

## DIPLOMATIC IMMUNITY AND JUSTICE DENIED: PROTECTING DOMESTIC WORKERS UNDER INTERNATIONAL LAW

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### ABSTRACT

*Domestic work refers to labour performed in or for a household, often by individuals in vulnerable situations. This paper aims to examine how international law addresses the conflict between diplomatic immunity and the protection of domestic workers' human and labour rights. The core issue lies in recurring reports of abuse by diplomats, where domestic workers are subjected to inhumane treatment but are denied justice due to the shield of diplomatic immunity. Despite the existence of credible evidence in many cases, legal proceedings are often obstructed, raising serious concerns about accountability and access to remedies for victims. This study adopts a legal doctrinal analysis, drawing on case law, international conventions, and scholarly literature. The findings reveal that while international law—particularly the Vienna Convention on Diplomatic Relations (1961) and the Convention on the Privileges and Immunities of the United Nations (1946)—provides extensive protections for diplomatic personnel, it frequently fails to safeguard the rights of domestic workers in cases of abuse. By critically assessing the tension between immunity and accountability, this paper contributes to existing scholarship by highlighting the normative gap in international law that questions the adequacy of current mechanisms in addressing diplomatic impunity in employment relations. It offers a framework for reconciling diplomatic privileges with the protection of human rights, an area that remains underexplored in current literature. The research concludes that these legal frameworks require reform to prevent the misuse of diplomatic immunity. States and international bodies should consider amending these conventions to achieve a balanced approach between diplomatic privileges and accountability for human rights violations. Where diplomatic immunity*

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*persists, the sending state should take appropriate measures to ensure a fair trial or provide adequate compensation. Furthermore, adopting a narrower interpretation of “official functions,” as seen in certain U.S. court decisions, may help limit the abuse of immunity. This paper underscores the need to close legal gaps and enhance enforcement mechanisms to protect domestic workers from diplomatic impunity.*

*Keywords: Domestic Workers; Diplomatic Immunity; Human Rights; International Law; Vienna Convention*

## INTRODUCTION

Diplomatic immunity (DI) is designed to facilitate peaceful and effective diplomatic relations by shielding diplomats from the legal authority of host states (Abusamra, 2024). Enshrined in the Vienna Convention on Diplomatic Relations, 1961, this legal protection is pertinent for the autonomy and security of diplomatic agents (Denza, 2008). However, its application has revealed significant tensions between protecting state representatives and enforcing fundamental human rights, particularly in the context of workers engaged in diplomatic homes (Butt, 2024).

Domestic workers (DWs)—often women from marginalized and economically vulnerable backgrounds—frequently face exploitative conditions, including unpaid wages, restricted freedom of movement, physical abuse, and threats of deportation (Dantes, 2023). Victims typically find themselves with limited or no avenues for redress when confronted with abuses perpetrated by diplomatic actors. The very legal frameworks established to facilitate international cooperation often function to insulate perpetrators from accountability (Bergmar, 2014; Mullally & Murphy, 2016). This denial of justice raises critical questions about the parameters of DI and the international legal system’s responsibility to protect vulnerable individuals.

This article examines the legal and ethical implications of DI in cases involving the abuse of DWs. It analyzes relevant international legal instruments, state practices, and judicial decisions to explore the extent to which DI obstructs access to justice. The discussion further considers

potential reforms and alternative legal avenues that could reconcile the protection of diplomatic functions with the imperative to uphold human rights. This study examines whether current international legal frameworks adequately protect domestic workers from abuse by diplomats, and how these frameworks can be reformed to ensure justice.

DWs are those who execute domestic work in or on behalf of a residential premises. (Article 1(a) and (b) of the Domestic Workers Convention 2011 (Convention No. 189)). This definition specifies that a DW is an individual who works to handle a household's needs. Examples of DWs include housemaids, cleaners, gardeners, personal chefs, personal drivers, and housekeepers. Similar to other groups of workers, DWs are susceptible to oppression, forced labour and other violations of their human rights.

What is more worrisome is that there are rumours that DWs have also been subjected to the tyranny of diplomats (Esim & Smith, 2004). DWs are also alleged to be oppressed from achieving proper legal justice because it is claimed that diplomatic officials are exempt from any criminal or civil law judicial process. Due to the DI of officials from the criminal and civil legal authority of the Host State, the abuse of rights and justice against DWs is at times compromised (Haynes, 2023).

It was reported by the International Labour Organization (ILO) that 52.6 million DWs were employed globally in 2010 (ILO, 2013). Since 1995, when 33.2 million DWs were first reported, this number has nearly doubled (ILO, 2013). According to reports, DWs are one of the migrant worker

categories that frequently encounter forced labour issues (ILO, 1980). Additionally, according to estimates, 20.9 million DWs worldwide at one point were subjected to forced labour (ILO, 2013). More than 75.6 million DWs are employed worldwide, with women comprising nearly 76 per cent of the total workforce (ILO, 2021). Many continue to face conditions amounting to forced labour, with ILO (2022) estimating 27.6 million people globally trapped in forced labour, including a significant number in domestic work.

