

# VICTIMS OF COMPLACENCY:

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

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ALLARD K. LOWENSTEIN  
INTERNATIONAL HUMAN RIGHTS  
CLINIC

YALE LAW SCHOOL



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JUNE 2012



### **AMERICAN CIVIL LIBERTIES UNION**

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# Executive Summary

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This report examines the ongoing trafficking and abuse of Third Country Nationals (“TCNs”), tens of thousands of whom are hired yearly through U.S. Government (“USG”) contracts to work in support of U.S. military and diplomatic missions in Iraq and Afghanistan.<sup>1</sup> This large and diverse civilian workforce, or “army behind the army,” hails primarily from developing countries such as Nepal, India, the Philippines, and Uganda, and performs low-wage but essential services, including construction, security, and food services.

As a result of widely publicized incidents—such as the abduction and murder of twelve Nepali men whom Government contractors<sup>2</sup> trafficked into Iraq in 2004—the U.S. Government came under pressure to eliminate trafficking and labor abuses from the U.S. contracting industry. Although the Government then adopted a “zero-tolerance” policy against trafficking, reports of abuse continued to surface. In 2007, U.S. Government contractors trafficked a group of Fijian women to Iraq and subjected them to various forms of abuse and exploitation.<sup>3</sup> In 2008, 1,000 South Asian workers staged protests on the outskirts of Baghdad after a Government subcontractor confined them to a windowless warehouse without money or work for as many as three months.<sup>4</sup> Most recently, in December 2011, dozens of Ugandan TCNs held a series of rallies in Baghdad; their employer, a U.S.-based contractor, had left them stranded—with no pay and no return airfare—upon losing its USG contract as a result of the military drawdown.<sup>5</sup>

In light of these ongoing abuses, this report aims to:

1. Shed light on the system by which U.S. Government contractors continue to traffic and abuse TCNs, as well as explain in detail how this system operates, whom it benefits, and how it affects TCNs;
2. Explain how this system violates U.S. and international prohibitions against human trafficking and labor abuse;
3. Demonstrate that U.S. Government measures to address these problems are failing to prevent contractors from engaging in trafficking and labor abuse; and
4. Recommend concrete steps the U.S. Government should take in order to eliminate trafficking and abuse from the U.S. contracting industry.

In addition to public sources, this report draws upon a) interviews conducted with a wide range of experts and other actors, including Government officials, journalists, attorneys, anti-trafficking advocates, and representatives of the contracting industry; b) documents obtained by the American Civil Liberties Union (“ACLU”) through Freedom of Information Act (“FOIA”) litigation on trafficking and forced labor of TCNs; and c) interviews with Indian

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

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

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

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

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

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

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

This system also forms part of a broader economy of contractor malfeasance that wastes tens of millions of U.S. tax dollars annually. The illicit recruitment fees TCNs must pay, together with the salary cost-cutting techniques used by their employers, go to enrich prime contractors, subcontractors, local recruiters, and a vast network of organized crime that continues to profit from the trafficking and exploitation of TCNs.

The U.S. Government has already instituted several measures designed to protect TCNs from further abuse. Contractors who commit certain felonies—including trafficking or forced labor—abroad may now be subject to criminal or military jurisdiction. Contractors who engage in trafficking may also be subject to a variety of non-criminal sanctions. Despite these and other reforms, accountability exists in theory but not in practice: to date, the U.S. Government has yet to fine or prosecute a single contractor for trafficking- or labor-related offenses. Despite having the authority to suspend and terminate contracts with both prime and subcontractors, government agencies have never exercised this authority.

## **Recommendations<sup>6</sup>**

To eliminate trafficking and labor abuses from the U.S. contracting industry, the Government should take the following steps to 1) **prevent** contractors from engaging in human trafficking, deceptive labor recruiting, forced labor, and workplace abuses; 2) **monitor and investigate** contractors' compliance with the prohibition against trafficking and labor rights abuses; and 3) **prosecute or otherwise penalize** contractors who commit or participate in trafficking- or labor-related offenses.

### **I. PREVENTION**

To prevent contractors *at every level of contract and subcontract* from engaging in trafficking, forced labor or other labor abuses, *every* USG contract performed overseas—regardless of contracting agency<sup>7</sup>—should specify the following:

1. **Prohibit Trafficking, Deceptive Recruiting, Forced Labor and Other Abuses**—Every USG contract should contain language that 1) affirms the Government's "zero tolerance" policy against trafficking, forced labor and other labor abuses; 2) requires contractors to certify compliance with anti-trafficking and forced labor protocols through regular reporting; and 3) states that the contracting agency is *obligated* to take all necessary and appropriate action against the contractor for violating, failing to report violations of, or otherwise refusing to comply with, the prohibition against trafficking, forced labor and other abuses.
2. **Hold Prime Contractors Responsible for the Recruitment, Hiring, and Treatment of TCNs**—Every USG contract should specify that the prime contractor is responsible for the recruitment and living and working conditions of all TCNs serving under its contract *or subcontract(s)*. To that end, every USG contract should require the contractor to use only subcontractors and recruiters with a proven track record of



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

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

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

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

## II. OVERSIGHT

In addition to incorporating the above conditions into every USG contract performed overseas, every U.S. contracting agency<sup>9</sup> should take the following steps to improve **oversight and monitoring** of contractors' compliance with the prohibitions against trafficking and forced labor:

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

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

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

### III. ENFORCEMENT AND ACCOUNTABILITY

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

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

## Methodology

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This report aims to provide a comprehensive account of the ongoing trafficking, deceptive recruitment, forced labor and abuse of TCNs serving under U.S. Government contracts in Iraq and Afghanistan. In preparing this report, a number of research methods were employed, combining in-person interviews and fieldwork with extensive reviews of existing literature, news reports, and other written sources. Interviews were also conducted with a number of experts and other relevant actors, including government officials, journalists, attorneys, trafficking experts, and representatives of the contracting industry. Finally, hundreds of pages of documents obtained from DOD and DOS through the ACLU's Freedom of Information Act ("FOIA") litigation were reviewed.<sup>10</sup> Documents received through FOIA are available on the ACLU's website.<sup>11</sup>

From January 4<sup>th</sup> - 16<sup>th</sup>, 2012, in-person interviews were conducted in Tamil Nadu, India, with Indian nationals who had formerly worked for U.S. Government contractors in Iraq and Afghanistan. The men interviewed served in Iraq or Afghanistan for up to four years between 2007 and 2011. Most of them had worked as cooks, while others had served as drivers, janitors, and shopkeepers. In addition, the offices of an unnamed recruitment agency were visited and the alleged operations manager of the recruitment company consulted. A village where several former TCNs lived was visited to witness first-hand their daily lives and economic circumstances and to speak with members of their families. Along with transcripts of interviews with Filipino TCNs used in the making of the documentary "Someone Else's War," the testimony from these TCNs and others in India is used in the report to corroborate information and data obtained through other sources.

U.S. and international laws relating to trafficking and labor abuses were researched as well as federal regulations pertaining to acquisitions. An initial draft of this report was discussed with various representatives of DOD, DOS, the Department of Labor ("DOL"), and Congressional staffers, as well as other relevant civil society actors and representatives of the contracting industry. The final report incorporates many of their insights and feedback.

The incidents detailed in this report occurred during an extended period of time, from early 2000 to the date of this report, in both Iraq and Afghanistan. Although conditions may have varied over this time in different locations and with different contractors, evidence indicates that trafficking, deceptive recruiting, forced labor and other abuses of TCNs continued throughout the reporting period.

## Acknowledgements

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

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

For his extensive knowledge of this issue as well as his unyielding commitment to effecting change, we would like to thank Sam McCahon, whose counsel has been invaluable. We are very grateful to Lee Wang for providing us access to her interview transcripts and documentary. Finally, thanks to Sindhu P. Kavinnamannil for her tireless work helping TCNs, as well as for her insights and her assistance arranging our India fieldwork.

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



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

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## Introduction

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

In the ensuing eight years, the U.S. Government made ongoing attempts to eradicate such abuse, but reports of similar incidents continued. In one widely-reported case, 1,000 South Asian workers staged a protest on the outskirts of Baghdad in December 2008, having been confined to a windowless warehouse without money or work for three months.<sup>15</sup> KBR subcontractor Najlaa International Catering Services, a Kuwaiti corporation, “recruited the laborers for contracts it expected to begin servicing, but the work didn’t materialize.”<sup>16</sup> Following the protests, Najlaa repatriated the workers, sending them home with just two months’ salary (amounting to \$600-800), far less than the \$3,000-5,000 brokers’ fees the workers had borrowed.<sup>17</sup> Meanwhile, one mile away, another group of workers lived in huts made of tarp and pieces of carpet without access to food or water. Like the protesters, these workers had incurred debts of up to \$5,000 for jobs that would never materialize.<sup>18</sup>

These incidents received coverage in news media and sparked efforts by the U.S. Government to protect TCNs hired under U.S. Government contracts in Iraq and Afghanistan.<sup>19</sup> Despite new legislation and codes of conduct generated by the legislative and executive branches, as well as the contracting industry itself, reports of abuses continue to surface. Following the recent publication of *Invisible Army*, a *New Yorker* article detailing the harrowing experiences of a group of Fijian women whom firms contracted by the Government trafficked to Iraq and subjected to labor and other forms of abuse,<sup>20</sup> the Yale Lowenstein Clinic partnered with the American Civil Liberties Union to document this pressing issue. For the past eight months, extensive research has been conducted into contractor-related abuses in Iraq and Afghanistan, including by DOD and DOS contractors.

U.S. operations in Iraq and Afghanistan rely extensively upon contractors to provide essential goods and services, such as transportation, engineering, construction, security, and logistics. To support these operations, contractors rely, in turn, upon some 174,000 laborers,<sup>21</sup> around 70,000 of whom are TCNs.<sup>22</sup> Recruited from developing countries to



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

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

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

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

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

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

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

In the years since media reports first surfaced of U.S. contractors engaging in these abusive practices, Congress has sought to establish mechanisms to hold contractors accountable for trafficking violations. Among other measures, it has extended military and criminal jurisdiction to include contractors who accompany the Armed Forces overseas, and empowered Government officials to penalize contractors for their misconduct through a variety of criminal and non-criminal sanctions. Nevertheless, Government agencies have yet to enforce these measures in any meaningful way; although they possess ample authority to do so, they have yet to fine or prosecute a single contractor for trafficking- or labor-related offenses. Despite having the ability to suspend and terminate contracts with both prime and subcontractors, Government agencies have never exercised this authority. As a result, contractors continue to traffic and abuse TCNs with impunity.

This report proceeds as follows: Section 1 provides a current overview of the deceptive recruiting, trafficking, and labor abuse of TCNs. Section 2 explains how these practices constitute violations of U.S. and international law with regards to trafficking and forced labor. Section 3 documents the steps the U.S. Government has taken to date and explains why they remain inadequate. The report concludes with detailed recommendations for the Government to undertake to eliminate trafficking, forced labor and other labor abuses from the contracting industry moving forward.



Third country nationals, or TCNs, right, serve dessert under Thanksgiving decorations at a U.S. military base in Tikrit, 130 kilometers (80 miles) north of Baghdad, Iraq, Thursday, Nov. 22, 2007. For this facility's 285 workers, all so-called "third country nationals" or TCNs, Thanksgiving is an American experience they've learned to celebrate in of all places, Iraq. (Photo credit: AP Photo/Lauren Frayer)

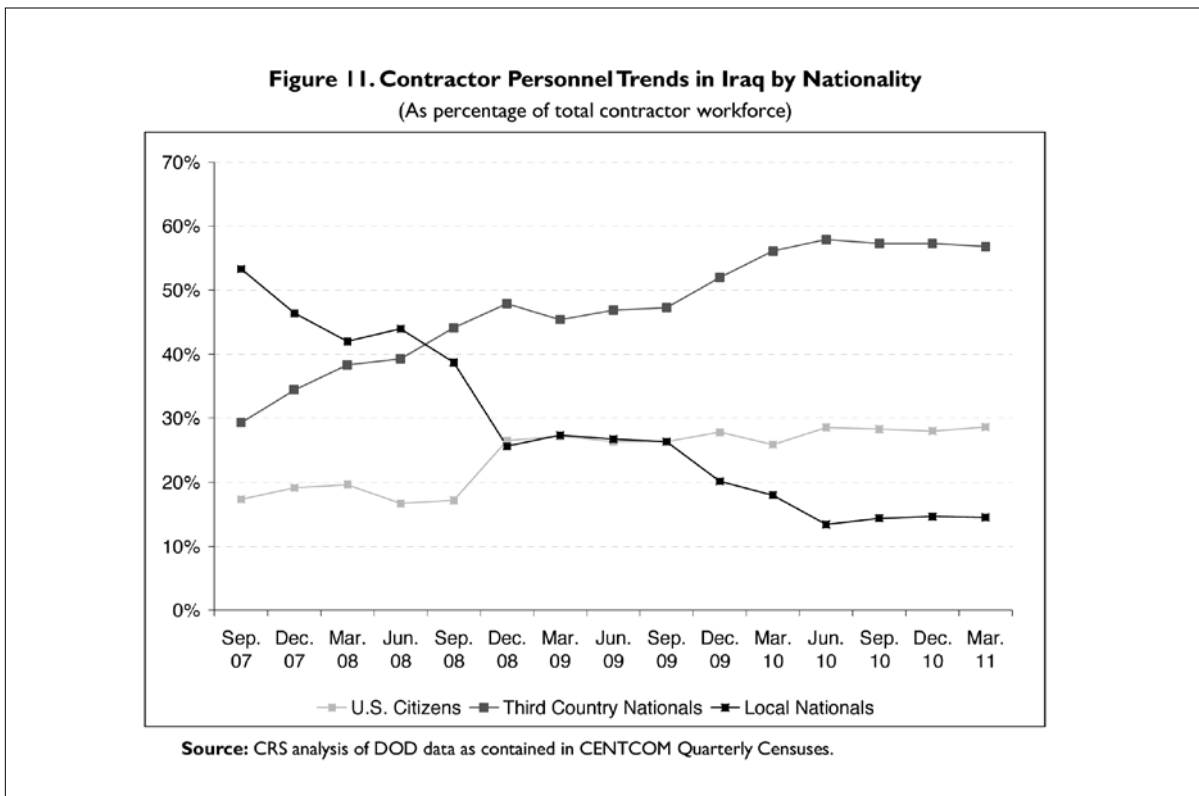
## SECTION 1: Findings

### Who are TCNs?

*"It's these guys from India who are supporting the military. They're the guys doing the work, cleaning the latrines, serving the food and cooking . . . doing it all."*<sup>26</sup>

—QUOTE FROM A FORMER KBR LABOR FOREMAN

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



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

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

#### *Typical Profile of Indian TCNs Surveyed in Tamil Nadu*

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

#### *Female TCNs*

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

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

## The Recruiting Process

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



Many contractors hire local labor brokers to recruit workers. Although diverse in location and culture, these recruiters appear to use common schemes to recruit TCNs: in particular, they 1) charge exorbitant and illegal “recruitment fees”; 2) exaggerate the compensation promised to TCNs; and 3) misrepresent the nature and conditions of the work—leaving TCNs all the more vulnerable to abuse and exploitation.<sup>33</sup>

### Typical Recruiter Profile

Although recruiters play an integral role in the process of worker hiring, neither contractors nor the U.S. Government monitor or regulate their activities. Many contractors hire unlicensed recruiters from within TCN countries of origin. Gulf Catering Company, for example, a Saudi Arabian subcontractor, uses Indian recruiting companies to hire Indian laborers for jobs subcontracted to them by KBR, a U.S. prime contractor. Although some contractors use licensed recruiters who operate transparently and in accordance with local labor laws, many do not. Instead, they use illicit recruiters who may have links to organized crime.<sup>34</sup> Interviews with Indian TCNs brought to light stories of stop-and-go businesses, which establish temporary recruitment offices only to vanish as soon as they finish recruiting.<sup>35</sup> The transient nature of some of these unlicensed recruiters means that local law enforcement are often not aware of their activities and recruits are unable to return to a recruitment office upon discovering their recruiters’ deception.

Many recruiters charge TCNs exorbitant and illegal recruitment fees. In India, the government establishes recruitment fees based on skill level. Unskilled workers may be charged fees of \$559; semi-skilled workers \$825; and skilled workers \$1,370.<sup>36</sup> Nevertheless, recruiters in India and elsewhere regularly charge laborers between \$1,000-5,000—small fortunes in communities where the average family makes less than \$2 per day.<sup>37</sup> The workers interviewed in India consistently reported payment of fees of between \$2,000 and \$5,000.<sup>38</sup> Agents may extort money from prospective workers in a number of ways. As one Filipino TCN recounted, his recruiting agent “had quite a number of gimmicks, so as to get more money from [the workers].”<sup>39</sup> For instance, the recruiting agent charged

“They’re locked in, it’s like a ball and chain around them. The agency fee makes it a despicable system . . . makes it slave labor.”

him and other prospective TCNs additional fees for supposedly mandatory food service training. When they arrived in Iraq, their “training” was disregarded and they were placed in any available job.<sup>40</sup>

Available data also indicate that recruiters promise prospective TCNs jobs paying \$1,000-3,000 or more per month.<sup>41</sup> Such promises allow recruiters

to “validate” the hefty fees, giving TCNs the false impression that they stand to recoup the amount within five to six months. Because the vast majority of TCNs ultimately earn between \$150-500 per month, however—and thus require upwards of one to two years just to break even<sup>42</sup>—these fees “effectively creat[e] an indentured servitude relationship between the contractor and employee.”<sup>43</sup> In the words of a former KBR labor foreman, “They’re locked in, it’s like a ball and chain around them. The agency fee makes it a despicable system . . . makes it slave labor.”<sup>44</sup>

**Figure 1: Estimated Repayment Periods based on TCN Salary**

Job	Pay/month <sup>45</sup>	Minimum Est. Repayment Period*	Average Est. Repayment Period**
Janitor	\$275	8 months	19 months
Waiter	\$300	7 months	17 months
Assistant Cook	\$350	6 months	14 months
Cook	\$500	4 months	9 months
Senior Cook	\$600	3.5 months	8 months
Sous-Chef	\$850	2.4 months	6 months
Chef	\$1000	2 months	5 months

\*These estimated time periods represent how long it would take a TCN to pay off his/her debt, with 1) a \$2,000 recruiting fee 2) no interest on the loan and 3) 100% of wages going towards paying the loan. E.g. In the first month of employ, the TCN earns \$275, and pays \$275 back on the loan of \$2,000, leaving \$1,725 remaining, which is paid off over the next 7 months.

\*\*These estimates represent how long it would take a TCN to pay off his/her debt, with 1) a \$2,000 recruiting fee 2) 30% annual interest on the loan and 3) 50% of wages going towards paying back the loan. E.g. In the first month of employ, the TCN earns \$275, is charged \$50 interest on the loan for a total debt of \$2,050, and pays back \$137.5 on the loan.

Many recruiters also misrepresent the nature and location of the work that awaits TCNs abroad. For example, recruiters assured the Fijian women, noted above, that they would be working as hairstylists at luxury hotels in Dubai; the women ended up in Iraq instead.<sup>46</sup> An Indian TCN likewise recalled being promised a job in Jordan; he did not discover he was headed to Iraq until he deplaned in Dubai.<sup>47</sup> Recruiters also told 18-year-old Bishnu Hari, one of the twelve Nepali men seized and executed by Iraqi insurgents in 2004, that he would be working at Amman’s five-star Le Royal Hotel.<sup>48</sup> An Indian TCN estimated that 90% of the men in his camp were unaware that they were destined for Iraq, having been told by recruiters that they were bound for Kuwait, United Arab Emirates, or Saudi Arabia.<sup>49</sup>

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

### **Loan Sharks and Exploitative Lending**

To pay recruitment fees, many TCNs borrow heavily from loan sharks and other illicit lenders. Because many TCNs earn far less than expected, they struggle just to keep up with the substantial interest rates—TCNs report interest rates on their loans as high as 30-50% per year<sup>51</sup>—which loan sharks charge. Paying off the principal can take years. Loan sharks also regularly use violence and intimidation to recover their investments. In India for example, loan sharks reportedly resort to tactics such as physical assault, extortion, harassment, and public humiliation—earning themselves names such as “the blade mafia.”<sup>52</sup> A recent article in *The Hindu* details the death of a laborer who was allegedly set on fire by a loan shark to whom he owed \$100.<sup>53</sup>

Reports of loan sharks collecting debts in sexual services—for instance, by taking TCNs’ female family members as collateral, forcing themselves on them, and even selling them into sex slavery—are not uncommon.<sup>54</sup> For example, Ramesh, a college graduate from India, borrowed \$5,000 from a loan shark to cover recruitment fees after being promised a storekeeper position in Kuwait paying \$800 per month. He was subsequently trafficked to Iraq and forced to work as a janitor on a U.S. military base for \$150 per month. Two months after his arrival, Ramesh found himself summarily terminated from his job. He returned home to discover that his younger sister had hung herself after being sexually assaulted by the loan shark in front of their entire village. His bedridden mother had lapsed into a state of shock, and the loan shark had seized the family’s home. One week after he returned, Ramesh and his remaining family members gathered together in a room and committed suicide by drinking poison.<sup>55</sup>

TCNs’ family members also may face ongoing threats from loan sharks, who often reside in the same village. In one case, a loan shark demanded that a returned TCN surrender his daughter for prostitution and debt bondage to satisfy his debt; the TCN, unable to pay after having been trafficked to Iraq, hanged himself.<sup>56</sup> Other TCNs reported that loan sharks regularly harassed their families in the course of collecting payments, and that threats began immediately if payment was not promptly delivered.<sup>57</sup>

### **Transit to and Arrival in Iraq and Afghanistan**

The abusive treatment of many TCNs by U.S. Contractors often begins during their transit to Iraq or Afghanistan. According to the State Department’s 2008 “Trafficking in Persons” report, for instance, TCNs frequently find themselves “coerced into positions in Iraq with threats of abandonment in Kuwait or Jordan, starvation, or force.”<sup>58</sup> While transiting through Kuwait City, Amman, or Dubai, TCNs are sometimes forced to wait in the airport or in a



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

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

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

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

In another example, Sri Lankan TCNs hired to work in the Gulf found themselves rerouted instead to Iraq. Not only did the men lose the \$2,000 recruitment fee that recruiters forced each of them to pay, upon arrival employees of a U.S. Government subcontractor confiscated their passports and kept the men confined, against their will, in a building without heat, sanitation, or proper accommodation.<sup>63</sup> Not long after, a second group of Sri Lankan workers found themselves held in “windowless warehouses near the Baghdad airport without money or a place to work.”<sup>64</sup> Another 1,000 men from India, Nepal, Bangladesh, and Sri Lanka paid more than \$2,000 each in return for jobs promising \$600-800 per month, only to be held in cramped, filthy warehouses for three months without money or work. “They promised us the moon and stars,” recalled Davidson Peters, 42, from Sri Lanka. “While we are here, wives have left their husbands and children have been shut out of their schools’ because money for the families has dried up.”<sup>65</sup>

Warehousing workers allows U.S. Government contractors to fill vacancies without needing to restart the entire recruitment process. For TCNs, however, this tactic frequently proves catastrophic. Left without pay for several months, some TCNs return home more indebted

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

**Wages, Promotions, Contracts, and Passports**

Many TCNs who secure employment upon arrival in Iraq or Afghanistan often discover that the jobs pay substantially less than advertised.<sup>66</sup> While recruiters regularly promise TCNs salaries between \$1,000-3,000 per month, many workers receive only \$150-500 per month.<sup>67</sup> For instance, recruiters promised the Fijian women, noted above, \$1,500-3,800 per month; the women ultimately received just \$350 per month. “We were all dumbstruck,” recounted one of the women. “It was ridiculous, really, slave labor, absolutely ridiculous out here in a war zone.”<sup>68</sup>

<b>Pay Scale for TCNs working for the Gulf Catering Company<sup>69</sup></b>		
<i>Job</i>	<i>Pay/month</i>	<i>Estimated Pay/Hour*</i>
Janitor	\$275	\$0.82
Waiter	\$300	\$0.89
Assistant Cook	\$350	\$1.04
Cook	\$500	\$1.49
Senior Cook	\$600	\$1.79
Sous-Chef	\$850	\$2.53
Chef	\$1000	\$2.98

\*These rates are based on the average hours TCNs reported working each month. Interviewees typically received 2 days off each month, working an average total of 28 days, 12 hours per day, for a total of 336 hours/month, with no overtime compensation.

