

May 21, 2018

Secretary of State Michael Pompeo
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Re: Enforcement of the Wilberforce Trafficking Victims Protection Reauthorization Act of 2008

Dear Secretary Pompeo:

The undersigned community-based organizations, labor organizers, human rights organizations, legal services organizations, and anti-trafficking advocates write to congratulate you on your confirmation as Secretary of State. We realize that you have a full docket of issues to address as you take up your new post at the State Department. We request that you place human trafficking high on your agenda.

This Administration has publicly stated that human trafficking is a priority issue. Yet trafficking of domestic workers by diplomats has festered in the absence of high-level leadership at the State Department. Unfortunately, foreign diplomats posted in the United States have used special visas reserved for domestic workers (A-3/G-5 visas) to hold these workers in forced labor and domestic servitude.

We commend the State Department on its efforts to prevent the abuse and exploitation of A-3/G-5 domestic workers. Under the State Department's pilot check-in program, A-3 and G-5 workers based in the Washington, D.C. area can disclose abuse or wage violations to a protocol officer. We applaud this effort and look forward to seeing the welfare-check program expanded to cover New York and the nation.

Despite these prevention initiatives, diplomats who engage in these crimes – and their countries of origin – continue to enjoy impunity. The State Department must also deploy Congressionally-mandated tools to hold diplomats accountable.

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

Bangladesh, India, and Malawi fully meet these criteria.

With the Wilberforce Act, Congress gave the State Department a powerful tool to halt the trafficking and abuse of domestic workers. To date, the State Department has not suspended a single nation, despite reports of human trafficking and other egregious exploitation.

¹ TVPRA, Section 203(a)(2) [emphasis added].

The Senate Appropriations Language attached to the State Department’s 2015 budget, and continued in effect by the Consolidated Appropriations Act, 2018², provides guidance on the criteria for suspension:

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

There is credible evidence that representatives and citizens of Bangladesh, India, and Malawi have abused or exploited non-immigrants holding A-3 or G-5 visas. Federal court judgments have issued against diplomats from all three countries. Victims in cases involving these diplomats have received T-visas. Unfortunately, despite these abuses, the State Department only rarely requests waivers of immunity.

I. There Is Significant Credible Evidence to Suspend Bangladesh, Malawi, and India

Bangladesh, India, and Malawi have had multiple, credible cases of human trafficking and abuse of domestic workers in the United States. The facts of these cases are outlined below:

A. Civil Human Trafficking and Abuse Case Involving Bangladeshi Diplomat

Rana v. Islam

On May 12, 2016, the federal court in the Southern District of New York issued a default judgment order finding the former Consul General of the Consulate General of Bangladesh and his wife liable for trafficking an A-3 domestic worker from Bangladesh to the United States for forced labor. The court awarded the victim \$922,597.31 in punitive and compensatory damages.⁴ Mr. Rana’s federal complaint alleged that he worked 17 hours each day for almost 19 months. Mr. Rana also alleged that the defendants forced him to cook food for events at the Bangladesh Consulate and work as a busboy and server during those events. He did not receive any wages for this work. The defendants allegedly confiscated Mr. Rana’s passport and threatened to kill him if he left the apartment without permission. If Mr. Rana asked for his wages, he was struck by the defendants. The consular official allegedly claimed that he could kill Mr. Rana and “not have to answer to anyone.” On April 6, 2018, the Second Circuit Court of Appeals issued a decision leaving the default judgment in place, remanding the case to the

² Consolidated Appropriations Act, 2018 § 7034(k), Pub. L. No. 115-141. (“Section 7034(k) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2015 (division J of Public Law 113–235) shall continue in effect during fiscal year 2018.”)

³ Department of State, Foreign Operations, and Related Programs Appropriations Act of 2015, § 7034(k), Pub. L. No. 113-235.

⁴ Complaint, *Rana v. Islam*, No. 14-cv-01993 (S.D.N.Y. Mar. 21, 2014); Order Entering Default Judgment, *Rana v. Islam*, No. 14-cv-01993 (S.D.N.Y. May 12, 2016).

district court for a recalculation of damages.⁵ On May 4, 2018, the federal district court in the Southern District of New York, in response to the appellate court's decision, issued a final order for damages in the amount of \$856,535.31.⁶

Bangladesh has tolerated this abuse. The defendant, Mr. Islam, has enjoyed a promotion since his departure from the United States. He now serves as his nation's ambassador to Ethiopia. Bangladesh has also retaliated against Mr. Rana, the victim in this case. A letter submitted to the State Department by Mr. Rana's pro bono attorneys at Dechert LLP on March 29, 2018 provides documentation that the Government of Bangladesh has refused to issue Mr. Rana a passport, despite multiple requests that they do so. This failure to issue a passport to a victim of human trafficking violates the Palermo Protocol, officially known as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. Retaliation against trafficking victims is further proof that the government has tolerated the abuse.

