

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



# Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude

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Research Paper on Trafficking in Human Beings for Domestic Servitude  
in the OSCE Region: Analysis and Challenges

Report of the Tenth *Alliance against Trafficking in Persons* Conference -  
“Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude”,  
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Wallnerstr. 6, 1010 Vienna, Austria

Tel: + 43 1 51436 6256

Fax: + 43 1 51436 6299

email: info-cthb@osce.org

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OSCE/Bianca Iapia



OSCE/Alberto Andreani

# FOREWORD

When I started to read the rich materials gathered by my colleagues in preparation for the *Alliance against Trafficking in Persons* conference on trafficking for the purpose of domestic servitude, I was not aware of all the implications of this extremely hidden form of trafficking. Trafficking for the purpose of labour exploitation is commonly perceived as less invasive and damaging than trafficking for sexual exploitation. While in some cases this might be true, trafficking for domestic servitude is often just as devastating an experience, with long-term and serious consequences.

First, trafficking for domestic servitude heavily involves children, especially girls, who are more vulnerable and dependent on adults for their basic needs. Second, the extreme and hazardous working conditions in a situation of domestic enslavement are unimaginable. I was not aware, for example, that little girls are often obliged to wake up during the night to work and are therefore forced to break their natural biorhythm. Moreover, they are often allowed to eat only leftovers, and therefore malnutrition and starvation cause disease and impede normal physical and psychological development. Third, a domestic servant is subject to the inexplicable and unpredictable anger of their exploiters, and is exposed to all kinds of cruel treatment and even sexual abuse. This is really torture.

The manipulation and abuse of vulnerable persons – be they children or adults – who are at the mercy of their employers, is unpardonable. It is even more unpardonable when the employer is a woman exploiting another woman or a girl.

Fortunately, women are also among those who have been compassionate and helpful in identifying and assisting victims. In many consulted cases, it was women who helped when approached on the street or in a supermarket, or when they observed a little girl who appeared to be increasingly malnourished, always sad and even abused by the very same children for whom she was caring. Women are also among the many *pro bono* lawyers who have helped these trafficked persons to free themselves, claim their rights, receive compensation, and take their lives in their own hands.

Domestic workers are part of our daily life. They often take care of our loved ones. Most of these courageous and hard working women and girls who migrate to support their families, find a decent job and form decent relationships with their employers. But those workers who fall prey to unscrupulous people – people who subjugate them to take advantage of their unpaid work – must be protected.

This invisible exploitation must become a concern for all of us. It could be taking place next door, in our own social environment. My commitment, and the commitment of my Office, is to make this reality better known in order to galvanize effective action.

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

## ACKNOWLEDGEMENTS

This is my first Occasional Paper in my capacity as the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, and the fourth paper in the Occasional Paper Series published by my Office.

I wish to express my gratitude to the speakers at the tenth *Alliance against Trafficking in Persons* conference entitled “Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude”, held in Vienna on 17-18 June 2010, as well as to the participants, who were able to share their knowledge to contribute to the discussions. A special thank you to the specialized NGOs who drew on their year-long experience to inform this paper.

My warmest thanks go to every colleague in my talented and dedicated Office, including my interns and JPOs over the past year, who have all worked tirelessly and diligently to prepare this paper, especially Joanna Benfield, Vera Gracheva, Caraigh Mc Gregor and Ruth Pojman who supported its preparation and contributed to the final review.

More particularly, I wish to thank my Adviser Georgina Vaz Cabral, the main author of this paper and lead organizer of the conference, for her commitment to the topic, vast experience in the field and sharp attention to detail; Liliana Sorrentino, my Executive Advisor who provided significant guidance and inputs throughout the preparation and final review of the Paper; and Claire Jessel my Administrative Assistant, for her invaluable assistance with the logistical arrangements of the Conference and finalization of this Paper.

And last but not least, I wish to extend my thanks to France who funded the “*Esclavage Domestique*” photo exhibition displayed at the *Alliance* Conference.

**Maria Grazia Giammarinaro**

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



# Introduction

The 2008 OSCE Ministerial Council Decision No. 5/08 encourages participating States to ensure that all forms of trafficking in human beings as defined in the OSCE Action Plan are criminalized in their national legislation. Political will and action at the national level are the prerequisites to preventing and combating the exploitation of individuals in slavery-like conditions and to meeting these commitments, as underscored in the UN Trafficking Protocol<sup>1</sup> and in the OSCE Action Plan<sup>2</sup>. First and foremost, governments bear responsibility for developing comprehensive national anti-trafficking responses, which acknowledge that a wide variety of persons can be bought and sold, abused, deceived threatened or coerced into a broad range of exploitative situations. These include sexual exploitation and labour exploitation in various sectors such as agriculture, construction, textiles, restaurants, food processing, cleaning, hospitality and entertainment.

In order to raise the visibility of trafficking for labour exploitation based on the OSCE Action Plan and other anti-trafficking commitments, the Office of the Special Representative hosted a high-level conference in November 2005 under the auspices of the **Alliance against Trafficking in Persons**. The conference had three major objectives: (i) to mobilize greater political will to eradicate trafficking for labour exploitation; (ii) to provide a forum for the exchange of concrete experiences as a tool to advance the implementation of anti-trafficking commitments; and (iii) to increase the understanding of the need to involve a range of new additional stakeholders in the design and implementation of responses to this form of trafficking in human beings.

In recognition of the importance of the issue, and building upon the awareness developed during the first event, a second high-level conference was organized in November 2006. This was entitled “Human Trafficking for Labour Exploitation/Forced and Bonded Labour: Prosecution of Offenders, Justice for Victims”. The event provided an opportunity to focus in greater depth on two of the major challenges facing participating States: how to bring perpetrators to justice and how to ensure legal redress for the victims.

Overall, these two events made a concrete contribution to two of the core tasks of the Special Representative: (i) to assist participating States in the development and implementation of national anti-trafficking policy in compliance with OSCE commitments and other international obligations; and (ii) to assume “responsibility within the OSCE for hosting and facilitating meetings for the exchange of information and experiences between national co-ordinators, representatives designated by the participating States and experts on combating THB”. Moreover, results from these two conferences increased the interest of the participating States and improved dialogue between them about the need to strengthen their efforts to combat trafficking for labour exploitation, thus contributing to additional OSCE commitments by governments through the 2006 Brussels and 2007 Madrid Ministerial Decisions on trafficking for labour exploitation.<sup>3</sup>

The Office of the Special Representative believes that the study of trafficking for labour exploitation by economic sector provides an important contribution to the participating States’ and other relevant stakeholders’ deeper understanding of this largely hidden problem, as well as to informing the design of shared policies to tackle it.

The various economic sectors where trafficking can occur

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

2 OSCE Permanent Council, *Decision No. 55/7 Action Plan to Combat Trafficking in Human Beings* (24 July 2003).

3 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*, MC.DEC/14/06 (Brussels, 5 December 2006); OSCE Ministerial Council, *Decision No. 8/07 Combating Trafficking in Human Beings for Labour Exploitation*, MC.DEC/8/07 (Madrid, 30 November 2007).

have a range of structural features that may cause or exacerbate worker vulnerability. They are regulated under different legal systems and call for different approaches to identifying and assisting victims. A thorough sectoral analysis should therefore lead to more effective interventions.

An Occasional Paper, focusing on the agricultural sector, was published in 2009. It presented *A Summary of Challenges on Addressing Human Trafficking for Labour Exploitation in the Agricultural Sector in the OSCE Region*, as well as the conclusions of the Technical Seminar on Trafficking for Labour Exploitation focusing on the Agricultural Sector. Building on this approach and experience, this fourth Occasional Paper focuses on labour trafficking in another specific economic sector, namely domestic work.

This Occasional Paper is the result of the *Alliance* High-level Conference on “Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude” hosted by the Special Representative in Vienna on 17 and 18 June 2010 and the Background Paper which informed the dialogue and exchange at the Conference.

The Paper is meant to provide a policy tool for decision makers and practitioners dealing with trafficking in human beings on the ground. It is based on desk research, field work and case study analyses in order to shed light on one of the most invisible forms of modern-day slavery. The Paper also benefits from the comments, inputs and expertise of specialized NGOs. Furthermore, it is enriched by the valuable contributions and direct experience of policymakers and public officials (including law enforcement, prosecutors, judges, diplomats), as well as trade unions, international organizations and academics who participated in the *Alliance* Conference.

The *Alliance* Conference, which aimed at advancing the implementation of OSCE anti-trafficking commitments and mobilizing greater political will, highlighted the specific features of this form of trafficking in human beings, as well as the experiences and challenges that participating States, civil society and international organizations encounter in prevention of trafficking for domestic servitude. It provided an excellent forum to gather expertise, exchange good practices and develop recommendations on what more can be done to eradicate trafficking in human beings for domestic servitude.



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Part I: Trafficking in Human Beings  
for Domestic Servitude in the OSCE Region:  
Analysis and Challenges

Domestic work has become a source of income for millions of women throughout the world, and in particular for those who have no other viable option than to migrate in search of a better life in order to support their children and family. The “feminization of migration” is a global trend, with women making up around half of the world’s 214 million international migrants;<sup>4</sup> yet national migration policies do not reflect the important economic contribution of women. According to the OSCE’s *Guide on Gender-Sensitive Labour Migration Policies*, “more women are migrating and the demand for workers in female-dominated sectors is ever-increasing, such as in domestic work”.<sup>5</sup> Indeed, research indicates that domestic workers have a crucial role in society, but, at the same time, due to the isolated setting of their work, they are especially vulnerable to humiliation, abuse, violence, exploitation and trafficking.

Domestic servitude affects every region in the world. Within the OSCE region, the scale of trafficking for domestic servitude is unknown and extremely difficult to assess. Trafficking is by definition a criminal activity and, like most criminal activities, it is clandestine. Moreover, domestic work is a hidden form of employment and often part of the informal economy. As domestic workers are invisible, victims of trafficking for domestic servitude are even more difficult to identify and therefore, they rarely receive assistance and redress. The ILO estimates that there are 12.3 million victims of “forced labour” worldwide, 2.5 million of them as a result of trafficking.<sup>6</sup> The vast majority of these are cases of trafficking for labour exploitation perpetrated by private agents for the purpose of economic exploitation.

This part of the Paper explains the phenomenon of trafficking for domestic servitude in the OSCE region through the use of specific case studies and illustrates the diversity of situations and workers’ experiences in this area. It seeks to identify the structural features that may make domestic workers particularly vulnerable to exploitation. The Paper also provides an overview of the applicable international legal standards as well as the legal approaches to prosecuting traffickers, using analyses of legal cases. The Office of the Special Representative hopes that once the challenges and structural issues contributing to trafficking for domestic servitude have been recognized, participating States, policymakers and non-governmental organizations can address them in a systemic way.

4 UN, Department of Economic and Social Affairs, Population Division, *Trends in International Migrant Stock: The 2008 Revision*, United Nations database, POP/DB/MIG/Stock/Rev.2008 (2009).

5 OSCE, *Guide on Gender-Sensitive Labour Migration Policies* (2009), p. 14.

6 ILO, *A global alliance against forced labour* (2005), paras. 37 and 50.

## 1. What is Trafficking in Human Beings for the Purpose of Domestic Servitude?

It is an invisible form of exploitation which is extremely difficult to detect due to the hidden nature of the work provided. The particularity of domestic work is that it takes place out of sight in private households, thereby isolating the workers. Indeed, research shows that domestic servitude is mostly undocumented in many OSCE participating States.

Both children and adults are trafficked for domestic servitude; they are recruited and exploited in the performance of domestic tasks and services, mostly within a private household under physical or psychological threat or coercion. Their documents are

### Case study 1

Ms. F was a student in Ecuador, her country of origin. Due to financial difficulties in her family, the young woman decided to undertake work experience abroad in order to pay for her university studies. She was recruited by a compatriot, and offered a job as a domestic worker in Madrid. Before travelling overseas, she signed a contract stipulating working conditions, remuneration and job description.

Ms. F arrived in Spain at the end of 2002 as a tourist and her subsequent stay was not regularized. She was provided with accommodation in the household of an Ecuadorian married couple with a child. She was forced to work 7 days per week, 16 hours per day and was given food once a day. Ms. F had to look after the baby, carry out domestic work and sell artisanal products manufactured in Ecuador in the street. Ms. F used to sleep on the floor or in the van when she went with her employer to sell goods outside the city. She was verbally abused and threatened, she was not paid, not allowed to contact her family, and her passport was confiscated by the employer. In case of sickness, she was not allowed to see a doctor.

After six months with the family, she asked an Ecuadorian man she met on the street for help. The man finally convinced her to report the abuse to the police. She was assisted by the NGO Proyecto Esperanza.

Source: Proyecto Esperanza (2010).

usually confiscated by the employer and they are made to work and have to be at the continuous disposal of the householder. Sometimes, more subtle means of coercion are used, so as to subjugate the adult or child and place her or him in a situation of vulnerability and total dependence.

Trafficking for domestic servitude covers a range of situations, all of which share certain features: subjugation and an obligation to provide work for a private individual, low or no salary, no days off, psychological and/or physical violence, limited or restricted freedom of movement, and the impossibility of a private life. Be it an adult or a child, the trafficked person usually lives in the house of the family and is constantly at their disposal and mercy.

Trafficked persons are forced to perform domestic work in a household, which includes housekeeping (such as cleaning, laundering, ironing and cooking) and childcare, but sometimes also extends to gardening, maintaining a country home, or any other activity linked to the employer's needs. Even though in most cases exploitation occurs within private households, cleaning may also take place elsewhere, for instance in shops or offices.

A comparative analysis of case studies collected for this Paper shows that, notwithstanding the type of task performed, trafficking for domestic servitude can take various forms. The trafficking process varies from one case to another depending in part on the cultural background of the trafficked person and on whether she or he is a child or an adult. Even though different *modus operandi* of exploitation have been identified, the means of coercion and the methods of subjugation are often identical, despite the diversity of countries affected.

Identifying a trafficked person is a fundamental, yet delicate and difficult process, with important issues at stake both for the person in question, and in terms of ensuring an efficient criminal justice response.<sup>7</sup> Domestic servitude is a form of exploitation which is extremely difficult to identify without raising awareness among the general public and practitioners most likely to encounter such situations.<sup>8</sup> Prevention measures such as information campaigns for the general public or for targeted groups (such as faith communities, hotel staff, health and education professionals, and neighbourhood communities) can facilitate the proactive identification of trafficked domestic workers by an alert public and by trained professionals.

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

8 For instance, porters, hotel staff, medical staff, teachers, social workers.

### Who are the trafficked persons?

Work within private households, in the OSCE region, is performed mainly by women, especially by migrant workers, au pairs and children.<sup>9</sup> ILO highlighted that girls constitute the overwhelming majority of the children employed as servants by third parties and that they are frequently abused.<sup>10</sup> However, a few cases involving boys have also been identified in OSCE participating States.

### Case study 2

“[Mr. T] was about five when he was taken from Nigeria and forced to work at a home in Harringay [UK] for an African woman who said she was his aunt. [Mr. T], 23, said: “I would be upstairs and my aunt would shout up to me to come downstairs. She would order me to change the channel with the remote control which was right in front of her. Or else she would wake me up at two in the morning to clean the house. Even if there were just two plates in the sink she would get me up. Her husband used to beat me. He would hit me regularly. He would say my parents were dead and it was my fault because I was evil. I don't even know if my 'aunt' was a relative or not.” [Mr. T] was given indefinite leave to remain in the UK on his 21st birthday and this month was accompanied by [Ms. A] to his graduation ceremony at the Arts Institute in Bournemouth where he received a 2:1 in animation production.”

Source: Robert Mendick, “Life as a slave... student reveals hidden world of trafficked children”, London Evening Standard, 5 August 2009.

### Who are the traffickers/exploiters?

Domestic servitude can involve individuals or members of a family from a variety of social backgrounds. In most cases, the person who recruits the victim is the one exploiting her or him. Research and NGO experience indicate that ruthless placement agencies may also act as recruiters and intermediaries. Evidence of this exists in some OSCE participating States<sup>11</sup>, and also in South-east Asia in particular.

It is important to highlight that understanding the phenomenon of trafficking for domestic servitude cannot be limited to identifying the types of services that the workers are forced to provide, but rather it is critical to analyse their overall living and working conditions

9 See Council of Europe, *PA Recommendation 1663* (2004); ILO, *Decent work for domestic workers*, Report IV(1) (2010).

10 ILO, *Give girls a chance: Tackling child labour, a key to the future* (2009), p. 12.

11 See for example: Centre pour l'égalité des chances et la lutte contre le racisme, *La traite et le trafic des êtres humains. Lutter avec des personnes et des ressources*, Rapport Annuel 2008 (Brussels, 2009), p. 29.

(accommodation, salary, hours worked, time off, variety of work, legal status, social treatment, family and cultural attitudes, etc.). Furthermore, the question of domestic servitude cannot be discussed without linking it to the more general problem of decent work for domestic workers, and to its gender and migration dimensions. In order to tackle this phenomenon, it is necessary to take into account the broader issues related to the working conditions of household employees and the protection of their rights, as well as the impact of migration and labour policies which may unintentionally make migrant workers, and especially women, more vulnerable to exploitation.

## 2. Defining Domestic Work

Domestic work is complex in nature and difficult to define. In fact, there is no internationally accepted definition or general agreement about the term to use to refer to this widespread economic activity.<sup>12</sup>

Domestic workers are considered, especially by trade unions, to be more vulnerable than other workers. Their activity is undervalued, underpaid and not recognized as real employment in many countries. Working conditions vary greatly, the work is not considered to be heavy labour, and a power imbalance characterizes the relationship between employer and employee. All these factors lead to inequalities, opportunities for abusive treatment and exploitative working conditions, and even situations of trafficking. Moreover, the protection of workers varies from one country to another but tends to be insufficient considering the amount of abuse reported.

### 2.1 A Poorly Defined Occupation

The International Standard Classification of Occupations (ISCO) established by the International Labour Organization (ILO) is currently the reference used to define domestic work in private households<sup>13</sup> and its related services<sup>14</sup> according to a set of tasks and functions which are or should be performed by the worker.

The ILO's recent work on this issue shows that States have very different approaches to understanding and tackling domestic work depending on the national and cultural context. Most of the national legislations studied

by the Organization do not define domestic work and only a small number of States effectively regulate this labour sector.<sup>15</sup> In the OSCE region, some countries, including Italy and Portugal, define domestic work by referring to a list of tasks such as housekeeping, childcare or gardening;<sup>16</sup> others, including Belgium, Canada and France, have defined a work contract relationship for domestic workers.<sup>17</sup>

The collection of information and of comparable data is made difficult by the lack of an international definition and the heterogeneity of national conceptions and definitions<sup>18</sup>, as well as the evolution of domestic work in the informal sector. In order to compensate for the lack or shortage of regulations for domestic work at a national level, the Governing Body of the ILO decided to put the issue of decent work for domestic workers on the agenda of the 99<sup>th</sup> Session (June 2010) of the International Labour Conference. The aim was to set labour standards for this category of workers and ensure respect for their work and visibility of the issue.<sup>19</sup>

### 2.2 Main Features of Domestic Work Relevant to the Context of Domestic Servitude

In recent years, there has been an increasing demand for domestic workers. This can be attributed to the increase in the number of women in the workplace, their personal development, and the need for workers to perform traditionally female tasks in the home. As a result of this increased demand and the fact that this is a labour sector which is neither well-regulated nor well-defined, domestic work has developed on a massive scale in the informal economy.

15 ILO, *Decent work for domestic workers*, Report IV(1) (2010), para. 103.

16 Italy defines domestic work in Section 10 of the National Collective Agreement of 13 February 2007 on the regulation of domestic work, including house cleaning, washing, cooking, cleaning stables and horses, assisting with domestic animals, taking care of green areas, babysitting, multifunctional household collaboration including cleaning, washing, cooking, assisting with animals; household security guard, ironing, waiting, gardening, driving, assisting self-sufficient persons, assisting persons with disabilities, chauffeurs, chef, acting as a butler.

17 Belgium defines the employment contract for domestic workers in Article 5 of the Act of 3 July 1978 respecting employment contracts: "The domestic employment contract is the contract by which a worker, the domestic servant, commits to perform, under the authority of the employer, mainly manual house-keeping services for the employer or his/her family in exchange for a salary."

The State of Ontario, Canada, defines "domestic worker" as "anyone employed by a householder to perform services in the household or to provide care, supervision or personal assistance to children, senior or disabled members of the household, but does not include a sitter who provides care, supervision or personal assistance to children on an occasional, short-term basis": Ontario Regulation 525/05, art. 1; Ontario Regulation 552/05, art. 1.

France adopted the following definition in Article 1(a) of the National Collective Agreement regarding domestic workers of 24 November 1999; extended by the decree of 2 March 2000 (Official Journal of 11 March 2000): "A [salaried domestic worker is a] person who performs all or part of the household tasks, family or cleaning related, full or part-time", <<http://www.legifrance.gouv.fr/affichIDCC.do?idConvention=KALICONT000005635792>>, accessed 4 June 2010.

18 ILO, *Decent work for domestic workers*, Report IV(1) (2010), para. 20.

19 *Ibid.*, pp. 1-2.

12 ILO, *Decent Work for domestic workers: a long way to go*, Education ouvrière 2007/3-4, nos. 148-149 (2007), p. 20.

13 Domestic and related helpers, cleaners and launderers, <<http://www.ilo.org/public/english/bureau/stat/isco/isco88/913.htm>>, accessed 4 June 2010.

14 Cooking, gardening, butler, driver, home care provider and other personal services <<http://www.ilo.org/public/english/bureau/stat/isco/isco88/major.htm>>, accessed 4 June 2010.

Domestic work is a multi-faceted activity which covers a wide range of situations which vary in terms of the tasks and functions to fulfil, the part-time or full-time nature of the employment, whether the worker serves one or several people and lives with the employer or not. Domestic work is currently perceived as an activity mainly performed by migrant women.

Some features of domestic work are relevant to explain why this category of workers is more vulnerable than any other and, therefore, how domestic work leads so easily to exploitation, including slavery-like conditions.

#### **The workplace: a private household**

The workplace is the household in which the domestic services are performed. The tasks are directly linked to the needs of the people living in the house, without being clearly defined beforehand. Migrant domestic workers mainly live with their employer. Their workplace becomes their living place, placing them in a situation of availability for non-stop service. “Living in” can influence the worker’s autonomy and private life.

#### **The employer: an individual**

The direct employer of the domestic worker is a family or an individual – generally a woman, as the ‘domestic’ sphere traditionally belongs to women.<sup>20</sup> Placement and recruitment agencies are often used, and their role as intermediaries can be controversial in the context of labour migration.<sup>21</sup>

#### **Non profit-making activity**

The private employer makes no profit from the domestic work as such, as the tasks performed do not constitute a ‘productive’ activity. Instead, the domestic worker enables families, especially women and/or single parent families, to be able to work and live a fuller life outside the home.

#### **Activity of migrant women**

The number of women migrating for work is constantly increasing, and they have become an important part of the global economy, partially to respond to the increasing demand for work in sectors that are stereotypically performed by women, such as domestic work.<sup>22</sup> For example, according to data from the OECD, in 2004-2005, more than 50 per cent of workers in the “maintenance and cleaning” sector in Switzerland were women<sup>23</sup> and statistics based on the number of work permits delivered

in the Russian Federation show that the number of migrant women workers has increased significantly.<sup>24</sup>

#### **Range of tasks and heterogeneity of functions**

Domestic work is a vague notion, especially when trying to define the work itself. It is generally accepted that it comprises a range of tasks and services connected to the daily functioning of the household. However, legally speaking, for countries that regulate domestic work, there are several different definitions, which may or may not include the provision of certain services linked to a person (such as caring for children, the ill and the elderly), to pets, or any other services (such as gardeners, drivers, butlers, agricultural work, etc.).

#### **“Atypical” employment relationship**

The employment relationship between domestic workers and their employer is fundamental from a legal point of view. Domestic work is not considered real work in many countries as it is traditionally rooted in family life, is poorly regulated or not regulated at all, and as a result is underprotected. Therefore, the worker-employer relationship is often informal. Hence, the private employer has an even greater role and power in determining the employment relationship.

Against this background, it becomes clear that the regulation of domestic work is a crucial step to prevent trafficking for domestic servitude. However, the aforementioned features of such employment make the process of regulating this sector extremely difficult and challenging for States, especially the respect of the employer’s privacy and the recognition of private households as workplaces.

## **3. Understanding the Problem: Why Does Trafficking Occur in Domestic Work?**

The number of domestic workers worldwide is difficult to estimate without an internationally recognized definition. According to the ILO, it is however certain that the number of workers in this sector has risen in most countries and that the most significant development in the past 30 years has been the increasing percentage of migrants among domestic workers.<sup>25</sup> Information at the national level confirms this trend; for example, the UK-based NGO

20 ILO, *Decent work for domestic workers*, Report IV(1) (2010), p. 8.

21 Save the Children, *Trafficking - A Demand Led Problem? A Multi-Country Pilot Study* (2002), p. 50.

22 OSCE, *Guide on Gender-Sensitive Labour Migration Policies* (2009), p. 15.

23 OECD, *International Migration Outlook* (Sopemi, 2007), p. 73.

24 OSCE, *Guide on Gender-Sensitive Labour Migration Policies* (2009), p. 15.

25 ILO, *Decent work for domestic workers*, Report IV(1) (2010), para. 21.

Kalayaan estimates that between 16,000 and 18,000 domestic workers enter the United Kingdom each year.<sup>26</sup>

In 2004, the United Nations Special Rapporteur on the Human Rights of Migrants underlined in her report on migrant domestic workers that “given growing demand for household help in developed countries, there has been a rise in the number of initiatives and agreements to facilitate female migration for domestic employment, and in spontaneous migration by women”; she further added that the demand for migrant domestic workers has increased considerably, in proportion to economic development.<sup>27</sup>

Research explains that the ever-increasing demand for domestic workers in Europe leads to excessive working hours, low salaries, lack of private life for most home-based domestic workers, and terrible abuse for some.<sup>28</sup>

As a sector which is deeply anchored in the private world of the family circle, it is often thought that a professional relationship is not needed – a trusting relationship is sufficient. Domestic work is one of the least protected labour sectors, be it by international standards or State regulations and practices in most OSCE participating States. There are several reasons for this (including socio-cultural, economic and legal factors) but they are all linked to the particular nature of domestic work, the migration and gender dimensions of the phenomenon, and the way that these related policies are interconnected.

