

**REVIEW OF THE 2015 TRAFFICKING
IN PERSONS REPORT**

HEARING

BEFORE THE

**COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE**

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

—————
AUGUST 6, 2015
—————

Printed for the use of the Committee on Foreign Relations



Available via the World Wide Web: <https://www.govinfo.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

COMMITTEE ON FOREIGN RELATIONS

BOB CORKER, TENNESSEE, *Chairman*

JAMES E. RISCH, Idaho	BENJAMIN L. CARDIN, Maryland
MARCO RUBIO, Florida	BARBARA BOXER, California
RON JOHNSON, Wisconsin	ROBERT MENENDEZ, New Jersey
JEFF FLAKE, Arizona	JEANNE SHAHEEN, New Hampshire
CORY GARDNER, Colorado	CHRISTOPHER A. COONS, Delaware
DAVID PERDUE, Georgia	TOM UDALL, New Mexico
JOHNNY ISAKSON, Georgia	CHRISTOPHER MURPHY, Connecticut
RAND PAUL, Kentucky	TIM KAINE, Virginia
JOHN BARRASSO, Wyoming	EDWARD J. MARKEY, Massachusetts

LESTER MUNSON, *Staff Director*
JODI B. HERMAN, *Democratic Staff Director*
JOHN DUTTON, *Chief Clerk*

CONTENTS

	Page
Hon. Bob Corker, U.S. Senator From Tennessee	1
Hon. Benjamin L. Cardin, U.S. Senator From Maryland	3
Hon. Robert Menendez, U.S. Senator From New Jersey	5
Hon. Sarah Sewall, Under Secretary for Civilian Security, Democracy, and Human Rights, U.S. Department of State, Washington, DC	7
Prepared Statement	9

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Press Release/From the Malaysian Bar, July 22, 2015	27
Response of Under Secretary Sarah Sewall to Question Submitted by Senator Corker	28
Responses of Under Secretary Sarah Sewall to Questions Submitted by Senator Benjamin L. Cardin	29
Responses of Under Secretary Sarah Sewall to Questions Submitted by Senator Marco Rubio	31
Responses of Under Secretary Sarah Sewall to Questions Submitted by Senator Robert Menendez	35

REVIEW OF THE 2015 TRAFFICKING IN PERSONS REPORT

THURSDAY, AUGUST 6, 2015

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The committee met, pursuant to notice, at 10:04 a.m., in room SD-419, Dirksen Senate Office Building, Hon. Bob Corker (chairman of the committee) presiding.

Present: Senators Corker, Johnson, Cardin, and Menendez.

OPENING STATEMENT OF HON. BOB CORKER, U.S. SENATOR FROM TENNESSEE

The CHAIRMAN. The Senate Foreign Relations Committee will come to order.

Before I move into the business at hand—I know the Senate floor is closed today—I just want to say how disappointed I was in the President's comments yesterday relative to Iran.

I know that we have questions about the TIP Report and trafficking, and I wonder if, because we have questions and concerns about trafficking, it throws us into a category of being bad people.

I thought for the President's comments yesterday relative to Iran, I just want to put things in perspective. Before we had a 19-0 committee vote here, the White House had a veto threat against us weighing in on the Iran deal, a threat up until an hour and a half until that vote took place, because they did not want a public debate on Iran.

Obviously, the committee chose otherwise. We passed it out on a 19-0 vote. Everyone here voted for it. But they did not want the issue debated.

What the President did yesterday, by saying that Senator Cardin, a ranking member who has questions about the Iran deal, Senator Menendez, who has questions about the Iran deal—by the way, both of which voted against the Iraq war, if I remember correctly—Senator Johnson, who has concerns about the Iran deal, we are being compared to the hardliners in Iran because we have concerns, concerns that we are trying to have answered.

Just a few months ago, the President publicly was talking about what a thoughtful, principled person I was. I have to get the quote someplace. But now because I have concerns—and I think everyone has concerns, and people are going to have to make a decision; this is going to be one of the toughest decisions—but he is trying to shut down debate by saying those who have questions legitimate

questions—legitimate questions—are somehow unpatriotic, are somehow compared to hardliners in Iran.

And again, it is to shut down debate. It is to make this about something other than arguing it on the merits of the deal.

So I am very disappointed.

I know Senator Cardin was meeting with the President last night. I do want to say, Senator, I wish that you had been there last night to hear the discussion about Parchin. Wendy Sherman said yesterday in Banking she would come share with us how Parchin—how that arrangement was working. I called her early this morning to ask her if she would at least, at a minimum, let us have her notes from when she was briefed by the IAEA.

And I am beginning to believe that one of the reasons they do not want people to know, it is not about Iran's confidentiality. I do not think it would stand the test of late-night comedy, if people understood how the Parchin thing was being done.

So I just hope that today—we thank Sarah Sewall for being here—the fact that we have concerns about trafficking, that again on a unanimous vote we voted to end modern slavery in this world—that somehow we will be viewed as people who are unpatriotic, be viewed as people that somehow are not serious about this issue?

So today, we are going to examine the recently released 2015 State Department Trafficking in Persons Report. This year's report has attracted significant interest because of controversy over how tier rankings were made regarding certain countries including India, China, Malaysia, Saudi Arabia, Cuba, and Mexico.

We thank Under Secretary of State Sarah Sewall for testifying today, so she can explain these tier rankings to the committee.

If it is true that the administration politicized this report, there are questions about why they chose to significantly diminish a tool that has been effective in fighting slavery around the world. If we are actually going to end modern slavery, we need to take on the hard questions and work harder.

How we make the tough calls matters. The integrity of the TIP Report matters for our country's credibility when we speak up for the powerless and the oppressed.

The State Department and our Nation will be judged by how State Department leaders make tough calls on the TIP Report's tier rankings. The State Department's behind-closed-doors tier ranking process only muddies the water.

We in Congress and everyone in the State Department and other parts of our government are responsible for implementing the Trafficking Victims Protection Act. Each year, the TIP Report makes recommendations for progress and turns these into tailored action plans for our embassies. Rigorously applied TIP action plans should inform the tough calls on tier rankings.

In releasing the 2015 TIP Report, Secretary Kerry said that—bottom line—this is no time for complacency. I am not convinced. I hope I will not be criticized for this or that I will be ridiculed for this. I am not convinced that this report lives up to that statement.

As many as 27 million human beings live in conditions of modern slavery. We need to be serious about this for their sake.

With that, I would like to recognize our distinguished ranking member, Senator Cardin, who I respect greatly, and really appreciate his commitment—his long-term commitment—to ensuring that human rights are honored and that we deal with issues like this in a way that is full of integrity.

Thank you.

**OPENING STATEMENT OF HON. BENJAMIN L. CARDIN,
U.S. SENATOR FROM MARYLAND**

Senator CARDIN. Mr. Chairman, first, thank you for convening this hearing.

In regards to your opening comments, I want you to know, I think you continue and have always been a thoughtful, principled person. I want you to know that. And I respect greatly your leadership on this committee and the manner in which we have been able to work together.

The CHAIRMAN. Hopefully, if I disagree with you once, you will not compare me to the hardliners in Iran.

Senator CARDIN. I am still going through the review process. I have not reached a decision on the vote that will take place when we return in September. I want to underscore a point that Senator Corker and I, working with our leadership, encouraged our leadership to provide for the debate on the floor of the United States Senate that we think is befitting this critical issue.

So yesterday, without any objection, we moved onto the bill. When we come back in September, we are not going to have to go through a cloture vote. We are not going to have to go through any procedure hurdles. We will be on the bill.

At that point, I expect the majority leader will put forward the bill that we will be voting on, and we will be right on that debate when we return, and we can use that week, I hope, to debate this issue. And each Member of the United States Senate will make up his or her mind as to what he or she thinks is in the best interest of this country.

I did not interpret from the President's remarks that he is challenging any of our independent judgments on this. You are correct. I voted against the Iraq war. I do not see a comparison between this vote and the Iraq vote.

The interesting thing, just to make a sidebar on this, I voted against the Authorization for Use of Military Force in Iraq. And in my district, it was a congressional district, not State, at the time, it was overwhelmingly unpopular. Overwhelmingly. It was not a close call. It was one of the most consequential votes that I cast in my career in the House. And it was interpreted to have an impact on my reelection.

This is not the case when it comes to this vote. There are divided views in this country on this issue. This is not a clear situation where the popular view is to support the President or to oppose the President.

There are very strong views on both sides. Do not get me wrong. But here, we are not authorizing the use of military force.

So I disagree with the President's interpretation on that issue. Having said that, I do not disagree with the President's strong statement. He is clearly doing what we would expect the President

of the United States to do, show strength in his position and taking the case to the American people.

So I do not join my good friend and principled leader of this committee in the interpretation of the President's remarks.

One of the most important responsibilities of this committee is oversight. We have passed a lot of laws, but are those laws being carried out in the way that they should?

Today's hearing is an oversight hearing on an extremely important subject. We have a very distinguished witness today, our administrative spokesperson on this. She has a long, distinguished career in promoting human rights and dealing with trafficking.

I just want you to know that, Ms. Sewall, you come to this committee with great credibility, and we thank you for your public service.

Trafficking is modern-day slavery. We have a moral imperative to speak out against trafficking. It involves labor servitude. It involves sex trafficking. And it financing criminal activities. The ILO estimates that it brings in about \$150 billion a year for illegal activities. It affects children who are victims of trafficking. The number of victims who are robbed of their future, the chairman mentioned is in the high 20 millions. We have had estimates anywhere from 20 million victims to 36 million victims of trafficking.

And they are victims. We have an obligation to deal with this.

I am proud of the leadership our country has shown on this issue. For a long time, working with the U.S. Helsinki Commission, we took it upon ourselves to not only develop laws in America, but to show international leadership in the OSCE countries. We now have special representatives. We have reports every year on trafficking. We share the best practices. Why? Because of U.S. leadership, and because of what we have done in this country.

This year we celebrated the 15th anniversary of the Trafficking Victims Protection Act. It was an incredible accomplishment by this Congress, and the United States, and leadership globally on this issue.

As a result, we have the Trafficking in Persons Report, which is the gold standard. It is on my desk. I look at it before I meet with any representative of another country so I can go over their trafficking issues and I can make it clear that they have to make fighting trafficking a high priority in their country.

So we take great pride in the leadership of our country.

The 2015 report causes me concern. And I want to get answers today about the 2015 report. There are upgrades in this report that are hard to understand, and I put Malaysia number one on the list.

Malaysia has a very serious labor trafficking problem. We know about it. We have documented it. In this report, Malaysia has been upgraded from Tier 3 to Tier 2 Watch List. A Tier 3 country is a country that does not fully comply with the Trafficking Victims Protection Act minimum standards and does not make significant efforts to do so.

So what has changed between the 2015 report and the 2014 report in Malaysia? Well, there are a couple things that have changed. They have enacted amendments to their laws, but they have not carried them out or implemented them. Given the number of prosecutions, the conviction rate is ridiculously low.

Just recently, beyond the window for inclusion in this report, mass graves of purported trafficking victims were discovered.

There is one other thing that is new since last year. That is Congress passed Trade Promotion Authority. There is a concern whether that had an impact on Malaysia's upgrade.

I hope it did not. But I tell you, we talked about it before the report came out. I just hope that we are using objective standards.

There have been reports that have been made that there were high-level discussions that disagreed with the staff-level recommendations. I understand the decision is made at a high level, as it should be. But how much politics went into this? I hope zero, because the TIP Report is the gold standard.

I could talk about concerns in Cuba, Uzbekistan, and other countries as well.

So, Mr. Chairman, this is a very important hearing. This committee needs to make sure that the work we have done in this country, setting the global example for commitment against trafficking, remains credible and is always improving. Mr. Chairman, I have asked my staff, working with your staff, to listen to today's hearing. Do we need to strengthen the Trafficking Victims Protection Act? Do we need to have congressional direct oversight before you take a country off of Tier 3? Have we reached that point where we need to have a stronger law in this country?

Those are some of the questions that I hope will be addressed today, so that this country can continue to lead in fighting the scourge of modern-day slavery.

The CHAIRMAN. Senator Cardin, since this is somewhat unusual—I think most people have gone home—we probably are not going to have a very full process here at the committee. I do not know if any other committee members want to make some opening comments. We do not typically do that, but if it is okay with you, I would certainly be glad for that to occur.

**STATEMENT OF HON. ROBERT MENENDEZ,
U.S. SENATOR FROM NEW JERSEY**

Senator MENENDEZ. Mr. Chairman, I appreciate the opportunity, because of the nature of the issue and the interest that I have had here. I want to start off by thanking you and the ranking member for supporting my call for hearings, because all of the concerns and reservations that Senator Cardin has expressed are mine and beyond.

Mr. Chairman, I would like the consent to enter some background documents on Malaysian trafficking into the record, one from the Malaysian Bar Association, one from the international NGO Verite, and one from the United Nations.

The CHAIRMAN. Without objection.

[EDITOR'S NOTE.—The document from the Malaysian Bar Association can be found in the "Additional Material Submitted for the Record" section at the end of this hearing. The documents from the United Nations and NGO Verite were too voluminous to include in the printed hearing and will be retained in the permanent record of the committee.]

Senator MENENDEZ. Mr. Chairman, in the State Department's own words, the Trafficking in Persons Report "is the U.S. Government's principal tool to engage foreign governments on human trafficking." We are here today because the integrity of this year's report has been called into question, and that means our Nation's commitment to our most fundamental principles has been called into question.

