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SPECIFIC GROUPS AND INDIVIDUALS

Written statement jointly submitted by Global Rights and the American Civil Liberties Union, non-governmental organizations in special consultative status

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Ending the Exploitation of Migrant Domestic Workers
Employed by U.N. Diplomats and Staff

Global Rights and the American Civil Liberties Union, in conjunction with the International Women's Human Rights Clinic of the City University of New York School of Law, submit the following written statement with information provided by Andolan: Organizing South Asian Workers.

1. Migrant domestic workers employed by United Nations diplomats and staff, including the representatives of various country missions to the UN, are too often subjected to fundamental human rights violations. Despite the protections guaranteed to migrant domestic workers under international human rights and labor laws, including those drafted and promoted by the UN Commission on Human Rights (UNCHR), the United Nations and the country missions to this body have failed to ensure that these workers are treated with dignity and respect.

2. The international community has recognized the protection of migrant domestic workers and the regulation of their conditions of employment as an urgent human rights issue. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which entered into force in July of 2003, is a manifestation of the importance of this issue. Typical human rights abuses range from denials of basic employment rights to which workers are entitled under the domestic law of the country in which they work (such as payment of the minimum wage and overtime) to extreme forms of exploitation in the form of sexual assault, trafficking and forced labor. In her report to the UNCHR in 2004, the Special Rapporteur on Migrant Workers called attention to the vulnerability of migrant domestic workers and urged the international community to act to protect the rights of these workers. She also cited specific cases involving women working for diplomatic staff or staff in international organizations.

3. It is therefore deplorable that, one year later, many migrant domestic workers employed by the United Nations' own staff and the staff of country missions to
the UN are still suffering exploitation and being denied their human rights. There are numerous reports from advocates, service providers and community organizations documenting the various forms of exploitation and abuse faced by migrant domestic workers working for UN staff and diplomats. For example, Andolan, an organization that organizes and advocates on behalf of low-wage, immigrant South Asian workers in the New York City area, has been working on a Campaign Against Diplomatic Immunity since 1998. The campaign, which has included demonstrations and protests against diplomat employers, contributed valuable information to a Human Rights Watch report, released in 2001, on the abuse of domestic workers.

In the United States, abusive employment conditions have included:

- Working from fourteen to nineteen hours per day, as many as seven days per week;
- Receiving as little as fifty-eight cents (or US$ .58) per hour or as little as US$150 per month when the minimum wage in the U.S. is $5.15 per hour;
- Being refused vacation or sick leave;
- The withholding of the worker’s travel documents by her employer;
- Housing conditions that include sleeping in the dining room or on the floor of a child’s bedroom;
- Being locked in a room when guests visit the employer’s home;
- Being refused medical treatment when ill;
- Being denied the right to leave the home;
- Not being allowed to talk to others or to make phone calls;
- Not being allowed to eat the same food as the family;
- Being forced to care for the children of the employer’s relatives in addition to caring for the employer’s children;
- Being forced to work extra hours without compensation;
- Being threatened with deportation to the worker’s home country when complaining to the employer about working conditions;
- Being verbally and physically abused; and
- Being sexually abused and harassed.

4. All migrant domestic workers are extremely vulnerable to exploitation for a variety of reasons. First, they are often unfamiliar with the rights to which they are entitled under international law and the domestic law of the country in which they work. They are often also extremely isolated due to long work hours and unfamiliarity with the local language and culture and are afraid to leave exploitative employment situations because their immigration status is dependent upon their relationship with a particular employer. Migrant domestic workers employed by the staff of international institutions or by diplomatic staff often face greater exploitation because their employers can claim immunity from civil and criminal jurisdiction because of their diplomatic status. These migrant domestic workers have no means to enforce their rights or to achieve redress in the country.
in which they work. In some cases, their employers have been transferred to a position in a different country, in order to avoid charges or penalty.

5. Some international organizations and countries have attempted to adopt policies and model employment agreements for their international staff that would prevent abuse of their migrant domestic workers. However, advocates continue to discover a variety of abuses that circumvent the systems that have been put into place. Some examples of these abuses are:

- The employer executes a contract at the country of origin that complies with the institutional policy but then changes the terms of the contract upon arrival in the destination country.
- The employer opens a bank account for an employee and deposits the worker’s wages but then keeps sole control over the bank card and uses the money in the account for his or her own purposes.
- The employer compels the domestic worker to sign fraudulent receipts for payment of a salary that is significantly higher than what the worker actually receives.
- The employer falsely tells an employee that her salary is being deposited in a bank account in her country of origin when in fact no money (or far less money) is actually being deposited.
- The employer brings the employee on a valid visa but arranges for a third-party to actually employ the domestic worker.
- The employer deducts money from the worker’s wages to pay for employee clothes, food, and medicine.
- The employer falsely promises to sponsor the employee’s family members to come to the United States after the employee leaves her native land.
- The worker does not directly receive any wages and does not have any pocket money, thus rendering it more difficult to escape.

Such abuses can only be avoided by instituting “watchdog mechanisms” or supervisory systems that allow for close monitoring of the employment conditions of the domestic worker, educating domestic workers as to their rights and giving workers access to communities and services that will ensure that those rights are respected.

6. We therefore make the following recommendations:

- We urge the UNCHR to address the issue of migrant domestic workers employed by UN diplomats and staff in its resolution on migrant workers and call for appropriate measures to be adopted in order to protect the rights of these workers.
- We support the recommendation in paragraph 90 of the Special Rapporteur’s report to the UNCHR in 2004 (E/CN.4/2004/76), stating that all “international organizations, embassies and consulates should adopt
codes of conduct on the recruitment of migrant domestic workers and require their staff to abide by the code, taking disciplinary action in the event of violations."

- We support the Special Rapporteur’s call for written contracts for migrant domestic workers, “giving particulars of the employer and employee and details of the employee’s monthly wages, duties and working hours, free time and vacations, board, lodging, medical insurance, transport to the country of destination, conditions for terminating the contract, complaint procedures, and provision for the eventuality of the employee’s death or illness” (paragraph 80 of E/CN.4/2004/76). We also call upon international organizations, embassies and consulates to ensure that the workers receive and sign a copy of the contract written in their native language.

- We support the recommendation in paragraph 77 of the Special Rapporteur’s report (E/CN.4/2004/76) that “States which admit migrant domestic workers under a sponsorship and special visa system [should] review their legislation and ensure that workers’ immigration status does not depend directly on the employment relationship with a given employer and that, under certain circumstances and conditions, workers may change employers.”

- We urge all member states to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
Domestic Workers’ Rights in the United States:
A report prepared for the U.N. Human Rights Committee
In response to the Second and Third Periodic Report of the United States

This report is submitted by the following nongovernmental organizations and individuals: Andolan organizing south Asian workers; CASA of Maryland; Domestic Workers United; Global Rights; University of North Carolina School of Law Human Rights Policy Clinic; Stefani Bonato; McKenna Coll; Eric Tars

EXECUTIVE SUMMARY

Employed in private homes to perform household tasks that historically have been assigned a diminished value, domestic workers frequently face exploitation and abuse, a problem further exacerbated by their association with particular groups (women, minorities, and migrants) who suffer multiple forms of discrimination. Domestic workers experience abuses ranging from verbal abuse and economic exploitation to physical and sexual assault and forced servitude. Although U.S. laws should protect them, domestic workers find that they are often excluded from legal protections or that the laws are not enforced. This reprehensible abuse of domestic workers violates Articles 2, 3, 7, 8, 9, 12, 17, 19, 21, 22, and 26 of the International Covenant on Civil and Political Rights.

Violations of Workers’ Rights (Articles 2, 3, 8, 21, 22, and 26)

Forced Servitude (Articles 8 and 2)
Article 8 prohibits slavery, servitude, or forced labor; yet, many domestic workers suffer these conditions. Trapped in economically abusive employment, domestic workers may receive little pay while working long hours in dangerous conditions. Some employers forbid domestic workers from leaving the house, confiscate their passports, or threaten deportation to keep them imprisoned and financially enslaved in their abusive positions. Without English language skills, contacts in the community, or information about resources, domestic workers are often left without recourse.

Substandard Working Conditions (Articles 8, 2, 3, and 26)
Domestic workers often endure various inhumane work conditions including lack of food, medical care and sleep in violation of Article 8. They have been forced to sleep in rooms without heat, on hard floors, or in moldy basements. At times they use hazardous materials without any safety warnings. Domestic workers are often severely underpaid and without overtime wages. Unfortunately, U.S. laws are inadequate and their enforcement is insufficient, which violates Articles 2, 3, and 26 of the ICCPR.

Right to assembly and association (Articles 21, 22, and 2)
The right to assembly and association are protected under Articles 21 and 22, and are to be read broadly. In contravention of those directives, the United States excludes domestic workers from laws that would protect the right to assemble, associate, and form a union. Domestic workers are excluded from the National Labor Relations Act (NLRA) which is the primary guarantee of workers’ right to organize. Any possible contract remedy available to workers has been recognized by the Committee as an insufficient guarantee of these rights.

Violations of Personal Rights (Articles 2, 7, 9, 12, 17, 19)

Domestic Violence (Articles 7, 9, and 2)
Article 7 prohibits cruel, inhuman or degrading treatment while Article 9 guarantees “the right to liberty and security of person.” Both Articles are violated when domestic workers suffer psychological, verbal, physical, and sexual abuse. Employers may engage in control tactics, such as regulating the workers’ food consumptions or confiscating their passports. Others use verbal abuse, including insults and name-calling. Some domestic workers experience physical and sexual assaults. These abuses are essentially unregulated and often remain unreported.
Limitations on Freedom of Movement (Articles 12 and 7)
Article 12 protects domestic workers' freedom of movement and is applicable to both state and private actors. The State Department requires that employers who are foreign diplomats or the staff of international organizations must sign employment contracts with domestic workers that state that the employee cannot be required to stay on the premises without additional compensation and that her passport cannot be confiscated. Such regulations, however, fail to cover a substantial number of domestic workers, and enforcement and monitoring of those regulations are almost non-existent. Private employers use other means of restricting their workers' freedom of movement including requiring an escort when leaving the premises and misrepresenting U.S. laws, culture, and the dangers of the streets.

Privacy Invasions (Article 17)
Article 17 protects the domestic worker from “arbitrary or unlawful interference with her privacy, family, home or correspondence.” Due to the nature of her work, the domestic worker is particularly vulnerable to privacy invasions. Employers have been documented to interfere with workers' rights in a number of different ways, including monitoring phone conversations, restricting access to others, opening mail, and searching the workers' private effects and rooms. Some employers have interfered with domestic workers' families by threatening or harassing the workers' families, often in an attempt to get them to persuade the worker to drop a complaint.

Limitations on Freedom of Expression (Article 19)
Freedom of expression is protected by Article 19. Employers limit a domestic worker's freedom of expression by restricting her communication, limiting her freedom of movement, and threatening deportation or retaliation against her family if she reports abuses. Article 19 also includes the freedom to seek, receive, and impart information and ideas. These rights are denied because the United States has failed to provide adequate access to legal and social services and to create a safe and effective reporting model by which workers can complain of abuses. Without these resources, workers cannot fully realize their rights under Article 19.

Denial of Effective Remedies (Article 2)

Barrier to Effective Remedies: Scope of Protection Under the ICCPR as adopted by the United States
U.S. declarations, reservations and understandings have lessened the protection of domestic workers under the ICCPR. In addition, the United States has failed to ratify the ICCPR's first Optional Protocol. By narrowing of the scope of ICCPR protection and by denying recourse for the individual, the United States has violated the spirit of Article 2 and has hindered individuals, including domestic workers, in their quest to attain justice.

Barrier to Effective Remedies: Diplomatic Immunity (Article 2)
Employers of domestic workers who are protected by diplomatic immunity are not subject to the civil, criminal or administrative jurisdiction of the United States, a protection that denies domestic workers the ability to obtain a remedy against them. U.S. courts have aggravated this problem by interpreting the commercial activity exception contained in Article 31(c) of the Vienna Convention on Diplomatic Relations to exclude domestic workers.

Barrier to Effective Remedies: Immigration Status
The connection between domestic workers' immigration status and her employment is exploited by employers to discourage the reporting of violations. The United States exacerbates this vulnerability by: (1) allowing inquiry into the domestic workers immigration status should she report a violation and (2) failing to provide a vehicle through which domestic workers fired after reporting abuses can obtain another visa and stay in the United States to pursue a remedy.

Barrier to Effective Remedies: Practical Obstacles
The private nature of domestic work means that there is a greater need for an effective monitoring system and for greater access to information. The United States has failed to recognize these unique needs and thus far has not provided either an adequate means of monitoring domestic work nor sufficient access to social or informational services. Thus, domestic workers lack the means to report violations or obtain remedies.
INTRODUCTION

1. Domestic workers are employed in private homes to perform household tasks traditionally perceived as inferior or “women’s” work. In the United States as in other countries, domestic workers are often not viewed as “real” workers, and some employers liken their workers to “family” members. Historically unappreciated, the work continues to be afforded little worth. The national and local labor laws frequently exclude domestic workers from the protections offered to other workers. As a result, domestic workers may find themselves devalued and powerless within the employment situation.

2. The degree of inequality between the employer and the domestic worker can be further stratified by racial, gender, and other types of prejudice. Domestic workers are frequently women, minorities, and immigrants. In a recent survey of more than five hundred domestic workers conducted by Domestic Workers United and DataCenter (based in New York City), ninety-nine percent (99%) of those surveyed were foreign-born, and seventy-six percent (76%) were non-U.S. citizens. Ninety-three percent (93%) were female. Only one percent (1%) self-identified as non-Hispanic white. These intersecting identities often subject domestic workers to significant hardship in a patriarchal and racist American society. Subjugated to a lesser societal status, domestic workers are often\(^1\) exploited and their fundamental rights and freedoms violated.

3. Domestic workers often face psychological abuse and economic exploitation, as well as severe physical, sexual, and verbal assault and battery, de facto imprisonment, and forced servitude. While U.S. laws should offer protection, domestic workers, as a class, find that they are excluded under many existing laws or that the protection the laws purport to provide does not actually exist in practice. Domestic workers need protection that is not readily forthcoming from the United States government. Therefore, it is imperative that the abuses suffered by domestic workers be recognized by the Human Rights Committee as violations of Articles 2, 3, 7, 8, 9, 12, 17, 19, 21, 22, and 26 of the International Covenant on Civil and Political Rights (ICCPR), and that the Committee make recommendations to the U.S. Government to meet its obligations in this area.

VIOLATIONS OF WORKERS’ RIGHTS – ARTICLES 2, 3, 8, 21, 22, 26

_We have been forced here because U.S. foreign policy has created poverty in our home countries. Once we are here in the U.S., searching for a way to survive, we are pushed into exploited jobs where our work is not recognized, respected or protected._

- Joycelyn Campbell, Nanny in Hoboken and Manhattan, from Barbados\(^2\)

\(^1\) Terms like “often” and “many” are used because of the difficulty in obtaining accurate statistics about domestic workers due to the hidden nature of their work.

4. Because of the private nature of their work, the United States has failed to fully recognize the domestic worker’s status as an employee. Instead, all too often both employers and the U.S. government see the domestic worker as a possession of the family. Such a conceptualization enables the ongoing violation of domestic workers’ rights. A domestic worker is afforded rights as a worker under various Articles of the ICCPR, including Article 8, which prohibits slavery, servitude, and forced labor, and Articles 21 and 22, which protect the rights to assembly and association. Nonetheless, domestic workers in the U.S. often find themselves held in servitude, unable to assert their rights to assembly and association.

**Forced Servitude (Articles 8 and 2)**

5. Article 8 of the ICCPR states that no one shall be held in slavery or servitude or be “required to perform forced or compulsory labor.” The Human Rights Committee has recognized the severity of this type of violation; yet, many domestic workers in the United States work in situations which could be classified as servitude or forced labor in violation of Article 8. Being held in servitude or forced to perform compulsory labor is the main form of abuse suffered by domestic workers in the United States and is the base abuse from which most other abuses stem.

6. Although the ICCPR does not explicitly define “involuntary servitude”, interpretations suggest that it consists of “a dependent, economically abusive labor relationship” with “no reasonable possibility of escape.” Forced or compulsory labor covers an even larger range of employment situations. The International Labor Organization Forced Labor Convention defined forced or compulsory labor to mean “all work or service which is exacted from any person under the menace of penalty [including a “loss of rights or privileges”] and for which the said person has not offered himself voluntarily.” Work entered into without knowledge and informed consent is commonly considered involuntary. Similarly, the U.S. Trafficking Victim’s Protection Act of 2000 effectively overruled prior precedent which had limited the U.S. interpretation of involuntary servitude to situations using or threatening the use of physical or legal coercion. U.S. law now prohibits obtaining another’s labor by employing not only physical, but also psychological, methods of coercion. Still, these forms of coercive work situations continue to occur in the United States at an alarming rate.

7. In the United States, many domestic workers are being held in involuntary servitude, subject to forced or compulsory labor. Their situations exemplify economically abusive relationships: they receive little or no pay and work long hours in dangerous conditions with little rest. Some employers forbid workers from leaving the house unaccompanied and may even physically restrain the workers or lock them inside the house. Others confiscate

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5 International Labor Conference, Forced Labor Convention, Convention (No. 29) Concerning Forced Labor, adopted June 28, 1930 (entered into force May 1, 1932) at Art. 2(1).
6 Hidden in the Home, supra note 3, at 51.
workers' passports or use threats of deportation to keep workers imprisoned.\textsuperscript{9} Psychological tactics are also commonly employed. Some employers, with the intent of instilling into the workers a fear of leaving the house, fabricate stories exaggerating the danger of the U.S. streets.\textsuperscript{10} Physically, mentally, and financially coercive methods are all used to keep the domestic workers enslaved.

8. The situations of many domestic workers amount to human trafficking. These individuals are brought to work for their employers under fraudulent promises of higher pay and desirable working conditions. When the employers fail to honor their agreements, fear or coercion can enslave domestic workers in abusive jobs. Even when workers are not restrained from leaving by force, threats or coercion, leaving the abusive situation may not be a viable option for migrant workers who are unfamiliar with U.S. laws, culture and sometimes language, and who lack local support networks. Furthermore, many domestic workers need the little money they are making, and are reluctant to leave jobs, no matter how abusive, if they believe they will have nowhere else to turn. Without information about available resources, the workers are trapped.

Substandard Working Conditions (Articles 8, 2, 3, and 26)

9. The substandard working conditions of domestic workers illustrate how their rights are being violated under Article 8 of the ICCPR. Although domestic workers may be caring for their employers' most valuable possessions - their children and their homes - or completing tasks essential to the operation of the household, a surprising number of domestic workers are exploited. For example, in the recent Domestic Workers United and DataCenter survey in New York City, one half of the more than five hundred workers surveyed earn low wages (less than the local "living wage"), with an additional quarter of the workers making either below the poverty line or below minimum wage. (The current federal minimum wage, to which domestic workers are entitled, is $5.15 per hour.\textsuperscript{11}) A survey of several hundred workers in Maryland confirms these findings: 51% of those surveyed reported earning less than Maryland’s minimum wage.\textsuperscript{12} These illegally low wages reflect the failure of the U.S. government to enforce domestic laws in protection of domestic workers. The lack of enforcement implicates violations by the U.S. government of Article 2, guaranteeing effective remedies for violations; Article 3, ensuring equal protection of men and women; and Article 26, requiring equality of all people before the law.

10. Domestic workers endure long hours with little rest and often face appalling work and living conditions. Many domestic workers are deprived of sleep or are forced to sleep in rooms without heat, on hard floors, or in moldy basements. Some domestic workers have been instructed to use strong cleaning chemicals without being given any warning of safety precautions. In severe cases, workers have been denied food necessary for proper nutrition.\textsuperscript{13} Many domestic workers are without health insurance, and for workers whose employers

\textsuperscript{9} Hidden in the Home, supra note3, at 13.
\textsuperscript{10} Id. at 13.
\textsuperscript{11} The federal minimum wage is the absolute lowest allowed. Some state laws require a higher wage. 29 U.S.C. § 206(f) (2005).
\textsuperscript{12} Montgomery County Council, Working Conditions of Domestic Workers in Montgomery County, Maryland, May 2006.
\textsuperscript{13} Hidden in the Home, supra note 3, at 16.
restrict their freedom of movement, their access to medical care can be limited or even eliminated.\textsuperscript{14}

11. Domestic workers are often not covered under U.S. labor laws, and the protection that some laws purport to provide does not actually exist. For instance, the Fair Labor Standards Act excludes live-in domestic workers from its overtime compensation regulations.\textsuperscript{15} Other laws, while not explicitly excluding domestic workers, deny protection in practice. The Occupational Safety and Health Act provides for safe and healthy working conditions for all people,\textsuperscript{16} yet the regulations governing enforcement of the Act exclude domestic workers.\textsuperscript{17} By failing to provide adequate protection to domestic workers, these laws, though not having a particular purpose to discriminate against women, minorities, and migrants, have that effect. The resulting discrimination is in violation of Article 26 of the ICCPR.

Right to assembly and association (Articles 21, 22, and 2)

12. Articles 21 and 22 of the ICCPR require that everyone shall have the right to assemble and associate, and that no restrictions may be placed on those rights except in limited circumstances.\textsuperscript{18} Although the Human Rights Committee has not commented directly on these rights under the ICCPR (namely because the language in Articles 21 and 22 is fairly explicit), decisions under other treaties, containing nearly duplicative language as Articles 21 and 22 of the ICCPR, indicate some conclusions about those rights. For instance, freedom of association affects more than just trade unions and enjoys a broad interpretation.\textsuperscript{19} It also requires that States adopt laws that provide “full and comprehensive rights to freedom of association.”\textsuperscript{20}

13. The United States, however, in violation of Article 2 of the ICCPR, fails to provide domestic workers with full and comprehensive protection of the right to freedom of association or assembly. The First, Fifth, and Fourteenth Amendments of the U.S. Constitution protect domestic workers’ right to organize and peacefully assemble but only as against the federal and state governments, not private employers. The National Labor Relations Act (NLRA) is the primary guarantor of U.S. workers’ right to organize. It protects employees’ “right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.”\textsuperscript{21} The right is extended broadly to employees, but notably excludes domestic workers.\textsuperscript{22}

\textsuperscript{14} Id.
\textsuperscript{16} 29 U.S.C. § 651(b) (2005).
\textsuperscript{17} 29 C.F.R. § 1975.6 (2005). \textit{Infra} see Denial of Effective Remedies, p. 19.
\textsuperscript{18} ICCPR Arts 21 and 22. Restrictions on the right to assembly and association may be imposed to protect national security, public safety, order, the protection of public health or morals or for the protection of the rights of freedoms of others.
\textsuperscript{22} 29 U.S.C. § 152(3). The NLRA also excludes other groups like agricultural workers and independent contractors.
14. Exclusion from the NLRA leaves domestic workers unprotected against private employers who deny them their right to associate and assemble peacefully. An employer, when violating those rights under the ICCPR, does not violate any U.S. law, nor is there any U.S. law under which the worker may bring suit. Even if a domestic worker has a contract assuring the right to associate and assemble, the Committee has stated that "a formal right to sue for breach of contract may well be insufficient" and has recommended that states extend coverage of labor laws to domestic workers.\textsuperscript{23}

**VIOLATIONS OF PERSONAL RIGHTS – ARTICLES 2, 3, 7, 9, 12, 17, 19**

*I wasn’t allowed to sit at the same table...I wasn’t allowed to wash my clothes with their clothes. They made me different. Sometimes the food I cooked didn’t taste good to them, and they would yell at me. They made me [feel] like...they were my owner.*

-Rokeya Akhatar, a Bangladeshi domestic worker employed by the family of a Middle Eastern businessman\textsuperscript{24}

15. Treatment of domestic workers in the personal realm – because of who they are – is a result of a constructed identity created through and reinforced by violations of the ICCPR. The personal rights of domestic workers are protected under various Articles in the ICCPR. Protection against domestic violence is found in Article 7. Article 12 protects domestic workers’ freedom of movement and access to others, while Article 17 protects their privacy. Finally, freedom of expression is protected by Article 19. It is important to note that the violation of personal rights impacts domestic workers differently depending on what type of domestic worker they are. For example, some domestic workers live on the same premises as where they work. These live-in domestic workers are often subject to greater violations of personal rights than those who merely work on the premises.

**Domestic Violence (Articles 7, 9, and 2)**

16. Article 7 of the ICCPR prohibits cruel, inhuman or degrading treatment and aims to protect "the dignity and the physical and mental integrity of the individual" against degrading treatment inflicted by both official and private actors.\textsuperscript{25} An individual’s well-being is additionally protected by Article 9’s guarantee of "the right to liberty and security of person." Yet, many domestic workers in the United States are stripped of their liberty, security, and dignity as they suffer domestic violence at the hands of their employers. The verbal, psychological, physical, and sexual abuse of domestic workers violates both Articles 7 and 9.


\textsuperscript{25}HRC, General Comment 20, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 30, para. 2 (1994).
17. By virtue of the diminished value many place upon the household tasks they complete, domestic workers sometimes find themselves devalued within their employment situations. The degree of inequality between the employer and the domestic worker can be further stratified by racial, gender, and other types of prejudice. An overwhelming majority of domestic workers are women and a vast number are also minorities and migrants. As members of groups that have historically been subjugated to a lesser societal status, domestic workers are all too often viewed in their workplace as second-rate individuals whose human rights deserve little respect.

18. Disrespect of domestic workers can escalate into different types of abuse. For some the abuse is psychological. Their privacy is invaded and autonomy disregarded. Employers may engage in control tactics, such as regulating the workers’ food consumption or confiscating their passports, to make the workers feel inferior and helpless. Commonly, the abuse is verbal, including insults and name-calling. The employers’ degrading actions and policies can result in a system in which the domestic worker is dehumanized and treated without common decency or respect. For others, the abuse is physical and can include slapping, kicking, hitting, shoving, assaults with a weapon, and threats of physical harm. Female domestic workers have also experienced sexual assaults and harassment. Many of these workers remain at their jobs despite the abuse because they feel too frightened or helpless to leave or because they believe that they have no better alternative.

19. The abuse of domestic workers is essentially unregulated and often remains unreported. Rights, protections, and enforcement measures extended to other types of workers under U.S. law often do not reach domestic workers employed in private residences. For example, Title VII, which prohibits discrimination in employment and sexual harassment in the workplace, applies only to employers with at least fifteen employees. Domestic workers, who are generally employed by someone with fewer than fifteen employees, therefore are usually not covered by Title VII. Even when the abuses, such as the physical assaults, are prohibited by law, domestic workers are frequently unprotected in violation of Article 2 of the ICCPR. Because domestic workers’ duties are mainly confined to individual private residences, the abuse the workers suffer, like the domestic abuse of spouses and children, often remains shielded from the public eye.

Limitations on Freedom of Movement (Articles 12 and 7)

20. According to the Committee, the freedom of movement protected by Article 12 should not be subjected to “the decision of another person,” and the right to that freedom should be

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37 Margaret L. Satterthwaite, Testimony Before the Inter-American Commission on Human Rights (October 14, 2005).


39 *Hidden in the Home*, supra note 3, at 8, 10.

40 Id. at 12.

41 Id. at 12.

42 See, e.g., 29 C.F.R. § 1975.6 (2005).


enforced against both state and private actors.\textsuperscript{35} The Committee has recognized that restrictions on a women's ability to obtain travel documents violate her right to freedom of movement.\textsuperscript{36} Additionally, the Committee has remarked that freedom of movement can be impacted by violations of other Articles: i.e. Article 7 (prohibiting cruel treatment) and 9 (right to liberty and security of the person) violations where private employers lock domestic workers in the home amounting to arbitrary detention.\textsuperscript{37}

21. U.S. laws and regulations are in place to protect domestic workers' freedom of movement. First, for domestic workers in the United States under G-5 and A-3 visas,\textsuperscript{38} the State Department requires employment contracts that state both that the employee cannot be required to stay on the employer's premises after working hours without additional compensation and that the employee's passport will not be confiscated.\textsuperscript{39} Additionally, the State Department and the Fair Labor Standards Act\textsuperscript{40} require employers of domestic workers to pay the federal minimum wage,\textsuperscript{41} which, in theory, should enable domestic workers to have the economic means to travel. While on their face, U.S. laws seem to offer strong protection for freedom of movement, protection is poorly implemented and does not cover all individuals. For instance, the laws suffer from gaps that fail to protect those who come to the United States outside of the A-3, B-1 and G-5 visa structure. Additionally, no governmental monitoring mechanism exists to ensure that employers actually follow employment contracts and minimum wage requirements.\textsuperscript{42} In fact, the data suggests that employers regularly confiscate passports and pay domestic workers under the minimum wage.\textsuperscript{43}

22. Employment conditions also limit domestic worker's freedom of movement. With domestic workers working an average of 14 hours a day, 6 days a week, their movement during these working hours is limited.\textsuperscript{44} Employers often put conditions on when domestic workers can leave the premises, allowing domestic workers to leave only on days off, requiring employer permission, or even an escort, to leave the premises, or denying the domestic worker a key to the house.\textsuperscript{45} Domestic workers also often work in suburban settings where their mobility is sharply limited by the unavailability of public transportation. Even those workers who are free to leave a house on their day off may not be able to do so if they cannot access public transportation.

\textsuperscript{31}\textit{Id.}
\textsuperscript{32} The Committee expressed concern with "the manifold legal and bureaucratic barriers" affecting freedom of movement. \textit{Id.}
\textsuperscript{33} HRC, General Comment 28, Equality of rights between men and women (article 3), U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000). ("States should provide information on any laws or practices which may deprive women of their liberty on an arbitrary or unequal basis, such as by confinement within the house.").
\textsuperscript{34} A-3 visas are issued to domestic workers who "work for ambassadors, diplomats, consular officers, public ministers, and their families" and G-5 visas to those who work for officers and employees of international organizations or foreign missions to international organizations." \textit{Hidden in the Home}, supra note 2, at 4.
\textsuperscript{35} 9 FAM 41.21 N6.2(A)(3)(4) (FEB. 9, 2000).
\textsuperscript{36} 29 U.S.C. 202(a)(b).
\textsuperscript{37} 9 FAM 41.21 N6.2(A)(1) (Feb. 9, 2000); 9 FAM 41.31 N6.3-2, N6.3-3.
\textsuperscript{38} \textit{Hidden in the Home}, supra note 3, at 13.
\textsuperscript{39} According to one report, in almost half the cases examined, employers confiscated domestic workers' passports.\textsuperscript{43} With regard to wage, that same report found the median average wage of 40 domestic workers to be only $2.14. \textit{Id.} at 13.
\textsuperscript{40} \textit{Id.} at 17.
\textsuperscript{41} \textit{Id.} In General Comment 27, the Committee states that in some cases "measures preventing women from moving freely or from leaving the country by requiring them to have the consent or the escort of a male person constitute a violation of article."
23. Employers also play off of the identity of the domestic workers and the nature of her work to limit freedom of movement. Employers often misrepresent U.S. laws, culture and the dangers of the streets; threaten workers that the police will arrest them if they are out without their documents; prohibit workers from speaking with anyone outside their immediate families; deny workers the right to attend religious services; and threaten deportation. In this way, employers exploit domestic workers' status as both immigrants and women, instilling in them fears that lead domestic workers to retreat to seclusion. Additionally, psychological and physical abuse can produce fear that creates "social and cultural isolation and a sense of helplessness and disempowerment" which keeps domestic workers in their employment relationship and denies them freedom of movement.

Privacy Invasions (Article 17)
24. Article 17 of the ICCPR protects the domestic worker from "arbitrary or unlawful interference with her privacy, family, home or correspondence." The Committee has interpreted this to mean that "correspondence should be delivered to the addressee without interception and without being opened or otherwise read. Surveillance. . . intereptions of telephonic, telegraphic and other forms of communication. . . should be prohibited. Searches of a person's home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment."[49]

25. The domestic worker is particularly vulnerable to arbitrary interference with her privacy due to the nature of her work, especially if she is a live-in worker. Monitoring phone conversations and restricting access to others, either by requiring an escort or otherwise, are violations of Article 17. In addition, domestic workers report that their employers listen in on telephone conversations, open and read their mail, and search their purses and rooms. Article 17 also protects the domestic workers against arbitrary interference with her family. Nonetheless, domestic workers report that employers visit or otherwise contact their home countries to threaten and harass workers' families for various reasons, including to persuade the worker to drop any suit against the employer.

Limitations on Freedom of Expression (Article 19)
26. The U.S. Government Report fails to address freedom of expression in terms of domestic workers and instead focus on how this right is protected by the First Amendment. But the Human Rights Committee desires that state reports not just mention that freedom of expression is protected under the Constitution, but also discuss "rules which either define the scope of freedom of expression or which set forth certain restrictions, as well as any other

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[46] Id. at 13. The threat of deportation can lead to severe seclusion for domestic workers in the U.S. illegally. See Margaret Satterthwaiite, Crossing Borders, Claiming Rights: Using Human Rights Law to Empower Women Migrant Workers, 8 Yale H.R. & Dev. L.J. 1 (2005); Denying domestic workers the ability to attend religious services also is a violation of Article 18.
[48] ICCPR Article 17.
[51] Id. at 32-33. For example, Human Rights Watch documented the story of Gladys Larbu, a domestic worker from Ghana. After she left her employer and filed a complaint against him with the World Bank, her employer visited her mother in Ghana where he made threats and pressured her mother to get her to drop the complaint.
conditions which in practice affect the exercise of this right."\textsuperscript{52} It is this last directive, which while unmentioned by the United States in its State report, that gives valuable insight into the plight of the domestic worker.

27. For the domestic worker, it is the conditions which in practice affect her right to freedom of expression that reflect violations of that right by both private employers and the state. Employers of domestic workers limit their freedom of expression directly through three primary means: (1) limiting who the worker speaks with either directly or by misrepresenting the dangers of talking to "strangers"\textsuperscript{53} or talking in her native language;\textsuperscript{54} (2) limiting the worker's freedom of movement;\textsuperscript{55} and (3) threatening deportation or retaliation against the worker's family if she reports abuses.\textsuperscript{56}

28. Freedom of expression also includes "freedom to seek, receive and impart information and ideas of all kinds." Yet the United States fails to provide adequate mechanisms through which domestic workers can enjoy this right. More specifically, the United States has not implemented an effective and safe reporting model through which domestic workers can complain of abuses at work, nor does it provide adequate access to legal services.

29. Due to the nature of domestic work, the burden of enforcement lies with the domestic worker. However, the domestic worker who seeks to file such a complaint faces enormous barriers and risks in doing so. To begin with, domestic workers express a number of fears that prevent such reporting, including "lack of knowledge of the U.S. legal system" and "fear that employers would report them to the INS [Immigration and Naturalization Service] and that they would subsequently be removed from the United States."\textsuperscript{57} These fears are well-founded. The United States has failed to structure a visa and work authorization system which allows workers to stay in the United States to pursue remedies. For those who are in the United States illegally, their immigration status can be investigated should they report a violation, and they subsequently will face deportation. Because domestic workers' visas are tied to their employment, if an employer fires his worker for reporting a violation, the worker could face deportation or may economically be unable to stay in the United States if she can not obtain work authorization.\textsuperscript{58}

### DENIAL OF EFFECTIVE REMEDIES – ARTICLE 2

[A] Filipina woman named Corazon Tabion worked for Jordanian diplomats in Washington, D.C., where she claims they paid her 50 cents per hour for 16 hour workdays. They confiscated her

\textsuperscript{52} HRC, General Comment 23, Article 27 (Fiftieth session, 1994), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRR\GEN\ARev.1 at 38 (1994).
\textsuperscript{53} \textit{Hidden in the Home}, supra note 3, at 14.
\textsuperscript{54} Id. at 15. See also Human Rights Watch and American Civil Liberties Union, Human Rights Violations in the United States: A Report on U.S. Compliance with the International Covenant on Civil and Political Rights (1993) (discussing how language rights are protected under Article 2 of the ICCPR).
\textsuperscript{55} See infra discussion of ICCPR Article 12, Freedom of Movement.
\textsuperscript{56} \textit{Hidden in the Home}, supra note 3, at 32.
\textsuperscript{57} Id. at 32.
\textsuperscript{58} Id., at 33-34.
passport, and made threats to have her arrested and deported if she left, abuses typical for the domestic worker of a diplomat. Ten years ago, Ms. Tabion filed suit against her employer, seeking her back wages, among other remedies. Ms. Tabion’s lawyers argued that an exception to immunity applied—the commercial activities exception. The Court disagreed with Ms. Tabion, and upheld immunity. One year later, the Court of Appeals for the 4th Circuit affirmed this ruling in Tabion v. Mufit. Since then, advocates for the exploited workers of diplomats have been denied access to the courts in any case where diplomats invoke their immunity.

30. Many domestic workers face cruel and inhumane treatment at the hands of their employers. Though private actors are the ones actively committing abuses against domestic workers, the government response, or lack thereof, allows the abuses to perpetuate. Domestic workers, after enduring various abuses, are often denied access to effective remedies for these abuses. The U.S. government, as party to the ICCPR, has the duty to protect the rights of all people. Yet, even that scope of protection has been reduced by the U.S. reservations, understandings, and declarations to the ICCPR as well as by the absence of any private cause of action for the workers themselves. Domestic workers employed by diplomats may even find themselves precluded from obtaining remedies when their employers’ abusive actions are protected by under diplomatic immunity. The immigration status of domestic workers often poses an additional barrier to remedies, either because a worker with an A-3, B-1 or G-5 visa fears losing her legal immigration status if she reports an abuse, or because an undocumented worker fears being exposed as undocumented if she reports an abuse. Finally, domestic workers confront a variety of practical obstacles stemming from the private nature of the work, lack of knowledge about rights, and lack of available resources.

Barrier to Effective Remedies: Scope of Protection under the ICCPR as adopted by the United States

31. The U.S. reservations, understandings, and declarations, designed to make the ICCPR more compatible with the already existing laws of the United States, have lessened the protection of domestic workers’ rights under the treaty. One reservation states that the “United States considers itself bound by article 7 to the extent that ‘cruel, inhuman or degrading treatment or punishment’ means the cruel and unusual treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.” Furthermore, the United States felt that the “broad anti-discrimination provisions [of the ICCPR]... do not precisely comport with longstanding Supreme Court doctrine in the equal protection field.” As a result the United States included an understanding attempting to ensure that the terms of Article 2 and Article 26 coincide with current domestic law and

39 73 F.3d 535 (4th Cir. 1996).
precedent, thereby precluding those anti-discrimination Articles from providing anyone, including domestic workers, with protections greater than those already provided by domestic law. In addition, the United States declared the first 27 Articles of the ICCPR to be non self-executing, preventing the ICCPR from creating a private cause of action in U.S. courts. The United States has also denied an alternative method of protection by failing to ratify the ICCPR’s first Optional Protocol. The preclusion of these types of remedies seems contrary to the spirit of Article 2 and hinders individuals such as domestic workers in their quests to attain justice.

**Barrier to Effective Remedies: Diplomatic Immunity (Article 2)**

32. Diplomatic immunity directly opposes the ICCPR’s Article 2 directive that a domestic worker whose rights have been violated must have an effective remedy. Under diplomatic immunity, the general rule is that employers protected by immunity are not subject to the civil, criminal, or administrative jurisdiction of the United States with some minor exceptions. Where a diplomat with full immunity commits a criminal offense against a domestic worker, “the State Department must request and receive from the employer’s sending state an express waiver of immunity.” In cases of a civil offense, “the State Department’s official policy is to ‘intervene’ when presented with satisfactory evidence of civil liability and when the matter was raised unsuccessfully with the diplomat,” though data suggests this avenue is underused.

33. Administrative and technical staff of diplomats, while enjoying full immunity for criminal acts, only enjoy civil and administrative immunity for acts performed in “the course of their duties.” While acts related to employment of domestic workers probably do not fall within the “course of their duties” requirement for immunity, two obstacles still remain for domestic workers seeking redress against these types of limited immunity workers. First, many domestic workers may misunderstand the scope of diplomatic immunity, thinking full immunity extends to all officials. Consequently, they may be reluctant to bring forth any claim. Second, “even if a civil judgment is entered against an employer with limited immunity, execution of that judgment may be difficult, as the majority of the employer’s assets are often abroad.”

34. For the domestic worker, diplomatic immunity means two things. First, if an employer protected by diplomatic immunity violates a worker’s rights, the worker has no recourse against him or her. Second, if her employer does recognize her rights, say to join a union,

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66 ICCPR, Article 2(3)(a).
67 Hidden in the Home, supra note 3, at 34-35.
68 Id.
69 Id. at 35.
70 A 2001 study reported that only one civil case came to the attention of the State Department who, rather than request a waiver of immunity, submitted a statement supporting it. Id.
71 Hidden in the Home, supra note 3, at 35 (citing Vienna Convention on Diplomatic Relations, Article 37(2)).
72 CASA of Maryland, supra note 63, at 3.
73 Hidden in the Home, supra note 3, at 35.
that right is basically rendered meaningless because if the domestic worker later seeks to enforce a union-obtained right, she will find that she cannot effectively do so.

35. In addition to diplomatic immunity, the U.S. courts’ interpretation of the commercial activity exception contained in Article 31(c) of the Vienna Convention on Diplomatic Relations provides another barrier to domestic workers’ realization of effective remedies. The exception to immunity exists for “any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.” While the Convention does not define “commercial activity,” the 4th Circuit Court of Appeals for the United States ruled in Tabion v. Mufli that “commercial activity” includes only activities engaged in for personal profit, explicitly stating that domestic workers are not covered. The effect of Tabion is to deny domestic workers any claim in the civil justice system should their employer be a diplomat.

Barrier to Effective Remedies: Immigration Status

36. The domestic worker’s visa status is tied to her employment. For a domestic worker who complains of a violation and either voluntarily leaves or is involuntarily fired for reporting a violation, the Department of Homeland Security (DHS) determines whether she may remain in the United States to seek a remedy. It is solely up to the discretion of DHS to allow the domestic worker to remain within the United States through the completion of her suit; there is no special visa option that will allow her to do so. Additionally, even if DHS does allow the domestic worker to stay, it could still deny her work authorization. If DHS discovers an undocumented worker’s status, she will be deported. Under Hoffman Plastic Compounds Inc. v. National Labor Relations Board, an employer can inquire into the immigration status of an employee who sues them.

37. The identities of domestic workers are also implicated in their ability to seek and obtain effective remedies. Because most domestic workers are migrant women, their immigration status is exploited by employers and not protected by the State, resulting in ineffective access to remedies. According to one report, many domestic workers cited “fear that employers would report them to USCIS and that they would subsequently be removed from the United States” as a major reason for not reporting human rights violations. This fear is not groundless as U.S. laws fail to protect either documented or undocumented domestic workers. Additionally, Hoffman Plastic creates a disincentive for undocumented workers to report violations.

