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TIFFANY WILLIAMS AND LEAH OBIAS

## An Organizing Approach to Human Trafficking in Domestic Work

60 N.Y.L. SCH. L. REV. 649 (2015–2016)

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Leah Obias is the Case Manager for Damayan Migrant Workers Association. Damayan's anti-trafficking campaign called Baklas was launched in 2010. Damayan is an anchor member of the Beyond Survival campaign of the National Domestic Workers Alliance.

## I. INTRODUCTION

As a labor rights organizer in New York (Obias) and a social justice advocate in DC (Williams), we have worked together for more than five years on a very specific issue: human trafficking of domestic workers. In this time, we have observed that, despite progress in advocating an inclusive approach toward trafficking into forced labor of all kinds, much of the discourse on human trafficking in the United States is still focused on commercial sex work. In national news, policy-making spaces, and larger metropolitan spaces, the inclusion of labor or migrant rights groups is now less unusual than it would have been ten years ago. But in small towns, on campuses, and in houses of worship—places where trafficking conversations and presentations are being organized en masse—the norm is still a sex-focused rescue rhetoric that makes the introduction of a labor-migrant organizing framework seem tangential. Though one of us is a licensed social worker and the other a case manager, we know that rescue and victim services alone offer an insufficient frame to the problem because neither touch on the root “push and pull” factors of forced migration. These factors include global economic or social pressures that “push” workers out of their own cities or countries—like conflict, climate collapse, or economic austerity measures—or “pull” them into migration through the promise of a new and better life for them or their families—like exploitative guest worker visas and deceptive recruitment practices.<sup>1</sup>

Beyond the limitations of rescue and victim services, perhaps the most disappointing trend is that the growing attention to trafficking has been focused on escalating policing, raids, and court interventions. Our observations and interactions with survivors—not only in our own community of domestic workers but also within larger networks of exploited workers—have not supported the idea that increased policing is the solution. Many of these exploited workers are fearful or distrustful of law enforcement; some workers are antagonized by law enforcement because of the nature of their work,<sup>2</sup> their race, or their immigration status. There are cases of women of color killed or assaulted by police in the communities where we live and work, even when they do not capture national media attention.

At the same time, we are seeing a small but growing consciousness of connections between trafficking and other social issues—for example, labor rights, migration rights, climate change, and trade inequality—on a global level. We believe this consciousness should be developed further, understood and validated by survivor-inclusive research, and then translated into action and policy change. We have found that looking outside the label of trafficking is helpful. International Labour Organization (ILO) Convention 189,<sup>3</sup> which covers basic rights of domestic workers,<sup>4</sup>

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1. UNITED NATIONS, OFFICE ON DRUGS AND CRIME, TOOLKIT TO COMBAT TRAFFICKING IN PERSONS 424 (2008), [https://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296\\_tool\\_9-2.pdf](https://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_9-2.pdf).

2. This is especially true for sex workers.

3. Int'l Labour Org., Convention Concerning Decent Work for Domestic Workers, June 16, 2011, No. 189 (entered into force 5 September 2013).

4. *Id.* These rights include, but are not limited to, the right to be free of “abuse, harassment and violence,” *id.* art. 5; the right to written contracts for domestic and migrant workers, *id.* arts. 7, 8(1); the right of

is not ostensibly an “anti-trafficking” convention, but its focus on some of the most egregious abuses faced by domestic workers makes it one of the most relevant tools available for understanding and addressing what trafficking in domestic work actually looks like. It is not a coincidence that the measure was crafted in close consultation with domestic worker groups organized on a global scale. These groups, which included the National Domestic Workers Association (NDWA) and sister organizations from around the world, came together to form the International Domestic Workers Federation (IDWF) during this ILO process. The IDWF steering committee included Confederación Latinoamericana y del Caribe Trabajadoras del Hogar (CONLACTRAHO), the regional network of domestic workers in Latin America and the Caribbean; the Asian Domestic Workers Network (ADWN); the South African Domestic Services and Allied Workers Union (SADSAWU); the Network for Domestic Workers Advocacy (Jala-PRT) in Indonesia; the Institute for the Promotion and Training of Domestic Workers (I PROFOTH) in Peru; and the National Union of Domestic Employees (NUDE) in Trinidad and Tobago.<sup>5</sup>

NDWA’s operating thesis, which we are testing in everyday life, is that work led by community-based organizations, in partnership with advocacy groups and service providers, is the best way to approach trafficking.<sup>6</sup> We believe this approach allows us to build power among the most affected groups, provide wraparound support for survivors, and refocus efforts on systemic problems that a policing and services model does not address.