### 3.1 Domestic Work: a Labour Sector Vulnerable to Exploitation

Domestic work is a labour sector which is not regulated or is regulated in very different ways in the 56 OSCE participating States. The cultural context plays a major role in the way in which States tackle it. Domestic work is often not considered as real work and is very closely linked to the concept of family; therefore, it is excluded from legal frameworks or can even be hard to include in standards regulating working conditions. Studies and reports by international organizations such as the ILO and UNOHCHR, and by trade unions, workers’ organizations and other NGOs strongly denounce the factors which

contribute to making domestic workers a particularly vulnerable category for State law and practices.

#### Lack of recognition of the professional status

Domestic work is not recognized as real work. Even though most cleaning tasks can indeed be done by anyone, caring for children, the elderly and disabled people requires qualifications and involves a high level of responsibility. Moreover, domestic workers are not recognized as real workers even if they are granted a status and rights. Indeed, the level of rights and protection is usually lower than general labour standards. They are generally underpaid, their work is undervalued, their social security coverage is poor and they often have to work long hours. An example of the lack of recognition granted to the professional status of domestic workers can be found in Article 3 of the European Directive 89/391/EEC from 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, which excludes domestic workers from the definition of “worker”.<sup>29</sup>

#### Lack of regulation and violation of rights

The complexity of the employment relationship and the age-old concept of the “master and servant” contribute to this labour sector not being regulated by labour laws or being explicitly excluded from certain national legal clauses. The ILO underlined in its recent report on domestic work that, during negotiations of international standards, ILO constituents often considered that domestic workers should be excluded as a category in instruments of general application, inasmuch as these instruments are not designed to address the specific nature of domestic work.<sup>30</sup> The possibility of excluding

#### Status of Domestic Workers

**Domestic workers are workers on the fringes of our labour market. A certain number of them work illegally, many may not be registered and others do not even have the status of worker.<sup>31</sup>**

Source: Organisation pour les Travailleurs Immigrés Clandestins (ORCA), *Le personnel domestique : un autre regard* (March 2010).<sup>32</sup>

26 Kalayaan, *Law Enforcement: Trafficking for domestic servitude* (February 2010), accessed 4 June 2010.

27 Economic and Social Council, Commission on Human Rights, *Report of the Special Rapporteur, Ms. Gabriela Rodríguez Pizarro, submitted pursuant to Commission on Human Rights resolution 2003/46, E/CN.4/2004/76* (12 January 2004), para. 14; ILO, *Forced Labour in the Russian Federation Today: irregular migration and trafficking in human beings* (ILO, 2005), p. 52.

28 B. Anderson, “Just Another Job? The Commodification of Domestic Labour”, in B. Ehrenreich and A. Russel Hochschild (under the dir. of), *Global Woman* (Metropolitan Books: New York, 2003), pp. 104-114.

29 Council of the European Communities, *Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work* (1989).

30 ILO, *Decent work for domestic workers*, Report IV(1) (2010), para. 76 and table in Appendix p. 131: For more information, the ILO report gives an indication of the countries with standards specific to domestic workers or who include them explicitly in standards governing work conditions; see also ILO, *Forced Labour in the Russian Federation Today: Irregular Migration and Trafficking in Human Beings* (2005).

31 V.R., “Les domestiques «à la marge»”, in *La Libre Belgique* (20 April 2010), <<http://www.lalibre.be/actu/belgique/article/577111/les-domestiques-a-la-marge.html>>, accessed 4 June 2010.

32 <[http://www.orcasite.be/userfiles/file/ORCA\\_Domestique\\_FR.pdf](http://www.orcasite.be/userfiles/file/ORCA_Domestique_FR.pdf)>, accessed 4 June 2010.

domestic workers from the protocol aiming to extend labour inspection to workplaces in the non-commercial sector has been raised. The lack or shortage of regulations on domestic work leads to limitations of the workers' rights and of their chances of obtaining fair compensation if they are abused or even if their working and living conditions are terrible or inhumane.

### **Lack of law enforcement and controls**

In view of the ever-increasing demand for household help and so as to remove the sector from the informal economy, a certain number of participating States have developed a specific legal framework (such as laws, decrees or National Collective Agreements) to regulate domestic work.<sup>33</sup> Nevertheless, even where laws do exist, the lack of efficient enforcement and of State monitoring inevitably leaves domestic work mostly in the informal economy. One of the main obstacles to State action is the private aspect of the workplace. As long as the family home is not legally recognized as a workplace, protection rules and mechanisms of State regulation such as labour inspection cannot be put into action. Labour inspectors, who play an essential role in the prevention, identification and protection of the victims, and also prosecution of the exploiters, have very limited power when faced with the principle of inviolability of the private household.<sup>34</sup>

## **Occupational Safety and Health Standards**

“In many countries, Occupational Safety and Health legislation does not apply to domestic work. (a) The reasons that have been invoked for excluding this category of workers are the practical difficulties of enforcing legislation in domestic settings; (b) As regards homeworkers, they are also excluded in several countries. Like for domestic workers, the reasons often invoked for the exclusion of homeworkers are the practical difficulties of enforcing legislation in domestic settings. Nevertheless, Austria, Czech Republic and Sweden appear to have overcome these difficulties and have adopted legislation regulating the working conditions of both domestic employees and homeworkers including some provision for OSH protection.”

Source: ILO, *General Survey: Labour Inspection* (2009), para. 40.

<sup>33</sup> For instance, Finland and Portugal opted for a specific law, Spain for a decree and France for a National Collective Agreement additionally to the social law which explicitly includes domestic workers. Italy developed a comprehensive legal framework with a law, a presidential decree and a National Collective Agreement which touches on various aspects of the protection and the rights of domestic workers.

<sup>34</sup> Such a conflict of standards can also be found when suing an employer enjoying immunities.

## **3.2 Migrant Workers Vulnerable to Exploitation**

According to the ILO, migrant domestic workers are among the world's most vulnerable workers.<sup>35</sup> Even if many studies show that all domestic workers, be they nationals, or regular or irregular migrants, are not protected from abusive and exploitative work conditions, it must be underlined that the vulnerability of migrants, especially of undocumented migrant women, is often increased by the fact that they do not know the language nor understand the legislation or the local traditions and cultural codes.

### **Isolation and lack of information**

The irregular administrative status of migrant women workers makes them isolate themselves further so as to not run any risks (to avoid identity controls and deportation, etc.). Moreover, it is often the case that they do not sufficiently master the language of the host country, are isolated, and are not aware of their rights. The hidden nature of domestic work emphasizes their isolation and limits their access to information and to protection and assistance measures, even if these do exist.

### **Lack of a work contract**

Because the majority of domestic work takes place in the informal economy, even the basic obligations of labour law are unlikely to be respected. Working conditions and the relationship between the employer and the worker are often based on a verbal agreement rather than on a written contract. Moreover, most workers, especially the most vulnerable migrant women, are not in a position to negotiate their working conditions.

### **Administrative status and imbalance power**

The vulnerability that migrants experience as a result of their precarious or illegal administrative status has an effect on the employment relationship. Researchers highlight that this relationship is no longer defined in terms of obligation, protection and responsibility but rather in terms of power and exploitation, dependency and gratitude.<sup>36</sup> Moreover, the power imbalance between the employer and the worker is worsened by the insufficient assistance and resources to seek redress that are available to domestic workers.

### **Administrative dependency and vulnerabilities unintentionally generated by migration policies**

The increase in demand for domestic workers in developed and emerging countries has led to an

<sup>35</sup> ILO, *Towards a fair deal for migrant workers in the global economy*, Report VI, 92<sup>nd</sup> session of the International Labour Conference (Geneva, June 2004), p. 67.

<sup>36</sup> B. Anderson, “A Very Private Business: Exploring the Demand for Migrant Domestic Workers”, in *European Journal of Women's Studies* 14 (2007), p. 255.

increase in the number of States which have developed migration policies to facilitate the migration of women seeking domestic employment. The nature and scope of migration programmes or agreements depend on existing social agreements and legislation on immigration.<sup>37</sup> The international community<sup>38</sup> and community-based organizations<sup>39</sup> recognize, however, that these policies do not guarantee sufficient protection to migrant domestic workers, especially if the legality of their stay is bound to a specific work contract or employer and the person cannot change employer or work sector. Moreover, it is crucial to develop and implement labour migration policies and practices that promote legal, safe channels of migration with a gender perspective to better protect women and girls and reduce the risks of abuse.<sup>40</sup> In this regard, it is also important to note that initiatives by host countries which encourage migration and authorize their legal stay via special visas for domestic workers may have unintended consequences and contribute to placing the migrant workers in a situation of dependency and vulnerability without protecting them or giving them the possibility to change their situation. In general, the more precarious their legal status, the greater the dependence on the employer, and the more vulnerable the migrant workers are to exploitation.<sup>41</sup> The impact of labour and migration policies that may unintentionally ultimately facilitate trafficking in human beings for domestic servitude, has not been adequately evaluated and should be further examined.

#### Administrative dependency and diplomatic privilege

A diplomatic visa (or legitimation/identification card) is provided to private domestic staff employed by members of diplomatic missions, permanent missions and consular posts, and by international civil servants, depending on their rank. This identification document authorizes the stay of non-resident workers. In most of the host countries, the visa is tied to the diplomatic status of the employer and not to the worker. Therefore, this group of migrant domestic workers is very dependent on individual

employers and particularly vulnerable, as the workers are mostly not free to change employers if abused or exploited. Moreover, this situation is worsened by the status of the employers which grants them immunity from prosecution and punishment.

#### Social dependency

Anti-Slavery International uses the concept of “multiple dependency”<sup>42</sup> to describe the often vulnerable situation of migrant workers. Apart from the administrative status, many migrants depend on their employer for food and housing. Living with the employer is not always a deliberate choice.<sup>43</sup> Whilst for some, it may be a ‘choice’ in order to save on accommodation and transport costs, for others, it is a condition of their recruitment and ensures the non-stop availability of the worker for the employer. For newcomers, without any family or community support, it may be the only option. If the working conditions have been established by a placement agency, the worker has no choice. Research on domestic work has shown that “live in” domestics are particularly vulnerable to abuse and exploitation. This situation creates a dependency vis-à-vis the employer and severely distorts the employment relationship. Working hours are flexible, rest hours depend on the needs of the employer; the worker has no time off, no private life, and the food and its quality depend on the employer. According to an investigation led by Kalayaan, in the United Kingdom, between 2007 and 2009, the issue of insufficient food was raised many times by interviewed workers.<sup>44</sup>

The causes of vulnerability of migrant workers, linked to the domestic setting, the lack of social and legal recognition of domestic work, and the lack of efficient regulations protecting workers all lead to mistreatment, exploitation, and abusive, or even inhuman or degrading, working conditions. Moreover, the lack of State checks (e.g., labour inspections) on the situation of household employees enhances the isolation of migrant domestic workers, makes them more vulnerable to exploitation, and allows the employers to act with impunity.

As highlighted in the Occasional Paper on the challenges of addressing trafficking for labour exploitation in the agricultural sector in the OSCE region, “violations of labour law should be taken very seriously, both because individual rights are at stake and because such violations create the conditions for trafficking to flourish”.<sup>45</sup>

37 Several OSCE participating States (e.g., Canada, Greece, Italy, Spain) have put in place admission systems for migrant domestic workers based on temporary work programmes. Available information and data on these programmes confirm the growing trend of the quota of domestic workers. See for more information: ILO, *The Gender Dimension of Domestic Work in Western Europe*, International Migration Papers No. 96 (2009); and Philippine Commission on Filipinos Overseas, <[http://www.asianpacificpost.com/portal2/c1ee8c441cb563fc011cbacbba80018c\\_Migrant\\_workers\\_leave\\_behind\\_millions\\_of\\_children.do.html](http://www.asianpacificpost.com/portal2/c1ee8c441cb563fc011cbacbba80018c_Migrant_workers_leave_behind_millions_of_children.do.html)>.

38 Economic and Social Council, Commission on Human Rights, *Report of the Special Rapporteur, Ms. Gabriela Rodríguez Pizarro, submitted pursuant to Commission on Human Rights resolution 2003/46, E/CN.4/2004/76* (12 January 2004), para. 55; ILO, *The Gender Dimension of Domestic Work in Western Europe*, International Migration Papers No. 96 (2009), p. 27; OSCE, *Guide on Gender-Sensitive Labour Migration Policies* (2009).

39 See for example: The « Association des aides familiales du Québec » (AAFQ), <<http://aafq.ca/en/qui-sommes-nous/>>, accessed 4 June 2010; Kalayaan, <<http://www.kalayaan.org.uk>>, accessed 4 June 2010.

40 OSCE Ministerial Council, *Decision No. 5/09 Migration Management*, MC.DEC/5/09 (Athens, 2 December 2009), para. 2; OSCE, *Guide on Gender-Sensitive Labour Migration Policies* (2009), p. 45.

41 OSCE, *Guide on Gender-Sensitive Labour Migration Policies* (2009), p. 45.

42 Anti-Slavery International, *Trafficking for forced labour in Europe – Report on a study in the UK, Ireland, the Czech Republic and Portugal* (November 2006), p. 1.

43 Kalayaan, *Care and immigration – Migrant care workers in private households* (September 2009), p. 19.

44 Ibid.

45 OSCE OSR, *A Summary of Challenges on Addressing Human Trafficking for Labour Exploitation in the Agricultural Sector in the OSCE Region*, Occasional Paper Series no. 3 (2009), p. 38.

## 4. Identifying Trafficking for Domestic Servitude

It is probable that a large number of victims of trafficking in human beings for domestic servitude are never identified nor assisted. Yet, the identification of a trafficked person is a requirement for her or his subsequent access to assistance, protection measures and restitution. The lack of knowledge and understanding of domestic servitude limits the action of participating States and relevant professionals.

NGOs in OSCE participating States emphasize the adverse implications of the lack of knowledge about this form of trafficking for labour exploitation and underline the difficulty of detecting victims of domestic servitude in cases where neither victims, neighbours, guests, nor any other people report the crime.<sup>46</sup> Only knowledge and evidence-based research can overcome the current lack of understanding of this form of exploitation and the violations of human rights it entails. Additional qualitative research is needed to better understand the social, cultural and economic dimensions of domestic servitude and to better respond to the crime.

Besides the lack of knowledge, drawing the line between domestic work and trafficking for domestic servitude is another challenging aspect for the identification of victims and detection of the crime.

The OSCE Ministerial Council Decision No. 8/07 recognizes the challenges of identification of and assistance to victims. It calls on participating States to “provide increased efforts and establish more effective procedures to identify victims of trafficking and, in this respect, to provide training and the resources necessary for this task to their labour inspectors and, where appropriate, step up inspections in sectors vulnerable to labour exploitation”.<sup>47</sup> Many countries still have to put in place or improve the victim identification process and corresponding referral mechanisms to deal with this hidden form of trafficking for labour exploitation.

The development of an identification process is needed, including guidelines and specific procedures that take

build on existing experiences and tools.<sup>48</sup> Research and data on trafficking for domestic servitude must also be systematically collected and analysed so as to develop and inform such tools. Awareness raising and information campaigns aimed at the wider public can encourage both self-identification of victims and the identification and referral of cases by neighbours, doctors, teachers, social actors, hotel staff, trade unions, and worker organizations.

Based on the UN Protocol’s definition of trafficking, the ILO has developed four sets of operational indicators for adult and child victims of trafficking for labour and sexual exploitation. A common set of indicators is necessary for the harmonization of both qualitative and quantitative research, as well as for the provision of guidance to practitioners on identifying trafficked persons and detecting the crime.<sup>49</sup>

### 4.1 Typologies of Domestic Servitude Cases

Interviews with organizations specialized in assisting victims of trafficking in OSCE participating States, as well as in the analysis of collected cases, lead to the conclusion that situations of trafficking for domestic servitude tend to involve the following typologies of cases:

#### Trafficking of migrant workers

This refers to migrant workers, predominantly women, seeking employment abroad, usually to support their family in their home country. They are recruited mainly via placement agencies but also by employers who travel to recruit the person directly. Domestic workers who make use of placement agencies often find themselves in debt due to the often exorbitant fees and additional costs that they are charged. Some agencies encourage them to migrate by offering to retain a few months’ wages to cover the recruitment costs, any training fees and other costs (such as transportation, documents, etc.).<sup>50</sup> The German NGO Ban-Ying has even encountered cases where five months of pay were withheld in order to cover the placement agency’s fees.<sup>51</sup>

48 UNODC, *International Framework for Action To Implement the Trafficking in Persons Protocol* (2009), p. 12.

49 ILO, and European Commission, *Operational indicators of trafficking in human beings: Results from a Delphi survey implemented by ILO and the European Commission* (September 2009); OSCE Permanent Council, *Decision No. 557/Rev.1 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005), chapter V para. 3.2.

50 G. Vaz Cabral, *Les formes contemporaines d’esclavage dans six pays de l’Union Européenne – Autriche, Belgique, Espagne, France, Grande-Bretagne, Italie, Etudes et Recherches* (IHESI, 2002).

51 See in particular N. Prasad, “Domestic workers working for diplomats”, in *Trafficking in Women in Germany*, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, KOK (ed.) (2008).

46 See for example intervention of E. Probst, LEFÖ, at the UN.GIFT Round Table on “The Situation of Domestic Workers in Austria. Employment or Human Trafficking for Labour Exploitation?” (Vienna, 2 December 2009); National Independent Commission on rights of women and harassment related to women, *Territory of silence: Women’s rights and violence against women in Russia* (2008), <<http://www.anna-center.ru/ru/component/content/article/32/15.html>>, accessed 10 June 2010.

47 OSCE Ministerial Council, *Decision No. 8/07 Combating Trafficking in Human Beings for Labour Exploitation*, MC.DEC/8/07 (Madrid, 30 November 2007), para. 4.

According to information collected from NGOs in the OSCE region, most migrant domestic workers recruited by agencies originate from South-east Asia, especially from the Philippines and Indonesia.<sup>52</sup>

### Trafficking of migrant workers from one foreign country to another

This refers to domestic workers already employed in a foreign country, who follow their employer when he or she travels or moves (short or long-term) to another country. Case studies tend to show that this predominantly concerns domestic workers from South-east Asia who work for employers from the Middle East. The workers may use the opportunity of being in a third country to escape.

#### Case study 3

Ms. J is Filipino. She had a two and a half year work contract for a man living in an Arab country, to look after the cleaning and to care for the man's mother who suffered from intense back pain. The latter was particularly aggressive towards Ms. J, shouted with no reason and treated her very badly. Ms. J tried in vain to understand why this woman was so unpredictable and was very afraid of her. She worked day and night for USD 300 per month, without any days off. In 2007, the mother needed a back operation and so the three of them went to Switzerland.

Shortly before their return, Ms. J managed to escape from the hotel they were staying in by the airport and was taken in by a migrant she had previously met on the street. She put her in touch with the NGO FIZ who offered psychological support and informed her about her rights and the possibility to press charges against her employer. However, Ms. J was afraid to do so. Moreover, as the offence had taken place in Switzerland, and the mother and son had already left the country, such a procedure did not seem very promising. Jane only wanted to return to her family in the Philippines, and FIZ organized her return. Unfortunately, she went home without receiving any compensation for either psychological or financial damages.

Source: FIZ, *Zwangsarbeit und Frauenhandel: Unsichtbar ausgebeutet*, Rundbrief 43 Zwangsarbeit und Frauenhandel (November 2008), p. 7.

### Child trafficking

NGOs in some participating States report that a significant proportion of children assisted had been trafficked for domestic servitude. For example, in France, on average a third of the people assisted each year by the French NGO Comité Contre l'Esclavage Moderne (CEEM) were underage at the time of their exploitation, and most of these came from African countries.<sup>53</sup> Another example comes from the United Kingdom where the NGO African Unite Against Child Abuse (AFRUCA), which promotes the rights of African children in the U.K., notes that most children encountered in the course of their work are in domestic servitude.<sup>54</sup> This issue will be further investigated in section 4.3 on Increased Child Trafficking for Domestic Work.

### Employer with diplomatic status

The case of members of the diplomatic corps (diplomats, embassy and consular staff, and high-level civil servants) exploiting domestic workers cannot be generalized to apply to the whole of the international community. Nevertheless, information and statistics from specialized NGOs suggest that the issue should not be underestimated or ignored. The gravity of the committed crime calls for greater attention to be paid to the phenomenon, especially considering the shortage of remedies available to victims and the specific challenges in bringing perpetrators to justice, including the lack of appeal possibilities for the victim and the impunity of the employers.<sup>55</sup> Indeed, in some OSCE participating States, beneficiaries of diplomatic privileges have been involved in documented cases. For example, 10 per cent of all cases dealt with by CCEM have concerned persons enjoying diplomatic privileges.<sup>56</sup> Between 1 April and 31 December 2009, nine of the 22 cases of domestic servitude referred by Kalayaan to the National Referral Mechanism of assistance to victims of trafficking concerned employees who had come to the United Kingdom to work for a diplomat.<sup>57</sup> In the United States, between 2000 and 2008, 42 domestic workers holding a special card (Visa A-3 or G-5) claimed to have suffered abuse at the hands of foreign diplomats enjoying immunity.<sup>58</sup> The issue of diplomatic immunities will be looked into in section 4.4 on Diplomatic Privileges and Domestic Work.

53 CCEM, *Le travail domestique des mineurs en France* (2009): the study is based on 79 cases of underage children, aged between 4 and 17 years old at the start of their exploitation, assisted by CCEM between 1994 and 2008.

54 AFRUCA, *What is child trafficking?*, Safeguard African Children in the UK Series 2 (2007), p. 10.

55 Information essentially from Austria, Belgium, Germany, Finland, France, Netherlands, Switzerland, United Kingdom and United States.

56 Information provided by CCEM.

57 Kalayaan, *Law Enforcement: Trafficking for domestic servitude* (2010).

58 United States Government Accountability Office, *U.S. Government's Efforts to Address Alleged Abuse of Household Workers by Foreign Diplomats with Immunity Could Be Strengthened*, Report to the Subcommittee on Human Rights and the Law, Committee on the Judiciary, U.S. Senate (July 2008).

52 Ibid.

### Au pair

In the OSCE region, cases of au pairs being exploited in slavery-like conditions have been identified in Belgium, France and the Netherlands.<sup>59</sup> The risk of human trafficking in this target group was highlighted by several NGOs. La Strada Ukraine pointed out that searching on the Internet for a family to work for as an au pair may also result in an unforeseen situation.<sup>60</sup> Indeed, the au pair line of work has changed in terms of sending countries, motivations and socio-economic background.

#### Case study 4

“V, a Philippino girl, came to the Netherlands as an au pair. At her first host family, despite other agreements on paper, V not only had to look after the children but also had to do increasing housework, and work on Saturdays. Without her knowing it, V became undocumented, because the host family had not registered her. A row broke out and V went to another family where she encountered the same problems: there was no residence permit and V was given too much work to do. V went to a third host family. Her duties there included cleaning the house and the swimming pool, walking the dog, cooking for the 15 and 18 year old sons and being on hand in the evenings and at weekends to serve guests.

V was in fact a maid and she earned between €450 and €500 per month. She did not have her own passport and was afraid of the lady of the house, who treated her badly. After more than 5 years of illegal residence, V went to an NGO which tried to mediate. Her boss said she would sort out V’s registration and insurance, but some months later the situation had not changed. Then V’s host family offered her a loan of €1,000 to build a house in the Philippines. The NGO warned that this would increase her dependence, but V still took the loan. V’s working conditions continued to be poor and she was not allowed to rest when sick, for example. When it became too much for her, she left. Because the situation was beyond mediation, the NGO collected V’s things from the family. V gave back the money she had borrowed and got her passport in exchange. The NGO wants to ask a lawyer whether she could claim back wages.”

Source: Dutch National Rapporteur on THB, *Trafficking in human beings* - Fifth Report of the Dutch National Rapporteur (The Hague, 2007), p. 170.

Research shows that the ‘new’ au pairs are more vulnerable, putting them at greater risk of abuses or human trafficking.<sup>61</sup> For instance, the largest group of au pairs in Denmark come from the Philippines. The number of au pair residence permits granted to this group increased considerably in recent years (211 in 2003 to 2,163 in 2008). Yet, as a Danish research underlines, it is important “to note that in 1998, the Philippine authorities banned Filipinos from working as au pairs in Europe, following a series of cases highlighted in the media which involved abuse and prostitution in Scandinavia and the Netherlands”.<sup>62</sup> Indeed, better monitoring of the recruitment mechanisms of au pairs and of their working conditions is crucial to better prevent such abuse and to avoid that au pair programmes become a means of facilitating human trafficking.

## 4.2 Applying the International Definition of Human Trafficking

Domestic servitude can take place in a variety of different situations, but the trafficking processes and the exploitative conditions are similar. The recruitment methods, the means of constraint and subjugation, the working conditions, the living conditions and the ill-treatment inflicted on the exploited person fall into a few common scenarios.

Trafficking for domestic servitude is mostly perpetrated on the initiative of a private employer who is the main beneficiary of the forced labour. She or he is both a recruiter and an exploiter.

### Modes of recruitment

The cases of trafficking for domestic servitude analysed in the framework of this Paper, as well as the interviews with NGOs, tend to show that trafficked persons are recruited via fraudulent job offers, false promises, fraudulent placement or recruitment agencies, intermediary traffickers who recruit in villages, as well as through the misuse of cultural traditions.

59 Dutch National Rapporteur on Trafficking in Human Beings, *Trafficking in human beings*, Fifth Report from the Dutch National Rapporteur (The Hague, 2007), p. 169; <<http://lastradainternational.org/?main=traffickinghumanbeings>>, accessed 18 November 2010; Information provided by CCEM and Pag-Asa.

60 <<http://www.lastrada.org.ua/tp.cgi?lng=en&ld=166>>, accessed 18 November 2010.

61 B. Anderson, *Doing the dirty work? The global politics of domestic labour* (Zed Books: London, 2000), p. 23; Danish Centre Against Human Trafficking, *Au pair and trafficked? – Recruitment, residence in Denmark and dreams for the future, A qualitative study of the prevalence and risk of human trafficking in the situations and experiences of a group of au pairs in Denmark* (2010), p. 12.

62 Ibid., p. 18: This report is based on interviews with au pairs in Denmark and concludes that none of the informants were trafficked.