B. Civil Human Trafficking Case Involving a Malawian Diplomat

Lipenga v. Kambalame

On November 9, 2016, the federal court in the District of Maryland awarded a trafficking victim, a domestic worker from Malawi, \$1,101,345.20 in punitive and compensatory damages.⁷ The court found the defendant, a high-ranking diplomat at the Embassy of the Republic of Malawi, liable for trafficking the A-3 domestic worker from Malawi to the United States for forced labor. The victim, Ms. Fainess Lipenga, alleged that she worked at least 16 hours each day for approximately two years and eight months. She received just \$0.40 per hour. The defendant threatened Ms. Lipenga with arrest and deportation if she left. Ms. Lipenga further alleged that the defendant confiscated her passport, did not allow her to leave the house without permission, monitored her communications, forced her to sleep on a basement floor, and isolated her from her family and the Malawian expatriate community.

The defendant, Ms. Kambalame, was promoted by her government. She left the United States to become her nation's high commissioner to Zimbabwe and Botswana. Again, evidence that a diplomat accused of these crimes enjoys promotion following their departure from their U.S. post is compelling evidence that the sending state has tolerated the abuse.

On April 3, 2018, in response to inquiries from the Department of State, the Government of Malawi provided a false report to the United States that the judgment of \$1,101,345.20 was settled for \$20,000. Contrary to the misleading information provided by the Government of Malawi, the parties have *not* engaged in any settlement negotiations since the court's entry of judgment. This case has *not* settled; the judgment remains unpaid and outstanding. The victim's pro bono counsel continues to press for an *ex gratia* payment from the Government of Malawi.

⁵ *Rana v. Islam*, No. 16-3966-cv (2d Cir. April 6, 2018).

⁶ Order, *Rana v. Islam*, No. 14-cv-01993 (S.D.N.Y. May 4, 2018)

⁷ Complaint, *Lipenga v. Kambalame*, No. 14-cv-03980 (D. Md. Dec. 19, 2014); Order Granting in Part and Denying in Part Motion for Default Judgment, *Lipenga v. Kambalame*, No. 14-cv-03980 (D. Md. Nov. 9, 2016).

C. Criminal and Civil Human Trafficking/Abuse Cases Involving Indian Officials

Gurung v. Malhotra

On November 22, 2011, the federal court in the Southern District of New York issued a default judgment final order finding an Indian consular official and her husband liable for trafficking an A-3 domestic worker from India to the United States for forced labor. The court awarded the victim \$1,458,335 in punitive and compensatory damages. Ms. Gurung's federal complaint alleged that the defendants forced her to work 16 hours each day for over three years. She received a one-time payment of \$150. Ms. Gurung slept on the living room floor and was given very little to eat. The complaint further alleged that the defendants confiscated her passport, did not allow her to leave the house alone, and threatened her with arrest if she tried to leave. After almost seven years, the judgment remains unpaid.

United States v. Khobragade

In December 2013, the Deputy Consul General of India, Devyani Khobragade, was arrested and later charged with visa fraud and providing false statements to the U.S. Government. Khobragade allegedly forced her A-3 domestic worker to work long hours for as little as \$1.22 per hour. Khobragade allegedly promised the domestic worker a good wage and working conditions. Upon arrival in the United States, she forced the victim to sign a second, illegal employment contract under which the victim earned significantly less than the minimum wage.⁸ The U.S. Government requested a waiver of immunity, which the Government of India rejected. The indictment was dismissed on diplomatic immunity grounds.⁹ In March 2015, an indictment was re-issued following Khobragade's departure from the United States.¹⁰ That indictment remains valid and the defendant is subject to arrest upon her return to the United States.

II. Bangladesh, India, and Malawi Have Tolerated the Abuse

Congress included a definition of "tolerating abuse" in the 2018 Appropriations Report Language. The report language states:

In addition to the directives in subsection (k) of this section and with respect to the implementation of section 203(a)(2) of Public Law 110-457, the Secretary of State shall consider the following as sufficient to determine that a diplomatic mission "tolerated such actions": the failure to provide a replacement passport within a reasonable period of time to a T-visa recipient; the existence of multiple concurrent civil suits against members of the diplomatic mission; or a failure to satisfy a civil judgment against an employee of the diplomatic mission.¹¹

⁸ Indictment, *United States v. Khobragade*, No. 1:14-cr-00008 (S.D.N.Y. Jan. 9, 2014).

⁹ Opinion and Order, *United States v. Khobragade*, No. 1:14-cr-00008 (S.D.N.Y. Mar. 12, 2014).

¹⁰ Indictment, *United States v. Khobragade*, No. 1:14-cr-00176 (S.D.N.Y. Mar. 14, 2014).

¹¹ 115th Cong. Rec. H2848 (daily ed. Mar. 22, 2018) (Explanatory Statement Submitted By Mr. Frelinghuysen, Chairman Of The House Committee On Appropriations, Regarding The House Amendment To Senate Amendment On H.R. 1625).

