

Submission to the CEDAW Committee prior to the General Discussion on "Access to Justice" on the Situation of Domestic Workers¹ who Work for Diplomats, February 2013

Submitted by: Ban Ying (Berlin), BliNN (Amsterdam), CCEM (Paris) Kalayaan (London), Lefö (Vienna) Migrants Rights Centre Ireland (Dublin) and PAG-ASA (Brussels)

As NGOs we assist migrant workers in various European Capitals who have been exploited in several manners. We would like to draw the attention of the CEDAW committee to women² Domestic Workers of Diplomats, who we consider to be an extremely vulnerable group, who therefore needs special attention and protection by states.

Domestic Workers who work for Diplomats are usually migrant women from countries of the global south; whereas the Diplomats who hire them are from all regions/countries. While the Domestic Worker has an immigration status that is directly linked to her employer, the employer actually has quite a different, almost untouchable status. The employer enjoys diplomatic immunity on the basis of the Vienna Convention on Diplomatic Relations³. This convention ensures that Diplomats and also their private residences are protected by immunity⁴, making it effectively impossible for Domestic Workers working for Diplomats to take any legal steps against their employers. In most countries they cannot sue them for unpaid wages, and the perpetrators cannot be taken to criminal court for assaults or be sued for pain and suffering even in severe cases of trafficking for the purpose of labor exploitation. Theoretically, the justice system of the Diplomat's sending state would be responsible, but we do not know of a single case where a Domestic Worker was successful in asserting her rights in the country of origin of her employer.

This gap in the field of prosecution requires additional efforts by states in the fields of prevention and protection, in order for states to fulfil their obligations under human rights and other treaties such as the Palermo Protocol, CAHTEH, ECHR, CEDAW, CESC and CCPR. We would therefore urge the CEDAW committee to hold states responsible for finding possibilities to protect domestic workers of Diplomats and ensuring them access to justice in the country they worked in.

¹ According to Article 1 of the ILO Domestic Worker Convention, the term "domestic work" means work performed in or for a household or households and the term "domestic worker" means any person engaged in domestic work within an employment relationship.

² This document focuses on women domestic workers, who represent the great majority of domestic workers working in diplomatic households – even if men can be victims of domestic servitude too and our organizations provide assistance to both women and men victims of human trafficking.

³ UN 1961: Vienna Convention on Diplomatic Relations; 18 April 1961

⁴ Ibid article 30.1

National Measures enabling access to Justice:

- In order to guarantee access to justice, all cases of criminal violations by diplomats against migrant domestic workers should be thoroughly investigated. Moreover, states should request a waiver of diplomatic immunity in order to allow prosecution.
- Where criminal investigation and prosecution are not possible, create the possibility for out of court settlement to ensure payment of due wages.
- Provide free access to legal assistance by a lawyer to defend the domestic worker's rights.
- A mechanism needs to be established to ensure that even where a prosecution is not possible that there are consequences for violations of the law by diplomats. At least, in severe cases states should consider declaring diplomats as "persona non grata"; See also the Report of the UN Special Rapporteur Against Slavery:
 - *"Diligently investigate credible allegations of abuse or exploitation committed by their diplomats and prosecute perpetrators. 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, while granting independent resident rights to the victim."*⁵
- A mechanism needs to be established where known cases of violations can be registered. Diplomats should not be allowed to continue hiring migrant domestic workers if they are known to have violated the rights of other workers.

International Measures promoting access to justice:

- A panel discussion at the Human Rights Council should be held on the "protection gap" experienced by migrant domestic workers employed by diplomats with the purpose of:
- Finding diplomatic and creative solutions to protect the rights of both diplomat employers and domestic workers, for example, establishing a voluntary code of conduct, to be endorsed by individual states, which includes:
 - The diplomat's state would aim to lift immunity, at least, for civil claims including employment complaints
 - The receiving states would systematically request a waiver of the immunity of the involved diplomat
 - The diplomat's state would commit to proceeding with prosecuting in their own courts should a diplomat be accused of abuse of their domestic staff abroad.
 - Where compensation is not forthcoming from the diplomat or sending state, receiving states would

⁵ ibid. Para 96

compensate domestic workers for the suffered harm
and/or unpaid wages

- An international fund should be created that compensates migrant domestic workers for the harm they have suffered and for unpaid wages, where diplomatic immunity has prevented the domestic worker receiving this compensation from the diplomat directly.
- A debate at ILO level is required to address issues arising from the practice of tying one's immigration status to individual employers, and its lack of compliance with the ILO's Forced Labour Convention (n° 29).
- The Vienna Convention on Diplomatic Relations 1961 needs to be discussed with regard to whether the Convention requires amendments to bring it up to date with current issues.