Payment also appears to be an issue. Many contractors pay workers through direct deposit or money wires. In addition to the fee that some contractors subtract from TCNs’ wages for the cost of wiring the money (e.g. a \$22 fee for every \$200 worth of wages sent home),<sup>70</sup> TCNs frequently experience delayed or missed payments.<sup>71</sup> According to a KBR employee to whom several TCNs complained, “they [TCNs] would call home, and money hadn’t been deposited for months and months and months.”<sup>72</sup> One KBR investigation discovered that Najlaa International Catering, a Kuwait-based U.S. Contractor, was “chronically late making wage payments to its employees.”<sup>73</sup> The Commission on Wartime Contracting in Iraq and Afghanistan<sup>74</sup> likewise found that “[c]ontractors withheld pay from third-country nationals until their contract term was completed, thereby preventing them from voluntarily returning to their homes of record.”<sup>75</sup> The unreliability of this payment scheme, and the difficulty TCNs face in reclaiming lost wages, impose severe hardships on TCNs, who require regular payments to meet their loan repayment schedules.<sup>76</sup>

“The Employee agrees to work 12 hours, 7 days a week and as many hours as may be required for the performance of the Employee’s duties.”

– A Najlaa International contract

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

On occasion, TCNs go without employment contracts for the duration of their employment. Many of those who actually sign contracts do not receive them until well after they arrive in Iraq or Afghanistan and begin work—at which point they have no choice but to accept whatever terms their employer demands of them.<sup>78</sup> Moreover, contracts may afford them little employment protection. Typically, contracts are drafted only in English—a language few TCNs speak, let alone read. Some contracts promise eight-hour workdays as well as payment for overtime, but many contractors do not honor these terms (see *Working Conditions* below). Other contracts explicitly spell out abusive employment practices. For instance, Najlaa International Catering Services requests TCNs to sign contracts that state: “The Employee agrees to work 12 hours, 7 days a week and as many hours as may be required for the performance of the Employee’s duties.” These contracts further provide that any TCN who wishes to return home before completion of one year of service must pay Najlaa \$2,500—an amount greater than many TCNs’ annual salaries (See *Appendix D* for excerpts from an actual Najlaa contract).<sup>79</sup>

Contract renewal also carries risks. U.S. Government Contractors require some TCNs to sign new contracts each year, providing them with increasingly fewer benefits, without giving TCNs an opportunity to renegotiate the terms of the agreement.<sup>80</sup> Other TCNs only ever receive initial one-year contracts, and continue to work for several additional years without any valid contract.<sup>81</sup> In one case, a manager for Daoud & Partners, a U.S. Government contractor based in United Arab Emirates, informed fourteen TCNs—who had already paid between \$1,800 and \$2,500 to Daoud to secure jobs in the first place—that they now had to pay their manager an additional \$1,000 to “assure their future employment.”<sup>82</sup>

In addition, U.S. Government contractors in both Iraq and Afghanistan sometimes hold TCNs captive (see *Living Conditions* below). Despite clear regulations mandating that TCNs remain at all times in possession of their passports,<sup>83</sup> certain contractors continue to seize and withhold TCNs’ passports.<sup>84</sup> In some instances, TCNs find their passports seized after they complain of mistreatment; others forfeit their passports as soon as they arrive in Iraq or Afghanistan.<sup>85</sup> One former TCN from India had his passport taken upon arrival at the Al Asad airport in Iraq. He then went without it for two years, the entire duration of his employment in Iraq. It was only returned to him immediately before his flight home.<sup>86</sup> That same TCN noted, “there were 1,400 TCNs at the Al Asad camp; none of them had their passports.”<sup>87</sup> Likewise, another TCN from India who worked in Afghanistan recalled, “[s]ome agents sent

men who were unskilled and would then leave them in Kabul City. The agents would hold the men's passports so that they couldn't leave. For some men, they had borrowed money and didn't have any jobs, but they couldn't get back [home] since they didn't have their passports."<sup>88</sup> Indeed, the confiscation of their passports makes it impossible for TCNs to leave Iraq or Afghanistan, even assuming they can afford a plane ticket.<sup>89</sup>

### **Fraud and Waste**

The abuse and exploitation to which U.S. Government contractors subject TCNs forms part of a broader economy of contractor malfeasance that wastes tens of millions of U.S. tax dollars annually. Waste and fraud in wartime contracting is well documented.<sup>90</sup> According to the Commission on Wartime Contracting (CWC), "At least \$31 billion, and possibly as much as \$60 billion, has been lost to contract waste and fraud in America's contingency operations in Iraq and Afghanistan."<sup>91</sup>

The routine underpayment of TCNs constitutes one such area of waste and fraud. As *New Yorker* reporter Sarah Stillman notes, TCNs "earn as little as two hundred and seventy-five dollars a month as cooks and servers for U.S. soldiers—a fraction of what they [re] promised, and a sliver of what U.S. taxpayers are billed for their labor."<sup>92</sup> The CWC estimated that contractors bill the Government at an annual rate of \$67,600 per full-time TCN (for work ranging from food service to construction, plumbing, and electrical wiring).<sup>93</sup> Yet, as discussed above, salaries for TCNs typically range from \$150–500 per month—or the equivalent of \$1,800–6,000 per year. Even if contractors spent lavishly on food and accommodation for TCNs (and all evidence indicates they largely do not), the total cost per TCN would still come nowhere close to \$67,600. Indeed, in one documented case, the U.S. Government allotted prime contractor SABRE International \$1,700 per month per security guard; the Ugandan guards that SABRE hired, however, earned no more than \$700 per month.<sup>94</sup> According to the Commission, "this \$1,000 difference exceeds even the most generous indirect contract costs."<sup>95</sup>

The secrecy surrounding many of the Government's overseas contracts renders it difficult to establish by just how much U.S. Government contractors underpay TCNs.<sup>96</sup> Such secrecy becomes all the more problematic in light of the culture of bribery and corruption that pervades the contracting industry in Iraq and Afghanistan.<sup>97</sup> Indeed, the widespread acceptance among contractors of bribes and kickbacks influences both the awarding of subcontracts and the illegal fees charged to TCNs.<sup>98</sup>

Another significant area of corruption arises where recruiters pay contractors a portion of the illegal recruitment fees they charge to TCNs. In an article for *Fraud Magazine*, Sam McCahon and Sindhu P. Kavinnamannil affirm, "the standard amount that wayward recruiters pay to contractors is 50 percent of the illegal commission."<sup>99</sup> McCahon and Kavinnamannil estimate that contractors have received \$312 million in recruitment-fee kickbacks.<sup>100</sup> Assuming such payments are occurring, they also violate the Anti-Kickback Act of 1986.<sup>101</sup>

## Hypothetical Money Trace: Fraudulent Contractor Recruitment Scenario\*

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

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

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

When the workers get to Iraq, the subcontractor is in charge of paying them and covering their living costs—but pays them only \$300 a month instead of the promised \$1,200/month. So out of the \$120,000 allocated for salaries, the subcontractor pays the ten workers only \$36,000 total in a year. The subcontractor cuts costs further by skimping on the sleeping quarters and food of the workers, spending only \$16,000 on housing and feeding all of the workers. End result: the subcontractor spends only \$62,000 (\$36,000 in salaries + \$16,000 expenses + \$10,000 recruiters' fee) of the \$120,000 it was paid; it has \$58,000 of the original contract leftover—a sum which neither the workers, nor the U.S. Government, ever see again. It also has its \$15,000 share of the illicit recruitment fees.

To sum up:

The local recruiter makes \$15,000 in recruitment fees extracted from workers, plus \$10,000 payment from subcontractor (USG\$) = \$25,000 total.

The subcontractor makes \$58,000 from the original contract (USG\$), plus \$15,000 (50% cut from workers' fees) = \$73,000 total.

The prime contractor makes \$6,000 in admin fees without doing anything (in addition to potential kickbacks).

Total fraudulent profit of \$88,000, \$30,000 of which came from TCNs and \$58,000 of which came from U.S. taxpayers.

The workers, meanwhile, earn only \$3,600 each in one year, and find themselves still in debt to the loan sharks at the year's end, leaving their homes and families at risk.

## Living Conditions

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

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

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

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

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

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

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

### **Working Conditions and Supervision**

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

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

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

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

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

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

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

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

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

### **Dangerous Work and Compensation for Injuries**

TCNs face many of the same risks that U.S. troops do.<sup>140</sup> Although no precise data on TCN injuries or deaths exist, in 2005 the non-profit organization, Iraq Coalition Casualty Count, found that TCNs made up more than 100 of the 269 reported civilian fatalities in Iraq.<sup>141</sup> Since then, scores of TCNs continue to suffer casualties every year from suicide and roadside bombs, executions, beheadings, hijackings, rocket attacks, and mortar fire.<sup>142</sup> As Bharathkumar Sekar, 25, who worked in Iraq for more than two years, recalled: “There were many rocket attacks inside our army camps. At times rockets even landed on top of my kitchen.”<sup>143</sup> A female TCN from the Philippines, who was wounded by shrapnel following a suicide bomb attack in the dining facility where she worked, likewise reported: “They were all just stepping over me, even if they kicked up some dirt at my face . . . because they were treating the U.S. Army first.” She was pregnant at the time of the attack.<sup>144</sup> Another Filipino worker recounted the death of his cousin and fellow TCN: “He didn’t have anything to do [with the war], he had never held a gun. He veered off from the convoy and got blown up [by] a landmine.”<sup>145</sup> Of such contract-worker deaths in Afghanistan, *New York Times* reporter, Rod Nordland, recently observed: “Even dying is being outsourced here.”<sup>146</sup>



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

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

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

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

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

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

shoes, clothing, and coats.<sup>161</sup> According to the Commission on Wartime Contracting in Iraq and Afghanistan, “The guards at [Forward Operating Base Delta] were often ill-equipped and without basic cold-weather gear such as gloves.”<sup>162</sup> TCNs who request personal safety equipment or additional safety provisions for their vehicles are often turned down.<sup>163</sup>

Despite hundreds of TCN deaths and injuries in Iraq and Afghanistan, as of 2009, the DOL had yet to station a single officer abroad to help injured TCNs or surviving family members file claims under the DBA.<sup>164</sup> “I see a complete absence of claims or payments for foreigners,” noted former DOL attorney, Joshua Gillelan, who now represents injured contract workers. “They are never going to be enforced.”<sup>165</sup> Indeed, while more than 1,600 contract workers have died and 37,000 have reported injuries, “foreign-born civilian contractors often [have] received no benefits at all, despite law requiring the delivery of payments within 14 days of an injury.”<sup>166</sup>

“More than 1,600 contract workers have died and 37,000 have reported injuries.”

### **Sex Trafficking and Gender-Based Violence**

Although this report focuses on labor trafficking and related abuses, female TCNs are at risk of other forms of abuse by U.S. Government contractors in Iraq and Afghanistan: sex trafficking and gender-based violence. In some instances, contractors have employed means similar to those detailed above: they hire recruiters who promise women jobs as domestic workers and charge them high recruitment fees, with the intent of selling them to sex traffickers.<sup>167</sup> Armed conflicts render these women especially vulnerable to such abuse: studies by numerous anti-trafficking organizations show that “the continued presence of military and paramilitary forces in volatile areas increases the demand for sex workers in those areas.”<sup>168</sup>

The presence of military contractors further increases women’s vulnerability to such sexual exploitation, as there is “no adequate governmental or military process in place for the criminal prosecution of [private contractor] employees engaged in sex trafficking activities.”<sup>169</sup> The scandal in Bosnia from the late 1990s, in which employees of DynCorp International Inc., a Virginia-based contractor, purchased girls as young as twelve for use as sex slaves, aptly illustrates this.<sup>170</sup> Although Bosnian authorities and the U.S. military eventually discovered and put an end to the sex ring, the contractors involved escaped prosecution (see Section 3: *U.S. Government Responses to Contractor Abuses in Iraq and Afghanistan*).<sup>171</sup>

Similar instances of sex trafficking are reported to have arisen more recently in Iraq and Afghanistan. A 2009 email from Garrison Commander Thomas A. Hardy of the Victory Base Complex in Baghdad described the alleged sex trafficking of three Ugandan women:

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

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

“Abandoned by their employers, some TCNs languish in Iraq or Afghanistan for months after they finish working.”

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

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

## **Returning Home**

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

Other TCNs face difficulties when they seek to return home before the expiry of their contracts. Although their profound financial vulnerability forces many to remain in Iraq or Afghanistan until their contracts expire, abysmal living and working conditions convince some TCNs to return home prior to the expiration of their contracts.<sup>179</sup> Rather than allow them to leave, however, some contractors deploy a variety of techniques to force them to continue working.<sup>180</sup> For example, they confiscate passports and other identification and travel documents and otherwise restrict their freedom of movement in-country, thereby preventing TCNs from leaving the workplace of their own accord. U.S. Contractors also withhold TCNs’ pay until the contract ends, “thereby preventing [TCNs] from voluntarily



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

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

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

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

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

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

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

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

In addition to ratifying the Trafficking Protocol, the United States has enacted anti-trafficking legislation, including the Victims of Trafficking and Violence Protection Act of 2000<sup>186</sup> and subsequent Reauthorizations (“TVPRA”).<sup>187</sup> Heralded as the first U.S. antislavery legislation since 1865,<sup>188</sup> these laws criminalize human trafficking and enhance civil remedies and criminal penalties for trafficking—including trafficking committed by “persons employed by or accompanying the Federal Government outside the United States.”<sup>189</sup> In addition, the TVPA imposes special restrictions on government contractors, requiring, among other things, that all U.S. contracts include a

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

Such language indicates that Congress intended for its anti-trafficking legislation to apply to U.S. contractors who engage in trafficking and/or forced labor abroad.<sup>191</sup>

### **The Definition of Trafficking and Forced Labor under U.S Law**

The TVPA obligates the U.S. government to 1) combat trafficking in persons; 2) ensure just and effective punishment of traffickers; and 3) protect the victims of trafficking.<sup>192</sup> To that end, it defines human trafficking as a) sex trafficking, or b) “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”<sup>193</sup>

Importantly, in addition to “force” and “fraud,” the TVPA explicitly includes “coercion” as one means by which a person may be trafficked or subjected to forced labor. As well as physical force, the TVPA recognizes that nonviolent coercion creates an environment of fear and intimidation that prevents workers from leaving exploitative work situations.<sup>194</sup> The statute defines coercion as:

1. Threats of serious harm to or physical restraint against any person;
2. Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
3. The abuse or threatened abuse of law or legal process.<sup>195</sup>

The TVPA thus incorporates an expansive view of coercion, including nonviolent coercion, into the legal definition of trafficking—as well as into the separate offense of forced labor.<sup>196</sup>

The legislative conference report accompanying the TVPRA demonstrates that Congress included the above provisions to address the “increasingly subtle methods” that traffickers use to “place their victims in modern-day slavery.”<sup>197</sup> Such subtle methods include those where “traffickers threaten harm to third persons, restrain their victims without physical violence or injury, or threaten dire consequences by means other than overt violence.”<sup>198</sup> The TVPRA conference report further explains that the term “serious harm” “refers to a broad array of harms, including both physical and nonphysical.”<sup>199</sup> It also reveals that Congress intended the language of serious harm to assist prosecutors in proving forced-labor violations in the absence of “physical harm or threats of force against victims” and in cases where, in addition to direct threats, traffickers employ “a scheme, plan, or pattern” amounting to a subtler, but no less effective, form of coercion.<sup>200</sup> For example, “a scheme, plan, or pattern intended to cause a belief of serious harm may refer to intentionally causing the victim to believe that his or her family will face harms such as banishment, starvation, or bankruptcy in the home country”—i.e., a situation where the victim is coerced into working out of fear for his or her family members back home.<sup>201</sup>

Several circuit court and district court cases have found that situations involving exploitation and non-physical coercion satisfy the trafficking and forced labor definitions under the TVPA. In *U.S. v. Dann*, for instance, the Ninth Circuit ruled that severe financial coercion is sufficient to meet the “serious harm” requirement under §1589.<sup>202</sup> Several other cases from the First and Seventh Circuits, in addition to district court cases, affirm this interpretation (see *Appendix F* for a discussion of relevant caselaw).

“The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”

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

### **Application of U.S. Anti-Trafficking Laws to Contractors in Iraq and Afghanistan**

Many of the abuses described in the factual findings section, above, constitute violations of the TVPA. For example:

- *Trafficking through fraud.* Situations in which workers are told that they are destined for United Arab Emirates, Kuwait, or Jordan to work in luxury hotels, only to find themselves in Iraq or Afghanistan when they deplane, as in the case of the Nepali workers in 2004, or the Fijian women in 2007, involve serious deception on the part of the recruiter. Attracting workers through false promises of high salaries is equally fraudulent.
- *Threat or imposition of serious harm.* Warehousing thousands of workers and holding them against their will without work and pay, and in squalid conditions in a war zone, as in the 2008 Najlala International episode, amount to serious harm under the statute.
- *Coercive schemes and threats to third parties.* In the Fijian women’s case, the subcontractor Kulak Construction Company threatened the women with termination fees as high as \$4,000 if they chose to return home from Dubai rather than continue on to Iraq. The women, who were already low-income workers in Fiji, would have lost months worth of salary had they returned home. Similarly, a group of Filipino TCNs arrived in Kuwait where their passports were confiscated and were told that they had to go to Iraq or alternatively pay \$1,300 in penalties.<sup>204</sup>



“TCNs live in constant fear that any failure on their part to make payments on their debt will result in serious harm being inflicted on them or, more likely, their families.”

Perhaps the most common violation is the financial coercion that regularly occurs in the system of TCN recruitment and labor. Contractors engage local recruiters that charge TCNs high fees. To meet this fee, TCNs are compelled to borrow money from loan sharks who routinely resort to intimidation and violence to recover their loan repayments. Consequently, TCNs live in constant fear that any failure on their part to make payments on their debt will result in serious harm being inflicted on them or, more likely, their families. Although

contractors may claim ignorance regarding recruiting fees and TCN debt, their common tactic of threatening TCNs with repatriation indicates knowledge of what TCNs face when they return home. In that sense, contractors obtain the labor of TCNs through a scheme in which TCNs believe that if they stop working, or are sent home, they or their families will suffer serious harm at the hands of loan sharks.

In addition, regardless of whether contractors and subcontractors actually engage in trafficking themselves, the TVPA also imposes liability on anyone who knowingly benefits from participation in any venture that involves trafficking or forced labor.<sup>205</sup> There is now ample evidence to support the fact that TCNs are being trafficked to Iraq and Afghanistan and subjected to forced labor. U.S. Government Contractors are benefiting from these ventures and may therefore be held liable under the TVPA.



