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'Tied Visas' and Inadequate Labour Protections: A formula for abuse and exploitation of migrant domestic workers in the United Kingdom

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Abstract

This article examines the link between restrictive immigration schemes, specifically 'tied visas' and the selective application of labour laws, with exploitation of workers. It focuses on the situation of migrant domestic workers, who accompany their employers to the United Kingdom (UK) and are exposed to both an excessively restrictive visa regime, introduced in April 2012, and limited labour protections. The immigration status of these workers is currently tied to a named employer, a restriction that traps workers into exploitative conditions, often amounting to forced labour, servitude or slavery. Additionally, current UK labour laws are either not enforced or not applicable to domestic workers. The article concludes that unless the current immigration regime is abolished and comprehensive labour law protections are extended to migrant domestic workers, exploitation will continue.

Keywords: domestic workers, immigration law, *Kafala*, labour law, exploitation

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Introduction

The abuse and exploitation endured by many migrant domestic workers globally is well documented and can often reach levels of forced labour, servitude or slavery.[1] This article does not attempt to map all instances and forms of exploitation; its aim is to examine how immigration and labour regimes contribute to such abuse. Reports concentrating on the UK and various Arab States, which are the focus of this article, include migrant domestic workers' accounts of physical, sexual and psychological abuse.[2] Many have had their passports confiscated and are prevented from leaving the place of employment unaccompanied.[3] Domestic workers report working excessive hours often for minimal, if any, salary.[4] Such conditions put the physical health and safety of workers at great risk, emphasising the need for protecting their rights.

This article does not claim that in the absence of restrictive immigration and labour regimes migrant domestic workers are not at risk of exploitation. Indeed, a number of intrinsic characteristics of domestic work enable exploitation to flourish. Nevertheless, what makes the situation in the UK particularly severe is that the present immigration and labour regimes applicable to migrant domestic workers facilitate and enhance such abuse, elevating

1 Organization for Security and Co-ordination in Europe (OSCE) Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, 'Unprotected Work, Invisible Exploitation: Trafficking for the purpose of domestic servitude', OSCE, 2010; P Smales, 'The New Slave in the Kitchen: Debt bondage and women migrant domestic workers in Asia', Asia Pacific Forum on Women, Law and Development, 2011.

2 R Begum, "'I Already Bought You": Abuse and exploitation of female migrant domestic workers in the United Arab Emirates', Human Rights Watch (HRW), 2014, pp. 32–33; Kalayaan, 'Still Enslaved: The migrant domestic workers who are trapped by the immigration rules', Kalayaan, 2014, retrieved 5 January 2015, http://www.kalayaan.org.uk/wp-content/uploads/2014/09/tied-visa-20141.pdf; HRW, "'As If I Am Not Human" Abuses against Asian domestic workers in Saudi Arabia', HRW, 2008, p. 69.

3 V Mantouvalou, 'Overseas Domestic Workers: Britain's domestic slaves', *Socialist Lawyer,* no. 69, 2015, p. 44.

4 I Leghtas, 'Hidden Away: Abuses against migrant domestic workers in the UK', HRW, 2014, pp. 33–35; Begum, pp.36–38; Kalayaan, 'Britain's Forgotten Slaves; Migrant domestic workers in the UK three years after the introduction of the tied Overseas Domestic Worker visa', Kalayaan, 2015, retrieved 26 June 2015, http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Kalayaan-3-year-briefing.pdf

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it from individual abuse on the part of the employers to institutionalised exploitation.[5]

When examining restrictive immigration regimes, the article looks at the *Kafala* system, which has received great censure, and compares it to the current UK migrant domestic worker visa. Relevant UK immigration rules are examined, together with parliamentary and non-governmental organization (NGO) reports on the current visa and its effects. A number of core UK labour law provisions are reviewed in an attempt to demonstrate how domestic workers are, implicitly or explicitly, excluded from key protections. Finally, the article seeks to identify means of enhancing the protection of migrant domestic workers' rights to freedom from abuse and exploitation.

Domestic Workers: Characteristics and vulnerabilities

According to the International Labour Organization (ILO), domestic work is 'work performed in or for a household or households.'[6] The prominence of domestic work worldwide is evident by recent ILO estimates, surmising that between 1995–2010 the global number of domestic workers has risen from approximately 33.2 million to 52.6 million.[7] Domestic work is a female-dominated sector, with women accounting for 83% of domestic workers worldwide.[8] Even though an exact percentage cannot be obtained due to data limitations, a high percentage of female domestic workers are migrants.[9] This supports the view that there has been a trend towards the 'feminisation of migration',[10] with many women from less developed countries now moving to more developed countries in order to take employment as domestic workers. Recent research on the 'feminisation of migration' moves away from the initial focus on wives and children migrating to join earlier waves of male migrants, and looks at women as independent labour migrants.[11] As Beneria, Deere and Kabeer observe, 'profound transformations [have been witnessed] in the structure of families and gender roles in the international division of labor';[12] with female migrants constituting 'a mighty but silent river' in the migration reality.[13]

Contrary to men however, migrant women enter a market that is often left in the informal economy with limited protections for the worker. Entrenched gender discrimination affects the social, economic and political rights of women in their home countries, limiting their educational and employment opportunities.[14] As Satterthwaite notes, the feminisation of migration is driven by a number of 'worldwide forces in which gender roles and sex discrimination are intertwined with globalization'.[15] Thus, while migrant men are given the opportunity to enter both low and high-skilled jobs, commonly part of the formal economy, women are often restricted to a finite range of female-dominated occupations, rooted within traditional gender perceptions often placing the woman in the home.