The issue of forced labour may appear in many different forms. For instance, according to reports, housemaids in Saudi Arabia are subject to a preposterous system that defines the position of a maid as someone who lives under sponsorship by the employer's family. This system allows for the slave-like exploitation of the human liberties of such DWs (Garcienda, 2023). It is said that DWs who travel to Latin America experience oppression because of their minority status. They experience oppression in the form of a lack of legal protection for their welfare in the nation where they make a living, unjust labour practices, and oppression by diplomats (Esim and Smith, 2024).

It is an incontrovertible fact that many employers, including diplomatic officials, are accused of mistreating DWs. Despite clear evidence placing some diplomatic abuses within the receiving state's legal jurisdiction, many diplomats evade investigation, arrest, or trial. Such immunity undermines natural justice by placing diplomatic status above the rule of law and due process (Hidayat & Syed Raza, 2024).

DWs are generally entitled to fundamental rights recognized in existing international instruments. The ILO highlights critical concerns regarding their welfare, urging states to address these issues through national laws and policies. This

underscores the importance of ratifying the Domestic Workers Convention, 2011 (No. 189), which, to date, has been adopted by only 35 countries.

Although international instruments exist to protect the liberties and fates of DWs, this study examines whether current international law adequately safeguards them from abuse by diplomatic officials. It will also explore potential legal reforms to protect DWs from such exploitation.

This study fills that gap by examining how international law addresses the conflict between DI and the protection of DWs' rights. It contributes to existing scholarship by highlighting the inadequacy of current legal frameworks in reconciling diplomatic privileges with accountability for rights violations.

The objectives of this study are: (i) to analyse international conventions related to DI and DWs, (ii) to evaluate related case precedents, and (iii) to propose legal reforms.

Unlike earlier works such as Staiano (2013) and Mullaly & Murphy (2016), which primarily examined the human rights implications of DI in theory or through selected regional cases, this study situates DWs' labour rights within the framework of the Vienna and UN Conventions, offering a reform-oriented model that reconciles diplomatic privileges with accountability, an approach largely absent from previous scholarship.

## RESEARCH METHODOLOGY

This study uses a doctrinal legal research approach, analyzing statutes, international treaties, international tribunal cases, and conventions as primary sources. It also refers to secondary sources such as journals and textbooks. A critical analysis examines legal protection against the misuse of DI in cases of DW mistreatment. The theme of

this article is the discourse of national humanitarian law focusing on the plight of DWs in the context of international legal instruments (Saiful Izan & Mohd Hisham, 2023). Analytically, the study adopts an interpretative legal reasoning framework, supported by selected international or national case analysis. It interprets the relevant provisions of international conventions—particularly the *Vienna Convention on Diplomatic Relations (1961)* and the *Domestic Workers Convention (No. 189, 2011)*—to evaluate how different jurisdictions have balanced diplomatic privileges against accountability for human rights violations. The discussion integrates judicial precedents and state practices to identify emerging norms and inconsistencies in the application of DI.

However, the research is limited in scope to the international legal framework and selected state practices with reported cases involving diplomatic abuse. It does not include empirical fieldwork or in-depth national case studies beyond those publicly documented. Jurisdictional coverage is also constrained by the availability of case law and state-level data, which vary across regions. Despite these limitations, the doctrinal and case-law approach provides a robust foundation for assessing the adequacy of existing international legal protections for DWs.

## LITERATURE REVIEW

### DIPLOMATIC IMMUNITY V. HUMAN RIGHTS

The link between DI and the rights of DWs in diplomats' residential homes has become an increasingly interesting area of study. A Kartusch (2011) highlights the pervasive nature of violations and abuse suffered by migrant DWs engaged by diplomats, attributing to the lack of accountability largely to DI. The report underscores the essential role of non-governmental organizations in exposing abuses by

reporting to United Nations (UNs) mechanisms associated with legal instruments like CEDAW, CERD, ICCPR, ICESCR, and MWC, and through emergency request to the UNs. Kartusch's work underscores the significance of the UN mechanisms in addressing these violations in the absence of domestic legal remedies.

Building on this concern, Staiano (2013) discusses the inherent tension between the rules on DI and the imperatives of international law, particularly in cases of egregious abuse. Staiano argues that the current framework allows for impunity and calls for the exploration of alternative remedies, focusing especially on the relevance of universal legal standards and the potential of international instruments to offer some form of legal recourse.

Naveen (2024) provides a more doctrinal analysis of DI under the Vienna Convention on Diplomatic Relations (1961), explaining its scope and underlying principles, including the concept of "persona non grata". While acknowledging the importance of DI for maintaining diplomatic relations, Naveen critiques the potential for its misuse, especially in private matters such as labour exploitation. The article highlights how such misuse challenges the balance between state sovereignty and human rights protection.

Mullally and Murphy (2016) analyze the evolving and often inconsistent jurisprudence surrounding state and diplomatic immunities in employment disputes involving DWs. Focusing on the UK and USA, the authors argue that the legal landscape is highly divided, with courts grappling to harmonize the principles of immunity with evolving international norms. This legal uncertainty, they suggest, undermines DWs' access to effective remedies and reveals deeper tensions about the role and purpose of international law.

