

LABOR TRAFFICKING OF DOMESTIC WORKERS AT-A-GLANCE

This document provides an overview of labor trafficking for the purpose of domestic work which is prevalent in the United States and internationally. The document is intended to provide a basic orientation on the following four topics: an introduction to domestic work in the U.S. context; specific vulnerabilities of domestic workers to human trafficking; relevant laws and protections for domestic workers; and examples of domestic servitude in the U.S. This document should not be viewed as exhaustive.

Introduction to Domestic Work in the U.S.

Domestic workers perform work within their employers' households, such as cooking, cleaning, childcare, elder care, gardening and other household work. Domestic workers may or may not live in their employer's homes; they may work for a single employer or family, or several employers or families. Employers may include relatives, diplomatic officials or employees of international organizations such as the World Bank or the United Nations and may or may not be from the same national, cultural, ethnic, or linguistic backgrounds as the domestic worker.

Domestic workers may be U.S. citizens, or foreign nationals – with or without legal documentation. Specific work visas that a domestic worker may have can include: A-3, G-5, NATO-7 or B-1. Females make up a large majority of this population; however males may also be employed as domestic workers. Victims may be adults or minors.

Defining Characteristics of Labor Trafficking of Domestic Workers

A situation becomes labor trafficking for the purpose of domestic servitude when the employer uses force, fraud and/or coercion to maintain control over the worker. Such methods cause the worker to believe that he or she has no other choice but to continue working for the employer.

Victims of human trafficking in domestic work commonly work 10 to 16 hours a day or more for little to no pay. Victims of labor trafficking of domestic workers in the U.S. are most often foreign national women living in the home of their employer. According to the International Labour Organization, approximately 83% of domestic workers are women and girls¹; a study on domestic workers in California found that 98% were female². Men and boys may also be victims, but these cases are less common. According to the International Labour Organization, in 2008 at least 15.5 million children ages five to 17 worked as domestic workers globally.³ In a report for the United Nations, Cecilia Flores-Oebanda estimates that at least 90% of child domestic workers are girls.⁴

Vulnerabilities to Human Trafficking

¹ “100th ILO Annual Conference decides to bring an estimated 53 to 100 million domestic workers worldwide under the realm of labour standards” International Labour Organization. June 16th, 2011. http://www.ilo.org/ilc/ILCSessions/100thSession/media-centre/press-releases/WCMS_157891/lang-en/index.htm (accessed July 30 2011)

² Mujeres Unidas y Activas, Day Labor Program Women's Collective of La Raza Centro Legal, and the DataCenter *Behind Closed Doors: Working Conditions of California Household Workers* (Oakland and San Francisco, 2007): 2. <http://www.domesticworkers.org/finish/3/3/0> (accessed September 9 2011)

³ “Questions and Answers On the Hidden Reality of Children in Domestic Work.” ILO Department of Communication and Public Information. http://www.ilocarib.org.tt/index.php?option=com_content&view=article&id=1593:questions-and-answers-on-the-hidden-reality-of-children-in-domestic-work&catid=117:news-room&Itemid=1035 (accessed September 1, 2011).

⁴ Cecilia Flores-Oebanda, Addressing vulnerability and exploitation of child domestic workers: An open challenge to end a hidden shame, United Nations Division for the Advancement of Women (DAW) in collaboration with UNICEF (Florence: 2006): 2 <http://www.un.org/womenwatch/daw/egm/elim-disc-viol-girlchild/ExpertPapers/EP.10%20%20Flores%20Oebanda.pdf> (accessed September 1 2011)



