

**HIDDEN IN THE HOME:  
Abuse of Domestic Workers with Special Visas in the United States**

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## 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 Alzankis [her employers], nor even to venture onto the balcony or look out the apartment windows. [The Alzankis] 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 (1<sup>st</sup> 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 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.

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 fleeing 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)<sup>1</sup>

Each year thousands of migrant workers enter the United States legally with nonimmigrant or "temporary" visas to work as live-in domestic workers.<sup>2</sup> 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;<sup>3</sup> 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.<sup>4</sup>

In the 1990s, 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.<sup>5</sup> As these visas are issued for a duration of one to three years and may be extended in two-year increments,<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> The B-1 is the most frequently used nonimmigrant visa,<sup>9</sup> with approximately 200,000 issued annually.<sup>10</sup> 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.<sup>11</sup> 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

<sup>1</sup> Human Rights Watch telephone interview, Liliana Martínez, a G-5 domestic worker, April 17, 2000.

<sup>2</sup> "Migrant worker" refers to "a person who is . . . engaged in a remunerated activity in a State of which he or she is not a national." International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. Res. 45/158, Annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49, 1990, Article 2(1).

<sup>3</sup> G-5 and A-3 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."

<sup>4</sup> INA § 101(a)(15)(A)(iii), (B), (G)(v); 9 FAM 41.31, N6.3 (August 30, 1988).

<sup>5</sup> In 1998, 3,762 A-3 and G-5 visas were issued. The largest percentages were held by workers from the Philippines (22.3%), Indonesia (8.1%), Peru (5.6%), India (4.8%), and Brazil (4.7%). "Nonimmigrant Visa Statistics for 1998." (No date). [Online]. Available: [http://travel.state.gov/1998niv\\_1.pdf](http://travel.state.gov/1998niv_1.pdf) [February 7, 2001]; "Nonimmigrant Visa Statistics for 1998." (No date). [Online]. Available: [http://travel.state.gov/1998niv\\_2.pdf](http://travel.state.gov/1998niv_2.pdf) [February 7, 2001].

<sup>6</sup> INS Operations Instructions (OI) 214.2(a)(1)(i), 214.2(a)(7)(i), 214.2(g)(1)(i), 214.2(g)(7)(i); 8 C.F.R. § 214.2(a)(1), 214.2(g)(1). The Operations Instructions are the internal operations manual for the INS.

<sup>7</sup> Human Rights Watch telephone interview, State Department Official B, March 17, 2000. In 1998, there were 4,061 registered; in 1997, 4,010; in 1996, 3,801; and in 1995, 3,675. Human Rights Watch telephone interview, State Department Official B, June 13, 2000. As explained below, U.S. officials who spoke with Human Rights Watch on the condition of anonymity are identified by their departments or agencies and distinguished by letters.

<sup>8</sup> 8 C.F.R. § 214.2(b)(1).

<sup>9</sup> 58 F.R. 40024 (July 26, 1993).

<sup>10</sup> United States Department of State, Bureau of Consular Affairs, *Report of the Visa Office 1998* (December 2000), p. 107.

<sup>11</sup> INA § 101(15)(B); 58 F.R. 40024 (citation omitted); 58 F.R. 58982 (November 5, 1993) (citation omitted).

accompanying the Immigration and Nationality Act of 1952.<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup>

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."<sup>16</sup>

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<sup>12</sup> 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 *Ibid.*; 58 F.R. 58982.

<sup>13</sup> Human Rights Watch telephone interview, United States Department of State Visa Services Office employee, November 17, 1999.

<sup>14</sup> 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 Smitson, 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 Rivas 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. Rivas 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 Rivas, attorney, Spanish Catholic Center, Gaithersburg, Maryland, November 29, 1999.

<sup>15</sup> Human Rights Watch telephone interview, Joy Zarembka, Director, Campaign for Migrant Domestic Workers' Rights, September 27, 2000. The Campaign for Migrant Domestic Workers' Rights is a coalition of approximately two dozen non-governmental 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.

<sup>16</sup> Letter from Secretary of State to Their Excellencies and Messieurs and Mesdames the Chiefs of Mission, 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

No formal data exists, however, regarding the abusive treatment of migrant domestic workers with special visas. Considering such figures and testimonies and recognizing that abusive treatment is severely underreported, Human Rights Watch believes that abuse is widespread.

#### 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.<sup>17</sup> 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,<sup>18</sup> fourteen A-3 workers, and five B-1 workers. The employment relationships existed primarily between 1995 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.<sup>19</sup>

The cases reviewed reveal various manifestations of these four 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

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employee; 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 though off duty.

The letter also noted that the United States would hold the Chiefs 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.

<sup>17</sup> See, e.g., Joan Fitzpatrick and Katrina R. Kelly, “Gendered Aspects of Migration: Law and the Female Migrant,” 22 *Hastings International & Comparative Law Review* 47 (Fall 1998), pp. 59, 67-68; Bridget Anderson, “Just Like One of the Family? Migrant Domestic Workers in the European Union” (Ph.D. diss., University of Leicester, 1998), pp. 113-14, 143-44; Sub-Commission on Prevention of Discrimination and Protection of Minorities, “Situation of migrant workers and members of their families,” Res. 1997/4, August 21, 1997.

<sup>18</sup> 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.

<sup>19</sup> 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, was 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.<sup>20</sup> 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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<sup>20</sup> Human Rights Watch interview, Malika Jamisola, a B-1 domestic worker, New York, NY, March 5, 2000.

Jamisola said that after approximately eight months, she requested a raise and another day off. According to Jamisola, "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." Jamisola said that he nonetheless raised her monthly salary from \$600 to \$700. Including standard deductions for room and board allowed under federal law,<sup>21</sup> Human Rights Watch calculates that Jamisola 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, Jamisola 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.<sup>22</sup> 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.<sup>23</sup>

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

<sup>21</sup> 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 formulae in the regulations. 29 C.F.R. § 531.3(b); 29 C.F.R. §§ 552.100(c), (d). Human Rights Watch used the formulae to calculate allowable deductions for room and board.

<sup>22</sup> Human Rights Watch telephone interviews, Anita Ortega, a G-5 domestic worker, March 30, 2000 and April 18, 2000.

<sup>23</sup> 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 these 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 provided with 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.<sup>24</sup> 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 came towards me and grabbed me . . . 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,<sup>25</sup> 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

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<sup>24</sup> 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 coloured 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).

<sup>25</sup> 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.

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.<sup>26</sup>

Ahmed's attorney told Human Rights Watch that Ahmed was promised \$200 per month to work as a domestic worker in the United States.<sup>27</sup> During her approximately nine-month employment, however, Ahmed was allegedly paid only \$100 per month—money which she said she never saw because it was sent directly to her husband in Bangladesh.<sup>28</sup> 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.<sup>29</sup> 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,"<sup>30</sup> went on vacation without leaving her food or money to purchase food,<sup>31</sup> and only allowed her to eat their leftovers.<sup>32</sup> Ahmed also claimed in her complaint that the employer's wife assaulted her on at least two occasions—once 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.<sup>33</sup>

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.<sup>34</sup> 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]." <sup>35</sup>

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<sup>26</sup> Complaint, (S.D.N.Y. December 1999), paras. 7-10 (on file with Human Rights Watch); Human Rights Watch interview, Ahmed's attorney, Asian American Legal Defense and Education Fund, New York, NY, March 6, 2000. Ahmed was a G-5 domestic worker.

<sup>27</sup> Human Rights Watch interview, Ahmed's attorney, New York, NY, March 6, 2000.

<sup>28</sup> 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).

<sup>29</sup> Written Testimony by Ahmed . . . , April 15, 2000; Complaint, (S.D.N.Y. December 1999), para. 11 (on file with Human Rights Watch); Human Rights Watch interview, Ahmed's attorney, New York, NY, March 6, 2000.

