

Questionnaire for NGOs and other stakeholders on domestic servitude

This questionnaire is addressed to stakeholders such as international and regional organisations, national human rights institutions, UN agencies, funds and programmes, non-governmental organisations, trade unions, research institutions, businesses, community initiatives, private individuals, foundations and academia.

The below questionnaire is meant to assist the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Urmila Bhoola, with elaborating a comprehensive report on domestic servitude of migrant women and girls that will be presented to the Human Rights Council in September 2018.

The responses to the below questionnaire should be submitted to the Special Rapporteur on contemporary forms of slavery, including its causes and consequences in English, French or Spanish at srslavery@ohchr.org

The deadline for submissions is 18 May 2017.

If not stated otherwise in your submission, the responses received will be published on the website of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences.

Question 1

Please provide information on your organisation and its work with migrant domestic workers who became victims of contemporary forms of slavery, including the countries in which you work on this issue.

- Ban Ying – Coordination and Counselling Center Against Trafficking in Persons is a specialised counseling center which works to combat human trafficking. Ban Ying offers advice and counseling services to migrant women and transgender individuals in Berlin and other parts of Germany. In exceptional circumstances, services are also offered to migrant men. The work focuses on People affected by human trafficking; Migrant women from South-East Asia who have experienced violence during the migration process, marital difficulties, or who have a questionable residency status; Domestic workers of diplomat.
- LEFÖ-IBF – Center for Trafficked Women, is an Austrian NGO with the mandate of identifying, counselling, accompanying and supporting female victims of human trafficking. Domestic workers have been since its foundation in 1998 at the core of LEFÖ-IBF. The work is done within the Austrian territory, but often reaching out to other countries to gather information, for legal procedures, remote counselling, and follow-ups, for instance when domestic workers decide or must return to their countries of origin.
- For the questionnaire at hand, the answers will focus on the specific group of **domestic workers of diplomats**, as this is a specialised - and in their respective countries unique - field of expertise of both Ban Ying and Lefoe.

Question 2

A. Please characterise the legal and/or policy frameworks relevant to the protection of migrant domestic workers subject to contemporary forms of slavery, as well as any global trends you would like to highlight. Please include information about provisions criminalising contemporary forms of slavery, those that might establish distinct rights and/or restrictions for domestic workers, including migrant domestic workers (in regards to, for instance, salary, working hours, freedom of movement, freedom of association, limited freedom to change employers, etc.), as well as measures to identify and support migrant domestic workers who are or were victims of contemporary forms of slavery.

- Domestic workers in diplomatic households have a special legal status. Diplomatic immunity of the employer makes these migrant workers group extremely vulnerable. Physical abuse, sexual attacks and other poor treatment such as the denial of food or withholding wages remain wholly unpunished. This, along with the fact that the residence permits of domestic workers are directly linked to their employer, produces an extremely dependent relationship, and makes a high degree of exploitation possible. Added to this, once victims decide to initiate legal procedures, the immunity that diplomats hold, make it effectively impossible to access justice.

- Legal framework in the case of Germany: Instead of a conventional residence permit, domestic workers working for diplomats receive a special document (Protokollausweis/protocol ID) issued by the Federal Foreign Office. Rather than the immigration authority, which is responsible for all other migrant workers, domestic workers in diplomatic households are the responsibility of the Federal Foreign Office. Residence permit is linked to the specific work relationship with the employer, if this ends (no matter the reason), the domestic worker has to leave the country. Maximum stay in Germany is, nonetheless, 5 years.

- Legal framework in the case of Austria: Similar to the German case, in Austria domestic workers working for diplomats are issued a one year stay and work permit (Legitimationskarte) issued by the Ministry of Foreign Affairs. This exceptional circumstance, means that domestic workers, despite having a contract, are not automatically part of the Austrian Chamber of Labour, leaving them without the right for representation in the case of civil procedures following criminal procedures for the crime of human trafficking. It is not foreseen that domestic workers with a Legitimationskarte can switch employers, however in cases of violation of rights, this has been allowed.

- Measure to identify and support domestic workers in diplomatic households:

Ban Ying and LEFÖ-IBF have developed over the years, in cooperation with the German Federal Foreign Office and the Ministry for Foreign Affairs, mechanisms to **prevent** exploitation/human trafficking of domestic workers in diplomatic households. These include:

- Domestic workers present themselves personally once a year at the Federal Foreign Office/MFA, for an interview upon renewal of the protocol ID/Legitimationskarte. On this occasion, the German Foreign Office is provided with proof of the employment's proper payment of wages through bank statements. In Austria only the possession of the Bank Card is controlled. These mechanisms are important and valuable, however strong

barriers such as: language, literacy, awareness of rights and cultural and social codes, obstruct the communication of what is actually taking place within the households.

