



BEYOND

SURVIVAL

Organizing to End Human Trafficking of Domestic Workers

National Domestic Workers Alliance
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NATIONAL DOMESTIC WORKERS ALLIANCE

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Foreword

Ai-jen Poo, Director
National Domestic Workers Alliance

Most of the first cases of domestic worker abuse that I worked on involved survivors of trafficking. Some of the women were trafficked by global banking executives, others by foreign diplomats. One woman in particular had a profound impact on me in 1999. Her name was "Lily" and she was brought to the United States at the young age of 15 with the promise of decent wages and access to an American education. She spent the next fifteen years living in a quiet suburban neighborhood with the family who trafficked her, cooking, cleaning and helping to raise their three children. However, not only was she not allowed to go to school, she was never paid, her mobility was restricted and her communication with her own family and the outside world was completely cut off. She read a newspaper article about the story of another trafficked domestic worker case that I was working on, and managed to find a way to call our office. We helped her to escape, find legal counsel and rebuild her life. She became an example and inspiration to many other workers who have courageously come forward to seek justice as survivors of trafficking. In the years since, countless women have walked into the doors of organizations like ours, all with similar stories: promises of a better life in the U.S. as a domestic worker that quickly gave way to threats, unpaid wages, endless hours, withheld identity documents and fear and shame.

The sad news is that nearly twenty years later, women are still walking into organizations with hauntingly similar stories. And the mark that their experiences have on them, on their dreams and on their families is indelible. The good news is that many of those same women went on to become leaders in their communities, strengthening the rights of workers like them and setting new norms through amplifying the voices of women who refuse to be victims. One of the most powerful moments of my life was at our 2014 National Domestic Workers Congress, when trafficking survivors took the stage to make an impromptu and timely announcement: they had just rescued another trafficked domestic worker from the Virginia house where she had been laboring, and they had brought her from captivity into the warm embrace of our members. I know from witnessing that moment and many others like it, that survivors themselves must be leaders in ending labor exploitation - there is no other way to make the changes that we need.

Women bear a disproportionate burden of the responsibility of caring for families, and must do that whether they are born into circumstances of great wealth or extreme poverty. For those women who are born into lives with little opportunity, seeking work in the U.S. and leaving their own families behind may offer the only hope that their children don't end up living a life of extreme poverty. The attempt to brake the cycle of poverty on the part of millions of women who migrate abroad for work lends itself to circumstances of extreme abuse and exploitation. We can change that together - everyone has a role in abating that suffering and danger. This report includes clear and simple steps that the U.S. federal government, states, service providers, the media and other countries can take to reduce trafficking and change the situation of trafficked domestic workers. Led by survivors, we can shine a light in the shadows of our economy, and create real pathways out of poverty and extreme vulnerability for the women whose work makes all other work possible.

1 | About NDWA and the Beyond Survival Campaign

The National Domestic Workers Alliance (NDWA) is the nation's leading voice for dignity and fairness for the millions of domestic workers in the United States, most of whom are women.

Founded in 2007, NDWA works for the respect, recognition, and inclusion in labor protections for domestic workers. The alliance is powered by 44 affiliate organizations—plus our first local chapter in Atlanta—of over 10,000 nannies, housekeepers, and caregivers for the elderly in 29 cities and 16 states. NDWA is winning improved working conditions while building a powerful movement rooted in the human rights and dignity of domestic workers, immigrants, women, and their families by:

- Working with a broad range of groups and individuals to change how we value care, women, families, and our communities.
- Developing women of color leaders and investing in grassroots organizations to realize their potential.
- Building powerful state, regional, and national campaigns for concrete change.

Domestic workers care for the things we value the most: our families and our homes. They care for our children, provide essential support for seniors and people with disabilities to live with dignity at home, and perform the home care work that makes all other work possible. They are skilled and caring professionals, but for many years, they have labored in the shadows, and their work has not been valued. These workers deserve respect, dignity and basic labor protections.

In 2013, NDWA launched our Beyond Survival campaign to build survivor leadership and promote a community organizing approach to ending human trafficking. The campaign is guided by member organizations that have a long history of working against human trafficking work: Damayan Migrant Association, Adhikaar, and CASA de Maryland. The campaign seeks to empower survivors of labor trafficking to become agents of change, bring their stories and voices into the main arenas of the trafficking debate that have historically been devoid of any discussion of workers' rights, and develop a vision for transformative change.

We call our campaign "Beyond Survival," as an indication that we are ready to move beyond the narrative of victimization, and towards true transformation and survivor-led advocacy and policy change in the US and around the world.

DOMESTIC WORKERS WHO HAVE SURVIVED HUMAN TRAFFICKING ARE MORE THAN VICTIMS

They are family members, teachers, counselors, artists, dancers, scientists, medical professionals, caregivers, and community leaders. They live at the intersection of many identities, and human trafficking does not define them. As organizers, they can move beyond just survival and into visionary leadership.

SYSTEMIC PROBLEMS REQUIRE SYSTEMIC-LEVEL SOLUTIONS

Human trafficking does not occur in a vacuum, so criminal justice approaches only address one part of the equation. As a society, we must first analyze the impacts of globalization, trade, migration, gender, race, and inequality in order to fully address and prevent human trafficking.

ECONOMIC, LABOR, AND MIGRATION RIGHTS SHOULD BE PRIORITIES

Workers and their families should be protected through economic, labor, and immigration policies that protect human rights. Forced migration, spurred by economic necessity, social and cultural discrimination and gender-based violence puts people at risk for trafficking and exploitation. Alleviating these “push factors” is a critical prevention element that would restore security for families. If and when they do choose to migrate, workers should be allowed to migrate safely and freely change employers.

SELF-DETERMINATION, ORGANIZING, AND SOCIAL SERVICES ARE INTERCONNECTED

In order to be truly survivor-centered, law enforcement and social service programs should emphasize self-determination and choices that help restore dignity. In addition, social service providers should recognize the value of labor organizing and leadership development in the healing process. Building partnerships with community-based organizations is an important step that social service providers can take to help survivors thrive beyond the case management period.

GOVERNMENTS AND EMPLOYERS SHOULD BE HELD ACCOUNTABLE

Diplomatic immunity should not be used to shield traffickers from justice. Governments should uphold international and human labor rights standards, and take action to address power imbalances between domestic workers and social protections. Further, governments should ensure adequate investigations, certification, and services for victims of trafficking and labor, who are frequently undeserved compared to those trafficked for sex.

ONLY A MOVEMENT-BUILDING APPROACH CAN DISMANTLE HUMAN TRAFFICKING

Survivor-led organizing around root causes is the real key to a long-term approach to ending human trafficking. Slavery has been illegal for over 100 years, laws alone fall short. We need a mass movement with survivors and workers in the lead, connected and in solidarity with other people's movements.

2 | SUMMARY & RECOMMENDATIONS

Around the world, an estimated 52 million people are employed as domestic workers, providing services such as child care, cleaning, and elder care, in private homes. In the United States alone, official estimates indicate that about two million people are engaged in such work, but because of the large number of undocumented immigrants involved, the real number is likely much higher.

While there is not yet nationally representative data about trafficking and forced labor in domestic work, there are a number of smaller studies, as well as individual cases, that have shed light on the problem and helped shape an analysis of how and why exploitation manifests.

The main arenas of the trafficking debate have focused on trafficking of sex workers and children. Those who have been trafficked for the purpose of supplying low-cost domestic work are often overlooked. While there is a great deal of overlap between different types of trafficking, the specific forms of labor exploitation associated with domestic worker trafficking deserve more focused attention. This report provides an overview of the problem of domestic worker trafficking. It then draws on the experiences of NDWA and our allies to put forward detailed recommendations for action at multiple levels.

Our overall view is that addressing this issue adequately will require a rights-based framework that tackles root causes and promotes basic immigration and labor rights. Therefore, our recommendations for governments— in the United States and around the world—cover a broad range of agencies and types of actions— from visa reform to more effective investigation of wage violations.

At the same time, we believe that nongovernmental organizations, with workers in the lead, are key to building the power necessary to end trafficking of domestic workers. Our recommendations for service providers and advocacy groups emphasize the need for leadership development among workers and survivors. Because human trafficking is a long-term structural problem, the recommendations in this report are only a first step. We look forward to working with allies inside and outside governments to build on these proposals for undoing the structural barriers to ending domestic worker abuse.

SUMMARY OF RECOMMENDATIONS

Government Accountability

United States Federal Government

Interagency Recommendations

1. Government agencies affiliated with the President's Interagency Task Force on Human Trafficking should collaborate and should provide resources to worker centers and community-based organizations to develop anti-trafficking materials and proposals focused on labor trafficking in general, and domestic work in particular.
2. The new Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws established as part of the President's November 20, 2014 Executive Action on Immigration should include the Department of State (DOS) to ensure that migrant domestic workers and other workers who receive work visas through consular processing are not excluded from collaborative efforts to address low wage immigrant worker exploitation.
3. The Interagency Working Group should recommend that the Department of Homeland Security strengthen USCIS programs to ensure immigrant workers who are undocumented or who have temporary visas and may fall out of status during a dispute with an employer, contractor, or recruiting agent can maintain legal status and work authorization through deferred action, parole in place, or other appropriate measures.
4. In exploitation and trafficking cases where the workers are immigrants (with or without authorization), Immigration and Customs Enforcement (ICE) should not be the primary federal investigating agency because of the inherent conflict between ICE's role in detaining and removing unauthorized immigrants and the overarching priority in these cases of serving immigrant victims of crime.

Department of Homeland Security

5. DHS should end partnerships with local and state law enforcement as these partnerships increase fear of police in low-income worker communities and prevent trafficked workers from seeking help.
6. DHS should train and mandate its agents to request continued presence for suspected victims of human trafficking, and should continue to improve screening procedures so that suspected victims are not arrested, detained, or deported.
7. The DHS's United States Citizenship and Immigration Services (USCIS) U and T visa adjudicators should receive additional and specialized training on victims of labor trafficking and workplace-based crime.

Department of State

8. Department of State (DOS) should improve and fully implement effective pre-departure and post-arrival programs for domestic workers and their employers, and include domestic worker groups.
9. DOS should establish annual in-person monitoring and exit interviews, and include domestic worker groups.
10. DOS should carefully monitor applications to ensure foreign missions are not misclassifying domestic workers under A-2 visas.
11. DOS should ensure meaningful consequences for diplomats and international officials and agencies who defraud or abuse domestic workers, including requesting waivers of immunity and suspending countries and agencies from the ability to bring more workers.

12. DOS should revise the B-1 and J-1 au pair programs to ensure that domestic workers employed in these programs receive similar protections- including the right to contracts and prevailing wages, and stays of removal if the worker pursues a criminal or civil case against an abusive employer.

Department of Labor

13. The Department of Labor (DOL) should consult with worker centers and community based organizations to understand the dynamics of domestic worker trafficking and exploitation, especially as it begins to certify T visas and expanded categories of U visas.
14. DOL should partner with worker centers to increase Wage and Hour Division capacity to investigate and respond to wage and hour violations experienced by domestic workers.

Department of Justice

15. The Department of Justice (DOJ) should prioritize human trafficking cases that domestic workers bring forward. Evidence shows that forced domestic work is likely one of the most prevalent forms of trafficking for labor in the U.S.
16. DOJ prosecutors should always request the restitution available to survivors under the Trafficking Victims Protection Act.

Victim Services Funding

17. Agencies, particularly Health and Human Services (HHS) and DOL, should receive adequate appropriations to provide services
18. Federal funding for victim services should address long-term needs such as housing and employment.
19. Victim services programs should promote collaboration and access to funds by community-based organizations that are well positioned to assist domestic workers.

Federal Legislation

20. Congress should reform temporary work visa programs with more mobility, transparency, oversight, and a pathway to citizenship.
21. Congress should increase the cap on U visas to reflect the actual need.

State Governments

22. State legislatures should pass Domestic Workers' Bills of Rights
23. State Departments of Labor should investigate and certify U and T visas for victims of human trafficking and other serious workplace-based crime.
24. States should improve legal protections for low-income workers, including strong, accessible enforcement mechanisms that allow low-income workers in high-exploitation industries including domestic work to protect their rights and be compensated for employer wrongdoing.

International Governments

25. Governments should ratify and implement the International Labor Organization (ILO) Decent Work for Domestic Workers Convention (C. 189, and its accompanying recommendation (R201) and all relevant ILO Forced Labor instruments (Convention 29, Protocol 29 and its accompanying recommendation (R203) Governments should reform domestic policy with regard to sponsorship systems and domestic worker coverage under labor laws
26. Governments should reform domestic policy with regard to sponsorship systems and domestic worker coverage under labor laws, with particular attention to the freedom of association and right to organize

27. Embassies should partner with ethnic community-based organizations to provide emergency services and resources, and training for staff
28. Given the specific problems faced by domestic workers employed by diplomats are common on a global scale, governments should mandate training and oversight for diplomats and consular officers who employ migrant domestic workers.
29. Through multilateral and bilateral cooperation, reform labor recruitment and employment processes, including eliminating all recruitment fees for workers.
30. Trade agreements should include strong worker protections and include the rights of domestic workers to fair wages and appropriate workplace protections.

Building Power Together

Service Providers

31. Service providers should partner with community-based worker/immigrant rights organizations to enhance capacity and promote self-determination for survivors.
32. Service providers should engage in advocacy as allies alongside survivors and community-based organizations.

Advocacy Organizations and Partners

33. Advocacy organizations should collaborate with workers and survivors in the development of materials and policy proposals.
34. Advocacy organizations should share resources and funding with worker centers and survivor groups to build survivor skills and training to be advocates, and either hire directly or fund local groups to hire survivor organizers.
35. Advocacy organizations should take a comprehensive approach to human trafficking, and address root causes and related issues including immigration reform and labor rights.
36. Advocacy organizations should initiate participatory research with survivor groups, and involve survivors in uncovering problems and solutions that would most benefit survivors and prevent human trafficking and exploitation.
37. Labor unions should recognize and speak out on the prevalence of labor trafficking and train union leaders and members to identify possible trafficking and provide survivors with resources and support.



Our Work Is Valuable, We Will Not Stop!

Fatima Cortesi

My name is Fatima Cortesi, member leader of the Committee of Women Seeking Justice, CASA de Maryland. We are the largest organization across the state fighting for the rights of immigrant workers.

I am from Paraguay and came to the United States on a B-1 visa to work as a domestic worker for a family of diplomats. In Paraguay I met my former employer Pedro, who was visiting my country at the time. He offered me my job, which seemed interesting, and together we met with his wife via Skype who was in the US with the kids. Together we came to an agreement and they sent me the contract. I would work 40 hours a week, Monday to Friday, with minimum pay of \$8.40 an hour, all which seemed very good to me.

Based on the difference of what one would earn in my country, the proposal seemed great to me. He promised that I would be able to study English, which seemed very interesting to me and a good opportunity. Everything seemed very legal and trustworthy because we had a contract signed by both parties.

However, I arrived to a much different reality. I worked 12-16 hours a day, 7 days a week. I never received my pay because they said I couldn't have cash in the house and opening a bank account was very complicated.

They assumed my stay would be short, only a year, and insisted it would be better if they held on to my money for me. This did not seem right to me and I never liked it, but didn't have any other option. I didn't know anyone I could talk to here, and my family in Paraguay couldn't help me. They only paid me \$100 a month, after working for them for 3 months. I almost never left the house. It was where I worked, ate, slept, and did almost everything. I realized I wasn't realizing my dreams of coming to the US, and they were not keeping their end of what they promised me.

It was very difficult to live with them, feeling so controlled. They did not permit me to have friends. My employer told me I didn't have a reason to have a social life because my purpose was to work for them. And I couldn't even use the phone freely, they controlled that too. It was terrible to feel like I didn't have my own life. I felt like an object, not even at the level of the dog, who I shared a bed with.

These are some of the reasons that I decided to be an activist and work towards helping domestic workers know their rights and be able to defend themselves.

We are a multicultural committee made up of domestic workers from all over the world. Our organizing challenges are also some of our strengths—our members speak different languages and come from various cultures. We have various workshops on political themes, self esteem, and others with the shared goal of empowerment. We go out to libraries, parks, bus stops, and in the metro to do outreach. We pass out flyers and inform people about our group and our meetings, and that they can contact us if they need help. Because of immigration status or other reasons, we know that often women who have been abused are afraid. When we meet someone who is in an abusive situation, we first work to build trust. When the person is ready to leave, we make a plan, and as a group, we go the employer's house to help the person leave. We know they cannot force someone to stay. I have met other women in the same situation that I was in. When I hear them speak, the pain and anguish I lived through comes back to me. We work to give them courage to leave without being afraid. It is a difficult but necessary task, and very gratifying for me to provide support to other women who lived what I lived and encourage them to join us.

This is how we fight human trafficking. Each action, no matter how small, and each person who joins, counts, and strengthens our struggle. I dream that one day there will be no more mistreatment or discrimination in the workplace. I would say to women right now who are facing abuse, get to know their rights and don't be afraid to exercise them. We work to raise consciousness in women to develop their sense of self esteem and respect, so that they will be able to stand up for themselves. We are human beings and we deserve respect.

I am grateful that I came across and joined CASA, and for other organizations like ours that are fighting for respect for domestic workers. We will continue our work to empower more women, so that we have more leaders to continue raising our voices. We are fired up to keep growing our movement, piece by piece, day by day. We want to reduce human trafficking, and create a world where domestic worker is recognized as real work, at a national and global level. Our work is valuable, we will not stop!

Fatima Cortessi is a member leader of the Committee of Women Seeking Justice, CASA de Maryland

3

OVERVIEW: Domestic Work & Human Trafficking

Domestic Workers

The International Labor Organization (ILO) estimates that there are at least 52.6 million adult domestic workers in the world, plus another 7 million child domestic workers.¹ The vast majority of domestic workers and caregivers who work in private homes are women.² Of the 232 million migrants in the world, 48% are women— most of whom are migrating for work.³

In the United States, the number of domestic workers and direct caregivers is approximately 2 million.⁴ Though the actual number may be higher: undocumented immigrants may be undercounted due to reluctance to share information with governmental agencies and because of language barriers.⁵ As is reflected internationally, most domestic workers in the U.S. are women.⁶

“Where labor standards are rigorously adhered to, workers are well unionized and labor laws are monitored and enforced— for all workers, indigenous or migrant – the demand for trafficked people and services is likely to be low.”

International Labor Organization

¹ International Labor Organization. 2013. *Domestic workers across the world: Global and regional statistics and the extent of legal protection*. Geneva: ILO. Available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173363.pdf [Accessed 2 January 2015].

² International Labor Organization. “Snapshot ILO In Action: Domestic Workers.” Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_214499.pdf [Accessed 4 January 2015].

³ International Labor Organization. “Labour Migration Facts and Figures.”

⁴ Shierholz, Heidi. 2013. “Low Wages and Scant Benefits Leave Many In-Home Workers Unable to Make Ends Meet.” Washington, DC: Economic Policy Institute. Available at: <http://www.epi.org/publication/in-home-workers/> [Accessed 2 January 2015]

⁵ Burnham, Linda, and Nik Theodore. 2012. *Home Economics: The Invisible and Unregulated World of Domestic Work*. New York: National Domestic Workers Alliance, Center for Urban Economic Development and University of Illinois at Chicago DataCenter

⁶ Shierholz, Heidi. 2013. “Low Wages and Scant Benefits Leave Many In-Home Workers Unable to Make Ends Meet.” Washington, DC: Economic Policy Institute. Available at: <http://www.epi.org/publication/in-home-workers/> [Accessed 2 January 2015].

A 2012 participatory research study by the National Domestic Workers Alliance, Center for Urban Economic Development, University of Illinois Chicago, and Data Center surveyed 2,086 nannies, caregivers, and housecleaners in 14 metropolitan areas.⁷ Some of the study's key findings revealed that the working conditions of domestic workers need serious improvement, before the question of trafficking and exploitation even enter the picture. For example, the results of the survey showed:

- 70 percent are paid less than \$13 an hour.
- 67 percent of live-in workers are paid below the state minimum wage, and the median hourly wage of these workers is \$6.15.
- Less than 2 percent receive retirement or pension benefits from their primary employer.
- 65 percent do not have health insurance, and only 4 percent receive employer-provided insurance.
- 25 percent of live-in workers had responsibilities that prevented them from getting at least five hours of uninterrupted sleep at night during the week prior to being interviewed.
- 30 percent of workers who have a written contract or other agreement report that their employers disregarded at least one of the provisions in the prior 12 months.
- Among workers who are fired from a domestic work job, 23 percent are fired for complaining about working conditions, and 18 percent are fired for protesting violations of their contract or agreement.
- 38 percent of workers suffered from work-related wrist, shoulder, elbow, or hip pain in the past 12 months.
- 31 percent suffered from other soreness and pain in the same period.
- 29 percent of housecleaners suffered from skin irritation; 20 percent had trouble breathing in the prior 12 months.
- Interviews with domestic workers reveal that they often endure verbal, psychological, and physical abuse on the job - without recourse. Domestic workers, who are unprotected by contracts and laws available to other workers, fear employer retaliation.
- 91 percent of workers who encountered problems with their working conditions in the prior 12 months did not complain because they were afraid they would lose their job.
- 85 percent of undocumented immigrants who encountered problems with their working conditions in the prior 12 months did not complain because they feared their immigration status would be used against them.

⁷ Burnham, Linda, and Nik Theodore. 2012. "The survey was conducted in nine languages. Domestic workers from 71 countries were interviewed. The study employed a participatory methodology in which 190 domestic workers and organizers from 34 community organizations collaborated in survey design, the fielding of the survey, and the preliminary analysis of the data."

Forced Labor of Domestic Workers

The ILO estimates that there are nearly 21 million people working in situations of forced labor around the world, including those working in domestic work, construction, agriculture, and commercial sex.⁸ The total illegal profits obtained from the use of forced labor worldwide amount to an estimated \$150.2 billion per year, with nearly \$8 billion generated in domestic work by employers who use threats and coercion to pay workers no or very low wages.⁹

There is no current prevalence estimate of overall forced labor in the United States,¹⁰ however small studies of individual organizations have revealed that when it comes to trafficking for labor, domestic work is often the leading sector. In last year's groundbreaking Urban Institute study of labor trafficking in the United States, domestic workers made up the largest proportion (37%) of the 122 cases they reviewed.¹¹ In a 2013 report spotlighting 150 cases of human trafficking, New York City legal services organization City Bar Justice Center showed that of their labor trafficking clients, 79.3% were domestic workers.¹² And, "as of August 2014, the National Human Trafficking Resource Center (NHTRC) [operators of the national hotline] received reports of 851 potential cases of labor trafficking involving domestic work, making it the most frequently reported type of labor trafficking and representing more than a quarter of all labor trafficking cases reported to the NHTRC."¹³

⁸ International Labour Organization, "Forced Labour, Human Trafficking and Slavery." Available at: <http://www.ilo.org/global/topics/forced-labour/lang-en/index.htm> [Accessed 2 January 2015].

⁹ International Labor Organization. 2014. *Profits and Poverty: The economics of forced labour*. Geneva: ILO. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf [Accessed 2 January 2015].

¹⁰ For a discussion of prevalence estimates in the U.S., particularly the problem of the "Woozle Effect" in Human Trafficking Research, see: Weiner, Neil A. and Nicole Hala (2008). *Measuring Human Trafficking: Lessons from New York City*. Vera Institute of Justice. The authors describe how under pressure to produce "evidence" for lawmakers, advocates used and recycled prevalence estimates that were not thoroughly documented and sourced, that were not generalizable, that had qualifications that were omitted in reproductions. When these reports are cited over and over again, the authors noted, they gain status of "an unqualified, generalizable truth." Further:

"[The authors] reviewed literature published from 1990 through 2006 and flagged estimates of trafficking prevalence...The final sample of cited figures featured 114 prevalence estimates, which appeared in 45 different publications...Only a single prevalence estimate was the product of the authors' own documented research. That is, only one publication out of the 45 reviewed was an "original study," the 2004 report, Hidden Slaves: Forced Labor in the United States, by the Human Rights Center at the University of California-Berkeley. The study relied on a survey of 49 service providers, eight case studies and an analysis of 131 incidents reported in the U.S. media for its prevalence estimate of "forced labor" in the U.S., which is defined similarly to sex and labor trafficking. The pie chart below categorizes the cited sources for the remaining 113 prevalence estimates contained in 44 publications, excluding the one original study. Starting at the upper right and moving clockwise, the pie chart shows that 14 percent (segment 1) of the 113 estimates appeared without source citations. Another 15 percent (segment 2) cited only the name of the source agency, often citing only "U.S. authorities" or the "U.S. government," and 16 percent (segment 3) provided the source agency name and date but lacked full reference information. By far, the most frequently cited sources, at 40% (segment 4), were U.S. government reports, usually the latest TIP reports. An early monograph by Amy O'Neill Richard, published by the Center for the Study of Intelligence, which relied on CIA data, was the second most frequently cited source, at five percent (segment 5).

¹¹ Owens, Colleen, and Meredith Dank, et al. 2014. *Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States*. New York: Urban Institute and Northeastern University.

¹² Tomatore, Suzanne and Laura Matthews-Jolly. December 2013. *Spotlight on 150 Human Trafficking Cases*. New York: City Bar Justice Center. Available at: <http://www2.nycbar.org/citybarjusticecenter/images/stories/pdfs/cbjc-iwc-human-trafficking.pdf> [Accessed 10 January 2015].

¹³ See Agatha Tan's essay in this report

Domestic Workers and the National Human Trafficking Resource Center

Agatha Schmaedick Tan

It's 1:15 AM on a Thursday morning when the phone rings at the National Human Trafficking Resource Center (NHTRC) hotline. The caller speaks in a hushed tone; her voice almost a whisper. She is speaking softly because she doesn't want anyone on her end to know that she is calling this number. The caller, Maria¹⁴, is a live-in housekeeper and nanny, working somewhere in the Washington, DC area. She doesn't want to identify herself more, or her employers, because she is afraid—afraid that her employers will act on their threats of physical harm or deportation. The NHTRC Call Specialist reassures Maria that she does not have to share anything that she does not feel comfortable with, and that all of the information will be kept strictly confidential unless she gives permission to share it with others. Maria speaks some English, but she asks if she can continue in Tagalog. The Call Specialist quickly gets a Tagalog interpreter on the phone.



Maria explains that she's been wanting to call the hotline for quite a while (she got the number from a pamphlet given to her at the U.S. Consulate in Manila when she got her work visa), but that she works every day from 6AM until 12 or 1AM. She often collapses from exhaustion before she can make any phone calls. Maria states that she has been working with this family for a little over a year. When she first arrived things were okay, but the situation rapidly deteriorated. Her hours of work keep getting longer, and her employers have stopped paying her directly. Her employers have explained that she will be paid when it's time for her to go home; until then, they will hold on to her wages because it's "safer that way." This is the same explanation they gave Maria for taking her

passport away. Maria has had to beg her employers to wire money to her family in the Philippines a few times, explaining that her family is greatly indebted due to the fees she paid her recruiter and the costs associated with processing her passport and visa. Maria reports that she is not allowed to go out of the house unaccompanied by a member of her employer's household.

¹⁴ This story represents a mosaic of stories from the hundreds of domestic workers who have called the NHTRC, thus does not disclose the details of any one, particular caller. All names of persons have been changed to protect the anonymity of our callers.

Since opening its doors in 2007, the NHTRC—operated by the non-governmental organization, Polaris—has received hundreds of calls from domestic workers like Maria.¹⁵ As of August 2014, the NHTRC received reports of 851 potential cases of labor trafficking involving domestic work, making it the most frequently reported type of labor trafficking and representing more than a quarter of all labor trafficking cases reported to the NHTRC. Like Maria’s situation, the majority of these calls involved high indicators of trafficking such as employers withholding passports and wages, outstanding debts to recruiters and others, fear of physical harm if one attempted to leave, and severely limited freedom of movement. These cases involved domestic workers whose jobs involved elder care, child care, cooking, and housekeeping. The vast majority of the callers are adult, foreign national women who are in the U.S. legally on one type of a work visa or another (e.g. A-3, G-5, B-1, and J-1).

After speaking for awhile, Maria agreed to give the Call Specialist her phone number. Maria was not ready to leave her abusive employers yet, but she wanted to speak with an attorney who could help explain her rights and options in the U.S. as a foreign domestic worker. The Call Specialist mentioned a few pro bono attorneys in her area who had experience helping people like her, and Maria gave her consent to have her contact information shared with them. A few weeks later, the NHTRC staff member followed up with the attorney referred to Maria. In the following weeks, Maria continued to contact the hotline to share further developments and ask advice.

When Maria decided she was ready to leave her traffickers, she did not want law enforcement involved. So, she worked closely with a NHTRC recommended local service provider and her attorney to develop a safe exit plan. They came to her house and supported her as she bravely gathered her few belongings and walked out the door. Today, with the assistance of a case manager, Maria is learning English, gaining new job skills, and actively rebuilding her life anew.

Agatha Schmaedick Tan is the Senior Advisor on Labor Trafficking at Polaris

¹⁵ People can receive help, report a tip, or request referrals, by calling the National Human Trafficking Resource Center at 1-888-373-7888 or by sending a text to Polaris at BeFree (233733). The NHTRC does not share personally identifying information to any external agency, including law enforcement, service providers, and government agencies without the explicit permission of the caller.

DEFINITIONS

The *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children*, often referred to as the Palermo Protocol, was passed in the General Assembly in 2000. The Protocol supplemented the UN Convention against National Organized Crime, and strongly mirrors the US definition in that it includes using force, fraud, and coercion for the purpose of exploitation in both labor and sex.¹⁶

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;”

The United States Trafficking Victims Protection Act of 2000¹⁷ defines “severe forms of trafficking in persons” as

- (a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person is induced to perform such an act has not attained 18 years of age; or
- (b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.

The mention of “severe” is somewhat misleading because the law doesn’t define a “non-severe” form. This is only one of the challenges facing law enforcement and service providers who are trying to identify human trafficking— others include understanding the distinction between smuggling and trafficking, prostitution and trafficking, and in some cases, the very concept of trafficking for traditional forms of labor (vs. sex) at all.¹⁸ Thus when the victim is an immigrant domestic worker trafficked for labor in a private home, the deck is stacked against her if she’s relying on mainstream outreach and policing at the local level.

¹⁶ For an excellent discussion of shifting definitions and terminology in both the US and global policymaking worlds, see Janie Chuang “Exploitation Creep and the Unmaking of Human Trafficking Law.” *American Journal of International Law*, volume 108, number 4 (2014, Forthcoming).

¹⁷ P.L. 106-386

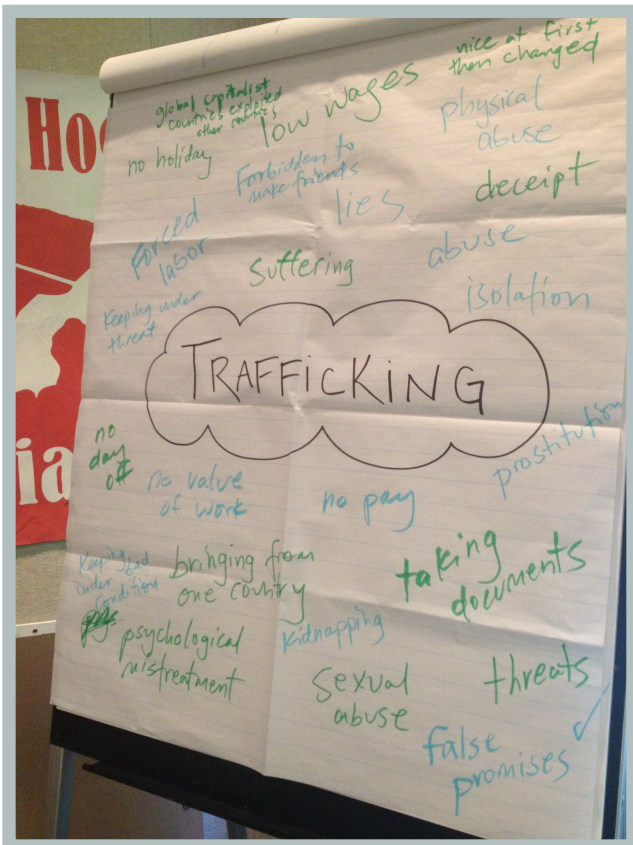
¹⁸ Newton, Phyllis J., Timothy M. Mulcahy, and Susan E. Martin. 2008. *Finding Victims of Human Trafficking*. Final report to the National Institute of Justice, grant number 2007-VT-BX-0001, October 2008, NCJ 224393.

There are many forms and faces of modern slavery, from workers forced to labor without wages to men and women trafficked for sex. It is clear that we need a broad, inclusive approach to policymaking that works to prevent every person from becoming a trafficking victim, and helps every survivor of this horrific crime to fully recover their lives. If our view, our approach is too narrow, we risk creating a hierarchy of victims, and that should not be acceptable.

Melysa Sperber, ATEST

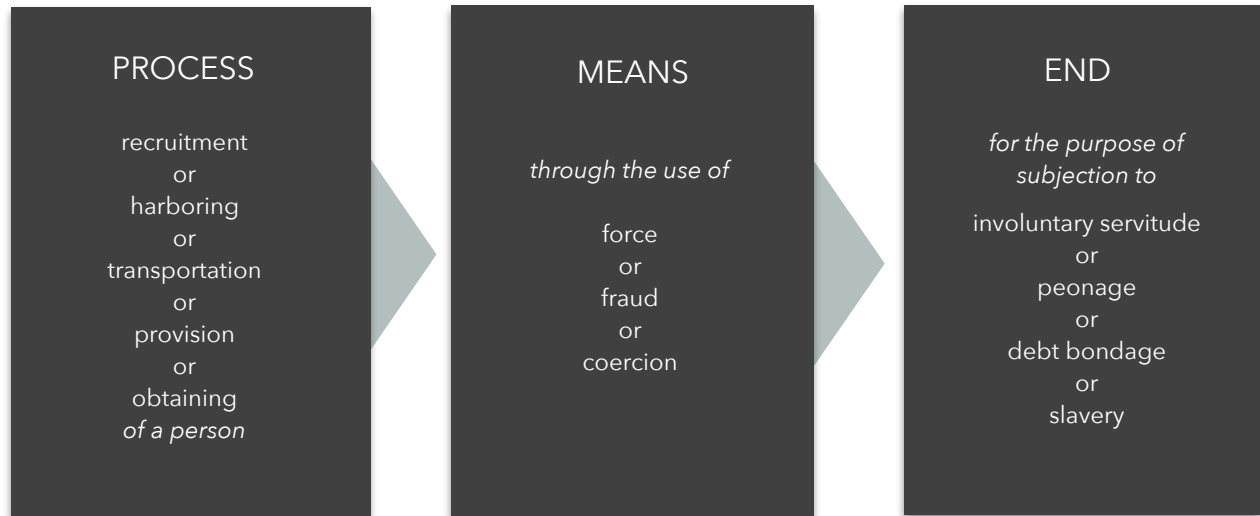
Because the Beyond Survival Campaign (BSC) is focused on the human trafficking and labor exploitation of domestic workers, for the purposes of our report we will mainly refer to human trafficking for the purpose of forced labor (part (b) of the definition). However, even when the trafficking itself does not involve commercial sex acts, many labor trafficked workers face sexual harassment and assault in the workplace. Separating sex and labor within trafficking may obscure how much the two have in common. For this reason, BSC works with other organizations in the anti-trafficking community that focus on different populations, including those who work with survivors trafficked for sex, to ensure that Congress and the media take an inclusive approach to human trafficking. This means recognizing the needs and concerns of all who are affected by human trafficking, regardless of age, gender, or type of work, and does not unnecessarily elevate the importance or urgency of one form at the expense of another.

