

## **DOMESTIC WORKERS WORKING FOR DIPLOMATS**

The expansion of the criminal definition of trafficking in human beings has led to much discussion about the industries, in which trafficking in human beings for the purpose of the exploitation of labour occurs. The stakeholders agree that domestic workers are certainly a vulnerable group, because they work in a highly unregulated industry that is almost invisible to the outside. There is little information, however, about the extent of this problem. Again and again, we hear of cases in which diplomats have not paid their domestic workers or have paid them very poorly, have exploited them and/or used violence against them. Some of them can be considered as trafficked persons; due to the immunity of diplomats, however, these cases cannot be prosecuted. This and the fact that the residence permit of domestic staff members is directly tied to their employee allows for an extreme scope of exploitation.

The majority of the domestic workers working in diplomat households in Germany come from Asian countries. Ban Ying has assisted about 20 of them over the past few years. They were all from Asia; most of them from the Philippines, but some of them also from Indonesia.<sup>141</sup> Just how many domestic staff members currently reside in Germany is not clear; estimates vary between 200 and 1,700.<sup>142</sup> One of the main reasons for the migration of migrant workers is to find work abroad, because there are no comparable alternatives in their country of origin that would allow them to sustainably guarantee their family's living expenses. With regard to women from the Philippines, another factor is that Philippine citizens cannot get a divorce. For many women, migration is therefore a socially accepted form of a de facto separation from their husband.<sup>143</sup>

Diplomats and other employers approach the agencies with job offers. Both the domestic workers as well the employers pay agency fees. In some cases, up to 5 monthly salaries of the domestic workers are kept as the fee for the job placement. This debt makes it impossible for Indonesian women to leave their employer until it has been paid.

### **Legal Context**

Migrant workers can legally enter Germany as domestic workers of diplomats to work here in the private household of diplomats. Based on the UN Vienna Convention on Diplomatic Relations from 1961, the international community of states agreed that countries maintaining diplomatic relationships should also allow the private domestic staff of diplomats to enter and stay in the respective countries. Diplomats not entering the country with any domestic staff are allowed to recruit their staff internationally.

The residence provisions for domestic workers are very specific and cannot be

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<sup>141</sup> According to a query submitted to the Bundestag [lower house of the German Parliament], 20% of the domestic staff members are from the Philippines, 14% from Indonesia. See query of the representative Irmingard Schewe – Gerigk et al.. 2008

<sup>142</sup> See Jung, Elmar 2008.

<sup>143</sup> See: Association of Indonesian Migrant Workers 2008

compared to other types of immigration. Not the local immigration office, but the Federal Foreign Office is responsible here. The employee must first apply for an entry visa in her country of residence. The visa must be accompanied by an invitation, a certificate of health, and a passport. In the meantime, the embassy of the employer's sending country contacts the Federal Foreign Office and informs it that a diplomat of its embassy would like to employ a certain person. If the Federal Foreign Office has no objections, the German embassy in the country of origin issues an entry visa to this person.

The employee must register with the Federal Foreign Office within 14 days of her arrival in Germany. Neither she nor her employer can register her, only the employer's embassy can do so. Usually, the domestic workers do not enter the embassy, which means that they have to give their passport to their employer, so that the employer can ask the embassy to register the domestic staff member with the Federal Foreign Office. Even though the Federal Foreign Office points out that *"...the employer may not infringe upon the employee's right of disposal of his/her personal documents such as passport and protocol ID"<sup>144</sup>*, there is no guarantee that a domestic staff member gets her passport or diplomatic identification papers back.

Diplomatic identification papers are only issued for domestic staff members, if the employer's embassy guarantees that the employer is complying with the minimum standards of the labour and social laws valid for Germany pursuant to the circular 7/2003 of the Federal Foreign Office. In March 2004, the Federal Foreign Office even defined minimum wages in the amount of EUR 750/month in its circular 6/2004, which the employer has to pay in addition to providing health insurance. Furthermore, the employer must provide domestic workers with boarding and lodging, and if possible their own room. He must also guarantee payment of the travel cost to and from his country of residence.

The Federal Foreign Office will then issue a so called diplomatic identification card. In contrast to the usual residence permit, this is not a stamp in an employee's passport, but a separate document that lists the identity of the domestic worker, the name of the employers, and its embassy! This document replaces a residence permit as required by the Residence Act. The diplomatic identification papers are usually issued for one year and renewed on a yearly basis, but at the most for five years. At the end of this time period, the domestic worker must leave the country and cannot re-enter Germany for one year.<sup>145</sup>

The diplomatic identification card is tied to the respective employment relationship for which it was issued, i.e. it becomes invalid at the moment the employment relationship is terminated. It is irrelevant if the employment relationship was terminated by mutual understanding or if the employee had to escape from the employer's violence. The employee will lose her residence status regardless. The Federal Foreign Office does not authorise a change in employer. It is assumed that the employer's embassy will contact immigration when the employment relationship is terminated.

