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Female domestic workers in the private households of diplomats in the Federal Republic of Germany

- Information collected for the CEDAW Committee to open an inquiry procedure according to Article 8 OP/ CEDAW -

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I. Introductory summary

The German NGO Ban Ying e.V., Berlin hereby presents information on the situation of female domestic workers in the private households of foreign diplomats in the Federal Republic of Germany. We ask the Committee to open an inquiry procedure according to Article 8 OP/ CEDAW to examine whether the treatment of domestic workers in diplomatic households by German authorities constitutes a systematic violation of Article 6 of the Convention, Traffic in Women.

During the last few years, the situation of domestic workers in the households of foreign diplomats has increasingly been recognised and addressed. Recently, Mende Nazer's book 'Slave', an autobiographic report about a Sudanese woman working under slave-like conditions in a foreign diplomat's private household in London, and about her rescue, has increased public awareness for these women's situation. Similar cases have been reported in the media for other Western countries¹.

With the establishment of foreign embassies in Berlin when Berlin became Germany's capital after the fall of the wall, the NGO Ban Ying e.V., an organization dedicated to supporting trafficked women predominantly from Southeast Asia, has been reporting more and more cases of exploitation and abuse of, and violence against, female domestic workers in foreign diplomats' private households.

We are aware that the problem of human rights violations we address is international and most probably global. These human rights violations occur in a framework of an extreme imbalance of power between private parties: on the one hand, the foreign diplomatic employer – wealthy, of excellent education and a high social standing and,

¹ E.g. France – 'Rathna, Sklavin in Paris', in: Der Tagesspiegel, 05.01.2001; USA/ Canada: 'Abused Nannies find champion of their rights', in: Financial Times, June 14, 2001. Further media reactions in Annex 1.

above all, legally protected by diplomatic immunity in their state of residence; on the other hand, the foreign domestic worker, usually a woman, typically coming from a developing country with a low average income, often responsible for supporting their whole family remaining in their country of origin, with poor education, not speaking the language of the country they enter to work, and with a weak legal status.

This imbalance of power is sharpened by two further factors: Firstly, their weak legal status in terms of alien law, as domestic workers' residency permits depend on their employer; and secondly the type of services they perform: both their place of work and their working conditions are invisible, inside private houses; they have scarcely any contact with the outside world in their country of residence.

But even in a case of abuse, violence or exploitation, the foreign worker was able to contact the outside world for support, legal remedies against the diplomatic employer are excluded by diplomatic immunity, established under the International Convention from 1961 on Diplomatic and Consular Relations (Vienna Convention).

The Parliamentary Assembly of the Council of Europe addresses the situation of foreign workers in private households in Recommendation 1523 (2001): Domestic Slavery. Regarding the situation of domestic workers in diplomatic households, the Assembly's recommendation sees a conflict with the domestic workers' rights as guaranteed in the European Charter of Human Rights, especially the right of access to a court in civil and criminal matters². It recommends the amendment of the Vienna Convention in order to waive diplomatic immunity for all offences committed in private life³.

Despite the above-mentioned international scope of the problem, we wish to bring to the attention of the committee the specific situation of foreign female employees in the private households of diplomats in Germany. We are of the opinion that Germany

² Recommendation 1523 (2001), No. 3; see also: Doc. 9102, Report of the Committee on Equal Opportunities for Women and Men (rapp.: Mr Connor), and Doc. 9136, Opinion of the Social, Health and Family Affairs Committee (rapp.: Ms Belohorska).

³ Recommendation 1523 (2001), No. 10 iv.

does not fulfil its obligation to protect the human rights of these women by the means available within the framework given by diplomatic immunity.

Furthermore, we do not mean to generally accuse foreign diplomats residing in Germany of exploiting, abusing and violating the rights of their private employees. We do have knowledge of exploitation, abuse and violation of rights in a number of cases; but we know, as well, cases of diplomatic employers paying fair wages, offering decent working conditions and treating their staff correctly. We challenge the fact that the legal and actual situation for foreign employees in diplomatic households in Germany structurally provides opportunities for exploitation and for human rights violations.

II. Prerequisites for an inquiry procedure

According to Article 8 of the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women (OP/CEDAW), the Committee may open an inquiry procedure if it receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention if that State Party has not declared its opting out of the inquiry procedure at the time of signature or ratification (Article 10 par. 1).

We hereby present information on the situation of domestic workers in the private households of diplomats in the Federal Republic of Germany. We ask the Committee to open an inquiry procedure according to Article 8 OP/ CEDAW to examine whether the treatment of domestic workers in diplomatic households by German authorities constitutes a systematic violation of Article 6 of the Convention, Traffic in Women.

Germany ratified the Optional Protocol on January 15, 2002 and did not make a declaration in accordance to Article 10 par. 1 OP.

As the Committee has not yet made any public inquiry procedure conducted by it, and research on the Optional Protocol to CEDAW remains limited, the present communication refers to other sources for the admissibility criteria of the procedure.

These include the inquiry procedure under Article 20 of the Convention on the Prevention of Torture (CAT), so far constituting the only treaty-based inquiry procedure apart from the OP/ CEDAW, and the charter-based 1503 procedure before the Commission on Human Rights (CHR), which displays similarities only to a certain extent. It has been described as a "petition-information system"⁴ referring not to specific individuals, but to situations with consistent patterns of gross violations⁵.

As stated in Article 8 OP/CEDAW, the committee's invitation to a State Party to participate presupposes the submitting of reliable information. Similar rules are set forth for the inquiry procedure under CAT and the 1503 procedure of the CHR.

The prerequisite to qualify information as reliable may consist of two elements: firstly, the source of information must be reliable and secondly, the material presented must be specific, consistent and credible in its fact-finding.

With regard to the reliability of the sources of information for the present communication, one may refer to the rules of procedure by the Sub-Commission on the Promotion and Protection of Human Rights⁶ adopted for dealing with the admissibility of communications in the 1503 procedure. Regarding the admissible source of communication, these rules mention amongst others "non-governmental organizations acting in good faith in accordance with recognized principles of human rights, not resorting to politically motivated stands contrary to the provisions of the Charter of the United Nations and having direct and reliable knowledge of such violations"⁷. Likewise, the inquiry procedure under Article 20 CAT has been initiated by information submitted by NGOs⁸.

⁴ Alston, *The Commission on Human Rights*, in Alston, 1992: *The United Nations and Human Rights*, A Critical Appraisal, Oxford, p. 146.

⁵ Schaber, *Internationale Verrechtlichung der Menschenrechte*, Baden-Baden 1996, p.123.

