

Domestic Workers' Rights in the United States:
A report prepared for the U.N. Human Rights Committee
In response to the Second and Third Periodic Report of the United States

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EXECUTIVE SUMMARY

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

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

Forced Servitude (Articles 8 and 2)

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

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

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

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

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

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

Domestic Violence (Articles 7, 9, and 2)

Article 7 prohibits cruel, inhuman or degrading treatment while Article 9 guarantees "the right to liberty and security of person." Both Articles are violated when domestic workers suffer psychological, verbal, physical, and sexual abuse. Employers may engage in control tactics, such as regulating the workers' food consumptions or confiscating their passports. Others use verbal abuse, including insults and name-calling. Some domestic workers experience physical and sexual assaults. These abuses are essentially unregulated and often remain unreported.

Limitations on Freedom of Movement (Articles 12 and 7)

Article 12 protects domestic workers' freedom of movement and is applicable to both state and private actors. The State Department requires that employers who are foreign diplomats or the staff of international organizations must sign employment contracts with domestic workers that state that the employee cannot be required to stay on the premises without additional compensation and that her passport cannot be confiscated. Such regulations, however, fail to cover a substantial number of domestic workers, and enforcement and monitoring of those regulations are almost non-existent. Private employers use other means of restricting their workers' freedom of movement including requiring an escort when leaving the premises and misrepresenting U.S. laws, culture, and the dangers of the streets.

Privacy Invasions (Article 17)

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

Limitations on Freedom of Expression (Article 19)

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

Denial of Effective Remedies (Article 2)

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

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

Barrier to Effective Remedies: Diplomatic Immunity (Article 2)

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

Barrier to Effective Remedies: Immigration Status

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

Barrier to Effective Remedies: Practical Obstacles

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

INTRODUCTION

1. Domestic workers are employed in private homes to perform household tasks traditionally perceived as inferior or “women’s” work. In the United States as in other countries, domestic workers are often not viewed as “real” workers, and some employers liken their workers to “family” members. Historically unappreciated, the work continues to be afforded little worth. The national and local labor laws frequently exclude domestic workers from the protections offered to other workers. As a result, domestic workers may find themselves devalued and powerless within the employment situation.
2. The degree of inequality between the employer and the domestic worker can be further stratified by racial, gender, and other types of prejudice. Domestic workers are frequently women, minorities, and immigrants. In a recent survey of more than five hundred domestic workers conducted by Domestic Workers United and DataCenter (based in New York City), ninety-nine percent (99%) of those surveyed were foreign-born, and seventy-six percent (76%) were non-U.S. citizens. Ninety-three percent (93%) were female. Only one percent (1%) self-identified as non-Hispanic white. These intersecting identities often subject domestic workers to significant hardship in a patriarchal and racist American society. Subjugated to a lesser societal status, domestic workers are often¹ exploited and their fundamental rights and freedoms violated.
3. Domestic workers often face psychological abuse and economic exploitation, as well as severe physical, sexual, and verbal assault and battery, de facto imprisonment, and forced servitude. While U.S. laws should offer protection, domestic workers, as a class, find that they are excluded under many existing laws or that the protection the laws purport to provide does not actually exist in practice. Domestic workers need protection that is not readily forthcoming from the United States government. Therefore, it is imperative that the abuses suffered by domestic workers be recognized by the Human Rights Committee as violations of Articles 2, 3, 7, 8, 9, 12, 17, 19, 21, 22, and 26 of the International Covenant on Civil and Political Rights (ICCPR), and that the Committee make recommendations to the U.S. Government to meet its obligations in this area.

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

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

- Joycelyn Campbell, Nanny in Hoboken and Manhattan,
from Barbados²

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

² Domestic Workers United and DataCenter, *Home is Where the Work Is: Inside New York’s Domestic Work Industry*, May 2006, p. 13.

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

Forced Servitude (Articles 8 and 2)