The article's focus on migrant domestic workers is based on the increased precariousness and vulnerability of their situation, due to restrictive immigration schemes. The use of the terms 'precariousness' and 'vulnerability' is intentional, as explained below, and both terms have academic precedent in research on migrant domestic workers.[16]

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5 House of Lords/House of Commons, 'Report of the Joint Committee on the Draft Modern Slavery Bill' (Session 2013-14, HL Paper 166, HC 1019), para. 225.

6 ILO C189, *Domestic Workers Convention, 2011 (N. 189), Convention concerning decent work for domestic workers*, 16 June 2011, Article 1 (Domestic Workers Convention).

7 ILO, 'Domestic Workers Across the World: Global and regional statistics and the extent of legal protections', International Labour Office, 2013, p. 24.

8 Ibid., pp. 19, 21.

9 Ibid., pp. 24, 39.

10 See N Piper, 'Feminisation of Migration and the Social Dimensions of Development: The Asian case', *Third World Quarterly*, vol. 29, issue 7, 2008; A Hochschild, 'Love and Gold' in B Ehrenreich and A Hochschild (eds.), *Global Woman: Nannies, maids and sex workers in the new economy*, Granta, 2003, p. 17

11 E Hofmann and C Buckley, 'Global Changes and Gendered Responses: The feminization of migration from Georgia', *International Migration Review*, vol. 47, issue 3, 2013, p. 510.

12 L Beneria, C Deere and N Kabeer, 'Gender and International Migration: Globalization, development and governance' in L Oso and N Ribas-Mateos (eds.), *The International Handbook on Gender, Migration and Transnationalism: Global developlment perspectives*, Edward Elgar Publishing Ltd, 2013, p. 45.

13 United Nations Population Fund (UNFPA), 'State of World Population 2006: A passage to hope–Women and International migration', UNFPA, 2006, p.21.

14 OSCE Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, 'Combating Trafficking as Modern-Day Slavery: A matter of non-discrimination and empowerment', OSCE, 2012, p. 51.

15 M Satterthwaite, 'Using human rights law to empower migrant domestic workers in the inter-American system' in N Piper (ed.), *New Perspectives on Gender and Migration: livelihood, rights and entitlements*, Routledge, Oxon, 2008, p. 278.

16 V Mantouvalou, 'Human Rights for Precarious Workers: The legislative precariousness of domestic labour', *Comparative Labor Law and Policy Journal*, vol. 34, issue 1, 2012, pp.133–166; J Fudge and R Owens, 'Precarious Work, Women and the New Economy: The challenge to legal norms' in J Fudge and R Owens (eds.), *Precarious Work, Women and the New Economy*, Hart Publishing, Oxford, 2006, p. 10.

Elements identified as determining whether an employment relationship is a precarious one include the control the worker has over the labour process, for example over the working conditions and the wages; the degree of certainty as to the continuance of the employment; the regulatory protection available for the particular employment sector; and the income level of the employment.[17] The majority of these elements are directly linked to state policies and laws, and as this article demonstrates the UK government has contributed to the creation and maintenance of such precarious employment relationships.

Vulnerable workers have been defined as individuals 'who are at risk of having their workplace entitlements denied, and who lack the capacity or means to secure them.'[18] Under this definition, it is clear that vulnerability can be both the result of precarious employment, due for example to the lack of labour law protections, and the result of characteristics of the particular individuals and labour sectors that may hinder their protection.

Anderson asserts that the term 'precariousness' is more suitable for describing the situation of domestic work and domestic workers than the term 'vulnerability' as the latter risks 'naturalising these conditions and confining those workers so affected to victimhood.'[19] Yet, by referring to domestic workers as 'vulnerable', the author does not claim that this is an inherent characteristic of the particular persons, but as Satterthwaite notes, vulnerability is 'the product of political, economic, and cultural forces acting along a variety of identity axes, including gender, race, and nationality, that disempower specific sets of women in particular ways.'[20] 'Precariousness' does not fully capture the dangerous situation in which individuals often find themselves. Precarious employment can simply refer to non-standard work.[21] Such flexible employment can often be the conscious choice of the worker and the most beneficial one in meeting his or her needs and obligations during a particular period. Notably, flexible and secure employment has been strongly advocated by the European Commission through its 'Flexicure' strategy.[22] Accordingly, describing the situation of migrant domestic workers as merely precarious—a term commonly understood as flexible, non-standard work—runs the risk of trivialising such workers' situation. It is vital for policy and legislative changes, but also for the mobilisation of civil society, to display the true picture of migrant domestic workers; that is of vulnerable workers in precarious employment.