### Case study 5

As she came from an ethnically mixed family, Ms. B, a mother of three children, was subject to discrimination in the Balkan nation she was living in and could not find a job. In December 2005, she replied to an advertisement for a job in Austria and was brought to Vienna by her employer, Mr. T, who promised her a residence permit, health insurance and accommodation. Her passport was confiscated upon arrival and she had to clean a mansion (where eight people lived) for four months, 18 hours a day, seven days a week. She did not receive any money for her work. As she regularly asked for her passport, her employer began to threaten her, telling her that she would have to pay for her stay, that she would go to prison or that he would take a bank loan in her name and spend the money.

In April, Ms. B fled from the house and asked a woman on the street for help. The latter offered her assistance and, noticing that she was in shock, brought her to the hospital. As Ms. B could not stay there overnight, she called relatives of her employer, whom she trusted, but they deceived her and brought her back to her employer. However, she managed to talk to a doctor during a scheduled visit to the hospital, and the latter contacted the relevant authorities.

Ms. B was then taken care of by LEFÖ-IBF, an Austrian NGO. The Ministry of Interior acknowledged that she had been victim of a grave crime and needed protection; she was therefore allowed to stay in Austria for humanitarian reasons. After a two and a half year long procedure in the Labour Tribunal, Ms. B obtained compensation amounting to 14,000 Euros (including unpaid salary).

Source: Information provided by LEFÖ, 2010.

### Case study 6

Ms. J is 23 years old and lives in an Eastern European country. She is a trained kindergarden worker but unemployed. An acquaintance offers her work as an au pair girl with a Swiss-Russian family (in Switzerland) on the following terms: five days working week, possibility to attend a German course, free board, and a wage of 500 Swiss Francs, travel expenses covered by the employer.

Already in the first week, it becomes clear to her that the work contract does not match the reality. Her personal documents are confiscated, and she is forced to work from 7am until midnight and care for a newborn baby and three older children. Ms. J has to cook three meals per day, launder the clothes of more than eight people, and clean the big house perfectly. Ms. J asks the Russian-Swiss couple to let her return to her home country, but they react violently, hit her in the face and force her to sign a debt of several thousand Swiss Francs. They also threaten her with serious punishment if she were ever to violate any of the established rules – Ms. J cannot leave the house alone, can only make telephone calls in the presence of the employer and must have her correspondence controlled by the employer. Moreover, due to her irregular stay in Switzerland, Ms. J was told that she had no rights and would have to go to prison if she were stopped by the police.

In the following years, Ms. J was often beaten; breaking the rules was punished with drastic means: she received no food, had to clean all night, eat the food which had gone bad and eat anything she threw up. This ordeal lasted for seven years.

After being raped twice by the oldest son, Ms. J dared to escape and eventually managed to get in touch with FIZ, who brought her to a secure secret place. Ms. J pressed charges, but the employers responded with a charge for sexual violence to children. The family left the country during the procedures, which then had to be interrupted. At a second hearing, Ms. J was granted a residence permit. Returning to her home country would be life threatening, as in the meantime her family had been threatened and had had to move.

Ms. J never received any compensation. She is still traumatized years later. The perpetrators were never found guilty.

Source: FIZ, Jelena: *Zur Arbeit im Haushalt gezwungen*, Fallbeispiele.

### Placement and recruitment agencies

Legal or well-established placement agencies have at times been found to play a particularly abusive or fraudulent role in the exploitation of migrant workers. While these unscrupulous agencies encourage and facilitate migration, they are more concerned with satisfying employers' needs and requests than protecting the rights of the workers. Migrant women recruited via such agencies often find themselves in servitude from the outset in order to pay back a debt. Some had to borrow money to pay upfront for the organization of the trip and to cover agency fees. Others asked for an advance from the agency, or the agency even encouraged them to go abroad, offering to then retain a few months' pay. They first had to reimburse their debt before being allowed to send money back to their families, in cases where a salary was paid.

The role of these agencies highlights one of the questions of the definition of trafficking which requires further clarification: what is the relationship between the person who recruits, displaces or transfers a worker, and the person who subjects the worker to unacceptable working conditions?<sup>63</sup>

According to ILO guidelines on trafficking in human being and forced labour exploitation for parliamentarians and law enforcement, monitoring of migrant recruitment procedures is an efficient way to manage migration. Such monitoring can, on the one hand, facilitate the prevention of trafficking for labour exploitation, and on the other, prevent ruthless go-betweens, employers and agencies from tricking (potential) migrants and leading them into exploitative situations.<sup>64</sup>

In some regions of the world, mainly outside the OSCE region, **deception and misuse of cultural** traditions is another method to recruit individuals to be trafficked. Children are especially affected by this method of recruitment. Practices such as *confiage* or *kafala* (entrusting a child with a relative or another wealthier person) are misused to traffic children into the OSCE region. As noted by a specialized NGO, "taking charge of the education of an underage child becomes a false pretext leading to his or her exploitation in a foreign country".<sup>65</sup>

The existence of **intermediary traffickers** who recruit in villages is not specific to domestic servitude, but rather common to many trafficking scenarios. These intermediaries provide information to the main traffickers

63 ILO, *Human Trafficking and Forced Labour Exploitation. Guidance for Legislation and Law Enforcement* (2005), p. 31.

64 Ibid.; for more detailed information, see ILO, *Trafficking for Forced Labour: How to monitor the recruitment of migrant workers*, Training Manual (2006).

65 CCEM, *Le travail domestique des mineurs en France* (2009), p. 17.

or to employers looking for workers and they take responsibility for identifying potential children or adult workers to exploit. Research and information collected from NGOs in the OSCE region show that children are recruited by persons who visit their villages and negotiate the children's placement and terms with the parents.<sup>66</sup> This system is also used by fraudulent recruitment agencies.

### Case study 7

Ms. A, the mother of three children under eight years old, was exploited as a domestic slave in Paris. She lived in a small village in Sri Lanka where her husband was a farmer. One day, a man passed through the village offering women the opportunity to work abroad without having to advance the money for the trip. In return for this good deal, they would have to work for two months for free. The idea is tempting for this young mother and her family who have always lived in misery. She follows the recruiter to an agency in Colombo. Very soon afterwards, she sets off for a capital in the Middle East, to work for Mrs. V, whose husband is a diplomat currently posted abroad. She discovers relentless work, threats, beatings, etc.. She receives no money at all and finds out one day that the family is moving to France.

Source: Sylvie O'Dy, *Esclaves en France* (Albin Michel: Paris, 2001), p. 108.

### Modus operandi of exploitation<sup>67</sup>

Trafficked domestic workers are forced to work long hours and to be available day and night, maintaining the household or caring for children, for no or very low wages. The *modus operandi* of the exploitation can take the following forms:

- the exploiter receives direct benefits from the work of the exploited person (this is the most frequent case); and
- the exploiter sells the services of the exploited person and receives the earnings for the hours of cleaning or childminding performed in other households; or the servant is lent to other members of the family.

In certain cases, the servants are forced to perform other tasks in addition to household-related ones, such as begging, selling in the streets, working in a restaurant, providing sexual services or prostitution.<sup>68</sup>

66 Human Rights Watch, *Bottom of the Ladder: Exploitation and Abuse of Girl Domestic Workers in Guinea* (2007), p. 33; ILO, IPEC, *Combating trafficking in children for labour exploitation. A resource kit for policy-makers and practitioners*, Book 1: Understanding what child trafficking is (2008), p. 25.

67 CCEM, *L'esclavage domestique. Le processus d'asservissement domestique et sa répression en France* (2007).

68 Examples taken from collected cases.

## Case study 8

Ms. Y a 29-year-old woman from a small town in northern Tajikistan was recruited and trafficked to the United Arab Emirates for the purpose of sexual exploitation and domestic servitude. Her traffickers, an unemployed couple from a larger city in the country, bought Ms. Y's ticket to Dubai and prepared all the necessary documents for her travel. Upon arrival, her passport was seized and she was sold for 16,000 Dirham (equivalent to EUR 3,247.90) to a local man.

"To prepare your documents, we spent a lot of money. Now you need to work to pay us back," Ms. Y was told. "When you pay back all money, you can receive your passport." For four years, Ms. Y was harassed. Only after addressing UAE government was she able to free herself from domestic servitude, and return home.

Upon her return, a criminal case was initiated against the couple under Article 130.1 part 2 and Article 132 part 3 (trafficking in human beings and recruitment of persons for exploitation respectively) of the Criminal Code of Tajikistan.

Source : Газета «Бизнес и Политика», "Продаем живое существо - человека!", <<http://gazeta-bjp.net/society/212-2010-06-17-09-10-43>>, accessed 1 November 2010.

**Profit** is as a major motivation for trafficking. It is difficult to calculate the profits of domestic servitude. The exploiter saves money by paying low or no wages for the work and services that he or she receives. The non-lucrative nature of this crime leads to it often being considered as a "non-serious" crime even though it has a clear impact on national economies and feeds into the informal sector.

To quantify the value of unpaid domestic work, labour courts often first assess the reality of a work contract by establishing the existence of a clear subordination link between the exploiter and the exploited person. Based on this, they apply the national agreement for household workers –if it exists- as well as the relevant labour law to calculate the wages and indemnities owed on breach of the oral or written contract.

### Working conditions, treatment and means of coercion

The UN Trafficking Protocol lists the following "means" of coercion to subjugate and exploit a person: 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.<sup>69</sup> These methods match those used in the cases of domestic servitude identified in the OSCE region.

### Means of coercion:

- Confiscation of identity documents;
- Physical violence;
- Threats to the victim or his/her family;
- Psychological, verbal and emotional violence (insults, humiliation, degrading treatment, instigating guilt feelings and manipulation...);
- Isolation (contact not allowed with the outside world or the family);
- Denial of private life and intimacy. The workers usually 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 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.

Several studies, especially by the ILO on forced labour, focus on the use of subtle means of coercion.<sup>70</sup> Most means of coercion observed in domestic servitude are similar to those used in other forms of exploitation. In addition to the abuse of vulnerability, domestic servitude is also characterized by verbal, emotional and subtle psychological violence which deeply affects the worker and has serious long-term consequences on the person's well-being. This may include, for instance, making a child feel guilty about his parents' death even though they died of an illness.<sup>71</sup>

Isolation, denial of private life, prohibition of communication with their family, verbal and emotional violence are all forms of harassment which undermine the workers' dignity and strengthen their feeling of being put down and not respected.

Victims of labour exploitation may also be subjected to sexual violence. Among those trafficked and exploited as domestic workers, many are young women raped by

<sup>69</sup> 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.

<sup>70</sup> ILO, *Forced Labour and trafficking in Europe: how people are trapped in, live through and come out* (2008).

<sup>71</sup> See case study 2.

Abuse and exploitation statistics recorded at Kalayaan for every new Migrant Domestic Worker registered in 2008 & 2009		
Type of abuse/ exploitation	2008 (n=350)	2009 (n=332)
<b>Control</b>		
Not allowed out unaccompanied	69%	66%
Passport was withheld	58%	67%
Psychological Abuse	58%	60%
<b>Abuse</b>		
Physical Abuse/assault	17%	15%
Psychological Abuse	58%	60%
Sexual Abuse/harassment	6%	5%
Did not get regular/sufficient food	21%	27%
Did not have own room (sleeping on living room or kitchen floor etc)	57%	46%
<b>Exploitation</b>		
Did not have any time off (i.e. Working 7 days a week)	60%	67%
Worked on call (i.e. Had to be available 24 hours)	68%	76%
Worked 16 hours or more per day	45%	51%
Received £50 or less per week in salary	50%	70%

Source: Kalayaan, *Submission to the Special Rapporteur on Contemporary Forms of Slavery* (4 June 2010).

male members of the family in which they work. Sexual abuse is a means to control, own or degrade a person. While the men often assert their power through sexual violence, the female homeowners can very often become even crueller than the men towards the domestic workers. Psychological and emotional violence affect victims to the same extent as physical and sexual violence, all leading to long-term trauma.

### What stops workers from leaving?

Violence and mistreatment are used as means of strengthening the relation of domination and submission between the exploiter and the victim respectively. Actual confinement is rare. However, evidence from testimonies shows that trafficked persons are conditioned by threats of being reported to the police, or being deported if they leave the home without authorization or without being accompanied. In the recent case of *Ramos v. Texas* in the United States, the threat of deportation was indeed recognized as coercion and as a factor to determine whether a person is a victim of trafficking in persons.<sup>72</sup>

<sup>72</sup> Case of *Ramos v. Texas*, <<http://geneva.usmission.gov/2010/05/06/trafficking-victims-protection-act/>>, accessed 11 June 2010.

Due to lack of resources, not knowing where to go and not having their bearings in the area in which they live, trafficked persons may at first be unwilling or unable to escape. Moreover, they often do not know where they are, or the address of their employer, and can only describe the location using landmarks. For example, in a case reported by one NGO,<sup>73</sup> the victim did not know where to go and came back to sleep in the rubbish room of the building of her exploiters after roaming around for three days.

False promises are very often used in domestic servitude, to strengthen control over the worker and ensure that the forced labour continues. In order to justify the non-payment of wages, employers may argue that the money is paid into a bank account and will be given to the worker at the end of the contract. In cases where the worker is recruited through the family, the employer promises to send the money directly to the family. Promises of an education are mentioned in most cases involving children.

In conclusion, three main criteria have been identified to detect the threshold beyond which a specific situation of exploitation in a household can be considered domestic servitude and falls within the legal requirements of trafficking or slavery or forced labour. They are:

- **Poor living and working conditions:** Victims of domestic servitude are subject to extremely long working hours, usually going beyond 12 hours and even amounting to 18 hours per day. They often systematically lack sufficient sleeping hours, or are obliged to wake up and perform one part of the job during the night without adequate rest compensation during the day. Victims of domestic servitude usually live with their employer and have no private living space. They are often given scarce and poor food and, in many cases, they suffer real starvation;
- **Low or no wages:** The existence of domestic servitude is not necessarily dependent on the complete absence of remuneration. Even if the worker receives a certain amount of money, insufficient wages can still be considered an important component of domestic servitude when such an amount, in addition to not being commensurate with the working hours, does not go beyond the mere subsistence of the worker, or does not make it possible for the worker to achieve – not even partially – the objectives related to the migration project, typically to send home what is sufficient for the survival of the family;

<sup>73</sup> Information from CCEM.

⇒ **Violation of human dignity and autonomy:** Human dignity is violated when people are psychologically or sexually abused; when they are subjected to violent forms of punishment; when they bear racist or discriminatory behaviour because of their racial or ethnic origin; when they are obliged to live in an unhealthy environment; when they cannot enjoy a minimum standard of privacy, typically when they sleep on the kitchen floor; and when they are constantly abused even if only verbally, and subject to continuous humiliation. Human autonomy and self-determination is denied when they are constantly under the control of the employer and cannot autonomously enjoy any free time; are not allowed to leave the household alone or to make friends outside the family; and when they are not allowed to go to school or to enjoy education or training.

### 4.3 Increased Child Trafficking for Domestic Work

Child domestic work is increasing worldwide. The ILO states that 40 to 50 per cent of the 12.3 million people affected in forced labour are under 18 years old.<sup>74</sup> Existing studies show that child domestic labour is one of the most widespread forms of child work, deeply anchored in traditions. Across the globe, more girls under 16 are employed in domestic service than in any other form of work.<sup>75</sup>

According to the ILO, children finding themselves engaged in domestic labour in someone else's or in the employer's home under conditions that are hazardous, constitutes one of the "worst forms of child labour". This is especially so in cases of extreme exploitation, resulting from trafficking, resembling slavery or similar practices, or when the children are forced to perform tasks which are, by nature or due to working conditions, dangerous and could harm their health, security or morals.<sup>76</sup>

The ILO's International Programme for the Elimination of Child Labour (IPEC) has acquired a wide range of experience in combating child labour, both at the local level of provision of assistance to children and at the political level in its work with governments. A recent report, entitled *Give girls a chance - Tackling child labour, a key to the future*,<sup>77</sup> highlights the particular vulnerability of girls and the importance of paying special attention to them in order to improve their future and that of subsequent generations.

74 ILO, *A global alliance against forced labour*, Report I(B), International Labour Conference, 93<sup>rd</sup> session (2005), p. 16.

75 ILO, IPEC, *Helping hands or shackled lives? Understanding child domestic labour and responses to it* (2004).

76 Ibid.

77 ILO, *Give girls a chance: Tackling child labour, a key to the future* (2009), p. 27.

The **cultural tradition of placing a child** in another household for a better future, referred to as *confiage*, is seen by the Committee on the Rights of the Child to often be a "synonym of exploitation of children as domestics and exposure to several forms of abuse and violence"<sup>78</sup>. This practice, typical in some parts of the world - mainly outside the OSCE region - is now recognized as a risk factor and as the source of child forced labour in home countries<sup>79</sup> or of trafficking for domestic servitude into some OSCE destination countries. Ironically, trust is at the core of such a tradition.

This practice of placing a child with another family is quite widespread throughout the world. In Benin, it is referred to as *Vidomegon*, whilst in Haiti, the phenomenon of *restaveks* consists of placing a child in a wealthier family so that he or she has access to an education and to a more or less decent life. "Nowadays, poor families welcome these children. They cannot afford to pay for domestic help. Therefore, they take a child for domestic work."<sup>80</sup>

Such social and cultural practices used to be a way for families to help each other out, and to give children a chance of survival and an education. They compensated not only for poverty but also for the lack of an educational system in certain rural regions. Nowadays, they tend to make these children vulnerable to exploitation and to trafficking.

#### Case study 9

**Ms. A was recruited in the Comores at the age of 13 by a couple of friends of her parents. In exchange for domestic work, it had been agreed that she would receive a proper education. She arrived on French territory with a false identity and her documents were destroyed by her employer. She was not sent to school and she looked after all the domestic tasks: cleaning, cooking, washing up, laundry and ironing. She was also obliged to clean the house of her employer's friend. To do so, she had to wake up at 3 o'clock in the morning. She never received any salary.**

Source: CCEM, *Le travail domestique des mineurs en France* (2009), p. 25.

78 UN, *Conclusion Observations of the Committee on the Rights of the Child: Burkina Faso*, Consideration of reports submitted by States parties under article 44 of the Convention, CRC/C/BFA/CO/3-4 (January 2010), p. 48.

79 See interview: C. Akakpo, "Confiage" is a modern form of child slavery (ITUC, 4 January 2010).

80 Courrier International, « La souffrance des "restaveks" », 26 May 2009, <<http://www.courrierinternational.com>>, accessed 4 June 2010; UNICEF Haiti, « J'aime nettoyer » : l'enfer des enfants domestiques habitués à obéir (2009), <<http://www.unicef.fr/en/node/734>>, accessed 10 June 2010.

The increase of **child trafficking within Africa** fuels trafficking towards Northern countries.<sup>81</sup> Indeed, UNICEF's estimate of 200,000 children trafficked within Western Africa is often quoted. Benin has become the hub of child trafficking in Western Africa, where the phenomenon of *vidomegon* is becoming increasingly widespread.<sup>82</sup> These children, who are placed with and entrusted to someone else, often become the slaves of their urban host families, who are meant to protect and educate them. Generally illiterate and used to being subjugated by adults, girls have no basic social education or knowledge of their rights.

### Case study 10

Ms. M was taken by a relative from her village in Togo to live in Nigeria. She ended up being sold as a domestic servant to a Nigerian family in Lagos. She worked with them for two years looking after their home and taking care of their two children. Later, the family decided to migrate to London. They brought Ms. M with them and she continued her role as a domestic servant. She was not allowed to leave the house and she never went to school. She was always beaten and not given enough food to eat. After hearing her cry many times, neighbours reported her case to social services that came to rescue her and took her into care.

Source: AFRUCA, *What is child trafficking?*, Safeguard African Children in the UK Series 2 (2007), p. 10.

In other parts of the world, children from ethnic minorities or from certain castes are traditionally exploited as domestic servants and may be trafficked into domestic servitude.<sup>83</sup>

The Economic Community of West African States (ECOWAS) Court of Justice's slavery case of *Hadidjtou Mani Koraou v. Souleymane Naroua* (2008) shed light on the continuity of caste-based slavery practices, rooted in ancestral master-slave relationships in Niger.<sup>84</sup> A 12-year-old girl was sold to the tribe chief. For about nine years, she had to perform all sorts of housework and serve as a concubine.

81 See for example: Human Rights Watch, *Bottom of the Ladder: Exploitation and Abuse of Girl Domestic Workers in Guinea* (2007), p. 26.

82 UNICEF, *Bénin : une loi contre la traite des enfants* (7 February 2006), <<http://www.unicef.fr/contenu/actualite-humanitaire-unicef/benin-une-loi-contre-la-traite-des-enfants-2006-02-07>>, accessed 15 November 2010; J. Tilouine, « Bénin : les vidomegon, nouveaux esclaves urbains », 11 December 2007, <<http://www.afrik.com/article13120.html>>, accessed 4 June 2010.

83 ILO, IPEC, *Combating trafficking in children for labour exploitation. A resource kit for policy-makers and practitioners*, Book 1: Understanding what child trafficking is (2008), p. 23.

84 Economic Community of West African States, Community Court of Justice, *Hadidjtou Mani Koraou v. The Republic of Niger*, Judgement No. ECW/CCJ/JUD/06/08 of 27 October 2008.

Child forced labour is not always restricted to cleaning tasks in the employer's household and to caring for children. Underage children can be coerced into other activities.

### Case study 11

Mr. K and his brother, aged 9 and 10 years old were brought into the country by relatives after the death of their father in Nigeria, with promises that they would go to school in London. Once they arrived in the UK, they were both forced to help run their aunt's Nigerian restaurant in south London. Their day-to-day tasks included going to the market every other day to buy the food used in the restaurant and carrying the food home on foot since they were refused transport money. Mr. K and his brother would walk long distances to and from the marketplace. If they took too long to return, they would be severely punished for being late. On return from the market, they would cook the food, serve customers, wash dishes and clean the restaurant. They were woken up at 5am every day and went to bed at midnight. Even though they were allowed to go to school, this was not regular. It also placed a greater burden on them as they were still expected to carry out all their daily chores regardless.

Eventually they were both able to break free from their abusers. Now in their twenties, they are still trying to cope with the effects of their long-term exploitation and abuse.

Source: AFRUCA, *What is child trafficking?*, Safeguard African Children in the UK Series 2 (2007), p. 12.

## 4.4 Diplomatic Privileges and Domestic Work

Countries give high-level employees of foreign diplomatic missions and international organizations the privilege of bringing household and childcare workers into the host country on special diplomatic visas (or legitimation/identification cards). However, such a visa is a privilege tied to the employer's diplomatic status and not granted to the worker personally. Indeed, the worker's legal status depends on the employer, as the residency status is bound to performing domestic services for a diplomatic household.<sup>85</sup> In addition to this privilege, diplomatic corps enjoy immunities which make the worker powerless if abused or exploited.

85 G. Vaz Cabral, *Les formes contemporaines d'esclavage dans six pays de l'Union Européenne – Autriche, Belgique, Espagne, France, Grande-Bretagne, Italie*, Etudes et Recherches (IHESI), January 2002), p. 94.

The Vienna Conventions on diplomatic (1961)<sup>86</sup> and consular (1963)<sup>87</sup> relationships provide a system of privileges and immunities for members of the diplomatic corps (the diplomat). The purpose of these privileges and immunities is to protect diplomats from pressures which might be brought to bear by the receiving state (host state). Staff members of international organizations likewise enjoy privileges and immunities, which are laid down in the Headquarters Agreement between the host country and the international organization, or in the organization's statutes.

Article 31 of the Convention stipulates that diplomatic agents shall enjoy full immunity from jurisdiction (criminal, civil and administrative) and from enforcement measures. At the same time, diplomats' persons and property are rendered inviolable (Articles 29 and 30). These privileges are extended to a diplomat's spouse and children, if the children are minors.

### Case study 12

CCEM and the French organization « Enfance et Partage » informed the Public Ministry of Nanterre about a possible case of domestic slavery in the household of a high-level civil servant in UNESCO (United Nations Educational, Scientific and Cultural Organization). 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, a former minister of Burundi. The former civil servant could then be sued like anyone else. Nevertheless, using his immunity, he used all legal steps to stop the procedure which, in February 2001, led to an order of dismissal, later invalidated by the Court of Cassation and sent back to another court. 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.<sup>88</sup>

Source: Georgina Vaz Cabral, *La traite des êtres humains. Réalités de l'esclavage contemporain* (Les Editions La Découverte, November 2006), p. 139.

### Abuse and exploitation statistics recorded at Kalayaan for new Migrant Domestic Worker (who had accompanied diplomats), who registered in 2008 (n27) & 2009 (n24)

ABUSE	% of those that answered	People who answered	% of those that answered	People that answered
Physical Abuse	15%	27	11%	19
Psychological Abuse	59%	27	65%	23
Not allowed out	52%	27	74%	23
Sexual Abuse	19%	21	0%	22
Denied regular food	30%	23	32%	22
No private space (no own room)	52%	27	30%	23
No day off in the week	44%	27	71%	24
Working 16 or more hours a day	40%	25	64%	22
On call 24 hours	60%	15	89%	19
Salary of £50 or under per week	48%	25	75%	20
Passport withheld	100%	9	83%	23

Source: Kalayaan, *Submission to the Special Rapporteur on Contemporary Forms of Slavery* (4 June 2010).

Concretely, these privileges and immunities prevent any judicial action from being taken against diplomats who breach the host country's law. Because of the principle of inviolability, not only is it impossible to arrest, detain, extradite or expel them, but they also cannot be obliged to give evidence as witnesses. Therefore, the immunities prevent the normal exercise of judicial appeals, and block investigations and the collection of evidence.<sup>89</sup> If criminal proceedings are initiated against a person who enjoys immunity from criminal jurisdiction, the prosecutor or the judge of the criminal court must request that this personal immunity be waived in order for proceedings to take place. For this reason, cases of domestic servitude

<sup>86</sup> UN, *Vienna Convention on Diplomatic Relations* (Vienna, 18 April 1961).

<sup>87</sup> UN, *Vienna Convention on Consular Relations* (Vienna, 24 April 1963).

<sup>88</sup> Court of Appeals of Versailles, *Epoux Mpozagara c/ Ministère public*, 29 June 2009.

<sup>89</sup> For more information, see G. Vaz Cabral, *Les formes contemporaines d'esclavage dans six pays de l'Union Européenne - Autriche, Belgique, Espagne, France, Grande-Bretagne, Italie*, Etudes et Recherches (IHESI, January 2002), p. 92.

carried out by individuals enjoying diplomatic immunities are not followed up at a criminal level. An option would be to use diplomatic channels, including giving up or waiving the diplomat's immunity or dismissing him or her, or declaring the diplomatic agent *persona non grata* despite the harmful consequences this could have on diplomatic relations between States.