5. Article 8 of the ICCPR states that no one shall be held in slavery or servitude or be "required to perform forced or compulsory labor." The Human Rights Committee has recognized the severity of this type of violation; yet, many domestic workers in the United States work in situations which could be classified as servitude or forced labor in violation of Article 8. Being held in servitude or forced to perform compulsory labor is the main form of abuse suffered by domestic workers in the United States and is the base abuse from which most other abuses stem.
6. Although the ICCPR does not explicitly define "involuntary servitude", interpretations suggest that it consists of "a dependent, economically abusive labor relationship" with "no reasonable possibility of escape."³ Forced or compulsory labor covers an even larger range of employment situations. The International Labor Organization Forced Labor Convention defined forced or compulsory labor to mean "all work or service which is exacted from any person under the menace of penalty [including a "loss of rights or privileges"⁴] and for which the said person has not offered himself voluntarily."⁵ Work entered into without knowledge and informed consent is commonly considered involuntary.⁶ Similarly, the U.S. Trafficking Victim's Protection Act of 2000 effectively overruled prior precedent which had limited the U.S. interpretation of involuntary servitude to situations using or threatening the use of physical or legal coercion.⁷ U.S. law now prohibits obtaining another's labor by employing not only physical, but also psychological, methods of coercion.⁸ Still, these forms of coercive work situations continue to occur in the United States at an alarming rate.
7. In the United States, many domestic workers are being held in involuntary servitude, subject to forced or compulsory labor. Their situations exemplify economically abusive relationships: they receive little or no pay and work long hours in dangerous conditions with little rest. Some employers forbid workers from leaving the house unaccompanied and may even physically restrain the workers or lock them inside the house. Others confiscate

³ *Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States*, Human Rights Watch Report, June 2001, Vol. 13, No. 2, at 50.

⁴ 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 Convention and Recommendations, 65th Session, Geneva, 1979, Report III, para. 21.

⁵ International Labor Conference, *Forced Labor Convention, Convention (No. 29) Concerning Forced Labor*, adopted June 28, 1930 (entered into force May 1, 1932) at Art. 2(1).

⁶ *Hidden in the Home*, supra note 3, at 51.

⁷ *U.S. v. Kozminski*, 487 U.S. 931 (1988).

⁸ 18 U.S.C. § 1589 (2000); See *United States v. Bradley*, 390 F.3d 145, 150 (2004).

workers' passports or use threats of deportation to keep workers imprisoned.⁹ Psychological tactics are also commonly employed. Some employers, with the intent of instilling into the workers a fear of leaving the house, fabricate stories exaggerating the danger of the U.S. streets.¹⁰ Physically, mentally, and financially coercive methods are all used to keep the domestic workers enslaved.

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

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

9. The substandard working conditions of domestic workers illustrate how their rights are being violated under Article 8 of the ICCPR. Although domestic workers may be caring for their employers' most valuable possessions – their children and their homes – or completing tasks essential to the operation of the household, a surprising number of domestic workers are exploited. For example, in the recent Domestic Workers United and DataCenter survey in New York City, one half of the more than five hundred workers surveyed earn low wages (less than the local “living wage”), with an additional quarter of the workers making either below the poverty line or below minimum wage. (The current federal minimum wage, to which domestic workers are entitled, is \$5.15 per hour.¹¹) A survey of several hundred workers in Maryland confirms these findings: 51% of those surveyed reported earning less than Maryland's minimum wage.¹² These illegally low wages reflect the failure of the U.S. government to enforce domestic laws in protection of domestic workers. The lack of enforcement implicates violations by the U.S. government of Article 2, guaranteeing effective remedies for violations; Article 3, ensuring equal protection of men and women; and Article 26, requiring equality of all people before the law.
10. Domestic workers endure long hours with little rest and often face appalling work and living conditions. Many domestic workers are deprived of sleep or are forced to sleep in rooms without heat, on hard floors, or in moldy basements. Some domestic workers have been instructed to use strong cleaning chemicals without being given any warning of safety precautions. In severe cases, workers have been denied food necessary for proper nutrition.¹³ Many domestic workers are without health insurance, and for workers whose employers

⁹ *Hidden in the Home*, supra note 3, at 13.

¹⁰ *Id.* at 13.

¹¹ The federal minimum wage is the absolute lowest allowed. Some state laws require a higher wage. 29 U.S.C. § 206(f) (2005).

¹² Montgomery County Council, *Working Conditions of Domestic Workers in Montgomery County, Maryland*, May 2006.

¹³ *Hidden in the Home*, supra note 3, at 16.

restrict their freedom of movement, their access to medical care can be limited or even eliminated.¹⁴

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

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

12. Articles 21 and 22 of the ICCPR require that everyone shall have the right to assemble and associate, and that no restrictions may be placed on those rights except in limited circumstances.¹⁸ Although the Human Rights Committee has not commented directly on these rights under the ICCPR (namely because the language in Articles 21 and 22 is fairly explicit), decisions under other treaties, containing nearly duplicative language as Articles 21 and 22 of the ICCPR, indicate some conclusions about those rights. For instance, freedom of association affects more than just trade unions and enjoys a broad interpretation.¹⁹ It also requires that States adopt laws that provide “full and comprehensive rights to freedom of association.”²⁰
13. The United States, however, in violation of Article 2 of the ICCPR, fails to provide domestic workers with full and comprehensive protection of the right to freedom of association or assembly. The First, Fifth, and Fourteenth Amendments of the U.S. Constitution protect domestic workers’ right to organize and peacefully assemble but only as against the federal and state governments, not private employers. The National Labor Relations Act (NLRA) is the primary guarantor of U.S. workers’ right to organize. It protects employees’ “right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.”²¹ The right is extended broadly to employees, but notably excludes domestic workers.²²

¹⁴ *Id.*

¹⁵ 29 U.S.C. § 213(b)(21) (2005).

