

COALITION LETTER

VIA HAND DELIVERY

March 20, 2009

Secretary Hillary R. Clinton  
Secretary of State  
U.S. Department of State  
2201 C Street, N.W.  
Washington, D.C. 20520

Dear Secretary Clinton:

The undersigned leaders of non-governmental organizations and advocates against trafficking in persons write today to offer our cooperation, assistance, and expertise as the State Department begins to implement the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110–457 (“TVPRA of 2008”). We know that you have labored for more than a decade in the fight against human trafficking. We recognize the tremendous leadership role you took during the Clinton Administration to pass the first Trafficking Victims Protection Act and to elevate human trafficking as an important foreign policy issue. We hope that you will continue to lead in this area and we look forward to working with you.

As you know, the United States gives the employees of foreign missions and international organizations the privilege of bringing household and childcare workers into this country on special A-3 and G-5 visas. Each year, more than 2,000 A-3 and G-5 visas are issued to individuals, predominantly to women. The State Department requires diplomats to sign employment contracts with their domestic employees that comport with United States law and guarantee fair working conditions. However, diplomats and representatives of international organizations frequently violate these requirements, subjecting women to trafficking, violence, exploitation, and abuse. The current system is marked by a lack of oversight and accountability that allows members of the diplomatic community to traffic and exploit their workers with impunity.

A July 2008 Government Accountability Office study, commissioned by Senator Durbin and Senator Coburn, reported 42 documented allegations in the United States of unlawful abuse, exploitation, or human trafficking by foreign diplomats with immunity since 2000.<sup>1</sup> The report further identified 19 criminal investigations of foreign diplomats opened by the Department of

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<sup>1</sup> Government Accountability Office, *U.S. Government’s Efforts to Address Alleged Abuse of Household Workers by Foreign Diplomats with Immunity Could be Strengthened*, Report to the Subcommittee on Human Rights and the Law, Subcommittee on the Judiciary, U.S. Senate, July 2008 (attached as Exhibit A).

Justice in the past three years alone. As Senator Durbin stated in the Congressional Record, “These are not isolated incidents.”<sup>2</sup>

In recent years, foreign diplomats have perpetrated some of the most egregious trafficking abuses against domestic workers reported in the United States. Yet, without exception, none of these diplomat traffickers have been brought to justice through criminal prosecutions even when requests, by the Department of Justice and advocates, were made to waive immunity so that criminal prosecutions could proceed. In only one case has an A-3 visa-holder employed as a domestic worker succeeded in holding the traffickers civilly accountable. And, even in that matter, the diplomats never paid the judgment awarded by a federal court. Diplomats routinely use their immunity as a shield to protect them from criminal or civil jurisdiction in the United States. Indeed, immunity in this context is nothing short of impunity.

As advocates, we have worked for years to gain protections for victims trafficked into the United States. And as attorneys, we have spent years seeking damages and justice for trafficking victims in U.S. courts. The TVPRA of 2008 is an important step in the right direction. Because many of us fought to win the provisions included in the new law — particularly those providing protections for the holders of A-3 and G-5 visas — we are eager to participate in the law’s implementation.

The TVPRA of 2008 includes enhanced protections for foreign domestic workers and other non-immigrant visa holders. Some of the key provisions include:

- Section 202(a) requires the development and distribution of an information pamphlet on legal rights and resources for aliens applying for employment- or education-based non-immigrant visas. The law also requires the Secretary of State to “consult with nongovernmental organizations with expertise on the legal rights of workers and victims of severe forms of trafficking in persons” when drafting the pamphlet. The deadline for completion of the pamphlet is 180 days after enactment.
- Section 202(e) requires Consular Officers of the State Department to provide and elicit specific information when interviewing individuals seeking employment-based non-immigrant visas.
- Section 203(b)(3) requires “appropriate training” for Consular Officers.

In addition to the protections outlined above, the TVPRA of 2008 also includes provisions relating specifically to A-3 and G-5 visas. Section 203, Protections, Remedies and Limitations on Issuance for A-3 and G-5 Visas, outlines significant new authority for the Secretary of State:

- Section 203(a)(2) requires the Secretary of State to suspend the issuance of A-3 or G-5 visas to applicants “seeking to work for officials of a diplomatic mission or an international organization, if the Secretary determines that there is credible evidence that one or more employees” have abused or exploited one or more non-immigrants holding an A-3 or G-5 visa, where the diplomatic mission or international organization tolerated such actions.