<sup>30</sup> Written Testimony by Ahmed . . . , April 15, 2000.

<sup>31</sup> *Ibid.*; Complaint, (S.D.N.Y. December 1999), para. 13 (on file with Human Rights Watch).

<sup>32</sup> Human Rights Watch interview, Ahmed's attorney, New York, NY, March 6, 2000.

<sup>33</sup> Complaint, (S.D.N.Y. December 1999), paras. 1, 13 (on file with Human Rights Watch).

<sup>34</sup> Written Testimony by Ahmed . . . , April 15, 2000; Complaint, (S.D.N.Y. December 1999), para. 14 (on file with Human Rights Watch); *New York Times*, January 2000; *New York Times*, July 2000. The newspaper article titles, authors, pages, and exact dates are omitted to preserve Ahmed's anonymity.

<sup>35</sup> Complaint, (S.D.N.Y. December 1999), para. 14 (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 Bengali-speaking produce vender nearby.<sup>36</sup> 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 Bengali-speaking produce vendor,<sup>37</sup> and recounted to him "that she was being mistreated and was kept locked up" in her employer's home.<sup>38</sup> 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.<sup>39</sup> 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.<sup>40</sup>

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."<sup>41</sup> Asked why her client, who spoke no English, was illiterate in her native Bengali, 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,<sup>42</sup> Ahmed's attorney told Human Rights Watch, "She had a sense of feeling imprisoned . . . She felt she couldn't get out."<sup>43</sup>

Ahmed's employer never admitted nor denied the allegations in Ahmed's complaint, instead invoking diplomatic immunity.<sup>44</sup> The parties ultimately settled the case,<sup>45</sup> 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.<sup>46</sup>

The police report, however, lists under the heading "offenses," "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 & Perps's [sic] wife made verbals [sic] threats in regard to her access to freedom . . . [The] Perp removed her passport from her upon arrival to this country."<sup>47</sup> The FBI is now conducting an investigation into the criminal claim of involuntary servitude made by Ahmed and based on these allegations.<sup>48</sup>

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<sup>36</sup> *Ibid.*, para. 15; see also *New York Times*, January 2000.

<sup>37</sup> *New York Times*, January 2000.

<sup>38</sup> Complaint, (S.D.N.Y. December 1999), para. 15 (on file with Human Rights Watch).

<sup>39</sup> *Ibid.*

<sup>40</sup> Complaint, (S.D.N.Y. December 1999), para. 19 (on file with Human Rights Watch); New York Police Department Seventeenth Precinct, Complaint Report, Complaint No. . . . , August 1999 (on file with Human Rights Watch). The full complaint number is omitted to preserve Ahmed's anonymity.

<sup>41</sup> Written Testimony by Ahmed . . . , April 15, 2000.

<sup>42</sup> Complaint, (S.D.N.Y. December 1999), paras. 10, 12 (on file with Human Rights Watch). Ahmed has remained in the United States illegally and is working as an undocumented live-in domestic worker.

<sup>43</sup> Human Rights Watch interview, Ahmed's attorney, New York, NY, March 6, 2000.

<sup>44</sup> Letter from the employer's attorney to the Honorable Richard M. Berman, U.S. District Judge, Southern District of New York, January 18, 2000.

<sup>45</sup> Order of Discontinuance, (S.D.N.Y. June 2000) (on file with Human Rights Watch). The settlement included a confidentiality agreement. Human Rights Watch telephone interview, Ahmed's attorney, August 1, 2000.

<sup>46</sup> Human Rights Watch interview, Ahmed's attorney, New York, NY, March 6, 2000; Human Rights Watch telephone interview, Ahmed's attorney, January 16, 2001. The NYPD has refused to respond to Human Rights Watch's repeated inquiries regarding the closure of Ahmed's case.

<sup>47</sup> New York Police Department Seventeenth Precinct, Complaint Report, Complaint No. . . . , August 1999 (on file with Human Rights Watch).

<sup>48</sup> Human Rights Watch telephone interview, Ahmed's attorney, January 16, 2001; Human Rights Watch telephone interview, FBI duty agent, January 23, 2001.

## 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 Ortega.<sup>49</sup> The incidents of alleged employer physical violence included yanking workers by their clothing, beating workers, striking or slapping workers, yelling 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 Alzanki [the employer] slapped [V.G.] and spat in her face when she failed to turn off a monitor."<sup>50</sup> 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.'"<sup>51</sup> The court also found that, "[o]n another occasion, Abair Alzanki threatened to sew up [V.G.]'s mouth with a needle and thread, and throw her into the ocean."<sup>52</sup>

Similarly, Tseheye 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."<sup>53</sup>

### 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 Women<sup>54</sup>

The International Covenant on Civil and Political Rights (ICCPR) protects the right to freedom of movement,<sup>55</sup> and the U.N. Human Rights Committee has recognized the importance of protecting this right from

<sup>49</sup> 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*, 6<sup>th</sup> ed., s.v. "assault."

<sup>50</sup> *U.S. v. Alzanki*, 54 F.3d 994, 999 (1<sup>st</sup> 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.

<sup>51</sup> *Ibid.*, p. 1004.

<sup>52</sup> *Ibid.*

<sup>53</sup> 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.

<sup>54</sup> Commission on Human Rights, "Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, on trafficking in women, women's migration and violence against women, submitted in accordance with Commission on Human Rights resolution 1997/44," E/CN.4/2000/68, February 29, 2000, para. 39.

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“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.”<sup>56</sup> The ICCPR also provides that “[e]veryone shall be free to leave any country.”<sup>57</sup>

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 “terrors” 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.<sup>58</sup> 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 Jamisola, 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.”<sup>59</sup> 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.”<sup>60</sup> Several domestic workers claimed that their employers justified denying them

<sup>55</sup> International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316, 999 U.N.T.S. 171, December 16, 1966, Article 12(1). The ICCPR entered into force for the United States on September 8, 1992.

<sup>56</sup> 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.

<sup>57</sup> 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.

<sup>58</sup> 9 FAM 41.21 N6.2(A)(3), (4) (February 9, 2000).

<sup>59</sup> Human Rights Watch interview, Glenda Heredia, an A-3 domestic worker, Washington, DC, April 1, 2000.

<sup>60</sup> Human Rights Watch interview, Paula Jiménez, an A-3 domestic worker, Washington DC, March 19, 2000.

permission to leave the homes after work hours on the grounds that the employers would be responsible if something bad 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,"<sup>61</sup> while another worker alleged that her employer cautioned her that "police grab Latinas who walk at night."<sup>62</sup> 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 Ecuadorean 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."<sup>63</sup>

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 instilled 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 no 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 withheld her passport and threatened her with dismissal and deportation if she ever left her home.<sup>64</sup>

Similarly, Rokeya Akhatar, a Bangladeshi domestic worker employed by the family of a Middle Eastern businessman from approximately July 1998 through September 1998,<sup>65</sup> told Human Rights Watch:

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<sup>61</sup> Human Rights Watch interview, Margarita Pérez, an A-3 Ecuadorean domestic worker employed by a Latin American diplomat from 1996 through 1999, Washington, DC, April 8, 2000; Human Rights Watch interview, Teresa Espinoza, an A-3 domestic worker, Washington, DC, March 20, 2000.

<sup>62</sup> Human Rights Watch interview, Veronica Cruz, an A-3 Ecuadorean domestic worker employed by a Latin American diplomat from 1993 through 1995, Washington, DC, April 8, 2000.

<sup>63</sup> Human Rights Watch interview, Pérez, Washington, DC, April 8, 2000.

<sup>64</sup> Complaint, (S.D.N.Y. March 1996), paras. 10, 37 (on file with Human Rights Watch). Florence Sadibou was a G-5 domestic worker. The parties settled the case. Order, (S.D.N.Y. February 1998) (on file with Human Rights Watch).

