

**How to prevent human trafficking  
for domestic servitude  
in diplomatic households and  
protect private domestic workers**

**HANDBOOK**

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Cover illustration by John Kline representing the Vienna Hofburg Imperial Palace where the Congress of Vienna took place in 1815 and the Vienna Convention on Diplomatic Relations was signed in 1961.

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Office of the Special Representative and Co-ordinator  
for Combating Trafficking in Human Beings

# How to prevent human trafficking for domestic servitude in diplomatic households and protect private domestic workers

# HANDBOOK



# Foreword



The aim of this handbook is to raise awareness of how host states can regulate and monitor the employment conditions of private domestic workers in diplomatic households. It highlights how protocol departments and similar authorities can prevent exploitation or abuse and what can be done if it occurs. Finding effective responses is a challenge for many countries. Switzerland, like Austria, Belgium, the Netherlands, the United States and other host states of international organizations and foreign missions, started to introduce preventive measures some time ago. The need to prevent and respond to employment disputes and to address grievances of private domestic workers, however, has been recognized in other countries too. Indeed, this is an issue which can be much better addressed together and which should be a priority for the international community. It is time to respond to this challenge, to strengthen the reputation of the international community in this respect, and to promote shared values across the OSCE region.

In June 2012, the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings took the lead and launched a workshop in Geneva, followed up by meetings in Kyiv, The Hague and Brussels. This handbook is an outcome of these workshops, where heads of protocol and protocol officers from 43 OSCE participating States, academics and members of non-governmental organizations shared their experiences. They identified relevant prevention and protection measures and discussed new trends, challenges and obstacles, and how to overcome them.

I commend the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings for its leadership and for the creation of a community of practice for officers from protocol departments. I thank Austria, Belgium, the Netherlands and the United States for their strong support and the International Labour Organization for its kind contribution. I also thank all participants of the workshops who have asked for this handbook and would like to continue their engagement.

I am convinced that our combined expertise and political will can improve the situation of private domestic workers across the OSCE region. We will not stop until we end exploitation and abuse in all forms. It is not an easy task. This handbook will serve as a reference for authorities and practitioners and provide guidance on what we all can do to prevent domestic servitude and respond to situations of exploitation. I thank you for joining forces in the fight against abuse, servitude and trafficking.

A handwritten signature in blue ink, appearing to read 'Didier Burkhalter', written in a cursive style.

**Didier Burkhalter**

OSCE Chairman in Office

Head of the Federal Department of Foreign Affairs, Switzerland



# Acknowledgments

This handbook summarizes the discussion and compiles the findings of the four workshops organized between 2012 and 2014 in the framework of the extra-budgetary project, “Workshops on prevention of trafficking in human beings for domestic servitude in diplomatic households”, developed and carried out by my Office. It also presents the good practices shared by the Protocol Departments during and after the workshops and responds to the request of the 43 participating States who participated in the project.

I would like to thank particularly my Advisor Georgina Vaz Cabral, the main author of this publication and the manager of the project, for her commitment to the topic throughout the years; my Administrative Assistant Claire Jessel for her invaluable assistance through the implementation of the project, the proofreading and the production process of the publication. Special thanks also go to Alfred Kueppers, Public Information Officer, and Rosalia Bollen, temporary Administrative Assistant, who assisted in the editing and production of the publication.

I would like to convey my gratitude to the Anti-trafficking focal points in the OSCE field operations who assisted in obtaining information and in facilitating the participation of the Protocol Departments of the countries where they are based.

I wish to extend my appreciation to all participating States who have shown their support for this important issue, and to the participating States who made this project and publication possible, including Austria, the Netherlands, Switzerland and the United States.

Finally, I would like to acknowledge and thank the Protocol Departments of those four aforementioned participating States, as well as Belgium for providing constant substantive support throughout the project, and wish to thank all those who contributed to the workshops including the International Labour Organization (ILO), the Council of the Baltic Sea States (CBSS) and the following non-governmental organizations and lawyers: Ban-Ying, Comité Contre l’Esclavage Moderne, Fair Work, Kalayaan, Victims Support Organisation LEFÖ – IBF, Migrant Rights Centre Ireland, Pag-Asa, Nicolas Angelet (Law firm Liedekerke), Martina Vandenberg (The Human Trafficking Pro Bono Legal Center).

And last but not least, I acknowledge the important steps taken by some participating States as a follow-up to the workshops and I encourage other countries to consider strengthening their efforts to fight exploitation and human trafficking for domestic servitude.



**Ambassador Madina Jarbussynova**

OSCE Special Representative and Co-ordinator  
for Combating Trafficking in Human Beings



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**When does domestic work become trafficking in human beings for the purpose of domestic servitude?**

1

**Internationally recognized human rights and States' obligations**

2

**Diplomatic context and diplomatic immunity**

3

**What are the roles and responsibilities of host countries in preventing exploitation and protecting the rights of domestic workers employed by diplomatic personnel?**

4

**How to regulate the employment of domestic workers by diplomatic personnel and officials at international organizations based in the host country?**

5

**Measures applying to staff of international organizations**

6

**Addressing allegations or complaints regarding abuses or more serious exploitation including domestic servitude**

7

**How to respond to challenges?**

8

# List of Acronyms

<b>CBSS</b>	Council of the Baltic Sea States
<b>CIS</b>	Commonwealth of Independent States
<b>CoE</b>	Council of Europe
<b>ECHR</b>	European Court of Human Rights
<b>EU</b>	European Union
<b>ILO</b>	International Labour Organization
<b>IO</b>	International Organization
<b>IOM</b>	International Organization for Migration
<b>ITUC</b>	International Trade Union Confederation
<b>MFA</b>	Ministry of Foreign Affairs
<b>NGO</b>	Non-governmental Organization
<b>OAS</b>	Organization of American States
<b>ODIHR</b>	OSCE Office for Democratic Institutions and Human Rights
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>OSR/CTHB</b>	Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings
<b>THB</b>	Trafficking in Human Beings
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNICEF</b>	United Nations Children's Fund
<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>VCCR</b>	Vienna Convention on Consular Relations (1963)
<b>VCDR</b>	Vienna Convention on Diplomatic Relations (1961)



# Introduction

The purpose of this handbook is to **raise awareness and inform the relevant authorities about how to prevent trafficking in human beings for domestic servitude in diplomatic households, how to detect abuses and how to react to exploitative situations while protecting the rights of the domestic worker.** Although the majority of diplomatic agents and consular officers conduct themselves in a manner that reflects the highest personal and professional standards, cases of abuse and human trafficking have been identified in a considerable number of OSCE participating States and Partners for Co-operation. Not all cases of abuse and exploitation are cases of human trafficking. However, every case of abuse, exploitation or human trafficking is cause for concern and presents challenges requiring tailored responses.

Private domestic workers employed directly by diplomatic personnel may be brought to a host country. However, persons benefiting from privileges and immunities are under the obligation to respect the host state's laws, including labour laws and human rights standards. This handbook will **increase knowledge about strategies and policies to discourage non-compliance in the employment of private domestic workers in diplomatic households** with those conditions. It presents several approaches to prevent exploitation, resolve disputes and address challenges. It will also provide examples of **national practices which have proven effective** towards those ends.

Protocol Departments of Ministries of Foreign Affairs (and relevant ministries dealing with the issue) are the key audience for this handbook. They are the first line interlocutors between host states and diplomatic missions and international organizations (IOs) in a majority of OSCE participating States for the implementation of the Vienna Convention on Diplomatic Relations (VCDR), the Vienna Convention on Consular Relations (VCCR) as well as the IOs headquarters agreements. As such they have the responsibility to regulate and oversee the employment of private domestic workers hired by diplomatic personnel. In conjunction with other branches of government, Protocol Departments are relevant to the entry and residence of foreign domestic workers in the host country as well as to ensure that the laws and regulations of the host country are applied.

It is important to remember that private domestic workers are a category of personnel which is mentioned in the VCDR/VCCR as well as the diplomatic agents and consular officers, the administrative and technical staff members and the service staff members, although private domestic workers are not considered as members of the staff of the mission. Issues related to service staff are not addressed in this handbook.

The prevention measures presented in this handbook apply to host and to sending states of diplomatic personnel as well as to international organizations. The measures are not limited to the prevention of domestic servitude; some of them can be used to tackle other problematic issues. In other words, this handbook adopts a human rights and a holistic approach which reflects zero tolerance towards all forms of exploitation, irrespective of their nature and the status of the perpetrator. Preventing abuses through the promotion of ethical conduct and protecting the rights of all domestic workers is the key response to exploitation. Especially in the context of the privilege of bringing private domestic workers abroad with them, diplomatic personnel and officials at international organizations are expected to conduct themselves at the highest personal and professional standards, and to set an example for others in complying with laws, regulations and policies aimed at preventing the abuse or mistreatment of private domestic workers in their employ.

# OSCE action to prevent human trafficking for domestic servitude including in diplomatic households

The fight against trafficking in human beings is at the heart of the OSCE's founding principle on security. In 2002, OSCE participating States recognized that, *"in countries of destination, demand for the activities of persons trafficked for the purpose of sexual exploitation, forced labour, slavery or other practices similar to slavery is an integral factor in trafficking in human beings"*. They have urged *"countries of destination to take measures to effectively address such a demand as a key element in their strategy for effectively preventing and combating trafficking in human beings and to exercise zero tolerance towards sexual exploitation, slavery and all forms of exploitation of forced labour, irrespective of its nature"* (Declaration on Trafficking in Human Beings adopted in Porto, 2002).

In 2010, the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (OSR/CTHB) initiated path-breaking work on trafficking for the purpose of domestic servitude including in diplomatic households. Since then, OSR/CTHB developed a strategy to raise the visibility of this overlooked form of labour exploitation and to mobilize greater political will to prevent and to tackle it, including in diplomatic households.

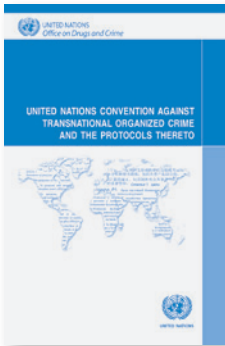
In the framework of an extra-budgetary project aiming to prevent trafficking in human beings for domestic servitude in diplomatic households, a series of workshops for Protocol Departments was organized. They were held in Geneva, Kyiv, The Hague and Brussels between June 2012 and March 2014, hosted by the respective Ministries of Foreign Affairs. 43 of the 57 OSCE participating States attended the events. This handbook constitutes one of the outcomes of the workshops. It provides a useful tool to facilitate the development of preventive measures beyond the completion of the project.

One of the objectives of the project is to enhance the knowledge and understanding of human trafficking for domestic servitude with its unique features and challenges and to promote recognition of the economic and social value of domestic work in the OSCE region. In addition, it aims to encourage more in-depth research and targeted actions to be taken as well as encourage participating States to consider signing and ratifying the new ILO Domestic Workers Convention, 2011 (No. 189) and its supplementing Recommendation No. 201.

# When does domestic work become trafficking in human beings for the purpose of domestic servitude?



- Elements of trafficking in human beings and indicators
- Binding instruments
- Vulnerability of domestic workers
- Vulnerability of private domestic workers in diplomatic households



Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, available at: <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

## Trafficking in human beings

Trafficking in human beings is a serious crime and a violation of human rights defined in international law. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (so called "Palermo Protocol"), is the first international instrument to explicitly define "trafficking in persons". All OSCE participating States (except one) have ratified the Palermo Protocol and criminalized human trafficking.