Secretary Kerry himself in his introduction to this year's report tells us that "justice is not just a matter of having the right laws on the books. We have to back those words with resources, strategies, and actions that produce the right result." That is true here, and that should be our aspiration for the countries in the report.

Sadly, I am convinced that this year we have not met that standard. Under your leadership, Mr. Chairman, human trafficking was one of the very first issues that we tackled at one of our first hearings, the first comprehensive piece of legislation reported from this committee. It demonstrated that it would be a priority for us. And I salute you for that.

Subsequent hearings in the House and legislation on modern slavery led by Senator Cardin in April kept the issue at the top of our concerns. On the same day that legislation passed the Senate 99-0, the Finance Committee added my amendment to prohibit fast-track treatment for the worst human traffickers, those countries that the TIP Report ranks as Tier 3. That provision is now law, signed by President Obama as part of the Trade Promotion Authority.

There can be no doubt that our fight against modern-day slavery is a bipartisan, bicameral commitment to put our principles in action. But several months ago, we began to hear reports both in the press and from sources close to this process that this year's TIP Report was under exceptional pressure to shape the rankings to meet political demands, not the facts on the ground.

I am sorry to say that the rankings in this year's report, held up against the hard facts about human trafficking and compared to the conclusions from the most respected and authoritative sources, appear in many instances to be the result of external pressure, not the independence and integrity we expected when we created this process.

Mr. Chairman, I will ask that the rest of my statement be included in the record, and I look forward to the opportunity to ask questions.

The CHAIRMAN. Senator Johnson, are you good?

Senator JOHNSON. I am fine.

The CHAIRMAN. Our witness is Sarah Sewall, the Under Secretary of State for Civilian Security, Democracy, and Human Rights, who was sworn in on February 20, 2014. She serves concurrently as the special coordinator for Tibetan issues.

Over the previous decade, she taught at Harvard Kennedy School of Government. During the Clinton administration, she served as Deputy Assistant Secretary of Defense for Peacekeeping and Humanitarian Assistance.

I want to thank you for responding to the invitation today. I think everybody knows we tried to get the regionals in, because we felt like much of the pressure came from regionals to carry out

maybe a different agenda. We were unable to do that. But we thank you very much for coming in today, and representing the administration's view on this. We thank you for your service to our country.

And obviously, there is a lot of passion around this issue, because we have seen firsthand the effects of trafficking and slavery. We have seen young women who could be coeds here in our university system, we have seen them being sold into slavery and trafficked for sex. We have seen that. We have seen the effect on their families.

We know what happens in fishing. We know what happens in brick kilns. We know what happens in rug manufacturing.

These are human beings just like us, and they are being deprived of freedoms. Every sensibility that any human being can care about is threatened by this, and the fact that possibly, for other agenda items, our concern has been cast aside obviously concerns us.

But we thank you for being here. We know you are representing the administration and none of this should be something that is directed at you personally, but as you can tell, there is a significant concern. Thank you.

We look forward to your testimony.

STATEMENT OF HON. SARAH SEWALL, UNDER SECRETARY FOR CIVILIAN SECURITY, DEMOCRACY, AND HUMAN RIGHTS, U.S. DEPARTMENT OF STATE, WASHINGTON, DC

Ms. SEWALL. Thank you, Chairman Corker, Senator Cardin, members of the committee. Thank you for having me here today, and thank you for your leadership on this issue.

I know that trafficking in persons, modern-day slavery, is a significant concern for this committee, and I look forward to working with you closely to tackle this insidious crime and human rights abuse.

The release of this year's Trafficking in Persons Report underscores the importance that the administration and Secretary Kerry place on combating modern slavery. As noted by Senator Cardin, this year marks the 15th installment of the report, as well as the 15th anniversary of the Trafficking Victims Protection Act, the TVPA.

The report itself reflects a year of dedicated effort by the Department of State's Office to Monitor and Combat Trafficking in Persons, the TIP office, as well as other bureaus and offices, and our missions around the world. Working year-round across offices and continents, the Department engages governments and civil society. It collects data. It navigates local laws. It develops best practices and objectively assesses each government's effort, including our own, to comply with the minimum standards for the elimination of trafficking in persons, as established by the TVPA.

In this process, we assess the adequacy of national laws in prohibiting and punishing trafficking, and we evaluate government actions to prosecute suspects, protect victims, and prevent further trafficking. Based on the country assessments, the TIP Report ranks countries and territories on different tiers in accordance with the minimum standards outlined in the TVPA.

These two distinct processes both entail complex criteria that require comprehensive factual analysis. The TVPA establishes criteria for the minimum standards in combating trafficking and delineates additional criteria for assigning tier rankings to governments for their anti-trafficking efforts.

Let me walk through the four key elements of the minimum standards. The first three revolve around the adoption of adequate antitrafficking laws. This is seen as a critical hurdle for states because it establishes a comprehensive legal standard to effectively prosecute and penalize perpetrators. The fourth element of the TVPA minimum standards is whether or not a government has undertaken serious and sustained efforts to eliminate trafficking over the current reporting period.

The TVPA provides 12 indicia to assess these efforts. Several of these indicia include additional criteria.

The ranking process builds on minimum standards, but it also entails additional criteria pursuant to the TVPA. A Tier 1 country is one that fully complies with these minimum standards. A Tier 2 ranking indicates that a country's government does not yet fully comply with minimum standards but is making significant efforts to bring itself into compliance.

By contrast, a Tier 2 Watch List country indicates that a country is also making significant efforts to comply with the minimum standards, but in addition it meets one of the TVPA's following three conditions: one, the number of trafficking victims is very significant or significantly increasing; two, the government failed to provide evidence of increasing efforts from the previous year; or three, the government committed to make significant antitrafficking efforts over the next year.

A Tier 3 ranking applies to a government that does not fully comply with the minimum standards and is not making significant efforts to bring itself into compliance.

The tier ranking process further includes contextual factors, such as the severity of the problem and the feasibility of further progress, given available resources and capacity.

In most cases, this tier assessment process clearly places government actions into one of the tiers. In other cases, further discussion among senior Department officials is required to clarify information and assess the totality of government efforts, pursuant to the TVPA's criteria. This ultimately leads to the Secretary of State's designation of tier rankings for each country and approval of the TIP Report.

It is helpful and I think very important to underscore that the tier rankings do not assess the severity of a human trafficking problem in a given country. The tier rankings assess the government's efforts in addressing human trafficking problems over the current reporting period, compared to that government's own efforts in the prior year. And determinations about the direction and quality of that progress in a given country are guided by the complex criteria outlined in the TVPA itself and described on pages 45 through 50 of the TIP Report.

The rigorous and comprehensive annual assessment process is what makes the TIP Report the gold standard in antitrafficking assessments. It is one of the most effective diplomatic tools our gov-

ernment has for encouraging a foreign government to improve its antitrafficking efforts.

In the 2015 TIP Report, 18 countries were upgraded and 18 were downgraded. In comparison, 15 were upgraded and 19 were downgraded in the 2014 report.

There were encouraging trends this year. Portugal and the Bahamas moved to Tier 1 while others, like Kenya, Panama, and Bosnia-Herzegovina, moved from the Tier 2 Watch List to Tier 2.

There has been considerable focus on countries that moved from Tier 3, the Democratic Republic of Congo, Cuba, Malaysia, Papua New Guinea, Saudi Arabia, and Uzbekistan. They moved to the Tier 2 Watch List.

For countries that moved to the Tier 2 Watch List this year, the Department closely evaluated the efforts those governments had made during the reporting period, as well as the commitments they made for next year. And our posts are already working with host governments to encourage them, 4 months into this next year's reporting cycle, to implement the recommendations outlined in this year's report. And the TIP office is finalizing assistance programming strategies to help make those recommendations a reality.

Embassy personnel are having dialogues with host government officials about how to better combat this crime and protect citizens. Just yesterday, the Secretary discussed the importance of continuing progress against trafficking with the Government of Malaysia.

The challenges are great, even for Tier 1 countries like the United States. Yet when I meet with trafficking survivors, whether in Uganda, India, or Albania, I am reminded how crucial and, indeed, how effective our work is. By prioritizing this issue, the U.S. Government has already changed the lives of millions across the globe, and Congress has played a leading role in this effort, from passing the TVPA to providing yearly resources to support antitrafficking initiatives on the frontlines of this global struggle.

Though we can be very proud of U.S. efforts and encouraged by the progress to date, we cannot rest until the scourge of modern slavery has ended and all of its victims are free to choose their own destinies.

Thank you, and I look forward to your questions.
[The prepared statement of Ms. Sewall follows:]

PREPARED STATEMENT OF SARAH SEWALL

Chairman Corker, Senator Cardin, members of the committee, ladies and gentlemen, thank you, Mr. Chairman and members of the committee, for your leadership in combating trafficking in persons. I know this is an issue of particular concern for the committee, and I look forward to continuing to work closely with you to tackle this insidious crime and human rights abuse. The release of this year's Trafficking in Persons (TIP) Report underscores the importance the administration and Secretary Kerry place on combating modern slavery.

This year marks the 15th installment of the report, as well as the 15th anniversary of the Trafficking Victims Protection Act (TVPA). The report reflects a year of dedicated effort by not only the Department of State's Office to Monitor and Combat Trafficking in Persons (TIP Office), but also its other bureaus and offices and missions around the world.

Working year round across offices and continents, the Department engages governments and civil society; collects data; navigates local laws, develops best practices; and objectively assesses each government's efforts—including our own—to

comply with the minimum standards for the elimination of trafficking in persons established by the TVPA.

In this process, we assess the adequacy of national laws in prohibiting and punishing human trafficking and evaluate government actions to prosecute suspects, protect victims, and prevent further trafficking—the “three Ps.” Based on the country assessments, the TIP Report ranks countries and territories on different tiers in accordance with the minimum standards outlined in the TVPA.

A Tier 1 country fully complies with these minimum standards. A Tier 2 ranking indicates that a country’s government does not yet fully comply with the minimum standards, but is making significant efforts to bring itself into compliance. By contrast, a Tier 2 Watch List country indicates that a country is also making significant efforts to comply with the minimum standards, but also meets one or more of the following three conditions: (1) the number of trafficking victims is very significant or is significantly increasing; (2) the government failed to provide evidence of increasing efforts from the previous year; or (3) the government committed to make significant antitrafficking efforts over the next year. A Tier 3 ranking applies to a government that does not fully comply with the minimum standards and is not making significant efforts to bring itself into compliance.

In most cases, this assessment process clearly places governments into one of the tiers; in other cases, further discussion among senior Department officials is required to clarify information and assess the totality of government efforts. This ultimately leads to the Secretary of State’s designation of Tier rankings for each country and approval of the TIP Report.

Tier rankings do not assess the severity of human trafficking in a given country, but rather that government’s efforts in addressing human trafficking problems over the current reporting period compared to its own efforts in the prior year.

Determinations about the direction and quality of that progress in a given country are guided by complex criteria outlined in the TVPA and described on pages 45 through 50 of the TIP Report.

The TVPA establishes criteria for the “minimum standards” in combating trafficking and delineates additional criteria for assigning Tier rankings to governments for their antitrafficking efforts.

The minimum standards have four key elements. The first three revolve around the adoption of adequate antitrafficking laws. This is seen as a critical hurdle for states, because it establishes a comprehensive legal standard to effectively prosecute and penalize perpetrators.

The fourth element of the TVPA’s minimum standards is whether a government has undertaken serious and sustained efforts to eliminate trafficking over the current reporting period. The TVPA provides 12 indicia to assess those efforts, and several of these include additional criteria. Thus, the assessment and ranking process involves a comprehensive set of factors whose trajectories often vary significantly with respect to overall progress.

The complexity of the TVPA assessment criteria reflects Congress’ intention to have the Department consider multiple factors in the TIP assessment process, including not only government actions—but in the case of Tier 2 Watch List—government commitment to take further action. They also include contextual factors, such as the severity of the problem and feasibility of further progress given available resources and capacity.

This rigorous assessment process, which implements the standards of the TVPA and ranks all the countries’ efforts on an annual basis, is what makes the TIP Report the “gold standard” in antitrafficking assessments. It is one of the most effective diplomatic tools our government has for encouraging a foreign government to improve its antitrafficking efforts.

In the 2015 Report, 18 countries were upgraded and 18 were downgraded. In comparison, 15 were upgraded and 19 were downgraded in the 2014 Report. There were encouraging trends this year: Portugal and the Bahamas moved to Tier 1, while others like Kenya, Panama, and Bosnia-Herzegovina moved from the Tier 2 Watch List to Tier 2. There has been considerable focus on countries that moved from Tier 3 to the Tier 2 Watch List this year; the Democratic Republic of the Congo (DRC), Cuba, Malaysia, Papua New Guinea, Saudi Arabia, and Uzbekistan moved up to the Tier 2 Watch List from Tier 3.

For countries that moved up to Tier 2 Watch List this year, the Department closely evaluated the efforts those governments had made during the reporting period as well as the commitments they made for next year. Our posts are working with host governments to encourage them to implement the recommendations outlined in this year’s report, and the TIP Office is finalizing assistance programming strategy to help make those recommendations a reality. I am receiving reports from the field on the frank and focused dialogues Embassy personnel are having with

host government officials on how to overcome the challenges they face to better combat this crime and protect their citizens.

The challenges are great—even for Tier 1 countries like the United States. Yet, every time I meet with trafficking survivors—which I recently did in Uganda, India, and Albania—I am reminded of how crucial this work is. By prioritizing this issue, the U.S. Government has already changed the lives of millions across the globe. Congress has played a leading role in this effort, from passing the TVPA to providing yearly resources to support antitrafficking initiatives on the front lines of this global struggle. Though we should be encouraged by this progress, we cannot rest until the scourge of modern slavery has ended and all its victims are free to choose their own destinies.