- A yearly Information seminar that all domestic workers registered in Germany are requested to attend. During these events at the Federal Foreign Office, Ban Ying presents their rights, hands out information material and informal conversations can lead to further counselling. Similarly, in Austria, a yearly information seminar takes place where all registered domestic workers with diplomats receive a non-binding invitation.

In case of exploitation/trafficking, Ban Ying supports domestic workers in the following ways:

- Legal and social counselling
- If needed, accommodation in protection shelters
- If applicable, preparation and support of out-of-court settlements/mediations with employers in the Foreign Office
- If required and agreed to, external communication of cases

Likewise, LEFÖ-IBF supports domestic workers who are not are not victims of human trafficking but labour exploitation, or not working under the Legitimationskarte scheme with a referral to the Chamber of Labour, Labour Unions and other organizations. For domestic workers in diplomatic households, LEFÖ-IBF can support with

- Legal and social counselling
- Accommodation in shelters with high protection standards
- If applicable, preparation and support of out-of-court settlements/mediations with employers in the Foreign Office
- If required and agreed to, legal accompaniment for criminal procedures against perpetrators.

B. Please include specific references to the source of law when possible.

In the Austrian case, the Criminal Code penalizes Human Trafficking under §104, building on the Palermo Protocol definition of Human Trafficking.

Question 3

Please describe the main challenges and barriers identified in the country or countries in which your organisation works to ensuring the human rights of migrant domestic workers victims of contemporary forms of slavery. Please also specify any global trends that you are aware of.

- Because of diplomatic immunity of their employers (added to the private and hidden nature of their workplace), domestic workers in diplomatic households worldwide are prone to exploitation and human trafficking.
- The Seventh General Report by GRETA (2017) specifies the possibility of trafficking in diplomatic households and explicitly refers to cases of exploitation in diplomatic households which could amount to human trafficking that have been brought to their attention.

Question 4

A. Please elaborate on any specific violence, threats of violence, abuse or harassment faced by migrant women and girls who are in situation of domestic servitude.

- Physical violence by employers, by children or by other family members of employers
- psychological violence and demotivation, frequent insults of being incapable, unworthy, etc.
- sexual harassment by employers, children of employers, or family members of employers.
- in some cases, actual sexual violence by employers, children or family members of employers. Like with many forms of violence against women, they take place at private homes, with no other witnesses or channels to bring about evidence.

B. Please elaborate on any other human rights violation faced by migrant women and girls who are in situation of domestic servitude (including, for example, their right to health, water, housing, freedom of movement, freedom of association, etc.).

- right to health: when no free days are given for health check-ups or medical treatment, when domestic workers are unaware and not given access to their social security cards, consciously withheld from them by employers.
- right to decent housing: many domestic workers, despite national regulations, do not receive decent housing, but must make arrangements in storage rooms, basements, on the floor or on beds in children's rooms, thus not providing them with any private sphere. In a particular case in Austria, a domestic worker had to make a daily shift-made bed, on the floor, in the shoe storage section of the home.

Question 5

Please elaborate on the challenges faced by migrant women and girls who are at the risk of or who are already under conditions of domestic servitude to obtain protection against their human rights violations.

First and foremost diplomatic immunity is a clear barrier to access justice. Domestic workers exploited and trafficked by diplomats, in Austria, cannot even issue a report at a regular police office, but must arrange for a special report done at the Federal Office for the Protection of the Constitution and Counterterrorism.

Other challenges include the availability of information on rights in different languages, social skills to approach organizations in case of rights' violations, literacy and experience with institutions.

Legal frameworks

Question 6

Please elaborate on the specific situation of migrant women and girls in domestic servitude, taking into consideration factors that might contribute to their increased vulnerability to contemporary

forms of slavery, including poverty, identification to minority groups, indigenous people, age, and caste.

- National and EU migration policies continue to offer very few possibilities for migrant workers from third countries to receive work and residence permits to work regularly in key sectors.
- The admission policy for domestic workers in diplomatic households is one of very few possibilities of regular migration for low wage occupations. This scheme ties the migrant worker to one specific job with one particular employer, for a specific period of time. If a worker wants or needs to change employer, they would have to re-apply for a new permit from their country of origin, a lengthy and complicated process with very insecure outcomes. If the worker loses their job, their residence and work permit becomes invalid and any continued residence is irregular. This creates a situation of excessive dependency and allows for situations of exploitation to continue and escalate as migrant workers are not willing to risk the loss of residence status that would follow after initiating a complaint against the employer, particularly if the employer cannot be sued in a labour court trial because of his/her immunity.
- Though control mechanisms have been developed in the past years (see Question 2), the German Federal Foreign Ministry still does not penalise those diplomats that refuse to attend mediations, pay missing wages, etc. (as far as Ban Ying is aware of) – even though the Foreign Office holds appropriate possibilities (be it only refusing the hire of new domestic staff after a complaint).
- In the experience of LEFÖ-IBF in Austria, domestic workers in diplomatic households come with a diversity of backgrounds in terms of rural-urban residences and education. The majority of them are seeking employment abroad due to the lack of opportunities in their countries of origin. Some cases, personal, economic, environmental and political crises in workers' countries, place them in or exacerbate poverty.