Furthermore, NDWA believes that survivors of exploitation who do not fit into the official definitions of human trafficking deserve protections. Our framework views human trafficking as only the endpoint on a continuum, with labor rights, immigration rights, and gender equality as essential parts of a long-term approach to ending it.



BREAKING DOWN THE TVPA DEFINITION

The Freedom Network Training Institute, which provides basic and advanced human trafficking training to service providers and law enforcement in the US, helps trainees understand the definition by dividing up the TVPA definition trafficking for labor (part b) into three basic parts.



EXAMPLES OF FORCE, FRAUD, AND COERCION

FORCE

Elma Manliguez, a live-in worker brought to the U.S. by her employers, was required to work from 4:30 am to 10:30 pm, seven days a week, doing housecleaning, taking care of three young children, cooking household meals and doing yard work. She was not allowed to eat at the kitchen table and was only permitted to eat one meal a day, and was never paid money directly and so had no resources. Her employers kept her locked inside the home where she worked. She was not allowed to go to church or communicate with her mother or other family members. The father hit and humiliated Ms. Manliguez, and his son began to do the same.¹⁹

¹⁹ Manliguez v. Joseph, 226 F. Supp. 2d 377, 2002 U.S. Dist. LEXIS 15277, 148 Lab. Cas. (CCH) P34,700, 8 Wage & Hour Cas. 2d (BNA) 136 (E.D.N.Y. 2002)

FRAUD

Bolivian worker Virginia Carazani accompanied her employer Emma Zegarra, a World Bank employee, to the U.S. To convince Ms. Carazani to come to the U.S., Zegarra executed a signed contract with Ms. Carazani, promising that Ms. Carazani would work in the U.S. for two years, would work a 40 hour a week schedule, would be paid at least minimum wage, would be compensated for overtime, would get sick leave and days of rest, and would have free health insurance, food, and lodging.

Once Ms. Carazani arrived in the U.S., her employer took her passport and told her she would not be paid as promised in the contract. Instead, Ms. Carazani had to work 66-75 hours a week, seven days for three years, with only four days of rest total during this three-year period. Ms. Carazani was first told she would be paid half of what she had been promised, but ultimately was only paid the \$8.50 total necessary to keep her bank account open - a requirement imposed by the World Bank. Ms. Carazani's health suffered as a result of these conditions, and she incurred medical debts when she went to the hospital - debts she thought had been covered by her guaranteed medical insurance. Her employer never got insurance for her, and Ms. Carazani had to pay for her medical care using money borrowed from family members in Bolivia, since she was not being paid. Ultimately, employer Zegarra let Ms. Carazani's visa lapse due to Zegarra's failure to pay employment taxes, converting Ms. Carazani to undocumented status and increasing her dependence on Zegarra. Zegarra threatened Ms. Carazani with deportation if Ms. Carazani did not continue to work for free, and told Ms. Carazani that she had installed listening devices so she would know if Ms. Carazani told anyone that she was not being paid.²⁰

COERCION

A domestic worker was recruited in Sudan when she was 14 years old to act as a housecleaner, nanny and caregiver for officials at the Sudanese Embassy in Washington, D.C. She was promised minimum wage and the opportunity to return home to Sudan. Instead, her employers confiscated her passport, told her not to leave their house, and threatened her with being kidnapped or arrested if she left on her own. They allowed her almost no contact with her family in Sudan and no contact with local relatives, and prohibited her from learning English. She was paid \$3.33 - \$6.66 a day and worked seven days a week without days of rest or time off for illness. She acted as housecleaner for the entire family, nanny to two minor children, and homecare provider to two adult children with disabilities, and was also expected to provide cleaning and childcare for the family's guests. She was held under these conditions for 19 years.²¹

²⁰ Carazani v. Zegarra, 972 F. Supp. 2d 1, 2013 U.S. Dist. LEXIS 93752, 2013 WL 5303492

²¹ Doe v. Siddig, 810 F. Supp. 2d 127, 2011 U.S. Dist. LEXIS 104227 (D.D.C. 2011)

Says she was 'slave'



Maid sues Qns. exec over bad pay, abuse

By JOHN MARZULLI
DALE NEWS STAFF WRITER

An immigrant domestic worker charges she was "treated like a slave" by a Merrill Lynch executive, who kept her prisoner in his Queens home where she suffered constant verbal abuse and was fed table scraps.

Filipino-born Elma Manliguez says she was paid the equivalent of 6 cents an hour over the two years she worked for Martin Joseph and his wife, Somanti. In a lawsuit filed against the couple, Manliguez also complained she was forced to take meals on the kitchen floor, was often told she was "stupid" and was denied basic necessities like sanitary napkins.

"I can't forget how I suffered," Manliguez, 41, told the Daily News yesterday. "There is still pain in my heart. He treated me like an animal. I know somebody will be punished by God, not by me."

On Friday, Brooklyn Federal Judge Nicholas Garaufis rejected an attempt by the Josephs to have the suit dismissed.

The judge ruled that the former housekeeper and nanny can pursue her civil-rights case based on 19th century laws outlawing slavery.

"These allegations describe acts of barbarism and unrelenting mental brutality reminiscent of the Gulag, memorialized by Aleksandr Solzhenitsyn in his novel entitled 'One Day in the Life of Ivan Denisovich,'" the judge said.

But Manliguez's former bosses call her modern tale of slavery a work of fiction by an ungrateful employee.

Met in Malaysia

The Josephs' attorney, Andrew Campanelli, denied the allegations and released photographs that show a smiling Manliguez at various family celebrations.

He said pictures that show Manliguez gaining weight during her so-called enslavement contradicted claims she was forced to live on leftovers.

"I am quite certain these charges will be disproved," Campanelli said.

Manliguez's complaint, first filed last year in Brooklyn Federal Court, seeks unspecified monetary damages.

The grim details got the attention of the Manhattan-based Filipino Workers Center and New York University's Immi-

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The Washington Post

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MARYLAND

2 Women Allege Enslavement By Kenyan Embassy Employee

By RUBEN CASTANEDA
Washington Post Staff Writer

Two Kenyan women who were brought to the United States to work as nannies and domestic workers for an employee of the Kenyan Embassy have filed a federal lawsuit alleging that they were essentially kept as slaves, working round-the-clock and never once being paid.

The alleged mistreatment of the two women—Alice Benio, 28, and



By ROBERT A. REEDER—THE WASHINGTON POST

Chumo, 22, allege they were not allowed to leave George's County home and were not paid.

REGION

FOR BREAKING LOCAL NEWS, VISIT DCEXAMINER.COM

NEWSMAKERS

BRIAN LAMB

The man who reinvented the way Americans view their politics says he's out of ideas. Lamb founded cable network C-SPAN 30 years ago, but told an audience in California last week that he's fumbled about the direction TV news will take next. "I have no idea where it's going," he said in remarks published by TV Week. "I love where it was going 30 years ago." Lamb says he sure that the Internet will dominate broadcast news, but he's not sure how. Network news is in even bigger trouble, Lamb said. "Frankly, if you look at what's happening to their ratings, you just don't want to be them. Young people just aren't going there."

RYNARD S. KINGTON

The acting director of the National Institutes of Health, finds his agency embroiled in a patent lawsuit filed by two University of Kansas researchers. Val Silebi and Wanda Waugh claim they've been cheated out of credit for developing Valsce, a drug used to treat multiple myeloma, a type of cancer. NIH officials haven't commented on the lawsuit yet.

CHRISTOPHER COX

The chairman of the Securities and Exchange Commission will host an international conference call today. Cox wants to talk to regulators around the globe about ways to regulate short selling. It's been a rough few months for Cox: Not only is the economy sliding into a recession, but he has been facing the prospect of unemployment since before the election, when Republican nominee John McCain vowed to sack him. His term officially ends in June 2005.

HEART OF THE CITY



SO OTHERS MIGHT EAT
So Others Might Eat, a nonprofit that provides food, clothing and health care to the poor and homeless of the District, will host its 7th Annual Thanksgiving Day Trot for Hunger on Thursday morning in West Potomac Park. The 5K fun run and walk will begin at 8:30 a.m. and cost \$23 per registrant. All funds raised will benefit SOME's programs for the homeless. Mayor Adrian Fenty will be among those participating, and official ChronoTrack race timing will be available to all participants. To register, go online to some.org/en_eve_trot.html.

TODAY'S TOP STORY » FALLS CHURCH

Forced labor operation busted



Between 7 to 11 women are said to have been held at a time by Sorjapada Labis, who listed this home in Falls Church as his residence.

Man allegedly confiscated the women's passports and threatened to kill their families if they left

By Freeman Klopott
Dale News Staff Writer

For the past seven years, federal authorities say, a Falls Church man forced almost a dozen female illegal immigrants from Indonesia into a form of slavery, selling their services as housekeepers to Montgomery County families.

Sorjapada Labis has been charged with conspiracy to harbor illegal immigrants. He has been released on bail and ordered to stay at his Roseville Avenue home with his wife and children.

It's in that home, a federal agent said in a sworn statement, that Labis kept between seven and 11 women at a time, sometimes sleeping two to a bed. He allegedly held the women's passports, and threatened to kill their families in Indonesia and alert immigration officials if they left him, the statement said in summarizing an interview with one of the women the agent compared her response, based on his training and experience, to that of "victims of human trafficking."

The women were charged between \$300 and \$350 a month, plus other expenses, to live in the one-story home on weekends. Labis, or an unnamed relative, would drive the women to households in places like Potomac, where they worked and lived during the week, the statement said.

Investigators say some of the women had come to the United States legally, but fell into Labis' clutches after they overstayed their visas, or were persuaded by his offers of financial rewards to leave their original employers and violate their visas, the statement said.



Human trafficking

By the numbers:

Internationally: 600,000-800,000 people annually; 70 percent female, 50 percent children.

United States: 14,500-17,500 foreign nationals annually; 5,000-7,000 from East Asia and the Pacific; Latin America, Europe and Eurasia contribute 5,000-7,000 victims each.

(SOURCE: U.S. DEPARTMENT OF JUSTICE)

Andra Powell, executive director of the Washington-based anti-human trafficking FAIR Fund, said Labis' alleged threats against the women go beyond harboring and enter the territory of human trafficking, a form of slavery.

There are thousands of women who are trafficked every year in the United States. The majority of trafficked women are found in the sex slave trade, but in the Washington region, experts say foreign diplomats, and others, are known to lure illegal immigrant domestic help and then trap them through devious means.

Earlier this year, the Montgomery County Council passed a law enabling houseworkers to form contracts with their employers as protection against human traffickers.

County Councilman Mark Eldridge played a key role in passing the contract law. He said Labis' case "shocked" him. "I've heard about individuals taking advantage of one worker at a time... But this goes way beyond that," Eldridge said.

Over the past eight years, the State and Justice departments have heightened their focus on combating human trafficking, a wide-reaching term that includes the sex slave

Special visas available to illegals who aid investigation

By Freeman Klopott
Dale News Staff Writer

Federal authorities won't say what will happen to the illegal immigrant women who aided the investigation into Sorjapada Labis, but under federal law, they could receive a special visa allowing them to live in the United States legally.

First signed in 2000, the Trafficking Victims Protection Act allows victims of human trafficking who help federal authorities prosecute the perpetrators to obtain a T visa.

The visa allows the victims to live in the United States for three years and provides a path to citizenship. Each year, the government makes 5,000 available, although only a few more than 1,000 have been granted.

To qualify for the visa, the victims must meet four requirements:

- 1) Be a victim of a severe form of trafficking.
- 2) Be physically present on account of the trafficking.
- 3) Cooperate with law enforcement and comply with any reasonable requests if returned to their country.
- 4) Establish that they would be under excessive hardship if returned to their country.

But, Daria Fisher Page, a staff attorney at Fairhills Justice Center, a Falls Church group that fights for trafficked victims' rights, said "trafficking" doesn't necessarily mean victims were physically moved across a border by their captors. The victim just has to be in the United States because they were recently released from a trafficking situation.

That may apply to the women identified as informants in the Labis investigation, she said.

If it's ruled they were trafficked as a result of Labis' threats against them, as some experts said is possible, then the women, who arrived in the United States legally, would have overstayed their welcome as a result of trafficking.

And if that's the case, they may be able to make the United States their permanent home by obtaining T visas.

fklopott@dcexaminer.com

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Benjo said she was told that she was brought into the United States by Belsol to replace Chumo, but Chumo had not been told that she was being let go.

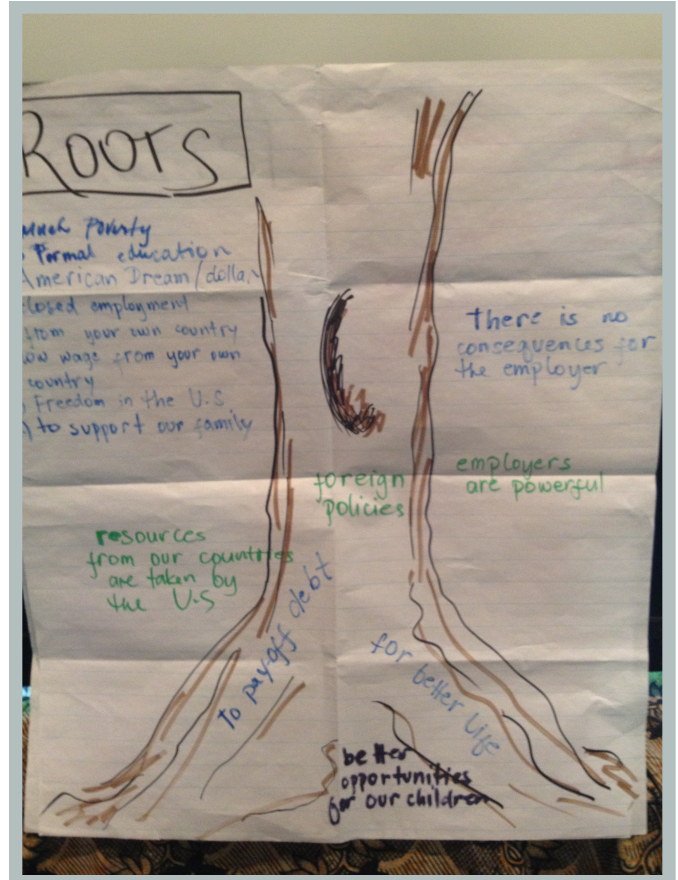
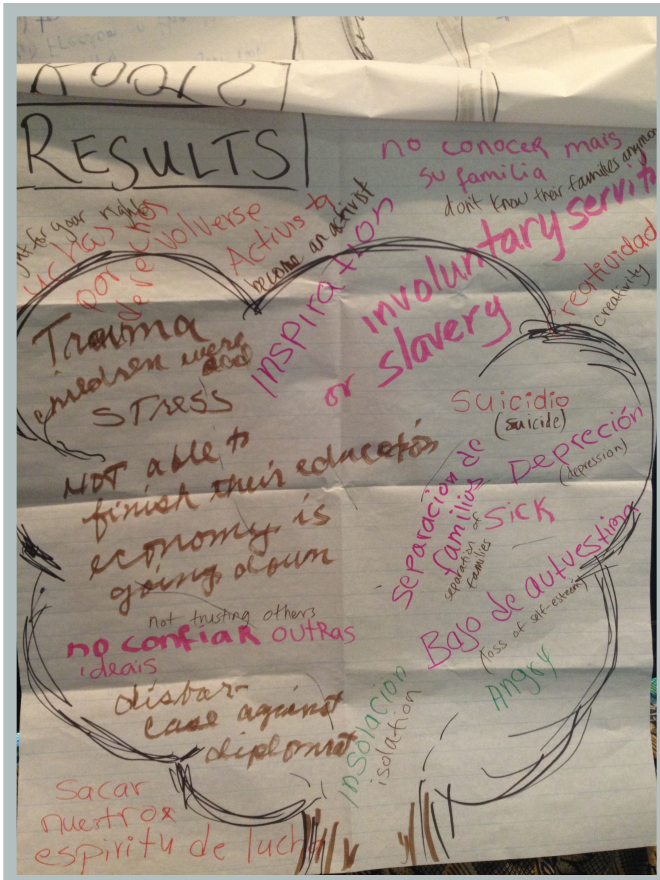
Leavy, who has volunteered his legal expertise on behalf of abused immigrants, said he learned of Benjo and Chumo from a member of the local Kenyan community.

In early September, Leavy went to Belsol's home in Bowie to ask the women if they wanted to leave. Leavy said he took Benjo, who was suffering from back pain, to Holy Cross Hospital in Silver Spring, where she was treated for severe strain. Meanwhile, Chumo stayed at the home to care for the children, Leavy said.

When he returned, Belsol's sister and an unidentified man barred him from talking to Chu-

TRAFFICKING SCREENING QUESTIONS FOR ORGANIZER AND SERVICE PROVIDERS

- How did the worker find out about the job?
- How did she arrive to the work location?
- Were the job duties what she was promised?
- What were her sleeping and eating conditions?
- Was she allowed to take breaks?
- How much was she paid? Is this what she was promised?
- Was she allowed to see a doctor if she was sick?
- Was she able to contact her family and friends freely?
- Does she owe a debt to anyone that she feels she must work to pay off?
- Is she afraid to quit or leave for any reason?



"Roots and Results" exercise led by Damayan Migrant Workers at Beyond Survival Retreat in 2012

EXAMPLE OUTREACH AND IDENTIFICATION TOOLS



IDENTIFYING CASES OF LABOR TRAFFICKING

Questions to Ask When Doing Case Intake

Human trafficking is a modern-day form of slavery, widespread throughout the United States, especially in Houston. Trafficking of humans is the second largest criminal industry in the world after drug dealing, and is the fastest growing. Many victims of trafficking are made to engage in prostitution, pornography, or exotic dancing. But trafficking also occurs in forms of labor exploitation, such as domestic servitude or restaurant work, sweatshop factory work, or migrant agricultural work. Force, fraud, and coercion are the main methods used by traffickers to press victims into lives of servitude and abuse.

Human trafficking is the extreme end of the continuum of labor rights abuses. Even if a worker does not qualify as a human trafficking victim under the legal definition, cases of extreme abuse need to be handled with precaution and care and may require coordination with other agencies/authorities.

HOW TO USE THIS CHECKLIST:

The following questions are divided up into different aspects of a worker's situation that could show signs of labor trafficking. If a worker's situation answers "yes" to multiple questions in any or all of the sections, it is likely to be a case of labor trafficking. In such a case, notify the director of the Worker Center and call the **Trafficking Information and Referral Hotline at 1.888.3737.888** or **Houston Rescue and Restore at 713.874.0290**.

FREEDOM

- Did someone else organize or force the worker's migration?
- Is the worker accompanied by someone controlling them or not letting them speak?
- Is the worker rarely allowed in public?
- Can the worker leave their job or situation if they choose to?
- Does the worker have to ask permission to eat, sleep, or go to the bathroom?
- Does someone prohibit the worker from socializing or attending religious services?

THREATS/ABUSE

- Is the worker afraid of his/her employer? Does the worker seem submissive or fearful?
- Can you detect any type of abuse, such as physical, psychological, verbal, or sexual abuse? Signs of these kinds of abuses could include scars, bruises, timidity, fearfulness, or any signs of discomfort when discussing the case.
- Has the worker ever been threatened if they tried to leave?
- Has the worker's family ever been threatened?
- Was the worker made a promise upon beginning work that has not been fulfilled, such as promises

Continued on back of page



IDENTIFYING CASES OF LABOR TRAFFICKING

Questions to Ask When Doing Case Intake

HOUSING

- Does the worker's employer also provide housing? Does the worker live and work at the same place?
- Does the worker describe extremely poor living/working conditions?
- Does the worker describe his residence/business as containing any kind of surveillance, guards, locked gates or doors to keep workers in? Are the door and windows of the worker's residence blocked?

WORK/PAY

- Does the worker receive a salary for his labor? Is the worker paid the minimum wage?
- Does the worker work an excessive amount of hours with little rest or breaks?
- Does the worker owe money to his employer that he's been working to "pay off"?

ACCESS TO DOCUMENTATION/MONEY

- Is someone else collecting the worker's pay or holding their money for "safe keeping"?
- Does the worker lack identification/documentation or is someone else in control of said documents?
- Was the worker provided with false documents of identification?
- Does the worker have access to his/her own money?

Challenges in Identification

In addition to the challenge around the word “severe” in the definition of trafficking, which can cause first responders and others to wonder subjectively whether any given situation is “severe,” there is still confusion about what force, fraud, and coercion might mean. While *force* may be obvious and have physical signs, and *fraud* may be discerned by looking at records and asking questions about what was promised, *coercion* can take many subtle forms. The TVPA allows for a broad understanding of how coercion manifests relative to how the worker experiences it.

As Kathleen Kim described in *The Coercion of Trafficked Workers*, “what sets the TVPA apart from its predecessors is its expansive notion of ‘serious harm,’ which includes ‘psychological, financial, or reputational harm’; its emphasis on the ‘circumstances’ of the trafficked victim to determine the seriousness of the threatened harm; and its inclusion of an indirect ‘scheme, plan, or pattern’ of coercion as a sufficient basis for a forced-labor violation.”²² While physical force and even fraud are easier to prove and more often seen in cases that move forward to prosecution, coercion is harder to define but likely more common.²³ The broadness of the definition is a double-edged sword: in one way, it allows flexibility to investigate cases, but the ambiguity may actually hamper decisive law enforcement and prosecution.

“When you think about coercion and control, it’s not just about actual threats. It’s not just about negative, direct things that the trafficker has done to this person. It could be the environment that’s set up. It could include things like isolation....like there are no other people nearby who speak their language, they don’t have any family here. That isolation helps to control their movement and who they can reach out to for help. We had a case where every morning [the trafficker] would wake up and read the newspaper and say ‘hey, today this person who is undocumented got arrested.’ This isn’t a direct threat to your client, but if this happens on a regular basis, your client is going to start to believe ‘oh, I don’t have documents, if I call the police I am going to get arrested...’ In terms of understanding coercion, it’s not just threats, you have to look at the whole picture of how the trafficker has set up a situation...”

Khan Nguyen,
Asian Pacific Islander Legal Outreach

²² Kim, Kathleen. 2011. The Coercion of Trafficked Workers. 96 Iowa Law Review 409; Loyola-LA Legal Studies Paper No. 2010-53. Available at SSRN: <http://ssrn.com/abstract=1710282>

²³ *Ibid*



Alison Yin/Alison Yin Photography

When Just Going Outside Isn't Enough

Kevin Kish, Bet Tzedek

Excerpted Transcript from "Civil Remedies for Trafficking Survivors," presented at PLI on November 4, 2014

This case involved an Indonesian woman, who is in some ways not what I think in popular culture would be considered a "typical" trafficking victim— one of the lessons of the case is that there isn't really a typical trafficking victim.

She was quite educated: she had not just high school, but college education in Indonesia. She was brought by a wealthy family to work in a wealthy suburb of Los Angeles and she was told to work without pay. Very classic facts: She was told 'we're Christian and Buddhist, you're a Muslim, you're a terrorist, you can't go to mosques, we don't trust you, we have to keep your passport. Also, you're dark skinned and everybody hates you for that. If you go outside, you are very likely to be raped, you can't trust anybody.

If the police come, by the way, you're illegal (which she didn't know)- they're going to deport you. You will be put in prison where you will almost certainly be raped, possibly starved, beaten, and deported.'

She wanted out from the beginning. The family wasn't always at home, which is common in domestic worker trafficking cases. She tried to escape three times: she saw that workers were working across the street. She ran from the home and asked them to take her to the Indonesian Consulate or Embassy- but they didn't know where it was and they spoke very little English, and she spoke very little English, and it was a disaster. She went back to the house.

A couple weeks later, there was a plumber outside working on a neighboring house and she ran to him and asked to use his cell phone.

She called the only American person she knew— an older woman who didn't understand who it was and hung up. Finally she got the courage to call from inside the house (because of course she was instructed not to) and called the same woman who finally understood who it was and connected her to her own daughter. The daughter said 'the FBI is going to come and help you— you will recognize them by the *FBI* on their jackets.' But the FBI sent the Sheriff's department, she didn't see *FBI* on their jackets and she told them there was no problem. Luckily, one of the Sheriffs deputies realized what was going on, got on the phone with the American woman who helped facilitate it, and ultimately the client was convinced to leave the home.

People don't get out very easily. It's not simply a matter of picking up the phone and calling, and this is something that juries have to understand if you do a civil case, many times they don't get that. She was less than a mile from a major commercial strip with stores and restaurants, and one thing that we found with mock juries is that people have a really hard time understanding— if the family is not there, why don't you walk out? Why don't you go down the street and ask for help?

So this is all part of creating that narrative about a person, what it's like in her shoes, what she believed, and what she felt that time.

Kevin Kish is the Director of the Employment Rights Project at Bet Tzedek in Los Angeles

Trafficking and Forced Labor in Domestic Work: Using ILO Indicators

The following list of eleven indicators of forced labor²⁴ were developed by the International Labor Organization (ILO), a division of the United Nations that creates and oversees international labor rights agreements through a tripartite process that includes workers, employers, and governments. The presence of one or more of these indicators may signal forced labor. For cases involving trafficked domestic workers, more than one of these indicators is usually present.

ILO INDICATOR: ABUSE OF VULNERABILITY

The ILO notes that just being in a vulnerable position isn't enough to prove forced labor, but when an employer uses it against the worker, it becomes an indicator. One of the most common abuses of vulnerability domestic worker groups and their advocates have reported is the immigration-based threat. It is important to note the power of this threat can be felt even if the worker is on a legal work visa.

An Indonesian worker, Suminarti Sayuti Yusuf, was invited to come and work as a housekeeper and nanny in the U.S. by employers who were going to arrange her immigration documents. Once Ms. Yusuf was in the U.S., the employer held her passport in a safe deposit box, told her that she should keep her Muslim religion a secret because Americans thought Muslims were terrorists, derided her dark skin color, told her that if she left the house by herself she would be jailed or deported, and warned that American people she met might try to kill her and harvest her organs.²⁵

²⁴ International Labor Organization (nd). *ILO Indicators of Forced Labor*. Geneva: ILO. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf [Accessed 2 January 2015]

²⁵ Yusuf v. Tija, 2010 Cal. App. Unpub. LEXIS 8154, 2010 WL 4012145 (Cal. App. 2d Dist. Oct. 14, 2010)

NDWA members have observed false contracts, switched contracts, and changes in promised job duties.

“On November 11, 2012, Khobragade executed a fraudulent employment agreement that made it appear as if Khobragade had entered into an agreement with the Victim that complied with U.S. labor laws (including, among other things, a wage at the prevailing wage)... the Victim then obtained a visa on the basis of the fraudulent employment agreement. A few days later, on November 32, 2012, Khobragade had the Victim execute a second agreement setting forth the true terms of employment, which provided for the payment of a legally insufficient wage...the second agreement lacked other legally required protections for the Victim.”

The indictment continues and outlines Khobragade allegedly coached the worker to lie in her consular interview, illegally withheld the worker’s passport, and required her to work “94 to 109 hours per week.” Further, the indictment alleges that when the worker asked to return to India, “Khobragade denied her requests.”

The indictment outlined the threats of retaliation the worker faced after escape. “Between June and August 2013, [Khobragade and a relative] called the Victim’s husband in Delhi, India multiple times to pressure him to locate and disclose the Victim’s location. From July through November 2013, Khobragade took steps to intimidate the Victim and the Victim’s family and to prevent them from initiating any proceedings against Khobragade. These steps included taking legal action and causing the Victim’s family to be contacted by law enforcement, [Khobragade’s relative], and others in India.²⁶”

²⁶ *U.S. v. Devyani Khobragade*, 14 CR 008, NYLJ 1202647183769 (SDNY, March 12, 2014)

ILO INDICATOR: RESTRICTION OF MOVEMENT

In some cases, domestic workers are physically prevented from leaving the house alone. In other cases, the restriction is more subtle, for example, some workers are allowed to go to church or to the grocery store but are accompanied or monitored.

A domestic worker was recruited to act as a housecleaner, traveling with her U.S. employers from Yemen to the U.S. Embassy in Japan based on promises of normal working conditions. Once in Japan, the worker was completely isolated – she did not speak Japanese nor have any support in that country. Her employers controlled all of her interactions with the outside world, monitoring her telephone calls, limiting her contact with others, refusing to allow her to obtain medical care for severe kidney problems, and forbidding her from leaving the house unless one of the employers accompanied her. The male employer repeatedly raped her and the female employer refused to change the worker’s housing situation or intervene when the worker reported the sexual assaults.²⁷

ILO INDICATOR: ISOLATION

There is isolation inherent in all domestic work because it occurs in private homes. This isolation is exacerbated in situations of forced labor and trafficking when the employer cuts off private communication with the outside world, restricts visitors, or listens in on phone calls. Long-term isolation can have significant effects on worker mental health that reverberate for years after escape. Live-in workers are particularly vulnerable.

Ms. Peña Canal was induced to move from Peru to the U.S. by her employer with the promise that she would work as a nanny and be paid \$600 a month with free, adequate room and board. Once she arrived in the U.S., Ms. Peña Canal had to sleep in the room with her employer’s three children and was expected to work from 6am to 9pm, but was paid only \$100 total over the course of the two years she was held by her employer. Her employer restricted Ms. Peña Canal’s movement, keeping her away from people who might help her. She also prohibited Ms. Peña Canal, a monolingual Spanish speaker, from watching Spanish language television and listening to the radio and destroyed the radio Peña Canal used to listen to Spanish-language news and music.²⁸

²⁷ Doe v. Howard, 2012 U.S. Dist. LEXIS 125414, 2012 WL 3834867 (E.D. Va. Sept. 4, 2012)

²⁸ Peña Canal v. de la Rosa Dann, 2010 U.S. Dist. LEXIS 97856, 2010 WL 3491136 (N.D. Cal. Sept. 2, 2010)

ILO INDICATOR: WITHHOLDING OF WAGES

Wage theft, late payment, or pay well below the minimum wage are all abuses of worker rights and are serious concerns for domestic workers. They become an indicator of forced labor and trafficking when the employer withholds wages as a means of coercion.

A Mexican worker, Ms. Hernandez, was convinced by prospective employers to immigrate to the U.S. and work for them. For the first year after she arrived in the U.S., she worked up to 14.5 hours a day but was not given any payment because her employers claimed that they were owed reimbursement for the money they spent transporting her to the U.S.²⁹

ILO INDICATOR: PHYSICAL AND SEXUAL VIOLENCE

Domestic workers have reported physical/sexual violence perpetrated by the employer, or family members of the employer. Similar to situations of domestic violence, the combination of fear, shame, and privacy of the home were barriers preventing domestic workers to getting help. The Urban Institute study noted: “Many service providers state that it was rare for individuals to be sexually abused by their trafficking, but that when sexual abuse did happen, it was often directed toward domestic workers. In fact, almost all cases containing elements of sexual abuse [in the study] occurred in private residences/domestic work.”³⁰

“[T]he victim, a poor, illiterate, Nigerian widow who spoke little to no English[,] agreed to come to the United States to look after the [traffickers, a couple] Nnajis' child so that she could earn money for her own six children, one of whom was ill. Once she arrived, her household responsibilities grew, as did the number of children in her care. She woke at 4:00 a.m. every day, attended to all of the household chores, and was the sole caregiver for the Nnajis' children (They eventually had three.). She did not have a room of her own and slept in the children's room. [Male employer and head of household] Emmanuel repeatedly sexually

²⁹ Hernandez v. Attisha, 2010 U.S. Dist. LEXIS 20235, 2010 WL 816160 (S.D. Cal. Mar. 4, 2010)

³⁰ Owens, Colleen, and Meredith Dank, et al. 2014. *Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States*. New York: Urban Institute and Northeastern University.

assaulted her. Over the more than eight years that the victim spent working for the Nnajis, she was not paid, and her family in Nigeria received less than \$400 from the Nnajis.³¹

Two domestic workers, Samirah and Enung, were brought to the U.S. from Indonesia and then were grossly abused by the wife, ostensibly as punishment for their misdeed. Abuses included being cut on the face and body with a knife and leaving scars, scalded with hot water, beaten with an umbrella, metal spoon, glass Pyrex and other objects, being forced to eat hot chili peppers until she vomited, being forced to walk up and down the stairs repeatedly as punishment for misdeeds, and being forced to bathe several times in a row and work while wearing wet clothing, and being forced to cut up their clothing and work with their bodies exposed. The husband reported the workers' activities such as eating from the garbage to the wife, who would then punish the women.³²

ILO INDICATOR: INTIMIDATION AND THREATS

Verbal and emotional manipulation and abuse are not uncommon. Employers also threatened family members in the home country, and used culturally specific forms of coercion that played on the workers' sense of obligation, or shame.

"FBI officers provided [the worker] with a recording device, which she used to record her conversations with [the employer]...The recorded conversations captured [the employer] warning [the worker] that she would be immediately escorted out of the country by the FBI if she stopped working for the defendants."³³

After an investigation into the employer's trafficking started and the worker had escaped from the home, the male employer flew to the worker's home country of Ethiopia, tried to speak with the worker's husband to induce him to stop the worker from testifying, and attempted to file criminal charges in Ethiopia against the worker.³⁴

³¹ *United States v. Nnaji*, 447 Fed. Appx. 558, 2011 WL 5105786 (5th Cir. 2011)

³² *United States v. Sabhnani*, 599 F.3d 215 (2d Cir. 2010)

³³ *Kiwanuka v. Bakilana*, 844 F. Supp. 2d 107, 2012 U.S. Dist. LEXIS 23093, 18 Wage & Hour Cas. 2d (BNA) 1506 (D.D.C. 2012)

³⁴ *Doe v. Howard*, 2012 U.S. Dist. LEXIS 125414, 2012 WL 3834867 (E.D. Va. Sept. 4, 2012)

ILO INDICATOR: RETENTION OF IDENTITY DOCUMENTS

NDWA members have noted that sometimes employers have tried to justify this act as “safekeeping” of the worker’s documents. The State Department has issued guidance to diplomat employers that requires a statement in the workers’ contract that forbids passport holding, and the TVPA reauthorization in 2013 added additional penalties for document confiscation as form of coercion.³⁵

A seventeen year-old was recruited to come to the U.S. from India on an A3 visa to work as a cook and housecleaner for the Counselor of Press, Culture, Information, Education, and Community Affairs at the Consulate General of India in Manhattan. Immediately after she arrived in the U.S., her employer seized her passport and visa and then kept them locked in her own bedroom. The worker was then forced to sleep on the floor of the living room, work 12-16 hours a day, and give her employer daily massages.³⁶

ILO INDICATOR: DEBT BONDAGE

Workers may have debt from borrowing money to pay off recruitment or travel expenses to get to the United States, or may already owe a debt at home and are forced to work to repay it. Furthermore, owing a debt can be a powerful cultural stigma that shed light on why workers stay in abusive workplaces.

