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Mandates of the Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; the Special Rapporteur on contemporary forms of slavery; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on trafficking in persons, especially women and children; and the Special Rapporteur on violence against women, its causes and consequences.

REFERENCE: G/SO 214 (106-10) Slavery (2007-2) Trafficking (2004-5) G/SO 214 (89-15)
GBR 7/2011

21 December 2011

Excellency,

We have the honour to address you in our capacities as Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; Special Rapporteur on contemporary forms of slavery; Special Rapporteur on the human rights of migrants; Special Rapporteur on trafficking in persons, especially women and children; and Special Rapporteur on violence against women, its causes and consequences pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/23, 15/2, 17/12, 17/1, and 16/7.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning your Excellency's Government's **proposal to remove the existing Overseas Domestic Worker (ODW) visa** which provides important safeguards to prevent abuse, exploitation and trafficking of migrant domestic workers.

According to information received:

In order to protect migrant domestic workers, a majority of whom is women, the Government introduced the Overseas Domestic Worker (ODW) visa system in 1998. Under this system, employers wishing to bring domestic workers with them into the United Kingdom of Great Britain and Northern Ireland (hereinafter "the UK") are required to prove that there is a 12 month pre-existing employment relationship and must provide a contract of employment. Crucially, visas are granted to the individual domestic workers and entitle them to basic labour rights under the UK employment legislation, including the right to pursue legal remedies against their employers. This visa system has helped to enable migrant domestic workers to escape abuse and exploitation, in part because the visas are not tied to their employers. Consequently, migrant workers who wish to leave their

employers due to abuse, exploitation or other forms of ill-treatment are not treated as irregular migrants, who face the risk of arrest and imprisonment but as victims.

It has been acknowledged by the UK Home Office that since the introduction of the ODW visa system, the situation for migrant domestic workers has improved. The UK Home Affairs Select Committee also recognized that retaining the Overseas Domestic Worker visa and the protection it offers to workers is the single most important issue in preventing the forced labour and trafficking of such workers. Also, the International Labour Organisation has hailed the visa system as good practice. The importance of the right to change employer was raised by the Special Rapporteur on the Human Rights of Migrants in his report (A/HRC/14/30/Add.3) on his country visit to the UK, in which he also referred to the existing ODW visa as a best practice for countries to replicate.

In this respect, the current proposals under consideration by your Excellency's Government to either replace the ODW visa system with a 6 or 12-month visit visa with no labour rights protection and no right to change employers, or, alternatively, abolish this visa category altogether, are of serious concern to us.

The first option proposes keeping the visa but restricting it to 6 or 12 months if the migrant domestic worker is accompanying certain migrant worker in the UK such as investors, entrepreneurs, highly skilled migrants, ministers of religion and elite sportspeople. Under this option, the migrant domestic worker would be denied some of their rights. Notably, there would be no possibility of extension or right to change employer. Under this proposal, your Excellency's Government would stop granting settlement or 'indefinite leave to remain' in the UK to domestic workers in diplomatic households, restrict temporary leave to 12 months and remove their ability to sponsor dependants, or alternatively remove the right for dependants to work in the UK. This option may contribute to facilitating contemporary forms of slavery practices, including trafficking, by allowing employers to bring migrant workers to the UK with no legal protection. Migrant domestic workers would also be tied to their employer and if their rights are violated, they may face the dilemma of continuing to suffer or fleeing and becoming irregular in the UK. In this situation, migrant domestic workers are unlikely to approach the authorities for help. As such, there will be no deterrent or sanction through the criminal courts or employment tribunals for employers who hold people in domestic servitude. Domestic workers themselves would be unable to seek justice for violations of their right to be free from servitude and other human rights violations.

If your Excellency's Government opts for its second proposal, which is to abolish the ODW visa entirely, it is likely that domestic workers will continue to be brought to the UK through other channels, thereby increasing the risk of trafficking for domestic servitude and to increase work in informal settings. According to information received, many victims who are trafficked into domestic servitude are brought into the UK on visitor visas, to a lesser extent as family members and/or using false documents. Migrant domestic workers who enter the country on visitor visas cannot benefit from the protection provided by the UK labour legislation and have no recourse to justice through the employment tribunal system.

In this context, we would like to reiterate that trafficking is not the only method by which migrant domestic workers may find themselves in domestic servitude. As mentioned in the 2010 annual report (A/HRC/15/20) of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, forced labour is another way in which migrant domestic workers may find themselves further enslaved.