### Definition of the human trafficking crime

- a. "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- b. The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- c. The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- d. "Child" shall mean any person under eighteen years of age.

Source: United Nations, *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (15 November 2000), art. 3.

## Elements of Human Trafficking

ACT AND PROCESS	MEANS	PURPOSE
<ul style="list-style-type: none"> <li>• Recruitment</li> <li>• Transportation</li> <li>• Transfer</li> <li>• Harbouring</li> <li>• Receipt of persons</li> </ul>	<ul style="list-style-type: none"> <li>• Threat</li> <li>• Force</li> <li>• Coercion</li> <li>• Abduction</li> <li>• Fraud</li> <li>• Deception</li> <li>• Abuse of power</li> <li>• Abuse of vulnerability</li> <li>• Giving and receiving of payments</li> </ul>	Exploitation which includes: <ol style="list-style-type: none"> <li>a. Prostitution and other forms of sexual exploitation</li> <li>b. Forced labor and services</li> <li>c. Slavery and similar practices</li> <li>d. Involuntary servitude</li> <li>e. Removal of organs</li> </ol>

Source: UNODC; <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>



**More information** about the Council of Europe Convention on Action against Trafficking in Human Beings is available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm>

**More information** on the EU Directive is available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

## Regional binding instruments building on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

- The Council of Europe Convention on Action against Trafficking in Human Beings entered into force on 1 February 2008.
- Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.



**Additional information** about human trafficking for domestic servitude can be found in the OSCE publication (available in English, French and Russian): *Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude* (<http://www.osce.org/secretariat/75804>).

### Domestic servitude

Domestic servitude is a form of trafficking in human beings which is extremely difficult to detect because the work is performed in private residences. Domestic work is by nature a hidden form of employment and often part of the informal economy. In many countries, this labour sector is poorly regulated and not recognized as real work. Moreover, it takes place out of sight, thereby isolating the workers. As such, domestic workers are generally more vulnerable to abuse and exploitation than other workers. Further, the difficulty of detecting and addressing domestic servitude in diplomatic residences is even greater, as such residences often enjoy inviolability under international law (e.g., the VCDR), and cannot be entered by host state authorities.

Trafficking for domestic servitude covers a range of situations, all of which share certain features: subjugation, intimidation and an obligation to provide work for a private individual, excessively low or no salary, few or no days off, psychological and/or physical violence, limited or restricted freedom of movement, denial of a minimum level of privacy and health care. Living in the household of the employer, the domestic worker may constantly be required to be available to work day and night, often in living conditions that are unacceptable and subject to abuse, humiliation, discriminatory behaviour and punishment.

## **Situations that increase domestic workers' vulnerabilities to abuses and exploitation may include:**

- They are isolated.
- They lack information about their rights.
- There are gaps in national labour and employment legislation.
- They lack a work contract.
- They often have a precarious administrative/immigration status.
- They are tied to their employer due to labour migration policies which often require domestic workers to work for their sponsoring employer.
- They are in a situation where there is an imbalance of power, often without access to complaint mechanisms.
- They depend on their employer for food and housing.

## **Why are private domestic workers in diplomatic households more vulnerable?**

### **1. Legal status of private domestic workers**

The issuance of a *special ID card or visa* to private domestic workers hired by a diplomatic agent is a privilege tied to the employer's status. This card or visa constitutes an authorization of entry and of residence in the host country. The workers' immigration status is directly linked to the performance of domestic services for diplomatic households and the card or visa is valid only so long as they remain employed by the diplomatic employer. Private domestic workers are often dependent on individual employers and are particularly vulnerable where workers are not allowed to change employer.

### **2. Immunity of employers: protection and prosecution gap**

Diplomatic agents who breach the host country's law cannot be arrested, detained or prosecuted, unless there is a waiver of immunity. Their residences and private vehicles are inviolable and cannot be entered or searched. The recourse of and the assistance to a private domestic worker who is being abused or exploited by a diplomatic agent employer is significantly circumscribed. In some countries, the lack of prosecution hampers the access to assistance measures offered by the state, in particular when such support is conditional on the victim's participation in criminal proceedings. Although private domestic workers have limited legal redress, inroads have been made, such that it can no longer be said that diplomatic personnel enjoy impunity.



## Case study 1

At the end of April – beginning of May, a friend of the family offered Ms. V, an Eritrean woman, the possibility to go to Belgium to work as a cleaning lady. Her passport was confiscated upon arrival by her employer, Ms. T.

Ms. V was then forced to clean and cook without payment under constant physical and psychological ill-treatment, without being permitted to leave the house. At the end of August, she moved to Vienna with Ms. T, and was obliged to wait all day long in a waiting room of the Embassy where Ms. T worked.

She underwent severe physical and psychological abuse on a regular (i.e., almost daily) basis, as she was, for example, forbidden to sleep, shower, eat or even use the restroom. Ms. V reported her situation to the Viennese police in October 2007. In spite of an ongoing investigation, the procedure was interrupted in February 2008 after the defendant displayed a diplomatic passport. Any further procedure is excluded as long as Ms. T enjoys diplomatic immunity. The case was raised with the Austrian Ministry of Foreign Affairs (MFA), which called upon the Embassy concerned to address the case and initiated preventive measures aimed at protecting diplomatic officials' private employees.

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Source: Information provided by the Victims Support Organisation LEFÖ – IBF, 2010.

### Indicators of exploitation in slavery-like conditions include:

- Confiscation of identity documents;
- Physical violence;
- Threats to the victim or his/her family;
- Psychological, emotional and verbal violence (insults, humiliation, degrading treatment, instigating guilt feelings and manipulation);
- Non-payment of wages or grossly inadequate wages;
- Isolation (contact not allowed with the outside world or the family);
- Denial of private life and intimacy. The workers often sleep on a mattress on the floor in the children's room, but also in the bathroom, in the kitchen or even in the shed;
- No access to health care and medical treatment;
- Food deprivation even up to starvation;
- Sleep deprivation due to long working hours, including during the night;
- Freedom of movement limited to meeting the needs of the employer;
- Threat of deportation.



#### Please note

that cases of domestic worker abuse are not all cases of human trafficking. However, any case of abuse or exploitation can hide a situation of domestic servitude. Indicators for the identification of victims of trafficking in human beings have been developed at the national and international level to support national authorities' identification process. More detailed information is available on the ILO website (operational indicators of trafficking in human beings): [http://www.ilo.org/sapfi/Informationresources/Factsheetsandbrochures/WCMS\\_105023/lang--en/index.htm](http://www.ilo.org/sapfi/Informationresources/Factsheetsandbrochures/WCMS_105023/lang--en/index.htm)

## Case study 2

**“Undeclared work, intolerable hours, very low pay and a complete lack of respect. Behind the beautiful embassy facades, the working conditions of diplomatic staff are sometimes closely akin to slavery.”**

“I arrived in Belgium in 2005 to mind children. In addition to looking after the children, I had to do the shopping, the housework, prepare the meals, do the washing. I did not have a room of my own and had to sleep with the children or in the living room. I had to stay with them at weekends too. Even when I was sick, I had to work. I was told that I did not have the right to be sick. I earned 150 euro per month. I had been promised Belgian papers. After some time, I realised that nothing was being done and I contacted an organisation that defends foreigners’ rights. My boss followed me and tried to forcibly enter the place where I went to file my report. In June 2008, I received an order to leave the country but I found an association that was able to help me and I was finally able to leave the house where I worked”.

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Source: ITUC, 19 June 2013 ; <http://www.ituc-csi.org/embassy-staff-in-belgium-slavery?lang=en>

### **Further information about the crime of trafficking in human beings is available on the following websites:**

**CIS** – Commonwealth of Independent States  
<http://www.e-cis.info/page.php?id=23806>

**CoE** – Council of Europe  
<http://www.coe.int/trafficking>

**EU** – European Union  
<http://www.ec.europa.eu/anti-trafficking>

**ILO** – International Labour Organization  
<http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>

**IOM** – International Organization for Migration  
<http://www.iom.int/cms/countertrafficking>

**OAS** – Organization of American States  
[http://www.oas.org/dsp/atip\\_AbouUs.asp](http://www.oas.org/dsp/atip_AbouUs.asp)

**OHCHR** – Office of the High Commissioner for Human Rights  
<http://www.ohchr.org/EN/Issues/Trafficking/Pages/TraffickingIndex.aspx>

**OSCE** – Organization for Security and Co-operation in Europe  
<http://www.osce.org/secretariat/trafficking>

**UNHCR** – United Nations High Commissioner for Refugees  
<http://www.unhcr.org/pages/4a16aae76.html>

**UNICEF** – United Nations Children’s Fund  
[http://www.unicef.org/protection/57929\\_58005.html](http://www.unicef.org/protection/57929_58005.html)

**UNODC** – United Nations Office on Drugs and Crime  
<http://www.unodc.org/unodc/en/human-trafficking/index.html?ref=menuside>

**Further information about human trafficking for domestic servitude is available on the following websites of specialized NGOs:**

**AFRUCA** – Africans Unite Against Child Abuse (United Kingdom)  
<http://www.afruca.org/>

**Ban-Ying** – Specialized counseling center (Germany)  
<http://www.ban-ying.de/>

**Break The Chain** (United States)  
<http://www.breakthechaincampaigndc.org/>

**CAST** – Coalition to Abolish Slavery and Trafficking (United States)  
<http://www.castla.org/>

**CCEM** – Comité Contre l'Esclavage Moderne (France)  
<http://www.esclavagemoderne.org/>

**Fairwork** (Netherlands)  
<http://www.fairwork.nu/english/>

**FIZ** – Fachstelle Frauenhandel und Frauenmigration (Switzerland)  
<http://www.fiz-info.ch/>

**Kalayaan** (United Kingdom)  
<http://www.kalayaan.org.uk/>

**Victims Support Organisation LEFÖ – IBF** (Austria)  
[http://www.lefoe.at/index.php/News\\_en.html](http://www.lefoe.at/index.php/News_en.html)

**MRCI** – Migrants Rights Centre Ireland (Ireland)  
<http://www.mrci.ie>

**Pag-Asa** (Belgium)  
<http://www.pagasa.be>

**The Human Trafficking Pro Bono Legal Center** (United States)  
<http://www.htprobono.org/>



# Internationally recognized human rights and States' obligations



- International human rights standards
- International human rights and labour rights instruments
- ILO Domestic Workers Convention, 2011 (No. 189) and its supplementing Recommendation No. 201

The principle of the universality of human rights is the cornerstone of international human rights law. States assume obligations and duties under international law to respect, to protect and to fulfil the human rights of all human beings regardless of their nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. These rights are all interrelated, interdependent and indivisible.

The recently adopted ILO Protocol to the Forced Labour Convention 1930 (No. 29) and ILO Recommendation (203) on Supplementary Measures for the Effective Suppression of Forced Labour (11 June 2014) recalls that the definition of forced or compulsory labour under Article 2 of the Convention covers forced or compulsory labour in all its forms and manifestations and is applicable to all human beings without distinction.

The following international instruments outline the obligations of States to protect human rights and codify the protection of workers' fundamental rights including for domestic workers.