A 19 year-old worker was recruited to migrate from the Philippines to work as a housekeeper for a family of doctors. When she arrived in the U.S., her employer confiscated her passport and told her she would have to work off the cost of her plane ticket. She worked from 6am to 10pm, seven days a week, for 19 years, but was only paid \$19,000 for the entire duration of her work. When she went to the store to shop for personal items, her employer accompanied her and sent her to the car during check-out. Her employer then claimed to be docking her pay for the cost of these expenses.³⁷

³⁵ TVPA 2013

³⁶ Gurung v. Malhotra, 851 F. Supp. 2d 583, 2012 U.S. Dist. LEXIS 40970 (S.D.N.Y. 2012)

³⁷ *U.S. v. Calimlim*, 538 F.3d 706, 713 (7th Cir. 2008)

ILO INDICATOR: ABUSIVE WORKING AND LIVING CONDITIONS

Numerous domestic worker trafficking cases involved the worker being forced to sleep on floors, in garages or children's rooms with no privacy, and inability to prepare their own food or access the family's food.

Two immigrant live-in domestic workers were prohibited from eating the household food except for leftovers, and were frequently left without food or money for food, and with the house fridge chained shut, forcing them to eat from the garbage or beg for food from visitors to the house.³⁸

A live-in domestic worker went from 147 pounds to 84 pounds over the 40 months she worked for an employer, as she was only allowed to eat left-overs, was forbidden from eating rice, and was paid only one one-time payment of \$120, leaving her without money to buy food. She was also forced to sleep on her employers' living-room floor, even though they had vacant bedrooms.³⁹

ILO INDICATOR: EXCESSIVE OVERTIME

As has been noted by the ILO, excessive working hours beyond the typical 40-48 hour work week are common for live-in workers, who are often asked to "help out" even on their breaks or sleeping time. This is more than an issue of fairness. Research on working hours has shown that long hours and fatigue have a negative effect on workers' mental and physical health, and their safety on the job.⁴⁰

After a domestic worker escaped from employers who forced her to labor for 12-16 hours a day for seven days a week, she became very sick and experienced frequent fainting spells and stomach pain.⁴¹

³⁸ *United States v. Sabhnani*, 599 F.3d 215 (2d Cir. 2010)

³⁹ *Gurung v. Malhotra*, 851 F. Supp. 2d 583, 2012 U.S. Dist. LEXIS 40970 (S.D.N.Y. 2012)

⁴⁰ Hobden, Claire. "Working Time of Live-in Domestic Workers." International Labor Organization, *Domestic Work Policy Brief #7*. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_230837.pdf [Accessed 9 January 2015]

⁴¹ *Gurung v. Malhotra*, 851 F. Supp. 2d 583, 2012 U.S. Dist. LEXIS 40970 (S.D.N.Y. 2012)



"We need zero tolerance policies for human trafficking. Diplomats should be permanently expelled if they are caught in such lies and abuses. It should be considered a crime of moral turpitude and a violation of human and civil rights that surely should warrant their expulsion, and of course the rescue of the worker. We have long thought that some kind of federal legislation is really necessary to protect against trafficking by diplomats. There's no other way for interventions to have any legal legs without federal involvement."

- Natalicia Tracy, Brazilian Immigrant Center

4 | DETAILED RECOMMENDATIONS

- I. United States
- II. International Governments
- III. Building Power Together:
Service Providers, Advocates, & Partners



A Snapshot of Trafficking of Domestic Workers in the U.S.

Elly Kugler, National Domestic Workers Alliance

The recently exposed case of Lucy Mwaka, a domestic worker who was brought to the U.S. by the Kenyan Embassy's Head of Public Affairs, affirms yet again that serious policy changes must be made to prevent trafficking in the domestic work industry.⁴² Ms. Mwaka's case also illustrates problems specific to domestic workers brought to the U.S. on employer-sponsored visas who experience a high level of incidents of exploitation and trafficking.⁴³ Ms. Mwaka was convinced to come and work in the U.S. as a live-in worker by her employer, who promised her a fair wage and benefits. She instead was required to work 16-20 hours a day for far below minimum wage and was denied access to crucial medical care. After Ms. Mwaka escaped, she was forced to sue her former employer in order to attempt to receive the wages to which she was entitled.

⁴² Armando Trull, *Kenyan Diplomat Accused of Domestic Slavery In Rockville Home*, WAMU 88.5 NEWS, June 4, 2014.

⁴³ Pier, Carol. 2001. *Hidden in the Home: Abuse of Domestic Workers With Special Visas in the United States*, Vol 13(2). New York: Human Rights Watch.

Ms. Mwaka's case is not unique. There is insufficient research on labor trafficking of domestic workers, as most U.S. research has been focused on sex trafficking.⁴⁴ Recent examples of labor trafficking of domestic workers include a worker who spent 19 years working with no breaks,⁴⁵ a young domestic worker who was subjected to physical punishment and required to administer massages to her employer⁴⁶, and a group of domestic workers who were forced to clean houses without pay while held in squalid conditions and threatened with physical violence.⁴⁷ There are targeted changes needed to effectively combat abuse of domestic workers brought by foreign diplomats. The federal government documented 42 incidences of abuses against domestic workers brought to the U.S. on A-3 and G-5 visas by foreign diplomats, but also concluded "the total number is likely higher."⁴⁸

Ms. Mwaka's case also demonstrates the cumulative effects of a devalued and underregulated industry. Since domestic workers are excluded from the protections enjoyed by most other workers, the floor for worker treatment has been set very low, allowing worker abuse and exploitation to continue without sanction by the state. Of live-in domestic workers, 50% reported working long hours without breaks, 58% were required to work outside of scheduled work hours, 25% were allowed less than five hours of uninterrupted sleep, and 36% were threatened, insulted, or verbally abused.⁴⁹ Domestic work is a continuum, and where domestic work is devalued, there will be a high prevalence of the worst sorts of abuses, including trafficking, harassment and assault.

Elly Kugler is the Staff Attorney for the National Domestic Workers Alliance

⁴⁴ National Institute of Justice, *The Prevalence of Labor Trafficking in the United States*, NIJ Journal No. 271, (<http://www.nij.gov/journals/271/Pages/anti-human-trafficking-us.aspx>); Elżbieta M. Goździak & Micah N. Bump, *Data and Research on Human Trafficking: Bibliography of Research-Based Literature*, Final report to the National Institute of Justice, NCJ 224392, at 7 (2008)

⁴⁵ *Doe v. Siddig*, 810 F. Supp. 2d 127 (2011) (A Sudanese woman was brought to the U.S. by an employer at the Sudanese Embassy in D.C. when she was 14, and spent the next 19 years working seven days a week without breaks, while being paid only \$100 a month).

⁴⁶ *Gurung v. Malhotra*, 851 F. Supp. 2d 583 (2012) (A 17 year-old woman was brought to the U.S. on an A-3 visa by an employee of the Consulate General of India in Manhattan, and was then forced to work 16 hours a day, allowed to eat only the employer's leftovers, threatened by her employers with arrest and deportation, and required to give her male employer a daily massage).

⁴⁷ *U.S. v. Botsvynyuk*, Crim. No. 10-159-1 (E.D. Penn. July 6, 2012)

⁴⁸ U.S. Gov't Accountability Office. July 2008. *Human Rights: U.S. Government's Efforts to Address Alleged Abuse of Household Workers by Foreign Diplomats Could Be Strengthened*. GAO-08-892.

⁴⁹ Burnham, Linda, and Nik Theodore. 2012. *Home Economics: The Invisible and Unregulated World of Domestic Work*. New York: National Domestic Workers Alliance, Center for Urban Economic Development and University of Illinois at Chicago DataCenter

THE UNITED STATES

The work of nannies, in-home caregivers, housekeepers, and other domestic laborers is amongst the most undervalued and under-regulated industries in the United States – a legacy of slavery, Jim Crow, and the undervaluation of “women’s work.” In the contemporary context, domestic workers (who are almost all immigrant women of color) routinely face low pay and long hours, and are denied health care and sick leave. Too often they endure racial/ethnic discrimination, physical and other forms of abuse, and many find themselves the victims of human trafficking and modern-day slavery.

Aliya Hussain, American Civil Liberties Union⁵⁰

⁵⁰ Hussain, Aliya. 2010. Trouble at Home: Domestic Workers Speak Out Against Exploitation and Abuse.” American Civil Liberties Union Blog. Available at: <https://www.aclu.org/blog/human-rights-womens-rights/trouble-home-domestic-workers-speak-out-against-exploitation-and>

Overview

The passage of the William Wilberforce Trafficking Victims Protection Act (TVPA) in 2000⁵¹ marked the beginning of a renewed government effort to combat human trafficking in the United States. The TVPA provided a threefold plan for the U.S. government to elevate the protections available to trafficking survivors, prosecution of traffickers, and prevention of trafficking internationally. Further, the TVPA prompted states to pursue and implement their own trafficking legislation. The federal law was reauthorized in 2003, 2005, 2008, and 2013. While the law has historically enjoyed bipartisan support, the 2013 reauthorization— which was folded into the reauthorization of the Violence Against Women Act—was delayed, and marked a shift toward partisan controversy.⁵² At the same time, an increasing number of labor rights and migrant rights groups have joined the call to end trafficking and expand the reach and coverage of US laws to immigrant and migrant workers— rejecting the confinement of trafficking as only a sex-related crime with only a criminal justice solution.

On 2002, President George W. Bush established the President's Interagency Task Force (PITF) to Monitor and Combat Trafficking in Persons⁵³, a requirement of the TVPA of 2000.⁵⁴ The Secretary of State was designated as the chair, and the PITF also included the Attorney General, the Secretary of Labor, the Secretary of Health and Human Services, the Director of Central Intelligence Agency, among a few other agencies. In the current iteration of the Task Force, more agency members have joined— including the Department of the Interior, Department of Defense, and the Equal Employment Opportunity Commission.

In 2013, the Obama Administration released a five year strategic action plan to address the needs of victims of human trafficking in the United States.⁵⁵ The Strategic Action Plan had commitments from most federal agencies and the process was chaired jointly by Health and Human Services (HHS), the Department of Justice Office for Victims of Crime (OVC), and the Department of Homeland Security (DHS).

⁵¹ P.L. 106-386

⁵² Serwer, Adam. 20 March 2012. "Republicans Are Block the Violence Against Women Act." *Mother Jones*. Available at: <http://www.motherjones.com/politics/2012/03/republicans-violence-against-women-act> [Accessed 2 January 2015].

⁵³ United States Department of State 14 February 2002. President's Interagency Task Force to Monitor and Combat Trafficking in Persons. Available at: <http://2001-2009.state.gov/r/pa/prs/ps/2002/8031.htm> [Accessed 2 January 2015].

⁵⁴ 22 U.S. Code § 7103 - Interagency Task Force to Monitor and Combat Trafficking

⁵⁵ *Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States 2013–2017*. 2014.

Most federal agencies are now involved in the PITF, and have made commitments to improving their response to trafficking the Strategic Action Plan. Further, in November 20, 2014, the Department of Labor announced the launch of a new “Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws,” which includes the Department Homeland Security and Department of Justice, among others. This working group will analyze what conditions make it difficult for immigrant and temporary migrant workers to speak out about mistreatment on the job, with an eye toward addressing those barriers.

Overall, the Administration has made notable progress toward the goal of ensuring that all victims—regardless of age, gender, nationality, and type of trafficking—are assisted. However, after basic government accountability is met, bolder steps to address and *prevent* trafficking of domestic workers must be taken. And where agency changes are not sufficient, advocates and workers are pursuing trafficking-related legislation, such as the regulation of foreign labor recruitment, data collection, and expansion of relief options for survivors. In addition, legislation that may not seem to be trafficking related (for example, state level domestic worker bills of rights), further the goal of addressing structural vulnerabilities.

“To evaluate these policies [to prevent human trafficking] we need to be clear about what exactly is the problem that they are attempting to prevent. Extreme exploitation is a structural problem, not a problem of human nature. Unless we deal with the ‘root causes’, which I locate in inequality, then it will continue.”

Bridget Anderson
Centre on Migration, Policy and Society
(COMPAS) at the University of Oxford

COORDINATED AGENCY EFFORTS

1. Government agencies affiliated with the President's Interagency Task Force on Human Trafficking (PITF) should collaborate with worker centers and community-based organizations to develop anti-trafficking materials and policies aimed at prevention and response to trafficking for labor.
2. The new "Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws" (established as part of the President's Executive Order on November 20, 2014) should include the Department of State in order to ensure that domestic workers on temporary visas are not left out of collaborative efforts to address low wage immigrant worker exploitation.
3. The Interagency Working Group should recommend that the Department of Homeland Security strengthen USCIS programs to ensure immigrant workers who are undocumented or who have temporary visas and may fall out of status during a dispute with an employer, contractor, or recruiting agent can maintain legal status and work authorization through deferred action, parole in place, or other appropriate measures.
4. In exploitation and trafficking cases where the workers are immigrants (with or without authorization), ICE should not be the primary federal investigating agency because of the inherent conflict of interest between detaining and removing unauthorized immigrants and serving immigrant victims of crime.

Overview

In addition to individual agency plans and programs to address trafficking, there are a few spaces where agencies in the Administration work together. These spaces present important opportunities to leverage their unique resources into more focused efforts— like strategic planning for victim services, immigration relief for survivors. It also presents the opportunity to re-evaluate the role of different agencies and how these roles might be shifted to be more responsive to what's needed on the ground.

Recommendations

All agencies should work with survivor and worker groups to improve and develop outreach materials.

The 2008 reauthorization of the TVPA included a mandate for the Department of State to produce and distribute a “know your rights” pamphlet for temporary workers and students coming to the United States.⁵⁶ This pamphlet, colloquially known as the “Wilberforce Pamphlet” after the full name of the legislation, is now required reading for consular interviews. The Wilberforce Pamphlet itself developed in collaboration with service providers and advocates of trafficked and exploited workers, and includes not only rights under the trafficking legislation, but also general labor rights in the United States, and who to call for help— in particular, the hotline number for the National Human Trafficking Resource Center, who point to the pamphlet as one of the primary ways that callers have found them— which points to how important this document may be in providing a lifeline to workers.

The pamphlet is supposed to be given to migrant workers at consular interviews before they depart— though anecdotally advocates say the survivors they’ve identified may not always receive it, or it may be confiscated by the employer or recruiter after the meeting, underscoring the importance of more in-depth pre-departure interviews without the presence of the employer.

As with any outreach tool, the pamphlet can be refined and improved to continue meeting evolving demands. NDWA members who had seen the translated pamphlet firsthand noted that the translation was far above the average literacy level of the migrants they worked with, so there is reason to believe that the pamphlets—while important tools to share information—should be reviewed with worker and survivor groups who can offer suggestions on translation and visuals that may help clarify the messages. Worker rights groups should be represented in the materials as another source of assistance and information. Additionally, videos, both for consular waiting rooms (and for airplanes, as suggested by the Urban Institute report)⁵⁷ should include the voices and experiences of actual domestic workers who can make the materials more relevant to the average worker. The video, which is available to watch on YouTube,⁵⁸ is currently just a narration of the

⁵⁶ PL 110-457, Section 202

⁵⁷ Owens, Colleen, and Meredith Dank, et al. 2014. *Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States*. New York: Urban Institute and Northeastern University.

⁵⁸ U.S. Department of State. 2014. “Know Your Rights Video” [Available at <https://www.youtube.com/watch?v=Ji-f3dkeOIE&feature=youtu.be>] Accessed 21 January 2015.

pamphlet. The National Survivors Network has already spoken out about the need to consult with survivors to create videos that would appeal to migrants and share information in a more compelling way.⁵⁹

The Wilberforce Pamphlet is an example of the success of government-NGO collaboration. To build on this success, agencies should work with survivor groups and worker rights groups, especially those who have members from the most common origin countries of migrant workers to the US, to develop informational materials, videos, posters, and public service announcements about domestic worker trafficking that all stakeholders can use as part of public outreach and worker organizing.

One of several potential structures to facilitate this collaboration is a “survivor advisory caucus,” for which a bipartisan bill is expected in January 2015 in both the Senate and the House, thanks to the advocacy of the National Survivors Network, ATEST, and several allies. The caucus would aim to be representative of different types of trafficking and different types of survivors, and could review and consult on policy and program efforts of federal agencies.

The Department of State should join the discussion on immigration enforcement and worker rights.

The new “Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws” currently includes representatives from the Department of Homeland Security, Department of Labor, Department of Justice, Equal Employment Opportunity Commission, and National Labor Relations Board. Its mission is to “promote effective enforcement of federal labor, employment, and immigration laws... [and] to identify policies and procedures that promote the consistent enforcement of those laws and protect all workers in the U.S.”⁶⁰ Agencies in the Working Group will meet with stakeholders, including labor rights organizations, to strategize about how to ensure that immigrant workers can speak out about exploitation without fear of immigration consequences.

The Department of State is not currently included in the group, but should be involved since many workers on temporary visas are under their purview— including A-3, G-5, B-1, and J-1 workers— in other words, most visa-holding domestic workers. Although the J-1 program is not considered a

⁵⁹ Personal conversation with Stephanie Richard, CAST

⁶⁰ United States Department of Labor. November 20 2014. Fact Sheet: Establishment of Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws. Available at: <http://www.dol.gov/dol/fact-sheet/immigration/interagency-working-group.htm> [accessed 1 January 2015]

work program by the government, there is no doubt that au pairs who enter the U.S. on that visa are engaged in work. J-1 au-pairs are required to provide 45 hours per week of childcare - ostensibly in exchange for a cultural experience—but the primary component of the program is work,⁶¹ and thus should be covered by this working group. Domestic workers are just as vulnerable to workplace threats regarding immigration status as other workers.

The learning and decisions of the working group should be shared as widely as possible, including with state and local law enforcement agents who often lack clarity about the roles of varying stakeholders when it comes to human trafficking and exploitation of immigrant workers. The public-facing materials of these agencies should be consistent and prominently featured on their websites and materials.

USCIS programs should ensure immigrant workers who are undocumented or who have temporary visas and may fall out of status during a dispute with an employer, contractor, or recruiting agent can maintain legal status and work authorization.

One of the mandates of the new DOL-led interagency working group is to “strengthen processes for staying the removal of, and providing temporary work authorization for, undocumented workers asserting workplace claims and for cases in which a workplace investigation or proceeding is ongoing.”⁶² “The new Interagency Working Group should recommend that the Department of Homeland Security strengthen USCIS programs to ensure immigrant workers who are undocumented (or who have temporary visas and fall out of status) can maintain legal status and work authorization throughout the entirety of a dispute with an employer, contractor, or recruiting agent.” Protections could include deferred action, parole in place, or other appropriate measures. This is critical to ensuring undocumented workers and guest workers on temporary visas can report violations of labor, employment, and civil rights laws that protect standards for all workers.

Victims could go directly to USCIS for relief if they qualified, rather than relying on ICE to intervene on their behalf. This kind of program could help workers come forward and seek assistance, and pursue justice for abuse on the job without fear of deportation.

⁶¹ United States Government Accountability Office. “Inappropriate Uses of the Education and Cultural Exchange Visas.” February 1990.

⁶² United States Department of Labor. 20 November 2014. Fact Sheet: Establishment of Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws. Available at: <http://www.dol.gov/dol/fact-sheet/immigration/interagency-working-group.htm> [accessed 1 January 2015]

ICE should not be the primary federal investigating agency for case involving immigrant workers.

Immigrant victims are eligible for relief in the form of T and U visas, special non-immigrant status visas set aside for victims of serious crimes. However the agency tasked with screening and assisting immigrant victims is the same agency tasked with detention and removal of unauthorized immigrants. This dual mandate has complicated immigrant crime victims' relationships with those in charge of protecting them.

ICE should continue improving victim-centered work when they encounter potential survivors of trafficking, and continue to add to the the federal government's efforts through the Blue Campaign. However, in order to create an environment where immigrant and undocumented workers feel comfortable cooperating with law enforcement, new referrals for investigation and certification of cases involving immigrant workers should go to other agencies with this authority whenever feasible. The Interagency Working Group could explore how to put this into practice.



A New *Blue Campaign* Poster Aimed at Domestic Servitude

DEPARTMENT OF HOMELAND SECURITY

1. Department of Homeland Security (DHS) should end partnerships with local and state law enforcement as these partnerships increase fear of police in low-income worker communities and prevent trafficked workers from seeking help.
2. DHS should train and mandate its agents to request continued presence for suspected victims of human trafficking.
3. DHS should continue to improve screening procedures so that suspected victims are not arrested, detained, or deported.
4. DHS's United States Citizenship and Immigration Services (USCIS) U and T visa adjudicators should receive additional and specialized training on victims of labor trafficking and workplace-based crime.

Overview

It is common for exploitative employers and traffickers of domestic workers to use threats based on a worker's immigration status as a means of control, even when the worker has a work visa.⁶³ Employers are able to threaten workers with deportation by immigration enforcement and with arrest by law enforcement in the same breath because DHS policy has led to an intertwining of these two distinct systems.⁶⁴ As long as law enforcement agencies are collaborating with immigration enforcement, those law enforcement agencies will continue to be ineffective partners in the fight against labor trafficking—especially with undocumented workers, who are highly vulnerable to being trafficked.⁶⁵

⁶³ For examples of cases where employers used deportation or the worker's immigration status as a means of controlling the worker and keeping the worker in a situation of severe labor exploitation, see *United States v. Dann*, 652 F.3d 1160 (9th Cir. 2011); *Carazani v. Zegarra*, 972 F. Supp. 2d 1, 2013 U.S. Dist. LEXIS 93752, 2013 WL 5303492 (D.D.C. 2013); *Kiwanuka v. Bakilana*, 844 F. Supp. 2d 107, 2012 U.S. Dist. LEXIS 23093, 18 Wage & Hour Cas. 2d (BNA) 1506 (D.D.C. 2012); *Yusuf v. Tija*, 2010 Cal. App. Unpub. LEXIS 8154, 2010 WL 4012145 (Cal. App. 2d Dist. Oct. 14, 2010); *Doe v. Howard*, 2012 U.S. Dist. LEXIS 125414, 2012 WL 3834867 (E.D. Va. Sept. 4, 2012); *Doe v. Siddig*, 810 F. Supp. 2d 127, 2011 U.S. Dist. LEXIS 104227 (D.D.C. 2011); *Hernandez v. Attisha*, 2010 U.S. Dist. LEXIS 20235, 2010 WL 816160 (S.D. Cal. Mar. 4, 2010); *Gurung v. Malhotra*, 851 F. Supp. 2d 583, 2012 U.S. Dist. LEXIS 40970 (S.D.N.Y. 2012).

⁶⁴ See Sweeney, Maureen A. 2014. Criminal Law: Shadow Immigration Enforcement and its Constitutional Dangers, 104 J. Crim. L. & Criminology, 227.

⁶⁵ Immigration status was found to be a direct predictor of workers' vulnerability to labor trafficking in a Department of Justice-funded study. Dr. Sheldon X. Zhang, "Looking for a Hidden Population: Trafficking of Migrant Laborers in San Diego County" (Nov. 2012), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/240223.pdf> (Out of a sample representative of the undocumented Spanish-speaking population of San Diego County, CA, 58% had experienced at least one type of trafficking violation or abusive practice on the job; and a full 31% had experienced an incident that met the TVPA definition of trafficking, Trafficking violations and abusive labor practices were "not isolated incidents, but common and frequent occurrences." (80) Workers' immigration states was found to be most directly determinative of their risk for trafficking and labor exploitation abuses. "The victims' legal status appears to be the most important factor in determining their likelihood of victimization, as few other variables seem to explain much of their experience.." (18)

In a recent study of domestic workers, “85 percent of undocumented immigrants who encountered problems with their working conditions in the prior 12 months did not complain because they feared their immigration status would be used against them.”⁶⁶ Furthermore, having a work visa is not a guarantee against these threats if the visa is tied to the employer.⁶⁷

In places like Georgia, service providers for domestic violence survivors have reported a fear of assisting or driving undocumented victims because they may be held responsible for their immigration status.⁶⁸ In Maryland, workers have said they were afraid of calling police to report assault because they or a family member did not have legal status.⁶⁹ On the other side, the cost burden of shifting immigration enforcement to the local entities has prompted police to join the efforts to roll back the agreements.⁷⁰

Across the country, residents and police have banded together, using legislation, ordinances, executive orders, and law enforcement policies to significantly narrow or undo these agreements in order to rebuild confidence of immigrants to report crime and work with the police. In January 2014, the California State TRUST Act went into effect. At least 19 counties and cities—including places like Philadelphia, Seattle, New Orleans, Miami, DC, and Boston have made changes in their rules that affirm the contribution of immigrant communities and the importance of confidence in police to overall community safety.

⁶⁶ Burnham, Linda, and Nik Theodore. 2012. *Home Economics: The Invisible and Unregulated World of Domestic Work*. New York: National Domestic Workers Alliance, Center for Urban Economic Development and University of Illinois at Chicago DataCenter

⁶⁷ International Labor Recruitment Working Group. 2013. *The American Dream Up for Sale: A Blueprint for Ending International Labor Recruitment Abuse*. Available at: <http://fairlaborrecruitment.files.wordpress.com/2013/01/final-e-version-ilrwg-report.pdf> [Accessed 2 January 2015].

⁶⁸ “We Belong Together” Report from the Women’s Delegation to Georgia: September 28-29, 2011. We Belong Together, at p.18

⁶⁹ “Abused and Deported: Immigrant Women Face Double Disgrace” <http://newamericamedia.org/2011/03/abused-and-deported-immigrant-women-face-double-disgrace.php>

⁷⁰ Memo, Thomas S. Winkowski to Secretary of Homeland Security Jeh Johnson re: The Secure Communities, Nov. 20, 2014. Available at http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf (“Governors, mayors, and state and local law enforcement officials around the country have increasingly refused to cooperate with the program, and many have issued executive orders or signed laws prohibiting such cooperation.”)

Recommendations

End enforcement partnerships with local and state law enforcement.

DHS-sanctioned partnerships with local/state law enforcement included Agreements of Cooperation in Communities to Enhance Safety and Security,⁷¹ an umbrella of programs which contained 287(g)⁷², the National Fugitive Operations Program,⁷³ the Criminal Alien Program⁷⁴ and the Law Enforcement Support Center.⁷⁵ In addition, DHS's Secure Communities⁷⁶ program further forced local law enforcement into collusion with immigration officials, running arrestee fingerprints sent by law enforcement authorities to the FBI to the DHS, which then screened for immigration violations and placed holds on detained immigrants, often when the immigrant had not been charged or convicted of any criminal activity but was merely being held by law enforcement for activities such as driving without a license.⁷⁷ Such collaboration led to the widespread engagement by law enforcement in what one attorney has called "shadow immigration enforcement"—leaving trafficked workers with no safe place to seek help.⁷⁸

In November of 2014, President Obama announced the replacement of Secure Communities with a new program called "Priority Enforcement Program (PEP)."⁷⁹ The National Immigration

⁷¹ See <http://www.ice.gov/factsheets/287g> [Accessed 1/19/15]

⁷² Immigration and Nationality Act of 1952 (INA), Pub. L. No. 82-414, § 287, 66 Stat. 163, 233 (codified as amended at 8 U.S.C. § 1357(g) (2012))

⁷³ <http://www.ice.gov/fugitive-operations> [Accessed 1/19/15]

⁷⁴ <https://www.ice.gov/criminal-alien-program> [Accessed 1/19/15]

⁷⁵ <https://www.ice.gov/lesc> [Accessed 1/19/15]

⁷⁶ <http://www.ice.gov/secure-communities> [Accessed 1/19/15]

⁷⁷ Migration Policy Institute, *Deportation and Discretion: Reviewing the Record and Options for Change*, Marc R. Rosenblum and Kristen McCabe (10/2014), available at <http://www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change> (In FY 2003-2013, 18% of immigrants who were removed had only prior immigration violations; another 14% were accused of non-violent crimes, many of which were traffic-related.)

⁷⁸ Legal scholar Maureen Sweeney described "shadow immigration enforcement" as "when state or local police officers with no immigration enforcement authority exercise their regular police powers in a distorted way for the purpose of increasing federal immigration enforcement. Shadow enforcement typically involves the disproportionate targeting of vulnerable "foreign-seeming" populations for hyper-enforcement for reasons wholly independent of suspected involvement in criminal activity as defined by state or local law. At best, the state officers use the enforcement of laws within their mandate (criminal or traffic laws) as a pretext for targeting those suspected of having unlawful immigration status, often based on observable ethnic or racial characteristics." CRIMINAL LAW: SHADOW IMMIGRATION ENFORCEMENT AND ITS CONSTITUTIONAL DANGERS, 104 J. Crim. L. & Criminology 227 (2014)

⁷⁹ Memo, Thomas S. Winkowski to Secretary of Homeland Security Jeh Johnson re: The Secure Communities, Nov. 20, 2014. Available at http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf

Law Center explains that although the PEP program primarily targets immigrants convicted of certain offenses,

“[T]here will be two notable exceptions to this policy. In the first, ICE may pursue deportation against people who pose a “demonstrable risk to national security,” regardless of whether they have been convicted of any crime. And under the second exception, ICE may pursue enforcement against people who fit within any of the November 20, 2014, prioritization categories (which includes all other immigration violations not included in the first two priority levels) if the state or locality agrees to cooperate with the transfer.⁸⁰

The new executive orders related to immigration are important, but do not go far enough to address immigration-based threats against domestic workers. Secure Communities has been discontinued, but DHS will continue to access data on immigrants detained in local jails—although it claims that it will only place holds on immigrants who have been convicted of certain crimes.⁸¹ This means that local law enforcement will still act as the eyes and ears for USCIS. As Angela Chan, policy director and senior staff attorney at the Asian Law Caucus points out, “The bones of the program are the same. Under S-Comm, fingerprints are transmitted to Immigration and Customs Enforcement by local police. Under PEP-Comm, the same thing will happen.”⁸²

In the absence of comprehensive reform with a pathway to citizenship and work authorization for all, immigrant workers will continue to face higher levels of risk for trafficking. As long as law enforcement is authorized to assist in the enforcement of immigration regulations, vulnerable and trafficked workers will not be able to use law enforcement as a resource. As labor anthropologist Denise Brennan puts it, “Those who do not qualify for immigration relief know that if they remain in the United States, they likely will live and labor in a kind of labor purgatory, in the shadow of the law. This liminal zone of abuse and limited rights also lays the groundwork for more egregious forms of exploitation to thrive—unchecked and unreported.”⁸³

⁸⁰ National Immigration Law Center. (2014, November 20). “Frequently Asked Questions: Administrative Immigration Relief 2014-15” Available at: <http://www.nilc.org/adminreliefenforcement.html> [Accessed 2 January 2015].

⁸¹ Memo, Thomas S. Winkowski to Secretary of Homeland Security Jeh Johnson re: The Secure Communities, Nov. 20, 2014. Available at http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf

⁸² Colorlines, “Goodbye, Secure Communities. Hello, Priority Enforcement Program.” By Aura Bogado, Nov 21, 2014 (available at http://colorlines.com/archives/2014/11/goodbye_secure_communities_hello_priority_enforcement_program.html)

⁸³ Brennan, Denise. May 2014. Trafficking, Scandal, and Abuse of Migrant Workers in Argentina and the United States, 653 *Annals* 107, 119.

Train and encourage agents to certify T and U visa applications during trafficking investigations, and to swiftly request continued presence for suspected victims.

A worker may attempt to report her trafficker without any response from law enforcement.⁸⁴ A worker may also report the trafficking and cooperate with law enforcement, but still be unable to obtain continued presence or a visa because of law enforcement's misconceptions about what domestic worker trafficking looks like.⁸⁵ As a result, trafficked workers are often unable to get the certifications they need to show that they were victims of trafficking-related crimes, and as a result are unable to stabilize their immigration status.

Continued presence (CP) is not a visa, but a temporary status that is requested by law enforcement on behalf of someone suspected of being a victim of human trafficking. It is only valid in one year increments and can be revoked at any time, yet law enforcement officers are reluctant to apply for it until they can fully prove that a person is a victim. Given the challenges in identification described in previous sections of this report, defaulting to this standard yields few requests.

This is antithetical to the purpose of CP, which is to stabilize an unauthorized immigrant victim *so that* she can cooperate with law enforcement to pursue an investigation. CP allows victims to not only live without fear of deportation, but also to access work authorization and certification that entitles them to public benefits and assistance. In other words, it is the first step to recovery and self-sufficiency after trafficking.

Law enforcement agents can request CP for individuals they have reason to believe *may* be victims of trafficking, but the Urban Institute study adds more confirmation to what many advocates have already known: CP is rare. The Urban Institute report recommends independent auditing of continued presence requests and reasons for denial so that enforcement agencies are more accountable.⁸⁶

⁸⁴ See, eg, Farrell, Amy and Rebecca Pfeffer. May 2014. Policing Human Trafficking: Cultural Blinders and Organizational Barriers, 653 Annals 46, 47-48. "Previous research suggests that local police and sheriffs are woefully unaware of human trafficking and commonly lack the training necessary to investigate these crimes... We find that the culture of local police agencies and the perceptions held by police officials about human trafficking prevent the police from seeing a broad range of human trafficking cases."

⁸⁵ See, eg, Farrell, Amy and Rebecca Pfeffer. May 2014. Policing Human Trafficking: Cultural Blinders and Organizational Barriers, 653 Annals 46, 47-48. "Interviews with police and prosecutors illuminated a number of areas of uncertainty in the enforcement of human trafficking laws, including confusion about how to define specific elements of the crime such as coercion and the necessity of proving movement of the victim. Interviewees struggled to determine whether victims consented to acts freely or whether consent was obtained through force. The distinction between exploitive labor practices and human trafficking was particularly unclear." Id at 50.

⁸⁶ Owens, Colleen, and Meredith Dank, et al. 2014. *Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States*. New York: Urban Institute and Northeastern University.

The new interagency working group led by DHS and DOL described in previous sections can also develop a more proactive approach to protect immigrant workers who complain about labor abuses, and DHS agents should be instructed to fully utilize CP and visa certifications.

DHS should continue to improve screening procedures so that survivors are not arrested, detained, or deported.

DHS has designed the Blue Campaign to promote awareness and action on human trafficking by offering training, informative pamphlets, and other resources that provide insight on the legal procedure and can facilitate a “victim-centered approach”. Though DHS has taken steps to prevent survivors of trafficking from deportation, without a significant overhaul, victims will continue to be detained and at risk of deportation - and their traffickers will not be stopped.