Butt (2024) further investigates the abuse of DI, highlighting a range of high-profile cases involving criminal acts such as human trafficking, corruption, and modern slavery. He underscores the challenge this poses to the legitimacy of diplomatic protections and international cooperation. The landmark English Supreme Court decision in *Basfar v Wong* (2022) is cited as a pivotal moment, where the court held that domestic servitude falls outside the scope of diplomatic immunity, thereby signaling a shift toward prioritizing human rights over rigid interpretations of immunity.

Özdan (2022) examines the theoretical underpinnings of DI and evaluates its consistency with overriding civil liberties standards, like the prohibition of slavery and torture. The chapter argues that absolute immunity is fundamentally at odds with international civil liberties law, and that when diplomatic protections are used to shield violations of peremptory norms, the legal framework itself must be questioned and reformed.

Across the literature, a clear convergence emerges on the recognition that DI, while central to maintaining international relations, has created significant gaps in accountability for abuses committed against DWs in diplomatic households. Kartusch (2011) and Staiano (2013) both highlight how the current framework perpetuates impunity, though Kartusch emphasizes the role of NGOs and UN mechanisms in filling this gap, whereas Staiano calls for reform through alternative legal remedies rooted in universal norms.

Similarly, Naveen (2024) and Özdan (2022) critique the doctrinal rigidity of DI under the Vienna Convention. Mullally and Murphy (2016) further substantiate these concerns through comparative judicial analysis, revealing inconsistent jurisprudence in the UK and USA. Butt (2024), in turn, moves the debate forward by illustrating how recent case law signals a

judicial shift toward limiting DI in cases of domestic servitude.

Collectively, these selected works underscore the need to reconcile the legal shield of DI with accountability mechanisms for human rights abuses. While international treaties and advocacy efforts provide some avenues for redress, the lack of enforceable legal remedies remains a barrier. The literature demonstrates a growing consensus that reform is necessary to protect vulnerable DWs within diplomatic households, whether through reinterpretation of existing laws, policy changes, or international advocacy.

#### CONTEMPORARY ABUSE CASES

According to reports, certain DWs in the homes of diplomats were subjected to cruel treatment by their employers, had their human rights violated, and were made to perform labour like slaves (Naveen, 2024). A DW for a Qatari military diplomat was denied the right to a medical checkup in the reported case of *United States v. Al Homoud* (No. 15-cr-00391 (W.D. Tex. Feb. 9, 2016)) despite complaining of an ongoing stomachache. She managed to flee her workplace and secure medical assistance to save her life. As a result, it was determined that she had cancer.

Meanwhile, a DW was also subjected to forced employment in the home of a Tanzanian diplomat in the case of *Mazengo v. Mzengi* (No. 1:07-cv-00756 (D.D.C. Dec. 20, 2007)). She was compelled to work for no pay. Additionally, her employer consistently refused her access to healthcare. She almost had to have her toes amputated since the procedure was delayed. The victim's lack of access to justice is the main issue when DWs are oppressed in a diplomatic family. This is because the diplomatic representatives frequently assert their immunity, and their sending state will not agree to waive it.

This case, *Sabbithi v. Al Salleh* (623 F. Supp. 2d 93), involved three Indian DWs who brought a claim against a Kuwaiti ambassador in the USA as an illustration. They alleged in their lawsuit that the diplomat had not paid them their promised salaries and had required them to labour up to 19 hours a day without a break. Therefore, the Department of Justice of the USA has advised the sending state (Kuwait) to waive the diplomatic official's immunity, taking into account the diplomatic official's immunity. Kuwait, though, has declined to consider the plea.

The only "highest punishment" that a receiving state may apply against a sending state that resists to relinquish a DI is to declare the envoy will be *persona non grata* and no longer required on its soil. This circumstance is evident in the 2014 case of *United States v. Khobragade* (15 F. Supp. 3d 383). In this instance, Dr. Devyani Khobragade, a diplomat stationed in the USA, was detained in relation to allegations that she had participated in the mistreatment of her maid, a violation of the country's laws against fraud and false statements. As a result of her legal right to DI, the Indian government has vehemently condemned any action taken against her. Additionally, the Indian government refused to lift her immunity. Because of this, the USA has advised her to be removed from their sovereign territory.

The assassination of Kim Jong Nam in Malaysia, which is alleged to have involved a conspiracy by diplomatic representatives of the Democratic People's Republic of Korea (DPRK) Embassy, is another instance where DI was tried to be used (Shiddiqii, & Utama, 2023). Although there are compelling reasons to believe that these diplomats were involved in the murder of Kim Jong Nam, no additional action can be taken to ensure that the victim receives the respect she deserves. The only sanction Malaysia could impose at the time was to pronounce the DPRK's ambassador

"*persona non grata*", which eventually led to his departure from Malaysia and return to his home country.

The concept of immunity of diplomatic officials does not stop protecting these individuals as people. The immunity is also extended to the building and the personal house of the diplomatic agents. Even though the premises of the missions and residences are abroad outside the boundary of the sending state, the duty of the receiving state to protect the inviolability of these premises is embedded under the Vienna Convention on Diplomatic Relations of 1961 ("VCDR 1961"). Article 22 of VCDR 1961 provides, among others, as follows:

"Article 22

- 1.The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.
- 2.The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.
- 3.The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution."

