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REPORT No. 224/20
PETITION 1481-07
REPORT ON ADMISSIBILITY

SITI AISAH AND OTHERS
UNITED STATES OF AMERICA

Approved electronically by the Commission on August 27, 2020.

Cite as: IACHR, Report No. 224/20, Petition 1481-07. Admissibility. Siti Aisah and others.
United States of America. August 27, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	American Civil Liberties Union Foundation and others ¹
Alleged victim	Siti Aisah and others ²
Respondent State	United States of America
Rights invoked	Articles I (life, liberty and personal security), II (equality before law), VII (protection for mothers and children), IX (inviolability of the home), X (inviolability and transmission of correspondence), XI (preservation of health and well-being), XII (education), XIV (work and fair remuneration), XV (leisure time and the use thereof) and XVIII (fair trial) of the American Declaration on the Rights and Duties of Man ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition	November 15, 2007
Additional information received during initial review	May 28, 2008
Notification of the petition	March 8, 2011
State's first response	May 5, 2016
Additional observations from the petitioner	August 11, 2011 and June 10, 2019

III. COMPETENCE

<i>Ratione personae:</i>	Yes
<i>Ratione loci:</i>	Yes
<i>Ratione temporis:</i>	Yes
<i>Ratione materiae:</i>	American Declaration (ratification of the OAS Charter on June 19, 1951)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL RES JUDICATA, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and international <i>res judicata</i>	No
Rights declared admissible	Articles I (life, liberty and personal security), II (equality before law), VII (protection for mothers and children), IX (inviolability of the home), X (inviolability and transmission of correspondence), XI (preservation of health and well-being), XII (education), XIV (work and fair remuneration), XV (leisure time and the use thereof) and XVIII (fair trial) of the American Declaration
Exhaustion or exception to the exhaustion of remedies	Exceptions set forth in article 31.2.a and b apply
Timeliness of the petition	Yes, under the terms of section VI

V. SUMMARY OF ALLEGED FACTS

1. The petitioners seek redress against the United States for the violation of rights guaranteed under the American Declaration to the detriment of 6 migrant domestic workers (hereinafter, "the alleged victims"). Specifically, they denounce the United States' failure to exercise due diligence to effectively prevent, punish and provide remedies for the harms caused by the unlawful acts of their foreign diplomat employers⁵, and the United States' discriminatory treatment and failure to afford the alleged victims special measures of protection and redress.

¹ Global Rights, Immigration/Human Rights Clinic of the University of North Carolina School of Law, Andolan – Organizing South Asian Workers, Break the Chain Campaign, CASA of Maryland, Inc.

² Hildah Ajasi, Raziah Begum, Lucia Mabel Gonzalez Paredes, Otilia Luz Huayta and daughter, Susana Ocares.

³ Hereinafter "the American Declaration" or "the Declaration".

⁴ The observations submitted by each party were duly transmitted to the opposing party.

⁵ The petition refers to foreign officials representing their governments in the United States in Embassies, Consulates, and foreign missions to International organizations and within international organizations.

2. The petitioners allege as contextual information that migrant domestic workers, almost exclusively women, are lured into the United States on promises of fair wages and working conditions. However, many of these workers find themselves trapped in situations of exploitation once in the US and are required to perform difficult labor for long hours at illegal and substandard wages, with some of them being physically and sexually assaulted, and subjected to forced labor and human trafficking. The petitioners contend that the alleged victims were enslaved in the diplomats' homes, where the work and life conditions were deplorable, and only permitted to leave on few occasions – on which, in most cases, they had to be accompanied – or not even once during the period of their employment; some had their passport confiscated; some of them were forbidden to use telephones, or highly restricted; they were allegedly severely underpaid and in some cases paid nothing directly, with wages ranging from \$150 to \$500 a month, despite the fact that their employment contracts stipulated a much larger amount; they worked every day of the week, or close to, from early in the morning until late at night, in contravention of their employment contracts; they were denied medical care by their employers; some were denied their own room. . The petitioners claim that the alleged victims were often intimidated, insulted and threatened by their employers.