In 2010, Human Rights Watch reported to the Office to Monitor and Combat Trafficking in Persons that there were significant incidents of victims being wrongfully detained,⁸⁷ including the following example:

Florence N. was detained by immigration authorities in July 2006 when she was 16 years old. She had been trafficked from Mexico into the U.S. in 2005 by two men who were brothers and a woman after agreeing to take another woman's place on a trip to the US that was supposed to lead to a job as a waitress. She was held in the US for a year as a domestic worker before someone called the police and they began an investigation into the captors for abduction, domestic violence, and sexual violence. Florence N. was held in ICE custody for a year, first in a shelter and then, after giving birth to the child of one of her captors, in a group home in Arizona specifically for mothers. She was released on her own recognizance in April 2007 and has recently been approved for a T-visa.

In its evaluation of U.S. efforts for the 2012 TIP report,⁸⁸ the Freedom Network wrote:

Human trafficking survivors continue to face detention and removal under current DHS policies. Trafficked persons are likely to be swept up in immigration raids as a result of

⁸⁷ <http://www.hrw.org/news/2010/04/19/us-victims-trafficking-held-ice-detention>

⁸⁸ Freedom Network. 12 February 2012. “RE: Request for Information for the 2012 Trafficking in Persons Report.” Available at: <http://freedomnetworkusa.org/wp-content/uploads/2012/06/TIP-Report-Comments-Edits-Compilation-FINAL.pdf>

trafficking and are more likely to be subject to immigration detention. Contractors operating ICE detention facilities have very little understanding about this complex issue. Despite a 2011 ICE memo encouraging the exercise of prosecutorial discretion for crime victims, including victims of human trafficking, ICE fails to proactively screen individuals for human trafficking, and the trauma of detention may prevent a trafficked person from disclosing the victimization. ICE often relies on NGOs to identify victims of human trafficking; but many individuals arrested in ICE raids are deported quickly, before receiving the opportunity to consult with an NGO. Further, many individuals in detention have no access to pro bono counsel or other NGO services.

[S]urvivors of human trafficking are often detained by DHS even after they have been identified as survivors of human trafficking. DHS has refused requests from Freedom Network members to remove detainees on identified survivors of human trafficking in criminal custody. DHS often detains trafficking survivors until their T visas are approved. When DHS does agree to release survivors, it often takes several weeks to respond to a request for release, during which survivors lack critical services and are further traumatized.

But ultimately, the U.S. detention system needs an overhaul. There are humane alternatives to immigration enforcement that do not involve jail, such as community monitoring. The staggering growth of the for-profit detention system in the US has troubling implications,⁸⁹ and the conditions in facilities and have been well-documented by the Women's Refugee Commission—which found that detention facilities are wholly unfit for women and families.⁹⁰

The DHS's United States Citizenship and Immigration Services (USCIS) U and T visa adjudicators should receive additional and specialized training on victims of labor trafficking and workplace-based crime.

USCIS adjudicators decide on T and U visa applications for victims of crime and trafficking in the U.S. Adjudicators have received substantial training on certain U visa qualifying crimes— particularly domestic violence. However, when it comes to crimes that happen in the workplace, including trafficking for labor, adjudicators need more training on what to look for and how to interpret abuse.. Domestic workers exploited and trafficked in the workplace can be subjected to physical, sexual,

⁸⁹ Detention Watch Network. *The Influence of the Private Prison Industry in Immigration Detention*. Available at: <http://www.detentionwatchnetwork.org/privateprisons>

⁹⁰ Women's Refugee Commission. *Locking Up Family Values, Again: The Detention of Immigrant Families* (2014), and *Migrant Women and Children at Risk In Custody in Arizona* (2010).

psychological, and economic abuse. This abuse can cause serious effects including physical injuries, psychological injuries like depression and Post-Traumatic Stress Disorder, and even harm to interpersonal relationships (social harm).

Advocates complain that while USCIS adjudicators have been hired, they don't yet have consistent knowledge about how trafficking for labor manifests.

The Freedom Network writes in its comments for the 2014 TIP Report⁹¹:

USCIS must fully train all adjudicators at the Vermont Service Center on human trafficking. After the initiative to increase capacity at VSC, adjudicators of T visas are issuing inconsistent requests for evidence that reveal some new adjudicators' fundamental misunderstanding of trafficking law and USCIS regulations. Thorough training is necessary to avoid causing survivors unnecessary distress and delay during immigration application processing. Additionally, officers adjudicating all applications for status through the Vermont Service Center should be trained on the dynamics of trafficking, as victims of trafficking may apply for other forms of relief.

In a letter to USCIS, the National Employment Law Project and a group of advocates wrote⁹²:

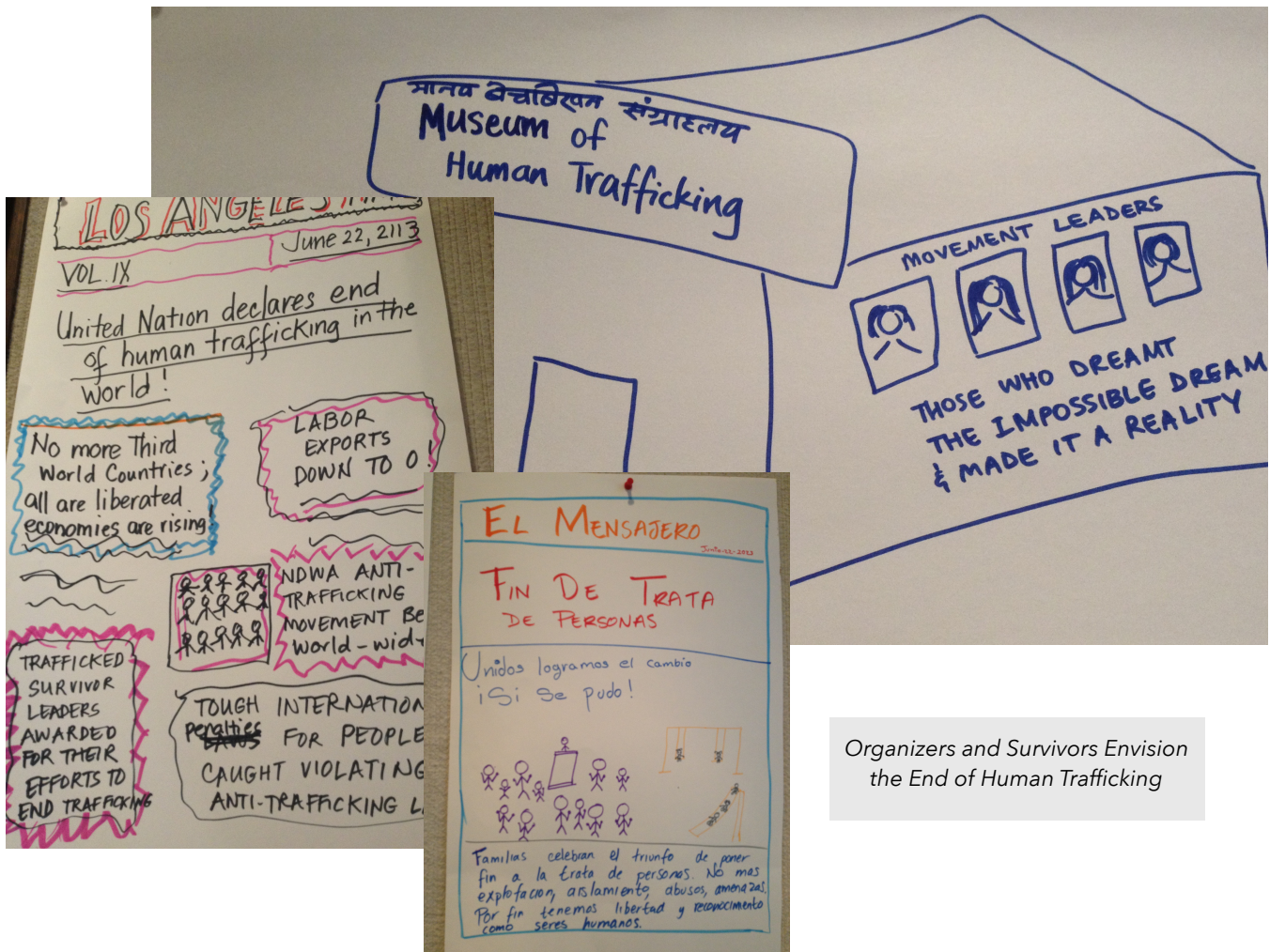
USCIS has applied an inconsistent and higher standard for a showing of "substantial physical or mental abuse" for victims of workplace crime than for victims of more commonly filed U visa crimes, including domestic violence. In these cases, adjudicators have (1) denied cases on the basis that harm suffered by the victim was not permanent; and (2) concluded that symptoms of harm that ordinarily lead to a finding of substantial abuse in domestic violence cases were not sufficient in cases involving workplace crime... In the domestic violence context, USCIS has received training on how mental and emotional harm reveals the profound impact of sexual assault and domestic abuse on those who experience them. Many survivors of domestic violence and sexual assault, for instance, say that overcoming psychological harm is much harder than recovering from abrasions and broken bones. We suggest that there is no rationale for finding such harm insufficient for other kinds of crimes. USCIS should apply a consistent analysis of harm to victims of workplace-based crime

⁹¹ Freedom Network. 2014. Addressing Human Trafficking in the United States: FN Comments for the Trafficking in Persons Report. Available at: <http://freedomnetworkusa.org/addressing-human-trafficking-in-the-united-states-fn-comments-for-the-trafficking-in-persons-report/>

⁹² National Employment Law Project. 6 May 2014. "U Visas Based on Crimes in the Workplace: USCIS Substantial Abuse Interpretations.."(Letter to USCIS).

USCIS needs more training and education on the context of workplace-based crimes. USCIS adjudications indicate confusion and misunderstanding of the context and elements of qualifying criminal activities commonly found in the workplace setting. In particular, USCIS adjudicators (1) seem confused about the ways broader labor violations contribute to qualifying abuse suffered by victims of workplace-based crime; (2) disregard or inadequately consider aggravation of prior injury to applicants; and (3) impose unreasonable and inconsistent standards of proof to show a nexus between the qualifying criminal activity and the abuse suffered by victims.

In order to ensure that victims who apply for relief in the form of U visas and T visas receive fair consideration, USCIS should ensure that adjudicators receive additional specialized training on workplace crimes and trafficking for labor— perhaps in collaboration with advocates who can illustrate the problems faced by immigrant victims in the workplace.



Organizers and Survivors Envision the End of Human Trafficking



Overcoming Threats of Immigration Related Retaliation to Combat Forced Labor

Jennifer J. Rosenbaum

For migrant domestic workers and workers in other sectors—both those who come on guestworker visas and those who are undocumented—vulnerabilities related to immigration status are often the biggest hurdle to responding to conditions of workplace exploitation including labor trafficking. In a 2009 survey presented in Congressional testimony, the

National Guestworker Alliance found that 100% of workers surveyed had faced a serious workplace violation and fear of immigration-related retaliation was the number one reason they did not come forward to report those violations of workplace standards.

Workers who act collectively to improve workplace conditions often face termination and threats of deportation. Guestworkers also face blacklisting from future jobs with the same or other employers. Some employers of guestworkers even engage in “private deportations” where they physically take workers to the bus station or airport and force them to return home without any other choice.

As this report shows, despite these vulnerabilities, workers’ resistance to forced labor and severe workplace exploitation is growing. Domestic workers and guestworkers in many sectors are joining with the U.S. workers who work alongside them to collectively organize to build workplace power and develop new forms of bargaining. And through their bold action, visionary leadership, and transformative organizing, survivors of labor trafficking are defining a new transnational policy agenda to raise working conditions and promote family unity in their home countries and the countries where they migrate to work.

Jamaican H-2B guestworker Shellion Parris was over \$2,000 in debt when her cleaning subcontractor employer threatened her and other workers with retaliation—threatening deportation by the county sheriff’s department and the Immigration and Customs Enforcement Agency—to keep them working under conditions of forced labor. But she and other guestworkers still went on strike demanding accountability from the luxury condominiums using the agency.

Chinese student Chen Wen and other student-workers on J-1 ‘cultural exchange’ visas were subjected to captive audience meetings and threats of long-term immigration consequences by both U.S.-based and home

country recruiters who flew to the U.S. to threaten the student-workers. But she still joined with students from Ukraine, Turkey, Mongolia, and other countries in a sit down strike and national campaign. This campaign exposed egregious wage and hour and health and safety violations while the students joining with labor allies to demand the Hershey Company stop exploiting cultural exchange students and return its warehouse work to living wage jobs for local workers.

And Aby Raju and other H-2B workers from India continued to organize their co-workers even after Mississippi-based shipyard Signal International attempted to repress workplace organizing following “guidance” from Immigration and Customs Enforcement: “Don’t give them any advance notice. Take them all out of the line on the way to work; get their personal belongings; get them in a van, and get their tickets, and get them to the airport, and send them back to India.”

Stronger protections from immigration related retaliation are needed at the legislative and administrative level so that more workers can follow in the footsteps so many brave domestic workers and of Shellion, Chen Wen, and Aby.

First introduced in 2010 as a stand alone bill and included as part of the Senate bipartisan immigration reform bill (S.744), the POWER Act (“Protect Our Workers from Exploitation and Retaliation”) offers critical immigration related protections to workers who suffer retaliation when they exercise their civil and labor rights. Championed by Senator Robert Menendez and House of Representatives Member Judy Chu, this legislation would help domestic workers and all workers—both undocumented and guestworkers whose visa is tied to their employer— to organize in response to workplace abuse without fear of retaliation.

Also as part of President Obama’s November 2014 Executive Action on Immigration, he established a new interagency working group for the enforcement of federal labor, employment, and immigration laws with the mandate to “strengthen processes for staying the removal of, and providing temporary work authorization for, undocumented workers asserting workplace claims and for cases in which a workplace investigation or proceeding is ongoing.”

Protections from immigration related retaliation are a critical step in preventing labor trafficking. They will ensure that employers cannot threaten workers ability to remain in the country and provide for their families while they come forward to combat workplace exploitation. And with protections, we can continue to build strong labor and people’s movements grounded in the experience, leadership, and vision of survivors of human trafficking.

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DEPARTMENT OF STATE

1. Department of State (DOS) should improve and fully implement effective pre-departure and post-arrival programs for domestic workers and their employers, and include domestic worker groups.
2. DOS should establish annual in-person monitoring and exit interviews, and include domestic worker groups.
3. DOS should carefully monitor applications to ensure foreign missions are not misclassifying domestic workers under A-2 visas.
4. DOS should ensure meaningful consequences for diplomats and international officials and agencies who defraud or abuse domestic workers, including requesting waivers of immunity and suspending countries and agencies from the ability to bring more workers.
6. DOS should revise the B-1 and J-1 au pair programs to ensure that domestic workers employed in these programs receive similar protections—including the right to contracts and prevailing wages, and stays of removal if the worker pursues a criminal or civil case against an abusive employer.

Overview

DOS oversees the visa programs for domestic workers, including A-3, G-5, B-1, and J-1 au pairs. They also lead the President's Interagency Task Force on trafficking, the body that coordinates government agency work on human trafficking. Further, they manage the international anti-trafficking programs of the United States, interact with home country embassies of migrant domestic workers, and evaluate countries in the annual Trafficking in Persons (TIP) Report. As such, they are a primary source of support and protection for visa-holding domestic workers at risk and recovering from human trafficking, as well as a primary leader in creating bilateral or multilateral agreements with sending countries of domestic workers.

The Department of State can prevent trafficking of domestic workers by partnering with immigrant community based organizations and worker centers to improve pre-departure and post-arrival programs for domestic workers. As part of the Trafficking Victims Protection Act, domestic workers on A-3 and G-5 visas were granted basic protections mandated to the Department of State. However

incidences of abuse are still far too high, pointing to the need to continue refining prevention strategies. Domestic workers on A-2, B-1, and J-1 au pair visas were not fully included in these protective mandates.

Recommendations

Partner with Worker/Survivor Groups to Improve Pre-Departure Education.

There is strong evidence that embassies and consulates are important places to intervene to prevent trafficking. According to the Urban Institute study, “during the recruitment process, some victims came into contact with authority figures such as staff member of a US embassy or consulate during the visa application process. Recruiters and traffickers often trained the victims about the interview process with embassy or consulate staff.”⁹³ Most workers researchers interviewed did not receive worker rights information at the embassy and many were interviewed in front of the employer or recruiter, which kept workers from reporting things like illegal fees, false documents, and other precipitators of abusive employment.

In order to create more effective pre-departure and post-arrival education programs, DOS should consult with worker/survivor groups (in addition to service/advocacy organizations) before and during development of anti-trafficking activities including consular staff training, pamphlets, consular office videos, and orientations. This partnership approach has been effective in the past (for example, in the development of the Wilberforce Pamphlet), and could be broadened to include more activities.

A video that can be played in the waiting rooms of consulates should include survivor voices and reflects the wide range of abuse and intimidation, including retaliation for reporting such abuse.

Rather than waiting until the review stage, an ongoing partnership that survivors can take part in from the beginning, before materials are developed, would help ensure that materials and orientations are effective on the ground. It would also ensure that translations are appropriate for the literacy level of the average migrant, and include graphics and pictures as recommended by the Urban Institute study.⁹⁴

⁹³ Owens, Colleen, and Meredith Dank, et al. 2014. *Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States*. New York: Urban Institute and Northeastern University.

⁹⁴ *ibid*

Improve Post-Arrival Orientation Sessions.

One important development for foreign domestic workers on the G-5 visas has been the orientation program conducted jointly by the World Bank and IMF, which was prompted by organizers and advocates who documented a history of abuse on this visa dating back to at least the mid- 1990's.⁹⁵ In 2013, DOS began conducting similar briefings for newly arrived domestic workers on A-3 visas. Both orientation programs are important opportunities for workers to learn about their rights in the United States, but they cannot replace ongoing relationships and connections to non-governmental organizations. One NDWA member organization was invited to observe a World Bank briefing in 2011, and noted that workers were seated next to their employers. While the intention was to create an environment in which both worker and employer are receiving the same information, the inherent power dynamic has a silencing effect. The DOS-operated orientation addressed that concern by conducting separate briefings for workers and employers, a positive improvement. In addition, both the World Bank/IMF and the DOS should ensure language access so that the employer is not in a position to interpret for the worker, childcare so that the children are not a distraction for either the employer or the worker to participate in briefings, and overall, in-person representation by worker groups and service providers to ensure that workers are aware of resources outside government hotlines. Further, the orientations are intended to happen in the first few months when the worker arrives. This is a critical time to reach workers, but many of the worker exploitation and trafficking cases that NDWA members have noted do not start as abusive as they end up, underscoring the importance of ongoing monitoring.

Establish annual in-person monitoring and exit interviews, and include domestic worker groups.

The Urban Institute study noted several gaps and failures in the process of consular interviews overseas, including the seizure of informational pamphlets, and the presence of the recruiter or employer in the interview itself. These failures underscore the importance of the U.S. government taking a proactive approach after the domestic worker arrives to ensure that information about rights is actually getting through. Over the past year, the Department of State has indicated interest in beginning in-person meetings to check on the conditions of domestic workers on A-3/G-5 visas to

⁹⁵ Break the Chain Campaign. (2012). *Historical Overview: 1995-2011*. Washington, DC: Institute for Policy Studies. Available at: <http://traffickingandlabor.files.wordpress.com/2012/03/btcc-historical-overview.pdf> [Accessed 2 January 2015].

ensure that the employers' obligations are being met and the workers are aware of their rights. The in-person model is not unprecedented, several countries in Europe have implemented in-person registration with successful outcomes.

The Department of State must begin in-person registration of domestic workers on A-3/G-5 visas, not just in Washington, DC but also in New York City, the two cities where most domestic workers on these visas are based. These check-ins should include the consultation of NGO and domestic worker support groups, should be done without the presence of the employer, and should continue annually as a condition of the visa. The Organization for Security and Cooperation in Europe (OSCE), a security and democracy-focused group made up of more than 50 governments including the United States, notes that "experience shows that after the second interview, the private domestic worker sees the Protocol [Department of State in the U.S.] official as a reliable contact person. In some cases, workers do not wait for the yearly visit to discuss problems that have arisen with their employer."⁹⁶ Closely coordinating with NGO and domestic worker advocacy groups will ensure that workers who do disclose abuse can receive services and support immediately.

At the annual meeting, the contract can be reviewed and updated, questions about living and working conditions can be explored, and information about domestic worker support groups and social service providers can be provided. Officials could be joined by trained NGO staff, and can be trained in establishing rapport and effective interview techniques in order to create a safe and open environment for complaints to emerge without the presence of the employer.

The efficacy of these meetings could be dramatically improved through a formal partnership with a local community-based NGO who could be trained in DOS protocols and provide cultural and linguistic support, as well as a more comfortable alternative to an anonymous government hotline if the worker needs assistance at a later date.

After the in-person check-ins have regularized, DOS should begin exit interviews to screen domestic workers leaving the country at the end of their A-3 and G-5 visas. Even as the program's monitoring and labor rights enforcement improves, some workers are not comfortable sharing the details of their employment conditions until they are safely headed home. To close the loop, the Department of State should conduct A-3 and G-5 exit interviews to assess working conditions of domestic workers, without the presence of the employer, before permitting that employer to bring more workers on sanctioned visas.

⁹⁶ Organization for Security and Cooperation in Europe (OSCE). 2014. *How to Prevent Human Trafficking for Domestic Servitude in Diplomatic Households and Protect Private Domestic Workers*. Vienna: OSCE. Available at: <http://www.osce.org/handbook/domesticservitude> [Accessed 2 January 2015].

Monitor applications to ensure foreign missions are not misclassifying domestic workers under A-2 visas.

One concerning trend noted by advocates involves deliberate visa misclassification to avoid compliance with worker rights laws in the United States.⁹⁷ Unlike an A-3 visa which is meant for the private domestic workers of diplomats and consular officials, an A-2 visa is meant for general embassy employees, and confers few rights upon the recipient. The law permits A-3 and G-5 visa holders to remain in the United States with deferred action status to sue their employers for abuse. In contrast, A-2 visas, usually reserved for technical and administrative staff, include no such protections. The Vienna Convention explicitly delineates between service staff of embassies, and private domestic workers.⁹⁸ The Department of State should analyze applications for A-2 visas thoroughly and implement a monitoring system to ensure that domestic workers are not misclassified under less-protected visas in order to avoid oversight. Countries who intentionally misclassify workers should be suspended from visa privileges. Consular interviews should explicitly review information about the differences between A-2 and A-3 visas, so that workers can safely report cases of misclassification and receive assistance without fear of retaliation. DOS should also explore how to legally implement strong worker protections on this visa.

Ensure thorough investigations of abuse and meaningful consequences for employers and agencies who violate the rights domestic workers.

Diplomatic Security Services (DSS) is the law enforcement division within the Department of State that investigates cases of passport and visa fraud involving diplomats. DOS should continue to support the work of DSS, who have demonstrated a commitment to a victim-centered approach in their investigations, and are already fluent in issues of immunity and protocol.

DOS can also support the role of foreign embassies in serving victims who come forward for help. We recommend that the missions develop relationships with local groups wherever possible, and set up emergency shelter and assistance to victims who may come to the embassy seeking help. In addition to expediting things like passport processing and copies of other documents, trained and

⁹⁷ A December 11, 2014 article in the Times of India noted “Bilateral ties have seen a near complete turnaround, with a new regime in India determined to change ties with the US. Select Indian diplomats will now be able to take their domestic helps along on A-2 visas.”

⁹⁸ United Nations (1961). Vienna Convention on Diplomatic Relations. See Article 1(g) and (h) for definitions.

culturally-informed embassy staff can provide referrals to community-based organizations, social and legal service organizations, and can provide information about workers' rights and resources in the United States.

Advocates and worker rights groups have criticized⁹⁹ the DOS for not pursuing meaningful penalties against employers who violate the law, and these groups are not alone: In 2008, the Government Accountability Office noted that abusers could get away with repeatedly bringing domestic workers on visas, mistreating those workers, sending them away when the worker speaks up or when the visa expires, and then bringing in another domestic worker.¹⁰⁰ Although progress has been made to better regulate the employment relationship between diplomats and domestic workers, such as mandating contracts and payments through direct deposit, exploitative officials are finding new ways to skirt the rules- underscoring the importance of proactive monitoring, and real penalties for violations.

When Congress passed the William Wilberforce Trafficking Victims Protection Reauthorization Act, the law included a provision¹⁰¹ requiring the Secretary of State to suspend the issuance of A-3 or G-5 visas to applicants "seeking to work for officials of a diplomatic mission or an international organization, if the Secretary determines that there is credible evidence that one or more employees have abused or exploited one or more non-immigrants holding an A-3 or G-5 visa, where the diplomatic mission or international organization has tolerated such actions."

Appropriations language attached to the State Department budget in 2013 elaborates further:

Provided, That in determining whether to suspend the issuance of A-3 or G-5 visas under such section, the Secretary should consider the following as "credible evidence": (1) a final court judgment (including a default judgment) issued against a current or former employee of such mission or organization (for which the time period for appeal has expired); (2) the issuance of a T-visa to the victim; or (3) a request by the Department of State to the sending state that immunity of individual diplomats or family members be waived to permit criminal prosecution: Provided further, That the Secretary should assist in obtaining payment of final court judgments awarded to A-3 and G-5 visa holders, including encouraging the sending states to provide compensation directly to victims.

⁹⁹ Vandenberg, Martina E. (1 January 2014). "Diplomats who commit domestic-worker crimes shouldn't get a free pass." *Washington Post*.

¹⁰⁰ U.S. Government Accountability Office. July 2008. GAO-08-892, Human Rights: U.S. Government's Efforts to Address Alleged Abuse of Household Workers by Foreign Diplomats Could be Strengthened.

¹⁰¹ Section 203(a)(2)

In addition to the directives in subsection (k) of this section and with respect to the implementation of section 203(a)(2) of Public Law 110-457, the Secretary of State is directed to consider the failure to provide a replacement passport within a reasonable period of time to a T-visa recipient; the existence of multiple concurrent civil suits against members of the diplomatic mission; or failure to satisfy a civil judgment against an employee of the diplomatic mission as sufficient to determine that such mission “tolerated such actions.”

Relatedly, DOS should ensure that governmental officials without immunity cannot switch to a status with full immunity in the wake of an ongoing criminal proceeding. In early 2013, DOS allowed the transfer of Deputy Consul General Devyani Khobragade to a U.N. post offering immunity. This set a dangerous precedent for other countries to exploit. The State Department should issue administrative guidance to correct this loophole, otherwise legislative action may be needed.

Take steps to prevent vulnerability to trafficking on B-1 visas.

Currently the number of domestic workers in the United States on B-1 visas is hard for advocates to calculate since they are lumped together with other B-1 holders: like business travelers. The 2008 TVPA reauthorization included significant protections for A-3 and G-5 domestic workers- like specific items in their contracts related to overtime and manner of payment and the right to stay in the United States and pursue civil claims against abusive employers.¹⁰² B-1 domestic workers are not currently covered by these protections.

Although a legislative fix may be necessary to address the ability of B-1 domestic workers to safely stay and work in the United States while they pursue civil claims, the DOS can improve guidance in the Foreign Affairs Manual related to contracts, can disaggregate the visas so that more information about domestic workers can be obtained, and can work with advocates to develop an outreach and monitoring strategy that could feasibly address the vulnerability of trafficking on this visa.

¹⁰² H.R. 7311, Section 202(b)(2) and (c)(1)

Strengthen protections for J-1 au pairs.

The J-1 visa has several different sub-categories including visas for students in summer jobs, camp counselors, and interns. One subcategory is designated for au pairs: young people who come to the United States to live with a “host family” for up to two years, in exchange for providing up to 45 hours per week of childcare for American families. The J-1 program is considered a “cultural exchange” program and as such is monitored by the Department of State, not the Department of Labor. However, the Government Accountability Office has long held that this program should be regulated like other work visas, since the main component is work.¹⁰³ Echoing this concern, in 2012, the U.S. State Department Inspector General “question[ed] the appropriateness” of using the J-1 visa in work programs such as the au pair program. The Inspector General thus recommended that the State Department determine the viability of ending or transferring the program to the Department of Labor.¹⁰⁴

The child care performed by au pairs is clearly a type of domestic work, and many of the challenges that other domestic workers face- like isolation in the home, gender discrimination, risk of sexual assault, and immigration vulnerability- are shared by au pairs. In some ways, these concerns are exacerbated by the fact that this is a government program, conducted in partnership with private agencies, with an infrastructure and bureaucracy that shields the au program from outside scrutiny. NDWA has begun to examine the au pair program and learn about its functions so that we can better reach au pairs and inform them of opportunities to join domestic worker organizing.

Emerging cases of labor abuses have put the J-1 program in the spotlight of worker rights advocates.¹⁰⁵ Advocates have recommended at a minimum: closer monitoring and greater transparency of the agencies’ practices, as well as the end of recruitment fees charged to participants— which often lead to debt-based vulnerability. Generally weak federal oversight of the “sponsor” au pair agencies means that issues like wage and hour abuses can snowball quickly without any recourse for the au pair, depending on the whim of her individual recruitment and placement agencies.¹⁰⁶

¹⁰³ United States Government Accountability Office. 1990. “Inappropriate Uses of the Education and Cultural Exchange Visas.”

¹⁰⁴ U.S. Department of State, Office of the Inspector General. 2012. *Inspection of the Bureau of Educational and Cultural Affairs*, Report No. ISP-I-12-15

¹⁰⁵ Stewart, Meredith. 2014. *Culture Shock: The Exploitation of J-1 Cultural Exchange Workers*. Southern Poverty Law Center. Available at: <http://www.splcenter.org/get-informed/publications/Culture-Shock> [Accessed 2 January 2015].

¹⁰⁶ Chuang, Janie. 2013. “The U.S. Au Pair Program: Labor Exploitation and the Myth of Cultural Exchange.” *Harvard Journal of Law and Gender*, Vol. 36, 269-343. Available at: <http://harvardjlg.com/wp-content/uploads/2013/09/Chuang.pdf> [Accessed 3 January 2015].

Overall the au pair agencies have an efficient and influential lobbying arm that has thwarted advocates from making legislative improvements to better protect au pairs through transparency and accountability of agencies. Backed by the Chamber of Commerce, these agencies have called upon families who employ au pairs¹⁰⁷ to contact Congress, often conjuring the specter of heightened program fees for families to incentivize action.

Given that the realistic primary function of the program is full-time childcare for the benefit of the employer family, recruitment and placement fees should be borne by the employer. These recruitment and placement fees charged to au pairs (typically in their countries of origin, and at rates that differ according to geographic region) do not correlate to any benefits au pairs gain from participating in the program. While the au pair program is meant to provide au pairs a cultural experience, au pairs already bear the cost of that experience. Au pairs pay for their room and board through automatic deductions from their minimum-wage stipends. Au pairs must also pay for any costs of their required coursework beyond the \$500 reimbursement provided by the host families - a reimbursement rate that has not changed since the mid-1990s, despite vast increases in the cost of education over this twenty-year period.

Agencies should train their front line staff about workplace rights and labor trafficking, including how to identify and respond to problems. There are creative and low-cost ways to implement proactive monitoring through anonymous web surveys, phone calls, home visits, and group meetings. Agencies should take full responsibility for their recruiters— developing consistent materials and rules and zero tolerance policy for fraud or deception in the recruitment process. During the post-arrival orientation process, agencies should establish a relationship with the au pair and review worker rights and remedies available for assistance, and clarify any inconsistencies between what was promised in the home country and what she can expect in the United States. As a condition of the program, there should be clear, enforceable contracts in English and in the au pair's primary language that detail hours, wages, rest, leave, time for education and cultural activities, and include statements that prohibit forced overtime, restriction of movement, and holding of visas and passports.

If agencies and the DOS agree that participant safety and security is a primary concern, making these changes should be a requirement for participation in the program.

¹⁰⁷ Ehrhardt, Nicole. 7 June 2013. "Showing Our Caregivers We Care About Them." *OtherWords*. Available at: <http://otherwords.org/showing-our-caregivers-we-care-about-them/> [Accessed 2 January 2015].

Bringing the Cause Home

Janie Chuang

In my nearly two decades of work on human trafficking issues, never has the issue hit so close to home for me as the situation of domestic worker exploitation. As a human rights advocate working on trafficking issues for the U.N. Special Rapporteur on Violence Against Women during the drafting of the U.N. Trafficking Protocol, I was well aware of the situation of exploited domestic workers

worldwide. Our mandate exposed the myriad reasons why accountability for domestic worker exploitation was so difficult to achieve: how the failure to comprehend domestic work as a form of work was deeply rooted in gender discrimination, and how social norms that cordon off the home as the “private” sphere rendering abuse hidden from scrutiny, among others. Later on, representing domestic workers trafficked by diplomats exposed how the interplay of legal regimes



(e.g., immigration, diplomatic immunity law) rendered accountability practically impossible for even the clearest of trafficking cases. And more recently, as a law professor, I have attempted to bring theory and lessons from practice together in an effort to think about how one might better prevent and redress domestic worker exploitation.

Despite a lot of time spent thinking about domestic worker exploitation, it wasn't until I became a mom and employer of a domestic worker that I came to fully appreciate the magnitude of the problem. In countless encounters with other parent-employers on schoolyards and playgrounds, I have seen firsthand how employers can so readily take their domestic workers for granted, expecting maximum flexibility yet offering so little in return. I have heard recounted the many reasons why domestic workers put up with unreasonable demands with no complaint - whether, for example, constrained by their (sometimes undocumented) circumstances, or by their fear of having to sever their ties with the children for whom they care. As an employer, I have come to appreciate the need to be vigilant about balancing a relationship that is both professional and intimate with a woman whom I deeply respect and also love, without whom my family life would be far less rich. Through that relationship, I have learned of terrible situations of exploitation closer to home than I'd ever imagined: of the domestic worker trafficked by diplomats, who'd frequented the park next door to

my home; of our nanny's relative who'd suffered the same fate several years ago; of the au pair of a (former) friend of mine, charged with caring for a colicky infant all day and all night, and paid less than minimum wage for her efforts; and even our nanny herself, whose first job in the United States was as an au pair for a family who had refused to pay her for an entire year.

Yet at the same time, I have seen the extraordinary work of NDWA members and partners bring measurable progress in improving the lives of domestic workers across the country. We now have laws at the state and even international levels explicitly recognizing domestic work as work, and domestic workers entitled to rights as workers. The NDWA worker organizing efforts have helped mobilize domestic workers and advocates to achieve crucial legislative and policy changes such as these. But they have also inspired efforts to respond to exploitation in individual cases. In working with our nanny to find the trafficked domestic worker from the park next door, we learned that two other domestic workers, with the help of their employers, had already helped the trafficked domestic worker escape the home of her diplomat-employer. A few months later, when students in my own school's Immigrant Justice Clinic approached me for advice on diplomatic trafficking cases, I was thrilled and relieved to hear that their client was that same domestic worker. This is a testament to the gains made in outreach and availability of legal representation for domestic workers.