Thank you again for your support, and I look forward to your questions.

The CHAIRMAN. Thank you very much. I think it would be helpful for all of us for you to explain your role, and explain how that differs from the Under Secretary of Political Affairs. I think it would just be good to set that context first, and, if you would, maybe elaborate a little bit on the friction that naturally occurs between political affairs component and your role in ensuring the integrity of a program like this.

Ms. SEWALL. Thank you for the question, Senator.

The process that we undergo within the Department engages many voices throughout the Department. As I noted, we work year round to gather and evaluate information that comes in and is processed through the TIP office, as well as a variety of other Departments through the bureau, working on the narratives for 188 countries.

The involvement of other officials would come to the extent that there are different perspectives that are presented to the Secretary for his consideration and final decisionmaking on tier rankings. And as with any reporting process and as with any State Department deliberations, there are a multiplicity of views, and the Secretary takes them into account when making his final decisions. Beyond that, the Department does not talk about internal deliberations.

The CHAIRMAN. I guess by virtue of what you are saying, there are sort of different equities at stake. Would that be correct?

Ms. SEWALL. I think what is fair to say is that it is, as I hope I have outlined, a very complex process, with a number of different elements, both with regard to the minimum standards and with regard to the separate criteria for the tier rankings, and that there are often gray areas and a need for further factual analysis, and differences of opinions as how to apply the complex elements of the TVPA itself.

So as with any human right process, any State Department process, there are a multiplicity of perspectives.

The CHAIRMAN. But at the end of the day, I guess, sort of up the food chain, if you will, that decision is going to be made. In other words, someone above is going to decide which equities to stress more. And ultimately, someone at a much higher level will decide whether they believe someone should be ranked upwardly or downwardly. Is that correct?

Ms. SEWALL. The Secretary of State is responsible for the Trafficking in Persons Report. He makes the decisions about tier rankings, and I think there is no one who can question the Secretary's commitment to the antitrafficking cause. It is something that he evinced as a prosecutor. It is something that he carried

with him as a Senator and as chairman of this committee. And it is, certainly, his strong and passionate commitment as Secretary of State.

The CHAIRMAN. Well, I think probably it is viewed that he probably cares about that. I think the concern that we have here is that there are other interests that trumped this. So let me move into that.

I am a strong supporter of TPP. I want to see the final elements. I am a little concerned about this last meeting and some of the things that are happening with intellectual property and other kinds of things. But I think that, certainly, establishing a good agreement, a good TPP agreement, is worthwhile.

I think that it would go without saying that many of us are concerned that the upgrading of Malaysia had more to do with trying to make sure that TPP was entered into successfully than a care for people being trafficked. I mean, I think that is sort of the central reason we are having this meeting right now, along with Cuba and a few other places, where the administration's policies toward those countries trumped any real regard for humans that are being trafficked.

So we understand that obviously Malaysia has passed some laws. I have looked at the actual effect on people, and I see very minimal—it is like eyewash—effect on human beings in Malaysia.

Again, the reason we are here, let us face it, let us be outward about this, is many of us believe that, to use a rhetorical phrase, you sort of threw the trafficking piece under the bus to ensure that you were successful with TPP.

I would like for you to do everything you can at this moment, you have an audience, to allay that concern and to talk to us about the number of people that were actually positively affected by this new criteria in Malaysia.

Ms. SEWALL. Well, thank you for sharing your views, Mr. Chairman.

I think it is important to note that the Secretary himself spoke to the concern that you raised yesterday in Malaysia. He conveyed that he had zero conversation about TPP relevant to his decision related to the Trafficking in Persons Report and the tier ranking process. So I hope that that can satisfy your concerns.

I am happy to talk about—

The CHAIRMAN. I will tell you what would satisfy my concerns, if you could just lay out—

Ms. SEWALL. Yes.

The CHAIRMAN. That comment does nothing to allay my concerns. If you would, tangibly explain to us how young women, 16 years old, trafficked for sex, were positively affected by the Government of Malaysia's policies this year that caused them to go from Tier 3 to Tier 2. Explain that to me.

Ms. SEWALL. I am happy to talk about the process by which we apply the laws' standards to—

The CHAIRMAN. No, no, no. I do not want the process. I want you to explain to me how people, real-life people who have parents and brothers and sisters, were affected by the government's actual implementation, and, therefore, caused them to move from Tier 3 to

Tier 2, which conveniently, by the way, causes the TPP process to work in a way that works very well.

Ms. SEWALL. The Tier 2 Watch List criteria, pursuant to the TVPA law, means that a government does not fully comply with the minimum standards for elimination of trafficking, but that that government is making significant efforts to do so. And while Malaysia's Tier 2 Watch List ranking reflects the government efforts and commitments to amend its antitrafficking laws, the fact remains that the government has major work to do on its antitrafficking efforts.

We will continue to work with the Malaysian Government, as the Secretary began doing yesterday in Malaysia doing, to urge the government to make continued progress.

In terms of the application of the TVPA law itself, a key factor to highlight in Malaysia's upgrade is the Malaysian Government efforts during the reporting period, as well as its commitment to amend its antitrafficking law in the year ahead, which was, of course, the number one recommendation from the 2014 TIP Report.

During the reporting period, the government officials consulted with civil society in drafting amendments to the existing antitrafficking in persons act to address Malaysia's flawed victim protection regime, a central concern of ours.

The government held four cabinet meetings to move toward implementation of the law and committed itself to passage of the law. We are encouraged by more recent progress on the amendments that occurred outside of the 2014 reporting period, but that were consistent with the commitments that the government made during the reporting period that have been made in moving the law forward.

The Parliament has passed the amendments, and they will enter into force in the near future.

In addition to this progress, Malaysian Government authorities increased their antitrafficking efforts in each of the key three areas. They increased the number of trafficking investigations by more than 100 percent, and they increased prosecutions by 67 percent. On protection, they experimented with a pilot program, very modest, very small, but nonetheless a pilot program addressing one of our core concerns, which was the ability of trafficking victims to leave government facilities in order to work while pending successful prosecutions of the cases.

In the area of prevention, the Malaysian authorities undertook campaigns to raise awareness, continued their efforts to publish informational brochures, and trained nearly 700 officials.

So these are the reasons, Mr. Chairman, that factored into the TVPA criteria pursuant to the Secretary's decisionmaking on the tier rankings. We still have enormous concerns about trafficking in Malaysia. Those concerns are detailed in the report itself.

We pulled no punches in terms of clarifying the extent of the problem and the nature of the problem. We see this as the important work ahead for us, to work with the Malaysian Government over the course of the next year.

I can detail more of our concerns, but they are fully documented in the report itself.

The CHAIRMAN. I know that you have to be here today representing the Department, and I know that you have to read the things that you just read. I would just say I do not think that any person in Malaysia that has loved ones who have been sold into sex slavery would be very comforted by what you just said. But I realize you have to do what you have to do. I do not want to make any personal attacks.

But if I could, I know you talked about percentages. The government convicted three traffickers for forced labor—three—and one for passport retention, a decrease from nine traffickers that it convicted in 2013. And you raised them from Tier 3 to Tier 2, based on those outcomes.

Let me say this one more time. This is a country that has massive trafficking. Massive. I have met young ladies in the Philippines that were trafficked to Malaysia, sold into sex slavery. I hope they are not watching this.

So the government convicted three traffickers for forced labor, and one for passport retention. And our State Department, for that record, less than what they did the year before, a country that is one of the worst in the world, and we raised them.

I do not see any tangible outcome. I listened to all your criteria, but I am sorry, it just does not hit me in a place that causes me to believe that there was integrity in this upgrade.

I would like you to respond, and then I will move to the next person. I feel like I am dominating.

Ms. SEWALL. Sure.

I think whether it is nine convictions or whether it is three convictions, in the case of Malaysia, given the scale of the problem, it is inadequate. The report makes that very plain.

That is not the basis on which the Secretary would make a sole decision regarding a tier ranking. I have explained to you many of the elements that fit the criteria that are required for us to consider, under the law, pursuant to both the narrative, the factual narrative in the book itself, and pursuant to presenting any information for the Secretary's decision with regard to tier rankings.

As you well know, the legislation itself is very complex. It asks us to look at a huge variety of factors, and it asks us to weigh and balance a huge variety of factors. Not all of the indicators go in the same direction.

The comprehensiveness of this report, and the facts that are contained in the narratives, I think are something that we should be very proud of, and something that we can continually use to try to achieve the very kinds of impacts on the ground that you are talking about.

Secretary Kerry yesterday in Malaysia raised this issue of prosecutions, offered to have the FBI help Malaysia improve its investigatory capacity, because it is our understanding that that is a significant factor in limiting effective prosecutions. That is an example of the ways in which we use the report, we use the factual analysis to try to make real outcomes for people on the ground.

The CHAIRMAN. I will reserve my questions, my additional questions, for later. I would just say that I would think that you would raise them up after they took him up on the offer of the FBI help-

ing and actually began to be serious. I know that, again, you are tasked with a tough job today, and my heart goes out to you.

Senator Cardin.

Senator CARDIN. The Trafficking Victims Protection Act is designed so that the ratings are based solely on the circumstances on the ground and meeting the criteria of the statute. As you point out, we evaluate all countries, including the United States. It is not meant to take into account any political or other bilateral issues between the countries. That was the clear intent of Congress.

I know that Secretary Kerry has reported that that was true in this case, but the perception here is to the contrary. It may require us to look at changes in the statute, to preserve the integrity of this report, and I am going to ask you to provide to this Senator with ways that we can strengthen the law to make sure that those who are closest to the ground and understand what is going on have the most to say about how the rankings are done using international standards.

Let me get to Malaysia, and I could go to other countries. What concerns me about Malaysia, and maybe you can give me other examples of where this has happened, in 2014, we downgraded Malaysia from Tier 2 Watch to Tier 3. We were pretty specific as to what we wanted them to do in order to get off that list. You point out that the number one recommendation was to amend the antitrafficking law.

Have we ever taken a country off Tier 3 because they had pending, but not enacted, the changes we asked for in their law? Are there other examples where you can show us that after 1 year of being on Tier 3, we said that they have made serious and sustained efforts and significant efforts by proposing a law, not enacting it, and not having any experience as to how well that law, in fact, has been implemented, which was our number one recommendation?

It seems to me that taking them off of Tier 3 takes the pressure off. And therefore, what guarantees do we have that they, in fact, will enact and implement the law?

Let me also mention a couple other factors that were in the 2014 report. We noted issues with prosecuting trafficking offenses, and convicting and punishing traffickers. That was based upon nine convictions. That is inadequate and they went from Tier 2 Watch to Tier 3 because they did not convict.

It is called impunity. You may have laws, you may have prosecution, but if you cannot convict, if you cannot hold people accountable, they walk, and they know that they can commit the crimes. That is unacceptable. In our 2014 report, unacceptable. We have to see more prosecutions.

In 2015, they go from nine convictions to three. Where is the serious and sustained and significant progress there?

You then list in your report, that to justify this, the government adopted a pilot project to allow a limited number of victims to work outside government facilities, because one of the recommendations in 2014 is to work with the victims.

My understanding is that the pilot program had four people participating in it. I do not even know why you listed it.

It seems like you are trying to justify a result that is not there. Where am I wrong? What am I not seeing here?

Ms. SEWALL. Let me offer a couple of responses to that, Senator Cardin.

First of all, as you well know, the report itself judges not the situation of trafficking or the severity of a problem, per se. The report itself judges the government's efforts, and it judges those efforts in a dynamic context. It judges the government's efforts this year against the government efforts during the last reporting period. Part of the strength of the TVPA, in my opinion, is the fact that it is an annual process, and, therefore, there is a constant reevaluation of all of the different elements that come into play in evaluating both a country's efforts with regard to the minimum standards articulated in the report and the placement of a country on a watch list.

Now in the case of Malaysia, as I said, the report itself, the Trafficking in Persons Report itself, makes the very points that you made. It talks about the limited number of prosecutions and how that is a weakness.

Senator CARDIN. So they are on Tier 2 Watch List because of that? Is that one of the reasons? They then get rewarded from Tier 3 to Tier 2 Watch for going from nine convictions to three?

Ms. SEWALL. One of the things that I have learned in working with the Trafficking in Persons office is how the TVPA specifically requires the administration to look at a huge number of factors.

Senator CARDIN. You can always justify a decision.

Ms. SEWALL. We follow the law by upholding exactly the provisions of the report and looking at all of these different pieces of information. They are, in turn, all reflected in the report.

I think you will see virtually in any country that we evaluate, to include our own country, criticisms, shortfalls.

So the ranking process needs to be understood as one that evaluates the government's actions compared to its actions before, and that will be reevaluated in a year's time. There are so many different elements that come into play that we include in the report both the criticism of prosecutions, but we also include in the report, pursuant to the 3P requirement of the TVPA, where the government has made progress in other aspects. All of those go into the narrative process. And it is that fact-based narrative process that, in turn, informs the Secretary's decisions on the tier rankings.

Senator CARDIN. I just call your attention to your own report in 2014. The recommendation section is not very long. It contains maybe 10 recommendations for change. I do not see progress on any one of the 10 recommendations in the 2015 report, other than the recommended changes in law that have not been passed yet. I look at each one of these and I look at your narrative here, trying to compare where progress has been made, I do not see it. If the reports mean anything, if the recommendations mean anything, then it seems to me, if we are going to upgrade their tier status, it has to be based on concrete progress made on the recommendations of the previous report.

