

Mandates of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on trafficking in persons, especially women and children

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on contemporary forms of slavery, including its causes and consequences; Special Rapporteur on the human rights of migrants; and Special Rapporteur on trafficking in persons, especially women and children, pursuant to Human Rights Council resolutions 42/10, 43/6 and 44/4

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **changes made to the Overseas Domestic Worker visa in April 2012, amendments made to the Immigration Bill which in May 2016 became the Immigration Act 2016, and the consequences of these legislative changes, which are still in effect.**

According to the information received:

There are two types of visa for migrant ('overseas') domestic workers in the UK: one for domestic workers in private households, and one for private staff in diplomatic households. More restrictive visa conditions for both visa categories were introduced in April 2012. The changes removed the entitlement to change employer whilst in the UK and introduced further restrictions on how long migrant domestic workers could stay in the UK. The changes made have been strongly opposed by migrant domestic worker advocates and anti-trafficking/slavery campaigners who have been campaigning for their reinstatement since. The right to change employer is considered a basic precondition to ensure protection against abusive or exploitative employers and to prevent trafficking in persons.

Your Excellency's Government argued in 2012 that the changes made to the Overseas Domestic Workers visa were required to align the visas with its strategy of attracting the "brightest and best" migrants as a matter of priority. Also, the purpose of the changes made was to restrict eligibility for permanent residence.

In response to a significant increase in reported abuses following the changes made in 2012, in 2016, additional changes were introduced to the Overseas Domestic Worker visa and changing employer became permitted through an amendment to the *Immigration Bill 2015-16*, which on 12 May 2016 became the Immigration Act 2016. Under the new Immigration Rules, all migrant domestic workers were granted the option to change employer, but only for the remaining term of their six-month visa, which is non-renewable. Also, migrant domestic workers found to be a victim of trafficking or slavery were granted the possibility of applying for limited leave to remain in the UK for up to two years,

with permission to work as a domestic worker. Within this framework, however, they have no access to public funds. Furthermore, migrant domestic workers who are not found to have been a victim of trafficking or slavery were not granted the right to renew their visa.

The legislative changes made in 2012 and 2016 have been the subject of repeated calls for reform, including by the Committee against Torture (CAT), the Committee on Economic, Social and Cultural Rights (CESCR), the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) and numerous civil society organizations and trade unions.

With regard to the changes made in 2016 to the terms of the so-called “tied” visa for migrant domestic workers, CAT expressed concern that these changes did “not provide a meaningful escape route for many migrant workers who have experienced abuse in the United Kingdom, especially those who have become trapped in an abusive employment relationship CAT/C/GBR/CO/6 (CAT 2019). CESCR urged your Excellency’s Government to (a) adopt all necessary measures to ensure that all migrant workers, including migrant domestic workers, enjoy the same conditions as other workers as regards remuneration, protection against unfair dismissal, rest and leisure, limitation of working hours, social security and maternity leave protection; (b) protect migrant workers and migrant domestic workers from all forms of exploitation and abuse, including through the effective implementation of the Modern Slavery Act 2015; (c) improve the complaint mechanisms and legal assistance provided to migrant workers and (d) ensure effective inspection mechanisms for monitoring the conditions of work of migrant workers and migrant domestic workers. The CESCR also expressed concern at migrant domestic workers being at greater risk of being victims of abusive working conditions (E/C.12/GBR/CO/6 (CESCR 2016).

The Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) has called for reforms to the Overseas Domestic Workers Visa regime and has called on the UK authorities to fully implement the recommendations of the Ewins Review, to allow for change of employment and, for domestic workers employed in diplomatic households, ensure that work contracts are concluded with Embassy missions rather than individual diplomats. GRETA also called on the UK to ensure that inspections can take place in private households to prevent abuse of domestic workers and to ensure identification of cases of trafficking in persons¹.

It is critical to ensure that the principle of non-discrimination and the obligation of guaranteeing gender equality is recognized in all measures to protect the human rights of migrant workers and to effectively prevent trafficking in persons. The majority of migrant domestic workers are women, and are at heightened risk of trafficking and slavery where the State fails to effectively protect their human rights as migrant workers.

¹ (Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom: Second Evaluation Round (GRETA(2016)21) (para 106).) See also GRETA’s first evaluation report, paragraphs 101, 102 and 110.