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75 U.S.T. 3227, at 3241.
76 73 F.3d 535 (4th Cir. 1996). Tabion was a domestic worker employed by a diplomat. She brought suit complaining of breach of contract, intentional misrepresentations in employment, false imprisonment, violations of 42 U.S.C.S. §§ 1981, 1985(3), and violations of the FLSA, after being subjected to low pay and long hours. The lower court found that her employer was protected by diplomatic immunity because the commercial activity exception to immunity as set forth in the Vienna Convention on Diplomatic Relations did not apply to the employment relationship. On appeal, that finding was affirmed.
77 Hidden in the Home, supra note 2, at 33.
78 Id.
80 The decision has created a “chilling effect” as “undocumented workers...fear [an] inquiry [into their immigration status] will negatively affect themselves, their friends, or their family.” Kathryn A. Dittrick, Migrant Workers' Right to Organize, 10, available at http://www.humanrightsadvocates.org/images/Kate'sMigrantWorkerReport.doc.
38. Though the DHS can exercise its discretion in allowing domestic workers to remain in the United States to pursue remedies, whether DHS actually exercises that discretion "varies greatly between... the regional offices."\textsuperscript{81} Moreover, when DHS does choose to exercise that discretion, "it must do so through procedures not specifically designed for victims of human rights abuses."\textsuperscript{82} If DHS allows the domestic worker to remain in the United States, but denies her work authorization, she will be unable to afford to remain in the United States. Not only does the worker in that position lack income because she cannot legally obtain a job, but, because of her undocumented alien status, "she is not eligible for federal public benefits, including welfare, health, and unemployment benefits, public or assisted housing, and food assistance."\textsuperscript{83}

**Barrier to Effective Remedies: Practical Obstacles**

39. The private nature of domestic work, the exclusion of domestic workers from the public sphere by overbearing employers, and personal challenges (cultural, social, language barriers) domestic workers face, make enforcing the rights of the ICCPR especially difficult. But this difficulty should not be used as an excuse. Unfortunately, those in charge of monitoring domestic workers are loathe to enter into the private sphere of domestic work,\textsuperscript{84} and these attitudinal impediments lead to a complete failure by governmental agencies to respond to the abuses.

40. The private nature of domestic work also creates a problem with resources. To ensure compliance in workplaces like individual homes where only one worker may be affected, additional resources are necessary.\textsuperscript{85} Unlike factories where workers are consolidated into one workspace, thus requiring only one trip to one location by one enforcement official or team, domestic workers are spread among thousands of workspaces requiring many more trips to many more locations by many more enforcement officials. But again, this cannot act as an excuse, as the Committee has recognized: "even in times of severe resources constraints whether caused by a process of adjustment, of economic recession, or by other factors the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes."\textsuperscript{86}

41. In addition to failure to monitor domestic work because of its private nature, domestic workers point to other practical reasons for not reporting violations, including "lack of knowledge of the U.S. legal system, exacerbated by social and cultural isolation and fear of retaliation by politically powerful employers against their families in their countries of origin."\textsuperscript{87} These fears point to two problems: (1) a lack of knowledge about rights and remedies; and (2) a lack of social support networks and organizations, both of which discourage workers from reporting violations.

\textsuperscript{81} Hidden in the Home, supra note 3, at 33.
\textsuperscript{82} Id.
\textsuperscript{83} Id.
\textsuperscript{84} Id.
\textsuperscript{85} For example, a U.S. immigration officer remarked, "Every employer and domestic worker ought to have the flexibility to work out their own best arrangement without worrying about the government of the courts invading people’s private lives." Id.
\textsuperscript{86} Graunke, supra note 30, at 186.
RECOMMENDATIONS

1. Already existing domestic laws that protect other workers, like the Fair Labor Standards Act, National Labor Relations Act, and Title VII should be expanded to fully cover the rights of domestic workers. Exclusion of domestic workers from laws reinforces the societal attitude that domestic workers are somehow inferior individuals and employees.

2. Laws which should protect domestic workers must be enforced in order to actually provide that protection in practice. This would require the United States to enforce laws like the federal minimum wage, and change its policies to include domestic workers in the enforcement regulations of the Occupational Safety and Health Act. Without action by the government, employers are able to continue to abuse domestic workers with impunity.

3. There are a number of approaches the United States could take to resolve the re-victimization of domestic workers through denial of Article 2 rights. Visa reform is one option. First, a special visa system could be used to automatically grant domestic workers who bring forward a formal complaint of human rights violations a visa and work authorization. Such a system is already in place for victims of trafficking and other criminal conduct (U and T visas) and should be expanded to protect domestic workers facing other types of abuse.

4. Better access to social services would provide domestic workers with opportunities to receive accurate information, correct misconceptions created by employers, and file complaints about rights violations. Social services could also serve as a social support network and a contact if something goes wrong. In order for domestic workers to seek remedies for their abuses, they must feel like there is a legitimate alternative to staying in the abusive home. Resources like shelters and legal aid must be made available to domestic workers.

5. The United States must address the problems posed by claims of diplomatic immunity in the cases of domestic workers who have been abused or exploited by their employers. For example, in those cases with evidence of exploitation and abuse, the U.S. government should request a waiver of immunity from the diplomat’s home country to allow the domestic worker to seek remedy through the courts.

58 The Code of Federal Regulations states that “[a] matter of policy, individuals who, in their own residences, privately employ persons for the purpose of performing for the benefit of such individuals what are commonly regarded as ordinary domestic household tasks... shall not be subject to the requirements of [OSHA] with respect to such employment.” 29 C.F.R. § 1975.6 (2005). Domestic employees are ‘working men and women in the nation’ and as such should be protected under the Act. Their work, which involves exposure to potentially dangerous items such as cleaning chemicals, knives, and gas stoves is not innately safe and healthful as to make the Act unnecessary. See Katharine Silbaugh, Turning Labor into Love: Housework and the Law, 91 NW. U. L. REV. 1, 77 (Fall 1996). The tasks performed by domestic workers, such as cooking, cleaning, and child care, are the same tasks performed by other workers covered by the Act. Though enforcement of OSHA may be more difficult in the private setting of domestic work, “It is not enough to say that the enforcement of the Act would be too difficult because of the job site; [the Act] regulates the working conditions of other people who enter private homes on a regular basis.” Katharine Silbaugh, Turning Labor into Love: Housework and the Law, 91 NW. U. L. REV. 1, 77 (Fall 1996).

59 For example, Congress should establish a new visa category for undocumented workers who suffer violations of their right to organize and bargain collectively, and the USCIS should exercise discretionary authority to allow them to remain in the United States.” Lance Compa, Workers’ Freedom of Association in the United States: The Gap Between Ideals and Practice, in WORKERS’ RIGHTS AS HUMAN RIGHTS 23, 51 (ed. James A. Gross, Cornell University 2003).
6. Finally, the United States should adopt the ICCPR Optional Protocol to allow for individual reporting to the Human Rights Commission.

Thanks to Stefani Bonato and McKenna Coll for drafting this report with contributions from all of the endorsing organizations and individuals.

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TESTIMONY OF ELIZABETH KEYES
DOMESTIC WORKER & TRAFFICKED PERSONS PROJECT
CASA OF MARYLAND

Inter-American Commission for Human Rights
October 14, 2005

Good morning, members of the Inter-American Commission for Human Rights. My name is Elizabeth Keyes, and I am the staff attorney for CASA of Maryland’s Domestic Worker and Trafficked Persons Project.

CASA of Maryland, a non-profit organization was founded in 1985 to serve the needs of refugees from Central America living in Maryland. Today, CASA goes beyond meeting simply the direct needs of the clients it serves, and it has transformed into an NGO that builds power in the Latino community and advocates forcefully for the rights of our community members. Among the groups of immigrants to which CASA has dedicated its political focus and its organizational resources are domestic workers.

In the last ten years, CASA has litigated hundreds of cases for domestic workers who have suffered a range of abuses in the workplace. There is, simply put, an epidemic of unpaid wages and exploitative work conditions among the domestic workers in the Washington metropolitan area. We have also handled dozens of cases of domestic workers who worked for diplomats, which present special challenges, as I will describe in my testimony today.

Overview of diplomatic cases

Roughly 20% of my active cases at any given time involve domestic workers who have worked for diplomats. In the year since I began working at CASA of Maryland, I have seen about two dozen cases involving exploitation by diplomats. Such cases are not limited to OAS member states; they come from all over the world. However, the IACHR has an important role to play in the abuses that are occurring within the diplomatic communities from OAS member states, and the Commission has the opportunity to set an example that will help us fight abuses by diplomats from whatever part of the world.

As background to the problem, it is important to understand that the United States law provides diplomats with the opportunity to apply for special visas, known as A-3 visas, to bring servants to the United States from overseas to work in their homes as cooks, cleaners, nannies, drivers or gardeners. To obtain an A-3 visa, the diplomats must provide the U.S. Department of State with a contract that respects U.S. labor laws and honors prevailing wages rates. Typically, therefore, the domestic worker arrives in this country with promises of wages in the range of $6-7 per hour, overtime wages for hours in excess of 40 hours per week, vacation and sick leave, and other standard provisions.
Once in the United States, however, many workers find that the contracts are little more than scraps of paper. Instead of earning $6 per hour and overtime wages, a typical employee works approximately 80 hours per week and earns $2 per hour. This $2 figure is merely the average among my cases. I have cases where the worker has earned somewhat more (still below the federal minimum wage of $5.15 per hour), and cases where the worker has earned significantly less—35 cents per hour or 50 cents per hour.

Living conditions are often extremely difficult, with the workers having no private room of their own or no place to rest during the day if they finish their chores. For example, one of my clients worked in a one bedroom apartment, and had to sleep on the couch in the diplomat’s living room, which meant that she could not sleep until her employers retired to their room at night.

Furthermore, the workers rarely if ever receive vacation time or promised benefits like health insurance. The failure of employers to live up to these contractual promises creates a precarious situation for their employees. Domestic workers perform physically demanding labor, and yet have little opportunity to rest and recuperate. They are therefore likely to experience illness or injury, but then they do not have the health insurance or the right to sick leave that might help them cope with their illness or injury. In several of my cases, the workers report working through illness and pain—including severe arthritis and hemorrhaging—simply because they have no other option.

Along the spectrum of abuses suffered by the domestic workers of diplomats, there are occasionally cases of human trafficking. Under U.S. law, human trafficking is defined as follows:

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.¹

The definition does not, as commonly believed, impose a requirement of “alien smuggling,” i.e. aiding the unlawful entry of an individual into the United States. Diplomats who obtain workers using legitimate A-3 visas, but who do so for one of the purposes outlawed in the definition of trafficking above, are committing the crime of human trafficking.

I presently represent three workers in human trafficking cases where the traffickers were diplomats. One was immediately transferred to the custody of a non-diplomat who worked her around the clock. Another was paid 35 cents per hour for her work the diplomat, and the third simply was not paid. They were kept in their situations through a combination of isolation, confiscation of passports,

threats of deportation, and verbal and physical abuse. Indeed, one diplomat's 
wife told my client as she beat her that my client could call the police if she 
wanted, but it would do her no good, because the wife had diplomatic immunity.

Although such a case is at one end of the spectrum of labor exploitation, the 
power imbalance is typical of the diplomatic cases that I see. The workers know 
that their employers are important and well-connected in their home countries, 
and this adds to the diplomats' ability to have the worker accept terribly 
exploitative conditions. Significantly, this effect continues even after the worker 
escapes. A woman recently came to me with a compelling case, but she chose 
not to go forward with any legal action or negotiation because on the day she fled 
her situation, the employer made a thinly veiled threat against the woman's son 
in the home country. The worker believed the threat because the woman making 
it was a diplomat, and had powerful connections in the home country.

The challenge of representing domestic workers in the shadow of 
diplomatic immunity

Many workers also understand the concept of diplomatic immunity, which makes 
them even more reluctant to step forward and seek justice. The specific 
challenges of representing domestic workers in the shadow of diplomatic 
immunity begin here: the fear clients have to come forward.

In addition to the client's fear of the employer and, specifically, their fear of the 
employer's power in the home country, an even more daunting obstacle lurks. 
Even when a worker is courageous enough to take action against a diplomatic 
employer, their cases are severely hampered by the fact that we are unable to 
sue bad employers in court, because they exercise their diplomatic immunity.

American caselaw unfortunately permits diplomatic employers to exercise 
immunity even in cases of domestic worker abuse. For 2 years in the early 
1990s, a Filipina woman named Corazon Tabion worked for Jordanian diplomats 
in Washington, D.C., where she claims they paid her 50 cents per hour for 16 
hour workdays. They confiscated her passport, and made threats to have her 
arrested and deported if she left. In other words, Ms. Tabion experienced an 
unfortunately typical situation in her domestic work for the diplomat.

Ten years ago, Ms. Tabion filed suit against her employer, seeking her back 
wages, among other remedies. Ms. Tabion's lawyers argued that an exception to 
immunity applied—the commercial activities exception. The Court disagreed with 
Ms. Tabion, and upheld immunity. One year later, the Court of Appeals for the 
4th Circuit affirmed this ruling in Tabion v. Mufli.2 Since then, advocates for the 
exploited workers of diplomats have been denied access to the courts in any 
case where diplomats invoke their immunity.

2 Tabion v. Mufli, 73 F.3d 535 (4th Cir. 1996).
The exception at issue in the Tabion case comes from Article 31(c) of the Vienna Convention on Diplomatic Relations. The exception exists for "any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions." The Convention does not define what constitutes a commercial activity. The plaintiff in Tabion argued that employment contracts fell within this exception. The court found otherwise, noting that Tabion's was an "occasional service contract" not intended to be covered by this exception. The exception, as held by the court, extended only to activities engaged in for personal profit.

An alternative understanding of the commercial activities exception is possible. In a case brought under the Foreign Sovereign Immunities Act (FSIA), Park v. Shin, the court analyzed an exception to the FSIA that is also called the "commercial activities exception." The court in Park determined that hiring a domestic worker did constitute a commercial activity, reasoning that "even if performed with a public purpose in mind, acts by governmental entities are considered commercial in nature if the role of the sovereign is one that could be played by a private actor." Since a private actor can hire servants, the court found that the Defendant could not be protected by immunity. Nevertheless, Tabion continues to govern challenges to immunity based upon the Vienna Convention.

The effect of Tabion v. Mufti is that innumerable employees of diplomats are denied justice through the civil litigation system. Were it not for Tabion, workers could bring wage and hour claims for payment of their wages and overtime wages, under both state labor laws and the Fair Labor Standards Act. Workers could bring contract claims to seek damages for the denial of their promised salary, the failure to provide vacation, the lack of compliance with severance provisions, and other failures. Indeed, there are a host of statutes under which workers could bring, including:

- The Trafficking Victims Protection Reauthorization Act of 2003
- The Thirteenth Amendment to the U.S. Constitution outlawing slavery
- The Alien Tort Claims Act for violations of human rights norms
- The Federal Racketeer Influenced and Corrupt Organizations Act (RICO)
- The employment discrimination provisions of the Civil Rights Act

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2 U.S.T. 3227, at 3241.
4 313 F.3d 1138 (9th Cir. 2002).
5 IP, at 1145.
8 U.S. Const., Amend. XII.
The Tabion decision enables diplomatic employers to evade responsibility for violations under all of these laws, because diplomats can invoke their immunity.

Nor are workers protected in the criminal setting. Domestic worker cases often involve such criminal charges as assault, sexual assault, rape, debt bondage, and involuntary servitude. However, diplomats have full immunity against these criminal charges. The U.S. government can prosecute only in cases where the sending state agrees to waive the diplomat's immunity. Such cases are few and far between. 14 In the trafficking cases I have handled, I continue to navigate a protracted, difficult process to get any government agency interested in investigating the diplomats involved. I have contacted, local and federal law enforcement officials in four agencies, but to date, there has been one investigation, and that investigation related to the non-diplomatic offenders involved in the trafficking case. In the other two cases, the victims have yet to be interviewed by any law enforcement official, despite their eagerness to move forward with the criminal process. The immunity issue has therefore had the effect of precluding justice for my clients even within the criminal justice system.

The Little That We Can Do to Secure Justice in the Shadow of Diplomatic Immunity

With our hands thus effectively tied, CASA of Maryland attempts to secure justice for our clients in other ways. We contact the diplomatic employers directly, reminding them of their obligation under Article 41 of the Vienna Convention to honor U.S. and state laws, which include labor and employment laws. Occasionally a diplomat will resolve the situation in good faith at this stage. If we are unsuccessful, however, we negotiate directly with the embassies. Occasionally an embassy will investigate the conduct of the diplomat involved. Even in such cases, however, the result is too often that the ambassador ignores the reality of the working relationship, and simply restates to us the terms of the worker's contract, noting that the contract comports with U.S. law.

In cases where neither the diplomat nor his or her embassy will negotiate a settlement in good faith, we turn to alternative strategies to apply pressure. We organize marches and protests, and we take advantage of media interest in these stories to shame the embassies into action. Occasionally we are successful using these strategies, but the process drains our resources and time, and at the end of the day, we may achieve nothing substantial for our clients, except for their satisfaction at fighting an unfair system. The contrast between these cases and the cases that we can take to the state and federal courts for resolution is striking. Our success rate in the courts is very high. But the legal roadblock posed by diplomatic immunity precludes resolution of cases for the vast majority of our clients who worked for diplomats.

14 The most famous case is that of a Georgian diplomat who killed a teen-ager in Washington, D.C. while driving drunk. Georgia agreed to waive his immunity. This case is the rarity, however.
This unfortunate reality compounds the powerful public perception that there is no accountability for diplomats, which makes it ever less likely that an exploited worker will step forward.

**What We Seek from the IACHR**

The IACHR is in a position to send a strong message to member states that these abuses must stop and that their diplomats must be held accountable. Upon hearing the testimony today of two workers who have experienced both exploitation in the workplace and impunity when they have attempted to seek redress for that exploitation, it is my profound hope that the IACHR will agree that these situations are human rights violations being perpetrated by the very people who should be representing the highest ideals of accountability, good governance and respect for human rights.

I request that the Commission monitor this situation and issue a report on the abuses it finds among the domestic workers employed by diplomats in this hemisphere. Such a report should include recommendations on the specific steps and measures that the various OAS member states can implement to protect these vulnerable workers from exploitation and abuse. Such an effort would aid immeasurably in the work of organizations like CASA of Maryland to address this ongoing series of human rights violations and obtain justice for those who turn to us when they have nowhere else to go.

Thank you for your time and your attention.
I. Introduction

Good morning. I would like to begin by thanking the Inter-American Commission for allowing us to speak to you about the human rights of migrant domestic workers today. The violations you have heard about are not unique to the United States; nor are they limited to the diplomatic corps. Instead, they are examples of a phenomenon that has been observed across the developed world. In affluent cities on all continents, the well-to-do invite migrant women into their homes to help them with their private chores: cleaning, cooking, childcare, and personal assistance. In what one academic has called today’s “global cities,” these domestic workers are made vulnerable by discrimination on the basis of their migration status, their gender, and their race or ethnicity. Women working for diplomats or international civil servants are made further vulnerable by the operation of diplomatic immunity.

In the United States, dozens of cases of abuse by international civil servants and diplomats have come to light. Those violations – like the ones you heard about today – would be unacceptable no matter who commits them. But when they are committed by international civil servants and diplomats – those charged with upholding the international legal system – these abuses are especially disgraceful. They bring shame on the profession and stature of international civil servants, and they make a mockery of doctrines like inviolability and immunity, which were created to protect such workers from harm in their country of work.

It is my role to briefly discuss the provisions of international human rights law that are relevant to the abuses we are discussing today. I will first identify the substantive rights in question, noting that some of these rights are protected by U.S. law, while others are not. Turning to diplomatic immunity, I will then focus on the human right most often harmed in diplomatic cases: the right to a remedy. Examining the potential conflict between that right and the international law governing diplomatic immunity, I will suggest that Member States of the O.A.S., the O.A.S., and especially the Inter-American Commission must not allow immunity to become impunity.

I will close by recommending certain steps that the Commission could take to put an end to these abuses.

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1 Adjunct Assistant Professor of Clinical Law & Research Director, Center for Human Rights and Global Justice, NYU School Of Law.
II. The Abuses that Migrant Domestic Workers Face in the United States are Human Rights Violations

There are two types of abuse that the Commission should be concerned about in relation to domestic workers in the United States: abuses that are cognizable under international human rights law but not under U.S. law, and those which are normally recognized under U.S. law, but whose remedies are blocked through the operation of diplomatic and associated immunities. We have focused on the latter category this morning; the former category is worth mentioning, since it is an area where future work by the Commission could have a very positive effect. This section will briefly mention a few possible claims; a full analysis is beyond the scope of this brief testimony.

a. Abuses cognizable under HR law but not under U.S. law

The human rights standard of substantive equality requires States to take affirmative measures to dismantle discrimination and exploitation – whether direct or indirect, intentional or unintentional – based on race, sex, and migration status.\(^2\) This standard, coupled with the \textit{jus cogens} nature of non-discrimination,\(^3\) makes possible a number of challenges to discriminatory practices that are not recognized as such under U.S. law. These claims would include the following, among others.

i. Claims concerning discriminatory exclusions from labor laws

Domestic workers are explicitly excluded from certain protections set out in the Fair Labor Standards Act, the National Labor Relations Act, and the Occupational Health and Safety Act.\(^4\) Because of these exclusions, domestic workers do not have the right to vacation leave, sick days, or notice prior to termination. While all domestic workers must be paid at least the hourly minimum wage, live-in domestic workers are excluded from overtime regulations.

1. Discrimination on the basis of race

The vast majority of domestic workers in the United States are women of color, meaning that the exclusions of domestic workers from labor protections falls disproportionatly on minority women. Using the standard of substantive equality, the disproportionate impact of these exclusions on racial and ethnic minorities would be \textit{prima facie} evidence of racial discrimination.

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\(^4\) For a discussion of these exclusions, see \textit{HUMAN RIGHTS WATCH, HIDDEN IN THE HOME: ABUSE OF DOMESTIC WORKERS WITH SPECIAL VISAS IN THE UNITED STATES} (2001), at 29-31.
2. Discrimination on the basis of sex

According to the United States Bureau of Labor Statistics, in 2004, 92.2% of all persons employed in services within “private households” were women. The negative consequences of the exclusion of domestic workers from labor protections fall almost exclusively on women; this would be *prima facie* evidence of sex discrimination under the substantive equality standard available under human rights law.

ii. Discriminatory failure to enforce labor laws that do protect domestic workers

In addition to claims concerning the exclusion of domestic workers from workers’ rights protections, domestic workers suffer from abysmal enforcement of those protections they do enjoy. Under the substantive equality standard, this failure could be *prima facie* evidence of discrimination on the basis of race, sex, or migration status, since women migrants of color suffer disproportionately from the failure to enforce labor standards in the domestic sphere.

b. Abuses cognizable under U.S. law but blocked by diplomatic immunity

In addition to claims like those just described, which are *not cognizable* under U.S. law, domestic workers in the United States technically benefit from a variety of rights protections that are practically unavailable because of diplomatic immunity. These protections include wrongs that would normally constitute civil claims, such as those concerning wages, hours, and contracts, or torts such as false imprisonment. Also practically difficult to pursue due to immunities are criminal charges relating to the abuse of domestic workers, such as sexual assault, physical abuse, debt bondage, and trafficking.

Under U.S. law, diplomats and their families, as well as officials of U.N. and O.A.S. missions and observer offices and their families, enjoy diplomatic immunity. The basic rule is that those with diplomatic immunity are not subject to the civil, criminal, or administrative jurisdiction of the United States, unless a specific exception applies, or unless immunity is waived by the sending state. Waivers must be express, and may be requested and obtained by the State Department from the sending state.

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6 The immunities enjoyed by diplomats are set out in the Vienna Convention on Diplomatic Relations in articles 31 (immunities of diplomats from criminal, civil, and administrative jurisdiction, subject to specific exceptions) and 37 (immunities of families of diplomats, administrative and technical staff). The specific immunities enjoyed by U.N. and O.A.S. officials are set out in the U.N. Headquarters Agreement, 11 U.N. Treaty Series 11, and Executive Order No. 11931, Aug. 3, 1976, 41 F.R. 32689, respectively.

7 Vienna Convention on Diplomatic Relations, articles 31-32.

8 Vienna Convention on Diplomatic Relations, article 32.
III. The Use of Diplomatic Immunity Defeats Human Rights Accountability and Denies the Right to a Remedy

To understand how diplomatic immunity is being used to deprive domestic workers of their rights, it is important to identify the rights in issue. As discussed above, we are not focusing today on substantive claims that could be advanced in the Inter-American system but which are not available under U.S. law. Instead, we call your attention to how certain immunities based on international law are being used to violate the right to a remedy.

a. The Right to a Remedy in the Inter-American System

The right to a remedy is widely recognized as a pillar of the human rights framework.9 Ensuring that individuals who suffer violations have the opportunity to seek and receive the remedies to which they are entitled is necessary to halt impunity. The Inter-American Court has stressed the obligations States have to provide remedies:

Under the Convention, States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8(1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Art. 1).10

The Inter-American Commission has similarly stressed the importance of the right to a remedy.11

i. American Convention on Human Rights and American Declaration on the Rights and Duties of Man

The American Convention on Human Rights guarantees the right to a remedy through Articles 8 and 25. Article 8 protects the right to a fair trial, and recognizes the right to a hearing for the determination of civil or labor rights. Article 25 upholds the right to judicial protection, which entails the right to recourse to a court for protection against acts that violate fundamental rights. Taken together, these provisions require States to ensure remedies are available through judicial processes when, inter alia, civil or labor rights are violated. The American Declaration on the Rights and Duties of Man recognizes, in Article 18, the right to resort to the courts to ensure the respect of legal rights.

These are rights to have access to justice – rights to have an underlying claim that is protected by law upheld and enforced by a court of law. For domestic workers, the right to a remedy should guarantee access to judicial enforcement of the labor rights that are protected by U.S. law, including the right to be paid at least the minimum wage, the right to be free from false imprisonment, the right to be free from sexual assault, and many other protected rights.

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b. The Law of Diplomatic Immunity Must Not Block Remedies for Human Rights Violations

Under international law, diplomats and certain staff members of international organizations enjoy a variety of immunities from the jurisdiction of the courts of the host state, and from enforcement measures. These immunities are required by domestic statutes or doctrines based on international law, and by international treaties – most importantly, by the Vienna Convention on Diplomatic Relations of 1961. The purpose of these immunities is to protect diplomats and international civil servants from pressure or interference by the receiving state; immunity was not designed to block accountability. Indeed, article 41 of the Vienna Convention makes clear that it is the duty of all diplomatic agents to “respect the laws and regulations of the receiving State.”

In the 2001 Congo v. Belgium case,12 the International Court of Justice held that the law of immunity protected a sitting Foreign Minister from the criminal jurisdiction of another State, even for crimes against humanity. In the years since that judgment, there has been much confusion about how to ensure that the regimes of international law governing immunity on the one hand, and international criminal law and human rights, on the other hand, may be squared. While there are no clear answers to the larger questions, it is clear that immunities may not be used to shield accountability.13

While the Inter-American Commission has not had the opportunity to examine the specific situation we are addressing today, the Commission has suggested that immunities cannot be used to block redress for human rights violations. In its decision on admissibility in the case of Narváez Murillo v. Nicaragua, the Commission determined that a petition alleging that Congressional immunity was improperly used to shield against a judicial determination of a woman’s claim of sexual abuse was admissible because it described a human rights violation within the jurisdiction of the Commission.14

This principle is clearly relevant to the plight of domestic workers. The Parliamentary Assembly of the Council of Europe has issued a strongly worded recommendation concerning “Domestic Slavery” that addresses this issue.15 The Assembly “deplores the fact that a considerable number of victims [of domestic slavery] work in embassies or in the homes of international civil servants,” and calls for an amendment of the Vienna Convention on Diplomatic Relations that would be specifically aimed at ending the use of immunities in “private life.”16 This amendment would rectify the conflict between States’ obligations to ensure

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13 The ICJ explicitly found that immunity may not be used to ensure impunity: concerning the Foreign Minister of the Congo, the Court held that “the immunity from jurisdiction enjoyed by incumbent Ministers for Foreign Affairs does not mean that they enjoy impunity in respect of any crimes they might have committed, irrespective of their gravity. Immunity from criminal jurisdiction and individual criminal responsibility are quite separate concepts. While jurisdictional immunity is procedural in nature, criminal responsibility is a question of substantive law. Jurisdictional immunity may well bar prosecution for a certain period or for certain offences; it cannot exonerate the person to whom it applies from all criminal responsibility.” Id. At para. 60.
15 Parliamentary Assembly of the Council of Europe, Recommendation 1523 (2001), Domestic Slavery.
16 Id.
the right of access to a court in criminal and civil matters under the European Convention for the Protection of Human Rights and Fundamental Freedoms and the immunities extended to diplomatic employers of domestic workers under the Vienna Convention on Diplomatic Relations.

Even without such an amendment, States are under an obligation to ensure that their treaty obligations are not upheld at the expense of the human rights of domestic workers. Indeed, given the Inter-American Court’s holding that equality is a *jus cogens* norm, it is clear that Member States must find a way to give effect to non-discrimination laws even in the face of immunities. A simple answer to this problem lies in the use of the “commercial activity” exception set out in the Vienna Convention.

Where diplomatic immunity is used to shield against claims of labor rights violations, sexual and physical abuse, and trafficking or debt bondage, human rights violations are going unpunished. The rights to judicial protection and recourse to a court cannot be arbitrarily denied because of the identity of the violator.

c. Member States of the O.A.S. Have Affirmative Obligations to Ensure Remedies for Human Rights Violations against Domestic Workers

Member States of the O.A.S. are required to ensure that domestic workers have the ability to access effective remedies for violations of their rights. Host States such as the United States have an obligation to ensure that legal doctrines are not used to block remedies; it should therefore request the lifting of immunity where abuses are challenged, and should support interpretations of treaties that allow domestic workers to achieve redress.\(^\text{17}\) Sending countries have obligations to ensure that they do not allow immunities to shield their nationals (diplomats) from accountability; they should therefore waive immunities when domestic workers are seeking remedies for human rights violations at the hands of diplomats. Finally, International organizations should protect and promote human rights—even though they are not parties to human rights treaties. The O.A.S. should take all necessary steps to ensure that its employees do not violate the rights of domestic workers, and that Member States do not allow diplomatic immunity to block access to effective remedies when their officials commit violations.

IV. A Role for the Inter-American Commission on Human Rights

The Inter-American Commission can make a valuable contribution to ensuring the rights of domestic workers are upheld by taking a few simple steps. Some immediate and important steps that the Commission could take include:

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\(^{17}\) Possibly the most important interpretive choice would be for the U.S. government to recommend that Courts and prosecutors interpret the “commercial activity” exception to the Vienna Convention on Diplomatic Relations to include the hiring and employment of a domestic worker. At least one U.S. Federal Court of Appeals has held that the employment of a domestic worker did not fall into that exception. *See Tobin v. Musfii*, 73 F.3d 535 (4th Cir. 1996). The opposite result was achieved under the Vienna Convention on Consular Relations, which extends immunity to consular officials and employees in relation to their “consular functions.” *See Park v. Shin*, 313 F.3d 1138 (9th Cir. 2002).
(1) The IACHR can monitor the situation of migrant domestic workers employed by representatives of O.A.S. Member States and the staff of the O.A.S.

(2) The IACHR can report on the situation of migrant domestic workers in the hemisphere. This might fruitfully be done by the Special Rapporteur on Women’s Rights and/or the Special Rapporteur on Migrant Workers and their Families.

(3) The IACHR can make recommendations to Member States about how best they can meet their international obligations to protect the rights of migrant domestic workers. These recommendations should focus on the role of both sending and host countries in ensuring that migrant domestic workers enjoy their human rights. Although we have not explored the situation in other countries in the hemisphere during this hearing, the same treaty governs diplomatic immunity throughout the Americas. For this reason, recommendations from the Commission will be valuable in many countries – especially concrete recommendations such as using the “commercial activity” exception available in the Vienna Convention.

The Inter-American Commission can have a very positive impact on the rights of migrant domestic workers by affirming clearly that the cruel irony of international civil servants violating international human rights in their own homes must come to an end.

Thank you.
TESTIMONY OF GERMANIA VELASCO

Good morning. My name is Germania Velasco, and I am a member of the Committee of Women Seeking Justice, of CASA of Maryland, which has been created to fight for the rights of domestic workers who are being abused. I am here to give my testimony about the experience that I lived when I worked almost two years for diplomats in this country.

I cannot reveal the identity of the family I worked for, but I can talk about the abuse that I was a victim of.

When this family hired me in my country, I signed a work contract where they promised to pay me $6 an hour for 40 hours of work per week. They also made a verbal promise that I would be given health insurance. They also promised me that they would give me my own room here. They never did so. I slept in a place that was the passageway to the laundry room.

I took care of two children and did the housework for the whole house. I prepared everything for the parties that they held frequently. I was the only one who did the work for those parties.

To be able to do all the work required of me, I got up at 6 in the morning, and fell asleep by 10 o'clock at night. I had no day off, and when I got sick, I went to the doctor and out of my own salary paid for the visit and the medicines. My wages were only $300 per month.
Thanks to CASA of Maryland, I left this abusive situation, and we began a campaign to educate people about my situation. We held marches and protests, attended meetings, and negotiated with the embassy, but until now, we have no concrete results.

It is for this reason that we have the Committee of Women Seeking Justice at CASA of Maryland. We have been working on, and have already presented legislation that will protect domestic workers. We know that protections already exist for employees that work for diplomats, but they have immunity and do not honor their obligations. We want this to end, and we want to see that the laws are respected, in order to stop the suffering.

This day itself is an effort we are making to gain your attention to this problem, so that you will intervene with the OAS, know what it is happening, and support us so that the laws that already exist are obeyed, and to support our efforts to create better laws to protect domestic workers.
HIDDEN IN THE HOME:
Abuse of Domestic Workers with Special Visas in the United States

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   Immunity for Employees of A-3 and G-5 Domestic Workers

   Full Diplomatic Immunity

   Limited Immunity
I. SUMMARY

[V.G.'s passport was confiscated by [her employers], who told her that she was not to leave the apartment alone. She was not permitted to use the telephone or the mails, speak with anyone other than the Alzanks [her employers], nor even to venture onto the balcony or look out the apartment windows. [The Alzanks] told [V.G.] that the American police, as well as the neighbors, would shoot undocumented aliens who ventured out alone.

—Findings in U.S. v. Alzanki, 54 F.3d 994 (1st Cir. 1995), a case involving V.G., a Sri Lankan domestic worker, employed by a Kuwaiti national studying at Boston University

In the past decade alone, tens of thousands of individuals, mostly women, arrived in the United States with special temporary visas to work as live-in migrant domestic workers. They work for foreign diplomats, officials of international organizations, foreign students and businesspeople, or U.S. citizens residing abroad but temporarily in the United States.

These domestic workers come to the United States to escape poverty in their countries of origin, to earn money to send back to their families, most often their children, and to save money for their futures. All too often, however, they become some of the world's most disadvantaged workers held captive by some of the world's most powerful employers, who exploit, abuse, degrade, mock, and humiliate them.

In the worst cases, the domestic workers are victims of trafficking—deceived about the conditions of their employment, brought to the United States, and held in servitude or performing forced labor. They work up to nineteen hours per day; are allowed to leave their employers' premises rarely, and virtually never alone; are paid far less than the minimum wage, sometimes $100 or less per month; are ordered not to speak with individuals outside their employers' families; and are psychologically, physically, and/or sexually abused. In these cases, workers' isolation is so extreme and the culture of fear created by their employers through explicit threats and/or psychological domination is so great that the workers believe they will suffer serious harm if they leave their jobs and have no choice but to remain in and continue laboring in abusive conditions.

While these most egregious conditions were present in at least five of the forty-three cases reviewed by Human Rights Watch, workers suffered one or more forms of abuse in the vast majority of employment relationships examined. Human Rights Watch found that workers are commonly paid significantly below the minimum wage and work long hours. Indeed, the median hourly wage in the cases reviewed by Human Rights Watch was $2.14, including deductions for room and board—only forty-two percent of the median federal hourly minimum wage of $5.15. The median workday was fourteen hours. Workers are also rarely free to leave their employers' homes without permission, resulting in the imposition of myriad restrictions on their freedom of movement, most often only being allowed to leave the employers' premises on their days off.

These workers come legally to the United States with A-3 visas if hired by diplomats, G-5 visas if employed by international organization officials, and B-1 visas if working for other foreigners or U.S. citizens. Nonetheless, their legal immigration status does not protect them from abuse similar to that suffered by the untold numbers of undocumented domestic workers in the United States. Ironically, their special visas exacerbate their vulnerability to abuse. Because they have employment-based visas, if these domestic workers leave their sponsoring employers, regardless of how abusive, they not only lose their jobs, like undocumented workers, but also their legal immigration status in the United States. Although certain workers may change employers, they may do so only under specific, rarely fulfilled conditions, and B-1 workers can likely never legally change employers in the United States. Because changing employers is difficult if not impossible, workers often must choose between respect for their own human rights and maintaining their legal immigration status.

Despite the often abusive treatment, migrant domestic workers with special visas are reticent to leave their employers or file legal complaints to enforce their rights. Many workers choose to endure human rights violations temporarily rather than face deportation. Others endure the abuses because their cultural and social
isolation—lack of knowledge of U.S. law, few local contacts and friends, and inability to communicate in English—make the steps required to file their employers, find alternative housing, and seek legal redress prohibitively daunting. Still others fear that if they leave their jobs and publicly complain of abuse, their powerful employers will retaliate against their families in their countries of origin.

Human Rights Watch found, however, that if a domestic worker does not leave her employer and assert her rights through a civil complaint or criminal allegations, it is unlikely that her rights will be protected. Agents of the governmental institutions responsible for protecting her are not likely to enter her workplace independently. The domestic worker labors in what has traditionally been referred to as the private sphere, a domain not historically scrutinized by government and often outside the reach of governmental enforcement mechanisms structured to protect workers in the public sphere. Neither the State Department, the Immigration and Naturalization Service (INS), nor the Department of Labor (DOL) monitors employer treatment of migrant domestic workers with special visas.

These domestic workers simply fall through the cracks of U.S. government bureaucracy. For example, although the State Department requires potential employers of most migrant domestic workers with special visas to submit employment contracts containing certain mandatory terms, the State Department does not enforce the contracts nor even keep them on file. The INS, for its part, has no records of workers' whereabouts, except for entry documents. The burden of ensuring employer compliance with these "mandatory" contract terms falls to the domestic worker herself.

Even if a domestic worker leaves her employer, losing legal immigration status, and files a civil complaint against the employer to seek enforcement of her employment contract and U.S. labor and employment laws, there is no guarantee that she will be allowed to remain in the United States to seek legal redress. There is also no guarantee that she will be permitted to work while her complaint is being considered, even though as an undocumented alien she does not qualify for federal public benefits, such as welfare, public housing, and food assistance, and could face extreme hardship if not provided work authorization. The INS has discretion to permit her to remain temporarily to pursue a civil action and to work while doing so, but there is no temporary visa for which that worker, as a victim of abuse, can qualify. Such visas are only available for domestic workers involved in criminal actions and meeting myriad other criteria specific to each category of visa.

Even if a domestic worker files a civil or criminal complaint against her employer and is allowed to remain in the United States during legal proceedings, her uphill battle to obtain legal redress for abuse is still not over. Live-in domestic workers are explicitly excluded by law from the overtime provisions of the Fair Labor Standard Act and from the National Labor Relations Act, which protects workers' right to organize, strike, and bargain collectively. They are also excluded through regulations from the Occupational Safety and Health Act, which provides for safe and healthful working conditions. In practice, too, live-in domestic workers are rarely covered by Title VII protections against sexual harassment in the workplace, as Title VII only applies to employers with fifteen or more workers. In some cases, employers enjoy diplomatic immunity and are not even subject to the criminal, civil, or administrative jurisdiction of U.S. courts. In these cases, unless the State Department seeks a waiver of immunity from the employer's country of origin and that waiver is granted, domestic workers cannot obtain legal redress in U.S. courts.

The special visa programs for domestic workers are conducive to and facilitate the violation of the workers' human rights. The U.S. government has not removed the impediments that deter domestic workers with special visas from challenging, leaving, or filing legal complaints against abusive employers; has failed to monitor the workers' employment relationships; and has failed to include live-in domestic workers in key labor and employment legislation protecting workers' rights.

There is no simple solution that will remedy the structural flaws of the U.S. special visa programs for domestic workers. If the U.S. government and the international entities whose employees employ migrant domestic workers with special visas follow the four key recommendations listed below, however, as well as the
general and specific recommendations set forth at this report's conclusion, they will be taking important steps toward protecting these workers’ human rights.

II. KEY RECOMMENDATIONS

Finding: The State Department, in most cases, requires that employment contracts, setting forth certain terms and conditions, be signed between migrant domestic workers and their employers, but workers often do not receive copies of their contracts and myriad obstacles prevent or impede them from independently enforcing their contracts.

Recommendation: Employment requirements for migrant domestic workers should be binding legal provisions set forth in U.S. statutory law, and the Department of Labor should be given explicit authority and the necessary resources to enforce and monitor compliance with these requirements.

Finding: A primary obstacle preventing domestic workers from flexing or leaving abusive labor situations is their immediate loss of legal immigration status upon ceasing their employment, the corresponding possibility of deportation, and the lack of a meaningful option to seek new employment legally as domestic workers in the United States.

Recommendation: Congress should pass legislation allowing migrant domestic workers whose employers are physically, sexually, or psychologically abusive or who commit other violations of U.S. law or legal standards within the employment relationships, including breach of contract, to transfer their visas to work as domestic workers for new employers. The new employers should be qualified under immigration law to employ domestic workers with special visas, and workers should have until their initial admission periods expire to make the transfer.

Finding: Workers’ ability to pursue legal redress against former employers for contract violations or human rights abuses is limited because they may not be allowed to remain in the United States to do so and may not be allowed to work legally during that time.

Recommendation: Congress should pass legislation creating temporary visas that allow a migrant domestic worker with a special visa who has left her employer, lost legal immigration status, and filed a civil or criminal complaint against her former employer, to remain in the United States as long as necessary to pursue legal redress and to work during that time.

Finding: Important U.S. labor and employment laws exempt live-in domestic workers from their protections, either de facto or de jure.

Recommendation: Congress should amend the Fair Labor Standards Act overtime protections, the National Labor Relations Act, and Title VII sexual harassment protections to cover live-in domestic workers, and the Department of Labor should repeal its regulation excluding live-in domestic workers from the Occupational Safety and Health Act.
III. BACKGROUND

We all suffer the same mistreatment. We come with illusions that they will pay a lot here. They offer us many things. They bring us here deceived... They bring women who don't know anything about American laws. The only thing left for these women is to continue being abused. They don't know where to go... I want there to be justice.

—Liliana Martínez, a Peruvian domestic worker employed from November 1999 through February 2000 by a representative of a mission to the Organization of American States (OAS)

Each year thousands of migrant workers enter the United States legally with nonimmigrant or "temporary" visas to work as live-in domestic workers. The vast majority enter with one of three visas: A-3 visas to work for ambassadors, diplomats, consular officers, public ministers, and their families; G-5 visas to work for officers and employees of international organizations or of foreign missions to international organizations and their families; and B-1 visas to accompany U.S. citizens who reside abroad but are visiting the United States or assigned to the United States temporarily for no more than four years, or foreign nationals with nonimmigrant status in the United States.

In the 1980s, over 30,000 A-3 and G-5 visas were issued, mostly to women, as part of a State Department program that each year grants over 3,700 such visas. As these visas are issued for a duration of one to three years and may be extended in two-year increments, the number of such visa holders at any one time in the United States exceeds the number issued annually, and, as of November 1999, there were over 1,700 A-3s and over 2,300 G-5s registered with the State Department Office of Protocol.

