




Women Domestic Workers in Diplomatic Households in the Netherlands:

Challenges and Recommendations



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“The tools to crush modern slavery exist, but the political will is lacking”

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Introduction

Migrant domestic workers face significant vulnerability as they are highly susceptible to abuse and exploitation, often enduring these injustices behind closed doors. This hidden nature of their plight makes it challenging for them to seek assistance and for outsiders to detect the abuse. In diplomatic households, which serve as residences for international diplomats and embassy staff, women domestic workers are commonly hired to carry out diverse household responsibilities. Tackling this issue poses a serious and complex challenge for host governments (Human Rights Watch, March 21, 2014).

According to documents obtained by the Volkskrant, the Dutch Ministry of Foreign Affairs has received 26 complaints in the past five years from domestic workers employed by diplomats in embassies in the Netherlands. These complaints involve issues such as underpayment, poor working conditions, and “inappropriate behaviour” (NL TIMES July 14, 2016).

FairWork, a non-profit organisation dedicated to addressing worker exploitation in the Netherlands, has stated that these complaints originate from approximately 14 different embassies, including those of Saudi Arabia, Kuwait, the United Arab Emirates, Qatar, India, Somalia, Bolivia, Ghana, the International Criminal Court, and the European Patent Office. The affected workers come from countries such as Asia, Africa and South America (NL TIMES July 14, 2016) & (Fair work Foundation).

This research investigates the legal framework pertaining to domestic workers employed by diplomats, evaluates the challenges they face, and offers recommendations to tackle these issues. It examines the extent and significance of the problem, identifies the obstacles encountered, identifies gaps in the legal framework and considers international standards and recommendations in order to propose effective measures.

The Vienna Convention on Diplomatic Relations of 1961

The Vienna Convention on Diplomatic Relations of 1961 is an internationally recognised treaty that establishes the standards governing diplomatic immunity. It has been widely ratified by 187 out of 192 UN member states, including the Netherlands, indicating near-universal acceptance. The main objective of diplomatic privileges and immunities is to facilitate the effective functioning of diplomatic missions, rather than granting individual diplomats personal benefits (Angelika Kartusch, June 2011).

Under the convention, diplomatic agents and their family members enjoy certain immunities, including protection from arrest and detention, inviolability of their residences, and absolute immunity from the criminal jurisdiction of the host state, except in cases unrelated to their official duties. However, individuals such as administrative and technical staff, service staff, and private domestic workers have more limited or no immunity, unless specifically permitted by the host state (Art.1, Art.29, Art.30, Art.22, Art.31, Art.37).

Diplomatic immunity begins upon the diplomat's entry into the host state or after notifying the host state's Foreign Ministry of their appointment (Art.39). The duration of immunity depends on the nature of the act. Immunity for acts performed in the exercise of official functions is indefinite and persists even after the diplomat's departure. However, immunity for acts performed in a diplomat's private capacity ceases when their functions end or upon leaving the country after a reasonable period. Immunity can be waived by the sending state or revoked by the host state through a declaration of *persona non grata* (Art.32). It is important to note that diplomatic immunity is a procedural safeguard and does not exempt diplomats from substantive liability for any violations of the law. Diplomats are still obligated to comply with the laws and regulations of the host country, and legal proceedings can be initiated or continued against them once immunity is waived or ceases to exist (Art 41).

Rights Violations of Domestic Workers in the Context of Diplomatic Immunity - an Issue on the International Agenda

A recent report by the UN Special Rapporteur on Contemporary Forms of Slavery highlighted the vulnerabilities of domestic workers to exploitation and abuse, particularly those employed by diplomats, due to the specific protection gap arising from visa status and diplomatic immunity. Recommendations included eliminating visa regimes tying workers to specific employers, conducting thorough investigations and prosecutions of abuses, and granting independent residence rights to victims (Angelika Kartusch, June 2011, pg.13).

The UN Committee on Migrant Workers and regional bodies, such as the Council of Europe and the Organization for Security and Cooperation in Europe (OSCE), have also addressed the issue, emphasising the need for legal remedies and removal of diplomatic immunity for offenses committed by diplomats (Angelika Kartusch, June 2011, pg.12-13).