According to Article 22, the sanctity of a mission's building and land is addressed in two distinct aspects. First, the premises of the sending state's mission are shielded from any actions or proceedings within the territory of the host state. Second, the receiving state is obligated to provide protection to the mission by taking all necessary measures. The receiving state is prohibited from entering the mission's premises without the explicit consent of the sending state's head of mission, even in cases of emergency, safety, or health inspections. The receiving state has no authority to enter, even if there is suspicion that the premises are being misused by the sending state beyond their intended function

or for any legitimate purpose. (Roberts, 2009).

This has been agreed by the UK House of Commons Foreign Affairs Committee on the murder case of a British police officer, which happened outside the Libyan premises of the Mission in London in 1984 (Ashton, 2025). In this case, the Libyan government refused to permit the British authorities to enter the premises of the mission in London to search for the murder weapon and the murder suspect in the incident. The House of Commons Foreign Affairs Committee, upon carrying out an enquiry into what had happened, held that in such situation, when there is no continuing threat from the mission to the public, there is no justification that would allow the authorities to enter the said premises (United Kingdom House of Commons Foreign Affairs Committee 1st Report, (1984-5). paras 88-95). Additionally, it is clear that if the receiving state knew of any threat to the mission's premises, it was obligated to provide protection (Roberts, 2009).

The extension of the missions' premises is subject to the understanding between the sending state and the receiving state. Neither party can individually determine the extension, size, or border. The immunity of the premises is also extended to the residences of the diplomatic agents. Article 30 of the VCDR 1961 provides as follows:

*“Article 30*

*1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.*

*2. His papers, correspondence and, except as provided in paragraph 3 of article 31, his property, shall likewise enjoy inviolability”.*

Based on the provision above, the diplomatic officers possess not only protection from the legal authority of the receiving state but also the inviolability and protection of their private residences and

property. This obligation is binding on the receiving state, as it is an international legal duty recognized by member states.

Similarly, the same obligation applied to Malaysia in the case of Kim Jong Nam. Although the Malaysian government had credible evidence implicating DPRK diplomatic agents, it lacked legal authority to act. It could not enter the mission's premises, search private residences, or inspect property without the permission of the sending state. As a result, justice for Kim Jong Nam remains unserved to this day, due to the provisions of the VCDR 1961 (Shiddiqii, & Utama, 2023).

## INTERPRETATIVE LEGAL REASONING

### INSTRUMENTS OF THE ILO

The passage of the Convention on Domestic Workers in 2011 (No. 189) represents the most recent advancement in the rights of DWs. Only 35 nations have ratified Convention No. 189 so far. Any person hired to perform domestic work as part of an employment relationship is covered by Section 2 of this Convention No. 189's broad definition of DW. As a result, it serves more than only housekeepers (Claire & Florences, 2021).

Article 5 of this Convention No. 189 expressly forbids DWs from being the target of any types of assault, harassment, or abuse. DWs are guaranteed fair terms of employment (Article 6, Convention 89), informed of the details regarding their employment clearly, and where possible, through a written contract concluded between the parties (Article 7, Convention 89). They are guaranteed the freedom of movement in their employment and the right to retain their travel documents, as affirmed in Article 9 of Convention 89. They are entitled to a weekly rest period of at least 24 hours, as stated in Article 10(2) of Convention 189. More importantly, Article

17 mandates that Member States establish a robust system for filing complaints of DW abuse, ensuring thorough investigation, effective enforcement, and appropriate punishment for offenders.

#### INSTRUMENTS OF THE UNs

According to Article 55 of the Charter of the United Nations—the organization’s founding document established in 1945—the UN is responsible for encouraging global respect for human rights and fundamental freedoms for everyone, regardless of race, gender, language, or religion (Owoeye et al., 2022). The UNs' member states, including Malaysia, affirm the concept outlined in Article 55. This pledge is included in Article 56 of the same Convention, which also states that Member States would work with the UN to implement the necessary measures to uphold the spirit of Article 55. The action that the States must take under Article 56 is described as "substantive rather than procedural," and the manner and methods of execution are at the liberty of the member nations. (Wolfrum, 2002).

The UNs made a significant stride in promoting human rights with the adoption of the Universal Declaration of Human Rights in 1948. Article 1 declares that every individual is born with equal dignity and rights. Articles 2 and 7 emphasize legal equality and protection from discrimination, including that based on race or social standing. Article 4 bans slavery outright, and Article 5 strongly denounces all forms of torture. Additionally, Article 8 upholds the right of individuals to pursue justice when their basic rights are violated.

The UDHR addresses key rights essential to the welfare of workers. Article 20 affirms that people have the right to express themselves freely and assemble peacefully. Article 22 ensures the right to protection of social security, while Article 23 upholds the right to employment, to just and favorable employment, to fair wages,

and to join workers’ organizations. Additionally, Article 24 ensures the right to reasonable working hours and paid leave.