Domestic workers may also enter the United States on a third type of employment-based visa—the B-1 visa, issued for a maximum of one year and extended in six-month increments. The B-1 is the most frequently used nonimmigrant visa, with approximately 200,000 issued annually. Unless issued to a domestic worker, however, the B-1 is not an employment-based visa and, instead, is issued to individuals employed by companies abroad who are visiting the United States temporarily for business. Unlike the A-3 and G-5 visas, the authority for issuing a B-1 visa to a domestic worker comes neither from statute nor regulation but rather the Senate Report

3. A-3 and G-5 visas can be issued to "attendants, servants, and personal employees." This report focuses on workers issued visas as "servants," however, and does not address the smaller percentage of workers issued visas as chefs, gardeners, chauffeurs, and other "attendants" or "personal employees."
4. INA 101(a)(15)(A)(ii)
6. INS Operations Instructions (OI) 214.2(a)(1)(i), 214.2(a)(7)(i), 214.2(a)(8)(i); 8 C.F.R. ••• B14.2(a)(1), 214.2(a)(1). The Operations Instructions are the internal operations manual for the INS.
8. 8 C.F.R. ••• B14.2(a)(1)
11. INA 101(a)(15)(B); 58 F.R. 40024 (citation omitted); 58 F.R. 58982 (November 5, 1993) (citation omitted).

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accompanying the Immigration and Nationality Act of 1952. Neither the State Department nor the INS knows what proportion of B-1 visas are issued to domestic workers, as neither keeps data of B-1 visa issuance by profession of the B-1 holder.

Live-in migrant domestic workers perform household tasks that are traditionally devalued and perceived as unproductive "women's work." They assume a role in their employers' households similar to that of the traditional housewife. In many cases, domestic workers find themselves in employment situations in which their human rights are respected. In other cases, employers exploit the power imbalance in the employment relationships to violate workers' rights, including the rights to freedom of movement, to freedom of association, to privacy, to just and favorable conditions of work, including a healthy and safe workplace and fair remuneration, to health, to be protected against sex discrimination, including sexual harassment, and not to be held in servitude or required to perform forced labor.

Estimating the percentage of employment relationships in which domestic workers suffer one or more human rights abuses is extremely difficult. Because of lack of governmental monitoring and deterrents that impede and often prevent domestic workers from making legal complaints alleging abusive employer treatment, the number of reported cases of abuse of migrant domestic workers with special visas most likely underrepresents the number of actual cases. No governmental records exist logging even those reported cases.

Two Washington, DC-area organizations and attorneys which have represented, assisted, or provided social services to these domestic workers, revealed that in 1999 alone these organizations and attorneys received approximately 160 calls from domestic workers alleging some form of employer abuse. In addition, from June 2000 through September 2000 alone, the Washington, DC-based Campaign for Migrant Domestic Workers Rights received approximately twenty-two such calls.

In May 1996, the State Department was sufficiently concerned about the number of reports of abuse of domestic workers with special visas employed by diplomats and consular officials that the department wrote to diplomatic Chiefs of Missions, stating that it was "concerned to learn of problems which continue to arise in the working relationships between some members of the diplomatic and consular community and their personal household employees."

12 58 F.R. 40024. Although in 1993 the State Department and the Department of Justice issued proposed rules to regulate the employment of B-1 domestic workers, the rules were never finalized. See id., 58 F.R. 58962.
13 Human Rights Watch telephone interview, United States Department of State Visa Services Office employee, November 17, 1999.
14 From approximately June 1999 through June 2000, CASA of Maryland, Inc. opened thirty cases on behalf of domestic workers with special visas against their employers, and, according to a CASA attorney, "through our promoters and calls to our office, we've probably spoken to or counseled three times that number." Human Rights Watch telephone interview, Steven Smithson, attorney, CASA of Maryland, Inc., June 7, 2000. Similarly, while working for the Spanish Catholic Center in Washington, DC, from 1991 through 1992 and 1993 through 1995, attorney Celia Riveras received approximately twelve to fifteen calls per month from A-3 and G-5 migrant domestic workers alleging abusive working conditions, totaling roughly 160 calls per year, and from 1995 through the present, working in Gaithersburg, Maryland, she has received approximately six such calls per month, totaling roughly seventy calls per year. Riveras believes she received more calls in Washington, DC, because more A-3 and G-5 domestic workers live in Washington, DC. Human Rights Watch telephone interview, Celia Riveras, attorney, Spanish Catholic Center, Gaithersburg, Maryland, November 29, 1999.
15 Human Rights Watch telephone interview, Joy Zarembe, Director, Campaign for Migrant Domestic Workers Rights, September 27, 2000. The Campaign for Migrant Domestic Workers Rights is a coalition of approximately two dozen nongovernmental organizations in the greater Washington, DC, area, including social service, legal, religious, and human rights organizations, formed under the auspices of and based at the Institute for Policy Studies, to assist migrant domestic workers with special visas.
16 Letter from Secretary of State to Their Excellencies and Messieurs and Mesdames the Chiefs of Missions, May 20, 1996, p. 1. The letter listed the "problems" as including instances:
where wages have been withheld from personal domestics for undue periods; where the wages actually paid are substantially less than those stipulated at the time of employment; where passports have been withheld from the
IV. TREATMENT OF MIGRANT DOMESTIC WORKERS WITH SPECIAL VISAS IN THE UNITED STATES

Live-in migrant domestic workers with special visas in the United States share with other live-in migrant domestic workers characteristics that make them particularly vulnerable. First, they labor in what has traditionally been deemed the private sphere and are largely invisible to and unprotected—either de facto or de jure—by laws, regulations, and government scrutiny. Second, when a live-in domestic worker assumes the role of caregiver and housekeeper, she assumes the historical role of the housewife, performing undervalued "women's work." She is often perceived not as a worker but as a "member of the family," though as a hired worker, she may be considered inferior to true family members, including the traditional housewife. In this devalued role, she is particularly susceptible to abuse that reinforces her subordination and her employer's power. Third, as migrants, they are absent from their countries of origin and often experience social and cultural isolation, lacking knowledge of local laws and customs, contacts with direct service organizations, friends and family in the area, and the ability to communicate in the local language. In addition, live-in migrant domestic workers with employment-based visas face pressure not to leave exploitative employers or risk dismissal by complaining about abusive working conditions, as loss of their employment strips them of their legal immigration status and can result in deportation.

Through interviews, civil complaints, court opinions, and affidavits, Human Rights Watch reviewed forty-three employment relationships involving migrant domestic workers with special visas—twenty-four G-5 workers, fourteen A-3 workers, and five B-1 workers. The employment relationships existed primarily between 1993 and the present, with only four relationships concluding prior to the end of 1995 and all commencing after or during 1990. Human Rights Watch conducted twenty-seven interviews with domestic workers in thirty-four different employment relationships.

The cases reviewed reveal various manifestations of these factors of vulnerability and employer abuse of these factors to violate domestic workers' rights. Although Human Rights Watch reviewed a significant number of cases involving severe worker abuse, it is likely that many others did not come to our attention because

where the actual number of working hours weekly is substantially more than those originally contemplated and with no additional pay; and where the employee has been forbidden from leaving the employer's premises even during off-duty.

The letter also noted that the United States would hold the Chief of Missions and sending governments responsible for employers' misconduct and advised that the State Department would examine closely cases of alleged abuse of domestic workers and take appropriate actions.


11 Of these twenty-four G-5 workers, four worked for International Monetary Fund (IMF) officials; three for United Nations (U.N.) officials; eight for World Bank officials; three for Organization of American States (OAS) officials; two for Inter-American Development Bank officials; one for an official of a foreign mission to the U.N.; two for officials of foreign missions to the OAS; and one for a foreign military corps.

12 Workers', employers', and workers' attorneys' true names, civil case numbers, as well as employers' countries of origin in most cases, are not used in this report to ensure anonymity to protect workers from retaliation by current or former employers. The only true name of an employer used in this report is from the one case that Human Rights Watch examined through an opinion issued by the U.S. First Circuit Court of Appeals.
workers in the most abusive labor relationships, by definition, are unable to leave their employers' premises alone, if at all, and are therefore inaccessible.

Case Studies

The following three cases reviewed by Human Rights Watch show the range of human rights abuses suffered by migrant domestic workers with special visas in the United States. The case of Malika Jamisola is an average case among those reviewed. The workday she described is typical, and the employment conditions and contract violations recounted are common—low wages, long hours of work, lack of health insurance, passport confiscation, limited freedom of movement and ability to communicate with others, and employer threats of deportation. The case of Anita Ortega is one of eleven cases examined by Human Rights Watch in which domestic workers' right to freedom of movement was so severely restricted that they rarely left their employers' premises and is the only case in which a domestic worker alleged sexual assault and harassment by her employer. The case of Fariba Ahmed is one of five in which workers' abusive employment conditions combined to make them feel trapped and unable to leave their employers or cease laboring, constituting servitude and/or forced labor.

Malika Jamisola: Malika Jamisola, a Filipina domestic worker employed by a U.S. citizen and his U.S. citizen wife from September 1994 through January 1996 in New Jersey.39 Prior to coming to the United States at age twenty-four, Jamisola worked in Japan, where she met her employer by responding to an advertisement the couple posted for a domestic worker while living in Japan. According to Jamisola, her employer offered her an employment contract stating that she would work eight hours per day five days per week, make the "prevailing wage," and have health insurance. She accepted.

Jamisola told Human Rights Watch that when she arrived in the United States, her employer confiscated her passport. She claimed that she did not possess her passport again until early 1995 when she returned briefly to the Philippines but that upon returning to the United States, she refused her employer's request to turn over her passport again and was allowed to keep it.

Jamisola alleged that her employer complied with none of the promised contract terms. She described to Human Rights Watch her typical workweek. Monday through Friday, she awoke at 6:30 AM to prepare the couple's three children—then aged six, nine, and thirteen—for the day. Between 6:30 AM and 8:00 AM, when the last child left for school, she was required to make each child a different breakfast. From 8:00 AM until 3:00 PM, she cleaned the house—washing dishes, doing laundry, washing dry-cleaning by hand, making beds, dusting, and vacuuming. At 3:00 PM, the youngest girl returned home from school, and Jamisola took her to "play dates." She then prepared dinner, set the table, cleared the table, cleaned the kitchen, and washed the dishes. Though she prepared the food, she told Human Rights Watch that she was only allowed to eat a limited amount, as her employer "put the portion on the plate for me. I couldn't help myself." Between 9:00 PM and 10:00 PM, she put the three children to bed. If the man in the family was preparing for a business trip, she began at 10:00 PM to iron all his dress shirts, finishing at approximately 11:30 PM. If her employer and his wife went out for the evening, she was expected to remain awake, often until midnight, until they returned. Three times a week, she went grocery shopping, riding five or six miles to the grocery store on the employer's son's old bicycle because she could not drive. She was also responsible for raking leaves, watering the garden, shoveling the snow, and washing the car twice a month. On Saturday, though her duties varied because the children were at home, her hours remained approximately the same. Sunday was Jamisola's only day off, and she was required to return to the house by 7:00 PM.

Jamisola stated that she was prohibited from using the employer's telephone to make local calls and was not allowed to leave her employer's premises Monday through Saturday except to run errands, such as grocery shopping. She recalled only one occasion when her employer's wife allowed her to leave during the work week with a friend, "but my friend had to call her [the employer's wife] and tell her where she was taking me."


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Jamiisola said that after approximately eight months, she requested a raise and another day off. According to Jamiisola, “He [her employer] said he needed my help on Saturdays . . . [and] he said that I should just go back to the Philippines if I couldn’t accept what he was paying.” Jamiisola said that he nonetheless raised her monthly salary from $600 to $700. Including standard deductions for room and board allowed under federal law, Human Rights Watch calculates that Jamiisola made approximately $2.37 per hour during the first half of her employment and $2.60 during the second half, though at the time the statutory minimum hourly wage was $4.25.

Despite her employment conditions, Jamiisola told Human Rights Watch that she would have remained with her employer if he had agreed to sponsor her to stay in the United States longer because “my family still needed help. I have three brothers and one sister . . . . Their jobs are not enough.”

**Anita Ortega:** Anita Ortega, a Guatemalan domestic worker, was employed by a high-ranking representative of a mission to the OAS from September 1995 until June 1997 in Potomac, Maryland. She recounted that she had previously worked for her employer while he was an OAS official in Guatemala and stated that he contacted her when he was appointed to work in the United States to ask if she would accompany him as his domestic worker. She was thirty-three. She told Human Rights Watch that her employer verbally promised her $300 per month, plus room and board, with periodic raises, and she accepted. She said she signed the employment contract without any further discussion of its terms, explaining, “I never imagined how the labor laws were here . . . . Nobody explained my rights to me before I came.” She did not remember reading the contract and claimed she never received a copy.

Ortega recounted that she was responsible for performing all the household chores for her employer—preparing meals, washing clothes, ironing, washing floors, washing dishes, washing the car, shoveling snow, and raking leaves—and caring for her employer’s three sons, aged five, eight, and nine. Ortega described her workday as beginning at approximately 6:30 AM and ending at approximately 8:30 PM Monday through Friday and lasting from approximately 8:00 AM until 9:30 PM on Saturday. When the family had gatherings in their home, which Ortega said occurred about once a month, she was required to work until 1:00 AM or 2:00 AM. Though Sunday was her day off, she was required to prepare all meals on Sunday and, if she returned to her room to rest, was frequently called upon by the three children.

Ortega told Human Rights Watch that in December 1996, she asked her employer for a raise from the $300 per month salary she was receiving, to which he replied that he could not pay her more because he earned very little as a representative to the OAS and that, if she wanted, he would cancel her visa and send her back to Guatemala. Including the permissible deductions for room and board and calculating an hourly wage based only on Ortega’s work Monday through Saturday, Human Rights Watch determined that her hourly wage was approximately $1.74—only 39 percent of the federal hourly minimum wage at the time.

Ortega told Human Rights Watch that until April 1997, two months before the conclusion of her employment, though the family took her with them for Sunday outings and to attend church, she never left the house alone. She said that her employer and his wife confiscated her passport upon her arrival in the United States and that “they never allowed me to leave for anything. They told me that Americans were bad and that if I went out, I would run into one.” Ortega said that she became very afraid because her employer’s wife told her that “people in the United States were crazy and could hurt me. [She said that] there are psychopaths here who could kill me, and no one would even realize it.” Even when Ortega accompanied the family on weekend outings, she

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21 According to U.S. Department of Labor regulations for the Fair Labor Standards Act, employers may either deduct the “fair value” of room and board if they keep records justifying the deductions or take deductions according to formulas in the regulations: 29 C.F.R. §§313.3(b); 29 C.F.R. §§532.100(c), (d). Human Rights Watch used the formulas to calculate allowable deductions for room and board.


23 The federal hourly minimum wage was $4.25 from September 1995 through September 1996 and $4.75 from October 1996 through May 1997. Human Rights Watch used these wages to calculate allowable deductions and determine the hourly wage received by Ortega during these periods—$1.70 and $1.77 respectively. Human Rights Watch averaged these figures and the federal minimum wage during those periods to reach the figures cited above.
said, “They told me not to talk to anyone. Even when we went to church, I couldn’t talk to anyone.” She alleged, “They didn’t want me to have friends,” and she described how the employer’s wife inhibited her from developing outside relationships by prohibiting her from making or receiving telephone calls.

During the spring of 1997, according to Ortega, she met another Guatemalan woman through a neighbor she befriended at the bus stop where she picked up her employer’s children from school. With the promise of the Guatemalan woman’s companionship, Ortega overcame her fear and asked her employer’s wife if she could leave the house on Sundays. Ortega was granted permission to do so but was required to wash the day’s dishes and clean the kitchen when she returned on Sunday evenings.

Though she was ultimately allowed to leave her employer’s premises on Sundays, Ortega said she was never permitted to bring a key to the family’s home. She recounted one instance when the family left for New York for three days and she became very sick but was unable to leave the home to get medicine because she lacked a key to let herself back in. Not only was she unable to obtain her own medicine when left alone but, according to Ortega, who had no health insurance, the employer’s wife denied her requests to be allowed to see a doctor.

Ortega further recounted through tears that in addition to the abusive treatment described above, she had also endured three instances of sexual assault and harassment by her employer.14 According to Ortega, the first instance occurred after a heavy snowstorm in January 1996, approximately four months after she arrived in the United States. Ortega explained that she had never seen snow before and was staring out of her basement bedroom window looking at the snow when “the man [her employer] entered my room and began rubbing my shoulders... I told him no and that I didn’t want problems with the woman. She was upstairs in the family room.” Ortega said that she then pulled away, and “he grabbed me and threw me in a rage on the bed and left.”

Ortega described the second incident, saying, “He was watching a movie and asked me to bring his dinner to him. He was watching a sex movie. The couple in the movie was having sex. I brought him his dinner, and he told me to stay and watch.” She said that she stayed for a time and then went into the kitchen, and he yelled, “You left at the best part.” She continued, “I [then] went to my room and was getting undressed. He entered without knocking. I had already taken off my pants. He came to tell me that he was going out. He had no reason to come down to my room to tell me that.” According to Ortega, the third incident occurred one evening when the employer’s wife was in the kitchen and told Ortega to go to Ortega’s room with the employer to look for something. Ortega recounts, “I didn’t want to, but I went. He turned off the light and tried to kiss me and make me touch him... He put his hand on my head and tried to bring me to him... He took my hand and tried to make me touch his private parts.” She said that she pulled away, turned on the light, and left her room and went upstairs to the kitchen, leaving her employer standing there.

When Human Rights Watch asked Ortega why she did not leave such an abusive employment relationship,15 she explained:

*I am a single mother of two daughters. The salary there [in Guatemala] is not sufficient for their studies, their food, their clothes. I want them to get ahead in life. I come from a poor family. My mother is a single mother. We don’t have anything... Sometimes one is pressured by the economic situation. It’s

14 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) prohibits discrimination against women, and the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee) has defined sexual harassment as including “such unwelcome sexually determined behavior as physical contact and advances, sexually colored remarks, showing pornography and sexual demands” and has noted that “it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment... or when it creates a hostile working environment.” Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19, A/47/38, 1992, paras. 17, 18 (emphasis added).

15 Ortega did not voluntarily leave her employer. In June 1997, Ortega returned to visit her family in Guatemala, during which time her employer allegedly called to tell her that the family had been called back to its home country and no longer needed Ortega’s services, so she should not return to the United States. Ortega returned; however, as her employer had not yet cancelled her visa, and she later learned that her employer had lied to her and, in fact, remained in the United States until July 1999. Ortega is now working as an undocumented domestic worker in the United States.

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terrible what one suffers... Sometimes I ask myself why I put up with so much. It's for this, for my mother and my daughters.

Asked why she did not file a lawsuit to seek redress for the abuses committed by her former employer, Ortega told Human Rights Watch, "I didn't know anything about lawyers... I thought about it, but I didn't know who to turn to."

Fariba Ahmed: Fariba Ahmed is a Bangladeshi domestic worker who was employed in an Upper East Side apartment in Manhattan, New York City, from December 1998 through August 1999 by a representative of a Middle Eastern mission to the U.N. According to her civil complaint filed in federal court, in August 1998, at age twenty-eight, Ahmed met an employment agent in Bangladesh who promised her a job in her employer's country of origin, where she worked briefly as a domestic worker for her employer's brother before agreeing to come to the United States to work for her employer.26

Ahmed's attorney told Human Rights Watch that Ahmed was promised $200 a month to work as a domestic worker in the United States.27 During her approximately nine-month employment, however, Ahmed was allegedly paid only $100 a month—money which she said she never saw because it was sent directly to her husband in Bangladesh.28 Ahmed claimed that during her employment, she performed typical household duties for her employer and cared for the couple's two children, a four-year-old boy and an infant girl, seven days a week, with no days off, for an average of fourteen hours per day—from 6:00 AM until 10:00 PM.29 Including allowable deductions for room and board, Human Rights Watch calculates that Ahmed made approximately $1.03 per hour—20 percent of the federal hourly minimum wage at the time of her employment.

Ahmed described a climate of fear that she felt during her employment, created through alleged psychological and physical abuse by her employer and his family. Ahmed claimed that the family "humiliated me and made me feel inhuman,"30 went on vacation without leaving her food or money to purchase food,31 and only allowed her to eat their leftovers.32 Ahmed also claimed in her complaint that the employer's wife assaulted her on at least two occasions—one when she asked Ahmed to bring a glass and struck her with the glass when she brought the wrong one and once when she allegedly struck Ahmed while she was cooking, causing Ahmed to burn her arm on the stove.33

Ahmed stated that when she arrived in the United States, her employer confiscated her passport at the airport and that during her employment she was not allowed to leave her employer's apartment alone.34 According to her complaint, Ahmed was "allowed to leave the apartment only on two occasions, both times to go to the market to assist [her employer's wife]."35

22 Written Testimony by Fariba Ahmed Prepared for Congressional Domestic Workers Hearing, April 15, 2000; see also Complaint, (S.D.N.Y. December 1999), paras. 1, 12 (on file with Human Rights Watch).
24 Written Testimony by Ahmed... April 15, 2000.
33 Complaint, (S.D.N.Y. December 1999), paras. 1, 13 (on file with Human Rights Watch).
Ahmed’s complaint alleged that during the second of her two outings with her employer’s wife, Ahmed spoke briefly with a Bangali-speaking produce vendor nearby. Allegedly, Ahmed’s employer’s family left for vacation later that day, and Ahmed, with the assistance of a boy who helped her operate the apartment elevator, left the apartment alone for the first time, retraced her steps to find the Bangali-speaking produce vendor, and recounted to him “that she was being mistreated and was kept locked up” in her employer’s home. Ahmed said that she gave the vendor her telephone number and described where she lived, whereupon he contacted a local newspaper reporter, who contacted a community advocate for South Asian workers. According to Ahmed’s complaint, the advocate reported Ahmed’s case to the New York City Police Department (NYPD) and accompanied the police to Ahmed’s residence, where they escorted her out.

Ahmed stated, “If I did not have their [the advocates’] support, I would not have been able to leave and would have stayed in their home like a prisoner.” Asked why her client, who spoke no English, was illiterate in her native Bangali, knew no one in New York City, did not have her passport, and had no money with her, did not leave her abusive labor situation on her own, Ahmed’s attorney told Human Rights Watch, “She had a sense of feeling imprisoned . . . She felt she couldn’t get out.”

Ahmed’s employer never admitted nor denied the allegations in Ahmed’s complaint, instead invoking diplomatic immunity. The parties ultimately settled the case, and the employer’s attorney has failed to return Human Rights Watch’s repeated telephone calls seeking a response to Ahmed’s allegations. The police report, filed by the NYPD officers who helped Ahmed leave her situation, was also closed—according to Ahmed’s attorney, without contacting either her or her client.

The police report, however, lists under the heading “offense,” “unlawful imprisonment,” and states under the heading “details,” that Ahmed told the police that the “perp. [i.e. perpetrator] held her against her will to freely go as she pleased . . . The Perp & Perp’s [sic] wife made verbal threats to her access to freedom . . . [The] Perp removed her passport from her upon arrival to this country.” The FBI is now conducting an investigation into the criminal claim of involuntary servitude made by Ahmed and based on these allegations.

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38 Ibid., para. 15; see also New York Times, January 2000.
41 Ibid.
45 Human Rights Watch interview, Ahmed’s attorney, New York, NY, March 6, 2000

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Specific Abuses Suffered

Assault and Battery

Human Rights Watch reviewed seven cases in which domestic workers’ physical and moral integrity was allegedly violated through assault and/or battery by their employers, including the cases of Ahmed and Omega.69 The incidents of alleged employer physical violence included yanking workers by their clothing, beating workers, striking or slapping workers, yanking at a worker while wielding a knife, sexual assault, and threatening a worker with physical harm.

In the case of V.G., a Sri Lankan domestic worker employed from August 28, 1992 through December 17, 1992 by a Kuwaiti national studying at Boston University, the U.S. First Circuit Court of Appeals found, "During the four months she remained in the apartment, [V.G.] was assaulted twice. On one occasion, when [V.G.] asked that the volume be turned down on the television while she was trying to sleep, appellant grabbed and threw her bodily against the wall. On another occasion, Abair Alzani [the employer] slapped [V.G.] and spat in her face when she failed to turn off a monitor." According to the court, on these two occasions, V.G. was "contemporaneously informed that their [the assaults'] purpose was to keep her ‘in her place’."62 The court also found that, "[o]n another occasion, Abair Alzani threatened to sew up [V.G.]:s mouth with a needle and thread, and throw her into the ocean."62

Similarly, Tsehaye Assefa, an Ethiopian domestic worker employed from February 1990 through June 1992 by an African senior research officer with the International Monetary Fund (IMF), alleged in her civil complaint, "Approximately one year after her arrival in the United States, [she] became emotionally distraught regarding her situation and was homesick and was crying. [Her employer] inquired as to why [she] was crying and proceeded to beat her for crying."63

Limited Freedom of Movement

[M]igrant women . . . are often subjected to arbitrary and enforced deprivation of liberty at the hands of both non-State and State actors. Women’s movement is either overtly impeded through locks, bars and chains or less conspicuously (but no less effectively) restricted by confiscation of their passports and travel documents, stories of arrest and deportation, or threats of retaliation against family members.

— Radhika Coomaraswamy, U.N. Special Rapporteur on Violence against Women64

The International Covenant on Civil and Political Rights (ICCPR) protects the right to freedom of movement,65 and the U.N. Human Rights Committee has recognized the importance of protecting this right from

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60 The term "assault" is used to refer to the attempt or threat to inflict injury on another, coupled with a display of force giving the victim reason to fear immediate bodily harm; no physical contact is required. See Black’s Law Dictionary, 6th ed., s.v. "assault."
62 U.S. v. Alzani, 54 F.3d 994, 999 (1st Cir. 1995). V.G. was a B-1 domestic worker. Her employer was convicted in federal district court of conspiring to hold and holding V.G., in involuntary servitude.
61 Ibid., p. 1004.
62 Ibid.
63 Complaint, (D. Md. 1998), para. 58 (on file with Human Rights Watch). Assefa’s employer was ordered by the court to pay back wages, liquidated damages, and attorneys’ fees and costs. Order Adopting Report and Recommendation, (D. Md. 1999), para. 3 (on file with Human Rights Watch). Assefa was employed as a G-5 domestic worker from February 1990 through June 1992, at which time her sponsoring employer resigned from his post at the IMF, thereby becoming ineligible to employ a G-5 domestic worker, resulting in Assefa’s loss of immigration status. Assefa nonetheless continued to work for this employer until May 1998.
"not only public but also from private interference," noting that "[i]n the case of women, this obligation to protect is particularly pertinent . . . [i]t is incompatible with [the ICCPR], that the right of a woman to move freely . . . be made subject, by law or practice, to the decision of another person."55 The ICCPR also provides that "[e]veryone shall be free to leave any country."56

Employers of migrant domestic workers use myriad techniques to limit workers' freedom of movement and perpetuate their social and cultural isolation. For example, employers confiscate workers' passports; deny workers the right to leave the employers' premises after work hours or completely deny the right to leave unaccompanied; fail to give workers house keys; misrepresent U.S. law, culture, and the "dangers" of U.S. streets; prohibit workers from speaking with anyone outside the employers' immediate families, either in person or by telephone; and deny workers the right to attend religious services. Such rules, warnings, and restrictions might easily be disregarded or dismissed by persons familiar with U.S. laws and culture and without severely restricted employment options. Migrant domestic workers with special visas, however, the vast majority of whom are unaware of their legal rights in the United States, are unlikely to challenge their employers. These techniques, therefore, can successfully confine a domestic worker to her employer's premises, transforming the employer's home at once into a prison and a safe haven from the "terror" of the outside world.

The State Department has directly addressed the problem of employer violation of G-5 and A-3 domestic workers' freedom of movement by requiring, as of February 2000, that the employment contract between such a domestic worker and her employer indicate that "the employee cannot be required to remain on the employer's premises after working hours without additional compensation" and that the employee's passport will not be confiscated.57 No such requirement exists for the potential employer of a B-1 domestic worker, and, as discussed below, no governmental monitoring mechanism exists to ensure that employers, in practice, respect these contract provisions.

Withholding Passports
In nineteen of the forty-three cases examined by Human Rights Watch, domestic workers reported that their employers confiscated their passports. In three more cases, including the case of Jumisula, domestic workers said that their employers took their passports at first but then agreed to return them.

Limiting Workers' Right to Leave Employers' Premises and Speak with Strangers
In most of the employment relationships reviewed by Human Rights Watch, domestic workers were allowed to leave their employers' premises once a week, usually on Sundays, and usually for the entire day. In approximately eleven of the forty-three cases, domestic workers were given more than one day off per week, during which they were also allowed to leave their employers' homes.

Most of the domestic workers provided one or more days of rest during the week also recounted that they were allowed to leave their employers' premises only on those days of rest. Glenda Heredia, a Peruvian domestic worker employed by a Latin American diplomat from May 1996 through August 1999, recounted, "I couldn't leave during the week. I had asked permission. She [the employer's wife] said no. . . . She didn't explain why."58 Paula Jiménez, a Colombian domestic worker employed by a Latin American diplomat from approximately 1995 through the present, also stated, "They tell me that I can go out on Sunday and nothing more. They said I have to work as if I were in Colombia."59 Several domestic workers claimed that their employers justified denying them

56 General Comment 27 to Article 12, U.N. Doc. CCPR/C/21/Rev.1/Add.9, November 2, 1999, para. 6. The U.N. Human Rights Committee was created by the ICCPR to monitor states' party's compliance with the Covenant.
57 ICCPR, Article 12(2). The Migrant Workers Convention, which is not yet in force and to which the United States is not a party, specifically proscribes limitation of this right through passport confiscation. Migrant Workers Convention, Article 21.
58 9 FAM 41.21 N6.2(A)(O), (6) (February 9, 2000).
permission to leave the homes after work hours on the grounds that the employers would be responsible if something had happened to the workers. In fact, however, like other U.S. employers, employers of domestic workers are not liable for misfortune that may befall their employees off work premises during non-work hours.

Domestic workers' freedom of movement was further limited by warnings they allegedly received from their employers regarding the misfortunes that could befall them alone on U.S. streets and the dangers of speaking with or befriending strangers in the United States. For example, two domestic workers told Human Rights Watch that their employers warned them that all Latino and Spanish-speaking people in the United States were "bad." While another worker alleged that her employer cautioned her that "police grab Latinas who walk at night." Whether or not the employers believed such warnings, domestic workers' social and cultural isolation likely inhibited them from objectively evaluating them, and several domestic workers told Human Rights Watch that the warnings made them fearful of venturing out alone in the evenings or even on their days off. Margarita Pérez, an Ecuadorian domestic worker employed from age nineteen by a Latin American diplomat from 1996 through 1999, told Human Rights Watch, "I was afraid because of what she [her employer] had told me... For two and a half years I didn't even go out on Sundays." Even those few domestic workers who were allowed to leave their employers' premises after completing their work said that they were free to do so only with their employers' permission. Thus, even those domestic workers in the most desirable employment relationships suffered some degree of employer control over their movements.

While most domestic workers were provided at least one day off per week, in eleven cases reviewed by Human Rights Watch, domestic workers were not regularly given a day off. In these cases, domestic workers were often allowed to leave their employers' premises only if accompanied by employers or employers' family members, such as children in their care, and only on rare occasions, if at all. Their employers frequently ordered them not to speak to anyone during their rare outings and insisted fear in them, deterring them from disobeying orders to remain on the premises. These eleven workers were also subjected to egregiously abusive wage and hour conditions, further inhibiting them from leaving their employers' premises or quitting their jobs and departing the United States by paying their own airfares and flying home. Two of the workers received a regular monthly salary—they were paid only small amounts randomly during their employment—while the monthly salaries of the other nine ranged from $50 to $300, averaging approximately $173 per month, not including deductions for room and board. The workdays ranged from fourteen to seventeen hours, with an average of fifteen hours. In ten of these eleven cases, employers also confiscated workers' passports, preventing them from voluntarily leaving the United States without intervention from government authorities.

Florence Sadibou, a Senegalese domestic worker employed from November 1994 through October 1995 by an African U.N. official, alleged in a civil complaint that she worked fourteen hours a day seven days a week and that her employer witheld her passport and threatened her with dismissal and deportation if she ever left her home.

Similarly, Rekeya Akhtar, a Bangladeshi domestic worker employed by the family of a Middle Eastern businessman from approximately July 1998 through September 1998, told Human Rights Watch:

85 Rekeya Akhtar was a B-1 domestic worker. Based on her description of the process by which her visa was issued, Human Rights Watch believes that her sponsoring employer was a relative of the family with whom she and the employer reside in the United States. This suspected sponsoring employer returned to her country of origin after approximately two
I couldn't go out for even one second. I wasn't allowed to leave the house [alone] at all. [The family] told me that if I went outside, the police would arrest me because I did not have my papers [with me]. They said that without a green card, the police would arrest me. [They said] America is bad and that it would be bad if I went outside as a single woman, so I never went outside. I was like a bird in a cage.  

Akhtar explained that the reason she did not have her papers was that, upon her arrival in the United States, a member of the family for whom she worked confiscated her passport. Akhtar continued, "Now I know that I can go outside, but at that time I did not."

According to her attorney, Akhtar left her employer's premises only once or twice during her employment to accompany a family member grocery shopping. Akhtar recounted that on those few occasions that she was allowed to leave her employer's premises, the family member "said [I had to] cover my head and hair and not speak to anyone in Hindi... . [She] told me that I was not to talk to anyone in that language."  

Akhtar's attorney recounted that Akhtar was told that if she tried to speak to anyone outside the family, she would be deported. Responding to the civil complaint filed by Akhtar, the family denied the above allegations.

Health and Safety Concerns

Several domestic workers recounted how their days were punctuated with demands and treatment that seriously affected their right to health and put in jeopardy their right to work in a healthy and safe working environment. They described unhealthy sleeping situations, unsafe working conditions, denial of food, and refusal to provide medical care.

Health and Safety in the Workplace

Domestic workers complained of sleeping arrangements ranging from sleeping in their employers' basements in utility rooms next to gas furnaces to sleeping in an unheated basement under construction, to sleeping on the basement floor. In addition to such sleeping situations, domestic workers also described unsafe working conditions that endangered their health. In two cases, domestic workers described cleaning their employers' looens with cleaning products that made them ill due to lack of proper protective measures. For example, Elena Castro, a Peruvian domestic worker for a Latin American World Bank official, stated, "She [my employer] gave me very strong Tliex. Each time I cleaned the bathroom, it was torture—tooie.  

Castro recounted that her employer ordered her to clean with the Tliex and told her she would grow accustomed to it. Castro noted, "She didn't tell me anything about opening windows or not staying in the room."

months, leaving Akhtar in the United States to work until January 1999 for other family members living permanently in the United States and ineligible to employ a B-1 domestic worker legally.  


See also Complaint and Jury Demand, D.N.J. October 1999, para. 16 (on file with Human Rights Watch).


Human Rights Watch interview, Akhtar, Astoria, NY, March 5, 2000. Akhtar learned Hindi while working for a relative of her sponsoring employer in that relative's country of origin.


Human Rights Watch believes to be Akhtar's sponsoring employer, her husband, their daughter, and their son-in-law are defendants in the lawsuit, which, as of January 2001, was still pending. Akhtar has remained illegally in the United States and is working as an undocumented live-in domestic worker.


In a few cases, such as the case of Ahmed, workers were also allegedly denied sufficient nourishment. For example, a court found that V.G., the Sri Lankan domestic worker employed by a Kuwaiti student in 1992, was "denied . . . adequate food, which resulted in serious symptoms of malnourishment, including enlarged abdomen, massive hair loss, and cessation of menstrual cycles."  

**Medical Treatment**

Another consequence of domestic workers' social and cultural isolation, low wages and long hours, lack of or insufficient health insurance, and restricted freedom of movement is their inability to access medical care, even for work-related injuries, without the permission and assistance of their employers. Of the forty-three employment relationships reviewed by Human Rights Watch, employers paid for health insurance or shared at least partial costs of medical treatment in seventeen cases and failed to provide any insurance or cost sharing in eighteen cases. In eight cases, domestic workers were not sure or failed to report whether they had health insurance. In at least three cases, including the case of Ortega, domestic workers told Human Rights Watch that they were explicitly denied permission by their employers to seek medical treatment when they were ill and, instead, were required to continue working.

Julia Chávez, a Bolivian domestic worker employed by an OAS official from July 1997 through October 1998, alleged in a civil complaint that her employer and his wife required her to work when she was sick and, despite her repeated requests for medical treatment, refused to take her to see a doctor, telling her that doctors were expensive and the family could not afford to pay her medical bills. Chávez also alleged in her complaint that after she told her employer and his wife that she was sexually abused and raped by an acquaintance of the family in August 1998, they denied her medical treatment and a forensic exam. Although Chávez allegedly "exhibited . . . signs of physical and emotional trauma" and "repeatedly explained to them that she was very sick and preferred to die," responding to her complaint, Chávez' employer and his wife denied these allegations and asserted "no knowledge" of Chávez' claim that she was raped.

**Wage and Hour Concerns**

The State Department requires the potential employer of any migrant domestic worker with a special visa to contract to pay the worker the state or federal minimum or prevailing wage, whichever is higher. The federal minimum wage is established at a level that the U.S. government believes ensures that "[i]f you get up every day and you go to work . . . [y]ou have food on your table and a living wage in your pocket." The Fair Labor Standards Act, establishing minimum wage protections, also claims to "eliminate conditions "detrimental to the maintenance of the minimum standard of living necessary for . . . [the] general well-being of workers." When a migrant domestic worker with a special visa is grossly underpaid for the many hours she is required to work, not only are her rights under U.S. and international law directly implicated, but her ability to exercise her rights to freedom of movement in the United States and to flee her abusive employment situation is

74 **Aliens**, 54 F.3d at 999.
75 **First Amended Complaint**, (D.D.C. April 2000), paras. 25, 27 (on file with Human Rights Watch). Chávez' case against her employer and his wife was settled. Chávez was a G-5 domestic worker.
77 **First Amended Complaint**, (D.D.C. April 2000), paras. 29-32 (on file with Human Rights Watch). Chávez has filed a civil case against her alleged rapist, which is still pending.
78 9 FAM 41.21 N6.2(A)(1) (February 9, 2000); 9 FAM 41.31, N6.3-2, N6.3-3 (August 30, 1988). U.S. citizens residing abroad and visiting, rather than assigned to, the United States temporarily with their B-1 domestic workers, however, are exempted from the requirement to forge employment contracts. 9 FAM 41.31, N6.3-1 (August 30, 1988).
80 29 U.S.C. •••902(a), (b).
81 The right of everyone "to the enjoyment of just and favourable conditions of work" recognized in the ICESSCR includes the right to a "reasonable limitation of working hours" and "fair wages" that provide for a "decent living." ICESSCR, Articles 7(a), (b), (d).
limited as well. Without money and a reasonable limit to work hours, a migrant domestic worker may be impeded from leaving her employer’s premises, seeking medical treatment, providing temporarily for herself in the United States after she quits her job, or arranging and financing a flight to her country of origin.

Often, however, implicit in the expectation that a domestic worker assume a persona similar to that of the traditional housewife is that she be on-call twenty-four hours a day and receive little remuneration for her devalued “women’s work.” Not surprisingly, the two most common complaints made by domestic workers interviewed by Human Rights Watch were that they worked long hours with little opportunity to rest and received compensation often significantly less than the minimum wage or even the sub-minimum wage salary to which they had agreed.

In the forty-three employment relationships reviewed by Human Rights Watch, both the average and the median workday was fourteen hours, with most workers working at least six days each week and ten working seven. Only three workers reported working ten hours or less per day.

Most domestic workers reported that during their workdays they were responsible for the care of young children throughout the day and that the wives and mothers, who in most cases did not work outside the home, or other live-in relatives closely monitored their activities. According to Akhtar, the Bangladeshi domestic worker employed by the family of a Middle Eastern businessman, “I didn’t even get one hour off . . . I couldn’t sit because people were always watching.”82 Akhtar described how, in addition to her visa sponsor, there were approximately six other adults residing in the home during her employment and monitoring her activities.83

Human Rights Watch reviewed forty cases to determine the median hourly wage received by domestic workers for their labors,84 which with little variation included those duties enumerated by Jamisola. Using the median workday of fourteen hours and the median work week of six days and taking into account allowable standard deductions for room and board calculated based on the median applicable federal hourly minimum wage of $5.15,85 domestic workers’ median hourly wage was $2.14—only forty-two percent of the minimum hourly wage.86

Privacy Invasions
The ICCPR provides that “[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence.”87 The Human Rights Committee has stated that “this right is required to be guaranteed against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons” and that states parties must “adopt legislative and other measures” to give effect to this right, ensuring that interferences only occur “in accordance with the provisions, aims and objectives” of the

84 Three salaries were excluded from calculation because, in each case, it was impossible for Human Rights Watch to calculate, with the information we had, the amount of money earned by the worker as a migrant domestic worker with a special visa.
85 The cases reviewed by Human Rights Watch occurred in Maryland, Massachusetts, New York, New Jersey, Virginia, and Washington, DC. Maryland, New York, New Jersey, and Virginia fix their minimum wage rates to the federal minimum wage. In Massachusetts and Washington, DC, the local minimum wage is higher than the federal minimum wage. As of January 2001, the hourly minimum wage in Washington, DC was $6.15 and in Massachusetts, $6.75.
86 As discussed below, the FLSA allows employers to deduct the reasonable cost of furnishing meals and lodging to live-in domestic workers, and the implementing regulations set forth percentages of the hourly minimum wage that will be accepted by the Department of Labor as reasonable deductions. Human Rights Watch used these percentages to calculate deductions for room and board and assumed employer provision of three meals daily. State laws may set different limits on reasonable deductions for room and board.
87 ICCPR, Article 17(1).
Even in the case of a live-in domestic worker who shares a home with her employer, both parties have a right to have their privacy respected.86

When employers read domestic workers’ mail, listen to their telephone conversations, or search their rooms or purses, these invasions of privacy harass workers, violate their dignity, and reinforce their positions in employers’ homes as inferior, disrespected, and devalued.86 In three cases in our survey, domestic workers recounted that their employers listened in on their telephone conversations. In two cases, workers reported that their employers opened and read their mail. In addition, some employers allegedly subjected domestic workers to invasive searches of their purses and rooms. Elena Castro, a Peruvian domestic worker for a Latin American World Bank official, explained that even having her own bedroom did not protect her against unwanted intrusions, describing how every Sunday—Castro’s only day off during the week—her employer searched her possessions, and, one Sunday, “she found my diary and read everything. She got mad.”

Psychological Abuse

I wasn’t allowed to sit at the same table . . . I wasn’t allowed to wash my clothes with their clothes. They made me different. Sometimes the food I cooked didn’t taste good to them, and they would yell at me. They made me feel like . . . they were my owner.

—Rokeya Akhtar, a Bangladeshi domestic worker employed from approximately July 1998 through September 1998 by the family of a Middle Eastern businessman

According to Ai-jen Poo, Program Director for the Women Workers Project of the Committee Against Anti-Asian Violence, serving live-in migrant domestic workers in the New York City area:

There’s a lot of psychological warfare that goes on in the workplace. It’s a really strange industry because the workers’ . . . jobs are to raise children and care for intimate elements of people’s lives. [There is] an emotional and psychological element to work that does not exist in any other industry, so the abuse [the women workers] face is very different [and] very similar to domestic violence—that power dynamics . . . that . . . kind of control is difficult to write about or document or create laws around, [but it is] such a key element of control and [of] how power operates.