As the Special Rapporteur on trafficking in persons, especially women and children, also explained in her 2010 report to the General Assembly (A/65/288), it is important to recognize that there are crucial differences between trafficking and migration in terms of the means used and the purposes of people's movement. While trafficking in persons and migration share the same "migratory space" as both involve the movement of people, trafficking in persons entails movement by fraudulent or coercive means for exploitative purposes. Thus, there may be situations where migrant domestic workers arrive in the UK without any elements of fraud or coercion, but end up being forced to work under the menace of any penalty and other conditions to which the migrant domestic worker has not offered himself voluntarily. This situation results in unfair and exploitative labour practices and the restriction of the migrant domestic worker's freedom of communication and movement. Physical, emotional and sexual abuse is also common. In this respect, we welcome your Excellency's Government's recognition that trafficking does not encompass all contemporary forms of slavery and rightly introduced new criminal legislation, Section 71 of the Coroners and Justice Act 2009, on slavery, servitude, forced or compulsory labour to deal with this issue.

Migrant domestic workers are also vulnerable to debt bondage. They will often assume a considerable debt towards the employer or the agency organizing their recruitment and transport. The domestic worker is then expected to work off this debt and is often unable to change employers. With salaries often being low, this means that migrant domestic workers become bonded for long periods to a single employer, making them easily exploitable.

Your Excellency's Government maintains that if the proposals are introduced, the National Referral Mechanism (NRM) for victims of trafficking will protect domestic workers. Nevertheless, this mechanism does not offer adequate protection against servitude as the NRM will only assist trafficked persons, not those who have been badly exploited and abused but not trafficked. Further, NRM does not allow trafficked persons or those who are abused but not trafficked to seek compensation through the UK's employment courts. This also implies that the NRM does not provide a deterrent to potentially exploitative employers. We also understand that one of the aims of this proposal alleged by your Excellency's Government is to reduce net migration rates by 2015. In this regard, we would be interested in receiving data and information on the use of the ODW system in the past five years to assess to what extent this has contributed to an increase in the number of migrant workers in the country.

We therefore recommend that a system be developed so that the human rights of migrant domestic workers are upheld throughout and they are not left at the mercy of their employers. In developing such a system, we strongly recommend that your

Excellency's Government consider maintaining the ODW visa and any changes to an alternative system should not erode the current safeguards provided to migrant domestic workers and be developed in consultation with experts and the civil society organizations and domestic workers themselves.

In this context, we would like to draw your Excellency's Government attention on article 3 of the Universal Declaration Universal of Human Rights which states that "everyone has the right to life, liberty and security of person". Article 4 says that "no one shall be held in slavery or servitude". Furthermore, article 23 states that everyone has the right to equal pay for equal work and article 24 states that everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Moreover, we would also like to bring to your Excellency's attention the 1926 Slavery Convention ratified by the UK on 318 June 1927 which states that High contracting State bring about "the complete abolition of slavery in all its forms". Article 5 of this Convention, states that the High Contracting Parties recognize that recourse to compulsory or forced labour may have grave consequences and undertake, each in respect of the territories placed under its sovereignty, jurisdiction, protection, suzerainty or tutelage, to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery. The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of 1956, ratified by the UK on 30 Apr 1957 which calls upon State Parties to undertake "all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment" of institutions and practices such as debt bondage "where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the [1926] Slavery Convention". Article 6 of this Convention also calls upon State Parties to criminalize "the act of enslaving another person or of inducing another person to give himself or a person dependent upon him into slavery, or of attempting these acts, or being accessory thereto, or being a party to a conspiracy to accomplish any such acts". Article 8 of the International Convention on Civil and Political Rights (ICCPR), ratified by the UK on 20 May 1976, reaffirms that no one shall be held in slavery, servitude or be required to perform forced labour.

