

Ambassador Mark P. Lagon
**Director of the Office to Monitor and Combat Trafficking in Persons,
U.S. Department of State**

**“Closing the Window of Vulnerability: Preventing Human Trafficking of
Migrant Laborers”**

It is good to be here this afternoon at the American Society of International Law—an organization whose work I have long admired.

Today, I plan to focus my talk on migrants and their vulnerability to becoming human trafficking victims. This phenomenon is not that of cheap labor or petty exploitation. I am talking about the acute but all too frequent cases of veritable enslavement. Its victims should be no less accorded basic human dignity than any other people. It is these universal principles of dignity and decency which, while not law in and of themselves, have historically informed our understanding of basic human rights from the Declaration of Independence to the Universal Declaration on Human Rights. The President and Secretary Rice have called these principles “the non-negotiable demands of human dignity.” It is this fundamental respect for human dignity that has inspired both domestic and international legal efforts to combat trafficking in persons, a phenomenon to which migrant workers are particularly vulnerable.

Human trafficking is the slavery of our time. Exactly two hundred years ago Britain and the United States *formally* outlawed the transatlantic slave trade, and a few decades thereafter the *practice* of slavery was expunged from North America as well (with a heavy dose of justice enforced by the British navy and of bloodshed in the American Civil War). History is repeating itself by producing a reprehensible by-product of globalization that is today’s analog to the transatlantic slave trade.

According to the U.S. State Department there are today 175 million migrant workers in the world, some of whom are susceptible to being lured into the trap of slave labor and sex trafficking. While the impetus for migration varies, more and more countries are economically dependent on the export of human capital and the promised income, or remittances generated for the source country. In today’s global economy there are manifold and diverse contributing factors including poverty, lack of job opportunities, political instability and in some cases repression....all of which compel people to leave their homes, and the life that they know, sometimes spurred on by the false promises of malicious manipulators.

In order to understand the true horror of this exploitation it is important that we have a clear picture of the nature of human trafficking, or more plainly put, modern day slavery. It is a horror with which I am intimately acquainted having traveled the world in my

capacity as Director of the State Department's Office to Monitor and Combat Trafficking in Persons, meeting numerous victims, each with tragic stories unique to them as individuals but with common threads running throughout of recruitment, coercion, deception and ultimately an acute form of exploitation where they lose control of their lives.

Human trafficking is a dehumanizing crime which turns people into mere commodities. According to the U.S. intelligence community, of the estimated 800,000 people trafficked across international borders annually, 80 percent of victims are female, and up to 50 percent are minors. Every day, all over the world, people are coerced into bonded labor, exploited in domestic servitude, enslaved in agricultural work and in factories and forced into prostitution. In many cases they are raped, beaten, starved and brutalized. This figure does not account for the many millions more trafficked within their own countries – because under U.S. law and international law “trafficking in persons” is not necessarily defined by crossing international borders but by qualitative elements of exploitation and control.

My office is presently in the midst of writing our flagship publication, the annual Trafficking in Persons Report which ranks countries around the globe into tiers for their efforts to eliminate human trafficking. While there are certain elements of the Report that are consistent year after year—the report is ultimately organic not static. We gather input from embassy posts, non-governmental organizations, activists, foreign governments, academics and the media to inform our findings. The timeliness of the data allows us to be on the cutting edge of emerging trends and new realities in the field—of which the plight of some migrant workers figures prominently.

In the 2007 *Trafficking in Persons Report*, we noted several disturbing global trends which speak directly to this issue—these are trends which we will explore further in our 2008 report set to be released in June of this year. One of these is use of debt, employed by traffickers, as a tool of coercion. In both labor and sexual exploitation, debt is increasingly used to keep people in servitude.

The very factors that push migrants to leave their countries are often the same factors which make some of them vulnerable to the exploitation of slavery when they arrive in a new destination— where people of ill intent seek to take advantage of them. For example, millions of Burmese, facing bleak economic conditions and the prospect of forced labor at home, have had to flee their homes and villages, usually without legal documents. The International Labor Organization considers Burma to harbor a significant share of the estimated 2.2 million victims of state-imposed forced labor globally. Burma's repression bleeds out into the surrounding region for as Harvard University professor Stanley Hoffmann wrote in the book *Duties Beyond Borders* in 1981 and it is no less true today, “There is no way of isolating oneself from the effects of gross violations abroad: they

breed refugees, exiles and dissidents...”¹ The grim situation in Burma serves to drive desperate people from their homes often in irregular migration patterns.