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<sup>2</sup> Congressional Record, December 11, 2008, S10936.

- Section 203(b)(4) requires the Secretary of State to maintain records on allegations of employer abuse of non-immigrant holders of A-3 and G-5 visas.
- Sections 203(b)(1) and (2) require the creation and execution of a mandatory, uniform employment contract between the A-3 or G-5 visa recipient and employer.
- Section 203(d)(1) requires the Secretary of State to issue a report — within 180 days of enactment — on the implementation of the law, including an assessment of actions taken by the Departments of State and Justice to investigate allegations of trafficking or abuse and the results of such investigations.
- Section 203(d)(2) requires the Secretary of State to issue a report — within 180 days of enactment — on the establishment of a monitoring system and analyzing a range of compensation approaches for victims of exploitation and abuse by diplomats, such as a bond program.
- Section 203(e) requires the Secretary of State to cooperate with investigations by U.S. law enforcement relating to the abuse or exploitation of A-3 and G-5 visa recipients, “to the fullest extent possible consistent with the United States obligations under the Vienna Convention on Diplomatic Relations, done at Vienna, April 18, 1961 (23 U.S.T. 3229).”

Over the last decade, victims of trafficking and labor exploitation perpetrated by diplomats and employees of international organizations have relied on nongovernmental organizations for support and representation. As a result, we have significant experience and expertise to offer the State Department as it begins to implement these important provisions. We have outlined suggestions for each of these provisions below.

#### Development of Anti-Trafficking Pamphlet

Since the law requires consultation with expert nongovernmental organizations, we request that the State Department convene a meeting to discuss the contents of the pamphlet. Several members of our informal coalition have extensive experience in drafting such pamphlets; others have already created information sheets for distribution by nongovernmental organizations in several countries of origin.

#### Creation and Execution of a Mandatory and Uniform Employment Contract

A mandatory contract with explicit terms and conditions of employment is crucial to protecting the rights of A-3 and G-5 recipients. It is a powerful tool that educates both parties, establishes the contours of acceptable behavior, and binds the signatories. Moreover, the contract can serve as a key reference point should the State Department choose to intervene and assist in holding an employer or diplomatic mission accountable. We have examined previous contracts between visa recipients and their employers and we stand ready to assist the State Department in drafting a document that meets the letter and spirit of the TVPRA of 2008.

#### Training of Consular Officials

The signatories to this letter, collectively, have worked with hundreds of trafficking victims. Drawing from this knowledge base, we offer our assistance in designing and implementing training programs for the community of consular officers.

## Suspension Requirements

While representing victims of trafficking and severe labor abuses, we have observed the refusal of governments to hold their own diplomats and citizens accountable for these crimes. Instead, these governments have tolerated the abuse. Moreover, several countries have taken steps to block victims' efforts to recover lost wages and damages. These countries should receive immediate suspension notices, as authorized by Section 203(a)(2) of the TVPRA of 2008. As a preliminary matter, we ask that the State Department consider sanctioning two of the most egregious violators: Tanzania and Kuwait.

We have enclosed press reports concerning diplomats from these states as Exhibit B and would be happy to provide additional details about these two cases, as well as many others.

## Reports on Investigations

Section 203(d)(1) requires that the State Department issue a report on its own actions and those of the Department of Justice to investigate allegations of trafficking and abuse. Again, this report is due 180 days after enactment, in late June.

As you draft this report, we would be happy to provide information on the State Department's past performance in concrete cases of trafficking by diplomats. As a general rule, we have found the Protocol Office at the State Department utterly unresponsive; our efforts to inform the office of pending cases fell on deaf ears. Our requests for assistance in negotiating with embassies went unanswered. With the exception of the Department's Trafficking in Persons Office, we received no assistance whatsoever from the Department in pursuing remedies for the victims we have represented over the past decade. We hope that under your leadership this record will improve markedly.

## Assistance to Law Enforcement Investigations

As noted above, Section 203(e) requires the State Department to cooperate with any investigation by U.S. law enforcement authorities of crimes related to abuse or exploitation of non-immigrants holding these special visas, consistent with U.S. treaty obligations. In order to comply with this provision, the State Department should determine in advance which investigative steps it will permit the Department of Justice to undertake in conducting investigations of diplomats stationed in the United States. On more than one occasion, the State Department and the Department of Justice have clashed on which investigative methods, such as consensually-monitored telephone calls, will be permitted. These conflicts have caused extensive delays in criminal investigations, and have forced civil litigators to postpone filing of victims' civil complaints to accommodate Department of Justice requests. These unresolved inter-agency disputes unnecessarily squander trafficking victims' opportunities to obtain justice.