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

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

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

The Bosnian incident revealed a critical loophole in U.S. efforts to combat human trafficking. Although the TVPA rendered trafficking a criminal offense in 2000, mechanisms to hold contractors accountable for trafficking violations remained all but nonexistent. In particular, Government agencies lacked jurisdiction under either military or criminal law to prosecute contractors for crimes committed abroad: military authorities lacked jurisdiction because, as civilians, contractors fell outside the scope of the Uniform Code of Military Justice (“UCMJ”);<sup>209</sup> similarly, civilian authorities lacked jurisdiction because the relevant criminal laws reached no further than the territorial borders of the United States.<sup>210</sup> As a result, contractors continued to operate within a jurisdictional void—a “Legal Bermuda Triangle”<sup>211</sup>—in which their crimes, including trafficking, went unpunished.

As DOD Associate Deputy General Counsel Robert E. Reed told the House Judiciary Committee in 2000, this jurisdictional gap and the consequent “inability of U.S. authorities to adequately respond to serious misconduct within the civilian component of the U.S. Armed Forces, presents the strong potential for embarrassment in the international community, increases the possibility of hostility in the host nation’s local community where our forces are assigned, and threatens relationships with our allies.”<sup>212</sup> Thereafter, the U.S. Government established a “zero tolerance” policy against human trafficking and implemented a series of reforms that aimed to close the jurisdictional gap and ensure against continued contractor impunity.<sup>213</sup> Taken together, these reforms extend military and criminal jurisdiction to include contractors who accompany the Armed Forces overseas, and empower Government officials to hold contractors accountable for their misconduct through a variety of criminal and non-criminal sanctions.

Although these new rules provide the Government with much-needed authority to prosecute or otherwise penalize contractors who engage in trafficking, Government agencies have failed to meaningfully implement or enforce them. As the Commission on Wartime Contracting concluded in its final report in 2011, “the Commission uncovered tragic evidence of the recurrent problem of trafficking in persons by labor brokers or subcontractors of

contingency contractors. Existing prohibitions on such trafficking have failed to suppress it.”<sup>214</sup> As a result, the trafficking and abuse of TCNs continues largely unabated, while the Government’s response to even the most egregious abuses remains inadequate.<sup>215</sup>

## **Prosecuting Contractors Under Military and Criminal Law**

### *1. The Military Extraterritorial Jurisdiction Act*

The first in a series of attempts to hold contractors accountable for misconduct overseas, the Military Extraterritorial Jurisdiction Act of 2000 extends the criminal jurisdiction of Article III courts to personnel “employed by or accompanying” the U.S. military overseas.<sup>216</sup> Initially, the MEJA covered only a limited class of contractors—namely, those directly employed by the DOD.<sup>217</sup> However, Congress amended the statute in 2004 to include all contractors who work in support of DOD missions.<sup>218</sup> The amended MEJA provides for jurisdiction over civilian employees of DOD or of “any other Federal agency, or any provisional authority, to the extent such employment relates to supporting the mission of the Department of Defense overseas.”<sup>219</sup> The statute covers any crime that would otherwise constitute a felony if committed within the special maritime and territorial jurisdiction of the United States, including human trafficking.<sup>220</sup>

Although it expands jurisdiction over certain contractor misconduct, the MEJA remains insufficient. First, the statute applies exclusively to contractors whose work supports DOD missions, whereas a significant number of contractors work in support of other departments or agencies.<sup>221</sup> For instance, as of February 2012, thousands of contractors remain in Iraq under the command of the State Department.<sup>222</sup> That such contractors fall outside the jurisdiction of the MEJA poses a serious challenge to contractor accountability.<sup>223</sup>

“the statute exposes traffickers to criminal liability in theory only”

Second, because the MEJA fails to mandate oversight and enforcement, even contractors who fall within its jurisdiction enjoy almost unlimited immunity for their actions.<sup>224</sup> No department other than DOD has adopted implementing legislation.<sup>225</sup> As a result, the

DOD Inspector General remains exclusively responsible for informing the Attorney General whenever he or she reasonably suspects that an enumerated federal crime has been committed, as well as for “implementing investigative policies” to carry the MEJA into effect.<sup>226</sup> In the twelve years since Congress passed the statute, however, the DOD-IG has referred remarkably few cases to DOJ for prosecution (see *Declining to Investigate* below). To date, the MEJA has not been used to prosecute a single contractor for trafficking or labor abuse. For now, at least, the statute exposes traffickers to criminal liability in theory only.

## *2. The Uniform Code of Military Justice*

In 2006, Congress passed an amendment to the Uniform Code of Military Justice.<sup>227</sup> On its face, the relevant section of the amendment extends military jurisdiction to include civilian contractors.<sup>228</sup> Specifically, it covers “persons serving with or accompanying an armed force in the field” in “time of declared war or a contingency operation.”<sup>229</sup> Previously, the UCMJ covered civilians serving with the armed forces only in “time of war.” In light of the constitutional issues that arise whenever civilians are tried in military tribunals, U.S. courts consistently interpreted the phrase “in time of war” to mean only wars declared by Congress.<sup>230</sup> Nevertheless, the inclusion of “contingency operation” in the amended UCMJ expands military jurisdiction over contractors to situations other than formal wars.

As the U.S. Army explained in its 2007 annual guide to the UCMJ, the impact of this amendment remains uncertain: “Subjecting contractor personnel to the UCMJ during all contingency operations appears to constitute a significant change rather than a clarification. No legislative history explains this change. Further, as there is no published guidance, it is unclear how this change will be implemented and precisely what the ramifications will be.”<sup>231</sup> In particular, although DOD issued guidance for implementing the UCMJ amendment in 2008,<sup>232</sup> the amendment itself “is almost certain to spark constitutional challenges.”<sup>233</sup> Courts have proved reluctant to extend military jurisdiction to civilians in the past, and have found that such jurisdiction “cannot be claimed merely on the basis of convenience, necessity, or the non-availability of civil courts.”<sup>234</sup>

Perhaps for that reason, DOD has made little use of the UCMJ amendment. In fact, there remains only one reported use: an Iraqi interpreter pleaded guilty in 2008 in connection with the stabbing of another contractor.<sup>235</sup>

## *3. The 2005 and 2008 TVPRA*

The original version of the TVPA did not provide for any extraterritorial application. In 2005, however, Congress amended the statute to expand extraterritorial jurisdiction to persons employed by or accompanying the U.S. Government outside the United States. Specifically, Section 2371 of the Act provides:

Whoever, while employed by or accompanying the federal government outside the United States, engages in conduct outside the United States that would constitute any offense under this title if the conduct has been engaged in within the United States or within the special maritime and territorial jurisdiction of the United States should be punished as provided for that offense.<sup>236</sup>

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

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

#### *4. Declining to Prosecute Contractors Who Engage in Trafficking*

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

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

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

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

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

Nevertheless, such sidestepping of legal enforcement continues to arise. In response to the highly publicized incident involving 1,000 Sri Lankan, Nepali, and Indian TCNs—whom Najlaa International confined to a windowless warehouse without money or work for three months<sup>247</sup>—the DOJ determined in 2009 that, “while certainly disconcerting, the facts and circumstances did not suggest that Human Trafficking Violations had occurred.”<sup>248</sup> This conclusion turned primarily on the fact that “TCN personnel housed in the above described complex were free to leave if they had decided to do so.”<sup>249</sup> On the contrary, TCNs rarely enjoy such freedom: as explained in detail above, contractors employ a range of tactics—including confiscating TCNs’ passports, restricting their movement, withholding their pay, and charging them “termination fees”—to prevent TCNs from leaving the worksites. Meanwhile, the debts many TCNs owe render them vulnerable to indentured servitude, even in the absence of such tactics.<sup>250</sup> Nor has this dynamic entirely escaped the notice of the U.S. Government: in a State Department email, one official acknowledged that the Najlaa incident involved “essentially the trafficking of low-skilled expat workers into forced labor or poor working conditions.”<sup>251</sup> Nevertheless, the Government continues to award Najlaa new service contracts, including one that lasts through 2012.<sup>252</sup>

In another recent case, the DOD-IG received information concerning abuses on the part of Amina Enterprise Group, a U.S. Government contractor serving under multiple contracts in Afghanistan.<sup>253</sup> These abuses included bribing engineers with prostitutes in order to garner contracts, as well as recruiting women to work at a beauty salon under false

“Despite substantial evidence of criminal wrongdoing, the U.S. Government has yet to prosecute a single contractor for trafficking or labor abuse.”

pretenses and inhumane conditions. For instance, Amina allegedly charged the women \$700 each for their flight into the country, even though the latter arrived via a military flight—ostensibly free for the company. Reports indicate that Amina also charged each of the women their entire salary (\$150 per month) to maintain a chair at the salon, leaving the women with only the tips they made.<sup>254</sup> When the Reporting Agent and the Air Force Office of Special Investigations (“AFOSI”) interviewed Amina employees, they also discovered that the company frequently paid workers late and withheld their passports. Nevertheless, the International Contract Corruption Task Force determined that it had “exhausted all logical leads” and that “no actionable criminal activity ha[d] been discovered.”<sup>255</sup>

As previously mentioned, trafficking and labor abuse occurring at the hands of foreign service providers serving under U.S. Government contracts is often, and erroneously, deemed not to fall under the purview of the U.S. Government.<sup>256</sup>



## **Implementing and Enforcing Anti-Trafficking Laws Against Government Contractors**

### *1. Implementing the TVPRA: Federal Acquisition Regulations 22.17*

In 2006, the U.S. Government announced a rule to implement those portions of the TVPRA concerning Government contracts.<sup>257</sup> The rule, Federal Acquisition Regulation (“FAR”) Subpart 22.17, requires that all overseas contracts include a provision authorizing the contracting agency to terminate the contract if the contractor, subcontractor, or any employee thereof engages in human trafficking.<sup>258</sup> Specifically, the rule requires contracting agencies to use contract clauses that prohibit “contractors, contractor employees, subcontractors, and subcontractor employees from—(1) Engaging in severe forms of trafficking in persons during the performance of the contract; (2) Procuring commercial sex acts during the period of performance of the contract; and (3) Using forced labor in the performance of the contract.”<sup>259</sup> In addition, the rule provides the Government with several options to remedy violations of anti-trafficking contract clauses. In particular, it authorizes contracting agencies to remove the offending contractor, to require termination of a subcontractor, to suspend payments, to require the loss of an award fee, to terminate the contract, or to terminate the contractor.<sup>260</sup> Together with the reforms noted above, these remedies afford the Government substantial authority to respond to trafficking violations by U.S. Government contractors.

Unfortunately, Subpart 22.17 contains several significant shortcomings. Most notably, it relies exclusively on contractor self-reports: as the Defense Department’s Inspector General concluded in 2011, “contractor-initiated reporting . . . was the only means by which [DOD] could obtain timely and relevant information regarding actual or alleged TIP [trafficking in persons] violations.”<sup>261</sup> In fact, the implementing regulation merely requires the prime contractor to inform its contracting officer of “[a]ny information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, or subcontractor employee has engaged in conduct that violates this policy,” as well as of “[a]ny actions taken against Contractor employees, subcontractors, or subcontractor employees pursuant to this clause.”<sup>262</sup> As a critic of the rule observes,

There appear to be no true means of enforcement. Contractors essentially have been asked to turn themselves in upon learning that an employee has violated this policy—even at the risk of contract termination, suspension and debarment. Thus, while the FAR and DFARS ban on human trafficking is a warning to Contractors that such activities are expressly prohibited, it is doubtful that the regulations will accomplish their laudable objectives, since Contractors are unlikely to self-report.<sup>263</sup>

Further, the regulation does not authorize contracting agencies to conduct audits of contractors, nor does it require contractors to certify compliance with the prohibitions against trafficking and forced labor.<sup>264</sup> Contracting agencies, meanwhile, have yet to implement the regulation in any meaningful way: only the Defense Department has issued

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

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

“Prime contractors have a history of turning a blind eye to the practice [of human trafficking] and lack any motivation to get involved in mitigation efforts.”

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

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

Prior to the 2008 TVPRA, the U.S. Government conducted remarkably few investigations into trafficking or labor abuses by Government contractors. As a study by the DC-based Center for Strategic and International Studies concluded in 2005, the United States “has been reluctant to address the security implications of misconduct by uniformed service members and civilian contractors, especially involving human rights abuses.”<sup>268</sup> For instance, according to annual DOJ reports on human trafficking enforcement, which summarize investigative activity across the federal government, there were no DOD investigations into trafficking in persons in 2006 or 2007.<sup>269</sup> The section detailing efforts by the U.S. military to combat trafficking is omitted from the 2008 DOJ report.<sup>270</sup> This lack of investigative activity comes despite widespread media reports of contractors engaging in human trafficking published from 2006 onwards.<sup>271</sup>

In the years since Congress passed the 2008 TVPRA, the Government has shown an increased reluctance to investigate allegations of trafficking.<sup>272</sup> According to the 2010 DOD-IG trafficking report, for instance, there was “one report of preliminary investigative activity of a contractor in Iraq” for labor trafficking violations in 2009.<sup>273</sup> Although the DOD-IG referred the matter to the Justice Department, prosecutors “determined facts and circumstances did not warrant further action.”<sup>274</sup> The 2011 DOD-IG report mentions one case during the 2010 time period, which it describes as “one TIP-related incident involving a DOD contractor or sub-contractor employee. In that case, the employee was barred from the installation by the commander and fired by the contractor.”<sup>275</sup> The State Department, meanwhile, opened just one investigation into labor trafficking in all of 2009.<sup>276</sup> Further, the 2011 DOS trafficking report notes, “during the reporting period, allegations were investigated and one employee was dismissed by a DOD contractor.”<sup>277</sup> However, “no prosecutions occurred and no contracts were terminated” for the reporting period, although “allegations against federal contractors engaged in commercial sex and labor exploitation continued to surface in the media.”<sup>278</sup>

Compounding the lack of formal investigations, insufficient oversight on the part of U.S. officials in the field continues to enable contractors to engage in trafficking and labor abuse without repercussion.<sup>279</sup> As the Commission on Wartime Contracting reported in 2009, “there is a critical shortage of qualified contract-management personnel in [Iraq and Afghanistan], and those that are there are stretched too thin. In particular, the process for designating and training contracting officer representatives to check contractor performance in theater is broken.”<sup>280</sup> For instance, DOD contracting oversight continues to suffer from a roughly 50% workforce reduction between 1994 and 2005.<sup>281</sup> Meanwhile, the number of contracts continues to increase, such that a single Contracting Officer Representative is often responsible for contractor performance oversight in as many as twenty-seven locations.<sup>282</sup> As the Commission on Wartime Contracting reiterated in 2010: “This Commission has documented and repeatedly warned, as have others, about inadequate numbers and training of civilian and military contracting officers, contracting officer’s representatives, subject-matter experts, and auditors.”<sup>283</sup> The Commission further noted, “Department of Defense contract management has been on the Government Accountability Office’s high-risk program list since 1992.”<sup>284</sup> That same year, Senator Joseph Lieberman responded to reports of inadequate oversight on the part of DOS, noting, “[t]he State Department appears to be sleepwalking through its oversight obligations.”<sup>285</sup>

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

For TCNs in Iraq and Afghanistan, this lack of investigation and oversight produces insidious effects. In 2003, Ramil Autencio, a 37-year-old air conditioning maintenance worker from the Philippines, signed a contract with MGM Worldwide Manpower and General Services, a company based in the Philippines, to work at the Crown Plaza Hotel in Kuwait City for \$450 per month. When he arrived in Kuwait that December, Autencio discovered that First Kuwaiti Trading & Contracting, a Kuwaiti-based company, had purchased his contract. First Kuwaiti,

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

In response, in June 2005, the Philippine government placed First Kuwaiti on a “watch list” forbidding it from recruiting or employing Filipinos.<sup>287</sup> The following month, by contrast, the U.S. State Department awarded the company a \$592 million contract to build the U.S. Embassy in Baghdad. Thereafter, evidence mounted of widespread trafficking and labor abuses: workers accused the Kuwaiti contractor of smuggling them into Iraq against their will, confiscating and withholding their passports, subjecting them to unsafe working conditions, warehousing them in crowded and unsanitary living quarters, and refusing them medical treatment. “When drinking water was scarce in the blistering heat,” First Kuwaiti allegedly forced workers to drink from the Tigris, “a river rife with waterborne disease, sewage and sometimes floating bodies.”<sup>288</sup> It also reportedly made them eat leftover food from a giant “pig” trough or else off of dirt floors.<sup>289</sup>

In response to these allegations, Howard Krongard, the then State Department Inspector General, conducted just two one-day site reviews of the Embassy project. He found nothing amiss: “Nothing came to my attention evidencing any Trafficking in Persons (TIP) violations or human rights abuses,” he wrote in a 2006 memorandum.<sup>290</sup> Although he later admitted that First Kuwaiti had three-months advance warning about his visit,<sup>291</sup> Krongard continued to dispute that the company was engaging in trafficking. Testifying before the House Oversight Committee in July 2007, he reiterated, “[n]othing came to our attention that caused us to believe that trafficking-in-persons violations”—or other serious abuses—“occurred at the construction workers’ camp at the new embassy compound.”<sup>292</sup>

At that same committee hearing, two American contractors—both of whom worked on the U.S. Embassy project—disagreed. One of the contractors, John Owen, arrived in Iraq in late 2005 with twenty-seven years of experience building U.S. embassies around the world. He quit eight months later, saying: “Every U.S. labor law was broken.”<sup>293</sup> For instance, when seventeen laborers attempted to escape by climbing over a wall, First Kuwaiti, with help from a State Department official, interdicted them and placed them in “virtual lockdown.”<sup>294</sup> In his testimony, Owens also described as “deplorable” the living and working conditions to which First Kuwaiti subjected foreign workers, and further noted, “[m]any of the workers were verbally and physically abused, intimidated, and had their salary docked for as much as three days pay for reasons such as being five minutes late.”<sup>295</sup> Similarly, the second contractor, Rory J. Mayberry, testified that he witnessed fifty-one Filipino workers being “kidnapped by First Kuwaiti to work on the U.S. Embassy;” the company also confiscated their passports and “smuggled [them] into the Green Zone.”<sup>296</sup>

In a written submission, the anti-slavery organization Free the Slaves also challenged Inspector General Krongard’s findings.<sup>297</sup> Committee chairman Henry Waxman expressed

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

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

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

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

Although the State Department’s 2011 Trafficking in Persons report made little mention of the trafficking and abuse of TCNs, it found that the United States constitutes a “source, transit, and destination country for men, women, and children subjected” to various kinds of trafficking,<sup>302</sup> including forced labor and debt bondage. This finding led DOS to partner with the Department of Homeland Security (“DHS”) to “develop two online trainings, one of which was for the federal acquisition workforce.”<sup>303</sup>

The subsequent 2011 and 2012 revised guidelines for DOS Contracting Officers and Contracting Officer Representatives represent a significant step toward improving monitoring and enforcement of anti-trafficking compliance. In particular, the guidelines expand the duties of COs and CORs to include:

- Contacting the TIP official to assess the nature of TIP threats at the site. Closely monitoring programs engaging low wage labor, third country nationals, and recruiters or utilizing employer-provided housing for TIP violations.<sup>304</sup>
- Ensuring that contractors provide a housing plan that (a) allots each worker a minimum of 50ft<sup>2</sup>, (b) and meets local housing and safety standards.<sup>305</sup> In practice, the living conditions should ‘pass a common sense review’ during the random, semi-annual inspections.<sup>306</sup>

- Ensuring that contractors provide a sample recruitment agreement that (a) explains the recruitment strategy; (b) gives anticipated number of workers, their skills, and countries the company will recruit from; (c) precludes recruiting fees for TCN; and mandates usage of licensed recruitment companies (rather than independent agents).<sup>307</sup>
- Certifying that the contractor rather than the TCN has paid the recruitment fee for DOS contracts.
- Certifying that the employer gave the TCN an accurate, translated copy of his/her contract defining employment, compensation, job description and benefits, prior to departure from his/her home country.<sup>308</sup>
- Ensuring contractors and subcontractors comply with sending and receiving nation laws regarding immigration and work permits.<sup>309</sup>

The guidelines further require CORs to ensure contractors and subcontractors do not withhold passports, visas, or identification documents; do not use work permits, physical force or threats to compel labor or sexual activity;<sup>310</sup> brief all employees about the TIPs clause and requirements;<sup>311</sup> and explain any wage deductions to their employees.<sup>312</sup> To accomplish these goals, DOS mandates that all contractors and subcontractors allow government personnel access to their workers, records, and housing.<sup>313</sup>

These guidelines also impose an obligation on the contractor to (a) monitor subcontractor compliance at all tiers; (b) inform the CO and COR of any information related to alleged TIP violations or compliance issues; (c) give employees Know Your Rights brochures; and (d) display posters in worker housing advising employees (in English and the dominant language of the TCNs being housed) that they must report TIPs violations to the contractor, who must in turn report them to the CO.<sup>314</sup> These posters should also provide the Office of the Inspector General Hotline and email.<sup>315</sup>

Enforcement of these and other anti-trafficking and labor rights standards, however, remains inadequate. To date, no contractors or subcontractors who have violated the above standards or committed other abuses have been held accountable.

Although the debarment process is one possible mean of enforcement, contracting agencies also need to hold prime contractors accountable whenever the latter hire subcontractors who engage in unlawful practices. At the same time, contracting agencies should take steps to assist TCNs and other workers employed by the offending company. Debarments or other punitive action, however, should not result in the immediate removal of TCNs, who in any event may not be able to provide identification or other documentation as a result of them having been confiscated by the subcontractor.

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

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

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

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

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

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





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**ALTHOUGH THE TVPRA AND THE FEDERAL ACQUISITION REGULATIONS REQUIRE USG CONTRACTS TO MANDATE COMPLIANCE WITH THE PROHIBITION AGAINST TRAFFICKING, U.S. CONTRACTING AGENCIES HAVE YET TO IMPLEMENT THIS REQUIREMENT IN ANY MEANINGFUL WAY.**

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# Recommendations

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Based on the findings of this report, the U.S. Government should take the following steps to 1) **prevent** contractors from engaging in human trafficking, deceptive labor recruiting, forced labor, and workplace abuses; 2) **monitor and investigate** contractors' compliance with the prohibition against trafficking and labor rights abuses; and 3) **prosecute or otherwise penalize** contractors who commit trafficking or labor-related offenses.