<sup>65</sup> Rokeya Akhatar 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 resided 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.<sup>66</sup>

Akhatar explained that the reason that 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.<sup>67</sup> Akhatar continued, "Now I know that I can go outside, but at that time I did not."

According to her attorney, Akhatar left her employer's premises only once or twice during her employment to accompany a family member grocery shopping.<sup>68</sup> Akhatar 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."<sup>69</sup> Akhatar's attorney recounted that Akhatar was told that if she tried to speak to anyone outside the family, she would be deported.<sup>70</sup> Responding to the civil complaint filed by Akhatar, the family denied the above allegations.<sup>71</sup>

### ***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.<sup>72</sup> 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' homes 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 Tilex. Each time I cleaned the bathroom, it was torture—toxic."<sup>73</sup> Castro recounted that her employer ordered her to clean with the Tilex 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."

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months, leaving Akhatar 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.

<sup>66</sup> Human Rights Watch interview, Rokeya Akhatar, Astoria, NY, March 5, 2000.

<sup>67</sup> See also Complaint and Jury Demand, (D. N.J. October 1999), para. 16 (on file with Human Rights Watch).

<sup>68</sup> Human Rights Watch telephone interview, Akhatar's attorney, April 12, 2000.

<sup>69</sup> Human Rights Watch interview, Akhatar, Astoria, NY, March 5, 2000. Akhatar learned Hindi while working for a relative of her sponsoring employer in that relative's country of origin.

<sup>70</sup> Human Rights Watch telephone interview, Akhatar's attorney, April 12, 2000.

<sup>71</sup> Answer to Complaint, (D. N.J. October 2000), paras. 29, 30 (on file with Human Rights Watch). The individual Human Rights Watch believes to be Akahatar'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. Akhatar has remained illegally in the United States and is working as an undocumented live-in domestic worker.

<sup>72</sup> The International Covenant on Economic, Social, and Cultural Rights (ICESCR), which the U.S. has signed but not ratified, recognizes the right of everyone "to the enjoyment of just and favourable conditions of work," including "safe and healthy working conditions," and the right to "the highest attainable standard of physical and mental health," including "medical service and medical attention in the event of sickness." International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316, 993 U.N.T.S. 171, December 16, 1966, Articles 7, 12.

<sup>73</sup> Human Rights Watch interview, Elena Castro, a G-5 domestic worker, Washington, DC, March 26, 2000.

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."<sup>74</sup>

#### *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.<sup>75</sup> 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, though Chávez allegedly "exhibited . . . signs of physical and emotional trauma" and "repeatedly explained to them that she was very sick and preferred to die."<sup>76</sup> Responding to her complaint, Chávez' employer and his wife denied these allegations and asserted "no knowledge" of Chávez' claim that she was raped.<sup>77</sup>

#### *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.<sup>78</sup> 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 . . . [you] have food on your table and a living wage in your pocket."<sup>79</sup> 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."<sup>80</sup>

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,<sup>81</sup> but her ability to exercise her rights to freedom of movement in the United States and to flee her abusive employment situation is

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<sup>74</sup> *Alzanki*, 54 F.3d at 999.

<sup>75</sup> 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.

<sup>76</sup> First Amended Complaint, (D.D.C. April 2000), paras. 32, 34-35 (on file with Human Rights Watch).

<sup>77</sup> Answer, (D.D.C. February 2000), paras. 29-32 (on file with Human Rights Watch). Chávez has filed a civil case against her alleged rapist, which is still pending.

<sup>78</sup> 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).

<sup>79</sup> The White House Office of the Press Secretary, "Remarks by the President at Signing of the Small Business Job Protection Act of 1996," August 20, 1996; The White House Office of the Press Secretary, "Statement of The [sic] President at Signing of the Small Business Job Protection Act of 1996," August 20, 1996.

<sup>80</sup> 29 U.C.S. § 202(a), (b).

<sup>81</sup> The right of everyone "to the enjoyment of just and favourable conditions of work" recognized in the ICESCR includes the right to a "reasonable limitation of working hours" and "fair wages" that provide for a "decent living." ICESCR, 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 day weeks 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 Akhatar, 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."<sup>82</sup> Akhatar 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.<sup>83</sup>

Human Rights Watch reviewed forty cases to determine the median hourly wage received by domestic workers for their labors,<sup>84</sup> 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,<sup>85</sup> domestic workers' median hourly wage was \$2.14—only forty-two percent of the minimum hourly wage.<sup>86</sup>

### ***Privacy Invasions***

The ICCPR provides that "[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence."<sup>87</sup> 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

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<sup>82</sup> Human Rights Watch interview, Akhatar, Astoria, NY, March 5, 2000.

<sup>83</sup> Human Rights Watch telephone interview, Akhatar, January 14, 2001.

<sup>84</sup> 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.

<sup>85</sup> 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.

<sup>86</sup> 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.

<sup>87</sup> ICCPR, Article 17(1).

ICCPR.<sup>88</sup> 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.<sup>89</sup>

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.<sup>90</sup> 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."<sup>91</sup>

### **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 Akhatar, a Bangladeshi domestic worker employed from approximately July 1998 through September 1998 by the family of a Middle Eastern businessman<sup>92</sup>

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—those 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.<sup>93</sup>

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

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<sup>88</sup> "Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies," General Comment 16 to Article 17, U.N. Doc. HRI/GEN/Rev.1, July 29, 1994, p. 21.

<sup>89</sup> See, *Ibid.*

<sup>90</sup> See "Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies," General Comment 16 to Article 17, U.N. Doc. HRI/GEN/Rev.1, July 29, 1994, p. 21.

<sup>91</sup> 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 recriminations.

<sup>92</sup> Human Rights Watch interview, Akhatar, Astoria, NY, March 5, 2000.

<sup>93</sup> 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."<sup>94</sup>

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.<sup>95</sup> 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. Lilita Martínez, 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."<sup>96</sup> 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."<sup>97</sup>

### ***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.<sup>98</sup> Although the prohibition of servitude obligates states to provide effective remedies for any individual held in servitude and to criminalize servitude in domestic law,<sup>99</sup> 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.<sup>100</sup> 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.<sup>101</sup>

<sup>94</sup> Human Rights Watch interview, Daniela Sánchez, a G-5 domestic worker, Washington, DC, April 2, 2000.

<sup>95</sup> Human Rights Watch interview, Espinoza, Washington, DC, March 20, 2000.

<sup>96</sup> Human Rights Watch telephone interview, Martínez, April 17, 2000.

<sup>97</sup> Human Rights Watch interview, Akhtar, Astoria, NY, March 5, 2000.

<sup>98</sup> 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.

<sup>99</sup> See ICCPR, Article 2.

<sup>100</sup> "Ownership is the common theme existing in all of the conventions concerning the abolition of slavery and slavery-like practices." Commission on Human Rights, "Contemporary Forms of Slavery: Working paper prepared by Mr. David Weissbrodt and Anti-Slavery International," E/CN.4/Sub.2/2000/3, May 26, 2000, para. 17.

<sup>101</sup> See Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (Strasbourg: N.P. Engel, 1993), pp. 148-49; P. van Dijk and G.J.H. van Hoof, *Theory and Practice of the European Convention on Human Rights* (The Hague, The Netherlands: Kluwer Law International, 1998), p. 334; Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, "Revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,"

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,<sup>102</sup> notes:

[C]ertain 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.<sup>103</sup>

Abusive labor situations suffered by migrant domestic workers may also constitute forced labor. The ICCPR prohibits forced labor,<sup>104</sup> and the definition of forced labor in the ILO Forced Labour Convention, to which the United States is not party, has been used to interpret the ICCPR prohibition.<sup>105</sup> 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."<sup>106</sup>

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."<sup>107</sup> 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.<sup>108</sup>

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

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(Draft Trafficking Protocol) A/AC.254/4/Add.3/Rev.7, July 19, 2000, Article 2 bis(c). Servitude is not defined in the final version of the Trafficking Protocol.