With all of the gains made by NDWA members and partners, I am hopeful that one day, domestic work will be widely appreciated as work, and that domestic workers will enjoy all of the privileges benefiting other workers. My hope is that it will be a world where pay is truly commensurate with experience - so that as my kids grow older, our nanny has maximum flexibility to find another job (if she so chooses) without sacrificing the wage she has come to earn over years of working for us. That it will be a world where systems are in place such that employers of domestic workers can collectively purchase group insurance plans to provide health and life insurance coverage for our workers. That it will be a world where the enormous contributions domestic workers provide to our families will be valued by law, by society, and by every single family that has had the enormous privilege of having them care for our children, our parents, our siblings, and our homes.

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DEPARTMENT OF LABOR

1. The Department of Labor (DOL) should train the Wage and Hour Division to investigate and certify cases of domestic worker abuse and human trafficking.
2. DOL should partner with worker centers to increase capacity to respond to domestic workers and proactively monitor working conditions.

Overview

Employers frequently keep trafficked workers from escaping abuse by threatening non-citizen workers with arrest and deportation. Immigrant workers must have a safe way to leave their traffickers that allows them to stabilize their lives, seek redress for the wrongs they have suffered, and see their traffickers brought to justice. The two types of visas that allow a worker to stay in the U.S. to pursue these goals are the U and the T visas¹⁰⁸. However, it can be difficult for a worker who has escaped her traffickers to get the documentation and certification needed to obtain these visas.¹⁰⁹

On November 20, 2014 as part of President Obama's immigration-related Executive Order announcements¹¹⁰, the Department of Labor (DOL) announced that it would issue T visa certifications for victims of serious forms of human trafficking—broadening the list of federal agencies that survivors could turn to. The DOL also announced that it would certify the newly recognized crimes of fraud in foreign labor contracting, closely related to labor trafficking, for workers seeking a "U" visa for victims of severe work-related crime¹¹¹. This news is long overdue and welcome by the anti-trafficking community.

¹⁰⁸ United States Citizenship and Immigration Services (nd). Victims of Human Trafficking & Other Crimes. <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes> [Accessed 2 January 2015]

¹⁰⁹ Freedom Network USA (2014, January 20). "Addressing Human Trafficking in the United States: Freedom Network Comments for the Trafficking in Persons Report." Available at: <http://freedomnetworkusa.org/addressing-human-trafficking-in-the-united-states-fn-comments-for-the-trafficking-in-persons-report/> [Accessed 2 January 2015]

¹¹⁰ National Immigration Law Center. (2014, November 26). "President Obama's Immigration Announcement." Available at: www.nilc.org/execactionssummary.htm [Accessed 2 January 2015]

¹¹¹ The new crimes are: extortion, forced labor, and fraud in foreign labor contracting. They were added to the existing list of DOL-certified U visa crimes of: trafficking, involuntary servitude, peonage, obstruction of justice, and witness tampering.

The DOL's broadened capacity to certify T and U visas strengthen the agency's ability to investigate severe forms of human trafficking and workplace crime, which is particularly vital in light of DOL's particular expertise and contact with vulnerable low-wage workers. In 2012, DHS issued only 674 T visas of the available 5,000. The addition of the Department of Labor—and investigators who are experienced and knowledgeable about labor violations—can help survivors access this important relief.

Recommendations

Ramp up training for investigators.

Given the expansion into T visas and more U visa qualifying crimes, it is important that Wage and Hour investigators are aware of the different forms of relief available, and how these crimes manifest. The sensationalized narratives around trafficking that have been popularized in the media are not analogous to what a DOL investigator might encounter. Moving forward, DOL should ramp up uniform and mandatory training of Wage and Hour Division investigators to recognize and respond to the full spectrum of workplace rights violations experienced by domestic workers

Partner with community-based organizations and worker centers.

DOL can implement a creative way to proactively monitor and respond to workplace conditions of domestic workers. Cases involving individual workers (most domestic worker cases) often take a lower priority compared to large scale violations involving multiple employees. In addition, much anecdotal evidence about how trafficked domestic workers are able to escape shows that these workers reached out or were offered help by someone whom they identified as trustworthy because she was like them - a speaker of the same language, a fellow nanny, an emigree from the same country. DOL's capacity could multiply by partnering with community-based organizations such as NDWA member organizations to serve as the agency's "eyes and ears." Worker Centers and WHD could exchange training and materials, and maintain a direct connections.¹¹²

¹¹² Fine, Janice & Jennifer Gordon. December 2010. Strengthening Labor Standards Enforcement through Partnerships with Workers' Organizations. *Politics & Society* December 2010, vol. 38 no. 4, 552-585. DOI: 10.1177/0032329210381240

Uncovering the Connections Between Domestic Worker Labor Rights and Exploitation

Sheila Bapat, Author of *Part of the Family*

In 2006, 17-year-old Shanti Gurung moved from her home in India to New York City with her new employer, Neena Malhotra. Shanti left behind her family, friends and everything she knew for what seemed like a secure job and an exciting opportunity: to live with and work for a privileged Indian family in the United States. The couple offered Shanti a verbal employment contract promising her a home and fair wages, in exchange for “light cooking, light cleaning, and staffing the occasional house party.”¹¹³

Shanti’s reality turned out to be far different than this initial promise. For the three years she worked in the Malhotra household, Shanti was regularly denied food, forced to sleep on the floor even though the Malhotra’s large apartment included several unoccupied bedrooms, and regularly worked more than sixteen hours per day. Eventually, using her small savings, Shanti fled the Malhotra’s apartment in 2010, seeking help from a random woman she had recently met in a grocery store. After escaping her abusive employers, Shanti discovered Adhikaar, a New York City nonprofit that works with the local Nepali community.

Stories like Shanti’s reflect the subjectivity and luck inherent in domestic labor. Whether a domestic worker’s life will be filled with fairness and dignity or exploitation and abuse depends on the whims, character and awareness of her employer as well as where in the world she happens to live. And what encourages this subjectivity is the legal status of the work itself: domestic workers are far less likely to be protected by the laws that regulate most other sectors of employment. As discussed in *Part of the Family: Nannies, Housekeepers, Caregivers, and the Battle for Domestic Workers’ Rights*, the risk of exploitation and trafficking many domestic workers like Shanti Gurung face is tied to, truly resulting from, the historic devaluation of women, women of color, and their labor.

Globally, more than forty percent of domestic workers are not legally entitled to earn a minimum wage, while one third are not entitled to maternity leave.¹¹⁴ And this is despite the fact that domestic work as an expanding sector of the global economy is staggering, having grown from 32 million in 1999 to 80-100



¹¹³ Gurung v. Malhotra, 851 F.Supp. 2d 583 (SDNY 2012).

¹¹⁴ International Labour Organization, “Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection,” January 9, 2013.

million worldwide, 15 million of whom are children.¹¹⁵ Nearly 85 percent of domestic workers today are women. According to the International Labour Organization (ILO), approximately 1 in 13 wage-earning women in the world are domestic laborers.¹¹⁶

The United States is far from exempt from these abuses. In 2001, many US-based migrant domestic workers interviewed by Human Rights Watch received an average of \$2.14 per hour—less than half the required minimum wage.¹¹⁷ A litany of US labor and employment regulations historically excluded domestic workers: only last year was the Fair Labor Standards Act (FLSA) updated to include minimum wage and overtime protections for domestic workers who provide in-home care, and the new FLSA rule is already facing an uphill battle when it comes to enforcement. Domestic workers are still excluded from the National Labor Relations Act (NLRA), and various occupational safety regulations. Cleaning homes and caring for children and the elderly, the nearly two million domestic workers in the United States—and the millions worldwide—are treated as a casual, ancillary part of the workforce, neglected by labor laws, even as they take on the most crucial caring work for families and communities.¹¹⁸

Anti-trafficking legislation has been adopted as a remedy for these abuses. But as scholar Jennifer Chacon pointed out in her 2009 Fordham Law Review article, “one possible legislative means for discouraging trafficking as manifested in migrant labor exploitation would be to allow undocumented workers to claim the full range of remedies available under the NLRA [National Labor Relations Act], the FLSA [Fair Labor Standards Act], and other labor protections, and allowing undocumented migrants sufficient legal protection to pursue those claims.”¹¹⁹

Fortunately, because of the domestic workers’ movement, U.S. labor codes are now beginning to reform to include workers within labor protections and global laws are slowly changing too. The movement building and organizing is helping address one of the root causes of the exploitation domestic workers face -- being wholly excluded from labor codes and invisible in the economy as a whole.

Sheila Bapat is a former employment attorney who now writes about gender and economic justice. See the “Resources” section for information about her most recent book on domestic worker rights.

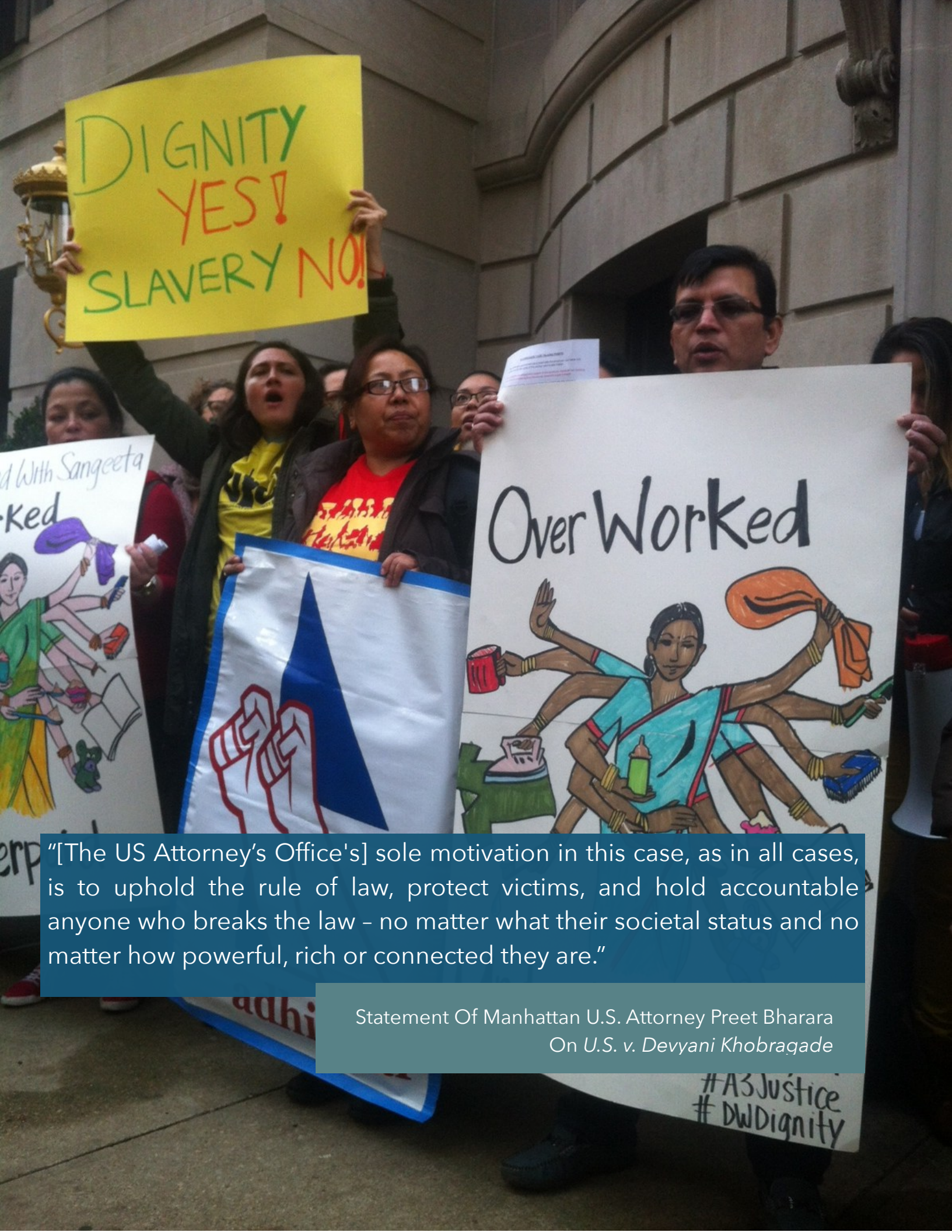
¹¹⁵ Bryce Covert, “The Global Domestic Workforce is Enormous - and Very Vulnerable.” TheNation.com, January 10, 2013. <http://www.thenation.com/blog/172099/global-domestic-workforce-enormous-and-very-vulnerable>

¹¹⁶ International Labour Organization, “Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection,” January 9, 2013.

¹¹⁷ Pier, Carol. (2001). *Hidden in the Home: Abuse of Domestic Workers With Special Visas in the United States*, Vol 13(2). New York: Human Rights Watch.

¹¹⁸ Laura Dresser, “Cleaning and Caring in the Home: Shared Problems? Shared Possibilities?” in *The Gloves Off Economy: Workplace Standards at the Bottom of America’s Labor Market*, eds. Annette Bernhardt, Heather Boushey, Laura Dresser, and Chris Tilly (Champaign: University of Illinois, Champaign-Urbana, 2008).

¹¹⁹ Chacon, Jennifer M. “Misery and Myopia: Understanding the Failure of U.S. Efforts to Stop Human Trafficking.” *Fordham Law Review* 74 (2006) 2977



DIGNITY
YES!
SLAVERY NO!

Over Worked



"[The US Attorney's Office's] sole motivation in this case, as in all cases, is to uphold the rule of law, protect victims, and hold accountable anyone who breaks the law - no matter what their societal status and no matter how powerful, rich or connected they are."

Statement Of Manhattan U.S. Attorney Preet Bharara
On *U.S. v. Devyani Khobragade*

#A3Justice
#DWDignity

DEPARTMENT OF JUSTICE

1. The Department of Justice (DOJ) should prioritize cases that domestic workers bring forward.
2. DOJ should ensure that prosecutors are requesting the restitution available to survivors that is mandated under the Trafficking Victims Protection Act.

Overview

The Department of Justice (DOJ) is responsible for investigation and prosecution of human trafficking cases. But few cases of trafficked domestic workers have been brought forward. Although prosecution is not technically required to receive immigration relief and services, the opportunity to pursue justice can be an important element of the survivor's healing process. Given that most mainstream estimates of trafficking in the United States are in the tens of thousands, it may be surprising to learn that in 2012, the DOJ only prosecuted 22 labor trafficking cases as contrasted with 106 sex trafficking cases.¹²⁰ Worldwide, there were 1,143 prosecutions of labor trafficking cases in 2012¹²¹ while the International Labor Organization estimates that there are approximately 14 million people¹²² in situations of forced labor (not including sex work or state-imposed forms of forced labor). Prosecutions are not necessarily the most desirable quantification of whether a country is successfully addressing trafficking, yet the low numbers, and the disparity between sex and labor cases given the opposite indications of prevalence estimates, are telling. Many survivors do not want to pursue prosecutions, but those who do face barriers.

¹²⁰United States Department of Justice. "Attorney General's Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2012". Available at: <http://www.justice.gov/sites/default/files/ag/pages/attachments/2014/10/28/agreporhumantrafficking2012.pdf> [Accessed 1 January 2015]

¹²¹ United States Department of State (2013, June 9). Trafficking in Persons Report 2013. Available at <http://www.state.gov/j/tip/rls/tiprpt/2013/> [accessed 1 January 2015]

¹²² International Labor Organization. Specifically: "Of the total number of 20.9 million forced labourers, 18.7 million (90%) are exploited in the private economy, by individuals or enterprises. Out of these, 4.5 million (22% total) are victims of forced sexual exploitation, and 14.2 million (68%) are victims of forced labour exploitation, in economic activities such as agriculture, construction, domestic work and manufacturing. The remaining 2.2 million (10%) are in state-imposed forms of forced labour, for example in prison under conditions which contravene ILO standards on the subject, or in work imposed by the state military or by rebel armed forces."

Recommendations

The Department of Justice should prioritize human trafficking cases that domestic workers bring forward.

In our membership and among our allies, there is a sense that when cases involve only one worker (the vast majority of domestic worker trafficking situations), investigators and prosecutors deprioritize them. Our members note that there are also ramifications for the worker when that happens- she is exposed for bringing forward a case, but when it's ignored or the perpetrator is allowed to plead a to lesser charge like alien harboring (where she is still seen as a criminal), there is a sense that the authorities don't believe her. This news spreads fast in tight-knit immigrant communities, making it less likely that other community members will come forward in the future.

When it comes to investigations, the Department of Justice and the Department of Labor should provide guidance to law enforcement agents about how domestic worker trafficking manifests. The Urban Institute noted that widespread placing of specialized human trafficking investigation efforts within vice units can account for much of the lack of action on trafficking for labor. These vice units - and police in general - are simply trained to find only trafficking for sex, and don't see themselves as responsible for investigating or pursuing labor trafficking cases.¹²³

Prosecutors face the same challenges that service providers face when it comes to the emotional and physical state of survivors. Like service providers, they also contend with language barriers and finding impartial and skilled interpretation and translation resources. But the primary challenge for prosecutors is that domestic worker cases are difficult to prove. Prosecutors must corroborate victims' statements- but often the domestic worker is the only witness, and other witnesses are protected by diplomatic immunity or marital privilege. Records and other documents are often in the employer's home country and the process to get them is lengthy and public.

Despite these challenges, we believe that when domestic workers come forward and want to pursue criminal justice, their cases should be taken seriously and all feasible routes of prosecution should be explored. And through training and outreach, the Department of Justice can educate both law enforcement investigators and worker organizations who assist domestic workers about what kinds of evidence and corroboration is necessary to pursue cases for domestic workers.

¹²³ Owens, Colleen, and Meredith Dank, et al. 2014. *Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States*. New York: Urban Institute and Northeastern University.

Simultaneously, government agencies, service providers, and community-based organizations can improve outreach to the public to help them understand trafficking of domestic workers. If the success of a case depends on a jury interpreting what they're hearing as something worse than just misfortune, smuggling, or a bad job- then public outreach efforts to sensitize everyday citizens to the differences is a key component to increasing successful prosecutions.

For domestic workers on A-3 and G-5 visas, diplomatic immunity is a challenge, but should not be the end of the conversation. The United States can request a waiver of immunity from the sending country of the diplomat so that a case can be brought forward. This is a critical demand of advocates for trafficked workers, who have yet to see this course of action pursued. But even in the absence of a waiver, there is still an opportunity to seek justice.

First, immunity has different scales. Some diplomats and officials are fully shielded while in their posts, but when it comes to civil claims, consular officers only enjoy "functional immunity" which means they can be held responsible for violations that are not part of their official duties (employing a domestic worker is not an official act).¹²⁴

Furthermore, according to the Vienna Convention which established the principle of diplomatic immunity, diplomats and international officials can be held liable in criminal and civil court for abuse and trafficking after they leave their posts.¹²⁵

All of this points to our recommendation that the Department of Justice continue to investigate and pursue justice for workers employed by diplomats and international officials, and continue to collaborate closely with the Department of State to ensure accurate information about the status and level of immunity for alleged abusers, and to urge the DOS to request waivers of immunity so that justice can be pursued.

DOJ should ensure that prosecutors request mandatory restitution.

The Trafficking Victims Protection Act requires "mandatory restitution" for victims whenever a trafficking case is prosecuted by the federal government.¹²⁶ Restitution includes either "gross income

¹²⁴ Vandenberg, Martina & Alexandra Levy. 28 November 2012. "Human Trafficking and Diplomatic Immunity: Impunity No More?" Available at: <http://www.htprobono.org/wp-content/uploads/2014/04/Diplomatic-Immunity-Article-St-Thomas-1.pdf> [Accessed 3 January 2015].

¹²⁵ *ibid*

¹²⁶ 18 U.S.C. § 1593

or value to the defendant of the victim's services or labor or the value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act."¹²⁷ And restitution should also cover all of the victim's losses including medical and mental health care, housing, transportation, child care, attorney costs, and of course, lost wages.¹²⁸

A recent report from the Human Trafficking Pro Bono Legal Center¹²⁹ found through an in-depth examination of all federal criminal human trafficking cases brought between 2009 and 2012:

A total of 306 federal indictments for human trafficking brought under Chapter 77 of Title 18 of the United States Code between 2009 and 2012 were identified. Researchers examined a subset of these cases to discern trends in restitution requests and awards. The key finding: restitution was awarded in just 36% of cases. For trafficking victims, mandatory does not mean mandatory. The criminal restitution ordered for the 2009-2012 cases identified totaled just \$11,279,009.51. This amount reflects \$3,568,842.35 awarded in 15 labor trafficking cases and \$7,834,696.30 ordered to victims in 52 sex trafficking cases. This research leads to the troubling conclusion that restitution is rarely awarded. And the paltry amount that has been awarded - less than \$3 million per year on average for each of the four years - should spark considerable concern among those who advocate for the rights of trafficking victims.

¹²⁷ *ibid*

¹²⁸ *ibid*

¹²⁹ Vandenberg, Martina, et al. 29 September 2014. "When Mandatory" Does Not Mean Mandatory: Failure to Obtain Criminal Restitution in Federal Prosecution of Human Trafficking in the United States." Available at: <http://www.htprobono.org/htprobono-mandatory-restitution-report-9-2014/> [Accessed 1 January 2015]

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Adhikaar Members Speak

The abusive and deceitful environment that we escaped come back to haunt us in the process of taking legal action against our traffickers because to make our case, we have to remember and re-remember each and every detail. It is an empowering process but also takes a toll on our bodies and minds. Having a community and group of friends close by often helps to restore our faith in community that was stripped away from us by our traffickers.

Then victory may come in the form of monetary compensation but what we actually want is an apology. But we are told that the law does not work like that. Abusive employers buy the “no wrong doing” clause by settling out of court. Why would someone give money if they didn’t do anything wrong? These are questions that at times make us sad and other times make us laugh. And makes us wonder if the law is on our side.

However, each case filed is a victory in its own and together we feel invincible. We are Adhikaar members and are part of Beyond Survival to start a sustainable movement to dismantle slavery. By working together we have realized the power in our stories to reassert our human rights wherever we live. We support each other in the time of sorrow when events from the past overtake our memories. Being part of the group we have taught each other that its okay to be sad and feel weak because in the past we were also alone, but now we are no longer alone. We want to be leaders in the movement to stop all forms of trafficking. And most important of all we want to lead our lives with dignity, a life in our chosen communities without seclusion and fear.

Adhikaar, meaning “rights” in Nepali, is a New York based non-profit organization working with Nepali communities to promote human rights and social justice. They are an anchor organization in the Beyond Survival campaign and serve on the NDWA Board of Directors.

VICTIM SERVICES

1. Increase appropriations for victim services.
2. Additional funding should cover long-term needs like housing, education, and employment for survivors.
3. Federal trafficking funding should encourage partnerships and subcontracts with worker centers and community-based organizations.

Overview

Growing and maintaining funding for social and legal services that is inclusive—of all ages, genders, and types of human trafficking—is a constant concern for providers and advocates. The current funding for social and legal services is not sufficient, which means some of the best service providers are at capacity and running long wait lists to take in new survivors. Those providers who do have capacity struggle with meeting long-term needs. Local worker centers may be in a good position to provide wraparound support to survivors, but do not have adequate access to the funding without collaboration.

Recommendations

Increase appropriations for victim services.

The Alliance to End Slavery and Trafficking (ATEST) has put forward recommendations for the federal appropriations process that address not only the services funding that is needed, but also the staffing and investments that are needed for each federal agency to fully implement their anti-trafficking commitments—particularly those commitments outlined in the Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States (2013-2017).

The Department of Justice has funds for victim services through the Victims of Crime Act (VOCA) and the Office of Justice Programs. The Department of Health and Human Services (HHS) also provides victim services grants to service organizations working with foreign national victims through the

Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR). The ATEST letter to the Office of Management and Budget demonstrates the gap between need and funding:

“In 2012, ORR certified 564 victims of human trafficking, an increase from the 99 certifications ORR issued to trafficking victims in 2002. Yet, funding for these programs did not increase for over 10 years and remains insufficient to meet victims’ needs, despite the 569% increase in the number of victims identified and certified as in need of comprehensive trauma-informed, gender specific services. We support the Department's decision to include legal services within the comprehensive services available to victims. We encourage ACF to use a portion of these increased funds for legal services for victims.”

The groups also recommend that ACF implement victim services for US citizen and lawful permanent resident victims, who do not currently have a fund available through ACF.

Of particular significance to survivors of trafficking for labor is the potential for services through DOL –specifically the Wage and Hour Division. DOL was given the authority to provide services under the original TVPA of 2000. Particularly given the DOL’s growing role in identifying trafficking for labor in the United States, and its expanded authority when it comes to T and U visas, DOL needs more funds to not only hire more investigators but also train them, and provide immediate assistance to victims they’re working with– like housing, food, and clothing. The ATEST letter continues: “Although funding for victim services through DOL has been authorized for over a decade, no funds have been provided for victim service programs through DOL.”

Fund and encourage long-term, holistic services.

Domestic worker survivors of trafficking are not accessing the full range of long-term services they need. Advocates for all victims of trafficking agree that both emergency and long-term housing services are critically underfunded. Trafficked domestic workers are particularly at risk of homelessness because they often live in the home of the employer. NDWA member organizations have experienced a range of patchwork solutions to the problem including restrictive domestic violence shelters, donated hotel vouchers, group houses that pool together the case management funding of several victims, moving victims from house to house of friends and neighbors, and even allowing them to sleep on the couches and spare beds of organizers when there were no other

options. None of these choices are ideal; what's needed is specialized housing: short-term emergency housing that is safe, immediate, culturally/linguistically accessible, and free, and long term housing that is accessible to victims who may not have good credit or work histories, and affordable for workers who are just getting back to the workforce after trafficking.

Work is a key component to healing. Being able to work and provide for oneself and one's family builds confidence and self-esteem and alleviates the financial damage wrought by trafficking and labor exploitation. But moreover, victim services funding is simply not enough to cover needs of workers and their family members at home who are likely still relying on them for remittances. As noted above, without legal work authorization through continued presence or a T visa, we've observed survivors are more likely to find work off the books because the need to bring in money does not vanish once they are identified as a victim. Working off-the-books puts them at risk for exploitative jobs and even re-trafficking because they have a strong incentive to stay silent.

In addition to "know your rights" trainings, informal job referrals, and individual career counseling—survivors need access to career paths. Quality job training and placement programs need to be accessible to survivors.

Once they do have the ability to work legally, some survivors do not want to return to domestic work and instead want to go to college or training program for a different career. Most traditional service providers simply don't have the resources to continue supporting workers through these pathways and logistical barriers to getting there. Other survivors are ready to go back to domestic work, or another kind of care work like home health care, as their occupation. Yet they sometimes find that these new jobs are only incrementally better than their trafficking situation.

This is why NDWA does not conceptualize human trafficking of domestic workers as a discrete criminal phenomenon, but rather as an extreme endpoint of the range of exploitation in the domestic worker and home care worker industry that stems from its unique history and place in the world of work. The important contribution of domestic work can and should be a good job. NDWA envisions a range of options for survivors: from long term career assistance that includes education and placement in a new industry, to training and confidence building to assert rights and negotiate good contracts for those who want to stay in the sector.



"In 2013 MUA joined the Bay Area Anti-Trafficking Collaborative. We were brought into the coalition because the existing social and legal service partners recognized that the majority of their trafficking cases were Spanish speakers and many of those were domestic workers, and they didn't have adequate Spanish language case management (or legal) partners. MUA was brought in to do case management for all Spanish language cases - which included a combination of domestic worker/labor trafficking and sex trafficking. Up until now, survivors have found us through referrals from their lawyers in the collaborative, and our staff offered one-to-one services - helping folks to access their benefits - while integrating them into MUA's existing leadership development and political work. Through December 2014 MUA received funding through a subcontract for this work, but there are no longer funds for our participation. Accessing services that are available to survivors is incredibly tedious and time intensive - if our staff wasn't there to provide moral and technical support, I don't think many survivors - particular older domestic worker survivors- would access the services that are available to them. Something that would simplify these processes, and also not require that they constantly be renewed, would be a huge help."

- Andrea Lee, Co-Director, Mujeres Unidas y Activas (MUA)

Prioritize collaboration.

Federal funding grants for human trafficking should encourage and provide resources for collaborations between traditional service organizations and community based worker rights organizations who are often well-positioned to provide support to domestic workers. The Urban Institute study noted that it was not uncommon for trafficked workers to go months or years before they received proper assistance. They may have reached out to law enforcement who did not believe them or did not pursue assistance, good Samaritans or other bystanders who didn't know what to do, and even attorneys who did not know about the legal recourses available to victims.¹³⁰ We strongly believe that outreach that includes worker and ethnic community based organizations as partners would reach more people.

That said, the groups need to have the resources to back up the increase in calls for assistance.

Numbers of trafficking service providers have multiplied over the past ten years, but across the board, our networks and allies are facing limitations on the kinds of services they can offer long-term. After housing, two areas in particular remain significant needs in our membership: Mental health (in particular culturally and linguistically competent trauma counseling) and good jobs.

Mental health and trauma are still taboo subjects at most of the world's dinner tables. It is not surprising that low-cost trauma therapy and counseling services are hard to find. Aside from the societal relegation of mental health and the lack of resources, survivors also have to deal with layers of cultural stigma and rebuilding of trust after trafficking. Organizers try build rapport right away, so when a worker is finally able to open up- it is often first to a trusted peer or organizer within her community group.

But when it comes to counseling, organizers are not trained to be therapists, so when workers come to them with deeper emotional struggles, organizers are faced with a difficult dilemma: try to respond as best they can, or refer. In NDWA member groups, bilingual organizers may be able to listen to the worker, but most aren't comfortable providing counseling. On the other hand, professional counselors who work through interpreters can only get so deep because of the language barrier.

An ideal solution would be for worker groups to have the resources to hire or contract with experienced professionals who are culturally and linguistically competent, and aligned with the

¹³⁰ Owens, Colleen, and Meredith Dank, et al. 2014. *Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States*. New York: Urban Institute and Northeastern University.

goals and philosophy of organizing. This would allow organizers to stay focused on campaigns, and allow survivors of trafficking to have their full emotions expressed and needs met in a safe place. However, even established service organizations have found that finding experienced bilingual case managers and counselors for trafficking is nearly impossible—there simply aren't enough people doing this work.

Thus, for the foreseeable future, a realistic primary step would be to designate victim services funding to support worker centers and community-based organizations to hire survivors as peer mentors, and eventually, with comprehensive training, as case managers and interpreters. This would provide employment and also fill a critical gap in survivor services.



Photo: Safe Horizon/Freedom Network

Service Providers at the Front Lines With Domestic Workers

Dana Sussman and Ilean Fohr

At Safe Horizon's Anti-Trafficking Program, a large fraction of our clients are survivors of trafficking into domestic servitude. They come from all parts of the world, including South Asia, Africa, and South America. They are trafficked by diplomats or consular officers, people doing business in the United States, or simply by relatives, extended family members, or members of their community.

Our domestic worker clients often present unique challenges related to their trafficking experience. For example, the level of isolation they've experienced is typically severe and multi-leveled; they are often alone in the home, without a community, a family, or people who speak the same language, and, as a result, face physical, social, and cultural isolation that prevents them from interacting with anyone outside of the home. Because of this isolation, the adjustment to independence and to meeting their basic needs after leaving the trafficking situation can be more challenging and can result in a longer road to recovery and stability.

Second, our clients are enmeshed in a family relationship within the home. They may have been trafficked by a family member or extended family member, and pressures from family to be obedient and grateful can prevent our clients from seeking help. Even if our clients are not trafficked by actual family members, they may feel a connection to and responsibility for the children in their charge and may not want to betray them by leaving or by reporting their parents. Many clients mourn the end of their relationship with the children even though they have been suffering at the hands of the children's parents.

Third, our clients often suffer from physical, sexual, verbal, and/or psychological abuse in the home, which involves a significant level of trauma, humiliation, and shame. We frequently see the withholding of food, medicine or medical care, or personal hygiene products as methods of control, coercion, and degradation. The levels of trauma of some of our domestic worker clients can be as severe as or more severe than our clients who were trafficked into the sex trade.

Domestic work has historically been excluded from labor protections in the United States and not valued on equal footing as other forms of labor in the United States and around the world. As a result, there is a perception, among both traffickers and clients, that our clients are not entitled to certain protections because they do not work in a formalized work setting and remain unaware of their legal rights and protections.

Many of our clients worked as domestic workers in their home country and may not have had formal schooling, resulting in limited or no literacy in their native language. Our clients are often forced to sign contracts - mandated by the U.S. Government in order to issue visas for domestic workers - that they have not been given the opportunity to read or cannot read. Our clients should have the opportunity to meet with a consular official during the visa interview process, one on one, without their employer present, and in their native language, to learn what their rights and remedies are in the United States and what resources are available to them if they need help.

Dana Sussman is an attorney and Ilean Fohr is a social worker, both from Safe Horizon in New York City

LEGISLATIVE MEASURES

1. Visa programs for domestic workers should include more mobility, oversight, transparency, and a pathway to citizenship.
2. Congress should increase the cap on available U visas for victims, including victims of human trafficking and related serious crimes.

Overview

There are limits to what an Administrative approach can accomplish— whether because of regulatory boundaries, lack of political will on the part of agency heads, or a combination of both. Congress has an important role to play. In addition to maintaining authorization for the Trafficking Victims Protection Act and the Violence Against Women Act, Congress can pass legislation that would improve prevention and response efforts to address human trafficking of domestic workers in the U.S.

Over the past few years, Congress has evaluated bills addressing victim identification and services, law enforcement and further criminalization proposals, and a few prevention-oriented measures. However, the vast majority of these proposals only address sex trafficking of children. Some blur the lines between prostitution and sex trafficking, and others would redirect existing limited human trafficking resources toward these new, more narrow, proposals. Indeed this pattern has been repeated endlessly, even by Congressional democrats who are otherwise supportive of labor rights. It remains puzzling how exclusionary these bills tend to be, given the evidence of trafficking for purposes other than child sexual exploitation. Stories of young girls kidnapped or tricked into sex industry are so compelling that they tend to inspire passionate, bipartisan activism. But when it comes to adults, even adult women, forced into other forms of labor exploitation—the bills struggle to gain co-sponsors. Strong advocates for inclusive approach to human trafficking in the Senate, including Senator Blumenthal (D-CT) and Senator Leahy (D-VT), even faced opposition for their proposals to ensure that victims of labor trafficking were addressed. It seems that, on average, the awareness and action on the part of Congress is limited to one particular subtype of the crime.

Despite this emotional obstacle, there are a few concrete legislative proposals on the table that would make an impact for trafficked domestic workers. These bills should be reintroduced and passed by a Congress that is otherwise committed to addressing human trafficking.

Recommendations

Visa programs for domestic workers should include more mobility, oversight, transparency, and a pathway to citizenship.