According to information received, there are several areas of particular concern regarding the legislative changes made to the Overseas Domestic Worker visa in 2012 and 2016, as outlined below:

- Migrant domestic workers are excluded from legislation determining the maximum number of hours an employer can request them to work, which increases the risk of exploitation;
- Based on legislative amendments undertaken in 2016 and reflected in the Immigration Act 2016, migrant domestic workers are no longer tied to a specific employer. While they are allowed to change employers within the six-month term of their visa, migrant domestic workers risk destitution if they change jobs and/or challenge their employer, as they are not granted the right to renew their visa. As a consequence, migrant domestic workers continue to be dependent on their employers and many endure exploitative working conditions in order to keep the job which allows them to legally reside in the UK. According to information received, most migrants who enter the UK on an Overseas Domestic Worker (ODW) visa have a valid visa (or entry clearance) secured at a visa issuing centre overseas on the basis of their employment. Hence, they enter the UK legally. Many then have their passports confiscated by their employer, so although they have a valid visa/ leave to remain in the country, they are unable to show proof of this. Many migrant domestic workers do not know the details- such as the duration of their visa. This may be because their employer made the arrangements and kept the information from them, because they do not read, or not read in English. Such migrant workers are at a particularly high risk of being preyed on by those looking to exploit their insecure status, especially if migrants have escaped their employer's home without passport or any evidence of their migration status in the UK.
- Experience has shown that finding decent work with only a few months left on a non-renewable visa is unrealistic, including in the domestic sector.
- Based on the above point, concerns are raised that the current legislative framework in place may limit migrant domestic workers' effective access to justice, as they are not likely to report abuse or exploitation in the first six months if their permit cannot be extended beyond that.
- Based on the changes made to the Overseas Domestic Worker visa in 2016, confirmed survivors of trafficking or slavery may apply for a two-year visa through the National Referral Mechanism (NRM). However, this threshold implies that migrant domestic workers are not in a position to report exploitation or abuse at an early stage/in a timely way. Only until abuses deteriorate to the point of trafficking or slavery migrants can access protection, and even then there is no guarantee that their claim will be accepted and they recognized as a survivor of labour exploitation. Only those migrants who receive a positive Reasonable Grounds decision while their initial six-month visa is still valid are permitted to

work. Those migrant workers who enter the NRM and receive a positive Reasonable Grounds decision after their six-month visa has expired do not have permission to work in the UK. They need to wait until their trafficking or slavery claim has been determined, leaving them in limbo and without legal work permit. Many migrants need to pay off debts and send home vital remittances for an undetermined amount of time.

- According to a High Court judgment issued in 2020, it took 356 days in average in 2017 until a Conclusive Grounds decision was reached and in 2019, the average rose to 462 days². According to information received, the average time taken from referral to a conclusive grounds decision made in 2020 was 339 days.
- While they wait for a decision regarding their claim, migrants whose visas expired before their Reasonable Grounds NRM decision may remain in the UK but without the right to work, the respective migrants are potentially exposed to further exploitation and abuse. In the absence of permission to work, this may prevent potential victims of slavery or trafficking from accessing the referral mechanism, particularly if they have family responsibilities.
- The subsistence allowance provided to migrants who have a pending NRM decision is £39.60 a week which is insufficient for a decent living and may push them into poverty or even destitution. Often, migrants may have no other choice but to work in the informal sector in which working conditions are unregulated, salaries tend to be very low and the risk of being exploited is higher than in the formal sector. Without being legally allowed to work, migrants are unlikely report exploitation and abuse in the informal sector which reinforces the protection gap further.
- If a victim of slavery or trafficking is handed down a Conclusive Grounds decision which gives entry to the NRM, the affected person must apply for a visa within 28 days of being notified by the Home Office should they not be granted Discretionary Leave to Remain. When applying for such a visa, victims are required to provide evidence of their finances and how they plan to maintain themselves without recourse to public funds. For those who had to wait for a conclusive grounds decision for a long time without a permission to work, this requirement will be very difficult to meet. It thus increases the financial and social pressure on already vulnerable victims of trafficking or of contemporary forms of slavery.
- Migrant domestic workers who have faced abuse by their employer but do not meet the definition of having been trafficked to the UK for the purposes of exploitation are not eligible for a two-year Domestic Worker visa, which leaves them without any options to seek employment or residence. Consequently, such migrants are highly vulnerable to labour

² [EOG \(Anonymity Order Made\) v Secretary of State for the Home Department \(Rev 1\) \[2020\] EWHC 3310 \(Admin\) \(03 December 2020\) \(bailii.org\)](#).

exploitation, trafficking in persons and other human rights abuses. Particularly live-in domestic workers face a high risk of being subjected to exploitation which may amount to forced labour.