## I. PREVENTION

To prevent contractors *at every level of contract and subcontract* from engaging in human trafficking, forced labor or other abuse, the U.S. Government should require that *every* USG contract performed overseas—including every *current* contract and regardless of contracting agency<sup>326</sup>—specify the following:

### **1. Prohibit Human Trafficking, Deceptive Recruiting, Forced Labor and Other Abuse Without Exception**

Although the TVPRA and the Federal Acquisition Regulations require USG contracts to mandate compliance with the prohibition against trafficking, U.S. contracting agencies have yet to implement this requirement in any meaningful way. For that reason, the U.S. Government should mandate that, regardless of contracting agency, every USG contract contain language 1) affirming the government's "zero tolerance" policy against trafficking; 2) requiring contractors to certify compliance with anti-trafficking protocols (on behalf of themselves *as well as their subcontractors*) through regular reporting; and 3) stating that the contracting agency is *obligated* to take all necessary and appropriate action against the contractor for violating or failing to enforce the prohibitions against trafficking, forced labor and other abuse.

### **2. Hold Prime Contractors Responsible for the Recruitment, Hiring, and Treatment of TCNs**

Every USG contract should specify that the prime contractor is responsible for the recruitment and living and working conditions of all TCNs serving under its contract *or subcontract(s)*. To that end, every USG contract should require the contractor to use only subcontractors and recruiters with a proven track record of charging no recruiting fees, engaging in good labor practices, and upholding anti-trafficking protocols. The prohibitions against trafficking and labor abuse apply to any such subcontractor or recruiter, and the prime contractor will be accountable for the hiring and labor practices of any subcontractor or recruiter operating on its behalf. Agencies should vet new companies to ensure that subcontractors and recruiters do not sidestep the debarment or suspension process by reformulating under a new name or license.

### **3. Encourage Direct Hire of TCNs**

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

### **4. Ensure Passport Access**

Compliance with the prohibition against trafficking demands that workers remain at all times free and able to terminate their employment and return home. For that reason, every USG contract should expressly require that TCNs retain access to their passports and other identification and travel documents *at all times*, including during transit to and return from their destination countries as well as for the duration of their employment, in accordance with Title 18 U.S.C., Sections 1589 and 1592. The only exception to this rule should be when passport retention is necessary for visa and security processing and documentation. Wherever possible, workers should retain physical possession of their passports and other identification and travel documents. However, if and when security is an issue, workers may *choose* to store these documents in a central, secure, and accessible location.

### **5. Prohibit Exploitative Worker Contracts**

Every USG contract should mandate that TCNs receive an employment contract *prior to departure from his or her home country*, and that every such contract comply with U.S. labor and anti-trafficking laws. In particular, every employment contract should specify—in English as well as in the TCNs’ native languages—the location, nature, and conditions of the work as well as the wages and hours that it entails. The contract should further detail the duration of employment, the duties of employer and employee, and the employment benefits, including transportation, leave, accommodation, medical care, and overtime pay. The contract should also include information about the U.S. Government’s zero tolerance policy against trafficking and forced labor. Finally, the contract should contain information about the Defense Base Act death or injury compensation scheme where applicable, including information on the procedure for filing claims under the Act, as well as a guarantee that such information will be transmitted to family members in the event of injury or death.

### **6. Require Fair Pay and Time Off**

Every USG contract should expressly require that TCNs receive fair wages. Wages should equal the amount specified in TCNs’ employment contracts, and TCNs should be allowed to report inadequate or missing payments without repercussion. No TCN should be compelled to work more than 40-50 hours per week; if a TCN chooses to work more

hours, he or she should receive overtime pay for each additional hour. Further, no TCN should receive less than one day off per week, and all TCNs should receive a reasonable amount of vacation time every year. TCN salaries should increase if and when they are promoted. Information regarding workers' rights should be publicly displayed around TCN camps.

## **7. Mandate Safe and Habitable Living Conditions**

Every USG contract should require the contractor to provide TCNs with safe and habitable living quarters, including personal living space comparable to that of their own personnel, as well as with adequate food, medical care, sanitary facilities, personal protective equipment, and safety training. The contractor should provide the contracting agency with a detailed description of housing accommodations it intends to provide for its foreign workers. Every TCN should have his or her own bed, securable storage space, and access to nearby toilets and showers. He or she should have access to healthcare and should be provided with regular and nutritionally adequate meals. Living quarters should be clean and meet the hygienic standards of other buildings on the site. TCNs should receive the same basic safety protections and equipment as American employees of the contractor, including, but not limited to: bulletproof vests when traveling outside the base; armored vehicles for the same purpose; and safety helmets. TCNs should also receive safety training with relevant site-specific information upon their arrival.

## **8. Require Medical Care and Insurance under Defense Base Act**

Every USG contract service performed outside the United States should obligate the contractor to provide TCNs with adequate medical care, as well as with Defense Base Act insurance to cover payments in the event of injury or death. The contractor should further make TCNs aware of these benefits through formal briefings as well as through language in the TCNs' employment contracts.

## **9. Facilitate Regular Contact With Home and Family**

Every USG contract should require the contractor to allow TCNs regular contact with family members in countries of origin. Access to email and phone should be available in a safe, central and accessible location, such as a communication post in TCNs' living quarters. TCNs should not be forced to go outside protected areas to call home or communicate with the outside world. TCNs should receive at least one free calling card when they first arrive on location, allowing them to call home and verify their safe arrival, and should have access to affordable calling cards thereafter. TCNs should never be prevented from contacting their embassies.

## **10. Safeguard the Right of Return**

Every USG contract should require the contractor to provide every TCN with a return plane ticket home. The contractor should provide the contracting agency with a repatriation plan 120 days prior to completion of the contract. The cost of return airfare

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

## **II. OVERSIGHT AND MONITORING**

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

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

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

### **2. Conduct Regular Audits and Inspections to Ensure Contractors Comply with U.S. Anti-Trafficking and Labor Standards**

Every contracting agency should conduct regular audits and inspections to assess contractor compliance with the prohibition against trafficking, forced labor, abusive labor practices, and substandard living conditions. These audits should involve a thorough review of contractors' compliance with *each* of the contract terms mentioned above. To that end, every contracting agency should dedicate additional resources and personnel to the task of monitoring compliance. Where necessary, agencies should increase the number of on-site Contracting Officer Representatives, and should require CORs to perform frequent spot-checks of TCNs' living quarters and worksites *specifically* to assess contractor compliance with anti-trafficking and labor standards. Every contracting agency should ensure that the contractor receive no advance warning of when such inspections will take place. In addition, every agency should ensure that audits and inspections include interviews with TCNs, conducted in private and in the absence of superiors. TCNs who consent to an interview should face no repercussions as a result. Finally, every agency should take immediate action if and when an audit or inspection reveals evidence of trafficking or forced labor—including evidence of activities that merely heighten the risk that the contractor will engage, knowingly or unknowingly, in trafficking or labor abuses in the future.

### **3. Implement Formal Mechanisms to Receive and Process Reports of Trafficking and Labor Abuses**

Every contracting agency should establish formal complaint mechanisms through which TCNs, as well as third parties, can easily and safely report incidents of trafficking, forced labor or other labor abuses to the appropriate officials. These mechanisms should include an anonymous hotline that allows TCNs to communicate with and report abuses directly to the contracting agency. Information about the hotline, including a phone number and email address, should be prominently displayed in and around TCNs' living quarters and communal spaces. In addition, TCNs should have regular access to CORs to whom they can bring complaints or raise concerns, outside of the presence of their supervisors.

### **4. Investigate and Respond to All Credible Reports of Trafficking and Labor Abuse**

No contracting agency should rely on contractor self-reporting to identify trafficking, forced labor or other abuses. Instead, contracting agencies should investigate and respond to all credible reports of trafficking, forced labor or other abuse, and should refer all confirmed cases thereof to the appropriate body for corrective action.

## **III. ENFORCEMENT AND ACCOUNTABILITY**

The U.S. Government should take all necessary steps to close the “jurisdictional gap” that allows contractors to avoid liability for trafficking- and labor-related offenses. In addition, the Government should *require*, rather than merely authorize, every contracting agency to impose non-criminal sanctions on contractors who engage in, or turn a blind eye to, trafficking forced labor and other abuses.

### **1. Expand Federal Criminal Jurisdiction to Include All Government Contractors**

Congress should expand the criminal jurisdiction of Article III courts to include every contractor who operates on behalf of the U.S. Government abroad. To that end, Congress should either: a) amend the MEJA to apply to every contractor, including every contractor hired in support of non-DOD missions, who commits enumerated federal crimes overseas, or; b) enact the Civilian Extraterritorial Jurisdiction Act of 2011 (H.R. 2136, S. 1145) to extend criminal jurisdiction to any contractor not otherwise covered under the MEJA.

### **2. Prosecute U.S. Contractors Who Engage in Violations of TCN Rights under Federal Criminal Law**

Every contracting agency should—compelled by Congress as necessary—take every effort to hold contractors legally accountable for their involvement in trafficking, forced labor and/or other abuse. To that end, contracting agencies should establish standard procedures for referring confirmed cases of trafficking and forced labor to the Department of Justice. In addition, DOJ and contracting agencies should allocate

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

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

Every contracting agency should—compelled by Congress as necessary—impose penalties on every contractor who engages in or fails to report trafficking, forced labor or other abuse. Violations of the prohibition against trafficking and labor abuses—as well as failures to cooperate with timely review and investigation of suspected trafficking and forced labor violations—should *automatically* subject contractors to remedial action. At a minimum, such action should include the imposition of fines hefty enough to eliminate any financial incentive for the contractor to continue engaging in the violative behavior. Widespread or systemic violations should meet with contract suspension and/or termination, and debarment from future contracts. Contractors who have participated in trafficking, forced labor or other abuse should be punished.





“

IT IS SIMPLY NOT ENOUGH FOR ATTORNEY GENERAL HOLDER  
TO PROCLAIM A “ZERO-TOLERANCE” POLICY AGAINST  
TRAFFICKING. THE U.S. MUST PUT THAT STATED POLICY  
INTO ACTION.

”

## Conclusion

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

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



# Appendices

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## Appendix A: Major Actors in Recruitment and Trafficking

Figure 1: Network of Relationships

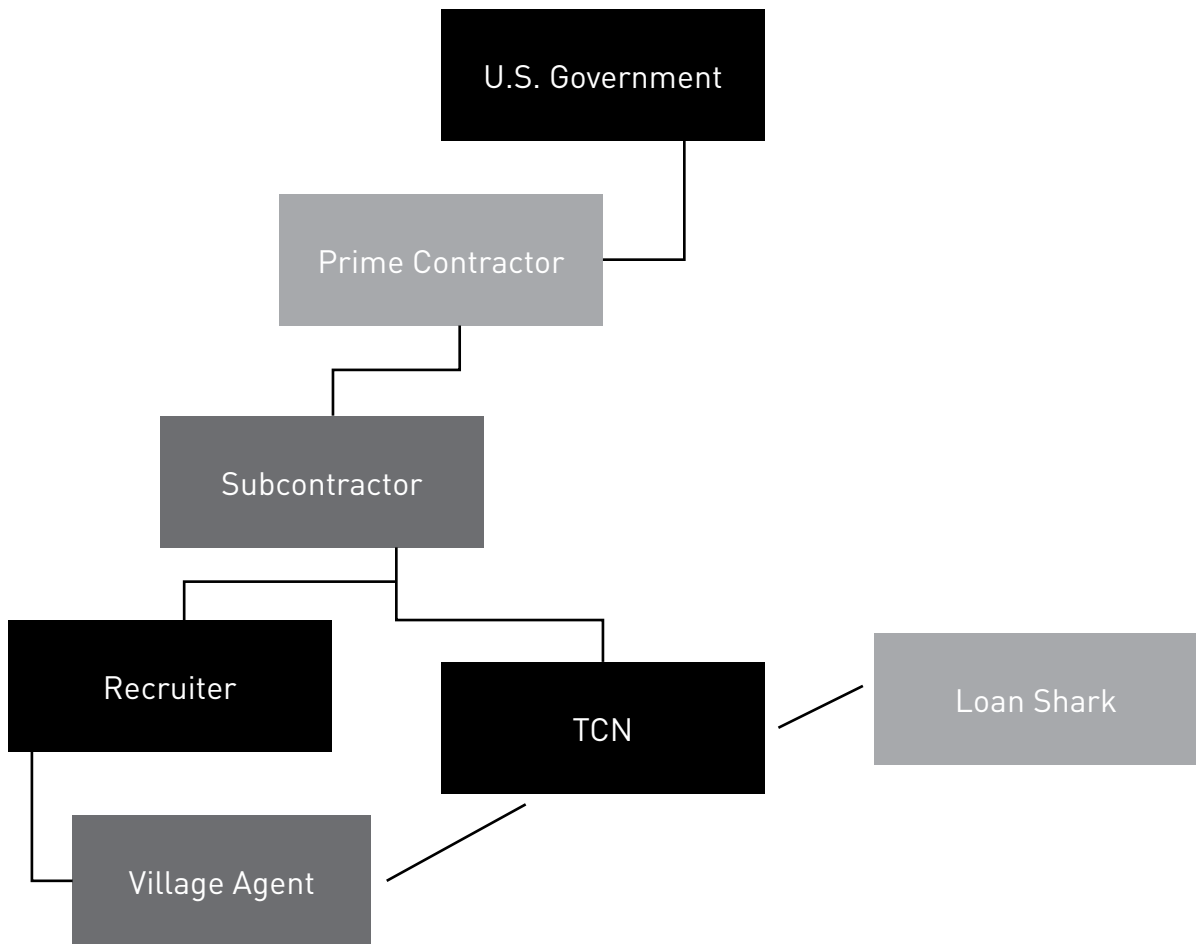
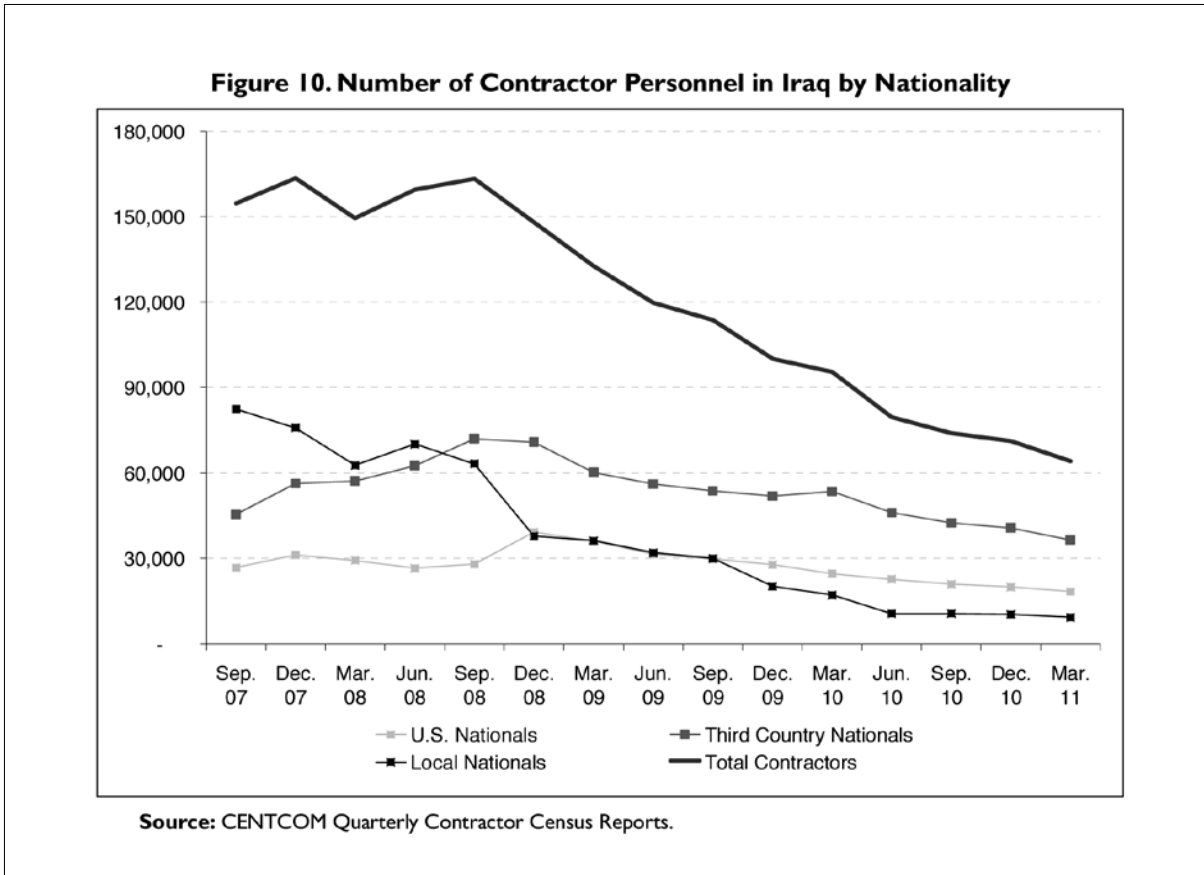


Figure 2: Recruitment Hierarchy



**Appendix B:  
Contractor Personnel Trends<sup>330</sup>**



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

## Appendix C:

### Sample Online Recruitment Advertisement, found on Indian jobs websites\*

#### Category: Workers Needed In Iraq/Afghanistan US Army

April 11, 2011 – 7:25 am

**PG Qualification: Any Post Graduation**

**Basic/UG qualification: Any Graduate**

**Role: Others**

**Experience: to 3 years**

**Key skills: CATEGORY JOBS**

**Country: Afghanistan**

**No. of vacancies: 10+**

**Job category: Other**

**Posted by: placement consultant**

**Contact person: Prashant**

**Company name: Zenith Engineering**

**Website: NA**

#### Description:

ECOLOG, IRAQ/AFGHANISTAN

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

SAFETY OFFICER (Three years exp) - \$ 800

IT Specialist – \$ 800

Administrator – \$ 800

All candidates should speak English

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

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

Passport validity should be minimum 2 years

ALL CANDIDATES SHOULD HAVE GOOD EDUCATIONAL BACK GROUND & CERTIFICATES

ALL CANDIDATES SHOULD SPEAK FLUENT ENGLISH

AGE GROUP 24 TO 42 YEARS

DRIVING LICENSE WILL BE AN ADDED ADVANTAGE

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

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

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

REQUIRED FOR SUPREME FOOD STUFF, AFGHANISTAN

PEST CONTROLLER – \$ 500 +100

RETAIL CASHIERS – \$ 600 +200

HEAVY DRIVER – \$ 600 + 100

ADMIN ASSISTANT – \$ 600 +200

DIESEL MECHANIC – \$ 800 + 200

SENIOR ADMINISTRATOR - \$ 1200 +200

WATER TREATMENT TECH - \$ 800 + 200

ACCOUNTANT – \$ 800 – 1200 +200

KITCHEN EQUIP TECHNICIAN - 800 +200

INVENTORY CONTROLLERS - \$ 600 +200

HVAC TECHNICIAN – \$ 800 +200

FUEL HANDLER – \$ 800 +200

WARE HOUSE MAN – \$ 600 +200

CARGO HANDLER – \$600 + 200

MAINTENANCE TECHNICIAN - \$ 650 +100

GENERAL LABORER -\$400

SAFTEY OFFICERS – \$ 600 +200

ALL CANDIDATES SHOULD HAVE GOOD EDUCATIONAL BACK GROUND & CERTIFICATES

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

ALL CANDIDATES SHOULD SPEAK FLUENT ENGLISH

AGE GROUP 24 TO 42 YEARS

DRIVING LICENSE WILL BE AN ADDED ADVANTAGE

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

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

KINDLY NOTE THIS IS NOT FREE VISA.

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

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

*\*\* At least \$2000 USD.*



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

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

### **“EMPLOYMENT AGREEMENT**

This Agreement is made and entered upon reaching to Iraq and valid till one year from joining; renewable for the same period.

Najlaa International Catering Service located in Sharq Tower, 16th Floor, Sharq, Kuwait and P.O. Box 64457 Shuwaikh-B, Kuwait (the (“Employer”); WEERASINGHE KANKANALAGE, SENEVIRATNE BANDARA holder of SRI LANKAN Passport Nr. N-1326256 valid until \_\_\_\_\_ (the “Employee”).

WHEREAS, the Employer has offered to the Employee the position of STORE SUPERVISOR on the basis of his/her previous experience in that field and the Employee has accepted said position.

IT IS HEREBY AGREED AS FOLLOWS [...]

#### **2. Work Schedule**

The Employee agrees to work 12 hours, 7 days a week and as many hours as may be required for the performance of the Employee’s duties [...]

#### **4. Remuneration and Entitlement to Vacation**

The Employee shall receive, upon the satisfactory completion of the probationary period; an all inclusive salary shall become USD (700) to be paid at the end of every month from the employee work period [...]

#### **8. Responsibility and Assumption of Risk**

[...] Employer is solely responsible to return the employee to country of origin upon terminating this contract or for any other reasons determined by the employer [...]

#### **12. Termination of Employment**

[...] In case of resignation before completion of one year of service. Whether for working with another company or going back to his country unless it is for force majeure. The employee will bear total fees of 2500 USD to cover (medical test, recruitment fees, and ticket from his original country, residency fees, ticket to and from Iraq, and other expenses).