Before examining how restrictive immigration regimes and inadequate labour protections generate or maintain the exploitation of migrant domestic workers, it is important to look at some inherent aspects of domestic work that can automatically place them in a vulnerable position. While the current UK immigration regime does not stipulate that domestic workers must live in the same dwelling as their employer, the majority of workers live-in,[23] as the alternative requires either the employer to pay for the worker's accommodation, or the latter's wage to be sufficient to cover this expense.[24] The private nature of domestic workers' employment and living environment renders its regulation challenging. The workers' isolation further limits their access to information and assistance.[25] The longstanding principle of the inviolability of the private home conflicts with state aims to regulate labour, confining domestic work to the shadows and allowing abuse to occur undetected. This is evidenced for example by the reluctance of states, including the UK, to apply to domestic work the same rules on labour inspection as applied to other labour sectors.[26] Importantly, the conflation of the workers' workplace with the home can enhance the intimacy between the two parties and reinforce the view of a paternalistic or familial relationship.[27] This presumed 'labour of love'[28] is often used to justify the worker undertaking more tasks and working longer hours in order to

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17 G Rodgers, 'Precarious Work in Western Europe: The state of the debate' in G Rodgers and J Rodgers (eds.), *Precarious Jobs in Labour Market Regulation: The growth of atypical employment in Western Europe*, ILO, Geneva, 1989, p. 3.

18 Health and Safety Executive (HSE), 'Vulnerable Workers', HSE, retrieved 27 January 2015, http://www.hse.gov.uk/vulnerable-workers/

19 B Anderson, 'Migration, Immigration Controls and the Fashioning of Precarious Workers', *Work, Employment & Society*, vol. 24, no. 10, 2010, p. 303.

20 M Satterthwaite, p. 286.

21 M Ori and M Sargeant, 'Introduction' in T Fashoyin and M Tiraboschi (eds.), *Vulnerable Workers and Precarious Working*, Cambridge Scholars Publishing, Newcastle-upon-Tyne, 2013.

22 European Commission (EC), 'Employment, Social Affairs and Inclusion, "Flexicure"', EC, retrieved 24 June 2015, http://ec.europa.eu/social/main.jsp?catId=102&langId=en

23 Kalayaan, 'Britain's Forgotten Slaves'.

24 UK Visas and Immigration, 'Guidance: Overseas domestic workers in private households: WRK2.1', UK Visas and Immigration, retrieved 29 June 2015, https://www.gov.uk/government/publications/overseas-domestic-workers-in-private-households-wrk21/overseas-domestic-workers-in-private-households-wrk21--2#wrk216-maintenance-and-accommodation

25 OSCE, 'Unprotected Work, Invisible Exploitation', p.15

26 Thomson Reuters Foundation for the Trust Women Conference, 'A Landscape Analysis of Domestic Workers' Rights and ILO Convention 189', Thomson Reuters Foundation, 2012.

27 V Mantouvalou, 'The Many Faces of Slavery: The example of domestic work', *Global Dialogue*, vol. 14, no. 2, 2012, retrieved 1 February 2015, http://www.worlddialogue.org/content.php?id=536

28 M Romero, *Maid in the U.S.A.*, Routledge, New York, 1992.

please the 'considerate employer'.[29]

One may argue that this highly personalised and dependent relationship between the employer and the domestic worker is unavoidable with live-in domestic work and therefore exposure to exploitation cannot be attributed to state-imposed policies and laws. Nevertheless, the very fact that this employment is already a precarious one makes regulation and labour protection imperative.

Migrant Domestic Workers under the *Kafala* system

Strikingly similar to the current UK immigration regime, the *Kafala* system is an immigration scheme for low-skilled migrant workers, including domestic workers, applied in a number of Gulf Cooperation Council (GCC) states, as well as in Jordan and Lebanon.[30] The term *Kafala* literally translates to 'surety, bail, guarantee, responsibility or amenability'.[31] This portrayal of responsibility and guardianship is echoed in the usage of the term when applied to the regulation of the employer-low-skilled migrant worker relationship.

The way in which the *Kafala* system is implemented varies.[32] While for example in the GCC countries all migrant workers are subject to the *Kafala* system, in Lebanon it is utilised for low-skilled workers coming primarily from Africa and Asia, but not for those from Syria.[33] Nonetheless, for the purposes of this article, the main element of this system, which is also present in the current UK visa system, can be identified throughout. Therefore this section does not focus on a particular form of *Kafala,* but rather on the negative effects of this all-encompassing immigration system.

In order for migrant workers to receive an entry visa under the *Kafala* system, a citizen or institution of that state must employ them and the worker can only work for that sponsor during her stay. The employer assumes full economic and legal responsibility for the worker.[34] Under Saudi Arabia's *Kafala* system for example, the employer 'bears the responsibility for the worker's recruitment fees, completion of medical exams, and possession of an *iqama*, or national identity card.'[35] The most controversial aspect of this scheme, found in all *Kafala*-supportive states, is the fact that the worker's residency permit is dependent on her continued employment by the named sponsor, a feature that 'ties' the employee to her employer. Therefore, in order for workers to change employment or leave the country, they must receive an'exit visa' from their sponsor.[36]

While the sponsorship arrangement is beneficial for the respective state, as it enables it 'to regulate labor flow…and monitor worker activities to mitigate security concerns',[37] this regime has proved extremely detrimental for migrant domestic workers. As the Special Rapporteur on the human rights of migrants noted, '[t]he *Kafala* system enables unscrupulous employers to exploit employees.'[38] This form of dependency is multifaceted, consisting of a legal, economical and livelihood dependency on the employer. The legal dependency alone greatly enhances an already vulnerable position as fear of arrest and deportation come into play and affect the worker's decision to flee and report an abusive situation. Accordingly, as the ILO Committee of Experts has noted, *Kafala* can be conducive to the exaction of forced labour.[39]

A 2014 report on the relation of the *Kafala* system to labour bondage in GCC countries provides a glimpse of the effects this system can have on workers. Some of the common forms of abuse recorded in Gulf countries include:

> [N]onpayment or underpayment of wages, confiscation of passports, inadequate living conditions,

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29 ILO, 'Report IV(1): Decent work for domestic workers', International Labour Office, 2010, p.12.