Ms. SEWALL. So let me explain the recommendations then. The recommendations for a given country do not reflect the steps that need to be taken in order to jump to the next tier. That is not the purpose of the recommendations. Our report aims higher.

Our recommendations for each country ask them to stretch toward the minimum standards and ask them to stretch in ways that would take them far beyond the next tier ranking. We ask for more.

So the recommendations are not linked to the next tier ranking. The recommendations are all of the different changes that we would like to see to be fulfilling the minimum standards related to the Palermo Protocol.

Senator CARDIN. That is what I would expect. But to upgrade a rating you would expect that there had been progress made. In this case, going from Tier 3 to Tier 2 Watch List, you expect to see sustained, serious, and significant efforts. That is that standard in the statute. So you have to have that.

So your recommendations for them to meet the minimum standards are spelled out in the 2014 report, where they are ranked Tier 3. I am going through those recommendations for action, then looking at your justifications in the 2015 report, and I do not see serious, sustained and significant progress on the recommendations that would justify an upgrade.

Ms. SEWALL. There are very few, relative to the number of countries in the world, that meet the minimum standards. I think that is perhaps part of the confusion.

So the minimum standards are something that we aspire to see all 188 countries move toward. Even those countries that meet the minimum standards, the report still requires that we ask countries to do better and that we measure them by their own progress there.

In the case that you are raising specifically of Malaysia, I have articulated several of the different elements of change that the government made over the course of the last year, pursuant to the TVPA criteria, that have a bearing on tier ranking placement. Those include both actions and commitments to address what was a key concern of ours over recent years with Malaysia, pertaining to both the law and the treatment of victims. It also included concrete actions in some areas such as investigations and prosecutions, but, as you pointed out, not convictions. But there were positive efforts in that regard.

So it is a complex equation with many different factors. But I think what is really important is that, in all cases, we are asking countries to do more, even in cases where countries meet minimum standards.

But as I said, those countries currently meeting minimum standards are, unfortunately, still a minority of the 188 countries and territories we examine.

Senator CARDIN. So I would ask that you give me examples of a country that was ranked as a Tier 2 country one year, then is downgraded to a Tier 3 country the next and then, in the following year, goes back up to Tier 2. Can you give me an example of a country that did that based upon promises, not action, because I think that is what you are saying. You are saying promises, not actions.

I will just make this last point, and I would appreciate that information, where you have seen that quick of a turnaround from Tier 2 to Tier 3 back to Tier 2 on promises.

And I can tell you this, once the spotlight goes down on this issue, and it does; and once this report is issued and they know they have another year the chances of getting the type of action we want is just not there anymore, based upon the TIP ranking.

That is a lot of pressure, believe me. I cannot tell you how many representatives of other countries come in to talk to me and complain about the TIP Report ranking. I say look, let us look over the report. Here is what you can do. These are the minimum standards. This is how you can do better. We all can do better. The United States can do better. We all know that.

The purpose of these reports is for all of us to do better because we all agree trafficking is horrendous.

But in this situation, when you can get an upgrade on the cheap—and that is what it looks like—by making a promise without action, it diminishes the strength of this report.

If there are other examples, please show me. Show me where you have gone through such a quick turnaround based upon promises, not action. That appears to be what you have in Malaysia today in the way you did this report.

The CHAIRMAN. Senator Menendez.

Senator MENENDEZ. Madam Secretary, you were here in February before the committee. At the time, I said to you the Trafficking in Persons Report, we all recognize, is a significant tool in our efforts here. The chairman referred to the fact that we have no ambassador at large in that role. So I assume that your answer to him is that you are personally going to protect the integrity of the TIP Report overall, and especially with regard to particular countries that may be subject to intense political pressure within the building. Your answer to me was yes.

Now, before you answer my questions, I want you to think about the following. I want you, before you answer my questions, to think, if there was an Inspector General's investigation or some other investigation, would your answers hold up in emails, memos, letters, and any and all communications?

So with that in mind, which, Mr. Chairman, I would urge the committee to seek all of the documentation that was created in the context of devising this year's report, because in the answers to you and the ranking member, I am certainly not satisfied.

The CHAIRMAN. If I could, I think that based on this presentation, if that is not forthcoming immediately, my sense is the committee would take the very unusual step of subpoenaing that information.

This is possibly the most heartless, lacking of substance presentation I have ever seen about a serious topic. And I do not see how anyone could believe there was integrity in the process.

I feel for our witness. I know that she has to come up here and do what she does. This may be the worst day she has ever had in her service, to have to say the things that she is reading to us right now.

But I would join in with others, if that information is not coming, to subpoena that information, because I think it should be done. So whatever you guys wish to do, I would join you.

Senator MENENDEZ. I would urge you and the ranking member to at least send a letter immediately to seek preservation of all

such documents, so that if they are forthcoming, that is great and they can be analyzed, if not, that they are preserved.

This is the latest that the TIP Report has been issued, is it not?

Ms. SEWALL. I am sorry, sir?

Senator MENENDEZ. This is the latest that the TIP Report has been issued?

Ms. SEWALL. The latest in time, yes.

Senator MENENDEZ. Why was that?

Ms. SEWALL. There are a number of reasons but they include the Secretary's personal commitment to being engaged in these issues and his travel schedule difficulties to make the time for that to happen.

Senator MENENDEZ. So let me ask you, what are the start and end dates? I know you have talked about the complexity of this calibration, so let me deal with some things that maybe are not so complex. What are the start and end dates of the reporting period covered by the TIP Report?

Ms. SEWALL. Sure. The TIP Report runs through March 31, and it typically covers data from prior years.

Senator MENENDEZ. So April 1, 2014, to March 31, 2015.

Ms. SEWALL. Where we have data.

Senator MENENDEZ. Okay. So the reality is that one of the main justifications for the upgrade of Malaysia that you have testified to here and answered as well was the government's effort to introduce amendments to strengthen antitrafficking laws and provide additional support for victims. But it is my understanding that the Malaysia Cabinet did not introduce these amendments until April 3 and that these were not approved by the Malaysia Parliament until June. Is that correct?

Ms. SEWALL. That is correct, sir. I would refer you to the factors to consider in determining Tier 2 and Tier 2 Watch List or Tier 3 countries, which exist in the law, the TVPA itself. One of those factors includes the determination that a country is making significant efforts to bring themselves into compliance.

Senator MENENDEZ. So simply offering amendments before they ever passed, before they are introduced, before they become part of the law, even before implementation, you are trying to suggest that is significant?

Ms. SEWALL. As I stated—

Senator MENENDEZ. Without knowing how far they were going to go in the reporting period?

Ms. SEWALL. There are a variety of ways in which Malaysia made progress over the course of the last calendar year.

Senator MENENDEZ. Okay, I have heard that answer.

Ms. SEWALL. One of the ways—

Senator MENENDEZ. I would like you to be responsive to my question.

Let me ask you this, on June 1, the Assistant Secretary of State for Population, Refugees, and Migration Anne Richard reaffirmed that the 2015 TIP Report covers until March 2015, which means that Malaysia's handling of the Rohingya refugee crisis will only be reflected in the 2016 report.

So how is it that you reflect things that happened after the reporting period that are positive, but you will not reflect those

things that are negative after the reporting period? It seems to me you cannot have it both ways.

Ms. SEWALL. I would be happy to explain that, Senator.

The law that I was referring to, the TVPA law, specifically states that a country making significant efforts to bring themselves into compliance with minimum standards, based on commitments by the country to take additional future steps over the next year, is in the Tier 2 Watch List criteria pursuant to the law.

That is the law. It has us looking at commitments. Those are not necessarily the sole reason for a decision related to a tier ranking. As I stated in the case of Malaysia, there are a number of different elements of progress that were made, both pursuant to preparing for the law but also in other areas that were factored into whatever decision that the Secretary makes.

Senator MENENDEZ. So the upgrade was partially based on actions that have not been implemented, that were not even passed, that were outside of the reporting period, but you did not take into account the discovery of the mass graves found in May.

Clearly, those graves reflected many months of trafficking activity before their discovery. So I do not quite get it.

Let me ask you this—

Ms. SEWALL. Senator Menendez, we are very concerned about trafficking in Malaysia. That is—

Senator MENENDEZ. It is not your concern I am worried about. It is your actions, not your concern.

Ms. SEWALL. Well, our actions—

Senator MENENDEZ. When I presided over your hearing as chairman of this committee, I believed that you were concerned. Now I am concerned about your actions. Not yours so much, but since you said to us in February, you would be responsible, you know, I have to pursue it.

Now, it has been answered here that there were nine convictions for trafficking in 2014. There were three in 2015. That is a two-thirds decrease in convictions that Malaysia had over the reporting period. Then the TIP Report mentions a pilot program that allowed victims to work outside of government holding facilities, and the answer to that is there were four people totally who participated.

So you are telling us that the upgrade was based on preliminary action, on legal reform that took place after the reporting period, on increased investigations that resulted in fewer convictions, and a pilot program that granted a total of four victims some refuge.

Ms. SEWALL. Let me share with you the Secretary's comments on Malaysia, Senator.

He signed off on the tier ranking relative to Malaysia because of his belief that Malaysia has taken the right steps to change. Those include a variety of factors, many of which I have enumerated. There are other elements that are deeply concerning, many of which I have enumerated and you have enumerated.

The Secretary said the rankings indicate Tier 2 Watch List, that there is still enormous room for improvement. It is not a golden seal of approval and it is a sign of movement in the right direction.

Senator MENENDEZ. I appreciate all of that, but Malaysia got what they wanted. They got to Tier 2, which just happens to allow them to continue TPP negotiations and have preferential access

into the United States market, assuming that they actually conclude successfully being part of the TPP, which under Tier 3 and my amendment, which is law, they would not have qualified. They could have been negotiated with, but they did not qualify for preferential access.

Now here is what the groups on the ground tell us what is actually happening in Malaysia. A July 22 press release from the president of the Malaysian bar states, "Any upgrade at this juncture would thus be a hollow victory of form over substance. The lives of an untold number of individuals bear silent testimony to the conclusion that Malaysia has yet to earn any upgrade."

Moving on, the U.N.'s Special Rapporteur in Trafficking in Persons in June of this year, in referring to the same time period covered by the 2015 TIP Report, said that the rate of prosecution of trafficking cases also remains very low, which perpetuates the impunity of traffickers and obstructs victims' access to justice.

David Abramowitz of the Alliance to End Slavery and Trafficking said recent press reports suggest that the State Department is recommending Secretary Kerry take an immoral and unprincipled stand in this year's Trafficking in Persons Report by concluding that the Government of Malaysia is making significant efforts to combat human trafficking in its country.

There is a whole host, I could go on, of a universe that has a different view.

Mr. Chairman, I have questions about Cuba, and I hope there will be a second round.

The CHAIRMAN. I have no objection to you continuing.

I do want—I want to move to India. I think everyone in the audience pretty well understands why Malaysia was upgraded.

I am not sure I understand what the competing equities were on India. So I think we have established what happened with Malaysia. I think there will be further investigations that will occur, but I do hope we will get to India. It is hard for me to understand how India could possibly be a Tier 2 entity, and I hope the Secretary will explain to us what those competing equities were there. I am not sure I fully understand.

But if you want to go on with Cuba for a moment, that will be fine.

Senator MENENDEZ. Thank you, Mr. Chairman.

Madam Secretary, at the rollout of the report, Secretary Kerry announced that you had the primary supervisor responsibility for it. According to a Reuters' article published Monday, the TIP office disagreed with the diplomatic bureaus on 17 rankings and was overruled on 14 of the 17, representing the worst ratio in the 15-year history of the TIP Report. Is that accurate?

Ms. SEWALL. We do not comment on internal deliberations, Senator Menendez. What I can tell you is that the reporting that was done by the TIP office and the team at the State Department was thorough and fact-based.

Senator MENENDEZ. So you are neither saying it was accurate or inaccurate.

Mr. Chairman, and to the ranking member who asked about possible reforms to the law, it seems to me that it at least confidentially should be transmitted to Congress to understand the delib-

erations that took place, so that if, in fact, the Reuters' article is true, that out of 17 disputes that the TIP office supposedly said these countries should not be elevated, that they lost 14 times, which is the worst ratio if it is true, that is something Congress should know.

Did the TIP office recommend that either Malaysia or Cuba stay on Tier 3, as Reuters suggests?

Ms. SEWALL. Senator Menendez, the Department does not comment on internal deliberations.

Senator MENENDEZ. Let me ask you this, when did you begin to engage with Cuba, since we did not formally establish relationships until after March 31, 2015, which is the end of the reporting period?

Ms. SEWALL. Let me get that information for you. Cuba sent two of its government antitrafficking experts to participate in an international visitors leadership program in June 2015. This was the first time any Government of Cuba official participated in the program. And participants learned about the U.S. perspectives on the problem and observed how we fight trafficking in persons.

Senator MENENDEZ. So that was an informative process that they had.

Ms. SEWALL. And over the course of the last 2 years, the Department has begun sharing information with Cuba, asking Cuba for information regarding its anti-TIP efforts.

The significance of the engagement I think cannot be overstated, which is to say that we previously had no information from Cuba at all on the trafficking situation in Cuba, and we now receive information from the government. That has enabled us to provide more concrete recommendations.

Senator MENENDEZ. So the providing of information is sufficient to be raised to Tier 2?

Ms. SEWALL. No, that is not what I said. You asked me to describe the engagement.

Senator MENENDEZ. Let me ask you this, did the USTR or the White House communicate with State Department officials to urge a specific outcome in any of these rankings?

