



To: Ms. Urmila Bhoola, UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences  
From: The Human Trafficking Legal Center  
Date: May 18, 2018  
Re: Questionnaire on Domestic Servitude

The Human Trafficking Legal Center respectfully submits the following in response to the UN Special Rapporteur on contemporary forms of slavery's questionnaire on domestic servitude of migrant women and girls.

### **Question 1**

**Please provide information on your organisation and its work with migrant domestic workers who became victims of contemporary forms of slavery, including the countries in which you work on this issue.**

The Human Trafficking Legal Center is a U.S.-based non-profit that trains pro bono attorneys to represent trafficking survivors in civil, criminal, and immigration cases in the United States. We create a bridge between trafficking survivors and highly skilled pro bono legal representation. The Human Trafficking Legal Center has trained more than 3,400 pro bono attorneys to represent trafficking victims, including victims of domestic servitude. The organization tracks data on civil and criminal cases brought at the federal level on behalf of trafficking victims, including domestic workers held in force labor and involuntary servitude. Our data indicate that 3 percent of federal criminal trafficking prosecutions and 33 percent of civil trafficking cases involve domestic servitude.

A subset of domestic servitude cases in the United States involve trafficking by diplomats and international organization employees. The Human Trafficking Legal Center has developed deep expertise in holding diplomats accountable for the trafficking and exploitation of migrant domestic workers. Domestic employees of diplomats and foreign officials enter the United States on special visas, known as A-3 and G-5 visas. These workers face significant risk of abuse.

The Human Trafficking Legal Center leads a coalition of anti-trafficking groups fighting to end impunity for diplomats who traffic migrant domestic workers. Many non-governmental organizations conduct advocacy in this arena. The National Domestic Workers Alliance launched the Beyond Survival Campaign in 2013 which aims to combat the trafficking of domestic workers—including A-3 and G-5 migrant workers.<sup>1</sup> Damayan Migrant Workers Rights Association's "Justice for Edith and Sherile" advocacy campaign presses for justice for two migrant domestic workers who allege that they were exploited and underpaid by a German diplomat.<sup>2</sup>

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<sup>1</sup> For more information on the Beyond Survival Campaign, see <https://www.domesticworkers.org/beyond-survival>.

<sup>2</sup> For more on Justice for Edith and Sherile, see <https://www.damayanmigrants.org/justice-for-edith-and-sherile>.

The submission focuses specifically on abuses suffered by migrant domestic workers trafficked by diplomats and international organization officials in the United States.<sup>3</sup>

## **Question 2**

**A. Please characterise the legal and/or policy frameworks relevant to the protection of migrant domestic workers subject to contemporary forms of slavery, as well as any global trends you would like to highlight. Please include information about provisions criminalising contemporary forms of slavery, those that might establish distinct rights and/or restrictions for domestic workers, including migrant domestic workers (in regards to, for instance, salary, working hours, freedom of movement, freedom of association, limited freedom to change employers, etc.), as well as measures to identify and support migrant domestic workers who are or were victims of contemporary forms of slavery.**

**B. Please include specific references to the source of law when possible.**

In 2000, Congress passed the Trafficking Victims Protection Act (TVPA), which prohibits “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.”<sup>4</sup> The TVPA criminalizes, *inter alia*, forced labor, sex trafficking, and human trafficking.<sup>5</sup>

The law applies equally to all victims of human trafficking in the United States—both U.S. citizen and foreign national victims. The TVPA also includes a mandatory criminal restitution provision for trafficking victims.<sup>6</sup> In 2003, Congress amended the law to include a private right of action, allowing trafficking victims to file lawsuits against their traffickers for civil damages.<sup>7</sup> In addition to criminal and civil cases, foreign national victims are eligible for various forms of immigration relief that allow victims legal status in the United States. The major form of immigration relief is a T-visa, a visa reserved for victims of trafficking.

U.S. law protects human trafficking victims, including migrant domestic workers. Congress expanded protections for A-3 and G-5 domestic workers in 2008 with the passage of the 2008 Trafficking Victims Protection Reauthorization Act (2008 TVPRA), also known as the William Wilberforce Trafficking Victims Protection Reauthorization Act.<sup>8</sup> This section provides an overview of the United States’ efforts to prevent and protect A-3 and G-5 workers. For a discussion of prosecution efforts, see Question 8.

### **1. Prevention Efforts Prior To U.S. Entry**

The 2008 TVPRA instituted several safeguards to screen for potential trafficking victims and educate migrant domestic workers on their rights within the United States. These safeguards

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<sup>3</sup> The Human Trafficking Legal Center would like to thank Professor Annie Smith, Samantha Baker, and Dylan Weisenfels of the University of Arkansas Law School Human Trafficking Clinic for their research and coding of federal criminal and civil trafficking-related cases involving A-3 and G-5 workers.

<sup>4</sup> Victims of Trafficking and Violence Protection Act of 2000, P.L. 106-386, § 103(8)(b). This act is also referred to as the “Trafficking Victims Protection Action” or “TVPA.” The TVPA was signed into law on October 28, 2000.

<sup>5</sup> Involuntary servitude is codified at 18 U.S.C. § 1584. The crime of forced labor is codified at 18 U.S.C. § 1589. The crime of sex trafficking is codified as 18 U.S.C. § 1591. The crime of trafficking is codified at 18 U.S.C. § 1590.

<sup>6</sup> 18 U.S.C. §1593.

<sup>7</sup> 18 U.S.C. § 1595.

<sup>8</sup> The Wilberforce Act was signed into law on December 23, 2008.

include a written contract requirement, private consular interviews, and providing domestic workers with informational “know your rights” materials.