### **International human rights standards**

- The Universal Declaration of Human Rights (1948)
- The Covenant of Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)



**The Universal Declaration of Human Rights is available at:**  
<http://www.un.org/en/documents/udhr/>



## International human rights and labour rights instruments

- ILO Forced Labour Convention, 1930 (No. 29), Protocol to the Forced Labour Convention No. 29, and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)
- ILO Abolition of Forced Labour Convention, 1957 (No. 105)
- UN Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- International Convention on the Protection of the Rights of All Migrant Workers and their Families (1990)
- ILO Declaration on Fundamental Principles and Rights at Work, 1998
- ILO Domestic Workers Convention, 2011 (No. 189) and its supplementing Recommendation No. 201

### ILO Domestic Workers Convention, 2011 (No. 189) and its supplementing Recommendation No. 201

The Domestic Workers Convention sets out principles and measures to be taken to ensure that domestic workers benefit from minimum labour standards and protections on par with other workers. The Convention affirms that domestic workers are, like other workers, entitled to the respect and protection of their fundamental rights at work and it applies to all domestic workers including those employed by diplomatic agents.

Paragraph 23(4) in the Recommendation stresses that *“in the context of diplomatic immunity, Members should consider: (a) adopting policies and codes of conduct for diplomatic personnel aimed at preventing violations of domestic workers’ rights; and (b) co-operating with each other at bilateral, regional and multilateral levels to address and prevent abusive practices towards domestic workers.”*



ILO Domestic Workers Convention, 2011 (No. 189) and its supplementing Recommendation No. 201 is available at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100\\_ILO\\_CODE:C189](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100_ILO_CODE:C189)



**ILO action and tools are available at:** <http://www.ilo.org/global/topics/domestic-workers/lang-en/index.htm>



# Diplomatic context and diplomatic immunity



- International legal framework for diplomatic and consular relations
- Immunities under the Vienna Convention on Diplomatic Relations
- Immunities under the Vienna Convention on Consular Relations
- International organizations

## International legal framework for diplomatic and consular relations

The Vienna Convention on Diplomatic Relations (1961) and the Vienna Convention on Consular Relations (1963) govern diplomatic and consular relations between States.

The main objective of the Vienna Conventions is to “*contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems*” through the institution of privileges and immunities whose purpose “*is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States*” (Preamble of the VCDR) and reiterated by the Preamble of the VCCR which adds “*but to ensure the efficient performance of functions by consular posts on behalf of their respective States*”.

The Vienna Conventions establish the privileges and immunities to be accorded by host states, define holders of such privileges and immunities as well as their duties. The privileges and immunities of officials and staff of international organizations are not governed by these conventions. Nevertheless, their privileges and immunities are often based on headquarters agreements or other multilateral conventions that incorporate, directly or indirectly, provisions of the VCDR.

Recognizing that varying functions require differing degrees of immunity, the Vienna Conventions prescribe different levels of immunity based on the status of mission members. The VCDR (Art.1) defines categories of persons addressed in the Convention, including:



- *The “members of the diplomatic staff” are the members of the staff of the mission having diplomatic rank;*
- *The “members of the administrative and technical staff” who are the members of the staff of the mission employed in the administrative and technical service of the mission;*
- *The “members of the service staff” who are the members of the staff of the mission in the domestic service of the mission;*
- *A “private servant”<sup>1</sup> is a person who is in the domestic service of a member of the mission and who is not an employee of the sending State;*

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<sup>1</sup> For the purpose of this handbook, the term “private domestic worker” has the same meaning as the term “private servant”. The term “domestic worker” is used in compliance with the ILO Convention on Domestic Workers (No. 189) adopted in 2011.

## Service staff and private domestic worker are different staff categories

“Under Article 1 of the Vienna Conventions on Diplomatic and Consular Relations, respectively, a “private servant” is a person who is in the domestic service of a member of a Mission or Consulate and not an employee of the sending state. Private servants should be distinguished from “members of the service staff” who, according to the above-mentioned conventions, are in the service of a Mission or Consulate.”

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Source: Sweden, “Diplomatic Guide”, Chapter 3 C: Employment of private servants;  
<http://www.government.se/sb/d/16264/a/194937>

### Immunities under the Vienna Convention on Diplomatic Relations (VCDR)

Members of the diplomatic staff (also known as diplomatic agents) enjoy the broadest immunity. Under the VCDR (Art.31), a diplomatic agent enjoys absolute immunity from the criminal and administrative jurisdiction of the host country and near absolute immunity from the civil jurisdiction. Further, their residences, property, and persons are inviolable (VCDR Arts. 29 and 30). As a result, absent waiver by the sending state, judicial redress is generally not available against active diplomatic agents.

Nevertheless, host state law enforcement should be encouraged to investigate allegations of abuse and trafficking to the extent that it can do so consistently with diplomatic immunities, if for no other reason than the fact that once the function of a diplomatic agent is terminated, she or he only benefits from criminal and civil immunity with respect to official acts and may be criminally prosecuted and/or sued civilly for abuse and trafficking. Moreover, family members, who performed no official acts, retain no immunities.

Like members of the diplomatic staff, members of the administrative and technical staff (and their families) enjoy inviolability of person and residence as well as full criminal immunity, and a waiver of immunity by the sending state would be necessary to prosecute while they are active mission members (VCDR Art. 37.2). Their civil immunity is significantly circumscribed, however: they are not immune from civil suits for acts outside of their course of duties. As a result, a civil law suit for abuse or trafficking may be brought against them even while they are active members of a diplomatic mission. Further, like diplomatic agents, once a member of the administrative and technical staff has completed his or her tour of duty, she or he only enjoys residual immunity related to official acts. The employment of a domestic worker is not an official act.



The Vienna Convention on Diplomatic Relations is available at:  
<http://legal.un.org/avl/ha/vcdr/vcdr.html>

### Higher Regional Court of Vienna (21 February 2014)

The Victims Support Organisation LEFÖ – IBF supported a private domestic worker who was employed in a diplomatic household in Vienna. The worker claimed that she was forced to work from 7am to 1am every day. She had neither regular breaks nor holidays. She worked on Sundays, public holidays and even when she was sick. She ran away after two and a half years of service.

A couple of months later her employer left Austria. The Labour and Social Court of Vienna decided that a civil action against the employer in the amount of EUR 132,000 of unpaid wages (outstanding salary, overtime, unused holidays, other allowances and separation benefits) was admissible.

The diplomatic employer appealed the decision and argued non-competence of the court because of diplomatic immunity (art. 31.1 and art. 32.3 VCDR). However, the Higher Regional Court of Vienna rejected the appeal and argued that immunity of the diplomat did not mean that a relationship under private law between the defendant and the claimant falls under the scope of the diplomat's functional immunity after leaving his post (art. 39.2 VCDR). While the matter was in court for a ruling on the substance early this year, an out-of-court settlement was reached between the lawyers of the plaintiff and the defendant.



The Vienna Convention on Consular Relations is available at: <http://legal.un.org/avl/ha/vccr/vccr.html>

### Immunities under the Vienna Convention on Consular Relations (VCCR)

Consular officers and employees posted outside of capitals generally enjoy much more limited immunities under the VCCR (Art.43). Consular officers (i.e., those exercising consular functions) and consular employees (i.e., persons employed in the administrative and technical service of a consular post) enjoy immunity from host state jurisdiction only for official acts. This more limited form of immunity has significant consequences in practice. Criminal and civil proceedings for abuse and trafficking of private domestic workers can generally be brought against consular officers and employees, because the employment of a private domestic worker is not considered to be an official act. Indeed, VCCR Article 41(3) states that *“if criminal proceedings are instituted against a consular officer, he must appear before the competent authorities.”*

### International Organizations

The privileges and immunities of officers and staff of international organizations are generally governed by constitutive agreements of the organization and/or headquarters agreements with host states. While the privileges and immunities accorded vary from agreement to agreement, it is often the case that most personnel do not enjoy the full immunity of jurisdiction of diplomatic agents. As a result, depending on the specific governing instrument, it may be possible for criminal and/or civil proceedings for private domestic worker abuse to be brought against active personnel.



# What are the roles and responsibilities of host countries in preventing exploitation and protecting the rights of domestic workers employed by diplomatic personnel?



- Prevention
- Monitoring
- Protection
- Mediation
- Sanctioning

Under the VCDR and the VCCR, diplomatic personnel enjoying privileges and immunities have a duty to respect national laws and regulations. The same principle applies to officials at international organizations. Protocol Departments play an essential role in this matter.



As Protocol Departments, you are a vital intermediary. You can take strategic action in different areas to ensure effective implementation of the Vienna Conventions as well as of headquarters agreements and monitor compliance with the laws and regulations of your country.

**“Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State.”**

VCDR, Art. 41-1

As Protocol Departments, you have a crucial role in the prevention, monitoring, mediation and protection of private domestic workers and sanctioning abusive employers.

**Why are regulations or guidelines to employ private domestic workers necessary?**

- To have a clear, transparent and accountable process
- To ensure that the employment relationship complies with the host country's labour and social laws
- To facilitate monitoring
- To discourage non-compliance with labour and human rights standards
- To detect abuses and violations of the host country's legislation and standards
- To respond to abuses and respond to complaints

## Prevention



As Protocol Departments, you can take affirmative measures to prevent private domestic worker exploitation by:

- Ensuring the correct implementation of the Vienna Conventions and headquarters agreements of international organizations;
- Raising awareness among foreign diplomatic missions and international organizations about their duty to respect national regulations and laws;
- Setting explicit guidelines or regulations on the employment of private domestic workers in diplomatic households including requirements that discourage abuse;
- Sensitizing relevant ministries and authorities, in particular the judiciary, about the existence of such privileges and the limitations of immunity as well as the possibility to ask for a waiver of immunity;
- Acting as a focal point at the national level for any questions related to privileges and immunities;
- Informing private domestic workers about their rights and obligations as well as available support in the host country when they apply for a visa and after they arrive in the host country, including by a meeting with such workers, whether by a group briefing or in-person registration process;
- Promoting a multidisciplinary approach for dispute settlement and effective co-operation with NGOs and/or trade unions to ensure assistance for vulnerable and exploited workers;
- Educating law enforcement and judicial authorities about diplomatic and consular immunities, including the limitations on such immunities;
- Developing a system whereby waivers of immunity are requested from sending states when but for immunity, law enforcement would be able to prosecute a serious case of domestic worker abuse;
- Providing appropriate awareness raising information and clear guidance on the employment of private domestic workers to your own diplomatic personnel.

## Monitoring

Private domestic workers are a category of the VCDR/VCCR. The MFA is accountable for their registration in the host country. Considering the protection gap resulting from the immunities, Protocol Departments should monitor the application of labour laws and Protocol Department rules. Note that the usual labour authorities (such as labour inspectors) are often not allowed to control private households. Therefore an effective monitoring procedure is essential.