Psychological abuse experienced by domestic workers in the cases reviewed by Human Rights Watch highlighted employers’ superiority and workers’ inferiority. The abuse reinforced employers’ power, control, and domination over the domestic workers, making them less likely to resist or seek redress for the abusive employment conditions described above. Domestic workers described to Human Rights Watch forms of psychological abuse committed by their employers or employers’ spouses, including: requiring them to wash their clothes separately from the employers’ or with dirty rags; denying them proper clothing; insulting them; and controlling their food consumption.

The most common form of psychological abuse described by the workers was verbal abuse, including name-calling, such as “stupid,” “creature,” and “bitch.” Describing her employer’s wife, Daniela Sánchez, a

87 See, ibid.
89 Human Rights Watch interview, Castro, Washington, DC, March 26, 2000. Castro requested that Human Rights Watch not provide the dates of her employment for fear that the dates might enable current World Bank officials to ascertain her identity and put her at risk of retribution.
91 Human Rights Watch interview, Ai-jen Poo, Program Director, Women Workers Project, Committee Against Anti-Asian Violence, New York, NY, March 6, 2000.
Chilean domestic worker employed by an Inter-American Development Bank consultant, stated, "She talks to me . . . as if I were a piece of furniture, not even an animal." 94

Teresa Espinoza, a Peruvian domestic worker, stated that on the evening of February 5, 1999 while working for a European diplomat, the diplomat returned home from work early, took his children upstairs to their room and closed their door, and came back downstairs and began to yell at her, telling her that she was a "simple maid" and "nothing" in his house. 95 Espinoza recounted, "He raised his hand to hit me on the head, but I turned my head, and his hand came down on the table." She described how her employer yelled again, calling her a "poor servant," a "piece of trash" and "from the street." Espinoza said that he then ordered her out of his house and that his wife joined in, encouraging him to grab her arm and throw her and her belongings into the street. Espinoza told Human Rights Watch that she begged her employer not to throw her out because she had nowhere to go on the cold, snowy February night. She explained that her employer retorted that he was a diplomat and could do whatever he wanted with her because the U.S. justice system could not reach him. According to Espinoza, her employer eventually relented and did not throw her out. She remained with him for two more months because, she said, she had nowhere else to go.

According to domestic workers, aside from verbal abuse, one of the most common means by which employers caused them psychological, and in some cases physical, suffering was by controlling and placing limitations on their food consumption. Domestic workers, such as Jamisola, described the various means by which their employers controlled their food intake: measuring their food portions; allowing them to eat only leftovers; and offering them rotten fruit or discarded food. Liliana Martinez, a Peruvian domestic worker employed from November 1999 through February 2000 by a representative of a mission to the OAS, recounted, "I wasn't allowed to eat the things in the refrigerator. When they didn't want something anymore, they gave it to me." 96 Akhtar, the Bangladeshi domestic worker employed by the family of a Middle Eastern businessman, told Human Rights Watch that she was allowed only leftovers for dinner and that, on several occasions, when there were no leftovers, she was told to eat bread and instructed not to prepare any additional food for herself because she had to "clean up." 97

Servitude, Forced Labor, and Trafficking in Persons

Servitude is prohibited under international law by the ICCPR and by other regional and international human rights instruments. 98 Although the prohibition of servitude obligates states to provide effective remedies for any individual held in servitude and to criminalize servitude in domestic law, 99 the term "servitude" is not explicitly defined in international law. The history of the prohibition of servitude under international law, however, suggests that, unlike slavery, servitude is not limited to those practices involving the deprivation of civil and political rights to create a relationship of ownership or de facto ownership. 100 Instead, although no consensus exists, two elements of servitude appear to be commonly identified: a dependent, economically abusive labor relationship; and no reasonable possibility to escape that relationship. 101

96 Human Rights Watch telephone interview, Martinez, April 17, 2000.
98 ICCPR, Article 8(2). The European Convention for the Protection of Human Rights and Fundamental Freedoms and the American Convention on Human Rights also prohibit servitude as does the Migrant Workers Convention. See Appendix III for a more detailed discussion of the international law prohibition of servitude.
99 See ICCPR, Article 2.
In the most egregious cases, a domestic worker's abusive employment conditions may combine to create a situation of servitude. A working paper prepared for the United Nations Working Group on Contemporary Forms of Slavery (Working Group), which has repeatedly examined the abuse of migrant domestic workers, notes:

"Certain techniques of abuse akin to slavery affect migrant workers in particular. These practices include employers confiscating workers' passports and, particularly in the case of domestic workers, keeping them in virtual captivity."  

Abusive labor situations suffered by migrant domestic workers may also constitute forced labor. The ICCPR prohibits forced labor and the definition of forced labor in the ILO Forced Labour Convention, to which the United States is not a party, has been used to interpret the ICCPR prohibition. The ILO Forced Labour Convention defines forced labor as "all work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."  

The two critical terms of the definition of forced labor—"menace of any penalty" and "voluntarily"—are not defined by the ILO Convention. The ILO Committee of Experts, however, has clarified that the "menace of any penalty... need not be in the form of penal sanctions, but might take the form also of a loss of rights or privileges." International fora that have addressed the meaning of "voluntarily" have taken the view that consent to enter an employment relationship is only voluntary if it is "free and informed" and made "with knowledge" of the terms and conditions of the employment being accepted.  

Domestic workers whose labor conditions constitute servitude or forced labor are frequently trafficking victims. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking Protocol), adopted by the U.N. in November 2000, requires states parties to prevent and combat trafficking, defining trafficking as:

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


ICCP, Article 4(I). See Appendix III for a more detailed discussion of the International law prohibition of forced labor.  

The "ILO Declaration on fundamental principles and rights at work" has also included the elimination of forced labor as a "fundamental right," which all ILO Members, including the U.S., have an obligation to promote. International Labour Conference, "ILO Declaration on fundamental principles and rights at work," 86th Session, Geneva, June 18, 1998.  

Convention concerning Forced or Compulsory Labour (ILO No. 29), 59 U.N.T.S. 55, June 28, 1930, Article 2(1). Both the ICCPR and ILO Forced Labour Convention contain exceptions to the prohibition of forced or compulsory labor, none of which is applicable to the labor situations of live-in migrant domestic workers.  


The issue has been addressed by the European Court of Human Rights, the Draft Trafficking Protocol of April 2000, the ILO Committee of Experts, and ILO responses to representations made pursuant to Article 24 of the ILO Constitution, which allows associations of employers or workers to make representations to the ILO Governing Body alleging that a Member has failed to observe any Convention to which it is a party.
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 abuse. Abuse shall include, at a minimum, the abuse of the prostitution of others or other forms of sexual abuse, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.²⁹

In some of the most egregious cases reviewed by Human Rights Watch, including the case of Ahmed, workers believed, given the totality of their circumstances, that they had no choice but to remain in their abusive employment relationships or, at the very least, that they would suffer serious harm—the "menace of any penalty"—if they ceased performing labor. In some cases, the climate of fear that compelled workers to remain in abusive relationships and continue laboring was created primarily through threats of arrest or physical harm to workers or others. In other cases, employers used restrictions on workers' right to freedom of movement and long hours of labor for little pay, combined with psychological and/or physical abuse, control, and domination, to exacerbate workers' social and cultural isolation and sense of helplessness and disempowerment to such an extent that the workers feared serious harm if they were to quit their jobs. As explained by Xiomara Salgado of Montgomery County, Maryland, Victim Assistance and Sexual Assault Program, in such cases:

[domestic workers] start feeling overwhelmed by their fears... They feel trapped, but ambivalent about leaving, talking and seeking help. After realizing betrayed by their employers... it is hard for them to trust strangers. The social isolation they have been subjected to has made them even more distrustful and vulnerable. Their self-esteem suffers considerable damage after prolonged periods of maltreatment, abuse, and humiliation. They feel inadequate, powerless, and worthless.³⁰

In these cases, employers created a climate of fear to hold workers in conditions of servitude and/or compel them to perform forced labor. These workers did not "voluntarily" consent to the abusive conditions of their employment. They became trafficking victims through employer use of deception—including fraudulent misrepresentation of the terms and conditions of their employment—to recruit and transport them to the United States to labor in conditions amounting to servitude or forced labor.

*Kaka Kuwa:* Kaka Kuwa, a Sudanese domestic worker employed from March 1997 through December 1997 by an African World Bank official, described her employment as "virtual bondage."³¹ She alleged in an affidavit that she worked fourteen hour days, Monday through Friday, six hour days on weekends, made $200 per month, not including room and board, and claimed that her employer took her passport upon her arrival in the United States and "did not allow me to leave the house."³² She asserted that she was unable to leave her employment because her employer "threatened me by saying that they [the employer’s family] would send me back to Sudan and have me arrested for the money owed to them [for my airline ticket to the U.S. and for incidenceals they say I accrued while working for them.]"³³ For Kuwa, the possibility of deportation was particularly terrifying, not solely because of the economic hardship she would face, but because she feared being tortured and persecuted upon her return because of the humanitarian work she had performed for the Nuba people of Sudan before she left.

³⁰ Xiomara Salgado, psychotherapist, Montgomery County, Maryland, Victim Assistance and Sexual Assault Program, presenting at the Campaign for Migrant Domestic Workers’ Rights Public Briefing, Washington, DC, February 15, 2000.
³¹ Affidavit, Washington, DC, January 22, 1999, paras. 4, 5 (on file with Human Rights Watch). Kuwa was a G-5 domestic worker. The affidavit was sworn in conjunction with Kuwa’s asylum application, which was granted.
³² Id. para. 6.
the country.\textsuperscript{114} According to Kuwa, despite this fear, she did not pursue an asylum claim while employed as a domestic worker because she "was unable to learn about, much less pursue" such a claim.\textsuperscript{115}

\textbf{V.G.:} The U.S. First Circuit Court of Appeals found that V.G., the Sri Lankan domestic worker employed from August 1992 through December 1992 by a Kuwaiti Boston University student, "reasonably believed that she had no choice except to remain in the service of the Alzankis [her employer and his wife]" and upheld her employer's involuntary servitude conviction.\textsuperscript{116} The court found that V.G.'s passport was immediately confiscated upon her arrival in the United States and that her employer "told her that she was not to leave the apartment alone. She was not permitted to use the telephone or the mails, speak with anyone other than the Alzanki, nor even to venture onto the balcony or look out the apartment windows. Appellant told [V.G.] that the American police, as well as the neighbors, would shoot undocumented aliens who ventured out alone.\textsuperscript{117} During her employment, V.G.'s employer required her to work fifteen hour days seven days a week for $120 per month, not including room and board, denied her medical treatment and adequate food, assaulted her on two occasions, and "threwed (her) on almost a daily basis with deportation, death or serious harm should she disobey the Alzankis' orders.\textsuperscript{118} V.G.'s employer threatened her with deportation to Kuwait if she left their employ, and V.G. was "well aware of the severely restrictive conditions encountered by household servants in Kuwait," where "soldiers manned checkpoints to enforce restrictions on noncitizen movement, especially household servants" and where, according to V.G.'s testimony at trial, "police catch domestic workers who venture out alone on the streets, hit them, and put them in jail."\textsuperscript{119} V.G. was finally able to escape her situation with the help of nurses who came to the Alzanki's home to care for their ill son.\textsuperscript{120}

\textbf{V. U.S. GOVERNMENT PROCEDURES, GUIDELINES, LAWS, AND REGULATIONS GOVERNING SPECIAL DOMESTIC WORKER VISAS}

The State Department and the INS have established procedures and policies governing special visas for domestic workers. State Department policies include pre-conditions for visa issuance, visa registration, and steps that a worker must follow if she wishes to change employers in the United States. INS policies include procedures to be followed if a worker wishes to extend her stay with her current employer and if she leaves her employer, thereby losing legal immigration status. The Department of Labor, for its part, does not review applications for special migrant domestic worker visas, as it does many other migrant worker visa applications, and performs no follow-up monitoring or investigations to verify employer compliance with employment contract terms and conditions. The Department of Labor's only contact with migrant domestic workers with special visas is through the rare worker complaint filed with the Department of Labor Wage and Hour Division. The INS and State Department policies and procedures, along with applicable laws and regulations, combined with the Department of Labor's lack of involvement in the administration of these visas, create an employment-based visa structure that contributes to domestic workers' susceptibility to abuse—a sensitive issue for U.S. government officials, most of whom agreed to speak with Human Rights Watch only on the condition of complete anonymity, refusing even to let us identify their offices or positions.\textsuperscript{21}

\textsuperscript{114} Ibid., paras. 2, 9, 10. In her affidavit, she also alleged that her sister was arrested by the Security Forces in Sudan and tortured because she refused to give details about Kuwa's whereabouts. Similarly, she alleged that the Security Forces also arrested her best friend, telling her that she was arrested in an investigation of Kuwa. Ibid., paras. 9, 10.

\textsuperscript{115} Ibid., para. 5.

\textsuperscript{116} Alzanki, 54 F.3d at 1002.

\textsuperscript{117} Ibid., p. 995. If V.G. had wandered outside, she would not have been able to prove that she was documented because her employer confiscated her passport immediately upon her arrival at his apartment.

\textsuperscript{118} Ibid.

\textsuperscript{119} Ibid., pp. 1004 n. 9, 1105, 1106 n. 10.


\textsuperscript{121} In these cases, the officials are identified by their departments, agencies, or international organizations only and are distinguished by letters.
Visa Registration

A-3 and G-5 visas are registered with the State Department Office of Protocol, which keeps records of the number of these visa holders in the United States at any one time. In contrast, B-1 domestic worker visas—like all other nonimmigrant visas for employment—are not registered with the State Department. Instead, applicants for most other nonimmigrant work visas must submit documents containing personal data and basic employment and contact information to the INS prior to visa issuance, the INS plays no role in the B-1 visa issuance process and lacks this information on B-1 domestic workers. As a result, the only governmental record of a B-1 domestic worker’s presence in the United States is her I-94 entry form, registered with the INS at the border and entered into an INS database, which an INS official admitted is “not all that foolproof.” No registry exists of B-1 domestic workers, however, and the U.S. government does not know how many B-1 domestic worker visas are issued annually. Commenting on the B-1 domestic worker, one INS official asked rhetorically, “How is anyone in the U.S. going to know that this person is here because they’re employed with a particular employer? Where is it in any system anywhere?”

Visa Issuance and Employment Contracts

In contrast to other employment-based temporary visa programs, mandatory employment conditions for migrant domestic workers with special visas are not set forth in U.S. law or regulations. Instead, they are established as employment contract requirements in the State Department Foreign Affairs Manual (FAM)—the internal code of policies for the State Department and Foreign Service. For A-3 and G-5 domestic workers, additional suggested contract provisions are set forth in State Department circular diplomatic notes, but, as recommended rather than mandatory provisions, they do not preempt the FAM. An employment contract containing the FAM requirements must be submitted as part of a domestic worker’s visa application to a consular office abroad, yet the State Department asserts that it is “not in a position to enforce” the contracts once the parties are in the United States and, therefore, does not maintain copies of the contracts on file.

At a “few” consular posts “with the highest volume,” the State Department has begun to distribute information brochures for A-3 and G-5 workers, explaining the required contract provisions and providing the telephone number of the


INS, “Petition for a Nonimmigrant Worker,” Form I-129; Human Rights Watch telephone interview, INS Official B, April 27, 2000. For example, employers petitioning to employ an H, L, O, P, or Q nonimmigrant worker must file an I-129 petition, setting forth a job description and weekly or annual wages, with the INS to be adjudicated prior to visa issuance.


Human Rights Watch telephone conversation, United States Department of State Visa Services Office employee, November 17, 1999.


For example, immigration law and Department of Labor regulations establish mandatory employment conditions for H-2A temporary agricultural workers and H-1B temporary speciality—often high-technology—workers. See INA ****

212(c)(2)(A)(i)(II), 212(c)(2)(C)(viii); 20 C.F.R. s 601.5 (a).

9 FAM 41.31, N6.3 (August 20, 1988); 9 FAM 41.21, N 6.2 (February 9, 2000). If the potential employer of a B-1 worker is a U.S. citizen visiting rather than assigned to the United States, however, no employment contract is required. 9 FAM 41.31, N6.3-1. Also, for B-1 visas for domestic workers, the INS Operating Instructions contain virtually identical requirements. INS OI 214.2(g). See Appendix I for the required contract provisions set out in the FAM.

Human Rights Watch telephone interview, State Department Official A, June 13, 2000. See Circular diplomatic note from the U.S. Mission to the U.N. to Permanent Missions and Permanent Observer Offices to the U.N., February 18, 2000; Circular diplomatic note from the Secretary of State to Their Excellencies and Messieurs and Madame the Chiefs of Mission, June 19, 2000, pp. 2-3; Circular diplomatic note from the Secretary of State to the Asian Development Bank, October 19, 2000, pp. 3-3. The note to the Asian Development Bank is one of approximately forty identical notes that were sent by the State Department to international organizations with offices in the United States. Human Rights Watch telephone interview, State Department Official A, June 13, 2000. See Appendix I for the circular diplomatic note provisions.

9 FAM 41.31, N6.3-2, N6.3-3 (August 30, 1988); 9 FAM 41.21, N 6.2 (February 9, 2000).

9 FAM 41.21, N 6.2(c) (February 9, 2000); Human Rights Watch telephone interview, State Department Official C, March 13, 2000.
Worker Exploitation Task Force Complaint Line for workers to call if they "believe that these rights are not being observed." No such brochures are provided to B-1 visa recipients.

Failure to codify FAM contract requirements in law or regulation as mandatory employment conditions means that, though a prospective employer must agree to the requirements when applying to employ a migrant domestic worker, no governmental department or agency is responsible for enforcing them during the employment relationship itself. The failure also means that, unlike many other nonimmigrant workers, a domestic worker with a special visa has no right to file a civil complaint against her employer based solely on violation of these governmental requirements. Instead, any civil complaint must be based on violation of other U.S. law provisions, such as failure to pay the minimum wage or breach of the employment contract. As neither the State Department nor any other governmental department or agency keeps records of the contracts and domestic workers frequently do not receive copies of their contracts, often no written record of the contracts exists, making breach of contract actions difficult.

Such weaknesses in the State Department-mandated contract regime, combined with workers' reluctance to pursue legal redress for breach of contract, discussed below, has contributed to the failure of many employers to take contract requirements seriously. The vast majority of domestic workers whose cases Human Rights Watch reviewed had either written or verbal employment contracts.

In twenty-seven of the thirty-three cases in which domestic workers, court opinions, affidavits, or civil complaints described terms and conditions of employment contracts, domestic workers claimed that one or more contract terms were breached.

Seven domestic workers explained to Human Rights Watch that their employers explicitly told them that their employment contracts were signed to satisfy U.S. consular offices' requirements, were not binding, and were not intended to govern their employment relationships in the United States. Five recalled being so informed while still in their countries of origin and two after arriving in the United States. Castro, a Peruvian domestic worker employed by a Latin American World Bank official, recounted that her employer told her that she had to sign the contract, even though the employer could not afford to pay the salary listed therein, because "that is what the government requires... These contracts are formalities that the United States asks for."

Natalia Vásquez, a Peruvian domestic worker employed from 1998 through the present by a Latin American diplomat, said that she signed a contract stating that she would earn $1,000 per month, but when she arrived in the United States, her employer erased the $1,000 and wrote in $500, saying to her that "the contract was so they [the U.S. consular office] would give [her] the visa. With $500, no visa." Similarly, Martínez, a Peruvian domestic worker employed from November 1999 through February 2000 by a representative of a mission to the OAS, recalled that when she arrived in the United States, the employer's wife said to her that the

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122 Human Rights Watch interview, State Department Official A, Washington, DC, March 1, 2000, "A Message from the Government of the United States of America to recipients of A3 and G5 visas," (no date). The brochures also advise workers to retain copies of their contracts and state that U.S. laws may provide workers with additional rights not set forth in the contracts. The brochures are available in English, French, Spanish, and Tagalog—one of the major languages spoken in the Philippines.

123 In contrast, in the case of H-2A and H-1B workers, immigration laws require the Department of Labor to investigate complaints alleging employer non-compliance with conditions agreed upon in visa applications. See INA § 212(n)(2)(A), 212(n)(2)(G)(i); 20 C.F.R. § 901.5 (a), 501.16(a).

124 In particular, without a copy of the contract, it would be especially difficult to prove that an employer included any of the recommended circular note provisions, as opposed to the mandatory FAM provisions.

125 In the thirty-eight employment relationships examined involving A-3s or G-5s, all but one worker reported signing a written employment contract. Of the five B-1 employment relationships reviewed, written contracts allegedly existed in two of the relationships, might have been signed in two, and allegedly did not exist in one.

126 Several domestic workers also stated that their employers made them sign but did not allow them to read their employment contracts.


contract for $300 per month was "only for the eyes of the gringos" and that she was going to pay her $300 instead because "in Peru that is a lot of money." 128

Most domestic workers with whom we spoke, however, like Jamisola, believed that their written or verbal employment contracts were binding but described how their employers breached the contracts once in the United States. Workers like Jamisola also described the difficulty of negotiating improved labor conditions, once in the United States, back to the level of those promised in their contracts, recounting that employers responded to such complaints and requests by threatening dismissal and deportation.

Visa Extensions and Employment of Multiple Domestic Workers

Application for an extension of a special visa provides the U.S. government with an opportunity to review an employer's treatment of a domestic worker, yet the U.S. government grants extensions with no examination of past employer conduct. 129 Similarly, none of the State Department's Foreign Affairs Manual requirements for issuance of special domestic worker visas precludes an employer who breaches the terms of the mandatory employment contract from therefor employing a series of migrant domestic workers. The State Department does not verify that an employer seeking to replace or hire an additional domestic worker has complied with the contract during employment of the original worker. Even if it comes to the State Department's attention that the employer has breached the contract, the State Department is not required to deny visa issuance for a new domestic worker. The State Department's recently issued circular diplomatic notes provide only that, "[i]f an employer seeks to replace an employee or add to his or her existing domestic staff, the . . . visa may be denied if there is reason to believe that the employer failed to fulfill his or her obligations to a former or current employee."

Employers may, therefore, hire a series of domestic workers, replacing each one after she leaves abusive labor conditions. Several domestic workers described such situations. Espinoza, a Peruvian domestic worker, claimed that while employed for a European diplomat in August 1998, one of the employer's daughters said that her parents had employed six domestic workers in one year and that the last one was a Filipina who escaped while the family was on vacation. 130 Gema Villanueva, an El Salvadoran domestic worker employed from August 1998 through the present by an administrative assistant for a Latin American military attaché, recounted that her employer told her that she had employed three A-3 domestic workers before her and that "she thought that they would not give me a visa because she thought she had broken the record for the number of A-3 domestic workers employed by one person." 131 According to a neighbor, the employer of Chávez, the Bolivian domestic worker employed by an OAS official, hired a new domestic worker three weeks after Chávez left his employ. 132 Chávez had filed a civil suit against her former employer alleging failure to pay minimum wage, denial of access to medical care, verbal harassment, false imprisonment, involuntary servitude, and rape by a friend of the employer.

In contrast, while the employer of a domestic worker with a special visa may hire another domestic worker after violating the original written employment contract, abusive employers of other employment-based visa holders are often not so lucky. The employer of an H-2A agricultural worker who "substantially violate[s]" mandatory terms and conditions of employment and the employer of an H-1B specialty worker who "willfully"

130 Circular diplomatic note from the U.S. Mission to the U.N. . . . , February 18, 2000, p. 3 (emphasis added); Circular diplomatic note from Secretary of State . . . , June 19, 2000, p. 3-4 (emphasis added); Circular diplomatic note from the Secretary of State . . . , October 19, 2000, p. 4 (emphasis added).
134 First Amended Complaint, (D.D.C. April 2000) (on file with Human Rights Watch). Chávez' employer denied the allegations, and the case was settled.
Visa Transfer and Change of Status

The most effective recourse for migrant domestic workers in abusive employment relationships is to change employers. If the domestic worker is unable legally to change employers or if she is able to do so only in rare circumstances and with great difficulty, this critical "self-help mechanism" is effectively absent. Nonetheless, for most migrant domestic workers, the ability to change employers legally is extremely restricted or nonexistent.

If a G-5 or A-3 domestic worker leaves her job and wishes to transfer to a new qualified employer in the United States, she must do so prior to expiration of the time period for which she was initially admitted to the United States and within "generally thirty days" after leaving her original employer. This thirty-day "grace period" is not official State Department policy, however, but a "matter of practice—custom." As unofficial State Department practice, information regarding the "grace period" is not provided to G-5 or A-3 visa recipients or their employers. The World Bank and IMF even require that employment contracts between their employees and G-5 domestic workers state that "if the domestic employee's employment by the staff member is terminated for any reason, the domestic employee will not be legally permitted to remain in the United States and will be required to leave the country promptly." Similarly, the U.N. has issued an administrative instruction to its employees stating that a G-5 visa is cancelled upon a worker's "separation from service" and "upon cancellation of the G-5 visa, the staff member must make arrangements for the repatriation of the household employee and provide to the United Nations Visa Committee proof of repatriation." Furthermore, the INS does not share this thirty-day "grace period" policy, and if a migrant domestic worker comes to the attention of the INS during this period, the INS has the discretion to initiate removal proceedings. For B-1 workers, even this unofficial "grace period" is nonexistent, and it is difficult if not impossible for a B-1 domestic worker legally to change employers in the United States.

20 C.F.R. § 655.110(a); 655.900(b)(2); 8 U.S.C. §1182(a)(2)(C)ii).

In the case of an H-2A worker, if "multiple or repeated substantial violations are involved, the employer will be denied labor certification for H-2A workers for up to three years. 20 C.F.R. § 655.110(a). In the case of H-1B workers, if employer violations have resulted in the displacement of a U.S. worker, the employer also may not employ an H-1B worker for at least three years. 8 U.S.C. §1182(a)(2)(C)(iii).

For the purposes of this report, "qualified employer" refers to an employer meeting the Immigration and Nationality Act requirements for employing a migrant domestic worker with a special visa, such as being a diplomat, an ambassador, a consular official, or an international organization official. A worker can change employers by transferring sponsorship of her visa, in which case the new employer reregisters her visa with the State Department, or by changing status from A-3 to G-5 or G-5 to A-3, in which case the new employer applies for a new visa for the worker. Human Rights Watch telephone interview, State Department Official B, March 17, 2000.

Ibid. The time period for which the worker is admitted is set forth on her I-94 form—the arrival-departure record. See 22 C.F.R. § 41.112(d)(2)(i).

Human Rights Watch telephone interview, State Department Official B, March 17, 2000. Under current immigration law, the State Department could allow up to six months for such a transfer or change of status, after which time the out-of-status domestic worker would be inadmissible in the United States for three years. See INA §212(a)(9)(B)(i).


"Administrative instruction: Visa status of non-United States staff members serving in the United States, members of their household and their household employees, and staff members seeking or holding permanent resident status in the United States," ST/ZA/2000/19, December 18, 2000, para. 8.1, 8.3.


Human Rights Watch telephone interview, INS Official C, April 27, 2000. Unlike an A-3 or G-5 worker's visa, a B-1 domestic worker's visa cannot be transferred simply by re-registering the visa with the State Department because B-1 visas are not registered with the State Department. Instead, if a B-1 domestic worker wishes to change employers, she must apply to the INS to do so prior to leaving her original employer. Human Rights Watch telephone interview, INS Official F, March 12, 2001.
VI. U.S. LAWS AND THEIR ENFORCEMENT: DOMESTIC WORKERS FALLING OUTSIDE GOVERNMENT SCRUTINY AND PROTECTIONS IN VIOLATION OF INTERNATIONAL LAW

The ICCPR states that the rights recognized therein inhere to "all individuals within the [state party's] territory and subject to its jurisdiction," including migrant domestic workers. The ICCPR requires states parties to "ensure" these rights, "adopt such legislative or other measures as may be necessary" to give effect to them, and "ensure . . . an effective remedy" when they are violated.

Under international law, migrant domestic workers have a right not to be held in servitude; not to be forced to perform forced labor; not to be trafficked; to freedom of movement; to freedom of association, including the right to form and join trade unions; to protection from sex discrimination, including sexual harassment; to privacy; to health and a healthy and safe workplace; and to a just remuneration. They also are entitled to equal protection of the laws safeguarding these rights, without discrimination—direct or indirect—based on sex.

The United States has failed to protect these human rights of migrant domestic workers and to ensure that workers have an "effective remedy" if their rights are violated. Despite a plethora of U.S. labor, health and safety, sexual harassment, and employment legislation, under U.S. law, live-in domestic work is often unregulated—excluded, de facto or de jure, from this legal safety net. Although U.S. law, regulations, and governmental policies contain limited provisions that, in theory, could protect the human rights of migrant domestic workers, they are largely unenforced by governmental enforcement mechanisms designed and structured to protect workers outside the home in the "public" rather than "private" sphere. The result is that the primary means by which migrant domestic workers can vindicate their rights is through worker-initiated lawsuits, yet there are numerous obstacles that preclude or inhibit them from successfully pursuing such cases.

Criminal Laws

Servitude, Forced Labor, and Trafficking in Persons

U.S. involuntary servitude, forced labor, and trafficking laws can provide relief only for those domestic workers laboring in the most abusive labor conditions and only when those workers report their treatment to government authorities.

The Thirteenth Amendment of the U.S. Constitution as well as statutory law prohibit slavery and "involuntary servitude" but fail to define the terms. Until recently, a restrictive definition of involuntary servitude was applied by U.S. courts, limiting involuntary servitude to cases in which a worker was held in service against her will through the use or threat of physical restraint, physical force or harm, or legal coercion. With the passage of the Victims of Trafficking and Violence Protection Act of 2000, which includes the Trafficking Victims Protection Act of 2000 (TVPA), U.S. law recognizes that individuals can also be held in servitude through "psychological abuse," "coercion," and other "nonviolent coercion." The TVPA does not explicitly amend U.S. servitude law, however, and no consensus yet exists regarding the precise meaning of the term under U.S. law.

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Rather than amending U.S. servitude law, the Trafficking Act, for the first time under U.S. law, criminalizes forced labor. The Trafficking Act defines forced labor as obtaining labor or services through the implicit or explicit threat of "serious harm to, or physical restraint against, that person or another person" or by "abuse or threatened abuse of law or the legal process." The legislative history of the Trafficking Act indicates that by recognizing the threat of "serious harm" as a means of obtaining forced labor, U.S. law covers those workers in the most abusive labor conditions that rise to the level of servitude or, at the very least, forced labor under international law.

The Trafficking Act, also for the first time in U.S. law, criminalizes trafficking of persons, including domestic workers into forced labor and involuntary servitude, and provides protections, benefits, and services for trafficking victims. The Trafficking Act adopts a definition of trafficking similar to that recently set forth in the U.N. Trafficking Protocol, defining as a perpetrator of trafficking anyone who "knowingly recruits, harbors, transports, provides, or obtains by any means any person for labor or services in violation of this chapter," which prohibits "peonage, slavery, involuntary servitude, or forced labor." The National Worker Exploitation Task Force (Task Force) was formed by Attorney General Janet Reno in April 1998 to "combat the serious problem of modern-day slavery and worker abuse in the United States" and coordinate efforts among federal agencies to investigate, prosecute, and combat "these so-called cases of indentured servitude." The Task Force targets a very narrow set of cases, "primarily criminal cases related to slavery situations, the most egregious types of situations."

The Task Force has also established the Worker Exploitation Task Force Complaint Line (Complaint Line) to receive calls from workers and concerned individuals. The Complaint Line is only available from 9:00 AM-5:00 PM Monday through Friday, though migrant domestic workers in abusive labor relationships often do not have access to private telephones during these hours and, instead, are only free to make such calls on Sundays, their day off. Even during business hours, a recorded message often answers, and workers desiring assistance must either leave a message or call back. In addition, according to Aiko Joshi, the only person staffing the Complaint Line, only if a caller alleges an egregious situation such as physical abuse, trafficking, or employer threats preventing a worker from leaving the premises, does Joshi refer the case to the Department of Justice (DOJ) Civil Rights Division for further review.

If a caller solely alleges "wage and hour" violations, Joshi told Human Rights Watch, the situation is not "abusive . . . enough to warrant civil rights attention" and not

162 Public Law 106-386, Sec. 112(a)(2).
164 Public Law 106-386, Sec. 112(a)(2).
165 Ibid., Sec. 112(a)(2). This definition differs slightly from that set forth in the non-criminal "Definitions" section, but the practical implications of the discrepancy are negligible. Ibid., Sect. 103(3)(B), 112(a)(2).
166 Press Release, "16 Indicted for Recruiting Mexican Women into the United States and Forcing Them into Prostitution: Attorney General Announces Worker Abuse Task Force," April 23, 1998; "Worker Abuse Task Force Fact Sheet," May 1998. Human Rights Watch telephone interview, Department of Labor Representative on the Worker Abuse Task Force, May 2, 2000. The Task Force is comprised of representatives from the Civil Rights Division of the Department of Justice, the Department of Labor, the Department of State, the FBI, the INS, and U.S. Attorney's offices, is co-chaired by the Assistant Attorney General for Civil Rights and the Solicitor of the Department of Labor, and reports to the Attorney General and the Secretary of Labor, "Worker Abuse Task Force Fact Sheet," May 1998.
169 E-mail from Joy Zaremka, Director, Campaign for Migrant Domestic Workers' Rights, to Human Rights Watch, July 20, 2000. For example, Human Rights Watch received a five rather than recorded answer at the Complaint Line only after calling five times on August 28, 2000.
170 Human Rights Watch telephone interview, Joshi, August 28, 2000. The DOJ Civil Rights Division then determines which other Task Force agencies or departments, such as the INS, the Department of Labor Wage and Hour Division, or the FBI, should be involved.

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a case for the Task Force. Not only is the case not referred to the Task Force for further investigation but, according to Joshi, it is also not referred to the Department of Labor Wage and Hour Division.

Labor and Employment Laws

The National Labor Relations Act

Domestic workers are explicitly excluded from coverage under the National Labor Relations Act (NLRA), which protects the right of workers to organize, strike, and bargain collectively. Because domestic workers are exempted from these protections, any labor organizing effort, whether to form a union or an alternative labor organization, could be legally thwarted by dismissal of or retaliation against workers participating in the organizing drive. If a union of live-in domestic workers were eventually formed, the domestic workers' employers would have no legal obligation under federal law to recognize the union or bargain collectively with its representatives.

The ICCPR provides, however, that "[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests." The "ILO Declaration on fundamental principles and rights at work" has listed freedom of association and the right to bargain collectively as "fundamental rights," which all ILO Members have an obligation to respect and promote. The ILO Committee of Experts has explicitly expressed concern over limitations on domestic workers' right to organize.

The right to organize, bargain collectively, and strike may, at first glance, seem relatively meaningless for live-in domestic workers, given the numerous obstacles to organizing in the sector—no central employment location or common employer, restricted freedom of movement, and limited ability to associate and communicate with others. Despite these obstacles, live-in domestic workers in a number of countries, including France, Greece, Italy, Spain, the United Kingdom, Argentina, Bolivia, Brazil, Colombia, and Paraguay have successfully unionized.

Though Human Rights Watch was unable to find examples of live-in domestic workers' unions in the United States, live-in migrant domestic workers in the United States, even when special visas, have begun to organize through community-based and direct service organizations, such as: CASA of Maryland, serving Latin American migrant workers in the greater Washington, DC area; the Committee Against Anti-Asian Violence/Women Workers Project in New York City; and Andolan, serving the South Asian community in greater New York City. As live-in domestic workers are not covered by the NLRA, any worker involved in these groups could be legally dismissed by her employer for participating in these organizational efforts.

Title VII and Sexual Harassment

Title VII, which prohibits employment discrimination, has been interpreted by U.S. courts and by the Equal Employment Opportunity Commission as prohibiting sexual harassment in the workplace, defined to include: "[a]ny unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature," that has the "purpose or effect of unreasonably interfering with an individual's work performance...

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278 NLRA, Sec. 2(3). Section 2(3) states that the term "employee" will not include "any individual employed . . . in the domestic service of any family or person at his home," thereby excluding live-in domestic workers from coverage.

279 ICCPR, Article 22. The Migrant Workers Convention also recognizes the right of migrant workers "[t]o take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests." Migrant Workers Convention, Article 28(1)(b).


or creating an intimidating, hostile, or offensive working environment." 177 The U.S. Supreme Court has termed a "right to work in an environment free from discriminatory intimidation, ridicule, and insult" created by sexual harassment is denied to migrant domestic workers because Title VII only applies to employers with fifteen or more employees. 174 Rarely, if ever, does an employer of a live-in domestic worker have fifteen household employees.

The Occupational Safety and Health Act

The Occupational Safety and Health Act (OSHA) was promulgated to "assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources." 178 Although live-in domestic workers are not explicitly excluded from the OSHA, the regulations promulgated by the Department of Labor for OSHA enforcement exclude live-in domestic workers. 180

The Fair Labor Standards Act

Live-in domestic workers are covered by the Fair Labor Standards Act (FLSA) minimum wage and employment record-keeping requirements, 182 but they are excluded from the FLSA's over-time provisions, which require compensation of at least one and one-half times the regular rate for every hour worked over forty hours a week. 183 Under the FLSA, an employee or the Wage and Hour Division of the Department of Labor may bring a civil action against a domestic worker's employer to recover unpaid wages plus damages. 183 An employer who "willfully violates" the minimum wage requirements of the FLSA may also be subject to criminal penalties of a fine of not more than $10,000 and a term of imprisonment of up to six months. 184 In practice, these relatively low maximum criminal penalties deter prosecutors from bringing cases under the FLSA alone, and such cases are usually only brought in conjunction with other criminal allegations carrying more severe penalties.

In most cases, under the FLSA, employers may deduct from workers' minimum wages the "reasonable cost" of furnishing room and board, 185 as defined by Department of Labor regulations. 186 Although the State Department Foreign Affairs Manual requires employers of B-1 domestic workers to contract to provide the workers "free room and board," 187 because this provision is not codified in U.S. law or regulations, it cannot be enforced by the Wage and Hour Division or any other governmental agency. In the case of A-3 and G-5 workers, the FAM explicitly allows for "reasonable deductions" for room and board. 188

178 Id.
179 29 U.S.C. \*1551(b).
180 29 C.F.R. \*1756.6.
181 Records must be kept of the worker's name, home address, sex, occupation, and hours worked and wages paid, including deductions for room and board, throughout employment and must be preserved for three years. 29 C.F.R. \*1562.6, 1565.5, 1566.27.
182 29 U.S.C. \*1606(f); 207(l); 29 U.S.C. \*213(b)(21). Some local laws, however, including those of New York and Maryland, provide ever greater protections for live-in domestic workers.
183 29 U.S.C. \*1916(b), (c).
184 See 29 U.S.C. \*1906(f), 207(l), 216(a).
185 These deductions may be taken if the facilities are "customarily furnished" by the employer and, in the case of lodging, if a worker's acceptance of the facilities is "voluntary and uncoerced." See 29 U.S.C. \*203(m); 29 C.F.R. \*552.100(h); United States Department of Labor Wage and Hour Division, Field Operations Handbook, Sec. 30.09(b) (December 9, 1988). In 1981, a DC Circuit Court of Appeals found in the case of a live-in migrant domestic worker that "[p]roper living-in was a lawful condition of employment and an integral part of the job, it must be found that [her] initial acceptance of board and lodging was 'voluntary and uncoerced.' Camacho Lopez v. Rodriguez, 668 F.2d 1367, 1380 (DC Cir. 1983).
186 Department of Labor regulations provide employers wishing to deduct the "reasonable cost," defined as not including a profit of room and board with two options—deduction of the "fair value" of room and board if employers keep and maintain records justifying the deductions or deductions according to formulas in the regulations. 29 C.F.R. \*552.100(c); 29 C.F.R. \*552.100(e), (d). The formulas allow employers to credit daily up to 37.5 percent of minimum hourly wage for breakfast, 50 percent for lunch, and 62.5 percent for dinner and to deduct weekly 7.5 times minimum hourly wage for lodging. 29 C.F.R. \*552.100(e), (d).
187 9 FAM 41.21 N6.2-2(2) (August 30, 1988).
188 9 FAM 41.21 N6.2(A)(1) (February 9, 2000).
The Wage and Hour Division of the Department of Labor

The Department of Labor Wage and Hour Division is responsible for enforcing the Fair Labor Standards Act. Michael Ginley, Director of the Enforcement Office of the Wage and Hour Division, told Human Rights Watch that although the Wage and Hour Division was "historically an investigative agency," monitoring compliance with the FLSA, because of loss of staff and resources and increase in responsibility over the past decade, it can no longer be primarily an investigative/monitoring agency. Instead, the division has had to prioritize the workers on whom it will focus and, in doing so, has chosen low-wage workers and developed National Low-Wage Worker Initiatives (Initiatives).

The Initiatives adopt a targeted enforcement policy through education, outreach, investigations, and litigation, focusing on "areas where violations are more often egregious and complaints less common" (ibid) offer a source of employment for vulnerable workers including many immigrants—both legal and undocumented—who are commonly exploited but unlikely to complain. According to Ginley, the Wage and Hour Division is trying to protect these low-wage workers by "task[ing] the national initiative approach to get an investigation without a complaint [and] to increase compliance of employers." The Initiatives have targeted various industries: agriculture, garment, security guard, janitorial services, restaurant, hotel, day-haul, and health care. Ginley told Human Rights Watch that he is unaware of any initiative for live-in domestic workers at any level of the Wage and Hour Division and that he is also unaware of any state wage and hour divisions that have adopted such an initiative. Ginley noted that it is "unlikely" that there will be a live-in domestic worker initiative at any level of the Wage and Hour Division in the near future because "locating them and establishing the universe of them . . . is extremely difficult. With garment and agricultural workers, you can establish where the work is taking place, but [you do] not have a similar ability to locate domestics. The inability to locate them militates against doing an initiative.

Without a Low-Wage Worker Initiative to target live-in domestic workers, the Wage and Hour Division from January 1, 1995 through October 1, 1999 initiated only 231 investigations involving "individuals employed in private households." According to the U.S. Bureau of Labor Statistics, there were approximately 847,000 reported "private household workers" in the United States in 1998—including cooks, butlers, child care providers, and 549,000 live-in and live-out domestic workers—and there are an additional number of unreported private household workers. Assuming the number of reported private household workers remained relatively constant from 1995 through 1999, the Wage and Hour Division during that time initiated investigations into labor violations in only approximately .005 percent of employment relationships involving those workers.

187 Human Rights Watch interview, Michael Ginley, Director, Department of Labor Wage and Hour Division Office of Enforcement Policy, Washington, DC, April 14, 2000.
188 Ibid.
195 Ibid.
197 According to Ginley, most of these investigations likely involved domestic workers, either live-in or day workers, but the Wage and Hour Division does not track investigations of live-in domestic workers as a sub-category of "individuals employed by private households." Human Rights Watch telephone interview, Ginley, June 27, 2000. Of those 231
contrast, in approximately 98 percent of the cases examined by Human Rights Watch, live-in migrant domestic workers reported receiving wages that violated the Fair Labor Standards Act.

**Ineffectiveness of the Complaint-Driven Enforcement Model for Migrant Domestic Workers with Special Visas**

Largely outside government scrutiny, abuse of live-in migrant domestic workers is, in most cases, hidden from government authorities. The burden falls on workers to complain about their treatment to obtain redress. U.S. laws, policies, and regulations, however, make such reporting exceedingly difficult for domestic workers with special visas, establishing deterrents rather than incentives to report abuses.