In case of resignation before the period of one year of service, the employee should provide the company a notice of 45 days to provide the company an adequate time frame for replacement. An employee can’t decide to resign today and stop from working.”

## **Appendix E:**

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

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

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

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

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

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

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

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

(c) In this section:

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

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

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

18 U.S.C. §1590 on Trafficking with Respect to Peonage, Slavery, Involuntary Servitude, or Forced Labor reads:

(a) Whoever knowingly recruits, harbors, transports, provides, or obtains by any means, any person for labor or services in violation of this chapter shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.

(b) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be subject to the penalties under subsection (a).

## Appendix F: Additional Supportive Caselaw

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

Dann was convicted of forced labor under §1589. In upholding the conviction, the Ninth Circuit found that Dann threatened Peña Canal with serious financial harm and that “for an immigrant without access to a bank account and not a dollar to her name, a juror could conclude that the failure to pay her—and thus the lack of money to leave or live—was sufficiently serious to compel Peña Canal to continue working.”<sup>333</sup>

In *United States v. Bradley*, 390 F.3d 145, 148 (1st Cir. 2004), laborers from Jamaica, recruited to work on a tree farm in New Hampshire, were promised wages of \$15-20 an hour in addition to free lodging.<sup>334</sup> Instead, they received only \$7 an hour, worked unconscionably long hours, and were charged rent for their lodging, which consisted of a dilapidated shack with no running water. When one of the workers complained to his employer, he was told that he only needed to stay and work long enough to repay \$1,000 that the employer allegedly spent on his plane ticket.<sup>335</sup> Although the workers were paid above minimum wage and were free to travel to the nearby town unaccompanied, they felt coerced into working for the defendants.<sup>336</sup>

A federal court found the defendants guilty under the TVPA’s forced-labor provision.<sup>337</sup> On appeal, the First Circuit rejected the defendants’ argument that “forced labor” required evidence of physical force, reasoning that the TVPA was intended to encompass “subtle psychological methods of coercion.”<sup>338</sup>

In *U.S. v. Calimlim*, the Seventh Circuit clarified what constitutes a threat for purposes of coercion under the TVPRA.<sup>339</sup> The case involved the forced labor of a live-in maid who willingly entered the United States but whose passport was confiscated by the defendants, who was made to work from 6:00 am to 10:00 pm daily, who was never directly remunerated (the family instead sent paltry and insufficient compensation directly to the woman’s family in the Philippines) and whose movement outside of the home was highly regulated.<sup>340</sup> In upholding the defendants’ conviction, the court noted that “the Calimlins intentionally manipulated the situation so that Martinez would feel compelled to remain. They kept her passport [...] and [t]heir vague warnings that someone might report Martinez and their false statements that they were the only ones who lawfully could employ her could reasonably be viewed as a scheme to make her believe that she or her family would be harmed if she tried to leave.”<sup>341</sup>

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

## **Appendix G: More on International Anti-Trafficking Law**

The origins of international anti-trafficking law date back more than two hundred years.<sup>346</sup> However, the Universal Declaration of Human Rights (“UDHR”) provides the theoretical framework for present-day international legal efforts to combat human trafficking. It affirms that “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”<sup>347</sup> Although not legally binding, the UDHR exists alongside a number of international legal instruments that outlaw human trafficking both within states and between them.

The most recent milestone in the international campaign against human trafficking is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children—also known as the Trafficking Protocol. Adopted by the United Nations in 2000 and entered into force in 2003, the Trafficking Protocol establishes a uniform and authoritative definition of human trafficking and further commits state parties to a) prevent and combat trafficking in persons and b) protect and assist victims of trafficking. 119 states, including the United States, have ratified the Protocol.

Overseen by the United Nations Office on Drugs and Crime (“UNODC”), the Trafficking Protocol defines human trafficking as:

the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

According to UNODC, this definition of trafficking consists of three basic elements:

1) process; 2) means; and 3) purpose.<sup>348</sup>

### 1. Process

Although transport or movement of some kind is often mistakenly assumed to be essential, the Trafficking Protocol makes clear that neither is an element of the crime of trafficking. In particular, the Protocol provides that “recruitment, transportation, transfer, harboring, or receipt” is sufficient to establish trafficking.

### 2. Means

Among its most powerful contributions, the Trafficking Protocol addresses the vulnerability of victims of trafficking, noting that “a victim’s exercise of free will is often limited by means of force, deception, or the abuse of power.” Hence, the Protocol provides that overt forms of force and coercion are not the only means by which traffickers bring victims into, and/or maintain them in, conditions of exploitation and servitude. It also recognizes subtle tactics,

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

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

### 3. Purpose

The Trafficking Protocol identifies the purpose of human trafficking as “exploitation,” which it defines broadly as “sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.” The International Labor Organization (“ILO”) defines the term “forced labor” as “all work or service, which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”

#### U.S. Compliance with the Trafficking Protocol

Although the United States has taken a number of steps to combat human trafficking, its efforts to date fall short of compliance with international standards. In particular, the United States’ principal anti-trafficking legislation—the TVPA and its 2003, 2005, and 2008 Reauthorizations —defines trafficking in narrower terms than the Trafficking Protocol.

The TVPA prohibits “severe forms of trafficking in persons,” such as sex and labor trafficking, but its definition of trafficking contains several important flaws. For instance, whereas the Trafficking Protocol defines the “means of trafficking” to include deception and abuse of power and/or of a position of vulnerability in addition to force and coercion, the TVPA restricts the means of trafficking to “force, fraud, and coercion.” Moreover, the TVPA permits traffickers to use the consent of the victim as a defense and only applies to “severe forms” of trafficking. Together, these departures from the Trafficking Protocol limit the protection the statute provides to a narrow subset of victims.

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

**KELLOGG BROWN & ROOT  
LOGCAP III  
VERBAL/~~WRITTEN~~ COUNSELING FORM**

**Company:** SEII OAS BRS

**Date:** 6 August 2007

**Name (Last, First):** Land, Michael

**Classification:** Logistics Coordinator

**SAP# No:** 142878

**Work Location/Camp:** F2LBSIZ / Camp Liberty

**Reason for Corrective Action and Date of Occurrence:** Mr. Land, you have demonstrated a pattern over a period of time of getting out of your lane in matters pertaining to sub-contracting company PPI. During June 2005, you contacted a reporter for the Chicago Tribune to do a story about the sub-contract workers; this reporter did in fact come to Camp Liberty. The reporter was removed from the camp after he was found to be interviewing and taking photos. You did not notify LOGCAP III Headquarters that you had requested the media/press nor did you receive authorization for the media to visit the site. Secondly, during November 2006 you tried to impose your will on how the PPI Human Resources Department should correct a PPI employee's pay issue, and you were instructed by PPI's management that the employee's pay issue was none of your business. Site DFI HR Management intervened and informed you to let PPI handle its own internal PPI business/employees. Lastly, on 28 July 2007 you again attempted to intervene between KBR and PPI by inquiring of Site F2 SCA about PPI's internal personnel policies for emergency leave on behalf of one of their employees. Once again, this is none of your business. PPI has its own internal structure for handling PPI HR matters; KBR is not involved.

**Violation:** Employee Agreement

16. Standard of Conduct

- (a) Insubordination – Failure or unreasonable delays in carrying out instructions given by superiors or managers
- (b) Misconduct – Engaging in any activity which conflicts with the interest of the Employer or Client or in a manner which brings discredit or embarrassment on the Employer or Client
- (f) Misuse of Time – Interfering with the work of other employees
- (i) Security – Discussion of sensitive matters with unauthorized persons or in public places
- (q) Other Violations – Any other acts or failure to act in a responsible, reasonable manner which reflects upon your fitness for the job and/or which adversely affect's Employer's reputation or conflicts with the interests of Employer or Client.

**Previous Counseling** – 26 July 2007 – Dignity and Respect / Misconduct

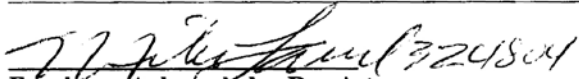
**Supervisor's Corrective Action:** Your actions and behavior are disruptive to maintaining a harmonious relationship between KBR and one of its Strategic Partners, PPI. This type of behavior will not be tolerated on the LOGCAP III Program. You are expected to refrain from further involvement regarding the working and living conditions of the sub-contract workers as that is not your responsibility. This written counseling will serve as the corrective action. Any future interference with PPI's operations may result in additional action up to and including termination.

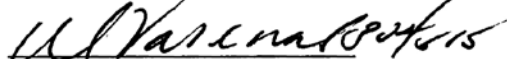
**Employee's Plan of Action with Completion Dates:**

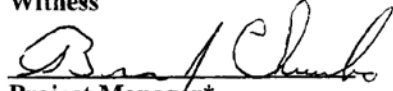
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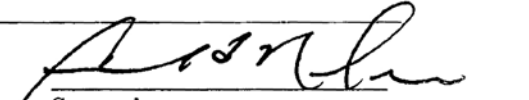
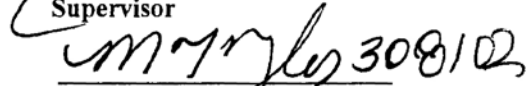
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**Employee/Acknowledge Receipt**

  
**Witness**

  
**Project Manager\*** 304774

  
**Supervisor**  
  
**Human Resources** 308102

\* Project Manager Signature required if corrective action includes time without pay or termination.

**BROWN & ROOT PROPRIETARY DATA –SOURCE SELECTION INFORMATION – SEE FAR 3.104**  
NOTE: In addition to protection under Federal Acquisition Regulation 3.104, this document contains information which may be withheld from the public because disclosure would cause a foreseeable harm to an interest protected by one or more Exemptions of the Freedom of Information Act, 5 USC Section 552. Furthermore, it is requested that any Government entity receiving this information act in accordance with DoD 5400 7-R, and consider this information as being for official use only (FOUO), and mark, handle and store this information so as to prevent unauthorized access.



**Appendix I:  
DOS Office of Inspector General (“OIG”) Sample Questionnaire for Contracting Officer  
Representatives to Use When Interviewing TCNs to determine TIPs Compliance**

Attachment 2: OIG Employee Interview Questionnaire

Recruitment 1	Response
1a. How did you find out about this job? (friend, colleague, newspaper, recruiter)	1a.
1b. If there was a recruiter, was he honest about the job? (pay, hours, danger)	1b.
1c. Do you owe money to the recruiter such as a recruitment fee? (yes, no, I don't know). If yes, is it a large amount? Is it reasonable? Did you have to pay for anything like your plane ticket?	1c.
1d. Are there problems if you can't pay right away? (financially, legally, family)	1d.
1e. Did you have to sign an agreement or contract? What was in the agreement?	1e.
1f. Why did you take the job? Did you take long deciding? (good money, adventure, bad family situation)	1f.
1g. Did you feel pressured to take the job by the recruiter? If so, in what way? (financially, family)	1g.
Work 2	
2a. Is the job what you expected? What is different?	2a.
2b. Were there other benefits promised? Have you received the benefits yet?	2b.
2c. How many hours do you work? Are the pay and hours what you expected?	2c.
2d. Do you get breaks? How long? How many?	2d.
2e. Tell me what it is like to work with your supervisors?	2e.
2f. Are you allowed to socialize with your co-workers?	2f.
2g. What kind of information about human rights and ethical conduct have you received?	2g.
Pay 3	
3a. How much are you paid?	3a.
3b. How are you paid? Are there additional fees for check cashing or wiring? How much?	3b.
Isolation 4	
4a. Do you get to keep money and identification on you? Where is your passport?	4a.
4b. If you have a problem, can you contact the host country government? How would you do that?	4b.
4c. Can you end your contract early? What is the penalty?	4c.
4d. Would you like to renew your contract? If not, why? If so, why?	4d.



# Endnotes

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

- 20 STILLMAN, *supra* note 3. In addition to the Fijian women, the article also recounts the experiences of hundreds of other workers in Afghanistan and Iraq who faced a broad range of labor abuses.
- 21 Moshe Schwartz and Joyprada Swain, *Department of Defense Contractors in Afghanistan and Iraq: Background and Analysis*, CONGRESSIONAL RESEARCH SERVICE, May 13, 2011, <http://www.fas.org/sgp/crs/natsec/R40764.pdf>, 6. This is the number of contractor personnel in both theaters of war as of March 31, 2011 (compared to 214,000 uniformed personnel). See Sindhu P. Kavinnamannil with Sam McCahon, *In the Name of Progress: Illegal Human Labor Trafficking Within Government Contracts*, FRAUD MAGAZINE, May/June 2011, 21, 22. At the height of the U.S. troop deployment to Iraq, TCNs working base support functions numbered more than 100,000 individuals; experts estimate that over 250,000 individuals over the course of the Iraq War have experienced some form of labor trafficking or abuse.
- 22 SCHWARTZ AND SWAIN, *supra* note 21, at 10, 17. In Iraq, TCNs comprise more than 50% of all contractor personnel (37,000/64,000); in Afghanistan, they comprise roughly 27% (24,000/90,000). For an illustration of the growing presence of TCNs, see *Appendix B: Contractor Personnel Trends*.
- 23 PERFORMANCE EVALUATION OF DEPARTMENT OF STATE CONTRACTS TO ASSESS THE RISK OF TRAFFICKING IN PERSONS VIOLATIONS IN FOUR STATES IN THE COOPERATION COUNCIL FOR THE ARAB STATES OF THE GULF, Report Number MERO-I-11-06, Office of Inspector General, U.S. DEP'T OF STATE, January 2011, <http://oig.state.gov/documents/organization/156263.pdf>, 1 [hereinafter *DOS OIG Jan. 2011 Report*].
- 24 Howard Krongard, former State Department Inspector General, *Memorandum: Construction Workers Camp at the New Embassy Compound, Baghdad*, U.S. DEP'T OF STATE, April 30, 2007, <http://oig.state.gov/documents/organization/85600.pdf>. When Howard Krongard, Inspector General for the Department of State, conducted a site visit to investigate allegations that "TCNs were forced to eat leftovers from American personnel off of the dirt floor ... food, when available, was put in a trough similar to pig farms," he stated that he found nothing amiss. However, Krongard took pains to note that his one day site visit was "necessarily limited in scope, consisted essentially of agreed-upon or limited procedures and was designed to provide negative assurance rather than attestation, and could not be considered an audit." For more on this incident, see Section 3.
- David Phinney, *Using Asia's Poor to Build U.S. Bases in Iraq*, ALTERNET, Oct. 15, 2005, <http://www.alternet.org/world/26660/authors/6952/?page=9>. Former KBR administrator Sharon Reynolds admitted to witnessing multiple problems with the treatment of TCNs including late payments, poor living conditions and inadequate clothing. ("TCNs had to stand in line with plates and were served something like curry and fish heads from big old pots," Reynolds says. "It looked like a concentration camp.")
- 25 The Commission on Wartime Contracting in Iraq and Afghanistan estimated in 2011 "that 5 percent to 9 percent of the \$206 billion in funds spent for contingency contracts and grants has been lost to fraud." Commission on Wartime Contracting in Iraq and Afghanistan, *Final Report to Congress: Transforming Wartime Contracting: Controlling Costs, Reducing Risks*, August 2011, [http://www.wartimecontracting.gov/docs/CWC\\_FinalReport-lowres.pdf](http://www.wartimecontracting.gov/docs/CWC_FinalReport-lowres.pdf), 90 [hereinafter *Wartime Contracting Commission Report*]. The Commission found that "U.S. contingency contractors, opportunistic labor brokers, and international criminal organizations have taken advantage of the easy flow of people, money, goods, and services to capitalize on this source of revenue and profit." *Id.* at 92.
- 26 Transcript of Lee Wang interview with KBR employee for the documentary "Someone Else's War," (February, 2006), [www.someoneelseswar.com](http://www.someoneelseswar.com) (on file with authors) [hereinafter *Wang interview with KBR employee #1*].
- 27 See WARTIME CONTRACTING COMMISSION REPORT, *supra* note 25, at 16 ("U.S. agencies engaged contractors at unprecedented levels to help achieve mission objectives in Iraq and Afghanistan and to support U.S. military service members and civilian employees deployed there"). *Id.* at 18 ("The number of contractor employees supporting Defense, State, and USAID operations in Iraq and Afghanistan exceeded 260,000 in 2010—a number larger than the U.S. military and federal-civilian workforce in theater. More than 80 percent of the contractor employees were local or third-country nationals, not U.S. citizens.")
- 28 Peter Graff, *The Price of a Pizza in Iraq: An Eye and a Leg*, REUTERS, Aug. 29, 2007, <http://www.reuters.com/article/2007/08/29/us-iraq-pizza-idUSGRA82832020070829>.
- 29 SCHWARTZ AND SWAIN, *supra* note 21, at 19.
- 30 David Phinney, *The Pay's Lousy, but the Slop is Free*, ASIA TIMES, Oct. 15, 2005, [http://www.atimes.com/atimes/Middle\\_East/GJ15Ak01.html](http://www.atimes.com/atimes/Middle_East/GJ15Ak01.html).
- 31 Interviews with former TCN workers, in Tamil Nadu, India (Jan. 11, 2012) (on file with authors) [hereinafter *Jan. 11 India Interviews*]; Interview with Sindhu P. Kavinnamannil conducted in India (Jan. 6, 2012) (on file with authors). Although it would be more convenient for these recruiters to hire directly within major urban centers, such as Delhi or Mumbai, where there are ample laborers looking for work, they journey deep into the countryside, where workers are less likely to ask questions and more likely to trust that the recruiter is telling them the truth; once these workers reach the base, they are also less likely to assert their rights and more likely to work obediently.

- 32 Telephone Interview with Tristan Forster, Chief Executive Officer, FSI Worldwide (Apr. 26, 2012).
- 33 KAVINNAMANNIL AND McCAHON, *supra* note 21, at 21. U.S. Department of State, *Trafficking in Persons Report*, June 2008, at 271, <http://www.state.gov/documents/organization/105501.pdf>. According to the State Department's annual "Trafficking in Persons Report," TCNs are frequently "coerced into positions in Iraq with threats of abandonment in Kuwait or Jordan, starvation, or force." For more information on the networks of illicit labor brokers, see STILLMAN, *supra* note 3; Cam Simpson, *Desperate for Work, Lured into Danger*, CHICAGO TRIB., Oct. 9, 2005, <http://www.chicagotribune.com/chi-nepal-1-story,0,656119.story>.
- 34 As the 2000 Victims of Trafficking and Violence Protection Act notes, "trafficking in persons is increasingly perpetrated by organized, sophisticated criminal enterprises. Such trafficking is the fastest growing source of profits for organized criminal enterprises worldwide . . . Trafficking in persons is often aided by official corruption in countries of origin, transit, and destination, thereby threatening the rule of law." See also Amy O'Neil Richard, *Ctr. FOR THE STUDY OF INTELLIGENCE, INTERNATIONAL TRAFFICKING IN WOMEN TO THE UNITED STATES: A CONTEMPORARY MANIFESTATION OF SLAVERY AND ORGANIZED CRIME 3* (2000), at 7; AND SEE THE WARTIME CONTRACTING COMMISSION REPORT, *SUPRA* NOTE 25, AT 92. THE COMMISSION ON WARTIME CONTRACTING LIKEWISE FOUND EVIDENCE OF ORGANIZED CRIMINAL ACTIVITY: "U.S. CONTINGENCY CONTRACTORS, OPPORTUNISTIC LABOR BROKERS, AND INTERNATIONAL CRIMINAL ORGANIZATIONS HAVE TAKEN ADVANTAGE OF THE EASY FLOW OF PEOPLE, MONEY, GOODS, AND SERVICES TO CAPITALIZE ON THIS SOURCE OF REVENUE AND PROFIT."
- 35 Interviews with former TCN workers in Tamil Nadu, India (Jan. 10, 2012) (on file with authors) (hereinafter Jan. 10 India Interviews). One TCN notes that he met his recruiter in an office which no longer exists, and that the recruiter disappeared to Afghanistan.
- 36 *Indian Government Fixes Recruitment Fees*, NATIONAL CONFEDERATION OF HUMAN RIGHTS ORGANIZATIONS, INDIA, [http://www.nchro.org/index.php?option=com\\_content&view=article&id=1813:indian-govt-fixes-recruitment-fees&catid=35:migrant-workers-migrant-workers&Itemid=18](http://www.nchro.org/index.php?option=com_content&view=article&id=1813:indian-govt-fixes-recruitment-fees&catid=35:migrant-workers-migrant-workers&Itemid=18) (last visited May 8, 2012).
- 37 STILLMAN, *supra* note 3 ("A typical manpower agency charges applicants between two thousand and four thousand dollars, a small fortune in the countries where subcontractors recruit. U.S. military guidelines prohibit such 'excessive' fees. But, in hundreds of interviews with TCNs, I seldom met a worker who had paid less than a thousand dollars for his or her job, and I never learned of a case in which anyone was penalized for charging these fees.").
- 38 *Jan. 10 India Interviews*.
- 39 Transcript of Lee Wang and Lucille Quiambao interview with Filipino TCN in Bataan Province, Philippines, for the documentary "Someone Else's War," (April, 2007) [www.someoneelseswar.com](http://www.someoneelseswar.com) (on file with authors).
- 40 *Id.*
- 41 See STILLMAN, *supra* note 3 (noting that TCNs were promised between \$1,500-3,800 per month); Interviews with former TCN workers in Tamil Nadu, India (Jan. 7 -11, 2012) (hereinafter *Jan. 7-11 India Interviews*). Most of the workers interviewed were promised at least this much.
- 42 ACLU-IRAP FOIA Request, Department of Defense Office of Inspector General, Defense Criminal Investigative Service, Iraq Resident Agency, APO AE 09342, Jan. 04, 2008, DoD-IG FOIA 40 (on file with authors). In December 2007, the DoD Inspector General ("DoD-IG") received a report that Indian workers employed by Prime Projects International (PPI) were charged fees that took the workers a year and a half to pay off. The DoD-IG investigation concluded that "the alleged employment fees are not charged by PPI, but by recruiters in the country of origin of the laborers," and that "Based on the preliminary investigation, no potential criminal violations and no damages to the government were identified." The DoD-IG took no action because the agency found that these fees were charged by local recruiting agencies, and not by PPI.
- 43 KAVINNAMANNIL AND McCAHON, *supra* note 21, at 21.
- 44 WANG INTERVIEW WITH KBR EMPLOYEE #1, *supra* note 26.
- 45 Interviews with former TCN workers, in Tamil Nadu, India (Jan. 7, 2012) (on file with authors) (hereinafter Jan. 7 India Interviews). These salaries were related to us by former TCNs who had worked for GCC in the 2007-2011 period.
- 46 STILLMAN, *supra* note 3.
- 47 JAN. 7 INDIA INTERVIEWS, *supra* note 45.
- 48 SIMPSON, *supra* note 33.
- 49 JAN. 10 INDIA INTERVIEWS, *supra* note 35.
- 50 Transcript of Lee Wang interview with journalist Pratap Chatterjee in Berkeley, California, for the documentary "Someone Else's War." Feb. 2006, [www.someoneelseswar.com](http://www.someoneelseswar.com) [hereinafter *Chatterjee Interview*].
- 51 JAN. 7-11 INDIA INTERVIEWS, *supra* note 41.