30 Migrant Forum in Asia (MFA), 'Policy Brief No. 2: Reform of the Kafala (Sponsorship) System', MFA, 2012, retrieved 22 July 2015, http://www.mfasia.org/resources/publications/464-mfa-policy-briefs

31 A Abikan, 'Contract of Kafalah (Guarantee): A veritable product of Islamic financing?', *University of Ilorin Law Journal,* 3 and 4, 2008, p. 200.

32 S Roper and L Barria, 'Understanding Variations in Gulf Migration and Labor Practices', *Middle East Law and Governance,* vol. 6, 2014.

33 K Azfar and H Harroff-Tavel, 'Reforming the Kafala: Challenges and opportunities in moving forward', Paper presented at 'Strengthening Dialogue to Make Migration Work for Development in the ESCAP and ESCWA Regions', Beirut, 2011, p. 294.

34 Roper and Barria*,* p. 34.

35 HRW, 'As if I am Not Human'*,* p. 26.

36 Ibid.

37 Roper and Barria, p. 34.

38 Report of the Special Rapporteur on the human rights of migrants, F Crépeau, 'Addendum Mission to Qatar', para. 25.

39 ILO, 'Giving Globalization a Human Face: General survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, Report III(1B)', International Labour Conference, 101st Session, Geneva, 2012, pp. 126–27.

> long working hours, agency fees and recruitment violations, contract substitution and restricted or no freedom of movement, physical, sexual or emotional abuse…[40]

The control granted to employers over migrant workers under the *Kafala* system has been enhanced by the adoption of a number of additional laws. One such law is the crime of 'absconding'. In Kuwait for example, as soon as the worker is reported missing, police can cancel her residency permit and register an order for her detention and deportation.[41] In Saudi Arabia, it has been reported that an estimated 20,000 migrant domestic workers 'abscond' from their employers on an annual basis.[42] As the workers' legal status is tied to their employer, once they flee, they automatically become undocumented. The potential effects of such 'absconding laws' can result in many workers choosing to work under the radar, which can expose them to a greater risk of exploitation. As Naufal's and Malit's qualitative interviews reveal, due to their undocumented status, many domestic workers struggle to bargain for higher wages, and the absence of an employment contract leads to their labour rights being disregarded with impunity.[43]

Promises have been made by many *Kafala*-supportive states to abolish this restrictive immigration regime, yet nominal action has been taken.[44] Notably, in 2009 Bahrain passed a new law seemingly abolishing this system, allowing migrant workers to change employers.[45] Nevertheless, a subsequent law introduced in 2011 undermined this reform, stipulating that the worker needs to remain with the same employer for a year before being legally allowed to change employers.[46]

According to the international community, *Kafala* is a system that has failed time and again.[47] Not only domestic workers, but also many others entering states under this system, experience its negative impact. Recent criticism has focused on labour exploitation of migrant workers entering Qatar to work on 2022 World Cup projects.[48] Accordingly, one would reasonably assume, that a system that has been shown as unequivocally failing to uphold basic labour and human rights of migrant workers is a system to denounce, or at a minimum one to avoid. Nevertheless, while GCC states can be seen taking steps, at least on paper, towards the abolition of this system, the UK chose to ignore the condemnation of the international community and in April 2012 commenced tying migrant domestic workers to their employers.

Domestic Workers in a Private Household Visa: *Kafala* by a different name?

To appreciate fully the potential impact of the current UK immigration regime for migrant domestic workers it is important to examine the previous visa regime: the '1998 visa'.[49] In order for domestic workers to enter the UK under the 1998 visa they had to prove themselves as an established member of their employer's staff. They were given permission to stay for a fixed period of twelve months towards the end of which they either had to leave the country or apply for an extension. The extension would allow them to stay and work as domestic workers for another twelve months, at the end of which they could make another application for extension. After five years of continuous employment as domestic workers, they could apply for settlement. The most important aspect of this

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40 Asia Pacific Mission for Migrants, 'The Kafala: Research on the impact and relation of the sponsorship system to migrant labor bondage in GCC countries', APMM, 2014, p. 29.