#### A. Written Contracts

The 2008 TVPRA requires written employment contracts between migrant domestic workers and their foreign official employers in order to obtain an A-3 or G-5 visa.<sup>9</sup> These contracts must include: a description of duties; hours of work—including a minimum of one full day off each week; hourly wage rate (must be at least the greater of the minimum wage under U.S. federal, state, or local law); overtime work policy; a provision stating that after the first 90 days of employment payments must be made by electronic transfer or check; a provision guaranteeing that the employer must provide transportation to and from the United States. Employers may not make deductions for room and board, medical care, travel, or meals.<sup>10</sup>

Contracts must be written “both English and (if the applicant does not understand English) a language understood by the applicant.”<sup>11</sup> Consular officials are required to review employment contracts with A-3/G-5 applicants during their consular interview.<sup>12</sup> In 2016, the State Department announced that they had partnered with a pro bono law firm, DLA Piper, to develop a model contract for A-3/G-5 domestic workers.<sup>13</sup> Employment contracts that fail to meet the above requirements are rejected and the A-3 or G-5 visa does not issue.<sup>14</sup>

#### B. Private Interviews

The 2008 TVPRA requires consular officials to conduct interviews with A-3 and G-5 visa applicants outside of the presence of their future employers or recruitment agent.<sup>15</sup> If a visa application “raise[s] fraud concerns,” U.S. consulates are instructed to refer the cases back to the State Department.<sup>16</sup>

#### C. “Know Your Rights” Pamphlet Distribution

The 2008 TVPRA requires that the State Department distribute an informational Know Your Rights pamphlet to all temporary workers entering the United States—including A-3 and G-5 visa applicants. The pamphlets are provided during the consular interviews.<sup>17</sup> The pamphlet explains the visa applicant’s rights in the U.S. The pamphlet also explains U.S. law prohibiting illegal exploitation, including human trafficking.<sup>18</sup> Consular officials are also required to confirm that A-3 and G-5 visa applicants have “received, read, and understood the contents of the pamphlet...”<sup>19</sup> If the applicant has not received the pamphlet, the consular official shall “distribute and orally

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<sup>9</sup> 8 U.S.C.A. § 1375c(a)(1).

<sup>10</sup> 9 FOREIGN AFFAIRS MANUAL 402.3-9(B)(4).

<sup>11</sup> 9 FOREIGN AFFAIRS MANUAL 402.3-9(B)(4)(a).

<sup>12</sup> 9 FOREIGN AFFAIRS MANUAL 402.3-9(B)(2)(c).

<sup>13</sup> Secretary John Kerry, *Remarks at the 2016 Trafficking in Persons Report Ceremony*, June 30, 2016, <https://www.state.gov/secretary/remarks/2016/06/259227.htm>.

<sup>14</sup> This has occurred in at least three federal civil cases: *Hussain v. Shaukat*, No. 16-cv-322 (E.D. Va. filed Mar. 22, 2016); *Hussain v. Shaukat*, No. 16-cv-322 (E.D. Va. filed Mar. 22, 2016); *Doe v. Penzato*, No. 10-cv-5154 (N.D. Cal. filed Nov. 12, 2012).

<sup>15</sup> 8 U.S.C.A. § 1375c(b)(1)(B). This is also stated in the Foreign Affairs Manual. 9 FOREIGN AFFAIRS MANUAL 9 FAM 402.3-9(C)(2)(b).

<sup>16</sup> 9 FOREIGN AFFAIRS MANUAL 41.21 N6.3(b).

<sup>17</sup> 8 U.S.C. § 1375b(a)(1).

<sup>18</sup> DEP’T OF STATE, *Rights and Protections for Temporary Workers*, available at <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/temporary-workers.html>

<sup>19</sup> 8 U.S.C. § 1375b(e)(1)(A)(i).

disclose to the [applicant] the information described in [the pamphlet] in a language that the [applicant] understands...”.<sup>20</sup> The pamphlet is available in English and has been translated into 44 other languages.<sup>21</sup> The pamphlet includes the phone number for the National Human Trafficking Hotline (1-888-3737-888). According to hotline staff, the pamphlet has prompted a significant number of calls to the hotline from migrants to report abuse. The pamphlet appears to have helped at least three migrant domestic workers escape their foreign official traffickers.<sup>22</sup> The U.S. State Department recently revised and re-issued the pamphlet, which has become a valuable prevention tool. It is perhaps most effective because it was developed in close collaboration with trafficking experts and attorneys representing trafficking victims in the United States. Close collaboration with NGOs is essential to provide materials that are useful to migrant domestic workers.

## 2. Identification Efforts Following U.S. Entry

### A. Welfare Check-in Program

In an effort to better identify potential victims, the U.S. State Department announced the launch of an “annual in-person registration process for domestic workers employed by foreign mission personnel” in the Washington, D.C. area.<sup>23</sup> Under the State Department’s pilot check-in program, A-3 and G-5 workers based in the Washington, D.C. area can disclose abuse or wage violations to a protocol officer. The State Department welfare-check program is a significant step forward in the effort to prevent abuse and exploitation by diplomats. Non-governmental organizations have called for the program to be expanded beyond Washington, D.C. Cases on behalf of victims forced into domestic servitude by foreign officials have been filed in California, Rhode Island, Texas, and Missouri. Migrant domestic workers in these regions do not have the opportunity to meet with State Department officials to disclose abuse. We applaud this effort and look forward to seeing the welfare-check program expanded to cover New York and the nation.

There are fewer protections for domestic workers once they enter the U.S. Without protection once in the U.S., domestic workers remain vulnerable to abuse. A 2014 study found that 82 percent of trafficked migrant domestic workers interviewed for the report possessed legal work visas.<sup>24</sup> A legal work visa is not, in and of itself, protection.<sup>25</sup> In fact, because these visas tie a worker to her employer, the visas can render the worker *more* vulnerable to abuse. The U.S. government lacks a robust system to check on workers after they arrive in the U.S. Instead, it has largely been left to the foreign missions and international organizations to monitor their employees’ treatment of the migrants.

## 3. Immigration Relief

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<sup>20</sup> 8 U.S.C. § 1375b(e)(1)(A)(ii).

<sup>21</sup> See Dep’t of State, *supra* note 18.

<sup>22</sup> See *Jeganathan v. Krishnan*, No. 1:16-cv-06784 (S.D.N.Y.); *Hussain v. Shaukat*, No. 16-cv-322 (E.D. Va.); and *Rios Fun v. Pulgar*, 2:13-cv-03679 (D. N.J. 2013). The pamphlet has also assisted migrant domestic workers entering the United States on other temporary work visas with escaping their employers, see *Garnica v. Edwards*, No. 1:13-cv-03943 (S.D.N.Y.) (entering on a B-1 visa).

<sup>23</sup> Diplomatic Note, U.S. Dep’t of State, Annual Review of Domestic Workers (Sept. 25, 2015), <http://www.state.gov/s/cpr/248451.htm>.