⁶ Formerly named Sub-Commission on Prevention of Discrimination and Protection of Minorities.

⁷ Sub-Commission on Prevention of Discrimination and Protection of Minorities, Resolution 1 (XXIV), 1971.

⁸ Peru, A/56/44, paras.144-193; Egypt, A/51/44, paras.180-222 ; Turkey, A/48/44/Add.1.

Ban Ying is an association⁹, founded in 1988 and now comprises two projects: a shelter for women predominantly from Southeast Asia, operating since 1989, and a co-ordination and counselling centre for trafficked women, in operation since 1991. Both projects have been continuously financed by the *Senatsverwaltung für Arbeit, Soziales und Frauen* (Berlin Department of Labour, Social Affairs and Women's Affairs)¹⁰. Ban Ying is an established NGO on a national and international level. A leaflet and Brochure that contains a description of the NGO's work is enclosed as **Annex 3**.

Regarding the reliability of the presented material:

Our major source of information are cases in which the NGO Ban Ying has provided counselling, supplemented with cases reported to them by other NGOs working in a similar field. All these cases have been gathered in a survey done by Ban Ying. This survey refers to 10 concrete cases of abusive working conditions for domestic workers in diplomatic households within the last 3 years. In all these 10 cases the victims had contact with supportive NGOs in Germany. Ban Ying has knowledge of about 5 more concrete cases – but the victims and the supporters are for various reasons too scared to give information precise enough to be referred to in the survey.

The questionnaire and results of the survey done by Ban Ying are enclosed as **Annex 4**.

Another important source of information are statements, numbers and data given by the German Foreign Office in consultations with Ban Ying.

We will further refer to the '*Dienstanweisung des Auswärtigen Amtes*', an authoritative guideline steering the Foreign Office's discretion when dealing with domestic workers in diplomatic households.

An English translation of excerpts the '*Dienstanweisung des Auswärtigen Amtes*' is enclosed in the annex of this submission (**Annex 5**).

⁹ An English translation of an excerpt from the register of associations, is included as Annex 2.

¹⁰ See Annex 3: Leaflet and Brochure Ban Ying e.V. and also our website: www.Ban-ying.de

III. The position of domestic workers in diplomatic households in the Federal Republic of Germany¹¹

1. Actual Situation

Diplomats who reside abroad generally employ domestic workers for their private households; this is true for the situation in Germany as well.

The domestic workers are mainly women who migrate and enter Germany in order to work as domestic workers. Most of them are from countries like the Philippines, India or Sri Lanka i.e. countries with low average income. Often, their motivation for taking up work in a foreign country is that in their home countries they cannot find work which allows them to maintain their own and their family's livelihood. So, when working abroad, they often carry the obligation to provide financial means for their family and relatives in their country of origin.

Usually, the women's recruitment occurs through an agency which offers their services to facilitate the migration of domestic workers. These agencies exist in various countries – one of which is the Philippines. Diplomats and other employers send their offers to these agencies. If a woman looking for a job, outside the country fulfils all the employer's needs, the agency can proceed with her papers. In some cases the local embassy has interviewed the domestic worker on behalf of the employer and then proceeded with her papers. With a letter of invitation, a medical certificate and their passports the women or the agencies can apply for a visa. In the meantime the German Foreign Office is contacted by the embassy of the employer in Germany letting them know that a diplomat from their embassy intends to hire this person. If the Foreign Office has no objections, it notifies the German embassy in the country of origin, which then issues a short term visa for entering Germany.

The ticket is usually paid by the employer. In some cases the women were told they would get their first wage after 3 months – because they had to work off the cost of

¹¹ The following exposition of the situation of domestic workers in diplomatic households is based on information from Ban Ying, the attached survey (Annex 4) performed by Ban Ying, and statements, numbers and data given by the German Foreign Office.

the ticket. The agencies are usually paid by both the employer and the domestic worker. The passport and medical checks are usually paid by the domestic worker.

2. Legal framework

Privately employed domestic workers of diplomatic households do not need a residence permit. On the basis of Section 2, subsection 1, no. 2 of the German Aliens Act (*Ausländergesetz*), in accordance with the international Convention of 1961 on Diplomatic and Consular Relations, foreign residents can be released from the obligation of a residence permit¹².

In accordance with Section 3, no. 4 of the Implementing Regulation to the Aliens Act (*Durchführungsverordnung zum Ausländergesetz*), privately employed domestic workers of members of diplomatic missions explicitly do not need a residence permit if they are employed with the formal agreement of the Foreign Office.

The practice of a *Protokollausweis* (protocol identity document) was developed to regulate the residential situation of the members of diplomatic and consular agencies, as well as their private staff, and for the purposes of the above-mentioned formal agreement of the Foreign Office in the sense of Section 3 of the Implementing Regulation to the Aliens Act.

Since 1 November 1999, the Foreign Office has issued pink-coloured laminated protocol identity documents with the following identification letters:

D for diplomats

VB for administration and technical personnel

DP for officially employed domestic workers

¹² The alien law of the Federal Republic of Germany is presently undergoing fundamental reform. However the content of this regulation will not change after the Aliens Act is replaced by the new Immigration Law (*Zuwanderungsgesetz*). The regulation concerned will then be found in Section 1, subsection 2, No. 3 Immigration Law

OK for local staff

PP for privately employed domestic workers.

The name of the employer and the embassy are noted on the protocol identity document of the domestic worker.

The protocol identity documents are issued for all addressees with time limitations of up to one year. However, this PP protocol identity document alone secures the residence status of the privately employed domestic workers of members of the diplomatic or consular corps.

The residence permit is issued on the basis of an authoritative guideline by the Foreign Office (*Dienstanweisung des Auswärtigen Amtes*).¹³

After the domestic worker enters the country with a short term visa, the diplomatic mission has to apply for the special residence permit. For this application, the mission has to send the domestic worker's passport and the necessary declarations to the German Foreign Office. These declarations contain the following obligations:

- The employer is responsible for the health insurance of the domestic worker.
- The domestic worker is to live in the private household of the diplomat, the employer has to facilitate adequate accommodation.
- The employer has to provide sufficient income.
- The employer has to pay for the return ticket.

The domestic worker herself can not apply for her visa on her own (*Dienstanweisung des Auswärtigen Amtes*, par. 5.8.2.). Instead she has to submit all her papers to the employer (*Dienstanweisung des Auswärtigen Amtes*, par.5.).

Some of these declarations have also to be signed by the domestic worker. There is no guarantee that she actually knows what she is signing; besides, she is not in a position to refuse.

¹³ See English version in Annex 5.