- Many migrant domestic workers who have recently arrived in the UK face difficulties in accessing timely and adequate information about their rights, entitlement and available reporting mechanisms in a language they understand. In the absence of such information, migrant domestic workers face a risk of being exploited and/or abused without knowing what their rights are or where to turn to in such incidences. Your Excellency's Government confirmed in April 2021 that it is abandoning plans to hold information meetings for newly arrived migrant workers in the UK, a commitment which had been made in 2016 in recognition of the failure to provide information during the visa application process or after workers arrive in the UK.
- Without access to decent work and to unconditional assistance and social protection, survivors of slavery and/or trafficking - face significant barriers regarding their effective and sustainable recovery and they are unable to gain financial independence. There is a risk that survivors develop mental health problems if they are not allowed to work over an extended period of time and their pre-existing trauma may be compounded. The risks of re-trafficking and other forms of exploitation are increased.

We are aware that in February 2021, a petition with over 12700 signatures was handed over to the UK Government and Parliament, requesting that the pre-2012 Overseas Domestic Worker visa with a route to settlement be reinstated.

As United Nations human rights experts, we firmly believe that migrant workers should be granted the right to change their employer at any point in time and for any reason while being able to apply for an extension of their visa/residency status. This would, in our view, contribute directly and significantly to the prevention and protection from exploitation and abuse of migrant workers.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned observations.
2. Please provide detailed information on how the current legislative framework applying to migrant domestic workers complies with your Excellency's Government obligations under the international legal framework of human rights law relating to the protection of the human

rights of migrants (regardless of their immigration status), the protection from slavery and other relevant norms and standards.

3. Kindly indicate if your Excellency's Government intends to amend the current Immigration Rules, for example by granting the right to work to migrants who are potential victims of slavery or of trafficking and who have been included in the NRM.
4. Please indicate how your Excellency's Government monitors the labour conditions of domestic workers and what measures are taken against employers who engage in exploitation and/or abuse of these workers, including by confiscating their passport. Please also indicate if any employers have been investigated and sanctioned/prosecuted in this regard. Please elaborate on your Excellency's Government efforts to enhance the capacity of the labour inspectorate to monitor working conditions in private households.
5. Please provide information on the measures applied to prevent the exploitation of domestic workers in diplomatic households.
6. Please indicate what measures your Excellency's Government has adopted or intends to adopt to guarantee the effective access to justice and redress for migrant domestic workers, regardless of their immigration status, including their access legal assistance and information. Please provide details on the protection measures available for migrant domestic workers during the process of accessing justice, and how these measures ensure causing their further victimization and exploitation.
7. Please indicate for which reasons your Excellency's Government has abandoned plans of holding information meetings for newly arrived migrant workers in the UK, after a commitment had been made in 2016 to offer such information sessions to migrants about their rights and duties.
8. Please indicate if there are any other measures to enable the monitoring of compliance with terms and conditions of employment contracts for migrant domestic workers and on protection of migrant domestic workers in diplomatic households.
9. Please indicate and elaborate on any further efforts to facilitate access to long term social protection for survivors of trafficking, other forms of contemporary slavery or labour exploitation that is afforded unconditionally, regardless of the victims' participation in the criminal proceedings.
10. Please elaborate on measures taken to ensure the application the non-punishment principle for victims of trafficking in persons for any unlawful activity carried out by a trafficked person as a direct consequence of their trafficking situation.

11. Please provide information on any measures that your Excellency's Government has taken or intends to take in order to implement the recommendations by human rights bodies, referred to above.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

In the meantime, we urge your Excellency's Government to immediately take steps to ensure the protection of migrant domestic workers in the UK.

Please accept, Excellency, the assurances of our highest consideration.