<sup>102</sup> See, e.g., Commission on Human Rights, "Report of the Working Group on Contemporary Forms of Slavery on its twenty-fourth session," E/CN.4/Sub.2/1999/17, July 20, 1999; Commission on Human Rights, "Report of the Working Group on Contemporary Forms of Slavery on its twenty-second session," E/CN.4/Sub.2/1997/13, July 11, 1997.

<sup>103</sup> Commission on Human Rights, "Contemporary Forms of Slavery: Working paper prepared by Mr. David Weissbrodt and Anti-Slavery International," E/CN.4/Sub.2/2000/3, May 26, 2000, para. 41 (emphasis added).

<sup>104</sup> ICCPR, Article 8(3). See Appendix III for a more detailed discussion of the international law prohibition of forced labor.

<sup>105</sup> 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," 86<sup>th</sup> Session, Geneva, June 18, 1998.

<sup>106</sup> Convention concerning Forced or Compulsory Labour (ILO No. 29), 39 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.

<sup>107</sup> International Labor Conference, *1979 General Survey of the Reports relating to the Forced Labor Convention, 1930 (No. 29) and the Abolition of Forced Labor Convention, 1975, (No. 105), Report of the Committee of Experts on the Application of Conventions and Recommendations*, 65<sup>th</sup> Session, Geneva, 1979, Report III, para. 21. The ILO Committee of Experts is comprised of a group of independent experts and reviews reports submitted by ILO member states on their ratification of ILO conventions and recommendations.

<sup>108</sup> 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.<sup>109</sup>

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 feeling 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.<sup>110</sup>

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.”<sup>111</sup> 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.”<sup>112</sup> 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 incidentals they say I accrued while working for them.”<sup>113</sup> 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

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<sup>109</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Article 3(a), in “Crime prevention and criminal justice: Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh sessions,” A/55/383, November 2, 2000. The United States has signed but has not ratified the Protocol.

<sup>110</sup> 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.

<sup>111</sup> 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.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid., para. 6.

the country.<sup>114</sup> 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.<sup>115</sup>

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.<sup>116</sup> 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 Alzankis, 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.”<sup>117</sup> 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 “threatened [her] on almost a daily basis with deportation, death or serious harm should she disobey the Alzankis’ orders.”<sup>118</sup> 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.”<sup>119</sup> V.G. was finally able to escape her situation with the help of nurses who came to the Alzankis’ home to care for their ill son.<sup>120</sup>

## 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.<sup>121</sup>

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<sup>114</sup> 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.

<sup>115</sup> Ibid., para. 5.

<sup>116</sup> *Alzanki*, 54 F.3d at 1002.

<sup>117</sup> Ibid., p. 999. 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.

<sup>118</sup> Ibid.

<sup>119</sup> Ibid., pp. 1004 n. 9, 1105, 1105 n. 10.

<sup>120</sup> Ibid., p. 999; Judy Rakowsky, “Man found guilty of enslaving his maid,” *Boston Globe*, March 22, 1994, p. 23.

<sup>121</sup> 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.<sup>122</sup> While 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.<sup>123</sup> 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."<sup>124</sup> 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.<sup>125</sup> 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?"<sup>126</sup>

## 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.<sup>127</sup> 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.<sup>128</sup> 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.<sup>129</sup> An employment contract containing the FAM requirements must be submitted as part of a domestic worker's visa application to a consular office abroad,<sup>130</sup> 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.<sup>131</sup> 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

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<sup>122</sup> Human Rights Watch telephone interview, State Department Official B, April 27, 2000.

<sup>123</sup> 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 or train H, L, O, P, or Q nonimmigrant workers 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.

<sup>124</sup> Human Rights Watch telephone interview, INS Official C, April 27, 2000.

<sup>125</sup> Human Rights Watch telephone conversation, United States Department of State Visa Services Office employee, November 17, 1999.

<sup>126</sup> Human Rights Watch telephone interview, INS Official D, March 15, 2000.

<sup>127</sup> For example, immigration law and Department of Labor regulations establish mandatory employment conditions for H-2A temporary agricultural workers and H-1B temporary specialty—often high-technology—workers. See INA § 212(n)(2)(A)(i), 212(n)(2)(C)(viii); 20 C.F.R. § 501.5 (a).

<sup>128</sup> 9 FAM 41.31, N6.3 (August 30, 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 Operations Instructions contain virtually identical requirements. INS OI 214.2(b). See Appendix I for the required contract provisions set out in the FAM.

<sup>129</sup> 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 Mesdames 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. 2-3. 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.

<sup>130</sup> 9 FAM 41.31, N6.3-2, N6.3-3 (August 30, 1988); 9 FAM 41.21, N 6.2 (February 9, 2000).

<sup>131</sup> 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."<sup>132</sup> 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.<sup>133</sup> 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 government 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.<sup>134</sup>

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.<sup>135</sup> 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.<sup>136</sup>

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."<sup>137</sup>

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 \$600, saying to her that "the contract was so they [the U.S. consular office] would give [her] the visa. With \$600, no visa."<sup>138</sup> 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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<sup>132</sup> 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.

<sup>133</sup> 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. §§ 501.5 (a), 501.1(c).

<sup>134</sup> 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.

<sup>135</sup> 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.

<sup>136</sup> Several domestic workers also stated that their employers made them sign but did not allow them to read their employment contracts.

<sup>137</sup> Human Rights Watch interview, Castro, Washington, DC, March 26, 2000.

<sup>138</sup> Human Rights Watch interview, Natalia Vásquez, an A-3 domestic worker, Washington, DC, March 26, 2000.

contract for \$800 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."<sup>139</sup>

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.<sup>140</sup> 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 thereafter 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."<sup>141</sup>

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.<sup>142</sup> 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]."<sup>143</sup> 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.<sup>144</sup> 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.<sup>145</sup>

In contrast, while the employer of a domestic worker with a special visa may hire another domestic worker after violating the original worker's 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"

<sup>139</sup> Human Rights Watch telephone interview, Martínez, April 17, 2000.

<sup>140</sup> Human Rights Watch telephone interview, INS Officials A, C, April 27, 2000.

<sup>141</sup> 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, pp. 3-4 (emphasis added); Circular diplomatic note from the Secretary of State . . . , October 19, 2000, p. 4 (emphasis added).

<sup>142</sup> Human Rights Watch interview, Espinoza, Washington, DC, March 20, 2000.

<sup>143</sup> Human Rights Watch telephone interview, Gema Villanueva, an A-3 domestic worker, April 28, 2000.

<sup>144</sup> Human Rights Watch telephone interview, Chávez' neighbor, February 24, 2000.

<sup>145</sup> First Amended Complaint, (D.D.C. April 2000) (on file with Human Rights Watch). Chávez' employer denied the allegations, and the case was settled.

does so are not permitted to employ another such worker for two years.<sup>146</sup> In cases of particularly egregious violations, the prohibition lasts for three years.<sup>147</sup>

### 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,<sup>148</sup> 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.<sup>149</sup> This thirty-day "grace period" is not official State Department policy, however, but a "matter of practice—custom."<sup>150</sup> 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*."<sup>151</sup> 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 "[u]pon 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."<sup>152</sup> 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.<sup>153</sup> 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.<sup>154</sup>

<sup>146</sup> 20 C.F.R. ■ 655.110(a), 655.90(b)(2); 8 U.S.C. ■ 1182(n)(2)(C)(ii).

<sup>147</sup> 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(n)(2)(C)(iii).

<sup>148</sup> 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.

<sup>149</sup> *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).

<sup>150</sup> 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).