Ms. SEWALL. Not to my knowledge.

Senator MENENDEZ. So email chains would show that is not the case, right?

Ms. SEWALL. To my knowledge, that is correct.

Senator MENENDEZ. Let me ask you this. I have serious concerns about politics having influenced the decision to upgrade Cuba from Tier 3. The 2015 report recognizes that there has been no progress on issues of forced labor. We all know that the Castro regime is complicit in nearly all cases.

Last year, the Cuban Government conscripted thousands of doctors to participate in foreign medical missions, including combating Ebola in Africa. In addition to the well-known fact the Castro regime grabs over 70 percent of the wages paid by the World Health Organization to Ebola medical mission participants, there are more troubling considerations that did not make the 2015 TIP Report.

For example, the Madrid-based news platform reported that Cuban doctors were forced to list the Cuban Government and not

their families as beneficiaries on World Health Organization-provided life insurance policies.

The 2015 TIP Report states that Cuba is a source country for adults and children subjected to sex trafficking. While information on the scope of this issue is extremely limited, there are independent reports which indicate that many prostituted children in Cuba are second or third generation and in some cases as young as 4 years old.

In a country where there is virtually no reporting data on human trafficking, nor the willingness to allow international human rights organizations or NGOs to conduct investigations, how does the State Department measure progress? How can you help us understand how the administration quantifies any advantages, given the restrictions presented by Cuba today?

Ms. SEWALL. Thanks for the question, Senator.

You are absolutely right. We remain concerned about labor trafficking in Cuba. I think the report makes that clear. What has been significant and where we have seen change in Cuba is on the question of sex trafficking.

The conviction of sex traffickers has been significant in the context of Cuba's history and the region, and the provision of services to sex trafficking victims is also something that is extremely positive that we have seen on behalf of the Cuban Government.

They have additionally made efforts to increase awareness in prevention efforts with regard to sex trafficking, and they have provided training to Cuban officials to recognize it and assistance to U.S. Federal prosecutors.

Senator MENENDEZ. Let me ask you this. Given the fact that the Castro regime takes 70 percent of wages paid to its doctors, and that Cuban doctors were forced to sign their life insurance policies over to the government, and that in many cases when they are sent abroad their passports are taken away so they cannot flee, did the State Department consult with the World Health Organization about those incidents?

Ms. SEWALL. I would have to check on that, sir. I do not know. I am sorry.

Senator MENENDEZ. Would you get that back formally for the committee?

Ms. SEWALL. Absolutely.

Senator MENENDEZ. Mr. Chairman, I will not go on.

I will just simply close, Mr. Chairman, by saying, I took to heart what Secretary Kerry said when he released the report. He said, we have to be true to the principle that although money may be used for many things, we must never ever allow a price tag to be attached to the heart and soul and freedom of a fellow human being.

I do not know that we did not pervert the lofty goal by a report that clearly seems to me has been politicized in a way that is not justifiable and cannot be justified.

I look forward to continuing to be engaged with the chair and the ranking member on this issue.

The CHAIRMAN. Thank you. I deeply appreciate your sincerity on this issue and your long-held concerns. Senator Cardin has been a champion for human rights.

And I just want to say to the Secretary, I am putting you on notice that any destruction of emails, phone records, or letters from 11:19 a.m. on could have significant consequences. I know that we are going to discuss how we go forward in trying to understand what has really occurred here.

I think it is an understatement to say that this testimony does not cause us to have a lot of faith in what is occurring. I would just say, again, if the administration is not serious about carrying out issues of this type, I think certainly with other issues before us, certainly, it creates concerns.

Let me go to India. I think we all understand, again, what happened with Malaysia.

Talk to me a little bit, if you can, in India—it is an amazing thing. As I understand it, the Government of India seized the passports of trafficking victims and their families who were issued T visas, which were reserved, by the way, for trafficking victims by the U.S.

In other words, we were trying to get trafficking victims here to safety. We understand that the Government of India seized their passports. They denied international travel to others.

Can you tell me what the internal equities would have been within the Department? I think that we fully understand with Malaysia—that would have caused the Department to not be any more pursuant, if you will, on India?

Ms. SEWALL. Thank you, Mr. Chairman.

India's Tier 2 ranking indicates that it does not fully comply with minimum standards but is making efforts to do so. The significance of those efforts is really primarily in the shelter and rehabilitation services arena, as well as in its training of prosecutors and judges, and the launching upon the order of the Supreme Court within India of searches to trace the whereabouts of lost and abandoned children, including potential trafficking victims.

We remain concerned, as you stated, about the T visa issue. It was in July 2014 that the Government of India began confiscating the passports of Indian nationals that had received T visas. As you noted rightly, these were visas provided by the U.S. Government to trafficking victim family members. These were the T derivative visas.

The Indian High Court has ruled in favor of petitioners that had had their passports confiscated as a result of the policy. They cited a violation of their rights guaranteed under the Indian constitution. The Indian Government has not appealed this case, but the actual dispositions of the cases affected by the policy remain pending at the close of the reporting period.

But this is absolutely a concern and this is one that we do repeatedly raise with the Indian Government.

The CHAIRMAN. Mr. Ranking Member, I am not going to ask any more questions. I think it is pretty clear that until we get into internal documents, we are never going to know what truly is at hand here.

I gave a speech on the floor, which I rarely do. Nothing really happens on the floor that matters most of the time, speech-wise. I know there is a lot of discussion right now about the presidential races and anger that the American people have at the U.S. Govern-

ment and some of the anomalies that are taking place. People are making comments about certain candidates and why they are getting traction on both sides of the aisle, I might add.

At the time, when we passed the highway bill, when, in essence, we engaged in generational theft, where we basically took 10 years of spending and 3 years of payout and we created all of these gimmicks because, let us face it, Congress does not have the courage to deal with the issue head-on, I said this was Exhibit A as to why Americans are so upset at government.

I will have to say that anybody watching this would have to say this is like Exhibit A-plus as to why Americans should be upset with government.

This is a reflection on us. What we are hearing today is a reflection on us. I am very disappointed in the testimony.

Again, I do not want to take it out on the person who has been thrust into having to read these comments that were put together by bureaucrats at the State Department.

But I do hope that we will take actions here. This is obviously not something that reflects the great Nation that we are. I do not think anybody listening to this could think that America is really serious, at least at the State Department level, regarding trafficking in persons.

I know we have a new person that has been nominated, by the way, who I do think cares deeply about this issue and potentially could bring about some balance here. I think we could see that the political side, in other words, the expedient things for our country, especially involving money, money, those things sort of won out in this process over the human side.

But I am disappointed. I am not going to say anymore, for regretting maybe going over the top here. I will not do that. But I do think that we can all see that we have created something here that is not working properly.

This process, to me, has been extremely inappropriate, especially this year. And I look forward to working with you and others on this committee to try to figure out a way to rectify something that has gone amok, and pulling back from balances here, so we ensure that human beings lives at least come into some kind of balance relative to other equities, if you will, that our government has.

I want to thank the witness for her willingness to come here, but I will not ask any more questions, because I realize I am going to get bureaucratic answers that do not really get to the essence of what the problem is.

Senator CARDIN. Mr. Chairman, if I might, the TIP Report is a very valuable report. The rankings have incredible significance, not just in shaming nations to do better, and that is an important factor, because it is not where you want to be, on a watch list or on Tier 3. But the report also has financial implications. It has implications for our partnerships. And it has ramifications on private companies and their economic participation in other countries.

So it is a very important tool. Countries hire lobbyists to try to influence us on things like the TIP Reports. That is one of the reasons why I am particularly concerned about the 2015 report.

Let me just sort of underscore this point. Whether politics played a role or not in the determinations, the perception is that it did.

It is going to be a much more open season by countries to try to influence the tier rankings through the political process. That is not good.

If the Reuters' report is accurate, and I do not know if it is or not, and I am not going to inquire further of our witness on this, but if the objective keepers were overruled a record number of times by those who were more politically engaged in other issues with countries other than trafficking, that also undermines our confidence that, in the future, this report will be based upon the objective standards that are in the statute, which has been why this report has been so valuable.

So I come back to the point that I really do believe we need to revisit the statute. I am afraid to take away some of the discretion at the higher levels at the State Department, and looking at making sure there is a more objective analysis on how these reports are done or at least getting more transparency on the interaction at the higher levels of State Department, so that we have a more accountable system for how these decisions are made.

I regret that I am not yet prepared to reach a conclusion as to how these reports were done, other than to say that there is certainly a perception out there that politics, played a role in some of these determinations.

That is not healthy for the future of this report, and my interest as a United States Senator is to protect the integrity of the Trafficking in Persons Report, and U.S. leadership globally on fighting trafficking.

It is one of the great horrors of our time. Anything we can do to combat trafficking, we must do and we need to be aggressive.

The CHAIRMAN. Senator Menendez, do you want to say anything in closing?

We thank you very much for allowing us to have this venue. I do realize that once you furnish to us all of the emails and phone conversations and letters about this, we may reach a conclusion that this process was full of integrity. That is not my thinking today, but I certainly will await all of that information coming to us.

And I want to agree with the ranking member. I do not know exactly what actions we need to take, and I know that whatever we take, we will do so in a manner that is very bipartisan in nature and one that only seeks to have integrity in this program. But I think certainly this meeting raises major concerns about whether this is something that has run amok.

Sometimes around here, let us face it, when companies and countries realize that they can affect the process to benefit them financially, let us face it, lobbying occurs. And it occurs not just in Congress, but it occurs, let us face it, in departments.

So we need to make sure that we understand this fully. I hope that voluntarily all of the information relevant to this will be forthcoming. I look forward to following up with the Secretary on this in one form or another.

And I guess the record will remain open until Monday afternoon for people to ask questions.

The CHAIRMAN. With that, would you like to say anything else in closing?

Ms. SEWALL. Thank you. I think Americans can be very proud of the TIP Report. I think it has made a difference for millions of people around the globe, and I think it will continue to make a difference in the future. And certainly, as an American, I am very pleased to be a part of it, and I am proud that we have elevated this issue on the global agenda and made a difference in so many lives.

The CHAIRMAN. Thank you so much.

The meeting is adjourned.

[Whereupon, at 11:32 a.m., the hearing was adjourned.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

[Press Release/From the Malaysian Bar, July 22, 2015]

UNTIMELY AND UNWARRANTED UPGRADE IN THE TRAFFICKING IN PERSONS REPORT COMPROMISES THE FIGHT AGAINST HUMAN TRAFFICKING

(By Steven Thiru, President, Malaysian Bar)

The Malaysian Bar is perturbed by recent news reports suggesting that Malaysia will be upgraded from Tier 3 to Tier 2 Watch List status in the rankings in the imminent 2015 Trafficking in Persons (“TIP”) report prepared by the United States (“U.S.”) Department of State.¹

The TIP report ranks nations according to their willingness and efforts to combat human trafficking. It is considered as the benchmark index for global antitrafficking commitments.

Malaysia’s historical ranking in the TIP report is abysmal. In the 2014 edition of the TIP report, Malaysia was downgraded to Tier 3 because the Government was “deemed not to be making significant efforts to comply with the minimum standards,” and it had made “limited efforts to improve its flawed victim protection regime.”² This is the lowest ranking in the TIP report, and placed us alongside North Korea, Syria, and Zimbabwe.

The 2014 TIP report also stated that Malaysia had been granted consecutive waivers in 2012 and 2013 from an otherwise required downgrade to Tier 3, on the basis of a written plan for compliance with the minimum standards for the elimination of human trafficking. Malaysia was downgraded in 2014 because the Government had not adequately translated the written plan into action.

The U.S. Ambassador to Malaysia has reportedly suggested that the Malaysian Government needs to show greater political will in prosecuting human traffickers and protecting their victims, if the Government hopes to improve its currently lowest ranking in the TIP report.³

It is inconceivable that Malaysia should receive an upgrade in 2015 based on the recent amendments to the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, which, in any event, have yet to come into force. If there is any lesson to be learnt from recent experience, it must be that the Government has an excellent record of drafting written plans, but a less than satisfactory record of implementing them. As such, the upgrade of Malaysia, if it were to occur, would be premature and undeserved.

Further, the gruesome discovery of the “death camps” and mass graves of victims of human trafficking in May 2015⁴ must necessarily be taken into consideration in the decision concerning Malaysia’s current ranking, despite the cut-off date of March 2015 for the report.

Such a discovery is irrefutable proof that human trafficking has been ongoing, on a large scale and for a considerable period of time, on Malaysian soil.⁵ The Malaysian Government’s alleged ignorance of this atrocity, which is incredulous, must not be disregarded or rewarded.

On 15 July 2015, nineteen members of the U.S. Senate acknowledged that amendments had been made to Malaysia’s antitrafficking laws, but that “additional work remains to ensure that this legislation is implemented in a manner consistent with the recommendations in the 2014 report.”⁶ On 17 July 2015, a bipartisan group of 160 Members of Congress said that they have “seen no reason during the reporting period for this year’s TIP Report that would justify moving Malaysia back to the

Watch List. If anything, the situation in Malaysia has grown worse. Malaysia has earned its place on Tier 3.”⁷

It has been alleged that the U.S. Government’s impending decision to upgrade Malaysia to Tier 2 Watch List is aimed at avoiding complications that may arise in connection with the Obama administration being granted Trade Promotion Authority, which is “fast-track” trade negotiating authority for free trade agreements such as the Trans-Pacific Partnership Agreement (“TPPA”).⁸ The latest Trade Promotion Authority legislation bars the U.S. from enacting trade deals with countries placed in Tier 3 of the rankings in the TIP report.⁹

Any upgrade of Malaysia in the 2015 TIP report would therefore appear to be primarily motivated by a desire to allow Malaysia to be included in the TPPA. If so, the upgrade being contemplated is wholly misplaced and unconscionable. The safety and protection of hundreds, possibly thousands, of victims of human trafficking must ultimately be of greater value and importance than trade agreements and political expediency.