3. Although diplomats are required under international law to abide by US federal and local laws, they are immune to the criminal and civil jurisdiction of the US courts, providing diplomats with a safe heaven. The petitioners submit the United States' application of diplomatic immunity to domestic workers claims violates its due diligence obligations because it eviscerate their right to protection, without serving any legitimate government interest. Further, they indicate that US law – including the National Labor Relations Act, the Fair Labor Standards Act, the Occupational Safety and Health Act, Title VII of the US Civil Rights Act of 1964 – typically excludes domestic workers from their scope of application. The petitioners contend that the State violates the principle of non-discrimination by excluding domestic workers employed by diplomats from the rights and remedies it affords to other workers. The petitioners argue that the State's consistent failure to ensure that domestic workers receive basic labor and employment protections under federal law has set a baseline for tolerance of abuse, exploitation and discrimination of these workers. Additionally, they contends that the US government policies, procedures and guidelines regarding special migrant domestic worker visas does not afford enough protection the domestic workers – they also submit that the State is not in position to actually enforce such policies, leading to a lack of oversight and accountability. The petitioners contend that the United States' failure to activate some of the measures introduced, including intervene in cases involving diplomats where a complaint is filed, suspending missions from the A-3/G-5 visas program, and declare diplomat *persona non grata* after credible allegations by domestic workers, suggest that diplomats and other representatives of international organizations who abuse their domestic workers will not face consequences for either violating the rights of domestic workers or for flouting the terms on which the United States issued their visas. Additionally, the petitioners submit that issuance of T-visas to survivors of domestic workers who are trafficked by their employers does not provide adequate and affective redress, as they are granted on a discretionary basis and in very limited circumstances, and do not imply that law enforcement will in fact seek civil or criminal prosecution.

4. The petitioners indicate that Siti Aisah worked from October 1998 until March 2000 in the apartment of the Ambassador of Qatar to the Mission of the United Nations. She was severely underpaid – around 150\$ a month -, despite working fifteen to sixteen hours a day, denied her freedom of movement and cut off from communication with the outside world. As soon as she arrived to the US, her employer confiscated her passport. She could not use the telephone and could only communicate with her family by mailing letters, for which she was charged money. She resolved to run away from the apartment of a Qatari diplomat in which she was working with the assistance of Andolan (one of the organizations presenting this petition). She considered taking legal actions, but she feared retaliations and was told that her employers were entitled to diplomatic immunity, so she would have no chance of recovering wages or other compensation.

5. Hildah Ajasi was subjected to severe exploitation in the home of a diplomat from Botswana, where she worked for nearly a year starting in September of 2004. She worked seven days a week, from early morning until late at night, and was also required to clean the house of her employer's friend. She was denied medical care, any rest day, her freedom, as she could not leave the house alone, and the ability to practice her religion. The petitioners indicate that in return, her husband received 250\$ a month, instead of the 1088\$ a month she would have received if the terms of her contract were respected. When she complained to her employer about her work conditions, she was yelled at, and ultimately given a plane ticket to go back to

Zimbabwe. She hid in the airport and did not board the plane. She received legal assistance from Ayuda) and Break the Chain Campaign (organizations presenting this petition), but was told that her employer was entitled to diplomatic immunity and accordingly any lawsuit would be dismissed – as a result, she did not bring such lawsuit.

6. Raziah Begum worked in the apartment of a Bangladeshi diplomat in Manhattan. For two and a half years, starting in June 1997, she was only permitted to leave the apartment on a few occasions, denied rest and paid nothing directly. Her employer confiscated her passport. She worked from 6 am to 9 or 10 pm, or later, and was forbidden to take any break. She was forced to sleep on the hard floor of the daughter's room, or under the dining room table. She was paid nothing directly, with her employer sending a mere 29\$ per month to her son in Bangladesh. She eventually managed to escape. However, she was also told that her employer was entitled to diplomatic immunity and accordingly any lawsuit would be dismissed.

