

Questionnaire on domestic servitude NV ref: A//HRC/33/1

This questionnaire addressed to Member States and other stakeholders is meant to assist the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Ms. Urmila Bhoola, to elaborate a comprehensive report on the domestic servitude of migrant women and girls that will be presented to the Human Rights Council in September 2018.

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

The deadline for submissions is 18 May 2018.

Question 1

A. Are there provisions in place within your country's national legal framework which criminalise contemporary forms of slavery (e.g. forced labour, bonded labour, domestic servitude, serfdom, etc.)?

B. Please specify these provisions, including specific references to the source of law.

Article 248A of the Criminal Code (Chapter 9 of the Laws of Malta) –

(1) Whosoever, by any means mentioned in sub-article (2), traffics a person of age for the purpose of exploiting that person in:

(a) the production of goods or provision of services; or

(b) slavery or practices similar to slavery; or

(c) servitude or forced labour; or

(d) activities associated with begging; or

(e) any other unlawful activities not specifically provided for elsewhere under this subtitle, shall, on conviction, be liable to the punishment of imprisonment from **four to twelve years**.

For the purposes of this sub-article exploitation includes requiring a person to produce goods and provide services under conditions and in circumstances which infringe labour standards governing working conditions, salaries and health and safety.

(2) The means referred to in sub-article (1) are the following:

(a) violence or threats, including abduction;

(b) deceit or fraud;

- (c) misuse of authority, influence or pressure;
 - (d) the giving or receiving of payments or benefits to achieve the consent of the person having control over another person;
 - (e) abuse of power or of a position of vulnerability:
- Provided that in this paragraph "position of vulnerability" means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.

(3) The consent of a victim of trafficking to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in sub-article (2) has been used.

From a Human Rights perspective, our **Constitution**, in **article 35**, contemplates that:

- (1) No person shall be required to perform forced labour.
- (2) For the purposes of this article, the expression "forced labour" does not include -
 - (a) any labour required in consequence of the sentence or order of a court;
 - (b) labour required of any person while he is lawfully detained by sentence or order of a court that, though not required in consequence of such sentence or order, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained or, if he is detained for the purpose of his care, treatment, education or welfare, is reasonably required for that purpose;
 - (c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;
 - (d) any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community.

Question 2

Are there provisions in place within your country's national legal framework which 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.)?

The Domestic Service Wages Council Wage Regulation Order (SL452.40), which can be accessed via <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11174&l=1>, specifies the conditions of employment applicable to domestic workers in Malta. Moreover, the general law on employment, also applies to domestic workers. It should be noted that both SL452.40 and the general law (CAP 452), apply irrespective of nationality. As long as one is working in Malta, full protection of Maltese labour law applies. Malta's minimum wage can be accessed through this link - <https://dier.gov.mt/en/Employment-Conditions/Wages/Pages/National-Minimum-Wage.aspx>

The full-time working hours are 40 hours per week not exceeding 48 hours a week with overtime. (S.L. 452.110 – Overtime regulations).

Question 3

A. Please specify whether reporting mechanisms or institutions are available for human rights violations suffered by domestic workers, including to migrants if applicable; if no reporting mechanisms or institutions are in place, please specify what kind of support is available to enable victims to file complaints in case of alleged abuse and to pursue effective and adequate remedies for their rights violations.

Any domestic worker whose employment rights are being breached can resort to the competent authority who is empowered to enforce all of the Maltese employment law. This is the role of the Department of Industrial and Employment Relations who investigates the case and proceeds before the criminal court against the employer in case of breach of employment laws. Articles 43-47A of CAP 452 apply. The relevant link is <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8918>

Reporting can be done through and not limited to, these channels: Agenzija Apogg, Malta Police Force, Ministry for Family and Social solidarity. Report to Police (kwerela and DIER insitutes criminal action). Moreover, the Constitution of Malta caters for forced labour.

B. Please specify these provisions, including specific references to the source of law.

Articles 43-47A of CAP 452 apply. The relevant link is <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8918>

Question 4

Please provide any available data on the number of migrant domestic workers in your country. Is there gender-disaggregated data available, specifying the number of female and male domestic workers? B. Please also provide data/estimates on the number of formal and informal migrant domestic workers in your country.

