



January 9, 2008

The Honorable Joseph Biden  
Chair  
Foreign Relations Committee  
United States Senate  
Washington, DC 20510

The Honorable Richard Lugar  
Ranking Member  
Foreign Relations Committee  
United States Senate  
Washington, DC 20510

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**RE: Preventing the Exploitation, Enslavement and Trafficking of  
Domestic Workers Employed by Foreign Diplomats in the USA  
in the TVPRA of 2007**

Dear Chairman Biden and Ranking Member Lugar:

For the past several months, the ACLU and several coalition partners have worked closely with members of your staff, as well as with House Foreign Affairs Committee staff and Senator Brownback's staff, to address the persistent exploitation, enslavement and trafficking of domestic workers, predominantly women, by foreign diplomats within the United States. We very much appreciate your thoughtful attention, along with Senator Brownback, to this issue.

As you know, the exploitation, abuse and trafficking of domestic workers by diplomats in the U.S. is not new. Almost a decade ago, Human Rights Watch outlined the dimensions of this problem. Yet in the intervening years, despite repeated reports of abuse, the State Department has turned a blind eye to the plight of these women and instead continued, unwittingly, to facilitate the exploitation and enslavement of women in the shadows of the Capitol. It has been unable or unwilling to use its discretion to protect and assist women like Ms. Kumari Sabbithi, Ms. Tina Fernandez or Ms. Joaquina Quadros, ACLU clients who were trafficked to the United States by a Kuwaiti diplomat and whose legal case is pending, or Ms. Zipora Mazengo, who testified about her abuse before the House Foreign Affairs Committee in October 2007.

The time has come for congressional action and oversight. We urge you not to defer to the State Department's plea for additional time or discretion to address this problem. Congress must ensure that the enslavement and exploitation of this most vulnerable population is eliminated once and for all. We welcome and applaud your leadership and commitment, along with Representatives Lantos and Ros-Lehtinen, to this matter.

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## **Analysis of HR 3887**

We are pleased that H.R. 3887, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2007, includes language aimed at preventing and remedying the type of abuse and exploitation suffered by domestic workers. We appreciate the work of Chairman Lantos in this regard. However, as your Committee prepares to introduce its bill, we'd like to bring to your attention certain troublesome aspects of the House bill which we hope the Senate will remedy. We are most concerned that the House bill did not include provisions requiring mandatory employment contracts and follow-up visits once the domestic worker arrives in the United States. These omissions are more fully discussed below.

### **Section 110 of HR 3887: Responsibilities of Consular Officers of the Department of State**

#### **(a)(1) Interviews-**

We applaud this provision requiring consular officers to inform domestic workers of their rights and available protections during the interview. However, legislation should also require that some part of the interview occur outside the presence of the employer, recruiter or any other third party. As many service providers and victims can attest, the presence of a third party, who may be the trafficker, is extraordinarily intimidating and often retards, undermines or distracts from the information conveyed.

#### **(a)(2) Review-**

We appreciate that consular officers are directed to review, before conducting an interview, a summary of the informational pamphlet required under section 202 of the bill. However, this is insufficient to prepare consular officers in a meaningful way and arm them with information and expertise to help prevent trafficking abuses.

Legislation should require the Department of State to provide consular officials with comprehensive training on fair labor standards, the widespread problems of human trafficking in persons, the common problems of labor abuse experienced by domestic workers of diplomats, and their responsibility to educate and inform both the diplomat and the domestic workers of their rights and obligations under U.S. law.

Several NGOs stand ready to assist the State Department in developing a concise but comprehensive capsule on this issue. Moreover, we believe that the State Department's Trafficking in Persons office has already expressed interest in spearheading more training around this issue. Congress should aggressively support this effort.

#### **(b) Special Provisions Relating to Aliens Issued A-3 and G-5 Visas**

- (1) **Elements of a Mandatory Interview** -- We applaud the requirement that consular officers ensure that the employment contract of the visa recipient is in a language she understands. However, legislation should also require that the consular officer orally review the contents of the employment contract in a language understood by the visa recipient.

Additionally, the consular officer should ensure that the alien has a copy of her passport and reiterate that her employer may not deprive her of possession of the passport.