**Workers’ Reluctance to File Complaints**

Of the twenty-seven domestic workers with whom Human Rights Watch spoke, in thirty-four different employment relationships, only six had attempted to file complaints against their employers before speaking to Human Rights Watch. None of those complaints was criminal. Although most of the workers knew by the time they spoke with Human Rights Watch that their employment conditions violated U.S. law, they did not wish to or did not know how to file legal complaints against their employers to enforce their rights. As a World Bank official acknowledged, “the fact that there were not many cases that came forward was not indicative of the number of cases.”

There were a variety of reasons mentioned by domestic workers for their failure to file complaints, including: lack of knowledge of the U.S. legal system, exacerbated by social and cultural isolation; fear that employers would report them to the INS and that they would subsequently be removed from the United States; and fear of retaliation by politically powerful employers against their families in their countries of origin.

Several workers described to Human Rights Watch their fear for the welfare of their families abroad if they sued their employers in the United States. The fear of retaliation against family members abroad was also clearly manifest during a Human Rights Watch interview with a Peruvian domestic worker previously employed by a Latin American World Bank official, who repeatedly requested Human Rights Watch for assurances that her identity would remain confidential in this report. She requested that we exclude her name, age, dates of employment, and the city in which she worked because she feared that World Bank officials would match this data with her identity in their records. She said, “I am afraid because [my ex-employer] knows where my family lives. She can punish them . . . I think they will look for me . . . They will know it’s me. It’s something indescribable—butterflies in my stomach.”

Some workers described how fears of retaliation against or harassment and intimidation of their families became a reality for them after they filed public complaints in the United States against their former employers. After Akhtatar, the Bangladeshi domestic worker working for the family of a Middle Eastern businessman, sued four of the family members, the employment agent, R., through whom she met the family, was sent to visit Akhtatar’s remote Bangladeshi village. Akhtatar told Human Rights Watch that shortly after filing her lawsuit, she called her mother in Bangladesh. Crying, her mother told her that she was scared and that R. had visited their family and told them that if Akhtatar did not drop her case, she would “have problems” in the United States. R. also allegedly offered to obtain visas for Akhtatar’s family to work in Dubai if she dropped her lawsuit. According to Nahar Alam, a member of Andolan, the organization for low-wage workers to which Akhtatar turned for assistance after leaving her employer, R. allegedly not only visited Akhtatar’s family but most of the village residents, including the village chairman, and brought them to Akhtatar’s family’s home, where he informed them investigations, 192 found back wages due to a total of 249 workers, and employers voluntarily agreed to pay the wages due to 265 of those individuals. Although the other forty-four cases may have resulted in litigation, the Wage and Hour Division does not track this information. Ibid.


that Akhtar would go to jail in the United States if she did not drop her case.203 Nahar said that the neighbors had started telling Akhtar’s mother that Akhtar was a bad woman because, according to Nahar, “in our culture, a woman doing this kind of thing, like suing someone, is very bad.”

Similarly, Gladys Larbi, a Ghanaian domestic worker employed from May 1999 through September 1999 by an African World Bank official, alleged that after she left her employer and filed a complaint against him with the World Bank, he visited her mother in Ghana and asked her to pressure her daughter to withdraw the complaint.204 Larbi said that she does not know what her employer said to her mother but that whatever it was, it “made my mother afraid.”205 Larbi’s employer has denied that he visited Larbi’s mother, alleging instead that her mother telephoned him while he was in Ghana to ask him “questions about the circumstances surrounding her daughter’s termination.”206 Nonetheless, Larbi’s mother sent a letter to Larbi in which she wrote, “Tell your lawyer it was revealed to me that [Larbi’s employer] wanted you to die in the U.S. because we are poor and can’t challenge him.”207

**Remaininng in the United States to Pursue a Legal Remedy**

For the domestic worker who files a civil complaint against her former employer, there is no special visa option that will allow her to remain in the United States even until conclusion of legal proceedings. If the INS exercises its discretion to allow her to remain for a limited time and to work during that time, it must do so through procedures not specifically designed for victims of human rights abuses.208 Furthermore, two of the most commonly used procedures do not stop accrual of a domestic worker’s period of unlawful presence in the United States, which under immigration law could make her inadmissible to the United States for up to ten years.209 According to civil rights lawyers, the INS decision whether to exercise this discretion on behalf of workers pursuing civil claims “varies greatly between different District Directors at the regional offices.”210 Even if the INS determines that an employer reported an undocumented worker to retaliate against her for asserting her rights, “there is no prohibition for enforcement of the Immigration and Nationality Act” against the worker.211

Before the Trafficking Act and the Violence Against Women Act of 2000 (VAWA), included in the Victims of Trafficking and Violence Protection Act of 2000, the only additional immigration option available for a victim of criminal violence to remain in the United States at least during legal proceedings was the S visa, whose

205 Ibid.
206 Defendant’s Answers to Plaintiff’s First Set of Interrogatories, (E.D.VA, December 2000), answer 10 (on file with Human Rights Watch).
208 See Appendix II for a description of the four procedures most commonly used by the INS to allow individuals to remain in the United States to pursue their civil claims. These options may also be used by the INS on behalf of individuals involved in criminal cases.
209 Human Rights Watch telephone interview, INS Official B, April 27, 2000; Human Rights Watch telephone interview, INS Official D, March 15, 2000; Human Rights Watch telephone interview, INS Official E, August 2, 2000; Human Rights Watch telephone interview, INS Official F, August 7, 2000; Memorandum from Michael A. Pearson, Executive Associate Commissioner, INS Office of Field Operations, to Regional Directors, March 3, 2000. If an individual remains illegally in the United States for more than six months, she is inadmissible for three years, and if she remains illegally for one year or more, she is inadmissible for ten years. INA § 212(a)(9)(B)(i).
210 Letter from Christopher Ho and Marielena Hincapié, the Employment Law Center, a Project of the Legal Aid Society of San Francisco; Sara T. Campos, Lawyers’ Committee for Civil Rights of the San Francisco Bay Area; Christina Chavez-Cook, Mexican American Legal Defense and Education Fund; Joel Najar, National Council of La Raza; Catherine K. Ruckelshaus, National Employment Law Project; Joah Bernstein, National Immigration Law Center; Michael J. Wishnie, New York University School of Law; Ana Averdende, United Food and Commercial Workers International Union, to Bill Lazo Lee, Acting Assistant Attorney General, DOJ Civil Rights Division, May 11, 2000, p. 2.
211 INS OI 287.5a. In such instances, however, the INS OI provide that no INS action should be taken without review of the District Counsel and approval of the Assistant District Director for Investigations or an Assistant Chief Patrol Agent and that “in the extent possible” the alien should not be removed from the United States without notifying the law enforcement agencies with jurisdiction over the labor or employment law violations.
conditions live-in migrant domestic workers with special visas rarely meet. Since passage of the Trafficking Act and the VAWA, if the migrant domestic worker is involved in a criminal case against her ex-employer, the INS may have two more options available to allow her to remain in the United States, the T and U visas, which grant the worker "lawful temporary status," without a fixed duration, and work authorization. Nonetheless, as discussed, even those migrant domestic workers held in egregious and abusive labor conditions rarely make criminal allegations against their employers.

**Lack of Public Benefits and Work Authorization**

In most cases, the INS has broad discretion to award work authorization to individuals whom it allows to remain temporarily in the United States. Nonetheless, one advocate for domestic workers reports being informed by an INS district director's office that, while work authorization will likely be available for individuals involved in criminal actions, granting such authorization in civil cases "was not usually something they did."

Without work authorization, it is financially very difficult for a migrant domestic worker who has lost her legal immigration status but remained in the United States to pursue legal redress. As an undocumented alien, except in exceptional circumstances, she is not eligible for federal public benefits, including welfare, health, and unemployment benefits, public or assisted housing, and food assistance.

**Immunity for Employers of A-3 and G-5 Domestic Workers**

**Full Diplomatic Immunity**

Some employers of domestic workers with special visas enjoy full diplomatic immunity, severely inhibiting and often preventing workers from obtaining legal redress in U.S. courts for abusive treatment by these employers. Diplomats and their families and officials of U.N. and OAS missions and observer offices and their families are immune from the criminal, civil, and administrative jurisdiction of the United States. Before U.S. courts are available to domestic workers to pursue allegations in court against employers covered by full immunity, the State Department must request and receive from the employer's sending state an express waiver of immunity.

The State Department has an official policy of requesting a waiver of immunity in all criminal cases, except where "overriding foreign relations, national security, or humanitarian concerns justify such an

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214 After three years of continuous presence in the United States on either visa, a migrant domestic worker satisfying additional criteria set forth in the law will be eligible to adjust her status to legal permanent resident. Public Law 104-336, Secs. 107(f), 1513(f).
215 8 C.F.R. §274a.12.
216 Human Rights Watch telephone interview, Zarembka, Director, Campaign for Migrant Domestic Workers' Rights, July 19, 2006.
217 Public Law 104-193, Sec. 431 (b); Public Law 105-33, Sec. 557(c); Public Law 106-336, Sec. 107(b)(1). Under the Trafficking Act, a trafficking victim can qualify for public benefits or services if the Attorney General is ensuring her continued presence in the United States in order to prosecute traffickers or if she receives certification from the Secretary of Health and Human Services that she is "willing to assist in every reasonable way in the investigation and prosecution" of trafficking and has made a "bona fide" application for a T visa. Public Law 106-336, Sec. 107(b)(1).
218 Vienna Convention on Diplomatic Relations, Articles 31, 37. A diplomat is understood to be "the head of the mission or a member of the diplomatic staff of the mission." Ibid., Article 1(e). "Establishment of Permanent Headquarters in New York; Agreement Between United Nations and United States," Joint Res. C. 482, 61 Stat. 756, August 4, 1947, Article V, Sec. 15 (U.N. Headquarters Agreement); "Extension of Diplomatic Privileges and Immunities to Permanent Observers to Organisation of American States," Executive Order No. 11931, August 3, 1976, 41 F.R. 32609. The immunity is specifically extended to principal resident representatives and resident representative with the rank of ambassador or minister plenipotentiary of U.N. member nations and their staffs, principal resident representatives of U.N. specialized agencies and their staffs, permanent observers to the OAS and their staffs, and representatives of OAS member nations and their staffs.
219 Vienna Convention on Diplomatic Relations, Article 32. Even if the waiver is obtained and legal proceedings are initiated, a separate waiver of immunity must latter be obtained to execute any civil judgment.
exemption.\textsuperscript{230} The policy dictates that when a waiver is refused in cases of "serious offenses" or "recurrent lesser offenses," the State Department will require the alleged perpetrator to leave the United States.\textsuperscript{231} According to a State Department official, no case charging the diplomat employer of a domestic worker with criminal conduct has come to its attention.\textsuperscript{232}

With regard to civil claims by domestic workers against employers with full diplomatic immunity, the State Department’s official policy is to "intervene" when presented with satisfactory evidence of civil liability and when the matter was raised unsuccessfully with the diplomat and the head of the mission.\textsuperscript{233} According to a State Department official, only one such civil case has come to the department’s attention since 1995.\textsuperscript{234} In that case, the State Department intervened by facilitating a settlement but, far from requesting waiver of immunity, submitted a statement of interest supporting immunity.\textsuperscript{235}

Limited Immunity

Although administrative and technical staff of diplomatic missions and their families enjoy full criminal immunity, they only enjoy civil and administrative immunity for acts performed in "the course of their duties."\textsuperscript{236} Consular officers and employees, as well as officials and employees of international organizations, enjoy immunity only for those acts performed in the exercise of their "official functions."\textsuperscript{237} Because it is unlikely that acts related to employment of domestic workers would be construed as official duties or functions, immunity is not an obstacle for domestic workers pursuing claims against employers who are consular officials or representatives to or employees of international organizations. Full diplomatic immunity may nonetheless prevent members of administrative or technical staff of diplomatic missions from being held criminally, though not civilly, accountable for abuse of migrant domestic workers.

Even if a civil judgment is entered against an employer with limited immunity, execution of that judgment may be difficult, as the majority of the employer’s assets are often abroad. Although a court may enter a garnishment order requiring the defendant’s employer to deduct a certain amount from that individual’s salary until the judgment is paid in full, a garnishment order is ineffective when the employer is an international organization, as international organizations enjoy "the same immunity from suit and every form of judicial process as is enjoyed by foreign governments."\textsuperscript{238} International organizations, including the IMF, World Bank, OAS, and U.N., in the words of an IMF official, "assert immunity in the face of a garnishment order."

\textsuperscript{230} 2 FAM 232.4 (February 28, 1991).
\textsuperscript{231} 2 FAM 233.3(a)(3) (February 28, 1991).
\textsuperscript{233} 2 FAM 234.2(1)(1)-3 (February 28, 1991).
\textsuperscript{236} Vienna Convention on Diplomatic Relations, Article 37(2). Family members of administrative and technical staff of diplomatic missions do not enjoy civil or administrative immunity under the Vienna Convention on Diplomatic Relations because they do not have "duties" with respect to the diplomatic missions. It is unclear under the Convention, however, whether a civil or administrative judgment can be enforced against administrative and technical staff and their families. Though the Convention explicitly waives civil and administrative immunity, it does not correspondingly explicitly waive immunity from enforcement of judgments in those cases. \textit{Ibid}, Articles 31(3), 37(2). See Eileen Donze, \textit{Diplomatic Law: A Commentary on the Vienna Convention on Diplomatic Relations} (Oxford: Clarendon Press, 1998), p. 335.
\textsuperscript{237} Vienna Convention on Consular Relations, 596 U.N.T.S. 262, April 24, 1963, Article 43; 22 U.S.C. \textsection 288a(b). Family members of international organization or consular officials enjoy no immunity, as they do not have any "official capacity" with respect to such organizations or offices.
\textsuperscript{238} 22 U.S.C. \textsection 288a(b). International organizations enjoy "the same immunity from suit and every form of judicial process as is enjoyed by foreign governments," except that the international organizations can expressly waive their immunity.

VII. INTERNATIONAL ORGANIZATIONS' INTERNAL REQUIREMENTS

In addition to the requirements established by the U.S. government for the employment of A-3 and G-5 domestic workers, international organizations, embassies, consular offices, and foreign missions and observer offices to international organizations may have internal requirements with which their employees hiring G-5 or A-3 domestic workers must comply. In the case of embassies, consular offices, and foreign missions and observer offices to international organizations, these requirements are determined on a country-by-country basis. International organizations, however, may have organization-wide requirements, and Human Rights Watch spoke with representatives from the OAS, the U.N., the IMF, and the World Bank, all of which have internal policies that govern the employment of G-5 domestic workers by their employees. 230

Human Rights Watch believes that international entities whose employees employ A-3 or G-5 domestic workers have the responsibility to try to prevent employer abuse of these workers. The reason for international entities' heightened responsibility for the private activities of their employees in this regard is two-fold. First, their employees enjoy the right to hire domestic workers with special visas solely because of their status as employees of these bodies. Secondly, the international entities with whom Human Rights Watch spoke, and likely others, assist their employees with the process of applying for domestic workers and endorse completed visa applications, becoming directly involved in the application process.

The International Monetary Fund and the World Bank

As of spring 2000, over one thousand G-5 domestic workers were employed by employees of the IMF and the World Bank—235 with IMF employees and 834 with World Bank employees. 231 Employees of the World Bank employ more G-5 domestic workers than employees of any other international organization.

In December 1999, the IMF and the World Bank issued a "Code of Conduct Regarding Employment of G-5 Domestic Employees" (Code of Conduct), effective January 1, 2000. Prior to the Code of Conduct, the IMF and the World Bank did not have formal procedures governing the employment of G-5 domestic workers by their employees, and complaints regarding employer mistreatment were handled on an ad hoc basis. 232 The Code of Conduct, however, establishes minimum standards for IMF and World Bank employees employing G-5 domestic workers, compliance with which is mandatory and violation of which may result in disciplinary action, including dismissal.

The Code of Conduct requires the potential employer of a G-5 domestic worker to submit to the World Bank or the IMF a copy of a written employment contract, containing certain terms and conditions of employment. 233 The Code of Conduct also mandates that the employer of a G-5 domestic worker maintain employment records. 234 According to IMF and World Bank officials, although records will be audited periodically, the audits will be paper audits only and will not include on-site visits or interviews with employers

230 According to a State Department official, an employer can attempt to evade these requirements by applying for a domestic worker independently, without seeking assistance or sponsorship from the international organization, or by demanding that the domestic worker apply on her own behalf, as the State Department does not require the visa application to be vetted and approved by the international organization employing the potential employer. Human Rights Watch telephone interview, State Department Official C, January 26, 2001.

231 Human Rights Watch telephone interview, William Murray, IMF Senior Press Officer, June 8, 2000; Written responses to Human Rights Watch written interview questions, Richard Stern, Vice President, World Bank Department of Human Resources, June 1, 2000.

232 Human Rights Watch telephone interview, Murray, June 8, 2000. The IMF official who requested to remain anonymous told Human Rights Watch that he felt his work at the IMF would be compromised if his name were revealed in this report.

233 Ibid., Article II, Secs. 1-13. See Appendix I for an enumeration of the relevant employment contract terms required by the Code of Conduct.

234 Ibid., Articles V, VI. See Appendix I for a description of the employment records that the Code of Conduct requires employers to keep.
and workers. In addition, though as of 2001 employers must file with the IMF or World Bank annual "returns" summarizing wage payments made that year, these "returns" need not be signed by workers. Code of Conduct requirements not documented through employer records, such as whether a worker's passport has been confiscated or whether a worker is allowed to leave her employer's premises during non-work hours, therefore, will not be audited, and the veracity of paper records will not be independently confirmed.

The World Bank and IMF Code of Conduct also requires all new G-5 domestic workers and any current workers seeking to extend their visas to attend orientation sessions with their employers. The orientation sessions address employers' and workers' mutual rights and responsibilities under the Code of Conduct and U.S. law but do not allow independent organizations, such as direct service providers, community-based organizations, and other NGOs, to participate. A "G-5 Information Pamphlet" is distributed at the sessions, which summarizes many of the Code of Conduct provisions and informs the workers that if they believe they are not being treated fairly under U.S. law or the Bank/Fund Code of Conduct, they may file complaints, using the telephone numbers provided, with the World Bank Professional Ethics Office, the IMF Ethics Officer, or the Worker Exploitation Task Force Complaint Line. The Code of Conduct states that if the IMF or World Bank receives such a complaint, the organization will "investigate" the matter, though according to IMF and World Bank officials, neither organization has yet developed formal complaint procedures.

The United Nations Secretariat

As of June 2000, there were 363 G-5 domestic workers employed by employees of the U.N. Secretariat. According to a U.N. administrative instruction, an employee of the U.N. Secretariat wishing to employ a G-5 domestic worker must submit a visa application to the U.N. Visa Committee for assistance with the application process. The Visa Committee will review the application to ensure that the application complies with "all the conditions defined . . . by the United States authorities" and includes an employment contract, valid for one year and containing other terms and conditions mandated by the U.N. The U.N. Visa Committee

236 Letter to Martha Honey, Campaign for Migrant Domestic Workers' Rights, from P. Kevin Craig, Chief of Staff Benefits Division, IMF Human Resources Department, December 7, 2000.
239 The World Bank Group and International Monetary Fund's G-5 Information Pamphlet, (no date).
240 WB/IMF Code of Conduct Regarding Employment of G-5 Domestic Workers, Article VII.
242 Human Rights Watch telephone interview, State Department Official D., June 15, 2000. As of June 2000, there were also 388 G-5 domestic workers employed by employees of foreign missions to the U.N. Secretariat internal regulations, however, do not apply to the foreign missions.
243 "Administrative instruction: Visa status of non-United States staff members serving in the United States, members of their household and their household employees, and staff members seeking or holding permanent resident status in the United States," ST/AI/2000/19, December 18, 2000, para. 7.1. (emphasis added).
244 Human Rights Watch telephone interview, U.N. Visa Committee Official, March 15, 2000; "Administrative instruction: Visa status of non-United States staff members serving in the United States, members of their household and their household employees, and staff members seeking or holding permanent resident status in the United States," ST/AI/2000/19, December 18, 2000, para. 7.1; Standard Contract for Household Employees under G-5 Visa (no date). The U.N. Visa Committee Official requested to remain anonymous in this report. See Appendix I for an enumeration of the relevant contract terms required by the U.N.
makes recommendations for application endorsement to the Assistant Secretary-General of Human Resources Management at the U.N., who forwards endorsed applications to the U.S. Mission to the U.N. 246

A U.N. Visa Committee official told Human Rights Watch that the Committee maintains a file on employers of G-5 domestic workers. 247 Three months after a domestic worker’s arrival in the United States and if the one-year employment contract is renewed for another year, the U.N. Visa Committee requires the employer to submit proof of payment of wages—weekly or biweekly statements of earnings signed by the staff member and the visa holder—proof of health insurance, and proof of payment of taxes. 248 According to the U.N. Visa Committee official, if staff members fail to submit the required documents, the Committee will contact them to remind them that disciplinary measures will be taken against those who fail to fulfill the requirements of visa issuance, ranging from written reprimand to dismissal. 249 The U.N. Visa Committee official explained that if the Committee subsequently does not receive the required documents, it will not endorse additional G-5 applications for the staff members nor visa extensions for current G-5 workers and will inform the U.S. Mission to the U.N. accordingly. 250

Although the Committee has received “telephone calls and an occasional letter” regarding employment “problems” between G-5 domestic workers and their employers, the number of which are not recorded, no disciplinary measures have ever been taken against a U.N. employee for mistreatment of a G-5 domestic worker. 251 The U.N. Visa Committee official told Human Rights Watch:

We always catch up with those who fail to pay on time and make them pay. . . If we receive a telephone call or letter from a G-5 alerting us to their concerns, we follow up with a phone call to the U.N. staff member to try to mediate and negotiate and draw the matter to the attention of the staff member. We then follow up with the employee. . . . It has worked so far. At the U.N., we are a diplomatic organization; we know how to talk to each other. 252

Unlike the World Bank and IMF, the U.N. does not conduct orientation sessions for G-5 domestic workers. Furthermore, while the U.N. Visa Committee provides employers with detailed guidelines regarding the employment of G-5 domestic workers, the workers receive no guidelines regarding their rights and duties. 253 Despite the U.N.’s professed willingness to mediate the resolution of disputes between domestic workers and their employers, no system is in place to inform workers of this informal complaint and mediation process, severely limiting its utility.

The Organization of American States

In comparison to the three other international organizations reviewed in this report, the OAS adopts a relatively “hands-off” approach to the employment of migrant domestic workers by its employees. In 1999, fifty G-5 domestic workers worked for OAS employees. 254 Although an OAS employee seeking OAS assistance with

248 Ibid.; “Visa Committee: Undertaking by Staff Member,” VISA COMMITTEE/JG/MQ/1, April 1997; “Administrative instructions: Visa status of non-United States staff members serving in the United States, members of their household and their household employees, and staff members seeking or holding permanent resident status in the United States,” ST/AI/2000/19, December 18, 2000, para. 6.3.
249 Human Rights Watch telephone interview, U.N. Visa Committee Official, March 15, 2000. See Appendix I for a description of the record-keeping requirements mandated by the U.N.
250 Ibid.
253 Ibid.
254 Human Rights Watch telephone interview, State Department Official B, June 13, 2000. In 1999, there were also sixty-nine G-5 domestic workers employed by members of foreign missions to the OAS. OAS regulations, however, are not applicable to foreign missions.

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her application to employ a G-5 domestic worker must submit a written employment contract to the OAS based on the OAS Draft Contract for Domestic Employees,226 the OAS does not require employers to maintain records demonstrating compliance with contract terms.227 Instead, the OAS requires that employers file income tax returns with the OAS at the end of each tax year, though no disciplinary process exists for failure to file tax returns, and, according to an OAS official, "usually the employer doesn’t bring in the tax returns."228

If the contract is breached or if provisions of U.S. law are violated and the G-5 worker files a complaint with the OAS, the OAS will not investigate the complaint.227 According to the OAS Director of the Office of External Relations, "If anyone is abused in the U.S., she must go to local authorities."228 The OAS Director of the Department of Human Resources explained, "As a convenience, we facilitate the [attainment] of the G-5 visa, but where is our responsibility with regard to the employer/employee relationship that is incurred? . . . I’m not sure that our mandate goes so far as to go into persons’ homes. . . . I’m not sure that our responsibility goes to that length."229 The OAS Director of the Office of External Relations added, "It's the job of the courts and other social institutions to investigate. We're not in a position to take any action against anyone . . . We don't have investigative personnel . . . for going into the private life and paying . . . We will not pursue anything until the OAS employee is found guilty in the courts,228 at which time the OAS Secretary General will consider the violations of the OAS internal ethics code that may have occurred and determine the proper course of action.230

VIII. THE UNITED KINGDOM: A COMPARATIVE STUDY

The United Kingdom experience is an instructive lens through which to view the current U.S. migrant domestic worker special visa programs. Prior to July 1998, U.K. law was similar to current U.S. law in that migrant domestic workers accompanying employers—foreigners or U.K. citizens residing abroad—to the U.K. were not provided immigration status independent of their employers.26 Workers were required to leave the U.K. with their employers or upon termination of their employment, whichever came first.230 In the mid-1980s, U.K. NGOs began to identify this precarious immigration status as one of the main factors behind migrant domestic worker abuse and, along with the Transport and General Workers Union and its live-in migrant domestic worker members, began to lobby the U.K. government to amend immigration regulations to allow these workers to change employers in the U.K. as long as they continued to work as domestic workers.26

Largely in response to the lobbying campaign, in the early 1990s, the U.K. government imposed new requirements on the employment of migrant domestic workers by foreign employers or U.K. citizens residing abroad. Several of the requirements parallel current U.S. special visa program provisions, including requirements that information leaflets setting forth workers' rights be distributed to workers during the "entry clearance"

226 In contrast to the IMF, World Bank, and U.N., the OAS does not require its employees seeking to hire G-5 domestic workers to obtain OAS endorsement or sponsorship of the visa applications. According to an OAS official, failure to seek OAS endorsement or sponsorship "is not against the rules, just unusual." Human Rights Watch telephone interview, Yolanda Morris, Senior Specialist, OAS Department of Human Resources, January 26, 2001. See Appendix I for an enumeration of the employment contract terms required by the OAS.


229 From 1995 through February 2000, the OAS received approximately three such complaints. Ibid.


230 Ibid., pp. 135-36.

230 Ibid., pp. 137, 140.
process and that employers submit written contracts stating terms and conditions of employment.\textsuperscript{265} NGOs monitoring the living and working conditions of overseas domestic workers in the U.K., however, found that “these changes were making no difference to workers’ lives” and continued lobbying for meaningful reforms.\textsuperscript{266}

In July 1998, the U.K. government announced additional amendments to the relevant immigration regulations.\textsuperscript{267} These new immigration regulations require that prior to accompanying their employers to the United Kingdom, migrant domestic workers must have been employed abroad by their employers for at least one year.\textsuperscript{268} Once in the United Kingdom, however, the workers are allowed to change employers—to any other foreigner or U.K. citizen—regardless of whether they allege employer abuse, as long as they continue to work as domestic workers.\textsuperscript{269} No limit is placed on the time within which they must find new employers, though they must do so prior to expiration of the period for which they were initially admitted. After four years as a migrant domestic worker in the United Kingdom, the worker can apply for permanent residence.\textsuperscript{270}

\section*{IX. RECOMMENDATIONS}

The U.S. government and international entities whose employees employ migrant domestic workers with special visas should adopt measures to protect the workers from the human rights abuses described in this report. Below, we identify first the general steps that they should take and then set out more detailed recommendations for achieving these ends.

\textbf{General Recommendations}

\textit{To International Organizations, Observer Offices and Missions to International Organizations, Embassies, and Consular Offices:}

\begin{itemize}
\item International organizations, observer offices and missions to international organizations, embassies, and consular offices should develop and adopt codes of conduct governing employment of migrant domestic workers with special visas by their employers and ensure their effective implementation, including by establishing appropriate mechanisms to monitor compliance.
\end{itemize}

\textit{To Congress:}

\begin{itemize}
\item Congress should amend the Immigration and Nationality Act (INA) to incorporate into the act the required and suggested employment contract provisions for migrant domestic workers with special visas that are currently set forth only in the State Department’s Foreign Affairs Manual and State Department diplomatic circulars, and so make them mandatory terms and conditions of employment under U.S. law;
\item Congress should amend the INA to empower the Department of Labor to ensure employer compliance with these mandatory terms and conditions of employment, including through imposing penalties, seeking injunctive relief, and requiring specific performance of these obligations, and provide the DOL with the resources necessary to monitor employer compliance.
\end{itemize}

\textsuperscript{265} ibid., pp. 141-42.
\textsuperscript{266} ibid., pp. 143-144.
\textsuperscript{267} ibid. Though announced in 1998 and effective immediately, as of late 2000, the new regulations had not yet been encoded in the immigration rules. Written responses to Human Rights Watch written interview questions, Chris Randall, solicitor at Winstanley-Burgess, London, November 28, 2000.
\textsuperscript{268} Written responses to Human Rights Watch written interview questions, Randall, November 28, 2000. The new regulations also only allow these domestic workers whose duties exceed those listed under the ILO Standard Classification of Occupations definition of domestic workers to accompany their employers to the United Kingdom. This requirement has reportedly prompted complaints from some prospective employers, however, and is under review, ibid; E-mail from Randall to Human Rights Watch, November 30, 2000.
\textsuperscript{269} Written responses to Human Rights Watch written interview questions, Randall, November 28, 2000.
\textsuperscript{270} ibid.
To Congress and the State Department:

- Congress should pass legislation requiring the State Department to determine, prior to issuing a special domestic worker visa, whether the petitioning employer has previously violated mandatory terms and conditions of employment for domestic workers. The legislation should require that the petitioning employer be denied the right to employ domestic workers for at least two years for minor violations, such as wage and hour and breach of contract, and for life for more egregious violations, such as servitude, forced labor, and physical or sexual abuse. The State Department, pending the passage of such legislation by Congress, should adopt this as its official policy and amend the State Department Foreign Affairs Manual accordingly.

To the State Department and the Immigration and Naturalization Service:

- Until Congress passes legislation allowing workers to transfer their visas to work as domestic workers for new qualified employers, as recommended above, the State Department and the INS should adopt official policies providing all migrant domestic workers with special visas with the right to change to new qualified employers—imposing a time of limit of six months to correspond with current immigration law inadmissibility provisions—and amend their internal operating manuals accordingly.

To the Immigration and Naturalization Service:

- Until Congress passes legislation creating temporary visas to allow all migrant domestic workers pursuing legal redress against former employers to remain in the United States for this purpose and to work during that time, as recommended above, the INS should adopt an official policy that it will exercise its discretion to guarantee workers these rights and should amend its Operations Instructions accordingly.

To the Department of Labor:

- The Wage and Hour Division of the Department of Labor should develop a Low-Wage Worker Initiative for live-in migrant domestic workers—including outreach, independently initiated investigations, and litigation—to monitor their employment relationships instead of relying on complaint-driven mechanisms to enforce labor laws on their behalf.

Detailed Recommendations

To International Organizations, Observer Offices and Missions to International Organizations, Embassies, and Consular Offices:

Codes of Conduct:

All international organizations, observer offices and missions to international organizations, embassies, and consular offices should adopt codes of conduct governing employment of domestic workers that include the “best practices” identified in Appendix 1 and, when not inconsistent with the “best practices,” the FAM terms and the circular diplomatic notes requirements and recommendations, and require the following:

- That international entities’ representatives conduct annual audits that include private interviews with employers and workers to verify compliance with codes of conduct provisions unverifiable through paper audits;
- That employers submit annually proof of compliance with codes of conduct provisions, including proof of wage payment and hours worked signed by both parties;
- That employers who fail to comply with codes of conduct provisions be disciplined appropriately;
- That orientation sessions be conducted for employers and domestic workers, with interpreters for those unable to understand English, and that information pamphlets distributed at the sessions include contact information for temporary shelters and direct service organizations that provide migrant domestic workers with legal, psychological, social, and other assistance; and
That specific procedures and an established time frame for the resolution of domestic worker complaints alleging code of conduct violations be established and followed.

**Enforcement of Judgments and Internal Determinations:**

International entities should ensure that when a garnishment order is entered by a U.S. court against an employee on behalf of a migrant domestic worker, the worker receives redress despite the entities' immunity to the jurisdiction of U.S. courts. International entities also should ensure that when a determination is made internally, pursuant to internal complaint procedures, that an employee owes wages to a migrant domestic worker, the worker receives those wages. The international entities therefore should adopt the following policy:

- Give effect to any such garnishment order or internal determination by deducting the amount indicated therein from the employee's wages and paying that amount directly to the migrant domestic worker. In the case of a garnishment order, such a procedure would allow international entities to give effect to the order without submitting to the jurisdiction of U.S. courts.

**To Congress:**

- To ensure that five-in domestic workers are covered by Title VII sexual harassment protections, Congress should amend Title VII so that its protections are applicable to workplaces with fewer than fifteen employees.

The Wage and Hour Division of the Department of Labor, responsible for enforcement of the Fair Labor Standards Act, has gradually lost staff and resources while gaining increased responsibility over the past decade. Congress should:

- Authorize increased budgetary appropriations for the Wage and Hour Division.

A migrant domestic worker who has left an abusive labor relationship has not only lost her job but her housing and food source. To ensure that a domestic worker in these circumstances has food and appropriate alternative housing, Congress should:

- Create an exception to Title IV of the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996" to allow all migrant domestic workers who have lost legal immigration status by leaving their sponsoring employers to be eligible for federal public benefits for a specified period while pursuing legal redress against their former employers or searching for new qualified employers.

**To the State Department:**

**Maintaining Records:**

Maintaining records of domestic workers' contact information and employment contracts is critical for the effective monitoring of workers' employment relationships, and maintaining disaggregated data by sex is critical for evaluating the participation of women in the domestic worker special visa programs. The State Department should:

- Require U.S. citizens living abroad but temporarily visiting, rather than assigned to, the United States to submit employment contracts for their B-1 domestic workers;
- Keep data recording the total number of B-1 visas issued annually to domestic workers;
- Maintain copies of all A-3, G-5, and B-1 workers' employment contracts and contact information and establish a database of this information;
- Disaggregate by sex data kept on migrant domestic workers with special visas.
Terms and Conditions of Employment:
Amending the mandatory conditions for employment of domestic workers with special visas is a necessary step in preventing worker abuse. The State Department should:

- Incorporate the recommended employment contract terms of the circular diplomatic notes into the State Department Foreign Affairs Manual as mandatory contract provisions, including record keeping requirements, extend them to cover B-1 domestic workers, and issue regulations setting forth these requirements.

Visa Issuance Procedures:
Because the State Department claims no jurisdiction over domestic workers and their employers in the United States, the department's primary opportunity to inform domestic workers of their rights and protect them from abuse occurs during visa issuance. The State Department should take advantage of this opportunity to:

- Distribute the information brochure setting forth workers' rights under U.S. law and contact information for the Worker Exploitation Task Force Complaint Line, currently distributed at a few "high volume" consular posts, to all A-3 and G-5 visa applicants;

- Create and distribute at all consular posts a similar information brochure for B-1 domestic worker visa applicants;

- Require that the rights set forth in the information brochures also be explained verbally to domestic workers, in a language they can understand, by U.S. consular offices abroad;

- Once the above recommendations regarding workers' right to remain in the United States to pursue legal redress against abusive employers and to transfer employers are adopted, these new rights should be explained in the information brochures.

To the National Worker Exploitation Task Force:
This inter-agency governmental task force was formed to combat worker abuse but has been involved only in the most egregious violations of federal criminal civil rights statutes, such as servitude. The Task Force should:

- Investigate and prosecute cases arising under the criminal provisions of the Fair Labor Standards Act (FLSA);

- Refer all cases alleging violations of the Fair Labor Standards Act, including those that come to the attention of the Worker Exploitation Task Force Complaint Line, to the Wage and Hour Division for investigation.

To the President:
The United States should be a party to international instruments setting forth rights particularly relevant to migrant domestic workers. The President should:

- Urge the Senate to ratify the International Covenant on Economic, Social, and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; the American Convention on Human Rights; and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;

- Sign and urge the Senate to ratify ILO Convention No. 29, the Convention concerning Forced or Compulsory Labor; ILO Convention No. 87, the Convention concerning Freedom of Association and Protection of the Right to Organize; ILO Convention No. 98, the Convention concerning the Right to Organize and Collective Bargaining; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
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APPENDIX I: VISA ISSUANCE REQUIREMENTS

B-1 Domestic Workers

State Department Foreign Affairs Manual

Requirements for employing a B-1 domestic worker:
- The employer is a U.S. citizen who has a permanent home or is stationed abroad and is temporarily visiting the United States and who employed the domestic worker prior to the U.S. visit; or
- The employer is a U.S. citizen subject to frequent international transfers lasting two years or more temporarily assigned to the United States for no more than four years and the domestic worker has a residence abroad which she has no intention of abandoning, has worked as a domestic worker for at least one year, and has been employed abroad by the U.S. citizen as a domestic worker for at least six months or the U.S. citizen can show that she regularly employed a domestic worker abroad; or
- The employer is a nonimmigrant in the United States on a B, E, F, H, I, J, L, or M visa and the domestic worker has a residence abroad which she has no intention of abandoning, has worked as a domestic worker for at least one year, and has been employed abroad by the nonimmigrant for at least one year or the nonimmigrant can show that she regularly employed a domestic worker abroad.

Mandatory employment contract terms:

When the Employer is a U.S. Citizen Visiting the United States:
- No employment contract is required.

When the Employer is a Nonimmigrant:
The contract must include statements that:
- The employer will be the sole provider of employment;
- The worker will receive minimum or prevailing wage, whichever is greater; and
- The employer will provide free room and board.

When the Employer is a U.S. Citizen Assigned to the United States:
The contract must include the statements required when the employer is a nonimmigrant plus statements that:
- The employer will provide airfare for the worker to and from the United States;
- The worker will receive any other benefits normally required for U.S. domestic workers in the area of employment; and
- The parties will provide two weeks notice before terminating the contract.

A-3 and G-5 Domestic Workers

Immigration and Nationality Act

Requirements for employing an A-3 domestic worker:
- The employer is an ambassador, public minister, career diplomatic or consular officer accredited by a foreign government and accepted by the United States or a member of the employer’s immediate family.

Requirements for employing a G-5 domestic worker:
- The employer is a designated principal resident representative of a foreign government to an international organization or an accredited resident member of that representative’s staff; an accredited representative of a foreign government to an international organization; an officer or employee of an international organization; or a member of the employer’s immediate family.
Mandatory employment contract terms:
The contract must include statements that:
- The worker will receive state or federal minimum wage or the prevailing wage, whichever is greater, including reasonable deductions for room and board;
- The worker will not accept other employment while working for the employer;
- The employer will not withhold the worker's passport; and
- The worker cannot be required to remain on the premises after work hours without additional compensation.

State Department Circular Diplomatic Notes

Recommended employment contract terms:
Each party should receive a copy of the contract, which should include the following statements:
- A description of duties;
- The normal daily and weekly working hours;
- That the worker will receive a minimum of one full day off per week;
- Whether the worker will receive paid holidays, sick days, or vacations days;
- That wages will be paid either weekly or biweekly and whether reasonable deductions for room and board will be taken; and
- That the employer will pay for the worker's travel to and from the United States.

Mandatory employment contract terms:
The contract must be in English and, if the worker does not understand English, in a language she understands, meet the FAM requirements, and include a statement that:
- The visa, a copy of the contract, and other personal property of the domestic worker will not be withheld by the employer for any reason.

Mandatory record-keeping requirements:
The employer must maintain the following records during employment plus three years:
- The worker's full name, date and place of birth, sex, and occupation;
- The worker's home address and telephone number in the United States;
- A record of hours worked daily and weekly; and
- A copy of a check or dated receipt for each pay period, including deductions made.271

International Organizations
Human Rights Watch has indicated with an asterisk (*) the employment contract, record-keeping, and internal requirements that exceed FAM requirements and circular diplomatic notes requirements and recommendations that we consider examples of "best practices."

World Bank and International Monetary Fund Codes of Conduct

Mandatory employment contract terms:
The contract must meet the FAM requirements and circular diplomatic notes requirements and recommendations and include the following statements, in relevant part, governing employment conditions:
- That wages will be paid by check, either weekly or biweekly;
- That copies of pay records will be made available without charge to the worker;
- That work over forty hours per week will be paid as overtime where required by law;

271 These record-keeping requirements are virtually identical to those already required of employers by the Fair Labor Standards Act 29 C.F.R. §§916.2, 516.5, 516.27.
• Whether the worker is required to live with the employer and, if so, that deductions for room and board shall not exceed $100 per week;
  • That three meals a day will be provided for a live-in domestic worker and at what cost;
• Whether the worker will be provided health insurance and, if so, at what cost;
• Whether the worker will be provided with transportation to and from the United States;
• Whether the worker will be charged any costs on a regular basis and, if so, the amount;
• That the contract may be terminated by either party for cause or, if the employment relationship is less than one-year old, with one month’s notice or pay; and
• That the domestic worker has the right to complain regarding her treatment to the World Bank’s or the IMF’s Ethics Officers and that the employer may not interfere with or retaliate against the worker for making such a complaint.

Mandatory record-keeping requirements:
The employer must maintain the following records during employment plus six years:
• Most documents required by circular diplomatic notes;\textsuperscript{272} and
• A copy of the employment contract;
• Proof of tax payments and any required unemployment or workers’ compensation insurance;
• Copies of the worker’s visa, I-94 entry form, and other proof of G-5 status; and
• A copy of the health insurance policy, if provided, and paid premiums.

United Nations Secretariat

Internal requirements for employing a G-5 domestic worker:
• The worker must not be related to the U.N. staff member or the member’s family or to another U.N. staff member;
• The worker must have previous experience in domestic service and provide letters of recommendation from previous employers;
• The worker must come from the same cultural background as the staff member or have “several years” of domestic service with the staff member’s household;
• The staff member must agree to provide private accommodation for the worker in the household;
• The staff member must have demonstrated ability to pay required wages, social security, and health care expenses; and
• The staff member must agree to provide a wage statement to the worker with each payment, listing hours worked, wages paid, and deductions taken.

Mandatory employment contract requirements:
Contracts must “meet the conditions established by the U.S. government” and include the following statements, in relevant part, governing employment conditions:
• Salary to be received and that the salary will be paid bi-weekly;
  • That the worker shall normally work eight hour days, five days a week;
  • That any time worked over forty-four hours per week is to be considered overtime and to be paid at one and one half times the hourly rate;\textsuperscript{275}
  • That the worker shall have two full days off per week;
• That the worker shall be free to leave the employer’s premises at all times other than regular or overtime working hours;
• That the worker shall get two weeks of paid vacation annually;
• That the employer shall pay the worker’s medical insurance and reasonable expenses;
• That the employer may deduct no more than $40 per week for room and board.\textsuperscript{276}

\textsuperscript{272} Unlike the circular diplomatic notes, the Code of Conduct does not explicitly require record of a worker’s place of birth, sex, occupation, weekly—in addition to daily—hours worked, and deductions taken.
\textsuperscript{275} New York law requires live-in domestic workers to be paid overtime for work over forty hours per week.
• That the employer will pay for the worker's travel to and from the United States;
• That the worker's duties shall be "normal domestic work," including child care;
• That either party may terminate the contract with one month notice; and
• That the employer should assist the employee in filing the required tax forms.