The table below provides the latest available published data (end of November 2017) on domestic workers (EU/EEA/EFTA/EU dependents and Third Country Nationals (TCNs)) for NACE codes Human Health and Social Work Activities and Activities of Households as Employers, Undifferentiated Goods and Services- producing Activities of Households for own use.

	Females			Males			Grand Total
	EU	TCN	Female Total	EU	TCN	Male Total	
[Q] Human Health & Social Work Activities							
CARE WORKER, PERSONAL (HOME-BASED)	34	256	290	8	45	53	343
CLEANERS AND HELPERS, DOMESTIC	22	7	29	1	1	2	31
DOMESTIC HOUSEKEEPER	2	16	18		2	2	20
NANNY	1	17	18	1		1	19

[Q] Human Health & Social Work Activities Total	59	296	355	10	48	58	413
[T] Activities Of Households as Employers, Undifferentiated Goods & Services - producing Activities of Households for own use							
CARE WORKER, PERSONAL (HOME-BASED)	1	1	2				2
CLEANERS AND HELPERS, DOMESTIC	2	1	3				3
DOMESTIC HOUSEKEEPER	1	8	9		1	1	10
NANNY	1	8	9	1		1	10
[T] Activities Of Households as Employers, Undifferentiated Goods & Services - producing Activities of Households for own use Total	5	18	23	1	1	2	25
Grand Total	64	314	378	11	49	60	438

No data or estimates are available on the number of informal domestic workers.

Question 5

A. Please describe how often the labour inspectorate conducts inspections in private households to investigate abuses in domestic work and if any investigations of such a nature have taken place.

The Labour inspectorate acts upon every report received and conducts inspections in private households accordingly.

B. Please specify if there are specific trainings of labour inspectorates to identify practices which may amount to slavery-like conditions or to contemporary forms slavery in domestic work.

The labour inspectorate is trained on a regular basis, in so far as all aspects of employment law is concerned.

Question 6

Please detail relevant jurisprudence, including any landmark cases, which demonstrate effective access to justice for victims of domestic servitude (including migrant workers), and provide copies of any judgments if possible.

The Honourable Civil Court First Hall (Judge Giannino Caruana Demajo) on the 19th of October 2010 in the names of “Psaila Emanuel Et Vs Farrugia Charlo Et” (reference number: 1443/2001/1) stated that the salary of a person whom is not employed but performs house work should be equal to the minimum wage given to domestic house workers (performed usually by house maids) which at the time was equal to 287.68/month or 3,452.16/year as per regulation 4(b) of subsidiary legislation 452.40 (**Domestic Service Wages Council Wage Regulation Order 452.40**).

Question 7

What measures are in place for victims of contemporary forms of slavery to pursue access to justice and remedy for violations of their human rights taking place in domestic work, in particular as pursued by migrant domestic workers?

The conventional course of action would normally entail a 'kwerela' (report) filed by the victim to the police as to the form of slavery in the current or past employment. The department for industrial and employment relations would take action in conjunction with the police by means of a court case according to the procedure envisaged in chapter 452 of the laws of Malta. With regards to violations of human rights taking place in domestic work be it migrant domestic workers or otherwise, a constitutional case may be instituted. Article 35 of the Constitution of Malta protects employees from forced labour. Alternatively article 4 of the European Court on Human Rights (ECHR) convention provides the same protection.

Question 5

A. Please describe how often the labour inspectorate conducts inspections in private households to investigate abuses in domestic work and if any investigations of such a nature have taken place.

Whenever Jobsplus (Malta's Public Employment Services) receives reports concerning domestic workers, personnel within Jobsplus' Inspectorate and Law Compliance Unit call the employee to Jobsplus' offices to check the employment details. So far throughout 2018 Jobsplus investigated one case of domestic work.

B. Please specify if there are specific trainings of labour inspectorates to identify practices which may amount to slavery-like conditions or to contemporary forms slavery in domestic work.

The Inspectorate and Law Compliance Unit attends the Human Trafficking Task Force chaired by the Ministry for Home Affairs and National Security whereby staff have the opportunity to discuss and refer any cases related to slavery and human trafficking. Furthermore, the Unit keeps up to date with recent publications and research such as the 'Human trafficking for labour exploitation: the results of a two-phase systematic review mapping the European evidence base and synthesising key scientific research evidence.'