Up to now, no employment contract guaranteeing adequate working conditions has been required, nor were the kind of work, the payment or the working conditions to be specified.

According to the circular note of the Foreign Office No. 7/2003 issued to the diplomatic missions in April 2003, from that date onwards employment contracts with domestic workers are to be notified by a Note Verbale with the following wording:

It is assured that

- the employer has concluded a written contract with the employee
- the employee will be paid an adequate salary
- the wages will be transferred into the employee's bank account
- health insurance for the employee will be concluded and will be maintained through regular premium payments by the employer
- minimum standards according to German labour legislation and social legislation will be respected
- the employee will be accommodated in the employer's household, if possible in a room of her/his own
- after the expiry of the employment contract or if the contract is terminated early (...), the employer will bear the costs of the employee's journey back to his/her country of origin
- the employee has the right to have at his/her disposal his/her passport and protocol identity document (*Protokollausweis*)

The residence permit (*Protokollausweis*) is granted for a maximum period of 5 years. After this period the domestic worker has to leave Germany at least for one year. If the diplomat is posted to Germany for a shorter period than 5 years, the residence permit (*Protokollausweis*) of the worker will be shortened accordingly. After this time, the employer has to guarantee the return of his/her employee to the latter's home country. However, the visa expires automatically when the employment is terminated.

According to the authoritative guideline by the Foreign Office (*Dienstanweisung des Auswärtigen Amtes*), a transfer by an employee to a different employer should be avoided. If at all, the transfer can only take place with the advance permission of the Foreign Office.

These regulations apply to all the household personal employed by diplomats. We have no access to information that would put us in a position to suggest whether diplomats usually act according to the requirements of the Foreign Office or not. We do assume that most diplomats are responsible employers who do not intend to exploit women in such a vulnerable position. But we have reliable information that some diplomats have been abusing their power towards women they have hired as domestic workers.

3. Working and living conditions

All women in the survey stated that their working conditions differed greatly from what they had agreed to.

Though the agreed work was housekeeping and child care, their tasks actually included cleaning, cooking, washing, working in the garden and looking after pets, in some cases also serving the diplomat, his family and his guests.

There was no common understanding of working hours between employer and domestic worker before they started working. In fact, the women reported working much more than 8 hours a day: working hours were 10 to 19 hours a day and generally seven days a week. When the women wanted to have a day off, this depended on the goodwill of the employer. Being live-in domestic workers they were expected to be available 24 hours a day. These circumstances are a violation of the German law on maximum working hours (*Arbeitszeitgesetz*). According to the *Arbeitszeitgesetz* working hours over 10 hours per day are only allowed under very restrictive and exceptional provisions; violations by the employer are punishable by criminal law.

Many of the women surveyed received inadequate payment for their work. The wages varied from € 120 per month for 19 hours work a day to € 500 per month for 69 hours a week. The latter was the best paid domestic worker of the survey.¹⁴ Quite often the payment was even reduced by the amount which the employer paid for the woman's health insurance. All payments were made in cash, without any receipt for either side.

The living conditions of the domestic workers are inadequate. They live in small rooms which sometimes were not even appropriately furnished. Being live-in domestic workers, they had very less private space, if at all.

All women surveyed by Ban Ying reported inhuman treatment. They suffered physical violence like beating or sleep deprivation. In addition, they were often humiliated, for example constantly shouted at, insulted, or not allowed to talk to their colleagues. Four women reported that they were not allowed to leave the house: they were deprived of their right to free movement.

4. The domestic worker's scope for action

These women do not have any real opportunity to change or improve their position.

The legal framework does not allow domestic workers to change and choose their employer freely; every transfer has to be approved by the Foreign Office. The experience made by Ban Ying is that this permission is very difficult to obtain. One has the impression that transfers are only allowed according to the goodwill of the person in charge. There is no visible structure behind or pattern to these decisions, which makes it impossible for domestic workers to know what they can rely on.

Even if the domestic worker just wishes to quit the employment, the information given by the Foreign Office was that the domestic worker cannot give the employer

¹⁴ for more information see the attached survey on the situation of domestic workers in diplomatic households by Ban Ying. (Annex 4).

his/her notice. Thus, termination of the employment may only be initiated by the employer.

When the domestic worker decides to simply leave the diplomat's house without giving formal notice, she risks not receiving her wages. In addition, her residence permit (*Protokollausweis*), which is strictly linked to the employment, expires and she will have to leave the country immediately.

Within the Foreign Office, there is no contact person for domestic workers in diplomatic households. Generally, the Foreign Office is not open to the public. Therefore, most of the women even do not know where the Foreign Office is situated and whom they might contact in order to get information about their legal situation.

If offences are committed against domestic workers, no investigations can be initiated against a perpetrator who enjoys diplomatic immunity according to the Vienna Convention.

Therefore, when a woman goes to the police, the latter can take very little action. The police cannot prosecute anybody who enjoys diplomatic immunity. They can start an investigation, but if the perpetrator refuses to cooperate or even talk to the police, the police cannot proceed with their investigations. Due to diplomatic immunity, there is also no way of taking action against the employer in order to claim due wages.

5. The employer's diplomatic immunity: The Vienna Convention

Putting the right to effective judicial hearing into practice, any party can require from the state the assertion of his or her subjective right towards the obligated party. However, if the person obligated is a member of a foreign diplomatic mission, Article 31 of the Vienna Convention of 1961 prevents measures of legal execution being taken against the person in the receiving state at all. The rationale behind this regulation lies, as stated in the preamble of the Vienna Convention of 1961, in

ensuring the efficient performance of the functions of diplomatic missions as representing states, in summary in the rule „*ne impediatur legato*“.

In consequence, diplomatic immunity prevents both criminal and civil pursuit of members of foreign diplomatic missions in the receiving state. But, in accordance with the Vienna Convention of 1961, diplomats are, at least in the abstract, obliged to adhere to the legal order in the receiving state, although no mechanisms for legal procedures back this principle up.

Despite possible cases of abuse to which this privilege can give cause, the constitutional courts stick to the overall immunity for foreign diplomats¹⁵. However, diplomatic immunity is only compatible with the right to effective legal hearing if the concerned persons have suitable alternative procedures for the protection of their legitimate interests.

The possibility of calling the courts in the sending nation alone does not provide a reasonable alternative in this sense. The states are thus obliged to create suitable measures and undertake any efforts to protect areas of human rights that, as a result of diplomatic immunity, are not protected.

IV. Systematic violations of the rights guaranteed in the convention

1. Violation of Article 1 CEDAW, Discrimination against Women

The Convention on the Elimination of All Kinds of Discrimination against Women (CEDAW) defines, in its Article 1, discrimination against women. According to General Recommendation No. 19 (11th Session, 1992) CEDAW, the definition of discrimination includes gender-based violence and therefore addresses not only violence that is directed against a woman because she is a woman, but also violence that affects women disproportionately.