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Special Rapporteur on contemporary forms of slavery, including its causes and consequences

Felipe González Morales
Special Rapporteur on the human rights of migrants

Siobhán Mullally
Special Rapporteur on trafficking in persons, especially women and children

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer to the recommendations made by the Special Rapporteur on contemporary forms of slavery in report A/HRC/39/52 which focused on domestic servitude affecting marginalized migrant women workers in the global economy. In this report, the Special Rapporteur called upon States to “create viable, accessible and non-discriminatory employment options for women as a sustainable alternative to poverty and to prevent exploitation” (para 82 a); to “adopt and implement labour and social protection laws which extend to all domestic workers, including migrant domestic workers” (para 82 f); to “avoid the isolation of domestic workers by ensuring their freedom of movement and access to communication” (para 82 j); to “ensure that national migration policies are in compliance with international obligations to respect, protect and fulfil the human rights of all persons within the jurisdiction of a State, irrespective of the migration status of individuals. On that basis, adopt gender-responsive migration policies, programmes and services, and safe, orderly and regular migration pathways, including for women and girls, as a means of preventing domestic servitude and other types of contemporary forms of slavery. Women should actively participate in decision-making regarding their safety and protection” (para 82 f) and to “ensure that migrant women have access to the regular labour market in the host country” (para 82 t).

Furthermore, we wish to refer to the report of the Special Rapporteur on the human rights of migrants on the access to justice for migrant persons (A/73/178/Rev.1). In this report, the Special Rapporteur highlighted that States have “a duty to protect migrants at all stages of the migratory process and to provide them with access to justice to obtain redress for any discriminatory treatment or human rights violations” (para 71). Effective access to justice includes as guarantees of due process the right to legal aid and legal representation, the right to information and to an interpreter, the right to consular assistance, and access to remedies and redress. The Special Rapporteur recommended States to “ensure and facilitate equal and effective access for all migrants whose labour or human rights are violated to independent, competent, fair, effective and accountable judicial and quasi-judicial institutions” (para 75 b); to “end discrimination and inequalities for migrants in the legislation, policies and practices that regulate access to justice” (para 75 e).

Additionally, we would like to recall the Principles and Guidelines on the human rights protection of migrants in vulnerable situations. Particularly, we would like to draw your attention to Principle 3 on access to justice, which calls upon States to ‘take measures that will enable migrants, including migrants at particular risk of marginalization and exclusion, to enjoy effective and equal access to justice’ and to “ensure that migration status that depends on a single employer or a partner is not a barrier to seeking or obtaining protection, support, or justice”. This principle further guides States to “strengthen or establish official mechanisms and procedures to receive, investigate and monitor allegations of human rights violations and abuse of migrants”, as well as to “consider granting legal status to migrant victims or witnesses of crimes during the process of accessing justice”.

Further, Principle 7 on the protection from violence and exploitation establishes to take measures to prevent and respond all forms of exploitation and violence against migrants, and guides States to “ensure that the measures taken will prevent the recurrence of abuse and are accessible to all migrants”; to “ensure that legislation and policy, as well as practice, reduce the risk that migrants will be exploited by those who offer them services or work in the formal or informal sectors, including the risk of being subject to forced labour or trafficking in persons”; and to “establish accessible and confidential services for migrants who are survivors of violence and exploitation”, further establishing that migrant’s experiences of violence “should be addressed without causing further victimization”.

We would also like to refer to Principle 14 of the Guidelines, on the right of migrants to work in just and favourable conditions. This principle highlights the importance of developing appropriate and gender-responsive policies and interventions to protect the rights of all migrants in the labour market, ensuring that they do not suffer discrimination and enjoy equality of treatment with nationals and recognizing that many, especially women, are compelled to work in the informal economy and are often excluded from the protection of national labour laws. Therefore, States should “establish effective complaint mechanisms to ensure that workers, regardless of their nationality, and migration and residence status, can lodge complaints against employers and obtain remedy (...) if violations of labour rights have been committed”.

Moreover, we would like to draw the attention of your Excellency’s Government to the Global Compact for Safe, Orderly and Regular Migration (A/RES/73/195). Particularly, we would like to refer to objectives 6 and 7. Through objective 6, States have committed to facilitate fair and ethical recruitment and safeguard conditions that ensure decent work and protect all migrant workers against all forms of exploitation and abuse (para 22). This objective further includes the commitment to “develop and strengthen labour migration and fair and ethical recruitment process that allow migrants to change employers and modify the conditions or length of their stay with minimal administrative burden” (para 22 g) as well as to “adopt specific measures to prevent, report, address and provide effective remedy for all forms of exploitation and abuse” (para 22 k).