Overall, the reports and recommendations underscore the urgent need for well-structured measures faced by domestic workers employed by diplomats. By implementing these recommendations, protection and security can be afforded to domestic workers in diplomatic households.

Landmark Supreme Court Case in the UK

The case of *Basfar v Wong*

In a ground-breaking decision delivered by the UK Supreme Court in July 2022, the case of *Basfar v Wong* marked a pivotal moment in clarifying the limits of diplomatic immunity, particularly in cases involving domestic servitude and modern slavery within diplomatic households.

Ms. Wong, a Filipino domestic worker, had worked for Mr. Basfar in Saudi Arabia and later in the UK, where she faced severe labor exploitation and abuse. She made a claim of 16.5-hour workdays, confinement to the house, no pay, and no breaks for 18 months. After escaping, she filed a claim in the Employment Tribunal (ET) to seek redress for her grievances, including failure to pay the national minimum wage, unauthorized deductions from wages, and a breach of the Working Regulations 1998 (SI 1998/1833). (The Supreme Court. *Basfar v Wong*, 2022)

The primary question before the ET was whether Mr. Basfar, a diplomat, could shield himself with diplomatic immunity. The ET, however, determined that Ms. Wong's case fell under the "commercial activity" exception, a decision that Mr. Basfar subsequently appealed. Eventually, the case landed in the UK Supreme Court, where the pivotal judgment was delivered. (Chris Stephen July 11, 2022)

This legal battle shed light on the plight of migrant domestic workers who often find themselves trapped in exploitative conditions akin to modern slavery. The unique challenge in such cases is the domestic setting, which makes it exceedingly difficult to detect and enforce compliance with labor standards. When the employer in question holds diplomatic status, their immunity from the host country's civil jurisdiction further complicates matters. (Chris Stephen July 11, 2022)

Nonetheless, the UK Supreme Court, in a majority decision, concluded that Ms. Wong’s circumstances squarely fell within the parameters of the “commercial activity” exception as outlined in the Vienna Convention on Diplomatic Relations. This pivotal ruling means that Mr. Basfar, a Saudi diplomat, was not shielded by diplomatic immunity when it came to facing civil jurisdiction in the UK. (Chris Stephen July 11, 2022)

This landmark judgment has significant implications for holding diplomats accountable in cases involving modern slavery and domestic servitude. It signals a major step toward ensuring that those who exploit vulnerable domestic workers can be brought to justice, even when they hold diplomatic positions.

Dutch Labour and Regulations

In the Netherlands, domestic workers are protected under various laws and regulations, including the Dutch Civil Code, the Working Conditions Act, and the Dutch Working Hours Act. These laws apply to all workers, regardless of their nationality or immigration status, ensuring basic rights such as minimum wage, working hours, and health and safety standards. However, challenges arise when these workers are employed in diplomatic households, as diplomatic immunity may limit the application of certain laws.

The Domestic Workers Regulation Act (2012) also aimed to improve the working conditions of domestic workers by introducing provisions on minimum wages, working hours, and social security. However, this act does not have jurisdiction over diplomatic households due to diplomatic immunity.

Procedure of reporting abuses in Diplomatic Households in the Netherlands

When it comes to reporting abuses in diplomatic households, the process diverges due to the unique situation of diplomatic immunity. As a result, abuses will be reported to and dealt with by the Ministry of Foreign Affairs, not the Labour Inspectorate. Because of diplomatic immunity, the Ministry of Foreign Affairs does not report to the Coordination Center against Human Trafficking (CoMensha). Only via other organisations like Fair Work Foundation might these potential victims be registered but most often they are not. Further, when considering that many domestic workers, particularly those with an irregular status, prefer to leave the exploitative situation and find alternative work instead rather than to report their situation, the number of victims might even be higher. Finally, there are also cases of trafficking in human beings (THB) in domestic work that are not identified at all (Eefje de Volder, 2017, pg. 3).