Question 7

Please detail any examples of good practice in relation to protecting, identifying and rescuing migrant women and girls in situation of domestic servitude. This might include actions and initiatives taken by governments, civil society organizations, international organizations, media outlets, employers, individuals, survivors, etc.

- The annual working permit renewal process at the respective Foreign Offices in Austria and Germany (See Question 2), allows for sensitized officers to identify (potential) cases of domestic servitude or trafficking and contact Ban Ying or LEFÖ-IBF. This is a channel that is in use.
- The annual information seminar (See Question 2) allows for face to face contact with domestic workers and continues to be highlighted as one reason for reaching out to the support organizations.

Question 8

Please describe any challenges identified in ensuring that migrant women and girls who are survivors of domestic servitude have access to justice?

- Extreme dependency of domestic workers in diplomatic households of their employer for their residence permit makes complaints rare. Complaints often lead to termination of work contract, which leaves the employee with no residence permit. Missing wages up to violence and abuse therefore remain unreported in many cases.
- First and foremost diplomatic immunity is a clear barrier to access justice. Domestic workers exploited and trafficked by diplomats, in Austria, cannot even issue a report at a regular police office, but must arrange for a special report done at the Federal Office for the Protection of the Constitution and Counterterrorism.
- If there is no sentence in a criminal procedure (which is always the case with diplomats, due to immunity), then civil procedures for financial compensation need to be financed by the survivor. This risk of financial ruin or debt discourages most workers to go through civil procedures.
- National legal competences. Frequently LEFÖ-IBF receives reports of abuses not only in Austria, but in other territories. When police investigation takes place, it is very rare that police decide to cooperate at an international level, contributing evidence for a domestic worker's case. In this sense, although the definition of human trafficking is consecrated in an international instrument such as the Convention against Transnational Crime, in practice the transnational cooperation among state figures is not the rule, but the exception. How to tackle a transnational crime when information and legal procedures remain conscripted within one country? Trafficking and domestic servitude are process that involve a chain of events, people and places. To tackle it, the whole picture is needed, and ultimately measures at all links of the chain need to be taken.

Question 9

Please describe any projects delivered by your organisation or other civil society organisations to ensure protection of the human rights of migrant domestic workers victims of contemporary forms of slavery.

- Ban Ying Campaign to identify people trafficked for labour exploitation: Intends to bring information to people, who are restricted to the house; The information should not be understood by the employers; Attracts workers attention: looks like advertisement in countries of origin. In Posters that look like harmless phone advertisements, messages are written in different languages (Filipino, Chinese, Thai) addressing domestic workers facing indecent working conditions/abuse/exploitation. Posters were driven around on scooters, as well as distributed in "diplomatic neighbourhoods" (where many consular and embassy households are located).
- Ban Ying has worked with the German Federal Foreign Office since 2002 to develop mechanisms of control for the employment of domestic workers in diplomatic households.
- Ban Ying actively engages in communicating cases of exploitation/human trafficking with the wider public and the press, whenever our clients want to do so.

- LEFÖ-IBF has an active communication, awareness rising and education front. Trainings for officials in state institutions take place regularly in all provinces of Austria and are held in cooperation with partners. Outreach and networking activities take place regularly to sensitize practitioners that might encounter cases.
- LEFÖ-IBF holds a monthly session for supporting students researching on the topic of human trafficking.
- Our informative flyers are translated into 10 languages and handed out at key meeting points for the target group.

Question 10

Please provide any research, data or other information that your organisation has produced or is aware of relating to the protection of domestic workers victims of contemporary forms of slavery.

- Ban Ying Information Brochure for domestic in diplomatic households (http://www.ban-ying.de/sites/default/files/BANYING_Broschuere%20DS_alle.pdf)
- Article (in German) Hausangestellte von Diplomatinen (Dr. Nivedita Prasad) http://www.ban-ying.de/sites/default/files/KOK_Hausangestellte%20von%20Diplomaten.2008.pdf
- Paper (in German) Law Clinic Humboldt Universität: Immunität von Diplomatinen und Konsulinnen als Hindernis für Hausangestellte beim Zugang zur deutschen Gerichtsbarkeit (http://www.ban-ying.de/sites/default/files/Paper_Immunitaet_Endversion.pdf)

Livia Valensise for Ban Ying Coordination and Counselling Center Against Trafficking in Persons, 16.05.2018

Daniela Paredes Grijalva for LEFÖ-IBF Intervention Center for Trafficked Women 16.05.2018

Thank you for your cooperation. Please feel free to include any additional pertinent information on access to justice and remedy that you think would help the Special Rapporteur on contemporary forms of slavery, including its causes and consequences.