¹⁶ 29 U.S.C. § 651(b) (2005).

¹⁷ 29 C.F.R. § 1975.6 (2005). *Infra see* Denial of Effective Remedies, p. 19.

¹⁸ ICCPR Articles 21 and 22. Restrictions on the right to assembly and association may be imposed to protect national security, public safety and order, the protection of public health or morals or for the protection of the rights of freedoms of others.

¹⁹ See, e.g., *United Communist Party of Turkey and Others v. Turkey*, European Court of Human Rights, (133/1996/752/951) (Grand Chamber decision, January 30, 1998); *Sidiropoulos and Others v. Greece*, European Court of Human Rights (57/1997/841/1047) (Chamber decision, July 10, 1998); *Freedom and Democracy Party (ÖZDEP) v. Turkey*, European Court of Human Rights, (93 1998/22/95/784) (Grand Chamber decision, December 8, 1999)

²⁰ Human Rights Committee [hereinafter “HRC”], Concluding Observations of the Human Rights Committee: Croatia, April 30, 2001, available [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/7c3306a53f34ff43c1256a2a0036d955?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/7c3306a53f34ff43c1256a2a0036d955?Opendocument).

²¹ 29 U.S.C. § 157.

²² 29 U.S.C. § 152(3). The NLRA also excludes other groups like agricultural workers and independent contractors.

14. Exclusion from the NLRA leaves domestic workers unprotected against private employers who deny them their right to associate and assemble peacefully. An employer, when violating those rights under the ICCPR, does not violate any U.S. law, nor is there any U.S. law under which the worker may bring suit. Even if a domestic worker has a contract assuring the right to associate and assemble, the Committee has stated that “a formal right to sue for breach of contract may well be insufficient” and has recommended that states extend coverage of labor laws to domestic workers.²³

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

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

-Rokeya Akhatar, a Bangladeshi domestic worker employed by the family of a Middle Eastern businessman²⁴

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

Domestic Violence (Articles 7, 9, and 2)

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

²³ HRC, Concluding Observations of the Human Rights Committee: Netherlands, Aug. 8 2001, available [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/dbab71d01e02db11c1256a950041d732?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/dbab71d01e02db11c1256a950041d732?Opendocument).

²⁴ Human Rights Watch interview, Akhatar, Astoria, NY, March 5, 2000 (*reprinted in Hidden in the Home*, Human Rights Watch Report, June 2001, Vol. 13, No. 2, at 18).

²⁵ HRC, General Comment 20, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 30, para. 2 (1994).

17. By virtue of the diminished value many place upon the household tasks they complete, domestic workers sometimes find themselves devalued within their employment situations. The degree of inequality between the employer and the domestic worker can be further stratified by racial, gender, and other types of prejudice. An overwhelming majority of domestic workers are women²⁶ and a vast number are also minorities²⁷ and migrants.²⁸ As members of groups that have historically been subjugated to a lesser societal status, domestic workers are all too often viewed in their workplace as second-rate individuals whose human rights deserve little respect.
18. Disrespect of domestic workers can escalate into different types of abuse. For some the abuse is psychological. Their privacy is invaded and autonomy disregarded. Employers may engage in control tactics, such as regulating the workers' food consumption or confiscating their passports,²⁹ to make the workers feel inferior and helpless. Commonly, the abuse is verbal, including insults and name-calling. The employers' degrading actions and policies can result in a system in which the domestic worker is dehumanized and treated without common decency or respect. For others, the abuse is physical and can include slapping, kicking, hitting, shoving, assaults with a weapon, and threats of physical harm.³⁰ Female domestic workers have also experienced sexual assaults and harassment.³¹ Many of these workers remain at their jobs despite the abuse because they feel too frightened or helpless to leave or because they believe that they have no better alternative.
19. The abuse of domestic workers is essentially unregulated and often remains unreported. Rights, protections, and enforcement measures extended to other types of workers under U.S. law often do not reach domestic workers employed in private residences.³² For example, Title VII, which prohibits discrimination in employment and sexual harassment in the workplace, applies only to employers with at least fifteen employees.³³ Domestic workers, who are generally employed by someone with fewer than fifteen employees, therefore are usually not covered by Title VII. Even when the abuses, such as the physical assaults, are prohibited by law, domestic workers are frequently unprotected in violation of Article 2 of the ICCPR. Because domestic workers' duties are mainly confined to individual private residences, the abuse the workers suffer, like the domestic abuse of spouses and children, often remains shielded from the public eye.