In theory, the diplomat can be taken to court in the sending state (the State of origin of the diplomatic agent). However, one cannot but note that such means are rarely used and that, in reality, immunity usually entails impunity. The current situation is marked by a lack of oversight and accountability in most of the OSCE participating States, thereby allowing trafficking and exploitation of vulnerable workers.

### Case study 13

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, an Arabic-speaking lady. Ms. V was then forced to clean and cook without payment and 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 ongoing investigation, the procedure was interrupted in February 2008, as the defendant displayed a diplomatic passport. Any further procedure is excluded as long as Ms. T enjoys diplomatic immunity. The case was brought up to the Austrian MFA, which called upon the embassy concerned to address the case and initiated preventive measures aimed at protecting diplomatic personnel's private employees.

Source: Information provided by LEFÖ, 2010.

Experience shows that the obstruction of justice in such situations has grave consequences on the protection of the trafficked persons. They have no access to justice; no legal recognition of the abuse and exploitation suffered; no compensation for the moral and material damages; no recognition of their status as victims of crime and therefore no access to protection and assistance

measures foreseen in the law, especially if this support depends on the participation of the victim in the criminal proceedings.

### Case study 14

“For four years, she was practically invisible. No one knew her – not her neighbors, not the doorman of the posh Upper East Side [NYC] apartment building where she lived and worked, not the other nannies and housekeepers who populated the stores and playgrounds she infrequently visited.

She claimed her employer, a Kuwaiti diplomat, and his wife kept a constant and watchful eye. They never allowed her out alone and intruded on any conversation she attempted with outsiders. They beat and insulted her, deprived her of her passport, paid her less than 50 [USD] cents an hour, and locked her in their 22nd floor apartment when they went out. Finally, her employer, [Mr. B], a Kuwait diplomat, raped her, she recently told a judge.

Because she was sexually assaulted and because she is now an undocumented Indian national and fears deportation, she has asked to use the nickname “[Ms. S]”.

Once four years ago, after a violent fight with her employers the day before a family vacation [Ms. S] was to join, [Mr. B] left the family's passports and tickets on the dining room table. [Ms. S] saw her passport, snatched it and fled.

Last year, with the assistance of a lawyer she met at the New York temple where she sought shelter, she filed a federal lawsuit against [Mr. B] and his wife, [...], but the couple did not appear to reply to answer her allegations [...].

The Kuwaiti mission to the United Nations, however, sent a letter on their behalf, claiming that the couple has full diplomatic immunity that protects diplomats from prosecution. Some diplomats, though, may be charged with crimes committed while they were engaged in activities outside their consular duties. In extremely rare cases, diplomats may be stripped of their immunity. Alternatively, the host country may declare them *persona non grata*, forcing them to leave the country.”

Source: Asjlynn Loder, “Domestic Worker Challenges Diplomatic Immunity”, *Womens News*, 23 May 2004, <<http://www.womensenews.org/story/labor/040523/domestic-worker-challenges-diplomatic-immunity>>, accessed 10 June 2010.

Faced with this denial of justice, and notwithstanding the sensitivity of this issue due to its potential effect on diplomatic relations and reciprocity to missions abroad,

some OSCE participating States have put in place preventive measures and special judicial arrangements to ensure that diplomatic immunity does not mean a lack of justice or assistance to the victim including compensation.

Experience shows that the regulation of the delivery of diplomatic visas (or legitimation/identification cards) for private domestic staff employed by members of the diplomatic corps is the most effective measure to prevent abuses and exploitation of these workers. Some participating States have introduced important preventive measures adopting special procedures requesting that the visa issuing authority meets the worker in person to hand over the visa, to provide her or him written and oral information on her or his rights, and where and how to report abuses (e.g., telephone numbers and addresses of institutions and service providers to receive support and report instances of exploitation). Moreover, such procedures can be used to monitor the enforcement of the labour legislation and the working conditions of this specific group of domestic workers.

The Foreign Ministry of **Austria** has taken a number of measures to regulate the issuance of *Legitimationskarte* (legitimation cards) and to protect domestic workers employed by persons enjoying privileges and immunities. The Note Verbale of 23 October 2009, completed by the Note Verbale of 13 October 2010, informed the international community diplomatic representations, consulates and international organizations of the requirements for the employment of private domestic staff by persons enjoying privileges and immunities. Such requirements include minimum monthly wage and social security contribution, proof of the opening of a bank account at a bank domiciled in Austria and of documents to be provided for examination before entry in Austria such as copy of the employee's passport and layout plan of the dwelling with indication of the private domestic employee's room.<sup>90</sup>

**Belgium** sets out the delivery procedure of the special card in Article 10 of the Circular Note of 26 September 2008 on the enforcement of multidisciplinary co-operation concerning victims of trafficking in human beings and/or of certain aggravated forms of human trafficking. Since then, Circular Note No. 26472 of 18 September 2009 recalling the conditions to benefit from diplomatic privileges related to domestic workers was sent to those concerned. Measures mentioned include to meet the domestic worker personally when she or he picks up the visa, to give advice and information, to provide the

worker with the contract signed by both parties, to have an interview every year when the visa is renewed to give the worker the possibility to reveal potential exploitation or abuses, and to cover the return cost when the contract comes to end.<sup>91</sup>

The Federal Foreign Office of **Germany** has established some minimum guidelines to prevent abuses and to ensure the enforcement of the national labour and social laws. Special visas are delivered to foreign domestic workers, if the employer complies with the minimum legal standards as set out in the Circular Note No. 7/2003 such as the provision of a written contract, payment of minimum wages, and the right of the employee to have at her or his disposal her or his passport and visa.<sup>92</sup>

The Ministry of Foreign Affairs of the **Netherlands** developed in 2009 a new proactive policy with regard to the terms and conditions of employment of foreign domestic workers by diplomatic corps. This policy includes instructions to Dutch missions abroad such as to interview domestic workers and explain their rights in the Netherlands when issuing a diplomatic visa as well as to explain measures to enable workers to change to a new employer with privileges without returning to the country of origin to apply for a new visa. In May 2010, a brochure in several languages, entitled *Welcome to the Netherlands*, was issued to inform concerned domestic workers about their rights and who to contact if they would rather speak to someone not connected to the authorities.<sup>93</sup>

The **Swiss** Federal Department of Foreign Affairs (FDFA) regulated the privileges and immunities of diplomats with respect to the recruitment of domestic staff by publishing the Directive on the hiring of private servants by staff members of diplomatic missions, permanent missions, consular posts and international organizations on 1 May 2006 (last amendment 1 January 2010).<sup>94</sup>

The **United States** adopted the Circular Note Verbale HC-83-04 of 9 July 2004 and a circular diplomatic note HC-04-00 of 18 February 2000 concerning the employment of foreign domestic workers who are already in the United

<sup>90</sup> Austrian Federal Ministry for European and International Affairs, *Notes Verbales*, BMeiA - AT.1.35.01/0018-1.1b/2009 and BMeiA-AT.1.35.01/0032-1.1b/2010.

<sup>91</sup> Belgian Federal Foreign Office, *Domestiques Privés*, Circular Note No. 26472 of 18 September 2009 (2009).

<sup>92</sup> Ban-Ying e.V., *Female domestic workers in the private households of diplomats in the Federal Republic of Germany*, Information collected for the CEDAW Committee (2003).

<sup>93</sup> Dutch National Rapporteur on Trafficking in Human Beings, *Trafficking in Human Beings*, Seventh Report of the Dutch National Rapporteur (The Hague, 2010), pp. 488-490; Ministry of Foreign Affairs, *Welcome to the Netherlands* (The Hague, May 2010).

<sup>94</sup> In December 2010, the Swiss Federal Department of Foreign Affairs was adapting the directive to be adopted by the Parliament as an *Ordonance*.

States or are about to enter the country.<sup>95</sup> In addition, the Trafficking Victims Protection Reauthorization Act of 2008 enhanced protection for foreign domestic workers by creating special procedures and limitations on issuance of visas. Measures mentioned include appropriate training for Consular Officers, distribution of an information pamphlet on legal rights and resources, as well as suspension of issuance of visas to workers of a country's diplomatic mission or international organization if the Secretary of State finds that the country's mission or employees have abused or exploited domestic workers, or tolerated such abuse.<sup>96</sup>

Most of these procedures, usually put in place by the Protocol Department of the Foreign Affairs Ministry, are adopted as administrative documents such as a circular and sent to countries' diplomatic missions and international organizations. While these are good practices, to ensure their sustainability as well as respect for the rule of law, such preventive measures should be formalized by adopting them on a binding legal basis. This is the case in the United States. In this regard, Switzerland is preparing an *Ordonance* to give a legal force to the Directive on private servants hired by diplomatic staff. The Swiss Federal Department of Foreign Affairs was officially mandated by the Parliament to do it.

In addition to these preventive measures, some participating States have taken further steps to overcome the obstacle of immunities, to assist victims and give them access to their rights, especially remedies for unpaid wages. Again, considering the "absolute immunity" of diplomats, a legal procedure whether it is criminal, civil or to labour courts is excluded. This also has a negative impact on the social assistance of trafficked persons. Indeed, domestic servitude victims have no access to established channels of assistance for victims of trafficking because in most countries these are conditional to co-operation with the authorities in criminal proceedings.

For instance, when such a case arises, Belgium tries to negotiate 'amicable' arrangements with the offending parties in order to compensate the victim for the unpaid work. This is achieved by negotiating with lawyers and with the support of the Protocol Department in the Ministry of Foreign Affairs.<sup>97</sup> Moreover, the Belgian Circular of 2008

foresees specific measures to enhance the assistance to domestic workers employed by diplomatic households. In concrete terms, to enable the victim to obtain the status of victim of trafficking in human beings, the Public Ministry may express a favourable opinion on the reality of the exploitative situation, and on the occurrence of a situation of trafficking in human beings. In such a case, the Public Ministry compares the victim's declarations to other specific elements in the file and does not only check if the work contract was respected or not. "The public ministry can take any useful initiatives in collaboration with the Protocol and Security Department to prove the existence of the crime of trafficking in human beings, still respecting the rules of diplomatic immunity. To do so, it informs the General Prosecutor of the opening of the file, of the steps taken, and of the follow-up to the file. To obtain the status, the victim must also be accompanied by the specialized welcome centre [personnel], must not have any more contact with the presumed offender, and must co-operate with the public ministry office."<sup>98</sup>

## 5. Roles of Actors and Examples of Good Practices in Addressing Domestic Servitude

In some OSCE participating States, NGOs, grass-roots and community-based organizations, migrant-based organizations and domestic workers' organizations, trade unions and governmental institutions have joined their efforts to combat and prevent trafficking for domestic servitude, support and empower victims and advocate for the protection of domestic workers' rights.

### 5.1 Civil Society

Specialized NGOs, grass-roots and community-based organizations and domestic workers' organizations have already become quite active, creative and innovative in raising public awareness of the situation of trafficked domestic workers, as well as providing victims with access to counselling and support services. Awareness raising of both (potential) trafficked persons and the general public, and training for professionals likely to come into contact with victims, especially child victims, are essential components of the struggle against

95 Circular Note Verbale HC-83-04 of 9 July 2004 and circular diplomatic note HC-04-00 of 18 February 2000, concerning the employment of personal servants, attendants, and domestic workers who are in the United States, or plan to come to the United States, in non-immigrant G-5 visa status, <[http://archive.usun.state.gov/hc\\_docs/arr\\_HC\\_57\\_S\\_08.pdf](http://archive.usun.state.gov/hc_docs/arr_HC_57_S_08.pdf)>, accessed 4 June 2010.

96 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.

97 Information received from CCEM and Pag-Asa.

98 Circular Note of 26 September 2008 concerning the enforcement of a multidisciplinary co-operation concerning victims of trafficking in human beings and/or of certain aggravated forms of human trafficking (2008) - No official translation.

domestic servitude. The detection of domestic servitude cases is particularly difficult because of the hidden nature of this crime. Only an alert public can facilitate the process by helping to refer the person to support services and report the abuse. NGOs' experience shows that outreach work must start with raising awareness to educate a broad range of people and professionals (be they neighbours, doctors, teachers, caretakers, hotel staff, communities of faith, trade unions, workers' and employers' organizations) to recognize indications of trafficking and to refer victims to support services.

## NGOs and community-based organizations

### **AFRUCA** – United Kingdom

<http://www.afruca.org/>

Africans Unite Against Child Abuse is an organization concerned about cruelty against the African child. AFRUCA is the only African-led charity in the United Kingdom working on counter trafficking issues and providing direct support to victims (aged between 12 and 21 years) of trafficking for sexual exploitation and domestic servitude.

### **Ban-Ying** – Germany

<http://www.ban-ying.de/>

Ban-Ying is the Thai term for "House of Women". The association was founded in 1988 and runs two projects: a shelter for women from South-east Asia and a counselling and co-ordination centre against trafficking in persons. It offers counselling to people who are either directly affected or potentially affected by trafficking. Ban-Ying is also active in the field of research and advocacy. The NGO provides counselling for domestic workers of diplomats in Berlin. In 2010, the organization developed a creative awareness raising campaign targeting affected people and the community of origin of trafficked domestic workers. Posters in different languages were placed in areas where they could be read by target groups but not by employers.

### **BLinN** – Netherlands

<http://www.blinn.nl/>

Bonded Labour in the Netherlands (BLinN) works to improve the position of victims of human trafficking. BLinN aims to support and empower trafficked persons in rebuilding their future.

### **Break The Chain** – United States of America

<http://www.breakthechaincampaigndc.org/>

Break The Chain Campaign (BTCC) takes a holistic approach to addressing a global problem: the exploitation and abuse of migrant women workers. It has more than

12 years of experience in direct services to domestic workers victims of trafficking. Activities include policy advocacy, research training and actions at the community level.

### **CAST** – United States of America

<http://www.castla.org/>

The Coalition to Abolish Slavery and Trafficking (CAST), created in 1998, is a multi-ethnic, multi-lingual human rights organization. Its mission is to assist persons trafficked for the purpose of forced labour and slavery-like practices. The organization mobilizes all sectors of the community to identify and advocate against trafficking. CAST provides direct services for victims and has established a partnership with a family clinic trained to address the health and mental health needs of trafficking victims.

### **CCEM** – France

<http://www.ccem-antislavery.org/>

The "Comité Contre l'Esclavage Moderne" (CCEM) was created in 1994 to fight all forms of modern-day slavery, but quickly specialized in trafficking for the purpose of domestic servitude. The CCEM provides legal assistance and representation and social support to victims. Its activities also include advocacy, awareness raising and training. In 2005, the CCEM brought the Case of Siliadin v. France to the European Court of Human Rights. It was the first case of human trafficking examined by the Court.

### **FIZ** – Switzerland

<http://www.fiz-info.ch/>

FIZ Advocacy and Support for Migrant Women and Victims of Trafficking advocates for the protection of the rights of migrant women who are victims of violence and exploitation. The organization runs two outreach programmes: the Counseling Center for Migrant Women; and Makasi—Counseling and Support Services for Victims of Trafficking in Women. Makasi offers women affected by trafficking, including for the purpose of domestic servitude, comprehensive support, regardless of whether they file criminal charges against the offender. FIZ Makasi assists women who denounce the perpetrators up to their court proceedings.

### **Kalayaan** – United Kingdom

<http://www.kalayaan.org.uk/>

Kalayaan was established in 1987 to provide advice, advocacy and support services in the United Kingdom for migrant domestic workers and is the only organization in the U.K. providing support services to migrant domestic workers. Kalayaan also campaigns for the rights of Migrant Domestic Workers as workers in the U.K..

**LEFÖ – Austria**

<http://www.lefoe.at/>

LEFÖ is an organization of and for female migrants, created in 1985 by exiled women from Latin America to advocate against structural violations of women's rights. In 1998, LEFÖ-IBF (“Interventionsstelle für Betroffene von Frauenhandel”) was created, to support women victims of trafficking for labour and sexual exploitation. It is a recognized victim protection institution, which operates on a national level on behalf of the Ministry of Interior and of the Women's Directorate within the Federal Chancellery of Austria. LEFÖ-IBF provides regular further training for law-enforcement officers, judges and prosecutors.

**MRCI – Ireland**

<http://www.mrci.ie>

Migrant Rights Centre Ireland is an organization working to promote justice, empowerment and equality for migrant workers and their families. MRCI was first established in 2001 to bridge a gap in information services available to migrant workers and their families. It has since grown to become a leading organization advocating for change on many of the critical issues affecting migrant workers and their families in Ireland.

**Pag-Asa – Belgium**

<http://www.pagasa.be>

Pag-Asa was created in 1994. Its objective is to provide humanitarian assistance to victims and co-operate in the fight against trafficking networks. Pag-Asa provides support services to victims but also engages in awareness raising.

**Domestic workers' organizations****Domestic Workers Action Group (DWAG)**

<http://www.mrci.ie/Domestic-Workers/>

DWAG was established by MRCI in 2004, to respond to the exploitation and unfair treatment that many domestic workers experience in Ireland. The Group advocates to change the law and to ensure the enforcement of labour rights for domestic workers. In December 2008, three members of the Group spoke out on a national television programme to highlight the bad conditions that they experienced as domestic workers in Ireland.

**R.E.S.P.E.C.T Network**

<http://www.respectnetwork.eu.org>

R.E.S.P.E.C.T was developed in 1998 as a network of migrant domestic workers, self-organizations, migrant support organizations, trade unions and individuals campaigning for the rights of migrant domestic workers in Europe. The network aims to improve the social, economic and legal position of the growing number

of migrant workers who are employed in the private domestic sector. It is committed to promoting migrant empowerment through self-organization, education and campaigns for rights and welfare.

**5.2 Trade Unions**

In the OSCE region, few trade unions are engaged in changing the image and attitude towards domestic workers. Unions are trying to organize these workers despite the fact that in many countries, domestic workers are prohibited from joining trade unions. Trade unions play a crucial role in the promotion of domestic workers' rights pressing for improvements in national laws and campaigning for a new ILO convention on domestic work. They also provide legal assistance to domestic workers to seek legal redress in co-operation with NGOs.

**International Trade Union Confederation (ITUC)**

<http://www.ituc-csi.org/forcedlabour>

ITUC is the main international trade union confederation, representing the interests of working people worldwide. It has 301 affiliated member organizations in 155 countries and territories. ITUC has strongly campaigned to encourage ILO to develop and adopt a Convention for international standards for domestic workers. The Confederation published, in 2008, a *Mini Action Guide*<sup>99</sup> to campaign and support trade unions to fight against forced labour including domestic servitude.

**European Trade Union Confederation (ETUC)**

<http://www.etuc.org/>

The ETUC was set up in 1973 to promote the interests of working people at the European level. The ETUC has 82 National Trade Union Confederations from 36 European countries, as well as observer organizations in other countries. In April 2005, the ETUC organized an international conference: “Out of the Shadows: organizing and protecting domestic workers in Europe: the role of trade unions”<sup>100</sup>. The conference focused on the need to develop innovative ways to reach out to workers in the ‘shadow’ of the formal economy, especially those providing domestic services in private households, as well as the need to develop a protective framework, by collective bargaining and/or legislative means, for the provision of household services in general. The ETUC joined the ITUC (International Trade Union Confederation) in a campaign to stop the exploitation of domestic workers.

<sup>99</sup> ITUC, *Mini Action Guide – Forced Labour* (May 2008).

<sup>100</sup> ETUC, *Out of the Shadows: organizing and protecting domestic workers in Europe: the role of trade unions* (November 2005).

### Irish Congress of Trade Union (ICTU)

<http://www.ictu.ie/>

ICTU has developed a code of practice for domestic workers in Ireland adopted as a part of the social partnership “Towards 2016”. In 2007, the Code of Practice for Protecting Persons Employed in Other People’s Homes was published by the Irish Government. It lays a good foundation to guarantee domestic workers labour rights. Unfortunately, the code is only voluntary and not binding.

### Unite

<http://www.unitetheunion.org>

Unite is a British trade union which started campaigning for the rights of migrant domestic workers in 1988. Together with the NGO Kalayaan, they have long campaigned to improve the status of migrant domestic workers and lobbied the Government to introduce the overseas domestic worker visa to protect this group of workers.

## 5.3 Labour Inspection

During many years, the role of labour inspectors in the fight and prevention of trafficking for labour exploitation was overlooked. While their mandates and the scope of the inspection system vary from one country to another, labour inspectors have a particular role to play in the struggle against labour exploitation. Their principal mission is to promote and monitor enforcement of labour protection regulations and react in case of non-compliance. However, their actions are limited when dealing with hidden forms of labour such as domestic work. It is very difficult or impossible for them to enter private homes if this is not regulated by national laws. The International Association of Labour Inspection (IALI), which is a partner of ILO Forced Labour Programme, advocates for a clear role for labour inspection, as well as for making protection of all categories of vulnerable groups of workers a priority, and developing new partnerships, for instance with relevant civil society actors.

## 6. International Standards Relating to Domestic Servitude and Their Implementation

The OSCE Ministerial Council Decision No. 5/08 on enhancing criminal justice responses to trafficking in human beings through a comprehensive approach encourages participating States, who have not yet done so, to ensure that all forms of trafficking in human beings, as defined in the OSCE Action Plan to Combat Trafficking in Human Beings, are criminalized in their national legislation and that perpetrators of human trafficking do not enjoy impunity.<sup>101</sup>

In order to meet this objective in terms of trafficking for labour exploitation, in particular for domestic servitude, a comprehensive justice response is necessary, including labour law, criminal justice, migration law and their enforcement with due regard for human rights.

This section provides a brief overview of the main international standards relevant to preventing and combating trafficking for the purpose of domestic servitude as well as a few findings of a comparative legal analysis.

### 6.1 International Legal Framework to Combat Trafficking in Human Beings

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (UN Trafficking Protocol) is the first international instrument to explicitly define ‘trafficking’.<sup>102</sup>

The Preamble of the protocol underlines the necessity of adopting a comprehensive international approach to trafficking in persons that includes measures to prevent trafficking, to prosecute and punish traffickers, and to protect trafficking victims, including by defending their internationally recognized human rights.<sup>103</sup> However, this

<sup>101</sup> OSCE Ministerial Council, *Decision No. 5/08 Enhancing Criminal Justice Responses to Trafficking in Human Beings through a Comprehensive Approach* (Helsinki, 5 December 2008).

<sup>102</sup> 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), and the status of ratifications, see <<http://www.unodc.org/unodc/en/treaties/CTOC/index.html?ref=menuaside>>, accessed 6 June 2010.

<sup>103</sup> UN, Op. Cit., Preamble.

international instrument is first and foremost a criminal justice response to trafficking. Article 3(a) defines “trafficking in persons” in terms of the acts, and means used against an individual, thereby stating the basic elements of the crime.<sup>104</sup> Article 5 urges State Parties to establish the conduct set forth in Article 3 as criminal offences, when committed intentionally.

The vast majority of OSCE participating States have taken the step of ratifying the UN Trafficking Protocol and of criminalizing the specific offence of trafficking.

Another important international instrument is the Council of Europe Convention on Action against Trafficking in Human Beings<sup>105</sup>, which participating States are encouraged to consider signing and ratifying where appropriate.<sup>106</sup> The Convention entered into force in 2008. Its main objective is to safeguard and protect human rights of victims of trafficking. The Convention provides a comprehensive framework covering prevention, the protection and provision of assistance to victims, criminalization and prosecution, and international partnerships and co-operation with NGOs. The Convention adopts the same definition of trafficking as the UN Protocol but further strengthens the protection of victims’ rights. Indeed, while the Protocol invites State Parties to “consider implementing” measures to provide for the physical, psychological and social recovery of victims,<sup>107</sup> the Convention urges State Parties to “adopt” such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery.<sup>108</sup> The legally binding effect of the Convention ensures that the protection of victims’ rights is not discretionary.

In the OSCE region, it is important to recall also the main relevant binding instruments for the European Union.

The EU Directive proposal on preventing and combating trafficking in human beings and protecting victims was adopted by the Commission on 29 March 2010. On 14 December 2010, the European Parliament voted with a strong majority in favour of the Directive against trafficking in human beings, which will replace the Council Framework Decision from 2002. The proposal adopts an integrated and holistic approach to the fight against trafficking in human beings. Its main objectives

include more rigorous prosecution and prevention, and the better protection of victims’ rights. The proposal establishes that a person should be treated as a victim as soon as there is an indication that she or he has been trafficked. It also allows for the possibility of non-prosecution of and non-imposition of penalties on victims of trafficking for involvement in criminal activities as a direct consequence of being trafficked. Moreover, it contains specific provisions on the protection of children and vulnerable victims before, during, and after criminal proceedings, based on an individual assessment of the circumstances.<sup>109</sup>

The Council Directive of the European Union on the residence permit issued to third-country nationals who are victims of trafficking in human beings, adopted on 29 April 2004,<sup>110</sup> foresees the granting of a reflection period, the provision of assistance and the issuing of a residence permit to victims of trafficking in human beings who are third-country nationals.

There are also several important non-binding instruments on trafficking in human beings. Most are political commitments and recommendations to guide States in decision-making or when taking action.

The OSCE Action Plan to Combat Trafficking in Human Beings, adopted by Permanent Council Decision No. 557 on 24 July 2003,<sup>111</sup> aims to both incorporate best practices and an advanced approach into its anti-trafficking policies and to facilitate co-operation among participating States. It focuses on bringing those responsible for trafficking to justice, and on carrying out effective measures to prevent it, while maintaining a humanitarian and compassionate approach when providing assistance to victims. Moreover, it recommends that participating States criminalize trafficking as set forth in the UN Protocol on trafficking and, more concretely, implement measures to reduce the “invisibility of exploitation”.<sup>112</sup> The Action Plan is complemented by other important Ministerial Council Decisions advancing the scope of OSCE anti-trafficking commitments, including commitments on tackling trafficking for labour exploitation.

104 The definition was analysed in: OSCE OSR, *A Summary of Challenges Facing Legal Responses to Human Trafficking for Labour Exploitation in the OSCE Region*, Occasional Paper Series no. 1 (2007).

105 CoE, *Convention on Action against Trafficking in Human Beings*, CETS no. 197 (adopted on 3 May 2005 by the Committee of Ministers).

106 OSCE Ministerial Council, *Decision No. 15/05 Preventing and Combating Violence against Women* (Ljubljana, 6 December 2008).