41 HRW, 'Walls at Every Turn: Abuse of migrant domestic workers through Kuwait's sponsorship system', HRW, 2010, p.8.

42 K Nikolas, 'Saudi proposal to fine runaway workers', *Digital Journal,* 2 March 2012, retrieved 2 February 2015, http://www.digitaljournal.com/article/320532

43 F Malit and G Naufal, 'Asymmetric Information under the Kafala Sponsorship System: Impacts on foreign domestic workers' income and employment status in the GCC Countries', *Cornell University ILR School,* Working Paper, 21 October 2014, p.17, retrieved 1 February 2015, http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1177&context=workingpapers

44 HRW, 'Saudi Arabia: A step to aid migrant workers', HRW, 10 April 2012, retrieved 2 February 2015, http://www.hrw.org/news/2012/04/10/saudi-arabia-step-aid-migrant-workers; Ministry of the Interior, 'Qatar announces wide-ranging labour market reforms', Ministry of the Interior, 2014, retrieved, 3 February 2015, http://www.moi.gov.qa/site/english/news/2014/05/14/32204.html

45 Decision No. (79) for 2009 Regarding the mobility of foreign employee from one employer to another.

46 Bahrain News Agency, 'HM King Hamad Issues Law 15/2011', Bahrain News Agency, retrieved 2 February 2015, http://bna.bh/portal/en/news/461096

47 F Crépeau, 'Report of the Special Rapporteur on the human rights of migrants, Addendum Mission to Qatar', Office of the High Commissioner for Human Rights (OHCHR), 2014.

48 P Pattisson, 'Revealed: Qatar's World Cup "slaves", *The Guardian*, 25 September 2013, retrieved 1 February 2015, http://www.theguardian.com/world/2013/sep/25/revealed-qatars-world-cup-slaves

49 Immigration Rules, Part 5, HC 395 of 1993-4 as amended by CM 5597 of 22 August 2002.

visa was that workers were allowed to change employers, at any point during their initial or extended twelve months, as long as they remained in employment as domestic workers.[50]

The ability to change employers provided workers both with an exit option when experiencing exploitation, and with greater bargaining power against employers, who did not control their legal status, a power that gave unscrupulous employers a false sense of proprietorship over domestic workers. Nevertheless, this regime, which has been described as a best practice,[51] is now merely a past glory as this visa was repealed in April 2012.

Under the new immigration rules, domestic workers, excluding those who had already been granted a visa under the former regime, can only enter the UK if accompanied by their overseas employer or the employer's spouse or child who is visiting the UK. Workers must now leave the UK when their employer leaves, and at a maximum six months after arrival. The new rules remove the possibility of applying for settlement. Most importantly, migrant domestic workers are no longer allowed to change employers.[52]

The government asserted that such a change was necessary to bring immigration rules in line with the UK policy of reducing net migration and focusing on the 'brightest and best' migrants.[53] Yet, despite pledges to reduce net migration from the hundreds of thousands to the tens of thousands,[54] estimates of net migration for 2014 were at 318,000, a significant increase from the 209,000 in 2013.[55] These figures therefore rebut any attempt to justify this drastic and harmful visa change for domestic workers. The visa's sole detectable impact has been, as demonstrated in this article, the creation of a workforce highly vulnerable to exploitation.

In an attempt to quell the objections to the new visa, the government introduced 'safeguards' in the form of eligibility criteria. Specifically, for migrant domestic workers to enter the UK written evidence must be provided that they have worked for their employer for at least twelve months prior to their arrival. Furthermore, before arriving in the UK, a contract of employment setting out the terms and conditions agreed between the parties needs to be presented. Finally, Home Office officials have been tasked with disseminating information to all workers applying for this visa, delineating their rights in the UK.[56]

Such measures could in theory contribute to the reduction of migrant domestic workers' vulnerability to exploitation; evidence indicates however, that the government is failing to implement these safeguards.[57] The requirement that a worker has worked for the employer for at least twelve months prior to arrival does not constitute a new safeguard, but was already an eligibility requirement under the 1998 visa.[58] In any event, this requirement is not a guarantee that the worker is not in an already abusive employment relationship. Indeed, according to Mantouvalou, who conducted interviews with migrant domestic workers who arrived in the UK under the tied visa, many reported that their working conditions prior to arrival were already very poor. The interviewees reported working between twelve and twenty hours a day, with no day off, and almost all reported not being allowed to leave the house unaccompanied. Notably, some reported physical, sexual and psychological abuse.[59] Such grave exploitation, often amounting to forced labour, servitude or slavery, exacerbated by the fear of deportation, can and has been reported to result in physically and/or psychologically trapped individuals who will either endure the abuse or become undocumented, rather than going to the authorities.[60]

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50 UK Border Agency (UKBA), 'Domestic Workers', retrieved 25 June 2015, http://webarchive.nationalarchives.gov.uk/20140110181512/;http://www.ukba.homeoffice.gov.uk/workingintheuk/othercategories/domesticworkers/

51 J A Bustamante, 'Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante—Addendum—Mission to the United Kingdom of Great Britain and Northern Ireland', OHCHR, 2010, para. 60.

52 M Gower, 'Immigration: Migrant domestic workers', House of Commons Library, Home Affairs Section, SN/HA/4786, 20 March 2012, p.7.

53 Press Release, 'British Prime Minister David Cameron Delivers Major Speech on Immigration Policy', retrieved 28 June 2015, https://www.gov.uk/government/news/british-prime-minister-david-cameron-delivers-major-speech-on-immigration-policy

54 Prime Minister David Cameron's Speech on Immigration, 10 October 2011, retrieved 26 June 2015, https://www.gov.uk/government/speeches/prime-ministers-speech-on-immigration

55 Office for National Statistics, 'Migration Statistics Quarterly Report, May 2015', retrieved 26 May 2015, http://www.ons.gov.uk/ons/rel/migration1/migration-statistics-quarterly-report/may-2015/stb-msqr-may-2015.html

56 Home Office, 'Statement of Intent: Changes to Tier 1, Tier 2 and Tier 5 of the Points Based System; Overseas Domestic Workers; and Visitors', 2012.