7. Lucia Mabel Gonzalez Paredes worked for an Argentine diplomat during a year, starting in April 2004. She was severely underpaid and denied medical care, in violation of her employment contract, which she never was given a copy of. She was forced her to sign fraudulent documents indicating that she received a much higher wage than she actually received. She worked more than fifteen hours a day, and had to take care of the employer's epileptic infant daughter on top of her other tasks. When her employer refused that she seek outside employment, while also refusing to improve significantly her working conditions, she left their home. She attempted to negotiate a settlement agreement with her former employer, but did not obtain favorable results. She then filed a complaint to the US District Court for the District of Columbia. Relying on the views of the Department of State and based on the *Tabion v. Mufti* decision, the Court granted the defendants' motion to dismiss the complaint of the alleged victim on the grounds that both defendants were diplomatically immune from suit⁶. The Court recognized that in upholding defendants' claim of diplomatic immunity from suit, it left the plaintiff without recourse, "at least within the United States and at this time", also acknowledging "that the outcome merely reflects policy choices already made".

8. Otilia Huayta and her young daughter worked in slave-like conditions in the home of a Bolivian diplomat for a year, where they were psychologically abused and severely underpaid, until June 2006. She was expected to work more than fifteen hours a day, every day, and received only 200\$ per month, a fraction of the amount that had been promised in the contract. She was forbidden to use the phone, including discussing with the daughter's teachers. Her employer also expected her daughter to help with the chores, interfering with her education, and for which she was paid only 20\$ per month. School officials, concerned with her daughter's malnourishment, alerted the police. She filed a written report to the Department of State, Immigration and Customs Enforcement, and the Montgomery County Police Department but did not receive a response. She was advised by CASA that her employer had diplomatic immunity and, as a result, that she had little chance of success for bringing a claim against her employer. She requested the intervention of the Bolivian embassy and the Bolivian Minister of Justice, with help of which she eventually reached an informal settlement agreement, on the condition that she did not reveal her name in connection with the alleged abuses committed.

9. Susana Ocares worked in the house of a Chilean diplomat, typically more than twelve hours a day, for approximately a year and a half, until August 2007. She was never paid any overtime wages, in violation of her employment contract. She suffered degrading treatment, including being "lent" out to others at her employer's will. She sought legal advice from CASA, and was told that her employer could claim immunity.

10. The petitioners submit that US laws, policies and practices, including official interpretation of the nature and scope of immunity granted diplomats under the Vienna Convention, do not currently provide adequate or effective remedies for any of the alleged victims' claims against the State or their diplomat employers. They allege that the US courts have repeatedly interpreted the Vienna Convention to grant foreign diplomats absolute immunity from any civil suit brought against them by domestic workers. Accordingly, claims brought by foreign workers against their foreign diplomat employers are summarily dismissed on immunity grounds. It was indeed the case of the alleged victim Mabel Gonzalez Paredes. Additionally, the US

⁶ 479 F.Supp.2d 187 (2007) *Lucia Mabel Gonzalez Paredes, Plaintiff, v. Jose Luis VILA and Monica Nielsen, Defendants*. United States District Court, District of Columbia. March 29, 2007. In *Tabion v Mufti*, the Fourth Circuit Court of Appeals held that diplomatic immunity extended to any claims arising out of the employment of domestic workers by foreign diplomats. Deferring to the US State Department's interpretation of the scope of "commercial activity" exception to diplomatic immunity in the Vienna Convention, the court held that domestic worker contracts and all claims pertinent thereto fell within the grant immunity afforded by the Vienna Convention.