While the domestic worker has a 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

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<sup>144</sup> Federal Foreign Office 2003

<sup>145</sup> This does not lead to any additional rights under the immigration law, because reentry after one year constitutes a new entry.

Relations.<sup>146</sup>146 This convention provides that also the private residences of diplomatic representatives are protected by immunity<sup>147</sup>147. This way, domestic staff members working for diplomats cannot take any legal steps against their employers. They cannot sue for unpaid wages, and the perpetrators cannot be taken to criminal court for assaults or be sued for pain and suffering. Even if they are suspected of trafficking in human beings as per Section 233 StGB, the law enforcement agencies cannot investigate. 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.

### **Living Conditions of Domestic Workers**

The Counselling and coordination Centre against trafficking in Persons Ban Ying submitted a petition in 2003 pursuant to Section 8 of the facultative protocol of the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) in the hope to open an inquiry procedure against Germany. To do so, it carried out a country-wide survey on the living and working conditions of diplomatic domestic staff members.<sup>148</sup> The survey documented 10 cases of exploitive working relationships. Since then, approx. 15 more women have approached Ban Ying who were also exploited as domestic workers of diplomats.

All of the women reported that their actual work load stood in no relationship to what had initially been discussed. Prior to starting their job, they had usually been told that they would be required to do simple household chores and to take care of the children.

The working hours did not in the least comply with the German minimum standards. The surveyed domestic workers worked between 10 and 19 hours per day, and normally seven days a week. Some women reported that they had to be available around the clock, and some said they never got paid. Those that did get paid did not get a compensation that was commensurate with their work. The wages ranged between EUR 120 per month for 19 hours of work per day and EUR 500 per month for 69 hours of work per week. Often, the employer had already deducted the health insurance premium from the pay, even though this was the employer's responsibility. The domestic workers were always paid in cash and without being given a receipt.

The women that had lived in the employer's household had to be available at all times. They said they had lived in tiny rooms that were often unfurnished. In none of the documented cases, the staff members had been given specific days or times off. If at all, there were given a few hours off here and there, and this always depended on the employer's good will. Some women indicated having experienced physical violence from their employer. Psychological violence such as the threat of violence, sleep deprivation, and severe verbal abuse were also listed. About half of the women explained that they were not allowed or able to leave the house by themselves.

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<sup>146</sup> UN 1961

<sup>147</sup> Ibid article 30.1

<sup>148</sup> See Ban Ying 2003

## The Hasniati Case

At the beginning of 2008, Ban Ying publicised the case of an Indonesian woman under the assumed name Ms. Hasniati, who lived and worked for a total of more than 4 years – 2 1/2 of which in Germany – as the domestic worker of a Yemenite diplomat under slavery-like conditions. Ms. Hasniati worked up to 19 hours per day, never got paid, could not leave the apartment, and had only been given small amounts of not very nutritious food. Only a serious illness allowed her to escape from this situation. Even though this is an extreme case, it illustrates the structural gaps in a striking manner.

To be able to employ Ms. Hasniati, her employer presented all the documents necessary to obtain an entry visa for her. It is undisputed that he did not comply with the provisions of the German labour and social laws and minimum standards, but there is no way to hold him responsible under criminal or civil law. The employer confiscated both Ms. Hasniati's passport and her diplomatic identification card. He never returned them to her, and she had never even seen her diplomatic identification card. It expired while she was hospitalised with open tuberculosis. Had the Federal Foreign Office not been informed of her illness and the accompanying circumstances, her identification card could easily have been renewed, once more without anyone from the Federal Foreign Office ever laying eyes on her.

Ms. Hasniati was not paid for her work. During the respective negotiations with the Federal Foreign Office, her former employer stated he had paid her wages in advance to a third person! He was never able to prove this, however. Regardless of the accuracy of such a statement, the question remains if this type of payment is not more consistent with slavery than a work relationship with rights for both parties. Nevertheless, the employer did not hesitate to make this statement publicly on repeated occasions and was never held responsible for this fact either.<sup>149</sup>

In addition, Ms. Hasniati was deprived of her freedom and subjected to physical violence. It is quite clear that she was in a *"situation of coercion or helplessness which is linked to the person's stay in a foreign country, into slavery, bondage or debt servitude or to take up or continue an employment relationship with him or a third person under working conditions which are in no way equal to the working conditions of other workers who do the same or a similar job."*<sup>150</sup> The findings of the hospital are just as clear. In addition, her employer never denied having kept her passport. Therefore, it is very probably that a crime pursuant to Section 233 StGB was committed. But even the best proof does not help in this case, because the perpetrator's diplomatic immunity protects him from criminal prosecution.