## II. DOMESTIC WORKER ADVOCACY AND ORGANIZING ON HUMAN TRAFFICKING

Human trafficking and severe labor exploitation of domestic workers are not new problems; our organizations can document activism in the United States on these issues in the mid-1990s. In 1995, a story in the *Washington City Paper* that compared the plight of household workers employed by diplomats and international officials in the Washington, DC area to that of slaves<sup>7</sup> prompted the creation of one of the first projects focused exclusively on combatting the trafficking of domestic workers: the Break the Chain Campaign (BTCC) at the Institute for Policy Studies.<sup>8</sup> This project

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workers to retain their own passports, *id.* art. 9(c); and the imperative to regulate and monitor recruitment agencies, *id.* art. 15(1)(a).

5. *About Us*, INT’L DOMESTIC WORKERS FED’N (Sept. 10, 2014, 6:22 PM), <http://www.idwfed.org/en/about-us-1>.
6. For a case study of a community-based organization that utilizes an organizing approach, see Leah Obias, *Damayan: How Organizing and Trafficking Connect*, in *BEYOND SURVIVAL: ORGANIZING TO END HUMAN TRAFFICKING OF DOMESTIC WORKERS* 125 (Elly Kugler et al. eds, 2015), <https://traffickingresourcecenter.org/sites/default/files/Beyond%20Survival%20Organizing%20to%20End%20HT%20of%20Domestic%20Workers%20-%20NDWA.pdf>.
7. Martha Honey, *Capital Slaves*, WASH. CITY PAPER (May 12, 1995), <http://www.washingtoncitypaper.com/articles/6480/capital-slaves>.
8. *Break the Chain Campaign*, INST. FOR POL’Y STUD., <http://www.ips-dc.org/projects/break-the-chain-campaign/> (last visited Apr. 20, 2016).

responded not only with advocacy, but also with direct social and legal services for the workers—there was no Trafficking Victims Protection Act<sup>9</sup> or network of appropriate service providers yet.<sup>10</sup> At the same time, existing community-based organizations under the leadership of CASA de Maryland had joined forces to push for the first domestic worker bill of rights in Montgomery County, Maryland.<sup>11</sup>

Across the country, service organizations were starting to enroll domestic worker trafficking survivors. The Coalition to Abolish Slavery and Trafficking (CAST) in Los Angeles and Safe Horizon in New York City were among the first to provide rights-based social and legal services for survivors, and immigrant community groups—many of which would later become NDWA members—were working to organize and spread awareness of domestic worker rights on the job. In cities across the United States today, even more service providers and community-based organizations are taking on trafficking through a rights-based lens<sup>12</sup> and proactively including domestic workers as a target population for outreach. We are on the cusp of a more intentional partnership in these parallel tracks of service and organization. As quickly as one of these rights-based groups appears, however, ten more groups crop up to divert attention from prevention to policing.

### III. THE CONTINUUM OF EXPLOITATION: WHY TAKE A COMMUNITY-BASED ORGANIZING APPROACH TO A CRIME?

In 2014, one of us moderated a panel, titled “The Continuum of Exploitation,” at the New York Law School symposium on human trafficking.<sup>13</sup> The panelists, including Professor Janie Chuang of American University; Shannon Lederer of the American Federation of Labor and Congress of Industrial Organization (AFL-CIO); and Jaribu Hill, the Director of the Mississippi Workers’ Center for Human Rights, conveyed to us the complexity within which trafficking into forced labor occurs. On one end of the continuum are jobs with unpredictable schedules and no sick leave; on the other end of the continuum is slavery. If we only focused on the