<sup>24</sup> Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States at 26, Urban Institute, October 21, 2014, <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413249-Understanding-the-Organization-Operation-and-Victimization-Process-of-Labor-Trafficking-in-the-United-States.PDF>.

<sup>25</sup> See The Human Trafficking Legal Center, *Federal Criminal and Civil Trafficking Cases Involving Legal Visas* (forthcoming at [www.htlegalcenter.org](http://www.htlegalcenter.org)).

Foreign national victims of trafficking in the United States may be eligible for immigration relief under two programs: continued presence and T-nonimmigrant status. In addition to this, A-3/G-5 workers may be eligible for a third form of immigration relief: deferred action.

#### A. Deferred Action

A-3/G5 visa holders who file a civil lawsuit against their employer are eligible for “deferred action.”<sup>26</sup> This temporary immigration status allows A-3/G-5 workers to remain in the United States and work legally while their civil lawsuit is pending. A-3/G-5 visa holders who are victims of human trafficking may also be eligible for a T-visa. The U.S. government does not publish data on the number of A-3 and G-5 victims who have received deferred action.

Although the deferred action regime has not resulted in an uptick in lawsuits, it does provide victims with some relief, especially in cases where the U.S. government declines prosecution. Deferred action gives trafficking victims immigration relief so that they can pursue justice in the civil arena. That said, advocates would prefer to see continued presence, a more robust form of temporary immigration relief, granted to victims.

#### B. Continued Presence

Continued presence (CP) may be provided by federal law enforcement to individuals identified as victims of a severe form of human trafficking who are potential witnesses in a human trafficking investigation or prosecution.<sup>27</sup> Continued presence permits a victim to stay in the U.S. for a renewable, two-year period and allows for legal employment.<sup>28</sup> Continued presence is far superior to deferred action, as it provides access to federal benefits.

Continued presence is rarely granted. Only law enforcement officials can apply for continued presence. Continued presence is a form of immigration relief available to all trafficking victims, not only those abused by diplomats. But only 129 victims received continued presence in FY 2016 in the entire United States.<sup>29</sup>

The number of A-3 and G-5 victims who have received continued presence is unknown. Also unknown is the number of A-3 and G-5 victims who requested continued presence. Without a clear sense of the data, advocates are unable to ascertain how effective the U.S. government’s continued presence program has been in supporting migrant domestic workers trafficked by foreign officials. Anecdotally, advocates report that the number of A-3 and G-5 victims who receive continued presence is very low and has been declining.

#### C. T-Nonimmigrant Status

Individuals who are victims of human trafficking are eligible for a T-nonimmigrant status—known as a T-visa. An applicant must show that she 1) is a victim of a severe form of trafficking (sex

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<sup>26</sup> U.S. CITIZENSHIP AND IMMIGRATION SERVICES, *USCIS Will Offer Protection for Victims of Human Trafficking and Other Violations*, Mar. 11, 2011, <https://www.uscis.gov/archive/archive-news/uscis-will-offer-protection-victims-human-trafficking-and-other-violations>.

<sup>27</sup> 22 U.S.C. § 7105(c)(3). U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *Continued Presence: Temporary Immigration Status for Victims of Human Trafficking*, (Aug. 2010), available at <https://www.ice.gov/doclib/human-trafficking/pdf/continued-presence.pdf>.

<sup>28</sup> *Id.*

<sup>29</sup> UNITED STATES DEPARTMENT OF STATE, *2017 Trafficking in Persons Report* 418 (2017).

trafficking, labor trafficking, or involuntary servitude); 2) has cooperated with law enforcement in the investigation of her alleged trafficker, 3) is present in the United States “on account of trafficking” *or* has been “allowed entry into the United States to participate in investigative or judicial processes associated with the an act or perpetrator of trafficking” and 4) would suffer extreme hardship involving unusual and severe harm if removed from the United States.<sup>30</sup> This nonimmigrant status allows trafficking victims to work, bring in qualifying family members, access federal and state benefits, and adjust to lawful permanent residency status.<sup>31</sup> The U.S. Citizenship and Immigration Services does not currently publish data on the underlying visa status of trafficking victims who receive T-visas.

### **Question 3**

**Please describe the main challenges and barriers identified in the country or countries in which your organisation works to ensuring the human rights of migrant domestic workers victims of contemporary forms of slavery. Please also specify any global trends that you are aware of.**

See response to Question 8.

### **Question 4**

**A. Please elaborate on any specific violence, threats of violence, abuse or harassment faced by migrant women and girls who are in situation of domestic servitude.**

**B. Please elaborate on any other human rights violation faced by migrant women and girls who are in situation of domestic servitude (including, for example, their right to health, water, housing, freedom of movement, freedom of association, etc.).**

Women and girls<sup>32</sup> from developing countries make up the vast majority of A-3 and G-5 domestic worker trafficking victims.<sup>33</sup> Some come to the U.S. seeking to provide financial support to their families.<sup>34</sup> Others hope to gain an education in the U.S. or learn English.<sup>35</sup> Many of the victims speak little to no English when they arrive. And although U.S. law requires that the workers receive contracts that comply with U.S. labor standards, many cannot read those contracts.

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<sup>30</sup> U.S. CITIZENSHIP AND IMMIGRATION SERVICES, *I-914, Application for T Nonimmigrant Status*, <https://www.uscis.gov/i-914>.

<sup>31</sup> For more on the T-visa program and eligibility requirements, see U.S. Citizenship and Immigration Services, *Victims of Human Trafficking: T Nonimmigrant Status*, <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status>.

<sup>32</sup> A-3/G-5 visas are for adults, but traffickers have been known to submit fraudulent travel documents in order to bring underage domestic workers to the United States. See Complaint, Gurung v. Malhotra at 4, No. 10-cv-5086 (S.D.N.Y.) (trafficked at the age of 17); Complaint, Doe v. Siddig at 2, No. 10-cv-01256 (D.D.C.) (allegedly trafficked at the age of 14).

<sup>33</sup> Only two of the identified cases involved plaintiffs who were male. See Hussain v. Shaukat, No. 16-cv-322 (E.D. Va.); Rana v. Islam, No. 14-cv-1993 (S.D.N.Y.).

<sup>34</sup> See Complaint at para. 20-21, Cruz v Maypa, 1:13-cv-00862 (E.D. Va. 2013); Amended Complaint at para. 19, Laamime v. Abouzaid, 1:13-cv-00793 (E.D. Va. 2013); First Amended Complaint at para. 33, Sabbithi v. Al Saleh, 07-00115 (D.D.C. 2010).