Although not legally binding, the UDHR has paved the way for its principles to acquire the standing of customary international law (Abdul Ghafur, 2012). Other binding UN documents, such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the United Nations Convention Against Torture (CAT), also recognize domestic workers as human beings.

States are required by the legally binding ICCPR to make sure that the civil and political rights of every person are respected (Abdul Ghafur, 2012). These rights include the right to liberty and safety (Article 9, ICCPR), freedom of movement (Article 12, ICCPR), freedom of association (Article 22, ICCPR), and equality before the law (Article 26, ICCPR), among others. They also include the right against any form of discrimination (Article 2, ICCPR), the right against deprivation of life (Article 6, ICCPR), the right against torture, cruel, inhuman, and degrading treatment (Article 7, ICCPR), the right against any form of slavery (Article 8, ICCPR), and more.

The legally binding ICESCR provides strong and comprehensive protection for DWs, equal to that of other workers. Article 6 of the ICESCR requires State Parties to protect the right to select one's employment. State Parties are also required, among other things, to provide workers with adequate training and information so they are aware of their rights. The State Parties are required by Article 7 to ensure, among other things, that all workers receive equal treatment about their employment, including the right for recess and take time off (Article 7d, ICESCR), equal pay for work of a similar nature (Article 7a, ICESCR), and—most



importantly—a safe working environment and conditions (Article 7b, ICESCR).

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is appropriate to DWs' rights, especially since women make up the majority of those employed as housemaids. Article 2 (e) mandated State Parties to take the appropriate actions to end any form of discrimination against women by any party. On the other hand, Article 2 (f) requires State Powers to make the necessary changes to domestic laws, regulations, and customs to eliminate all forms of oppression against women. On the other hand, Article 11 states the responsibilities of the State Parties to ensure that female workers are granted the same employment rights such as the ability to select a career (Article 11c, ICESCR), income equality (Article 11d, ICESCR), the right to social security benefits both during employment and retirement (Article 11e, ICESCR), and the right to receive health benefits (Article 11f, ICESCR).

Article 10 of the CAT mandates Members to make sure that their citizens receive the necessary information and training regarding the outlawry of torture (UNs Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984). A victim of such cruelty is guaranteed the right to be compensated and rehabilitated under Article 14.

Current United Nations instruments are well-crafted to safeguard the rights of DWs. However, to fully realize the spirit and intent of these conventions, commitment is needed from states like Malaysia, which have yet to ratify key legally binding instruments such as the CAT, ICCPR, and ICESCR. Even among states that have ratified these instruments, full implementation remains incomplete due to reservations and objections to certain obligations. For instance, Malaysia still maintains its exception to CEDAW's Article 9(2) since it is unable to provide Malaysian

women the same rights as children who are granted citizenship (Human Rights Commission of Malaysia, CEDAW Report, 2022).

#### IMMUNITY OF DIPLOMATIC OFFICIALS UNDER VIENNA CONVENTION ON DIPLOMATIC RELATIONS (VCDR) 1961

VCDR 1961 contains guidelines for the development of bilateral domestic ties. These guidelines are regarded as the oldest and most fundamental in all international law (Denza, 2016). According to the provisions of Article 51, the Convention only became legally effective on April 24, 1964, the 13th day after the instrument of ratification by the 22nd country was forwarded to the Secretary-General of the UNs. 193 nations have ratified this convention. Malaysia accepted the Convention on 9 November 1965 (United Nations Treaty Collection, 2023).

The 53 articles of the Convention, which include regulations on DI and of diplomatic officers in performing their duties as a foreign delegation in the host country, among other things, outline the procedures for diplomatic relations between nations.

Under Article 31(1) of VCDR 1961, a diplomatic officer is exempt from criminal prosecution. A diplomatic official also has immunity from civil and administrative legal authority, except in three situations: (i) private immovable property disputes (Article 31(a), VCDR, 1961); (ii) inheritance disputes in which the agent represents himself, not the sending state (Article 31(b), VCDR, 1961); or (iii) situations involving professional or business services outside the scope of the diplomats official duties in the receiving state (Article 31(c), VCDR, 1961). A head of mission or staff member of a diplomatic office is referred to in Article 1(e) as a diplomatic agent.

Diplomatic agents' family members, as well as the mission's administrative and technical personnel, are exempt from criminal, civil, and administrative jurisdiction, except in the circumstances specified in Article 31(a), (b), and (c).

This immunity, however, is not a completely unassailable privilege. According to Articles 32(1) and (2) of the VCDR 1961, a sending state may relinquish the privileges of a diplomatic agent by giving immediate consent to the receiving state. Therefore, it is evident that the sending state may forgo such immunity. The Court of Appeal had argued in the French case of *Nzie v. Vessah* (1978, 74, ILR 519) that a diplomat's immunity can only be waived with the explicit consent of the sending state, not through a private letter from an individual diplomat. In this case, a letter from a Cameroonian Embassy official in France, requesting the matter be heard by a French court, does not amount to a valid surrender of immunity.

In this case, the court ruled that the letter issued by one of the ambassadors to waive DI was unconstitutional. Since the government of Cameroon did not clearly and unequivocally consent to the waiver, the attempt to renounce immunity was deemed unlawful.