Similarly, Objective 7 recognizes the commitment by States to address and reduce vulnerabilities in migration, by reviewing relevant policies and practices to ensure that they do not increase vulnerabilities of migrants (para 23 a), explicitly acknowledging migrant domestic workers and those working in the informal economy (para 23 d).

Furthermore, we would like to recall article 6 of the International Covenant on Economic, Social and Cultural Rights, ratified by your Excellency’s Government in 1976, which recognizes the right to work and article 7 on the right of everyone to the enjoyment of just and favourable conditions of work. We also wish to recall General Comment No. 23 (2016) issued by the Committee on Economic, Social and Cultural Rights (CESCR) on the latter article. The General Comment notes that “the right to just and favourable conditions of work is a right of everyone, without distinction of any kind. Hence, the right applies to all workers, including workers in the informal sector, migrant workers and domestic workers (E/C.12/GC/23 para 5). We would also like to refer to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially

Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, ratified by your Excellency's Government in 2006, in particular articles 6 and 9 which state obligations to protect and prevent, and CEDAW, CEDAW General Recommendation 26 on women migrant workers, and in particular recommendations regarding responsibilities specific to countries of destination, as well as CEDAW General Recommendation 38 on trafficking in women and girls in the context of global migration. At regional level, we would like to draw your attention to the Council of Europe Convention on Action against Trafficking in Human Beings and in particular articles 5, 6, 10, 12, 17, as well as the European Convention on Human Rights, art 4, ratified by your Excellency's Government in 2008 and 1950 respectively. Finally, we would also like to recall OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking.

We would also like to bring to your attention the report by the Special Rapporteur on trafficking in persons, especially women and children to the Human Rights Council in 2019 A/HRC/41/46 on Innovative and transformative models of social inclusion of survivors of trafficking in persons into societies. We would like to highlight recommendations made by the Special Rapporteur to States on areas such as considering the revision of any legislation or policies hampering social inclusion, including policies tying workers to a single employer, or preventing equal access to long-term empowerment measures (para 66), in addition to other measures with regard to trafficked persons' access to empowerment measures in the long term (para 68).

Additionally, we wish to refer to the Fundamental Conventions of the International Labour Organization (IL), in particular the Forced Labour Convention, 1930 (No. 29) of the International Labour Organization, ratified by your Excellency's Government on 3 June 1931; the Protocol of 2014 to the Forced Labour Convention (P029) which your Excellency's Government ratified on 22 January 2016 and the Abolition of Forced Labour Convention, 1957 (C105), ratified by your Excellency's Government on 30 December 1957. Article 2 of P029 creates an obligation of State parties to adopt the following measures in order to prevent forced or compulsory labour:

- (a) educating and informing people, especially those considered to be particularly vulnerable, in order to prevent their becoming victims of forced or compulsory labour;
- (b) educating and informing employers, in order to prevent their becoming involved in forced or compulsory labour practices;
- (c) undertaking efforts to ensure that:
 - (i) the coverage and enforcement of legislation relevant to the prevention of forced or compulsory labour, including labour law as appropriate, apply to all workers and all sectors of the economy; and
 - (ii) labour inspection services and other services responsible for the implementation of this legislation are strengthened;

- (d) protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process;
- (e) supporting due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour; and
- (f) addressing the root causes and factors that heighten the risks of forced or compulsory labour.

Lastly, we wish to bring to your attention the ILO general principles and operational guidelines for fair recruitment which in general principle 1) state that “Recruitment should take place in a way that respects, protects and fulfils internationally recognized human rights, including those expressed in international labour standards, and in particular the right to freedom of association and collective bargaining, and prevention and elimination of forced labour, child labour and discrimination in respect of employment and occupation”. Principle 10 stipulates that “Workers should have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment”; principle 11. States that “Freedom of workers to move within a country or to leave a country should be respected. Workers’ identity documents and contracts should not be confiscated, destroyed or retained”. Principle 12 stipulates that “Workers should be free to terminate their employment and, in the case of migrant workers, to return to their country. Migrant workers should not require the employer’s or recruiter’s permission to change employer” and principle. 13 states that “Workers, irrespective of their presence or legal status in a State, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred”.