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9. The Trafficking Victims Protection Act, first passed in 2000 and reauthorized four times since, is the comprehensive federal law in the United States which penalizes all forms of human trafficking, authorizes services and immigration relief for victims, and directs government agencies to create prevention and response plans. Trafficking Victims Protection Act, Pub. L. No. 106-386, 144 Stat. 1464 (codified at 22 U.S.C. §§ 7101–7112 (2012)).
  10. The Freedom Network, the main coalition of anti-trafficking social and legal service providers in the United States, was founded in 2001.
  11. Press Release, CASA de Maryland, Montgomery County Executive Signs Historic Domestic Workers Rights Bill Providing Protection to Housekeepers and Nannies (July 22, 2008), <http://cdm.nonprofitsoapbox.com/press-release/383-07222008>; see also Lizzy Ratner, *The New Domestic Order*, THE NATION (Sept. 9, 2009), <http://www.thenation.com/article/new-domestic-order/>.
  12. A rights-based organizing approach often develops leaders from within; offers globalized political education and analysis on root causes of trafficking; engages in campaigns, actions, and base-building; engages the worker community in meeting the needs of newly identified survivors; is worker-led and informed; and is an equal and respected partner to service providers and advocacy organizations.
  13. *New York Law School Law Review*, Symposium, *Innovations in the Fight Against Human Trafficking* (Oct. 10, 2014), <https://youtu.be/gxjpJ3caEqE>.

most extreme ends, we would lose sight of the chance to intervene in labor exploitation and trafficking in a more transformative way.

Affiliates of NDWA, along with groups like the Coalition of Immokalee Workers<sup>14</sup> and the National Guestworker Alliance,<sup>15</sup> center their anti-trafficking work within labor and immigrant rights organizing. The work experiences of NDWA members, many of whom have been victims of harassment or wage theft, demonstrate how blurry the line between labor exploitation and labor trafficking can be. Rather than pitting one type of experience against another, and thus one category of member against another, we orient our members toward acting in solidarity along the entire range of the continuum.

This focus matters because race, gender, class, profit, trade and tax rules, immigration, and other social constructions that drive inequality are also drivers of labor exploitation, and thus labor trafficking. We believe that focusing only on the perpetrator ignores the systemic context. Survivors want to see justice for those who abused them, but they also want to see justice on a scale that would protect their families and future generations from the same fate. Moreover, they want to see justice for the members who do not qualify for anti-trafficking services or attention.

We bring our organizing philosophy to the anti-trafficking fight. Practically, the lens and structure help identify where current systems are failing workers. But primarily, we believe that rescue alone is not an adequate goal, and therefore services or prosecutions alone are not adequate solutions.

#### *A. Better Identification*

We have observed few efforts to identify and respond to labor trafficking outside of our own work and that of our allies in the workers' rights movement. For this reason, we have reached the conclusion that we must take responsibility for identification of trafficking in our sector.

Professors Jennifer Gordon and Janice Fine propose a formal partnership between labor inspectors and community-based organizations in which the limited resources of the former can be enhanced by the deep knowledge and relationships of the latter<sup>16</sup>—especially when the partners are from the same sector and ethnic and linguistic background as the workers.<sup>17</sup> Empowering community-based organizations to coordinate “know your rights” outreach puts them in a better position than

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14. The Coalition of Immokalee Workers is a worker-based human rights organization that focuses on social responsibility, human trafficking, and gender-based violence in the workplace. Created in 1993, it utilizes a community organizing framework and works mainly with migrant farmworkers. *About CIW*, COALITION IMMOKALEE WORKERS, <http://www.ciw-online.org/about/> (last visited Apr. 20, 2016).

15. The National Guestworker Alliance (NGA) is a membership organization whose members “organize in labor camps across the United States to fight for collective dignity at work.” *About NGA*, NAT'L GUESTWORKER ALL., <http://www.guestworkeralliance.org/about-nga/> (last visited Apr. 20, 2016).