**Finally, meaningful legislation must include model language for employment contracts used by A-3 and G-5 visa recipients. The House bill does not include such language and we urge the Senate to remedy this startling omission.**

The State Department already requires the use of an employment contract between domestic workers and employers that is in English and in a language understood by the domestic worker. The State Department also already specifies certain mandatory terms in these contracts, such as the payment of the federal minimum or prevailing wage, and sets forth numerous terms that should be contained in these contracts, such as paid holidays and vacation days.<sup>1</sup>

Congress should codify these requirements and mandate the use of a uniform and comprehensive contract because it is a critical instrument that articulates, in clear and definite terms, the domestic worker's rights. It lets her – and her employer – know that she is no slave to a master but is instead protected by the rule of law. Additionally, the contract educates the employer on his or her obligations, demonstrates the employer's understanding of and acquiescence to a standard of conduct and serves to deter conduct that may violate the contract. The contract is an absolutely necessary tool to hold employers accountable – through diplomatic means or through the legal system.

A mandatory contract with explicit terms and conditions of employment is crucial to protecting the rights of domestic workers even where enforcement of the contract is stymied – *in the case of A-3 visa recipients but not necessarily for G-5 visa recipients* – by the assertion of diplomatic immunity. As stated above, despite the legal hurdles, the contract remains a powerful tool that educates both parties, establishes the contours of acceptable behavior, and is a tool to hold the signatories accountable. Finally, the contract can serve as a key reference point when a compensation fund or scheme is implemented and when the State Department chooses to intervene and assist in holding an employer or diplomatic mission accountable.

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<sup>1</sup> Unlike other temporary employment-based visas, the mandatory employment contract and conditions of employment for domestic workers on A-3 and G-5 visas are currently not established in US law or regulations. Rather, they are set forth in the internal code of policies for the Department of State and the Foreign Service, the Foreign Affairs Manual (FAM), and Department of State Circular Diplomatic Notes. These policies contain a few basic requirements upon which the granting of a visa is conditioned. *See* 9 FAM 41.21 N6.2(d), (b), N4.4(a).

**(2) Feasibility of Oversight of Employees of Diplomats and Representatives of Other Institutions**

Subsections (A) and (B) of the House bill call for reports on the feasibility of systems to monitor AND compensate domestic workers. These subsections recognize and attempt to address two significant problems suffered by domestic workers employed by diplomats in the United States: (1) the isolation and anonymity experienced by the domestic workers once they arrive in the US that create the conditions for abuse and exploitation and provide cover for the trafficker and (2) diplomatic immunity that shields some diplomat traffickers such that even if a domestic worker is physically, emotionally and sexually abused by her trafficker, she is without legal recourse and denied the remedies afforded victims of trafficking by the TVPA.

However, it appears that the current subsections don't mandate action beyond the study and certainly don't ensure change. A feasibility study must not be the end goal of the legislation. We urge Congress to be more directive and to ensure action after the study's completion. Specifically, legislation should require a study, done in consultation with NGOs, outlining the components of a system to monitor the treatment of A-3 and G-5 recipients in the United States. But the legislation should require that after the study is completed and presented to Congress, implementation of the most effective and sustainable system must commence within a year.

Most important, until the formal study is completed and the monitoring system is implemented, Congress must erect a safety net. Because these women are hidden and terrorized in the home, there are no mechanisms that reveal, or can help them escape, their enslavement. Therefore, meaningful legislation should require that within some period of time – between 90 and 180 days – after her arrival in the United States, the domestic worker should meet with a representative of the State Department, away from the home and not in the presence of the employer. The employers must know that issuance and renewal of the visa will be jeopardized if they do not facilitate the worker's presence at such a meeting. The House bill omits this critical provision.

At this mandatory follow-up meeting, the State Department representative must attempt to ensure that the worker is not being victimized; that she possesses her contract, information pamphlet, and passport; that she understands her rights and obligations; that her designated family member or other contact and the embassy of her country of citizenship in the United States possess a copy of her employment contract, passport, U.S. address and telephone number where she lives. NGOs stand ready to assist the State Department in implementing this requirement.

The House bill requires a feasibility study on a range of compensation approaches. We applaud this requirement but this must not be the end goal of legislation and an interim measure is necessary. We have previously proposed a narrow waiver of diplomatic immunity for breaches of the employment contract to ensure that immunity can no longer be used to shield diplomats from accountability under the law and to restore due process rights to these workers. We've also proposed that the sending state co-sign the employment contract or serve as a guarantor for the diplomat such that the sending state is equally liable for abuses committed by the diplomat.