<sup>35</sup> See Complaint at 4, Doe v. Siddig, 1:10-cv-01256 (N.D. Ca. July 26, 2010); Complaint at 5, Kiwanuka v. Bakilana, 1:10-cv-01336 (D.D.C. 2010); Complaint at 5, Ouedraogo v. Bonkougou, 1:15-cv-01345 (S.D.N.Y.); Complaint at 3, Waru v. Madhvani, 1:05-cv-00662 (D.D.C.); Complaint at 5, Laamime v. Abouzaid, No. 13-cv-00793 (E.D. Va.); Complaint at 4, Lipenga v. Kambalame, No. 14-cv-03980 (D. Md.); Complaint and Action for Replevin at 4, Elat v. Ngoubene, 8:11-cv-02931 (D. Md. 2012).

Many migrant domestic workers, promised decent working hours and conditions, find a much different reality in the U.S.<sup>36</sup> Many reported that the labor conditions they experienced with the *same* employer in the home country were far better prior to coming with that employer to the United States.<sup>37</sup> Domestic workers typically work ten or more hours per day, six to seven days a week. In every civil trafficking case examined, the victim allegedly worked well over forty hours per week, did not receive overtime wages, and, if they received any pay at all, the amount was far below minimum wage.

Domestic workers often suffer severe physical, verbal, and psychological abuse. Victims are also at high risk for sexual abuse. Traffickers threaten the domestic workers with death, arrest, or deportation if they reveal the abuse. Some live in constant fear of being raped.<sup>38</sup>

Domestic workers often live in abysmal conditions, forced to sleep in unheated basements, on floors, and even in the kitchen. Others are forbidden to share the family's cutlery or use the washing machine for their own clothing. Some suffer malnutrition and weight loss when traffickers restrict the domestic workers' food intake, another mechanism of control.<sup>39</sup>

Traffickers deny domestic workers access to medical care, despite evidence of deteriorating health. Following escapes, domestic workers have been diagnosed with various forms of cancer, HIV, tuberculosis, and serious dental conditions.<sup>40</sup>

Domestic worker trafficking victims are isolated from their communities and the outside world. They are almost always forbidden from leaving the home without permission or speaking with outsiders. Some of the victims who filed civil cases reported that traffickers forbade them from looking out the window or approaching the front door.<sup>41</sup> In one case, a victim alleged that she had to stare at the ground when walking outside of the home to avoid personal contact with anyone.<sup>42</sup>

### **Question 5**

**Please elaborate on the challenges faced by migrant women and girls who are at the risk of or who are already under conditions of domestic servitude to obtain protection against their human rights violations.**

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<sup>36</sup> Domestic workers are enticed with promises of reasonable work schedules, good pay, and time off. *See, e.g.*, Complaint at 4, *Leo v. Al Naser*, 1:08-cv-01263 (D.D.C. 2008); Complaint at para. 12, *Doe v. Amal*, 1:12-cv-01359 (E.D. Va. 2012) Complaint at para. 13, *Doe v. Siddig*, 1:10-cv-01256-Ckk (D.D.C. 2010).

<sup>37</sup> *See* Complaint, *Carazani v. Zegara*, No. 12-cv-00107 (May 17, 2012); Complaint at 3, *Doe v. Amal*, 1:12-cv-01359 (E.D. Va. 2012); Complaint at 4, *Lipenga v. Kambalame*, No. 14-cv-03980 (Dec. 19, 2014).

<sup>38</sup> Complaint at 9, *Leo v. Al Naser et al.*, 1:08-cv-01263 (D.D.C. 2008); Complaint at 13, *Swarna v. Al Awadi et al.*, 06-cv-04880 (S.D.N.Y. 2006).

<sup>39</sup> Complaint at 7, *Baoanan v. Baja*, No. 08-cv-05692 (S.D.N.Y. Aug. 17, 2009); Complaint at 11, *Butigan v. Al-Malki*, No. 13-cv-00514 (E.D. Va. Apr. 26, 2013); Complaint at 8, *Chere v. Taye*, No. 04-cv-06264 (D.N.J. Dec. 21, 2004); Complaint at 4, *Doe v. Penzato*, No. 10-cv-05154 (N.D. Cal. Nov. 12, 2010); Complaint at 7, *Elat v. Ngoubene*, No. 11-cv-02931 (D. Md. June 4, 2012); Complaint at 6, No. 10-cv-05086 (S.D.N.Y. July 1, 2010); Complaint at 3, *Judavar v. Al Mannai*, No. 11-cv-00625 (D.D.C. Mar. 25, 2011) | Complaint at 14, *Kiwanuka v. Bakilana*, No. 10-cv-01336 (D.D.C. Aug. 9, 2010); Complaint at 7, *Leo v. Al Naser*, No. 08-cv-01263 (D.D.C. July 22, 2008); Complaint at 10, *Rana v. Islam*, No. 14-cv-1993 (S.D.N.Y. Mar. 21, 2014); Complaint at 10-1, *Rios Fun v. Pulgar*, No. 13-cv-03679 (D.N.J. June 13, 2013); Complaint at 25, *Sabbithi v. Al Saleh*, No. 07-cv-00115 (D.D.C. Jan. 18, 2007); Transcript of Sentencing Hearing at 19-20, 22, *U.S. v. Al Homoud*, No. 15-cr-00391 (W.D. Tex. Feb. 9, 2016).

<sup>40</sup> Complaint at 3-4, *Butigan v. Al Malki*, No. 13-cv-00514 (E.D. Va. Apr. 26, 2013); Complaint at 10-1, *Lipenga v. Kambalame*, No. 14-cv-03980 (D. Md. Dec. 19, 2014); Transcript of Sentencing Hearing at 22-3, *U.S. v. Al Homoud*, No. 15-cr-00391 (Feb. 9, 2016).

<sup>41</sup> *See* First Amended Complaint at 27, *Sabbithi v. Al Saleh*, No. 1:07-cv-00115 (D.D.C. 2010).

<sup>42</sup> *See* Complaint at 10, *Swarna v. Al Awadi*, No. 1:06-cv-04880 (S.D.N.Y. 2006).

See responses to Questions 4 and 8.

