

PROTECTING DOMESTIC WORKERS EMPLOYED BY DIPLOMATS IN IRELAND



SUMMARY

The MRCI has been directly assisting migrant women who have reported gross exploitation while employed as domestic workers for foreign diplomats in Ireland. This development is extremely concerning for two main reasons. First is the open abuse of power by diplomats hiding behind diplomatic immunity to avoid investigation and prosecution, and denying access to justice for workers. Second is the system of embassy visas that effectively binds non-EU domestic workers to their employers. While it may be the case that most diplomats are responsible employers who do not intend to exploit workers in such vulnerable positions, the current system gives diplomats excessive power in the employer-employee relationship and is fertile ground for potential abuse and exploitation. While the systemic injustice that provides opportunities for exploitation and human rights violations is not unique to Ireland, the government should urgently put in place measures similar to those being taken by other governments to prevent exploitation and protect domestic workers employed by diplomats.

EVIDENCE OF EXPLOITATION IN IRELAND

The problem of the exploitation of domestic workers employed by foreign diplomats is increasingly being given attention nationally and internationally. The *Dispatches* programme, 'Britain's Secret Slaves', on Channel 4 earlier this year highlighted how embassy staff, hiding behind diplomatic immunity, abuse their domestic workers in the UK. This type of exploitation is also happening in Ireland.

MRCI has most recently been advocating on behalf of seven women who reported being exploited as domestic workers while working in the private homes of foreign diplomats in Ireland. These cases range from less severe violations of employment rights to cases of apparent forced labour. Four of these cases have been referred to An Garda Síochána for investigation. In addition, MRCI has attempted to pursue civil redress for violations of employment rights in all cases. It is likely that there are many other domestic workers employed by the diplomatic staff of approximately 130 foreign missions in Ireland who are too afraid to come forward to report similar exploitation due to their vulnerability.

Maria was brought to Ireland with her diplomat employer to work as a childminder when aged 17. Her passport and documents were taken from her when she arrived. She worked from 5.30am until midnight daily. She had no separate accommodation and shared a bed with the children in her care. She received 1-day off every 5 months and was not permitted to go outside the home without her employer. She never received a wage and was forbidden to contact her family. A person from an organisation who called to the house one day met Maria and put her in contact with the MRCI. With MRCI's assistance she ran away and was then referred to An Garda Síochána's Anti-Human-Trafficking Unit for investigation.

There are some trends emerging from the experiences of domestic workers exploited by diplomatic employers.

- The most severe exploitation occurs in cases with younger female non-EU workers recruited from the country of origin of the sending state.
- Most cases include gross underpayment of wages, excessive working hours, no days off, no contracts.
- Workers reported that their conditions of work differed greatly from what they had agreed before coming to Ireland. Though most agreed to work in childcare only, additional tasks included cleaning, cooking, washing and serving the diplomat and his/her family and guests.
- In several instances employees were threatened and told they would be deported immediately if they challenged the employer.
- Employers frequently placed restrictions on the freedom of movement of workers, prohibiting them from living or socialising outside the diplomat's home. This enabled the employer to isolate the worker.
- Accommodation was often unsuitable. Several women slept in the same bed as the children in their care.
- The majority of employers retained workers' passports.
- Workers were of the belief that their lives were totally under the control of the diplomat. They also feared retribution from the diplomatic employer, and their power to impact on them or their family at home in the sending state.

VULNERABILITY FACTORS

MRCI has been working with migrant domestic workers since 2001. The exploitation of domestic workers employed as cleaners, childminders, carers, and cooks in private homes in Ireland is not new. There are several factors which make domestic workers vulnerable to exploitation. Many from outside the EU are employed under the work permit system and are therefore dependent on their employer for their employment and immigration status, which has limited options for changing employer. Domestic workers are isolated in the private home, making it easier for employers to mistreat them. Evidence of exploitation is difficult to gather as there are usually no witnesses to testify to the treatment and conditions that workers can experience. Many workers live in the homes of their employer. This live-in factor can be abused by employers who expect workers to be available for work beyond normal working hours. Workers in private homes typically have limited contact with the outside world in Ireland. Dependence on accommodation makes it more difficult for them to leave an employer for risk of being homeless in addition to losing their income and immigration status. All these factors greatly contribute to the vulnerability of domestic employees. As a result of public campaigns in recent years led by MRCI's Domestic Workers Action Group with the support of SIPTU and the Irish Congress of Trade Unions, measures have been established to protect workers employed in the private home including: a Code of Practice for Protecting Persons Employed in Other People's Homes, S.I. 239 (2007); changes in the issuing of employment permits to non-EU workers employed as domestic workers; and a pilot initiative by the National Employment Rights Authority to inspect the conditions of domestic workers. This has resulted in improvements in the treatment of domestic workers in Ireland.