Although these proposals have not yet gained traction, we appreciate that both the House and Senate seek to address this gap in accountability. We are pleased that the House bill attempts to close the gap by requiring the State Department to explore various compensation approaches such as an insurance scheme, compensation fund or bond program, that ensures domestic workers receive appropriate compensation when the employer breaches the contract. For example, Ms. Mazengo, who testified about her abuse by a Tanzanian diplomat, recently received a default judgment of over \$1,000,000 by the United States District Court for the District of Columbia. It is likely that execution of her judgment against the diplomat may be thwarted by diplomatic immunity. Ms. Mazengo is entitled to justice.

However, until the compensation scheme is implemented, the legislation should direct the State Department "to make all serious efforts to assist domestic workers to obtain compensation for violations of their rights by mediating or brokering settlements between the diplomat or foreign mission and the domestic worker."

Finally, we urge completion of the report within 120 days, rather than 180 days, of the enactment of the Act.

### **(3) Assistance to Law Enforcement Investigations**

We applaud the provision requiring the State Department to cooperate, to the fullest extent possible, with investigations by US law enforcement authorities and appreciate the Committee's oversight in this area. However, the provision must be strengthened because service providers and advocates can attest to the State Department's resistance to and noncompliance with investigations and their frequent citation to the Vienna Convention to buttress their lack of cooperation. This lack of cooperation exists at all levels of investigations. For example, in one instance, the State Department would not assist in implementing a pre-indictment investigative measure like monitored phone calls, a tool that could enable law enforcement to press convincingly for the need to waive immunity for criminal prosecution.

Instead, meaningful legislation should provide that in order to facilitate the Department of Justice's (DOJ) investigations of trafficking in persons, the State

Department will issue a report clarifying when their cooperation is limited by the Vienna Convention and shall provide authority for their interpretation. This requirement will help eliminate the State Department's blanket statements of noncooperation premised on the Vienna Convention and shed light on the Department's decision-making process.

The DOJ and State Department should then be encouraged to enter into a Memorandum of Understanding that sets forth investigative measures that DOJ can undertake, with the State Department's cooperation, when a domestic worker employed by a diplomat alleges that she was a victim of trafficking and/or forced labor.

#### **(4) Zero Tolerance for Abuse**

We appreciate the intention, manifested in this provision, to elevate the seriousness of a diplomat's exploitation of a domestic worker by holding the entire diplomatic mission accountable. However, we are concerned that this provision does not sufficiently reward missions that attempt to act responsibly.

We recommend, therefore, that evidence that the chief of mission has helped broker an equitable settlement of claims, has taken disciplinary action against an offending diplomat and has instituted preventive measures, should be a relevant factor in the decision-making process. In particular, diplomatic missions should be encouraged and given incentives to broker equitable settlements between the victim and her diplomat trafficker.

#### **Section 202 of HR 3887:**

##### **Information for Work-Based Non-Immigrants on Legal Rights and Resources**

Section 202 authorizes the creation and widespread dissemination of an information pamphlet that must be shared with A-3 and G-5 and other nonimmigrant visa recipients. We heartily applaud the inclusion of this provision in the reauthorization bill. We are also pleased with the translation and dissemination subsections. However, there are several weaknesses and omissions that we urge the Senate to remedy.

First, along with providing information about the visa process and any portability of employment or educational institution, the pamphlet should also provide information about the terms of the visa recipient's immigration status. This is needed to combat any misinformation that the employer may give in an effort to coerce or intimidate the worker.

Next, requiring information about "services" is too vague. We recommend that the bill specifically require a pamphlet that contains (1) contact information for community organizations, legal service providers and victims' advocacy organizations that provide services to domestic workers and victims of human trafficking, labor exploitation, and

sexual and physical violence; (2) emergency contact numbers for the police, the national human trafficking hotline and Federal law enforcement and other victim services complaint lines; (3) contact information for the Embassies and Consulates of the countries of citizenship of A-3 and G-5 nonimmigrant visa recipients.

Finally, the pamphlet must contain information about the required employment contract between the employer and the worker, including an explanation that the contract is legally binding and enforceable, and a summary of the rights and protections included in the contract.

**Conclusion**

On behalf of the 53 ACLU affiliates across the country and more than 550,000 members, we offer our sincerest thanks for your leadership and commitment to ending the exploitation, enslavement and trafficking of domestic workers employed by diplomats in the United States.

Should you have any questions or need additional information, please do not hesitate to contact Vania Leveille at 202.715.0806 or vleveille@dcaclu.org.

Sincerely yours,



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Director



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Legislative Counsel

cc: Honorable Sam Brownback  
Honorable Dick Durbin  
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Honorable Ileana Ros-Lehtinen