### **Question 6**

**Please elaborate on the specific situation of migrant women and girls in domestic servitude, taking into consideration factors that might contribute to their increased vulnerability to contemporary forms of slavery, including poverty, identification to minority groups, indigenous people, age, and caste.**

See response to Question 4.

### **Question 7**

**A. Please detail any examples of good practice in relation to protecting, identifying and rescuing migrant women and girls in situation of domestic servitude. This might include actions and initiatives taken by governments, civil society organizations, international organizations, media outlets, employers, individuals, survivors, etc.**

See response to Question 2.

### **Question 8**

**Please describe any challenges identified in ensuring that migrant women and girls who are survivors of domestic servitude have access to justice?**

The U.S. federal government prosecutes very few criminal human trafficking cases—particularly for forced labor. In 2016, the federal authorities prosecuted just 241 human trafficking cases total. Of those, just 13 cases were for forced labor. The remaining 228 human trafficking cases were for sex trafficking. And even though federal law mandates that trafficking victims receive financial compensation in the form of criminal restitution, restitution is rarely ordered (and even more rarely collected).<sup>43</sup>

Federal authorities have prosecuted just 11 criminal cases against diplomats and international officials for trafficking, abuse, and exploitation of A-3/G-5 workers since 2000. Victims themselves have filed 34 federal human trafficking civil cases against diplomats and international officials since 2004. The discrepancy between the number of criminal and civil cases against foreign officials is troubling.<sup>44</sup>

#### **A. Criminal Prosecution**

Criminal prosecutions of diplomats and international organization officials who abuse migrant domestic workers are rare. Immunity can severely impede a victim's ability to obtain justice. While diplomatic immunity is necessary to protect diplomats abroad and maintain friendly relations between countries, it also presents a frustrating obstacle to achieving justice for A-3 and G-5 trafficking victims.<sup>45</sup>

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<sup>43</sup> See Alexandra F. Levy and Martina E. Vandenberg, THE HUMAN TRAFFICKING LEGAL CENTER, *When "Mandatory" Does Not Mean Mandatory: Failure to Obtain Criminal Restitution in Federal Prosecution of Human Trafficking Cases in the United States* (2015).

<sup>44</sup> See Martina E. Vandenberg & Sarah Bessell, *Diplomatic Immunity and the Abuse of Domestic Workers: Criminal and Civil Remedies in the United States*, 26 DUKE J. OF COMP. & INT'L L. 595 (2016), available at <http://scholarship.law.duke.edu/djcil/vol26/iss3/6>.

<sup>45</sup> *Tabion v. Mufti*, 73 F.3d 535, 537 (4th Cir. 1996).



## 1. Diplomatic Immunity

Foreign diplomats, consular officials, and United Nations officials are generally protected from legal liability by immunity. Diplomatic immunity is granted to diplomats and staff at diplomatic embassies.<sup>46</sup> Consular immunity is granted to those who work as officials and employees at foreign consulates.<sup>47</sup> Representatives of member states to the United Nations and high-level UN officials receive a special form of immunity, similar to diplomatic immunity.<sup>48</sup>

A foreign official's position will determine their level of immunity. Embassy diplomats and high-ranking UN officials, and their family member dependents, enjoy absolute immunity for both their official and personal acts. While in office, these officials are immune from arrest, detention, and legal action—though the Department of State may request a waiver of immunity or declare a foreign official *persona non grata*. Upon exit from their foreign posting, diplomats retain residual immunity only for acts taken as official functions of their employment.<sup>49</sup> Since the abuse of a domestic worker is not related to any “acts performed by (the diplomat) in the exercise of his functions as a member of the mission,” after their service in the United States ends and they depart the U.S., criminal or civil liability may be imposed.<sup>50</sup>

Consular officers<sup>51</sup> enjoy immunity only from acts arising from their official functions.<sup>52</sup> Consular officers, but not their employees, are generally inviolable before criminal trials, but can be arrested for felony offenses after judicial approval.<sup>53</sup> As trafficking is a felony offense and considered a personal act for the purposes of immunity, consular officials and staff are not immune from arrest, detention, and legal action with respect to alleged human trafficking.<sup>54</sup>

The State Department contends that diplomatic immunity “is not intended to serve as a license for persons to flout the law and purposely avoid liability for their actions.”<sup>55</sup> Unfortunately, this is

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<sup>46</sup> VCDR, *supra* note 71.

<sup>47</sup> VCCR, *supra* note 71. Like diplomatic personnel, consular personnel are officials sent by a state to reside in and represent the sending state in the territory of another state with that state's consent. Unlike diplomatic personnel, however, consular personnel ordinarily do not represent their state for purpose of official communication and negotiation with the receiving state, but perform services on behalf of the sending state largely in connection with transportation, communication, and trade between the receiving state or its nationals and the sending state or its nationals, as well as providing various forms of assistance to nationals of the sending state in the territory of the receiving state. Restatement (Third) of Foreign Relations Law of the United States note 1, p. 456.

<sup>48</sup> See generally Convention on the Privileges and Immunities of the United Nations, Feb. 13, 1946, 1 U.N.T.S. 15.

<sup>49</sup> VCDR *supra* note 7146, at art. 39.

<sup>50</sup> *Id.* The same is true for United Nations employees with full immunity. For a more robust discussion of residual immunity see Martina E. Vandenberg & Alexandra Levy, *Human Trafficking and Diplomatic Immunity: Impunity No More?*, 7 INTERCULTURAL HUM. RTS. L. REV. 77, 96 (2012); Martina E. Vandenberg & Sarah Bessell, *Diplomatic Immunity and the Abuse of Domestic Workers: Criminal and Civil Remedies in the United States*, 26 DUKE J. OF COMP. & INT'L L. 595-633 (2016)

<sup>51</sup> Consular officers are “members of consular posts who are recognized by both the sending and host country as fully authorized to perform the broad array of formal consular functions.” DIPLOMATIC AND CONSULAR IMMUNITY HANDBOOK.

<sup>52</sup> VCCR *supra* note 71, at art. 43(1).

<sup>53</sup> VCCR *supra* note 71, at art. 41(1). Cf. VCDR *supra* note 71, at art. 29 (Consular officers are inviolable before trial “except in the case of a grave crime and pursuant to a decision by the competent judicial authority.”) Diplomatic and Consular Immunity Handbook *supra* note 94, at 11.

<sup>54</sup> See *Park v. Shin*, 313 F.3d 1138, 1145–46 (9th Cir. 2002).