- **Immigration Status** – Domestic workers employed by diplomatic officials or employees of international organizations may hold special visas, such as A-3, G-5 or NATO-7, which tie their immigration status to a single employer. Once a domestic worker leaves his or her employment situation, he or she becomes out of status and may risk being placed in removal proceedings for deportation. Traffickers often use the threat of deportation as well as document confiscation to maintain control over their victims. Undocumented workers and individuals who enter the U.S. on tourist or other non-employment-based visas are also particularly vulnerable to deportation threats.
- **Diplomatic Immunity of A-3 and G-5 Employers** – Many employers of A-3 and G-5 workers are protected by diplomatic immunity from criminal charges. This hinders prosecution of these cases and can prevent a victim of trafficking from pursuing back wages or other damages. In these cases the Department of State may work with the employer’s country of origin to find another resolution.
- **Lack of Contract Standards or Enforcement** – Employment contract requirements and oversight vary greatly depending on a worker’s visa type and locality. Standards for A-3 and G-5 workers have been established by the Department of State rather than by law. No contract standards exist for B-1 visa holders or undocumented workers. Coupled with exclusion from most labor laws, the lack of enforceable contract requirements makes domestic workers particularly vulnerable to exploitation and trafficking.
- **Isolation** – Domestic workers may be physically, culturally and/or linguistically isolated and may have few, if any, local contacts. Employers may restrict the worker’s movement outside of the home, not permitting the worker to leave at all, or only to attend church or take the employer’s child to and from school for example. The employer may limit or monitor the worker’s communication with his/her family, or forbid the worker from speaking with neighbors. The domestic worker may not know his/her actual address or even the city and state where he/she is located.
- **Familial and Intimate Partner Trafficking:** Parents or other family members may be traffickers in domestic servitude situations. If the controller is a family member or intimate partner, it can be particularly difficult for the victim to leave the situation or involve law enforcement due to increased shame, fear of repercussions within the family unit, and lack of a familial support network to assist them. This creates much of the same complexity that exists with leaving an abusive relationship – loyalty, love, fear of leaving, etc. Family members may also have arranged the domestic work situation, and may also pressure the potential victim to enter or remain in the situation to help support the family.

Means of Control

Traffickers may exert control over their victims through threats of deportation or other harm to the victim or the victim’s family, document confiscation, debt, and/or restrictions on movement and communication. Traffickers often exploit a foreign national domestic worker’s unfamiliarity with the language, laws and customs of the U.S., and may use physical, verbal and/or sexual abuse to create a climate of fear and helplessness. False promises of education or a better life are also common.

International Protections for Domestic Workers

- On June 16th, 2011, the International Labour Organization (ILO) adopted the **International Convention on Decent Work for Domestic Workers**, the first global convention to establish the rights of domestic workers.⁵ These standards dictate that domestic workers are entitled to the same basic labor rights guaranteed to those employed in the formal economy. By clearly defining the rights of domestic workers worldwide, national entities can more effectively formulate cogent policy to protect populations susceptible to exploitation through domestic work, such as women and children.

⁵ “100th ILO Annual Conference decides to bring an estimated 53 to 100 million domestic workers worldwide under the realm of labour standards” International Labour Organization. June 16th, 2011. http://www.ilo.org/ilc/ILCSessions/100thSession/media-centre/press-releases/WCMS_157891/lang--en/index.htm (accessed July 30 2011)

- These rights include reasonable work hours, weekly free time of a minimum of 24 consecutive hours, limits to in-kind payment terms, clearly-defined conditions of employment, and labor freedoms such as the right to collectively bargain.⁶

Federal Laws Relevant to Domestic Workers

•The Trafficking Victims Protection Act (TVPA) of 2000 was the first comprehensive federal act to combat human trafficking in the U.S. Domestic servitude is considered a form of labor trafficking.

○**Labor trafficking** is defined as “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purposes of subjection to involuntary servitude, peonage, debt bondage, or slavery.”⁷

○A domestic worker may be considered a victim of labor trafficking when the employer uses force, fraud, or coercion in order to compel the individual to perform household labor against their will.

○The 2008 Reauthorization of the Trafficking Victims Protection Act created procedures specifically designed to protect the rights of holders of diplomatic domestic worker visas including requiring written contracts for all such workers, requiring the Department of State to implement various provisions to monitor the conditions of domestic workers, and requiring the “Secretary of State to suspend the issuance of such visas to all diplomatic personnel of specified countries . . . if the Secretary finds that the country’s missions or employees have abused or exploited A-3 / G-5 workers, or tolerated such abuse.”⁸

•Domestic workers are particularly vulnerable to exploitation as a result of their exclusion from certain legal protections, either formally or in practice:

○The **Fair Labor Standards Act (FLSA)** governs fair labor practices, including minimum wage, record-keeping, and overtime, which are enforced by the Department of Labor. Minimum wage and maximum hours do not apply to any employee who is employed in domestic service in a household and who resides in such household. While domestic workers are entitled to minimum wage, they are explicitly excluded from overtime provisions.⁹

○The **Occupational Safety and Health Act (OSHA)** mandates safe and healthy working conditions.¹⁰ The act does not explicitly exclude domestic workers; however, Federal regulations interpreting OSHA exclude individuals in their own homes who privately employ others for the purpose of “ordinary domestic household tasks” (e.g. house cleaning, cooking, and caring for children) from the employment requirements of OSHA.¹¹

○**Title VII** prohibits employment discrimination, including sexual harassment in the workplace. Title VII only applies to employers with at least 15 employees, effectively excluding domestic workers, who typically work alone or in small groups.¹²

○The **National Labor Relations Act (NLRA)** protects the right of workers to organize, strike or bargain collectively,¹³ but explicitly excludes domestic workers.¹⁴ Without this protection, unionizing domestic workers are vulnerable to retaliation or dismissal, and their employers have no legal obligation to recognize or bargain with a union or its representatives.¹⁵

⁶ Ibid.

⁷ 22 U.S.C. § 7102.

⁸ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. 110-457, U.S. Statutes at Large, 110th Cong., sess. 1. (December 23, 2008): 5044 § 203

⁹ 29 U.S.C. § 206(f), § 207(l); 29 U.S.C. § 213(a)(15), § 213(b)(21)

¹⁰ 29 U.S.C. § 651(b).

¹¹ 29 C.F.R. § 1975.6

¹² 42 U.S.C. § 2000e.

¹³ NLRA, 29 U.S.C. § 151-169.

¹⁴ 29 U.S.C. § 152(3).

¹⁵ Human Rights Watch, *Hidden in the Home* (2001), 29, <http://www.hrw.org/en/reports/2001/06/01/hidden-home> (accessed October 29, 2010).

State Laws Pertaining to Domestic Workers

• On November 29th 2010, a **Domestic Worker Bill of Rights** went into effect in **New York** state. The first of its kind, the law establishes an 8-hour legal work day and overtime after 40 hours for live-out domestic workers and after 44 hours for live-in domestic workers, at the rate of 1.5 times the regular rate of pay. The law establishes protections and standards regarding days-off, discrimination and harassment, and disability benefits.¹⁶ **California** is considering a Domestic Workers' Bills of Rights as well.¹⁷

• **Maryland** is the only other state to extend overtime benefits to live-in domestic workers, with the overtime rate of 1.5 times the regular pay rate after 40 hours.¹⁸

Relevant Statistics

The availability of statistics on labor trafficking of domestic workers in the U.S. is limited due to the crime's hidden nature, limited awareness, and the lack of a comprehensive study.

- In a 2008 report, the Government Accountability Office (GAO) identified 42 domestic workers with A-3 and G-5 visas who alleged abuse by foreign diplomats from 2000 through 2008. Ten of the 42 cases resulted in federal human trafficking investigations. The study concluded that the total number of incidents is likely higher.¹⁹
- In a 2006 report, Domestic Workers United estimated that there are over 200,000 domestic workers in New York City.²⁰ According to this report, 76% are foreign nationals, 95% are people of color, and 93% are women.²¹ The report further found that 41% of the workers who participated in the study earned low wages and an additional 26% made below minimum wage. Half of the workers interviewed worked overtime, often more than 50 or 60 hours a week. Sixty-seven percent of workers reported not receiving overtime pay for overtime hours worked.²²
- A 2007 report on domestic workers in California found that many respondents experienced various labor violations or mistreatment. Thirty-one percent reported working more hours than initially agreed upon, 22% reported being paid less than agreed upon with their employer, and 16% reported not being paid at all. Additionally, 20% of respondents reported many domestic workers reported being insulted or threatened by their employers, and 9% reported being sexually harassed and/or experiencing physical assault or violence. The study also notes an unusually high rate of non-response to these particular questions, suggesting that workers were uncomfortable with the questions or concerned about responding.²³
- The National Human Trafficking Resource Center (NHTRC) hotline received over 400 calls from December 2007 through July 2011 referencing potential labor trafficking of domestic workers. The most common locations referenced in these calls in descending order were California, New York, Maryland, Virginia, and Washington, DC. The most common nationalities of potential victims referenced in these calls in descending order were Filipino, Ethiopian, Indian, Guatemalan and Mexican.