16. Janice Fine & Jennifer Gordon, *Strengthening Labor Standards Enforcement Through Partnership with Workers' Organizations*, 38 POL. & SOC'Y 552, 559–61 (2010).

17. *Id.* at 570.

government inspectors to identify exploitative working conditions.<sup>18</sup> Furthermore, the peer aspect of the outreach work may open up a less intimidating conversation for a worker who may be fearful or distrustful of law enforcement.<sup>19</sup> For many years, our groups have tested this thesis through the natural course of learning what works. Namely we have learned that we should be organizing and deploying peer leaders and other workers to be a source of information and assistance because workers tend to talk to each other more than they would a social worker or a police officer. Even in cases of human trafficking, workers are often able to go to play-dates and parks and to pick up children at school. In those spaces, even the most isolated workers have a chance to meet someone to whom they can relate.

*B. Healing Power of Organizing*

Though we conceive of its causes and solutions as structural and systemic, human trafficking is still personal: a violation of human rights that has a silencing and isolating effect and damages a person's sense of self-determination and ability to make choices about her life and body. This is particularly true in domestic work, where the workplace is a private home, outside the gaze of law enforcement, customers, and the public. Exposure to physical, emotional, verbal, or sexual abuse over the course of exploitative employment compounds the trauma. Several NDWA member organizations offer culturally appropriate therapy and informal counseling. One of our founding member organizations, Mujeres Unidas y Activas in Oakland, California, developed these culturally appropriate services over twenty-five years of community-based practice. Over the past few years, we have also introduced a relationship with Generative Somatics, a group focused on movement and body awareness as a means of opening and healing from trauma.

What makes our work with survivors different is the connection between these therapeutic concepts and the concepts of community building, sisterhood, and even power. When we meet with workers, we talk about how community-based organizing intends to create a voice, foster community, and build personal and political power. We believe these organizing aims could be a direct antidote to the effects of trafficking. A few of our member organizations, including Damayan Migrant Workers Association, have engaged social service organizations as partners. However, service providers and rescue groups must consider organizing and community-based worker centers as crucial partners when it comes to wraparound support for trauma.

*C. An Organizing Approach Allows for an Intersectional View and Intersectional Transformation*

Beyond crimes of evil or greed that call for a criminal justice response, trafficking, when viewed as a symptom of inequality, calls for a social justice response. As Jaribu Hill noted in her remarks at the 2014 symposium, class, race, immigration status, and

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18. *Id.* at 561.

19. *See id.*

even corporate influence are largely responsible for the modern shape of human trafficking.<sup>20</sup> Domestic work is a perfect prism through which to view the problem's intersectional nature because it is heavily defined by these factors. Furthermore, it has retained a legacy of slavery, even in modern times, because domestic workers are excluded from the basic labor protections offered to other workers.<sup>21</sup>

We are motivated by the idea that organizing around all of these intertwined aspects might lead us toward a more transformational solution to severe labor exploitation and trafficking. We envision an alternative more empowering than a rescue and police strategy and more comprehensive than an "end demand" strategy that focuses solely on sex. Beyond this, our vision of worker justice allows us the space to challenge corporate greed and reject solutions that enshrine corporate charity as an ideal source of anti-trafficking funding instead of calling out corporations' role in the human crises that precipitate migration and forced labor.

Our organizations share the mantra that change will happen only when communities become organized and build the power necessary to challenge the economic and social conditions that perpetuate labor exploitation. If risky migration and economic desperation open the door to trafficking, a broader response going back to rights-based labor migration policies and equitable economic development is an anti-trafficking measure. All over the global south, remittances keep food on the table for families who have been separated from their mothers, sisters, aunts, and cousins gone abroad because they cannot earn enough to stay in their own communities. We believe that the trade deals that undercut labor rights and the environment, and economic development programs which elevate cost-cutting and resource extraction, only serve to deepen poverty and inequality. Organizing around human rights and safety devoid of this context is not enough to transform systems; educating workers about economics and neoliberalism is required.