Limitations on Freedom of Movement (Articles 12 and 7)

20. According to the Committee, the freedom of movement protected by Article 12 should not be subjected to "the decision of another person,"³⁴ and the right to that freedom should be

²⁶ According to the Department of Labor, women comprised 92.2% of the people employed in services work in private households in 2004. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, WOMEN IN THE LABOR FORCE: A DATABOOK, tbl. 14 (2005), available at <http://www.bls.gov/cps/wlf-table14-2005.pdf>.

²⁷ Margaret L. Satterthwaite, Testimony Before the Inter-American Commission on Human Rights (October 14, 2005).

²⁸ Kristi L. Graunke, "Just Like One of the Family": Domestic Violence Paradigms and Combating On-the-Job Violence against Household Workers in the United States, 9 MICH. J. GENDER & L. 131, 151 (2002).

²⁹ *Hidden in the Home*, supra note 3, at 8, 10.

³⁰ *Id.* at 12.

³¹ *Id.* at 12.

³² See, e.g., 29 C.F.R. § 1975.6 (2005).

³³ 42 U.S.C. § 2000e (2005).

³⁴ HRC, General Comment 27, Freedom of movement (Art.12), U.N. Doc CCPR/C/21/Rev.1/Add.9 (1999).

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

21. U.S. laws and regulations are in place to protect domestic workers' freedom of movement. First, for domestic workers in the United States under G-5 and A-3 visas,³⁸ the State Department requires employment contracts that state both that the employee cannot be required to stay on the employer's premises after working hours without additional compensation and that the employee's passport will not be confiscated.³⁹ Additionally, the State Department and the Fair Labor Standards Act⁴⁰ require employers of domestic workers to pay the federal minimum wage,⁴¹ which, in theory, should enable domestic workers to have the economic means to travel. While on their face, U.S. laws seem to offer strong protection for freedom of movement, protection is poorly implemented and does not cover all individuals. For instance, the laws suffer from gaps that fail to protect those who come to the United States outside of the A-3, B-1 and G-5 visa structure. Additionally, no governmental monitoring mechanism exists to ensure that employers actually follow employment contracts and minimum wage requirements.⁴² In fact, the data suggests that employers regularly confiscate passports and pay domestic workers under the minimum wage.⁴³
22. Employment conditions also limit domestic worker's freedom of movement. With domestic workers working an average of 14 hours a day, 6 days a week, their movement during these working hours is limited.⁴⁴ Employers often put conditions on when domestic workers can leave the premises, allowing domestic workers to leave only on days off, requiring employer permission, or even an escort, to leave the premises, or denying the domestic worker a key to the house.⁴⁵ Domestic workers also often work in suburban settings where their mobility is sharply limited by the unavailability of public transportation. Even those workers who are free to leave a house on their day off may not be able to do so if they cannot access public transportation.

³⁵ *Id.*

³⁶ The Committee expressed concern with "the manifold legal and bureaucratic barriers" affecting freedom of movement. *Id.*

³⁷ HRC, General Comment 28, Equality of rights between men and women (article 3), U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000). ("States should provide information on any laws or practices which may deprive women of their liberty on an arbitrary or unequal basis, such as by confinement within the house.")

³⁸ A-3 visas are issued to domestic workers who "work for ambassadors, diplomats, consular officers, public ministers, and their families" and G-5 visas to those who work for officers and employees of international organizations or foreign missions to international organizations." *Hidden in the Home*, *supra* note 2, at 4.

³⁹ 9 FAM 41.21 N6.2(A)(3)(4) (Feb. 9, 2000).

⁴⁰ 29 U.S.C. 202(a)(b).

⁴¹ 9 FAM 41.21 N6.2(A)(1) (Feb. 9, 2000); 9 FAM 41.31 N6.3-2, N6.3-3.

⁴² *Hidden in the Home*, *supra* note 3, at 13.

⁴³ According to one report, in almost half the cases examined, employers confiscated domestic workers' passports.⁴³ With regard to wage, that same report found the median average wage of 40 domestic workers to be only \$2.14. *Id.* at 13.

⁴⁴ *Id.* at 17.

⁴⁵ *Id.* In General Comment 27, the Committee states that in some cases "measures preventing women from moving freely or from leaving the country by requiring them to have the consent or the escort of a male person constitute a violation of article."