- 52 Preeti Kannan, *Expatriates Fall Prey to 'Blade Mafia' Loan Shark*, THE NATIONAL, Sept 13, 2011, <http://www.thenational.ae/news/uae-news/expatriates-fall-prey-to-blade-mafia-loan-sharks>.
- 53 Staff Reporter, *Labourer Burnt for not Returning Loan*, THE HINDU, Jan. 10, 2012, <http://www.thehindu.com/news/states/other-states/article2788788.ece>.
- 54 Mark Maginer, *Amid Droughts and Failed Crops, A Cycle of Poverty Worsens*, LA TIMES, Dec. 1, 2009, <http://articles.latimes.com/2009/dec/01/world/la-fg-climate-loanshark1-2009dec01>; see also Karen Russo, *Drought Causing India Farmers to Sell Wives*, ABC NEWS, Sept. 17, 2009, <http://abcnews.go.com/International/drought-poverty-force-indian-farmers-sell-wives/story?id=8599840#.T0xl03pQtK0>.
- 55 KAVINNAMANNIL AND McCAHON, *supra* note 21, at 21; JAN. 11 INDIA INTERVIEWS, *supra* note 31. Suicide among debtors is not uncommon: our interviewees related that many men they knew from their village had committed suicide when they could not pay their debt.
- 56 KAVINNAMANNIL AND McCAHON, *supra* note 21, at 21.
- 57 JAN. 11 INDIA INTERVIEWS, *supra* note 31.
- 58 DEPARTMENT OF STATE, *supra* note 33, at 271. As noted above, when a group of Nepalese workers in transit in Kuwait City requested that their employer, a U.S. Government subcontractor, return them to Nepal, the subcontractor seized and withheld their passports and threatened to abandon the men on the streets of Kuwait City, with no pay, if they did not enter Iraq. SIMPSON, *supra* note 12.
- 59 JAN. 11 INDIA INTERVIEWS, *supra* note 31.
- 60 A. Srivathsan, *Nation in a State: Meals Ready, on America's Frontline Pressure Cooker*, THE HINDU, Feb. 16, 2012, <http://www.thehindu.com/opinion/op-ed/article2897316.ece>.
- 61 JAN. 11 INDIA INTERVIEWS, *supra* note 31.
- 62 Transcript of Lee Wang and Lucille Quiambao interview with Filipino TCN in Manila, Philippines, for the documentary "Someone Else's War," (December, 2005) [www.someoneelseswar.com](http://www.someoneelseswar.com) (on file with authors).
- 63 *Sri Lankan Workers' Iraq Nightmare*, BBC NEWS, Feb 6, 2007, [http://news.bbc.co.uk/2/hi/south\\_asia/6336439.stm](http://news.bbc.co.uk/2/hi/south_asia/6336439.stm) [hereinafter *Sri Lankan BBC Article*].
- 64 ASHTON, *supra* note 4.
- 65 *Id.*
- 66 See STILLMAN, *supra* note 3. ("[I]n hundreds of interviews with TCNs, I seldom met a worker who had paid less than a thousand dollars for his or her job. . . . It's equally uncommon to meet a worker who receives the salary he or she was promised.").
- 67 *Id.* ("Many [TCNs] learned [upon arrival] that they were to earn as little as two hundred and seventy-five dollars a month as cooks and servers for U.S. soldiers – a fraction of what they'd been promised, and a tiny sliver of what U.S. taxpayers are billed for their labor."). CHATTERJEE INTERVIEW, *supra* note 50. According to Pratap Chatterjee, an investigative journalist, "[t]he typical third country national in Iraq employed by Halliburton makes about \$300 a month so that's about \$3,600 a year." See also KAVINNAMANNIL AND McCAHON, *supra* note 21, at 46.
- 68 STILLMAN, *supra* note 3.
- 69 JAN. 7 INDIA INTERVIEWS, *supra* note 45. These salaries were related to us by TCNs who had worked for Gulf Catering Company in the 2007-2011 period.
- 70 Transcript of Lee Wang and Lucille Quiambao interview with Filipino TCN in Bataan Province, Philippines, for the documentary "Someone Else's War," (April, 2007) [www.someoneelseswar.com](http://www.someoneelseswar.com) (on file with authors).
- 71 JAN. 10 INDIA INTERVIEWS, *supra* note 35.
- 72 JAN. 10 INDIA INTERVIEWS, *supra* note 35. Transcript of Lee Wang interview with KBR employee for the documentary "Someone Else's War," (February, 2006) [www.someoneelseswar.com](http://www.someoneelseswar.com) (on file with authors) [hereinafter *Wang interview with KBR employee #2*].
- 73 ACLU-IRAP FOIA Request, Department of Defense Office of Inspector General, Defense Criminal Investigative Service, Iraq Resident Agency, APO AE 09342, Feb. 18, 2009, DoD-IG FOIA 47 (on file with authors).
- 74 The Commission on Wartime Contracting ("CWC") is an independent, bipartisan legislative commission established to study wartime contracting in Iraq and Afghanistan. Created by Section 841 of the National Defense Authorization Act for Fiscal Year 2008, this eight-member Commission is mandated by Congress to study federal agency contracting for the reconstruction, logistical support of coalition forces, and the performance of security functions, in Iraq and Afghanistan.
- 75 WARTIME CONTRACTING COMMISSION REPORT, *supra* note 25, at 92.

- 76 ACLU-IRAP FOIA REQUEST, *supra* note 73.
- 77 JAN. 11 INDIA INTERVIEWS, *supra* note 31.
- 78 JAN. 10 INDIA INTERVIEWS, *supra* note 35.
- 79 See also STILLMAN, *supra* note 3 (noting that Kulak Construction provides TCNs with similar contracts, which specify working hours as “Twelve (12) hours per day and seven (7) days a week.”).
- 80 JAN. 7 INDIA INTERVIEWS, *supra* note 45.
- 81 *Id.*
- 82 ACLU-IRAP FOIA Request, Department of Defense Office of Inspector General, Defense Criminal Investigative Service, Iraq Resident Agency, APO AE 09342, February 18, 2009, DoD-IG FOIA 46-47 (on file with authors). While this manager was eventually removed from Camp Victory and “barred from access to all United States military facilities,” the DOJ declined to pursue the case, and further investigation was dropped.
- 83 Casey, Gen. George & Lt.Col. Brian Mace, MNF-I FRAGO 06-188 [TRAFFICKING IN PERSONS], Apr. 13, 2006.
- 84 Most of the Indian TCNs interviewed were based in Iraq or Afghanistan more recently, between 2007-2011, well after the U.S. government regulations requiring that TCNs retain their passports came into effect.
- 85 JAN. 11 INDIA INTERVIEWS, *supra* note 31.
- 86 JAN. 10 INDIA INTERVIEWS, *supra* note 35.
- 87 *Id.* This TCN was in Iraq from 2008 – 2011, after the issuance of General Casey’s Memo mandating TCN possession of their passports.
- 88 JAN. 11 INDIA INTERVIEWS, *supra* note 31. The TCN noted that local Afghan police were aware of the situation in 2009, and began sending TCNs back home and made attempts to put some agents in jail.
- 89 JAN. 10 INDIA INTERVIEWS, *supra* note 35.
- 90 See, e.g., James Risen, *KBR Losing Exclusive Hold on Iraq Contracts*, N.Y. TIMES, May 26, 2008, <http://www.nytimes.com/2008/05/26/business/worldbusiness/26iht-defense.4.13211927.html?pagewanted=all> (“KBR has come under fire from the U.S. Congress and Pentagon auditors for complaints including making more than \$200 million in excessive charges . . . Government auditors concluded last year that the U.S. State Department’s \$1.2 billion contract with DynCorp for police training in Iraq was so badly managed that they could not determine exactly what was done for the money.”)
- 91 WARTIME CONTRACTING COMMISSION REPORT, *supra* note 25, at 1.
- 92 STILLMAN, *supra* note 3.
- 93 WARTIME CONTRACTING COMMISSION REPORT, *supra* note 25, at 226, 234.
- 94 *Id.* at 93.
- 95 *Id.*
- 96 Julie Sullivan, *Hexavalent Chromium Issues: Army Secretary Says KBR Contract Still Classified*, Aug. 31, 2010, THE OREGONIAN, [http://www.oregonlive.com/news/index.ssf/2010/08/army\\_secretary\\_says\\_kbr\\_contra.html](http://www.oregonlive.com/news/index.ssf/2010/08/army_secretary_says_kbr_contra.html). KBR’s contract with the U.S. Army’s combat mission in Iraq remains classified, even after the war’s official end.
- 97 WARTIME CONTRACTING COMMISSION REPORT, *supra* note 25, at 79.
- 98 *Id.* The Commission found that in 2002, “the Iraq general manager for Tamimi, a Kuwaiti company, gave kickbacks to KBR’s LOGCAP III managers on initial awards of contracts.” As a result of the kickbacks, KBR subsequently “awarded additional subcontracts for dining-facility services to Tamimi worth more than \$700 million.” *Id.* at 100. The Commission concluded, “Foreign money flooding into a culture of widespread acceptance of bribes and kickbacks can raise transaction costs and impede competition on merit.”
- 99 KAVINNAMANNIL AND McCAHON, *supra* note 21, at 22. See also Written Testimony of Sam McCahon, McCahon Law Office, LLC, Before the House Committee on Oversight and Government Reform, Subcommittee on Technology Information Policy, Intergovernmental Relations and Procurement Reform; *Subject: Are government contractors exploiting workers overseas? Examining enforcement of the Trafficking Victims Protection Act?*, Nov. 2, 2011 (“The contractor and recruiter also agree to the amount of the kickback paid to the contractor for giving the recruiting firm the business. This kickback is typically 50% of the money charged by the recruiter to the prospective employee.”).
- 100 KAVINNAMANNIL AND McCAHON, *supra* note 21, at 22.
- 101 See 41 U.S.C § 53.

- 102 DOS OIG JAN. 2011 REPORT, *supra* note 23. According to a 2011 Report by the State Department’s Office of the Inspector General, “more than 70 percent of foreign contract workers live in overcrowded, unsafe, or unsanitary conditions.”
- 103 David Rohde, *Indian Contract Workers in Iraq Complain of Exploitation*, N.Y. TIMES, May 7, 2004, <http://www.nytimes.com/2004/05/07/world/struggle-for-iraq-foreign-labor-indians-who-worked-iraq-complain-exploitation.html?pagewanted=all&src=pm>.
- 104 JAN. 7 INDIA INTERVIEWS, *supra* note 45. See also Rory J. Mayberry, *Statement to House Committee on Oversight and Government Reform*, Subcommittee on National Security and Foreign Affairs (July 26, 2007).
- 105 *Allegations of Waste, Fraud and Abuse at the New U.S. Embassy in Iraq: Joint Hearing before the Subcommittee on National Security and Foreign Affairs and the Committee on Oversight and Government Reform*, House of Representatives, 110th Cong., 1st Sess., July 26, 2007 (Statement of John Owens).
- 106 WANG INTERVIEW WITH KBR EMPLOYEE #1, *supra* note 26.
- 107 JAN. 10 INDIA INTERVIEWS, *supra* note 35. For further descriptions of living conditions within these camps, see SRI LANKAN BBC ARTICLE, *supra* note 63; PHINNEY, *supra* note 24; STILLMAN, *supra* note 3.
- 108 JAN. 11 INDIA INTERVIEWS, *supra* note 31.
- 109 STILLMAN, *supra* note 3.
- 110 JAN. 7 INDIA INTERVIEWS, *supra* note 45.
- 111 KRONGARD, *supra* note 24. For more on this incident, see U.S. Government Responses to Contractor Abuses in Iraq and Afghanistan, page 53 of this report.
- 112 See David Phinney, *A U.S. Fortress Rises in Baghdad: Asian Workers Trafficked to Build World’s Largest Embassy*, Oct. 17, 2006, <http://www.corpwatch.org/article.php?id=14173>. According to a former American contractor, when laborers working on the construction of the U.S. Embassy in Baghdad tried to escape from their camp, First Kuwaiti, a Kuwait-based U.S. contractor, with help from a State Department official, interdicted them and placed them in “virtual lockdown,” preventing them from leaving.
- 113 JAN. 7-11 INDIA INTERVIEWS, *supra* note 41.
- 114 WANG INTERVIEW WITH KBR EMPLOYEE #1, *supra* note 26; WANG INTERVIEW WITH KBR EMPLOYEE #2, *supra* note 72.
- 115 WANG INTERVIEW WITH KBR EMPLOYEE #1, *supra* note 26.
- 116 JAN. 7-11 INDIA INTERVIEWS, *supra* note 41.
- 117 *Id.*
- 118 *Id.* See also WARTIME CONTRACTING COMMISSION REPORT, *supra* note 25, at 93 (“The third-country national guards worked unusually long tours, sometimes 12-hour shifts and 72-hour work weeks.”); STILLMAN, *supra* note 3 (“In the contracts they signed in Iraq, [TCNs] working hours were specified as ‘Twelve (12) hours per day and seven (7) days a week.’ Their ‘vacation’ was a ‘Return ticket after the completion of the service.’”).
- 119 JAN. 7-11 INDIA INTERVIEWS, *supra* note 41.
- 120 JAN. 11 INDIA INTERVIEWS, *supra* note 31.
- 121 *Id.*
- 122 JAN. 10 INDIA INTERVIEWS, *supra* note 35.
- 123 JAN. 11 INDIA INTERVIEWS, *supra* note 31.
- 124 *Id.*
- 125 *Id.*
- 126 TELEPHONE INTERVIEW WITH TRISTAN FORSTER, *supra* note 32.
- 127 *Rest and Recuperation, Frequently Asked Questions*, U.S. ARMY, <http://www.armyg1.army.mil/randr/faq.asp>. U.S. service members and Department of Defense civilians who are deployed in the combat theater for 1 year are allowed to take up to 15 days of leave during their deployment.
- 128 TELEPHONE INTERVIEW WITH TRISTAN FORSTER, *supra* note 32. “Working under extremely dangerous conditions without a vacation every 11 months undermines TCN’s physical and mental well-being as well as their productivity.”
- 129 SRIVATHSAN, *supra* note 60.
- 130 WARTIME CONTRACTING COMMISSION REPORT, *supra* note 25, at 93-94.
- 131 OWENS, *supra* note 105.



- 132 Transcript of Lee Wang and Lucille Quiambao interview with Filipino TCN in Manila, Philippines, for the documentary “Someone Else’s War,” (December, 2005) [www.someoneelseswar.com](http://www.someoneelseswar.com) (on file with authors).
- 133 JAN. 10 INDIA INTERVIEWS, *supra* note 35.
- 134 JAN. 11 INDIA INTERVIEWS, *supra* note 31.
- 135 *Id.*
- 136 Pamela Hess, *KBR workers in Iraq paid 50 cents an hour*, UNITED PRESS INTERNATIONAL, Dec 1, 2005, [http://www.upi.com/Business\\_News/Security-Industry/2005/12/01/KBR-workers-in-Iraq-paid-50-cents-an-hour/UPI-24731133472851/](http://www.upi.com/Business_News/Security-Industry/2005/12/01/KBR-workers-in-Iraq-paid-50-cents-an-hour/UPI-24731133472851/).
- 137 JAN. 7 INDIA INTERVIEWS, *supra* note 45.
- 138 Verbal/Written Counseling Form from KBR supervisor to KBR employee, Aug. 6, 2007 (*Appendix H*).
- 139 *Id.*
- 140 See SRIVATHSAN, *supra* note 60; SIMPSON, *supra* note 12; STILLMAN, *supra* note 3.
- 141 PHINNEY, *supra* note 24. As Sarah Stillman notes, “Since many T.C.N. deaths and injuries are never tallied – contractors are expected to self-report, with spotty compliance – the actual numbers are presumed to be higher.” STILLMAN, *supra* note 3.
- 142 T. Christian Miller, *This Year, Contractor Deaths Exceed Military Ones in Iraq and Afghanistan*, PROPUBLICA, Sept. 23, 2010, <http://www.propublica.org/article/this-year-contractor-deaths-exceed-military-ones-in-iraq-and-afgh-100923>; Rod Nordland, *Risks of Afghan War Shift From Soldiers to Contractors*, N.Y. TIMES, Feb. 11, 2012, <http://www.nytimes.com/2012/02/12/world/asia/afghan-war-risks-are-shifting-to-contractors.html>. *Iraq Coalition Casualties: Contractors - A Partial List*, IRAQ COALITION CASUALTY COUNT, 2009, <http://icasualties.org/Iraq/Contractors.aspx>; Steven L. Schooner & Collin D. Swan, *Contractors and the Ultimate Sacrifice*, SERVICE CONTRACTOR, Sept. 2010, <http://graphics8.nytimes.com/packages/pdf/world/2010/contractor-casualties-gw-paper.pdf>.
- 143 SRIVATHSAN, *supra* note 60.
- 144 Transcript of Lee Wang and Lucille Quiambao interview with Filipino TCN in Manila, Philippines, for the documentary “Someone Else’s War,” (December, 2005) [www.someoneelseswar.com](http://www.someoneelseswar.com) (on file with authors). It is generally rare for female TCNs to be hired to work in the dining facilities; testimony from the interviewee states that she was one of a small number of women hired initially, but that the company changed its policy in 2006, and she was not rehired.
- 145 Transcript of Lee Wang and Lucille Quiambao interview with Filipino TCN in Rizal Province, Philippines, for the documentary “Someone Else’s War,” (Apr., 2007) [www.someoneelseswar.com](http://www.someoneelseswar.com) (on file with authors).
- 146 *Id.*
- 147 See SIMPSON, *supra* note 33; STILLMAN, *supra* note 3; JAN. 7-11 INDIA INTERVIEWS, *supra* note 41.
- 148 42 U.S.C. § 1651 et seq.
- 149 42 U.S.C. § 1701 et seq.
- 150 Telephone Interview with Mark Reinhalter, Counsel for Longshore Legal Services Division, Washington, D.C. (Apr. 24, 2012) [Hereinafter *Reinhalter Interview*]. Although the government requires that all contractors purchase insurance and reimburses the costs, the system is private rather than public. To see relief, the private employee working for the employer who has purchased private insurance must submit their claim through the Department of Labor to the insurer. The insurance company serves as the initial arbiter in determining whether compensation or relief will be granted.
- 151 HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM, SUBCOMMITTEE ON DOMESTIC POLICY, *After Injury, The Battle Begins: Evaluating Worker’s Compensation for Civilian Contractors in War Zones*, 111th Cong., 1st sess., June 18, (2009).
- 152 REINHALTER INTERVIEW, *supra* note 150.
- 153 *Id.*
- 154 *Id.*
- 155 See SIMPSON, *supra* note 33; STILLMAN, *supra* note 3; JAN. 11 INDIA INTERVIEWS, *supra* note 31.
- 156 T. Christian Miller, *Foreign Workers for U.S. Are Casualties Twice Over*, PROPUBLICA, June 19, 2008, <http://www.propublica.org/article/foreign-workers-for-u.s.-are-casualties-twice-over-619>.
- 157 *Id.*
- 158 *Id.*
- 159 Telephone interview with Molly McOwen, New Haven, CT (Nov. 10, 2011). Molly McOwen, an attorney at D.C.-based

law firm, Cohen Milstein, noted that “There are a host of TCN workers who don’t know about their rights; and who suffer injury and accidents and never recover worker’s compensation.” Cohen Milstein took a number of such cases and brought administrative claims against the subcontractor and insurance company in which they were able to recover DBA benefits for the injured worker or his/her family. JAN. 11 INDIA INTERVIEWS, *supra* note 31. All Indian TCNs interviewed had also never been informed about DBA insurance.

160 MAYBERRY, *supra* note 104.

161 WANG INTERVIEW WITH KBR EMPLOYEE #1, *supra* note 26. One KBR foreman states: “I was wearing this heavy gear, had on a Kevlar helmet. But my men didn’t have on the protective gear and I felt very odd. It’s not something I like to do. I don’t place more importance on myself than the next man. Here I was decked out in this protective gear and my men didn’t have any. I really didn’t know what to make of that. Does this mean my life was more important than theirs?”