Allow me to introduce you to one Burmese woman who I met shortly after starting in this job. Aye Aye Win was a young woman in search of work beyond her own tortured country. A recruiter painted a beautiful picture of work in a neighboring country. Aye Aye assumed substantial debt to cover up-front costs required by the recruiter for this job placement. Together with some 800 Burmese migrants, many children, Aye Aye was "placed" in a shrimp farming and processing factory. But it wasn't a job. It was a prison camp. The isolated 10-acre factory was surrounded by steel walls, 15 feet tall with barbed wire fencing, located in the middle of a coconut plantation far from roads. Workers weren't allowed to leave and were forbidden phone contact with anyone outside. They lived in run-down wooden huts, with hardly enough to eat.

Aye Aye tried to escape with three other women. But factory guards caught them and dragged them back to the camp. They were punished as an example to others, tied to poles in the middle of the courtyard, and refused food or water. Aye Aye told me how her now beautiful hair was shaved off as another form of punishment to stigmatize her. And how she was beaten for trying to flee.

This is forced labor. This is trafficking in human beings. This is modern day slavery.

The ILO estimates that *at any given time* more than 12 million men, women, and children are “deceived or coerced into forced and bonded labor, involuntary servitude, and sexual slavery.” In countries where desperation leads people to migrate, it is easy for human traffickers and recruiters to market a dream, or a lie, to vulnerable men, women and children like Aye Aye Win.

Before we proceed, it is important to clear up any misunderstanding that may exist about the difference between the issues of human trafficking and human smuggling. Human smuggling is the illicit transfer of someone across sovereign borders, often with the consent of the person being smuggled. Human trafficking, by contrast, involves a defining element of gross exploitation and control over an individual. As recognized in both U.S. and international law, human trafficking victims either do not consent to their situations, or if they initially consent, later become victims of force, fraud or coercion. The ongoing exploitation of the trafficking victims generates illicit profits. Once we understand that migrants who are victims of human trafficking are just that—victims—the sooner we will have a proper perspective, which looks beyond simply law enforcement mechanisms, for grappling with how to confront this challenge.

National laws and policy, *bilateral* accords, and *international* instruments are among the legal mechanisms available to close the windows of vulnerability of migrants to enslavement.

¹ Hoffmann, Stanley, Duties Beyond Borders: On the Limits and Possibilities of Ethical International Politics (Syracuse University Press, June 1981) 111.

The United States is Party to a number of international treaties pertinent to the severe victimization of migrants which constitutes human trafficking, including the International Covenant on Civil and Political Rights, which explicitly says, “No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. No one shall be held in servitude. No one shall be required to perform forced or compulsory labor.”

We are a Party to the Slavery Convention as well as its Supplementary Convention which addresses “Practices Similar to Slavery” including the sort that some migrants are subjected to. These instruments require parties to, “prevent compulsory or forced labor from developing into conditions analogous to slavery...and provides for the complete abolition of debt bondage and serfdom...” The U.S. also belongs to two Optional Protocols to the Convention on the Rights of the Child. One protocol-- on the sale of children, child prostitution and child pornography-- provides Parties with detailed requirements to end the sexual exploitation and abuse of children and addresses ways children become victims of commercial sexual exploitation as a form of human trafficking. The other protocol addresses children in armed conflict—with forced child recruitment, often by means of abduction, constituting a unique and severe form of human trafficking involving the exploitation of minors in conflict zones. I’ll join a delegation in Geneva later this month to present the U.S. record implementing these two important protocols to a U.N. monitoring body of experts.

Of perhaps greatest significance, the United States is party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime. Among other provisions, this Protocol, requires parties to criminalize all trafficking in persons, including trafficking for purposes of forced labor or services.

Notwithstanding such international agreements, however, my office has noticed in recent years a rise in the number of reported cases of labor trafficking, some of which are occurring within the context of otherwise legal transnational labor migration, which is itself on the rise.

Let me provide one example: A contract labor agency in Bangladesh advertised work at a garment factory in Jordan. The ad promised a 3-year contract, \$425 per month, 8 hour workdays, 6 days a week, paid overtime, free accommodations, free medical care, free food, and no advance fees. Instead, upon arrival, workers (who had been obliged to pay exorbitant recruitment fees in Bangladesh) had their passports confiscated, were confined to miserable conditions, and prevented from leaving the factory. Months passed without pay, food was inadequate, and sick workers were tortured. While the Government of Bangladesh has taken some steps to crack down on illegal and abusive recruiters, clearly more needs to be done.