The July 2008 GAO report specifically referenced this problem. The report recommended that the Secretaries of State and Homeland Security and the Attorney General outline a process for

determining which specific techniques can be used during investigations. Significantly, all three Departments informed GAO that they concurred with this recommendation.

We hope that the Department will examine its past actions in this area, and chart its future cooperation, with this Congressional mandate in mind.

### Recordkeeping Requirements

The State Department's maintenance of records on domestic workers brought to the United States on A-3 and G-5 visas has been uneven at best. The 2008 GAO report confirmed the agency's recordkeeping failures.

Section 203(b)(4) requires the Secretary of State to maintain records on A-3 and G-5 visa holders in the United States, including dates of the non-immigrant's entry and exit; the title, contact information and immunity level of the employer; and information regarding any allegations of employer abuse received by the Department of State. We hope that the Department will go beyond these minimum requirements and will institute a robust recordkeeping protocol designed to: 1) track workers' visa status and renewal applications; 2) maintain copies of workers' contracts and passports (which are routinely and illegally seized by diplomats); and 3) track violations of labor rights by the diplomat perpetrator's name and country of origin. Again, we are eager to assist in this effort.

### Report on Monitoring System and Compensation Programs

As advocates, we know that traffickers isolate and threaten their victims once they arrive in the United States. This isolation, often exacerbated by the domestic workers' inability to speak English, provides cover for traffickers, permitting the forced labor to continue unchecked. While some of these women escape, they are stunned to learn that diplomatic immunity thwarts their efforts to obtain compensation for the physical, emotional and sometimes sexual abuse they have suffered. Even trafficking victims fortunate enough to enlist NGO support and pro bono legal representation find their attempts to seek legal recourse blocked by assertions of diplomatic immunity.

Sections 203(d)(1) and (2) require that the State Department begin to address these twin problems. Within 180 days of enactment, the law requires the Department to issue a report on the feasibility of establishing a system to monitor the treatment of non-immigrants holding A-3 or G-5 visas. The same provision requires that the Department examine possible compensation approaches, such as "a bond program, compensation fund, or insurance scheme" to ensure that victims of exploitation and abuse receive "appropriate compensation." Several countries have instituted programs to enable workers exploited by diplomats to recover compensation. Again, nongovernmental organizations and independent experts stand ready to assist in considering the various options and in evaluating specific proposals to monitor and to provide compensation.

### *Conclusion*

The passage of the TVPRA of 2008 presents an unprecedented opportunity to right a long-standing wrong. We wish to work cooperatively with the State Department to create realistic and innovative solutions to what has been an intractable issue. We know that under your leadership, and with the mandates Congress has delivered, change is imminent.

We would welcome the opportunity to meet with you or a member of your staff on April 16, 2009, or at your earliest convenience, to discuss the issues raised in this letter. Please let us know if April 16<sup>th</sup> is a possible date to initiate our efforts.

Sincerely,

Organizations

American Civil Liberties Union  
Arizona Coalition Against Domestic Violence  
Ayuda  
Break the Chain  
CASA de Maryland  
City University of New York International Women's Human Rights Clinic  
Coalition to Abolish Slavery & Trafficking  
ECPAT-USA  
Free the Slaves  
Human Rights Watch  
International Labor Rights Forum  
Iowa Coalition Against Domestic Violence  
Legal Momentum  
National Asian Pacific American Women's Forum  
National Employment Law Project  
Not for Sale  
The Ricky Martin Foundation  
Safe Horizon  
The Sex Workers Project at the Urban Justice Center  
Tahirih Justice Center  
Women Empowered Against Violence  
Workers' Rights Law Center of New York, Inc.

Individuals

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Elizabeth Demirgian, O.P., Sister of the Catholic Religious Order-----Adrian Dominican Sisters  
Ann Jordan, Director, Program on Human Trafficking and Forced Labor, American University  
Washington College of Law (for identification purposes only)  
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cc Senator Richard Durbin  
Senator Tom Coburn  
Senator Patrick Leahy  
Senator Arlen Specter  
Senator John Kerry  
Senator Richard Lugar  
Representative Howard Berman  
Representative Ileana Ros-Lehtinen  
Representative John Conyers  
Representative Lamar Smith  
Attorney General Eric Holder