23. Employers also play off of the identity of the domestic workers and the nature of her work to limit freedom of movement. Employers often misrepresent U.S. laws, culture and the dangers of the streets; threaten workers that the police will arrest them if they are out without their documents; prohibit workers from speaking with anyone outside their immediate families; deny workers the right to attend religious services; and threaten deportation.⁴⁶ In this way, employers exploit domestic workers' status as both immigrants and women, instilling in them fears that lead domestic workers to retreat to seclusion. Additionally, psychological and physical abuse can produce fear that creates "social and cultural isolation and a sense of helplessness and disempowerment" which keeps domestic workers in their employment relationship and denies them freedom of movement.⁴⁷

Privacy Invasions (Article 17)

24. Article 17 of the ICCPR protects the domestic worker from "arbitrary or unlawful interference with her privacy, family, home or correspondence."⁴⁸ The Committee has interpreted this to mean that "correspondence should be delivered to the addressee without interception and without being opened or otherwise read. Surveillance. . . interceptions of telephonic, telegraphic and other forms of communication. . . should be prohibited. Searches of a person's home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment."⁴⁹

25. The domestic worker is particularly vulnerable to arbitrary interference with her privacy due to the nature of her work, especially if she is a live-in worker. Monitoring phone conversations and restricting access to others, either by requiring an escort or otherwise, are violations of Article 17. In addition, domestic workers report that their employers listen in on telephone conversations, open and read their mail, and search their purses and rooms.⁵⁰ Article 17 also protects the domestic workers against arbitrary interference with her family. Nonetheless, domestic workers report that employers visit or otherwise contact their home countries to threaten and harass workers' families for various reasons, including to persuade the worker to drop any suit against the employer.⁵¹

Limitations on Freedom of Expression (Article 19)

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

⁴⁶ *Id.* at 13. The threat of deportation can lead to severe seclusion for domestic workers in the U.S. illegally. See Margaret Satterthwaite, *Crossing Borders, Claiming Rights: Using Human Rights Law to Empower Women Migrant Workers*, 8 Yale H.R. & Dev. L.J. 1 (2005); Denying domestic workers the ability to attend religious services also is a violation of Article 18.

⁴⁷ *Hidden in the Home*, *supra* note 3, at 21.

⁴⁸ ICCPR Article 17.

⁴⁹ General Comment 28, *supra* note 40.

⁵⁰ *Hidden in the Home*, *supra* note 3, at 18.

⁵¹ *Id.* at 32-33. For example, Human Rights Watch documented the story of Gladys Larbu, a domestic worker from Ghana. After she left her employer and filed a complaint against him with the World Bank, her employer visited her mother in Ghana where he made threats and pressured her mother to get her to drop the complaint.

conditions which in practice affect the exercise of this right.”⁵² It is this last directive, which while unmentioned by the United States in its State report, that gives valuable insight into the plight of the domestic worker.

27. For the domestic worker, it is the conditions which in practice affect her right to freedom of expression that reflect violations of that right by both private employers and the state. Employers of domestic workers limit their freedom of expression directly through three primary means: (1) limiting who the worker speaks with either directly or by misrepresenting the dangers of talking to “strangers”⁵³ or talking in her native language;⁵⁴ (2) limiting the worker’s freedom of movement;⁵⁵ and (3) threatening deportation or retaliation against the worker’s family if she reports abuses.⁵⁶
28. Freedom of expression also includes “freedom to seek, receive and impart information and ideas of all kinds.” Yet the United States fails to provide adequate mechanisms through which domestic workers can enjoy this right. More specifically, the United States has not implemented an effective and safe reporting model through which domestic workers can complain of abuses at work, nor does it provide adequate access to legal services.
29. Due to the nature of domestic work, the burden of enforcement lies with the domestic worker. However, the domestic worker who seeks to file such a complaint faces enormous barriers and risks in doing so. To begin with, domestic workers express a number of fears that prevent such reporting, including “lack of knowledge of the U.S. legal system” and “fear that employers would report them to the INS [Immigration and Naturalization Service] and that they would subsequently be removed from the United States.”⁵⁷ These fears are well-founded. The United States has failed to structure a visa and work authorization system which allows workers to stay in the United States to pursue remedies. For those who are in the United States illegally, their immigration status can be investigated should they report a violation, and they subsequently will face deportation. Because domestic workers’ visas are tied to their employment, if an employer fires his worker for reporting a violation, the worker could face deportation or may economically be unable to stay in the United States if she can not obtain work authorization.⁵⁸

DENIAL OF EFFECTIVE REMEDIES – ARTICLE 2

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

⁵² HRC, General Comment 23, Article 27 (Fiftieth session, 1994), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/I/Rev.1 at 38 (1994).

⁵³ *Hidden in the Home*, *supra* note 3, at 14.