Malaysia was shielded from the full effect of being downgraded in the 2014 TIP report when, in September 2014, President Barack Obama exempted Malaysia from U.S. sanctions that could have been imposed on countries designated as Tier 3.¹⁰ Malaysia should not continue to expect to be treated with kid gloves, and the 2015 TIP report should not exculpate Malaysia from the shortcomings in its legal obligations, both international and domestic, to protect victims of human trafficking.

In coming to its determination concerning Malaysia’s ranking, the 2015 TIP report must not only consider the fact that measures have been formulated to address the scourge of human trafficking, but it must also evaluate their actual implementation and effectiveness. An upgrade should only be given as and when it is truly warranted, namely when tangible measures have been effectively implemented and positive results clearly demonstrated.

An upgrade at this juncture would thus be a hollow victory of form over substance. The lives of an untold number of individuals bear silent testimony to the conclusion that Malaysia has yet to earn any upgrade.

Amidst the vortex of economic and political issues engulfing the nation, the suffering and anguish of the victims of human trafficking, and their families, must not be forgotten.

* * * * *

¹“Exclusive—U.S. upgrades Malaysia in annual human trafficking report: sources,” Reuters U.K., 9 July 2015.

²“2014 Trafficking in Persons Report (Malaysia),” Office to Monitor and Combat Trafficking in Persons, Web site of U.S. Department of State.

³“Malaysia must do more to prosecute human traffickers, says top U.S. diplomat,” The Malaysian Insider, 17 April 2015.

⁴“Horrors unearthed at 28 sites used by human traffickers,” The Star Online, 26 May 2015.

⁵“Int’l disbelief over M’sian ignorance of ‘death’ camps,” Malaysiakini, 28 May 2015.

⁶“Menendez Leads Bipartisan Senate Letter on Possible Unwarranted Ranking Upgrade for Malaysia in Human Trafficking Report,” press release of U.S. Senator Bob Menendez of New Jersey issued on 15 July 2015.

⁷“160 Members of Congress Call on State Department to Not Upgrade Malaysia Ranking in 2015 Trafficking in Persons Report,” Web site of Ways and Means Committee Democrats, U.S. House of Representatives, 17 July 2015.

⁸“Exclusive: U.S. upgrades Malaysia in annual human trafficking report—sources,” Reuters, 8 July 2015.

⁹(a) “Exclusive: U.S. upgrades Malaysia in annual human trafficking report—sources,” Reuters, 8 July 2015; (b) “Obama Takes Unexpected Setback On Trade Agenda As Fast Track Passes Senate,” Huffington Post, 22 May 2015.

¹⁰“U.S. waives human trafficking sanctions on Malaysia and Thailand,” Asian Correspondent, 19 September 2014.

RESPONSE OF UNDER SECRETARY SARAH SEWALL TO QUESTION
SUBMITTED BY SENATOR CORKER

Question. In 2014 the Government of India made nine requests to the Department of State to change the status of Indian nationals previously holding A–3 visas, and instead, provide them with A–2 visas. What had changed for those nine applicants to allow the Department to make that change?

Answer. In 2014, the Department received nine requests from the Government of India to issue A–2 visas to persons previously holding A–3 visas. These A–2 visas were scrutinized with particular care.

As in all such cases, reviews of these cases focused on whether the duties to be performed by each applicant were consistent with all applicable requirements for A–2 visas. While generally a domestic worker would not qualify for an A–2 visa,

those employed on mission premises or engaged in certain duties pertaining to the maintenance of the residence of the head of a diplomatic mission or the principal officer of a consular post may qualify for an A-2 visa. Such individuals are not considered personal employees of an individual foreign diplomat, but are considered employees of the foreign government, provided such individuals are accredited by their foreign government. These legal requirements are defined in 22 CFR 41.21(a)(1) as “an alien holding an official position, other than an honorary official position, with a government or international organization and possessing a travel document or other evidence of intention to enter or transit the United States to transact official business for that government or international organization.”

RESPONSES OF UNDER SECRETARY SARAH SEWALL TO QUESTIONS
SUBMITTED BY SENATOR BENJAMIN L. CARDIN

Question. Please provide recommendations to strengthen the Trafficking Victims Protection Act of 2000, and subsequent adopted amendments, to ensure that civil society, trafficking victims, and other stakeholders who are involved in antitrafficking efforts on the ground, in country have the most input into the rankings.

Answer. The Trafficking Victims Protection Act (TVPA) is the legal framework that has made the annual Trafficking in Persons (TIP) Report such an effective tool in combating human trafficking across the globe. After 15 years, the TVPA-mandated TIP Report criteria and ranking system are increasingly understood by foreign governments, civil society, other stakeholders, and the media. That understanding has contributed to the importance and acceptance of the TIP Report as the gold standard in assessing government antitrafficking efforts.

The Department actively seeks information from civil society, trafficking survivors, local NGOs, and others working on the front lines of the problem, whether they be government officials who want to see change in their country, activists who confront the crime wherever it occurs, or professionals providing services to victims across the globe. This input is especially valuable, as it ensures the accuracy and relevance of the TIP Report narratives, which best conveys the human face of these trafficking crimes. In addition, State Department officials in Washington and U.S. embassies around the world seek information from foreign government officials, and gather and evaluate information provided by international organizations, as well as information derived from a full array of open sources. The current legislation ensures significant input from those directly involved in on-the-ground efforts to eradicate human trafficking.

We look forward to working with you and your staff to ensure the continued robust implementation of this critical law.

Question. When, in the past, has the United States downgraded a country off Tier 2 Watch, then after 1 year upgraded that same country, on “promises not action”? Please provide a list.

Answer. The annual TIP Report assesses government efforts—not promises—to comply with the minimum standards for the elimination of trafficking in persons over a 1-year period. The governments of countries on Tier 3 do not comply with the minimum standards and are not making significant efforts to do so. The governments of countries on Tier 2 Watch List do not comply with the minimum standards, but are making significant efforts to do so and are countries for which the absolute number of trafficking victims is significant or increasing; there is a failure to provide evidence of increasing efforts to combat trafficking from the previous year; or the determination that such country is making significant efforts was based on its commitments to take additional steps over the next year. Annual tier rankings reflect a government’s efforts during the most recent reporting period, compared to that government’s own efforts in the prior year, not as compared to other countries. Promises to make efforts are not sufficient, as we look for a government to take steps toward meeting the minimum standards.

Several countries’ rankings have moved rapidly from Tier 2 Watch List, to Tier 3, and then sometimes back to Tier 2 Watch List over a 3-year period. The rankings are—as required by law—based on government efforts to comply with the minimum standards over the three distinct 1-year periods. Examples over the past 8 years include the countries below:

China (2012–2014); Dominican Republic (2009–2011); Guinea-Bissau (2010–2012); Lebanon (2010–2012); Malaysia (2008–2010) and (2013–2015); Federated States of Micronesia (2010–2012); Niger (2008–2010); Turkmenistan (2010–2012); Venezuela (2010–2012).

Question. In the 2015 Trafficking in Persons Report, Sri Lanka remained on the Tier 2 Watch List for the third consecutive year. In what precise ways is Sri Lanka falling short? What is preventing them from improving each year? Corruption? Lack of resources? Weak rule of law institutions? As we continue to build partnership capacity with the new government in Sri Lanka, how are we engaging with them on this issue?

Answer. For the fourth consecutive year, authorities failed to convict any traffickers under Sri Lanka's trafficking statute. Rather, the government convicted one trafficker—a decrease compared with 12 in 2013—under a procurement statute that provided lower penalties than the trafficking statute. Measures for victim protection were inadequate, as the government provided no specialized services to male victims, incarcerated sex trafficking victims, and mixed child victims with criminals in state institutions.

In addition, reports of official complicity in trafficking offenses continued. There were allegations police and other officials accepted bribes to permit brothels to operate; some of the brothels exploited trafficking victims. Some recruitment agencies hired subagents who reportedly worked with officials to procure forged or modified documents, or genuine documents with falsified data, to facilitate travel abroad. Despite these reports, the government did not report any investigations, prosecutions, or convictions of government officials complicit in human trafficking offenses.

Continued lack of understanding of trafficking impeded government efforts to identify potential victims, particularly among Sri Lanka's migrant labor force, and adequately investigate the crime. The shortage of High Court judges trained to adjudicate the complex crime of human trafficking contributed to low conviction rates. The government's inability to regulate subagents, who often work for licensed foreign employment agents, contributed to the debt bondage and fraud experienced by some migrant workers, which subsequently increased their vulnerability to human trafficking.

The government of former President Rajapaksa was widely perceived to be extremely corrupt. The current government has embarked on a good governance reform agenda. Indeed, one of the first acts of the new government during its "100 Day" agenda of good governance reform was passage of the Victims Protection Act, which can assist trafficking victims.

Parliamentary elections this month will hopefully sustain this momentum and, if so, improvement in the government's adherence to the rule of law can be anticipated.

The Department continues to regularly engage with the new government on human trafficking. One of the most important outcomes of this engagement was the Ministry of Justice obtaining Cabinet approval in October 2014 for the standard operating procedures for the identification and protection of trafficking victims. In addition, Embassy Colombo has directly engaged to urge the government to formulate a Strategic Action Plan for 2015–17 and ratify the 2000 U.N. Palermo Protocol. The Department also funded a 2014 assessment to ascertain reasons for the low number of identified victims, investigations, prosecutions, and convictions in Sri Lanka. Based upon the assessment's findings and recommendations, the Department will support future training and technical assistance to support members of the Ministry of Justice's national antitrafficking taskforce, representing 14 governmental departments and ministries, in addressing identified gaps to combat human trafficking.

Question. Thailand—our close friend and ally—remains a Tier 3 country. In my meetings with the Thai, they seem to want to make the necessary changes to fix this problem. Where is Thailand falling short? What is preventing them from improving each year? Corruption? Lack of understanding of the issue? Lack of resources?

Answer. The Government of Thailand expressed its commitment to address human trafficking in 2014, but ultimately did not take sufficient action during the reporting period required for tangible progress on the vast human trafficking problem in the country. While the government investigated and prosecuted some cases against corrupt officials involved in trafficking, trafficking-related corruption continued to impede antitrafficking efforts. The numbers of investigations, prosecutions, convictions, and victims identified by the government all decreased in 2014.

The government also did not proactively identify and protect many trafficking victims among fishing workers or irregular migrants. Although senior government officials repeatedly expressed their strong commitment to combat trafficking, the prosecution of journalists and advocates for alleged crimes in relation to their efforts to expose human trafficking, and statements discouraging media reporting on traf-

ficking crimes, undermined some efforts to identify and assist victims and apprehend traffickers.

We are encouraged by efforts by the Royal Thai Government in recent months to fight trafficking in persons, including efforts to create special units within criminal courts to adjudicate trafficking cases and the arrests of dozens possibly involved in human trafficking crimes and other abuses against migrants in southern Thailand. We will continue our strong engagement with the government to encourage tangible progress on these efforts and will assess them in the 2016 Trafficking in Persons Report.

Question. We continue to build partnership capacity with Thailand in a number of different areas. How are we engaging with them on this issue?

Answer. We remain deeply concerned about human trafficking in Thailand, and continue to urge Thai Government officials at all levels to take bold steps to combat trafficking. Through Department engagement, we continue to encourage the Government of Thailand to use its updated legislative framework and whole-of-government approach to expand efforts to prosecute and convict traffickers and proactively and consistently identify and assist labor and sex trafficking victims among vulnerable populations. We also encourage the Thai Government to hold accountable officials who are complicit in trafficking and rigorously investigate and prosecute individuals, including those who commit forced labor abuses on fishing vessels or who commit sex trafficking crimes.

We further engage the Thai Government and civil society organizations through our programming. We have provided the New Life Center Foundation \$240,977 to support vulnerable tribal populations throughout Thailand with human rights, life skills, and vocational training and victims of trafficking with medical and mental health services, interpretation, vocational training, and reintegration assistance.

We have supported the U.N. Office on Drugs and Crime with a grant of \$500,000 to develop a new 50-person Anti-Human Trafficking Center under the Thai Department of Special Investigations, including providing a case management system, standard operating procedures, and training on victim care. We have also provided \$350,000 to the NGO Solidarity Center and its efforts in Thailand to promote access to justice for trafficking victims; punishment of exploitative employers, recruitment agents, and other traffickers; and increased awareness of migrant worker exploitation. Finally, we support the NGO ZOE International with a \$500,000 grant to enhance victim protection in Thailand by improving the quality and range of existing comprehensive services for child trafficking victims and children at risk of being trafficked, with a special focus on migrant populations and tribal communities—especially in northern Thailand.

The Department leverages a broad array of resources beyond those of the Office to Monitor and Combat Trafficking in Persons. For example, the Department's Bureau of Population, Refugees and Migration (PRM) supports a program implemented by the International Organization for Migration (IOM) that helps build the capacity of national and local governments in Thailand and other Southeast Asian countries to address the needs of trafficking victims and other vulnerable migrants. IOM provides training to government officials to strengthen and institutionalize referral networks and protect and support vulnerable migrants; provides legal counseling and support for assisted voluntary returns; trains trafficking shelter staff on case management; and works with relevant ministries to train primary care providers on psychosocial and health problems. In addition to our work directly with the Government of Thailand, we work with international and nongovernmental organizations and civil society groups in the region to help address the causes of human trafficking and play a bigger role in preventing the problem, protecting victims, and convicting traffickers.