<sup>151</sup> The World Bank Group Code of Conduct Regarding Employment of G-5 Domestic Workers, December 13, 1999, Article II, Sec. 12 (emphasis added); The International Monetary Fund Code of Conduct Regarding Employment of G-5 Domestic Workers, December 10, 1999, Article II, Sec. 12 (emphasis added). These documents will hereinafter be collectively referred to as WB/IMF Code of Conduct Regarding Employment of G-5 Domestic Workers.

<sup>152</sup> "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, paras. 8.1, 8.3.

<sup>153</sup> Human Rights Watch telephone interview, INS Official F, November 7, 2000.

<sup>154</sup> 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,"<sup>155</sup> "without discrimination between citizens and aliens,"<sup>156</sup> 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.<sup>157</sup>

Under international law, migrant domestic workers have a right not to be held in servitude; not 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.<sup>158</sup>

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.<sup>159</sup> 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.<sup>160</sup> With the passage of the Victims of Trafficking and Violence Protection Act of 2000, which includes the Trafficking Victims Protection Act of 2000 (Trafficking Act), U.S. law recognizes that individuals can also be held in servitude through "psychological abuse," "coercion," and other "nonviolent coercion."<sup>161</sup> The Trafficking Act 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.<sup>162</sup>

<sup>155</sup> ICCPR, Article 2(1) (emphasis added).

<sup>156</sup> The exceptions to this general principle of universal applicability are set forth in article 25, addressing political participation of citizens, and in article 13, addressing the expulsion of aliens from a territory.

<sup>157</sup> ICCPR, Article 2; see also "Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies," General Comment 3 to Article 2, U.N. Doc. HRI/GEN/1/Rev.1, July 29, 1994, p. 4.

<sup>158</sup> See Appendix III for a discussion of disparate impact sex discrimination.

<sup>159</sup> 18 U.S.C. § 1584.

<sup>160</sup> *Alzanki*, 54 F.3d at 1001; see also *U.S. v. Kozminski et al.*, 487 U.S. 931 (1988). Legal coercion is defined as "the use of the law, the legal process, or legal institutions to compel service." *Alzanki*, 54 F.3d at 1001 n. 6.

<sup>161</sup> Public Law 106-386, Secs. 102(b)(6), (13).

<sup>162</sup> See Appendix III for a detailed discussion of the treatment of servitude in the Trafficking Act.

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."<sup>163</sup> 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.<sup>164</sup>

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.<sup>165</sup> 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."<sup>166</sup>

#### *The National Worker Exploitation Task Force*

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."<sup>167</sup> The Task Force targets a very narrow set of cases, "primarily criminal cases related to slavery situations, the most egregious types of situations."<sup>168</sup>

The Task Force has also established the Worker Exploitation Task Force Complaint Line (Complaint Line) to receive calls from workers and concerned individuals.<sup>169</sup> 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.<sup>170</sup> 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.<sup>171</sup> 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

<sup>163</sup> Public Law 106-386, Sec. 112(a)(2).

<sup>164</sup> See Appendix III for a detailed discussion of the treatment of forced labor in the Trafficking Act.

<sup>165</sup> Public Law 106-386, Sec. 112(a)(2).

<sup>166</sup> *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.*, Secs. 103(8)(B), 112(a)(2).

<sup>167</sup> 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.

<sup>168</sup> Human Rights Watch telephone interview, INS Official D, May 3, 2000.

<sup>169</sup> Human Rights Watch telephone interview, DOJ Official, May 18, 2000; Human Rights Watch telephone interview, Aiko Joshi, Victim Witness Coordinator, Worker Exploitation Task Force, August 28, 2000. The Complaint Line telephone number is 1-888-428-7581.

<sup>170</sup> E-mail from Joy Zarembka, Director, Campaign for Migrant Domestic Workers' Rights, to Human Rights Watch, July 20, 2000. For example, Human Rights Watch received a live rather than recorded answer at the Complaint Line only after calling five times on August 28, 2000.

<sup>171</sup> 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.

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),<sup>172</sup> 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."<sup>173</sup> 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.<sup>174</sup> The ILO Committee of Experts has explicitly expressed concern over limitations on domestic workers' right to organize.<sup>175</sup>

The right to organize, bargain collectively, and strike may, at first glance, seem relatively meaningless for live-in domestic workers, given the enormous 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 those with 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,<sup>176</sup> has been interpreted by U.S. courts and by the Equal Employment Opportunity Commission as prohibiting sexual harassment in the workplace, defined to include "[u]nwelcome 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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<sup>172</sup> 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.

<sup>173</sup> 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 26(1)(a).

<sup>174</sup> International Labour Conference, "ILO Declaration on fundamental principles and rights at work," 86<sup>th</sup> Session, Geneva, June 18, 1998. Even countries, like the United States, that have not ratified ILO Convention No. 87, Freedom of Association and Protection of the Right to Organize, and ILO Convention No. 98, Right to Organize and Collective Bargaining, are bound by this obligation.

<sup>175</sup> International Labor Conference, *General Report of the Committee of Experts on the Application of Conventions and Recommendations*, 1998, 85<sup>th</sup> Session, Geneva, 1998, Report III, para. 49

<sup>176</sup> 42 U.S.C. § 2000e-2(a)(1).

or creating an intimidating, hostile, or offensive working environment."<sup>177</sup> What 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.<sup>178</sup> 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."<sup>179</sup> 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.<sup>180</sup>

### ***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,<sup>181</sup> 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.<sup>182</sup> 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.<sup>183</sup> 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.<sup>184</sup> 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,<sup>185</sup> as defined by Department of Labor regulations.<sup>186</sup> Although the State Department Foreign Affairs Manual requires employers of B-1 domestic workers to contract to provide the workers "free room and board,"<sup>187</sup> 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.<sup>188</sup>

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<sup>177</sup> 29 C.F.R. § 1604.11(a); *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 66 (1986), quoting 29 C.F.R. § 1604.11(a)(3).

<sup>178</sup> *Ibid.*

<sup>179</sup> 29 U.S.C. § 651(b).

<sup>180</sup> 29 C.F.R. § 1975.6.

<sup>181</sup> 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. §§ 516.2, 516.5, 516.27.

<sup>182</sup> 29 U.S.C. §§ 206(f), 207(l); 29 U.S.C. § 213(b)(21). Some local laws, however, including those of New York and Maryland, provide over-time protections for live-in domestic workers.

<sup>183</sup> 29 U.S.C. §§ 216 (b), (c).

<sup>184</sup> See 29 U.S.C. §§ 206(f), 207(l), 216(a).

<sup>185</sup> 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(b); 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 "[s]ince '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 López v. Rodríguez*, 668 F.2d 1367, 1380 (DC Cir. 1983).

<sup>186</sup> 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 formulae in the regulations. 29 C.F.R. § 531.3(b); 29 C.F.R. §§ 552.100(c), (d). The formulae 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 the minimum hourly wage for lodging. 29 C.F.R. §§ 552.100(c), (d).

<sup>187</sup> 9 FAM 41.31 N6.3-2(2) (August 30, 1988).

<sup>188</sup> 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.<sup>189</sup> 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).<sup>190</sup>

The Initiatives adopt a targeted enforcement policy through education, outreach, investigations, and litigation,<sup>191</sup> focusing on "areas where violations are more often egregious and complaints less common . . . [that] offer a source of employment for vulnerable workers including many immigrants—both legal and undocumented—who are commonly exploited but unlikely to complain."<sup>192</sup> According to Ginley, the Wage and Hour Division is trying to protect these low-wage workers by "tak[ing] the national initiative approach to get an investigation without a complaint [and] to increase compliance of employers."<sup>193</sup>

The Initiatives have targeted various industries: agriculture, garment, security guard, janitorial services, restaurant, hotel, day-haul, and health care.<sup>194</sup> 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.<sup>195</sup> 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."<sup>196</sup>

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."<sup>197</sup> 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—<sup>198</sup> 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 .006 percent of employment relationships involving these workers.<sup>199</sup> In

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<sup>189</sup> Human Rights Watch interview, Michael Ginley, Director, Department of Labor Wage and Hour Division Office of Enforcement Policy, Washington, DC, April 14, 2000.