<sup>55</sup> Diplomatic and Consular Immunity; Guidance for Law Enforcement and Judicial Authorities, U.S. Dept. of State at 5 (June 2015) available at <http://www.state.gov/documents/organization/150546.pdf> [hereinafter DIPLOMATIC AND CONSULAR IMMUNITY HANDBOOK].

precisely what occurs all too often in human trafficking cases involving A-3 and G-5 domestic workers. In one case, a diplomat at the Embassy of Malawi allegedly bragged that she could never get into trouble for her treatment of the victim. She claimed that her diplomatic immunity would protect her, no matter the abuse meted out to the domestic worker.<sup>56</sup> Trafficking survivors report that their employers often flaunt their immunity.

## 2. Waivers of Immunity

The primary way to circumvent diplomatic immunity is through a waiver by the diplomat's sending state.<sup>57</sup> If the Department of Justice determines it would file charges against a diplomat "but for" immunity, it may request that the Department of State request a waiver of immunity from the diplomat's sending state. If the State Department requests a waiver, the sending country may grant or reject the request. If a waiver request is not granted, the State Department will require the departure of the diplomat.<sup>58</sup>

The U.S. rarely requests waivers of immunity and sending states almost never grant them.<sup>59</sup> Since 2000, the State Department has requested only two waivers of immunity that are known publicly.<sup>60</sup> In *U.S. v. Soborun*, the government of Mauritius granted the request and the case proceeded.<sup>61</sup> In *U.S. v. Khobragade*, the government of India denied a waiver request and the diplomat left the United States.

The U.S. government must ask for a waiver of immunity in every case where trafficking is alleged against a sitting diplomat with full immunity. The State Department contends that its policy is to seek a waiver of immunity if the Department of Justice has determined that a foreign diplomat would be prosecuted but for her diplomatic immunity.<sup>62</sup> This policy must be enforced.

Since the passage of the TVPA in 2000, there have only been 11 criminal cases brought against diplomats and foreign officials for abuse of domestic workers. Of those, only two have been brought against sitting diplomats. The remaining nine cases were filed against former diplomats, consular officials, international officials, and military officials.

One recent development made it harder for diplomats to avoid justice. In *U.S. v. Khobragade*, the Deputy Consul General of India, Devyani Khobragade, was indicted for charges related to the alleged abuse of domestic worker. After erroneously claiming that Khobragade enjoyed full diplomatic immunity as a consular officer, the government of India reassigned her to the Indian Mission to the United Nations. The State Department approved Khobragade's new diplomatic status, shielding her from prosecution. In an effort to prevent future perpetrators from following suit, the U.S. Mission to the United Nations altered the accreditation criteria. In order to qualify for diplomatic privileges and immunities, the applicant must:

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<sup>56</sup> Complaint at 6, *Lipenga v. Kambalame*, No. 14-cv-03980 (D. Md. Dec. 19, 2014).

<sup>57</sup> VCDR *supra* note 71, at art. 45.

<sup>58</sup> U.S. DEP'T OF STATE OFFICE OF FOREIGN MISSIONS, DIPLOMATIC AND CONSULAR IMMUNITY: GUIDANCE FOR LAW ENFORCEMENT AND JUDICIAL AUTHORITIES 22 (2015), <http://www.state.gov/documents/organization/150546.pdf>.

<sup>59</sup> IMPUNITY NO MORE *supra* note 50, at 82.

<sup>60</sup> It is possible that the State Department has issued more trafficking-related waiver requests to diplomats' sending states, but these are not in the public domain.

<sup>61</sup> The defendant pled guilty and paid a \$5,000 fine and \$24,153 in back wages to the victim. Plea Agreement, *United States v. Soborun*, No. 2:12-mj-03121 (D.N.J. Sept. 7, 2012).

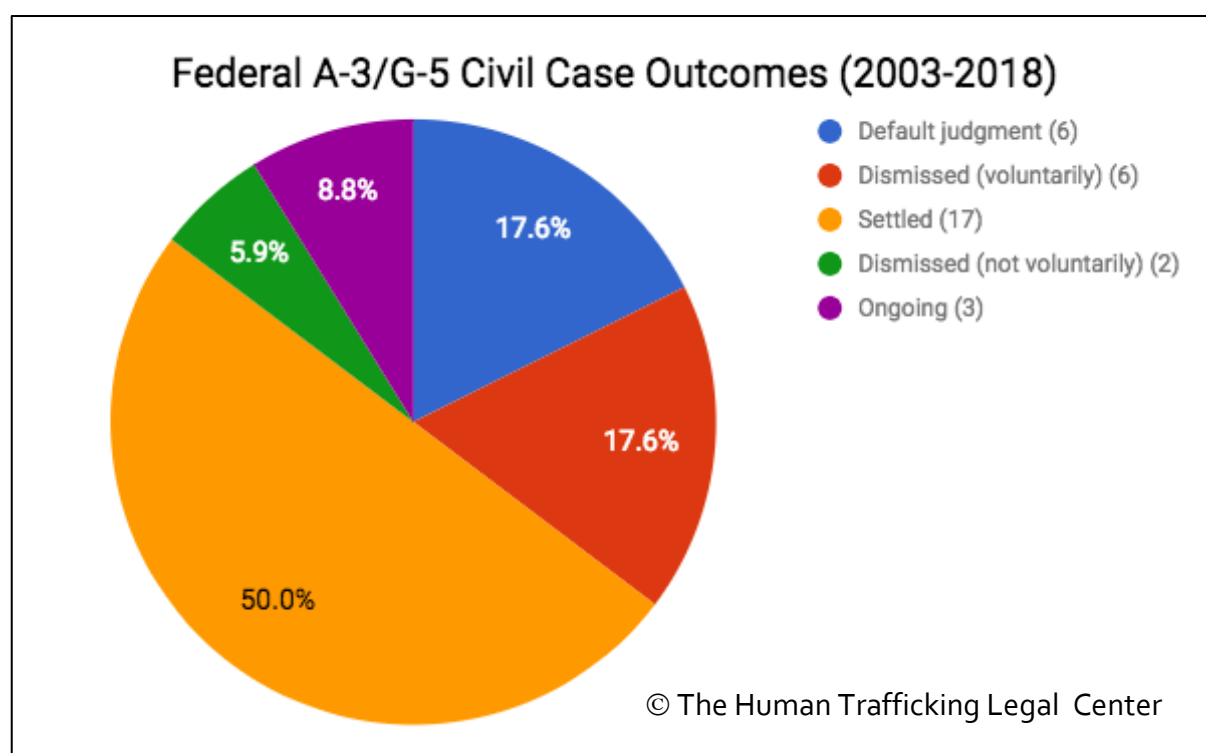
<sup>62</sup> 8 U.S.C.A. §1375B; LETTER FROM U.S. DEP'T OF STATE TO CHIEFS OF MISSIONS (JUNE 18, 2015) AVAILABLE AT [HTTP://WWW.STATE.GOV/DOCUMENTS/ORGANIZATION/244614.PDF](http://www.state.gov/documents/organization/244614.pdf); 9 FOREIGN AFFAIRS MANUAL 41.21 N6.9.