In spite of this, the vulnerabilities faced by all domestic workers are amplified in a diplomatic household by two key factors. The first is the precarious immigration status of non-EU domestic workers employed by diplomats. The embassy-type visas granted to such workers bind their immigration status in Ireland to their continued employment in a diplomatic household. Secondly, regardless of the circumstances of a worker's particular complaints, the employer's diplomatic immunity leaves workers and the state unable to legally challenge exploitation or to prosecute for violations.

Immigration status

The status of domestic workers and other diplomatic staff of foreign missions in Ireland is governed by the Vienna Convention on Diplomatic Relations 1961 which, under the Diplomatic Relations and Immunities Act 1967, has the force of law in the State. The Convention provides that the sending state must notify the Department of Foreign Affairs in Ireland of the arrival and departure of diplomatic staff, their family members, private domestic staff and the engagement and discharge of persons already resident in Ireland as members of the mission or private staff also entitled to privileges and immunities.

Citizens of certain countries require a visa to travel to Ireland and when they are posted to Ireland they must obtain an Irish visa prior to entry. The Protocol Division of the Department of Foreign Affairs handles the applications from foreign missions regarding issuing and renewing of such visas, acting as an intermediary between the foreign mission and the Irish Naturalisation and Immigration Service who issue the specific visa. Members of the mission, including the private domestic staff, are not required to be issued with a separate Garda National Immigration Bureau (GNIB) registration card after they arrive as other non-EU immigrants usually are. There are no particular conditions attached to the visa other than it being issued for the purpose of allowing the person to take up the assignment. No employment contract outlining the kind of work, duties, conditions and payment in accordance with Irish legislation is required before a visa is issued.

A domestic worker who was already resident in Ireland on foot of a separate immigration permission, and subsequently switched to being employed by diplomats under a visa, may seek to resume their previous immigration status when their assignment with the embassy or diplomat comes to an end. However, where the person was recruited from outside the EU by the foreign mission, it would be expected that they would leave the State when this assignment comes to an end. A domestic worker's visa expires once s/he leaves employment.

Under this system of embassy visas, domestic workers are effectively bonded to their diplomat employers. This factor thus closes the door for domestic workers who want to leave an exploitative situation and remain in Ireland to take up alternative employment and/or pursue some form of justice. When a worker leaves an abusive employer s/he loses her immigration status, is not permitted to take up new employment, and risks becoming homeless and destitute. This forces many domestic workers to remain in exploitative and forced labour situations.

Diplomatic Immunity

The diplomatic immunity of the employer prevents both the receiving state and the worker from challenging exploitation through accessing justice via legal means. Article 31 of the 1961 Vienna Convention provides that, “A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction.” Even in cases of trafficking and forced labour the police cannot prosecute anyone who enjoys diplomatic immunity. They may start an investigation, but if the accused refuses to cooperate, the police often cannot proceed with their investigation. While there are some exceptions to immunity regarding professional or commercial activity and some positive decisions in favour of workers employed in embassies (*see Cudak v. Lithuania-EctHR, Mar. 2010*), this overarching legal protection gives diplomats excessive power in the employer-employee relationship and is fertile ground for potential abuse and exploitation.

In accordance with the Vienna Convention of 1961, diplomats are, at least theoretically, obliged to adhere to and respect the laws of the receiving state. Article 41 of the Vienna Convention provides that, “...without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving state.” Unfortunately there are no mechanisms for legal procedures to enforce this principle.

Additionally, where the sending state sees fit, it may waive such immunity, presumably where its interests are not threatened and to do so advances the common good. Article 32 (1) of the convention provides, ‘*The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under article 37 may be waived by the sending state.*’

In theory, victims can pursue their claims in the diplomat’s sending state. This option is impossible in practice however, as many workers lack the funds necessary to take a claim back in the sending state. The sending state may also lack the same legal rights and protections normally guaranteed in the receiving state.

In 2009 the MRCI advocated on behalf of an employee of the South African embassy who took a case against the South African Ambassador, who she claimed did not pay her according to minimum standards in Ireland and unfairly dismissed her when she raised the issue with her employer. The ambassador chose to invoke diplomatic immunity. The Rights Commissioner decided that he had no jurisdiction to hear the complaints brought by the worker. In another case in 2010, the Domestic Workers Action Group gathered in front of the Philippines Embassy in Ireland to protest

against the embassy’s decision not to attend an employment complaint hearing brought by a domestic who was employed a staff member of the embassy. The woman claimed that her employment rights were violated including gross underpayment of minimum wages.

PROTECTING DOMESTIC WORKERS

Although the numbers of workers affected by rights violations in this context is small, it is a serious human rights issue. There is growing awareness of the exploitation of domestic workers by diplomats on the part of many governments across the world. Various initiatives are being implemented to provide opportunities to strengthen the protections of domestic workers. The fundamental solution to the problem lies in implementing changes to the Vienna Convention. The Parliamentary Assembly of the Council of Europe addresses the situation of foreign workers in private households in Recommendation 1523 (2001) where it identifies the 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 matters. It suggests amending the Vienna Convention in order to waive diplomatic immunity for all offences committed in private life.

