs have provided strong evidence of forced labor in the industry. When the State Department ranked Thailand on Tier 3 last month, the Thai fishing industry again claimed the allegations were outrageous.¹⁸ The industry representatives can make these false claims because they know that they likely will not be held accountable by the Thai government or anyone else.

U.S. multinationals may be complicit in this. As mentioned earlier, Thailand is one of the largest importers of shrimp to the U.S.; resulting in Thai shrimp ending up in the freezers of major retailers here. As buyers of Thai processed seafood, these U.S. companies have not done enough to prove to consumers that their supply chains are not tainted with forced labor.

Again, public awareness campaigns and education for at-risk groups are important tools for prevention; but in and of themselves they will not eradicate trafficking for forced labor. Together with increased prosecutions and convictions, one of the most effective prevention tools that governments and businesses have is economic pressure. Governments should impose trade restrictions or penalties on products made with forced labor, and multinational corporations should exert their significant power as buyers to hold suppliers accountable to supply chains free of forced labor.

In general, it is difficult to quantify the exact number of forced labor victims in global supply chains but, as those supply chains reach down to smaller and smaller suppliers, the chances increase that the labor force includes trafficked people.

- When employers (buyers and multinational corporations) demand cheap or unrealistic pricing structures, severe labor abuses, including forced labor, often will result in their supply chains.
- Similarly, when employers contract out or hire unregulated subcontracted suppliers, they should not be surprised to find that they have trafficking victims in their production lines.
- When employers refuse to enforce or claim that it is too difficult to monitor adherence to core labor standards in their supply chains, the probability that they will find forced labor, debt bondage, and other severe forms of labor exploitation increases.

The pricing structure as a cause of human trafficking cannot be overemphasized, as this is an underlying factor that employers, business, corporations and consumers can all address. As described in the Solidarity Center's report, *The True Cost of Shrimp*:

As a commodity, the price of shrimp fluctuates according to supply and demand, and price pressure is significant all along the supply chain. Retailers, sensitive to

¹⁸ "Fishery Invites Supply Chain Inspection," *The Nation*, June 25, 2014, <http://www.nationmultimedia.com/business/Fishery-invites-supply-chain-inspection-30237027.html>.

the risk involved with importing fresh food, press import companies for faster distribution, acceptable quality, and the lowest prices. Importers, aware that market fluctuations can affect prices, leverage their bulk purchasing power to demand speedy delivery from producers. Trapped between producers and importers are labor-intensive shrimp factories. Often, the factories' response to price pressure is to squeeze wages, neglect workplace health and safety regulations, and cut other corners that leave shrimp workers bearing the social cost of affordable shrimp.¹⁹

And yet, Thai shrimp continues to be found in major U.S. retail markets. Similar concerns may be raised on the potential of forced labor in the supply chains of products exported from Malaysia and Cambodia.

The U.S. government must do more to ensure that U.S. corporations are held accountable for their practices abroad. And we must increase government scrutiny of imports and exports to ensure goods made by forced labor are not allowed in the U.S. marketplace. The 1930 Tariff Act prohibits the importation of goods into the U.S. made with forced or child labor. This law however is rarely enforced as the "consumptive demand exception" weakens it. As required by the 2005 TVPRA, the U.S. Department of Labor "maintains a list of goods and their source countries which it has reason to believe are produced by child labor or forced labor in violation of international standards."²⁰ Even though many of the goods on the list are produced for export by the identified countries, the list has not been used to enforce the Tariff Act.

After the publication of the Solidarity Center's *True Cost of Shrimp* report, Senator Harkin asked the Department of Homeland Security (DHS) to investigate. U.S. Immigration and Customs Enforcement (ICE) investigators admitted to the Solidarity Center that they knew that their investigation would not find forced labor in the Thai seafood sector because the investigation process is flawed. Currently, ICE must notify foreign governments of their intent to inspect workplaces that export products to the United States. Such notification results in the "cleansing" of these workplaces to remove any signs of trafficking or forced labor. Moreover, U.S. law does not allow evidence collected by unions, the media or non-governmental sources to be the basis for restricting the importation of products made by trafficked or forced labor. This must be reformed. The DHS must review and rework the role of ICE in overseas inspections.

Multinational corporations' codes of conduct have failed to curtail trafficking practices in many sectors, including garment/textile, agriculture, and seafood processing. There is no easy solution to this problem, but we know that a key deterrent is the ability of unions and labor rights organizations to shine a light on these practices through on-the-ground investigations. We believe it is important that Congress and the administration support such monitoring efforts and the efforts of workers to monitor their own workplaces. Ultimately, workers and trade unions must be empowered to monitor supply chains because history shows that abuses in the workplace only end when workers have the power to ensure that their rights in ILO conventions and national laws are respected.

¹⁹ *The True Cost of Shrimp*, Solidarity Center, 2008, p. 11.