¹⁵ See detailed explanation in „Grundrechte und Immunität der Angehörigen diplomatischer Missionen“ by Prof. Dr. Carlos D. Esposito Massici and Prof Dr. Francisco J. Garcimartin Alvarez, Madrid, in Zeitschrift für das internationale Privatrecht 1997, S. 129-132

"Gender-based Violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international Law or under human rights conventions, is discrimination within the meaning of Article 1 of the Convention. These rights and freedoms include:

(...)

- d) the right to liberty and security of person;
- e) the right to equal protection under the law;

(...)

- g) the right to highest standard attainable of physical and mental health;
- h) the right to just and favourable conditions of work."¹⁶

All these rights may be affected by the above described situation of domestic workers in diplomatic households, specifically the right to just and favourable conditions of work. As stated above, we have knowledge of exploitation, abuse and violation of rights in a number of cases; this is due to the fact that the legal and actual situation for foreign employees in diplomatic households in Germany structurally provides opportunities for exploitation and violations of human rights.

As the exploitation takes place in the area of domestic work, a well-known typical field of female employment, most affected persons are indeed female.

Thus, we have here a typical case of legally and structurally conditioned discrimination in the sense of Article 1 CEDAW.

2. Violation of Article 6 CEDAW – Traffic in Women

Definition of Traffic in Women

Article 6 CEDAW obliges the States Parties to take all appropriate measures, including legislation, to suppress all forms of trafficking in women. Trafficking in

¹⁶ General Recommendation No. 19 (11th Session, 1992) of the Committee on the Elimination of Discrimination against Women

women is not defined in the provisions of the Convention. An interpretation of the term is given in General Recommendation Nr. 19 (11th Session, 1992) CEDAW. Recently, the first internationally binding definition of trafficking has been adopted in the *Protocol to Prevent, Suppress and Punish Trafficking in Persons*¹⁷.

According to this, trafficking in persons is

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of 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 of the giving or receiving of payments or benefits to achieve the consent or a person having control over another person, for the purpose of exploitation.

The definition comprises three elements:

- the action which leads to the trafficked person's dislocation
- the coercive means of undertaking this action and
- the purpose of exploitation.

In the cases surveyed by Ban Ying, the situation of domestic workers in diplomatic households fulfils this definition's conditions: the action of dislocation, coercive means and the exploitative purpose.

The **action of dislocation**, according to the definition stated in the Palermo Protocol, comprises the recruitment, the transport and the receipt and harbouring at the destination of the trafficked person.

Domestic workers in diplomatic households have generally not resided in Germany before they took up the employment. In some cases they entered Germany together

¹⁷ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the Convention Against Transnational Organized Crime; 40 ILM 335 (2001), UN-Doc A/55/383, 2 November 2000

with the diplomat; in other cases, they were recruited abroad to work for a diplomat who was already residing in Germany. In one case in which counselling was provided by Ban Ying, the domestic worker originally left her country for a third country. There she was told that her final destination would be Germany. She does not even know, who actually applied for her visa to Germany.

In the case of domestic workers in diplomatic households, recruitment and receipt and harbouring, at least, are undertaken by the employer, third persons or agencies. In some cases, agencies also arrange the transport. According to the authoritative guideline by the Foreign Office, the domestic workers are obliged to live in the diplomat's house. Thus, the harbouring and receipt is undertaken by their employers.

As stated in the Palermo Protocol, there is a wide range of **coercive means** or means similar to coercion that may be used in order to prevent the trafficked person from acting and deciding freely and to achieve the exploitation of the trafficked person.

One of these means is the **abuse of power or of a position of vulnerability**. The relationship between the domestic worker in a diplomatic household and the diplomat is characterized by the employer's position of power on the one hand and the domestic worker's position of vulnerability on the other hand.

Due to the special regulations for domestic workers in diplomatic households, this relationship greatly exceeds the hierarchical differences that usually exist in the relationship between employer and domestic worker.

The domestic worker's residence and work permit is strictly linked to one particular employer. It is the diplomat who must apply for the protocol identity document (*Protokollausweis*), which is the domestic worker's residence and work permit, on behalf of the domestic worker. The domestic worker herself is not able to apply for the protocol identity document. The document is issued only for working and living in the employer's household; when the employment is terminated, the protocol identity document expires immediately.

In order to apply for the document, the domestic worker's passport is handed over to the employer.

The employment can not be terminated by the domestic worker giving notice – neither if she wishes to change employer nor if she wants to quit the domestic work completely.

As a consequence, the diplomat has absolute power over the domestic worker's right to residence in Germany and her obligation to continue employment in his household. It is he who has the know-how about the legal situation of and the conditions for the domestic worker's legal residence in Germany.

Besides, the diplomat knows the country, the language spoken and the cultural and legal framework. He also knows that his criminal actions will have no consequences for him, because he has diplomatic immunity.

On the other hand, the domestic worker enters the country only to take up employment. She is a legal labour migrant. She generally does not know the German language and has no social network in Germany. Due to her living and working conditions, she is cut off from the German society, which makes it extremely difficult for her to learn the language or to build up personal relations. So she lives in social and cultural isolation.

The domestic workers mostly come from countries of origin with a low average income; they rely on domestic work as a way of earning their livings, and carry the responsibility of their families on their shoulders. Concerning their right to residence in Germany, they are totally dependent on their employers. As there is no official contact person within the responsible authorities for domestic workers who seek advice or information, she has no control and know-how about the procedure of applying for permits.

The regulations in the authoritative guideline by the Foreign Office (*Dienstanweisung des Auswärtigen Amtes*) oblige the domestic worker to live in the employer's household. Though the '*Dienstanweisung des Auswärtigen Amtes*' is not a law but an authoritative guideline which exclusively addresses and obliges the executive authorities, the application of the guidelines ensures that the domestic workers are obliged by the authorities to live in the employer's house, as otherwise permission to

reside in Germany in order to work for the diplomat would not be granted.

Therefore, the regulations by the guideline have the same effect as an obligation by law. The fact that domestic workers are obliged to live in the diplomat's house makes them extremely vulnerable to offences, humiliating treatment and violence. This obligation also results in excessive working hours and a lack of privacy.

Due to diplomatic immunity, domestic workers have no legal protection against violations of their rights. In addition, they have no way of taking action against the employer in order to claim worker's rights, such as (adequate) payment, social security or adequate working conditions.

