

Human Rights Council XV Session: NGO written statement

I. Contact Information

Caroline Hames, International Advocacy Officer, the Global Alliance against Traffic in Women (GAATW).

Tel: +662-864-1427

E-mail: caroline@gaatw.org

Address: 191/1 Rm 41, 6th Fl, Sivalai Condo. Charan sanit wong Rd, Soi 12, Wattapra, Bangkokyai, Bangkok, 10600, Thailand

II. Agenda Item

3) Report of the SR on contemporary forms of slavery (Res. 6/14)

III. Co-sponsored by

The Global Alliance against Traffic in Women and Anti-Slavery International (Special Consultative Status) and Franciscan's International (General Consultative Status).

IV. Supported by

Non-ECOSOC NGO, Ban Ying, Germany.

V. TITLE

THE "PROTECTION GAP"¹: DIPLOMATIC IMMUNITY AND DOMESTIC WORKERS

INTRODUCTION

The Global Alliance against Traffic in Women, Franciscan's International and Anti-Slavery International welcome the Special Rapporteur on Contemporary Forms of Slavery's (SR CFS) report on Domestic Servitude and her ongoing commitment to dialogue with civil society.

Domestic servitude has received increasing international attention in recent years. At its 301st session, March 2008, the ILO Governing Body agreed to begin discussions on setting labour standards to address the treatment of domestic workers in employment worldwide. Similarly, at its 11th session, September 2009, the Committee on Migrant Workers focused on domestic work, and is in the process of developing a General Comment on the issue for discussion at its 12th session.

We welcome this focus on an industry which predominantly occupies migrant women and children in sites which are particularly ripe for exploitation.

With reference to the SR CFS' report our three organizations have one specific area of concern: the Treatment of Domestic Workers by diplomatic personnel

DIPLOMATIC IMMUNITY AND DOMESTIC WORKERS

While domestic workers employed by diplomatic personnel share the same vulnerability to abuse as other domestic workers, their situation is also made more critical by the diplomatic immunity granted to their employers on the basis of the Vienna Convention on Diplomatic Relations (1961).² This Convention provides that diplomats and their private residences are protected by immunity,³ creating a major obstacle to those wishing to take legal action against an exploitative employer.

Exploited domestic workers are unable to reclaim unpaid wages through legal channels, and employers cannot be penalised for the pain and suffering they have caused. The state of origin of diplomatic personnel has de jure

¹ OHCHR, 2010, *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian*, para 57. Available at

http://www2.ohchr.org/english/issues/slavery/rapporteur/docs/A.HRC.15.20_EN.pdf (accessed 22.08.10)

² UN 1961: Vienna Convention on Diplomatic Relations; 18 April 1961.

³ Ibid article 30.1

responsibility for holding them to account for actions committed in a destination state and yet rarely does so and no domestic worker has been known to have been successful in asserting his/her rights by this means.

Violations of the human rights of domestic workers employed by diplomatic personnel occur in the framework of extreme imbalance of power between private parties creating conditions which are ripe for modern day slavery. The foreign diplomatic employer is usually wealthy, of high social standing, with a good education and is above all, protected in law by diplomatic immunity. By contrast, the foreign domestic worker is usually female, from a developing country, on a below average wage, responsible for supporting his/her family back home, relatively poorly educated, lacking fluency in the language of his/her host country and with limited awareness of his/her rights. This imbalance of power is sharpened by the fact that the domestic worker's employment and residency status cannot be separated from each other and are both dependent on their diplomatic employer.

In 2001, the Council of Europe (CoE) noted great concern⁴ about the relatively high number of domestic workers exploited in diplomatic employment. The CoE report concluded that the Vienna Convention on Diplomatic Relations (1961) must be amended⁵ noting a legal conflict between the Convention and Article 6 of the European Convention on Human Rights (1950)⁶ which guarantees that anyone is entitled to a fair and public hearing by an independent and impartial tribunal. Such rights are not only guaranteed in the European Convention on Human Rights but also in the International Bill of Rights.

By failing to provide adequate legal channels for domestic workers to hold diplomatic employers to account for crimes committed against them; to compensate for the losses of the parties concerned; and to prevent exploitation, states are failing in their fundamental responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

CONCLUSION AND RECOMMENDATIONS

We welcome the SR CFS's recognition (outlined in her report to this session) that the immunity enjoyed by diplomatic personnel creates a specific "protection gap" (OHCHR, 2010, para 57) for domestic workers. We support her recommendations that states should not only abolish regulations tying domestic workers visas to diplomatic employers but also investigate allegations of abuse by diplomatic personnel with due diligence. We strongly support her recommendation that:

"If no criminal action is taken by the sending State, host States should demand that diplomatic immunity is lifted or, failing that, declare the alleged perpetrator in serious cases *persona non grata*" (OHCHR, 2010, para 96)

In this regard we make the following recommendations to the Human Rights Council:

To make space for discussion at future sessions on:

- Protecting, respecting and upholding the human rights of all domestic workers;
- The human rights implications of diplomatic immunity provisions in the Vienna Convention on Diplomatic Relations (1961) with reference to the employment of domestic workers

Further, all States should:

- Ratify and enforce the Slavery Convention (1926), the Supplementary Convention (1956) and the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) the ILO Convention 182 and Recommendation 190 on the Worst Forms

⁴ See EU Committee on equal opportunities for women and men, 2001

⁵ Ibid

⁶ Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4.XI.1950, available at http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf (accessed 22.08.10)

of Child Labour (1999) and the Council of Europe Convention on Action against Trafficking in Human Beings (2005);

- Adhere to the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002);
- Criminalize all forms of slavery, including domestic servitude, and ensure the prosecution of the perpetrators with sentences commensurate with the crime;
- Establish effective and comprehensive national action plans for the eradication of all forms of slavery. To include, inter alia, measures to identify, release, rehabilitate and reintegrate those subject to slavery and to tackle the demand for labour under slavery like working conditions;
- Strengthen international cooperation between states in the prevention of human trafficking and slavery, prosecution of perpetrators and protection of victims

At the national level we urge States to:

PREVENT EXPLOITATION

- Include information for domestic workers on their rights in visa issuing procedures and ensure channels to official assistance in countries of destination;
- Ensure all employment agreements entered into with regard to domestic workers adhere to the principles of international labour law;
- Ensure above all that regulations pertaining to the employment of domestic workers in no way risks placing employees in positions of heightened vulnerability;
- Ensure that persons employed as domestic workers retain full possession of their identity documents at all times;
- Ensure the right to an immigration status for persons employed as domestic workers independent of any employer and the right to change employer

PROSECUTE PERPETRATORS

- Ensure migrant domestic workers access to multiple recourses to justice for employer violations, not just criminal prosecution;
- Establish a register of cases where domestic workers' rights have been violated in order to ensure that those who are known perpetrators of violations are not permitted to reoffend;

PROTECT DOMESTIC WORKERS

- Establish complaint mechanisms for domestic workers;
- Ensure compensation for unpaid wages and other damages is either guaranteed by the state or collected from offending employers;
- Provide effective mechanisms for redress, recovery and reintegration in countries of origin and destination for victims of domestic servitude. Permit changes in employer at least during complaint procedures.