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**THE VICTIM IN THE CRIMINAL JUSTICE PROCESS:
A FOCUS ON JUSTICE AND HUMAN RIGHTS**

**2012 OSCE Human Dimension Seminar:
Rule of Law Framework for Combating Trafficking in Human Beings**

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Thank you for inviting me to participate in this important seminar. I am grateful for the opportunity to discuss what I have learned from representing survivors of human trafficking in the U.S. justice system and am eager to hear the experiences of the other participants. We all benefit from OSCE's commitment to this issue. The OSCE and the European Union have been leading the way in combating trafficking in persons and in working to provide victims with effective remedies. But we still have along way to go to protect our most vulnerable populations and to work together across borders to combat the scourge of trafficking in persons.

I work at a private law firm in Washington, DC. I am the co-chair of the firm's Pro Bono practice and head of the Human Rights practice group, where we focus on representing survivors of human rights abuses including human trafficking. The firm also represents claimants in cases involving discrimination based on race and gender, fair wages, and financial fraud. Our clients include state and local governments, particularly state attorneys general, who we represent in investigations in these areas.

I litigated my first trafficking case twelve years ago – and that experience illustrates how far we've come, and how much good public education work has been done by advocates. We lost that case, in part, because at the time, a claim involving international trade in women for sexual slavery seemed novel, ill-defined and the judges seemed quite skeptical. I remember one of the judges on the panel leaning over to the other two and asking, "but don't you read Nick Kristof's columns in the New York Times? This is trafficking." And the others really sort of frowned down at me. I don't think attorneys face that skepticism today, because the Trafficking



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Protocol has become well known, many states have passed anti-trafficking legislation, and the crime of trafficking has become well-defined in a way that our courts have no trouble managing.

We have since then handled several trafficking cases, including those of women in domestic servitude to former diplomats in Washington, DC, and men trafficked into labor at farms in the United States and for US military contractors at a US military base. In some cases we are able to get restitution directly by filing civil suits on behalf of the victims, in others we are working with the authorities in the hopes that the traffickers will be prosecuted.

Although no one now doubts that the individuals we represent are victims of a real crime, the survivors still face significant hurdles, particularly in cases that span national borders.

Based on our experiences, we wanted to make the following four recommendations:

1. It is important to build transnational networks of attorneys and non-governmental organizations to assist victims of trafficking. ODHIR has already begun this effort and it deserves support;
2. More needs to be done to address basic civil procedure hurdles that prevent victims, even when the laws are in place, from being able to bring their traffickers to court;
3. Survivors of trafficking need adequate immigration relief, for themselves and often for their children, so that they can effectively participate in criminal, civil and administrative proceedings; in addition, the victim's immigration status should be inadmissible in civil cases; and
4. Restitution and collecting damages from the perpetrators must be a priority, or the survivors are easily re-victimized because they are broke, in debt, and still suffering. States should enable victims to seek restitution themselves, and provide some incentive for private lawyers to take the cases pro bono.

1. Transnational network

Because trafficking is a transnational crime, it can only be effectively countered by transnational cooperation. We need to build bridges between attorneys and non-governmental organizations in source, transit and destination countries.

Just this last week, I dealt with two cases that provide an example of why this is so important. A typical labor trafficking victim pays enormous up front fees to shady recruiters in his or her source country. Often, when we meet with new clients we find that the client's escape from their trafficker has put their families in dire straights. For example, they may have put their ancestral farm land up as collateral to pay recruiting fees, and now have no way of paying back the fees. Or, as in another case, the victim's home was being foreclosed on by loan sharks. Those are just



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two examples I was trying to deal with last week, but as an American lawyer, I am not an expert in foreclosure law in Thailand, Nepal, Tunisia, or Morocco. It would be good to have a reliable resource to go to or to refer clients to. Unfortunately, these crises arise early in a case, when criminal restitution or a successful civil suit is years and years away, by which time the victim's farm or home will be lost.

Thanks to the network developed by ODIHR, if similar questions arise in OSCE countries, I know where to go to find an answer, or where to refer a victim for assistance.

Networks of colleagues can also assist us as in practical matters such gathering evidence, providing information about local conditions, identifying country experts, and reuniting victims with their families. And we're happy to share our experiences in building cases with attorneys who are just beginning to grapple with these issues. We were delighted to have been invited to a meeting at ODIHR a few weeks ago, where we among other things, learned a great deal about how to litigate before the European Court of Human Rights from experts at the Aire Center and French lawyers who'd handled precedent setting human trafficking cases. This kind of collaboration is invaluable and makes private, pro bono lawyers more likely to be successful in their own cases.

2. Victims are often passed along a daisy chain of recruiters, labor brokers and middlemen in different countries. State laws must impose liability on the whole chain of bad actors and in particular must contain effective provisions making the end user of trafficked labor liable. Otherwise, the defendants can just blame each other and escape liability (indeed, we've got one case where the defendants are suing each other). In particular, state laws should encompass fraud in labor contracting and labor recruiting even when it occurs overseas, if the conduct was intended to bring a victim to the country.

Even when robust laws are in place, procedural obstacles can pose big hurdles. For example, in one of our cases, it took over two years to effect service – service of process to start the lawsuit – on the labor broker in the transit country because the transit country was not a party to the Hague Convention for Service of Process. Cross border discovery can be cumbersome and expensive, and corruption in source and transit countries can make it very difficult to collect admissible evidence. Establishing personal jurisdiction over the labor brokers and middlemen can be difficult as well. Some of these problems are not unique to trafficking cases, but perhaps those who work on these issues can raise these concerns in the appropriate international bodies.

3. Several speakers have discussed the importance of immigration relief. This is obviously crucial for victims. A victim who lives in fear of deportation and is unable to support him or herself through legal work is vulnerable and cannot effectively seek justice. Relief must be accessible, quick, and last longer than the period of trial.

My written statement discusses the US immigration scheme in more detail, but the statistics show that the T-visas and continued presence designations are still under utilized.



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In addition, States should consider making immigration status inadmissible in a civil trial so a defendant can't use a victim's status against him or her.

4. Adequate restitution can be a victim's highest priority. They are motivated to seek work abroad to fund school fees, medical expenses, and meet basic family needs. Many victims of labor trafficking pay huge fees to brokers and recruiters, often taking out loans using their family farms as collateral. Failure to get restitution can devastate their entire family.

U.S. law requires restitution in a criminal case. An additional significant and effective feature of US law permits survivors to file a civil suit on their own to obtain compensation for the harm they suffered. Adequate compensation is crucial for survivors and their families. It can help ensure they are not vulnerable to re-victimization. Adequate compensation should include not only back pay, but compensatory damages and punitive damages so the traffickers do not retain ~~any~~ a financial benefit.