57 Written evidence submitted by Dr Virginia Mantouvalou on the Modern Slavery Bill, prepared 15 October 2014, retrieved 28 November 2014, http://www.publications.parliament.uk/pa/cm201415/cmpublic/modernslavery/memo/ms28.htm

58 UKBA, 'Domestic Workers, Eligibility', retrieved 23 June 2015, http://webarchive.nationalarchives.gov.uk/20140110181512/http://www.ukba.homeoffice.gov.uk/workingintheuk/othercategories/domesticworkers/eligibility/

59 V Mantouvalou, 'Overseas Domestic Workers: Britain's domestic slaves', p. 42.

60 Ibid., p. 43.

Additionally, measures such as the delineation of contract terms and rights-awareness ought to be applied regardless of the workers' visa type. These constitute basic safeguards against exploitation and should be standard practice, rather than being presented as a proactive and innovative method conceived by the government for protecting these individuals. Importantly, there is no guarantee that the contracts presented are legitimate or that the terms delineated within them will be respected once the visa is granted. Domestic workers confirmed the non-implementation of contracts during interviews with Mantouvalou.[61] As the next section demonstrates, the situation is further exacerbated with the exclusion of migrant domestic workers from numerous labour law protections.

There has been widespread criticism of this new visa. Kalayaan, a UK-based NGO working to provide advice and support to migrant domestic workers, insisted that such a regime would increase the instances of human trafficking.[62] One of the arguments posited by the government in an attempt to placate such fears, is that the National Referral Mechanism (NRM) exists to identify and support victims of trafficking.[63] While such a mechanism is important, it does not constitute a prophylactic approach, but simply an *ex post facto* measure, confirming the very fact that this visa exposes individuals to exploitation. Furthermore, the current NRM is flawed, partly because the UK Visas and Immigration (UKVI), one of the bodies responsible for identifying trafficking victims, is also responsible for deporting undocumented migrants. It therefore follows that numerous workers registered with Kalayaan, whose situations display human trafficking characteristics, do not wish to be referred to the NRM.[64]

The anticipated effects of the new visa regime have been and continue to be realised. In a May 2015 report, Kalayaan found that in the three years since the introduction of the tied visa, the level of abuse reported has been consistently higher than under the 1998 visa. In particular, domestic workers reported that 14% of those tied to their employers were physically abused, as opposed to 9% of those under the old visa; 66% of workers on the current visa reported being prevented from leaving the house freely, compared to 41% of workers previously; 81% of those on the tied visa reported having no time off compared to 66% of those under the 1998 visa; 31% of those on the current visa reported not being paid at all, compared to 11% under the old visa; and 74% of those on the tied visa had their passports withheld, compared to 50% under the 1998 visa.[65]

A 2013 report on modern slavery also highlighted the negative effects of the current visa regime and the need for its abolition. It noted that this regime 'presents serious risks that the informal and unregulated nature of this form of work will increase, disempowering workers through restricting their freedom to leave an abusive employer and fostering increased cases of modern slavery.'[66] Among other things, the report proposed the drafting of a Modern Slavery Act. In preparation for the drafting of this Bill, the Joint Committee on the draft Modern Slavery Bill published a report in which it also expressed its disapproval of these visa changes, noting that they 'have unintentionally strengthened the hand of the slave master against the victim of slavery'.[67]

During the Bill's readings, Members of Parliament raised the issue of migrant domestic workers, urging the Home Secretary to rectify the situation.[68] A clause was initially tabled and considered during the House of Commons Committee stage, reiterating the elements of the 1998 visa. Nevertheless, the clause was rejected both at the Committee and Report Stage and was also withdrawn at the House of Lords Committee stage.[69] Lord Hylton subsequently tabled a new amendment under which migrant domestic workers could change employers, as long as they notified the Secretary of State of this change.[70] Regrettably, on 25 March 2015 the House of Lords voted against this amendment, leaving the majority of migrant domestic workers outside the remit of the Modern Slavery Act

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61 Ibid., pp. 42–43.

62 Kalayaan, 'Response on Consultation: Migrant domestic workers', p. 3, retrieved 23 October 2014, http://www.kalayaan.org.uk/documents/Kalayaan%20full%20response%20to%20consultation%20(final).pdf

63 Home Office, 'Impact Assessment Changes to Tier 5 of the Points Based System and Overseas Domestic Worker routes of entry', IAHO0053, 15 March 2012, p.17, retrieved 1 February 2015, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/117958/impact-assessment.pdf

64 Kalayaan, 'Still enslaved'.

65 Kalayaan, 'Britain's Forgotten Slaves'.

66 Slavery Working Group, 'It Happens Here: Equipping the United Kingdom to fight modern slavery', Centre for Social Justice, 2013, pp. 92–93.

67 House of Lords/House of Commons, para. 5.

68 House of Commons Debate (HC Deb), 8 July 2014, vol. 584, col. 167.

69 Modern Slavery Bill Debate, 14 October 2014, col. 503; HC Deb, 4 November 2014, vol. 587, col. 780; House of Lords Debate (HL Deb), 10 December 2014, vol. 757, col. 1872.

70 HL Deb, 25 February 2015, vol. 759, col. 1689.

2015.[71] The government announced the launch of an independent inquiry on this issue that was scheduled to report its findings by the end of July 2015.[72] At the time of writing, no such report has been published.