In the case of *Gustavo JL and Others* (187, 86, ILR 517), the Supreme Court of Spain reiterated its earlier ruling in *Nzie v. Vessah*, holding that the sending state, not the ambassador or his agent, has the authority to relinquish DI. A clear and unconditional waiver of DI must be formally and expressly granted by the sending state; it cannot be implied, presumed, or issued by an individual diplomat.

This can be determined from the decision in the 1987 case of *Public Prosecutor v. Orhan Olmez* (87 ILR 212), in which the Supreme Court of Malaysia

argued that the Turkish Government's diplomatic note offering the First Secretary's presence to verify the veracity of some documents issued by the embassy did not directly relinquish its diplomatic protection.

The International Criminal Court's ruling in a case involving the USA and Iran governments provides evidence of the applicability of this immunity (International Court of Justice, 1980). In this case, the Iranian judiciary and the Iranian foreign minister both threatened to extradite a US diplomat, prompting the US government, among others, to request a ruling from the International Criminal Court. According to the International Court of Justice's ruling on the United States Government's counterclaim, any attempt by the Iranian Government to prosecute a U.S. diplomat would constitute a serious violation of its obligations under Article 31(1) of the VCDR 1961.

The immunity of a diplomatic officer in matrimonial proceedings applies not only to claims directly brought against the officer but also to legal proceedings related to family issues, such as divorce and alimony, as evidenced by numerous international cases. (*de Andrade v De Andrade*, 1984, 118 ILR 299; *P v. P (Diplomatic Immunity: Jurisdiction)*, 1987, 1 FLR 1026; 114 ILR 485; *In re B (A Child) (Care Proceedings: Diplomatic Immunity)*, 2022 EWHC 1751 (Fam); 2003, 2 WLR 168). Based on the foregoing, the VCDR 1961 shields diplomatic personnel, their families, and the technical and administrative staff of a foreign delegation from virtually all civil and administrative jurisdictions as well as all criminal jurisdictions. The immunity may only be resolved if the sending state clearly waives it. A diplomatic agent, their family members, and the employees of a foreign delegation are not susceptible to any legal action without such a waiver. Any action the receiving state takes against these diplomats will be viewed as a grave infringement of international law.

A recent incidence on this issue can be seen in an Australian case involving *Shergill v. Singh* (2023, FCA 1346-326 IR 428), Navdeep Suri Singh, former Indian High Commissioner to Australia, was accused of exploiting his domestic worker, Ms. Shergill, including confiscating her passport, imposing excessive working hours, and underpayment. The Federal Court of Australia ruled that Singh was liable for significant breaches of Australian employment law, ordering him to pay \$189,000 in unpaid wages. The case highlighted that a former diplomat could be held accountable for labor abuses, especially after leaving their official posts, challenging the traditional scope of DI.

In another case in Australia between *Arunatilaka v. Danaratna* (2024, 918-334 IR 52), Himalee Arunatilaka, a former Sri Lankan diplomat, was found to have exploited her DW, Ms. Danaratna, including imposing excessive working hours without proper compensation. The Federal Court ruled that Arunatilaka owed Ms. Danaratna nearly \$500,000 in unpaid wages and interest, despite Arunatilaka's absence from the proceedings. This case underscored the judiciary's willingness to address labor abuses within diplomatic contexts, even when the alleged perpetrators invoke DI.

In *Swarna v. Al-Awadi*, (622 F.3d 123 (2d Cir. 2010) the District Court determined that a Kuwaiti diplomat's actions of denying his DW her promised benefits, abusing her physically, and raping her were not considered to be a part of the diplomat's official mission-related duties. Therefore, as stated in Article 31 (1) of VCDR 1961, the diplomat shall not have the right to assert DI from the local legal authority. The acts would not be immune from the Receiving State's jurisdiction because they would fall under the exemption of Article 31(1)(c).

Similar reasoning was used in the 2009 case of *Baoanan v. Baja* (627 F. Supp.

2d 155 (S.D.N.Y. 2009). In this instance, the court decided that a diplomatic officer's hiring of a DW had no direct bearing on the diplomat's official duties. Therefore, in matters related to employment, there is no entitlement to DI in the receiving state. However, it is significant to remember that the USA does not follow the common law system of law.

The Supreme Court in England also adopted a similar strategy (Sarto, 2023). The Supreme Court of England recently ruled in the case of *Basfar (Respondent) v. Wong (Appellant)* (2022, UKSC 20), in which Khalid Basfar, a Saudi Arabian diplomat, oppressed his Filipino domestic worker Josephine among other things by ordering her to wear a bell every day, failing to pay her salary, making her work up to 16 hours per day, barring her from communicating with outsiders, and denying her the right to rest and vacation, among other things. Khalif Basfar's actions, according to the Supreme Court of England, are not directly connected to the official duties of diplomatic personnel. Under Article 31(1)(c) of the VCDR 1961, the court rejected his claim to DI from England's jurisdiction (Ryan, 2024). The case is likely to set a new precedent in England, offering renewed hope to DWs abused by diplomats that they can pursue justice through civil actions.