107 UN, *Op. Cit.*, art. 6.

108 CoE, *Op. Cit.*, art. 12.

109 European Commission, *Proposal for a Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA*, COM(2010)95 final. At the time of printing, the official text of the EU Directive for which the European Parliament voted in favour was not available. The explanation contained in the text reflects the original proposal.

110 European Union, *Council Directive 2004/81/CE of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities* (April 2004), in *Official Journal L 261*, 6.8.2004, p. 85.

111 OSCE Permanent Council, *Decision No. 557 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 24 July 2003).

112 *Ibid.*, Chapter IV.

The UN Principles and Guidelines on Human Rights and Human Trafficking recommended by the UN Office of the High Commissioner for Human Rights provide practical, rights-based policy guidance on the prevention of trafficking and the protection of victims of trafficking. They particularly affirm the primacy of human rights in all anti-trafficking efforts and call on States to ensure that trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care, whether or not they are able or willing to co-operate in legal proceedings. Children who are victims of trafficking should be identified as such. Their best interests should be considered paramount at all times. Child victims of trafficking should be provided with appropriate assistance and protection. Full account should be taken of their special vulnerabilities, rights and needs.<sup>113</sup> It is important to note that many of these principles are also reflected in OSCE anti-trafficking commitments.

In addition to numerous recommendations on trafficking in human beings, the Council of Europe addressed the question of domestic servitude in 2001 and 2004. Based on the resulting reports, the Parliamentary Assembly adopted recommendations to urge member states to legally recognize domestic slavery, to safeguard victims' rights, and to combat domestic slavery in all its forms as a matter of urgency.<sup>114</sup>

## 6.2 Other Relevant International Instruments to Address Labour Exploitation and Domestic Servitude

In addition to the international instruments specific to trafficking in human beings, there are also other legal instruments that are applicable to situations of domestic servitude. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are core to recognizing the fundamental rights of all human beings.

The ILO has established a bona fide international labour code covering a wide range of labour rights. Many ILO Conventions are relevant to domestic workers, even if they do not expressly refer to them. In addition, the Forced Labour Convention of 1930 (no. 29) defines forced labour as “all work or service which is exacted

from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” (article 2.1). The Convention prohibiting the Worst Forms of Child Labour uses the definition of Convention no. 29 and explicitly forbids debt bondage, serfdom, forced labour and child trafficking.

### ECHR, Case of Siliadin v. France

In the *Siliadin v. France* case, the European Court of Human Rights detailed certain constituent elements of forced labour, thereby extending the notion of “menace of any penalty”. “In the instant case, although the applicant was not threatened by a “penalty”, the fact remains that she was in an equivalent situation in terms of the perceived seriousness of the threat. She was an adolescent girl in a foreign land, unlawfully present on French territory and in fear of arrest by the police. Indeed, Mr. and Mrs. B. nurtured that fear and led her to believe that her status would be regularised.”<sup>115</sup> Moreover, the Court considers that the lack of choice offered to the young girl means that she “did not offer herself voluntarily”.

International and regional conventions on women rights, child rights, migrant rights, worker rights and refugee rights are also relevant with respect to domestic servitude.<sup>116</sup> Among others, key instruments include the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the UN Convention on the Rights of the Child and the UN Convention and Protocol relating to the Status of Refugees.

The international Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families<sup>117</sup> is particularly interesting in the case of migrant domestic workers. It has indeed only been ratified by a few States but many of the rights listed reflect the international Covenants and the Universal Declaration of Human Rights, such as the right to just and favourable conditions of work,<sup>118</sup> to equal pay for equal work (art. 25), to work security and hygiene (art. 70), to rest, to

<sup>115</sup> ECHR, *Case of Siliadin v. France*, application no. 73316/01, point 118 (Strasbourg, 26 July 2005).

<sup>116</sup> For an analysis of international standards and States' engagement towards trafficking for the purpose of labour exploitation, see OSCE OSR, *A Summary of Challenges Facing Legal Responses to Human Trafficking for Labour Exploitation in the OSCE Region*, Occasional Paper Series no. 1 (2006); OSCE ODIHR, *Discussion paper on standards and new developments in labour trafficking*, ODIHR.GAL/66/07 (2007).

<sup>117</sup> Adopted by the United Nations General Assembly in resolution 45/158 of 18 December 1990.

<sup>118</sup> See also 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).

<sup>113</sup> UNOHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1 (2002).

<sup>114</sup> CoE, *Domestic Slavery*, Recommendation 1523 (2001); CoE, *Domestic slavery: servitude, au pairs and “mail-order brides”*, PA Recommendation 1663 (2004).

leisure, to reasonable hours of work, and to holidays with pay (art. 25). Moreover, article 21 states that “it shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits”.

## 6.3 Comparative Legal Analysis

There are very few prosecutions and convictions for trafficking in human beings for labour exploitation in most OSCE participating States. This is due to a number of reasons, including challenges in the criminalization of all forms of trafficking and in the implementation of appropriate legislation, as well as in the detection and investigation of the crime.<sup>119</sup>

The legal concept of trafficking in human beings is a fairly recent development, and judges often still find difficult to apply the provision on trafficking in human beings.<sup>120</sup> Moreover, many national laws do not include forced labour or servitude as an independent criminal offence, nor are these notions included in the main criminal offence of trafficking. Indeed, some laws are still limited to the criminalization of trafficking for sexual exploitation.

Even though all participating States now recognize the crime of trafficking and have taken necessary measures to incriminate it (even if only partially), only few victims of trafficking are recognized as such. Indeed, States are currently developing and improving their techniques of victim identification and crime detection. ILO indicators could guide States in the further development of identification tools.

OSCE Ministerial Council Decision No. 14/06 encourages participating States to ensure that their national criminal legislation on trafficking for labour exploitation complies with the requirements of the UN Trafficking Protocol.<sup>121</sup> Participating States are recommended to take the necessary measures to adopt or amend their legislation, in an appropriate and effective manner,<sup>122</sup> so as to

criminalize all forms of exploitation of trafficking, including domestic servitude.

A small sample of case law on trafficking for domestic servitude in OSCE participating States was analysed for the purpose of this background paper. It provides an interesting picture of how some national courts approach cases of domestic servitude. From this brief analysis, a few findings are worth noting.

**Domestic servitude cases are rarely qualified as trafficking in human beings.** Courts apply related offences rather than trafficking in human beings itself (such as harbouring of an alien, abuse of vulnerability, lack of remuneration, irregular work, withholding of documents, etc.).

The low number of convictions for trafficking in human beings is partly due to the fact that cases are often prosecuted for other offences rather than directly on trafficking charges. In cases of trafficking for domestic servitude, one of the main problems is the qualification of facts, in addition to the actual identification of victims and detection of cases. These issues are linked: if trafficking for domestic servitude is not identified as such, prosecutions will take place on another legal basis, and it will never be filed as a trafficking case.

In France, for instance, despite the existence of a specific criminal offence of trafficking in human beings, the jurisprudence developed by courts in cases of domestic servitude focuses on two other articles incriminating the abuse of vulnerability.<sup>123</sup> In a case involving an 11-year-old girl, the family court recognized that the facts which had been established proved that physical and psychological abuse of the child had occurred. She was in charge of all cleaning tasks and of washing laundry by hand despite the presence of a washing machine, so as to save water. She was not allowed to go to school, or to leave the apartment except to go shopping or to care for the children, and she was only allowed to take one shower per week. She did not eat for a week, after which she accepted a neighbour’s offer to go to the police station. The facts described by the victim were confirmed by seven witnesses including the niece and the paediatrician of the exploiter. According to the niece, the girl had often expressed her wish to return to her country, and her employer – allegedly her aunt - had planned to send the victim back and have another child come with

119 For more details, see: OSCE OSR, *A Summary of Challenges Facing Legal Responses to Human Trafficking for Labour Exploitation in the OSCE Region*, Occasional Paper Series no. 1 (2006), p. 4; MRCL, *Forced Labour: The case for criminalisation*, Policy Paper (2010).

120 C. Dettmeijer-Vermeulen (Dutch National Rapporteur on THB), *Human trafficking, turning our attention to labour exploitation* (Science Shop of Law, Economics and Governance, Utrecht University, October 2009); G. Vaz Cabral, *Draft report on France NRM Assessment 2009*, Anti-trafficking programme of ODIHR.

121 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), para. 6.

122 See also UNODC, *International Framework for Action To Implement the Trafficking in Persons Protocol* (2009).

123 These include articles repressing the abuse of vulnerability, or of a position of power, and the dependence of a worker who provides his or her “services without pay or in exchange for a remuneration clearly not representative of the importance of the performed work” (art. 225-13 CC), or to submit him or her “to working or living conditions which are incompatible with human dignity” (art. 225-14 CC). It must also be noted that the French criminal offence of trafficking includes the behaviour punished by article 225-14 CC.

the same passport. Despite the seriousness of the facts, the court qualified them as harbouring and submitting a person to undignified living and working conditions. The exploiter, a woman aged 41 at the time, was sentenced to a 12-month suspended sentence.<sup>124</sup> Even if the criminal offence of abuse of vulnerability and conditions against human dignity could seem appropriate, it is important to underline that this results in the actual criminal act of trafficking not being fully addressed.

Spain, Finland and the Netherlands have encountered the same problems as France. In case study 1 from Spain, the charges brought were restricted to the confiscation of the passport.<sup>125</sup> In Finland, one of the first investigations into domestic servitude was filed for exorbitant discriminatory employment practice (article 47.3a of the Finnish Criminal Code).<sup>126</sup> The Dutch National Rapporteur underlined, in a presentation at the University of Utrecht in February 2009, that the legal qualification of the facts of a case as trafficking for labour exploitation is one of the biggest problems in the Netherlands. She also pointed out that judges grapple with how excessive the abuse and circumstances need to be in order to qualify a case as a trafficking case.<sup>127</sup> That being said, judges of some participating States fully recognize domestic servitude facts as trafficking, forced labour or servitude. American courts apply the offence of involuntary servitude.<sup>128</sup> In Belgium, domestic servitude is qualified by courts as trafficking, in accordance with the law of 13 April 1995 on trafficking in human beings.<sup>129</sup>

**The length of sentences varies greatly, and often does not match the gravity of the acts committed.** There are, however, notable exceptions. In the United States, the offences of involuntary servitude and forced labour in domestic servitude cases are seriously punished. In April 2010, a Northern California woman was sentenced to five years in prison for luring a Peruvian woman to the U.S. with the promise of a job, but then confiscating her travel documents and forcing her to work as a nanny for no pay.<sup>130</sup> In one extreme case where serious physical

violence had been inflicted on the victim, the offender was sentenced to 17.5 years of incarceration. In this case, the victim was an 11-year-old girl who was brought to the United States and forced to work against her will as a domestic servant, not allowed to speak to anyone nor to leave the house or open the door to anyone.<sup>131</sup>

### Case study 15

During her years of servitude, the woman is said to have cared for the children day and night, and cooked and cleaned without a single day off. She was also prohibited from leaving the home without supervision, speaking with her children on the phone unsupervised and from making friends or speaking with the family's friends.

The U.S. District Court Judge sentenced Mr. X, a naturalized U.S. citizen, to 20 years in prison. His 40-year-old wife, a Nigerian citizen, was sentenced to nine years. The couple was also ordered to pay USD 305,957.60 in restitution.

The seven-count indictment handed down against them in February included conspiracy to commit forced labour, forced labour, conspiracy to harbour an alien for financial gain, harbouring an alien for financial gain, placing the victim in servitude and false statements to an FBI agent.

Source: AFP, "Texas couple sentenced for enslaving Nigerian women", 4 June 2010.

**The compensation of victims also varies from country to country.**<sup>132</sup> In the case of the Peruvian woman in the U.S., the defendant was ordered to pay USD 123,740.34 restitution for forced labour, unlawful use of documents in furtherance of forced labour and other charges. In another U.S. case, the Los Angeles Superior Court awarded USD 768,000, including USD 500,000 in punitive damages, to "an Indonesian woman who served as a domestic servant for a wealthy Southern California couple who confiscated her passport, withheld all pay, required her to work 16 hours a day, seven days a week, and never permitted her to leave the house, to pray at a mosque or visit the Indonesian consulate. They subjected the worker to verbal abuse, psychological coercion, and instructed her to lie and say she was a family member if law enforcement ever visited the home. They also told her that if she left the house she would be raped or arrested.

124 Tribunal de Grande Instance Bobigny, Ministère Public c/Hama, 17 April 2008.

125 Information obtained from the NGO Proyecto Esperanza.

126 Information obtained from the NGO Monikas, <<http://www.mtv3.fi/utiset/rikos.shtml/arkistot/rikos/2008/04/633142>>, accessed 6 June 2010.

127 C. Dettmeijer-Vermeulen (Dutch National Rapporteur on THB), *Human trafficking, turning our attention to labour exploitation* (Science Shop of Law, Economics and Governance, Utrecht University, October 2009). The delegation of Netherlands noted that in the same year, the Supreme Court laid down less demanding criteria. Since then, the number of convictions for trafficking for labour exploitation has risen. This trend is expected to continue.

128 U.S. Court of Appeal, *United States v. Paulin et al.* (Florida, 27 May 2009); *United States v. Mubang* (2004); *United States v. Satia* (Maryland, 2001).

129 See the annual reports of the Centre for Equal Opportunities and Opposition to Racism, <<http://www.diversite.be>>, accessed 6 June 2010.

130 U.S. Attorney's Office, *Walnut creek woman sentenced to five years imprisonment for forced labor of domestic servant*, <[http://www.justice.gov/usao/can/press/2010/2010\\_04\\_15\\_dann.sentenced.press.html](http://www.justice.gov/usao/can/press/2010/2010_04_15_dann.sentenced.press.html)>, accessed 1 December 2010.

131 U.S. Court of Appeal, *United States v. Mubang* (Maryland, 2004).

132 See also OSCE ODIHR, *Compensation for Trafficked and Exploited Persons in the OSCE Region* (2008).

Eventually, she managed to escape with the help of the Los Angeles County Sheriff". This successful outcome was the result of a two-year long collaboration between a team of lawyers who worked on a *pro bono* basis, and a non-profit legal services agency.<sup>133</sup>

However, in most cases, as underlined by NGOs who provide legal assistance to victims, compensation payments - even if ordered by the court - are all too often not executed in practice. Indeed, an order to pay remedies does not mean that the money will systematically be recovered. In several legislations, the recovery process would need an additional procedure.

To conclude, the main legal challenge is rooted in the difficulty for law enforcement and the judiciary to differentiate between situations where there is exploitation in violation of the labour law, or the abuse of a child, and situations where a person has been trafficked for the purpose of labour exploitation. Even where trafficked persons indeed have a right to justice and to seek compensation for crime-related damages, in reality, lacking constant legal support and free representation, victims are not able to access justice and claim their rights.

## 7. Conclusion: Challenges for an Effective and Comprehensive Response

Trafficking for domestic servitude is an economic, social, political and human reality. This form of modern-day slavery is a complex phenomenon strongly linked to issues of labour, gender, migration and globalization.

This inhumane and degrading crime causes long-term damage and trauma to trafficked persons, as well as the progressive loss of their identity. They are denied their fundamental rights and freedoms, including freedom of thought, freedom of expression and freedom of movement. Victims suffer violence and multiple forms of humiliation, deeply affecting their physical and emotional well-being. Therefore, a key principle to be adhered to should be to regard the worker [or child] as an individual who has been subjected to violence and whose human right to physical and psychological safety needs to be restored.<sup>134</sup>

In order to prevent and combat trafficking for domestic servitude, the factors which make trafficked persons particularly vulnerable must be recognized and the obstacles which impede common and effective action must be overcome.

### The challenges of investigation and prosecution

There are still very few prosecutions and criminal investigations concerning domestic servitude cases. This is due to the difficulty of detecting this hidden form of exploitation and the fact that the workers are in situations which are generally considered irregular work and/or simple violations of labour law. Thus, the current main challenge is how to differentiate cases of trafficking for labour exploitation from other situations of irregular employment, as recommended in OSCE Ministerial Council Decision No. 08/07 on combating trafficking in human beings for the purpose of labour exploitation.<sup>135</sup> As discussed previously, appropriate charges are not brought in most of the cases prosecuted in criminal courts. Therefore, trafficked persons are not recognized as victims of the crime that has actually been committed against them. To obtain compensation for the work provided, victims are encouraged to turn to labour tribunals to appeal for recognition of the work performed in an exploitative situation.

### Challenges in the identification of and assistance to trafficked persons for domestic servitude, and in its prevention

The hidden nature of domestic servitude makes the identification of this crime particularly difficult. This is coupled with a lack of awareness of this crime by the general public, as well as by law enforcement, health workers, labour inspectors and other professionals likely to encounter such situations. By the same token, isolated domestic workers, be they children or adults, do not have access to information and assistance, while the appropriate social service providers equally have no access to workers without the help of an alert public (be they neighbours, doctors, teachers, caretakers, hotel staff, communities of faith, trade unions, or workers' and employers' organizations). Therefore, the challenges of identification and assistance cannot be addressed without building capacity in a systematic way and raising awareness to educate the full range of relevant actors and potential reporters of cases. This will not only contribute to enhance victim identification and improve the detection of hidden trafficking crimes, but also lead to a more effective criminal justice response and result in bringing more perpetrators to justice.

133 <<http://www.omm.com/newsroom/news.aspx?news=1319>>, accessed 30 November 2010.

134 OSCE, *Guide on Gender-Sensitive Labour Migration Policies* (2009), p. 46.

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

### **The challenges of migration, gender equality and employment policies**

Several studies,<sup>136</sup> confirmed by information collected in the field, show that migration, employment and gender equality policies have a clear impact on the human trafficking process. Further discussions and analyses are necessary to examine how these policies interact, as well as the traffickers' fraudulent use of legal means, such as misuse of special work permits and diplomatic visa or legitimation/identification cards, to bring and to exploit migrant workers into a country.

The OSCE Action Plan emphasizes a comprehensive and multidimensional approach to combating trafficking in human beings. Moreover, as recommended by OSCE Ministerial Council Decision No. 08/07, despite national and international efforts aiming to prevent trafficking and to prosecute those responsible for the crime, it is necessary to continue raising awareness of the challenges of trafficking for labour exploitation in all its forms. A collective effort would ensure the dignity and safety of thousands of unprotected people, especially women and girls, who suffer social exclusion and are deprived of their freedom and dignity.

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136 See: OSCE, *Guide on Gender-Sensitive Labour Migration Policies* (2009); Save the Children, *Trafficking - A Demand Led Problem?: A Multi-Country Pilot Study* (2002); B. Anderson, "A Very Private Business: Exploring the Demand for Migrant Domestic Workers", in *European Journal Of Women's Studies*, vol. 14 (2007); ILO, *The Gender Dimension of Domestic Work in Western Europe*, International Migration Papers No. 96 (2009).



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## Part II

*Tenth Alliance against Trafficking In Persons Conference*

# Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude

Vienna, 17-18 June 2010

**Conference Report**

On 17 and 18 June 2010, the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Maria Grazia Giammarinaro, convened the tenth *Alliance against Trafficking in Persons* conference, entitled *‘Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude’*. The two-day conference was the first high-level event on one of the most invisible forms of trafficking for labour exploitation in the OSCE region. This large-scale event attracted over 250 participants, including senior government officials, and National Co-ordinators and Rapporteurs from 50 countries, as well as more than 75 representatives from international and non-governmental organizations, law-enforcement agencies and trade unions.

The conference provided an excellent forum to gather expertise, exchange good practices and develop recommendations on what more can be done to tackle the issue of trafficking for domestic servitude. The event was accompanied by the presentation of a photo exhibition and screening of a documentary film followed by a debate with the Belgian photographer and filmmaker, both of which gave fresh insights into trafficking in human beings for domestic servitude.



“*Esclavage domestique*” is a unique exhibition developed by the French non-governmental organization Comité Contre l’*Esclavage Moderne* (CEEM) that tells the stories of 19 victims of human trafficking and their way out of domestic slavery. Each image is accompanied by a short text detailing the plight of a trafficked and abused woman. The collection of their testimonies gives voice to these survivors to raise awareness about domestic servitude.

Photos: Raphaël Dellaporta  
Text: Ondine Millo

Speakers highlighted the specific features of this form of trafficking in human beings, including the challenges involved in identification and detection of the phenomenon, its gender, child and migration dimensions, the complexities of victim assistance and access to justice, and the challenges of investigation and prosecution of offenders. Participants also discussed good practices and challenges in prevention of domestic servitude, including where employers enjoying diplomatic immunities and privileges are involved.

## 1. Welcome and Opening Remarks

*Usen Suleimenov, Deputy Permanent Representative of Kazakhstan, Representative of OSCE Chairman of the Permanent Council*

The OSCE has an excellent record of combating trafficking in human beings in all its forms and of increasing awareness of this horrendous crime, providing concrete tools for policymakers, practitioners, law-enforcement bodies and civil society. We can no longer turn a blind eye to this crime, or remain ignorant of the humiliation and exploitation of human beings, which amounts to torture in all participating States, and requires immediate and adequate action.

The OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings and her Office have focused on many aspects of trafficking that go far beyond traditional stereotypical perceptions of this crime. Starting from the broad topic of trafficking for forced labour, the OSCE has tackled certain economic sectors prone to trafficking and exploitation, one after the other. Addressing domestic servitude is a pioneering initiative in the OSCE region.

Millions of people are employed in domestic work across the globe. In some countries, domestic work constitutes up to ten per cent of total employment. Decent by its nature, it is seen as low-skilled, suitable only for people without education, and therefore it is undervalued and underpaid. Unrecognized as workers, unregistered and unprotected, domestic workers may be forced to live through egregious abuses of power. Mental and physical abuses can include rape and sexual harassment, and extend to the point of torture and death, imprisonment and forced labour.

The most vulnerable of all domestic workers are children, and the vast majority of child domestic workers are girls.

Domestic work is estimated to be globally the single largest form of employment for girls under the age of 16. In many countries, according to Anti-Slavery International, the average age of entry into domestic work is as young as nine years old. Children may be kidnapped or sold by their parents, often deceived by recruiters with false promises of a better life in well-established families, and are traded into slavery. They have no means of escape and, in most cases, have no future. Deprived of education, they may live in a circle of poverty and lost opportunity. Children and young people recruited as domestics are among the most commonly trafficked group.

This is what trafficked children testify: they are beaten with hot irons, whipped and covered with scalding water, sexually harassed and raped, suffering from verbal abuse, threats, restriction of personal freedom, kept locked up, banned from attending school, forced into long working hours – up to 15–18 hours a day – with no permission to see their families, kept in isolation, working at night, with no salaries, starving and given only their employers' leftovers to eat.

This modern version of human slavery manifests itself as domestic servitude in thousands of households throughout the world; the OSCE participating States are not exempt. Today's slaves are predominantly female and usually work in private households, starting out as migrant domestic workers or au pairs, with many of them deceived by their employers, agencies or other intermediaries, debt-bonded and trafficked. Many of them do not know where to turn for help and do not dare to go to the police for fear of deportation.

The Kazakh OSCE Chairmanship chose combating trafficking in human beings, especially child trafficking, as one of its priorities. The situation is grave, the responsibility is great: participating States must be ambitious and redouble their efforts to eradicate modern-day slavery.

**Marc Perrin de Brichambaut, Secretary General, OSCE**

The *Alliance against Trafficking in Persons* is an important, informal forum for joining together major international organizations and regional NGOs in a genuine partnership in the fight against modern-day slavery in all its forms. This excellent platform for common advocacy, dialogue, and sharing of expertise and best practices in the OSCE region and among the participating States demonstrates that we are not alone in addressing this complex, multifaceted issue.

Over the years, the *Alliance* has been built into a unique, very important forum, which is particularly effective. There is a challenge for the OSCE participating States to reaffirm and develop Commitments and work on this issue, which is at the centre of the OSCE *acquis*.

In December 2009, OSCE Ministerial Council decision MC.DEC/2/09 on furthering OSCE efforts to address transnational threats and challenges to security and stability tasked the Secretary General with looking at how to strengthen the Organization's overall response to threats which have emerged since the end of the Cold War. Trafficking is one of the most serious transnational threats to security, especially to the safety and human rights of each individual, and to the state of health of our economies and democratic institutions.

The *Alliance* and its conferences provide excellent opportunities for participating States to reaffirm and further develop political commitments, regular dialogue and co-operation in order to strengthen the exchange of experience and expertise, and the implementation of concrete actions to work for the dignity, empowerment, and freedom of our fellow human beings in all our societies.

The OSCE Action Plan to Combat Trafficking in Human Beings is the basis for the Organization's anti-trafficking efforts. In addition, Ministerial Council Decisions have been taken on an almost yearly basis, indicating that combating trafficking in human beings remains high on the political agenda of the participating States. The OSCE Secretariat, the Special Representative, the ODIHR and our field operations are ready to assist partners in the international community and civil society, but responsibility for the challenging implementation of anti-trafficking commitments rests upon the participating States.

## 2. Keynote Addresses

**Maria Grazia Giammarinaro, Special Representative and Co-ordinator for Combating Trafficking in Human Beings, OSCE**

Every year millions of people, mainly women and girls, migrate from poor to rich countries or from rural to urban areas to work as domestics, nannies and maids, leaving their children and elderly in the care of their grandmothers, sisters, and relatives. The majority of migrant domestic workers do find a job that gives them the chance to improve their lives and the lives of their children and families, and they are also able to send quite important remittances back to their home country.

Others are, however, less fortunate and end up working in slavery-like conditions. When a person is obliged to be permanently at the disposal of the employer in a household, and when this person works all day and receives no salary, receives little food, is allowed to sleep for just a few hours, is psychologically abused, and has no days off, this is not domestic work; it is slavery.

Domestic servitude cases must be detected and adequately punished. In reality, however, in most cases in which domestic servitude is investigated, the charges are usually for much less serious crimes, and the average penalty usually amounts to just a few months of detention, and very often with a suspended sentence. These sentences are absolutely inadequate.

In this respect, especially when addressing practitioners, including lawyers, law-enforcement officials, prosecutors and judges, it is important to point out that depending on the actual situation concerned, various provisions can be used to prosecute and adequately punish these cases of domestic servitude, including enslavement or forced labour, where the latter is autonomously criminalized. However, the provision incriminating trafficking in human beings should preferably be used, given that in the vast majority of reported cases, all the legal conditions of trafficking in human beings were actually met. Moreover, in many countries only an indictment for trafficking allows the person concerned to access assistance and support measures specifically designed for the victims of this crime.