⁵⁴ *Id.* at 15. See also Human Rights Watch and American Civil Liberties Union, Human Rights Violations in the United States: A Report on U.S. Compliance with the International Covenant on Civil and Political Rights (1993) (discussing how language rights are protected under Article 2 of the ICCPR).

⁵⁵ See *infra* discussion of ICCPR Article 12, Freedom of Movement.

⁵⁶ *Hidden in the Home*, *supra* note 3, at 32.

⁵⁷ *Id.* at 32.

⁵⁸ *Id.*, at 33-34

passport, and made threats to have her arrested and deported if she left, abuses typical for the domestic worker of a diplomat. Ten years ago, Ms. Tabion filed suit against her employer, seeking her back wages, among other remedies. Ms. Tabion's lawyers argued that an exception to immunity applied—the commercial activities exception. The Court disagreed with Ms. Tabion, and upheld immunity. One year later, the Court of Appeals for the 4th Circuit affirmed this ruling in *Tabion v. Mufti*.⁵⁹ Since then, advocates for the exploited workers of diplomats have been denied access to the courts in any case where diplomats invoke their immunity.⁶⁰

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

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

31. The U.S. reservations, understandings, and declarations, designed to make the ICCPR more compatible with the already existing laws of the United States,⁶¹ have lessened the protection of domestic workers' rights under the treaty. One reservation states that the "United States considers itself bound by article 7 to the extent that 'cruel, inhuman or degrading treatment or punishment' means the cruel and unusual treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States."⁶² Furthermore, the United States felt that the "broad anti-discrimination provisions [of the ICCPR]. . . do not precisely comport with longstanding Supreme Court doctrine in the equal protection field."⁶³ As a result the United States included an understanding attempting to ensure that the terms of Article 2 and Article 26 coincide with current domestic law and

⁵⁹ 73 F.3d 535 (4th Cir. 1996).

⁶⁰ Elizabeth Keyes of the Domestic Worker & Trafficked Persons Project CASA of Maryland, Testimony given at the Inter-American Commission for Human Rights (Oct. 14, 2005).

⁶¹ SENATE COMM. ON FOREIGN RELATIONS REPORT ON THE INTERNATIONAL COVENANT OF CIVIL AND POLITICAL RIGHTS, S. REP. NO. 102-23, at 3-4 (1992), *reprinted in* 31 I. L. M. 645 (1992) [hereinafter S. COMM. REP.]

⁶² UNITED NATIONS, OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, 4. *International Covenant on Civil and Political Rights, New York 16 December, 1966*, Ratifications and Reservations (Last update 7 October 2005), at <http://www.ohchr.org/english/countries/ratification/4.htm>.

⁶³ S. COMM. REP., at 15.

precedent, thereby precluding those anti-discrimination Articles from providing anyone, including domestic workers, with protections greater than those already provided by domestic law.⁶⁴ In addition, the United States declared the first 27 Articles of the ICCPR to be non self-executing, preventing the ICCPR from creating a private cause of action in U.S. courts.⁶⁵ The United States has also denied an alternative method of protection by failing to ratify the ICCPR's first Optional Protocol. The preclusion of these types of remedies seems contrary to the spirit of Article 2 and hinders individuals such as domestic workers in their quests to attain justice.

Barrier to Effective Remedies: Diplomatic Immunity (Article 2)

32. Diplomatic immunity directly opposes the ICCPR's Article 2 directive that a domestic worker whose rights have been violated must have an effective remedy.⁶⁶ Under diplomatic immunity, the general rule is that employers protected by immunity are not subject to the civil, criminal, or administrative jurisdiction of the United States with some minor exceptions.⁶⁷ Where a diplomat with full immunity commits a criminal offense against a domestic worker, "the State Department must request and receive from the employer's sending state an express waiver of immunity."⁶⁸ In cases of a civil offense, "the State Department's official policy is to 'intervene' when presented with satisfactory evidence of civil liability and when the matter was raised unsuccessfully with the diplomat,"⁶⁹ though data suggests this avenue is underused.⁷⁰
33. Administrative and technical staff of diplomats, while enjoying full immunity for criminal acts, only enjoy civil and administrative immunity for acts performed in "the course of their duties."⁷¹ While acts related to employment of domestic workers probably do not fall within the "course of their duties" requirement for immunity, two obstacles still remain for domestic workers seeking redress against these types of limited immunity workers. First, many domestic workers may misunderstand the scope of diplomatic immunity, thinking full immunity extends to all officials.⁷² Consequently, they may be reluctant to bring forth any claim. Second, "even if a civil judgment is entered against an employer with limited immunity, execution of that judgment may be difficult, as the majority of the employer's assets are often abroad."⁷³
34. For the domestic worker, diplomatic immunity means two things. First, if an employer protected by diplomatic immunity violates a worker's rights, the worker has no recourse against him or her. Second, if her employer does recognize her rights, say to join a union,

⁶⁴ UNITED NATIONS, OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *supra* note 67.