<sup>190</sup> Ibid.

<sup>191</sup> Ibid.; United States Department of Labor Employment Standards Administration. (No date). *Strategic Plan FY 1997-2002*. [Online]. Available: <http://www.dol.gov/dol/esa/public/aboutesa/str-plan/main.htm> [October 11, 2000].

<sup>192</sup> United States Department of Labor Employment Standards Administration, *Strategic Plan FY 1997-2002* . . . [October 11, 2000].

<sup>193</sup> Human Rights Watch interview, Ginley, Washington, DC, April 14, 2000.

<sup>194</sup> United States Department of Labor Employment Standards Administration, *Strategic Plan FY 1997-2002* . . . [October 11, 2000].

<sup>195</sup> Human Rights Watch interview, Ginley, Washington, DC, April 14, 2000.

<sup>196</sup> Human Rights Watch telephone interview, Ginley, June 27, 2000.

<sup>197</sup> Ibid.

<sup>198</sup> United States Department of Labor Bureau of Labor Statistics, *Table 3: Employed and experienced unemployed persons by detailed occupation and class of worker, Annual Average 1998* (unpublished 1999) (on file with Human Rights Watch); United States Department of Labor Bureau of Labor Statistics. (No date). *1998-1999 Occupational Outlook Handbook*. [Online]. Available: <http://stats.bls.gov/oco/ocos175.htm> [September 17, 1999].

<sup>199</sup> 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."<sup>200</sup>

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."<sup>201</sup>

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 Akhatar, 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 Akhatar's remote Bangladeshi village. Akhatar 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 Akhatar did not drop her case, she would "have problems" in the United States. R. also allegedly offered to obtain visas for Akhatar's family to work in Dubai if she dropped her lawsuit.<sup>202</sup> According to Nahar Alam, a member of Andolan, the organization for low-wage workers to which Akhatar turned for assistance after leaving her employer, R. allegedly not only visited Akhatar's family but most of the village residents, including the village chairman, and brought them to Akhatar's family's home, where he informed them

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investigations, 192 found back wages due to a total of 249 workers, and employers voluntarily agreed to pay the wages due to 205 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.

<sup>200</sup> Human Rights Watch interview, John Donaldson, World Bank External Affairs Counselor, Washington, DC, February 29, 2000.

<sup>201</sup> Human Rights Watch interview, Castro, Washington, DC, March 26, 2000.

<sup>202</sup> Human Rights Watch interview, Akhatar, Astoria, NY, March 5, 2000.

that Akhatar would go to jail in the United States if she did not drop her case.<sup>203</sup> Nahar said that the neighbors had started telling Akhatar's mother that Akhatar 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.<sup>204</sup> Larbi said that she does not know what her employer said to her mother but that whatever it was, it "made my mother afraid."<sup>205</sup> 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."<sup>206</sup> 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."<sup>207</sup>

### ***Remaining 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.<sup>208</sup> 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.<sup>209</sup> 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."<sup>210</sup> 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.<sup>211</sup>

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 activity to remain in the United States at least during legal proceedings was the S visa, whose

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<sup>203</sup> Human Rights Watch telephone interview, Nahar Alam, member of Andolan, April 14, 2000.

<sup>204</sup> Human Rights Watch interview, Gladys Larbi, a G-5 domestic worker, Washington, DC, February 15, 2000.

<sup>205</sup> *Ibid.*

<sup>206</sup> Defendant's Answers to Plaintiff's First Set of Interrogatories, (E.D.VA, December 2000), answer 10 (on file with Human Rights Watch).

<sup>207</sup> Letter from Larbi's mother to Larbi, March 13, 2000.

<sup>208</sup> 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.

<sup>209</sup> 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).

<sup>210</sup> 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; Josh Bernstein, National Immigration Law Center; Michael J. Wishnie, New York University School of Law; Ana Avendaño, United Food and Commercial Workers International Union, to Bill Lann Lee, Acting Assistant Attorney General, DOJ Civil Rights Division, May 11, 2000, p. 2.

<sup>211</sup> INS OI 287.3a. 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 "to 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.<sup>212</sup> 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.<sup>213</sup> Nonetheless, as discussed, even those migrant domestic workers held in egregiously 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.<sup>214</sup> 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."<sup>215</sup> 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.<sup>216</sup>

#### *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.<sup>217</sup> 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.<sup>218</sup> 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.<sup>219</sup>

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

<sup>212</sup> INA § 101(15)(S)(i). See Appendix II for a description of the S visa.

<sup>213</sup> 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 106-386, Secs. 107(f), 1513(f).

<sup>214</sup> 8 C.F.R. § 274a.12.

<sup>215</sup> Human Rights Watch telephone interview, Zarembka, Director, Campaign for Migrant Domestic Workers' Rights, July 19, 2000.

<sup>216</sup> Public Law 104-193, Sec. 431 (b); Public Law 105-33, Sec. 5571(c); Public Law 106-386, 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 106-386, Sec. 107(b)(1).

<sup>217</sup> Even employers with full diplomatic immunity, however, have a duty "to respect the laws and regulations of the receiving State." Vienna Convention on Diplomatic Relations, 500 U.N.T.S. 95, April 18, 1961, Article 41(1).

<sup>218</sup> 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., Ch. 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 Organization of American States," Executive Order No. 11931, August 3, 1976, 41 F.R. 32689. 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.

<sup>219</sup> Vienna Convention on Diplomatic Relations, Article 32. Even if the waiver is obtained and legal proceedings are initiated, a separate waiver of immunity must later be obtained to execute any civil judgment.

exemption."<sup>220</sup> 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.<sup>221</sup> According to a State Department official, no case charging the diplomat employer of a domestic worker with criminal conduct has come to its attention.<sup>222</sup>

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.<sup>223</sup> According to a State Department official, only one such civil case has come to the department's attention since 1995.<sup>224</sup> 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.<sup>225</sup>

#### *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."<sup>226</sup> 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.<sup>227</sup> 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."<sup>228</sup> 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."<sup>229</sup>

<sup>220</sup> 2 FAM 232.4 (February 28, 1991).

<sup>221</sup> 2 FAM 233.3(a)(3) (February 28, 1991).

<sup>222</sup> Human Rights Watch interview, State Department Official A, Washington, DC, March 1, 2000.

<sup>223</sup> 2 FAM 234.2(b)(1)-(3) (February 28, 1991).

<sup>224</sup> Human Rights Watch telephone interview, State Department Official B, May 24, 2000.

<sup>225</sup> Statement of Interest of the United States, *Ahmed*, Civil No. 99- . . . (S.D.N.Y. March 31, 2000).

<sup>226</sup> 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. *Ibid.*, Articles 31(3), 37(2). See Eileen Denza, *Diplomatic Law: A Commentary on the Vienna Convention on Diplomatic Relations* (Oxford: Clarendon Press, 1998), p. 335.

<sup>227</sup> Vienna Convention on Consular Relations, 596 U.N.T.S. 262, April 24, 1963, Article 43; 22 U.S.C. § 288d(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.

<sup>228</sup> 22 U.S.C. § 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.

<sup>229</sup> Human Rights Watch interview, IMF Official, Washington, DC, March 31, 2000; see also Donna Zalusky, World Bank Official, at a meeting between the Campaign for Migrant Domestic Workers' Rights and the IMF-World Bank Working Group, Washington, DC, attended by Human Rights Watch, October 23, 2000.

## 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.<sup>230</sup>

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.<sup>231</sup> 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.<sup>232</sup> 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.<sup>233</sup> The Code of Conduct also mandates that the employer of a G-5 domestic worker maintain employment records.<sup>234</sup> 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

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<sup>230</sup> 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.