As Protocol Departments, you can take the necessary measures to monitor diplomatic privileges by:

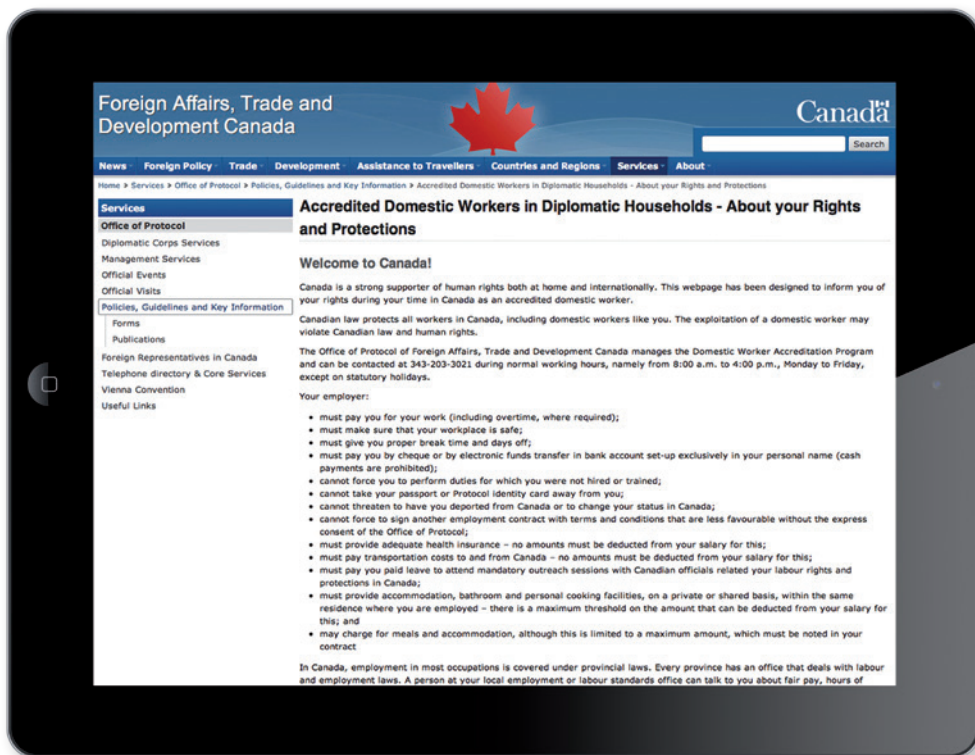
- Reminding foreign missions and IOs of their duty to comply with host country's regulations;
- Monitoring enforcement of workers' rights;
- Monitoring the entry and departure of private domestic workers;
- Preventing labour and social rights violations.



## Protection

You can proactively help protect the rights of private domestic workers by:

- Ensuring that the privacy of private domestic workers is respected;
- Identifying abuse or exploitation;
- Making information available to private domestic workers on relevant NGOs or authorities that focus specifically on human trafficking;
- Referring victims of domestic servitude to relevant NGOs or relevant authorities;
- Developing and working with a network of NGOs or service providers that specialize in assisting such workers and/or victims of domestic servitude;
- Relying on civil society's strengths and experience and come to a mutual understanding on how to work together to increase confidence. Note that NGOs (as well as trade unions in some countries) can play a valuable role in helping to identify victims and find a solution while supporting the person.



The detection of exploitation cases and the identification of potential victims of domestic servitude are key functions in securing the rights of domestic workers. Abusive working conditions taking place in private households are not easy to detect. Victims of domestic servitude are difficult to identify as they often do not see themselves as victims of crime and are frequently unaware of their rights in the host country. Thus, they rarely seek assistance or redress.

The ILO Forced Labour Protocol requires Member States to *“take effective measures for the identification, release, protection, recovery and rehabilitation of all victims of forced or compulsory labour, as well as the provision of other forms of assistance and support”* (Art. 3). Recommendation 203 states that *“targeted efforts should be made to identify and release victims of forced or compulsory labour”* (Art. 5(1)). In addition, the Palermo Protocol requires States to take certain measures to assist and protect trafficking victims, including by providing them with information about legal redress and to consider permitting victims to remain in the territory temporarily or permanently.

Information provided on the website of the Canadian Ministry of Foreign Affairs, Trade and Development, for accredited private domestic workers: [http://www.international.gc.ca/protocol-pro-cote/policies-politiques/rights-domestic-workers\\_domestiques-prives-droits.aspx?lang=eng](http://www.international.gc.ca/protocol-pro-cote/policies-politiques/rights-domestic-workers_domestiques-prives-droits.aspx?lang=eng)



### Mediation

As Protocol Departments, you are key intermediaries because you are the first interlocutor for foreign diplomatic missions and international organizations as well as for private domestic workers. As appropriate, you can help find “amicable” arrangements when problems arise between the employer and the private domestic worker. Switzerland and Belgium have developed a mediation mechanism to settle dispute out of court.



### Sanctioning

In case of non-compliance with the rules, you can:

- Use a range of diplomatic measures that are at Foreign Ministries’ disposal to sanction abusive diplomatic employers such as exerting pressure and withdrawing privileges;
- Take appropriate measures to ensure that when credible, serious allegations arise that a specific diplomatic employer has abused or exploited a private domestic worker, this official would no longer be allowed to hire a private domestic worker (while any allegations remain unresolved);
- Declare the diplomatic employer *persona non grata* as provided for by the VCDR, Art.9, where applicable.

## United States Trafficking Victims Protection Act of 2000, as amended

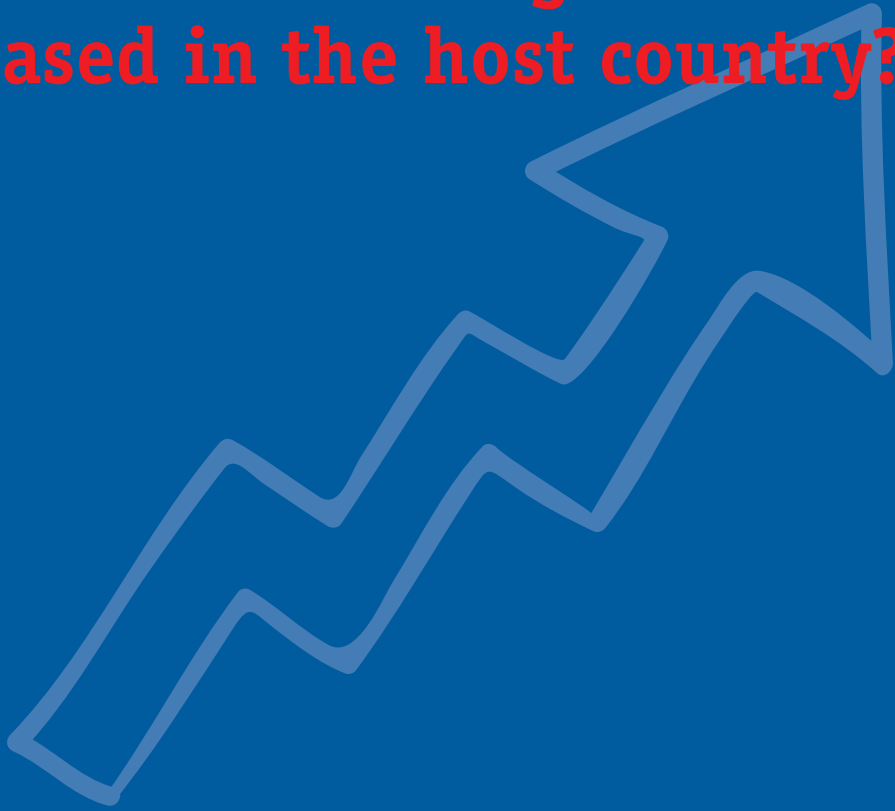
The Trafficking Victims Protection Act of 2000, which has been amended over the years to enhance protection for foreign domestic workers employed by diplomatic personnel, requires specific training for consular officers to alert domestic worker visa applicants to their legal rights and provide with an information pamphlet on legal rights and resources to visa applicants, including those who seek work as domestic employees of diplomatic personnel. In addition, in 2008 the law was amended to require the Secretary of State to suspend issuance of domestic worker visas for all personnel of a diplomatic mission if the Secretary of State determines that there is credible evidence that a member of the mission abused or exploited a domestic worker and the mission tolerated such abuse. The suspension requirement also applies to international organizations, if an official of such an organization abuses or exploits a domestic worker and the organization tolerates the abuse.

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Source: U.S 110<sup>th</sup> Congress, *William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)*, Public Law 110-457, 23 December 2008, sections 202 and 203. <http://www.state.gov/j/tip/laws/>



# How to regulate the employment of domestic workers by diplomatic personnel and officials at international organizations based in the host country?



- Step 1: Setting a policy framework with rules and procedures for employing a private domestic worker
- Step 2: Developing rules and procedures for the employment of private domestic workers

## Step 1

# Setting a policy framework with rules and procedures for employing a private domestic worker



See the Netherlands "Protocol Guide for Diplomatic Missions and Consular Posts", Chapter 5 on Private servants, p. 31: <http://www.government.nl/issues/staff-of-foreign-missions-and-international-organisations/documents-and-publications/leaflets/2013/01/21/protocol-guide-for-diplomatic-missions-en-consular-posts-january-2013.html>

Other examples of Foreign Ministries' online policies are available in Annex 2.

A policy framework and related rules and procedures to govern the employment of a private domestic worker will enable Protocol Departments to send a clear message to the diplomatic community that your government expects domestic workers to be treated fairly and in accordance with local law and Protocol requirements and will not tolerate any abuse.

### A policy governing the registration/admission of private domestic workers in diplomatic households can include:

#### Employers' information on their obligations

The most common way is to send a circular note to foreign diplomatic missions and international organizations informing them of the host country's rules and procedures for the employment of private domestic workers. You can in addition inform employers individually during the accreditation process about their responsibility and ask for their commitments. In addition, ad hoc briefings to sensitize eligible members of foreign missions can be organized by the Protocol Department. Switzerland adopted an Ordonnance giving legal force to their regulation on the employment of private servants by diplomatic personnel.

## New procedures and guidelines in Poland and Ireland

In 2014, as a follow up to the workshops on the prevention of domestic servitude in diplomatic households organized by the OSCE, countries such as Poland and Ireland adopted new procedures and guidelines to prevent and discourage exploitation of domestic workers in diplomatic households.

**The Ministry of Foreign Affairs of the Republic of Poland** introduced on 1 April 2014 new procedures for the employment of private domestic workers in private households of members of diplomatic missions and consular posts in Poland. Polish consulates started distributing written information - *Know your rights and responsibilities in Poland* - to all persons seeking employment in Poland as private domestic workers. It provides additional information on their basic rights in Poland and where to seek immediate help if required.

**The Department of Foreign Affairs and Trade of Ireland** issued in September 2014 guidelines to diplomatic and consular missions in Dublin concerning the employment of private domestic workers at Embassies. The guidelines were developed in close consultation with the Ministry of Justice and Equality, including its Anti Human Trafficking Unit, the Department of Jobs, Enterprise and Innovation, as well as the National Employment Rights Authority and An Garda Síochána (Irish National Police Force, also responsible for operational matters relating to immigration).

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Source: Department of Foreign Affairs and Trade Website, "Minister Flanagan announces new guidelines for diplomatic staff employing private domestic employees", <https://www.dfa.ie/news-and-media/press-releases/press-release-archive/2014/september/minister-guidelines-private-domestic-employees/>

### **Eligibility of employers and limits**

The VCDR and VCCR do not address the issue of who is eligible to hire private domestic workers and the number per household. Host countries can decide on these elements. Some countries have adopted a restricted eligibility policy.

### **Registration mechanism**

A registration mechanism for private domestic workers is simply a formal procedure to register with the Protocol Department and/or to authorize them to enter the host country for the purpose of working in a diplomatic household under the responsibility of the employer. It enables you to control the entry and final departure of the workers as stipulated in the VCDR (art.10 (c)). Experience has shown that it also facilitates the monitoring of the employment situation and the detection of rights violations.

### **Profile of the private domestic worker**

Many host countries do not allow issuing a visa to, or hiring a close relative or a family member of the employer. A service staff member is not allowed to work in the private residence of a diplomatic agent or an administrative and technical staff member, except the Head of mission as the residence is part of the official premises of the diplomatic mission (VCDR/VCCR). Some countries, such as Canada, require specific linguistic skills, for example, the official language/s of the host country. Australia expects that the worker has a sufficient level of English to allow her/him to operate independently in the host country. Switzerland requires that the private domestic worker has sufficient language skills in one language among a list of six to enable the person to communicate with the Swiss authorities.