⁶⁵ S. COMM. REP., at 19; *See Leienbach v. Williamson*, No. 05-3224, 2005 U.S. App. LEXIS 23030, at *5 (3rd Cir. Ct. of App. Sept. 23, 2005); *United States v. Duarte-Acero*, 296 F.3d 1277, 1282 (11th Cir. 2002).

⁶⁶ ICCPR, Article 2(3)(a).

⁶⁷ *Hidden in the Home*, *supra* note 3, at 34-35.

⁶⁸ *Id.*

⁶⁹ *Id.* at 35.

⁷⁰ A 2001 study reported that only one civil case came to the attention of the State Department who, rather than request a waiver of immunity, submitted a statement supporting it. *Id.*

⁷¹ *Hidden in the Home*, *supra* note 3, at 35 (citing Vienna Convention on Diplomatic Relations, Article 37(2)).

⁷² CASA of Maryland, *supra* note 63, at 3.

⁷³ *Hidden in the Home*, *supra* note 3, at 35.

that right is basically rendered meaningless because if the domestic worker later seeks to enforce a union-obtained right, she will find that she cannot effectively do so.

35. In addition to diplomatic immunity, the U.S. courts' interpretation of the commercial activity exception contained in Article 31(c) of the Vienna Convention on Diplomatic Relations⁷⁴ provides another barrier to domestic workers' realization of effective remedies. The exception to immunity exists for "any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions."⁷⁵ While the Convention does not define "commercial activity," the 4th Circuit Court of Appeals for the United States ruled in *Tabion v. Mufti* that "commercial activity" includes only activities engaged in for personal profit, explicitly stating that domestic workers are not covered.⁷⁶ The effect of *Tabion* is to deny domestic workers any claim in the civil justice system should their employer be a diplomat.

Barrier to Effective Remedies: Immigration Status

36. The domestic worker's visa status is tied to her employment. For a domestic worker who complains of a violation and either voluntarily leaves or is involuntarily fired for reporting a violation, the Department of Homeland Security (DHS) determines whether she may remain in the United States to seek a remedy. It is solely up to the discretion of DHS to allow the domestic worker to remain within the United States through the completion of her suit; there is no special visa option that will allow her to do so.⁷⁷ Additionally, even if DHS does allow the domestic worker to stay, it could still deny her work authorization.⁷⁸ If DHS discovers an undocumented worker's status, she will be deported. Under *Hoffman Plastic Compounds Inc. v. National Labor Relations Board*, an employer can inquire into the immigration status of an employee who sues them.⁷⁹

37. The identities of domestic workers are also implicated in their ability to seek and obtain effective remedies. Because most domestic workers are migrant women, their immigration status is exploited by employers and not protected by the State, resulting in ineffective access to remedies. According to one report, many domestic workers cited "fear that employers would report them to USCIS and that they would subsequently be removed from the United States" as a major reason for not reporting human rights violations. This fear is not groundless as U.S. laws fail to protect either documented or undocumented domestic workers. Additionally, *Hoffman Plastic* creates a disincentive for undocumented workers to report violations.⁸⁰

⁷⁴ Apr. 18, 1961, 23 U.S.T. 3227, T.I.A.S. No. 7502, 500 U.N.T.S. 96.

⁷⁵ U.S.T. 3227, at 3241.

⁷⁶ 73 F.3d 535 (4th Cir. 1996). *Tabion* was a domestic worker employed by a diplomat. She brought suit complaining of breach of contract, intentional misrepresentations in employment, false imprisonment, violations of 42 U.S.C.S. §§ 1981, 1985(3), and violations of the FLSA, after being subjected to low pay and long hours. The lower court found that her employer was protected by diplomatic immunity because the commercial activity exception to immunity as set forth in the Vienna Convention on Diplomatic Relations did not apply to the employment relationship. On appeal, that finding was affirmed.

⁷⁷ *Hidden in the Home*, *supra* note 2, at 33.

⁷⁸ *Id.*

⁷⁹ 535 U.S. 137 (2002).

⁸⁰ The decision has created a "chilling effect" as "undocumented workers. . . fear [an] inquiry [into their immigration status] will negatively affect themselves, their friends, or their family." Kathryn A. Dittrick, *Migrant Workers' Right to Organize*, 10, available at <http://www.humanrightsadvocates.org/images/Kate'sMigrantWorkerReport.doc>.