In some regions of the world, particularly Asia and the Middle East, a number of governments have entered into bilateral agreements or Memoranda of Understanding (MOUs) in order to encourage and formally manage the flow of migrant workers from one country to another. To date, however, very few if any of such agreements contain

provisions explicitly protecting the workers in question from conditions of forced labor or other forms of trafficking in persons.

We are encouraging source and destination governments in these regions to collaborate in confronting the problem of labor trafficking, including, where appropriate, through incorporation in their bilateral agreements and Memoranda of Understanding specific measures to prevent trafficking in persons.

We are also encouraging governments participating in existing multilateral initiatives such as the Colombo Process and the Abu Dhabi Dialogue to collaborate with the ILO, in light of its mandate regarding the elimination of forced or compulsory labor, as an integral participant. Mark Taylor, Senior Coordinator for Reports and Political Affairs in my office, who has helped immensely to form my thinking on human trafficking in the area of migrant labor, took part in the Abu Dhabi Dialogue whereby Asian labor sending countries were able to share experiences and best practices on overseas employment.

Future bilateral agreements and MOUs regarding migrant labor should be negotiated in a transparent fashion, should be conducted in a transparent fashion, with participation of civil society and associations representing workers and employers, as appropriate. Such agreements should be made publicly accessible, and explicitly protect workers from conditions of forced labor and trafficking in persons.

Labor destination governments should consider steps to ensure that workers recruited for work in their countries are not the victims of fraudulent work offers or conditions of debt bondage. The activities and practices of local recruitment agencies should be monitored, and such agencies should be criminally accountable for acts of force, fraud and coercion committed against foreign workers. All criminals responsible for human trafficking deserve potent penalties rather than suspended sentences or fines worthy of only petty infractions or other mere slaps on the wrist.

Labor source governments should prohibit and punish the exploitation of migrant workers by labor recruiters who recruit workers through fraudulent offers of work conditions, or who impose fees that lead to situations of debt bondage. Source country governments should ensure that labor recruiters are properly vetted, licensed, and monitored, and should increase efforts to raise awareness of risk associated with labor recruitment and migration.

Too often, people are enticed into fraudulent offers of work abroad that require a steep payment up front for the services of a labor agency arranging the job or a payment that goes straight to the future employer. To pay such fees, workers in poorer countries either become indebted to the recruiter, or take out a formal or informal loan in their country of origin, with the expectation of payment based on future wages earned abroad. In many instances, worker expectations and repayment terms are based on exaggerated and false representations by recruiters as to wages they can expect to earn in their new jobs.

Once at the overseas worksite, however, such high levels of indebtedness can make workers vulnerable to further exploitation by unscrupulous employers. Such employers use this information as leverage to subject workers to terms much less favorable than promised at the time of recruitment (e.g. more hours, less pay, and harsher conditions) – including in some instances, conditions that amount to debt bondage.

The United Nations Protocol on Trafficking in Persons calls on governments to protect victims of trafficking within their respective territories, which includes foreign migrants.. For purposes of the Annual Trafficking in Persons Report, one important component of victim protection that my office considers is whether foreign victims of trafficking are provided with legal alternatives to deportation to countries where they face hardship or retribution. Within the United States, the Trafficking Victims Protection Act of 2000 (TVPA), the legislation which created my office, also created the T Visa which allows trafficking victims to remain in the United States and assist federal authorities in the investigation and prosecution of human trafficking cases, thereby giving victims a place of refuge in the aftermath of severe exploitation. This applies even to individuals who may have originally come here without proper documentation, if it is clear that they were recruited or transported through force, fraud or coercion, for the purpose of modern day slavery.

From 2001 through January 2008 the U.S. Department of Homeland Security granted approximately 2,000 T visas to trafficking victims and their families, allowing them to remain in the United States. Additionally, human trafficking survivors from as many as 77 countries have been certified to receive certain U.S. federally-funded or administered benefits.

While this victim-centered approach is laudable and something that we encourage foreign governments to implement, there is still room for us to improve at home. Many trafficking victims do not know that this form of relief exists. Greater government efforts need to be made to educate this highly vulnerable group of victims as to what protections are available to them. Otherwise, like in so many countries, victims hidden in the shadows of complex, insidious manipulation will be afraid to come forward and seek help – afraid to be treated themselves as criminals and illegal aliens, to be treated as what Kevin Bales, President of Free the Slaves, calls “disposable people”.