Notwithstanding legislative change to the Vienna Convention, the existing gap in the field of legal prosecution challenges governments to offer some defence to the rights of victims and to prevent exploitation. These measures are required in the context of meeting obligations under human rights and other treaties such as the Palermo Protocol, CAHTEH, ECHR, CEDAW, CESC, CCPR¹ and the recently adopted ILO Convention (No.189) on domestic work. To date, such efforts have focused on the areas of prevention, prosecution and protections with the primary responsibility falling to the Protocol Divisions of the Department of Foreign Affairs. Most measures have involved cooperation across state and non-state actors, similar to anti-trafficking National Referral Mechanisms in operation.

The following recommendations are a series of measures in the areas of prevention, prosecution and protection to be considered by the Irish Government to combat the potential abuse of domestic workers by foreign diplomats. Many of these mechanisms currently exist in some form in Germany, Belgium, Sweden, Finland, UK, Austria and the US.

¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementary to the UN Convention Against Transnational Organised Crime (Palermo Protocol) Ad Hoc Committee on Action Against Trafficking in Human Beings (CAHTEH), European Convention on Human Rights (ECHR), Committee on the Elimination of Discrimination Against Women (CEDAW), International Covenant on Economic, Social and Cultural Rights (CESCR), and International Covenant on Civil and Political Rights.

Prevention

The Protocol Division (PD) of the Department of Foreign Affairs, in its role of administering and governing the requests from foreign missions in Ireland for the issuing of visas for the domestic workers, has the opportunity to institute measures to prevent and help identify exploitation of domestic and other household workers. Examples of such preventative measures include:

- Requiring diplomats to fulfil robust admission criteria and procedures, and to comply with monitoring measures, before new or subsequent visas are issued for household and domestic staff.
- Ensuring that the PD provides diplomat employers with concrete guidelines outlining the various obligations of an employer under Irish law. Ireland should also actively educate its own consular staff abroad by issuing guidelines and consequences for violations including removal and prosecution in Ireland.
- Requiring that diplomat employers provide evidence of signed contracts of employment that are in compliance with Irish law, including additional agreements such as payments by electronic transfer into the employee's bank account and employees retaining passports, similar to Belgium, Sweden, Finland, UK, USA.
- Informing domestic workers directly about their rights & entitlements, and appointing a PD contact person to go to for assistance should their rights be violated, as in Belgium and the US.
- The PD should put in place a system to track cases of credible allegations of abuses by certain diplomatic employers. The PD should also limit the duration of validity of a visa and require regular renewal, providing an opportunity to monitor employment law compliance (i.e. P60s and bank statements required), as is the procedure in France, Germany, Austria and UK.

Prosecution

In the absence of diplomatic employers waiving immunity there is an opportunity to establish "out-of court" mechanisms as in Belgium to deal with and resolve grievances. This mechanism could be openly facilitated by the PD with the assistance of the Labour Relations Commission and the National Employment Rights Authority which have competence in this area and conduct their business in private. This avenue of dispute resolution would encourage a culture of compliance and provide a means to have disputes assessed and determined independently. This is without prejudice to the right of the various parties to a dispute to seek to resolve any issues internally, which is encouraged.

Ireland should also ensure that allegations of a criminal nature against domestic workers should be thoroughly

investigated. In cases of reported trafficking and forced labour, requests to waive diplomatic immunity should be the standard practice as in Finland and the UK. In the US the William Wilberforce Trafficking Act 2008 allows for prosecution of diplomatic staff in cases of trafficking as well as suspending the issuing of visas where there is credible evidence of abuse or exploitation. If a foreign mission does not cooperate with grievance mechanisms or waive immunity when requested, the PD should more actively exert pressure on foreign missions. Consequences should range from delaying or refusing visas for future domestic workers to declaring a diplomat employer *persona non grata*.

Protections

Protections are a critical dimension to providing avenues for workers to exit abusive situations and report exploitation. The PD, in cooperation with the Department of Justice and the Department of Jobs, Enterprise and Innovation, should allow domestic workers in situations of exploitation to apply for a temporary permission to remain in the State in order to seek alternative employment under the employment permit scheme, as provided in the Undocumented Workers Scheme (Bridging Visa). Provision should also be made to allow extremely vulnerable workers exiting exploitative situations to access accommodation and essential services. Legal aid and assistance for the domestic worker should be granted in situations where they have made complaints.

The PD should adapt existing anti-trafficking regulations to enable domestic workers working for diplomats identified as presumed trafficked persons to benefit from the same reflection period and short-term and long-term residence permits, including in cases where the diplomatic status of the employer does not allow for court proceedings. Non-EU domestic workers employed by diplomats should also be included in long term residency and citizenship schemes provided under other visa regimes.

The Migrant Rights Centre Ireland is a national organisation working to promote justice, empowerment and equality for migrant workers and their families.

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