

CIVILIAN SECURITY, DEMOCRACY, AND HUMAN RIGHTS



HOW GOVERNMENTS ADDRESS DOMESTIC SERVITUDE IN DIPLOMATIC HOUSEHOLDS

Governments face a special challenge in addressing domestic servitude in diplomatic households, a form of human trafficking involving domestic workers employed by diplomats and international organization officials posted abroad. Although it is rare that diplomats subject domestic workers to involuntary servitude or other forms of exploitation, on those occasions when it does occur, the problem is a grave and challenging one for host governments to address.

Foreign mission personnel and their family members can enjoy various forms of immunity from jurisdiction in the country in which they are posted. In particular, foreign government representatives who are accredited to a host country as “diplomatic agents” or have equivalent status (such as Permanent Representative to the United Nations), along with their spouses and children, enjoy immunity from criminal and most civil jurisdiction, and thus cannot be sued or prosecuted unless their government grants a waiver of immunity. Diplomats and their immediate family members also enjoy personal inviolability, meaning they cannot be arrested or detained. Other foreign government representatives, such as embassy administrative and technical staff members, enjoy a less robust degree of privileges and immunities, but may also be immune from a host state’s civil, administrative, and criminal jurisdiction.

The typical immunities for members of a diplomatic mission are enshrined in the Vienna Convention on Diplomatic Relations, a treaty based on the reciprocal interests of all States that both host foreign diplomats and send their own abroad. The Convention also obliges diplomats to respect the host nation’s laws, and implicitly recognizes the long-held privilege of bringing foreign domestic workers on diplomatic assignments abroad.

Domestic workers often face circumstances that leave them extremely vulnerable to exploitation by their diplomat employers. They are usually legally resident in the country in which they are working only by virtue of their employment by the diplomat. Thus, they may remain in exploitative situations because they feel they have no other options. Further, these workers are often isolated from the community beyond the diplomat’s family due to lack of familiarity with the language, institutions, and culture of the country in which they are employed. There is a significant power disparity between a diplomat, who is a government official of some standing, and a domestic worker, who likely has a modest background and may have limited education or language skills. In addition, domestic workers are usually made aware of the special status of diplomats and may believe that rules of accountability do not apply to their employers and that it is hopeless to seek help.

An international consensus has begun to take shape, however, acknowledging that diplomats should be held accountable for exploitation of domestic workers.

For instance, it is increasingly understood that there is a temporal limit to the immunity enjoyed by diplomats and their family members. The Vienna Convention on Diplomatic Relations provides that, after a diplomat leaves his or her position, the diplomat enjoys a limited form of immunity that extends only to the diplomat’s “official acts” while he or she was accredited. Employment of a domestic worker is widely recognized not to be an official act, thus domestic workers have successfully sued diplomats (and their spouses) *after* diplomatic status has been terminated for abuses alleged to have occurred while the diplomats were accredited.

The following sections outline some of the innovative approaches currently implemented by the U.S. government and other host governments around the world across the 3P paradigm of Prevention, Protection, and Prosecution to address domestic servitude in diplomatic households.



PREVENTION

- » Requiring that foreign domestic workers employed by diplomats have written contracts in a language workers understand before arriving in country; the contracts must specify the hours of work, wages, holidays, medical care, etc. Many governments also prohibit employers from holding workers' travel and identity documents.
- » Requiring that domestic workers register in person with the host government (usually the Protocol Office in the Foreign Ministry). Registrations offer workers an opportunity to meet with host government representatives without their employer present to discuss their working conditions and learn about their rights and obligations. A domestic worker typically is provided with an identification card that is renewed periodically and contains contact information for assistance, if needed.
- » Prohibiting payment of wages in cash in countries with effective banking systems, and instead requiring direct deposit of wages to a bank account in the sole name of the domestic worker or payment by check. These measures provide objective evidence in the event of a salary dispute. In addition, many governments have minimum wage requirements and prohibit entirely or specify the extent to which lodging or food expenses can be taken from wages, thereby limiting excessive deductions that can mask underpayment of wages.
- » Limiting the number of domestic workers that any one diplomat may employ at the same time to help ensure diplomats can afford to pay the promised wages, as well as prohibiting workers' family members from accompanying them, as family members themselves may be subject to exploitation. Workers accompanied by family may be less likely to report abuse for fear that their spouse or children will lose residence status.
- » Requiring that domestic workers demonstrate understanding of at least one of the host country languages before a visa is issued.
- » Providing training to diplomatic personnel on appropriate treatment of domestic workers before overseas assignments, and developing internal Foreign Ministry human resources policies to sanction diplomats who abuse domestic workers while posted abroad.

PROTECTION

- » Bringing credible allegations of exploitation of a domestic worker by a diplomat to the attention of the Ambassador of the sending State's mission and requesting a timely response to the allegations. Some host governments may also take the preventive step of limiting the issuance of visas for any additional domestic workers to be employed by mission members until the allegations are addressed satisfactorily.
- » Engaging diplomatically with foreign governments to encourage settlement and/or payment of final court judgments in civil suits, including default judgments, against one of their diplomats. As described above, diplomats and their family members have been sued successfully by their former domestic workers after diplomatic status has been terminated.
- » Encouraging diplomat employers who are the subject of serious allegations by domestic workers to address the problem and, if appropriate, provide compensation to the domestic worker, even if no formal legal redress is available in the country of assignment.
- » Setting up alternative dispute resolution mechanisms in an attempt to mediate disputes between diplomats and domestic workers.
- » Building partnerships between law enforcement and NGOs in the community to ensure that domestic workers fleeing human trafficking have access to shelter and support.

PROSECUTION

- » Taking serious action to hold diplomats accountable. For example, if law enforcement authorities in the host State advise that they would prosecute the diplomat for a serious crime (including human trafficking) if the diplomat did not have immunity, then that host State could request that the sending state waive immunity to allow the prosecution to proceed. If such a waiver were not granted, the diplomat and family members could be required to depart the country.
- » Referring credible allegations of exploitation of a domestic worker by a diplomat to law enforcement for investigation.
- » Proposing former foreign mission members and, if appropriate, family members as the subject of Interpol "red notices," which are flags in an international system that alert law enforcement globally that the individuals are wanted by another national government for prosecution based on an arrest warrant.