These cases reflect a growing trend toward limiting the scope of DI, particularly concerning labour abuses and exploitation of DWs. Judicial systems are increasingly willing to hold diplomats accountable for actions deemed outside the protective boundaries of their official functions.

THE CONVENTION ON THE PRIVILEGES  
AND IMMUNITIES OF THE UNITED  
NATIONS, 1946, AND THE CONVENTION  
ON THE PRIVILEGES AND IMMUNITIES  
OF THE SPECIALIZED AGENCIES, 1947

The other pertinent international instruments that grant DI to members of organizations are the Convention on the

Privileges and Immunities of the United Nations, 1946 ("Convention 1946") and the Convention on the Privileges and Immunities of the Specialized Agencies, 1947 ("Convention 1947"). Representatives of Member States are guaranteed rights and DI under Article IV of the 1946 Convention, including immunity from legal action. Only the Member State in which the representative is a citizen may expressly waive this immunity. For instance, only Malaysia has the authority to rescind the immunity of Malaysia's Permanent Representative to the UN.

On the other hand, the Convention of 1946 also provides a DI to the Secretary-General, Assistant Secretary-General, officials, and experts on Mission for the UNs (Sections 18, 19, and 22 of the 1946 Convention). The representatives of members, secretary-general, assistant secretary-general, officials, and experts on mission for the UN, however, may have different privileges depending on the regulations that apply to them. Only the United Nations Secretary-General is empowered to relinquish the DI of the Secretary-General, Assistant Secretary-General, representatives, and experts on mission (Sections 20 and 23 of the 1946 Convention).

Additionally, the Convention of 1947 grants privileges and immunity to its officials (Section 19 of the 1947 Convention), executive heads of each Specialized Agency (Section 21 of the 1947 Convention), and representatives of its members (Section 13 of the 1947 Convention). Each category's range of privileges and immunities may be different. The immunity for representatives of members of Specialized Agencies may only be waived by the relevant member state (Section 16 of the 1947 Convention), much as the immunity under the Convention of 1946. The waiver of immunity for the executive head or any official of a Specialized Agency may only be granted by

that specific Specialized Agency itself (Plant, 2022).

## FINDINGS

Finding 1: Diplomatic immunity overrides domestic justice mechanisms. Building on earlier scholarship by Staiano (2013) and Mullaly & Murphy (2016), which explored the human rights challenges created by DI, this study offers a deeper inquiry into how international law structurally allows immunity to override domestic justice mechanisms. Unlike prior works that focused on documenting human rights violations or advocating for state responsibility, this paper exposes how international legal instruments themselves—particularly the Vienna Convention and related frameworks—embed a hierarchy that privileges diplomatic protection over victims' access to redress. By doing so, the study not only identifies this normative imbalance but also proposes a recalibration of international legal norms to reconcile DI with the principles of rule of law and human rights.

Finding 2: Domestic workers are not entirely excluded from the protection of international law. In fact, existing frameworks—such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the ILO Domestic Workers Convention No. 189—affirm their right to humane treatment, fair working conditions, and protection from exploitation. The United Nations and other international bodies have also introduced various mechanisms, including special rapporteurs, treaty-body reporting, and periodic reviews, to strengthen compliance and visibility of DWs' rights. However, despite this extensive normative framework, the study finds that these protections remain largely ineffective.

## DISCUSSION

The judgments cited make it abundantly clear that international law offers insufficient protection for DWs. The judiciary is bound by existing legal frameworks that uphold the diplomatic immunity granted to diplomatic agents in cases involving clear violations of domestic law. The judiciary is constrained by existing legal frameworks that uphold DI, even in situations involving blatant infringements of domestic law and people's rights. Without an explicit waiver from the sending state, no investigation, prosecution, or sentencing can lawfully progress. In practice, when a problem arises between DI and the rights of DWs, immunity takes precedence.

It is high time to reassess these outdated regulations, more than a century after the enactment of treaties granting DI. The international community must pay close attention to the ongoing abuse of immunity by diplomats and sending countries. Unfortunately, there has been such a long silence over the actual occurrences of DW oppression.

International law at times fails to deliver justice to those abused by diplomats. According to the current legal framework, the culprit may be instructed to leave the territory of the receiving state if the sending state/sending organisation declines to relinquish the DI of a diplomatic officer. The international community may consider several recommendations to address this vulnerability. The provisions of the outdated international rules, which granted diplomatic officials complete protection without adequate checks and balances, should be changed first and foremost.

To prevent diplomats from abusing their immunity, the VCDR 1961, Convention 1946, and Convention 1947 need to be amended. Any alleged abuse of DI will be reported to the United Nations committee, and the decision to revoke immunity will no longer be made solely by the sending state but rather by an

independent committee following a careful review of the reports and evidence provided.

In addition, the international community might also want to consider requiring the sending state that declines to lift the diplomatic representative's immunity to ensure that a just proceeding is held in the sending state's court. According to Article 31(4) of VCDR 1961, a diplomatic officer who possesses DI while on the territory of the receiving state is nonetheless subject to the legal authority of that country. Therefore, none of the requirements of the current VCDR 1961 conflicts with our proposal. Moreover, the UNs may wish to guarantee that its representatives are given access to the case at all times and report to the UNs General Assembly the results of the investigation and trial as a process of checks and balances, and to prevent any bias or injustice.