¹⁶ "The New NYS Domestic Workers Bill of Rights Summary." Domestic Workers United. <http://www.domesticworkersunited.org/campaigns.php> (accessed October 19, 2010).

¹⁷ "CA Domestic Workers' Bill of Rights." National Domestic Workers Alliance. <http://www.nationaldomesticworkeralliance.org/campaigns/ca-domestic-workers-bill-of-rights> (accessed October 19, 2010).

¹⁸ Montgomery County Commission for Women: Employment Guide for Domestic Workers http://www.montgomerycountymd.gov/content/CFW/Publications/pdfs/cfwbrochure_english-fullfinal.pdf

¹⁹ United States Government Accountability Office, *US Government's Efforts to Address Alleged Abuse of Household Workers by Foreign Diplomats with Immunity Could Be Strengthened*. 2008, GAO-08-892, 3. <http://www.gao.gov/new.items/d08892.pdf> (accessed October 29, 2010).

²⁰ Domestic Workers United and DataCenter. *Home Is Where the Work Is: Inside New York's Domestic Work Industry* (2006), 1. <http://www.datacenter.org/reports/homeiswheretheworkis.pdf> (accessed October 29, 2010).

²¹ *Ibid.*, 10

²² *Ibid.*, 2.

²³ Mujeres Unidas y Activas, Day Labor Program Women's Collective of La Raza Centro Legal, and the DataCenter *Behind Closed Doors: Working Conditions of California Household Workers* (Oakland and San Francisco, 2007): 4. <http://www.domesticworkers.org/finish/3/3/0> (accessed September 9 2011)

Recent Labor Trafficking of Domestic Workers Convictions

- May 2008, *United States v. Paulin*: Maude Paulin, a middle school teacher, was sentenced for bringing a 14-year-old Haitian girl to Miami, Florida, to be her domestic servant. For six years, the girl was forced to work for Paulin, who beat her, threatened to have her jailed or deported to Haiti, and denied her wages or an education. Three other members of Paulin's family were also convicted. It was through the help of a family friend that the victim finally escaped.²⁴
- May 2009, *United States v. Lubis*: For seven years, Soripada Lubis and his wife kept 11 undocumented Indonesian women in the basement of their Falls Church, Virginia home. During the week, the women worked as live-in housekeepers for wealthy families in the area, and on the weekends Lubis transported them back to his home, where the women slept three to a bed. Lubis confiscated their passports and charged \$375 a month in "rent," fees for "taxes," and fees for sending money to Indonesia. Lubis will receive up to 10 years in prison and will pay restitution to the victims.²⁵
- February 2010, *United States v. Emmanuel and Ngozi Nnaji*: Emmanuel and Ngozi Nnaji were sentenced for keeping a Nigerian woman as their domestic servant for nine years. They lured the widowed mother of six to Arlington, Texas with promises of a salary and support for her children. She was isolated, forbidden to attend church, and given little or no pay for long hours of work with no days off. On the few occasions when she was allowed to contact her family, she was monitored closely. The Nnajis confiscated the woman's documents, sexually assaulted her, and made her fearful of the police.²⁶

²⁴ United States, Department of Justice, "Miami, Florida, Schoolteacher and Ex-Husband Sentenced for Human Trafficking and Smuggling Charges," May 20, 2008. http://www.justice.gov/opa/pr/2008/May/08_crt_446.html (accessed October 29, 2010).

²⁵ United States, Department of Justice, "Falls Church, Va., Man Pleads Guilty to Harboring Indonesian Aliens for Financial Gain," February 25, 2009. <http://www.justice.gov/opa/pr/2009/February/09-crt-167.html> (accessed October 29, 2010).

²⁶ United States, Department of Justice, "Arlington, Texas, Couple Convicted of Forced Labor and Other Crimes for Holding Nigerian Woman in Domestic Servitude," February 2, 2010. <http://www.justice.gov/opa/pr/2010/February/10-crt-118.html> (accessed October 29, 2010).