The multiple cases described above illustrate that the governments of Bangladesh, India, and Malawi have tolerated this abuse:

Bangladesh has an outstanding civil judgment against a diplomat accused of trafficking an A-3 domestic worker. The Government of Bangladesh has sought to protect its diplomats, rather than holding them accountable. Additionally, Bangladesh has made no effort to settle the original 2016 default judgment of \$922,597.31 against its former Consul General (*Rana v. Islam*, above). Far from facing censure, this official went on to become the Ambassador of Bangladesh to Morocco and currently serves as the Ambassador to Ethiopia.¹² In addition, the Government of Bangladesh has retaliated against the victim, refusing to provide him with a replacement passport.

Malawi has one outstanding civil judgment against a diplomat accused of trafficking an A-3 domestic worker. Malawi has made no effort to settle the 2016 final judgment of \$1,101,345.20 against the diplomat (*Lipenga v. Kambalame*, above). This diplomat continues to enjoy impunity; indeed, she was promoted to become Malawi's High Commissioner to Zimbabwe and Botswana. The victim in this case received a T-visa.

India has one outstanding civil judgment (A-3) and one pending criminal case (A-3) against diplomats. The country has made no effort to settle the 2011 final judgment of \$1,458,335 against an Indian consular official (*Gurung v. Malhotra*, above). The Government of India also went to great lengths to shield a consular official from criminal prosecution, transferring her to the Indian Mission to the United Nations to obtain full diplomatic immunity. India refused to waive immunity when requested (*United States v. Khobragade*, above).

Given the magnitude of domestic worker abuse by officials from Bangladesh, India, and Malawi, the United States government should enforce U.S. law and suspend *all* three countries from A-3/G-5 visa privileges. The failure to do so only rewards Bangladesh, India, and Malawi's continued tolerance of abuse and exploitation of non-immigrants holding A-3/G-5 visas.

Conclusion

This record provides significant, credible evidence to warrant the suspension of Bangladesh, India, and Malawi from A-3/G-5 visa privileges. Congress sent a clear message in 2008: there must be consequences for diplomats and international officials who abuse and exploit domestic workers. The State Department should now enforce the law to prevent further trafficking of domestic workers by diplomatic officials of these three nations. Their record of abuse speaks for itself.

A 2015 report by the National Domestic Workers Alliance called upon the State Department to “ensure meaningful consequences for diplomats and international officials and agencies who defraud or abuse domestic workers, including requesting waivers of immunity and suspending

¹² Press Release, Ministry of Foreign Affairs, *The Government has decided to appoint Md. Monirul Islam, currently serving as the Ambassador of Bangladesh in Morocco as our inaugural Ambassador to the Federal Democratic Republic of Ethiopia* (Jan. 7, 2016), <http://mofa.gov.bd/media/government-has-decided-appoint-md-monirul-islam-currently-serving-ambassador-bangladesh>.

countries and agencies from the ability to bring more workers.”¹³ We reiterate this call and ask for immediate suspension of Bangladesh, India, and Malawi.

If you have any further questions, please do not hesitate to contact Martina Vandenberg, president of the Human Trafficking Legal Center, at mvandenberg@htlegalcenter.org or 202-716-8485.

Sincerely,

Asian Pacific Islander Legal Outreach
Ayuda
Damayan
Freedom Network USA
The Human Trafficking Legal Center
Justice in Motion
My Sisters' Place
National Domestic Workers Alliance
The Santa Clara County Wage Theft Coalition
Sanctuary for Families
Fainess Lipenga
Agatha Schmaedick
Roxie Farrow
Florrie Burke
Professor Janie Chuang
Professor David Abramowitz

Cc:

Kari Johnstone, Acting Director, Office to Monitor and Combat Trafficking in Persons
Laura Rundlet, Senior Coordinator for Public Engagement, Office to Monitor and Combat Trafficking in Persons
Shonnie Ball, Deputy Senior Coordinator for Public Engagement, Office to Monitor and Combat Trafficking in Persons

Ambassador Alice G. Wells, Principal Deputy Assistant Secretary of State for South and Central Asian Affairs
Ambassador Daniel Y. Yamamoto, Acting Assistant Secretary of State for African Affairs

Ambassador Sean P. Lawler, Chief of Protocol
Gladys Boluda, Assistant Chief Protocol Officer
Nan Kennelly, Senior Advisor, Office of the Chief of Protocol

Michael T. Evanoff, Assistant Secretary of State for Diplomatic Security

¹³ National Domestic Workers Alliance, *Beyond Survival* at 9 (2015).

Ambassador Michele Bond, Assistant Secretary, Bureau of Consular Affairs
Kevin Wittenberger, Office of Consular Affairs

Senator Bob Corker, Chairman, Senate Foreign Relations Committee
Senator Bob Menendez, Ranking Member, Senate Foreign Relations Committee
Senator Marco Rubio, Senate Foreign Relations Committee
Senator Christopher Coons, Senate Foreign Relations Committee
Senator Ben Cardin, Senate Foreign Relations Committee

Senator Chuck Grassley, Chairman, Senate Judiciary Committee
Senator Patrick Leahy, Ranking Member, Senate Judiciary Committee