162 WARTIME CONTRACTING COMMISSION REPORT, *supra* note 25, at 93-94.

163 WANG INTERVIEW WITH KBR EMPLOYEE #2, *supra* note 72, and Transcript of Lee Wang and Lucille Quiambao interview with Filipino TCN in Rizal Province, Philippines, for the documentary “Someone Else’s War,” (April, 2007), [www.someoneelseswar.com](http://www.someoneelseswar.com) (on file with authors). While U.S. Armed Forces vehicles often lack protective armor, TCNs’ trucks lack even windshields. Amy Brown, *Baghdad Bound: Forced Labor of Third-Country Nationals in Iraq*, 60 RUTGERS L. REV. 737 (2007-2008).

164 MILLER, *supra* note 156.

165 *Id.*

166 T. Christian Miller, *Injured Abroad, Neglected at Home: Labor Department Slow to Help War Zone Contractors*, PROPUBLICA, Dec. 17, 2009, <http://www.propublica.org/article/labor-dept-slow-to-enforce-defense-base-act-for-contractor-care-1217>. In 2009, a joint ProPublica-*Los Angeles Times* investigation found that the Labor Department “has failed to pursue sanctions against corporation accused of ignoring federal requirements to purchase [DBA] insurance. . . . The department has also taken no action in cases where insurance carriers allegedly provided false or misleading information to the federal government to terminate medical benefits for injured civilians – another potential crime under the law. . . .” According to veteran claimant’s attorney, Dennis Nalick, “No one has ever been prosecuted for anything.” *Id.*

167 See Rebecca Murray, *Female Trafficking Soars in Iraq*, INTER PRESS SERVICE NEWS AGENCY, Aug. 27, 2011, <http://ipsnews.net/news.asp?idnews=104911>; see also, NORWEGIAN CHURCH AID-IRAQ REPORT, *Trafficking, Sexual Exploitation and Prostitution of Women and Girls in Iraq*, April 2010, <http://www.kirkensnodhjelp.no/PageFiles/726/Report,%20Trafficking%20in%20Iraq%20%28PDF%29.pdf>.

168 Margaret Maffai, *Accountability for Private Military and Security Company Employees that Engage in Sex Trafficking and Related Abuses While Under Contract with the United States Overseas*, 26 WIS. INT’L L.J. 1095, 1105 (2008-2009).

169 *Id.* at 1099.

170 BROWN, *supra* note 163, at 747.

171 *Id.*

172 ACLU-IRAP FOIA, email of Thomas A. Hardy, *Trafficking in Persons Report*, July 6, 2009, IRAP-STATE 4-15-1 (on file with authors).

173 Deborah Haynes and Sonia Verma, *Iraqis Allege Sex Abuse at the British Embassy*, THE TIMES, May 8, 2008.

174 STILLMAN, *supra* note 3.

175 *Id.*

176 William J. Astore, *The Cost of Our Wars: Listening to Our Troops*, LE MONDE DIPLOMATIQUE, Feb, 2011, <http://mondediplo.com/openpage/the-cost-of-our-wars>.

177 In 2010, the Defense Department discovered that contractors had abandoned TCNs at worker compounds in Iraq. In response, CENTCOM issued a letter prohibiting the practice. See, Memorandum from Richard E. Nolan, Commanding General, CENTCOM Contracting Command to All Contractors in Iraq on Contractor Compliance with US/TCN/GOI Laws and Contract Demobilization. (Jul. 20, 2010).

178 *Migrant Workers Abandoned Without Food or Pay in Iraq*, UN Radio, Aug. 16, 2011, <http://www.unmultimedia.org/radio/english/2011/08/migrant-workers-abandoned-without-food-or-pay-in-iraq/>. Humanitarian agencies are alarmed by the rising number of foreign workers forced to seek aid after being abandoned by private companies in Iraq.

179 JAN. 7-11 INDIA INTERVIEWS, *supra* note 41.

180 See Department of Defense, Inspector General Report, 135-138, March 31, 2009; Department of Defense,

- Inspector General Report, 172-176, Oct 13, 2009. The Department of Defense has investigated incidents of this type of misconduct; e.g. in the case of Saehal Al Sahra Group, DOD discovered that the Iraqi contractor had withheld payment, badges and work visas to strengthen its control over workers, whom it later abandoned.
- 181 WARTIME CONTRACTING COMMISSION REPORT, *supra* note 25, at 92.
- 182 UNIVERSAL DECLARATION OF HUMAN RIGHTS, *adopted* Dec. 10, 1948, G.A. Res. 217A (III), at 71, U.N. Doc. A/810 (1948).
- 183 *Id.* at art. 4.
- 184 PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, G.A. Res. 55/25, U.N. GAOR, 55th Sess., Supp. No. 49, U.N. Doc. A/55/25 (2001).
- 185 See United Nations Office on Drugs and Crime, *Anti-Human Trafficking Manual for Criminal Justice Practitioners*, Module 1, p. 4 (2009); United Nations Treaty Collection, Ratification Status of the Trafficking Protocol, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en).
- 186 Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified as amended in scattered sections of the U.S.C.).
- 187 The TVPRA has undergone several iterations: it was first introduced as Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, amended with the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (2003), the Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (2006), and finally with the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008). The TVPRA provides the tools to combat trafficking in persons both worldwide and domestically. The 2000 Act established the State Department's Office to Monitor and Combat Trafficking in Persons and the President's Interagency Task Force to Monitor and Combat Trafficking in Persons to assist in the coordination of anti-trafficking efforts. In 2003, a civil remedy was added to the statute. See Pub.L. No. 108-193, § 4(a)(4)(A). In 2008 the statute's extraterritorial reach was inserted and Congress deleted limitations under the statute's civil remedy. See Pub. L. 110-457, Title II, § 223(a) (adding the extraterritorial provision in §1596).
- 188 Hussein Sadrudin, Natalia Walter, and Jose Hidalgo, *Human Trafficking in the United States: Expanding Victim Protection Beyond Prosecution Witnesses*, STANFORD L. & POL'Y REV. 379, 380 (2005).
- 189 Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (2006) (“(a) Whoever, while employed by or accompanying the Federal Government outside the United States, engages in conduct outside the United States that would constitute an offense under chapter 77 or 117 of this title if the conduct had been engaged in within the United States or within the special maritime and territorial jurisdiction of the United States shall be punished as provided for that offense. . . . (b) No prosecution may be commenced against a person under this section if a foreign government, in accordance with jurisdiction recognized by the United States, has prosecuted or is prosecuting such person for the conduct constituting such offense, except upon the approval of the Attorney General or the Deputy Attorney General (or a person acting in either such capacity), which function of approval may not be delegated.”).
- 190 Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (2003).
- 191 In fact, Congress passed the 2003 TVPRA largely in response to the controversy surrounding Virginia-based contractor DynCorp International Inc.'s involvement in human trafficking in Bosnia. See Kelly Patricia O'Meara, *Bush Taking Battle to the Sex Trade*, INSIGHT MAG., Nov. 24, 2003, at 24 (stating that the contract language arose in response to the DynCorp scandal).
- 192 22 U.S.C. § 7101(a) (2000).
- 193 Trafficking Victims Protection Act of 2005 § 103(8)(B), 22 U.S.C. § 7102(8) (2005). Subsequent legislation incorporates and expands this provision (see *Appendix E* for full text of 18 U.S.C. § 1589 on Forced Labor and 18 U.S.C. §1590 on Trafficking with Respect to Peonage, Slavery, Involuntary Servitude, or Forced Labor).
- 194 22. U.S.C. § 7102(2), (5) (defining coercion and involuntary servitude for trafficking provisions).
- 195 Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386, § 103(2), 114 Stat. 1464, 1469 (current version at 22 U.S.C. § 7102(2) (Supp. II 2008).
- 196 18 U.S.C. § 1589 (“Whoever knowingly provides or obtains the labor or services of a person— (1) by threats of serious harm to, or physical restraint against, that person or another person; (2) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or (3) by means of the abuse or threatened abuse of law or the legal process . . .”).
- 197 H.R. REP. NO. 106-939, at 101.
- 198 *Id.*

- 199 *Id.* In addition, 18 U.S.C. § 1589 c(2) on Forced Labor defines “serious harm” as: “[A]ny harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.”
- 200 *Id.*
- 201 *Id.*
- 202 *United States v. Dann*, 652 F.3d 1160, 1162 (9th Cir. 2011).
- 203 See 18 U.S.C. § 1589 b on Forced Labor.
- 204 Transcript of Lee Wang and Lucille Quiambao interview with a Filipino TCN in Manila, Philippines, for the documentary “Someone Else’s War,” (December, 2005) [www.someoneelseswar.com](http://www.someoneelseswar.com) (on file with authors).
- 205 See 18 U.S.C. § 1589 b on Forced Labor.
- 206 Office of the Inspector General, *Assessment of DOD Efforts to Combat Trafficking in Persons, Phase II Report*, U.S. DEP’T OF DEFENSE, Case No. H03L88433128, p. 25, [http://www.dodig.mil/fo/Foia/HT-Phase\\_II.pdf](http://www.dodig.mil/fo/Foia/HT-Phase_II.pdf). The U.S. Government uncovered similar abuses in South Korea, leading the Department of Defense Inspector General to conclude in 2003, “DOD contractor employees may have more than a limited role in trafficking.”
- 207 See K. Elizabeth Waits, *Avoiding the ‘Legal Bermuda Triangle’: The Military Extraterritorial Jurisdiction Act’s Unprecedented Expansion of U.S. Criminal Jurisdiction over Foreign Nationals*, 23 *Arizona J. Int’l & Com. L.* 493, 494 (2006); John G. Bradbury, *Human Trafficking and Government Contractor Liability: Is FAR 22.17 A Step in the Right Direction?*, 37 *Pub. Contract L. J.* 907, 908 (2008).
- 208 Kelly Patricia O’Meara, *Bush Taking Battle to the Sex Trade*, *INSIGHT MAG.*, Nov. 24, 2003, at 24.
- 209 Joseph R. Perlack, *The Military Extraterritorial Jurisdiction Act of 2000: Implications for Contractor Personnel*, 169 *Mil. L. Rev.* 92, 97-98 (2001). The UCMJ exercises jurisdiction over civilians in only two instances. First, it applies to civilians who serve with or accompany the armed forces overseas during times of congressionally-declared war. Second, it applies to civilian contractors who are retired members of the armed forces who are entitled to pay. See WAITS, *supra* note 207, at. 494.
- 210 See Jennifer K. Elsea, Moshe Schwartz, and Kennon H. Nakamura, *Private Security Contractors in Iraq: Background, Legal Status, and Other Issues*, CONGRESSIONAL RESEARCH SERVICE, Aug. 25, 2008, <http://www.fas.org/sgp/crs/natsec/RL32419.pdf>.
- 211 WAITS, *supra* note 207 (describing the jurisdictional gap into which U.S. contractors fall as a “Legal Bermuda Triangle”).
- 212 *Military Extraterritorial Jurisdiction Act of 1999: Hearing Before the Subcomm. on Crime of the H. Comm. on the Judiciary on H.R. 3380*, 106th Cong. 19 (2000) (Statement of Robert E. Reed, Associate Deputy General Counsel of the Department of Defense).
- 213 In 2002, President Bush issued a national security directive establishing a “zero-tolerance” policy against U.S. involvement in trafficking activities. Press Release, *Trafficking in Persons National Security Presidential Directive*, WHITE HOUSE OFFICE OF THE PRESS SECRETARY, Feb. 25, 2003, <http://georgewbush-whitehouse.archives.gov/news/releases/2003/02/20030225.html>. Among other things, the directive served as a catalyst for executive branch recognition of its authority under the TVPA. BRADBURY, *supra* note 207, at 912. In January 2004, Deputy Defense Secretary Paul Wolfowitz authored a memorandum implementing the President’s zero-tolerance policy throughout the Department of Defense. In so doing, he declared: “Trafficking in persons will not be facilitated in any way by the activities of our Service members, civilian employees, indirect hires, or DOD contract personnel.” *Memorandum from Deputy Defense Secretary Paul Wolfowitz, to Secretaries of the Military Departments and the members of the Department of Defense*, Jan. 30, 2004. Defense Secretary Donald Rumsfeld similarly proclaimed in September 2004: “Trafficking practices will not be tolerated in DOD contractor organizations or their subcontractors.” Secretary Rumsfeld further called upon officials within DOD to never “turn a blind eye to this issue” and to take “every step possible to combat Trafficking in Persons.” *Memorandum from Defense Secretary Donald Rumsfeld, to Secretaries of the Military Departments and the members of the Department of Defense*, Sept. 16, 2004. More recently, the State Department has implemented new policies that aim to prevent its contractors from engaging in trafficking and labor abuse. See *Labor Abuses, Human Trafficking, and Government Contracts: Is the Government Doing Enough to Protect Vulnerable Workers?: Hearing before the Technology, Information Policy, Intergovernmental Relations and Procurement Reform Subcommittee of the House Oversight and Government Reform Committee*, 112th Cong., 2, Mar. 27, 2012, (Statement of Cathy Read, DOS Office of Acquisitions Management), <http://oversight.house.gov/wp-content/uploads/2012/03/3-27-12-TechIP-Read.pdf>.
- 214 WARTIME CONTRACTING COMMISSION REPORT, *supra* note 25, at 159.
- 215 *Are Government Contractors Exploiting Workers Overseas? Examining Enforcement of the Trafficking Victims*

- Protection Act, Hearing before the House Committee on Oversight and Government Reform*, 11th Cong. 2, Nov. 2, 2011 (Statement of Sam McCahon), [http://oversight.house.gov/wp-content/uploads/2012/01/11-2-11\\_McCahon\\_TechIP\\_Testimony\\_FINAL.pdf](http://oversight.house.gov/wp-content/uploads/2012/01/11-2-11_McCahon_TechIP_Testimony_FINAL.pdf). As Sam McCahon testified before the House Committee on Oversight and Government Reform in November 2011, “[s]ubcontractors and labor brokers have been exploiting and engaging in modern day slavery in support of U.S. government contractors for nearly 10 years. The practice is unabated.” At the hearing, Congressman Gerry Connolly observed, “Human trafficking by federal overseas contractors is widespread and never punished.” *Id.* (Statement of Rep. Gerry Connolly).
- 216 18 U.S.C. 3261(a) (2000). *See also*, 146 Cong. Rec. 16, 200 (2000) (Statement of Rep. Chambliss) (“[The MEJA] will create a new Federal law that would apply Federal criminal statutes to crimes which are committed overseas by employees or dependents of members of the Armed Forces, persons employed by the Department of Defense, or contractors or subcontractors of the Armed Forces”).
- 217 The definitions given by the 2000 MEJA limit the term “employed by” to civilian employees, contractors, and subcontractors employed by the Department of Defense, as well as limit the term “accompanying” to dependents of members of the armed forces, civilian personnel and contractors. *See* 18 U.S.C. 3267.
- 218 *See* MEJA, 18 U.S.C. 3261–3267 (2000), *amended by id.* 3267 (Supp. IV 2004).
- 219 *Id.* 3267(1)(A) (2000 & Supp. IV 2004).
- 220 *Id.* at 3261.
- 221 *Private Military & Security Contracts: Questions & Answers*, AMNESTY INTERNATIONAL (2007).
- 222 Tim Arango, *U.S. Planning to Slash Iraq Embassy Staff by as Much as Half*, N.Y. TIMES, Feb. 7, 2012, [http://www.nytimes.com/2012/02/08/world/middleeast/united-states-planning-to-slash-iraq-embassy-staff-by-half.html?\\_r=1](http://www.nytimes.com/2012/02/08/world/middleeast/united-states-planning-to-slash-iraq-embassy-staff-by-half.html?_r=1) (stating that the DOS staff in Iraq “has swelled to nearly 16,000 people, mostly contractors”).
- 223 Abuse scandals in Iraq reveal the significance of this gap. In the infamous 2007 Nisour Square shootings, for instance, DOS security contractors fired without provocation upon Iraqi civilians, killing seventeen people. The incident provoked an unprecedented response from the Iraqi government, which condemned for the first time the “trigger-happy” practices of security contractors and threatened to expel them from Iraq. Although the Secretary of State apologized and promised a full investigation, the incident exposed a significant hole in the U.S. regulatory regime. *See* Peter Walker, *Blackwater Guards Shot Iraqis Without Provocation, Report Says*, THE GUARDIAN, Oct. 8, 2007, <http://www.guardian.co.uk/world/2007/oct/08/usa.iraq>; Fred Attewil, *Iraq Gets Tough with Foreign Security Firms*, THE GUARDIAN, Sept. 18, 2007, <http://www.guardian.co.uk/world/2007/sep/18/usa.iraq1>; Ewen McAskill, *Rice Apologises for US Security Firm Shootings*, THE GUARDIAN, Sept. 18, 2007, at 27, <http://www.guardian.co.uk/world/2007/sep/18/usa.iraq>.
- 224 Currently, the MEJA provides discretionary extraterritorial jurisdiction; it does not require prosecution. Compare 18 U.S.C. §§ 3261–3267 (2006) (detailing arrest and judicial proceedings but not mandating oversight or investigation), with MEJA Expansion and Enforcement Act of 2007, H.R. 2740, 110th Cong. (2007) (detailing enforcement procedures for the FBI and the Attorney General and requiring the Department of Justice to submit a progress report to Congress).
- 225 DOD adopted implementing legislation in 2005. *See* 71 Fed. Reg. 8,946.
- 226 DOD Instruction 5525.11 § 5.
- 227 John Warner National Defense Authorization Act for Fiscal Year 2007, Pub. L. No. 109-364, § 552, 120 Stat. 2083, 2217 (2006) (codified at 10 U.S.C.A. § 802(a)(10) (West Supp. 2008)).
- 228 *See* Marc Lindemann, *Civilian Contractors Under Military Law*, PARAMETERS, Autumn 2007, at 90 (“On its face, the 2007 defense authorization act applies the whole of the UCMJ to contractors.”).
- 229 Article 2(a)(10), UCMJ, as amended by § 552 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (P.L. 109-364) (“FY07 NDAA”). “Contingency operation” is defined under 10 U.S.C. § 101(a)(13) to mean a military operation that —  
 (A) is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or  
 (B) results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301 (a), 12302, 12304, 12305, or 12406 of [title 10], chapter 15 of [title 10], or any other provision of law during a war or during a national emergency declared by the President or Congress.
- 230 *See Robb v. United States*, 456 F.2d 768 (Ct. Cl. 1972); *United States v. Averette*, 41 C.M.R. 363 (1970); *see also Latney v. Ignatious*, 416 F.2d 821 (D.C. Cir. 1969) (finding that even if the Vietnam conflict constituted a “war” within the meaning of the UCMJ, conduct must be intimately connected to military in order for jurisdiction under Art. 2(10) to apply).