Challenges Faced by Women Domestic Workers

Limited Monitoring and Regulations

The privacy and inviolability of diplomatic residences pose a significant challenge in effectively monitoring and regulating the employment conditions of women domestic workers in the Netherlands. The special status granted to diplomatic residences hinders the ability to oversee and enforce labor rights, making it difficult to ensure the fair treatment and protection of these workers. Diplomatic immunity, as enshrined in the Vienna Convention on Diplomatic Relations, grants diplomats and their residences immunity from search, requisition, and legal action by the authorities of the host state. This immunity creates a barrier to conducting inspections and investigations within diplomatic residences, limiting the ability to monitor the employment conditions and welfare of domestic workers (Angelika Kartusch, June 2011, pg. 49).

Restrictions on Autonomy and Family Life

The admission criteria that mandate domestic workers to reside within their employer's household while also prohibiting them from bringing their family members to the host country can be seen as encroachments upon their autonomy, right to privacy, family life, and protection against discrimination. Such restrictions expose them to potential isolation, exploitation, and abuse (Angelika Kartusch, June 2011, pg. 49).

Many domestic workers are compelled to leave their families behind in their home countries, resulting in emotional distress, profound feelings of isolation, and a gradual erosion of their family bonds. This separation has not only adverse effects on the workers themselves but also on their families, who may endure hardships and emotional strain due to the absence of a beloved family member.

The combination of residing within the employer's household and the enforced separation from their own families can render domestic workers highly susceptible to isolation, exploitation, and abuse. Their limited access to support networks can make it exceedingly challenging to seek assistance or report any form of mistreatment. In certain instances, unscrupulous employers may exploit their vulnerable position, leading to incidents of physical, emotional, or financial abuse. (Angelika Kartusch, June 2011, pg. 49).

Low Wages and Financial Constraints

Female domestic workers in diplomatic households often earn wages that fall below the national minimum wage, which poses significant challenges for them in covering additional expenses like external accommodation. Their inability to prove labor rights violations, such as unpaid wages and excessive work hours, due to the absence of witnesses further compounds their difficulties, as these violations are often the primary basis for their claims. These financial constraints not only lead to financial hardship but also increase their vulnerability to exploitation and abuse, given their economic dependence on their employers. This dependence makes it intimidating for them to assert their labor rights or advocate for better working conditions, as they fear losing their employment due to their precarious financial situation.

The combination of low wages and financial constraints faced by female domestic workers in diplomatic households not only affects their immediate financial well-being but also perpetuates a cycle of vulnerability that makes them more susceptible to exploitation and abuse. Moreover, the hidden nature of labor rights violations in the private domain of domestic work further hinders their ability to seek justice and protect their rights. (Gloria Moreno, April 1, 2005).

Lack of Information and Language Barriers

Domestic workers face difficulties in accessing comprehensible information about their rights and available support services. Language barriers can hinder their understanding of their legal rights and limit their ability to seek assistance or justice. NGOs and government interviewees highlighted the significant challenges posed by language barriers when it comes to enabling domestic workers to openly communicate with Protocol officials regarding the abuses they have endured from their employers. (Angelika Kartusch, June 2011, pg.25).

Gaps in the Legal Framework

Lack of Specific Legislation for Domestic Workers.

One of the most pressing issues faced by domestic workers in diplomatic households in the Netherlands is the absence of specific legislation tailored to their unique needs and vulnerabilities. However, labor laws in the Netherlands, including the Working Conditions Act and the Minimum Wage and Minimum Holiday Allowance Act, do provide some general protections for all workers, including domestic workers.

Unlike many other sectors, domestic work remains largely unregulated by Dutch law, making it challenging for domestic workers to access essential protections and assert their rights. This legislative gap leaves them exposed to various forms of exploitation, abuse, and unfair working conditions.

Domestic workers often contend with irregular working hours, inadequate compensation, and a lack of job security. They may also face difficulties in seeking recourse for workplace grievances due to the absence of clear legal frameworks. In diplomatic households, where power dynamics can be particularly skewed, these problems become even more pronounced.

To address these issues effectively, it is crucial for the Netherlands to establish comprehensive legislation specifically designed to safeguard the rights and welfare of domestic workers. This would not only align the country with international standards but also provide domestic workers with the protections they urgently need in a sector where exploitation and abuse can too easily go unchecked.