The UNs and the sending state or organisation must give urgent and focused attention to cases of abuse that fall outside the reach of any legal system. A dedicated compensation mechanism should be established to ensure that victims with legitimate claims, denied justice due to DI, receive appropriate redress. This must include compensation for lost wages, medical expenses, therapy, rehabilitation, and other essential needs. As previously noted, current international law offers no viable path to justice for these victims. The global community has failed profoundly by remaining silent in the face of ongoing abuses. A swift and coordinated response is essential to protect affected individuals, providing them with access to food, shelter, medical care, and rehabilitation so they can begin to rebuild their lives after such traumatic experiences.

States Parties is also encouraged to consider using a "narrower" interpretation of the definition of "official functions" as adopted in some United States court cases to exclude diplomatic officers from the

enjoyment of civil jurisdiction immunity per Article 31 (1) (c) of the VCDR 1961 if these DI laws are challenging to amend due to the difficulty of gaining majority support and commitment.

Recent developments in other jurisdictions highlight an emerging trend toward strengthening accountability mechanisms in addressing abuses by individuals shielded by DI. For instance, the United Kingdom has introduced clearer procedural guidelines and inter-agency coordination to ensure that diplomatic protections are not misused. The United States has adopted a more transparent complaints framework and public reporting mechanisms for cases involving DWs employed by diplomats. Similarly, Australia has advanced internal review procedures that balance international obligations with domestic accountability.

## CONCLUSION AND REFORM PROPOSALS

The preceding analysis makes it clear that the rights of DWs are routinely violated, due to the immunity and privileges granted to foreign diplomats. The global society must adopt urgent action to tackle this issue. A reassessment of DI laws is essential to prevent misuse and ensure access to justice. This study offers a reform-oriented strategy that balances diplomatic privileges with responsibility by placing DWs labour rights in a unique way inside the framework of the Vienna and UN Conventions.

Without embedding these suggestions into binding legal instruments, they may lack enforceability and real-world impact. Key suggestions can be incorporated into legal frameworks, both domestically and internationally.

First, host countries can update their diplomatic protocols and labour laws to integrate: (i) Mandatory registration and approval of DW contracts, including

specified working hours, wages, and leave entitlements; (ii) Condition for diplomatic accreditation: Granting accreditation only if diplomats sign legal agreements ensuring fair treatment and waive certain immunities in civil labour matters; (iii) Bank transfer requirement for DW salaries as a condition of employment permits. For example, the U.S. already requires certain diplomatic missions to use a written employment contract and pay wages through electronic transfer.

Second, a model Protocol or Convention Amendment can be created through the United Nations or regional bodies (e.g., AU, EU, ASEAN). It is a need to draft a Model Protocol on the rights of DWs in diplomatic homes, to be adopted voluntarily or incorporated into bilateral agreements.

Third, amending or clarifying interpretations of the Vienna Convention, especially Article 31 (Scope of immunity), and clarifying that immunity does not cover acts of a private nature, such as labour exploitation or trafficking. Further, Article 9 (persona non grata), which mandates expulsion in cases of abuse findings, must be enforced.

Fourth, bilateral agreements between host and sending countries must include binding provisions that directly address the issue of DI in labour law violations. These agreements should incorporate: a waiver of immunity in cases involving labour rights abuses; joint monitoring mechanisms; third-party oversight from credible bodies such as the ILO or trusted NGOs; effective dispute resolution mechanisms, including arbitration panels to handle civil claims filed by DWs.

Fifth, establishing a special labour visa regime is essential. This visa category would be specifically tailored for DWs employed by diplomatic personnel and be

... tied to legal protection under the host nation's labour legislation, access to a transparent monitoring and grievance redress system. The right to automatically transfer to alternate employment in cases of abuse, protecting workers from sudden deportation if they flee an exploitative household.

Sixth, the creation of a Legal Aid Fund or Victim Compensation Scheme is crucial. This state-managed fund should be partially financed by contributions from sending states and diplomatic missions. A mandatory bond or insurance policy is required of diplomats employing domestic workers. Such a fund would ensure that victims receive compensation even in situations where legal prosecution is blocked by DI. These measures, collectively, would represent a significant step toward upholding the rights and dignity of DWs within diplomatic households.

TABLE 1. Proposed Suggestions and Legal Instruments

Suggestions	Legal Instruments
Contract approval, salary monitoring	Domestic labour law / Foreign affairs regulations
Immunity waiver for labour disputes	Bilateral agreements / Amendments to Vienna Convention
Safe reporting and legal aid	Host country anti-trafficking law / Immigration law
Persona non grata provisions	Diplomatic and consular regulations
International oversight	UN Convention / ILO Protocol / Regional human rights charters

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#### CONFLICT OF INTEREST

The authors confirm that they have no conflicting interest in this study.

#### AUTHORS' CONTRIBUTION

All authors contributed to the development of this article and approved the final version for publication.

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