Therefore, there is a strong hierarchical relationship between the diplomatic employer and the domestic worker, one that concerns all spheres of the domestic worker's life in Germany.

The fact that the woman remains in her status as domestic worker is achieved *by means of* the employer's power and her position of vulnerability.

Though domestic workers have agreed to the domestic labour, they have certainly not agreed to this scale of exploitation, with unacceptable working conditions, or even illegal ones, inhuman treatment and violations of their basic human rights. However, the employer's power and the domestic worker's position of vulnerability as described above results in an inevitable situation for the woman and makes her remain in domestic servitude. So, even if the domestic work itself was taken up with the woman's consent, the position of domestic workers in diplomatic households, the working and living conditions and the continuation of this work is not a result of the woman's free decision.

Diplomatic household workers do not have the option of freely changing their status. Once they have agreed to the domestic work, there is no opportunity to freely change or choose their employer or to terminate their employment in a regular manner.

They live and work under conditions that prevent them from acting freely: they have to hand over their passports to their employer in order to apply for the protocol identity document, and there is no guarantee that the passport will ever be returned to the domestic worker; the fact that they live in the employer's household makes them extremely vulnerable to threats and pressure; as the wages are very low, they will generally not have the financial means to arrange by their own efforts to leave the country.

According to the definition of the Palermo Protocol, trafficking in persons is given when the action is undertaken **for the purpose of exploitation.**

As stated in the Protocol, ***exploitation*** shall mean at a minimum

the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The labour of domestic workers in diplomatic households in Germany under the actual conditions as described above is to be classified as exploitation, as their actual position and the legal framework of the domestic workers results in a situation which is similar to slavery.

Accordingly, the General Recommendation No. 19 (11th Session, 1992) CEDAW clarifies that Trafficking in Women does not only mean trafficking for the purpose of (forced) prostitution, but also other kinds of exploitation, e.g.

the recruitment of women from developing countries for domestic labour in industrialized countries.

The Palermo Protocol does not provide a definition of Slavery and Practices Similar to Slavery.

But the ***Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery*** provides these

definitions . One of the practices similar to slavery is defined in Section 1, Art. 1 subpar. b) as

serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;

This definition, among others, corresponds to the situation of domestic workers in diplomatic households in Germany.

Violation of Art. 6 of the Convention by the Federal Republic of Germany

As shown above, the cases of domestic workers surveyed by Ban Ying can be defined as cases of trafficking in women in accordance with Article 6 of the Convention. To address a violation of Article 6 by the Federal Republic of Germany, it must be examined whether this provision does comprise an individual right that is **justiciable** under the Optional Protocol.

The question of justiciability of the CEDAW provisions was discussed during the drafting of the OP. There was some debate over whether the OP should take an 'a la carte'- approach, meaning that only some provisions of the Convention could be the subject of a complaint or inquiry procedure. But finally a 'comprehensive approach' has been implemented in the OP. That means that, as a rule, every provision of the Convention can be the subject of a procedure under the OP.

The wording of the provision establishes an obligation by States Parties – the obligation to suppress traffic in women. It does not explicitly guarantee an individual right, unlike civil and political rights which are classically understood as negative rights, imposing an obligation on the state not to interfere with them.

Nevertheless, contemporary human rights experts agree that the state's duty of non-interference – the so-called obligation to respect – represents only one type of a range of state obligations in human rights law and must be combined with, at least, the obligation to protect and the obligation to fulfil.¹⁸ The obligation to protect against and to prevent violations of rights requires appropriate institutional and legal machinery. Article 6 CEDAW refers to the obligation to protect: States Parties must take all appropriate means to protect women from being trafficked. This has been characterized as a typical provision requiring a State Party to regulate specific non-governmental activity.¹⁹

This is underlined by the concept of women's human rights which has been developed by researchers and women's rights activists over the last thirty years. It addresses the relevance of the public-private divide in the traditional concept of human rights, which neglects the harms from which women most need protection. Women's human rights require a rethinking of the interpretation of human rights law.²⁰

In the provisions of CEDAW, discrimination is addressed in the public as well as in the private sphere. Starting from the wide definition of discrimination in Article 1 and the breadth of the goals set forth in Article 2, also with respect to the private sectors of society, a characteristic throughout the Convention is the range of obligations on states to intervene in the private sector, to go beyond respect in order to protect, ensure and promote women's rights.²¹

This being so, the next question is whether and to what extent the obligation to protect women from being trafficked does comprise a justiciable right for individual women. Again, experts agree that every substantial provision of human rights law

¹⁸ This was comprehensively developed for economic, social and cultural rights, see G.J.H. van Hoof, *The legal Nature of Economic, Social and Cultural Rights*, in Philip Alston and K. Tomasevski (eds) *The Right to Food* (1987), p.97.

¹⁹ Henry J. Steiner/ Philip Alston: *International Human Rights in Context. Law Politics Moral*, p. 180.

²⁰ Hilary Charlesworth, Christine Chinkin: *The Gender of Ius Cogens*, *Hum.Rts Q.* 63 (1993), and the contributions in Dorinda Dollmeyer (ed.), *Reconceiving Reality: Women and International Law* (1993).

²¹ Henry J. Steiner/ Philip Alston: *International Human Rights in Context. Law Politics Moral*, p. 179.

comprises a justiciable core. The question of justiciability is related to the level of obligation (respect, protect, fulfil); the obligation to respect is easily justiciable, and in many cases the obligation to protect will also be.

The question whether Article 6 is violated must therefore be decided in the light of the individual cases and concrete situations: whether Germany has **violated its obligation to protect** women from being trafficked with all appropriate measures.

During the last 15 years, the issue of trafficking in women has increasingly moved into the focus of international organizations such as the UN, the OSCE, the Council of Europe and the European Union, and has been recognized and addressed as a severe violation of human rights. Unanimously, international documents state that the combating of trafficking must be based on the three pillars of prevention, prosecution of perpetrators and protection of the victim.

Therefore, the wording of Article 6 CEDAW that States Parties are obliged to take all 'appropriate measures' requires States Parties to take all necessary measures in these three fields: prevention, prosecution and victim protection. Although the wording implies that on the one hand States Parties do have a certain discretion in choosing the means they consider appropriate in the framework of their domestic legislation and practice, on the other hand, Article 6 of the Convention imposes the duty to take all measures that are necessary.

We hold the opinion that the individual cases reported to Ban Ying e.V., as well as the authoritative guidelines of the Foreign Office and the Foreign Office's statements, show that the measures taken by German Authorities to protect domestic workers in diplomatic households are not sufficient, neither in the field of prevention, nor in those of prosecution and victim protection.