A rapidly aging population, and increased economic pressure for the “sandwich generation” has resulted in a care deficit, and in turn a high demand for immigrant workers to fill the role of caregivers in the household.¹³¹ At the same time, economic inequality, political instability, and even environmental devastation have become “push factors” for individuals to leave behind home countries and families in search of income. Im/migrant domestic workers come to the United States from all parts of the world, some come as students or tourists and overstay visas and work in the informal economy, others come on official work visas. There are four main visas for domestic workers: A-3 (to work with diplomats), G-5 (to work with employees of international organizations), B-1 (to work with U.S. citizen employers who reside in a foreign country, U.S. citizen employers on temporary assignment in the U.S., or a foreign national employer with a select visa), and J-1 (to work as au pairs for host families).¹³²

As the previous sections have shown, simply having a legal work visa is not enough to prevent a domestic worker from being trafficked or abused. According to the Urban Institute study, of the domestic worker trafficking cases they reviewed, 82% of the workers had come to the United States on legal visas.¹³³

Not every worker who comes to the United States on a visa will be trafficked, and for many women these visas provide the rare opportunity to travel and work. However, there is room for improvement to ensure that the visas do not create conditions ripe for exploitation.

One problem stems from the domestic worker being directly tied with a single, designated employer who sponsors her visa. As described in the preceding sections, unscrupulous employers can use this dependency to their advantage. If the working conditions are not as promised, there are few viable

¹³¹ See for example: Graham, Judith. February 2014. “A Shortage of Caregivers.” *New York Times*; Hochschild, Arlie Russell and Barbara Ehrenreich (Eds.). 2003. *Global Woman*. New York: Metropolitan Books; Anderson, Bridget. 2007. “A Very Private Business: Exploring the Demand for Migrant Domestic Workers.” *European Journal of Women’s Studies*, Vol. 14(3), p. 247-264.

¹³² Centro de los Derechos del Migrante, Inc. 2010. *Monitoring International Labor Recruitment: A Cross-Visa Exploration of Regulatory Challenges*, p. 2-4, 14.

¹³³ Owens, Colleen, and Meredith Dank, et al. 2014. *Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States*. New York: Urban Institute and Northeastern University.

options available to transfer employers.¹³⁴ When it comes to trafficking, by confiscating passports and identification documents, the employer can ensure that the domestic worker will not attempt to escape because she would be immediately “out of status.” Visa portability, and a path to citizenship for migrant domestic workers would lessen their dependence on an employer that could easily take advantage of their vulnerable position.

A more difficult challenge may be how to monitor working conditions of domestic workers on temporary visas. As we have noted, the work of domestic workers occurs “behind closed doors” in a country that highly values privacy and freedom from government interference. There are also serious logistical challenges to reach domestic workers who are scattered across regions in private homes. For B-1 domestic workers or others (for example, those who are undocumented or out of status), there is not a coordinated outreach or monitoring system. For A-3 and G-5 workers, an initial briefing is all that is currently offered, though more may be on the horizon. And the recruitment and placement agencies for J-1 *au pairs* offer varying levels of monitoring depending on the individual agency. We learned of at least one agency that offered weekly email based anonymous surveys, a promising but seemingly rare practice. But even in the J-1 program, which has a structure capable of greater oversight, *au pairs* can slip through the cracks. On the response side, counselors may be stretched too thin or undertrained,¹³⁵ so they may not pick up on the signs of exploitation. Furthermore, the full-time childcare required in the visa is not considered real work and so is not monitored like employment.¹³⁶ The circumstances of the participant herself may be a factor: she may have debt from recruitment fees, and may be too afraid to quit or complain. More proactive and uniform monitoring protocols that protect all domestic workers are clearly needed. Protocols should be drafted in collaboration with the Department of Labor and with domestic workers’ organizations to ensure the policies are appropriate.

Although there is no framework standardizing the regulations and protections for each visa, there are shared patterns of abuse in America’s “guestworker” programs- an alphabet soup of visa categories for temporary workers.¹³⁷ Workers traveling to the United States on any of these visas may be subjected to fraud even before arriving at their destination. One prevalent risk factor is the collection of inordinately high recruitment fees by subcontractors. In the recent study on labor trafficking by the

¹³⁴ Pier, Carol. 2001. *Hidden in the Home: Abuse of Domestic Workers With Special Visas in the United States*. New York: Human Rights Watch. Available at: <http://www.hrw.org/reports/2001/usadom/> [Accessed 3 January 2015].

¹³⁵ Chuang, Janie. 2013. The U.S. Au Pair Program: Labor Exploitation and the Myth of Cultural Exchange.” *Harvard Journal of Law and Gender*, Vol. 36, 269-343. Available at: <http://harvardjlg.com/wp-content/uploads/2013/09/Chuang.pdf> [Accessed 3 January 2015].

¹³⁶ *ibid*

¹³⁷ International Labor Recruitment Working Group. 2013. *The American Dream Up for Sale: A Blueprint for Ending International Labor Recruitment Abuse*. Available at: <http://fairlaborrecruitment.files.wordpress.com/2013/01/final-e-version-ilrwg-report.pdf> [Accessed 2 January 2015].

Urban Institute, victims in its sample “paid an average \$6,150 in recruitment fees to recruitment agencies for jobs in the United States. This figure was higher than the annual per capita income of the top six countries of origin for victims in [the] sample.”¹³⁸ Migrant workers are often forced to take out loans to pay these fees. Domestic workers may pay the recruiter the costs for the visa, transportation, and room and board in one amount or individually. This means that the domestic worker begins their life in the United States immediately in debt or remains indebted at home, with no means to pay off their loans. Consequently, indentured servitude manifests in the form of debt bondage as high interest rates on these loans accumulate. Advocates for migrant workers are pushing for the end of recruitment fees altogether, noting that workers should not have to pay to get a job, as it is a double standard that is not applied to U.S. workers.¹³⁹

Compounding these problems is the lack of information available to both workers and advocates about recruiters, placement agencies, and employers. In 2013, as a part of immigration reform, the International Labor Recruitment Working Group (ILRWG) and the Alliance to End Slavery and Trafficking (ATEST) pushed for recruitment protections that were included in S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act. This bill ultimately passed in the Senate, but was not brought to a vote in the House of Representatives. S. 744 would have required recruiters and employers to disclose to workers the terms and conditions of their employment before workers left their country of origin, would have banned employers and recruiters from charging workers’ recruitment fees, and would have created a registry of recruiters to bring transparency to the recruitment process. The bill also included protections against discrimination and retaliation and important enforcement mechanisms.

“Anyone who is a good practitioner in this area is going to tell you that one of the number one problems we see in the anti-trafficking movement right now is that we don’t have good data... what we do know is that it’s an issue that is impacting all fifty of our states, and is a problem that we’re under-identifying and under-addressing. The lack of data isn’t a way of saying ‘Oh, we shouldn’t deal with the issue;’ but rather it’s another area that we as advocates need to be doing better work around.”

Stephanie Richard
Coalition to Abolish Slavery and Trafficking (CAST)

¹³⁸ Owens, Colleen, and Meredith Dank, et al. 2014. *Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States*. New York: Urban Institute and Northeastern University.

¹³⁹ International Labor Recruitment Working Group. 2013. *The American Dream Up for Sale: A Blueprint for Ending International Labor Recruitment Abuse*. Available at: <http://fairlaborrecruitment.files.wordpress.com/2013/01/final-e-version-ilrwg-report.pdf> [Accessed 2 January 2015].

After immigration reform stalled, anti-trafficking and labor advocates worked with Congress to put forward the "Fraudulent Overseas Recruitment and Trafficking Elimination (FORTE) Act of 2013", legislation that was similar to the recruitment provisions in S.744.¹⁴⁰ The legislation met with fierce opposition from corporate interests represented by the Chamber of Commerce, but could potentially be reintroduced this year. A related bill, "Transparency in Reporting to Protect American Workers and Prevent Human Trafficking Act" (HR 51917)¹⁴¹ would require the government to keep track of how many workers are coming on each visa and subclass of visa, where they are coming from, and where they are going- information that is only erratically collected.¹⁴² This data would give government and advocates more of the information they need to develop better anti-trafficking outreach and prevention programs targeted to specific populations and locations.

Congress should increase the annual cap on U visas for immigrant victims of serious crimes.

The U visa is an important source of relief for immigrant victims of crimes in the workplace that may not qualify as trafficking. We take a spectrum approach to the abuses in our industry- workers who are exploited should have access to a range of relief based on their circumstances. In 2012, USCIS received more than 24,000 applications for U visas. But the U visa has an annual cap of 10,000- which has been met for 6 years in a row.¹⁴³ There are so many applications that USCIS officials who approve the visas think the backlog from the waiting list will fill most of the next year's available slots. Fortunately, reaching the waiting list after approval does allow victims to receive work authorization per USCIS policy, but the countdown clock to when victims are able to adjust their status to permanent residency does not begin until the visa is official- costing them several months of time in limbo. With the new crime of "fraud in foreign labor contracting" being added to the list of U visa crimes, and the Department of Labor's new authority to certify U visas for additional crimes, identification of victims will likely increase. Congress must increase the cap on these visas.

¹⁴⁰ H.R. 3344, Fraudulent Overseas Recruitment and Trafficking Elimination (FORTE) Act of 2013. Available at: <http://foreignaffairs.house.gov/bill/hr-fraudulent-overseas-recruitment-and-trafficking-elimination-act-2013>.

¹⁴¹ Press release. 24 July 2014. "Frankel, Deutch, Himes to Introduce Transparency Bill to Protect American Jobs and Prevent Human Trafficking." Available at: <http://frankel.house.gov/media-center/press-releases/frankel-deutch-himes-to-introduce-transparency-bill-to-protect-america-0>.

¹⁴² *ibid*

¹⁴³ United States Citizenship and Immigration Services. 11 December 2014. "USCIS Approves 10,000 U Visas for 6th Straight Fiscal Year." Available at <http://www.uscis.gov/news/uscis-approves-10000-u-visas-6th-straight-fiscal-year> [Accessed 1 January 2015].

DOMESTIC WORKER VISAS AT-A-GLANCE

Visa	Purpose	Application Process	Visas Issued (2013)
A-3 Visa	The A-3 visa is a temporary, nonimmigrant employment visa issued to attendants, servants, domestic workers, or other personal employees of a foreign government official or their immediate family members who hold A-1 or A-2 visas.	Submit application, passport, and diplomatic note from country of origin, consular interviews, contract	1,135
G-5 Visa	The G-5 visa is a temporary, nonimmigrant employment visa issued to attendants, servants, domestic workers, or other personal employees of either a representative of an international organization (e.g. World Bank) or their immediate family members who hold a G-1, G-2, G-3, or G-4 visa.	Submit application, passport, and diplomatic note from the international organization, consular interviews, contract	736
B-1 Visa	The B-1 visa is a temporary, nonimmigrant visa for domestic workers who are accompanying or following to join an employer who seeks admission into, or is already in, the United States on a B, E, F, H, I, J, L, or TN nonimmigrant classification or to a domestic worker accompanying or following to join his or her U.S. citizen employer who has a permanent home or is stationed in a foreign country, and who is temporarily visiting the United States.	Submit application, passport, consular interview, fee, documentation noting intended time period in the US, financial status, at least 1 year of experience as a domestic worker, and proof that he/she was working for the employer for at least one year or that her employer had regularly employed domestic workers previously	41,956 total* DOS does not disaggregate B-1's between business visitors or their domestic employees, an important concern for the advocate community.
J-1 Visa (Au Pair)	Young people who come to the United States to live with a "host family" for up to two years, in exchange for providing up to 45 hours per week of childcare for American families.	Find a designated agency sponsor for the program's duration, demonstrate English proficiency and medical insurance. Multiple fees and forms, consular interview. The au pair must be between 18-26 years old.	13,789 (2012)

Source: United States Department of State

DOMESTIC WORKER VISA PROTECTIONS

Visa	Contracts	Monitoring and Protection
A-3 Visa	<ol style="list-style-type: none"> 1. An employment contract in English and in a 2nd language that the domestic worker can understand, if applicable. 2. Full description of duties 3. Number of working hours, paid holidays, sick days, and vacation time. Within this section, the employer must state that the domestic worker will be given at least one day off each week. 4. Agreement to pay by check or electronic transfer to the domestic worker's bank account. 5. The domestic worker must be paid at least the minimum wage under U.S. Federal and state law, or the prevailing wage (whichever is higher). Any work performed in addition to normal working hours, including "on call" work, should be considered overtime and paid as such. 6. Wages must be paid weekly or biweekly, without deductions for lodging, medical care, medical insurance, travel, or meals. 7. Any transportation to and from the United States must be provided by the employer. <p><i>Employer's agreements to:</i></p> <ol style="list-style-type: none"> 8. Follow all Federal, State, and local laws in the United States. 9. Allow the domestic worker to maintain possession of their passport, visa, copy of the employment contract, and all other personal property. 10. Not require the domestic worker's presence in the employer's residence except during working hours. 	<p>Consular Interview/Pamphlet Contracts Orientations In-Person Check-ins (pending) Deferred action to pursue civil claims against abusive employers</p>
G-5 Visa	<i>Same as above.</i>	<i>Same as above</i>
B-1 Visa	The B-1 visa application process for domestic workers <i>in the United States</i> requires a contract which includes free room and board, roundtrip airfare, the greater of minimum or prevailing wage, two weeks notice of termination, and any other benefits enjoyed by US domestic workers in the area of employment.	Consular Interview/Pamphlet Contracts
J-1 Visa (Au Pair)	Au pairs are required to have a "written agreement" and hosts/agencies must ensure: a private bedroom, no more than 45 hours per week of work, 1 1/2 days of rest per week, one full weekend of vacation per month, and two weeks of paid vacation per year.	Pamphlet, agency interviews and orientations. Sponsor agency is tasked with ongoing monitoring, at least once per month, through local counselors.

Sources:

A-3/G-5: US Department of State Foreign Affairs Manual (9 FAM 41.21 N6.4)

B-1: US Department of State Foreign Affairs Manual (9 FAM 41.31 N9.3-1 through N9.3-3)

J-1: Code of Federal Regulations (22 CFR 62.31 - Au pairs)

Temporary Visa Systems Foster Human Trafficking

Cathleen Caron, Global Workers Justice Alliance



Through our work promoting access to justice for transnational migrants who have suffered human trafficking and other labor abuses, we identified particular problems with the temporary visa system.¹⁴⁴ Nonimmigrant visas allow work only temporarily and usually offer no pathway to citizenship. With most classes of these visas, work is only authorized for one specific employer, which means that if an employee suffers abuse on the job, the visa does not allow him or her to look for another job.

In May 2012, Global Workers published a report *Visas, Inc.: Corporate Control and Policy Incoherence in the Temporary Labor System*, which took a panoramic approach and revealed a fragmented system that

lacks transparency and government oversight. This has resulted in abuse of both foreign and U.S. workers. U.S. immigration policy is moving away from its roots in permanent labor migration, towards a continually metastasizing temporary work visa system. Rather than developing a coherent, unitary system, the U.S. has responded piecemeal to employer demands and created a patchwork of visa classifications subject to distinct rules.

As we disseminated *Visas, Inc.*, we found that there was a lack of in depth, technical knowledge regarding nonimmigrant temporary work programs generally, even among stakeholders. Therefore, to follow up to *Visas, Inc.*, in April 2014, Global Workers launched *Visa Pages*, the first one-stop resource of its kind where advocates, policy makers, media and the general public can all find comprehensive information about the various non-immigrant visas U.S. employers use to bring temporary foreign workers from all over the world to work in the United States.

¹⁴⁴ Ashwini Sukthankar, *Visas, Inc.: Corporate Control and Policy Incoherence in the U.S. Temporary Foreign Labor System*, Global Workers Justice Alliance, (2012), available at <http://www.globalworkers.org/our-work/publications/visas-inc>; see also, Meredith Stewart, *Culture Shock: The Exploitation of J-1 Cultural Exchange Visitors*, Southern Poverty Law Center (2014), available at <http://www.splcenter.org/get-informed/publications/Culture-Shock>; International Labor Recruitment Working Group, *The American Dream Up for Sale, A Blueprint for Ending International Labor Recruitment Abuse*, (2013), available at <http://fairlaborrecruitment.files.wordpress.com/2013/01/the-american-dream-up-for-sale-a-blueprint-for-ending-international-labor-recruitment-abuse1.pdf>; Daniel Costa, *Guestworker Diplomacy*, Economic Policy Institute (2011), available at www.epi.org/files/2011/BriefingPaper317.pdf; and U.S. Dep't of State Office of the Inspector Gen., *Inspection of the Bureau of Educational & Cultural Affairs* (Feb. 2012), available at <http://oig.state.gov/documents/organization/186048.pdf>.

Drawing from this expertise, Global Workers is leading efforts to reform the visa system in a holistic manner. Compounding the problems that temporary employment and a lack of job portability bring is the fact that there is little transparency within the nonimmigrant visa program.

For example, currently, three federal agencies are charged with monitoring and reporting various data, Department of Homeland Security (DHS), Department of Labor (DOL) and the Department of State (DOS), depending on the particular visa class and pertinent statutes and regulations. The nationality of many nonimmigrants is not published. Furthermore, no data is reported on specific visa subclassifications delineated in regulations and agency guidance. Because the subclasses are distinct, and some are relatively quite large, the current practice of grouping them together broadly does not allow policymakers and the public to make evidence-based assessments about the programs. Examples of subclassifications where important data are not made public include the J-1 visa (which includes 14 sub-classes that include Au Pairs) and B-1 business visitor visas, which can be issued for domestic workers.

The lack of transparency contributes to worker exploitation. Indeed, when a workforce is hidden, migrants are even more susceptible to human trafficking. In the last several years, advocates have documented hundreds of potential trafficking victims who entered the United States lawfully with a temporary nonimmigrant work visa.¹⁴⁵

Knowledge about the scope of these visa programs is critical to prevent human trafficking. However, current law does not require sufficient public data reporting to shed light on these visas and the problems that lurk in the shadows. With the exception of a few visa categories, we don't know which employers are using which visas. The gender of nonimmigrant workers is not published. A foreign workforce that is demographically distinct from its U.S. counterpart may be a strong indicator about whether a problem exists, such as employment discrimination, or worse, human trafficking.

On July 24, 2014, Representatives Lois Frankel, Ted Deutch, and Jim Himes introduced HR 5197, the "Transparency In Reporting to Protect American Workers and Prevent Human Trafficking Act." This effort was spearheaded by Global Workers and the Economic Policy Institute and endorsed by the Alliance to End Slave Trafficking. This legislation requires improved data reporting for each nonimmigrant visa classification that permits employment under any circumstances. With this bill, for each visa classification and subclassification, the public will be able to see the employers, recruiters, locations of jobs, exact occupations, wages, education levels of workers, as well as the workers' ages, gender and countries of origin. The information reported will be disaggregated down to the visa subclassification so that the public will be able to see, for example, the nationality of J-1 au pairs, the number of B-1 domestic workers, the age and wages of A-3/G-5 domestic workers as well as the nationality and location of their employers.

Data transparency is a primary step in trafficking prevention. A more complete, textured picture of temporary workers and the U.S. nonimmigrant visa system will reveal which populations are more vulnerable to human trafficking, allow for targeted and therefore more effective prevention outreach efforts both during the recruitment phase overseas and in the United States, and stronger law enforcement and policy responses when problems are uncovered.

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¹⁴⁵ National Human Trafficking Resource Center. 2014. *Human Trafficking and Visas Report*. [Available at http://act.polarisproject.org/o/5417/t/0/blastContent.jsp?email_blast_KEY=1285794]

STATES

1. State legislatures should pass Domestic Workers' Bills of Rights
2. State Departments of Labor should investigate and certify cases of human trafficking
3. States should improve legal protections for low-income workers, including strong, accessible enforcement mechanisms that allow low-income workers in high-exploitation industries including domestic work to protect their rights

Recommendations

State legislatures should pass Domestic Workers' Bills of Rights.

Domestic workers were excluded from the protections of many federal labor laws since the inception of those laws—not because of a rational, policy-based reason, but due to federal legislators' racism against African-American workers.¹⁴⁶ As states subsequently passed their own employment protections, those laws replicated the federal carve-outs, limiting protections for domestic workers or excluding domestic workers from state protections altogether.¹⁴⁷

Since state exclusion of workers has contributed to the trafficking of domestic workers, states also have a powerful role to play in reducing the prevalence of domestic worker trafficking. In order to effectively combat the widespread trafficking of domestic workers, states must support worker-driven efforts to create strong, enforceable laws that close gaps in employment protections for domestic workers, and that address problems specific to the domestic work industry. Better regulation of an industry leads to more points of contact between workers, NGOs and government agencies, and thus more points of potential intervention. Employment conditions and legal gaps are

¹⁴⁶ "The president was quick to reassure, when asked if Fair Labor Standards Act (FLSA) would "force" Southern housewives to "pay your negro [sic] girl eleven dollars a week." He replied that no wage and hour bill would "apply to domestic help." Boris, Eileen and Nadasen, Premilla, 2008. *Domestic Workers Organize!*, 1089-7011 WorkingUSA: The Journal of Labor and Society 413, 420. "There has always been a difference in the wage scale of white and colored labor...You cannot put the Negro and the white man on the same basis and get away with it." Statement of Representative J. Mark Wilcox in 1937, opposing the proposed Fair Labor Standards Act if FLSA equalized wages of white and black workers. Perea, Juan F, 2010. *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 72 Ohio State Law Journal 95, 115.

¹⁴⁷ See National Employment Law Project, "New Federal Protections for Home Care Workers". Available at http://www.nelp.org/page/content/state_chart_companionship [Accessed 5 Jan 2015] (provides detailed chart of states that do not provide minimum wage, overtime, or both to homecare workers - one group of domestic workers)

different in every state, and so each state must work with worker groups to tailor the protections.¹⁴⁸ However, states can look to California, Hawaii, Massachusetts, and New York bills for examples of such legislation.¹⁴⁹

Key provisions important to combatting trafficking are state-funded education and outreach (HI, NY), inclusion in anti-discrimination and anti-harassment protections (HI, MA, NY), protection against retaliation for speaking out about workplace conditions (MA, NY) and penalties for employers who engage in labor exploitation (CA, MA). Civil penalties, not criminal ones, allow workers to receive compensation for their abuses.

State Departments of Labor should investigate and certify cases of human trafficking.

States should also authorize their agencies in charge of enforcing labor and employment rights to certify U and T visas. Currently, four state agencies certify U and/or T visas: NY's Department of Labor; CA's Division of Labor Standards Enforcement; CA's Department of Fair Employment and Housing; and IL's Department of Labor.¹⁵⁰ Certifying U and T visas encourages trafficking survivors to report their traffickers and hold them accountable while assisting survivors to address their basic needs. It is also important because law enforcement's investigation of labor trafficking is often unresponsive and inadequate.¹⁵¹

States must also ensure that the agencies responsible for enforcing employment protections are effective in reaching domestic workers. To act as effective advocates, these agencies must be fully funded and willing to partner with worker centers and cultural organizations that are most knowledgeable about identifying domestic workers.

Creating effective regulations that address the exclusions of domestic workers and that address issues specific to the state and industry is one effective way to take the state badge of approval away from those engaged in labor exploitation and to raise the bar for standards in this industry.

¹⁴⁸ National Employment Law Project.2013. "Winning Dignity and Respect: A Guide to the Domestic Workers' Bill of Rights." Available at https://stateinnovation.org/uploads/asset/asset_file/1824/Winning_Dignity_and_Respect.pdf [Accessed 5 Jan 2015]

¹⁴⁹ See <http://www.domesticworkers.org/Initiatives> for summaries of these bills. [Accessed 5 January 2015]

¹⁵⁰ National Employment Law Project, "The U Visa: A Potential Immigration Remedy for Immigrant Workers Facing Labor Abuse" (2014). Available at <http://www.nelp.org/page/-/justice/2011/uvisa.pdf?nocdn=1>. [Accessed 5 Jan 2015]

¹⁵¹ Policing Human Trafficking: Cultural Blinders and Organizational Barriers, 653 Annals 46 (May 2014) By AMY FARRELL and REBECCA PFEFFER (Police lacked the training necessary to investigate labor trafficking; had a vice investigation structure that did not fit investigation of labor trafficking, were unclear on how to determine whether workers' labor was coerced and unwilling, was biased by the fact that many survivors of labor trafficking were immigrants, and because they engaged in tip-based investigation and did not receive tips on labor trafficking nor know where to search for that kind of intelligence.)

States should improve legal protections for low-income workers, including strong, accessible enforcement mechanisms that allow low-income workers in high-exploitation industries including domestic work to protect their rights. State legislation on human trafficking should be inclusive of labor, and should prioritize victim restitution and social services over criminalization.

Low-income workers are more likely to be subjected to abuse and exploitation, and the more such abuse goes unchecked, the greater the risk that severe labor exploitation will start to become a pervasive industry norm. Workers should be able to defend their labor rights in both civil court and in administrative procedures; should be able to access these procedures in their language; and should have access to help and guidance as needed. To fight trafficking, states must fight labor exploitation: “Trafficking policy that provides immigration relief and social-service assistance for severely abused workers cannot be separated from the larger context of rampant exploitation of low-wage migrant workers... Individuals designated as trafficked are just one part, a small part, of a much larger story of everyday exploitation of migrants in the U.S. labor force.”¹⁵²

States (and municipalities with the right authority) can pass laws that allow all low-wage workers to work together to raise the standards of their industries. States should also fund worker-led enforcement and worker training that includes information on worker rights. Municipalities can also follow San Francisco’s lead and create a locally based wage, hour and health agency that enforces employment protections, partners with community organizations, conducts joint monitoring of workplaces and proactively collaborates with other city agencies to suspend non-complying employers’ licenses and permits.¹⁵³ States can also create stronger protections for workers who speak up for their rights and for improvements in their workplaces – and should explicitly include domestic workers in those protections. The more that states and municipalities involve workers and worker organizations in the process of enforcing worker protections, the more likely it will be that workers facing severe exploitation will find support, speak out about their conditions and seek reparations.¹⁵⁴

¹⁵² Brennan, Denise. May 2014. Trafficking, Scandal, and Abuse of Migrant Workers in Argentina and the United States, 653 *Annals* 107.

¹⁵³ <http://sfgsa.org/index.aspx?page=391>

¹⁵⁴ Having peers who speak a common language can be crucial to allow a trafficked worker to escape. In the Urban Institute study on trafficking, most workers who escaped did so by reaching out to community members, service providers, and friends – “Seeking help from community members accounted for 38 percent of escapes, 21 percent of escapes were credited to service providers, and help from a friend accounted for 20 percent. At 111.



**2013 TIP REPORT:
"COMMON DREAMS LEAD TO COMMON ABUSES"**

"Around the world, domestic work provides jobs to millions of people—mostly women and girls, and mostly in private homes. The promise of steady employment and good pay as a domestic worker often draws people away from communities and conditions where opportunities are scarce.

Yet even with so many people pursuing better lives in this industry, domestic work remains largely unregulated and beyond the reach of law. Rather than workers in a recognized service sector, domestic workers are often viewed more as informal help. At the same time, domestic work usually takes place behind closed doors, where workers are isolated. Because of these factors, domestic workers—especially migrants—face a particular vulnerability to trafficking.

For example, domestic workers may find themselves at risk of trafficking before they even enter employment. If a recruiter charges an applicant an up-front fee for placing her in a job, that worker may find herself owing a burdensome debt from day one. In other cases, domestic workers have reported arriving at a promised job only to be subjected to brutal conditions, ranging from exhausting hours with no days off, to horrific physical and sexual abuse. Yet because of the isolation—sometimes amounting to forced confinement—inherent in the domestic work setting, victims often struggle to escape their situation or inform someone in a position to help.

Aspirations for a better life will continue driving women and men around the world to seek new opportunities. Traffickers will continue seeking zones of impunity where lax regulation and poor oversight make workers vulnerable. And so long as domestic workers remain outside the protections governing other industries, the risk of trafficking will continue to plague this sector."

United States Department of State. 9 June 2013. Trafficking in Persons Report 2013. Available at <http://www.state.gov/j/tip/rls/tiprpt/2013/> [accessed 1 January 2015]

INTERNATIONAL GOVERNMENTS

"My colleague and I interviewed 99 domestic workers in the UAE, including some who were trafficked, for a new Human Rights Watch report. The women reported a range of abuses. Recruiters made false promises. Employers often didn't pay the women's wages on time, and some didn't pay at all. Many employers confiscated the women's passports and confined them to the households where they worked. The women worked long hours with no rest, and some were deprived of food. Some employers inflicted psychological and physical abuse – including sexual abuse. One example is Mabel (whose name is changed for her protection), who left an office job in the Philippines for what she believed would be more lucrative work in the United Arab Emirates. A labor recruitment agent in the Philippines duped Mabel with the promise of an office job in Dubai with good pay. But when she arrived in the UAE, there was no office job. Instead, the agent in the UAE made her work as a nanny and housecleaner for a family with three children. Mabel said her employers took her passport and locked her in their home. She worked up to 20 hours each day with no rest periods, or even one day off, for 10 months. Her employers delayed paying her wages for three months at a time. After they started beating her, she pretended to take out the garbage one day and then ran."¹⁵⁵

- Janet Walsh, Human Rights Watch

¹⁵⁵ Walsh, Janet. 2014, November 6. "Human Trafficking: Its Not Just About Sexual Exploitation." Human Right Watch. Available at: <http://www.hrw.org/news/2014/11/06/human-trafficking-it-s-not-just-about-sexual-exploitation> [Accessed 15 January 2015].

The Global Fight against Trafficking into Domestic Servitude

Nisha Varia

In 2008, a Human Rights Watch investigation found that on average, one domestic worker died each week in Lebanon,¹⁵⁶ an astonishingly high number for a country with just over 4 million people. Most had fallen from windows from high-rise buildings during botched escape attempts or committed suicide.

In numerous investigations worldwide, ranging from Saudi Arabia¹⁵⁷ to the United States¹⁵⁸, and Indonesia¹⁵⁹ to the United Kingdom¹⁶⁰, Human Rights Watch has documented patterns of abuse against domestic workers.

Human Rights Watch works on a wide range of pressing issues, including armed conflict, child marriage, pain relief for the dying, police brutality, sexual violence, and torture. It's tough to choose projects among so many compelling human rights issues. But domestic workers' rights¹⁶¹ have been a consistent priority for a decade given the scale and severity of abuses, its relative invisibility in the public eye, faulty government policies that contribute to exploitation instead of stopping it, and the real possibility for positive change.

Abuses against domestic workers span the spectrum from wage-and-hour violations to forced labor, including trafficking into domestic servitude. The International Labour Organization (ILO) identifies domestic work¹⁶² as one of the most common sectors for forced labor and estimates that employers make almost US\$8 billion in illegal profits each year¹⁶³ from the lost wages of domestic workers in forced labor.

A domestic worker's experience often depends on the whim of her employer. While some workers have good situations, far too many work long hours with little or no rest. Unpaid wages and confinement to the workplace are among the most common complaints. Violence against domestic workers can involve verbal abuse including threats, humiliation, and insults; physical abuse such as beatings or attacks using hot irons or boiling water; and sexual harassment and rape.

¹⁵⁶ Human Rights Watch (2008, August 24). "Lebanon: Migrant Domestic Workers Dying Every Week." www.hrw.org/news/2008/08/24/lebanon-migrant-domestic-workers-dying-every-week

¹⁵⁷ Human Rights Watch (2008, July 7). "Saudi Arabia: Domestic Workers Face Harsh Abuses." www.hrw.org/news/2008/07/07/saudi-arabia-domestic-workers-face-harsh-abuses

¹⁵⁸ Pier, Carol. 2001. *Hidden in the Home: Abuse of Domestic Workers With Special Visas in the United States*, Vol 13(2). New York: Human Rights Watch. Available at: <http://www.hrw.org/reports/2001/usadom/>

¹⁵⁹ Human Rights Watch (2009, February 11). "Indonesia: Protect Child Domestic Workers." www.hrw.org/news/2009/02/10/indonesia-protect-child-domestic-workers

¹⁶⁰ Human Rights Watch (2014, March 31). "UK: Migrant Domestic Workers Face Serious Abuse." www.hrw.org/news/2014/03/31/uk-migrant-domestic-workers-face-serious-abuse

¹⁶¹ Human Rights Watch: Pushing for Justice for Domestic Workers. www.hrw.org/topic/womens-rights/domestic-workers

¹⁶² International Labor Organization: Domestic Workers. www.ilo.org/global/topics/domestic-workers/lang--en/index.htm

¹⁶³ International Labor Organization. (2014). "Profits and Poverty: The Economics of Forced Labor." www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf

Isolation in private homes, gaps in labor protections, restrictive immigration policies, and limited access to assistance set the stage for abuse. More than 30 percent of domestic workers are in countries where labor laws exclude domestic work entirely.¹⁶⁴ Another 60 percent are in countries that provide only partial protections -- such as the United States, where domestic workers can claim a minimum wage, but are not covered under workplace sexual harassment laws, occupational safety and health provisions, or the law governing unionizing and collective bargaining.

Deception and onerous fees during the recruitment process in their home countries, confiscation of passports by recruiters and employers, fear of arrest and deportation for irregular immigration status, and limited avenues for recourse put migrant domestic workers at heightened risk of trafficking.

Anti-trafficking efforts in many countries have been geared toward trafficking for sexual exploitation, with relatively little attention to identifying and protecting the victims of labor trafficking. Of the more than 18 million people in forced labor¹⁶⁵ in the private economy, though, the ILO estimates that 4.5 million are victims of sexual exploitation and 14.2 million are victims of labor exploitation.

In the past few years, members of the ILO – governments, trade unions, and business associations – adopted two landmark treaties to address forced labor and domestic work. The 2014 Forced Labor Protocol¹⁶⁶ modernizes a widely ratified, but outdated, 1930 treaty and complements existing criminal justice strategies by focusing on preventing forced labor, and protecting and compensating survivors.

It provides for:

- Expanding labor laws and inspections to sectors at risk of forced labor;
- Protecting migrants from exploitative recruitment practices;
- Providing assistance to victims and protecting them from retaliation; and
- Ensuring that all victims, regardless of their immigration status, have access to justice and remedies, including compensation.

The strength of domestic workers' organizations¹⁶⁷ has grown dramatically, and they are successfully demanding recognition and respect. Numerous campaigns at the national level and advocacy across international borders led to the 2011 ILO Domestic Workers Convention.¹⁶⁸

The convention stipulates that governments must provide domestic workers the same labor protections as other workers get, including for working hours, minimum wage coverage, rest periods, parental leave, and

¹⁶⁴ International Labor Organization. "Snapshot ILO In Action: Domestic Workers." http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_214499.pdf

¹⁶⁵ International Labor Organization: Forced labour, human trafficking, and slavery. www.ilo.org/global/topics/forced-labour/lang-en/index.htm

¹⁶⁶ International Labor Organization. "TEXT OF THE PROTOCOL TO THE FORCED LABOUR CONVENTION, 1930." Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_246615.pdf

¹⁶⁷ International Domestic Workers Federation: www.idwfed.org/en

¹⁶⁸ International Labor Organization, "C189 - Domestic Workers Convention, 2011 (No. 189)." Available at: www.ilo.org/dyn/normlex/en/f?p=normlexpub:12100:0::no:12100:p12100_instrument_id:2551460:no

social security. The convention provides protection from violence and harassment and sets out guidance on employment contracts. The convention also includes specific protections, including on recruitment, to address the heightened risks and specific needs of children and migrants.