<sup>231</sup> 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.

<sup>232</sup> Human Rights Watch telephone interview, IMF Official, June 7, 2000; 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.

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

<sup>234</sup> *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.<sup>235</sup> 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.<sup>236</sup> 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.<sup>237</sup> 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.<sup>238</sup> 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.<sup>239</sup> The Code of Conduct states that if the IMF or World Bank receives such a complaint, the organization will “investigate” the matter,<sup>240</sup> though according to IMF and World Bank officials, neither organization has yet developed formal complaint procedures.<sup>241</sup>

### **The United Nations Secretariat**

As of June 2000, there were 363 G-5 domestic workers employed by employees of the U.N. Secretariat.<sup>242</sup> 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.<sup>243</sup> 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 only for one year and containing other terms and conditions mandated by the U.N.<sup>244</sup> The U.N. Visa Committee

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<sup>235</sup> P. Kevin Craig, Chief of Staff Benefits Division, IMF Human Resources Department, at a meeting between the Campaign for Migrant Domestic Workers’ Rights and the IMF-World Bank Working Group, Washington, DC, attended by Human Rights Watch, October 23, 2000; Human Rights Watch interview, John Donaldson, World Bank External Affairs Counselor, Washington, DC, February 29, 2000.

<sup>236</sup> 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.

<sup>237</sup> WB/IMF Code of Conduct Regarding Employment of G-5 Domestic Workers, Article III; Human Rights Watch interview, IMF Official, Washington, DC, March 31, 2000; Written responses to Human Rights Watch interview questions, Stern, June 1, 2000. The sessions are scheduled to be held quarterly and sponsored jointly by the IMF and the World Bank. Human Rights Watch interview, IMF Official, Washington, DC, March 31, 2000; Written responses to Human Rights Watch interview questions, Stern, June 1, 2000.

<sup>238</sup> Human Rights Watch interview, IMF Official, Washington, DC, March 31, 2000.

<sup>239</sup> The World Bank Group and International Monetary Fund’s G-5 Information Pamphlet, (no date).

<sup>240</sup> WB/IMF Code of Conduct Regarding Employment of G-5 Domestic Workers, Article VII.

<sup>241</sup> Human Rights Watch interview, IMF Official, Washington, DC, March 31, 2000; Written responses to Human Rights Watch written interview questions, Stern, June 1, 2000.

<sup>242</sup> 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. U.N. Secretariat internal regulations, however, do not apply to the foreign missions.

<sup>243</sup> “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).

<sup>244</sup> 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.<sup>245</sup>

A U.N. Visa Committee official told Human Rights Watch that the Committee maintains a file on employers of G-5 domestic workers.<sup>246</sup> 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.<sup>247</sup> 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.<sup>248</sup> 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.<sup>249</sup>

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.<sup>250</sup> 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.<sup>251</sup>

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.<sup>252</sup> 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.<sup>253</sup> Although an OAS employee seeking OAS assistance with

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<sup>245</sup> Human Rights Watch telephone interview, U.N. Visa Committee Official, March 15, 2000; "Secretary-General's bulletin: Visa Committee," ST/SGB/2000/11, May 22, 2000, paras. 3.4, 3.5.

<sup>246</sup> Human Rights Watch telephone interview, U.N. Visa Committee Official, March 15, 2000.

<sup>247</sup> *Ibid.*; "Visa Committee: Undertaking by Staff Member," VISA COMMITTEE/JGM/MQ/1, April 1997; "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. 6.3.

<sup>248</sup> 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.

<sup>249</sup> *Ibid.*

<sup>250</sup> *Ibid.*; Human Rights Watch telephone interview, U.N. Visa Committee Official, March 20, 2000.

<sup>251</sup> Human Rights Watch telephone interview, U.N. Visa Committee Official, March 15, 2000.

<sup>252</sup> *Ibid.*

<sup>253</sup> 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.



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,<sup>254</sup> the OAS does not require employers to maintain records demonstrating compliance with contract terms.<sup>255</sup> 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."<sup>256</sup>

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.<sup>257</sup> 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."<sup>258</sup> 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."<sup>259</sup> 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 prying . . . We will not pursue anything until [the OAS employee] is found guilty in the courts,"<sup>260</sup> 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.<sup>261</sup>

### 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.<sup>262</sup> Workers were required to leave the U.K. with their employers or upon termination of their employment, whichever came first.<sup>263</sup> 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.<sup>264</sup>

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"

<sup>254</sup> 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.

<sup>255</sup> Organization of American States Process for the Request of an Employment Contract for a Domestic Employee, (no date); Human Rights Watch interview, Yolanda Morris, Senior Specialist, OAS Department of Human Resources, Washington, DC, February 26, 2000.

<sup>256</sup> Human Rights Watch interview, Morris, Washington, DC, February 26, 2000.

<sup>257</sup> From 1995 through February 2000, the OAS received approximately three such complaints. *Ibid.*

<sup>258</sup> Human Rights Watch interview, Eduardo del Buey, Director, OAS Office of External Relations, Washington, DC, February 26, 2000.

<sup>259</sup> Human Rights Watch interview, Nelson Laporte, Director, OAS Department of Human Resources, Washington, DC, February 26, 2000.

<sup>260</sup> Human Rights Watch interview, del Buey, Washington, DC, February 26, 2000.

<sup>261</sup> Human Rights Watch interview, Laporte, Washington, DC, February 26, 2000.

<sup>262</sup> Bridget Anderson, *Doing the Dirty Work?: The Global Politics of Domestic Labour* (London: Zed Books, 2000), p. 135.

<sup>263</sup> *Ibid.*, pp. 135-36.

<sup>264</sup> *Ibid.*, pp. 137, 140.

process and that employers submit written contracts stating terms and conditions of employment.<sup>265</sup> 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.<sup>266</sup>

In July 1998, the U.K. government announced additional amendments to the relevant immigration regulations.<sup>267</sup> 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.<sup>268</sup> 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, so long as they continue to work as domestic workers.<sup>269</sup> 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.<sup>270</sup>

## 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.

### General Recommendations

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

- 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 employees and ensure their effective implementation, including by establishing appropriate mechanisms to monitor compliance.

#### *To Congress:*

- 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;

- 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.

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<sup>265</sup> Ibid., pp. 141-42.

<sup>266</sup> Ibid., pp. 141-143.

<sup>267</sup> 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.

<sup>268</sup> Written responses to Human Rights Watch written interview questions, Randall, November 28, 2000. The new regulations also only allow those 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.

<sup>269</sup> Written responses to Human Rights Watch written interview questions, Randall, November 28, 2000.

<sup>270</sup> 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 I 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 live-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.

## **X. ACKNOWLEDGEMENTS**

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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.

## ***State Department Foreign Affairs Manual***

### *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.<sup>271</sup>

## ***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;

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<sup>271</sup> These record-keeping requirements are virtually identical to those already required of employers by the Fair Labor Standards Act. 29 C.F.R. ■ 516.2, 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;<sup>272</sup> 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;<sup>273</sup>
- \* 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;<sup>274</sup>

<sup>272</sup> 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.

<sup>273</sup> New York law requires live-in domestic workers to be paid over-time 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.<sup>275</sup>

*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;<sup>276</sup> and
- The prior noticed required for contract termination.

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<sup>274</sup> 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.

<sup>275</sup> Mandatory employer submission of records to the U.N. Visa Committee is discussed in the text.

<sup>276</sup> 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).<sup>277</sup> 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."<sup>278</sup> 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*."<sup>279</sup>

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 'serf' to live on another's property and the impossibility of changing his condition."<sup>280</sup> 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."<sup>281</sup> 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.<sup>282</sup> 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."<sup>283</sup>

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.