### **Time of employment**

There are different practices. Some countries allow transfer from one diplomatic employer to another diplomatic employer after the termination of the contract without time limitations; some prohibit the private domestic worker from changing employer even at the end of the contract. One country imposes a limitation of 10 years that any foreign private domestic worker can stay in the employ of diplomatic personnel. Others restrict employment to one diplomatic household and then require the person to depart the country when the job is terminated.

### **Information for private domestic workers**

It is optimal for Protocol Department to provide private domestic workers with information about their rights and obligations – including contract information in case they are mistreated - in a language they understand. If leaflets or written documents are used, they should be available in different languages.

### **Terms and conditions of employment**

The terms and conditions of employment must comply with relevant labour laws and human rights standards. A model employment contract prepared by the MFA can be used by the parties so as to conform to relevant legislation. The employment contract must be written in a language the private domestic worker can read. Provisions such as minimum wage, working hours, overtime, time off, holidays, paid annual leave, round-trip transportation, health/accident insurance and termination modalities should be included. In some countries, some provisions are adapted to the specific circumstance of working for a diplomatic employer (regulations of working hours, payment of salary via bank transfer to a bank account opened in the host country in the name of the worker, in an attempt to close the protection gap, proper accommodation and food). Wage and benefits in kind should be explicitly indicated if no minimum wage is mandatory. A majority of countries prohibit the private domestic worker from working for more than one employer at a time.

### **How a bank account helps to protect private domestic workers**

A couple of years ago Austria introduced the obligation that all wages of a private domestic worker have to be paid into a bank account in the sole name of the domestic worker. Previously, such a worker usually received payments in cash. Although receipts were signed, there was no certain proof that they really got the money. Also, employers often transferred a part of the wages directly to the families of the private domestic worker in their home countries. As the workers knew little about exchange rates and bank commissions, they had to trust their employers that they were not being cheated.

Mandatory bank transfer provides a proof that the private domestic worker has received the money as well as a proof that the employer has paid the money. In Austria bank statements are checked annually on the occasion of the extension of the private domestic worker ID card by the MFA. Therefore it is possible to detect early, if payment obligations are not met and to trigger the necessary interventions.

### **Arrival and departure procedures in accordance with Art. 10 of VCDR and Art. 24 of VCCR**

#### **Modalities to change employer**

Many countries do not allow private domestic workers to change employer before the termination of the working contract. While there may be reasons for this limitation, it seems that this restriction has been used as a tool to pressure the worker and increase his or her vulnerability as his or her legal status is tied to the diplomatic employer. Note that some countries do authorize workers to change employer under the minimum condition

that the new employer is an eligible diplomatic agent. It has been observed that giving private domestic workers the possibility to change employer without leaving the country has been helpful. Switzerland allows the private domestic worker to change employer (within the persons authorized to hire a private domestic worker with a legitimation card (special ID card/visa)), and therefore it requests that employers attempt to employ someone already in the country before requesting authorization to hire a person from abroad. This grants private domestic workers an opportunity to find a new employer and ensures that the employer find a person who is familiar with the environment and working conditions.

### **Monitoring**

Monitoring of the general situation surrounding a particular worker's condition can be done on a yearly basis through the renewal of a special ID card or visa. The private domestic worker shall be invited to collect the renewed special ID or visa personally and unaccompanied by the employer. It is an opportunity to conduct a personal interview to check the situation, review the working conditions as well as update the contract, if needed. Experience shows that after the second interview, the private domestic worker sees the Protocol official as a reliable contact person. In some cases, workers do not wait for the yearly visit to discuss problems that have arisen with their employer. This is a valuable opportunity for workers to speak out about their employment conditions, as they are not accompanied.

### **Complaint mechanism and dispute settlement**

The immunity of diplomatic agents may limit the extent to which a domestic worker can take legal redress against their former employer while he or she is accredited to the host state. The worker still has the right to complain and seek redress. A mechanism including collaboration with appropriate authorities (e.g., Ministry of Labour, ombudsman, mediation mechanism, Ministry of Justice) can be set up to collect the complaints and settle disputes between the employer and the private domestic worker. While the settlement of a claim may be appropriate in some cases, it cannot replace legal action, if a criminal offence was committed.

### **Prosecution**

Some host states require, if a prosecutor has a criminal case against a diplomatic agent but cannot proceed with an arrest and prosecution because the agent enjoys immunity, that the sending state waive that immunity and, if it fails to do so, requires the departure of such a mission member. In the United States where domestic workers have filed civil cases against their former diplomatic agent employers after those employers were no longer accredited to the United States, courts have found that the agents' residual immunity does not protect them (or their spouses) from the court jurisdiction. The defendants (formerly diplomatic agents accredited to the United States or the United Nations in New York) have settled those cases rather than go to trial or risk a default judgment.

## Step 2

# Developing rules and procedures for the employment of private domestic workers

1

### Pre-arrival measures and pre-notification requirement for special ID card or visa request

Prior to arrival in the host country, the foreign diplomatic mission, on behalf of the employer, should request approval for recruiting and bringing a private domestic worker and the issuance of a special ID card or visa, through a Note verbale.

The visa application must be done at the competent diplomatic representation of the destination country. The following information and/or documentation should be submitted by Note verbale and considered in order to assess the validity of the recruitment:

- Copy of the passport of the private domestic worker;
- **Employment contract signed by both parties** in accordance with the model contract provided by the MFA;
- Statement of responsibility.

Due to multiple violations of domestic workers' privacy and safety, the Austrian MFA requests a copy of the employer's rental agreement and of the layout plan of the dwelling indicating the location of the private domestic worker's room.

In addition to reviewing documents, before issuing the visa, some countries conduct an interview of the prospective private domestic worker at their diplomatic or consular mission abroad. It is an opportunity to check that the person understands the terms of the employment contract and has all useful information.

2

### Issuance of a special ID card or visa after arrival in the host country

When the application for employing a private domestic worker from abroad is approved, additional steps are required, such as:

- **Personal interview with domestic workers.** The private domestic worker must collect the special ID card or visa in person and unaccompanied by the employer. It enables you to have a first contact with the worker and to inform the person about her or his rights and where to seek assistance, if needed. It is useful to hand out short information leaflets containing contact details of relevant national authorities and specialized NGOs or trade unions during this meeting;
- **Registration** of the worker with his or her country's diplomatic or consular mission;
- Employer takes out an **accident and health insurance policy** for the private domestic worker;
- Employer opens a **bank account** in the sole name of the private domestic worker for the payment (bank transfer) of the salary. You should note that in many countries of the OSCE region the burden of proof with respect to the agreed payment of wages rests with the employer. In some countries, the review of bank statements is conditional for the renewal of the special ID card/visa.

# 3

## Renewal of the special ID card on a yearly basis

The renewal will enable you to maintain a relationship with the private domestic worker and to become his or her main contact person.



**Know Your Rights**  
Call one of the hotlines listed in this pamphlet if you need help

You are receiving this pamphlet because you have applied for a nonimmigrant visa to work or study temporarily in the United States. The purpose of this pamphlet is to help you understand your rights when you arrive in the United States. Even though you will be living in the United States only temporarily, you will still have many of the basic workplace rights that U.S. citizens and residents have.

This pamphlet gives an overview of your basic workplace rights. Understanding your rights will help you to protect yourself from abuse. Keep this pamphlet with you in the United States in case you need to reach someone for help.

This pamphlet was also created to help you protect yourself against the most serious abuses, such as human trafficking. Human trafficking is a form of modern-day slavery where an employer or other individual, through physical or psychological abuse, causes an individual to feel that he or she is not free to leave the situation. Recognizing that you are in an abusive employment situation is the first step toward getting help.

If you arrive in the United States and have problems at work, you should seek help immediately. Do not believe your employer if he or she says that you do not have legal rights in the United States. Do not accept legal advice from your employer, contractor, or recruiter. Only an attorney representing you should give you legal advice.

If you believe your rights are being violated, the hotlines listed in this pamphlet can help you reach local organizations that can provide further assistance. Do not be afraid to contact these organizations! They are here to help you.

This pamphlet is not a substitute for legal advice. There are many different types of temporary work and educational visas, and you should not be afraid to ask for more information about your visa.

**IF YOUR RIGHTS ARE VIOLATED, CALL THESE TOLL-FREE NUMBERS:**

National Human Trafficking Resource Center  
1-888-372-7888  
(24 hours)

Trafficking in Persons and Worker Exploitation Task Force Complaint Line  
1-866-428-7581  
(Monday—Friday, 9am-5pm Eastern Time)

United States information leaflet point 8 on Your Right to Leave an Abusive Employment

## Swiss Practice

### Seeking a private domestic worker on site prior to engaging a person from abroad: Employment Registration Desk for private domestic workers, as well as for the employers

In keeping with its mission to welcome, inform and offer advice, the Geneva Welcome Centre (CAGI), created in 1996 by the federal and cantonal authorities, has established an Employment Registration Desk for private domestic workers who are seeking employment with a member of a diplomatic mission, of a permanent mission, or of a consular post, or with an international civil servant, as well as for employers seeking a private household employee.

#### The aims of the Employment Registration Desk are to:

- assist private domestic workers, holding a legitimation card of FDFA (ID card or visa) who are already in Switzerland in finding a new employer;
- provide an opportunity for employers to find suitable private domestic workers on site in accordance with the Private Household Employees Ordinance of 6 June 2011 (<http://www.dfae.admin.ch/eda/en/home/topics/intorg/un/unge/gepri/manodp.html>), which stipulates that prior to engaging a private domestic worker from abroad, the employer must look in Switzerland for a private domestic worker who is able and willing to fill the position.



**Information note available at:**

<https://www.eda.admin.ch/content/dam/missions/mis-sion-onu-ofc-aele-geneva/fr/documents/Bourse%20d%20emploi%20%20notice%20francais%20novembre%202011.pdf>





# Measures applying to staff of international organizations



- Good practices
- Code of conduct

Senior officials of international organizations may enjoy immunity from jurisdiction (criminal, administrative and civil), similar to diplomatic agents, which are set out in the Headquarters Agreement between the host country and the international organization, or in the organization's statutes. The majority of international organization personnel, however, enjoy limited immunity from jurisdiction only for official acts related to their employment, which will not likely protect them from criminal or civil measures regarding abuse or exploitation of a private domestic worker.

In many countries, the rules developed for members of foreign diplomatic missions also apply to eligible officials at international organizations. The ethical policy of the World Bank perfectly describes how Protocol's rules and procedures can be implemented by international organizations.

Host countries of international organizations should ensure that organizations understand their duties and responsibilities when their officials enjoy privileges and immunities, and in particular when employing private domestic workers. As Protocol Departments, you should encourage and **promote a regular dissemination of your rules and procedures** through staff briefings, staff circulars, and staff training on ethics or adoption of a staff code of conduct.

### **UN Code of Conduct for United Nations staff in Lebanon employing Domestic Workers (extract)**

"All United Nations staff are expected to demonstrate at all times the core principles of integrity, gender equality and respect for diversity. This Code of Conduct aims to ensure that these values are applied in the private as well as the public spheres, and sets out guidelines for national and international UN staff in Lebanon in their treatment of domestic staff in their employ, whether they live in the household or not.

[...]