Supreme Court has interpreted the constitution of the United States as not imposing obligations on the State or its agents where they fail to act with respect to violence committed by private actors⁷. Hence, US law does not recognize a remedy where the State or its agents fails to exercise due diligence regarding the actions of a private actors⁸. The petitioners further submit that the filing of civil suits once immunities don't apply anymore can't be considered as an available, appropriate and effective remedy for solving the presumed violations of their rights, as some diplomats may still be subject to immunities, and that enforcement of judgement against defendants residing outside a US court's jurisdiction is extremely difficult. Additionally, the petitioners contend that private settlements are inadequate and ineffective⁹, and highlight the vulnerable position in which employees are in the lack of available alternatives. Finally, the petitioners allege that challenges to the national legislation based on claims of discriminatory treatment in the domestic courts would be futile, because the Equal Protection Clause of the Constitution requires a plaintiff to show a discriminatory intent from the defendant¹⁰. In contrast, Article II of the Declaration recognizes effects-based standard for assessing allegations of discriminatory treatment. The law excluding domestic workers from the protections of U.S. law applies gender-neutral language that has a disparate impact on women. Even in the face of evidence of mixed neutral and gender- or race-based motives, plaintiffs bear the burden of proving that the discriminatory intent was the "substantial" factor. Because of the futility of advancing their claims of discriminatory treatment against the United States in domestic courts, the petitioners submit that the exception set forth in Article 31.2(b) of the Rules of procedure applies.

11. As for the timeliness of the petition, the petitioners recall the uniquely vulnerable position in which the foreign workers are¹¹, making resorting to the official remedies more difficult. Additionally, the alleged violations are ongoing and the timeliness requirements are therefore inapplicable.

12. For its part, the State submits that the petitioners have not exhausted the domestic remedies. Only one of the six alleged victims sought a remedy in US domestic court, without however fully exhausting it with an appeal. The other alleged victims have not filed any claim before the domestic courts. The State contends that while the Vienna Convention, and the resulting US legal obligations, limit the remedies for the alleged victims, it does so only temporarily, the diplomatic immunity ceasing to apply after the end of the diplomatic assignment of the employers. Accordingly, the remedies are not barred altogether. The State submits that none of the employers referred to in the petition are still serving in a diplomatic capacity within the United States, as of the date of the submission of the petition to the Commission – domestic remedies are accordingly available to the alleged victims. The State also refers to past claims that have led to settlements. Additionally, the State indicates that not all foreign government personnel enjoy immunity from civil and/or criminal jurisdictions, including for acts performed outside of their official duties. The State also contends that the petition is inadmissible since none of the alleged victims has brought claims challenging the US labor laws themselves as discriminatory. The petitioners' fear that they would be unable to prove intent to discriminate is not a sufficient basis to claim that no remedy exists in US domestic courts – mere doubt as to the prospect of success in going to court is not sufficient to exempt a petitioner from exhausting domestic remedies. By completely failing to present the bulk of the petitions' claim to a US court, the alleged victims have deprived the United States of the opportunity to afford them a remedy for any violations of their human rights.

13. The State further contends that the petition was not filed in a timely manner with the Commission regarding the alleged victims Aisah and Begum, whose rights would have been respectively violated from 1998 to 2000, and from 1998 to 1999. The petition was only filed with the Commission in 2007,

⁷ *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989).

⁸ The petitioners refer to the case *Salas and Others v United States*, where the Inter-American Court found that the plaintiffs had no appropriate possibility of redress because any attempts to secure access to courts was unlikely to prevail due to sovereign immunity .

⁹ The petitioners refer to IACHR, Report No. 134/11, Petition 1190-06, Admissibility, *Undocumented Workers*, United States, Oct. 20, 2011, at paras. 14, 28; IACHR, Merits Report No. 50/16, Case 12.834, *Undocumented Workers*, United States, Nov. 30, 2016, paras. 21, 105, 112

¹⁰ As interpreted by SCOTUS in *Village of Arlington Heights v. Metropolitan Housing Corp*, 429 U.S. 252 (1977)

¹¹ On this issue, the petitioners indicate that virtually no other immigrant worker's entry into and ability to stay in the United States is conditioned on employment with a person or entity wholly immune from legal process, and recalls that the visa status of the domestic worker is contingent on their continued employment with the specific person who sponsors them, the same person who may be the perpetrator of abuse or harassment.

despite both having been in touch with the petitioner Andolan for numerous years before. Delays of seven or eight years have been found unreasonable by the Commission¹².