²⁰ <http://www.dol.gov/ilab/reports/child-labor/list-of-goods/>

Recommendations for Initiatives to Combat Trafficking for Labor Exploitation in the East Asia Region

“End Worker Exploitation, End Human Trafficking.” This simple slogan captures one of the most critical solutions to ending human trafficking in Thailand, Malaysia, and Cambodia as migrant worker exploitation is a major factor in forced labor in the region.

Key initiatives to combat trafficking for labor exploitation in the region should include:

1. *Using trade agreements to prevent forced labor (economic pressure):*
 - a. Congress, the administration, and other governments should ensure that bilateral and multilateral trade agreements (like the TPP) contain labor standards and protections as a preventative measure, ensuring they are applied to all workers, including migrants. Labor standards in trade agreements should include the same enforcement and dispute resolution mechanisms as other provisions like intellectual property rights, and not be relegated to secondary status.
 - b. Congress should encourage and support the United States Trade Representative (USTR) to suspend GSP and other trade preferences for any country that does not effectively address forced labor. Given the clear evidence of forced labor of migrant workers in Thailand, once Congress reauthorizes the GSP program, the USTR should give serious consideration to the AFL-CIO’s petition to suspend Thailand’s GSP status. Economic pressure is key to eradicating forced labor.
2. *Prevention through regulation of labor recruiters:*
 - a. Congress and other governments should strictly regulate labor recruiters and employment agencies. Specifically, eliminate worker recruitment fees and shift costs back to the employer. Workers should not be required to pay any fees associated with recruitment, the migration process, or placement. Employers must be held liable for the abuses of labor recruiters they hire. In addition, workers must have a way to ensure that a recruiter is legitimate and licensed.
 - b. To that end, the Senate passed *Subtitle F: Prevention of Trafficking in Persons and Abuses Involving Workers Recruited Abroad* and similar provisions in *Subtitle I* as part of S. 744 (Immigration Reform) in 2013 is a significant step forward in addressing #15 above. In the House of Representatives, H.R. 3344, introduced last year by Chairman Ed Royce, is modeled after *Subtitle F*, and has bi-partisan support with over 70 co-sponsors. The Senate and the House of Representatives should make efforts at the earliest possible time to pass such legislation to end fraud in our nonimmigrant visa programs and prevent trafficking in the labor recruitment system. Not only will such a law help to protect migrant workers in the U.S.; but, it will also serve as a powerful model for other countries, such as Thailand, Malaysia, and Cambodia, which need to pass and enforce similar laws and policies.

- c. Thailand, Malaysia and Cambodia must specifically adopt measures to de-link government officials from recruitment agencies, including measures to address possible conflicts of interest. High level prosecutions of corrupt government officials and owners of labor recruitment agencies would also send a powerful message.
3. *Safe Migration*: Congress and the administration (J/TIP, DRL, DOL, DOJ) should emphasize safer migration processes for workers. Immigration policies should emphasize ways to make workers safer during the migration process, and reflect economic reality. For Thailand and Malaysia, this means ending operations that result in mass deportations of undocumented migrant workers, without effective measures in place to identify and support trafficking victims. It also means ensuring that deported workers are provided with a safe passage home. Finally, Thailand and Malaysia should amend their laws and policies to make it easier for migrant workers to obtain valid work permits and residency documents at little or no cost, in streamlined processes.
4. *The rule of law (prosecutions and accountability)*
 - a. Governments should increase the number of prosecutions and convictions for forced labor. For Thailand, Malaysia, and Cambodia, this means training police and prosecutors to better investigate and prosecute forced labor cases; and protecting police and other law enforcement officials from retaliation by powerful employers, business owners or high-level government officials for bringing cases forward.
 - b. Penalize abusive workplaces. Strengthen enforcement and penalties against employers who are found to have trafficked workers or to companies who have bought products or raw materials made by forced labor. This means prosecuting employers and imposing stiff penalties. Employers must be held accountable for the abuses of their subcontractors, including labor recruiters, and for abuses in their supply chains.
5. *The rule of law (creating an enabling environment)*:
 - a. Congress, the administration, governments in the region, and multinational corporations should ensure freedom of association, the right to organize, join trade unions and collectively bargain for all workers, regardless of status or nationality, in both origin and destination countries, and as an essential component of ASEAN economic integration.
 - b. For Thailand and Malaysia, the freedom of association must be assured in practice and not just law. This means strict penalties for employers who fire, blacklist or retaliate against migrant workers who try to organize; and reform of laws that prohibit migrant workers from joining or holding leadership positions in unions, and from participating in collective bargaining.
 - c. Thailand, Malaysia and Cambodia should reform their labor and other laws to include and protect migrant and domestic workers. All workers—whether national or foreign,

documented or undocumented—must have equal protection under the law, and receive full protection of the laws. In addition, governments and employers must recognize and enforce all ILO core labor standards, including the freedom of association and right to organize.