Lack of Ratification of the ILO Convention 189

The absence of ratification of the ILO Convention 189 on Domestic Workers in the Netherlands poses a significant challenge, primarily due to the lack of a comprehensive legal framework specifically designed to address the unique rights and protections needed for domestic workers. Without this international standard in place, domestic workers in diplomatic households may continue to face inconsistent and inadequate protection, leaving them vulnerable to exploitation, abuse, and unfair working conditions (FNV,2021).

Conclusion and Recommendations

Conclusion

The issue of migrant domestic workers employed by diplomats in the Netherlands is a difficult and urgent issue that needs immediate attention. It is challenging to monitor and address the exploitation and abuse faced by these workers because of the special protection diplomats have and the hidden nature of domestic work. The Vienna Convention on Diplomatic Relations sets the rules for diplomatic immunity but also acknowledges that it does not give diplomats personal advantages or exempt them from legal consequences for breaking the law. The Netherlands, as the host country, faces challenges in offering sufficient protection to domestic workers because of the limitations imposed by diplomatic immunity.

Recommendation

Enhancing Collaboration and Regulatory Frameworks

To effectively address the challenge of limited monitoring and regulations surrounding the employment conditions of women domestic workers in the Netherlands within diplomatic residences, it is essential to enhance collaboration, regulatory frameworks, support services, transparency, and international cooperation. Strengthening cooperation between the Dutch government, diplomatic missions, and relevant stakeholders, along with reviewing laws and regulations, providing comprehensive training programs for diplomatic personnel, improving support services for domestic workers, promoting transparency and accountability, and advocating for international cooperation, will contribute to ensuring the fair treatment and protection of domestic workers while respecting diplomatic privileges and upholding labour rights standards.

Review and Amend Admission Criteria

A re-evaluation and modification of admission criteria is crucial to eliminate constraints that infringe upon the fundamental rights of workers, such as privacy and family life. This involves permitting domestic workers to be accompanied by immediate family members and abolishing the requirement for employees to reside within their employer's residence. It is worth noting that countries like Belgium and France have established practices that enable domestic workers to be accompanied by their families. Moreover, theoretically in Austria, Belgium and France domestic workers are not obliged to live in their employer's house (Angelika Kartusch, June 2011, pg.49).

Ensure Fair Wages and Financial Security

Implementing measures to ensure that domestic workers receive fair wages is paramount. This can be achieved by mandating employers to ensure transparent salary disbursements through bank accounts. For instance, Austria requires the establishment of a bank account of the domestic worker as a prerequisite for the registration of private domestic workers and has notified diplomatic missions and international organisations that wage payments in cash are no longer accepted. While setting up a bank account is not obligatory in the Netherlands, it is common practice endorsed by the protocol department to recommend in practice the establishment of bank accounts (Angelika Kartusch, June 2011, pg.24).

Provide Accessible Information and Language Support

Access of domestic workers to comprehensible information about their legal rights and possibilities to seek support in a language they understand is a key prerequisite for their access to justice. Efforts should be made to ensure accessible legal aid and support services for women domestic workers, including language assistance and culturally sensitive services.

Develop and disseminate information materials, brochures, and resources about domestic workers' rights and available support services. Ensure that this information is provided in languages understood by domestic workers to overcome language barriers.

In this respect, the comprehensive brochure for domestic workers published by the Swiss Foreign Ministry in eight languages and the compilation of Protocol verbal notes and circulars published and distributed by the German NGO Ban Ying are examples worth mentioning (Angelika Kartusch, June 2011, pg.49).

Ratification of the ILO Convention 189

A key recommendation is for the Netherlands to prioritise the ratification of the ILO Convention 189 on Domestic Workers. By doing so, the country can establish a robust legal framework that explicitly addresses the rights and working conditions of domestic workers, including those in diplomatic households. Ratification will ensure that domestic workers are protected by comprehensive laws, receive fair wages, have access to social security benefits, and are safeguarded against exploitation and abuse. This step would demonstrate the Netherlands' commitment to promoting fair and dignified work for all domestic workers and contribute to international efforts in protecting their rights.

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