## Need for Action

Aside from having to comply with the Vienna Convention on Diplomatic Relations, Germany is also obligated by various international agreements<sup>151</sup> to fight against trafficking in human beings and other types of violence against women. Article 16 of the Convention on the Elimination of all Forms of Discrimination against Women

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<sup>149</sup> See Emmerich, Marlies 2008

<sup>150</sup> See Section 233 StGB Trafficking in human beings for the purpose of exploitation of labour

<sup>151</sup> See Koopmann-Aleksin in Chapter 6

CEDAW, for example, obligates all member states to take all appropriate measures, including legislation, to suppress all forms of traffic in women, such as prevention, criminal prosecution, and victim protection.

The fact that the diplomatic status prevents any kind of criminal prosecution requires that the gap in this area must be compensated for with additional initiatives in the areas of prevention and victim protection to assure that the steps that were taken can be considered as sufficient in view of the international agreements on human rights and particularly in terms of CEDAW.

Even though the Federal Foreign Office has changed some guidelines and has defined a very helpful minimum wage, the guidelines are, unfortunately, far from what could be viewed as sufficient preventive measures. As the case of Mrs. Hasniati clear shows, it is still possible to circumvent all preventive measures. The gaps are significant. If diplomats could be threatened with clear consequences, such as having them declared as a "persona non grata", an undesirable person, they might be more inclined to adhere to the regulations of the Federal Foreign Office. Aside from the fact that prevention still leaves a lot to be desired, some of the legal forms of the entire process<sup>152</sup> create structures that facilitate abuse. Also in this regard, there is an urgent need for action.

The fact that there is an urgent need for action not only in Germany becomes evident in a report and a respective recommendation by the parliamentary assembly of the Council of Europe dated May 2001,<sup>153</sup> that voices great concern about the larger number of women that are exploited by members of the embassy or other diplomats as domestic workers. The report draws the conclusion that the Vienna Convention on Diplomatic Relations from 1961 must be amended, so that immunity does not equal exemption from punishment.<sup>154</sup> Furthermore, these reports believe that there is an international law conflict between the Vienna Convention and Article 6 of the European Convention on Human Rights that guarantees that anyone is entitled to a fair and public hearing by an independent and impartial tribunal. It is thus possible that the EU states are violating the European Convention on Human Rights, if a group of persons is unable to legally defend itself against exploitation and abuse.

To clarify this on the example of Ms. Hasniati: If there were a provision that stipulated that domestic workers had to pick up their diplomatic identification card themselves,<sup>155</sup> Ms. Hasniati's poor health would have been noticed. If she had had the option of living outside of her employer's residence, she would have been able to get out of this situation, and would not have been available to work up to 19 hours per day to begin with. If one of the duties of the Federal Foreign Office were to instruct domestic workers of diplomats on their rights and existing assistance centres,<sup>156</sup> Ms. Hasniati would have known about a way out. If the employer would have had to worry about being declared a "persona non grata" or about losing diplomatic immunity to be able to be prosecuted in Germany, he might have refrained from some of the things he did in his own interest. Without all these hypothetical options, Ms. Hasniati was only able to get out of this situation, because she developed open TBC and was hospitalised.

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<sup>152</sup> The linking of the residence permit to a single employer, for example, or the requirement of having to live in the employer's household.

<sup>153</sup> See EU Committee on equal opportunities for women and men, 2001

<sup>154</sup> See *ibida*

<sup>155</sup> such as in Belgium. See Smit et al.. 2008 p. 172

<sup>156</sup> as required by Article 5 of the Council of Europe Convention to fight trafficking in human beings.

The only guideline that was very helpful in her (and other) cases, is the defined minimum wage, which is certainly a good international practice. Just the fact that the minimum wage is EUR 750/month makes it possible to calculate the wage claims of domestic workers and to try to enforce them with employers or the embassy. In the case of Ms. Hasniati, the Yemenite embassy was, after the respective public pressure, prepared to pay her wages to protect the country's reputation. In another case, it was possible for the ambassador to exert the necessary pressure to pay the domestic workers her wages. All this, however, are just courtesies that do not suffice to build legal rights for the domestic workers of diplomats. The fact, however, that it is not possible to take legal steps against diplomats forms the basis of a special duty of the state to protect and to compensate for the resulting disadvantages of the parties concerned and to prevent wrongdoing. It is therefore urgently necessary to amend the regulations for domestic workers.

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