The diplomatic status hinders any kind of prosecution. This gap in the field of prosecution requires, however, additional efforts in the fields of prevention and victim protection, in order to be appropriate and in accordance with the obligations in human rights treaties and especially in CEDAW.

Currently the legal structure of the residence permit as well as the concrete use and arrangement of the legal procedures, especially the close links with the employer-employee relationship, the obligation to live in the household, etc., promotes trafficking.

In its circular note No. 7/2003, dating from the 8th of April 2003, the Foreign Office has pointed out that the employers must guarantee that certain standards and regulations are complied with, e.g. the conclusion of a written contract, adequate wages according to German legislation standards, the transfer of wages into a bank account, upholding of minimum standards according to German labour legislation and social legislation, and the worker's right to have her identification documents at her disposal. The diplomats must declare by Note Verbale that they comply with these standards. In addition, the Foreign Office makes clear that in case of grave violations of the standards indicated, the diplomatic mission responsible will be requested to revoke the immunity of the diplomat concerned.

This circular note is too recent to evaluate its effect at the moment. But we have knowledge of one case in which a domestic worker was dismissed because the employer refused to provide working conditions compatible with the new circular note.

It is highly desirable that the Foreign Office makes clear its disapproval of the improper treatment of domestic workers. But it must be stressed that the measures now undertaken by the Foreign Office exclusively address the employers, requesting them to commit themselves to follow these regulations.

Especially with respect to measures in the field of prevention, it must be taken into consideration that in cases of violations of rights, the mere obligation of the diplomat not to do so may not be sufficient, as there are no sanctions against diplomats.

Therefore, it is important to establish a procedure that prevents the opportunity for offences against the regulations laid down by the Foreign Office. This also applies to the procedure of issuing protocol identity documents, as well as for the process of finding out whether proper working conditions and adequate payment are in fact being provided.

There are several measures available which have not so far been applied that would be both in accordance with the present legal situation and would improve the actual situation of the exploited domestic workers. These are:

1. Measures in the field of prevention:

- transparency of financial actions, especially clear separation of the salary claim and social insurance would help the domestic worker and the officials to identify violations of the contract
- no obligation for domestic workers to live in the employer's household;
- the opportunity to file an application should be provided for the persons employed themselves;
- the application procedure could be arranged in such a way that the domestic worker remains in the possession of her papers;
- information about supporting organizations could be made available during application procedures;
- there could be a contact person at the Foreign Office for encroachments/ law breaking/ violations of contract etc.

2. Measures in the field of prosecution:

- consequences of violations of the law apart from prosecution, with reference to the obligation to respect legislation
- admonishments after justified complaints about violations of the law
- no more protocol identity documents to be given to diplomats about whom there have been justified complaints

3. Measures in the field of victim protection, also fulfilling the obligation to redress victims of human rights violations:

- setting up of a complaints office
- making the balance agency for wage claims in the Foreign Office accessible for foreign domestic workers
- provisions for the protection and accommodation of victims
- setting up a victim fund for serious encroachments

- permission to change employer during complaint procedures
- setting up support agencies to look for a new employer in the FRG

Thus, Germany does not fulfil its obligation to take all appropriate measures against trafficking in women. Unless Article 6 CEDAW stipulates a state obligation, this also constitutes a violation of individual rights set forth in the convention.

Systematic Violation of the Convention

The opening of an inquiry procedure presupposes that violations of the Convention are of a systematic character. The present situation does also represent one of systematic violations of Article 6 CEDAW.

Unlike the 1503 procedure, the inquiry procedure under Article 8 OP/CEDAW does not require gross and systematic violations (cumulatively) but systematic *or* grave violations (alternatively).

The term systematic refers to the scale or prevalence of violations, or to the existence of a scheme or policy directing violations. The inquiry procedure under Article 20 CAT also deals with the wording of torturing 'systematically' as a presupposition for an inquiry. Concerning this wording, the Committee on the Prevention of Torture expressed the following view: *"The Committee considers that torture is practiced systematically when it is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question. Torture may in fact be of a systematic character without resulting from the direct intention of a Government. It may be the consequence of factors which the Government has difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation by the local administration. Inadequate*

*legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice.*²²

The important aspect in these views is that the systematic character of a violation must not stem from direct intention of the Government, but also from inadequate legislation or implementation of legislation which allows room for violations by other actors.

The practice of German authorities as presented above is not directed at violating the domestic workers' rights, but it does represent a consistent pattern of structural dangers for these women's human rights, thereby violating the obligation to suppress traffic in women. As these structural dangers result from a permanent policy directed by official guidelines, the violation of Article 6 must be seen as systematic.

²²Official Records of the General Assembly, Forty-eighth Session, Supplement No. 44 (A/48/44/Add.1), para. 39; CAT, Inquiry under Article 20 : Peru. 16/05/2001. A/56/44,paras.144-193; para. 20.

Annexes

1. Media reactions
2. Excerpt from the register of associations
3. Ban Ying leaflet and Brochure
4. Questionnaire and Results of a Ban Ying Survey on the situation of domestic workers, who work in Germany for Diplomats.
5. English translation of excerpts of an authoritative guideline of the foreign office the so called '*Dienstanweisung des Auswärtigen Amtes*'.

			abuse study says	2001Jun
Newsday	13.06.01	Mae M. Cheng	News/US: Migrant sues Botswanian envoy	Newsday oder stop-traf
die tageszeitung	18.05.01	Antje Lang-Lendorff	Ein rechtsfreier Raum	www.taz
Die Welt	18.05.01	Silvia Meixner	US-Diplomatin: Ohrfeigte sie ihre Hausangestellte?	www.wel ? =silvia+r
Neue Zürcher Zeitung	12.01.01		Sklavenartige Ausbeutung Hausangestellter in Europa	www.nzz
	09.01.01		Bericht des Europarates sagt, daß jährlich 4 Millionen Frauen verkauft werden	europa.e s/010119
The Irish Times	09.01.01	Alison O`Connor	Europe-based Diplomats Guilty of Slavery	www.fre

Der Tagesspiegel	05.01.01	Andrea Exler	Moderne Sklaverei Ratna, Sklavin in Paris	www2.ta 11194.ht
Balita	Nr. 67/97	eb/ga	Malaysische Botschaft Offenes Feuer im Zimmer kostet philippinischer Haus- haltshilfe das Leben	

Annex 4

Results of a Ban Ying Survey on the situation of domestic workers, who work in Germany for Diplomats

Number of collected cases

- 10 cases, 6 of them in Berlin

All workers were women

Countries of origin of the domestic workers

- 5 Philippines
- 2 India
- 2 Thailand
- 1 Sri Lanka

Nationality of the Diplomats

- Egypt
- Israel
- Rep. of Korea
- Saudi Arabia
- Thailand
- United Arab Emirates
- USA

Working conditions

All domestic workers stated, that the work they had to do, was very different from what they had agreed to do. Their actual work consisted of: household, child caring, cleaning, washing, looking after the garden and pets. In some cases "serving" was explicitly mentioned. Usually guests who would frequently change, needed to be

hosted. The domestic workers stated to have originally agreed to child caring and in some cases also to house keeping.