- 231 Mark A. Ries, *Contractors Accompanying the Force*, ARMY LAW., Jan. 2007, at 161, [http://www.loc.gov/rr/frd/Military\\_Law/pdf/01-2007.pdf](http://www.loc.gov/rr/frd/Military_Law/pdf/01-2007.pdf). Under normal circumstances, UCMJ action is initiated when a commissioned officer with command authority over the accused formally presses charges. See 10 U.S.C.A. § 830 (2007). Because contractors operate outside the military chain of command, however, it is unclear which officers (if any) possess the authority to initiate such proceedings. David H. Chen, *Holding 'Hired Guns' Accountable: The Legal Status of Private Security Contractors in Iraq*, 32 BOSTON COLLEGE INT'L & COMP. L. REV. 101, 108 (2009). For instance, the Contracting Officer ("KO"), a military officer, assigned to the contract bears responsibility for enforcing the contract. Although KOs exercise authority over contractors by monitoring the contracting company's compliance with DOD regulations, they "cannot exercise authority over contractor employees because these persons are not assigned to the military organization. Contractor employees work for their employer, the contractor." Office of the General Counsel, U.S. Air Force, *Deploying with Contractors: Contract Considerations 6*, at 5 n.13 [Air Force General Counsel guidance document 2003].
- 232 Citing "a particular need for clarity regarding the legal framework that should govern a command response to any illegal activities by Department of Defense civilian employees and DOD contractor personnel overseas with our Armed Forces," the guidance instructs that commanders of regional combatant commands may initiate disciplinary proceedings against covered civilians or delegate such authority to subordinate commanders who possess general courts-martial convening authority. It further mandates that court-martial jurisdiction over civilians be exercised only when U.S. federal criminal jurisdiction is inapplicable or not pursued, and when the misconduct in question is adverse to a "significant military interest." See Memorandum from the Sec'y of Def., to Sec'y of the Military Dep'ts, Chairman of the Joint Chiefs of Staff, Under Sec'y of Def., Commanders of the Combatant Commands on UCMJ Jurisdiction Over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and in Contingency Operations (Mar. 10, 2008), <http://www.wileyrein.com/docs/144.pdf>.
- 233 Griff Witte, *New Law Could Subject Civilians to Military Trial*, WASH. POST, Jan. 15, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/01/14/AR2007011400906.html>. For instance, the amendment fails to "differentiate among the various categories of civilians who might be accompanying military forces, such as contractors and embedded journalists. Nor does it distinguish among the various provisions of the UCMJ, meaning military regulations about sexual orientation or disparaging the commander-in-chief could in theory be applied to civilians." Jonathan Finer, *Holstering the Hired Guns: New Accountability Measures for Private Security Contractors*, 33 YALE J. INT'L L. 259, 262 (2008).
- 234 *In re diBartolo*, 50 F. Supp. 929, 930 (S.D.N.Y. 1943). See also *Reid v. Covert*, 354 U.S. 1, 21 (1957) ("Every extension of military jurisdiction is an encroachment on the jurisdiction of the civil courts, and, more important, acts as a deprivation of the right to jury trial and of other treasured constitutional protections."); *O'Callahan v. Parker*, 395 U.S. 258, 267 ("[C]ourts-martial have no jurisdiction to try those who are not members of the Armed Forces, no matter how intimate the connection between their offense and the concerns of military discipline."), *overruled on other grounds by Solorio v. United States*, 483 U.S. 435 (1987).
- 235 See Press Release, Multi-National Corps — Iraq PAO *Civilian Contractor Convicted at a Court-Martial*, June 23, 2008, [[http://www.mnf-iraq.com/index.php?option=com\\_content&task=view&id=20671&Itemid=128](http://www.mnf-iraq.com/index.php?option=com_content&task=view&id=20671&Itemid=128)].
- 236 TVPRA 2005, Pub. L. No. 109-164, § 2371, 119 Stat. 3558 (2005).
- 237 *Id.* [Defining criminal offenses committed by U.S. Government contractors outside the United States as a crime under 18 U.S.C. § 3721, which reads: "Whoever, while an extraterritorial Federal contractor, engages in conduct outside the United States that would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States shall be punishable as provided for that offense."].
- 238 TVPRA of 2005, P.L. 109-164, Section 2(10).
- 239 *Id.*
- 240 18 U.S.C. § 1596. The crimes included are: peonage (18 U.S.C. 1581), enticement into slavery (18 U.S.C. 1583), sale into involuntary servitude (18 U.S.C. 1584), forced labor (18 U.S.C. 1589), human trafficking (18 U.S.C. 1590), and sex trafficking (18 U.S.C. 1591).
- 241 18 U.S.C. § 1596 [specifying that 18 U.S.C. § 77 should be amended by adding "Sec. 1596. Additional jurisdiction in certain trafficking offenses: (a) In General—In addition to any domestic or extra-territorial jurisdiction otherwise provided by law, the courts of the United States have extra-territorial jurisdiction over any offense (or any attempt or conspiracy to commit an offense) under section 1581, 1583, 1584, 1589, 1590, or 1591 if – (1) an alleged offender is a national of the United States or an alien lawfully admitted for permanent residence (as those terms are defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)); or (2) an alleged offender is present in the United States, irrespective of the nationality of the alleged offender."].
- 242 Thomas F. Gimble, Principal Deputy, Memorandum for Under Secretary of Defense (Personnel and Readiness),

- Subject: Alleged Trafficking in Persons Practices by Department of Defense (DoD) Contractors in Iraq*, Apr. 14, 2006, available at <http://iwp.legalmomentum.org/reference/additional-materials/vawa-legislative-history/miscellaneous/Legal%20Options%20to%20Stop%20Human%20Trafficking.pdf>.
- 243 Martina E. Vandenberg, attorney at Jenner & Block, *Testimony on Legal Options to Stop Human Trafficking, before the Senate Judiciary Committee on Human Rights*, Mar. 26, 2007, at 9.
- 244 *Id.* Specifically, the Inspector General found that there were “no privities of contact between DOD and the foreign companies allegedly guilty of these trafficking practices, and therefore . . . the U.S. had no jurisdiction over the persons or offenses.” As Vandenberg noted, this conclusion rested upon “a conflation of criminal and civil law principles.”
- 245 *Id.*
- 246 18 U.S.C. 212 – Military Extraterritorial Jurisdiction; 18 U.S.C. 3271.
- 247 ISENBERG AND SCHWELLENBACH, *supra* note 15.
- 248 ACLU-IRAP FOIA Request, Department of Defense Office of Inspector General, Defense Criminal Investigative Service, Iraq Resident Agency, APO AE 09342, Feb. 18, 2009, DoD-IG FOIA 47.
- 249 *Id.*
- 250 ASHTON, *supra* note 4. In fact, many of the 1,000 workers whom Najlaa held for three months without pay reportedly owed \$2,000 to loan sharks back home.
- 251 ACLU-IRAP FOIA, email of Alfred Anzaldúa, Bureau of Democracy, Human Rights, and Labor (DRL), *Re: TCN Labor Practices in Iraq*, Jan. 13, 2009, IRAP-STATE 89.
- 252 In addition to serving as a subcontractor to KBR during the 2008 incident, Najlaa also serves as a prime contractor for USAID. In 2010, USAID awarded the company a two-year \$3,027,875 service contract to prepare food for the USAID compound in Iraq. See *Memorandum to USAID/Iraq Mission Director, Alex Dickie, From Office of Inspector General/Iraq Director, Lloyd Miller, Subject: Review of USAID/Iraq’s Contractors’ Compliance With the Trafficking Victims Protection Reauthorization Act of 2008*, Rep. No. E-267-11-002-S, Dec. 12, 2010, available at <http://www.usaid.gov/oig/public/fy11rpts/e-267-11-002-s.pdf>. See also ISENBERG AND SCHWELLENBACH, *supra* note 15.
- 253 ACLU-IRAP FOIA Request, Department of Defense Office of Inspector General, Defense Criminal Investigative Service, Bagram Post of Duty, Bagram Air Base, Building 845, Bagram, Afghanistan APO AE, July 10, 2010, DoD-IG FOIA 141-49.
- 254 *Id.* at 141-42.
- 255 *Id.* at 142.
- 256 In addition to the examples involving Daoud, KBR, and Najlaa, mentioned above, and First Kuwaiti, mentioned below, see also ACLU-IRAP FOIA Request, Department of Defense Office of Inspector General, Defense Criminal Investigative Service, Iraq Resident Agency, APO AE 09342, Jan. 04, 2008, DoD-IG FOIA 40.
- 257 Although the original TVPA neglects to include the terms “contractor” and “subcontractor,” and further fails to address issues of labor contracting specifically, subsequent reauthorizations of the statute introduce provisions and requirements that pertain directly to government contracting practices and policies. Thus, the 2003 TVPRA amends the TVPA to require that all overseas contracts include a condition authorizing government agencies to terminate the contract without penalty if the contractor or subcontractor (1) engages in severe forms of trafficking in persons, (2) procures a commercial sex act during the period of time that the contract is in effect, or (3) uses forced labor in the performance of the contract. *Trafficking Victims Protection Reauthorization Act of 2003*, Pub. L. No. 108-193, 117 Stat. 2875 (2003). This language arose largely in response to the scandal involving DynCorp and the concerns of “contractor invulnerability” that it precipitated. See BRADBURY, *supra* note 207, at 911 (noting that “[t]his language was added largely in response to the controversy involving DynCorp and a growing concern of contractor invulnerability”); Kelly Patricia O’Meara, *Bush Taking Battle to the Sex Trade*, INSIGHT MAG., Nov. 24, 2003, at 24 (stating that the contract language arose in response to the DynCorp scandal). The 2005 TVPRA, meanwhile, states as one of its prefatory findings that “[t]he involvement of employees and contractors of the United States Government and members of the Armed Forces in trafficking in persons, facilitating the trafficking in persons, or exploiting the victims of trafficking in persons is inconsistent with United States laws and policies and undermines the credibility and mission of United States Government programs in post-conflict regions.” TVPRA of 2005, P.L. 109-164, Section 2(10). The reauthorization further acknowledges the need for additional anti-trafficking measures to ensure that U.S. government personnel and contractors are “held accountable.” *Id.* To that end, the reauthorization amends the U.S. Criminal Code to expand extraterritorial jurisdiction of certain trafficking offenses to encompass persons employed by the federal government outside the United States, including contractors, employees of contractors, as well as subcontractors. *Id.*
- 258 Federal Acquisition Regulation Combating Trafficking in Persons, 71 Fed. Reg. 20,301, 20,201-03 (Apr. 19, 2006). In

- particular, FAR 22.17 implements 22 U.S.C. 7104(g), which authorizes termination of a contractor that engages in human trafficking. The rule was subsequently amended in 2007 to apply to all contracts. *Id.* at 46,336.
- 259 FAR 22.1703.
- 260 FAR 22.1704, 52.222-50.
- 261 *Evaluation of DOD Contracts Regarding Combating Trafficking in Persons: U.S. Central Command*, DEPARTMENT OF DEFENSE, OFFICE OF THE INSPECTOR GENERAL, Rep. No. SPO-2011-002, at 9, Jan. 18, 2011, [http://www.dodig.mil/Inspections/IE/Reports/DODIG\\_Evaluation\\_CombatingTrafficking\\_Persons2010.pdf](http://www.dodig.mil/Inspections/IE/Reports/DODIG_Evaluation_CombatingTrafficking_Persons2010.pdf).
- 262 48 C.F.R. § 52.222-50(d) (2009).
- 263 Tenley A. Carp, *The FAR and DFARS Ban on Human Trafficking—Heavy on Rhetoric, Light on Enforcement*, 49 GOV'T CONTRACTOR, Jan. 17, 2007, ¶ 12, at 1.
- 264 *Id.*
- 265 DEP'T OF DEFENSE, OFFICE OF THE INSPECTOR GENERAL, *Evaluation of DOD Contracts Regarding Combating Trafficking in Persons: U.S. Central Command*, Rep. No. SPO-2011-002, at 5, Jan. 18, 2011, [http://www.dodig.mil/Inspections/IE/Reports/DODIG\\_Evaluation\\_CombatingTrafficking\\_Persons2010.pdf](http://www.dodig.mil/Inspections/IE/Reports/DODIG_Evaluation_CombatingTrafficking_Persons2010.pdf) (“In our review of a selected sample of contracts for construction and services within the U.S. Central Command area of responsibility, we found that 173 [47 percent] were missing, or included an outdated or incorrect version of the Federal Acquisition Regulation (FAR) clause. . .”).
- 266 BRADBURY, *supra* note 207, at 918 (noting that “so long as the contractor is not aware of the violative behavior, it is not subject to liability”).
- 267 Sam McCahon, *Statement to the House Committee on Oversight and Government Reform, Subcommittee on Technology Information Policy, Intergovernmental Relations and Procurement Reform* (Nov. 2, 2011). WARTIME CONTRACTING COMMISSION REPORT, *supra* note 25, at 159. The Commission on Wartime Contracting likewise found, “[s]ome prime contractors, although not themselves knowingly violating the prohibitions on trafficking, have not proactively used all their capacities to supervise their labor brokers or subcontractors.”
- 268 Sarah E. Mendelson, *Peacekeepers and Human Trafficking in the Balkans*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES viii (Feb. 2005). David Isenberg, *Sex and Security in Afghanistan*, ASIA TIMES, Oct. 6, 2009, available at [http://www.atimes.com/atimes/South\\_Asia/KJ06Df03.html](http://www.atimes.com/atimes/South_Asia/KJ06Df03.html). The same study found that those few investigations the government did conduct were, at best, superficial and pro forma. See *id.*
- 269 *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2006*, DEPARTMENT OF JUSTICE, Sept. 2007, at 18, <http://www.justice.gov/archive/ag/annualreports/tr2007/assessment-of-efforts-to-combat-tip0907.pdf>; *Attorney General's Annual Report to Congress and Assessment of the U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2007*, DEPARTMENT OF JUSTICE, May 2008, at 25-26, <http://www.justice.gov/archive/ag/annualreports/tr2007/agreporthumantrafficking2007.pdf>.
- 270 *Attorney General's Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2008*, DEPARTMENT OF JUSTICE, June 2009, <http://www.state.gov/documents/organization/125840.pdf>.
- 271 See e.g., Cam Simpson, *Officer Says Iraq Firms Were Slow to Return Passports*, CHICAGO TRIBUNE, Jun. 22, 2006, <http://articles.chicagotribune.com/keyword/human-trafficking/recent/3>; Dana Hedgpeth, *KBR, Partner in Iraq Contract Sued in Human Trafficking Case*, WASH. POST, Aug. 28, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/08/27/AR2008082703237.html?wpisrc=newsletter>.
- 272 See Nick Schwellenbach, *Statement to the House Committee on Oversight and Government Reform, Subcommittee on Technology Information Policy, Intergovernmental Relations and Procurement Reform* (Nov. 2, 2011).
- 273 DEP'T OF DEFENSE, OFFICE OF THE INSPECTOR GENERAL, *Evaluation of DOD Contracts Regarding Combating Trafficking in Persons*, Rep. No. IE-2010-001, at 5, Jan. 15, 2010, [http://www.dodig.mil/Inspections/IE/Reports/DODIG\\_Evaluation\\_CombatingTrafficking\\_Persons2010.pdf](http://www.dodig.mil/Inspections/IE/Reports/DODIG_Evaluation_CombatingTrafficking_Persons2010.pdf).
- 274 *Id.*
- 275 DEP'T OF DEFENSE, OFFICE OF THE INSPECTOR GENERAL, *Evaluation of DOD Contracts Regarding Combating Trafficking in Persons*, Rep. No. SPO-2011-002, at 7, Jan. 18, 2011, [http://www.dodig.mil/SPO/Reports/SPO-2011-002\\_508.pdf](http://www.dodig.mil/SPO/Reports/SPO-2011-002_508.pdf).
- 276 SCHWELLENBACH, *supra* note 272.
- 277 DEP'T OF STATE, *Country Narratives: Countries N Through Z: Office To Monitor and Combat Trafficking in Persons Trafficking in Persons: Report 2011*, <http://www.state.gov/g/tip/rls/tiprpt/2011/164233.htm>.
- 278 *Id.*
- 279 The absence of oversight mechanisms is widely noted. See, e.g., GAO-080436T, *Military Operations: Implementation*



- of Existing Guidance and Other Actions Needed to Improve DOD's Oversight and Management of Contractors in Future Operations* (Jan. 4, 2008), GAO-07-1098T, *Federal Acquisitions and Contracting. Systemic Challenges Need Attention* (July 17, 2007), GAO-04-854, *Military Operation. DOD's Extensive Use of Logistics Support Contracts Requires Strengthened Oversight* (July 19, 2004).
- 280 Commission on Wartime Contracting in Iraq and Afghanistan, *At What Cost? Contingency Contracting in Iraq and Afghanistan*, Interim Report, June 2009, [http://www.wartimecontracting.gov/docs/CWC\\_Interim\\_Report\\_At\\_What\\_Cost\\_06-10-09.pdf](http://www.wartimecontracting.gov/docs/CWC_Interim_Report_At_What_Cost_06-10-09.pdf).
- 281 Valerie Bailey Grasso, *Defence Contracting in Iraq: Issues and Options for Congress*, Report No. RL33834, U.S. CONG. RESEARCH SERVICE, Jan. 26, 2007 at 14.
- 282 U.S. GOV'T ACCOUNTABILITY OFFICE, Rep. No. 07-359T, *Defense Acquisitions: DOD Needs To Exert Management and Oversight to Better Control Acquisition of Services*, at 8, Jan. 2007.
- 283 Joint Statement of Christopher Shays and Michael Thibault, Co-Chairs of the Commission on Wartime Contracting in Iraq and Afghanistan, *Subcontracting: Who's Minding the Store?*, July 26, 2010, [http://www.wartimecontracting.gov/docs/hearing2010-07-26\\_opener-cochairs.pdf](http://www.wartimecontracting.gov/docs/hearing2010-07-26_opener-cochairs.pdf).
- 284 *Id.*
- 285 Statement of Senator Joseph Lieberman, *Lieberman Reacts to Sigir Report on Waste in Iraq*, Jan. 24, 2010, <http://lieberman.senate.gov/index.cfm/news-events/news/2010/1/lieberman-reacts-to-sigir-report-on-waste-in-iraq>.
- 286 PHINNEY, *supra* note 24.
- 287 David Phinney, "Pushing Boulders and Sleeping on Cardboard: A Story of Trafficking In Iraq," ALTERNET, [HTTP://WWW.ALTERNET.ORG/WORLD/54648?PAGE=2](http://WWW.ALTERNET.ORG/WORLD/54648?PAGE=2).
- 288 David Phinney, "Blood, Sweat and Tears at New US Embassy," June 8, 2007, IPS News, <http://ipsnews.net/news.asp?idnews=38102>.
- 289 See e.g., KRONGARD, *supra* note 24; PHINNEY, *supra* note 24.
- 290 KRONGARD, *supra* note 24.
- 291 See David Phinney, "Caught in Trafficking," IPS News, Jun. 15, 2007, <http://ipsnews.net/news.asp?idnews=38193>.
- 292 Howard Krongard, *Statement to House Committee on Oversight and Government Reform, Subcommittee on National Security and Foreign Affairs*, (July 26, 2007).
- 293 PHINNEY, *supra* note 112.
- 294 *Id.*
- 295 OWENS, *supra* note 105.
- 296 MAYBERRY, *supra* note 104. (discussing the trafficking and abuse of TCNs by First Kuwait during the construction of the U.S. Embassy).
- 297 Ron Soodalter, *Slavery in Iraq*, Apr. 6, 2009, CARNEGIE COUNCIL, [http://www.policyinnovations.org/ideas/policy\\_library/data/01525](http://www.policyinnovations.org/ideas/policy_library/data/01525). In particular, the organization stated that Mr. Krongard failed "to recognize the significance of, and appropriately characterize as warning signs: ... the contractor's practice of holding employee passports; terms of employment that raise concerns about exploitation, including the amount of payment relative to national standards, payment by the month rather than the day or hour, and a 7 day workweek, with no days off; the requirement to prepay recruitment, travel or other fees before obtaining control of earnings; and the fact that most workers interviewed either originated in countries whose laws prohibit work in Iraq, because of the strong possibility of abuse, and/or whose countries are identified by State's TIP report as having a significant number of victims of severe trafficking to the Middle East."
- 298 *Id.*
- 299 *Id.* See also, Committee on Oversight and Government Reform, Majority Staff, *Report on Allegations Regarding State Department Inspector General Howard Krongard*, Nov. 2007.
- 300 Warren P. Strobel, *Builders of Baghdad Embassy Strike Again - in Saudi Arabia*, McCLATCHY NEWSPAPERS, Mar. 3, 2010 (noting that DOS awarded three additional contracts to First Kuwait in 2006 and 2007).
- 301 Joe Davidson, *House Panel Hearing Explores U.S. Government Contractors' Exploitation of Workers Overseas*, WASH. POST, Nov. 2, 2011, [http://www.washingtonpost.com/politics/house-panel-hearing-explores-us-government-contractors-exploitation-of-workers-overseas/2011/11/02/gIQAImMggM\\_story.html](http://www.washingtonpost.com/politics/house-panel-hearing-explores-us-government-contractors-exploitation-of-workers-overseas/2011/11/02/gIQAImMggM_story.html).
- 302 Department of State: Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report* (2011).
- 303 Secretary of Homeland Security Janet Napolitano, Remarks at Annual Meeting of the President's Interagency Task Force To Monitor and Combat Trafficking in Persons (Mar. 15, 2012), (transcript available at <http://www.state.gov/secretary/rm/2012/03/185905.htm>) [hereinafter *Napolitano Remarks*].

- 304 See Office of Procurement Exec., Procurement Info. Bull.2012-10: *Contractor Recruitment Third Country National, Dep't St. Bull. 1, 2012*, [hereinafter *PIBS 2012*]; Office Of Procurement Exec., Procurement Info. Bull. 2011-09: *Combatting Trafficking In Pers., Dep't St. Bull. 1, 2011*, (hereinafter *PIBS 2011*).
- 305 *PIBS 2012 supra* note 304, at 5.
- 306 *Id.*
- 307 *Id.* at 4.
- 308 *Id.*
- 309 *Id.* at 6.
- 310 *Id.* at 5
- 311 *PIBS 2011, supra* note 304, at 5.
- 312 *Id.* at 4.
- 313 *PIBS 2012, supra* note 304, at 6.
- 314 *Id.* at 5-6.
- 315 *Id.*
- 316 Ivana Schellongova, FSI Worldwide-Case Study 1 (2012). (“Schellongva is the Senior Programme Manager in End Human Trafficking Now, an international non-governmental organization focusing on creating partnerships with the business community in tackling human trafficking.”).
- 317 *Id.*
- 318 *Id.* at, 8-9, 10-11, 13 17.
- 319 *Id.* at 11-13.
- 320 *Id.* at 13.
- 321 Telephone Interview with Doug Brooks, President, International Stability Operations Association (ISOA) (Dec. 12, 2011).
- 322 Quote from contractor representative, transmitted via email by Doug Brooks (Apr. 26, 2012) (email on file with authors).
- 323 *Id.*
- 324 *Id.*
- 325 SCHELLONGOVA, *supra* note 319.
- 326 Contracting agency refers to any government agency on whose behalf TCNs might serve, including DOD, DOS, and USAID, among others.
- 327 See “A Better Way of Doing Business: Recent Developments and Best Practices,” in Section 3 of this report, which details the practices of FSI and reported contractors who employ variations of direct hire in numerous locations.
- 328 See, Attorney General Eric Holder Speaks on Human Trafficking for the Frank and Kula Kumpuris Distinguished Lecture Series, Little Rock, Arkansas (Apr. 24, 2012) *available at* <http://www.justice.gov/iso/opa/ag/speeches/2012/ag-speech-120424.html>.
- 329 See Commission on Wartime Contracting in Iraq and Afghanistan, *Subcontracting: Who's Minding the Store?*, Hearing of July 26, 2010, <http://www.wartimecontracting.gov/index.php/hearings/commission/156-hearing2010-07-26>.
- 330 SCHWARTZ AND SWAIN, *supra* note 21.
- 331 *United States v. Dann*, 652 F.3d 1160, 1162 (9th Cir. 2011).
- 332 *Id.*
- 333 *Id.* at 1171.
- 334 *United States v. Bradley*, 390 F.3d 145, 148 (1st Cir. 2004), vacated on other grounds, 545 U.S. 1101 (2005).
- 335 *Id.* at 149.
- 336 *Id.*
- 337 *Id.* at 149-150.
- 338 *Id.* at 150. The court also upheld the constitutionality of jury instructions that emphasized the victims’ “special vulnerabilities” and the power imbalances between the defendants and the victims as relevant factors in

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

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

340 *Id.* at 708-09.

341 *Id.* at 713.

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

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

344 *Id.*

345 *Id.*

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

347 *Id.* at art. 4.

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



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