(8) not be subject, at the time accreditation is sought, to any pending criminal charges in the United States punishable by incarceration for more than one year nor have a family member forming part of the diplomatic envoy’s household who is subject to any such charges and is present in the United States at the time such accreditation is sought.<sup>63</sup>

Although diplomatic immunity is an impediment to justice, it is not a complete block. Waivers of diplomatic immunity can be granted. Diplomats can be prosecuted once they leave their post. Consular officials and lower-ranking international organization staff have limited immunity, covering only their official acts. Following the closing of the “Khobragade Loophole”, consular officials can no longer avoid prosecution through a politically-motivated transfer to a post with full immunity.

## B. Civil Litigation

Most trafficking victims never see their day in court. Few survivors are aware that there is an alternate path to justice: civil litigation. As of May 2018, trafficking survivors had brought 275 federal civil cases for trafficking since 2003. Of those, migrant domestic workers brought 90 of the cases, or 33%. Of that figure, domestic workers trafficked by diplomats and international officials brought 34 cases, or 12%.



A-3/G-5 workers have been largely successful in the civil arena, with the majority of civil cases ending in settlements or voluntary dismissals—usually an indication of a settlement.

Collection of default judgments, cases in which the defendants failed to appear, remains an ongoing challenge. Congress mandated that the Secretary of State “should assist in obtaining payment of final court judgments awarded to A–3 and G–5 visa holders, including encouraging

<sup>63</sup> Diplomatic Note from the U.S. Mission to the United Nations, to the Permanent Missions to the United Nations 3 (Jan. 13, 2016), [http://usun.state.gov/sites/default/files/organization\\_pdf/hc-01-16.pdf](http://usun.state.gov/sites/default/files/organization_pdf/hc-01-16.pdf).

the sending states to provide compensation directly to victims.”<sup>64</sup> The U.S. government has successfully assisted in brokering at least one *ex gratia* payment. In 2013, government of Tanzania agreed to make an *ex gratia* payment to a victim of domestic servitude. The victim had been trafficked to the United States by a Tanzanian diplomat and his wife. A civil suit resulted in a \$1 million default judgment for the victim, but went unpaid for five years. As required under the Wilberforce statute, U.S. government intervened. This practice is not limited to the United States. A German non-governmental organization secured an *ex gratia* payment in the amount of EUR 23,250 from Yemen on behalf of a domestic worker trafficked by a Yemeni diplomat.<sup>65</sup>

There are currently five outstanding civil judgments against diplomats and international officials from Bangladesh, Bolivia, India, Malawi, and the United Arab Emirates.<sup>66</sup> These unpaid judgments total \$5,836,704.28 in compensatory and punitive damages awarded by U.S. federal courts. The U.S. should seek compensation for survivors by demanding *ex gratia* payments from the governments of alleged traffickers.

### C. Diplomatic Sanctions

In addition to criminal and civil liability, the Department of State has several diplomatic tools that can be used to sanction diplomats and their sending states for the trafficking and abuse of migrant domestic workers.

#### 1. Suspension of Visa Privileges

The 2008 TVPRA mandates that the Secretary of State **shall** suspend the issuance of A-3 or G-5 visas to applicants “seeking to work for officials of a diplomatic mission or an international organization, *if the Secretary determines that there is credible evidence that 1 or more employees have abused or exploited 1 or more non-immigrants holding an A-3 or G-5 visa, and that the diplomatic mission or international organization tolerated such actions.*”<sup>67</sup>

The Senate Appropriations Language attached to the State Department’s 2015 budget, and continued in effect by the Consolidated Appropriations Act, 2018<sup>68</sup>, provides guidance on the criteria for suspension:

*Provided, That in determining whether to suspend the issuance of A-3 or G-5 visas under such section, the Secretary should consider the following as “credible evidence”: (1) a final court judgment (including a default judgment) issued against a current or former employee of such mission or organization (for which the time period for appeal has expired); (2) the issuance of a T-visa to the victim; or (3) a request by the Department of State to the sending state that*

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<sup>64</sup> Department of State, Foreign Operations, and Related Programs Appropriations Act of 2015, § 7034(k), Pub. Law No. 113-235.

<sup>65</sup> ANGELIKA KARTUSCH, GERMAN INST. FOR HUMAN RIGHTS, DOMESTIC WORKERS IN DIPLOMATS’ HOUSEHOLDS: RIGHTS VIOLATIONS AND ACCESS TO JUSTICE IN THE CONTEXT OF DIPLOMATIC IMMUNITY 43 (2011), [http://lastradainternational.org/lsidocs/domestic\\_workers\\_in\\_diplomats\\_households.pdf](http://lastradainternational.org/lsidocs/domestic_workers_in_diplomats_households.pdf).

<sup>66</sup> See *Rana v. Islam*, No. 14-cv-1993 (S.D.N.Y. filed Mar. 21, 2014); *Lipenga v. Kambalame*, No. 14-cv-03980 (D. Md. filed Dec. 19, 2014); *Carazani v. Zegarra*, No. 12-cv-107 (D.D.C. filed Jan. 23, 2012); *Ballesteros v. Al-Ali*, No. 11-cv-00152 (D.R.I. filed Apr. 12, 2011); and *Gurung v. Malhotra*, No. 10-cv-5086 (S.D.N.Y. filed July 1, 2010).

<sup>67</sup> TVPRA, Section 203(a)(2) [emphasis added].