This Code of Conduct is guided by international human rights standards and principles, including core labour standards, and takes note of existing legal provisions in Lebanese labour laws and the unified employment contract recently introduced in Lebanon. In employing a Domestic Worker, fair terms of employment and decent working and living conditions including fair remuneration established, at minimum, on the basis of the legal minimum wage should apply ..."

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Source: <http://www.un.org.lb/Library/Files/News/Code%20of%20Conduct%20E.pdf>

## World Bank measures and requirements for the employment of private domestic staff.

"Report Arrival of G5 Visa Holder and Attend Mandatory Orientation Seminar

Summary of the steps to be followed to employ a domestic with a G5 visa (special visa for private domestic worker):

### Action by Staff

**01** Complete the G5 Arrival package through myHR Self Service, after the G5 visa holder arrives at the U.S. If the G5 contract was signed on or before August 1, 2012, you must complete a new contract that reflects the updated required minimum wage.

**02** Submit the mandatory documents mentioned in myHR Self Service to HR Operations. The online request should be completed and all required documents should be submitted within 10 calendar days of the G5 visa holder's arrival. The Bank is obligated to report the event to the U.S. State Department.

### Action by HR

**03** Perform these actions:

Add the G5 visa holder's details to the staff member's household record. Register the G5 visa holder with the U.S. State Department.

Send the staff member an invitation to attend the mandatory G5 orientation seminar along with the G5 visa holder.

If a staff member receives three such invitations and does not attend the seminar, HR Operations will refer the case to the Investigations Unit for review and possible disciplinary action under Staff Rule 3.00 and Staff Rule 8.01.

### Action by Staff

**04** Attend one G5 orientation seminar along with the G5 visa holder. If you are employing an additional G5 visa holder, attend the orientation along with the additional G5 visa holder as well. A spouse, even if s/he is also a staff member, cannot attend the G5 orientation seminar on your behalf.

Note: Orientation sessions are usually held in January, April, July, and October of each year. G5 Orientation session for the year 2014 is:

Tuesday, January 28, 2014

Wednesday, April 16, 2014 (World Bank)

Wednesday, July 9, 2014 (World Bank)

Tuesday, October 21, 2014 (IMF)

Details of time and venue will be communicated in the invitation. Both the World Bank and IMF have strict security procedures for G5 visa holders attending the orientation:

Requests to attend are not accepted after the deadline that is specified on the invitation. The G5 visa holder must carry a photo ID, preferably a passport, to the orientation to gain entry.

**05** Complete and retain Form I-9 Employment Eligibility Verification. Do not file this form with USCIS. You must retain this form either for three years after the date of hire or for one year after employment is terminated, whichever is later. The form must be available for inspection by authorized U.S. Government officials, such as the Department of Homeland Security and Department of Labor.

**06** Obtain mandatory medical insurance for the G5 visa holder.

**07** Assist the G5 visa holder in opening a bank account. Refer to Open a Bank Account at BFSFCU for a G5 Visa Holder. According to a U.S. State Department requirement, within 90 days of commencement of employment, the G5 visa holder should be paid by check or electronic fund transfer to a bank account in the G5 visa holder's name only. No cash payments should be made.

**08** Retain accurate records of all financial transactions relating to the employment of the G5 visa holder.

**09** Abide by the Code of Conduct and the contract in all respects during employment of the G5 visa holder.

Additional actions to consider Refer to the online resources on tax and legal obligations pertaining to G4 visa holders employing domestics with G5 visas.

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Source: <http://web.worldbank.org/WBSITE/EXTERNAL/EXTSTAFF/EXTHR/0,,contentMDK:22193808-menuPK:64231687-pagePK:64233720-piPK:64233738-theSitePK:444049-isCURL:Y,00.html>

## OSCE action to promote compliance with human rights and ethics

The **OSCE Code of Conduct** is the basis of the Organization's Ethical Framework. Each official, by signing his or her letter of appointment, undertakes to abide by the Code of Conduct. A number of Staff Regulations, Rules, Circulars and Instructions supplement and strengthen the application of the Code of Conduct. The Code of Conduct applies to all OSCE officials, including the Secretary General, Heads of Institutions and Heads of Mission.

For instance, the OSCE adopted a **Staff Circular** on the requirements for the employment of private domestic staff. Its purpose is to summarize and clarify the requirements for the employment of private domestic staff by OSCE staff as per the information provided by the Austrian Federal Ministry for European and International Affairs and Integration.

Moreover, an OSCE Ethics Co-ordinator is in place to support the ethical framework in the Organization and to provide advice and recommendations on ethical dilemmas. OSCE officials are introduced to the relevant policy framework and given guidance on how to approach and resolve ethical issues through an **interactive online ethics training course**.



### Extract from OSCE Code of Conduct

#### **4. Compliance with accepted human rights standards**

*OSCE officials shall refrain from any conduct which could be detrimental to the goals of the OSCE. This includes but is not limited to an affiliation with any person who is suspected of being involved in any activity that violates national or international law or accepted human rights standards, or an affiliation with any person who could reasonably be suspected of engaging in the trafficking in human beings. OSCE officials shall be aware that the use of the services of a person suspected of being a victim of trafficking contributes both to the profit of traffickers and the harm to victims. OSCE officials shall adopt exemplary standards of personal behaviour to ensure the OSCE is contributing to combating trafficking in human beings, and is not exacerbating the problem. OSCE officials shall be accountable to their respective national authorities, and when appropriate to local authorities, for any illegal activities inciting this criminal trade or behaving in contravention of the above mentioned standards.*

#### **5. Relations with the Host Country**

*Notwithstanding privileges and immunities which may be granted to OSCE officials by the host country in the interest of the OSCE and not for their personal benefit, OSCE officials shall respect the laws and regulations of the host country, as well as its local customs and traditions. Privileges and immunities granted to OSCE officials shall not exempt OSCE officials who are covered by them from the performance of their private obligations."*



The full text of the OSCE Code of Conduct is available at: <http://www.osce.org/secretariat/31781?download=true>

# Addressing allegations or complaints regarding abuses or more serious exploitation including domestic servitude



- Referral of victims of domestic servitude
- In-house solutions
- Initiate investigations
- Settlement of disputes: mediation

The VCDR is explicit that “*without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State*”. Nevertheless, diplomatic immunity may lead in some instances to a protection gap for abused private domestic workers.

Allegations or complaints can have various levels of gravity: from a “simple” civil contractual violation to a criminal offence such as trafficking in human beings or forced labour to other related crimes, such as visa fraud. A case-by-case solution approach should be applied as each case is unique and because legal procedures may be hampered by the employer’s immunity.

Domestic servitude is a serious crime that needs to be investigated and, where possible, prosecuted – even when it is committed by diplomatic personnel. Firstly, when diplomats finish their posting, they no longer enjoy broad immunity in the state to which they had been accredited and their spouses or other family members no longer enjoy any immunity. In most of the host countries the hiring of a private domestic worker is not considered to be part of the official functions of the diplomatic employer.

Immunity can be a serious impediment for the prosecution of diplomats engaged in exploitation as well as for the provision of assistance to victims of domestic servitude. In many countries, governmental protection measures for victims of human trafficking including for domestic servitude, presuppose that the perpetrator will be or is prosecuted and they are conditional upon the victim’s participation in the case. When diplomatic immunity constitutes an obstacle to prosecution and in states where assistance for trafficked persons is conditional upon the involvement of the victim in the criminal justice proceedings, the trafficked person may not be entitled to benefit from the status of human trafficking victim and related protection measures even if she or he was willing to participate in the proceedings. From this point of view, immunity is a barrier to redress as well as to assistance since the victim’s participation in the investigation and prosecution of the abusive employer is not possible.

## What can be done?

- 1. Refer the victim of domestic servitude to the appropriate support and assistance services**
- 2. Assess the situation in-house**
- 3. Initiate investigation**
- 4. Out-of-court settlement through mediation**
- 5. Request waiver of immunity** in compliance with the VCDR (art. 32) and VCCR (art.45)
- 6. Declare *Persona non grata***



**The CBSS, the IOM and the OSCE/ODIHR published handbooks** on how to refer and assist victims of trafficking:  
<http://www.cbss.org/wp-content/uploads/2012/11/CBSS-TF-THB-Handbook-for-Diplomatic-and-Consular-Personnel.pdf>

[http://publications.iom.int/bookstore/free/IOM\\_Handbook\\_Assistance.pdf](http://publications.iom.int/bookstore/free/IOM_Handbook_Assistance.pdf)

<http://www.osce.org/odihr/13967?download=true>

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<http://www.cbss.org/wp-content/uploads/2012/11/CBSS-TF-THB-Handbook-for-Diplomatic-and-Consular-Personnel.pdf>

[http://publications.iom.int/bookstore/free/IOM\\_Handbook\\_Assistance.pdf](http://publications.iom.int/bookstore/free/IOM_Handbook_Assistance.pdf)

<http://www.osce.org/odihr/13967?download=true>

## **1. Refer the victim of domestic servitude to the appropriate support and assistance services**

Multidisciplinary co-operation including with a network of specialized NGOs or service providers, consular offices (e.g., for issuance of new passport), relevant national authorities and lawyers in their respective role will facilitate the management of cases.

## **2. Assess the situation in-house**

Depending on the severity of abuse, Protocol Departments must, as a first step, ascertain whether the diplomatic employer enjoys immunity or not, whether the immunity is an obstacle to redress and whether mediation, if appropriate, should be attempted:

- If the employer does not enjoy immunity or enjoys immunity only for official acts, the private domestic worker must be advised to seek legal redress including civil action, and authorities can initiate an investigation.
- If the employer has full immunity, prioritize “amicable” solutions enabling domestic workers to obtain restitution of wages and/or compensation from the employer, while he or she is still in the country. In criminal cases, an “amicable” solution does not apply.

## **Effective mediation and out-of court settlement at the Austrian MFA**

In 2014, two private domestic workers fled from the Vienna residence of a bilateral diplomat and found shelter with the Victims Support Organisation LEFÖ - IBF. They claimed to have - over a period of three months - received less than half of their wages due by the provisions of the work contract and complained about excessive working hours. By means of a questionnaire, which was sent to LEFÖ and the Mission of the diplomat, the MFA pinpointed the gap between the wages paid and promised. Starting with the established figure, there were some negotiations with the parties until a couple of weeks later a compromise was found. LEFÖ (on behalf of the private domestic workers) and the employer signed an out-of-court settlement. An amount of EUR 8,000 was given to the private domestic workers for all remaining claims resulting from their work contracts. The diplomat could stay in his post. Thus, a relatively swift solution was achieved without costly interventions by lawyers and court fees.

## **3. Initiate investigation**

An investigation establishes better preconditions to settle and to reach an agreement between parties, to support the identification procedure of victims, to support prosecution. Note that indictments can be issued after the diplomatic agent's departure. A lawsuit can be filed, though it will then be dismissed due to immunity, but the record stays on file. Keep in mind that most officials of international organizations enjoy far more limited immunity than most diplomatic personnel.



## 4. Out-of-court settlement through mediation

Switzerland and Belgium have established a specific mediation mechanism to resolve labour disputes arising between diplomatic employers and private domestic workers. Note that out-of-court settlements can never replace the criminal prosecution of serious crimes.



### More information about

The Office of the *Amiable Compositeur* is available at: <http://www.eda.admin.ch/eda/en/home/topics/intorg/un/unge/gepri/manlab/manla1.html>

## Swiss practice of mediation

### The Office of the *Amiable Compositeur* (BAC)

The Office of the *Amiable Compositeur* is a mediation structure created by the Geneva authorities in 1995 upon the Swiss Federal Department of Foreign Affairs (FDFA).