38. Though the DHS can exercise its discretion in allowing domestic workers to remain in the United States to pursue remedies, whether DHS actually exercises that discretion “varies greatly between... the regional offices.”⁸¹ Moreover, when DHS does choose to exercise that discretion, “it must do so through procedures not specifically designed for victims of human rights abuses.”⁸² If DHS allows the domestic worker to remain in the United States, but denies her work authorization, she will be unable to afford to remain in the United States. Not only does the worker in that position lack income because she cannot legally obtain a job, but, because of her undocumented alien status, “she is not eligible for federal public benefits, including welfare, health, and unemployment benefits, public or assisted housing, and food assistance.”⁸³

Barrier to Effective Remedies: Practical Obstacles

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

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

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

⁸¹ *Hidden in the Home*, *supra* note 3, at 33.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ For example, a U.S. immigration officer remarked, “Every employer and domestic worker ought to have the flexibility to work out their own best arrangement without worrying about the government of the courts invading people’s private lives.” *Id.*

⁸⁵ Graunke, *supra* note 30, at 186.

⁸⁶ HRC, General Comment 3, Article 2 Implementation at the national level (Thirteenth session, 1981), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 4 (1994).

⁸⁷ *Hidden in the Home*, *supra* note 3, at 32.

RECOMMENDATIONS

1. Already existing domestic laws that protect other workers, like the Fair Labor Standards Act, National Labor Relations Act, and Title VII should be expanded to fully cover the rights of domestic workers. Exclusion of domestic workers from laws reinforces the societal attitude that domestic workers are somehow inferior individuals and employees.
2. Laws which should protect domestic workers must be enforced in order to actually provide that protection in practice. This would require the United States to enforce laws like the federal minimum wage, and change its policies to include domestic workers in the enforcement regulations of the Occupational Safety and Health Act.⁸⁸ Without action by the government, employers are able to continue to abuse domestic workers with impunity.
3. There are a number of approaches the United States could take to resolve the re-victimization of domestic workers through denial of Article 2 rights. Visa reform is one option. First, a special visa system could be used to automatically grant domestic workers who bring forward a formal complaint of human rights violations a visa and work authorization. Such a system is already in place for victims of trafficking and other criminal conduct (U and T visas) and should be expanded to protect domestic workers facing other types of abuse.⁸⁹
4. Better access to social services would provide domestic workers with opportunities to receive accurate information, correct misconceptions created by employers, and file complaints about rights violations. Social services could also serve as a social support network and a contact if something goes wrong. In order for domestic workers to seek remedies for their abuses, they must feel like there is a legitimate alternative to staying in the abusive home. Resources like shelters and legal aid must be made available to domestic workers.
5. The United States must address the problems posed by claims of diplomatic immunity in the cases of domestic workers who have been abused or exploited by their employers. For example, in those cases with evidence of exploitation and abuse, the U.S. government should request a waiver of immunity from the diplomat's home country to allow the domestic worker to seek remedy through the courts.

⁸⁸ The Code of Federal Regulations states that “[a]s a matter of policy, individuals who, in their own residences, privately employ persons for the purpose of performing for the benefit of such individuals what are commonly regarded as ordinary domestic household tasks. . . shall not be subject to the requirements of [OSHA] with respect to such employment.” 29 C.F.R. § 1975.6 (2005). Domestic employees are ‘working men and women in the nation’ and as such should be protected under the Act. Their work, which involves exposure to potentially dangerous items such as cleaning chemicals, knives, and gas stoves is not innately safe and healthful as to make the Act unnecessary. See Katharine Silbaugh, *Turning Labor into Love: Housework and the Law*, 91 NW. U. L. REV. 1, 77 (Fall 1996). The tasks performed by domestic workers, such as cooking, cleaning, and child care, are the same tasks performed by other workers covered by the Act. Though enforcement of OSHA may be more difficult in the private setting of domestic work, “It is not enough to say that the enforcement of the Act would be too difficult because of the job site; [the Act] regulates the working conditions of other people who enter private homes on a regular basis.” Katharine Silbaugh, *Turning Labor into Love: Housework and the Law*, 91 NW. U. L. REV. 1, 77 (Fall 1996).

⁸⁹ For example, Congress should establish a new visa category for undocumented workers who suffer violations of their right to organize and bargain collectively, and the USCIS should exercise discretionary authority to allow them to remain in the United States.” Lance Compa, *Workers’ Freedom of Association in the United States: The Gap Between Ideals and Practice*, in *WORKERS’ RIGHTS AS HUMAN RIGHTS* 23, 51 (ed. James A. Gross, Cornell University 2003).

6. Finally, the United States should adopt the ICCPR Optional Protocol to allow for individual reporting to the Human Rights Commission.

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