**Mandatory record-keeping requirements:**
The employer must maintain the following records during employment plus three years:
• All documents required by circular diplomatic notes; and
• A record of all social security payments made for the worker; and
• A record of all health insurance payments made for the worker.225

**Organization of American States**

**Mandatory employment contract terms:**
The contract must include the following statements:
• That the domestic worker will work forty hours a week five days a week with occasional overtime;
• The regular and overtime wages to be earned by the worker;
• A description of duties;
• That the worker may "come and go as she pleases" outside of working hours;
• That the worker must live with the employer;
• That the employer will pay for the worker's travel to and from the United States;
• Whether the employer will take deductions for food, lodging, and health insurance and, if so, how much;226 and
• The prior notice required for contract termination.

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225 The U.N. Standard Contract for Household Employees Under G-5 Visa explains, "This figure is based on local regulations pertaining to employment of residential domestic workers." Under the FLSA, employers providing lodging and three meals a day five days a week could deduct approximately $77 per week.

226 Mandatory employer submission of records to the U.N. Visa Committee is discussed in the text.

226 The OAS requires employers to ensure that workers have health insurance but allows employers to deduct the cost of insurance from workers' wages.
APPENDIX II: MEANS OF DISCRETIONARY EXTENSION OF STAY AVAILABLE TO THE INS

The INS may invoke the following immigration options to allow migrant domestic workers to remain in the United States to pursue legal redress for abuses by their former employers. The options have been summarized, and information not relevant to migrant domestic workers has been omitted.

Primary Means Available to the INS to Delay Removal in Civil Cases:

• *Parole*: Requires an individual to leave and reenter the United States and may be granted for "urgent humanitarian reasons" or "significant public benefit," including for witnesses in judicial proceedings. When the purposes of the parole have been served, the individual is returned to her country of origin or to the custody from which she was paroled for immigration proceedings to resume.

• *Voluntary Departure*: Provides an individual with 120 days to leave the United States voluntarily, without initiation of formal immigration proceedings;

• *Deferred Action*: Delays INS proceedings against an individual indefinitely, but does not stop accrual of the individual’s unlawful time in the United States; and

• *Stay of Deportation or Removal*: Delays enforcement of a final order of removal or deportation "for such time and under such conditions as [the INS district director] may deem appropriate" but does not stop accrual of the individual’s unlawful time in the United States.

Additional Means Available to the INS in Criminal Cases to Delay Removal:

• *S Visa*: 200 available annually for individuals possessing and willing to supply critical information concerning criminal organizations or enterprises and whose presence in the United States is essential to the investigation or prosecution of the criminal activities.

• *T Visa*: 5,000 available annually for trafficking victims who have complied with any reasonable requests for assistance in the investigation or prosecution of trafficking and "would suffer extreme hardship involving unusual and severe harm upon removal;"

• *U Visa*: 10,000 available annually for victims of enumerated criminal activities, who have "suffered substantial physical or mental abuse" as a result of the activities, possess information concerning the activities, and have been certified by government authorities as having been or likely to be helpful in the investigations or prosecutions of the activities.

*Criminal activities of which an individual must be a victim to qualify for a U visa: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.*
APPENDIX III: LEGAL ISSUES RELEVANT TO MIGRANT DOMESTIC WORKERS

Servitude and Forced Labor

International Law

As discussed in the text, servitude is prohibited but not explicitly defined by international law. The history of the international law prohibition of servitude suggests that "servitude" is more expansive than "slavery" and not confined to the four "institutions and practices similar to slavery" proscribed by the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (Supplemental Slavery Convention). 277 Slavery is defined by the Convention to Suppress the Slave Trade and Slavery (Slavery Convention) as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised." 278 Servitude, however, was recognized by the Council of the League of Nations, prior to adoption of the Slavery Convention, as one of several practices, including the four specific conditions later prohibited as "institutions and practices similar to slavery," that are "restrictive of the liberty of the person, or tending to acquire control of the person in conditions analogous to slavery." 279

But what is the scope of servitude? The European Commission of Human Rights stated that "in addition to the obligation to provide another with certain services, the concept of servitude includes the obligation on the part of the "serv" to live on another's property and the impossibility of changing his condition." 280 Legal scholars interpreting the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) have suggested that servitude refers to "the total of the labour conditions and/or the obligation to work or to render services from which the person cannot escape and which he cannot change." 281 Scholars interpreting the ICCPR have suggested that those "labor conditions" suffered must be economically abusive and create a dependent relationship between the individual and her employer. 282 The Revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Draft Trafficking Protocol) of July 2000 proposed that servitude "shall mean the condition of a person who is unlawfully compelled or coerced by another to render any service to the same person or to others and who has no reasonable alternative but to perform the service, and shall include domestic servitude and debt bondage." 283

Although no consensus exists regarding the definition of servitude, two likely elements of a definition can be extracted from the above interpretations: a dependent, economically abusive labor relationship; and no reasonable possibility of escape. As discussed at length in the preceding text, while the abusive labor conditions of the live-in migrant domestic workers described in this report do not rise to the level of slavery or the "institutions and practices similar to slavery," the conditions may, in certain instances, accurately be described as servitude.

277 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 U.N.T.S. 3, September 7, 1956, Article 1. The Supplemental Slavery Convention entered into force for the United States on December 6, 1967. In summary form, the following four "institutions and practices" are proscribed by the Supplementary Convention: debt bondage; servitude; delivery of a minor to another by her parent or guardian for exploitation of the child or her labor; and the promise, surrender, or transfer of a woman in marriage through payment of consideration to another or through inheritance.

278 Convention to Suppress the Slave Trade and Slavery, 60 L.N.T.S. 253, September 25, 1926, Article 1(1). The Slavery Convention entered into force for the United States on March 21, 1929.


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As also discussed in the text, when abusive labor situations rise to the level of servitude or fall just short of servitude, they may constitute forced labor under international law, prohibited by the ICCPR and defined by the ILO Forced Labour Convention as "all work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." Neither "menace of any penalty" nor "voluntarily" is defined by the ILO Convention.

"Menace of any penalty" was explained by the ILO Committee of Experts as a penalty that "need not be in the form of penal sanctions, but might take the form also of a loss of rights or privileges." The scope of such "rights or privileges" has not been defined, though the ILO Committee of Experts later identified entitlement benefits based on previous work or contributions, such as social security, as one such "right or privilege," and the European Court of Human Rights identified expulsion from law school or denial of the right to practice law to a law student as another.

"Voluntarily" has been even less explicitly defined than "menace of any penalty," though the fora in which the issue has been addressed suggest that "voluntary" consent must be free and informed and made with knowledge of the employment conditions being accepted. The European Court, interpreting the European Convention's prohibition of forced labor, found that if an individual "entered the profession . . . with knowledge of the practice complained of, there was no forced labor, as consent was "voluntary." Similarly, Option 1 of the definitional section of the Draft Trafficking Protocol of April 2000 defined forced labor as "all work or service extracted from any person under threat [of] . . . or use of force [or coercion], and for which the person does not offer himself or herself with free and informed consent." Likewise, in a report addressing an alleged violation of the ILO Forced Labour Convention, the ILO found that impoverished workers, "recruited on the basis of false promises" of "good wages and good working conditions," did not voluntarily consent to their employment relationships. The ILO Committee of Experts similarly found that mandatory overtime could not constitute

266 ICCPR, Article 8(3); ILO Forced Labour Convention, Article 2(1). Both the ICCPR and the ILO Forced Labour Convention contain exceptions to the prohibition of forced or compulsory labor, none of which is applicable to the labor situations of live-in migrant domestic workers.


270 See van Dijk and van Hooif, Theory and Practice of the European Convention on Human Rights, pp. 335-336. Although the European Convention has been interpreted in light of the ILO Forced Labour Convention, the European Commission of Human Rights has added the requirement that the labor be "unjust," "oppressive," or an "avoidable hardship." Van der Meerse, 70 Eur. Ct. H.R. (ser. A), para. 37, "Neither the wording nor the historical background of Art. 8 [of the ICCPR] permits the inference of [these] further definitional features that would limit the scope of this prohibition." Nowak, U.N. Covenant on Civil and Political Rights . . . p. 150.

271 Van der Meerse, 70 Eur. Ct. H.R. (ser. A), para. 40. Unlike the Court, the European Commission on Human Rights adopted the view that prior consent deprives work or services of their involuntary character, a view which experts have found to be "too restrictive." See van Dijk and van Hooif, Theory and Practice of the European Convention on Human Rights, pp. 335-336.


273 International Labor Organization, Report of the Committee set up to examine the representation made by the Latin American Center of Workers (CLAT) under article 24 of the ILO Constitution alleging non-observance by Brazil of the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1975 (No. 105), GB.264/16/7, 1995, paras. 9, 22, 25, 61 (emphasis added).
forced labor if "within the limits permitted by the national legislation or collective agreements"—in other words, the limits of which a worker was "informed."

**U.S. Law**

The U.S. Constitution and U.S. statutory law also prohibit "involuntary servitude" without explicitly defining the term. Before promulgation of the Trafficking Act, the task of defining involuntary servitude fell exclusively to U.S. courts, which found that an individual held in involuntary servitude must "reasonably . . . believe, given her 'special vulnerabilities,' that she has no alternative but to remain in involuntary service for a time." Providing for the consideration of special vulnerabilities, however, did not imply that "psychological pressure alone would . . . satisfy the 'force or threat' element of the involuntary servitude offense"—an element requiring use or threat of physical force or harm, physical restraint, or legal coercion to create conditions of involuntary servitude.

In its non-criminal "Definitions" section, the Trafficking Act expands the definition of involuntary servitude, defining the condition as induced by "any scheme, plan, or pattern intended to cause a person to believe that if the person did not enter into or continue in such a condition, that person or another person would suffer serious harm or physical restraint" or by "abuse or threatened abuse of the legal process." The Trafficking Act does not, however, amend U.S. criminal law to adopt this definition. Instead, the Trafficking Act, criminalizes forced labor, defined using language virtually identical to that used in the "Definitions" section to define involuntary servitude.

Thus, by recognizing under its criminal section that the threat of "serious harm" can coerce performance of forced labor and under its "Definitions" section that this threat can create conditions of involuntary servitude, the Trafficking Act may have created a standard similar to the "menace of any penalty" standard required to establish forced labor under international law. Just as international law fails to define "menace of any penalty," however, the Trafficking Act fails to define "serious harm." Nonetheless, according to the legislative history:

"[S]erious harm" refers to a broad array of harms, including both physical and nonphysical harm or threats of force . . . and [is] intended to be construed with respect to the individual circumstances of victims that are relevant to determining whether a particular type or certain degree of harm or coercion is sufficient to maintain or obtain a victim’s labor or services, including the . . . background of the victims.

The legislative history further notes that the Trafficking Act is intended to cover "cases in which individuals have been trafficked into domestic service . . . not only where such victims are kept in service through overt beatings, but also where the traffickers use more subtle means designed to cause their victims to believe that serious harm will result to themselves or others if they leave." Because the Trafficking Act fails to amend U.S. criminal law to reflect the concept of involuntary servitude set forth in its "Definitions" section, U.S. criminal involuntary servitude law still narrowly limits the coercive means by which an employer can create conditions of servitude, a limitation not suggested by international law. Nonetheless, labor conditions rising to the level of servitude or forced labor under international

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296 Altakri, 54 F.3d at 1000 (citations omitted); See also Kozlowski, 487 U.S. 971.
297 Altakri, 54 F.3d at 1001.
298 Ibid.; see also Kozlowski, 487 U.S. 971. Legal coercion is defined as "the use of the law, the legal process, or legal institutions to compel service." Altakri, 54 F.3d at 1001 n. 6.
299 Public Law 106-384, Sec. 103(5)(A), (B) (emphasis added).
300 Ibid., Sec. 112(a)(2).
302 Ibid. Examples of such "serious harm" include "causing the victim to believe that her family will face harms such as banishment, starvation, or bankruptcy in their home country."

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law may be covered by the Trafficking Act’s new prohibition of forced labor, which does not so restrict coercive employer tactics that can give rise to such abusive labor situations.

Discrimination

International Law

The ICCPR prohibits discrimination on the grounds of sex, providing that “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law.” The Human Rights Committee, guided by the definition of discrimination against women established in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), defines sex discrimination under the ICCPR as “any distinction, exclusion, restriction or preference which is based on . . . sex . . . and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.” What if an apparently neutral exclusion—one not explicitly based on sex—has the effect of disproportionately denying women legislative protection? Neither the Human Rights Committee nor the CEDAW Committee has directly addressed this question. The Committee on the Elimination of Racial Discrimination, which monitors the implementation of the Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the European Court of Justice, however, suggest the following analysis.

The Human Rights Committee has stated that the discrimination prohibition in the ICCPR should be interpreted in accordance with CERD, and the CERD Committee has found that “an action has an effect contrary to the Convention”—even an apparently neutral action—when it has “an unjustifiable disparate impact upon a group” protected under the Convention. When is an apparently neutral action resulting in a negative disproportionate impact on women unjustifiable? The European Court of Justice (ECJ), applying the Council of the European Union (Council) equal treatment directive prohibiting “discrimination whatsoever on grounds of sex either directly or indirectly,” provides some guidance. The ECJ has repeatedly found that “[i]ndirect discrimination arises where a national measure, albeit formulated in neutral terms, works to the disadvantage of far more women than men” and the state is unable to show that the measure is “attributable to factors which are objectively justified and are in no way related to any discrimination based on sex.” To meet this burden, a state must show that the measure in question reflects a necessary aim of its social policy, unrelated to any

---

380 ICCPR, Article 26.
381 CEDAW defines “discrimination against women” as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, December 18, 1979, Article 1. The United States has signed but not ratified CEDAW.
383 Ibid.
385 Council of the European Union Directive 76/207/EEC, February 9, 1976, Article 2(1). The equal treatment directive was issued by the Council in 1976 to direct member states on the implementation of the principle of equal treatment for men and women with regards to access to employment, vocational training and promotion, and working conditions set forth in the Treaty establishing the European Economic Community.
386 The language, “directly or indirectly,” is virtually identical in meaning to the Human Rights Committee language, “purpose or effect.”
3878 v. Secretary of State for Employment, ex parte Seymour-Smith and another, All ER (EC) 97, Case C-167/97 (1999), para. 60. J.P. Jenkins v. Kingsgate, Ltd., ECR 911, Case 96/89 (1981); see also Enderby v. Frenchay Health Authority and Another, 1 CMLR 8, Case 127/92 (1993), para. 37. To show that women are disproportionately impacted, statistics must demonstrate that “considerably” more women than men are affected. Secretary of State for Employment, ex parte Seymour-Smith and another, All ER (EC) 97, para. 60, 65.
discrimination based on sex, and that the measure is capable of advancing and both suitable and necessary for achieving that aim.²⁰⁹

According to the ILO Committee of Experts' interpretation of ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation, discriminatory justifications include those based on the "archaic and stereotyped concepts . . . that are at the origin of discrimination based on sex."²¹⁰

U.S. Law Exclusions of Live-In Domestic Workers

If the exclusions of live-in domestic workers from U.S. labor and employment legislation affect substantially more women than men but are facially neutral—not explicitly based on sex—they may still have a discriminatory impact. Applying the analysis suggested by CERD and the European Court of Justice, they have a discriminatory impact if they are implicitly based on sex—if it cannot be shown that they are objectively justified, suitable and required to achieve a necessary social policy goal that is unrelated to sex discrimination.

The exclusions of live-in domestic workers from the Fair Labor Standards Act overtime protections, the National Labor Relations Act, and the Occupational Safety and Health Act use neutral language. Under the suggested analysis, they may have a discriminatory impact, however, because they predominantly affect women and the government has not shown that they are "attributable to factors which are objectively justified and are in no way related to any discrimination based on sex."²¹¹ On the contrary, this sector of work has historically and traditionally been related to women, and regulation of this sector has often been driven by discriminatory stereotypes.

The view of domestic work as private, informal, devalued female work, malleable to the needs of the family, has affected perceptions of domestic work performed for pay.²¹² Even though working for pay, a domestic worker is often still perceived as "part of the family," integrally connected to the employer's intimate family life and a private, family care-taker rather than a productive, value-producing member of society.²¹³ Her labor has been distinguished in U.S. law from labor performed in the public sphere, even similar work such as that of janitors and hotel maids—sectors covered by the NIRA, the OSHA, and the FLSA overtime protections.²¹⁴

²⁰⁹ Secretary of State for Employment, ex parte Saymore-Smith and another, All ER (EC) 97, para. 69, 72. In this case, the ECIJ also added that, in performing this analysis, the "possibility of achieving the social policy aim in question by other means" must also be considered. The ECIJ has also noted that "mere generalizations concerning the capacity of a specific measure to encourage" the social policy goal are not sufficient to show "that the aim of the disputed rule is unrelated to any discrimination based on sex nor to provide evidence on the basis of which it could reasonably be considered that the means chosen were suitable for achieving that aim."


²¹¹ Live-in domestic workers are and historically have been predominantly female. According to the U.S. Bureau of Labor Statistics, in 1999, there were 831,000 private household workers, including cooks, butlers, child care providers, and live-in and live-out domestic workers; 791,000 of these workers, approximately 95 percent, were women. United States Department of Labor Bureau of Labor Statistics, Table 1: Employed and experienced unemployed persons by detailed occupation, sex, race, and Hispanic origin, Annual Average 1999 (unpublished 2000) (on file with Human Rights Watch). See also Peggy R. Smith, "Regulating Paid Household Work: Class, Gender, Race, and Agenda of Reform," 48 American University Law Review 851 (April 1999); Melanie Ryan, "Swept Under the Carpet: Lack of Legal Protections for Household Workers—A Call for Justice," 26 Women's Rights Law Reporter 159 (Spring-Summer 1999); Jennifer Bickham Mendler, "Of maps and maid's: contradictions and continuities in bureaucratisation of domestic work," 45 Social Problems 114 (February 1, 1998).

²¹² Domestic work, traditionally performed by a wife or a mother without pay, has also generally not been assigned a monetary value and not been recognized as productive labor under U.S. laws, including marital contract, social security, tax, and welfare reform laws. See Katharine Silbaugh, "Turning Labor into Love: Housework and the Law," 91 Northwestern University Law Review 1 (Fall 1996), pp. 27-67.


²¹⁴ For example, in 1939, the Minnesota Supreme Court emphasized that the worksite of a domestic worker—the private home—should be treated differently from a public workplace because the private home is "a sacred place for people to go and be quiet and at rest and not be bothered with the turmoil of industry," "a sanctuary of the individual," and "the abiding place of affections." State v. Cooper, 235 N.W. 903, 905 (Minn. 1929).

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Live-in domestic workers are specifically excluded from the NLRA, but the justifications provided do not withstand scrutiny. The NLRA exclusion of live-in domestic workers is explained in one sentence in the act's legislative history as reflecting a policy of covering only those "disputes which are of a certain magnitude and which affect commerce." If Congress wished to prevent coverage of disputes not of "a certain magnitude," however, Congress would have excluded all small employers, rather than explicitly excluding only a few labor sectors, such as live-in domestic workers. Similarly, the suggestion that domestic work should be excluded from the NLRA because it does not affect interstate commerce also does not hold water—approximately forty years after passage of the NLRA, in defining the scope of the Fair Labor Standards Act, Congress explicitly stated that domestic work does affect interstate commerce.

The exclusion of live-in domestic workers from the OSHA was established "as a matter of policy" by a 1972 Department of Labor regulation. The DOL provided no further explicit justification nor goal to be accomplished by this general "policy."

In the FLSA legislative history, Congress indicates that live-in domestic workers are excluded from overtime protections to avoid the "monitoring and enforcement costs inclusion would foist upon the federal Department of Labor." The record notes, "Ordinarily such an employee engages in normal private pursuits such as eating, sleeping, and entertaining, and has other periods of complete freedom. In such a case it would be difficult to determine exact hours worked." This justification is specious, however. Live-in domestic workers are covered by FLSA minimum wage protections, and the federal Department of Labor must therefore already calculate hours worked by live-in domestic workers to monitor and enforce the FLSA on their behalf, regardless of whether they are covered by overtime protections.

The explicit, facially neutral justifications offered for the exclusions of live-in domestic workers from the overtime protections of the FLSA, the NLRA, and the OSHA, in fact, on examination, do not appear "attributable to factors which are objectively justified and in no way related to any discrimination based on sex. These exclusions appear, instead, to be implicitly sex-based—related to discriminatory perceptions of women and housework performed in the private sphere. Therefore, under the analysis suggested by CERD and the European Court of Justice, these exclusions constitute impermissible indirect sex discrimination in violation of international law.

***

115 The only other workers employed by small employers explicitly listed in the legislative history are agricultural workers and individuals employed by their parents or spouses. Furthermore, when Congress drafted the final version of the NLRA, it chose not to exclude from coverage all employers with under ten workers—small employers—as suggested during the 1934 legislative debate of the NLRA.
116 29 U.S.C. §201(a); 29 C.F.R. §552.99. The FLSA implementing regulations note that "[i]n the legislative history it was pointed out that employees in domestic service employment handle goods such as soaps, maps, detergents, and vacuum cleaners that have moved in or were produced for interstate commerce and also that they free members of the household to themselves engage in activities in interstate commerce." 29 C.F.R. §552.99.
117 29 C.F.R. §1975.6. Concern regarding coverage of small employers did not lie behind the exclusion, however, as OSHA covers "any employer employing one or more employees." 29 C.F.R. §1975.4(a).
119 House Report. No. 93-913, 93rd Cong., 2d Sess. (March 15, 1974); see also 29 C.F.R. §186.23.
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HOME IS WHERE THE WORK IS:
Inside New York's Domestic Work Industry

DOMESTIC WORKERS UNITED & DATACENTER
JULY 14, 2006

Introduction by Dr. Robin D. G. Kelley, Columbia University
Legal History by New York University Immigrant Rights Clinic
Domestic Workers United [DWU] is an organization of Caribbean, Latina and African domestic workers who work in close collaboration with other domestic worker organizations in New York to build the power of the entire domestic workforce, raise the level of respect for domestic work, establish fair labor standards and help build a movement to end exploitation and oppression. Founded in 2000, DWU helped to pass groundbreaking New York City legislation in support of rights and dignity for domestic workers, won over $300,000.00 in unpaid wages for exploited domestic workers, and held two statewide conventions for domestic workers resulting in a proposal for a New York Domestic Workers Bill of Rights.

The DataCenter supports social justice groups to bridge the gap between having a desire to create change and having the power to effectively be a part of the decision-making process, by providing critical research support to guide campaign strategies and community-based policy change. Through partnerships with grassroots social justice organizations, the DataCenter plays an integral role in strategically placing research in organizing work, engaging members in research, recognizing and drawing out community expertise and transferring skills.

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Immigrant and Refugee Rights Clinic
Women of Color Resource Center
North Star Fund
New York Women's Foundation
New York Foundation
Ms. Foundation for Women
Open Society Institute
# HOME IS WHERE THE WORK IS:
Inside New York's Domestic Work Industry

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All contents © Copyright 2006 Domestic Workers United
We have a dream that one day, all work will be valued equally.

DOMESTIC WORKERS UNITED

NEW YORK CITY IS A LEADING FORCE IN THE GLOBAL economy, but it couldn’t be without the 200,000 domestic workers who sustain the city’s families and homes. Domestic workers enable New Yorkers to work and have leisure time knowing that their children, elderly, and homes are taken care of. Domestic workers also enable their employers to meet the demanding hours required for the smooth functioning and productivity of the professional sectors. Domestic work forms the invisible backbone of New York City’s economy.

This groundbreaking report shines a spotlight on the hidden workforce of domestic workers who keep the city’s economic engine running every day. It delivers legal, historical, anecdotal, and unprecedented survey-based information. The data are the result of the first ever industry-wide analysis of domestic workers by domestic workers, based on 547 worker surveys, 14 worker testimonies and interviews with 7 employers. An overview of exclusionary labor laws illustrates the explicit legislative discrimination against domestic workers, while an economic history of domestic work in the U.S. and analysis of present day global pressures that impact the industry illustrate structural dynamics that foster worker abuse.

Domestic worker is defined here as anyone employed to work in a private home by the head(s) of household, including nannies, housekeepers, elderly companions, cleaners, babysitters, baby nurses and cooks.

Estimates based on 2000 U.S. Census data of New York City households with children (under 18 years) or elderly (65 years or older) and income of $50,000 or greater as likely employers. Due to the dispersed and informal structure of the industry and its immigrant workforce, it is impossible to precisely measure industry size. An estimate cited by the Chicago Tribune (“Maids Services Clean Up as Demand Escalates,” Carol Kleinman, 1995) states that 45% of women working outside the home are domestic workers, which would bring the number of domestic workers in New York City closer to 600,000 using 2000 Census data of employed women.
Survey results show that immigrant women of color make up nearly the entire domestic workforce. The wages domestic workers earn cannot cover New York's high cost of living. Domestic workers lack basic labor and health protections and often face exploitative work conditions. Many endure verbal or physical abuse. Domestic work may be a labor of love, but it isn't one that loves its laborers. For too long, worker exploitation has remained invisible in an industry that is rarely documented and goes largely unmonitored—until now.

Survey results clearly point to the need for industry standards that will ensure fair labor practices, recognition, and humane treatment. The report proposes a set of long-overdue policy recommendations to create an industry that is fair, equitable, and dignified.

**A LIFETIME OF BONDAGE**

Survey results show domestic workers stay in the industry, often with the same employer, for significant periods of their lives. They are a stable workforce; yet endure working conditions that violate their rights as workers and as human beings.

- Forty-one percent (41%) of the workers earn low wages. An additional 26% make wages below the poverty line or below minimum wage. Half of workers work overtime—often more than 50-60 hours a week. Sixty-seven percent (67%) of workers don't receive overtime pay for overtime hours worked. Domestic workers are primary providers of their families in the U.S. and in their home countries, but face severe financial hardships.

- Thirty-three percent (33%) of workers experience verbal or physical abuse or have been made to feel uncomfortable by their employers. One-third of workers who face abuse identify race and immigration status as factors for their employers' actions.

- Nine out of ten domestic workers do not receive health insurance from their employers. One-third of workers could not afford medical care needed for themselves or their families. Less than half of workers receive basic workplace benefits such as regular raises and paid sick days.

- Forty-six percent (46%) of domestic workers experience stress at work. Employers cause stress by requiring domestic workers to perform multiple jobs, to do work not in their job descriptions, and to work for someone other than their employer.

**VALUING DOMESTIC WORK**

The struggle of domestic work is to be recognized as "real work." Its historical roots in slavery, its association with women's unpaid household labor, its largely immigrant and women of color workforce and exclusion from legal protections reinforce the notion that domestic work is less valuable than work outside of the home.

Historically, African slaves, indentured servants or hired maids performed housework. After the abolition of slavery, the paid domestic workforce became predominantly Black women until the Civil Rights movement opened doors to other occupations. Since the 1970s, a growing workforce of immigrant women of color seeking to escape poverty created by U.S.-driven neoliberal policies abroad occupies the industry. Survey results found 99% of domestic workers in New York are foreign-born.

Race and gender-based legal exclusions by the U.S. and New York state governments have shaped the domestic work industry in New York. Domestic workers have been written out of major federal and state laws that protect workers. Ninety-five percent of domestic workers in New York are people of color, and 93% are women.

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1 Wage breakdowns are modeled after Restaurant Opportunities Center of New York's report *Behind the Kitchen Door: Pervasive Inequality in New York City's Thriving Restaurant Industry* 2009, p. 11. The breakdowns are based on 2004 Department of Health and Human Services federal poverty line standards for a family of four of $18,650 per year; low wages are one and a half times the poverty line.

2 Minimum wage, although increased to $8.75 per hour in New York City, is shown here as $5.15 since surveys were conducted before the wage increase.
The NLRA guarantees U.S. employees the right to organize, but specifically excludes domestic workers from its definition of "employee."

The FLSA sets a federal minimum wage rate, maximum hours, and overtime for employees in certain occupations. Until 1974, domestic workers were completely excluded, and today the Act still excludes from coverage "casual" employees such as babysitters and "companions" for the sick or elderly. Furthermore, live-in domestic workers, unlike most other employees in the U.S., cannot get overtime under FLSA.²

OSHA regulations explicitly exclude domestic workers from the Act's protections "[a]s a matter of policy."³

Title VII bars employment discrimination on the basis of "race, color, religion, sex, or national origin," but applies only to employers with 15 or more employees. Thus, virtually every domestic worker in the U.S. is de facto excluded from Title VII's protections.

Under New York state law, while domestic workers who do not live in their employer's home are entitled to overtime at a rate of one and a half times their regular rate after 40 hours of work in a week, live-in domestic workers are only entitled to overtime at a rate of one and a half times the minimum wage and then only after 44 hours of work in a week.⁴

Interviews with employers show they are unclear about their legal and ethical responsibilities and are in need of industry standards. In 2003, New York City Council passed the Nanny Bill, which requires employment agencies to provide domestic employers with a "code of conduct" that explains labor laws and to inform workers of their rights.⁵

It is a good beginning. But in an informal industry based in private homes, domestic workers require a comprehensive solution that guarantees their rights to fair working conditions and recognizes their work. The Domestic Workers’ Bill of Rights is a New York State legislative proposal that addresses the longstanding, unfair exclusion of domestic workers from labor protections, and the unique conditions and demands of the industry in which they work, by amending the New York State Labor Law to ensure workers:

- Receive a livable wage and are paid for overtime;
- Are given time off for family care and medical care. In addition, they are given at least one day of rest off each week and receive paid personal days, sick days, vacation and holidays;
- Are given advance notice of termination and paid severance in accordance with number of years worked;
- Are protected from trafficking.

In addition, the Bill proposes to eliminate language excluding domestic workers from the definition of "employee." It also eliminates exclusion from coverage of other New York State Labor Law and Human Rights law provisions to end the cycle of slavery and gender and race-based exclusionary laws at last.

It is only fair that those that care for our homes and loved ones are given the same respect and dignity as other workers for the work they perform.

---

² Local Law 33. See page 9 for further information.
A DAY IN THE LIFE OF "CARLA," A LIVE-OUT NANNY

"Carla" describes a typical day in her life as a live-out nanny. Her chronicle demonstrates the long work hours caring for her employer's family and the brief amount of time available for her own family common to domestic workers in New York.

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>5:00 AM</td>
<td>Wake up, take a bath and get dressed</td>
</tr>
<tr>
<td>5:46 AM</td>
<td>Get the boy ready for school: comb his hair, make sure he washes, pack his lunch</td>
</tr>
<tr>
<td>6:00 AM</td>
<td>Make breakfast for my three children, ages 5, 7, and 11</td>
</tr>
<tr>
<td>6:08 AM</td>
<td>Get the girl dressed and walk the boy to the bus stop together</td>
</tr>
<tr>
<td>6:25 AM</td>
<td>Leave the house to catch the bus to the train</td>
</tr>
<tr>
<td>6:30 AM</td>
<td>Catch the bus – ride for 10 minutes</td>
</tr>
<tr>
<td>6:40 AM</td>
<td>Arrive at the Marble Hill Metro North station in the Bronx</td>
</tr>
<tr>
<td>7:08 AM</td>
<td>Board the Train to Westchester</td>
</tr>
<tr>
<td>7:25 AM</td>
<td>Arrive in Hastings-on-Hudson and catch a cab to the house</td>
</tr>
<tr>
<td>7:30 AM</td>
<td>Arrive at the house, prepare breakfast for the kids: a six year-old boy and three year-old girl</td>
</tr>
<tr>
<td>7:45 AM</td>
<td>The parents, my employers, leave</td>
</tr>
<tr>
<td>7:46 AM</td>
<td>Get the boy ready for school: comb his hair, make sure he washes, pack his lunch</td>
</tr>
<tr>
<td>8:08 AM</td>
<td>Get the girl dressed and walk the boy to the bus stop together</td>
</tr>
<tr>
<td>8:13 AM</td>
<td>Bus arrives, put the boy on the bus, walk home with the girl</td>
</tr>
<tr>
<td>8:20 AM</td>
<td>Prepare the girl for nursery school: comb her hair, get her dressed, pack a snack</td>
</tr>
<tr>
<td>9:05 AM</td>
<td>Walk to the nursery school and drop her off</td>
</tr>
<tr>
<td>9:25 AM</td>
<td>Return home and clean the kitchen, load the dishwasher</td>
</tr>
<tr>
<td>10:45 AM</td>
<td>Clean the children's rooms, load the washing machine, begin preparing dinner</td>
</tr>
<tr>
<td>11:45 AM</td>
<td>Return to the nursery to pick up the little girl</td>
</tr>
<tr>
<td>12:05 PM</td>
<td>Return home to make lunch for the little girl</td>
</tr>
<tr>
<td>1:00 PM</td>
<td>Put the little girl down for a nap</td>
</tr>
<tr>
<td>2:00 PM</td>
<td>Wake the little girl and get her ready for tap dance class</td>
</tr>
<tr>
<td>3:00 PM</td>
<td>Take her to tap dance class</td>
</tr>
<tr>
<td>3:40 PM</td>
<td>Pick up the boy from the bus stop, return home and prepare a snack</td>
</tr>
<tr>
<td>4:15 PM</td>
<td>Get the boy ready for karate class, pack his gym bag, take him to class</td>
</tr>
<tr>
<td>4:45 PM</td>
<td>Pick up the little girl from tap dance class</td>
</tr>
<tr>
<td>5:00 PM</td>
<td>Finish preparing dinner</td>
</tr>
<tr>
<td>6:00 PM</td>
<td>Friend drops the boy off at home, we start his homework</td>
</tr>
<tr>
<td>6:30 PM</td>
<td>Feed the kids dinner</td>
</tr>
<tr>
<td>7:00 PM</td>
<td>Prepare baths for the kids, parents arrive at home</td>
</tr>
<tr>
<td>7:10 PM</td>
<td>Parents drive me to train station</td>
</tr>
<tr>
<td>7:23 PM</td>
<td>Board the train at Hastings-on-Hudson</td>
</tr>
<tr>
<td>7:44 PM</td>
<td>Reach the Marble Hill train station and wait for the bus</td>
</tr>
<tr>
<td>8:15 PM</td>
<td>Enter my door at home, drop my bags &amp; take a bath</td>
</tr>
<tr>
<td>8:45 PM</td>
<td>Have tea and dinner</td>
</tr>
<tr>
<td>9:15 PM</td>
<td>Lay down in bed with my kids, listen to them until they go to sleep</td>
</tr>
<tr>
<td>10:00 PM</td>
<td>Clean the house</td>
</tr>
<tr>
<td>11:00 PM</td>
<td>Go to sleep</td>
</tr>
</tbody>
</table>
When I was growing up in New York City in the 1960s, I remembered the Upper East Side as purely white-bread, upper crust, bourgeois. My mom had no real reason to drag us over there from our West Harlem/Washington Heights neighborhood, unless we happened to be spending the day at the Central Park Zoo and searching for a place to grab a bite, or if she scraped up enough money to take us to the Guggenheim Museum. I do remember the white people and the snooty looks. It was clear, even to a seven-year-old, that brown people didn’t belong here.

Today, one can hardly walk up Park or Madison Avenues without seeing black and brown women behind strollers or with bigger white kids in tow. They are hypervisible reminders of a largely invisible working-class of 200,000 women throughout the city who do the essential work of childcare, cleaning, cooking, washing, shopping, and whatever else their employers might demand of them. We don’t know, or rarely acknowledge, that these women are grossly underpaid, exploited and often abused—in some cases forced to live and work under conditions tantamount to slavery. The majority are immigrants, often caught in a web of modern-day human trafficking created, in no small part, by U.S. political and economic policies.

As I write these words, there are untold numbers of middle and upper-class, mostly white women, complaining about their “help,” or trading tales about their nanny problems or possibly exchanging references. But the true conditions of domestic workers and their own collective efforts to improve those conditions are rarely part of the popular discourse. Why? In part because Hollywood has taught us everything we need to know about domestic workers. Alice of “The Brady Bunch,” Nell Carter of “Gimme a Break!,” Mr. French of “Family Affair,” or good ol’ Tony from “Who’s the Boss?” show us that domestic workers are happy people treated like part of the family. They are the real force behind the household, giving advice to children and adults alike, and like the slaves of “Gone with the Wind,” they want to stay with their family forever. And if you’re young and pretty, you just might snag the boss, like Fran Drescher, Jennifer Lopez, or Elizabeth Pena (remember “I Married Dora”? ), and live happily ever after. Sadly, these myths are so well ingrained and hard to overturn, and they function to convince us that domestic workers really are family, not labor, and thus they ought to be grateful for the opportunity to live in or work for such a loving household.

While there have been many critical scholarly studies documenting the exploitation and abuse of domestic workers in the U.S., there is no substantial survey of the current
conditions of domestic workers in a major city like New York. And as far as I know, this is the first study initiated by domestic workers themselves, through the auspices of Domestic Workers United (DWU). Assembled by DWU members and the DataCenter, the report tells the truth about the work of the city’s nannies, caretakers, and housekeepers. If its findings are widely circulated and seriously engaged, the report may finally lay to rest many of the myths surrounding the fate of domestic workers.

We learn, for example, that the vast majority of domestic workers in New York City earn substandard wages, often working 50 hours a week or more. Live-in workers suffer greater exploitation since they are always on call and can work up to 100 hours a week. Although they are legally entitled to overtime pay, few receive it. Approximately 90% of the workers do not receive health insurance benefits, nor do their employers arrange to pay social security.

And for so little money, we discover that untold numbers of workers are forced to sleep in damp basements with no heat in winter or ventilation or air conditioning in summer. Worse, the report records shocking stories of outright slavery. Included in these pages are documented cases of employers bringing immigrant workers from other countries with promises of decent wages and working conditions, but once they arrive in the U.S. they are neither paid nor allowed to leave. One particularly harrowing story involves a young Indian woman who was hired to work for one family in the U.S., but once she arrived, her employer literally subcontracted or ‘leased’ her to another family, who then paid her employer $1,200 a month directly. The employer sent $200 of it to the worker’s family, but the worker herself never saw a dime.

Domestic workers are often victims of verbal and even physical abuse. But unfortunately, they have very few protections outside of the criminal justice system (and, in truth, very few domestics have the luxury of turning to the law for support since so many are undocumented workers fearful of deportation). Indeed, federal and state governments are accomplices in the exploitation of domestic workers because domestic workers are largely excluded from laws intended to protect workers’ rights—notably, the National Labor Relations Act, the Fair Labor Standards Act, and the Occupational Safety and Health Act.

What this startling document tells us is that the battles these women endure extend far beyond the rights of labor. They are immersed in a struggle for human rights and dignity; for immigrants’ rights and social justice; for the dismantling of racism and globalization. As depressing as the report’s findings may be, what I find heartening is the fact that groups like DWU are fighting back, working feverishly to overturn these inhumane working conditions and to provide all domestics with a living wage. One of the functions of the myth that domestic workers are merely “part of the family” is to discourage collective organization. Of course, there have been efforts to organize domestic workers in the past, beginning as early as the late 19th century, but what DWU has done is unprecedented. Through solidarity, mass mobilization, and hard work, they forced the city council to pass a “code of conduct” for domestic employment placement agencies, and currently they are working on a statewide Bill of Rights for domestic workers. In the tradition of social justice unions such as Justice for Janitors, DWU members understand that in order to truly transform the conditions of household work, they have to transform the city ... the nation, and quite possibly the world. Pipe dream? Not if you do the math: domestic workers are 200,000 strong in New York City, and those who benefit from their services number in the millions. All of us need to read this report and decide where we stand. And if you really believe in freedom, the choice is obvious.

—Robin D. G. Kelley, William B. Ransford
Professor of Cultural and Historical Studies, Columbia University

What do we do about the cleaning lady that comes in? She enjoys herself. She gets together with the family and has a coke or a glass of milk.

SENATOR DOMINICK
arguing against extending labor protections to domestic workers in 1974 Congressional debates

DOMESTIC WORKERS IN THE U.S. ARE MAINLY WOMEN of color, and in many communities are predominantly immigrants. They are also mostly excluded from the protections afforded by U.S. labor laws.

Women, people of color, and immigrants have played vital roles in the struggle for U.S. workers' rights, risking—and sometimes losing—their lives in strikes and marches for fundamental dignities like the right to organize, the eight-hour workday, minimum wage and maximum hour laws, and basic safety standards in the workplace. Yet for years, mainstream labor unions excluded women, people of color, and "foreigners;" and when the U.S. government responded to labor unrest by passing workers' rights legislation, these same constituencies were often de facto excluded from the very protections they helped to win. These exclusions generally do not operate directly—today's labor laws don't exclude women or people of color by name. Rather, they exclude certain categories of workers, such as agricultural or domestic workers, who are, in practice, women, people of color, and/or immigrants. These exclusions suggest that U.S. laws do not recognize domestic work as "real" work, and very often do not recognize women and people of color as real workers. The racism and sexism inherent in such a system are striking.

3at 40–41
Domestic workers are denied labor protections in both direct and indirect ways. For example, because the law does not guarantee domestic workers the right to organize, they are excluded from certain benefits that other employees obtain through collective bargaining, such as vacation, sick days, and notice prior to being fired. The full history of the exclusion of domestic workers from U.S. labor law would take volumes to explore. Below, we look at the most direct exclusions in the major labor laws: the Fair Labor Standards Act (FLSA), National Labor Relations Act (NLRA), Occupational Safety and Health Act (OSHA), civil rights laws, and New York state labor law.

NATIONAL LABOR RELATIONS ACT (NLRA):
The NLRA guarantees U.S. employees the right to organize, but specifically excludes domestic workers from its definition of “employee” — with the result that U.S. law does not recognize domestic workers’ right to organize for better working conditions.\(^5\) Passed in 1935 as one of the cornerstones of the New Deal, the NLRA is the foremost guarantee of U.S. workers’ right to organize. It defines employees extremely broadly, excluding only agricultural laborers and domestic workers, along with a few other narrow categories of workers. As discussed above, jobs in agriculture and domestic work have traditionally been filled by people of color, often immigrants, and domestic workers historically have been—and are still—nearly all women.

FAIR LABOR STANDARDS ACT (FLSA): The FLSA sets a federal minimum wage rate, maximum hours, and overtime for employees in certain occupations. Until 1974, domestic workers were completely excluded, and today the Act still excludes from coverage “casual” employees such as babysitters and “companions” for the sick or elderly.\(^6\) Furthermore, live-in domestic workers, unlike most other employees in the U.S., cannot get overtime under FLSA.\(^6\) Even when minimal coverage for domestic workers was added in the 1970s, it was a matter of immense debate. Legislators who opposed the extension would not acknowledge that domestic work was real work, instead preferring to make references to the boy who mowed the lawn and domestics who enjoyed themselves while working. The 1974 amendments failed to protect domestic workers completely, and no federal legislation since then has remedied this shortcoming in the law.

OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)

OF 1970: OSHA was enacted by Congress to “assure so far as possible every working man and women in the Nation safety and healthful working conditions.”\(^7\) Yet, in what would seem to be a direct contravention of this mandate, agency regulations explicitly exclude domestic workers from the Act’s protections “as a matter of policy.”\(^8\)

CIVIL RIGHTS LAWS: Title VII bars employment discrimination on the basis of “race, color, religion, sex, or national origin,” but applies only to employers with 15 or more employees.\(^9\) Thus, virtually every domestic worker in the U.S. is de facto excluded from Title VII’s protections. Similarly, the Americans with Disabilities Act (ADA) protects individuals with disabilities from employment discrimination, but applies only to employers with 15 or more employees.\(^10\) And the Age Discrimination in Employment Act (ADEA) protects individuals 40 years of age or older from age-based employment discrimination, but applies only to employers with 20 or more employees.\(^11\)

NEW YORK LABOR LAW: New York state law sets a state minimum wage for employees, including domestic workers. However, the law, like FLSA, distinguishes between live-in and live-out domestic workers. While domestic workers who do not live in their employer’s home are entitled to overtime at a rate of one and a half times their regular rate after 40 hours of work in a week, live-in domestic workers are only entitled to overtime at a rate of one and a half times the minimum wage and then only after 44 hours of work in a week.\(^12\)

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—RACHEL S. COEN & HENA MANSORI
Immigrant Rights Clinic
New York University School of Law

LOCAL LAW 33 – A BEGINNING

NEW YORK CITY NANNY BILL: Passed in 2003 in response to advocacy by domestic worker organizations, New York City Local Law 33 requires employment agencies that place domestic workers to provide employers with a “Code of Conduct” which explains existing labor laws. Employers must sign the code of conduct and agencies must retain the document for three years. The law also requires agencies to inform workers of their rights to and provide a description detailing their work responsibilities in prospective jobs.\(^13\)

\(^{19}\) U.S.C. § 152(5)
\(^{29}\) U.S.C. § 215(a)(15)
\(^{28}\) C.F.R. § 1978.6
\(^{10}\) U.S.C. § 6301 et seq.
\(^{12}\) NYC Admin. Code § 20-770 et seq.
We have been forced here because U.S. foreign policy has created poverty in our home countries. Once we are here in the U.S., searching for a way to survive, we are pushed into exploited jobs where our work is not recognized, respected or protected.

**JOYCELYN CAMPBELL**
Nanny in Westchester, from Barbados

**IN NEW YORK CITY TODAY, THE DOMESTIC WORK industry is on the rise, fueled by changes in the local and global economies. Middle and upper class women have become a significant part of the professional workforce, yet they remain largely responsible for maintaining their households. Many turn to domestic workers to avoid the “double day” of career and household work. Increasing income disparity creates a condition in which employers have greater disposable wealth and can afford to hire domestic workers, while workers have fewer viable employment options. In fact, the domestic work industry is largest in cities like New York where income disparity is high. These factors have built a demand for domestic work. U.S. Census data show a 24% increase in size of the New York domestic workforce from 1990 to 2000. In this same period, there was only a 10% growth in the workforce overall.**

Meanwhile, nations of the global South that struggled to gain independence after colonization have had the formidable task of reorienting economies that had been geared for production to serve colonizer interests. Many have become unable to service debts to international lending institutions and G-B nations (particularly the U.S.), and they have been required to adopt stringent economic policies that promote free trade, deregulation, privatization, and cuts in social services spending. While transnational corporations have benefited from the increased access to foreign markets, resources and labor, economies of the global South have been devastated by job loss, product dumping that undercuts locally produced goods, the end of communal land rights and the loss of traditional trading patterns. With their livelihoods destroyed, people around the world have been pushed to migrate in search of work.

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1Throughout this report, domestic workers and employers whose testimony is public are quoted with their full names, while others are quoted using a pseudonym, indicated by quotations, for their protection.
3Despite U.S. Census limitations in accurately counting industry size, it is perhaps the only source that captures industry data relatively consistently over time, and is included for that reason.
Domestic workers of the 21st century are a migrant workforce. The domestic workers who responded to our survey come from 42 countries. One-third (33%) came to the United States because they could not support their families in their home countries. Workers who live in their employers' home (31%) were especially likely to have left their home countries due to economic hardship. Workers also came because they had friends or relatives already working in the U.S. (35%) and because they had no job options in their home country (28%). Nine percent of live-in workers received sponsorship, or visas, from their employers.

TWO WORKFORCES - TWO WORLDS

Not only are domestic workers immigrants, they are overwhelmingly women of color. Ninety-five percent of the domestic workers who responded to the survey are people of color and 93% are women. Three-fourth of workers (76%) are not U.S. citizens.

In contrast to the largely immigrant workforce, employers of domestic workers are white (77%) and from the U.S. (78%).

<table>
<thead>
<tr>
<th>Reasons domestic workers came to the U.S.</th>
<th>% of all Workers</th>
<th>% that Live-out</th>
<th>% that Live-in</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unable to support family in home country</td>
<td>33%</td>
<td>26%</td>
<td>5%</td>
</tr>
<tr>
<td>No job options in home country</td>
<td>36%</td>
<td>26%</td>
<td>36%</td>
</tr>
<tr>
<td>Had relatives/friends already working in U.S.</td>
<td>35%</td>
<td>32%</td>
<td>25%</td>
</tr>
<tr>
<td>To work for an employer (sponsored)</td>
<td>3%</td>
<td>3%</td>
<td>9%</td>
</tr>
<tr>
<td>War, political unrest or natural disaster in home country</td>
<td>4%</td>
<td>3%</td>
<td>8%</td>
</tr>
</tbody>
</table>

SOURCE: DWU SURVEY

<table>
<thead>
<tr>
<th>Worker Demographics</th>
<th>% of Workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asian</td>
<td>20%</td>
</tr>
<tr>
<td>Black</td>
<td>65%</td>
</tr>
<tr>
<td>Latina</td>
<td>7%</td>
</tr>
<tr>
<td>Mixed race/Ethnicity</td>
<td>3%</td>
</tr>
<tr>
<td>White</td>
<td>1%</td>
</tr>
<tr>
<td>Female</td>
<td>93%</td>
</tr>
<tr>
<td>Male</td>
<td>1%</td>
</tr>
<tr>
<td>Foreign-Born</td>
<td>99%</td>
</tr>
<tr>
<td>Not U.S. Citizens</td>
<td>76%</td>
</tr>
</tbody>
</table>

SOURCE: DWU SURVEY

<table>
<thead>
<tr>
<th>Employer Demographics</th>
<th>% of Employers</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td>77%</td>
</tr>
<tr>
<td>One or both employers</td>
<td>76%</td>
</tr>
</tbody>
</table>

SOURCE: DWU SURVEY

DOMESTIC WORKERS ORGANIZING IN NEW YORK

DAMAYAN Migrant Workers Association is an independent, grassroots, membership-based organization led by women domestic workers. Damayan fights for the rights and welfare of Filipino migrant workers in New York and New Jersey and addresses the root causes of forced migration in the Philippines. We educate, organize and mobilize towards justice and dignity for Filipino domestic workers, and the genuine liberation of the Filipino people.

(212) 564-6057 • contact@damayannmigrants.org

*Elizabeth Martinez and Arnelco Garcia, "What Is Neoliberalism?" www.corpwatch.org/article.php?id=376
Domestic workers in New York come to the industry from a wide range of occupations in their home countries. While one-third (34%) of workers surveyed were employed in service, office and administrative support, and sales occupations in their home countries, workers also reported being business owners, business and financial professionals, medical professionals and lawyers before emigrating to the U.S. The impact of neoliberal policies cuts across social sectors, leading to the migration of workers from a broad range of professions and classes.

Domestic workers surveyed in our study reported that their employers are most likely to be business and finance professionals (22%). Other common fields include law, media, arts and entertainment, healthcare professions, or small business ownership. Educators, salespeople, office support staff, government and social services workers also hire domestic workers. However, very few employers represent the lower income rungs of the occupational ladder.

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**TABLE 3.4 Top Five Occupations of Workers in their Country of Origin**

<table>
<thead>
<tr>
<th>Occupation</th>
<th>% of Workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service</td>
<td>14%</td>
</tr>
<tr>
<td>Office &amp; Administrative Support</td>
<td>12%</td>
</tr>
<tr>
<td>Sales</td>
<td>8%</td>
</tr>
<tr>
<td>Homemaker</td>
<td>8%</td>
</tr>
<tr>
<td>Construction, Mining, Manufacturing</td>
<td>7%</td>
</tr>
</tbody>
</table>

**SOURCE:** DWU SURVEY

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**TABLE 3.5 Top Fields of Work for Employers in New York**

<table>
<thead>
<tr>
<th>Field</th>
<th>% of Employers</th>
<th>% of Spouses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business and Finance (corporate executive, business owner, broker, accountant, tax services, insurance agent)</td>
<td>22%</td>
<td>18%</td>
</tr>
<tr>
<td>Law (lawyer, judge, paralegal, court worker)</td>
<td>8%</td>
<td>9%</td>
</tr>
<tr>
<td>Healthcare (doctor, dentist, therapist, nurse)</td>
<td>6%</td>
<td>6%</td>
</tr>
<tr>
<td>Technology (computer programmer, economist, engineer, architect)</td>
<td>4%</td>
<td>3%</td>
</tr>
<tr>
<td>Small Business Owner</td>
<td>8%</td>
<td>6%</td>
</tr>
<tr>
<td>Media, Arts &amp; Entertainment (reporter, actor, designer, artist, writer, athlete)</td>
<td>7%</td>
<td>6%</td>
</tr>
</tbody>
</table>

**SOURCE:** DWU SURVEY

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Domestic workers play an important role in the New York City economy. Their work sustains their employers' participation in professions that uphold New York City's leadership role in the global economy: business and finance, law, media, arts and entertainment. Domestic workers also contribute to the New York economy by enabling their employers to increase family income. This, in turn, enables their employers to spend more on consumer goods, thus expanding the economy. Finally, in caring for their employers' children and their own, domestic workers nurture the future workforce.

**LEGACY OF SLAVERY**

The domestic work industry today reflects our legacy of slavery: immigrant women of color perform the household work that sustains and builds the economic strength of the U.S.

During the early colonial period, domestic work and other household subsistence labor was integrated with the market economy; settlers produced many goods for their own consumption. As the colonial market economy grew under industrialization, settlers acquired wealth. They then bought slaves, used indentured servants or hired maids to handle household work. White men were able to enter the market economy, but working women of all races had little option besides household work. By 1870, half of all women workers in the U.S. were domestic servants.9

Key to wealth accumulation in the colonies was the lucrative cotton plantation economy that relied on African slave labor to harvest cotton for world markets. In addition to working the fields, slaves were required to perform the household work that sustained plantation life: spinning thread and weaving fabric, cooking and serving meals, washing dishes and clothes, cleaning homes, and nurturing their masters' children. Slaves endured long work hours, and they frequently experienced physical and sexual abuse at the hands of their masters.9

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I am a negro woman, and I was born and reared in the South...For more than thirty years...I have been a servant in one capacity or another in white families...

I frequently work from fourteen to sixteen hours a day. I am compelled by my contract, which is oral only, to sleep in the house. I am allowed to go home to my own children...only once in two weeks...and even then I'm not permitted to stay all night...I don't know what it is to go to church; I don't know what it is to go to a lecture or entertainment...I live a treadmill life...You might as well say that I'm on duty all the time—from sunrise to sunrise, every day in the week. I am the slave, body and soul, of this family. And what do I get for this work—this lifetime bondage? The pitiful sum of ten dollars a month?"  
BLACK DOMESTIC WORKER*  
Independent, 1912

We are subjected to emotional and physical exploitation from which we cannot easily free ourselves because of the need to work and support our families in our home countries

For some of us, being immigrants—this makes our situation worse, because the employers take advantage of this situation, increasing our work hours, many times reaching 24 hours. We are verbally assaulted and we have to stay quiet. Often we end up leaving these jobs when we can’t take it anymore. What is sad and difficult is that sometimes we are not paid a single penny for the work we’ve done. In my case, I have had good, considerate employers but in these years I have also experienced difficulties which I never thought I would have to endure—discrimination because of the color of my skin and for being an immigrant

"TANIA" Housecleaner in Manhattan, from Dominican Republic, 2005

*Seven Days, p. 24-25.
After the abolition of institutionalized slavery, black women continued to perform household work as paid domestics. Native-born white women and—later—immigrant white women moved out of domestic work as jobs in factory, retail, and service sectors became available to them. This became a means of distancing themselves from what was becoming characterized as “black women’s work.” Black women were denied access to most other occupations due to race discrimination, so they concentrated in the domestic work industry. They became the majority of the domestic workforce by the 1940s. It wasn’t until the Civil Rights Movement opened occupational doors in the public sector to some people of color in the 1970s that the presence of African American women in domestic work declined.6

STRUGGLE FOR DIGNITY

Black domestic workers succeeded in achieving a few major improvements in what remains a largely unregulated and exploitative industry. Unlike white women who typically worked until marriage, black women frequently did domestic work their entire adult lives. If they worked as live-ins, domestic workers had little access to their own families. African American domestic workers instituted day-work as the prevailing arrangement for domestic work, replacing the long-standing custom of servants living in their employer’s home. By World War II, day-work became common practice. Day-work gave workers more control over their working conditions, shortening workdays and making it easier to leave bad work situations. It also enabled workers to have time with their own families.

In the 1970s, domestic workers involved in the National Committee on Household Employment in New York City fought for and won the inclusion of domestic workers in the Fair Labor Standards Act, entitling domestic workers to a minimum wage.18

WORKING TOWARD EQUITY

As during the time of slavery, domestic workers are doing the household work that sustains and builds the economic strength of the U.S. Consistent with historic patterns, the domestic work industry has grown when economic disparity has increased along with the availability of workers without other viable employment options.19 The informal structure of the domestic work industry continues to facilitate the exploitation of domestic workers, including low wages, long hours, and abusive workplaces. As in previous eras, gender, race and immigration continue to play a role in domestic work, changing only from what was once “either an immigrant woman’s job or a minority woman’s job to one that is now filled by women who, as Latina and Caribbean immigrants, embody subordinate status both racially and as immigrants.”19

Neoliberalism is the dominant economic policy in the world, promoted by the U.S. At the same time, U.S. immigration policy has so far failed to offer a path to legalization for immigrants, and continues to diminish the rights of migrants and immigrants within U.S. borders while threats of deportation and detention keep workers living in fear. This reality compounds the multi-layered vulnerability of domestic workers who at the end of the day must take care of their families both in the U.S. and abroad.

Domestic workers will continue to migrate in search of jobs. Their families will continue to rely on their labor for survival. Their labor will remain necessary to enable the work of professionals in the “global city.” The following sections outline the abuses workers face daily on their jobs and the impact on their homes and families. Also presented are clear recommendations that can create an equitable industry for all workers. Formal recognition and basic standards are important steps toward moving the workforce out of the shadows of slavery. The dignity of the work and the value of the workforce have remained invisible for too long.

DOMESTIC WORKER ORGANIZING IN NEW YORK

Andolan – Organizing South Asian Workers was founded in 1998 by low-wage South Asian women workers to support each other and organize against exploitative work conditions. Andolan, which means “movement” in several South Asian languages, is strongly committed to a vision where all workers are treated with respect and dignity, and are able to realize their rights. Andolan educates workers about their rights, promotes a living wage and standard employment contracts, raises public awareness about poor industry conditions, and holds employers accountable for abuses including labor rights violations, verbal and physical abuse, and sexual harassment.

(718) 426-2774 • andolan_organizing@yahoo.com • http://andolan.net/index.html

*ibid. p. 225
*ibid. p. 226
*Seven Days p. 46. Katzenman notes that during industrialization of the U.S. the size of the domestic work industry was limited by the supply of workers; demand from the growing middle class was constantly increasing.
*Condition p. 34.
My job began as early as 5:45 am, bathing and feeding the brother and preparing him for adult daycare. Then it was time for me to clean the whole house. During the summers, I kept the garden. I lived with the family and worked Monday to Sunday, seven days a week.

My contract said I was supposed to be paid $400/week for 40 hours of work. Instead, I was paid $200, and worked more than a hundred hours a week, with no days off.

Sometimes my employer allowed me some time off to see friends in the city, but that was only a few times each year. One day, after 3 months of working every day, I asked for time off to visit friends. At first she said she would give me some time off, but then she kept making excuses for why I had to keep working. She said there was too much work to do, and kept reducing the number of days she said I could take. Then one day the family had visitors. I cooked and set the table. I was so tired from working such long hours I put the salad fork on the wrong side. The next day, my boss was so mad. She said I embarrassed them in front of their friends and that I didn’t do my job right. She gave me a book and told me to study about table-setting.

Wilma Housekeeper and Nanny in Manhattan, from the Philippines

DOMESTIC WORKERS CREATE SPACE FOR NEW YORKERS to be able to work, have evenings out in the city and travel while having the security of knowing that their children and the elderly are being cared for, their homes cleaned and their errands completed. Through their work in the private sphere, domestic workers allow New York’s professionals to participate in the public sphere.

Yet, as Professor Peggy Smith notes, “Because of its close association with women’s unpaid household labor, and its connection with the intimacies of family life, domestic service has often been devalued as a form of real work.” As a result, domestic workers endure workdays that are too long and wages that are too low, often not receiving overtime and other workplace benefits. Lacking industry standards that ensure fair labor practices, domestic workers have little recourse if their rights are violated and little leverage to improve their work conditions. The industry thus creates conditions that make domestic workers highly vulnerable. In her own domestic life, due to low wages and lack of benefits, a domestic worker’s ability to provide even the most basic needs for her family is precarious.

In her workplace, she is vulnerable to exploitation and mistreatment because she has little control or negotiating power or legal protection to ensure fair and equitable work conditions. Our investigation of working conditions among domestic workers shows that low wages, long hours and wage violations prevail in New York City:

1. Forty-one percent (41%) of the workers earn low wages with an additional quarter of workers making either below the poverty line or below minimum wage. Wages for live-in workers are even lower, with 20% of them earning below minimum wage.

2. Nearly half of the workers work overtime, often more than 50 and 60 hours per week. Even when they are working a five-day week, the days extend to 10-12 hours.

3. Two-thirds (67%) of workers are not receiving overtime pay for the work they do. Live-out workers who said they did receive overtime pay, often received their usual wage, not time and a half as mandated by law.

4. Workers are not being paid on time and are fired without notice or severance pay.


'Domestic p. 25.'
WAGES NOT LIVABLE

Previous studies on domestic workers have found that the wages earned by domestic workers generally fall short of a living wage, despite the fact that domestic workers work well over 40 hours per week. However, wages vary significantly within the industry with live-out housecleaners typically earning the most, live-out housecleaner/nannies earning less, and live-in domestic workers earning less than minimum wage. A survey of Latina domestic workers in Los Angeles found that 79% of live-in domestic workers earn less than minimum wage.\(^*\)

Survey results demonstrate a vast range of hourly wages, showing the lack of industry standard and enforcement. Hourly wages reported by domestic workers in New York range from a low of $1.43 to a high of $40.00. The median hourly wage for domestic workers is $10.00; half the workers make below $10.00 per hour. Eight percent of workers report earning below minimum wage, with 21% of live-in workers earning below minimum wage and an additional 35% earning below the poverty line. Eighteen percent of all workers earn below the poverty line and 41% earn low wages. Only 13% earn a wage that is livable for a family of four in New York City. (Table 4.1)

### TABLE 4.1 Worker Hourly Wages

<table>
<thead>
<tr>
<th>Description</th>
<th>% of Workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Below minimum wage (less than $5.15/hr)(^*)</td>
<td>8%</td>
</tr>
<tr>
<td>Below poverty line ($5.16-$8.97)</td>
<td>18%</td>
</tr>
<tr>
<td>Low wage ($8.98-$13.46)</td>
<td>41%</td>
</tr>
<tr>
<td>Livable wage ($13.47 and above)</td>
<td>13%</td>
</tr>
<tr>
<td>No response</td>
<td>20%</td>
</tr>
</tbody>
</table>

**SOURCE:** DWU SURVEY

### GRAPH 4.1 HOURLY WAGES FOR LIVE-IN & LIVE-OUT DOMESTIC WORKERS

- **Live-Out**
- **Live-In**

\(^*\)Wage breakdowns are modeled after Restaurant Opportunities Center of New York's report Behind the Kitchen Door: Persistent Inequality in New York City's Thriving Restaurant Industry, 2005, p. 1. The breakdowns are based on 2004 Department of Health and Human Services federal poverty line earnings for a family of four of $18,890 per year; low wages are one and a half times the poverty line.

\(^*\)Minimum wage, although increased to $6.75 in NY in 2006, and will increase to $7.25 on January 2007, is shown here as $5.15 since surveys were conducted before the wage increase.
NOT JUST EIGHT-HOUR WORK DAYS

A study on Caribbean domestic workers found that, on average, domestic workers in New York City work 10 hours a day, 5 days a week, for about 50 weeks a year. Many work longer. Survey results found that nearly half of all live-out workers (48%) work more than 40 hours per week. In addition, two-thirds (63%) of live-in workers work more than 44 hours per week, the point at which they are eligible for overtime under New York labor law. Half of the workers (51%) worked five days in the previous week. Of these, 66% work overtime (over 40 hours for live-out workers and 44 hours for live-in workers) during those five days. So although they may receive days off, domestic workers labor much longer than eight hours a day. Of those working overtime, 43% work more than 50 hours and 35% work more than 60 hours a week, amounting to an average of 10 to 12 hours in a work day.

In most low-wage work, wages are calculated hourly. In domestic work, the standard practice is for employers to pay a flat rate per week for unpredictable and sometimes unlimited hours of work. Live-in workers may be expected to be on call 24 hours per day, 5 to 6 days per week. This practice is a unique feature of the domestic work industry; it is both a manifestation and a cause of exploitation of the workforce. It points to the legacy of servitude from which this sector emerges and a lack of respect for the work itself.

OVERTIME PAY AND BREAK VIOLATIONS

Even more disturbing than the long working hours is the fact that domestic workers often receive no remuneration for the overtime hours they work. In New York, live-out domestic workers are legally entitled to receive overtime pay when they work over 40 hours per week for one employer and live-in workers are entitled to overtime to pay after working 44 hours per week. However, employers commonly violate the law. Two-thirds (67%) of the workers sometimes or never receive overtime pay. For live-out workers who do receive overtime, one-third of the workers (34%) are paid their usual wage (not time and a half as required by law). In addition, 41% of workers sometimes or never receive breaks.

Lack of notice from employers when required to work overtime is a common experience for domestic workers. Thirty percent of those taking care of children received a day of notice or less, and 14% were given no notice at all.

Workers also experience withholding of pay and unfair termination. Our survey found that 19% of workers were not paid on time. In the previous year, 12% were fired without notice and 11% were fired without severance.

Sometimes they didn’t pay me. If I asked them about the money they started teasing me. They told me to go buy food from fifty dollars for the whole family, and I had to buy my clothes, lotion, soap. They never gave me a vacation or holidays off. Sometimes I was not feeling well, but still had to work. The doctor told them that I had to stop working for four days, but when I went home they told me I had to cook, clean the house, take the children to the park, take the children to the YMCA from 33rd Street to 47th Street by walking with two children. At the same time, I was collecting the cans of soda and took them to the store to get some money to buy food.

"RUBY" B1 Visa Holder, Housekeeper in Manhattan, from the Philippines

"Empirical Profile of Domestic Workers"  
*2 NYCOM 8 143,2,2
As this section demonstrates, the domestic work industry is erratic. Wages vary immensely, but most workers earn remarkably low wages. Hours are long, well beyond the 40-hour week and 8-hour workday. Employers rarely pay overtime. The industry has no standards, no enforcement of minimum wage or overtime laws, and no collective bargaining rights. But as we see in the next section, exploitation doesn’t stop with wages, hours and overtime.

TABLE 4.5 WITHHOLDING

<table>
<thead>
<tr>
<th>% of Workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not paid on time</td>
</tr>
<tr>
<td>Not paid at all</td>
</tr>
<tr>
<td>Fired without notice</td>
</tr>
<tr>
<td>Fired without severance pay</td>
</tr>
</tbody>
</table>

SOURCE: DWU SURVEY

DOMESTIC WORKER ORGANIZING IN NEW YORK

Unity Housecleaners is a cooperative of domestic workers that sets fixed rates for services. An initiative of The Workplace Project, which organizes low-wage Latino immigrants on Long Island, Unity Housecleaners seeks to fight for better working and living conditions for domestic workers.

(516) 565-5377 • workplace@igc.org
One day, her son locked me in the basement. As I tried to call out for help, I fell and injured myself. The nanny found me and called an ambulance. At the hospital, my employer said to me, "I should have left you for dead, no one knows you are here anyway." At that moment, I realized, "I have to get out of this place." When we returned home, I was not permitted to leave and I was told I must work even though I was still recovering from my injuries. The same day I returned from the hospital, I was also cleaning. I also realized then that my employer was right: if something more terrible happened to me, who would know? Who would help?

"JUDY" Housekeeper in Long Island, from Malaysia

DOMESTIC WORK IS HARD AND DANGEROUS WORK. DOMESTIC workers bear the responsibility for the well-being and safety of children and the elderly in their care. They are regularly exposed to the toxic chemicals contained in most household cleansers, placing them at risk for long-term damage to their health. Those who care for people with contagious diseases also risk their health.

Domestic workers also experience an unusually high level of on-the-job stress. The National Institute of Occupational Safety and Health (NIOSH) notes that unresolved stress can result in severe health consequences, and identifies job conditions that may lead to stress as including:

- Heavy workload
- Infrequent rest breaks
- Long work hours
- Hectic and routine tasks that do not utilize workers' skills and provide little sense of control
- Lack of worker voice in decision-making
- Poor social environment at work
- Conflicting expectations
- Job insecurity
- Unpleasant or dangerous physical conditions

Domestic workers routinely experience these stress-inducing conditions in their workplaces.

As solitary workers in their employers' homes, domestic workers are uniquely at risk of exploitation and abuse. They are one-to-one (sometimes one-to-two) with their employers in a private setting—their employer's home. Unlike most other workers, domestic workers generally have no other employees at their workplace to turn to for support or leverage should an employer abuse her or his power. The power that an employer holds over workers is exacerbated for domestic workers. Supported by social values that devalue household work and equate it with servitude, the structure of the industry enables employers to abuse workers with impunity.

Our investigation of industry working conditions shows that domestic workers endure frequent exploitation and abuse, and lack basic workplace benefits:

- Workers perform multiple job responsibilities, such as housecleaning and childcare. One quarter (25%) of workers felt that they performed too many tasks or were told to do work not in their job descriptions. Employers also compel workers to work for their friends and family.
- One-third (33%) of workers face abuse in their workplaces. Workers are made to feel uncomfortable or face verbal abuse, such as being called insulting names, being yelled at and threats. A smaller percentage of workers experience physical abuse, including beating, pushing or sexual assault.
- Workers who reported mistreatment identified race, language and immigration status as key factors for their employers' actions.
- Nine out of ten domestic workers surveyed do not receive health insurance from their employers. One-third of workers could not afford medical care when needed for themselves or their families. Workers do not receive other workplace benefits including money for food or transportation and regular raises.
- Forty six percent of workers experience stress at work.

### Table 5.1 Number of Job Responsibilities Performed

<table>
<thead>
<tr>
<th></th>
<th>% of all workers</th>
<th>% of live-in workers</th>
<th>% of live-out workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 job responsibility</td>
<td>29%</td>
<td>34%</td>
<td>11%</td>
</tr>
<tr>
<td>2-3 job responsibilities</td>
<td>37%</td>
<td>42%</td>
<td>25%</td>
</tr>
<tr>
<td>4-8 job responsibilities</td>
<td>28%</td>
<td>20%</td>
<td>56%</td>
</tr>
<tr>
<td>No Answer</td>
<td>6%</td>
<td>3%</td>
<td>8%</td>
</tr>
</tbody>
</table>

**SOURCE:** DWU Survey

Domestic work involves a broad range of housework, childcare and home health care. Housework responsibilities typically include washing, ironing, fixing beds, housecleaning and cooking. Providing medication is also common. Domestic workers are also asked to run errands for employers, purchase groceries or care for the lawn. Seventy-seven percent of the domestic workers we surveyed provide childcare as part of their duties, typically caring for 1-2 children. Forty-six percent of them provide housekeeping in addition to childcare. Less than one-third (29%) of workers perform only one responsibility. Thirty-seven percent performed 2-3 different job responsibilities and over one quarter (28%) performed 4-8. Over half of live-in workers performed 4-8 different job responsibilities. One quarter (25%) of workers felt they were given too many tasks.

**"ESMERELDA"**

Nanny, Elderly Caregiver and Housekeeper in Long Island, from Zambia

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*pEmpirical Profile of Domestic Workers*
These additional job responsibilities are not necessarily a part of the duties agreed upon with the employer. "Many of the women are hired as nannies and then asked if they wouldn't mind straightening up a bit. They are asked if they wouldn't clean, then shop, then do the laundry, then, etc." Our survey found that 23% were told to do work that was not in their job description and 8% were directed by their employer to work for someone else. One worker, "Wilma," a Filipina housekeeper and nanny in Manhattan, describes taking care of a family with three children and a dog: "I looked after my lady boss' brother who has brain damage. My job also included house-cleaning, taking care of the dog, cooking and maintaining a vegetable garden. Also, when they had visitors, I had to make sure they were taken care of. I also had to wash and iron clothes."

**ABUSE**

I am from India. My boss "Daniel" promised me that I would be working for him. When I came to the U.S., he made me work with another family but I was not allowed to ask to be paid by them. As the time passed, I found out that this family was paying Daniel $1200 a month for my work. Daniel sent $200 to my parents. But I never saw the money in my hand.

I used to do office work, housekeeping and babysitting from 7 o'clock to 12 o'clock. They yelled and screamed at me. One morning, I was not feeling well. I had to dress the baby who was 6 years old. While putting on her socks, she got hurt and she kicked me. I told her babies should not kick. Her mom heard this and she came running and she kicked me and she pulled my hair. She abused me verbally. She told me to take the child to school and "then I will show you. How dare you tell my child that."

The next day, she told me to clean the table and I shook my head. She removed her sandals and hit me and slapped my face. She told me to get out of the house at that very moment. I asked madam, "How can I go? I don't have my passport. Please give me my passport and my money. I will go." She told me that she didn't have my passport, and to do whatever I want to do. She also refused to give me my money. My neighbor helped me to escape from that house. I went to the police and reported the complaint against them. Then the cop came with me and I packed my stuff to get out from there. When I was leaving, my madam stopped me and told the cop that she wanted to check my luggage. Then the cop told her I packed in front of him. Then, madam told the cop that I took her gold chain and gold earing. I told the cop she was talking about the chain she gave me as a gift but I don't want it. Luckily I was wearing the chain and the cops told me not to give it. The cop asked her whether she had my passport. And she said no.

"VIVIAN" Housekeeper and Nanny in Manhattan, from India

Many domestic workers contend with abusive behavior on the part of their employers. This makes for a work environment in which the worker feels devalued or unsafe.

One-third (33%) of all workers, and half of live-ins (48%) indicated that they had experienced at least one type of abusive behavior from their employer in the last twelve months. Twenty-four percent of workers reported that their employers made them feel uncomfortable. Twenty-one percent of workers, and one-third (37%) of live-in workers, reported that their employer verbally abused them by yelling, threatening or calling them insulting names. A small percentage of workers reported physical abuse such as being pushed, beaten, raped or sexually assaulted by their employer. However survey collectors noted that the question was uncomfortable for workers, and that this implied that there may have been underreporting. "Emilia," a housekeeper in Manhattan from the Philippines, confronted harsh working conditions daily:

"My employer...did not allow us to sit down or talk to other people. During lunchtime, we were not allowed to use their utensils. We were supposed to use disposable plates, spoons, forks and cups. After using them, we were supposed to put them in the dishwasher and

---

use them again. She yelled for no reason. She insisted on scrubbing the carpet on my knees. Every time she came into the room, I was supposed to stand. When she would pass by, I'd have to stand aside and not look at her. She always made me feel stupid."

Of the workers who reported mistreatment, one-third (33%) felt that immigration status was a factor in their employer's actions, one-third (32%) felt race was a factor, and 18% felt language played a role. Domestic workers are typically excluded from civil rights protections that bar discrimination on the basis of race, color, religion, sex, or national origin because these laws only apply to employers with 15 or more employees.

"Emilia" notes how immigration status and the industry itself take advantage of her situation: "I know I'm not stupid. I graduated from the University of Santo Tomas in the Philippines, with a bachelor's degree. Most of my employers overworked me and did not give me the rights and respect that I deserve as a human being. They paid me very little compared to how much they benefited from my services. I was not paid overtime. I was not given social security and healthcare. Our employers directly benefit from us. But the U.S. government and the Philippine government gain even more. We, undocumented workers, prop up the U.S. economy but we receive no protection or benefits."

NO HEALTH INSURANCE

I had breast surgery in February of 2005. "Lynette" asked me what she was going to do when I had the surgery because she can't deal with the children herself and what was I going to do. I told "Lynette" I would ask my cousin to come and work for me while I was out having the surgery and recovering. She said she would only allow my cousin to work 4 days for me and I would have to come back to work or I would not be paid. "Lynette" called me two days after my surgery and demanded that I come over to the house because she needed to talk to me. So I went over to the house and she demanded that I come back to work right away. I went back to work 4 days after my surgery with stitches in my right breast and a bandage over my chest. I never took any sick days during the 3 years that I worked for the "Connors" but I had appointments every six months to see the endocrinologist because I had cancer four years ago. The "Connors" would always make it hard for me to keep these appointments even though I told them from the beginning that I had to keep these appointments because it could be dangerous to my health.

"CAROLYN" Nanny and Housekeeper in Long Island, from Barbados

In addition to fair wages and reasonable work hours, workers have the right to expect health benefits. Lack of health benefits increases the level of job insecurity and vulnerability of the worker. A recent report by the Iowa Policy Project notes: "More than 80 percent of the uninsured are working Americans and their families, and more than half (56 percent) are members of families with at least one full-time worker." There's a strong connection between the rise of the contingent workforce and the drop in workplace benefits. Employers shift the cost of health benefits on to workers, and workers are unlikely to prioritize health insurance when they are barely able to pay for basic necessities like food and rent.

Nine out of ten domestic workers surveyed do not receive health insurance from their employers. Furthermore, 36% of workers or their family members could not afford medical care or surgery when they needed it in the previous twelve months.

<table>
<thead>
<tr>
<th>TABLE 5.4 FACTORS WORKERS REPORT CONTRIBUTED TO EMPLOYER ABUSIVE ACTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>% of Workers</strong></td>
</tr>
<tr>
<td>---------------------------------------------</td>
</tr>
<tr>
<td>Immigration status</td>
</tr>
<tr>
<td>Race or ethnicity</td>
</tr>
<tr>
<td>Language</td>
</tr>
<tr>
<td>Age</td>
</tr>
<tr>
<td>Religion</td>
</tr>
<tr>
<td>Gender</td>
</tr>
<tr>
<td>Sexual orientation</td>
</tr>
</tbody>
</table>

SOURCE: DWU SURVEY

<table>
<thead>
<tr>
<th>TABLE 5.5 LACK OF ACCESS TO HEALTHCARE AND HEALTH BENEFITS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>% of Workers</strong></td>
</tr>
<tr>
<td>----------------</td>
</tr>
<tr>
<td>Employer does not provide health benefits</td>
</tr>
<tr>
<td>Could not afford medical care when needed</td>
</tr>
</tbody>
</table>

SOURCE: DWU SURVEY

MINIMAL HEALTH AND SAFETY

Domestic workers, as noted in Chapter 2, are excluded from the Occupational Health and Safety Act that protects workers from workplace hazards such as exposure to toxic chemicals and unsanitary conditions. An AFL-CIO report on workplace safety for immigrants points out that "not only are new immigrants less likely to complain about job hazards, but they also tend to return to work quickly despite potentially serious job-related injuries and illnesses." Immigrants were also more likely to return to work the next day out of fear of being fired. In the survey results, we found that live-in workers (who tend to be newer immigrants) were more likely to experience workplace hazards. Thirty percent of live-in workers do heavy lifting or other strenuous activities. One-quarter (26%) work with toxic supplies and 23% clean hard-to-reach places. Ten percent provide care for children or elderly people with contagious diseases.

<table>
<thead>
<tr>
<th>TASK</th>
<th>% of Workers</th>
<th>% of Live-out Workers</th>
<th>% of Live-In Workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heavy lifting or other strenuous activities</td>
<td>17%</td>
<td>13%</td>
<td>26%</td>
</tr>
<tr>
<td>Work with toxic cleaning supplies</td>
<td>16%</td>
<td>13%</td>
<td>26%</td>
</tr>
<tr>
<td>Climbing to clean hard to reach places</td>
<td>12%</td>
<td>9%</td>
<td>23%</td>
</tr>
<tr>
<td>Slipped and injured yourself while on the job</td>
<td>4%</td>
<td>3%</td>
<td>9%</td>
</tr>
<tr>
<td>Provided care for children or elderly people who had a contagious illness</td>
<td>9%</td>
<td>9%</td>
<td>10%</td>
</tr>
</tbody>
</table>

SOURCE: DWJ SURVEY

FEW BASIC BENEFITS

Mr. "Connor" told me my job started at 6:30am until he came home around 7:30 in the evening. But from the first week that never happened because he would come in later than 7:30 and I would have to wait until he got there until I was able to go to bed. I was told that as a live-in nanny they were supposed to provide my food but I had to use my own money to buy food from the store—bread and crackers to last the week. I worked all day and into the night. Most nights I would get three to four hours of sleep. I was never given holidays because Mr. & Mrs. "Connor" said I was not an American so the holidays were not for me. The "Connors" would bring their children to my small, one-room apartment on weekends for hours. I had to feed the children from what little I had. Most Sundays they would ask me to come back to work on Sunday evening so they could have the evening. I was never paid for any of these Sundays, because they said my workdays started from Monday morning at 6:30.

"CAROLYN" Nanny and Housekeeper in Long Island, from Barbados

Survey results show that many domestic workers lack standard workplace benefits such as paid time-off or regular raises, although such workplace benefits do exist for some workers in some jobs.

Paid time off for vacation, holidays, sick days and personal days varies widely. While 67% of domestic workers reported receiving paid vacation days, less than half received paid sick days (47%) or national holidays (44%). Even fewer received paid religious holidays (39%) or personal days (26%).

Two-thirds (63%) of domestic workers surveyed have been at their jobs for two years or more (see Table 6.3), but only 34% receive a raise every year. Most domestic workers have to pay out of pocket for job-related expenses. "Liza," a nanny from Brazil who is working in Manhattan, described having to buy her own groceries: "I had to buy food for me, for her son, and for the dog because she would not..."

* AFL-CIO Immigrant Workers at Risk: The Urgent Need for Improved Workplace Safety and Health Policies and Programs, August 2005, p. 10.
give any money for the groceries. With the little money that she randomly paid me, I was able to do that. Survey results found that only 21% of workers receive money for food and 25% received money for transportation.

Employers entrust the most valuable parts of their lives to domestic workers—their children, their elders and their homes. To couple that with the lack of benefits, poor or abusive work conditions, and a workplace with too many job responsibilities is a paradox in values. The survey results and particularly the haunting testimonies in this section create an unseemly picture of the life of the domestic worker. Along with fair wages and hours, domestic workers require a reasonable amount of job responsibilities, health and safety protections and access to benefits such as health insurance and days off. Such changes will help in alleviating the stress of the worker that, as we see in the next section, extends into her own home as she struggles to support her family.

Table 5.8 Workplace Amenities Given to Worker:

<table>
<thead>
<tr>
<th>Amenity</th>
<th>% of Workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>A raise every year</td>
<td>34%</td>
</tr>
<tr>
<td>Money for lunch or food</td>
<td>21%</td>
</tr>
<tr>
<td>Money for transportation</td>
<td>25%</td>
</tr>
<tr>
<td>Taxi home if have to work late</td>
<td>43%</td>
</tr>
</tbody>
</table>

SOURCE: DWU SURVEY

DOMESTIC WORKER ORGANIZING IN NEW YORK

Haitian Women for Haitian Refugees is dedicated to providing a variety of services for the Haitian community of New York City including English classes for its predominantly English-limited immigrant community, helps develop micro-enterprises, resettles refugees, advocates on behalf of domestic workers fighting for fair wage demands, and organizes advocacy campaigns in support of Haitian low-wage workers.

(718) 735-4660 ❄ Haitianwomen@aol.com
The story of domestic workers is a story about families. It is not just the story of their employers' families; it is also the story of their own families. While sustaining the families of their employers, most workers have difficulty meeting the needs of their own families.

ONE ACADEMIC STUDY ON DOMESTIC WORK NOTES that the U.S. has a long history of incorporating people of color through coercive systems of labor that do not recognize family rights, including the right to care for one's own family members." Such an analysis is consistent with the contemporary picture of those doing domestic work. This section highlights the vulnerabilities workers face in their lives as domestic workers:

- Domestic workers have been in this industry, often with the same employer, for years and are a stable workforce while their working conditions are not.
- As primary providers for their families in the U.S. and in their home countries, workers and their families are facing severe financial hardships.
- Live-in workers are particularly vulnerable, particularly those sponsored by their employers.

A STABLE WORKFORCE

Survey results show that a considerable percent of domestic workers stay in the profession for significant periods of their lives. One-third of workers (32%) have been in the industry for over ten years, with an additional quarter (27%) for six to ten years. Survey results also found that workers have been in the U.S. for an average of 11 years and 61% have not done any other jobs in the U.S. aside from domestic work.

In addition, survey results indicate that workers aren't jumping from employer to employer. Half of the workers (52%) worked for only one employer in the past year. Almost half of the workers (45%) have been with the same employer for two to five years and 18% of workers have been with the same employer for six or more years.

These statistics show a stable workforce, and an industry of workers for whom domestic work is a career. In addition, the numbers reveal a pattern in which immigrant women of color are stuck in a poorly paid and frequently abusive "occupation ghetto." Domestic work conditions have a significant impact on the worker and her family.

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*Domestic, p 51

SUPPORTING MULTIPLE FAMILY MEMBERS

Survey results found that on average, workers were supporting two adults and two children. Fifty-nine percent of workers are the sole income earner for their families, and 16% are joint income earners.

Domestic workers also support family members in their home countries. Almost three quarters (72%) of the domestic workers surveyed send money (also known as remittances) to relatives abroad on a regular basis. Seventy-one percent of workers send barrels or packages. Many nations of the global South, such as the Philippines and Mexico, rely heavily on the remittances of migrant workers to keep their economies afloat. Some have made the "trade in human labor," particularly women's caregiving labor, a primary export. They have established government agencies that recruit and broker migration and employment abroad.

DOMESTIC WORKER FAMILIES FACE HARDSHIPs

Yet domestic workers have difficulty making ends meet as they try to support their families here and abroad. The Community Service Society annual survey of New York City residents found that two-thirds of New York’s poor are in working families, but that their low wage jobs do not pay enough to meet basic housing and food needs. This is apparent in the lives of domestic workers who face low wages and a lack of job benefits while living in a high-cost, high-rent city. The survey showed that workers are experiencing economic hardship and food insecurity. Whether live-in or live-out, workers are either unable to pay essential bills or are having to pay them late. Over one-third of workers (37%) are unable to pay rent or mortgage or have to pay late. One-quarter of workers (25%) are unable to pay electricity and gas. Twenty-one percent of workers do not have enough food to eat. Six percent were evicted or had to move in with friends.

<table>
<thead>
<tr>
<th>TABLE 6.6 FINANCIAL HARDSHIPS EXPERIENCED BY WORKERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unable to pay rent or mortgage</td>
</tr>
<tr>
<td>Evicted or had to move in with friends</td>
</tr>
<tr>
<td>Sometimes or often not enough food to eat</td>
</tr>
<tr>
<td>Unable to pay electricity and gas</td>
</tr>
<tr>
<td>Unable to pay Phone</td>
</tr>
<tr>
<td>Unable to pay cable</td>
</tr>
<tr>
<td>Unable to pay credit cards</td>
</tr>
</tbody>
</table>

SOURCE: DWSU SURVEY
LIVE-IN WORKERS PARTICULARLY VULNERABLE

I was never allowed to go out or go anywhere by myself for 15 years. When you're living and working in people's homes, it's hard because you have to do everything. And it's just you alone, you have no one else with you. They will not even pick up a fork. If I went out with them and met someone, she wouldn't let me tell my name and she would try and cut it off. She said, "Don't tell anyone about yourself." I didn't have any friends. The only movie I saw the whole time was the Lion King. I didn't know where anything was, how to get around. I was always in the house.