It is necessary to answer a crucial preliminary question in order to avoid the risk of designing an exceedingly broad area of criminalization. What is the threshold between domestic work performed in poor conditions and trafficking for the purpose of domestic servitude, or other crimes of comparable gravity, such as slavery or forced labour, which should lead to strict penalties? In this respect, national case law, although scarce, gives some guidance. There are three criteria to take into account: the living and working conditions, the wages and the dignity and autonomy of the person concerned.

The first criterion – the living and working conditions – relates to various factual situations which involve extremely long working hours, usually going beyond 12 hours. Another important element is the possibility to sleep a certain amount of hours, and enjoy the natural biorhythm of sleeping hours. Often a victim of domestic servitude bears the consequence of a systematic lack of sufficient sleeping hours, or is obliged to wake up and perform one part of the job during the night without adequate rest compensation during the day. Among the

living conditions, an important element is the quantity and quality of food. Victims of domestic servitude often suffer real starvation; often they can only eat unwanted leftover food.

The second criterion – wages – should be evaluated in relation to the working conditions. In other words, a migrant worker is usually ready to work hard, provided that the remuneration is comparable with the work performed; however, this never occurs in cases of domestic servitude. In a certain number of reported cases, the workers did not receive any wages. However, it is important to underline that the existence of domestic servitude is not necessarily dependent on the complete absence of remuneration. Even if the worker receives a certain amount of money, the insufficient wages can still be considered an important component of domestic servitude when such an amount, in addition to not being commensurate with the working hours, does not go beyond the mere subsistence of the worker, or does not make it possible for them to achieve – even partially – the objectives related to their migration project, typically to send home what is sufficient for the survival of the family.

The third criterion is the dignity and autonomy of the person concerned. For example, when the person is sexually abused or subjected to violent forms of punishment; when she or he bears racist or discriminatory behaviour because of their racial or ethnic origin; when she or he is obliged to live in an unhealthy environment that other members of the family do not share, typically a place designated for animals; when the person does not have any space in which she or he can enjoy a minimum standard of privacy, typically when she or he sleeps on the kitchen floor; when the person is constantly abused, albeit only verbally, and subject to continuous humiliation; when she or he is constantly under the control of the employer and cannot autonomously enjoy any free time and is not allowed to leave the household alone or to make friends outside the family; when she or he is not allowed to go to school or to enjoy education or training; when any of these elements occur, the third criterion is also relevant to qualify a situation of domestic servitude.

In conclusion, my thoughts go out to so many migrants performing domestic work in our countries. Let us side with these courageous, enterprising and hard working, mostly female migrant workers who cross the globe to find work in order to provide for their children and families, while enabling us to pursue our vocations and careers. Let us protect them from the risk of falling prey to unscrupulous or criminal employers who could enslave them. Let us empower them, and enable them to pursue their own goals. It is important that everyone plays their

part in advancing the eradication of this modern-day slavery.

**Luis CdeBaca, Ambassador-at-Large, Office to Monitor and Combat Trafficking in Persons, U.S. State Department**



OSCE/Alberto Andreati

OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Maria Grazia Giammarinaro (centre) listens as U.S. Ambassador-at-Large, Luis CdeBaca (right) addresses journalists at a media conference during the tenth *Alliance against Trafficking in Persons* conference. Belgian photographer and film-maker, Jorge León (left) also participates.

Trafficking in human beings is not simply an issue of sex, but also of labour; not just an issue of migration; and not just an issue of women. Last year, globally, over 50,000 trafficking victims were identified and there were 4,000 prosecutions.

The scars left upon the victims of trafficking for domestic servitude are not simply the visible ones. There are also the invisible wounds of not having a day off in years, isolation, sleeping on the floor, and the knock on the door at night. We must realize that this is not just an issue of labour trafficking versus sex trafficking. We have to look at the whole woman; so many women trapped in domestic servitude suffer ongoing sexual abuse from their employers.

It is necessary to pursue the traffickers endlessly, protect the victims and raise public awareness. It is also imperative to agree meaningful improvements to the international community's efforts. We must not only look at the abusive employers, but also clean the supply chain of the companies that provide the workers.

The ILO Convention will be an important step forward; however, we cannot wait for the final version in 2011 before we take action. The OSCE continues to drive the agenda forward. There are a number of concrete steps

that can be taken now: provide domestic workers with information about their rights before they leave home, provide opportunities for education rather than work; set up a hotline for reporting abuse; regulate the labour recruiting companies, implement not just administrative sanctions but also criminal penalties – those who steal another person's freedom should lose their own freedom; provide the possibility to pursue the trafficker in criminal and civil proceedings; and allow victims to work once they have gained their freedom and do not put them in detention.

Article 4 of the Universal Declaration of Human Rights is not self-executing, the Palermo Protocol cannot go through a door and liberate a slave. We must knock the doors down and go into that place where people have suffered so long. We need to free the men, women and children from their captors and help them pursue a life based on freedom.

### 3. Understanding What Domestic Servitude Is

**Moderator: Shivaun Scanlan, Senior Anti-trafficking Adviser, ODIHR**

This panel provided an overview of trafficking for the purpose of domestic servitude with the aim of underlining the specific features of this form of exploitation, such as slavery-like working and social conditions, invisible work and exploitation, and particular vulnerabilities of migrant workers. The panel illustrated the diversity of domestic servitude situations with concrete examples involving adults and children exploited in private households and cases of exploitation of domestic workers by employers enjoying diplomatic immunities and privileges, as well exploring hereditary forms of slavery and cultural traditions that may lead to trafficking.

**Gulnara Shahinian, UN Special Rapporteur on Contemporary Forms of Slavery**

According to ILO estimates, domestic work accounts for between four and ten per cent of the employed workforce in developing countries. For industrialized countries, the figure stands at 1 to 2.5 per cent of total employment. It is one of the largest and the most hidden employment industries in today's world. To the extent that fair labour practices are ensured, the sector can offer opportunities for domestic workers, who may be able to earn an additional salary for their families, move to and pursue

educational options only available in urban settings or, in the case of au pairs and other migrant domestic workers, have the opportunity to experience another country and culture. The sector has numerous specificities that make domestic workers particularly vulnerable to economic exploitation, abuse, and, in extreme cases, subjugation to domestic servitude and slavery.

The line between domestic work, albeit accompanied by serious violations of fair labour standards, on the one hand, and domestic servitude and slavery, on the other, is difficult to draw. In practice, there is a wide spectrum ranging from domestic workers engaged in labour relationships that follow applicable labour and human rights standards to women, children and men who are subjected to domestic servitude or slavery in contravention of the Universal Declaration of Human Rights (art. 4) and international human rights treaty law.

Due to the criminal and hence clandestine nature of domestic servitude and slavery, it is impossible to determine what percentage of domestic workers are actually victims of servitude or slavery. Servitude is characterized by an unequal exploitative relationship between parties, which the inferior party is legally or factually unable to end at his or her own volition. In cases of slavery, as classically defined by the 1926 Slavery Convention, the perpetrator puts forward a claim to “own” the victim, which is sustained by custom, social practice or domestic law, despite violating international law. In servitude and slavery-like practices, no such claim to formal ownership exists. The 1956 Supplementary Convention on Slavery provides a non-exhaustive list of instances under which a person is regarded to be of servile status (see articles 1 and 7 of the Convention).

The exploitation of children in domestic work can also amount to domestic servitude. The 1956 Supplementary Convention on Slavery specifically outlaws “any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.” In most contexts, domestic work, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children, and therefore falls into the ambit of the Convention on the Worst Forms of Child Labour (ILO Convention No. 182).

Forced marriage, a serious human rights concern and a violation of women’s rights, combines sexual exploitation with domestic servitude. The victims are forced to perform

household chores in line with gendered stereotypes, while submitting to their husbands’ sexual demands. The link between forced marriages and servitude is explicitly recognized by Article 1 (c) of the 1956 Supplementary Convention on Slavery. The domestic servitude aspect of child marriages is a key contributing factor, as it disempowers girls by denying them educational opportunities and the option to form protective networks of friends and peers.

International law unequivocally outlaws all forms of domestic servitude and domestic slavery, much like it outlaws other forms of slavery and servitude. Nevertheless, there is a gap in the international framework. Available international instruments do not address the specificities of domestic servitude and the working environment in which this human rights violation occurs. Progress is being made in International Labour Law, which can prevent domestic servitude. Customary and treaty-based international labour law implicitly outlaws domestic servitude by banning forced and compulsory labour and child labour. Relevant instruments include the Abolition of Forced Labour Convention (No. 105), the Convention on the Elimination of the Worst Forms of Child Labour (No. 182) and the 1998 Declaration on Fundamental Principles and Rights at Work. Responding to a growing international campaign calling for the protection of domestic workers through binding international instruments, the ILO Governing Body decided to place an item on decent work for domestic workers on the agenda of the 99<sup>th</sup> Session of the International Labour Conference, with a view to the setting of labour standards.

International human rights law outlaws domestic and other forms of servitude. Beyond the Universal Declaration of Human Rights and the 1956 Supplementary Slavery Convention, relevant norms can also be found in the International Covenants on Civil and Political Rights (art. 8), the Convention on the Human Rights of all Migrant Workers (art. 11), the Convention on the Rights of Persons with Disabilities (art. 27), the International Covenant on Economic, Social and Cultural Rights (art. 7 on just and favourable conditions of work), the Convention on the Rights of the Child (art. 19 on exploitation and art. 32 on hazardous work), and the Convention on the Elimination of all Forms of Discrimination against Women (art. 11 on women’s right not to be discriminated in the field of employment).

In the shadow of the global domestic work industry, large numbers of people – mainly women and girls – find their dignity denied. It is everybody’s responsibility to restore and protect this dignity.

**Georgina Vaz Cabral, Adviser, Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, OSCE**

Trafficking in human beings for the purpose of domestic servitude is one of the most invisible forms of exploitation. Defining this crime is complex, with economic, social, cultural and human factors all coming into play. It is an unknown and underestimated phenomenon which is extremely difficult to detect due to the informal and hidden nature of domestic work.

Domestic work is undervalued and poorly recognized as real work and consequently left unregulated. It is often considered an occupation which requires very few qualifications and which can be arranged informally between two individuals, instead of through a more formal worker-employer relationship.

Domestic servitude occurs when workers are isolated and kept prisoners in a relationship of violation and exploitation. Trafficking for domestic servitude covers a variety of situations but the features and the conditions of the victims are always the same. They are forced to work long hours and to be constantly at the disposal of the family, unpaid or in receipt of a low salary, and are given no rest days. Identity documents are confiscated by the exploiter, which contributes to denying their human autonomy and to destroying the victim's identity. The person is not allowed to leave the house, except when accompanied by a member of the family. They have no private life and no private space. They are often forced to sleep in a bathroom, kitchen or storeroom. They are not allowed to contact their families, and suffer physical and psychological violence. Extreme cases may entail torture or corporal punishment.

The traffickers can be individuals from any social strata; they can even be family members, neighbours or friends of the trafficked domestic worker. Subtle means of coercion are used to hold the person captive, such as subjugation by psychological conditioning or the generation of a feeling of guilt. The exploiters will blame children for being responsible for the death of their parents, even when the parents are not dead. They may receive threats of being released into a society whose language they do not know, with the exploiter instilling a fear of arrest by the police and deportation, and of being sent home as a failure.

The exploitation is based upon a relationship of domination and subservience. The relationship is defined in terms of imbalanced power, dependency and gratitude.

The purpose of this treatment is to make the victim invisible and to prevent her or him from escaping. The living conditions are poor and depend on the exploiter's will. Often the victim is given no access to medical care or not provided with enough food.

When examining the *modus operandi* of exploitation, two modes were identified: (i) an exploiter who benefits from the services rendered by the trafficked person – these may include household chores, childcare, or other activities such as selling products on a market or working in a restaurant; and (ii) the exploiter sells the services of the trafficked person to another family, or the servant is lent to other members of the family.

The case studies provided by NGOs have allowed the OSCE to draw up a typology of cases of domestic servitude in the OSCE region. This includes: (i) the trafficking of migrant workers looking for a job abroad to support their family in their home country. They may be recruited by an agency or directly by employers and find themselves in debt as they owe money for agencies fees and transport; (ii) migrant workers who work in a third country outside the OSCE region, who follow the employer to a country within the OSCE for a few days, weeks or months for work or holiday; (iii) employers with diplomatic status; (iv) *au pairs*; and (v) trafficking of children for domestic work – children, especially girls, are in the most vulnerable position. Child domestic work is very widespread as a tradition in some parts of the world. There is often a misuse of cultural and social practices, such as *confiage* in Western Africa, which are originally based upon trust and intended for families to help each other and survive, and for the child to lead a better life or receive an education. Instead the abuse is based upon lies and false promises.

In conclusion, while making a profit is the primary motivation for traffickers, in cases of domestic servitude, financial interests are often accompanied by a feeling of dominating another person and holding power over them, which reflects the 1926 definition of slavery.

**José Ramirez, International Programme on the Elimination of Child Labour, ILO**

The ILO has recently adopted a report and conclusions on a new international standard on decent work for domestic workers. A further session of the ILO will refine the conclusions, with the view to adopting a new international standard. This will take the form of a legally binding Convention, supplemented by a Recommendation.

Not all domestic work is domestic servitude, and domestic work should not be stigmatized. In the conclusions referred to above, domestic work is defined as work performed in or for a household. A domestic worker is anyone engaged in domestic work within an employment relationship. A person who performs domestic work only occasionally or sporadically, and not on an occupational basis, is not a domestic worker.

Forced labour is defined in the ILO Convention 29 on Forced Labour, which has been ratified by 174 countries. Forced labour is any work or service which is exacted from a person under the menace of a penalty, for which the said person has not offered him or herself voluntarily.

Child domestic labour is domestic work undertaken by children under the legal minimum age for work or employment, or by children even above that legal minimum age but under the age of 18, under slavery-like, hazardous or other exploitative conditions, in which case it is considered as a worst form of child labour. It is governed by ILO Convention 138 on the Minimum Age for Employment and by Convention 182 on the Worst Forms of Child Labour. Child domestic work is seen as socially acceptable in many cultures, with the home seen as a positive and safe place for girls to be working. There is a clear gender bias; domestic work is considered as a perpetuation of traditional female roles and responsibilities within and outside the household. It is sometimes perceived as part of a girl's apprenticeship for adulthood and marriage. Therefore, in many cultures, child domestic work is a phenomenon which is regarded positively as a protected kind of work, and considered preferable to other forms of work, particularly for girls.

These views contribute to the low recognition of domestic work as a form of economic activity, and to its social, economic and statistical invisibility. They also contribute to the non-recognition of child domestic labour as a form of child labour and to a widespread institutional reluctance to address the issues with specific policies and laws. This also results in an ignorance of or disregard for the risks to which a child may be exposed. These may include long working hours, physical and chemical dangers, biological dangers, and carrying of heavy loads and handling of dangerous tools, as well as sexual exploitation, isolation and deprivation of education. Child domestic labour has only recently come to the forefront of the international debate as potentially one of the most widespread worst forms of child labour.

Child domestic labour is a multi-causal and multi-faceted phenomenon. Push factors include poverty and its feminization, certain cultural and social practices that

render those with low social status more apt for domestic work, displacement and migration, and lack of education, economic and employment opportunities. Pull factors include increasing social and economic disparities, the perception of domestic work as a good opportunity for girls to receive employment and education and the perception that urban areas offer more opportunities than rural ones. In addition, with the increasing participation of women in the labour force, child domestic labour becomes viewed as an affordable alternative.

There is a lack of statistics on child domestic labour, given the hidden nature of the work. The high incidence of informal and undeclared working relationships leads to underreporting. However, conservative estimates put the total number of domestic workers, both adults and children, at above 100 million. IPEC is in the process of carrying out statistical work to produce a global estimate on child labour. IPEC is also working on raising awareness of child domestic labour, and building the capacity of government officials, social partners and civil society to tackle it, as well as implementing direct action pilot interventions and developing holistic care intervention models.

### *Discussion*

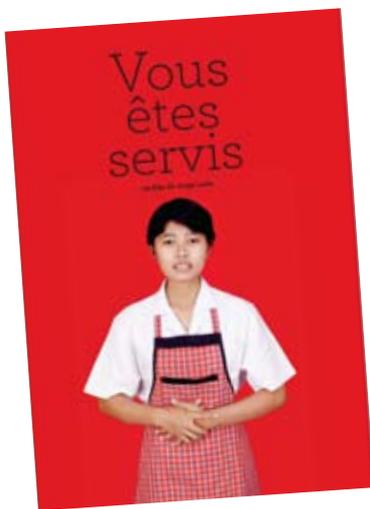
A discussion ensued on the links between domestic work and domestic violence, and the respective Conventions being developed by the ILO and Council of Europe on these two topics. These pieces of work are complementary but do not duplicate one other, as domestic work refers to an employment relationship, whereas domestic violence occurs within a family relationship. However, there are sometimes cases in which domestic workers can also be said to be victims of domestic violence, as they are perceived as a part of the family. An informal, binding relationship is created between the domestic worker and the family, whereby the former may be too afraid or unwilling to leave the children, as she or he feels emotionally attached to them despite the abuse suffered.

Research carried out by the UN Special Rapporteur on Contemporary Forms of Slavery into three generations of women in Mauritania demonstrated that the younger generation were more likely to leave a family if they found themselves in a situation of domestic servitude, whereas the older generations tended to stay within the family even if they suffered. They considered the situation as fate and did not see any options for escape. This attitude is part of a social acceptance of the violence. Even if they suffer exploitation, they are still members of the family or of the extended family.

### Documentary “Vous êtes servis”, by Jorge León

Following the panel, the documentary “Vous êtes servis”, by Belgian photographer and film-maker Jorge León was screened. The documentary showed the first-hand experience of Indonesian domestic workers. The screening was followed by a discussion between conference participants and Mr. León. The film demonstrated how the desire of these women to change their own destiny was exploited; they fell into the pitfall of indebtedness and often felt that they then had to accept the situation despite the exploitation, unable to return home empty-handed. There is a sense of honour and of collectivity – if one member of the family fails, there are repercussions for everyone. Additionally, if a woman is raped and becomes pregnant, she may be rejected by her family. The producer of the film explained that he had tried to understand and highlight what these women were experiencing, rather than to judge. There is a deep sense of sacrifice; the women do not see themselves as victims, but rather as women who are taking full responsibility for what they are doing.

The documentary showed that what happens in the country of origin has a direct impact on what happens in the country of destination. It also highlighted the issue of social class and status; most of these women do not hold a position of power in their own communities.



“Vous êtes servis” by Jorge León (2010)

Filmed in Yogyakarta, Indonesia, in 2009, the documentary centres on a recruitment centre where women undergo training to become maids. In juxtaposition to moving images that depict aspects of this training are numerous photo stills, over which a single voice reads from a number of authentic letters to detail real-life stories where the hopes of numerous migrant maids to secure economic prosperity for their families back home have turned into nightmares where they are overworked or mistreated, and reduced to a state of slavery.

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## 4. Identification of and Assistance to Trafficked Persons for Domestic Servitude, Including Access to Justice

*Moderator: Marta Requeña, Executive Secretary of the Council of Europe Convention on Action against Trafficking in Human Beings, Council of Europe*

This panel examined the specific challenges in the identification of and assistance to victims of trafficking for domestic servitude. The panel presented practical examples which illustrated the role of various actors in identification, referral and assistance. It discussed experiences and practices in implementation, covering outreach work by grass-roots communities, awareness raising campaigns aimed at the wider public to encourage identification and referral of cases by neighbours and specifically targeted information campaigns, and training for professional groups. The panel illustrated the subtle means of psychological coercion and isolation used to achieve total control over the person, and stressed the importance and challenges of providing victims with social and psychological counselling and legal assistance to access justice, in particular to claim compensation through criminal, civil and labour law procedures.

*Luis Gouveia, SEF (Immigration Police), Portugal*

The Jossefina N case study examines the case of a domestic worker exploited in Portugal and provides a telling insight into the boundaries between trafficking and other crimes. Jossefina N was 34 years old, single and from Mozambique. In 2008, Ms. V invited her to work for her in Portugal to take care of two children, recruiting her through Jossefina’s cousin. Jossefina was offered accommodation, food, salary and legalization in Portugal. Ms V arranged all the visa-related procedures for a short stay visa, on the basis that she was inviting Jossefina to Portugal on holiday. Jossefina arrived in September 2009.

The exploitation started immediately on arrival. Ms V asked for Jossefina’s passport for legalization procedures, and did not return it. The work turned out to include all the cleaning and domestic work, as well as the care of the children. When Jossefina complained, she was told that at least she had food and a place to sleep. She had no days off and she slept in a room outside the

house with no running water. Money was taken from her salary every month for her flight. The working conditions were therefore different to those promised, and the victim suffered from psychological violence and abuse of her vulnerable situation in Portugal.

In January, Jossefina escaped to the local police, who advised her to return and facilitated a dialogue with the employer. In the next few weeks, things improved, with some time off provided. However, after a few weeks, the work returned to the original pattern. Jossefina approached an NGO, which asked the SEF (Immigration Police) for guarantees that she would not be arrested and immediately deported. Once those guarantees were provided, Jossefina went to the SEF, and was referred to a shelter. The SEF communicated to the prosecutor to start the criminal investigation. Ms. V's house was searched and Jossefina was questioned before a judge. However, the prosecutor decided that there was no evidence that when Ms. V recruited Jossefina she had the intention to exploit her, so Ms. V was charged with 'recruitment for illegal work'. This will result in a much lower sentence, as it is viewed as a less serious crime than trafficking in human beings and the penalty foreseen in the Penal Code is lower. The prosecutor perhaps played safe because he knew that it was a case of one person's word against another.

In general, experience shows that the crime of trafficking is only invoked in the most serious cases where there is physical violence and deprivation of freedom; in other cases, lesser crimes tend to be used instead.

This case also demonstrates that it is absolutely vital to separate judicial proceedings from assistance measures. Jossefina now has a residence permit and the right to work. She currently works in a café. It also shows the absolute need to network; law enforcement, NGOs, civil society and government bodies must work together and build trusting relationships with each another.

### *Siobhán O'Donoghue, NGO Migrant Rights Centre Ireland (MRCI), Ireland*

MRCI is a national NGO working in Ireland from a social justice ethos. The organization works with migrant workers in the most vulnerable categories; these workers are often undocumented and in forced labour situations, working in unregulated sectors. They receive low pay and are sometimes trafficked.

MRCI takes a community-work approach, which is effective in securing social change. This approach

is underpinned by participation and empowerment; everyone has the right to have a say in the decisions that affect their lives. This is not a passive process, but rather has to be actively worked for. The MRCI approach is also based on a belief in structural change; people are denied their rights because of bad laws and decision-making. A collective action approach means that MRCI works cross-sectorally, with trade unions and with the state in order to achieve change. The organization also works in solidarity, recognizing that exploitation is not confined to one group. Their work is not about improving the rights for one group over another, but rather about achieving a more equal society.

Eight years ago, in response to increasing demand, MRCI established the Domestic Workers Action Group. Migrant domestic work was relatively new in Ireland at this time. The organization was successful in securing an extension of employment legislation to extend to the private home. They also secured a code of practice for employers employing domestic workers.

MRCI has worked with 150 people who have been trafficked for forced labour. They are currently working with 12 potential victims of trafficking; six of these were in domestic work, of whom four were in the service of diplomats. Four of the 12 potential victims have been granted a reflection period.

The legislative framework for addressing trafficking in Ireland is not yet two years old and there have been no prosecutions for forced labour as yet. The average waiting time before being officially identified as a potential victim of trafficking is six months; during this time, the individual is not entitled to any state benefits, so NGOs take responsibility for providing shelter, food and other support. There also tends to be a resistance towards believing that trafficking for forced labour is a reality.

People tend not to self-identify as victims of trafficking. Primarily, they are seen by the State as undocumented migrants and they are not aware of their rights, thinking that they have broken the law and will be prosecuted. In general, victims come to MRCI with poor health, no documents, no accommodation and no knowledge of English. Many of them experience a traumatic mental health breakdown in the first few weeks. They have undergone a cycle of domination and powerlessness, and often find themselves unable to tell the whole story; this makes it difficult for them to engage with the police.

Many victims come to MRCI as a result of a neighbour, friend, someone in the area, or a taxi driver approaching MRCI with their suspicions. Before they can free the

victim, MRCI often has to support their family in the home country to move, as they are under threat.

At present, there is very little trust between NGOs and the police, but MRCI is working hard to try to build it. Securing prosecutions is also a problem; there have been no results so far, and there is a fear that soon the energy may dissipate, resulting in non-effective trafficking legislation. The motivation behind the legislation is to prosecute traffickers rather than assist the victim. Long-term support and integration are further problems.

MRCI is also currently trying to engage the state on the issue of 'reasonable grounds' and what it is necessary to prove in order to ensure state support for a potential victim. The threshold is currently set very high, and MRCI is challenging it, claiming that it should be set at the point at which any reasonable person would think that this person is potentially a victim.

Moreover, MRCI is working to codify protection for victims, and ensure that these are separate from immigration law. They are also carrying out media and public awareness work, and working to have forced labour recognized in its own right. A recent legal opinion has argued that it is already codified in existing trafficking legislation; this is currently being verified by the Attorney General, and if correct, forced labour will be recognized independently of trafficking.

Furthermore, MRCI is implementing a campaign on diplomatic immunity, looking to create a voluntary protocol for all Embassies to sign up to, to confirm that they would not evade due process in cases of employment law. Finally, the organization is actively working to have inspections of private homes.

### ***Bénédicte Bourgeois, NGO Comité Contre l'Esclavage Moderne (CCEM), France***

CCEM was set up in 1994 by a journalist. The NGO focuses on supporting victims of trafficking through the whole judicial procedure including the conviction of traffickers and the award of compensation. The main bulk of the NGO's legal services work consists of following the penal procedures. Further procedures are then required to ensure that the trafficking victims receive full compensation.

In order to initiate a procedure and start an investigation, it is necessary to file a complaint, but this is insufficient on its own, as the criminal judge only evaluates the damages of the crimes to determine compensation. To ensure that

all the offences committed against the victim trafficked for domestic servitude are taken into account, the civil party must therefore bring the case before the Labour Tribunal. Even when compensation is awarded, perpetrators often prove to be insolvent, and spreading the payments over a long period creates an undesirable lasting link between the victim and the trafficker. In France, a backup fund exists to ensure that victims receive some compensation, but access to this fund depends upon how the judge in the criminal court classifies the case, and there are numerous legal obstacles to overcome.