### Mission

- Resolve labour conflicts involving persons enjoying diplomatic privileges and immunities;
- Intervene when a civil dispute arises between a private domestic worker and his/her employer;
- Seek out an amicable solution to settle the labour dispute.

### Composition

- Team of 3 mediators (or *Amiable Compositeur*) appointed by the Geneva Council of State.
- Current team includes the chair, Martine Brunschwig Graf, former National Councillor and former President of the Geneva Council of State, and two members, Isabel Rochat, former Geneva Councillor of State, and Francis Amar, former Delegate of ICRC.

### Application modalities

- Any member of the international community – employer or employee – may address a request to the Office of the *Amiable Compositeur*;
- Intervention is free of charge.

### Mediation

- Examination of the claim of the private domestic worker followed by an invitation to the employer to discuss the matter. The aim is that the parties to the dispute come to an agreement on the amount of compensation that the employer should pay to the private domestic worker.
- The terms of the settlement concluded under the auspice of the BAC are covered by confidentiality.

The *Amiable Compositeur* works closely with the FDFA and also collaborates with trade unions and lawyers while respecting the principle of confidentiality of cases.

If the *Amiable Compositeur*'s mediation fails, the parties may always address the competent courts.

## Belgian practice of mediation

### The Commission for Good Offices

The *Commission de Bons Offices* was established on 23 May 2013 by the Ministry of Foreign Affairs, the Ministry of Labour and the Ministry of Social Affairs.

### Mission

- To analyse emerged actual conflicts, propose advice and counsel in order to find a solution by mutual agreement;
- To inform the Embassies about their legal obligations – propose a code of good conduct on their behalf;
- To launch proposals for better working conditions for Embassy staff.

### Composition

- The Federal Ministry of Labour (social laws inspection);
- The Protocol Department of the Federal Ministry of Foreign Affairs;
- The National Social Security Agency;
- The Federal Ministry of Finance (Tax Agency);
- Trade Unions.

The president is a representative of the Ministry of Labour and the vice-president is a representative of the Protocol Department of the Ministry of Foreign Affairs.

The mediation request shall be sent to the president of the Commission or to one of its members.

### Mediation

- An official letter is addressed to the diplomatic employer;
- For serious cases of abuse, when the diplomatic employer does not co-operate or reply to the request of the Commission, he, she or the chief of the mission is invited to an amicable meeting with the president and the vice-president of the Commission in order to find a solution while explaining the situation and his or her obligation under Belgian labour law.

The work of the Commission is based on a multidisciplinary approach which enables it to handle complaints in a quick and efficient manner, as all main actors are members of the Commission.

The Commission does not act like a court. When no solution could be found, the plaintiff can always sue the diplomatic employer, if the immunity is not an obstacle.



### More information about

The *Commission de Bons Offices* is available at: <http://www.emploi.belgique.be/defaultNews.aspx?id=39861#>

<http://myembassy.be/?lang=en>

## UNESCO Case

The French NGOs, *Comité Contre l'Esclavage Moderne and Enfance et Partage* informed the Public Ministry of Nanterre about a potential case of domestic slavery in the household of a high-level official working at UNESCO (United Nations Educational, Scientific and Cultural Organization).

Mr M., a former Government minister of Burundi, was a UNESCO staff member and, as such, enjoyed diplomatic immunity. The spouses owned a four-bedroom detached house in Ville d'Avray in the Hauts de Seine region. They had seven children, one of whom was disabled. The victims, two orphaned Burundi sisters aged 16 and 10 years old, were forced to perform all domestic chores in their aunt and uncle's home without remuneration.

When they arrived in France the applicants were housed in what they described as a poorly heated unconverted cellar in the basement of the house. The room contained a boiler, a washing machine and two beds. As soon as they arrived they had been made to do all the housework and domestic chores necessary for the upkeep of the house and the M. family of nine. They had been used as "housemaids". The older sister had to look after the family's disabled son and do the gardening. They were not paid for their work or given any days off. The two sisters were not in an illegal situation vis-à-vis the French authorities, because their names were in their aunt's diplomatic passport.

An investigation on "suspicion of mistreatment" was opened and, for the first time, in 1999, the former UNESCO Director-General decided, on request of the court, to waive the immunity of his staff member. The former official could then be prosecuted. Nevertheless, using his immunity, the procedure was stopped

in February 2001, by an order of dismissal, later invalidated by the Court of Cassation and sent back to another court.

As to the scope of the lifting of Mr M.'s immunity, the court found that no immunity applied, for the following reasons:

*"The explicit terms of the letter addressed to the court on 20 January 2003 by the Protocol Department of the Ministry of Foreign Affairs on behalf of the Minister, who has authority to interpret and measure the scope of the immunity granted to diplomats, dispel all uncertainty about the situation of Mr [M.]; the latter ceased to be a UNESCO staff member on 30 November 2001; as the deeds in question were not committed in the course of his duties, he no longer enjoys diplomatic immunity; there is accordingly no obstacle to his prosecution;"*

In 2009, the Court of Appeal of Versailles invalidated the charge of subjecting several vulnerable people to undignified working conditions, which had been pronounced by the Court of Nanterre in 2007. Indeed, the Court of Appeal argued that the offenders had acted on family solidarity grounds rather than on exploitation grounds (Court of Appeals of Versailles, *Epoux Mpozagara c/ Ministère public*, 29 June 2009).

The European Court of Human Rights examined the case on the ground of allegations of servitude or forced or compulsory labour in 2012 (C.N. and V. v. France (application no. 67724/09), 11 October 2012). The Court held that there had been a violation of Article 4 (prohibition of slavery and forced labour) of the European Convention of Human Rights in respect of one of the applicants, as *"the State had not put in place a legislative and administrative framework making it possible to fight effectively against servitude and forced labour"*.

Source: Georgina Vaz Cabral, *La traite des êtres humains. Réalités de l'esclavage contemporain* (Les Editions La Découverte, November 2006), p. 139 ; ECHR, *C.N. and V. v. France* (application no. 67724/09), 11 October 2012. <http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-114032#>

## 6. Declare *Persona non grata*

The host State may at any time, in compliance with the VCDR (art. 9) and VCCR (art. 23), where applicable, notify the sending State that the diplomatic employer (head of mission, any member of the diplomatic staff of the mission or a consular officer) is *persona non grata*.

## How can you apply a multidisciplinary approach to solve and settle a case of domestic servitude in a diplomatic household while protecting victims of domestic servitude?

In Belgium, a Circular adopted in 2008 by the Government and the Board of Prosecutors General on the implementation of multidisciplinary co-operation concerning the victims of trafficking in human beings and of certain aggravated forms of smuggling in human beings provided a response to how to offer protection to private domestic workers exploited in diplomatic households. The Circular contains specific directives aimed at providing a solution to the problem. It also details and organizes the way in which the various parties must collaborate when implementing procedures to protect victims of trafficking in human beings.



2008 Circular on the implementation of multidisciplinary cooperation concerning the victims of trafficking in human beings and of certain aggravated forms of smuggling in human beings: [http://www.om-mp.be/circulaire/4232485/col\\_08-2008\\_dd\\_07\\_11\\_2008.html](http://www.om-mp.be/circulaire/4232485/col_08-2008_dd_07_11_2008.html)

Multidisciplinary co-operation The different steps		Responsible partner
1	First contact with private domestic worker and victim's declaration	Social Inspection/law enforcement agencies + Specialized NGOs (PAG-ASA/Brussels, Payoke/Antwerp, Surya/Liège)
2	Start of victim protection and assistance program	PAG-ASA
3	Start of investigation	Labor Prosecutor + Social Inspection
4	Inform Protocol Dept. about investigation	Labor Prosecutor + PAG-ASA
5	Inform diplomatic foreign mission or international organization about investigation and temporary suspension of privilege (issuance of special ID cards for private domestic workers)	Protocol Dept.
6	Consultation to decide the amount of salary that can be requested	Labor Prosecutor + PAG-ASA
7	Hire a lawyer to run the process of amicable settlement	PAG-ASA + Lawyer
8	Possible voluntary interrogation of diplomat	Labor Prosecutor + Protocol Dept.
9	If amicable settlement failed, civil litigation possible in Labor Court	Lawyer or Labor Prosecutor

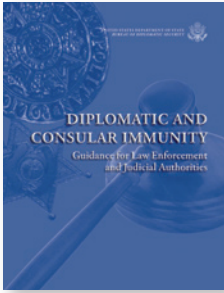
Source: "Protecting victims of trafficking in human beings exploited in the framework of private services performed in diplomatic households - Policy co-ordination, multidisciplinary approach and practices", Side-event, OSCE workshop on prevention of THB for domestic servitude in diplomatic households, Brussels, 13 March 2014.



# How to respond to challenges?



- Existing challenges
- Lessons learned



See the "Guidance for Law Enforcement and Judicial Authorities on Privileges and Immunities" available at: <http://www.state.gov/documents/organization/150546.pdf>

## Existing challenges

The following challenges in the protection of private domestic workers have been identified in several countries:

- Reaching out to private domestic workers;
- Providing adequate assistance;
- Communication problems with private domestic workers;
- Finding fair and decent solutions for all parties;
- Lack of understanding of law enforcement and the judiciary of the immunities enjoyed by diplomatic employers leading to:
  - Misperception that immunity equals impunity;
  - Failure to investigate and prosecute severe forms of abuse and human trafficking for domestic servitude;
  - Failure to request waivers of immunity;
- Seek redress and compensation for the private domestic worker;
- Minimize collateral impacts on diplomatic relations between the host country and the sending country.

## The inter-trade union of diplomatic workers and international organizations in Belgium.

In order to respond to abusive situations in diplomatic missions and international organizations, Belgian trade unions (the CNE, the LBC and SETCa-BBTK) have been working together a year and a half. Established at the end of 2011, the inter-trade union of diplomatic workers and international organizations set themselves the primary objective of creating a forum to defend these workers.

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The website of the inter-trade union of diplomatic workers and international organizations in Belgium is available at: <http://myembassy.be/?lang=en>

## Lessons learned and concrete possible action:

- Provide training for frontline staff, such as social and health workers, consular personnel, law enforcement officers, prosecutors and judges, in the identification of victims of trafficking for domestic servitude and in the detection of the crime. Furthermore, multi-disciplinary cross-training is recommended in order to foster better mutual understanding of the roles of the various actors and collaboration among them;
- Sensitize and educate law enforcement and judicial authorities about diplomatic immunities, including the limitations on such immunities;
- Take measures as a host country to ensure that victims have access to assistance and that support is provided to victims of trafficking in human beings, regardless of whether the alleged perpetrator enjoys full or partial diplomatic immunity;
- Co-operate with NGOs that provide services to trafficked domestic workers in order to ensure adequate assistance, including medical, social, psychological, legal and administrative services, and especially to enable them to accompany victims throughout legal proceedings, including in claiming compensation;
- Provide clear guidance to relevant governmental authorities on their roles and responsibilities;
- Ensure that private domestic workers can access existing compensation schemes for victims of crime including State funds in case of domestic servitude;
- Favour an amicable solution enabling private domestic workers to obtain restitution of wages and compensation from the diplomatic employer when access to justice is denied due to the employer's immunity;
- Strengthen international co-operation and make use of the network of Protocol Departments.