It is not a coincidence that the industries where labor trafficking flourishes are the same places where worker and migration rights are in daily jeopardy. We urge our allies in the fight against human trafficking to look more closely at these seemingly tangential fights around immigration and visas, minimum wage, and the right to organize. To focus narrowly on a symptom (trafficking) is to miss the forest for the trees.

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20. Jaribu Hill, Exec. Dir., Miss. Workers' Ctr. for Human Rights, Comments at the New York Law School Law Review Symposium: Innovations in the Fight Against Human Trafficking (Oct. 10, 2014), <https://youtu.be/gxjpl3caEqE?t=3m5s>.

21. Domestic workers have been excluded from the protections offered by the National Labor Relations Act, the Occupational Safety and Health Act, Title VII of the Civil Rights Act of 1964, the Family and Medical Leave Act, the Americans with Disabilities Act, and the Age Discrimination in Employment Act. Until 2015, many in-home domestic workers were carved out from the Fair Labor Standards Act. *Employment Protections for Domestic Workers: An Overview of Federal Law*, NAT'L DOMESTIC WORKERS ALLIANCE, [http://www.domesticworkers.org/sites/default/files/Domestic\\_Worker\\_Employment\\_Protections\\_Federal.pdf](http://www.domesticworkers.org/sites/default/files/Domestic_Worker_Employment_Protections_Federal.pdf) (last visited Apr. 20, 2016). In 2015, the Department of Labor promulgated the "Final Rule," which limited the domestic worker exemptions to "the individual, family or household using the services." U.S. DEP'T OF LABOR, FACT SHEET: APPLICATION OF THE FAIR LABOR STANDARDS ACT TO DOMESTIC SERVICE, FINAL RULE (2013), <http://www.dol.gov/whd/regs/compliance/whdfsFinalRule.pdf>.



#### IV. CONCLUSION

There is now a multi-million dollar area of work for non-profits, for-profits, and governments to tackle human trafficking. In some ways, the global human rights community got what it asked for: more attention, more outrage, and more action. An analysis that calls for the deconstruction of many existing economic systems and social norms, however, has been a tough sell. We should have foreseen that all this action and “awareness raising,” when directed at initiatives that only perpetuate inequality and dependence, would backfire. In a confusing and increasingly loud media and policy echo chamber, we want workers to analyze these ideas and advocate for their own interests. Why do we organize alongside services and support groups? Because politicians are willing to negotiate away the right to be free from slavery in order to seal a trade deal;<sup>22</sup> because the same entities that state they want to help immigrant trafficking victims are the ones privatizing immigration detention centers that force inmates to work without pay;<sup>23</sup> and because our legal system allows corporations to file bankruptcy and avoid paying the penalties for trafficking workers.<sup>24</sup> We organize because we believe that no amount of policing, charity, voluntary “corporate social responsibility,” or celebrity will work better than a global movement of survivors and workers aiming to undo structural inequality. In this struggle, there is a place for social services, a place for legal services, and a place for policy advocacy. However, even the best practitioners in this field will only win piecemeal victories if they only use a single strategy. Throughout history, humanity has learned that victory over injustice happens when the people most impacted were organized. We follow now in the footsteps of the powerful movements that laid down tracks before us.

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22. See Annie Kelly, *US Human Trafficking Report Under Fire as Cuba and Malaysia Are Upgraded*, THE GUARDIAN (July 27, 2015, 10:24 AM), <http://www.theguardian.com/global-development/2015/jul/27/us-human-trafficking-in-persons-report-under-fire-cuba-malaysia-upgraded>.

23. Matthew Bultman, LAW360, *Dentention [sic] Center Can't Nix Immigrants' Forced Labor Claims* (July 8, 2015, 4:03 PM), <http://www.law360.com/immigration/articles/676930/dentention-center-can-t-nix-immigrants-forced-labor-claims>.

24. Peg Brickley, *Accused of Labor Trafficking, Oil-Rig Repairer Files for Bankruptcy*, WALL ST. J. (July 13, 2015, 3:11 PM), <http://www.wsj.com/articles/signal-international-files-for-bankruptcy-1436787503>.