The plight of exploited migrants, some of whom are susceptible to human trafficking, often becomes enmeshed in our own domestic debate on immigration. Regardless of where one falls on that particular issue, we should be able to agree that as a nation which holds dear the plight of the “huddled masses” depicted in Emma Lazarus’ iconic poem at the base of the Statue of Liberty, that those who arrive on our shores only to experience victimization in the form of human trafficking, deserve proper care befitting our great nation, the global leader in the abolitionist movement to eradicate those in labor slavery and sex slavery.

It is important that labor destination governments encourage workers to report alleged cases of veritable forced labor to law enforcement authorities and institute measures to

ensure a worker can leave an abusive employer and seek legal redress without fear of automatic detention and deportation. In short, destination countries should take steps to make migrant workers aware of their rights. These efforts may be more effective where there are incentives for workers, such as provision of shelter, medical care, free legal aid with translation services, the ability to work while awaiting resolution of investigations, and avenues for victims to claim and obtain restitution and attention to their safety against possible retribution for their having filed a complaint.

In many Gulf states, which rely heavily on foreign migrant labor, individuals working as domestic servants, often migrant women, are particularly vulnerable to acute sexual and labor exploitation. They labor in low-paying, poorly regulated sectors. In many such countries, to be a woman or a migrant often means less than equal treatment under the law and in practice. But to be a *woman migrant* leaves you in a particularly unenviable position.

So-called “sponsorship laws” prevalent throughout the Gulf have in practice been abused in too many cases by unscrupulous employers, who leverage the migrant worker to do whatever they demand or else run the risk of deportation due to alleged breach of contract, and the withholding of pay. Take Nour Miyati, an Indonesian woman who sought a brighter future for her nine-year old daughter. She worked as a domestic for four years in a Middle East state. She was treated fairly and was able to send money back home so that her daughter could stay in school. Then her fate took a turn under a new employer who confined her to his house, denied her pay, and tortured her. Injuries she suffered to her hands and feet resulted in gangrene that required the amputation of her fingers and toes.

Tragically Nour was twice victimized. Despite having escaped these horrific circumstances, she was arrested for 'running away' under the country's sponsorship laws and was not accorded proper status as a victim of trafficking. Workers such as Nour may escape abuse in private homes or work sites only to be denied an exit permit to leave the country. Labor destination countries should have procedures in place to ensure that foreign workers are screened for evidence of trafficking prior to being removed for lack of legal immigration status. Training law enforcement officials and immigration officers on victim identification, or the deployment of trained victim identification specialists, are among the measures destination countries should consider in order to improve their ability to identify trafficking victims.

It is our responsibility to accord status to migrants as rights-holding humans in full. In my work leading the U.S. anti-human trafficking office I urge governments in the Gulf and elsewhere to limit the power of recruiters and sponsors and strengthen the human rights of foreign workers, often viewed as sub-human. I delivered this message in Oman, Bahrain, UAE and Kuwait earlier this year.

Trafficking of migrant women is particularly relevant in the realm of commercial sexual exploitation. As migration becomes increasingly feminized more migrant women are at risk of being trafficked into prostitution. Thirty-year-old Mara migrated from Ukraine,

leaving behind her husband and two children, to take a housekeeping job in Italy. Recruiters from an employment agency promised her a high salary. But once there, she was taken to a brothel where the owner said he had purchased her for several hundred dollars. He said she *owed him money for the plane ticket*. For nine months, Mara was controlled by this trafficker, who beat her when she refused a client. If a man complained about her, the brothel owner increased her debt. Mara was freed only when the Italian police raided the brothel. Charged with prostitution (blamed as the victim), she was deported to Ukraine.

Clinical evidence documents that many people used in prostitution want to escape. They are often beaten, raped, and terrorized. Many of those trafficked for commercial sexual exploitation exhibit signs of post-traumatic stress disorder on the same scale as combat veterans or victims of dictatorships' terror, according to Dr. Melissa Farley in field research published in the *Journal of Trauma Studies* in 2003. Research conducted by the International Organization for Migration found that, "Almost 100 per cent of the trafficking victims returning to Moldova who were forced into prostitution manifest various forms of post traumatic disorders, depression, anxiety and mental illness. In Ukraine, of the 249 trafficking victims assisted by IOM, 185 women had psychological problems and 59 women were reported to have psychiatric disorders."²

We must not fall into the trap of believing that more "management" in the realm of prostitution is what is necessary. Quite the contrary. Official U.S. policy since December 2002 has recognized that prostitution is inherently harmful and dehumanizing and contributes to the phenomenon of human trafficking. A few years ago, the U.S. Government offered a resolution at the United Nations Commission on the Status of Women that highlighted this link and called on countries to take steps to confront the demand for commercial sex but we still have not gotten far enough in addressing the demand which fuels the victimization of women, including migrant women.