The only relevant provision in the Act relates to migrant domestic workers who have been identified as slavery or trafficking victims by the NRM; granting them a six-month visa as domestic workers. While this provision is welcome, it is merely an *ex post facto* solution in a poor attempt to rectify the failings of the immigration regime. As Lord Hylton noted, under this provision '[…] the worker must first endure a period of abuse and exploitation, then escape, and then find the national referral mechanism.'[73] Accordingly, this provision provides no safeguards for domestic workers until a positive NRM decision comes through, a process that, according to the Anti-Trafficking Monitoring Group, is in itself flawed and discriminatory.[74]

While the international community has been fighting for the eradication of forced labour, servitude and slavery, the UK willfully chose to disregard the visible effects of this visa, and to revert toward a regime closely resembling the *Kafala*. The two systems tie migrant domestic workers to a named employer and dictate that any attempt to change or flee will lead to the worker becoming undocumented. The inability to change employers and the finite period of time to remain in the destination country create an easily exploitable group with no viable recourse to support or redress. These provisions become increasingly unjustifiable when one considers that UK labour law partly excludes domestic workers, and where provisions do extend to them, they have proved problematic in enforcement. Inadequate labour protections are therefore added to the equation to produce a formula for abuse and exploitation.

Domestic Workers and UK Labour Law

As Taran and Geronimi note, a 'major incentive for exploitation of migrants and ultimately forced labour is the lack of application and enforcement of labour standards in countries of destination as well as origin…'[75] One could partly attribute non-enforcement of labour standards in domestic work to its link with household tasks that have been traditionally perceived as merely women's work in the home.[76] This perception is reflected in the legislation of many countries, which either exclude domestic workers entirely from labour protections or apply labour law selectively to them.[77] As Mantouvalou notes, the lower protection afforded to domestic workers in the UK represents what she refers to as 'legislative precariousness'.[78] This in turn 'places domestic workers at disadvantage if compared to other groups of workers, and reinforces the relationship of submission and subordination that typically characterises the employment relation.'[79]

Domestic workers in private households, both migrants and non-migrants, are explicitly exempt from a number of UK labour regulations. According to Regulation 19 of The Working Time Regulations 1998, the provisions on maximum weekly working time and the length of night work do not apply to domestic workers.[80] Moreover, they are exempt from the right to free health assessment for night workers and from the pattern of work provision ensuring that workers are provided with adequate breaks when the work pattern is such as to put their health and safety at risk.[81] Section 51 of the Health and Safety at Work etc. Act 1974 also excludes domestic servants working in private households.[82] Even though such workers are in theory entitled to the National Minimum Wage (NMW), they are often deprived of this right. A 2011 report found that of the ninety-two employment contracts and letters examined and held by the UK Border Agency (now superseded by UKVI), in only twenty was it established that the worker

71 HL Deb, 25 March 2015, vol. 760, col. 1449.
72 HC Deb, 17 March 2015, vol. 594, col. 681;
73 Ibid., col. 1432.
74 (ATMG) Anti-Trafficking Monitoring Group, 'Hidden in Plain Sight: Three years on: Updated analysis of UK measures to protect trafficked persons', ATMG, 2013, p.8.
75 P Taran and E Geronimi, 'Globalization, Labor and Migration: Protection is paramount', International Labour Office, 2002, p. 11.
76 ILO, 'Report IV(1)', p. 1.
77 For a comparison between the Domestic Workers Convention provisions and national labour laws, see Thomson Reuters Foundation for the Trust Women Conference.
78 V Mantouvalou, 'Human Rights For Precarious Workers', p.137.
79 Ibid.
80 Contrary to the UK, Kuwait, a *Kafala*-supportive state, which for years has reportedly neglected the rights of migrant domestic workers, passed on 24 June 2015 new legislation granting domestic workers enforceable labour rights, including the right to a national minimum wage, maximum working hours and rest days. See: HRW, 'Kuwait: New law a breakthrough for domestic workers', HRW, 2015, retrieved 1 July 2015, https://www.hrw.org/news/2015/06/30/kuwait-new-law-breakthrough-domestic-workers
81 HM Government, Working Time Regulations 1998, SI 1998/1833, reg. 19.
82 HM Government, Health and Safety at Work etc. Act 1974, c. 37, s. 51.

was paid at least the minimum wage.[83] This deprivation is partly attributed to a legal loophole found in the NMW Regulations. Regulation 2 states that the term 'work' does not include work relating to the family household of the employer that is done by a worker residing in the family home and who, even though not a family member, is treated as such, through elements such as the provision of accommodation and meals.[84] Even though this may not explicitly apply to all live-in domestic workers, it provides employers with leeway to argue that the worker is part of the family, in an attempt to avoid liability. Notably, the Court of Appeal has applied this exemption explicitly to domestic workers.[85]

Some labour law provisions available to other workers do extend to domestic workers. For example, unless the employer is related to the domestic worker, the latter is in theory entitled to the statutory provisions relating to redundancy payments.[86] Furthermore, such workers have the right to paid holiday, statutory sick pay and statutory maternity leave.[87] Yet, the hidden nature of this employment makes the enforcement of such rights challenging. As noted, these workers are excluded from the Health and Safety at Work etc. Act 1974 that, among other provisions, includes a provision for labour inspections.[88] Therefore, authorities cannot easily ensure that these labour provisions are respected.