- d. Congress and the Departments of State and Labor should promote the ratification and implementation of *ILO Convention 189 on Decent Work for Domestic Workers*, and the *ILO Protocol of 2014 to the Forced Labor Convention, 1930 and its accompanying Recommendation*.
- e. Congress, the administration, and governments in the region should give equal attention not only to passing better laws, but also implementing, monitoring, and enforcing those laws. To do so, governments must enhance the role of labor inspectors. Labor inspectors must be engaged in and be an integral part of law enforcement initiatives to combat human trafficking. In particular, labor inspectors must be given special training to recognize the signs of human trafficking in a workplace, including debt bondage and other forms of economic coercion that result in human trafficking, and to identify victims. Governments must also ensure that there are sufficient numbers of labor inspectors, and that they have the responsibility to inspect all workplaces – including those with high percentages of migrant workers.
- f. Congress and the Thai, Malaysian and Cambodian governments must pass national whistleblower protection laws regarding trafficked workers. Also, companies should ensure that there are such protections in company policy all along the supply chain, and advocate to governments for such protections for workers.

6. *Preventing the importation of goods made with forced labor:*

- a. DHS should increase scrutiny of imports and exports to ensure goods made by trafficked or forced labor are not allowed in the U.S. marketplace. This includes reviewing and re-working the role of ICE in overseas inspections. The Senate may consider holding a hearing on this issue.
- b. Congress should amend the Tariff Act of 1930 to remove the “consumptive demand exception.” The demand loophole “renders the ban almost useless, since courts have ruled that U.S. Customs cannot block any product unless the U.S. makes enough of it to meet 100 percent of domestic needs . . . The 1930 provision is unsuited to a globalized 21st-century economy that gives importers a wide choice of suppliers. As the dominant force in this new era, the U.S. has an obligation to set the example.”²¹ Congress and the administration should also amend U.S. law and policy to allow evidence collected by unions or non-governmental sources to be the basis for restricting the importation of products made by forced labor.

²¹ “U.S. Can Help End Child Labor by Amending 1930 Tariff Act: View”, *Bloomberg View*, January 2, 2012, <http://www.bloombergvew.com/articles/2012-01-03/u-s-can-help-end-child-labor-worldwide-by-amending-1930-tariff-act-view>.

- c. As an immediate measure to implement #11 and #12, DHS and Congress should review the importation of Thai seafood under the 1930 Tariff Act.

7. *Supply chain accountability:*

- a. Congress should increase pressure on companies to map their supply chains and make such information public. Companies argue that it is too difficult or expensive to completely map their supply chains. If NGOs and the media can do it, however, companies can too. There needs to be a change in business practices.
- b. To that end, Congress should pass supply chain transparency legislation, similar to HR 4842, *the Business Supply Chain Transparency on Trafficking and Slavery Act of 2014*, which was introduced on a bi-partisan basis by Representatives Maloney and Smith on June 11, 2014. Such legislation would require companies to report annually to the SEC and on their websites what measures they have taken to address forced labor, human trafficking, and the worst forms of child labor within their business operations, including supply chains and labor management, in a way that is consistent with the obligations of businesses as outlined by the UN Guiding Principles on Human Rights. While such legislation would purely be a transparency measure, we see it as a first step in ensuring forced labor-free supply chains.
- c. As an effective way to monitor supply chains for trafficking and forced labor, Congress, the administration, other governments, and businesses should promote freedom of association and the right to organize, worker agency and worker representation, over codes of conduct and third party monitoring. The *Bangladesh Accord on Fire and Building Safety* and Coalition of Immokalee Workers' *Fair Food Program* are promising models of how to do this.

8. *U.S. Government Bilateral and Multilateral Support*

- a. Congress and the administration should provide support to origin countries (like Cambodia, Indonesia and Bangladesh) to negotiate multilateral agreements with more powerful destination countries to level the playing field for migrant workers. Because of unequal bargaining power, and the desire of developing origin countries for remittances and employment abroad for their citizens, bilateral agreements are often weak, and provide few worker rights protections. Multilateral agreements may provide more avenues for labor standards.
- b. Congress should authorize and appropriate sufficient long-term resources to the Department of State's Bureau of Democracy, Human Rights and Labor (DRL) and J/TIP, as well as the Department of Labor-International Labor Office (ILAB) to support government efforts in Thailand, Malaysia, and Cambodia, and in other high-risk countries around the world, in their efforts to combat forced labor and other forms of trafficking for labor exploitation. All three agencies have an important role to play in this effort to provide technical assistance to governments and moral and financial support for civil society (including Solidarity Center long-term local

partners) in all three countries to enhance monitoring and implementation of anti-trafficking capacity building programs.

- c. Congress should continue to call for the Department of State to strengthen the labor reporting function in its Embassies abroad. The Cambodian government should also assign, and properly train, labor attachés in Embassies abroad where there are large numbers of Cambodian migrant workers.

9. Victim Protection

- a. Promote better protection measures for victims. For Thailand and Malaysia, this means training government officials to recognize and identify victims of forced labor and other forms of labor trafficking, and not detain or deport them as undocumented migrants.
- b. Provide compensation to victims, including payment of withheld or back wages.

Thank you, again, for the opportunity to testify and for your help to combat labor trafficking in the East Asia and Pacific region. I welcome your questions.