The main component of CCEM's assistance to victims of trafficking consists of ensuring that the traffickers are charged. The essential stages of this process include establishing a coherent chronology of the facts, preparing the victims for and accompanying them to the various phases of the trial.

The European Court of Human Rights has determined that there are some real gaps in French legislation which mean that perpetrators are not properly punished. In June 2009, the Court of Appeal of Versailles interpreted this legislation as excluding the possibility of sentencing in a particular diplomatic case where the victim did not speak French, did not want to go to school, and was 'contributing' to the family who had taken her in by helping in the home.

Besides the criminal law, the main reasons that cases of trafficking for domestic servitude are rarely, if at all, successfully prosecuted are: (i) difficulties around the perception of domestic work as actual work; (ii) confusion (often by the police) with kidnapping or abduction; and (iii) a belief that trafficking in human beings is necessarily linked to organized crime. In order to have an effective trial, it is necessary to properly qualify the crime of trafficking for domestic servitude.

In December 2007, a trafficker was released because the working conditions of the victim were not considered a violation of their human dignity. Legal assistance was provided by an NGO, which decided to bring the case to the Court of Cassation; the Court, however, overturned the traditional interpretation of the working conditions, stating that any forced labour was a violation of human dignity. This ruling led to an additional financial award from the Court of Appeal.

In conclusion, victims of trafficking for the purpose of domestic servitude often have to use various legal means, sometimes repeatedly, before their traffickers are successfully prosecuted. Therefore, lawyers providing assistance need to be particularly competent. Even then,

in most cases, victims do not receive the full amount of compensation that traffickers have been ordered to pay.

***Susanne Seytter, NGO FIZ Advocacy and Support for Migrant Women and Victims of Trafficking, Switzerland***

FIZ is a special advocacy and support centre that assists 800 migrant women per year, of whom around 150 are victims of trafficking. The majority are trafficked into prostitution, and between 10 and 20 per cent are trafficked for domestic servitude, working in restaurants, hotels and private households. Traffickers use different forms of violence, including physical, sexual and psychological violence.

An example of the use of psychological violence can be seen in the case of 'Elena' from Latin America. A distant relative of her mother asked her if she wanted to work in Switzerland as an au pair, saying this would provide an opportunity to learn a new language and eventually do some vocational training. Elena was promised pay, board and health insurance. Having worked as a domestic worker in Latin America, she was happy to take up this opportunity. The aunt paid for her flight and organized the passport. On arrival, Elena was expected to work over 10 hours (and often 14 hours) a day, seven days a week. She was also lent out to other members of the family to do other work. When she was given time off, she had to say where she would go and when she would return.

There was no physical violence, but there were some typical types of psychological violence, including: (i) systematic reminders of indebtedness – Elena signed a promissory note and was continually reminded of the costs that needed repaying, with other debts being added at a later point; (ii) systematic berating of the work she was doing – she was always criticized and told she was a disgrace to the entire family, and therefore there was no point sending her to a language school; (iii) isolation – Elena's aunt kept her from the outside world, telling her she had no right to interact with anyone else; although not locked up, there are often chains in the minds of the victims; and (iv) intimidation – constantly reminding the victim of her illegal status in country.

Humiliation always has an impact on the victims, who end up with a poor sense of self-worth, feeling that they are controlled by another and have a complete lack of autonomy. They have a hard time trusting anyone, often feel worthless, and believe that they have disappointed their families back home. These stresses often result in insomnia, eating disorders, anxiety and depression.

FIZ offers medical, psychological and legal support to the victims, and finds them a safe place to stay. When the women arrive at FIZ, they are sometimes so physically exhausted, that they have to be given a mattress on the floor and left to just sleep before counselling can start.

The aim of the counselling provided by FIZ to the victims is to help them to take decisions, empowering them and helping them to gain their own autonomy. Once they are better, they often want to find work, so that they can become independent and support their families back home. However, this is difficult. The women mainly come from non-EU states and do not have a legal status in Switzerland. If they are not acknowledged as victims of trafficking or if they do not testify against perpetrators for fear of the traffickers' revenge, they do not receive a residence permit and have to return home.

FIZ has established good co-operation with the police and justice department concerning protection of victims trafficked for sexual exploitation. However, there is very little awareness of domestic servitude, with the victims often seen as perpetrators, as they have come to the country illegally. Domestic servitude is often not recognized as a form of trafficking in human beings. FIZ is therefore working on raising awareness with migration and labour offices, NGOs, police and other authorities.

### ***Discussion***

In the discussion following this panel, conference participants presented some examples of experiences of domestic servitude in their own countries. They identified the problem of the invisibility of this crime. Trafficking in human beings is a serious violation of human rights and requires international co-operation in order to combat it. It deprives people of the enjoyment of their human rights, it knows no territorial boundaries and it provides colossal income to traffickers. All OSCE participating States are involved as countries of transit, origin or destination.

Despite the fact that many states have recognized that this form of exploitation exists and have legislated accordingly, there is a need to pool efforts to make better use of limited resources. Even though articles to prevent trafficking for domestic servitude are present in the criminal code in many countries, they are often not properly implemented or understood in prosecutions.

## 5. Investigation and Prosecution

*Moderator: Doris Buddenberg, Senior Manager, UNODC/UN.GIFT*

This panel provided examples from participating States on challenges encountered in investigating and prosecuting cases of trafficking in human beings for domestic servitude, as well as in ensuring the protection of victims.

*Raisa Botezatu, Acting Chair Supreme Court of Justice, Moldova*

Labour exploitation is a modern form of slavery, which unfortunately occurs very often; however, it is often not recognized, even by victims. Sexual exploitation has a longer history and there is wider experience of dealing with it; practitioners have much less experience of dealing with labour exploitation, especially domestic servitude, even though the phenomenon is widespread. One of the problems is the absence of legislation on this issue, or in cases where the legislation does exist, the absence of mechanisms for punishment. In the case of domestic servitude, the work performed by the victims is not seen by society and it is hard to prove the existence of exploitation, unless the victim is able to escape and contact the police. Victims of domestic servitude are often unprotected and face psychological and physical abuse. More obstacles are created by the victims themselves, who often do not realize that they are in a situation of slavery, are afraid of the abuse, have signed contracts, and do not want to lose their only source of income, however small. This is compounded by the fact that the traffickers often lock up the victims in their homes, co-operate with the police, and threaten the victims.

There are a number of problems in the identification of victims of labour exploitation, and in conducting criminal investigations and judicial reviews of such cases. Articles 1, 4 and 6 of the European Convention on Human Rights, alongside other international documents, oblige States to carry out investigations into criminal cases of trafficking and to punish the perpetrators. International co-operation between law-enforcement bodies plays an important role in this process.

Under the Palermo Protocol, States have to adopt legislation regarding criminal responsibility for trafficking in human beings. Moldova has ratified the UN Convention

against Transnational Organized Crime and its two protocols, as well as the Council of Europe Convention on Action against Trafficking in Human Beings. Moldova has also made several changes to its Criminal Code, but reality shows that not all people engaged in trafficking are identified, and the goals of the legislation are not always achieved.

Trafficking for labour exploitation only accounts for six per cent of trafficking cases in Moldova, with domestic servitude accounting for even less. In court cases, it is important that the testimony of the victim comes last, with the other evidence presented first. The victim should not be obliged to be present in the courtroom, and in Moldova they can testify by video link and have their identity disguised.

Children are often victims of domestic servitude. Often they are children whose parents have sought work elsewhere. In one case, a mother sold her daughter into domestic slavery in the Russian Federation for USD 1,000. In the majority of cases identified, victims were recruited through false advertisements for jobs abroad, but ended up in Moldova. In one case, a man brought a Ukrainian girl to Moldova, saying that he wanted her to meet his parents. On arrival, he gave her to his sister for exploitation and begging. He received a sentence of seven years and six months. Trafficking for forced labour also takes place within the country. In one case, a woman took a homeless boy and forced him to work at her house until law-enforcement bodies intervened.

The victims of labour exploitation are not only those who are exploited, but the States in which the exploitation takes place also suffer, as they are deprived of taxation income. There is a real need for improvement in legislation and procedures. Labour laws are needed to govern the work of all those working as domestic workers and case law from the European Court of Human Rights needs to be taken into account.

*Germaine Ligot, Prosecutor General of Liège, Auditorat du Travail (Public Ministry of the Labour Tribunal), Belgium*

In Belgium, the Public Ministry of the Labour Tribunal is divided into two branches, which address common law violations and violations of labour and social laws respectively. The Belgian system of tackling trafficking for labour exploitation has three key strengths: the existence of this specialized branch of the public ministry with its own public prosecutor, a focus on protecting the victims, and a multidisciplinary approach.

In 2005, Belgium introduced a distinction between trafficking and smuggling, the former containing both a physical and a moral dimension. The physical element can include recruiting and transporting the individual, while the moral element includes the intent of exploitation and the provision of working conditions that are an affront to human dignity. The consent of the victims is considered irrelevant for trafficking cases. Neither is it necessary for the victim's passport to be confiscated or for the person to be locked away. The employer's intention of exploitation is paramount. Once this has been established, the Auditorat intervenes.

There is a very wide range of other infractions, which may be addressed together with charges of trafficking in human beings. These include social and labour law violations in areas such as insurance, health and safety, and working hours. This two-pronged strategy, examining labour law violations on the one hand and trafficking charges on the other, is aimed at ensuring that a trafficker will be successfully prosecuted, even if the crime of trafficking in human beings cannot be proven.

Since 2003, co-operation between the respective inspection services of the various ministries in Belgium has been mandatory. The services are obliged to report any suspected cases of illegal work to the Auditorat. This multidisciplinary approach has enhanced the detection of victims.

Since 1994, any victim can go to the police and declare themselves as a victim of human trafficking, at which point they are taken into the care of a specialist organization. The victim is granted a reflection period of 45 days, during which they decide whether to collaborate with the authorities. If they do so, they are granted a temporary residence permit, a social allowance and the right to receive a work permit for the duration of the trial. If trafficking in human beings is proven, those benefits become permanent.

These features of the Belgian system have given good results in terms of tackling economic exploitation in general. However, charges for domestic servitude are scarce, with around 20 cases so far. This is due to the fact that the exploitation happens in private households and therefore generally remains hidden. Difficulties in prosecution also occur if the perpetrators have diplomatic immunity. However, in such cases, if prosecution cannot go ahead but there is enough evidence that trafficking has taken place, the prosecutor can confirm an objectively determined case of exploitation that will allow victims to access all the benefits and protections granted to other victims of trafficking.

### *James Felte, Prosecutor, Human Trafficking Prosecution Unit, United States Department of Justice*

Domestic servitude is one of the most difficult of all forms of trafficking in human beings to address, both in terms of detection and successful prosecution. Detection is difficult, as victims are isolated, in unfamiliar surroundings and may feel that they have nowhere to go for help. There may also be cases of diplomatic immunity that hamper investigation and prosecution. Victims often become very dependent on the traffickers, who supply the only food and shelter to which they have access. They may also develop feelings for the trafficker's children who are in their care.

The victim's fear of law enforcement is a significant obstacle to detecting domestic servitude cases. This fear is often enhanced by the trafficker, who tells the victim that if they go to the police, they will be arrested and deported. They may also make threats about hurting the victim's family.



A slide used during a powerpoint presentation by U.S. Prosecutor, James Felte, showing possible reporters of cases of domestic servitude, including neighbours, relatives and law enforcement officers who are investigating other crimes. The slide stresses the importance of raising public awareness.

These crimes are often reported by neighbours, friends or clients (in cases in which the victim has been lent to other families). Social services checking on the welfare of children in the family may also report potential cases of domestic servitude. NGOs with a foothold in the community may win the trust of victims and also report. Sometimes domestic servitude is uncovered through long-term investigation or by law-enforcement agencies responding to calls concerning domestic violence, but these instances are a minority of cases. Usually it will be the general public who uncovers these cases; for this reason, raising awareness is paramount.

A recent case study of note is that of the U.S. v. Calimlim. This case concerned an 18-year-old who grew up in the Philippines and went to work in the U.S. for a couple who were wealthy doctors. The couple confiscated her documents, and told her she was illegal and that if she went to the police, she would be deported. The woman slaved away for the family for 19 years, looking after their children and the house. Occasionally the traffickers would send a small amount of money back to her family. The victim was also required to hide in a locked room if visitors came. The authorities eventually received an anonymous tip-off concerning the victim. In order to verify the situation, they sent someone posing as a postal officer to the house a couple of times, with a delivery for the victim. The traffickers said the victim had moved away, but the police were eventually able to go in and remove her from the situation. The defences used by the traffickers included that the victim was so much better off in this environment than at home in the Philippines and that the victim fabricated the allegations in order to remain in the U.S.. Both defendants were sentenced to six years' imprisonment (the sentence could have been much longer if there had been physical or sexual abuse). Restitution was granted to the victim from the traffickers, and has been paid.

There is a range of common defences that traffickers may use. They may say that the victim consented to come and work. However, U.S. law says that if the person later wants to leave but was forced to remain, then a crime has been committed. Even if they are paid a small amount of money, it does not mean that this has not been an exploitative situation. Traffickers may also use the 'Happy Slave' defence, in which they bring in photos of the victim smiling, for instance taken during an outing. The 'escape' defence is also often used, whereby the traffickers say that the victim was not locked away and therefore was not held against his or her will. However, victims may be coerced to stay and work by psychological means or by threats, even if they are not physically constrained. Under the 'fabrication' defence, the traffickers claim that the victim has made up the story so that he or she can gain privileges and stay in the country. However, in reality, the victim often does not even know about these privileges, having been told she or he would be deported if they went to the police.

***Chantal Bredin, Lieutenant, Office Central de Lutte contre le Travail Illégal (Central Office for Combating Illegal Employment), France***

A case study was presented of a case in France which, at the time of the conference, was awaiting the decision

of the court. The case concerned a 62-year-old woman, Claude B, who is a French National. Claude was an orphan from an early age, and grew up in a convent with no schooling. She was later employed by a retirement home. At 42 years old, she was recruited by the director of the retirement home to look after her housework. The director and her husband were a well-off French couple, with a nice house, who seemed on the surface to be decent, law-abiding citizens.

Claude was mentally retarded and had no understanding of social security or entitlements. She had no contract with the couple and was not registered with social services. Claude's identification papers had been confiscated and she had no contact with the outside world. She worked in the household for more than 20 years, throughout which she slept on a sofa in the living room and ate scraps of food behind her employers' backs. She was the victim of psychological abuse, receiving reproaches and criticism, and physical abuse in the form of kicking and punching. The traffickers also used a bank card that they obtained for Claude in order to claim the disability allowances to which she was entitled (EUR 1,000 per month), which they then kept for themselves.

During her 20 years of captivity, Claude tried to run away twice. The first time she was beaten and hospitalized. When she came out of her coma, she begged the doctors not to let her go back to the family, but as they did not have anywhere else to send her, they contacted her abusers and she was returned to them. The second time she tried to escape, she went to a police station, pleading not to be taken back and asking to bring charges against the traffickers for physical abuse. However, the police rang the employers, who came to pick her up.

Finally, on running away again, Claude was found on the street by two women who brought her to a shelter for homeless people. After a few days in the centre, social workers started taking an interest in her case. She explained to them that she had escaped from a place where she had been mistreated. The social workers then referred Claude to a local NGO called ALC that works with victims of trafficking. On arrival at ALC, Claude had injuries to her feet as she had not worn proper shoes. She had bruises across her body, and very few teeth remaining, as a result of malnutrition. She had no identification papers with her, just her clothes and a few photos. She had never been paid for her work. ALC immediately provided Claude with medical, psychological and legal assistance. At a later stage, Claude was given a self-contained flat, where she quickly learned to become independent and received a living allowance.

The investigation would not have taken place if it had not been for the social workers and the Association. Where the law will not allow inspections of private homes, it is crucial that there are associations to assist the victim and accompany her or him through the legal process. This case shows that it is not only foreigners who are exploited. The vulnerability of the victim and the length of exploitation made the investigation difficult. There is still a real need to convince judges that domestic servitude cases are cases of trafficking in human beings.

### *Discussion*

In the discussion following this panel, OSCE participating States and Partners for Co-operation highlighted their own countries' experiences of providing assistance to persons trafficked for domestic servitude. Italy emphasized the importance of the provision of residence permits to victims, irrespective of their willingness to cooperate with the police. Israel described its special laws on foreign workers which include the requirement for written contracts in the language of the employees.

In tackling domestic servitude, cultural difficulties need to be taken into consideration. Some workers do not report their exploitative conditions because it is considered unacceptable to criticize. Some other cultures may even perceive the exploitation as fate or karma, which is therefore unavoidable. Police and other officials coming into contact with potential victims should recognize this aspect while pursuing investigations.

## **6. Prevention of Trafficking for Domestic Servitude**

*Moderator: Gilbert Galanxhi, Ambassador, Head of Permanent Mission of Albania to the International Organizations in Vienna*

This panel focused on prevention policies and practices, underlining the role of various actors, such as NGOs, academia and trade unions, in preventing trafficking for domestic servitude. It showcased public awareness raising campaigns to unveil the invisibility of exploitation. The speakers discussed the impact of gender-sensitive migration policies, visa policies and diplomatic privileges, which could all unintentionally facilitate trafficking by bringing migrant domestic workers legally to the country and not protecting them appropriately.

*Bridget Anderson, Centre on Migration, Policy and Society (COMPAS), United Kingdom*

The employers of domestic workers have the power to harm or help their employees in unmediated ways, and not all will use it to harm. It is important to examine how we can discourage and punish abusive employers. The privacy of the household should not mean impunity for abusive employers and those who are abused must have access to redress. However, we need to move beyond responding to individual cases, and consider how to address some of the root causes of domestic servitude, including the imbalance of power between worker and employer. That is, it is not simply about requiring employers not to abuse their power; it is also about looking at ways of redressing this imbalance. Domestic servitude is not just about moral turpitude and abusive personalities; it is symptomatic of inequalities between genders, between States, and between groups of people.

States need to regulate well-trained, decent paid care and/or support for carers. Interdependence is part of being human; we all need to care and be cared for, but at some stages in our lives, our needs for physical care are particularly intense. This care has often traditionally relied on unpaid female labour. The proportion of people requiring physical care in Europe is set to increase. For some, this care will be provided by (female) family members – usually with very limited support, often at high mental and emotional cost. But the increased feminization of the paid labour force has diminished the availability of free female labour, and increased life expectancy has made the needs of older people more complex. There are structural reasons why this work is very poorly paid. It does not generate profit. For private individuals buying a service to meet these needs, it can represent an overwhelming cost; paying tax and employers' contributions on another person's full-time wage (and at least two workers are required to provide 24-hour care for a needy person) is more than a single income can stand. The unfettered market is generally not a good mechanism for allocating and regulating care, whether this care is provided inside or outside the private household. Different types of arrangements work for different types of people, both care users and care workers. However, there needs to be regulation and/or oversight of care provision for the protection of all. New York State recently passed a bill requiring paid holidays, sick days and overtime for domestic workers, irrespective of their legal status. However, in itself this is not sufficient: anxiety and lack of knowledge may mean domestic workers do not avail of protections, especially if they are isolated. Facilitating the organizing of domestic workers is of crucial importance to redressing imbalances of power.

Domestic labour also needs to be recognized as an honourable occupation. Legally recognizing domestic work as work requiring time and physical and emotional input is an important first step in acknowledging its value. However, domestic work is not just care work, and while caring may be priceless, other aspects of domestic work such as cleaning, certainly are not. Price is usually the major consideration in judging its value (the cheaper, the better) because this kind of labour is invisible. Since classical times, women's work connected with house and home has been deemed as not honourable and unskilled, and regarded simply as natural. Domestic work is not only low-skilled but low-status and the people who do it are disrespected accordingly. The countries where domestic workers are most abused are often countries where women's rights, and the rights of poor women in particular, are least regarded. Increasing the status granted to domestic labour requires a significant social shift. It will require men to take on responsibility for domestic chores and management, and for middle class children to not be the household labour deficit that many currently are. Until then, one practical way forward is to recognize the importance of experience and 'soft skills' and not only reward accordingly, but offer a career path, a way in which women can feel they are developing all aspects of themselves. This would grant domestic work more status in the eyes of workers and of employers and society at large.

It is important that the demand for this work is acknowledged. This means a visa regime that permits people to enter to do domestic work. However, it is of crucial importance that this visa is not dependent on the employer given the nature of the power relations in private households. Immigration enforcement and employment protection must be separated. States should not be giving employers of domestic workers even more authority and control than they already have; still less should they be enforcing employers' threats, for example, to ensure the worker leaves the country if she or he asks for an improvement in terms and conditions. This should be the case whoever the employer is, including for diplomats. The visa status should lead to permanent settlement in order to not trap a woman into a life of service to others, and to enable her to develop her own life and relations with her children.

Prevention of domestic servitude is ambitious and we all have a stake in it. Those who have the largest stake are of course domestic workers themselves. Their role is not simply to be rescued or protected from abuse, but to prevent it from happening in the first place, and in this respect support and recognition of their organizing, and listening to their demands and their analysis is critical.

*Elisabeth Tichy-Fisslberger, National Co-ordinator on Combating Trafficking in Human Beings, Austria*

The topic of domestic servitude is a very sensitive one, and includes many cases in which diplomatic staff and employees of international organizations are involved as perpetrators. The Austrian Foreign Ministry, which co-ordinates the work of the Austrian Inter-ministerial Task Force on Combating Human Trafficking, feels particularly responsible when it comes to the exploitation of domestic workers of diplomatic staff based in Austria. There are dozens of embassies in Vienna, and among the diplomats there are some black sheep; they are just a small minority, but the Foreign Ministry takes them very seriously, despite the immunity of the perpetrators of the crime.

The Austrian Foreign Ministry has taken a number of stringent measures geared to ensuring the protection of domestic staff in diplomatic households in Austria. A number of documents have to be presented to and checked by the Ministry when a diplomat applies for a visa for his or her future household employee. These include copies of a work contract, the floor plan of the apartment with the room assigned to the employee, a copy of the lease contract, the travel insurance and a copy of the letter of commitment. Furthermore, the Ministry can request proof of the salary payment made to the private household employee at any time. The minimum salary is currently EUR 1,000, 15 times per year. Non-compliance with one of these prerequisites results in the denial of the issuance of a visa or of an identity card to the private household employee.

It is now compulsory for private household employees to register personally with their consulate in Austria and to appear at the Ministry at least once a year in person in order to pick up their identity card. The domestic employee is therefore given the possibility to be received individually, to obtain information about his or her rights and – if needed – to have an opportunity to talk and receive help. Despite diplomatic immunity, in cases of domestic servitude, as an ultimate stance the perpetrator can be declared *persona non grata*. In some cases, people have been fined; sometimes this is just a partial response but it is still a gesture, as there is no obvious solution.

The Foreign Ministry provides domestic workers with the addresses of NGOs and also tries to sensitize employers and to make them aware that NGOs or neighbours could report cases of abuse. NGOs provide help, shelter, aid, and psychological and medical care to victims. The NGO LEFÖ-IBF is particularly helpful to female victims who

have been trafficked to Austria and had to live there under slave-like conditions. For child victims a special shelter – “Die Drehscheibe” – has been created in Vienna.

Since April 2009, all victims of trafficking and of cross-border exploitation in prostitution are granted a provisional residence permit for a minimum period of six months in order to assist in the criminal prosecution of the trafficker. Moreover, the Ministry of Interior operates a witness protection programme for victims of trafficking which, under specific conditions, includes their close relatives. The first challenge is to identify victims, but this is just the tip of the iceberg.

Direct contact with the intervention centre for trafficked women enables the Foreign Ministry to act immediately, follow up on every single case and investigate. The Austrian Foreign Ministry follows a policy, whereby every single case is taken seriously and investigated. The issue of diplomatic immunity should never protect a person who commits such a terrible crime. Such crimes are considered severe human rights violations and every effort is taken to hold the perpetrators accountable.

The *Alliance against Trafficking in Persons* – with its informal and unique mechanism for permanent consultation – could provide a forum to discuss these issues among the OSCE participating States. International organizations based in Vienna may wish to organize awareness raising campaigns for their employees. Members of the diplomatic community must be aware of the fact that the exploitation of domestic staff constitutes a severe violation of human rights. Finally, the establishment of ombudspersons in international organizations can also prove helpful in combating trafficking for domestic servitude.

### ***Eduard Perepelkin, Oratorium Crisis Centre for adolescents and youth, Russian Federation***

Oratorium is a crisis centre and shelter for young people who have experienced violence. The organization’s activities include administration, rehabilitation, volunteering, legal and accounting services, psychological counselling, teaching and the organization of conferences. Oratorium also has a separate youth group, which organizes holidays and events.

The centre, established in 2000, is unique, because it was set up and is run by volunteers. These volunteers are former trafficking victims, who have gone through the centre’s rehabilitation programme. They have first-hand experience of trafficking in Astrakhan, Russian Federation, which enables them to communicate well with

victims and to find information about potential victims. Recently, they found a teenager who was sweeping the street during school hours, as well as children working as domestic slaves in local households. A strict recruitment policy guarantees the retention of volunteers.

Oratorium has been monitoring cases of trafficking in human beings since 2003, sharing information with the police and social workers, organizing panel discussions and sharing ideas. Oratorium also has direct access to the municipal authorities. The organization sometimes works in partnership with the IOM. They also work together with the media, and organize social events as a way to reach out to their target audiences. Volunteers have contacts with American NGOs, with whom they are able to share their experiences. They have also given an interview to Voice of America and have produced a documentary film together with one of the main television producers in the Russian Federation. Oratorium also brings young people into contact with the police, teaching them not to fear the police. Many of the children come from poor families and are illiterate. As a part of the rehabilitation programme, summer camps are organized, during which the children are informed about slavery. These camps help the children to feel that they are part of a larger family, and these activities receive good feedback. After the rehabilitation programme, participants have the opportunity to become volunteers with Oratorium.

Examples of cases encountered by Oratorium include that of a brother and sister working in a fairly wealthy tourist resort. The girl was employed in household chores and the boy in gardening. The victims were suffering from the so-called Stockholm syndrome, with the girl justifying the perpetrator’s behaviour and thanking him for keeping her alive. A second case involved sexual exploitation, and the victim was found starving and in dreadful conditions. Victims suffer from very low self-esteem. They need to be empowered and to learn to believe in themselves. It is necessary for all organizations working on combating trafficking in human beings to co-operate with each other in order to improve results and to raise the visibility of this important work.