<sup>68</sup> Consolidated Appropriations Act, 2018 § 7034(k), Pub. L. No. 115-141. (“Section 7034(k) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2015 (division J of Public Law 113–235) shall continue in effect during fiscal year 2018.”)

*immunity of individual diplomats or family members be waived to permit criminal prosecution.*<sup>69</sup>

To date, the State Department has not suspended a single nation from A-3 and G-5 domestic worker visa privileges, despite repeated calls by the anti-trafficking NGO community to do so. Congress sent a clear message in 2008: there must be consequences for diplomats and international officials who abuse and exploit domestic workers. The State Department should enforce the law to prevent further trafficking of domestic workers by diplomats and international organization employees.

A 2015 report by the National Domestic Workers Alliance called upon the State Department to “ensure meaningful consequences for diplomats and international officials and agencies who defraud or abuse domestic workers, including requesting waivers of immunity and suspending countries and agencies from the ability to bring more workers.”<sup>70</sup>

## 2. Persona Non Grata

The U.S. has the option of declaring an alleged diplomatic trafficker a *persona non grata*. Both the Vienna Convention on Diplomatic Relations and Convention on Consular Relations allow for a state to, at any time, declare that a member is *persona non grata* and not acceptable in that state.<sup>71</sup> This requires that the individual be recalled to her home country or be terminated from his or her current post.<sup>72</sup>

Declarations of *persona non grata* are rarely – if ever – used against diplomats and foreign officials in cases of alleged human trafficking of migrant domestic workers.<sup>73</sup> Similar to the provisions in the suspension requirement, where there is credible evidence that a foreign official abused or exploited a nonimmigrant domestic worker, that individual should be declared *persona non grata*.

### **Question 9**

**Please describe any projects delivered by your organisation or other civil society organisations to ensure protection of the human rights of migrant domestic workers victims of contemporary forms of slavery.**

The Human Trafficking Legal Center co-chairs a U.S. working group on the abuse of domestic workers with A-3 and G-5 visas. Internationally, the Human Trafficking Legal Center is a member of a working group of European partner organizations committed to addressing this issue in Europe. The organization is also working with partners in Australia to combat the exploitation of domestic workers in that country.

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<sup>69</sup> Department of State, Foreign Operations, and Related Programs Appropriations Act of 2015, § 7034(k), Pub. L. No. 113-235.

<sup>70</sup> National Domestic Workers Alliance, *Beyond Survival* 9 (2015).

<sup>71</sup> Vienna Convention on Diplomatic Relations, art. 9, Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95 [hereinafter VCDR]; Vienna Convention on Consular Relations, art. 23, Apr. 24, 1963, 21 U.S.T. 3227, 500 U.N.T.S. 95 [hereinafter VCCR].

<sup>72</sup> *Id.*

<sup>73</sup> The Human Trafficking Legal Center is unaware of any instances where the U.S. has designated an individual *persona non grata* for the human trafficking of migrant domestic workers on A-3 or G-5 visas. However, the U.S. has declared individuals *persona non grata* in recent years. See Joshua Keating, *Foreign Policy: How to Expel a Diplomat*, NPR (May 30, 2012) <http://www.npr.org/2012/05/30/153979270/foreign-policy-how-to-expel-a-diplomat>.

The Human Trafficking Legal Center provides legal representation to victims who have escaped human trafficking, including domestic servitude. Attorneys on staff have spearheaded advocacy campaigns that have led to *ex gratia* payments for domestic worker trafficking survivors. The organization has also trained more than 3,400 pro bono attorneys to handle these cases nationwide. The Human Trafficking Legal Center participated as an NGO partner in the OSCE meetings on trafficking by diplomats, providing input at meetings held in The Hague and Brussels. In 2014, the OSCE published a handbook, *How To Prevent Human Trafficking for Domestic Servitude in Diplomatic Households and Protect Private Domestic Workers*.

### **Question 10**

**Please provide any research, data or other information that your organisation has produced or is aware of relating to the protection of domestic workers victims of contemporary forms of slavery.**

- Martina E. Vandenberg & Sarah Bessell, *Diplomatic Immunity and the Abuse of Domestic Workers: Criminal and Civil Remedies in the United States*, 26 DUKE J. OF COMP. & INT'L L. 595 (2016);
- Martina E. Vandenberg, *Innovations in the Fight Against Human Trafficking: Listening to Trafficking Survivors, Fighting for Justice*, 60 N.Y.L. Sch. L. Rev. (2015-2016);
- Martina E. Vandenberg, *Diplomats Who Commit Domestic-Worker Crimes Shouldn't Get a Free Pass*, WASH. POST (Jan. 1, 2014);
- Martina E. Vandenberg & Alexandra Levy, *Human Trafficking and Diplomatic Immunity: Impunity No More?*, 7 INTERCULTURAL HUM. RTS. L. REV. 77 (2012); and
- Martina E. Vandenberg, *Why Are Diplomats Free to Abuse in America?*, WASH. POST (June 3, 2011).

#### *Other resources*

- TIFFANY WILLIAMS, NAT'L DOMESTIC WORKERS' ALLIANCE, BEYOND SURVIVAL: ORGANIZING TO END HUMAN TRAFFICKING OF DOMESTIC WORKERS (2015), [http://www.domesticworkers.org/sites/default/files/beyond\\_survival\\_campaign\\_report\\_full-final.pdf?sid=58750](http://www.domesticworkers.org/sites/default/files/beyond_survival_campaign_report_full-final.pdf?sid=58750)
- ORGANIZATION FOR SECURITY & CO-OPERATION IN EUROPE [OSCE] OFFICE FOR THE SPECIAL REP. & CO-ORDINATOR FOR COMBATING TRAFFICKING IN HUMAN BEINGS, HOW TO PREVENT HUMAN TRAFFICKING FOR DOMESTIC SERVITUDE IN DIPLOMATIC HOUSEHOLDS AND PROTECT PRIVATE DOMESTIC WORKERS (2014), <http://www.osce.org/handbook/domesticservitude?download=true>

### **Conclusion:**

The Human Trafficking Legal Center maintains comprehensive databases of U.S. civil and criminal trafficking cases brought at the federal level. We stand ready to provide additional assistance to the UN Special Rapporteur as she drafts this report. If there are any questions or additional requests for data, please contact staff attorney Sarah Bessell at the Human Trafficking Legal Center, [sbessell@htlegalcenter.org](mailto:sbessell@htlegalcenter.org).