Working hours and salaries

- 19 hours a day for no money at all
- worked around the clock (salary not clear)
- 18/hrs a day for 240 DM a month
- 69/ hours a week for 500\$ a month
- 7 days a week, from 7 am – midnight, sometimes till 3 am for DM 1100 DM/month

Those who were live-in domestic workers were always “on call”.

Off days: none of the women had clear days off. If at all, they were allowed to take a few hours off; this always depended on the mood of the employer.

All women stated, that their salaries were paid in cash – without any receipt for either side.

Health insurance

We have only some information on this issue. All the women, who answered this question mentioned, that the employers made it look as if they paid for the insurance of their workers. The money for the insurance was transferred from the bank account of the employee, but deducted from the workers salary at the end of the month. One women states not to know, whether she has been insured or not.

Living conditions

Those who were live in domestic workers, lived in places, that seemed to be more chambers than rooms, in some cases without furniture.

Violence

- 3 domestic workers experienced physical violence through their employers; in 2 further cases this was presumed

- 2 women experienced psychological violence
- In 2 cases the social workers presumed sexual violence
- In 9 cases women reported other forms of violence. For example: shouting, not being allowed to sleep if the employer herself was not tired, 2 women who worked for the same diplomat were not allowed to talk to each other, one was constantly told to “clean her body”, one was told the employer would let the police pick her up, if she decided to resign. All this violence occurred by women; i.e. diplomats or wives of Diplomats.
- 4 women reported, that they could not leave the house on their own

Police investigation

in 5 cases the police was informed, but could not react at all – because of the diplomatic immunity of the employers

Condition of the women, when contacted first

The domestic workers seemed to be very scared and confused (7cases) and under pressure.

Matters of concern, mentioned by the domestic workers

- transfer of employer
- violence through the employer
- return to their country of origin
- salary claims

Questionnaire on the situation of migrant domestic workers, whose employers enjoy diplomatic immunity

The questions are comparable to a questionnaire of Bridget Anderson from Kalayaan.

Please use 1 questionnaire for each employee- employer relationship..

1. Name and address of the counseling center:

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2. Information about the domestic worker:

- a. Age:
- b. Nationality:
- c. Family status:
- d. Entered Germany on:
- e. Is this her first diplomatic employer? (If not, please fill further questionnaires)

3. Information on the employer:

- a. Nationality:
- b. Nr. of people living in the household:
- c. Where does the employer work?
- d. In which position?
- e. In which city?
- f. Is this his/her first domestic worker?

4. Information on the work:

a. Did the worker have a written or an oral working contract?

If yes, what was agreed upon, regarding:?

- the type of work:
- the working hours:
- the wage:
- off days:
- the number of people, that need to be taken care of:
- on – call service at night, and free days:
- other agreements:

b. When did these agreements take place?

c. What did the **actual** work look like:

- the type of work:
- the working hours:
- the wage:
- off days:
- the number of people, that need to be taken care of:
- on – call service at night, and free days:

- other agreements:
- d. Has the worker been paid? If yes, how much, how often and what was the payment procedure?
- e. Did the worker have a health insurance?

5. Information about working and living conditions

- a. Where did the worker live?
- b. Did she have a room to herself?
- c. Did she have a own bed?
- d. Did she experience violence in the house?
- e. If yes, wenn ja, in which form:
- physical
 - psychological
 - sexual
 - other:

Please give exact data concerning kind of violence, frequency and the perpetrator:

- f. Was this reported to the police? If yes, with what result?

- g. Was there an regulation of food in the house?

If yes,
what did it look like?

- h. was food regularly available?

Did the domestic worker get the same food as the employer, or was she given different food?

If not,:

What and when did the worker eat?:

i. Could the worker leave the house on her own?

6. Information on the recruitment

a. How did the worker and the employer meet?

b. Was a third person/party involved?

If yes, who:

did this person want to be paid? If yes:

how much:

through whom:

who received the payment:

c. Who paid for the following:

- Flight:
- Visa:
- medical checks:

d. In case the domestic worker did not pay herself, under what conditions did she have to pay back the money? Did she have to take a debt?

7. Information on the counseling

a. How did the worker get in touch with your organization?

b. Why did she primarily contact you?

c. Did she have her identity papers with her?

d. What was her immigration status:

- during the counseling:
- when she entered Germany:
- when she was working:

f. Who applied for her immigration status?

g. Did she ever go to any German Authority? If yes, which one?

h. How and where did the counseling take place:

- one meeting at the counseling center:
- one meeting outside of the counseling center:
- regular counseling:
- admission and support in a shelter:

h. In which condition was the worker, according to you?

i. Could you support her? if, yes, how?

j. Was she satisfied with the support you could provide?

If not:

What did she expect, what she could not get?:

Why could she not get what she not be supported at this point:

k. End of the counseling:

8. whereabouts of the worker

a. where does she live today?

b. What is she doing, where is she working?

9. The employer:

a. Did you ever contact the employer?

If yes, in which form:

- by telephone:
- through a letter:
- personally:
- other:

b. was he/she cooperative?

If yes, how:

c. If not, which cooperation would have been required according to you?

10. Miscellaneous :

a. Did the worker press charges against the employer?

If yes:

What was the reason:

was experiences did she have by pressing charges:

b. has the press ever been informed?

If yes:

Did it help, or was it contra productive?

c. Has the Auswärtige Amt been informed?

If yes:

What was the reaction?

d. Has the embassy of the employer/ or his senior been informed?

If yes,:

what was the reaction?

e. Was a lawyer informed?

If yes,:

was that helpful?

11. any other relevant information

Annex 5

English translation of excerpts of an authoritative guideline of the foreign office the so called '*Dienstanweisung des Auswärtigen Amtes*'.

5. Private domestic staff

Members of the diplomatic and consular staff or of the administrative and technical staff of foreign missions who have been posted to Germany can employ private domestic staff hired abroad for service in their own household only. Regular 'sharing' or 'lending' of private domestic staff to other (non-privileged, e.g. German) persons is not permitted. The domestic staff may occasionally help out at large functions held by a privileged person, even if their own employer is not the host.