As of December, 16 countries had ratified the Domestic Workers Convention, which has sparked even wider reform. At least 30 countries improved legal protections for domestic workers¹⁶⁹ between 2011 and 2014. These range from comprehensive laws covering all aspects of domestic work to reforms on discrete issues such as raising the minimum wage for domestic workers. For example:

- Argentina adopted a new domestic work law in March 2013 that provides for a maximum of 48 working hours per week, a weekly rest period, overtime pay, annual vacation days, sick leave, and maternity protections. It also provides additional protections for live-in domestic workers and those under 18.
- The Philippines enacted the Domestic Workers Act in January 2013, requiring contracts and extending an improved minimum wage, social security, and public health insurance to domestic workers. The new law also prohibits recruitment fees and makes private employment agencies liable, along with employers, for providing wages and benefits.
- India included domestic workers in a 2013 law prohibiting sexual harassment in the workplace that sets out complaints mechanisms and obligates employers to provide a safe working environment.

The wave of recent reforms is an important step forward, but far more needs to be done to stop abuse and trafficking of domestic workers. Many countries have yet to adopt comprehensive legal protections for domestic workers, and for these changes to be meaningful on the ground, the critical hurdle will be enforcement.

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¹⁶⁹Human Rights Watch. "Pressure Grows to Protect Domestic Workers." (2013, October 28) www.hrw.org/news/2013/10/27/pressure-grows-protect-domestic-workers

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حملة لحقوق عاملات المنازل في الكويت

INTERNATIONAL GOVERNMENTS

1. Governments should ratify and implement the ILO Decent Work for Domestic Workers Convention (C. 189, and its accompanying recommendation (R201) and all relevant ILO Forced Labor instruments (Convention 29, Protocol 29 and its accompanying recommendation (R203).
2. Governments should reform domestic policy with regard to sponsorship systems and domestic worker coverage under labor laws, with particular attention to the freedom of association and right to organize.
3. Embassies should partner with ethnic community-based organizations to provide emergency services and resources, and training for staff.
4. Given the specific problems faced by domestic workers employed by diplomats are common on a global scale, governments should mandate training and oversight for diplomats and consular officers who employ migrant domestic workers.
5. Through multilateral and bilateral cooperation, reform labor recruitment and employment processes, including eliminating all recruitment fees for workers.
6. Trade agreements should include strong worker protections and include the rights of domestic workers to fair wages and appropriate workplace protections.

Overview

The Solidarity Center, an international worker rights NGO which studies and supports worker organizing on a global level, recently supported research that shows that labor migration is both an opportunity and a risk. Safe, adequately paid employment opportunities at home are disappearing with globalized trade, and migration offers the chance for economic independence for women.¹⁷⁰ For the destination countries that receive domestic workers, including the United States, the lack of government-provided childcare has squeezed middle class families into finding care as cheaply as possible.

When domestic workers arrive in the destination country, their status as a female migrant becomes a risk. They are less likely to be covered by employment protections, they regularly encounter confiscation of their passports, and they are highly vulnerable to gender-based violence and sexual

¹⁷⁰ Preibisch, Kerry et. al. 2014. *Irreconcilable Differences? Pursuing the Human Development Approach within the Global Governance of Migration*. Washington, DC: Solidarity Center. Available at: http://www.solidaritycenter.org/wp-content/uploads/2014/11/Migration-Development-and-Rights-Paper-University-of-Guelph.SC_.20014.pdf [Accessed 3 January 2015].

assault. "Adding to their vulnerability," says the Solidarity Center-supported report, "is the fact that guest workers are dependent upon their employers for housing, food and transportation."¹⁷¹

A common and widely reported route for domestic worker trafficking is between countries in South Asia (e.g., India, Nepal, Bangladesh) and Southeast Asia (e.g., Philippines, Indonesia) to wealthy nations in the Gulf (Saudi Arabia, Qatar, Jordan). However, it's important to remember that trafficking of domestic workers extends far beyond this geographic route. Break the Chain Campaign, one of the first groups to work on this issue in the United States, worked with survivors from dozens of countries in Africa, Asia, Latin America, and Europe from 1997-2010, and those workers reported exploitation at the hands of an equally diverse set of employers.¹⁷²

The Organization for Security and Cooperation in Europe (OSCE) has pursued a special interest in the trafficking of migrant domestic workers- particularly those working for diplomats and international officials. In 2010, they issued a research paper that provided the background and overview of the problem of trafficking of domestic workers, which found that "the question of domestic servitude cannot be discussed without linking it to the more general problem of decent work for domestic workers, and to its gender and migration dimensions. In order to tackle this phenomenon, it is necessary to take into account the broader issues related to the working conditions of household employees and the protection of their rights, as well as the impact of migration and labour policies which may unintentionally make migrant workers, and especially women, more vulnerable to exploitation."¹⁷³

¹⁷¹ Fine, Janice. 2013. "Emergent Solidarities: Labor Movement Responses to Migrant Workers in the Dominican Republic and Jordan." Rutgers University. Available at <http://www.solidaritycenter.org/Files/Rutgers.Emergent%20Solidarities.Migration.pdf> [Accessed 30 December 2014]

¹⁷² Break the Chain Campaign. 2012. *Historical Overview: 1995-2011*. Washington, DC: Institute for Policy Studies. Available at: <http://traffickingandlabor.files.wordpress.com/2012/03/btcc-historical-overview.pdf> [Accessed 2 January 2015].

¹⁷³ Organization for Security and Cooperation in Europe (OSCE). 2010. *Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude*. Vienna: OSCE. Available at: <http://www.osce.org/secretariat/75804?download=true> [Accessed 3 January 2015].

Recommendations

All countries, particularly the most frequent origin and destination countries for migrant domestic workers, should ratify the International Labor Organization Convention No.189 and implement the ideas put forth in the corresponding Recommendation No. 201.

The International Labor Organization (ILO) has stepped up to promote domestic worker rights, noting that “vulnerability to forced labour is not inherent but constructed.”¹⁷⁴

First and foremost, the Convention affirms that domestic workers are like any other workers, and should be treated with the same level of respect and protection. C.189 recognizes that domestic worker abuse can be a manifestation of the layers of discrimination described in sections above, and that domestic worker protections must be mandated proactively because of the unique nature of their workplace.¹⁷⁵

The Convention includes protection of the right to bargain collectively, to have a safe and respectful living space, weekly rest periods, and a clear contract. It also includes protection against child labor and ensures that minor workers (those who are between fifteen and eighteen years old) are not deprived of compulsory education. It also includes specific protections for migrant workers.

Recommendation 201, which accompanies the Convention, goes further in detailing steps that governments should take to bring up standards for domestic workers. These recommendations include supporting domestic worker organizations, establishing complaint and investigation mechanisms for workers, providing relocation and rehabilitation programs, and creating a structure for international cooperation with an eye toward prevention.¹⁷⁶

¹⁷⁴ International Labour Conference, 99th Session, 2010. Report IV(1) Decent work for domestic workers. International Labour Office: Geneva

¹⁷⁵ C189 - Domestic Workers Convention, 2011 (No. 189). http://www.ilo.org/dyn/normlex/en/f?p=normlexpub:12100:0::no:12100:p12100_instrument_id:2551460:no

¹⁷⁶ R201 - Domestic Workers Recommendation, 2011 (No. 201) http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:R201

- Argentina (March 2015)
- Bolivia
- Colombia (May 2015)
- Costa Rica (January 2015)
- Ecuador
- Finland (January 2016)
- Germany
- Guyana
- Ireland (August 2015)
- Italy
- Mauritius
- Nicaragua
- Paraguay
- Philippines
- South Africa
- Switzerland (November 2015)
- Uruguay

(enforcement date)



Celebrating The Vote in Geneva in 2011

All countries should ratify ILO Forced Labor Convention (C.29), its accompanying Protocol P029, and Recommendation R203 of 2014.

The ILO Convention 29 is more than eighty years old- it was adopted on June 28, 1930. Convention 29 prohibits forced labor, defined as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."¹⁷⁷ Out of

¹⁷⁷ International Labor Organization. "TEXT OF THE PROTOCOL TO THE FORCED LABOUR CONVENTION, 1930." Available at:http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_246615.pdf [Accessed 4 January 2015].

the 185 member countries of the ILO, the United States is one of only eight nations that have declined to ratify the convention.¹⁷⁸

In 2014, the ILO adopted a binding “protocol, ” or update, to the Convention. Protocol P029 adds provisions that reflect current issues of forced labor including forced labor of migrant workers, recruitment abuse, the role of private actors, and supply chains. Like Convention 189, the Protocol also includes a “Recommendation” section¹⁷⁹, which highlights best practices and ideas for governments to implement, such as the prohibition of recruitment fees and a safe reflection period to give victims time to decide what remedies to pursue. Again, recommendations are not binding, so some of the most essential and effective prevention ideas may not be pursued by governments, however ratification, and taking steps to pursue the recommendations, would be an important step forward for governments, including the United States.

Governments should reform domestic policy with regard to sponsorship systems and domestic worker coverage under labor laws.

Internationally, domestic worker rights and protection from forced labor vary. The Gulf is the workplace for more than two million migrant domestic workers, and has earned a harsh media spotlight in the past several years due in part to the *kafala* system- which restricts workers from moving to new jobs without consent from their current employer, leverage for abusive employers to keep workers in servitude. Adding this sponsorship system to the typical risks for migrant workers of recruitment fraud, exorbitant fees, and lack of labor protections, this region in particular has become a focus of domestic worker and human rights advocates.

Both Human Rights Watch¹⁸⁰ and Amnesty International¹⁸¹ have issued reports detailing the kinds of human rights abuses migrant domestic workers are facing- like wage theft, passport confiscation, forced overtime, and sexual assault- and on the labor side the International Trade Union

¹⁷⁸ The United States Council for International Business analyzed why the U.S. has declined to ratify many ILO core labor standards, and included the results of a The Tripartite Advisory Panel on International Labor Standards (TAPILS) report about C.29: “Convention 29 cannot be ratified without amending U.S. law and practice...[TAPILS] concluded that the trend of states to subcontract the operation of prison facilities to the private sector in the United States conflicted with the requirements of Convention 29 relating to circumstances under which the private sector may profit from prison labor.” As a consequence, review of C.29 was suspended and has never been resumed.” Available at http://www.uscib.org/docs/US_Ratification_of_ILO_Core_Conventions.pdf

¹⁷⁹ International Labor Organization. “TEXT OF THE RECOMMENDATION ON SUPPLEMENTARY MEASURES FOR THE EFFECTIVE SUPPRESSION OF FORCED LABOUR.” Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_246617.pdf [Accessed 4 January 2015].

¹⁸⁰ Begum, Rothna, 2014. *I Already Bought You: Abuse and Exploitation of Migrant Domestic Workers in the United Arab Emirates*. New York: Human Rights Watch. Available at <http://www.hrw.org/news/2014/11/06/human-trafficking-it-s-not-just-about-sexual-exploitation> [Accessed 15 January 2015]

¹⁸¹ Amnesty International. (2014). *My Sleep is My Break: Exploitation of Migrant Domestic Workers in Qatar*. London: Amnesty International. Available at: <http://www.amnesty.org/en/library/asset/MDE22/004/2014/en/7b7121b8-37c1-4e49-b1a1-2d8a005450a3/mde220042014en.pdf> [Accessed 4 January 2015].

Confederation, the International Domestic Workers Federation, and the Solidarity Center have all issued reports and statements urging countries in the Gulf to abolish the *kafala* system and implement stronger worker protections.

A 2012 research study of female migrant domestic workers from Bangladesh and Nepal working in Lebanon revealed that recruiters often deliberately mislead workers before migration.

“Most importantly, none of the surveyed workers knew of the existence of the kafala system applied in Lebanon, which limits their basic rights and freedoms. Although recruitment agents were sufficiently aware of these conditions, they intentionally hide this information from the workers in order to lure them in and secure their consent. Such practices constitute a violation of the rights of MDWs to fully understand their work conditions and the migration process before departure. Had they known the full reality, 83% of the surveyed workers stated that they would have never taken the decision to migrate to Lebanon.”¹⁸²

The Gulf Cooperation Council (GCC), a coordinating body for governments in the Gulf, has put forward the idea of a model contract (which would include limitations on working hours among other protections) and additional oversight. However advocates pointed out that worker groups and migrant groups have not been adequately involved- and further that a model contract simply does not go far enough.¹⁸³

The Gulf region is not the only place migrant domestic workers are less protected. International domestic worker rights and human rights groups are pushing for widespread reforms in the policies of both origin and destination countries. In general:

- Countries’ labor laws and social security programs should be reformed to fully include in-country domestic workers and migrant domestic workers
- Visas and work permits should not be tied to an employer (e.g., the *kafala* sponsorship system)
- Recruitment agencies should be regulated and monitored through a transparent system
- Recruitment fees should be eliminated as they are a known pathway to debt bondage

¹⁸² KAFA (enough) Violence & Exploitation. 2012. DREAMS FOR SALE: The Exploitation of Domestic Workers from Recruitment in Nepal and Bangladesh to Working in Lebanon. Available at: <http://www.kafa.org.lb/videos/29/dreams-for-sale-the-exploitation-of-domestic-work>

¹⁸³ International Trade Union Confederation. 23 November 2014. “Gulf Countries: Increase Migrant Worker Protection.” Available at <http://www.ituc-csi.org/gulf-countries-increase-migrant>.

- Every country should ratify ILO Domestic Workers Convention C189¹⁸⁴ and its Recommendation R201¹⁸⁵, the ILO Forced Labor Convention¹⁸⁶ and its 2014 update Protocol P029¹⁸⁷, and the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families¹⁸⁸
- And all of these actions and program changes should be done in collaboration and consultation with worker groups and migrant groups.

Foreign embassies in host countries should be reliable sources of support for workers.

Embassies of the workers' origin countries can provide culturally and linguistically specific information, as well as shelter and referrals. NDWA member organization Damayan is currently exploring an MOU with the Philippines Embassy in New York City to see how this partnership could develop. The host embassies can also play a role. We echo the recommendation from the Urban Institute report that the U.S. embassy and consulate staff should be involved in investigating the practices of recruitment agencies who send workers to the United States, and that data on abuse should be made publicly available.

Given the specific problems faced by domestic workers employed by diplomats are common on a global scale, governments should mandate training and oversight for diplomats and consular officers who employ migrant domestic workers.

In November 2014, the OSCE released the handbook: *"How to prevent human trafficking for domestic servitude in diplomatic households and protect private domestic workers"*¹⁸⁹ which was aimed at the Protocol departments of foreign affairs ministries (In the US, this would be within the

¹⁸⁴ C189 – Domestic Workers Convention. 2011. No. 189. Available at http://www.ilo.org/dyn/normlex/en/f?p=normlexpub:12100:0::no:12100:p12100_instrument_id:2551460:no.189.

¹⁸⁵ R201 – Domestic Workers Recommendation. 2011. No. 201. Available at http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:R201.

¹⁸⁶ International Labor Organization. "Text of the Protocol to the Forced Labour Convention, 1930." Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_246615.pdf

¹⁸⁷ International Labor Organization. "Text of the Recommendation on Supplementary Measures for the Effective Suppression of Forced Labour." Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_246617.pdf

¹⁸⁸ United Nations. UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Available at <http://www2.ohchr.org/english/bodies/cmw/cmw.htm>

¹⁸⁹ Organization for Security and Cooperation in Europe (OSCE). 2014. *How to Prevent Human Trafficking for Domestic Servitude in Diplomatic Households and Protect Private Domestic Workers*. Vienna: OSCE. Available at: http://www.osce.org/handbook/domestic_servitude [Accessed 2 January 2015].

DOS). The handbook includes detailed recommendations echoed throughout this report, including strong collaborations with NGO worker groups, proactive monitoring, in-person registration, and sanctioning of abusive employers through suspension and requesting waivers of immunity. The handbook also includes examples of country policy and practice on the issue.

Trade agreements should include strong worker protections and include the rights of domestic workers to fair wages and appropriate workplace protections.

Trade agreements are often at the heart of “push and pull factors” that create an environment ripe for trafficking and exploitation.¹⁹⁰ As poorer countries work to meet demands of these agreements, labor rights, immigration rights, and general human rights protections may become afterthoughts.¹⁹¹

This extends to migrant workers in destination countries with trade agreements – for example, the severely exploited Bangladeshi garment workers in Jordan who complained of 20 hour days, beatings, and confiscation of their passports in a *New York Times* story from 2006.¹⁹² The vulnerable status of migrant workers often mean lower wages, fewer protections, and no outlet to complain without retaliation– an easily exploitable workforce for countries who want to increase production and lower costs for trade.

For workers within the country, many are displaced into part time, temporary work, and have fewer safety net programs. Others may lose their jobs altogether and are forced to migrate.

“[G]lobal trade agreements such as the 2005 phaseout of the Multifiber Arrangement under World Trade Organization (WTO) rules left thousands of female textile and garment contract workers in places like Swaziland, Indonesia, and Bangladesh, without jobs almost overnight. Without adequate severance pay, unemployment insurance, and employment opportunities, many of these young female workers were vulnerable to exploitation by labor recruiters trying to take advantage of their precarious situation by offering them jobs abroad that they had little choice but to accept.”¹⁹³

A serious endeavor to end human trafficking will include mandates in trade agreements that uphold labor rights for both in-country and migrant workers, and ensure safe and voluntary migration policies.

¹⁹⁰ Chuang, Janie. 2006. Beyond a Snapshot: Preventing Human Trafficking in the Global Economy. *Indiana Journal of Global Legal Studies*, Volume 13, Issue 1, Winter 2006, pp. 137-163

¹⁹¹ Claudine Chastain. 2006. The Nexus between Free Trade Agreements and the Trafficking of Human Beings, 5 *Wash. U. Global Stud. L. Rev.* 587

¹⁹² Greenhouse, Steven and Michael Barbaro. 3 May 2006. “An Ugly Side of Free Trade: Sweatshops in Jordan.” *New York Times*. Available at: http://www.nytimes.com/2006/05/03/business/worldbusiness/03clothing.html?_r=0

¹⁹³ Misra, Neha. 2007. The Push & Pull of Globalization: How the Global Economy Makes Migrant Workers Vulnerable to Exploitation. *Solidarity Center Policy Brief*.

"On the global scene, one of the real lessons we have taken on our work with global unions is that if we want to be advocates for migrant workers, then starting when they arrive in our countries is too late. So much of the damage has been done at the point of hire, so many rights have been signed away in the recruitment process. As advocates, we really need a vision around cross border engagement, imagining how we can chip away at the jurisdictional territorial boundaries to pursuing justice for workers and accountability for employers."

Shannon Lederer, AFL-CIO



Through multilateral and bilateral cooperation, reform labor recruitment and employment processes, including eliminating all recruitment fees for workers.

Given that the recruitment process stands out as a known avenue for labor exploitation in domestic work, article 15 of ILO Convention 189¹⁹⁴ prescribes:

To effectively protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, against abusive practices, each Member shall:

- (a) determine the conditions governing the operation of private employment agencies recruiting or placing domestic workers, in accordance with national laws, regulations and practice;*
- (b) ensure that adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies in relation to domestic workers;*
- (c) adopt all necessary and appropriate measures, within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of domestic workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations that specify the respective obligations of the private employment agency and the household towards the domestic worker and provide for penalties, including prohibition of those private employment agencies that engage in fraudulent practices and abuses;*
- (d) consider, where domestic workers are recruited in one country for work in another, concluding bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment; and*
- (e) take measures to ensure that fees charged by private employment agencies are not deducted from the remuneration of domestic workers.*

In the Recommendation to P029¹⁹⁵, the Forced Labor Protocol, the link between trafficking/forced labor and recruitment is even more explicit:

*"...promotion of coordinated efforts by relevant government agencies with those of other States to facilitate regular and safe migration and to prevent trafficking in persons, including coordinated efforts to regulate, license and monitor labour recruiters and employment agencies and **eliminate the charging of recruitment fees** to workers to prevent debt bondage and other forms of economic coercion."* (emphasis added)

¹⁹⁴ C189 – Domestic Workers Convention. 2011. No. 189. Available at http://www.ilo.org/dyn/normlex/en/f?p=normlexpub:12100:0::no:12100:p12100_instrument_id:2551460:no.189.

¹⁹⁵ International Labor Organization. "Text of the Recommendation on Supplementary Measures for the Effective Suppression of Forced Labour." Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_246617.pdf



Photo: Nafisah Ula/Solidarity Center

Changing the Frame: End Worker Exploitation, End Human Trafficking

Neha Misra, Solidarity Center

A colleague from the Coalition to Abolish Slavery and Trafficking (CAST) recently remarked that she wanted to print T-shirts that said, “End Worker Exploitation, End Human Trafficking.” While it is a simple slogan, it packs a lot of truth—and then some. Vulnerable women and men seeking to improve their lives by migrating for work often find themselves in trafficking, forced-labor or exploitive situations because the law does not or will not protect their rights. Indeed, the abuse of migrant workers and denial of their rights are often built into the labor migration system, for the benefit of the bottom line. For the past decade, the Solidarity Center has advocated an approach to combating human trafficking that puts worker rights at the forefront of solutions and calls for the labor movement, and unions in particular, to be involved.

Understanding the link between vulnerability and worker rights violations is the first step toward eradicating human trafficking globally. And nowhere is the nexus of the two more obvious than with migrant domestic workers. Many of the approximately 50 million domestic workers around the world are migrant workers, who travel long distances due to a lack of decent work at home. Many of them disrupt their education or leave their children behind so they can care for other families’ kids. Most of them are women or girls. Some are tricked by unscrupulous labor brokers, who force them into jobs far different than they were promised.

Because their workplaces are private homes, migrant domestic workers are isolated. Behind closed doors, they might face physical or sexual violence, or egregious working conditions and abusive hours. The terms of their contract might change when they walk in the house. And the confiscation of passports is not uncommon, leaving the women in a foreign place without identification documents, too fearful to seek help. Their vulnerability is often heightened by the mere fact that they are female. And most destination countries specifically leave domestic workers out of their labor code or purposefully avoid enforcing laws designed to protect them and their rights.

Economies of both origin and destination countries rely on the migration of domestic and other workers—home countries for the significant remittances they send back to support their families and destination countries for their cheap labor that makes other work possible. Yet, despite the significant economic contributions they make, origin and destination countries treat them as widgets in a supply chain, not as humans with rights. In fact, currencies moving across borders are often better protected.

Tackling these injustices requires a laser focus on worker rights and on empowering workers to know and stand for those rights. Labor laws must cover all workers, including those in our homes, and those laws must be enforced. Workers must be able to exercise their right to organize and monitor their workplaces, and demand better wages and working conditions.

As a labor movement, we now embrace that DOMESTIC WORK IS WORK. Over the past decade, there has been an inspiring grassroots movement led by domestic workers themselves to get their work recognized. This movement culminated in the passage of the an international standard in the form of the International Labor Organization *Decent Work for Domestic Workers Convention* (C. 189), where domestic workers, migrant rights organizations, and unions came together to demand full rights under labor laws for all domestic workers, including migrants. Just last year, domestic worker unions from around the world formed the International Domestic Workers Federation, a global union for domestic worker organizations. The Solidarity Center is proud to work in partnership with IDWF and a number of its affiliates around the world to assist these organizations in building their capacity to organize, educate, and advocate for domestic worker rights, including the rights of migrant domestic workers.

This is a powerful start along the path to improving the lives and livelihoods of domestic workers, migrant or otherwise. But the battle is not won until all workers, regardless of job and origin, can go about their work without fear and fully exercise their rights—and expect their rights to be respected. End worker exploitation, end human trafficking.

Neha Misra is the Senior Specialist on Migration and Human Trafficking at the Solidarity Center

BUILDING POWER TOGETHER:

Service Providers, Advocates, and Partners

"History, and our own experience, teaches us that those who hold power do not give it up easily. Once we understand that, we also come to understand that the struggle for human rights, equality and justice is not a one-off battle. It is, rather, a slow chipping away at structures, attitudes and behaviors that have defined the human condition and human relationships, for a very long time."¹⁹⁶

- Anne Gallagher

¹⁹⁶ <https://www.opendemocracy.net/5050/anne-gallagher/human-trafficking-from-outrage-to-action>

Overview

Beyond Survival is made up of two basic activities: first, supporting local member organizations to organize, educate, and build healing and leadership of survivors with the ultimate goal of shifting power, and second, working within existing policy structures to make immediate changes based on demands of the workers we represent.

In the anti-trafficking advocacy world, there are many theories and strategies about how to address the problem. Many groups narrowly focus on law enforcement and criminal justice approaches, few groups take on the myriad “root causes” or deeper factors related to human trafficking, even fewer take on the underlying imbalance of power that allows exploitation to permeate. As Ann Gallagher describes, change will only come when we can begin deconstructing the relationships and structures that perpetuate trafficking.

In addition to policy change, a culture shift is needed: a shift that regards survivors as agents of change not passive victims, a shift that evaluates human trafficking and response as a labor and migration rights issue, and a shift that promotes a rights-based and systemic approach versus an individualistic/rescue approach.

Service providers like social workers, health care professionals, and attorneys can take divergent paths. NDWA members have had a wide range of experiences with service providers: some providers inadvertently foster isolation and dependence. They are built upon a “saving” mentality that puts them at the center of the relationship. Others have created collaborative and empowering relationships and networks that allow survivors to choose their own pathway and stay connected to a larger movement. Those who take the path of collaboration and connection are amongst our strongest allies. Service providers, labor unions, advocacy organizations, and even media can be partners in this effort; by committing to a rights-based approach to the issue of human trafficking, we can multiply our individual efforts and make a broader impact on how our society understands and addresses the problem.

An organizing framework, and our own personal experiences in this work, have taught us that while individual escape assistance and intermediate policy victories are crucial, without an overall shift in power from governments and corporations to workers and families, we will continue to fight the same small battles indefinitely, and our victories will be hollow.

Recommendations

Labor unions across the globe can help grow a rights-based approach by continuing to draw the connections between inferior labor protections and human trafficking.

In the United States and in several other countries, mainstream labor unions have begun to speak out powerfully on forced labor and human trafficking. Recognizing that human trafficking and forced labor of workers falls at the end point of a continuum that starts with poor working conditions, the labor movement can help us connect the struggle for basic labor rights, like freedom of association and safety regulations, to the hot topic of human trafficking. As Professor Hila Shamir explains "...the incorporation of the human rights paradigm into the international anti-trafficking regime resulted in new legal arrangements for providing protection, assistance, and rehabilitation to victims after they are removed from harmful environments. Yet this pervasive paradigm is inadequate for contending with the phenomenon's underlying causes: worker vulnerability resulting from structural labor market inequalities in bargaining positions."¹⁹⁷

"The Continuum of Exploitation"



Worldwide, 30% of domestic workers are excluded from national labor laws that would protect them with fair wages, reasonable working hours and the right to bargain collectively, and 45% have no

¹⁹⁷ Shamir, Hila (2012) A Labor Paradigm for Human Trafficking. *UCLA Law Review*, 60(76)

right to paid rest or holidays.¹⁹⁸ Live-in domestic workers contend with long, unpredictable hours based on changing employer family schedules, or being “on-call” even during rest time in order to attend to the needs of the employer family.

In the United States, workers have made progress toward inclusion, but it is slow. Only last year did direct care workers win the right to minimum wage and overtime pay. These workers provide assistance to seniors and people with disabilities so they can remain in their homes and communities, but have been denied some of the most basic labor rights guaranteed to other workers under the Fair Labor Standards Act. Despite the announcement of a new rule to end this exclusion, the battle is not over. Private home care agencies and their lobbyists have sued the Department of Labor to prevent the new rule from being fully enforced because guaranteeing fair wages for this vital workforce would “disrupt” their businesses.

In “Winning Wage Justice,” the National Employment Law Project¹⁹⁹ summarizes the scope of domestic worker exclusions from labor laws:

The problems of agricultural workers, domestic workers, and home care workers are compounded by inadequate protection at the federal level and exclusion from other key state workplace laws. The Fair Labor Standards Act (FLSA) exempts home care workers from both minimum wage and overtime protections, exempts agricultural workers from overtime, and subjects domestic workers to a lower level of standards. The National Labor Relations Act (NLRA), which protects workers’ rights to organize, exempts agricultural workers and domestic workers. And state workers’ compensation and health and safety laws also commonly exempt these groups of workers. Exclusions come in a variety of forms, not all apparent at first glance or easy to interpret:

The state’s wage and hour laws may contain an “exemptions” section, or define “employee” to exclude certain categories of workers based on industry or occupation.

The state’s wage and hour laws may apply only to employers with more than a certain number of employees (generally between 2 and 4), which results in the exclusion of domestic workers and some home care workers. An exemption may cover an entire category of workers, such as “agricultural workers”, or may apply only to a subset, such as “casual babysitters” or “domestic workers who live in an employer’s home.”

¹⁹⁸ International Labor Organization. “Snapshot ILO In Action: Domestic Workers.” Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_214499.pdf [Accessed 4 January 2015].

¹⁹⁹ National Employment Law Project. January 2011. “Winning Wage Justice: An Advocate’s Guide to State and City Policies to Fight Wage Theft.” Available at <http://www.nelp.org/page/-/Justice/2011/WinningWageJustice2011.pdf?nocdn=1> [Accessed 4 January 2015].

"A strong, active trade union may even succeed at creating a rights enforcement mechanism where no effective state mechanism exists. Indeed, studies suggest that labor trafficking occurs less frequently in sectors in which workers are unionized. The key features of unions are that they are member based, are accountable to that membership, and include elected bodies. The presence of unions in a particular sector or workplace does not, of course, guarantee worker agency and democratic participation or the emergence of industrial citizenship. The interests of vulnerable workers may be discounted and underrepresented in the framework of large unions. Yet trade unions do at least have the potential to establish a unique form of industrial democracy and citizenship that promotes active membership in a community, solidarity, political agency, and direct participation. Perhaps such a prospect may seem farfetched and not easily obtainable for vulnerable populations and precarious labor sectors, but it is far from impossible. Indeed, some unions are already creating a path for vulnerable workers to identify, frame, prioritize, and represent their interests and bargain for improved working conditions."

Hila Shamir

Tel-Aviv University Faculty of Law

The Urban Institute report found that next to domestic work, restaurant work was another significant industry for labor trafficking in the United States. Domestic workers and home care workers have joined the labor movement in the fight for a \$15 minimum wage, led prominently by the fast food workers and allied groups like Jobs with Justice and SEIU, finding solidarity across different low-wage work sectors.

The AFL-CIO is also a staunch ally. They are a leading voice in the International Labor Recruitment Working Group, which is working toward reform of the recruitment and visa systems that put migrant workers at risk for exploitation in the US. The group also includes service providers, migrant rights organizations, and sector-based groups like NDWA . The AFL-CIO also represents US labor groups in the tripartite system ILO, and during the negotiations leading up to the ILO Convention 189 on Decent Work for Domestic Workers they opened up seats on their delegation for domestic workers to represent our own sector.

Labor unions are well positioned to move the public from understanding human trafficking of domestic workers as an isolated crime to understanding it as the end point on the continuum of labor rights violations. They should continue to use their platform to underscore this point, and continue to show solidarity by creating and supporting space for domestic workers to represent themselves in national and international forums.



Damayan: How Organizing and Trafficking Connect

Leah Obias

At the center of Damayan’s organizing approach is our belief that fundamental changes in society happen when the people most marginalized and most affected by society’s structural inequalities are in the leadership of our social change movements. Because of this, Damayan uses an organizing approach to help trafficked workers help themselves, build an informed membership base and sharpen women workers’ political and organizational leadership. In Damayan, workers provide strategic and practical leadership as elected Board members and as active participants in committees. They pay annual dues, donate money, time and labor to outreach and mobilize contacts and constituents.

Damayan also engages in campaigns, collaboration and movement building. We believe that structural change will happen only when workers and whole communities become organized and build the power necessary to challenge the economic and social conditions that exploit and marginalize people. We are deeply committed to the struggle against classism, racism and patriarchy because these systems deepen the devaluation of domestic work and domestic workers.

Damayan also advocates against the labor export program of the Philippines. The logic of this program is to keep the Philippine economy afloat on the remittances of overseas Filipino workers. At the same time,

corporate neoliberal economic policies, a root cause of poverty and widespread unemployment, push Filipinos, mostly women, to migrate to foreign lands in search of livelihood.

Damayan launched the *Baklas* anti-labor trafficking campaign in 2010. Through *Baklas*, trafficked workers become knowledgeable about how to identify potentially trafficked workers; how to access community, legal and other expert support services; and how to support one another in their processes towards family reunification, economic stability and community leadership. The individual trafficked workers gain courage and confidence, and through the education component of the campaign, begin to understand the underlying economic and social causes of labor trafficking.

Through trainings, retreats and committee meetings, trafficked women workers in Damayan engaged in a process to define what it would look like to win justice from the Philippine government, the local representative of which is the Philippine Consul General in New York City. By going public with their cases, picketing the Philippine Consulate on 5th Avenue, petition-writing and coalition-building, among other campaign tactics, trafficked workers were able to bring the Consul General to the table to negotiate the creation of a Task Force-based Memorandum of Understanding to formally hold the Philippine government accountable in giving programmatic, legal, informational, logistical and financial support to trafficked Filipino workers. Negotiations for this MOU are ongoing.

In addition, to our work with the Consulate, *Baklas* aims to raise public consciousness and support for additional demands addressing the incongruence between the difficulty of obtaining T visas and the many forms of severe labor exploitation experienced by immigrant workers along a "spectrum"; and as well addressing the trafficking of domestic workers by diplomats, an issue affecting Filipino domestic workers in New York City in an outsized way due to the number of consulates and missions based in New York as well as the high number of visas for domestic workers of diplomats given by the Philippines.

These demands are:

- 1) full enforcement of labor laws in homes of diplomats;
- 2) expand the current definition and criteria for victims of labor trafficking;
- 3) suspension of diplomat traffickers' sending countries from the A3 and G5 visa program;
- 4) waivers of diplomatic immunity in cases of trafficking.

Why organizing?

Labor trafficking exists in industries where there is widespread exploitation, isolation, immigration issues, employer retaliation, lack of protections and other factors that make these workers vulnerable. **We cannot transform these industries without organizing the workers.** We can advocate for policy changes, and Damayan does do policy engagement work. But laws and policies alone will not transform these industries - they will provide small piecemeal fixes here and there. It is historically and concretely true that workers organizing to change their condition has been the most effective strategy to change conditions - this was true for the union

struggle for the 8-hour work day, it was true for the early slave revolts that led to the eventual abolishment of slavery, and it was true for the massive demonstrations and civil disobedience in the civil rights era. In this view, attorneys and policy advocates must understand and support the workers' right to organize and their desire to organize. That means, the worker is not an individual client in the narrow sense of the word. The worker is part of a community and if she's not part of an organization already, she should be.