As I have already noted, abuses of migrants do not simply involve far off lands. Allow me to share a story a bit closer to home. Molina, a 30-year-old Mexican, was held against her will and forced to work in a factory in Southern California, making dresses from 5:30 in the morning until 11 at night, seven days a week. She was not allowed to take a shower or leave the factory, at night sharing a small bed with another woman. She received one meal of beans and rice a day. If she didn't sew fast enough, her boss would pull her hair, pinch and slap her. The factory doors were locked during the day and at night a watchman prevented her from leaving. "If we wouldn't do what she [her boss] said, she told us somebody who we love would pay the consequences," says Molina. Fortunately, Molina qualified for a T Visa under U.S. law and she now works as a security guard in Los Angeles; she's completed English classes and is working toward her GED.

I chair the interagency Senior Policy Operating Group on human trafficking. To elicit cooperation from other nations, they need to see that we acknowledge having the same

² International Organization for Migration: the Migration Agency, Particularly Vulnerable Migrants 3 April. 2008 <<http://www.iom.int/jahia/Jahia/pid/610>>

problem here in the U.S. as Molina's story illustrates, and that we are willing to share lessons learned as well as talk about areas where there is room for improvement. I work closely with domestic agencies to show other nations we are not just delivering diplomatic demands to change but rather are deeply committed to change ourselves. Several U.S. agencies' officials did so this past February at the UN Vienna Forum on Human Trafficking, where I had the privilege to lead the U.S. delegation.

I close with this story of Molina in the hopes of reminding us that in an age of globalization, and the tremendous benefits that international migration brings, we can not be blind to the dark side of this global economy—for it is in these shadows that an actual trade in human beings is permitted to flourish. Whether it is an Indonesian migrant worker trapped in factory in the Middle East, or an Eastern European prostituted girl held captive in a brothel in Western Europe, or a young North Korean bride forcibly married to a Chinese man—these are the faces of modern day slavery. These are migrants. They have intrinsic value every bit as much as any other fellow human being. They have become ensnared in human trafficking and they demand our attention, they cry out for justice, they yearn for dignity.

Governments, both at the domestic level and through international cooperation, must work to improve protection for those migrants who are victims of trafficking as well as respect for their human rights, —ensuring they are not treated as non-people. As I have argued here today, most of these arrangements need not take the form of new treaties and multilateral institutions. As Anne-Marie Slaughter has argued in *A New World Order*, "In this context, a world order based on government networks, working alongside and even in place of more traditional international institutions, holds great potential."

When I was trained as a political scientist (not as a lawyer) I was exposed to the jurisprudential school, which while old fashioned, is the construct we need to figure out how to bring public law to bear to end the enslavement of some of the world's migrants. Spearheaded by Myres McDougal of the country's leading intellectual Law School, Yale University the so-called New Haven approach emerged. He worked closely with the social scientist Harold Lasswell, both very focused on value systems. In 1959, McDougal and Lasswell wrote, "Our overriding aim is to clarify and aid in the implementation of a universal order of human dignity." To decrease migrants' vulnerabilities to human trafficking, we indeed need to fashion tools in public law and also in less formal arrangements which self-consciously seek to serve the New Haven school of international law called "human dignity."

Most important of any of the existing instruments in accomplishing this end is the UN Trafficking in Persons Protocol, a state-of-the-art UN instrument completed shortly after our own domestic law passed. That Protocol should be the touchstone, even more than ILO conventions or migration agreements, when the problem is indeed the special calamitous horror of human trafficking. Even more important than ratifying the Protocol is implementing it. And even more important than enacting laws consonant with the Protocol is vigorously enforcing those laws.

I have tried to sketch for you some needed arrangements for that “world order of human dignity” McDougal wrote of fifty years ago and Slaughter has more recently. Some of them are more formal, such as the U.N. Protocol on Human Trafficking, and some less formal, such as MOUs between certain source and destination countries of migration. Yet make no mistake, the common denominator of these arrangements remains promoting human dignity.