"LILY" Nanny and Housekeeper in Long Island, from Jamaica

While all domestic workers are likely to experience exploitative working conditions, domestic workers who live in their employers' homes are particularly vulnerable. They are more likely to experience illegally low wages, long hours, employer abuse and extreme isolation. Our survey found that 21% of live-in domestic workers earn below minimum wage. Forty percent were not paid for their work or were not paid on time. Forty-eight percent experience abuse by their employers. Live-in domestic workers' statements documented in this report attest to physically abusive and unhealthy work environments: workers were physically beaten, denied access to necessary medical care when injured, and forced to sleep in substandard or hazardous living quarters. Many live-in workers are recent immigrants; 40% of live-in workers who responded to our survey have resided in the U.S. for five years or less.

Structurally, live-in work makes it difficult to maintain boundaries between a worker's personal life and work life. With no physical separation between home and work, some workers are always on call: day, night and weekends. Indeed, one survey respondent reported that she worked 24/7. Labor law currently supports the overwork of live-in workers. Although live-in domestic workers in New York are afforded overtime under state labor law, they are not considered as working overtime until they have worked more than 44 hours or 6 days a week, and even then they are only entitled to compensation at a rate of one and a half times minimum wage. Over half of the live-in workers surveyed (58%) work 50 hours a week or more.

I found work in a house, caring for a disabled youth. I ended up doing everything—the housecleaning, the ironing, the food. I had to carry him and help him in the bathroom. I had to bathe him and even brush his teeth. And for all of this, I was paid $2.00 per hour. I slept in the basement, where the sewage often overflowed. I had to find cardboard in order to walk around and get out of the basement to go and perform my daily housework. I also had to pick up wood in addition to the cardboard in order to pass through and also to open the backdoor so I could step outside to the sun and for the stench to leave. Two and a half years later, my employer—on my day off—called to tell me she needed me early. I arrived and I told her I am here like you asked me. And it was to tell me that I no longer had work. Well, you can imagine how one would feel—after a shock like that—without telling me why. She offered no explanation. I asked her for permission to stay in the house that night so I could go out and find another place to live—I could not even sleep thinking about where I would go next. No one knows what I went through that night.

"MARIA" Housekeeper and Caregiver in Queens, from Colombia
Lack of privacy and substandard living quarters exacerbates poor living and working conditions for live-in domestic workers. Our survey found that 20% of live-in workers had no personal space in their employers’ homes. Twelve percent shared a room with their employer’s children, and 8% slept in a common area of the house. At the end of her first day of work, “Emilia,” a housekeeper in Manhattan from the Philippines, was told to sleep in the basement. She walked in to find two couches in the malodorous and moldy room. She notes, “I felt dehumanized. She made me feel like garbage. I had a headache and I felt nauseated and so I told her I had to leave that evening. She didn’t pay me for all the hard work that I did for that day.”

I used to sleep on the floor in the corner of the living room. I was only given one blanket, one comforter, and one pillow. In the summertime, it would get so hot, but I was denied to use the AC because the electricity bill would go up. It wasn’t comfortable at all. In the wintertime, it would get so cold. And I would try to sleep with warm clothes because I had only a comforter. The conditions were terrifying and humiliating. There was no respect and privacy at all. I would be sleeping at night, and he would come into the living room to use the computer. Since it was directly across from where I was sleeping, he could see me sleep when he turned on the light. In the summertime, I would want to sleep with clothes on because I did not want him to see me even though I was very uncomfortable.

“ESMERELDA” Nanny, Elderly Caregiver and Housekeeper in Long Island, from Zambia

In addition to low wages, live-in domestic workers may also have room and board deducted from their pay. Eight percent of live-in workers surveyed report that room and board are deducted from their pay; an additional 16% report not knowing whether their employer deducted room and board. Workers who do have room and board deducted from their pay report widely varying amounts from $100 per week to $425 per week, an amount that exceeds legally allowable deductions.*

In analyzing interviews with live-in domestic workers, researcher Pierreotte Hondagneu-Sotelo found that “once live-in workers experience it, most women are repelled by live-in jobs. The lack of privacy, the mandated separation from family and friends, the round-the-clock hours, the food issues, the low pay, and especially the constant loneliness prompt most immigrants to seek other job arrangements.” These women often seek live-out domestic work. [Table 3.1]

They’ve made me sleep in a basement with no heat in the dead of winter. They’ve made me eat during the time I was living-in and also forbid me to bring food for myself from outside. I’ve also been yelled at to the point where I was becoming sick with depression and nervousness. I left my last job so exhausted and destroyed I could only think of hurling myself in front of passing cars because I was made to feel so bad I wanted to die. I felt worse than a worm after the way they told me how poor I was and that’s why I was worth nothing.

“TANIA” Housecleaner in Manhattan, from Dominican Republic

However, live-in work is generally performed by workers who have no other options. Not only do they tend to be recent immigrants, they are also more likely to have come to the U.S. to escape war, political unrest or natural disaster in their home countries.

*If a domestic employer provides meals and a place to stay, he or she can only deduct:
- For meals: $2.08 per meal ($2.30 per meal after January 1, 2006 and $3.45 per meal after January 1, 2007)
- For lodging: $3.56 per day ($4.00 per day after January 1, 2006 and $4.25 per day after January 1, 2007)
- If a domestic employer provides a worker with a house or apartment, with utilities: $7.45 per day ($8.40 per day after January 1, 2006 and $8.90 per day after January 1, 2007)

(2) N.Y.C.R.B. 8-142-3.56(d)(1) & (2).
WORKERS SPONSORED BY SPECIAL VISAS

My name is “May,” I am from the Democratic Republic of the Congo. I am a widow and I have six children who have stayed in my country. It is since 1999 that I started to work as a babysitter for the Belgian diplomat in my country. In my country, the Belgians are the majority because it is they who colonized the Congo, which is my country. I accepted the job because I am a mother and had taken housekeeping classes, and I had to work to feed my children. This is why I accepted to come with them. Once in New York, the diplomat did not respect the work contract we signed. He had broken it in many ways, no health insurance, which was promised in the contract. Overtime was not paid, days off were not respected. The diplomat accused me of stealing and tearing their clothes. He also would wake me up sometimes during the night to do the ironing. He threatened to take my passport from me. This day, May 10th, 2002, we parted.

“MAY” Nanny and Housekeeper in Manhattan, from the Democratic Republic of the Congo

Live-in workers are twice as likely as live-out workers to have been sponsored by their employers to come to the U.S.4 Sponsored domestic workers arrive in New York on a number of different employment-based special visas including B1, A3 and G5 visas. Home to Wall Street and the United Nations, New York is often seen as a “capital” of the current globalized world. In addition to supporting the permanent workforce of New York, domestic workers support the international business workforce and international government officials who make New York a temporary home. The U.S. government issues special visas for the domestic workers of temporary non-citizen workers and of United States citizens based in foreign countries.

Thousands of B1 visas are issued annually to domestic workers of temporary non-citizen workers in the private sector, mainly finance. A3 and G5 visa holders are domestics who work for employees of the World Bank, International Monetary Fund, or other international or foreign government entities that hold varying levels of diplomatic immunity to local laws. All three visas hinge upon the worker’s employment relationship. As soon as the worker leaves her employer, her visa is no longer valid. She becomes undocumented. Special visas compound the imbalance of power between a worker and her employer, because the worker’s legal presence in the U.S. is contingent on her employer. This relationship has frequently led to severe forms of abuse and violations of labor laws as workers choose to remain in a dangerous situation rather than risk deportation:

Despite the often abusive treatment, migrant domestic workers with special visas are reticent to leave their employers or file legal complaints to enforce their rights. Many workers choose to endure human rights violations temporarily rather than face deportation. Others endure the abuses because their cultural and social isolation—lack of knowledge of U.S. law, few local contacts and friends, and inability to communicate in English—make the steps required to flee their employers, find alternative housing, and seek legal redress prohibitively daunting. Still others fear that if they leave their jobs and publicly complain of abuse, their powerful employers will retaliate against their families in their countries of origin.6

The above section shows that despite working extremely long hours, domestic workers have difficulty supporting their own families on the low wages they earn, even after many years in the industry. Domestic workers and their families experience food and housing insecurity. In addition, workers who live in their employers’ homes are vulnerable to especially poor living conditions and a lack of separation between their work and personal lives that damages their well-being, causing workers to feel “dehumanized,” “humiliated” and “sick with depression and nervousness.” Workers may be separated from their families. Workers with special visas, whose legal status is dependent on retaining their jobs, can be trapped in exploitative and dangerous employment situations.

Domestic workers need comprehensive legal protections to ensure that they can adequately support their own families and that they can act to protect their rights as workers and as human beings. Creating a fair industry with standards will support domestic workers and their families to achieve economic security and well-being. And, as we see in the next section, legal protection for domestic workers will provide employers with a much-needed roadmap for treating their workers fairly.
The first time I heard “Christie,” our son’s caregiver, refer to me as her boss, I was taken aback. The word seemed too formal. I had hoped for the kind of intimacy I’d known other parents and nannies to experience and wanted “Christie” to relate to me as someone other than her employer. I’ve now come to see that whether an employer hopes to replicate the mistress-servant dynamic or tries to negate the power relationship altogether, both attitudes can undermine the rights of a domestic worker. Without workplace standards, which kinds of employer she ends up with is wholly arbitrary. “Christie” ended up with me; my resistance to seeing myself as an employer meant that it took too long for “Christie” to be treated like an employee; rather than signing a contract and agreeing to the terms of work on day one, we talked about benefits casually, after she’d already started work. I would not have tolerated such lack of professionalism in my own job.

**Gayle Kirschenbaum**
Brooklyn Employer

**Employers of Domestic Workers Are in Many Ways a Unique Group of Employers.** They employ other people to work in their homes, generally considered their “castle” or their private sphere. They entrust the most important and personal elements of their lives—their homes and loved ones—to the care of people often very different from themselves. They are part of an industry that is hardly recognized as an industry, where roles and responsibilities are largely passed on word of mouth and salaries and schedules are negotiated informally. Many do not even think of themselves as employers.

Relationships between employers and domestic workers, because they exist within the private sphere and deal with caregiving, can become intimate, in some cases enabling exploitation. An employer may consider their worker as part of the family while still underpaying or overworking her. The employer who fired her worker for demanding a pay raise due to increased tasks, reported by the *Los Angeles Times*, is a case in point. When the worker sued for back wages, her former employer expressed a sense of betrayal, saying, “I don’t know where this came from ... she was not treated as an employee. It was like a family.”

Lacking industry standards, employers will “ask around” to find out what the going rate is for a worker and negotiate work responsibilities informally. For example, an employer may casually ask the worker to stay a few extra hours if the employer needs to work late, or ask the worker to take on another job responsibility without compensation. Even well-intentioned employers are often unaware of their legal responsibilities, including payment of social security taxes and minimum wage requirements.¹

This next section explores the structural dynamics between employers and workers, and illuminates some employers’ perspectives. It is based on seven interviews with employers as well as data from the worker surveys. It shows that:

- Employers need domestic workers to manage career and family life;
- Employers turn to neighbors and peers to determine wages and working conditions, and the majority do not give written contracts to their workers;
- Domestic workers find their jobs through word of mouth, through employers or other domestic workers;
- Employers are unclear about their legal and ethical responsibilities;
- Employers and workers navigate a wealth and race divide;

²*Domestics*, p. 216.
EMPLOYERS NEED DOMESTIC WORKERS TO MANAGE CAREER AND FAMILY LIFE

I used to work a hectic corporate job. After working sixty hours a week you don’t want to ... I did do the cleaning for a long time. I used to, when I was in a house, do upstairs on Thursdays and downstairs on Saturday. I realized I was just working all the time. I finally had a meltdown. I said to my husband “You gotta help me.” You know it’s not just passing a broom, it’s washing the floors, dusting, laundry, it’s a lot of work. I like to have my house clean. So I made the decision then and there [i.e., when she had the “meltdown”] that for the rest of my life, as long as I could afford it, I would hire somebody. It’s a luxury for me. It took off a lot of stress. I used to be sitting at work thinking “I can’t go out to dine with my friend tonight, I have to clean.” It’s a big apartment.

“LESLEY” Manhattan Employer

Nannies, housekeepers and caregivers for the elderly provide the labor needed to maintain households and take care of families. Their work enables their employers to pursue careers and interests. One way of understanding this relationship is to think of the domestic worker as producing her employer’s labor power. As Manhattan employer Leslie’s statement indicates above, hiring a domestic worker also enables her to meet the demanding hours expected by her own employer. Thus, domestic workers provide flexibility not only to their immediate employer, but additionally support the smooth functioning and productivity of the professional sectors.

In New York, 68% of domestic workers care for families with children. Employers need domestic workers because their work lives do not provide enough time to take care of their families and home. As “Jeffrey,” an employer in a two-income two-child family describes, “Our older daughter is about 6... My wife was fortunate in that she got... I think it was 6 months maternity leave from her company which was pretty generous. There came a point when... my wife was going back to work full-time and I was working part-time. My wife works for a publishing company. And we had to have somebody who could come and watch “Jennifer.” She’s our older daughter.”

The employers interviewed value the work domestic workers perform and its impact on their lives. “You know, ‘Number 1 job, Second mother,’ if I could afford to pay her $1,000 a week I would,” explained one employer. “Domestic work is a lynchpin of yuppie society,” noted another.

INFORMALLY EMPLOYERS

While most employers are professionals, they are also usually still employees in their own right. Many have never thought of themselves as employers. In several interviews with employers, they were unclear of the expectations and responsibilities of employing another person. As one employer, “Julia,” notes, “I never called myself an employer when I had a babysitter. But since we hired the nannies I noticed it was strange to think of myself as an employer. It's awkward when you talk about employment issues: how much to pay, etc.”

<table>
<thead>
<tr>
<th>TABLE 7. EMPLOYER’S FAMILY TYPE</th>
<th>% of Workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single parent with children</td>
<td>8%</td>
</tr>
<tr>
<td>Couple with children</td>
<td>60%</td>
</tr>
<tr>
<td>Single or couple; no children</td>
<td>9%</td>
</tr>
<tr>
<td>Elderly</td>
<td>4%</td>
</tr>
</tbody>
</table>

SOURCE: DWU SURVEY
Some employers determine the wages and working conditions of their domestic workers through "asking around" among friends who also hire domestic workers. But as employers "Susan" and "Angela" point out below, "asking around" results in an arbitrary pay scale that fails to address workers’ need for a living wage and their professional qualifications, while providing little guidance to employers as to what they should pay.

It's impossible [to figure out how to set domestic workers' pay rates], it's absolutely impossible. I don't mean that, I just mean it's complicated. The way you determine what to pay your babysitter is by looking at what your neighbors pay their babysitters. Maybe you have neighbors who make a lot more than you do. And there are major cultural differences across the board, in terms of a) child rearing ideology, b) work expectations c) just all of it. But in terms of the issue of being in the position of somebody who was illegal and had no health benefits—of course it was harder for her, but it was a very hard situation to be in...I don't know the answer.

"SUSAN" Brooklyn Employer

I asked other people and they gave me a range. There's a big range. But it wasn't like I was a fancy East Side mother with three homes and could afford somebody for whatever their compensation is.

"ANGELA" Manhattan Employer

### TABLE 7.2 METHODS WORKERS USED TO FIND DOMESTIC EMPLOYMENT

<table>
<thead>
<tr>
<th>Method</th>
<th>% of Workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agency placed me</td>
<td>16%</td>
</tr>
<tr>
<td>Friend referred me</td>
<td>54%</td>
</tr>
<tr>
<td>Employer referred me</td>
<td>20%</td>
</tr>
<tr>
<td>I ran a newspaper ad</td>
<td>10%</td>
</tr>
<tr>
<td>I answered employer's newspaper ad</td>
<td>3%</td>
</tr>
</tbody>
</table>

SOURCE: DWU SURVEY

Most workers find employment through social networks rather than an agency. While agencies tend to have set rates, workers and employers who are referred through social networks negotiate wages and hours without the benefit of pre-set standards. Survey results show half of the workers (54%) found jobs through friends, and 20% were referred by an employer.

### TABLE 7.3 ACCESS TO AND VIOLATION OF CONTRACTS

<table>
<thead>
<tr>
<th>Type of Contract</th>
<th>% of Workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Contract</td>
<td>66%</td>
</tr>
<tr>
<td>Written Contract</td>
<td>8%</td>
</tr>
<tr>
<td>Oral Contract</td>
<td>18%</td>
</tr>
<tr>
<td>Contract violated</td>
<td>24%</td>
</tr>
</tbody>
</table>

SOURCE: DWU SURVEY

In the absence of labor protections, negotiating contracts is the main safety net available to workers. However, only a small number of workers surveyed have contracts (written or oral). Of those with contracts, 24% said that their contracts have been violated.

Employers also articulated a need for a more formal arrangement between themselves and their domestic employees. "Leslie" commented: "As far as benefits—what is expected of both parties. I asked "Claudia," 'what are your expectations?' There wasn't a job description, and it worked out great, but it would have been helpful."
A WEALTH AND RACE DIVIDE

"I was single, working very hard, making enough money to afford someone to clean my house. I had no time and no willingness to do housework," notes "Anne." The situation she describes reflects a reality of the contemporary New York City economy in which employers, even those who do not perceive themselves as wealthy, nevertheless live in a much more secure economic and social class than the workers they hire.

A recent study published by the Pratt Center finds that the New York City economy is doing well. Having bounced back from the economic downturn after September 11, 2001, jobs and businesses continue to rise. But the gap between the top-end and low-end income earners continues to rise as the number of middle-income earners declines: "There's growth at the upper end of the income scale, with high-tech and managerial jobs," Immigrant workers fill low-end jobs in the service sector. The study also points out that the divide between the rich and the poor has increased dramatically in the last twenty years. In 2000, "the top fifth of earners in Manhattan [are making] 52 times more than the lowest fifth." This is up from a differential of 21 times in 1980.

Race and immigration dynamics exacerbate the wealth differential between domestic workers and their employers. Employers of the workers surveyed are white and U.S. born while the overwhelming majority of workers are immigrant women of color. This color line reflects larger trends of racial and gender-based inequality in the workforce. Negotiation of a domestic worker's job responsibilities, wages and working conditions takes place within a context of vast structural inequality.

As seen in this section, many employers feel that the industry is unfair to workers, while its informal nature also does a disservice to employers seeking to determine their costs and responsibilities. Some employers express frustration and discomfort with the arbitrary nature of negotiating work arrangements with employees. Other employers explicitly state that more formal workplace practices would be helpful. Employers view the work performed by domestic workers as key, even necessary, to their ability to juggle career and personal life, and place high value on the care-giving work domestic workers perform. At the same time, some employers are uncomfortable in an ambiguous role that is racially and class stratified. The concerns employers express with how the industry currently functions indicate that industry standards would benefit employers by providing guidance on how to responsibly employ domestic workers, and in so doing, begin to address structural racism and sexism in the domestic work industry.

I don't know what the solutions are because it is slavery. I think it's slavery and it's horrible and on one level I hated participating in it ... She had dental problems and I helped. She has been struggling with her rent and I am throwing her an extra $100 per month. Her money problems are very different from mine. I have no idea [how to improve domestic work]. My brain isn't big enough for that. It's a horribly racist world. People take advantage and it's a mess.

"ANGELA" Manhattan Employer
With all my heart, I must demand those who make the laws—the Governor, Congress, and especially this tribunal panel—do your part so that domestic workers are heard. We are fighting for a just cause. We come to work with great will and care and are unjustly treated.

"M aria" Nanny in Queens
Testimony from Domestic Workers Human Rights Tribunal, Cooper Union Great Hall, New York City, October 8, 2005.

THE DOMESTIC WORK INDUSTRY—WHERE WORKERS are in separate households, far from their own communities—makes domestic workers uniquely vulnerable to labor abuses and even physical abuses. As this study has shown, domestic workers suffer in isolation under exploitative conditions. As a solitary worker, negotiating with two employers for a few hours off to see the doctor is a profound challenge. Relying on their employers for food, phone, shelter, and—in the suburbs—transportation, live-in domestic workers are particularly at risk. This creates a dramatic power imbalance that is unique to the domestic work industry. Without a comprehensive set of labor protections, domestic workers will be mistreated. They will continue to lack the leverage to negotiate fair conditions with their employer.

On November 3, 2003, Domestic Workers United held a convention of domestic workers to discuss the future of the domestic work industry, and the root causes of exploitation. Workers shared their experiences and in the process, a proposal for comprehensive legislation to protect the rights of domestic workers emerged: The Domestic Workers' Bill of Rights. The Domestic Workers' Bill of Rights is a New York State legislative proposal which addresses the longstanding, unfair exclusion of domestic workers from labor protections, and the unique conditions and demands of the industry in which they work, by amending the New York State Labor Law. The Bill of Rights would:

- Protect domestic workers from economic exploitation. It would allow domestic workers to earn a living wage of $14.00/hour ($16.00/hour if the employer does not provide health benefits), and it would require overtime pay for work exceeding 40 hours per week.

- Require employers to provide health benefits for domestic workers or to supplement the domestic worker's hourly wage by $2.00/hour. It also provides for family care and medical leave and for at least five paid sick days per year.
"We are not asking to be treated different. Since slavery we have been treated different. We are asking to be treated the same, that's what the Bill of Rights will do. The Bill of Rights will right centuries of wrongs."

ERLINE Nanny in Manhattan, from United Kingdom

- Require at least five paid personal days each year, and also requires one full day of rest in each calendar week. It would also provide designated paid holidays and paid vacation leave.

- Require employers to provide a domestic worker with written notice of termination 21 days before her final day of employment. It also requires that employers provide severance pay to each domestic worker equal to one week of pay for each full year of the domestic worker's service.

- Require that exclusionary language be taken out of New York State Labor Law and Human Rights Law provisions. It also eliminates language that excludes domestic workers from the definition of "employee."

- Prohibit trafficking of domestic workers

**DOMESTIC WORKER ORGANIZING IN NEW YORK**

Women Workers Project of CAAAV Organizing Asian Communities organizes Asian immigrant women working in the growing service sectors of New York City, particularly domestic workers, for fair working conditions and respect. The Project develops leadership among Asian women, fights for justice on behalf of exploited workers and unites Asian communities to challenge unjust immigration policies, while promoting human rights and dignity for all.

(718) 478-6849 chdeleon@caaav.org

**INTERNATIONAL HUMAN RIGHTS STANDARDS**

The following articles from the Universal Declaration of Human Rights support respect and recognition for domestic workers, and provide a guide for future policies and protections.

**ARTICLE 1.**
All human beings are born free and equal in dignity and rights.

**ARTICLE 2.**
Freedom from Discrimination.

**ARTICLE 4.**
Freedom from Slavery or Servitude.

**ARTICLE 5.**
Freedom from Torture and Degrading Treatment.

**ARTICLE 6.**
Right to Recognition as a Person before the Law.

**ARTICLE 12.**
Freedom from Interference with Privacy, Family, Home & Correspondence.

**ARTICLE 13.**
Right to Movement in and out of the Country.

**ARTICLE 20.**
Right of Freedom of Peaceful Assembly and Association.

**ARTICLE 22.**
Right to Social Security.

**ARTICLE 23.**
Right to Desirable Work with equal pay for equal work and to Join Trade Unions.

**ARTICLE 24.**
Right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

**ARTICLE 25.**
Right to Adequate Living Standard including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

**ARTICLE 27.**
Right to Participate in the Cultural Life of a Community.
AN ACT to amend the labor law and the executive law, in relation to the labor standards and human rights of domestic workers.

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

SECTION 1. LEGISLATIVE FINDINGS AND INTENT.

Many thousands of domestic workers are employed in New York State as housekeepers, nannies, and companions to the elderly. The labor of domestic workers is central to the ongoing prosperity that the state enjoys, and yet, despite the value of their work, domestic workers do not receive the same protection of many state laws as do workers in other industries. Domestic workers often labor under harsh conditions, work long hours for low wages without benefits or job security, are isolated in their workplaces, and are endangered by sexual harassment and assault, as well as verbal, emotional and psychological abuse. Moreover, many domestic workers in the State of New York are women of color who, because of race and sex discrimination, are particularly vulnerable to unfair labor practices, as well as trafficking into forced labor and involuntary servitude.

Because domestic workers care for the most important elements of their employers' lives—their families and homes—the legislature finds that it is in the interest of employees, employers, and the people of the State of New York to ensure that the rights of domestic workers are respected, protected, and enforced.

Given domestic workers' long-standing exclusion from multiple protections available to workers in other industries, and bearing in mind the unique conditions and demands of the industry, the legislature further finds that domestic workers are entitled to industry-specific protections and labor standards.

SECTION 2. THE LABOR LAW IS AMENDED BY ADDING A NEW ARTICLE 19-B TO READ AS FOLLOWS:

ARTICLE 19-B

LABOR STANDARDS FOR DOMESTIC WORKERS

SECTION 690. Definitions

691-a. Minimum wage
691-b. Overtime rate
692. Health benefits
693. Family and medical leave
694-a. Day of rest
694-b. Holidays
694-c. Vacation
694-d. Sick days
694-e. Personal days
695. Termination and severance
696. Notice, posting, and payment records
697. Trafficking
698-a. Penalties
698-b. Civil action
699. Severability
S 690. DEFINITIONS.

For purposes of this article, the following terms shall have the following meanings:

(1) "Domestic worker" means a person employed in a home or residence for the purpose of caring for a child, serving as a companion to a sick, convalescing or elderly person, housekeeping, or for any other domestic service purpose.

(2) "Trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or physical, legal, or psychological coercion.

(3) "Victim of trafficking" means a person subjected to an act or practice described in subdivision two of this section.

S. 691-a. MINIMUM WAGE.

(a) Every employer shall pay each domestic worker no less than the minimum wage described in subdivision b of this section, for each hour worked.

(b) The minimum wage shall be an hourly rate of $14.00. Beginning on January 1, 2026, and each year thereafter, the minimum wage shall be increased by an amount corresponding to the prior year's increase, if any, in the Consumer Price Index.

S. 691-b. OVERTIME RATE.

Every employer shall pay each domestic worker at an overtime rate of one and one-half times her regular rate of pay for every hour worked over forty hours in a work week.

S. 692. HEALTH BENEFITS OR HEALTH BENEFIT SUPPLEMENT.

(a) Every employer must provide each domestic worker health benefits as described in subdivision b of this section, or must supplement her hourly wage rate by an amount no less than the health benefits supplement rate described in subdivision c of this section.

(b) Health benefits mean a health care benefits package for the domestic worker and her family and dependents, including a drug benefit plan.

(c) The health benefits supplement rate shall be $200 per hour. Beginning on January 1, 2026, and each year thereafter, the health benefits supplement rate shall increase by an amount corresponding to the prior year's increase, if any, in the Consumer Price Index for medical care.

S. 693. FAMILY AND MEDICAL LEAVE.

(a) Every employer shall grant a request by each domestic worker with more than 12 months of service with the employer, and who has at least 1,250 hours of service with the employer during the previous 12-month period, to take up to a total of 12 work weeks in any 12-month period for family care or medical leave. Leave provided pursuant to this section may be taken in one or more periods. Family care or medical leave requested pursuant to this subdivision shall not be deemed to have been granted unless the employer provides the domestic worker, upon granting the leave request, a guarantee of employment in the same or a comparable position upon the termination of the leave.

(b) Every employer shall provide to each domestic worker qualified for family care or medical leave under subdivision a of this section the first 6 weeks of such leave as paid leave. Paid leave shall be calculated at each domestic worker's regular rate of pay for her regular hours worked in a week.

(c) For purposes of this section, "family care and medical leave" means any of the following:

(1) Leave for reason of the birth of a child of a domestic worker, the placement of a child with a domestic worker in connection with the adoption or foster care placement of the child by the domestic worker or the serious health condition of a child of the domestic worker;

(2) Leave to care for a parent, spouse or domestic partner who has a serious health condition;

(3) Leave because of a domestic worker's own serious health condition that makes her unable to perform the functions of her position;

(d) A domestic worker taking a leave permitted by subdivision a may elect to substitute, for leave allowed under subdivision a, any of the domestic worker's accrued vacation leave or accrued sick or personal days during this period.

(e) During any period that an eligible domestic worker takes leave pursuant to subdivision a, the employer shall maintain and pay for health benefits or continue to pay the health benefits supplement for the duration of the leave, at the level and under the conditions coverage would have been provided if the domestic worker had continued in employment continuously for the duration of the leave. Nothing in the preceding sentence shall preclude an employer from maintaining and paying for health benefits or the health benefits supplement beyond 12 workweeks.

(f) If a domestic worker's need for a leave pursuant to this section is foreseeable, the domestic worker shall provide the employer with reasonable advance notice of the need for the leave.

S. 694-a. DAY OF REST.

(a) Every employer shall allow each domestic worker at least twenty-four consecutive hours of rest in each and every calendar week.

(b) No domestic worker shall be required to work on her day of rest.

(c) In the event that a domestic worker agrees to work on her day of rest, she will be compensated at the overtime rate for all hours worked on her day of rest or at twice her regular rate if such hours constitute hours worked beyond forty hours in a work week.

S. 694-b. HOLIDAYS.

(a) Every employer shall provide each domestic worker the following days off and provide holiday pay for each day:

(1) New Year's Day;

(2) Martin Luther King, Jr.'s Birthday;

(3) President's Day;

(4) Memorial Day;

(5) Independence Day;

(6) Thanksgiving;

(7) Labor Day;

(8) Christmas Day;

(9) One additional holiday of the domestic worker's choosing.

(b) Holiday pay shall be calculated at each domestic worker's regular rate of pay for her regular hours worked on that day.

(c) No domestic worker shall be required to work on a holiday.
(d) In the event that a domestic worker agrees to work on a holiday, she will be compensated at the overtime rate for all hours worked on the holiday or at twice her regular rate if such hours constitute hours worked beyond forty hours in a work week.

S. 694-c, VACATION

(a) Every employer shall provide each domestic worker with at least the following vacation leave:

(1) Two weeks per year for each domestic worker with more than 6 months service and less than 3 years service.

(2) Three weeks per year for each domestic worker with more than 3 years service and less than 5 years service.

(3) Four weeks per year for each domestic worker with more than 5 years service and less than 10 years service.

(4) Five weeks per year for each domestic worker with more than 10 years service.

(b) Nothing in this section shall preclude an employer from providing greater vacation leave than required by subdivision a.

(c) Vacation pay shall be calculated at the domestic worker’s regular rate of pay for her regular hours worked in a work week.

(d) Every employer shall pay each domestic worker her vacation pay on or before her last regular work day before her vacation leave begins.

(e) Each domestic worker shall choose the dates of her vacation leave. Vacation leave may be taken in one or more periods.

(f) Each domestic worker may choose to accrue unused vacation leave from year to year or may choose to have her unused vacation leave paid out by her employer at the end of each calendar year.

(g) Each domestic worker shall provide her employer with reasonable advance notice of her vacation dates.

S. 694-d, SICK DAYS

(a) Every employer shall provide each domestic worker with at least 5 sick days each year.

(b) Pay for each sick day shall be calculated at the domestic worker’s regular rate of pay for her regular hours of work for the day.

(c) Each domestic worker may choose to accrue unused sick days from year to year or may choose to have her unused sick days paid out by her employer at the end of each calendar year.

S. 694-e, PERSONAL DAYS

(a) Every employer shall provide each domestic worker with at least 5 paid personal days each year.

(b) Pay for each personal day shall be calculated at the domestic worker’s regular rate of pay for her regular hours or work for the day.

(c) Each domestic worker may choose to accrue unused personal days from year to year or may choose to have her unused personal days paid out by her employer at the end of each calendar year.

S. 695, TERMINATION AND SEVERANCE

(a) Every employer shall provide each domestic worker with written notice of termination 21 days before her final day of employment.

(b) Every employer shall provide severance pay to each domestic worker equal to one week of pay for each full year of the domestic worker’s service for the employer on or before her final day of employment. If an employer does not provide notice of termination as required by subdivision a of this section, then the employer shall provide severance pay to each domestic worker equal to one and one-half weeks of pay for each full year of the domestic worker’s service for the employer.

(c) Severance pay shall be calculated at each domestic worker’s regular rate of pay for her regular hours worked in a week.

(d) Every employer shall pay each domestic worker for all accrued vacation leave, sick and personal days on or before her final day of employment.

S. 696, NOTICE, POSTING AND PAYMENT RECORDS

(a) By December 1 of each year, the commissioner shall publish and make available to employers a bulletin announcing the adjusted minimum wage rate and health benefit supplement rates for the upcoming year, which shall take effect on January 1. In conjunction with this bulletin, the commissioner shall by December 1 of each year publish and make available to employers a notice informing domestic workers of the current minimum wage rate, health benefit supplement rate, domestic workers’ rights under this article, and of employer obligations pursuant to the laws, including social security payments, unemployment insurance coverage, disability insurance coverage and workers’ compensation.
(b) By January 1 of each year, every employer shall provide each domestic worker a copy of the notice published each year by the commissioner.

(c) Every employer shall retain records of payments, supplements, and benefits paid or provided to each domestic worker for a period of six years and shall allow the commissioner or his authorized representative access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this article.

S. 697. TRAFFICKING

No employer or any other person shall engage in or aid and abet in the trafficking of a domestic worker.

S. 698-a. PENALTIES

(a) Any employer or his agent, or the officer or agent of any corporation, who discharges or in any other manner discriminates against any domestic worker because such domestic worker has made a complaint to his employer, or to the commissioner or his authorized representative, or to a labor or advocacy organization that she has not been paid or received supplements or benefits in accordance with the provisions of this article, or because such domestic worker has caused to be instituted a proceeding under or related to this article, or because such domestic worker has testified or is about to testify in an investigation or proceeding under this article, shall be guilty of a class B misdemeanor.

(b) Any employer or his agent, or the officer or agent of any corporation, who pays or provides or agrees to pay or provide to any domestic worker less than the wages, supplements, or benefits applicable under this article shall be guilty of a class B misdemeanor, and each payment or provision to any domestic worker in any week of less than the wages, supplements, or benefits applicable under this article shall constitute a separate offense.

(c) Any employer or his agent, or the officer or agent of any corporation, who fails to keep the records required under this article or to furnish such records or any information required to be furnished under this article to the commissioner or his authorized representative upon request, or who hinders or delays the commissioner or his authorized representative in the performance of his duties in the enforcement of this article, or refuses to admit the commissioner or his authorized representative to any place of employment, or falsifies any such records or refuses to make such records accessible to the commissioner or his authorized representative, or refuses to furnish a sworn statement of such records or any other information required for the proper enforcement of this article to the commissioner or his authorized representative, shall be guilty of a class B misdemeanor and each day's failure to keep the records required under this article or to furnish such records or information to the commissioner or his authorized representative shall constitute a separate offense.

(d) Any employer or his agent, the officer or agent of any corporation, or any other person who engages in or aids and abets the trafficking of a domestic worker shall be guilty of a class B felony.

(e) Where any person has previously been convicted of a violation of this section within the preceding five years, upon conviction for a second or subsequent violation such person may be fined up to ten thousand dollars in addition to any other penalties including fines otherwise provided by law; provided, however, that the total additional fine that may be imposed pursuant to this subdivision for separate offenses committed in any consecutive twelve month period may not exceed ten thousand dollars.

S. 698-b. CIVIL ACTION

(a) If any domestic worker is paid or provided by her employer less than the wages, supplements, or benefits to which she is entitled under the provisions of this article, she may recover in a civil action the amount of any such underpayments of wages or supplements or the value of such benefits, punitive damages, costs and such reasonable attorney's fees as may be allowed by the court, and if such underpayment of wages or supplements or failure to provide benefits was willful, an additional amount as liquidated damages equal to twenty-five percent of the total of such underpayments or the value of benefits found to be due her. Such claim, punitive damages, and liquidated damages shall be paid to the domestic worker.

(c) A domestic worker carries the burden of documenting wages, supplements, and benefits paid or provided if she proves that she has performed work for which she was improperly compensated and the amount and extent of such work as a matter of just and reasonable inference. The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negate the reasonableness of the inference. If the employer fails to produce evidence, the domestic worker shall be awarded damages, even though the result may be only approximate.

(d) If a domestic worker is a victim of trafficking by her employer and is paid or provided less than the wages, supplements, or benefits to which she is entitled under the provisions of this article, she or the commissioner may recover in a civil action, in addition to the amounts authorized in subdivisions a and b of this section, additional punitive damages and an additional amount as liquidated damages equal to two hundred percent of the total of such underpayment of wages, supplements or benefits found to be due to her.

(e) If a domestic worker is a victim of trafficking by any person other than her
employer, such person shall be considered a joint employer for purposes of liability under this article.

(f) Notwithstanding any other provision of law, an action to recover upon a liability imposed by this article must be commenced within six years.

S. 699. SEVERABILITY

If any part of provision of this article, or the application of this article to any person or circumstance, is held invalid, the remainder of this article, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this article are severable.

SECTION 3. SUBDIVISIONS 5 AND 6 OF SECTION 292 OF THE EXECUTIVE LAW ARE AMENDED TO READ AS FOLLOWS:

5. The term "employer" does not include any employer with fewer than four persons in his employ. Notwithstanding the preceding sentence, the term "employer" includes any employer employing one or more domestic workers, as defined by article 19-B, section 690 of the labor law.

6. The term "employee" in this article does not include any individual employed by his or her parents, spouse or child, or in the domestic service of any person.

SECTION 4. SUBDIVISION 3 OF SECTION 160 OF THE LABOR LAW IS AMENDED TO READ AS FOLLOWS:

3. For all other employees, except those engaged in farm work or domestic service and those affected by subdivision four of section two hundred and twenty, eight hours.

SECTION 5. SUBDIVISION 1 OF SECTION 218 OF THE LABOR LAW IS AMENDED TO READ AS FOLLOWS:

1. If the commissioner determines that an employer has violated a provision of article six (payment of wages), article nineteen (minimum wage act), article nineteen-A, article nineteen-B, section two hundred twelve-a or section two hundred twelve-b of this chapter, or a rule or regulation promulgated thereunder, the commissioner shall issue to the employer an order directing compliance therewith, which shall describe particularly the nature of the alleged violation. In addition to directing payment of wages, benefits or wage supplements found to be due, such order, if issued to an employer who previously has been found in violation of those provisions, rules or regulations, or to an employer whose violation is willful or egregious, shall direct payment to the commissioner of an additional sum as a civil penalty in an amount equal to double the total amount found to be due. In no case shall the order direct payment of an amount less than the total wages, benefits or wage supplements found by the commissioner to be due, plus the appropriate civil penalty. Where the violation is for a reason other than the employer's failure to pay wages, benefits or wage supplements found to be due, the order shall direct payment to the commissioner of a civil penalty in an amount not to exceed one thousand dollars for a first violation, two thousand dollars for a second violation or three thousand dollars for a third or subsequent violation. In assessing the amount of the penalty, the commissioner shall give due consideration to the size of the employer's business, the good faith of the employer, the gravity of the violation, the history of previous violations and, in the case of wages, benefits or supplements violations, the failure to comply with recordkeeping or other non-wage requirements.

SECTION 6. SUBDIVISION 1 OF SECTION 219 OF THE LABOR LAW IS AMENDED TO READ AS FOLLOWS:

1. If the commissioner determines that an employer has failed to pay wages, benefits or wage supplements required pursuant to article six (payment of wages), article nineteen (minimum wage act), article nineteen-a, or article nineteen-b of this chapter, or a rule or regulation promulgated thereunder, the commissioner shall issue to the employer an order directing compliance therewith, which shall describe particularly the nature of the alleged violation. Such order shall direct payment of wages or supplements found to be due, including interest at the rate of interest then in effect as prescribed by the superintendent of banks pursuant to section fourteen-a of the banking law per annum from the date of the underpayment to the date of the payment.
SECTION 7. SUBDIVISION 5 OF SECTION 651 OF THE LABOR LAW IS AMENDED TO READ AS FOLLOWS:

5. "Employee" includes any individual employed or permitted to work by an employer in any occupation, but shall not include any individual who is employed or permitted to work: (a) on a casual basis while a minor in service as a part time baby sitter in the home of the employer, or someone who lives in the home of an employer for the purpose of serving as a companion to a sick, convalescing or elderly person, and whose principal duties do not include housekeeping; (b) in labor on a farm; (c) in a bona fide executive, administrative, or professional capacity; (d) as an outside salesman; (e) as a driver engaged in operating a taxicab; (f) as a volunteer, learner or apprentice by a corporation, unincorporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual; (g) as a member of a religious order, or as a duly ordained, commissioned or licensed minister, priest or rabbi, or as a sexton, or as a christian science reader; (h) in or for such a religious or charitable institution, which work is incidental to or in return for charitable aid conferred upon such individual and not under any express contract of hire; (i) in or for such a religious, educational or charitable institution if such individual is a student; (j) in or for such a religious, educational or charitable institution if the earning capacity of such individual is impaired by age or by physical or mental deficiency or injury; (k) in or for a summer camp or conference of such a religious, educational or charitable institution for not more than three months annually; (l) as a staff counselor in a children's camp; (m) in or for a college or university fraternity, sorority, student association or faculty association, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which is recognized by such college or university, if such individual is a student; or (n) by a federal, state or municipal government or political subdivision thereof. The exclusions from the term "employee" contained in this subdivision shall be as defined by regulations of the commissioner.

"Employee" also includes any individual employed or permitted to work in any non-teaching capacity by a school district or board of cooperative educational services except that the provisions of sections six hundred fifty-three through six hundred fifty-nine of this article shall not be applicable in any such case.

SECTION 8. SUBDIVISION 3 OF SECTION 701 OF THE LABOR LAW IS AMENDED TO READ AS FOLLOWS:

3. The term "employees" includes but is not restricted to any individual employed by a labor organization; any individual whose employment has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment; and shall not be limited to the employees of a particular employer, unless the article explicitly states otherwise, but shall not include any [fig 'I] individual employed by his parent or spouse or in the domestic service of and directly employed, controlled and paid by any person in his home, any individual whose primary responsibility is the care of a minor child or children and/or someone who lives in the home of a person for the purpose of serving as a companion to a sick, convalescing or elderly person or any individuals employed only for the duration of a labor dispute, or any individuals employed as farm laborers or, any individual who participates in and receives rehabilitative or therapeutic services in a charitable non-profit rehabilitation facility or sheltered workshop or any individual employed in a charitable non-profit rehabilitation facility or sheltered workshop who has received rehabilitative or therapeutic services and whose capacity to perform the work for which he is engaged is substantially impaired by physical or mental deficiency or injury.

SECTION 9. SUBDIVISIONS 1 AND 3 OF SECTION 875 OF THE LABOR LAW IS AMENDED TO READ AS FOLLOWS:

1. "Employer" means any individual, partnership, corporation or association engaged in a business who has employees including the state and its political subdivisions. The term "employer" does not include the employment of domestic workers or casual laborers employed at the place of residence of his or her employer.

3. "Workplace" means any location away from the home, permanent or temporary, where any employee performs any work-related duty in the course of his employment.