The employer must ensure that employees receive suitable accommodation in the employer's household and have an adequate level of income.

Private domestic staff who regularly carry out employment other than that authorised by the Foreign Office or who live outside their employer's household will have their papers confiscated. They will be required to leave Germany immediately.

5.1 Insurance requirements for private domestic staff

5.1.1 Health insurance

In accordance with Article 33, Paragraph 2 of the Vienna Convention on Diplomatic Relations and Article 48, Paragraph 2 of the Vienna Convention on Consular Relations, private domestic staff are subject to German social insurance requirements unless it can be proven that they are insured in their country of origin or in a third country, in accordance with the regulations applying there. The employer is required to ensure that the employees have adequate health insurance cover in Germany (i.e.: the insuring partner is the employer, the beneficiary is the employee).

5.1.2 Type and extent of health insurance

Health insurance will be regarded as adequate if the services covered are equal to those of the German public health insurance system. Proof of insurance that does

not clearly indicate that this is the case will not be recognised. The Foreign Office will recognise insurance policies with limited validity or duration (e.g. travel insurance policies) for the purposes of entering Germany and for the first 14 days in the country only. All German health insurance companies and all insurance companies within the EU or EEA that have a representative office in Germany will be recognised.

5.1.3 Commencement of the requirement for health insurance

Health insurance is required immediately upon entry into Germany. Thus, it is strongly recommended that the process of acquiring health insurance is started well in advance, and that a travel insurance policy is taken out for the date of entering Germany and for the first two weeks afterwards.

5.2 Length of stay

Private domestic staff may stay in the Federal Republic for up to five years. This limit may not normally be exceeded. Exceptions may only be made for private domestic workers who have not changed employer during their five-year stay, will remain with the same employer and will leave Germany with that employer in the foreseeable future, or for private domestic staff employed in the residence of the Head of Mission who will remain employed there.

5.2.1 Requirement to leave

The employer is responsible for ensuring that his/her private domestic employee leaves Germany immediately once his/her employment has terminated. The employer is responsible for the employee's travel costs back to his/her country of origin.

5.2.2 Reentry into Germany to take up a new position

After an employment contract has terminated, or after the five-year limit has ended and the employee has left Germany, private domestic staff may re-enter Germany at the earliest after one year and take up employment with another member of a foreign diplomatic mission.

5.3 Bringing private domestic staff into Germany on first entry

Persons entering Germany for the first time who are entitled to employ foreign domestic staff may only bring such staff with them on first entry if the consent of the Foreign Office has previously been obtained and if the corresponding entry visas have been issued. The intention to employ foreign domestic staff must be notified to the Foreign Office in good time in advance of the person's entry into Germany. Applications for entry visas must also be lodged with the responsible German foreign mission well in advance.

5.4 Number and age of private domestic staff

The number of private domestic staff permitted in a household depends on the family situation and function of the employer. They must be of age according to the law of their home country and must be at least 18 years old. They may not take up any other gainful employment.

5.5 Family members of private domestic employees

Private domestic staff may not bring family members with them to Germany or have family members join them here. If private domestic employees marry in Germany, each spouse's right to remain in Germany is determined by his or her own employment situation. The five-year rule is not affected by marriage.

The Foreign Office must be notified immediately of any change in the family status of a private domestic employee (e.g. marriage, birth of a child in Germany).

5.5.1 Children of private domestic employees

Children born in Germany to private domestic employees must leave Germany together with their mother, at the latest after the expiry of the five-year limit.

5.6 Change of employer

Private domestic employees may only change employer during their stay in Germany if this is authorised by the Foreign Office **in advance**; such changes of employer should normally be avoided. Changing employer will not, under any circumstances, lead to the five-year limit being extended. When employing a person as a private

domestic employee, the length of time for which he/she has already been in Germany must always be taken into account.

5.7 Change of status

Private domestic staff may not have their status changed to that of a locally employed member of the foreign mission.

5.8 Entry and registration formalities

5.8.1 Before entry

Embassies must notify the intention to employ a private domestic worker to the Foreign Office in good time before the person's entry into Germany; full-time consular representatives must notify both the Foreign Office, by means of their Embassy, and the State or Senate Chancelleries of the appropriate federal state. Even if the private domestic employee is in possession of an official passport, he or she must apply for an official visa with the German mission in their home country, presenting a certificate from the future employer detailing the intended employment and the type of work to be carried out. When doing so, he or she must sign a declaration corresponding to the sample attached to this document as Appendix 11. Once the Foreign Office has given its approval, the German foreign mission will issue an entry visa limited to a period of one month.

5.8.2 After entry

Within two weeks after the employee entering Germany, the diplomatic mission or full-time consular representative must lodge an application with the Foreign Office for a protocol identity card using a Note Verbale that corresponds to the sample attached as Appendix 12. Full-time consular representatives should forward this application to the Foreign Office via the responsible State or Senate Chancellery. Private domestic staff who have not been registered, with all the necessary documentation, two weeks after entering Germany, must leave the country. (This two-week limit also applies to an authorised change of employer.)

The following documentation must be included with the application:

- a copy of the Note Verbale as described in paragraph 5.8.1
- the employee's passport with his/her entry visa

- declaration by the private domestic employee and declaration of responsibility by the employer, in accordance with the attached sample (Appendix 13)
- proof of valid health insurance as described in paragraph 5.1

5.8.3 Extending the protocol identity cards

After the period of validity has expired, a new protocol identity card must be applied for from the Foreign Office or from the responsible State or Senate Chancellery. The application must be accompanied by the employee's passport and proof of current health insurance. If continual health insurance cover cannot be proven, no new protocol identity card will be issued.

Note Verbale

The Embassy/The Consulate of has the honour to inform the Foreign Office/the State Chancellery of , on the basis of reciprocity, that (Surname, first name, function), member of the diplomatic/consular staff, intends to employ/to bring to Germany the national (Surname, first name) as a private domestic employee.

It is hereby undertaken that the employee will be housed in the employer's household, will be paid a wage sufficient for supporting himself/herself in the Federal Republic of Germany and that full health insurance will be concluded for him/her and maintained by means of regular payments.

In addition, it is undertaken that the employee is subject to the regulations applying in his/her home country or in a third country with regard to social security provisions. A declaration by the applicant and a declaration of responsibility by the employer in accordance with appendix 13 of the Guidelines will be presented together with the application for issuance of a protocol residence permit.

The Embassy/The Consulate of avails itself of this opportunity to renew to the Foreign Office/the State Chancellery the assurance of its highest consideration.

Place, Date

Raised Stamp