RESPONSES OF UNDER SECRETARY SARAH SEWALL TO QUESTIONS
SUBMITTED BY SENATOR MARCO RUBIO

Question. For several years, antitrafficking activists have raised concerns about the politicization of the TIP report—namely that countries are sometimes upgraded undeservedly when it serves other political interests for the U.S. Government. Each time this happens, it sends a strong signal overseas that politics is more important than combating trafficking.

- ◆ How can we ensure that addressing trafficking is a priority in the future and not just seen as being in the way of other U.S. Government priorities?

Answer. The Department evaluates government efforts to combat trafficking based on criteria established under U.S. law—criteria that are independent of polit-

ical developments. The President, Secretary Kerry, and the administration are committed to combating human trafficking, have made it a priority, and have demonstrated this through consistent high-level outreach and dedication of resources. As Secretary Kerry has noted, “the United States is working with our international partners at every level to attack the root causes of trafficking, warn potential victims, put perpetrators behind bars, and empower survivors as they rebuild their lives.” The State Department has dedicated staff working on human trafficking issues in Washington and at U.S. embassies around the world. The State Department has a specialized office, the Office to Monitor and Combat Trafficking in Persons, with staff that work year round to gather information and produce the annual Trafficking in Persons (TIP) Report. This report publicly analyzes the human trafficking problem in 188 countries and territories around the world and government efforts to comply with minimum standards for the elimination of trafficking in persons.

Throughout the year, Department officials and staff encourage foreign governments to implement recommendations outlined in the TIP Report and raise human trafficking issues with foreign officials at senior levels of government. Secretary Kerry personally raises the issue with foreign leaders, as he recently did in Cuba and Malaysia. The State Department offers a variety of training and technical assistance to foreign governments, international organizations, and civil society groups to better address the human trafficking problem. U.S. officials highlight efforts to address human trafficking via public diplomacy initiatives, speeches, and media interviews. As human trafficking is a crime that intersects with a variety of other issues, including law enforcement capacity, corruption, labor rights, and migration, the Department integrates human trafficking priorities into all appropriate forums, with the goal of enhancing and deepening the global response to this crime.

Question. What will be done to rebuild the credibility of the Trafficking in Persons Report given the widely held perception that diplomatic interests unrelated to trafficking led to inflated rankings for some countries?

Answer. Over the past 15 years, the TIP Report has consistently drawn public attention to the problem of modern slavery and foreign government efforts to address it. The report is widely regarded as the gold standard for antitrafficking information. The Department strives to make the report as objective and accurate as possible, documenting the successes and shortcomings of government antitrafficking efforts measured against the minimum standards established under U.S. law. The attention that the report generates demonstrates the impact and importance of addressing this crime and protecting trafficking victims. The Department will continue to use the report to elevate the issue on the global stage, to guide its antitrafficking programming around the world, and to encourage foreign governments to implement recommended improvements in their efforts.

Question. How do we address ambiguities in data, across all tiers, to ensure that countries are ranked consistently based on the same information provided? (For example, from the TIP report, Germany has not provided new data in several years, yet still holds a Tier 1 ranking. They continue to work to combat trafficking, but without hard data, as in the case of Germany, how is ranking countries uniform? To give another example, India remains on Tier 2 and yet also did not provide law enforcement data for the 2014 reporting period.)

Answer. Analysts work year round to gather and evaluate information from U.S. embassies, foreign government officials, nongovernmental and international organizations, and a full array of open sources, as well as from information submitted directly to the Department. Reliable information is hard to collect and verify for a variety of reasons, including the different definitions and laws against which law enforcement data is collected in each country, the challenging environments in which our NGO partners operate, and the difficulty of identifying victims. As a result, assessments contained in the TIP Report are not wholly reliant on any one source and they are focused on the totality of a government’s efforts relative to its own past performance according to standards laid out in the Trafficking Victims Protection Act (TVPA).

The Office to Monitor and Combat Trafficking in Persons works with colleagues at the U.S. embassies overseas and State Department staff in Washington—to include regional and functional bureaus—to draft and edit these assessments. They begin the narrative-writing process by rigorously applying the standards laid out in the TVPA and comparing the facts gathered over the reporting period to the government’s efforts the previous year. The Department leverages its resources to ensure

all applicable data is available for its analysis, but must assign tier rankings based on the information available for the relevant time period.

Question. Worldwide, convictions dropped 23 percent last year from 5,776 to 4,443. With an estimated 21 million victims worldwide, yet fewer than 45,000 victims reported to law enforcement last year and fewer than 4,500 convictions worldwide, it is a crime of very low risk to the traffickers.

- ◆ What is the State Department doing now to work with countries to increase that number in advance of next year's report?

Answer. We continue to be troubled by the low number of trafficking prosecutions, convictions, and victims identified relative to estimated incidence of the crime. Global law enforcement statistics reflect the Department's best estimate of prosecutions and convictions based in large part on data provided by foreign governments. State Department staff work to verify this data through conversations with government officials, media reports, and information provided by nongovernmental sources. Modern slavery is a hidden crime and, for the global effort to combat modern slavery to succeed, we need more data and research about its prevalence and root causes. The hidden nature of this crime directly contributes to the low level of prosecutions and convictions.

Department efforts are robust and multifaceted to address global shortcomings in protecting trafficking victims and prosecuting and convicting traffickers. The Department publicly documents foreign government efforts to identify and protect victims and prosecute and convict traffickers in the annual TIP Report. Department officials engage foreign governments year round to identify the root causes of inadequate victim protection and law enforcement efforts, and urge authorities to take appropriate action to address deficiencies.

The Office to Monitor and Combat Trafficking in Persons also administers foreign assistance to build foreign government's law enforcement and victim protection capacity. For example, we fund several databases with the goal of increasing coordination and learning more about number of victims and prosecutions globally. The International Organization for Migration (IOM) receives support to develop its database to track and analyze global trends in victim assistance, types of trafficking, and other trends in trafficking in persons. We also fund the United Nations Office on Drugs and Crime to continue to strengthen, expand, and disseminate the online Human Trafficking Case Law database.

In addition, Department staff work with civil society and international organizations to build capacity to identify and assist victims. Through public diplomacy efforts, the State Department raises awareness of the problem. Governments are ultimately responsible for holding traffickers accountable and protecting trafficking victims and we will continue to urge all governments to fulfill this responsibility.

Question. In the 2015 TIP report, Cuba was upgraded to Tier 2 Watch List after being a Tier 3 country since 2003. What was your role in the decision to move Cuba from Tier 3 to Tier 2 Watch List in the TIP report?

Answer. The Office to Monitor and Combat Trafficking in Persons lies within the "J" Under Secretariat, and I am personally highly engaged throughout the year on its efforts to combat human trafficking. The TIP Office works with colleagues at U.S. embassies overseas and State Department staff in Washington—both regional and functional bureaus—to draft and edit narratives for 188 countries and territories around the world, including the United States. The TIP officers begin the narrative writing process by rigorously applying the standards laid out in the TVPA and comparing the facts gathered over the reporting period to the government's efforts the previous year. The TIP Office then recommends a ranking and presents that recommendation to the regional bureaus.

In a few cases each year, the analysis is not immediately conclusive as to which tier ranking criteria, as spelled out in the TVPA, a country has met. In such cases, I and other senior Department officials offer assessments of the totality of government efforts measured against the minimum standards, informing the Secretary of State's designations of tier rankings for each country for the reporting period.

In addition to working on the report, over the past year, I have also worked closely with the TIP Office to ensure effective use of their programming funds to help countries implement the recommendations laid out in the report, and worked with embassies and regional offices to coordinate our whole-of-government approach to combating human trafficking. I have raised U.S. concerns directly with officials from several governments to urge them to increase their efforts to combat modern slavery and engaged directly with Ambassadors in countries with critical trafficking issues to guarantee their personal commitment to the issue.

Question. Are you aware of the TIP ranking upgrade being discussed during the administration's recently concluded negotiations with the Cuban Government?

Answer. Cuba's TIP Report tier ranking was never discussed during negotiations with Cuba on the normalization of relations. The Department, however, has been seriously engaged with Cuba on trafficking in persons since 2010. This engagement increased following Cuba's accession to the Palermo Protocol in June 2013. Our serious and sustained engagement has included a digital video conference between experts from both governments in November 2013, J/TIP leadership traveling to Havana in 2014, and a Cuban delegation visiting Washington in March 2015 to discuss trafficking in persons. I raised trafficking in persons with Cuban officials myself on February 27, 2015.

More specifically, engagement with the Cuban Government has included frank, in-depth discussion on the full scope of U.S. Government concerns, including our serious concern about human trafficking of Cubans, to include forced labor, both in Cuba and in other countries. We will continue robust diplomacy with the Cuban Government to encourage its efforts to address trafficking and enact a comprehensive antitrafficking law prohibiting all forms of the crime.

Question. What specific actions did the Cuban Government take during 2014 to justify this upgrade?

Answer. Cuba was upgraded from Tier 3 to Tier 2 Watch List in 2015 because the Government of Cuba made significant efforts to comply with the minimum standards for the elimination of trafficking; but did not yet fully comply. A Tier 2 Watch List ranking clearly indicates there is much room for improvement in the government's antitrafficking efforts; an upgrade to the Watch List does not mean the government is doing enough to address human trafficking.

The Government of Cuba demonstrated sustained efforts to prosecute sex trafficking cases and protect victims of sex trafficking, including by obtaining 13 convictions. The government provided extensive assistance to U.S. federal prosecutors in their investigation of a child sex tourist, leading to a conviction. In addition, the government cooperated with civil society groups on prevention and protection efforts and providing services for victims, including through the Federation of Cuban Women. The Federation received funds from international organizations to run centers that provide psychological treatment, health care, skills training, and assistance finding employment for victims harmed by violence, including sex trafficking. Cuban police continued to operate three facilities for child victims of crime where psychologists led the video recording of testimonies so child victims did not have to appear in court.

The Government of Cuba also demonstrated a commitment to prevention efforts. Authorities maintained an office within the Ministry of Tourism charged with combating sex tourism and decreasing the demand for commercial sex acts. State media produced newspaper articles and television and radio programs to raise public awareness of sex trafficking.

Question. Were any independent NGOs or international organizations consulted for information on Cuba's efforts to combat trafficking? If yes, then who?

Answer. In the case of the 2015 TIP Report, as is customary, Cuba and trafficking experts worked year round to gather and evaluate information from U.S. missions, foreign government officials, nongovernmental and international organizations, and a full array of open sources, as well as information provided directly to the Department. The Department's assessment was not reliant on any one source, as we leverage our resources to ensure all applicable data is available for our analysis. For the safety of the organizations involved and to preserve the relationships we have built with them, we cannot provide the names of specific organizations from which we obtained information this year related to Cuba.

Question. Can you please provide any internal documents detailing the decision to upgrade Cuba from Tier 3 to Tier 2 Watch List?

Answer. State Department officials will not disclose internal Department deliberations, as doing so would undermine the Department's ability to ensure robust and candid internal discussions about countries and tier rankings as they relate to the minimum standards for the elimination of trafficking in persons. Such frank discourse is critical to the integrity of the process that is so vital to combating trafficking in persons.

RESPONSES OF UNDER SECRETARY SARAH SEWALL TO QUESTIONS
SUBMITTED BY SENATOR ROBERT MENENDEZ

Question. When did the State Department first engage with the Cuban Government regarding trafficking in persons?

Answer. The Department has included Cuba in the annual Trafficking in Persons (TIP) Report since 2003, and has for many years raised the issue of trafficking in persons with the Cuban Government. The issue was first officially placed on the agenda of the bilateral talks held in conjunction with the Migration Talks in Havana in February 2010, and has been included on all subsequent agendas for bilateral talks held in connection with regularly scheduled Migration Talks.

Question. Please provide a detailed timeline of engagement with the Cuban Government regarding any exchange of information relevant to assessing Cuba's ranking in the 2015 TIP report.

Answer. Regarding engagement with Cuba on trafficking, beginning in 2010, the Department regularly raised combating trafficking in persons as an official agenda item in bilateral Migration Talks and in other fora. Our engagement with the Government of Cuba intensified following Cuba's accession to the Palermo Protocol in June 2013.

In a positive step toward greater transparency, in October 2013, the Government of Cuba released a 56-page report on Cuban antitrafficking initiatives. This report provided official data on investigations and prosecutions of sex trafficking offenses and convictions of sex traffickers.

Subsequent serious and sustained engagement has included a digital video conference between experts from both governments in November 2013 and officials from both the Office to Monitor and Combat Trafficking in Persons (TIP Office) and the Bureau of Western Hemisphere Affairs (WHA) traveling to Havana in 2014. The Cuban Government released a second annual report on its antitrafficking efforts on November 18, 2014. I raised concerns with Cuban officials in February 2015 about the government's efforts to combat human trafficking.

The Government of Cuba sent a delegation to Washington in March 2015 to discuss trafficking in persons with officials from my office, the TIP Office, and WHA. During in-depth talks, State Department officials discussed Cuba's antitrafficking efforts including concerns about forced labor and the gaps between Cuba's law and the U.N. Palermo Protocol. Representatives of several U.S. government agencies also discussed U.S. domestic efforts to address trafficking and best practices for prosecuting both labor and sex trafficking cases. Members of civil society in the United States discussed human trafficking trends and efforts to prevent it. During the visit, Cuban officials expressed interest in further exchanges of information and in cooperation on joint investigations of human trafficking with links to Cuba and the United States.