Workers entering a country under tied visas find themselves in an even more disadvantageous position. Dependence on employers for accommodation, food and legal status leaves workers with limited bargaining power, preventing them from demanding respect of their labour rights. Additionally, the limited period for which they are allowed to remain in the UK also prevents them from enforcing their rights. While raising employment claims has always been challenging, due to the private environment of the work and the relationship between the parties, the current system hinders such claims even further. It is very unlikely that within the six months prescribed, the worker will find the courage to report the abuse, as well as commence and conclude legal action brought against the employer. While workers could potentially apply for a special residence permit that would enable them to remain for the duration of the proceedings, such a permit is often refused.

Conclusion: The way forward

Current UK labour laws are in clear contradiction with the spirit of the Domestic Workers Convention. Not only do the existing limited labour protections and the inability of domestic workers to seek legal redress become an incentive for exploitation, but they also reinforce gender disparities in relation to access to decent work. Since, the majority of domestic workers are women, poor working conditions and limited protections evidenced disproportionately affect them.[89] Therefore, not only is the need for adequate labour protections important for ensuring that this labour force is protected and able to realise their rights, but it is also vital for promoting gender equality. The UK must therefore ratify the Domestic Workers Convention to ensure, at a minimum, that labour rights commonly afforded to other workers, and to a great extent male workers,[90] are extended to domestic workers who are in the majority women.

The UK ratification of the Domestic Workers Convention is a vital step towards the protection of migrant domestic workers. Nevertheless, despite the obligation on states, as set out in Article 17, to implement a labour inspection mechanism for domestic workers, in practice this may not be adequate to protect workers. The article's wording itself seems tentative, noting that such a mechanism shall be implemented 'with due regard for the special characteristics of domestic work, in accordance with national laws and regulations'.[91] Accordingly, this gives states discretion in the way in which they comply with the provision and justifies the retention of existing ineffective national labour inspection mechanisms. Indeed, even though a number of countries now allow such inspections to take place, they do so under certain conditions, such as obtaining the permission of the homeowner.[92] Such

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83 N Clarke and L Kumarappan, 'Turning a Blind Eye: The British state and migrant domestic workers' employment rights', Working Lives Research Institute, 2011, p. 2, retrieved 25 January 2015, http://workinglives.org/fms/MRSite/Research/wlri/WORKS/TaBE%20final%20report.pdf

84 HM Government, National Minimum Wage Regulations 1999, SI 1999/584, reg. 2 (2) (a) (i), (ii).

85 Nambalat v. Taher & Anor: Udin v. Pasha & Ors [2012] EWCA Civ 1249.

86 HM Government, Employment Rights Act 1996, c.18, s.161.

87 HM Government, Social Security Contributions and Benefits Act 1992.

88 Health and Safety at Work etc. Act 1974, s.51.

89 ILO, 'Domestic Workers Across the World', p. 21.

90 ILO, 'Preventing Discrimination, Exploitation And Abuse Of Women Migrant Workers—An information guide', Booklet 1, International Labour Office, 2003, p. 11.

91 ILO, Domestic Workers Convention, Article 17 (2).

92 French Labour Code, *Code Du Travail (Version Consolidée Au 30 Mai 2014)* Huitième Partie: Contrôle de L'application De La Lègislation Du Travail Livre Ier: Inspection du Travail. Titre Ier: Compétences et Moyens D'intervention, Chapitre III:

conditions are self-defeating as they place overt control in the hands of the employer, comparable to the current UK immigration regime.

It is therefore imperative for the UK to take further preventative steps to eradicate the risk of exploitation. To do so, the current immigration regime for migrant domestic workers must be abolished. Regrettably, parliament failed to achieve this through the inclusion of a clause in the Modern Slavery Act 2015, and it remains to be seen whether the government will put the proposed immigration changes before Parliament. In any event, anything less than a return to the 1998 visa will not suffice in protecting migrant domestic workers from exploitation.

Importantly, while reverting to the 1998 visa will undoubtedly equip workers with bargaining power and the potential to leave an exploitative relationship, the new visa should go further and set out a number of requirements that UKVI should ask from employers. One such recommendation, proposed by the Working Lives Research Institute is for UKVI to require more detailed contracts and pay slips from employers.[93] This is a means of checking whether the remuneration received is both according to the initial contract and above the NMW. Furthermore, UKVI needs to become more active in enquiring into alleged abuse reported by migrant domestic workers and notifying the appropriate authorities. Research showed that it had in its possession details of abuse provided by workers when changing employers, yet no evidence was found that it had acted upon this information. Finally, UKVI must ensure that, when applying for a visa, domestic workers are informed of their rights and of how to obtain assistance while in the UK. Currently, as noted, authorities do not often comply with this obligation.

The international community is witnessing both a movement towards decent work for domestic workers, as well as an effort for the eradication of human trafficking, forced labour, servitude and slavery. The UK must therefore ensure that both its labour and immigration provisions promote these ideals, rather than facilitate and enhance the exploitation of migrant domestic workers.

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Prérogatives et moyens d'intervention, Section 1 Droit d'entrée dans les établissements, Article L8113-1, L8113-2.

93 Clarke and Kumarappan, p.2.