14. The State submits that the petition is further inadmissible for failure to state a violation under the American declaration. Rather, the petitioners' claims are based on their dissatisfaction with the US application of international law on diplomatic immunity. However, the Commission lacks the competence under its Statute or Rules to interpret and apply this body of law. The State further contends that the origins and purposes of diplomatic immunity confirm that employment of a domestic worker, and others contractual relationships for goods and services incidental to the daily life of the diplomat and his family, is not a commercial activity within the meaning of the Vienna Convention – this is this view that has been endorsed by all US courts that have addressed the issue. The State cannot be found to have impermissibly restricted the petitioners' access to its courts – under international law, its courts never possessed jurisdiction over diplomats for these types of suits. The right of access to courts cannot create jurisdiction. There is also no *jus cogens* exception to diplomatic immunity, and nothing in the Vienna Convention authorizes any practice that violates any such norm. Furthermore, the State contends that it has taken significant steps to prevent and respond to allegations of abuse of domestic workers by foreign mission personnel, rejecting the petitioners' contention that it had failed to do so. The State revised, expanded and strengthened its policies to prevent domestic abuse, including the visa issuance process, requirements in the employment contracts (relating to the language of the contract, the wage payments, description of the work, etc.), information regarding the rights of the workers to be given to them by the employer, and also provided by the State. Additionally, the Department of Sates now keeps copies of contract on file. The State indicates that it explicitly advised that it would ultimately look to the Chiefs of Missions to ensure that the treatment accorded to domestic workers by their employees comports whit contractual and other legal requirements. Both the State department and the US Congress have worked towards expanding the resources devoted to domestic workers issues. The State also contends that it has implemented procedures to respond and remedy domestic worker abuse by foreign diplomats to the extent its international law obligations permit. Finally, as of 2000, foreigners in the United States who are identified by the government as trafficking victims are eligible for T nonimmigrant status, which allow them to remain in the United States to assist law enforcement in the investigation or prosecution of acts of trafficking and to work. It also allows them to apply for permanent residence after three years.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

15. The petitioners allege that the US courts have repeatedly interpreted the Vienna Convention to grant foreign diplomats absolute immunity from any civil suit brought against them by domestic workers and that accordingly, such claims are summarily dismissed on immunity grounds. The State does not deny such claim, submitting that the interpretation made by the tribunals is consistent with international law. It adds that it however does not preclude the alleged victims from suing their former employers once the immunities cease to apply – none of the victims did so. The Commission notes that one of the alleged victims, Lucia Mabel Gonzalez Paredes, filed a complaint to the US District Court for the District of Columbia and that on March 29, 2007, the Court dismissed her case on the grounds that the defendants were immune from suit due to their diplomatic status, in line with the jurisprudence and the views of the Department of State. In light of the consistent case law of the United States courts on the issue, and taking into account that the State did not demonstrate that other remedies existed and would have been effective in providing relief for the alleged victims, the Commission concludes that in the domestic venue, no remedies are available to assert the claims of the alleged victims due to the diplomatic immunity. Additionally, the Commission considers that the situation of vulnerability and isolation in which the alleged victims found themselves, as well as the fear of retaliation they faced, including in relation to their legal status in the United States, prevented them to file and exhaust the existing domestic remedy.. Therefore, the exceptions set forth in Article 31.2.a and 31.2.b of the IACHR's Rules of procedure apply. Finally, the Commission considers that the filing of civil actions once the immunity cease to apply does not constitute an adequate remedy, since not being available at the moment of the alleged violations.