Cuba sent two of its government antitrafficking experts to participate in an International Visitors Leadership Program in June 2015. This was the first time any Cuban official participated in this program. Participants learned about U.S. perspectives on the problem and observed how U.S. Government officials and civil society address trafficking in persons.

Most recently, Secretary Kerry raised concerns about human trafficking with the Cuban Foreign Minister.

Regarding Cuba's ranking, Cuba was upgraded from Tier 3 to Tier 2 Watch List in 2015 because the Government of Cuba made significant efforts to comply with the minimum standards for the elimination of trafficking; but did not yet fully comply. A Tier 2 Watch List ranking clearly indicates there is much room for improvement in the government's antitrafficking efforts; an upgrade to the Watch List does not mean the government is doing enough to address human trafficking.

The Government of Cuba demonstrated sustained efforts to prosecute sex trafficking cases and protect victims of sex trafficking, including by obtaining 13 convictions. The government provided extensive assistance to U.S. federal prosecutors in their investigation of a child sex tourist, leading to a conviction. In addition, the government cooperated with civil society groups on prevention and protection efforts and providing services for victims, including through the Federation of Cuban Women. The Federation received funds from international organizations to run centers that provide psychological treatment, health care, skills training, and assistance finding employment for victims harmed by violence, including sex trafficking. Cuban police continued to operate three facilities for child victims of crime where psychologists led the video recording of testimonies so child victims did not have to appear in court.

The Government of Cuba also demonstrated a commitment to prevention efforts. Authorities maintained an office within the Ministry of Tourism charged with combating sex tourism and decreasing the demand for commercial sex acts. State media produced newspaper articles and television and radio programs to raise public awareness of sex trafficking.

Question. What, if any, third-party data was used to assess Cuba's ranking in the 2015 TIP report?

Answer. The Department's Cuba and trafficking experts worked year round to gather and evaluate information from U.S. missions, foreign government officials, nongovernmental and international organizations, a full array of open sources, and other information provided to the Department.

Question. Of the countries we have free trade agreements with, which have shown a sustained improvement in their TIP rankings after entry into force of the relevant free trade agreement?

Answer. Countries' TIP Report tier rankings have varied widely following the entry into force of a trade agreement with the United States.

The existence of a bilateral or regional free trade agreement is not taken into consideration during the annual TIP Report ranking process.

Question. Given reports that the Castro regime takes 70 percent of the wages paid to its doctors and that Cuban doctors were forced to sign their life insurance policies over to the government, did the State Department consult with the WHO about these incidents? What information was provided? Does the State Department consider such activity to be forced labor?

Answer. The issue of forced labor in Cuban foreign work missions has not been addressed adequately by the Cuban Government, and we continue to have concerns about indicators of trafficking in Cuba's medical missions abroad. These indicators include reports of withholding of passports, restrictions on movement, and threats to revoke medical licenses or retaliate against a participant's family members if they leave the medical mission. However, we have no conclusive evidence of systematic abuses or the existence of forced labor in this program.

On April 8, Department staff from relevant bureaus and offices participated in a conference call with U.S. consular officers in Caracas, Brasilia, and Bogota to discuss their experiences with applicants in the Cuba Medical Parole Program. As noted in the TIP Report, these calls revealed some indicators of human trafficking, but did not reveal passport retention to be a consistent practice across all work missions. We also note that some participants in Cuba's foreign work missions state the postings in the program are voluntary and well-paid compared to jobs within Cuba. Furthermore, the January 2013 decision by the Cuban Government to allow most Cuban citizens to travel freely without requiring an "exit permit" means that those professionals serving overseas now have other means to leave Cuba apart from participating in foreign work missions.

We have not had recent discussions with the WHO about how it assesses the Government of Cuba's treatment of Cuban personnel in its overseas medical missions. We will continue, however, to leverage our resources to gather as much verified information as possible, including from the WHO, to assess Cuba's efforts in the 2016 TIP Report. We will also continue to pursue robust diplomacy to engage the Cuban Government on this issue and push for appropriate action.

Question. Please describe the specific actions to combat trafficking in persons taken by the Malaysian Government, broken down by month, from April 1, 2014 to March 31, 2015.

Answer. Throughout the 2015 TIP reporting year, the Government of Malaysia took tangible steps to combat human trafficking pursuant to the indicia mandated by the Trafficking Victims Protection Act (TVPA). Of particular significance, the government more than doubled its trafficking investigations from the previous year—186 as compared to 89 in 2013—and substantially increased prosecutions—54 as compared to 34 in 2013. The Malaysian Government also made significant efforts during the year to amend its existing antitrafficking law in order to reform its flawed victim protection regime. The government continued to disseminate informational brochures on trafficking indicators to law enforcement personnel and to produce public service announcements via radio and television conduits to educate the public.

From March 2014 through March 2015, the Malaysian Government convened four Cabinet-level meetings to address pressing trafficking issues, including amendments to its existing antitrafficking law to reform its flawed victim protection regime. In September 2014, Malaysian officials consulted with civil society stakeholders regard-

ing the proposed legislation. Although introduction of the draft legislation to Parliament was originally anticipated to take place in the fall, in November 2014 the Malaysian Government concluded that it was important that stakeholders be afforded ample opportunity to provide input and, in March 2015, the government formally resumed consultations with civil society regarding the proposed legislation. The Cabinet formally approved the draft legislation on April 3, 2015. (Although not during the reporting period, as expected, the legislation was tabled on April 7 before the lower house of Parliament, debated in May, passed on June 16, 2015, and subsequently passed by the upper house on July 6.)

In addition, in August 2014 the Attorney General's Chambers Prosecutions Division issued a written directive requiring deputy public prosecutors to engage with human trafficking victims at least 2 weeks preceding trial. This directive was intended to ensure that prosecutors familiarize themselves with victims' concerns and address the victims' anxieties to enable them to be compelling witnesses against traffickers. In October 2014, the government's antitrafficking council, MAPO, met with 20 companies in Penang—the heart of the electronics sector—to discuss the importance of combating forced labor. In addition, the Ministry of Home Affairs conducted outreach sessions in Shah Alam and Johor to raise awareness about the illegality of passport retention. During the reporting year, the Malaysian Government convicted and fined one employer for withholding 29 employees' passports—the first case prosecuted since 2012. The Malaysian Government also published 15,000 brochures alerting law enforcement personnel to trafficking indicators, which they disseminated to enforcement agencies during the reporting year.

Question. The 2015 TIP report states that, “[p]rogress on the 2014 pilot project to enable two NGOs to operate a government-owned facility for victims was set aside in favor of pursuing holistic change through legal amendments to Malaysia's Trafficking in Persons Act.”

◆ Why was the Malaysian Government unable or unwilling to persist with this pilot project?

Answer. The Government of Malaysia adopted and worked to implement the pilot project during the reporting year. However, the pilot project was set aside due to a combination of logistical and financial constraints. During the initiation phase, the government discovered that some implementing partners lacked sufficient administrative overhead funding and managerial expertise to implement the project. Of three leading candidates, one NGO decided to withdraw after admitting a lack of capacity to run the shelter. Another capable NGO was concerned about its ability to provide necessary security. The third NGO found the amount of funding available insufficient to run a shelter after paying high overhead costs for administering the grant. For all three leading candidates, the government's subcontractor model for the program notably led to exorbitant administrative costs that reduced the amount of funding available for shelter management. NGOs nonetheless continue to provide targeted support in government-managed shelters, including psychosocial counseling and health services.

Question. What are the specific problems that prevented the Malaysian Government from setting up the pilot project while simultaneously “pursuing holistic change through legal amendments to Malaysia's Trafficking in Persons Act”?

Answer. The Malaysian Government focused its efforts on amending the law to expand the role of NGOs in providing protection and assistance to trafficking victims because of the aforementioned challenges with this pilot project and because this legislative change would have greater impact for trafficking victims. Pursuant to the new amendments, NGOs will be able to operate their own shelters for trafficking victims—an alternative that may better serve the needs of victims and prove more sustainable than the pilot project. The amended laws and ongoing U.S. Government-funded trainings aim to increase the capacity of NGOs in Malaysia to provide broader protection for trafficking victims.

Question. Did the two NGOs in question support the Malaysian Government's decision to set aside the pilot project?

Answer. As noted above, the three leading candidates determined not to participate in the pilot project for the reasons stated. The Department does not have further information about the views of these NGOs regarding the Malaysian Government's decision to set aside the pilot project.

Question. The 2015 TIP report states that the Malaysian Government “adopted a pilot project to allow a limited number of victims to work outside government facilities.” How many victims participated in this pilot program?

Answer. The Malaysian Government adopted the pilot project in cooperation with an international hotel chain to provide temporary employment to some trafficking victims. Four victims were approved to participate in this program and the hotel chain agreed to hire them in December 2014. The Department recently learned that, due to medical concerns, two participants were unable to participate in the initial program, and the remaining two participants chose to depart the country prior to receiving work permits, which take an average of 3 months to obtain.

While the project was ultimately unsuccessful, the effort revealed a number of challenges the Malaysian Government needs to address as it shifts its focus from the pilot project to allowing all trafficking victims to work, as provided for in the new legislation. These challenges include matching victims' skillsets to employer needs, determining who will bear costs of required medical tests, and providing support while victims undergo an approval process to obtain employment.

The insights gleaned from this process will also inform the development of regulations to implement the amendments. In assessing lessons learned from this project, the government now understands that the new law's implementing regulations must address medical treatment for communicable diseases and the length of time required to obtain a work permit for victims. We expect that they will apply these lessons to future efforts. These and other actions, or lack thereof, will be assessed in the coming TIP Report.

Question. When did the pilot program begin operations? When did the first victim participate in the program?

Answer. The Government of Malaysia approved the program, four initial beneficiaries were selected to participate, and the hotel chain agreed to hire them in December 2014. While Malaysia was ultimately unable to successfully implement the pilot project, the effort revealed a number of challenges the Malaysian Government needs to address as it shifts its focus from the pilot project to allowing all trafficking victims to work—something the Department has consistently recommended and that is provided for in the new legislation.

Question. What are the Malaysian Government's plans for expanding participation in the program?

Answer. If implemented, the amendments to the 2007 antitrafficking law will authorize the right to work for all trafficking victims in Malaysia. The partner hotel chain remains open to hiring trafficking victims, and other international hotel brands expressed support in December 2014. The Malaysian Government is currently drafting implementing regulations for the new amendments, including those that will govern how to extend work rights to trafficking victims across the country. The 2014 pilot project identified a number of challenging obstacles to victim employment, which the government is more equipped to address. As the implementation guidelines are developed, Embassy Kuala Lumpur will assist the Malaysian Government—as it did during the 2014 pilot project—to identify willing employers for trafficking victims, and will re-engage private sector partners throughout the hotel industry.

Question. The release of this year's TIP report was the latest in its history. Please account for this delay in terms that could be documented: i.e., if the primary reason for the delay was Secretary Kerry's travel agenda, when was the final version of the report forwarded to him?

Answer. It was very important to the Secretary to be present for the launch event of the TIP Report and celebrate the 2015 TIP Report Heroes. This year's TIP Report was not released in June due to a number of events related to the Secretary's schedule. The Secretary broke his leg in late May, affecting his schedule for the weeks that immediately followed. In addition, the Secretary presided over talks in Austria on the Iran nuclear agreement in June that extended into July.

Question. Malaysia was downgraded to Tier 3 in the 2014 report. Please document the timeline of the steps Malaysia took to respond to the recommendations in that report. Specifically, explain which actions credited to Malaysia for this year's report took place in each of the months between the release of the 2014 report and the 2015 report.

Answer. During the 2015 reporting period, the Malaysian Government took steps to address recommendations made in the 2014 TIP Report. One recommendation was that the Malaysian Government should amend its antitrafficking law to allow trafficking victims to travel, work, and reside outside government facilities, including while under protection orders. From March 2014 through March 2015, the government convened four Cabinet-level meetings to address pressing trafficking issues, inclusive of amendments to its existing antitrafficking law to reform its flawed vic-

tim protection regime. In September 2014 and March 2015, Malaysian officials consulted with civil society stakeholders regarding the proposed legislation, which was formally approved by the Cabinet on April 3, 2015.

The 2014 TIP Report recommended that prosecutors increase their efforts to prepare victims for participation as witnesses in human trafficking trials. During the reporting year, Malaysian officials issued a written directive requiring deputy public prosecutors to engage with trafficking victims at least 2 weeks preceding a trial to familiarize themselves with victims' needs and concerns and mitigate their anxieties related to testifying in judicial proceedings.

Furthermore, the 2014 TIP Report encouraged the government to increase efforts to investigate and prosecute trafficking offenses and convict and punish traffickers. The Malaysian Government more than doubled its trafficking investigations from the previous year—186 as compared to 89 in 2013—and substantially increased its prosecutions—54 as compared to 34 in 2013. Although the government did convict three traffickers, this was a decrease compared to the convictions obtained in the previous year. The 2014 TIP Report also recommended that the government enforce the law that prohibits employers from confiscating passports. During the reporting period, Malaysia convicted and fined an employer for withholding 29 employees' passports.

Throughout the 2015 reporting cycle, the Malaysian Government continued robust antitrafficking training for nearly 700 law enforcement personnel, which included the distribution of 15,000 informational brochures on human trafficking. These efforts responded to the 2014 Report recommendation to increase training for officials on the effective handling of sex and labor trafficking cases.