Unique role of the Community Based Organization (CBO)

As a CBO, we are the first contact for the worker. If the worker is severely isolated, her only contact is other workers - the driver, the nanny who brings the children to a playdate, the nanny she meets in the playground or at school. These contacts refer the isolated worker to Damayan, and help her along the way during her case. In our experience, having an informed membership base is the best way to reach trafficked workers - and we have over 1,100 members in the NYC area. That means 1,100 pairs of eyes and ears around NYC.

We assist with escape and safety plans; emergency housing (workers housing each other); we inform the worker of her rights; listen to her story often the first time she is telling her story; we are there supporting her and encouraging her as she overcomes her fear of speaking to a lawyer or opening up this wound she wants to just forget about. This means, when we refer the worker to a lawyer or social worker, she has already gone through a process. Often, the legal and social service providers are unaware of this - they might think the CBO is just a referral agency. But they do not know how many times we have counseled workers who are terrified of coming forward, or if they've been told by one or more lawyers that they don't have a strong case, and because we believe in their case and know these workers and their experience, take them to other lawyers who end up successfully helping them get their T visas.

Cultural factors

Language of course is a major barrier to workers coming forward, and we assist with interpretation and help the worker feel like she has a community who is supporting her. But also, there may be cultural factors to the coercion in the trafficking case. In our example, we worked with attorneys to develop legal arguments for why *utang na loob* - a deep-seated Filipino value of indebtedness - contributed to the coercion.

We reinforce the information that is given to the worker by the lawyer and social worker. Anyone who has helped a worker in a case knows how many people talk to the worker during the course of her case. How many meetings she goes to, how much information is given to her. It is all very overwhelming. Working together to provide consistent information is a must.

*Leah Obias is the Campaigns Coordinator and Case Manager at
Damayan Migrant Workers Association in New York*

Direct service providers play a vital role in helping survivors recover, and should partner with community-based worker/immigrant rights organizations to increase their capacity and further promote self-determination and empowerment.

"A rights based approach to human trafficking works to restore individual agency and dignity to survivors by offering choices and options for services, participation in the criminal justice system and most importantly, an empowering process for determining one's own path to the future."

Florrie Burke
Freedom Network

Direct service providers like social workers, case managers, attorney, and medical and mental health professionals work on the front lines on behalf of trafficking survivors, and can offer a next step forward after case management by connecting them to worker and immigrant rights groups for community organizing and leadership opportunities.

Capacity is a real challenge. Service organizations that take a rights-based approach, are open to partnerships with community-based organizations, and take on trafficking for labor have few openings for new referrals. Worker center groups find themselves scraping together their own meager resources, including organizers' own money and space, to assist survivors. This points to the need for both more education of legislators and human trafficking activists about the need for rights-based, labor-inclusive services funding. While sex-focused activism has exploded in recent years, trafficking for labor still seems to be an afterthought in legislation and programming.

A small number of our member organizations are also service providers, for example Mujeres Unidas y Activas (MUA). Other NDWA affiliates work within their local trafficking networks, coalitions, and task forces as key partners. Typically our groups provide assistance with outreach, for example Fe y Justicia Worker Center in Houston. But just being part of a coalition is not a guarantee that the domestic worker group will have access to services. They have limited places to refer for comprehensive, worker-friendly social services case management. Many places will accept their referrals, but then restrict further communication with the survivor, closing a potentially supportive network.

But on the whole in the US, there is a remarkable dearth of trained legal and social service advocates for labor trafficking, culturally/linguistically competent mental health providers, and accessible housing for survivors. This makes sharing resources with well-positioned immigrant and worker rights groups a vital way to bridge some of these gaps.

There are options for service providers who want to respond to these challenges:

Cross-Training

Social workers often play the role of information brokers for attorneys—who are stretched thin and cover multiple cases at a time. Social workers can help survivors understand the complex pathways of their criminal, civil, and immigration legal cases, as well as public benefits and other relief available. Organizers and peer leaders at worker centers, in turn, can explain, reinforce, and elaborate on information from attorneys and social workers as part of their interaction with survivors. Organizers and peer leaders are already providing informal counseling. Service providers can train worker organizers and peer leaders in the basics of the legal and the social services timelines, so that they can translate and advocate for the worker within these systems: one way to help survivors feel less overwhelmed and uncertain after escape.



Social service organizations should build the relationship to organizers so that survivors have another pathway to receive and understand information about their situation.

Peer leaders and organizers often have an established relationship with survivors, so by training and partnering with organizers to explain what to expect in each stage of the process, service providers can help build the knowledge base of the survivor while conserving capacity for the social workers and attorneys.



Mujeres Unidas Y Activas (MUA)

Claudia Reyes

When it comes to trafficking survivors, besides doing referral and accompaniments to secure social and human services, we make a big effort to encourage survivors to attend general MUA meetings, where they are able to find a shared sense of identity and community with other Latina immigrant women who have undergone or are overcoming different forms of abuse. For male clients, we find that not being able to work is particularly frustrating and that they often show signs of being under high levels of stress or depression. We work hard to know that we are available for one-on-one counseling and offer a space to talk through their emotions and concerns but understand that because of cultural norms, they are uncomfortable talking about their emotions and feelings, and the counseling process can be longer.

After a member begins participating in meetings, they are eligible to take part in leadership training where he/she will learn skills to be a leader- public speaking, campaigning, and different models of leadership. After completing this training, members agree to participate for one year in community campaigns of MUA. During that time, members can give Know Your Rights presentations for domestic workers, immigrant rights presentations, and lead activities such as press conferences, marches, or actions.

Organizations like MUA are important and can make a positive impact for survivors. In addition to becoming spokespeople about the hidden types of trafficking in the US, they can help educate people about the problems of fraudulent and forced migration, and global capitalism that exploits women of color and immigrants.

For example, Mrs. Francisca is a domestic worker who worked for a family for nearly twenty years in very bad working conditions. She came to our office referred by [legal partner] APILO with great fear, she would not talk to anyone, and always had her head down. In 2013 when we introduced the Bill of Rights for Domestic Workers in California's AB 241, she went to legislative visits and gave her testimony as a domestic worker. Now she takes part in outreach at parks to inform domestic workers of the law.

In general we see that clients are more confident and are willing to pursue compensation and legal justice which we think is an important part of the healing process.

Claudia Reyes is the workers rights organizer at Mujeres Unidas y Activas

Formal Relationships

Some human trafficking service providers take a “rights-based” approach (particularly those affiliated with the Freedom Network, which requires member groups to sign agreements where they commit to an inclusive approach, and to prioritizing the rights and agency of survivors). These groups promote self-determination and healing over a solely criminal justice approach. This is a good start. Our member organizations have relationships with several of these service provider groups, including Safe Horizon in New York City.

For service providers who already have relationships with community-based groups, developing a more formal agreement through a Memorandum of Understanding (MOU) should be considered. This creates an environment where service providers can depend on worker centers to help survivors connect to a community and learn how their personal struggles connect to a larger struggle (something that service providers cannot do on their own), and worker centers can depend on service providers to offer case management in an environment that values survivor leadership and connection to community organizing. Ethically, the survivor still retains the right to informed consent and can end relationships with either or both of the groups at her will, but she will make the decision, and all other decisions related to her case and next steps, in a much more informed and supported way.

Joint Proposals

Service providers who have developed a strong working relationship with worker centers should consider taking the next step of submitting joint proposals for funding: subcontracting a portion of case management work and funding directly to the worker center so they can hire trained case managers and survivor advocates on site.

Direct Service Providers can be Political Allies

Inclusive legislation, programs, and media coverage are not just rhetorical demands based in fairness; they have tangible effects: you will find, and fund, what you are looking for. Service providers should engage in advocacy alongside survivors and community-based organizations to increase funding for long-term services. Organizers and advocates regularly educate congressional staffers and media about why labor trafficking victims should be included in any given proposal. It is exhausting and frustrating to spend time putting out fires and remedying egregious exclusions—and takes away resources that could be used to promote proactive ideas. The allied voices of day-to-day case managers and attorneys at front lines add significant value and impact because they are relatable and compelling to staffers and media.

TRAFFICKING SERVICE PROVIDERS AS ALLIES



November 19, 2014

Domestic Workers Rights Task Force
Legislative Office Building
Hartford, CT 06106

RE: Testimony in Support of the Connecticut Domestic Workers Rights Bill

Dear Members of the Domestic Workers Rights Task Force,

My name is Alicia Kinsman and I am here today in support of the Connecticut Domestic Workers Rights Bill. I am an immigration attorney and manager of the legal services program at the International Institute of Connecticut, Inc., a statewide nonprofit organization dedicated to the needs of immigrants, refugees, and foreign born victims of serious crimes. Collectively, its programs aim to help low income families become self-sufficient and integrated, and include refugee resettlement, language services, job assistance, educational programming, and legal immigration assistance.

Since 2006, the Institute has assisted survivors of trafficking residing in the state of Connecticut through a federally funded aftercare program named Project Rescue. Project Rescue provides a unique array of culturally competent and trauma-informed services. These services include assistance with immigration needs, reuniting families, providing safe, confidential shelter and other basic necessities, and providing general victim advocacy with law enforcement and the criminal justice system. Additionally, Project Rescue works with partners around the state to raise awareness of human trafficking among social service agencies, law enforcement, first responders, and the general public. The program holds an appointed position with the state Trafficking in Persons Council and in 2013 received a national award by the FBI for its work in combating trafficking.

Our clients are survivors. They defy expectations. They are resilient and brave. They thrive in the face of adversity. But the number of clients we've served has increased exponentially since the beginning of our program. And many of these clients have been victims of domestic servitude. Domestic work becomes domestic servitude, a form of trafficking, when the employer uses force, fraud and/or coercion to maintain control over the worker, causing the worker to believe that he or she has no other reasonable choice but to continue working. In 2013, of the 54 trafficking survivors that Project Rescue served, 11 came from domestic servitude, 10 females and 1 male.

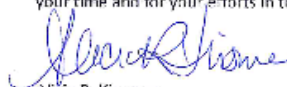
Victims of domestic servitude in the United States, and based on our experience, here in Connecticut, are often immigrant women. Immigrant women are particularly vulnerable to exploitation in these circumstances for a variety of reasons, including unfamiliarity with the laws, low levels of English proficiency, and fear of law enforcement. But the very nature of the job also makes domestic workers inherently susceptible to exploitation and abuse.

MEMBER: U.S. Committee for Refugees and Immigrants
Valley United Way. Recognized and Accredited by

Domestic workers often live in the home of the employer, isolated from the public and outside of the purview of federal labor laws. They commonly work 10 to 16 hours a day for more, 6 to 7 days a week, for little to no pay.

To be clear, not all domestic workers are trafficked. But if the home remains a place where labor laws do not apply, domestic workers will continue to be exploited, with little legal protection. The Institute supports a Domestic Workers Bill of Rights to change that; one that will establish labor standards and address some of the most common employment areas that put domestic workers at risk for severe exploitation, including job safety, wage and hour requirements, and protections against discrimination and sexual harassment. It will be an important step toward transforming the vulnerability of this workforce, and fighting human trafficking in our state.

On behalf of the International Institute and the individuals we serve each year, I thank you for your time and for your efforts in this matter.


Alicia R. Kinsman
Managing Attorney

Testimony submitted by
trafficking service provider
International Institute of
Connecticut in support of
the Connecticut Domestic
Workers Bill of Rights
(November 2014)



Life After Trafficking

Denise Brennan

While reports on life in forced labor and dramatic stories of escape or rescue are common, there has been little focus on what happens after. As an anthropologist, I have followed the lives of trafficking survivors for the past ten years and have witnessed how difficult it can be to resettle in the United States after such traumatic experiences. Our current policies and programs fall short of offering the support these survivors need and deserve.

In order to qualify for a new temporary visa to stay in the United States trafficking survivors have to prove that they labored under conditions of "force, fraud or coercion." This is not easy, especially for those who fear their traffickers. Some survivors describe pretending to not understand English during their first interviews with law enforcement. After months -- and sometimes years -- of exploitation, they had learned to not trust others. Keeping details of their lives to themselves often were often the only aspects of their lives that they could control.

Survivors often do not know a single person in the United States. Isolation is a textbook form of control that traffickers use. Once out of forced labor, survivors have to build all relationships from scratch. This can be

daunting for individuals who have learned to not trust others. While new migrants often move into neighborhoods where their compatriots live, trafficking survivors may strategically avoid co-ethnics. It can be dangerous to live in a community where your trafficker, or his or her associates, may still be at-large. Survivors, thus, cut themselves off from contacts that otherwise could help them find work and housing. Nor do most survivors ever meet another survivor of trafficking. Attempting to succeed in a new country without the guidance from anyone with similar experiences adds to survivors' struggles.

Receiving trafficking visas relieves the burden of living without documentation in the United States. But it is not a cure-all. While trafficking survivors qualify for the same kinds of benefits that refugees receive, assistance runs out in about a year, long before survivors can establish an economic toehold. The benefits clock is completely out of synch with survivors' needs.

Trafficking survivors most often enter the same low-wage labor market into which they had been trafficked. They also may still have travel debts to smugglers, recruiters, family or loan sharks. Their families often do not know what they endured and still expect money to be sent back home. Their families see these survivors as lucky to be in the United States where they are assumed to be earning high wages. With limited social networks, travel debts, and obligations to family back home, survivors often live in poverty.

Survivors insist, however, that they are not victims and that they are more than their stories in forced labor. They are emphatic that although their time in forced labor changed them, it does not stop them. But survivors willing themselves forward is not enough. We need more policies and services that offer support over time -- not just in the immediate aftermath of forced labor.

Many survivors, for example, spend nearly all their waking hours on buses and trains as they juggle more than one job. Programs that provide driving lessons and assistance to purchase a car and insurance would make a profound and immediate impact in survivors' lives. So too would social-service benefits that help survivors for more than a year. Educational fellowships would provide another important path to success. And regulating temporary labor recruiters' astronomical (and sometimes bogus) fees would ease debt burdens.

Ending trafficking must also involve supporting survivors throughout their resettlement process -- not just in the weeks and months following their exit from forced labor. Right now, as a social worker in New York City laments, we offer them a temporary visa and then say "Go ahead, make a life." They deserve more.

Denise Brennan is Chair of the Department of Anthropology at Georgetown University and author of Life Interrupted: Trafficking into Forced Labor in the United States. All the proceeds of the book support the Survivor Leadership Training Fund (which is administered through the Freedom Network).



Working With Journalists: How Can We Change the Narrative Together?

Christa Hillstrom

A while ago, I was reporting overseas on an issue related to human trafficking. A colleague and I were interviewing workers with an NGO that worked on anti-trafficking efforts in the country. My colleague was new to the issue, and when organizers talked about raids that had been carried out to rescue trafficked workers, she eagerly asked if we might come along on something similar. She is a very good journalist, but hadn't spent time previously with trafficking survivors or those who work with them. You really only need to do one story on human trafficking to understand how fraught with controversy the issue of raids (and reporters covering them) is.

But my colleague was getting at something important with her request, a need for certain ingredients that transform an issue into a story: narrative tension, compelling characters, a sense of place, pathos. In other words, she was looking for ways to offer the public a way to **feel** what's at stake in issues like trafficking. And its

not just because editors demand clicks. Readers respond to a sense of connectedness to human experience with empathy and sometimes, when journalism is at its best, even action.

Most NGOs, social workers, and other people who work with survivors of trafficking are used to getting calls from reporters who, often knowing little about the issue before the latest story, ask to interview trafficking survivors. There is a big learning curve, but the good news is as journalists, it's our job to learn and ask questions and report what we find. Most effective stories are going to have to include some version of a personal story, but if you're interested in getting your work covered in the media, there are things you can do to help encourage reporters you interact with to pursue stories with context and empathy.

First, vet reporters before you agree to participate in their story. Look them--and their publication--up to see how they have covered similar issues in the past. Ask them what interests them about your work, what angle they're approaching the story from, and what questions they have for you. Chances are, you've done this before, and you may have been disappointed with the result. But reporters who are new to an issue come in on the entry level. What they know is limited, and probably in line with a popular narrative about trafficking. **But that's why they're talking to you**--to understand what's really going on. If you are concerned about a journalist's framing, you might offer them a more complex frame--which will undoubtedly be more interesting. And a new angle that hasn't been reported to death is invaluable for journalists.

After they speak with you, they might want to speak with survivors you work with. When I have talked to organizations about interviewing survivors, I usually ask if they can connect me with someone who has some distance from the trafficking experience, and has processed the experience and expressed interest (or is already practiced) in speaking publicly about it. If this is a possibility for your organization, it can make a reporter's story much better and sometimes make survivors feel empowered.

Make sure you set clear ground rules, on the survivor's terms, whatever they are. Not all reporters have experience interviewing survivors of trauma and they should appreciate your guidance. If this kind of interview is not possible, you can brainstorm other ways to tell a story that reflects the depth and complexity of your work. For example, you might offer some anonymous examples of situations you've encountered in your work.

Finally, give journalists a chance. Some reporters will stay on a story for years, absorbing its nuance and communicating that to the world. They will get to know and care about the people whose lives are affected. They will frame those lives in context, and with humanity.

Christa Hillstrom is the Web Managing Editor for YES! Magazine and the founder and editor of Human Goods, a website that covers human trafficking in context.

The NGO advocacy community is a key ally in moving policy changes forward. They should ensure that these policy ideas address root causes, reflect survivor experiences, and meet real needs by including worker groups as collaborators.

Only a small handful of advocacy and service organizations have hired survivors to represent them in their work. In many cases, this shortfall is a result of limited budgets that cannot stretch—but in other cases, it’s a matter of prioritizing where funding is invested. For groups who can afford to, we recommend sharing resources and funding to support survivor leadership through skills training, and either hiring directly or funding local groups to hire survivor organizers. For example, the advocacy network The Alliance to End Slavery and Trafficking (ATEST) has offered media training and education to survivors, and has contracted with survivors to do research. The Coalition to Abolish Slavery and Trafficking (CAST) has hired a survivor to run their survivor organizing work. NDWA member Damayan has four survivors on its nine person board of directors.

Regardless of budgets, advocacy groups should work to move society beyond the over simplified “victim-perpetrator” dyad, beyond romanticized stories of dramatic rescues, and beyond policies that advocate more policing and law enforcement without also including more services and prevention programs. Advocacy organizations in the anti-trafficking universe should take a comprehensive approach to the issue and address root causes and a labor-rights based framework that has the potential to make a deeper impact. Involving survivor groups, worker rights groups, and immigrant rights groups in the development of policies and programs is an important step.

Real collaboration also means respect for survivors’ expertise and time—which will take a philosophical shift. Journalists and legislative staffers tell advocates that “stories” have to lead articles and reports and events in order to keep people engaged, and without fail survivor panelists draw crowds and command attention. But it’s not yet the norm to compensate and include survivor advocates as collaborators in the planning of the speaking event, let alone the planning of demands. This is particularly painful for the survivor leaders we work with: many of them are struggling to make ends meet and find quality employment and housing. Even when there is funding, they are sometimes asked to front the costs of travel. While advocates and organizers receive a salary, most survivor leaders have other jobs and have to create space in their schedules, and bank accounts, to do advocacy. The least organizations can do is compensate survivor advocates they deploy for advocacy activities. Recognizing that if we want to move our campaign forward from a survivor/worker-led frame we will need to address this shortfall, this year NDWA will launch a fund to help defray some of the costs of advocacy and organizing for survivor leaders in our membership— but this fund won’t replace the responsibilities of advocacy groups at conferences, school events, and legislative events to compensate survivors as professionals.



Beyond Awareness and Toward Long-Term Recovery

Evelyn Chumbow

I'm a survivor of child labor trafficking in domestic work. I am also a full-time student at the University of Maryland University College; I am focusing on Humanitarian work and Homeland Security. Where I come from, lack of knowledge about rights is an everyday reality. I understand that I am in a unique position to do something about human trafficking in West Africa, in my hometown, and the rest of the world.

When I got to the U.S., I was forced to cook, clean, and take care of the children of my trafficker. I was never paid for my work, and any hope that I might escape my miserable life was undermined by the constant beatings I received from my trafficker. For seven years of my young teenage life, I lived in constant fear and worked day and night. I never rode the school bus, went to a prom, hung out with friends after school, or joined a dance team. Instead, I was a modern day slave, not in some far-flung country, but right here in the U.S. I had not seen my parents for eighteen years due to this situation.

After all those years of captivity, I finally escaped. I enrolled in GED courses and then community college and then University of Maryland University College. My trafficker was sentenced to 17 years in prison for what she did to me.

But my story doesn't end there. It has been a long road to freedom, which is why I want to talk about long-term services for survivors. There many survivors that have been rescued, but after getting a little service, they are forgotten.

There are many campaigns for identification and prosecution of human trafficking. There are more new NGO's working to build awareness, but not much is being done to help with the long-term needs of survivors, and very few of them actually employ survivors or offer paid training that would assist with recovery. There are very few good paying jobs available to us, which leads to vulnerability and inability to move on. Many survivors don't want to go back to that same work they were doing before, but don't have any choice. After leaving the situation, we are struggling to recover and make ends meet.

On top of that, thanks to increased awareness, survivors are being asked to speak at events but are sometimes not offered any compensation. Unlike the experts and employees of the NGO's, speaking at these events is usually on top of our regular work.

Every survivor is different, with a different set of skills and experiences. Some speak fluent English, and some only know a few words. Some were professionals with education from their home company, and others have only primary school education.

Not just NGO's, but businesses and government, and media could play a role- there's a part for everyone, as long as it's led by survivors. We need scholarships so that survivors can attend vocational schools, community colleges, and universities to obtain higher education. Businesses could design internships at their offices that would be appropriate/supportive for a variety of different skills/sectors, or could fund paid internships at NGO's and offer training and education to supplement them. Media professionals could offer training on writing and communication, ensuring that the workshops cover all costs associated with attending, including missed work, transportation, and childcare. They could offer a column or other outlet to highlight survivor contributions. Lawyers could help with getting work authorization and green cards for survivors. Governments could contract with NGO's to hire survivors as consultants on projects related to human trafficking policies and programs, so that survivor voices are represented in an ongoing way, rather than just to give feedback once a year. Celebrities and Hollywood could lend their voices to the importance of helping survivors with recovery that includes access to education and jobs- not just identification and awareness.

Evelyn Chumbow is a survivor advocate in the United States



Since the onset of globalization that opened nations' borders and undermined the economies of poor countries, more people have left their countries of birth and become victims of labor trafficking... we see that trafficking flourishes in industries like domestic work where there is a lack of protection, weak enforcement, isolation, and immigration issues. We see that racial discrimination and devaluation of women's work also contributes.

The way to empower, heal, and develop the leadership of survivors is to engage them in organizing. We encourage them to talk about their experience, however horrible and hurtful it has been. But we frame it in a way that its not just about the individual and her experience, but about the structure and other factors that make domestic workers particularly vulnerable to trafficking.

Linda Oalican, Damayan

5 | RESOURCES

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National Domestic Workers Alliance: Beyond Survival Anchors

Adhikaar for Human Rights and Social Justice

www.adhikaar.org

Since 2005, Adhikaar has trained community leaders of the Nepali-speaking communities and helped strengthen their voice in the social justice movement; working with coalitions to successfully change policies and create new laws at local, state, national, and international levels, including the New York State Domestic Workers Bill of Rights and the International Domestic Workers' Convention.

Facebook: <https://www.facebook.com/adhikaar>

Twitter: <https://twitter.com/adhikaar>

CASA de Maryland

<http://casademaryland.org/>

Building a more just society by improving the quality of life in low-income immigrant communities through solidarity, respect, and the vision of living free from discrimination and fear.

Facebook: https://www.facebook.com/pages/CASA-de-Maryland/108337384472?ref=br_rs

Twitter: <https://twitter.com/CASAdMaryland>

Damayan Migrant Workers Association

<http://www.damayanmigrants.org/>

Damayan is a grassroots organization based in New York and New Jersey of and for Filipino im/migrant workers and led by Filipino women domestic workers. Damayan was officially founded in 2002 and became a 501c3 in 2003.

Twitter: <https://twitter.com/DamayanMigrants>

Other NDWA Members

Arizona

Centro Laboral de Mujeres por un Mundo Mejor
Tuscon

California

Coalition for Humane Immigrant Rights of Los Angeles CHIRLA
Los Angeles
<http://www.chirla.org> | 213-353-1333

Filipino Advocates for Justice
Oakland
<http://www.filipinos4justice.org>

Filipino Community Center
San Francisco
<http://filipinocc.org/>

Filipino Migrant Center
Long Beach
<http://fmcs09.wordpress.com>

Graton Day Labor Center
Graton
<http://www.gratondaylabor.org> | 707-829-1864

IDEPSCA
Los Angeles
<http://www.idepsca.org/> | 213-252-2952

La Colectiva de Mujeres
San Francisco
<http://lacolectivasf.org> | 415-575-3500

Mujeres Unidas y Activas
Bay Area
<http://www.mujeresunidas.net> | 415.621.8140
ex301

People Organized to Win Employment Rights
POWER
San Fransico
<http://www.peopleorganized.org> | 415-864-8372

Pilipino Workers' Center of Southern California
Los Angeles
<http://www.pwcsc.org/> | 213-250-4353

Colorado

Centro Humanitario
Denver
<http://www.centrohumanitario.org> | 303-292-4115

Connecticut

Brazilian Immigrant Center CT
Bridgeport, CT, Allston, MA
<http://www.braziliancenter.org/> | (203) 540-5444

District of Columbia

Break the Chain Campaign
Washington
<http://www.ips-dc.org/BTCC>

Florida

Ola de Mujeres of Miami Workers Center
Miami
<http://www.miamiworkerscenter.org>

Georgia

Atlanta NDWA Chapter
Atlanta
<http://www.atlantadomesticworkers.org>

Hawaii

FACE
Makawao
<http://www.facehawaii.org/>

Illinois

ARISE Chicago
Chicago
<http://arisechicago.org>

Latino Union of Chicago
Chicago
<http://www.latinounion.org> | 312-491-9044

Massachusetts

Brazilian Immigrant Center
Allston, MA, Bridgeport, CT
<http://www.braziliancenter.org/> | 617-783-8001

Brazilian Women's Group
Allston
<http://verdeamarelo.org/> | 617-787-0557

Dominican Development Center
Jamaica Plain

Matahari Eye of the Day
Boston
<http://eyeoftheday.org> | 617-448-0993

New Jersey

New Labor
New Brunswick
<http://www.newlabor.org>

New Mexico

El Centro de Igualdad y Derechos
Albuquerque
<http://elcentronm.org> | 505.246.1627

Encuentro
Albuquerque
<http://www.encuentronm.org>

Olé
Albuquerque
<http://olenm.org> | 505.796.6544

New York

Cidadao Global
Long Island City
<http://www.cidadaoglobal.org/> | 917-294-6087

Domestic Workers United
New York
<http://www.domesticworkersunited.org/> |
212-481-5747

Hispanic Resource Center Workers Center
Mamaroneck
<http://www.hispanicresourcecenter.org/>

KABALIKAT Domestic Workers' Support
New York
<http://pf-kabalikat.org/> | 718.565.8862

Las Mujeres de Santa Maria
Staten Island

New Immigrant Community Empowerment
Jackson Heights
<http://www.nynice.org/>

Unity Housecleaners Cooperative
Hempstead
<http://www.workplaceprojectny.org/> |
516-565-5377

Workers Justice Project-Apple Eco Cleaning
Jackson Heights
<http://workersjustice.org/>

Tennessee

Tennessee Immigrant and Refugee Rights
Coalition
Nashville
<http://www.tnimmigrant.org/>

Texas

Fe y Justicia Worker Center
Houston
<http://www.houstonworkers.org> | 713-862-8222

Southwest Workers Union
San Antonio
<http://www.swunion.org> | 210-299-2666

Washington

CASA Latina
Seattle
<http://www.casa-latina.org/> | 206-956-0779

Other Organizations

Alliance to End Slavery and Trafficking (ATEST)

<http://www.endslaveryandtrafficking.org/coalition-partners>

ATEST bring a diversity of expertise in fighting different forms of human trafficking and modern-day slavery in communities across the globe. Our membership currently includes 14 U.S.-based human rights organizations with anti-slavery programs in the United States and around the globe.

American Civil Liberties Union (ACLU)

<https://www.aclu.org/>

<https://www.aclu.org/immigrants-rights/about-aclus-immigrants-rights-project>

Founded in 1987, the ACLU Immigrants' Rights Project is dedicated to expanding and enforcing the civil liberties and civil rights of non-citizens and to combating public and private discrimination against immigrants.

AFL-CIO

<http://www.aflcio.org>

The AFL-CIO is the umbrella federation for U.S. unions, with 56 unions representing 12.5 million working men and women. We work to ensure that all people who work receive the rewards of their work—decent paychecks and benefits, safe jobs, respect and fair treatment.

Coalition to Abolish Slavery and Trafficking (CAST)

<http://www.castla.org/homepage>

CAST partners with NGOs and government agencies, locally and internationally, to build a powerful movement to end modern-day slavery by reaching out to communities where potential victims of trafficking may reside, and offers training on identifying potential trafficking victims, and after identification, client services including free legal aid is given.

Freedom Network

www.freedomnetworkusa.org

The Freedom Network is a national alliance of experienced service providers and advocates working with survivors of all forms of human trafficking to ensure that trafficked persons have access to justice, safety, and opportunity.

Global Workers Justice Alliance

www.globalworkers.org

Global Workers Justice Alliance strives to combat worker exploitation by promoting portable justice for transnational migrants through a global network of advocates and resources.

Human Rights Watch

<http://www.hrw.org/>

Human Rights Watch defends the rights of people worldwide. We scrupulously investigate abuses, expose the facts widely, and pressure those with power to respect rights and secure justice. Human Rights Watch is an independent, international organization that works as part of a vibrant movement to uphold human dignity and advance the cause of human rights for all.

Human Trafficking Pro Bono Legal Resource Center

<http://www.htprobono.org/>

The Human Trafficking Pro Bono Legal Center empowers trafficked women, men, and children to seek justice. HT Pro Bono leads national efforts to hold human traffickers accountable for their crimes and to raise awareness of victims' rights. By linking trafficking victims with highly-skilled pro bono attorneys, HT Pro Bono works to obtain criminal convictions, criminal restitution, and civil judgments against traffickers. With pro bono legal assistance, trafficking survivors can rebuild their lives.

International Labor Recruitment Working Group

<https://fairlaborrecruitment.wordpress.com/>

The Working Group seeks to end the systemic abuse of international workers who are recruited to the U.S., by collaborating across labor sectors to develop comprehensive policies and advocate for reforms, including increased enforcement of existing laws and increased transparency in the labor recruitment process.

National Human Trafficking Resource Center

<http://www.polarisproject.org/what-we-do/national-human-trafficking-hotline/the-nhtrc/overview>

The NHTRC has a wide referral network—connecting victims of human trafficking and service providers with the resources they need such as attorneys, trained law enforcement contacts, and organizations such as the National Domestic Workers Alliance. People can receive help, report a tip, or request referrals, by calling the National Human Trafficking Resource Center at 1-888-373-7888 or by sending a text to Polaris at BeFree (233733). The NHTRC does not share personally identifying information to any external agency, including law enforcement, service providers, and government agencies without the explicit permission of the caller.

National Guestworker Alliance (NGA)

<http://www.guestworkeralliance.org>

The National Guestworker Alliance (NGA) is a membership based organization dedicated to defending the rights of guestworkers and all workers in guestworker industries and for just migration and work. Many of our members have survived forced labor and are now grassroots community and labor leaders engaged in the labor movement and advocating for policy reform in their countries of origin and destination countries.

National Survivor Network

<http://nationalsurvivornetwork.org>

In February 2011, CAST launched the National Survivor Network (NSN) in an effort to foster connections between survivors of diverse forms of human trafficking and to build a national anti-trafficking movement in which survivors are at the forefront and recognized as leaders. By connecting survivors across the country, the NSN supports and encourages survivors to realize and develop confidence in their own leadership qualities and for others to learn to value their insight not just as survivors but as experts in the field.

Polaris

<http://www.polarisproject.org/>

Offers comprehensive clinical social services to victims of all forms of human trafficking through specialized local offices in Washington, D.C. and New Jersey as well as offering legislative expertise for advancing policy advocacy through training and technical assistance

Domestic Work Resources

- "Human Trafficking in Domestic Servitude" Presentation:
<http://www.traffickingresourcecenter.org/resources/human-trafficking-domestic-servitude>
- "Domestic Work At a Glance" Factsheet:
<http://www.traffickingresourcecenter.org/resources/domestic-work-glance>

Safe Horizon

<http://www.safehorizon.org/>

Safe Horizon is the nation's leading victim assistance organization and touches the lives of more than 250,000 affected by crime and abuse each year. Whether we are responding to child abuse, domestic violence, or other violent crimes, we help victims and their families heal and rebuild their lives by raising awareness and support victims to move from crisis to confidence.

Solidarity Center

www.solidaritycenter.org

The Solidarity Center stands with workers as they defend their right to freedom of association, supporting them as they organize, advocate and build worker voice.

Box Quotes

1. International Labor Organization
2. Sperber, Melysa. Personal Correspondence.
3. Nguyen, Khanh. 4 November 2014. "Immigration Remedies for Trafficking Survivors." *Working with Survivors of Human Trafficking: Learning About Immigration, Criminal, Civil, and Benefits Legal Remedies in California*. Practicing Law Institute: San Francisco, CA.
4. Richard, Stephanie. 4 November 2014. "Immigration Remedies for Trafficking Survivors." *Working with Survivors of Human Trafficking: Learning About Immigration, Criminal, Civil, and Benefits Legal Remedies in California*. Practicing Law Institute: San Francisco, CA.
5. Burke, Florrie. Personal Correspondence.
6. Oalican, Linda. 10 October 2014. "The Continuum of Exploitation" panel discussion at New York Law School.
7. Anderson, Bridget. 9 October 2014. "Extreme exploitation is not a problem of human nature." *Open Democracy: Beyond Trafficking and Slavery*. <https://www.opendemocracy.net/beyondslavery/bridget-anderson/extreme-exploitation-is-not-problem-of-human-nature>
8. Shamir, Hila. 2012. A Labor Paradigm for Human Trafficking. *UCLA Law Review*, 60(76)
9. Lederer, Shannon. 10 October 2014. "The Continuum of Exploitation" panel discussion at New York Law School.

National Domestic Workers Alliance

Beyond Survival Campaign

www.domesticworkers.org/beyondsurvival



/nationaldomesticworkersalliance
/ndwabeyondsurvival



@domesticworkers
@dwtrafficking

Coordinator: Tiffany Williams (tiffany@domesticworkers.org)