16. The petitioners additionally contend that challenges to the labor legislation in the domestic courts, based on claims of discriminatory treatment, would be futile, because the Equal Protection Clause of the

¹² The State refers to IACHR, Inadmissibility Report No. 100/06, Petition 943-04, Gaybor Tapia and Colón Eloy Muñoz, Ecuador; IACHR, Inadmissibility Report No. 36/05, Petition 12.170, Fernando Colmenares Castillo, Mexico; IACHR, Inadmissibility Report Report No. 85/05, Petition 430-00, Romeel Eduardo Díaz Luna, Peru.

US Constitution requires a plaintiff to show a discriminatory intent from the defendant, and does not allow for a complaint based solely on the discriminatory effect of an otherwise neutral law. For the foregoing, and in light of the consistent case law of the United States courts, the Commission concludes that the domestic remedies cannot be considered to have had a reasonable prospect of success. The exception to the exhaustion of domestic remedies set out in Article 31.2.b of the Rules of Procedure is applicable.

17. The Commission notes that the alleged facts took place between 1997 and 2007, with employment periods of 1998-2000, 2004-2005, 1997-2000, 2004-2005, 2005-2006 and 2006-2007 for the individualized alleged victims; and that on March 29, 2007, the US District Court for the District of Columbia dismissed the case of the alleged victim Lucia Mabel Gonzalez Paredes, filed against her former employers. In view of the above, and taking the situation of vulnerability, notably because of the language and literacy barrier, and isolation in which the alleged victims find themselves as well as the fear of retaliation they are facing, including in relation with their legal status¹³, the Commission concludes that the petition, presented before the Commission on November 15, 2007, was presented within a reasonable period of time, in accordance with Article 32.2 of the Rules of Procedure of the IACHR.

18. The IACHR finally notes that the question of the existence of a duty of due diligence to prevent the exploitation and abuse of domestic workers by private parties, as well as whether the facts alleged by the petitioners regarding the ineffectiveness of the remedies put in place, indeed constitute a violation under the Declaration, will be analyzed, as appropriate, in the report that the Commission adopts on the merits of the case.

VII. COLORABLE CLAIM

19. The Commission notes that this petition includes allegations regarding the alleged impossibility, due to the diplomatic immunity of the foreign employers and the ineffectiveness of the protection and remedies put in place by the State, of sanctioning and repairing the damages that would have been caused by the working and living conditions to which were subjected the alleged victims, often in violation of their employment contracts, including the allegations regarding the long hours, the substandard wages, the lack of days off, the limits on their ability to leave their workplace and enjoy leisure time, and the physical and sexual assaults. In view of these considerations and after examining the factual and legal elements presented by the parties, the Commission considers that the claims of the petitioner are not manifestly unfounded and require a substantive study since the alleged facts, if corroborated as true, could characterize violations of articles I (life, liberty and personal security), VII (protection for mothers and children), IX (inviolability of the home), X (inviolability and transmission of correspondence), XI (preservation of health and well-being), XII (education), XIV (work and fair remuneration), XV (leisure time and the use thereof) and XVIII (fair trial) of the American Declaration. Additionally, at the merits stage, the IACHR will analyze whether the discriminatory effect of the exclusion of certain domestic workers from the scope of application of regulations relating to labor and employment standards, if proven, could constitute a violation of articles II (equality before law) of the Declaration.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles I, II, VII, IX, X, XI, XII, XIV, XV and XVIII of the American Declaration;
2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 27th day of the month of August, 2020. Joel Hernández, President; Antonia Urrejola, First Vice-President; Flávia Piovesan, Second Vice-President; Margarete May Macaulay, and Julissa Mantilla Falcón, Commissioners.

¹³ See Inter American Court of Human Rights, advisory opinion OC-11/90, August 10, 1990, *Excepciones al agotamiento de los recursos internos* (Art. 46.1, 46.2.a y 46.2.b Convención Americana Sobre Derechos Humanos, notably at par. 22 and 31; See also Inter American Court of Human Rights, advisory opinion OC-18/03, September 17, 2003, *Condición jurídica y derechos de los migrantes indocumentados*, par. 148-149, 159.