**See** Canada's National Action Plan to Combat Human Trafficking which foresees the "use of diplomatic protocols to promote regional and international partnerships, policies and capacity building to combat human trafficking and child exploitation": <http://www.publicsafety.gc.ca/cnt/rsrsc/pblctns/ntnl-ctn-pln-cmbt/index-eng.aspx>

**“International cooperation should be strengthened between and among Members and with relevant international and regional organizations, which should assist each other in achieving the effective and sustained suppression of forced or compulsory labour, including by:  
d) cooperation to address and prevent the use of forced or compulsory labour by diplomatic personnel”**

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The Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), Art. 14.



**Keep in mind that the following situations can occur anytime anywhere:**

- You may not be aware fully of the situation in your country and that a number of private domestic workers are illegally employed and may not be registered;
- Use of service staff to circumvent your regulations;
- Use of children as private domestic workers;
- Disproportionate reaction of the sending State.

**Recapitulation:**

**Tools to prevent abuses and exploitation**

- Develop and adopt a clear and transparent policy
- Sensitize and educate relevant actors
- Establish rules and procedures for the employment of private domestic workers
- Monitor the situation before the special ID card/visa renewal
- Provide the possibility to change employer
- Set up a complaint mechanism
- Frame the dispute resolution mechanism with several options

# Annexes



- Extract of the Addendum to the OSCE Plan of Action to Combat Trafficking in Human Beings: One Decade Later
- Sample of online national policies and regulations related to the employment of private domestic workers in diplomatic households
- Additional resources

## Annex 1

# Extract of the Addendum to the OSCE Plan of Action to Combat Trafficking in Human Beings: One Decade Later

(PC.DEC/1107/Corr.11, 6 December 2013)



**More information** on the Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later is available at: <http://www.osce.org/addendum>

### **III. Prevention of trafficking in human beings**

#### **Recommended action at the national level**

[...]

1.8. Encouraging accessible complaint mechanisms and relevant information for workers to enable them to notify the authorities on abusive practices that foster trafficking in human beings, and taking measures to prevent such abuses;

[...]

1.10. Promoting measures to prevent THB for domestic servitude, inter alia in diplomatic households, to protect domestic workers and inform them of their rights as employees and how to report abuses; ensuring that the victims of THB receive relevant assistance regardless of the employer's status; recognizing the responsibility of the participating States, that their own diplomatic personnel respect local laws, in particular with regard to the employment of domestic workers;

[...]

#### **Action for OSCE institutions and bodies**

[...]

3. The OSR/CTHB, in co-operation with relevant OSCE executive structures, will continue to promote the exchange of best practices aimed at the prevention of THB for domestic servitude, inter alia in diplomatic households, and protection of the victims.

### **IV. Protection and assistance**

#### **Recommended action at the national level**

[...]

2. Access to justice and appropriate remedies

2.1 Facilitating access for victims of trafficking, on an individual basis, to relevant legal counselling and legal assistance in order to enable them, in accordance with national laws, to use the opportunities of obtaining appropriate remedies, including compensation for material and moral damage suffered;

2.2 Establishing, where necessary, or facilitating access of victims of THB, regardless of their legal status or nationality, to a State compensation fund or other relevant mechanisms in accordance with national law;

[...]

## Other OSCE commitments on trafficking in human beings

OSCE Ministerial Council, *Decision No. 1 Enhancing the OSCE's Efforts to Combat Trafficking in Human Beings* (Vienna, 28 November 2000).

OSCE Ministerial Council, *Declaration on Trafficking in Human Beings* (Porto, 7 December 2002),

OSCE Ministerial Council, *Decision No. 2/03 Combating Trafficking in Human Beings* (Maastricht, 2 December 2003).

OSCE Ministerial Council, *Decision No. 13/04 the Special Needs for Child Victims of Trafficking for Protection and Assistance* (Sofia, 7 December 2004).

OSCE Ministerial Council, *Decision No. 2/05 Migration* (Ljubljana, 6 December 2005).

OSCE Ministerial Council, *Decision No. 13/05 Combating Trafficking in Human Beings* (Ljubljana, 6 December 2005).

OSCE Permanent Council, *Decision No. 557/Rev. 1 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005).

OSCE Ministerial Council, *Decision No. 14/06 Enhancing Efforts to Combat Trafficking in Human Beings, Including for Labour Exploitation, Through a Comprehensive and Proactive Approach* (Brussels, 5 December 2006).

OSCE Ministerial Council, *Decision No. 8/07 Combating Trafficking in Human Beings for Labour Exploitation* (Madrid, 30 November 2007).

OSCE Ministerial Council, *Decision No. 5/08 Enhancing Criminal Justice Responses to Trafficking in Human Beings through a Comprehensive Approach* (Helsinki, 5 December 2008).

OSCE Ministerial Council, *Declaration on Combating all Forms of Human Trafficking*, MC.DD/27/11/Rev.1 (Vilnius, 7 December 2011).

## Annex 2

### Sample of online national policies and regulations related to the employment of private domestic workers in diplomatic households

<b>Australia</b>	<b>Government Protocol Guidelines for Private domestic employees</b> <a href="https://www.dfat.gov.au/protocol/Protocol_Guidelines/10.html">https://www.dfat.gov.au/protocol/Protocol_Guidelines/10.html</a>
<b>Belgium</b>	<b>Private Servants: Conditions and procedures for granting special identity cards</b> <a href="http://diplomatie.belgium.be/en/binaries/Private%20Staff%20Circular%20march%202014ENG_tcm312-246023.pdf">http://diplomatie.belgium.be/en/binaries/Private%20Staff%20Circular%20march%202014ENG_tcm312-246023.pdf</a>
<b>Canada</b>	<b>Hiring a Domestic Worker &amp; Related Accreditation Program</b> <a href="http://www.international.gc.ca/protocol-protocole/policies-politiques/domestic-workers_domestiques-prives.aspx?lang=eng">http://www.international.gc.ca/protocol-protocole/policies-politiques/domestic-workers_domestiques-prives.aspx?lang=eng</a>
<b>Estonia</b>	<b>Handbook: Diplomatic Immunities and Privileges in Estonia</b> <a href="http://vm.ee/sites/default/files/elfinder/article_files/kasiraamat_2014_1_0.pdf">http://vm.ee/sites/default/files/elfinder/article_files/kasiraamat_2014_1_0.pdf</a>
<b>Finland</b>	<b>Diplomatic privileges and immunities in Finland: Private domestic staff</b> <a href="http://formin.finland.fi/Public/download.aspx?ID=13943&amp;GUID={A811E070-2712-4E7E-81DB-F223DB58CC1E}">http://formin.finland.fi/Public/download.aspx?ID=13943&amp;GUID={A811E070-2712-4E7E-81DB-F223DB58CC1E}</a>
<b>France</b>	<b>Domestic staff in diplomatic households</b> <a href="http://www.diplomatie.gouv.fr/en/the-ministry-of-foreign-affairs-158/protocol/social-matters/article/domestic-staff">http://www.diplomatie.gouv.fr/en/the-ministry-of-foreign-affairs-158/protocol/social-matters/article/domestic-staff</a>
<b>Ireland</b>	<b>Guidelines relating to the Employment of Private Domestic Employees by Accredited Members of the Mission</b> <a href="https://www.dfa.ie/media/dfa/alldfawebsitemedia/newspress/publications/FINAL-GUIDELINES-RELATING-TO-THE-EMPLOYMENT-OF-PRIVATE-DOMESTIC-EMPLOYEES-BY-ACCREDITED-MEMBERS-OF-THE-MISSION.pdf">https://www.dfa.ie/media/dfa/alldfawebsitemedia/newspress/publications/FINAL-GUIDELINES-RELATING-TO-THE-EMPLOYMENT-OF-PRIVATE-DOMESTIC-EMPLOYEES-BY-ACCREDITED-MEMBERS-OF-THE-MISSION.pdf</a>
<b>Netherlands</b>	<b>Staff of Foreign Missions and International Organisations - Private servants:</b> <a href="http://www.government.nl/issues/staff-of-foreign-missions-and-international-organisations/staff-of-international-organisations/private-servants">http://www.government.nl/issues/staff-of-foreign-missions-and-international-organisations/staff-of-international-organisations/private-servants</a>
<b>Norway</b>	<b>Diplomat in Norway - Private servants</b> <a href="http://www.regjeringen.no/nb/dep/ud/dep/forbindelser/diplomat_norway.html?id=666838#10">http://www.regjeringen.no/nb/dep/ud/dep/forbindelser/diplomat_norway.html?id=666838#10</a>
<b>Portugal</b>	<b>Practical Guide to the Diplomatic Corps accredited in Portugal</b> <a href="http://www.portugal.gov.pt/media/1499954/20140813-manual-diplomatico-eng-ultima-ver-sao-april-2014.pdf">http://www.portugal.gov.pt/media/1499954/20140813-manual-diplomatico-eng-ultima-ver-sao-april-2014.pdf</a>
<b>Switzerland</b>	<b>Manual: Private servants - Private Household Employees (Ordinance of 6 June 2011)</b> <a href="http://www.eda.admin.ch/eda/en/home/topics/intorg/un/unge/gepri/manodp.html">http://www.eda.admin.ch/eda/en/home/topics/intorg/un/unge/gepri/manodp.html</a>
<b>Sweden</b>	<b>Employment of private servants</b> <a href="http://www.government.se/sb/d/16264/a/194937">http://www.government.se/sb/d/16264/a/194937</a>
<b>Turkey</b>	<b>Guide to diplomatic missions in Turkey</b> <a href="http://www.mfa.gov.tr/data/Guide-to-Diplomatic-Missions-in-Turkey.pdf">http://www.mfa.gov.tr/data/Guide-to-Diplomatic-Missions-in-Turkey.pdf</a>
<b>United States</b>	<b>Visas for diplomats and Foreign government officials: Personal employees</b> <a href="http://travel.state.gov/content/visas/english/other/diplomat-foreign-government-official.html">http://travel.state.gov/content/visas/english/other/diplomat-foreign-government-official.html</a>  <b>Visas for Employees of International Organizations and NATO: Personal employees</b> <a href="http://travel.state.gov/content/visas/english/other/employee-of-international-organization-na-to.html">http://travel.state.gov/content/visas/english/other/employee-of-international-organization-na-to.html</a>

## Annex 3

### Additional resources

Ban Ying, *Female Domestic Workers in the Private Households of Diplomats in the Federal Republic of Germany – Information Collected for the CEDAW Committee to Open an Inquiry Procedure According to Article 8 OP/CEDAW*(2003).

German Institute for Human Rights (Kartusch, A.), *Domestic Workers in Diplomats' Households Rights Violations and Access to Justice in the Context of Diplomatic Immunity*(2011).  
[http://www.institut-fuer-menschenrechte.de/uploads/tx\\_commerce/domestic\\_workers\\_in\\_diplomats\\_households\\_03.pdf](http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/domestic_workers_in_diplomats_households_03.pdf)

International Labour Organization (ILO), *Trafficking for Forced Labour: How to monitor the recruitment of migrant workers*, Training Manual (2006).  
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King Baudouin Foundation, *Working as a Homehelp at the Private Residence of a Diplomat* (2005).  
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[http://www.kalayaan.org.uk/documents/SR%20contemporary%20forms%20of%20slavery%20-%20Kalayaan%20submission%20final%20\\_names%20now%20deleted%20for%20publication\\_.pdf](http://www.kalayaan.org.uk/documents/SR%20contemporary%20forms%20of%20slavery%20-%20Kalayaan%20submission%20final%20_names%20now%20deleted%20for%20publication_.pdf)

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