### ***Nivedita Prasad, NGO Ban-Ying, Germany***

Domestic servitude in diplomatic households poses a particular challenge, as diplomatic immunity can deny the victim proper access to justice, with no way of taking legal measures against the perpetrators. Domestic servitude always consists of an imbalance of power, but this is even greater in diplomatic households, as the employee is helpless.

Has your passport being taken away? Are you constantly monitored? Are you paid? You can call any time this number and receive counselling.

An innovative mobile campaign by German NGO Ban-Ying has been used to raise awareness among victims and potential victims of trafficking, as well as the general public from targeted communities, regarding available support.



SCHIEBE PREIL BAYER / © Ban-Ying, Berlin / Photographs: Lars Jensen / www.sxc.hu, A.P. / www.photocase.de

In order to help address these issues, there is a need to update the Vienna Convention on Diplomatic Relations. Secondly, the fact that the residence status of the domestic worker is bound to her or his employer increases the vulnerability of the person; victims of domestic servitude should be given the opportunity to find other employment opportunities. Thirdly, diplomats violating the laws should be given the status of *persona non grata*. In extreme cases, their diplomatic immunity should be removed.

At the national level, one possibility could be to ensure that domestic workers are informed about their rights at the point of issuance of the visa. In Germany, for instance, an information leaflet is handed out for this purpose. In order to renew the visa, a face-to-face meeting should be organized in order to prevent or detect cases of exploitation.

Employers should be forced to disclose financial payments to domestic workers and authorities should check these accordingly. This sector is particularly prone to cash payments, which are difficult to track. Another possibility would be to impose a minimum wage on this

sector, which would help to ensure that domestic workers receive a decent salary.

In cases of domestic servitude, the victim should have the possibility to remain in the country, at least until they have settled the issue of compensation. The possibility to file a complaint should also be improved.

It is challenging to inform domestic workers about their rights, if they are not allowed to leave the household. In Germany, a vehicle displaying information posters in different languages was parked in playgrounds, outside shops and in other places where they could be read by affected people. The idea behind this was to place them in areas where they would not be read by employers. The rolling advertisements were innocuous, almost pleasant looking, advertising a bar of soap. The posters contained a number of questions, such as: *Has your passport being taken away? Are you constantly monitored? Are you paid? You can call any time this number and receive counselling.* The bars of soap had a similar hidden message and are available in Chinese, Vietnamese, Amharic, Turkish, French, Tagalog, Indonesian and English. The soaps are being used instead of leaflets to inform domestic and other workers about counselling services.

## Discussion

Discussions on investigation and prosecution allowed conference participants to highlight their own experiences of working in this area. Moldova emphasized the fact that, whilst legislation is needed at the national level, action really needs to begin in local communities and to follow a multidisciplinary approach, working together with NGOs. In Belgium, domestic workers have to appear personally at the offices of the Ministry of Foreign Affairs to renew the special identity cards so that the Ministry has direct contact with them, helping in the identification of cases of trafficking. In Kazakhstan, temporary accommodation is provided for victims during criminal investigations, and other issues such as entering the country illegally are left aside.

In Austria, whilst the possibility of declaring a diplomat *persona non grata* in cases of trafficking exists, to date it has not actually been used. In a case where the offender was a lower ranking diplomat, the Ambassador was requested to deal with the case. When domestic workers go to the Ministry to collect their identity cards and Ministry staff sense there is something wrong, they take further action. The requirement that employers provide proof of salaries will be an additional safeguard to prevent trafficking for domestic servitude.

Participants agreed that it was vital that diplomats comply with the labour law of their host country. It is difficult to legislate for the behaviour of diplomatic staff, but it is possible to inform domestic employees about their rights and avenues to report abuse and to this end, Austria, Belgium and Germany, provide best practice examples.

## 7. Lessons Learned, Ways Forward & Next Steps

*Moderator: Ruth F. Pojman, Deputy Co-ordinator, OSCE*

This panel provided reflections on the issues discussed and suggested ways forward. The panel also helped to devise concrete recommendations for both policy and action.

*Caroline O'Reilly, Head, Special Action Programme to Combat Forced Labour, ILO*

Cases of successful prosecutions and redress for victims of trafficking for domestic servitude are few and far between, and the victim often remains trapped and without hope. Although there are some good practice examples, much more clearly needs to be done to protect such vulnerable workers. The ILO's specific concern is to protect and promote labour rights. Domestic servitude is a clear violation of ILO Convention 29, which has been ratified by 174 States. Under the terms of this Convention, forced labour is when a person is working against his or her free will, and risks some penalty if they attempt to leave.

It is clear that not all domestic work amounts to domestic slavery or servitude. However, the distinction between forced labour and labour exploitation is not always easy to draw. Indicators can help us to assess when decent domestic work degenerates into labour exploitation and further into domestic servitude. The ILO has been working closely with partners in developing indicators of trafficking and forced labour, and intends to continue to take this work forward.

Domestic work is generally undervalued and invisible. In order to tackle domestic servitude, domestic work has to become valued as real work and domestic workers recognized as real workers with real rights and responsibilities. Adoption of a new ILO standard on domestic work would represent a significant step forward in this direction.

At the International Labour Conference in June 2010, ILO constituents proposed that there should be a new Convention with an accompanying Recommendation on domestic work. This draft instrument provides for domestic workers to be assured the same basic rights as other workers, including the right to freedom of association and freedom from forced labour, child labour and discrimination. It also proposes certain specific measures such as provision of written contracts in an understandable form and language, and decent living and working conditions that respect the worker's privacy. Migrant domestic workers should have written offers or contracts before leaving their home country. Protection should be given against abuse and harassment, and hours of work should be stipulated, including on-call hours and rest hours. Minimum wage legislation must be respected and wages should be paid regularly in legal tender, with only a limited proportion in kind. Finally effective means should be found to ensure compliance with national legislation. The ILO is encouraging all its member states, and workers' and employers' organizations to engage in the process leading to the adoption of the instruments in 2011.

Private employment agencies can sometimes be the weak link in the chain which allows abuses to occur. It is important to have better regulation of such agencies so that they can fulfil a positive role. States should promote respect for the principle that the fees for recruitment should not be the responsibility of the worker, but of the employer.

Legislation is important, but not enough; it must be enforced. Joined-up approaches are needed, as is training for the police and other key actors. We need to see co-operation between enforcement agencies at national and international level, and explore innovative measures, such as labour inspectors being authorized to enter private homes as workplaces, or domestic workers being required to report at regular intervals to labour offices.

Prevention is the best and only sustainable solution to these problems. Awareness of rights is important for domestic workers, and employers need to be made aware of their obligations. The main motivation for women to leave their homes to go abroad as domestic workers is to secure a better life for themselves and their children. If they had the choice, would they really go? If they could count on a decent salary and working conditions, perhaps they would. However, this has to be a real choice, and not one forced upon them by lack of alternatives. Promotion of decent, freely chosen work opportunities at home is therefore essential.

*Petra Snelders, NGO Rights Equality Solidarity Power Europe Cooperation Today (R.E.S.P.E.C.T), Netherlands*

RESPECT NL is a network of migrant domestic workers in the Netherlands, which also has the support of several human rights advocates and NGOs. It is a member of the European Network RESPECT, which includes migrant domestic workers organizations, migrant and human rights organizations, trade unions and NGOs based in most of the EU countries. The overall objective of the organization is to improve and strengthen the social, economic and legal position of the growing number of migrant domestic workers who work in private households as cleaners or caretakers, both women and men, regardless of their immigration status.

In general, the cause of the systematic abuse that many migrant domestic workers are facing in Europe is primarily rooted in their unsustainable immigration status. Unlike other victims of trafficking, many of them were not violently forced or falsely seduced to come to Europe for forced labour or are not forced into domestic servitude in Europe. Therefore, their problems and needs are also different from those of trafficked women and men. The use of anti-trafficking or anti-smuggling policies is not the strategy and approach that RESPECT has chosen. Instead, their campaign is based on empowerment from the framework of a rights-based approach. Proper access to workers' rights and women's rights would give migrant domestic workers the tools necessary to strengthen their position, improve their living and working conditions, and stand up against exploitation and abuse.

In this context, it is also relevant to indicate that most migrant domestic workers do not identify themselves as victims of trafficking. The dominant image of migrant women within the concept of trafficking is the one of a victim. That is not how migrant domestic workers perceive themselves or want to be perceived by others. They see themselves as conscious migrants who understand their economic relevance for both the sending countries and the receiving countries. A rights-based approach acknowledges the importance of the economic and social contribution that migrant domestic workers deliver to European households and thereby to European society at large. It acknowledges migrant domestic workers as active agents with a voice, able to articulate their demands. The rights-based approach also leads to emancipatory and empowering processes.

The RESPECT Network facilitates the empowerment of migrant domestic workers working in private households. It acknowledges the workers as the main actors in their

own campaign for their rights as a sector and promotes the importance of strengthening the immigration and labour rights of migrant domestic workers.

RESPECT member organizations pursue the following specific objectives: (i) recognition of work in the private household as proper, regular work; (ii) ensuring the protection of all rights of all migrant domestic workers as workers, whether they live-in or live-out, and regardless of their immigration status, and (iii) putting in place an immigration status which recognizes their work as migrant domestic workers.

RESPECT values very much the positive contribution of the OSCE in the fight against trafficking and domestic servitude. However, RESPECT advocates strongly for further policy coherence that will address a crucial gap in the policy context of migrant domestic workers, addressing issues such as the recognition of domestic work as a proper work and as a category for migration.

*Jeroen Beirnaert, International Trade Union Confederation (ITUC)*

ITUC is a global umbrella organization of 311 national trade union centres in 155 countries and territories, representing 175 million workers around the globe. ITUC, as part of the international trade union movement, has lobbied for placing the development of a Convention and a Recommendation on decent work for domestic workers on the ILO 2010-2011 Conference agenda, as a crucial step towards the regulation of domestic work in the global economy and the improvement of domestic workers' working and living conditions. Domestic work is highly undervalued and of growing importance in the light of current global trends of ageing populations, globalization, single-parent households, working women and the decrease in support of family members for domestic work. Domestic workers are often denied the fundamental right to organize and can therefore end up in situations of severe abuses of their rights. This Convention and Recommendation are essential in order to bring domestic workers out of the shadows, recognize them as workers and give them the protection that they are due under labour and social security laws. While a Convention establishes a minimum set of basic rights for domestic workers and creates a legal obligation upon States further to ratification, a Recommendation provides additional guidance to governments prepared to go beyond the provisions of the Convention on issues such as working hours, leave and housing.

Trade unions around the world are promoting these issues to governments, employers and other civil society actors, but also and actively among their own membership and to the public in general. In recent years, many unions have intensified activities to reach out to, assist and represent domestic workers. Challenges for the organization of migrant domestic workers lie in the informal nature of the work, coupled with the presence of irregular migrants, and both of these factors are combined with unacceptable limitations of their freedom of association.

Trade unions are traditionally engaged in the organization of workers in the public sector or industrial sectors and companies and consequently in the negotiation of their wages and working conditions. Due to their isolation in private homes and the individualized relationship with the employer, domestic workers, also in this regard, called for novel trade union approaches and strategies towards them.

Domestic servitude is forced labour suffered by a domestic worker. Therefore, an adequate legislative framework should include a clear definition of forced labour and trafficking in human beings. However, the inclusion of legal provisions alone is not sufficient to guarantee compliance with the law. Consistency in regulations and monitoring compliance are essential in order for these provisions to be effective.

Formal and informal recruiters are the facilitators supplying domestic workers in an under-regulated market. Many workers end up in domestic servitude indebted to their recruiter or employer having paid a huge fee for their placement and transport. The recruitment industry is a business that urgently needs to be regulated and monitored by governments in co-operation with social partners. As a general rule, social partners in the sector agree that employees should not be responsible for paying the fees for their recruitment, consistent with the 1997 ILO Private Employment Agencies Convention (No. 181).

In short, in order to really tackle domestic servitude, it is particularly important to ensure the right of migrant domestic workers to form and join trade unions, to regulate domestic work, to recognize demand for domestic work within the labour market, to foster supply migration policies to meet this demand, to avoid any discrimination against foreigners in national labour codes, to effectively monitor and inspect all workplaces, to regulate and monitor recruitment agencies, to enforce the prosecution of and sanctions for employers who violate labour rights by committing abuses and to ensure effective compensation for abused workers.

## Discussion

The discussions on the prevention of domestic servitude allowed participants to present experiences from their own countries. People who are enslaved for purposes of domestic servitude often feel that they belong to the owner. More attention should be paid to the creation of alternatives in the country of origin, particularly with regard to the provision of employment and education opportunities.

## 8. Concluding Remarks

### *Maria Grazia Giammarinaro, OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings*

The trafficking of individuals for domestic servitude is an extremely serious, yet often overlooked crime that violates the human rights and dignity of each person who is subjected to the ordeal. Very few people have been arrested, prosecuted or convicted of this crime, allowing it to continue largely unchallenged.



OSCE Special Representative Maria Grazia Giammarinaro delivers her concluding remarks at the end of the tenth *Alliance against Trafficking in Persons* conference.

It is important to reiterate that any confusion between domestic work and domestic servitude must be avoided; however, poor regulation of domestic work can place people in a situation of vulnerability in which domestic servitude flourishes. Massive violations of human rights can then occur. Such cases have to be identified, prosecuted and punished, which is still proving very difficult. The criteria to adequately identify situations of domestic servitude still have to be clearly defined. Better protection of domestic workers is therefore needed, and international standards must be established.

The definition and understanding of what constitutes acceptable domestic work is affected by perceptions of

cultural, social and gender roles. We have to challenge discrimination, the perception of domestic workers as low-status workers, and the undervalued nature of domestic work as such, which is often not considered as real work. All these social and cultural patterns contribute to increase the vulnerability of workers to domestic servitude.

Unconditional assistance must be provided to victims of trafficking for domestic servitude. This is important in all cases, and in particular in cases of domestic servitude in diplomatic households, where victims may have no access to legal recourse. Support should be provided to NGOs that work with victims, and the role of trade unions should also be acknowledged.

At present, the links between domestic servitude and organized crime have not been exactly identified. Cases of domestic servitude are often not properly investigated. Further work needs to be undertaken to identify the whole trafficking chain, including those responsible for recruitment and placement, across international borders. Greater efforts to improve international co-operation in investigation and prosecution are therefore needed.

It is important to sensitize the diplomatic community to the issue of trafficking, and to replicate best practices, such as the possibility of declaring a diplomat *persona non grata* if she or he engages in domestic servitude. Other steps must be taken before this extreme sanction, such as appropriate and direct information provided to the domestic workers about their rights. The Ministry of Foreign Affairs must act proactively in every country, and monitor potential cases of domestic servitude on a constant basis. It is important to advocate for visas which allow employees to change employer, as the lack of such a possibility renders domestic workers particularly vulnerable to abuse.

In conclusion, let me point out that the OSCE is grateful to the *Alliance* partners for their assistance in the organization of this conference and let me also highlight the need for partnership in order to tackle the crime of trafficking in human beings for labour exploitation. I look forward to further work and co-operation.





Part III  
Key Recommendations for Action to Tackle  
Trafficking in Human Beings for Domestic Servitude

There are a number of concrete measures that the OSCE and its participating States could take to strengthen the fight against trafficking for domestic servitude, which are set out in this section of the paper. These recommendations are based on the research of the Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, and inputs from NGOs and from discussions held at the tenth *Alliance against Trafficking in Persons* conference. A wide range of actors – governmental anti-trafficking co-ordinators, public officials (including police, prosecutors, judges, lawyers, and social workers), trade unions, NGOs and national experts from the participating States and Partners for Co-operation, as well as international organizations – contributed to this important conference. They explored different approaches to domestic servitude, shared examples of good practices and elaborated specific recommendations. A side meeting was held during the conference which allowed NGO representatives from a few specialized NGOs working on domestic servitude in the OSCE region to present and discuss their specific recommendations to the participating States; these NGOs also had an opportunity to make submissions before and after the conference.

The recommendations are structured into four main areas of action: Prevention, Protection, Prosecution, and specific recommendations concerning the Diplomatic Corps. All the recommendations are based on a victim-centred and human rights approach. They are addressed to OSCE participating States and Partners for Co-operation and other relevant actors, when appropriate, for consideration and implementation at the national level. The recommendations are specifically focused upon tackling trafficking in human beings for domestic servitude and are therefore intended to complement existing OSCE anti-trafficking commitments, especially the OSCE Action Plan to Combat Trafficking in Human Beings; Ministerial Council Decision No. 14/06 on Enhancing Efforts to Combat Trafficking in Human Beings, including for Labour Exploitation, through a Comprehensive and Proactive Approach; Ministerial Council Decision No. 8/07 on Combating Trafficking in Human Beings for Labour Exploitation; and Ministerial Council Decision No. 5/08 on Enhancing Criminal Justice Response to Trafficking in Human Beings through a Comprehensive Approach.

Furthermore, it remains crucially important to ratify, as well as fully and effectively implement all relevant international instruments, especially the UN Convention against Transnational Organized Crime and its supplementing Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Trafficking

Protocol) and, where appropriate, the Council of Europe Convention on Action against Trafficking in Human Beings. In addition, participating States are encouraged to consider signing and ratifying the relevant ILO Conventions, as well as the International Convention on Protection of the Rights of All Migrant Workers and Members of their Families.

## RECOMMENDATIONS:

### *Prevention*

1. To regulate domestic work to ensure that all workers enjoy the same protection under labour law and social security provisions. Such protections should include written contracts, specified hours of work and rest, decent living conditions for live-in workers, paid holiday and sick leave policies, health insurance and benefits, and fair compensation respecting the minimum wage in the location/country of work, with only a specified and limited proportion to be provided in kind. Furthermore, it is recommended to ensure the right to freedom of association for domestic workers in order to allow them to self-organize, and join representative organizations that can uphold their rights.
2. To promote these rights by supporting the development of, and eventually signing and ratifying the forthcoming ILO Convention on Decent Work for Domestic Workers.
3. To regulate and monitor the activities of recruitment and placement agencies responsible for training and facilitating the job placement of domestic workers in order to prevent abuse and exploitation. In addition, it is recommended to ensure that the recruitment fees or costs are not charged directly or indirectly, to workers.<sup>137</sup>
4. To better regulate and monitor the recruitment mechanisms of au pairs and their working conditions to prevent abuses and exploitation so that au pair programmes cannot be used to facilitate trafficking in human beings.

<sup>137</sup> ILO, *Private Employment Agencies Convention*, C181 (1997).

5. To promote the role of domestic workers' self-organizations and trade unions in monitoring the implementation of minimum wages and other labour standards, ensuring decent working conditions, empowering workers to claim their rights, and supporting workers to seek redress.
6. To assess the impact of migration and labour policies, which may unintentionally make migrant workers, especially women and children, more vulnerable to trafficking for domestic servitude.
7. To promote managed migration to ensure that admission policies better reflect the actual need of foreign labour for domestic work, and take into consideration the gender distribution of this specific labour market sector. Such measures would help to reduce the number of migrants working in irregular employment situations.
8. To consider ways to allow migrant domestic workers to change employer in order to reduce their dependency on the employer.
9. To raise awareness of trafficking for domestic servitude among the general public; relevant professionals, including health professionals, teachers, social workers, hotel staff; and other relevant groups and organizations, including faith communities, youth groups, community-based organizations, trade unions and workers' and employers' organizations. Awareness raising should aim to challenge the socio-cultural bias of domestic work based on the "master and servant" concept, build stronger capacity for the identification and referral of trafficked persons to appropriate support services, and improve the detection of this hidden crime.
10. To promote and strengthen co-operation and knowledge sharing among trade unions, NGOs, domestic workers' organizations and community-based organizations.
11. To encourage the systematic collection of data on trafficking for domestic servitude to inform the development of the identification process, and relevant migration, labour and anti-trafficking policies.

## **Protection**

12. To 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.
13. To ensure that as soon as there is the slightest indication that a person may be a victim of trafficking for domestic servitude, the person should immediately be informed about her or his rights and referred to the appropriate support and assistance services. Where the age of the person is uncertain and there are reasons to believe that the person is a child, the presumption shall be that she or he is a child; she or he should receive immediate protection as envisaged in international standards, with a view to securing the best interests of the child and a durable solution.
14. To provide resources and support for NGOs providing 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.
15. To consider how to balance the respect for the employer's private and family life and their home, and the need for inspection of working conditions in a place of employment.

## **Prosecution**

16. To strengthen the legislative framework taking the necessary measures to adopt or amend national legislation so as to criminalize all forms of trafficking, including trafficking for domestic servitude in accordance with the UN Trafficking Protocol.
17. To enhance efforts to build the capacity of law enforcement, prosecutors and judges to understand, detect and consistently address the crime of trafficking for domestic servitude, and to protect the rights of trafficked domestic workers.

18. To ensure that, wherever possible, charges are brought for trafficking in human beings, rather than for lesser crimes which would result in lower penalties, lack of recognition of the seriousness of the crime, and lack of assistance, support and access to remedies for victims.
19. To ensure that criminal or non-criminal sanctions taken against those responsible for trafficking for domestic servitude are effective, dissuasive and proportionate to the gravity of the crime.
25. To require that an employer member of the diplomatic corps submits the working contract, proof of salary and proof of the provision of adequate living conditions for his or her employed domestic worker.
26. To ensure that domestic workers in the employment of the diplomatic corps are protected by labour legislation and can access legal redress, including compensation, in the case of exploitation and abusive treatment.

## **Diplomatic Corps**

20. To take measures to prevent any abuse of diplomatic immunities for the purpose of exploiting domestic workers.
21. To ensure that members of the diplomatic staff on the territories of participating States, and their own diplomats overseas, understand their duties and responsibilities when enjoying privileges and immunities under the rules of the Vienna Conventions on Diplomatic Relations and on Consular Relations<sup>138</sup>, and in particular when employing domestic workers.
22. To ensure that staff members of International Organizations on the territories of participating States understand their duties and responsibilities when enjoying privileges and immunities under the rules of the Headquarters Agreement or the organization's statutes, and in particular when employing domestic workers.
23. To put in place preventive measures and special arrangements to ensure that diplomatic immunities do not hamper access to assistance and support to victims.
24. To regulate and monitor the delivery procedure of diplomatic visas (or legitimation/identification cards) for domestic workers employed by members of the diplomatic corps in order to prevent abuse and exploitation. This procedure should require that the visa issuing authority meets the worker in person to hand over the visa and provide her or him written and oral information on her or his rights, and where and how to report abuses and seek assistance.
27. To foresee the possibility of face-to-face meetings of the relevant department of the Ministry of Foreign Affairs, or other relevant institutions, and/or NGOs, with domestic workers already employed in diplomatic households. Such meetings could take place at least once a year at the time of visa renewal in order to prevent or detect cases of exploitation and abusive treatment.
28. To take responsibility for the behaviour of nationals who are members of the diplomatic staff abroad, and to ensure waiving the diplomat's immunities where there are reasonable grounds to believe that he or she is involved in trafficking for domestic servitude.
29. To take measures as a host country to assist and protect the rights of domestic workers exploited in diplomatic households. Such measures can range from informal discussions with the Embassy of the country concerned or with the International Organization concerned to find "amicable" arrangements, and in extreme cases, to declare a diplomat *persona non grata*.
30. To take measures as a host country to ensure that as soon as it is known that a member of the diplomatic corps has abused or exploited domestic workers, or tolerated such abuse, this member enjoying diplomatic privileges is no longer allowed to employ migrant domestic workers.

<sup>138</sup> UN, *Vienna Convention on Diplomatic Relations* (1961); UN, *Vienna Convention on Consular Relations* (1963).

# ANNEXES

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## Annex 2: List of Acronyms

<b>AFP</b>	Agence France Presse
<b>AFRUCA</b>	African Unite Against Child Abuse
<b>ALC</b>	Accompagnement, Lieux d'accueil, Carrefour éducatif et social
<b>BLinN</b>	Bonded Labour in the Netherlands
<b>BMeiA</b>	Bundesministerium für europäische und internationale Angelegenheiten (Austrian Federal Ministry for European and International Affairs)
<b>CAST</b>	Coalition to Abolish Slavery and Trafficking
<b>CCEM</b>	Comité Contre l'Esclavage Moderne
<b>CEDAW</b>	UN Convention on the Elimination of All Forms of Discrimination against Women
<b>CoE</b>	Council of Europe
<b>COMPAS</b>	Centre on Migration, Policy and Society
<b>DWAG</b>	Domestic Workers Action Group
<b>ECHR</b>	European Court of Human Rights
<b>FDFA</b>	Swiss Federal Department of Foreign Affairs
<b>FIZ</b>	Frauen Information Zentrum
<b>IHESI</b>	Institut des Hautes Études de la Sécurité Intérieure
<b>ILO</b>	International Labour Organization
<b>IPEC</b>	International Programme for the Elimination of Child Labour
<b>ISCO</b>	International Standard Classification of Occupations
<b>ITUC</b>	International Trade Union Confederation
<b>LEFÖ-IBF</b>	Interventionsstelle für Betroffene von Frauenhandel
<b>MRCI</b>	Migrant Rights Centre Ireland
<b>NGO</b>	Non-governmental Organization
<b>NRM</b>	National Referral Mechanism
<b>ODIHR</b>	OSCE Office for Democratic Institutions and Human Rights
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OFWs</b>	Overseas Filipino Workers
<b>ORCA</b>	Organisation pour les Travailleurs Immigrés Clandestins
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>OSR</b>	OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings
<b>R.E.S.P.E.C.T</b>	Rights Equality Solidarity Power Europe Cooperation Today
<b>SEF</b>	Portuguese Immigration Police
<b>THB</b>	Trafficking in Human Beings
<b>UN</b>	United Nations
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization
<b>UN.GIFT</b>	United Nations Global Initiative to Fight Human Trafficking
<b>UNICEF</b>	United Nations Children's Fund
<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>UNOHCHR</b>	United Nations Office of the High Commissioner for Human Rights



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- 2007: A Summary of Challenges Facing Legal Responses to Human Trafficking for Labour Exploitation in the OSCE Region



## Other Publications:

- 2010: Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime, OSR / UN.GIFT
- 2009: Guide on Gender-Sensitive Labour Migration Policies, Gender Section / OCEEA / OSR
- 2008: Compensation for Trafficked and Exploited Persons in the OSCE Region, ODIHR



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

Wallnerstr. 6, 1010 Vienna, Austria  
Tel: +43 1 51436 6921  
Fax: +43 1 51436 6299  
email: [info-cthb@osce.org](mailto:info-cthb@osce.org)  
[www.osce.org/cthb](http://www.osce.org/cthb)