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<sup>277</sup> 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; serfdom; 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.

<sup>278</sup> 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.

<sup>279</sup> "Report of the Temporary Slavery Commission to the Council of the League of Nations," A.17.1924.VI.B, 1924 (emphasis added).

<sup>280</sup> *Van Droogenbroeck Case*, Eur. Comm'n H.R. (July 9, 1980), para. 79, cited in 44 *Publications of the European Court of Human Rights* (ser. B) (Strasbourg, Council of Europe, 1985), p. 30.

<sup>281</sup> Van Dijk and van Hoof, *Theory and Practice of the European Convention on Human Rights*, p. 334.

<sup>282</sup> See Nowak, *U.N. Covenant on Civil and Political Rights: . . .*, pp. 148-49.

<sup>283</sup> Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, "Revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime," A/AC.254/4/Add.3/Rev.7, July 19, 2000, Article 2 bis(c). Servitude is not defined, however, in the final version of the Trafficking Protocol.

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."<sup>284</sup> 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."<sup>285</sup> 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,"<sup>286</sup> 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.<sup>287</sup>

"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,<sup>288</sup> found that if an individual "entered the profession . . . with knowledge of the practice complained of," there was no forced labor, as consent was "voluntary."<sup>289</sup> 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 [or] [,] or use of force [or coercion], and for which the person does not offer himself or herself with free and informed consent."<sup>290</sup> 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.<sup>291</sup> The ILO Committee of Experts similarly found that mandatory overtime could not constitute

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<sup>284</sup> 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.

<sup>285</sup> International Labor Conference, *1979 General Survey of the Reports relating to the Forced Labor Convention, 1930 (No. 29) and the Abolition of Forced Labor Convention, 1975, (No. 105), Report of the Committee of Experts on the Application of Conventions and Recommendations*, 65<sup>th</sup> Session, Geneva, 1979, Report III, para. 21.

<sup>286</sup> International Labor Conference, *General Report of the Committee of Experts on the Application of Conventions and Recommendations*, 1998, 85<sup>th</sup> Session, Geneva, 1998, Report III, paras. 106, 123.

<sup>287</sup> *Van der Musselle v. Belgium*, 70 Eur. Ct. H.R. (ser. A) (1983), para. 35. The European Court of Human Rights applied the ILO standard in the case to interpret the European Convention's prohibition of forced labor.

<sup>288</sup> See van Dijk and van Hoof, *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 Musselle*, 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.

<sup>289</sup> *Van der Musselle*, 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 Hoof, *Theory and Practice of the European Convention on Human Rights*, pp. 335-336.

<sup>290</sup> Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, "Revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime," A/AC.254/4/Add.3/Rev.6, April 4, 2000, Article 2 bis, Option 1(c). Option 2 provides an alternative definition of forced labor that does not address this issue, and the final version of the Trafficking Protocol fails to define forced labor.

<sup>291</sup> International Labor Organization, *Report of the Committee set up to examine the representation made by the Latin American Central 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, 1957 (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”—<sup>292</sup> 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.”<sup>293</sup> 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”—<sup>294</sup> an element requiring use or threat of physical force or harm, physical restraint, or legal coercion to create conditions of involuntary servitude.<sup>295</sup>

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.”<sup>296</sup> 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.<sup>297</sup>

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.<sup>298</sup>

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.”<sup>299</sup>

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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<sup>292</sup> International Labor Conference, *General Report of the Committee of Experts on the Application of Conventions and Recommendations, 1998*, 85<sup>th</sup> Session, Geneva, 1998, Report III, para. 107.

<sup>293</sup> *Alzanki*, 54 F.3d at 1000 (citations omitted); See also *Kozminski*, 487 U.S. 931.

<sup>294</sup> *Alzanki*, 54 F.3d at 1001.

<sup>295</sup> *Ibid.*; see also *Kozminski*, 487 U.S. 931. Legal coercion is defined as “the use of the law, the legal process, or legal institutions to compel service.” *Alzanki*, 54 F.3d at 1001 n. 6.

<sup>296</sup> Public Law 106-386, Sec. 103(5)(A), (B) (emphasis added).

<sup>297</sup> *Ibid.*, Sec. 112(a)(2).

<sup>298</sup> *Joint Explanatory Statement of the Committee of Conference* (no date), p. 13.

<sup>299</sup> *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.”

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.”<sup>300</sup> 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),<sup>301</sup> 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.”<sup>302</sup> 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,<sup>303</sup> 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.<sup>304</sup> 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,”<sup>305</sup> provides some guidance.<sup>306</sup> 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.”<sup>307</sup> To meet this burden, a state must show that the measure in question reflects a necessary aim of its social policy, unrelated to any

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<sup>300</sup> ICCPR, Article 26.

<sup>301</sup> 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.

<sup>302</sup> “Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies,” General Comment 18, Non-discrimination, U.N. Doc. HRI/GEN/1/Rev.1, July 29, 1994, p. 26. (emphasis added).

<sup>303</sup> *Ibid.*

<sup>304</sup> General Recommendation 14 to Article 1(1), U.N. Doc. A/48/18, March 19, 1993, para. 2

<sup>305</sup> 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.

<sup>306</sup> The language, “directly or indirectly,” is virtually identical in meaning to the Human Rights Committee language, “purpose or effect.”

<sup>307</sup> *R v. Secretary of State for Employment, ex parte Seymore-Smith and another*, All ER (EC) 97, Case C-167/97 (1999), para. 60; *J.P. Jenkins v. Kingsgate, Ltd.*, ECR 911, Case 96/80 (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 Seymore-Smith and another*, All ER (EC) 97, paras. 60, 65.

discrimination based on sex, *and* that the measure is capable of advancing and both suitable and necessary for achieving that aim.<sup>308</sup>

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 types of discrimination based on sex."<sup>309</sup>

### ***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."<sup>310</sup> 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.<sup>311</sup> 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.<sup>312</sup> 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 NLRA, the OSHA, and the FLSA overtime protections.<sup>313</sup>

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<sup>308</sup> *Secretary of State for Employment, ex parte Seymore-Smith and another*, All ER (EC) 97, paras. 69, 72. In this case, the ECJ 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 ECJ 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."

<sup>309</sup> International Labor Conference, *Equality in Employment and Occupation, General Survey of the Committee of Experts on the Application of Conventions and Recommendations*, 75<sup>th</sup> Session, Geneva, 1988, Report III (Part 4B), para. 38.

<sup>310</sup> 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 Peggie R. Smith, "Regulating Paid Household Work: Class, Gender, Race, and Agendas 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," 20 *Women's Rights Law Reporter* 159 (Spring-Summer 1999); Jennifer Bickham Méndez, "Of mops and maids: contradictions and continuities in bureaucratized domestic work," 45 *Social Problems* 114 (February 1, 1998).

<sup>311</sup> 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.

<sup>312</sup> Smith, "Regulating Paid Household Work . . .," p. 899.

<sup>313</sup> 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*, 285 N.W. 903, 905 (Minn. 1939).



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."<sup>314</sup> 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.<sup>315</sup> 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.<sup>316</sup>

The exclusion of live-in domestic workers from the OSHA was established "[a]s 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."<sup>317</sup>

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."<sup>318</sup> 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."<sup>319</sup> 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.

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<sup>314</sup> Senate Report No. 1184, 79<sup>th</sup> Cong. 2d Sess. (May 10, 1934).

<sup>315</sup> 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.

<sup>316</sup> 29 U.S.C. § 202(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, mops, 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.

<sup>317</sup> 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).

<sup>318</sup> *Lagrimas v. Gossel*, 1 Wage and Hour Cases 2d (BNA) 385 (D. Md. 1993).

<sup>319</sup> House Report. No. 93-913, 93<sup>rd</sup> Cong. 2d Sess. (March 15, 1974); see also 29 C.F.R. § 785.23.

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