We would also like to bring to your Excellency's attention article 2 of the 1930 ILO Forced Labour Convention, ratified by the UK on 3 June 1931 which defines "forced or compulsory labour" as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

We would also like to draw to the attention of your Excellency's Government the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime ("Palermo Protocol"), which your Excellency's Government ratified on 9 February 2006. Paragraph 1, article 9 of the Palermo Protocol stresses the State Parties' obligation to "establish comprehensive policies, programmes and other measures: (a) To prevent and combat trafficking in persons; and (b) To protect victims of trafficking in persons, especially women and children, from revictimization". We also deem it appropriate to

make references to the Recommended Principles and Guidelines on Human Rights and Trafficking, issued by the Office of the United Nations High Commissioner for Human Rights in July 2002. In particular, guideline 7 recommends States to consider “reviewing and modifying policies that may compel people to resort to irregular and vulnerable labour migration” and “examining ways of increasing opportunities for legal, gainful and non-exploitative labour migration. The promotion of labour migration by the State should be dependent on the existence of regulatory and supervisory mechanisms to protect the rights of migrant workers”. The Special Rapporteur on trafficking in persons, especially women and children, also stressed in her report to the General Assembly in 2010 (A/765/288) that any strategies to prevent trafficking in persons “should be underpinned by the recognition of freedom of movement and the creation of more opportunities for legal and non-exploitative labour migration. In fact, a lower incidence of trafficking is reported where opportunities for regular migration are available within a multilateral framework or under a bilateral agreement between the sending and receiving States, or where there are otherwise established channels of migration” (paragraph 42).

Allow us to also recall General Assembly resolution 65/212 on Protection of Migrants which “calls upon States to promote and protect effectively the human rights and fundamental freedoms of all migrants, regardless of their migration status, especially those of women and children, and to address international migration through international, regional or bilateral cooperation and dialogue and through a comprehensive and balanced approach, recognizing the roles and responsibilities of countries of origin, transit and destination in promoting and protecting the human rights of all migrants, and avoiding approaches that might aggravate their vulnerability.” It also “recalls that the Universal Declaration of Human Rights recognizes that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him or her”.

In addition, migrant domestic workers being predominantly women, we would like to draw your attention to General Recommendation No. 28 on women migrant workers of the Committee on the Elimination of All Forms of Discrimination against Women (hereafter CEDAW) which elaborate the circumstances that contribute to the specific vulnerability of women migrant workers and calls for the integration of a gender perspective to the analysis of the position of female migrants workers and the development of policies that counter discrimination, exploitation and abuse. The majority of the migrant domestic workers are women. Female domestic migrant workers face hazards on the basis of their migrant status, their sex and gender. Women, who are migrant domestic workers and have lost their immigration status, are particularly vulnerable to violence, including sexual violence, by the employer or others who wants to abuse the situation. The above-mentioned General Recommendation calls States parties to the Convention on the Elimination of All forms of Discrimination against Women, ratified by the UK on 7 April 1976, to ensure that domestic work is protected by labour laws and that women migrant workers have the ability to access remedies when their rights are violated.

In connection with the right to a remedy, we wish to recall that the UK as a State party to the International Convention on Civil and Political Rights (ICCPR), has

undertaken to: “ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; and ensure that the competent authorities shall enforce such remedies when granted”. Allow us to underscore in this regard that the Covenant applies to “everyone”, citizens or non-citizens, and that rights stipulated therein are fully applicable to all migrant workers in Thailand, regardless of their status. Under article 2 of the Covenant, State parties undertake to guarantee the exercise of the rights enunciated therein without any discrimination of any kind, including nationality.

We also wish to refer your Excellency’s Government to General Assembly resolution A/C.3/66/L.18/Rev.1, adopted on 20 November 2011 which “calls upon all Governments to incorporate a human rights, gender sensitive and people-centred perspective in legislation, policies and programmes on international migration and on labour and employment, consistent with their human rights obligations and commitments under human rights instruments, for the prevention of and protection of migrant women against violence and discrimination, exploitation and abuse, and to take effective measures to ensure that such migration and labour policies do not reinforce discrimination, where necessary, by conducting impact assessment studies of such legislation, policies and programmes in order to identify the impact of measures taken and the results achieved in regard to women migrant workers” and “also calls upon Governments to adopt or strengthen measures to protect the human rights of women migrant workers, regardless of their immigration status, including in policies that regulate the recruitment and deployment of women migrant workers, and to consider expanding dialogue among States on devising innovative methods to promote legal channels of migration, inter alia in order to deter illegal migration, to consider incorporating a gender perspective into immigration laws in order to prevent discrimination and violence against women, including with regard to independent, circular and temporary migration, and to consider permitting, in accordance with national legislation, women migrant workers who are victims of violence to apply for residency permits independently or abusive employers or spouse”

As it is our responsibility to try and clarify all issues brought to our attention, we would be grateful for your observations on the following:

1. Please provide information on how many visas have been issued to migrant domestic workers in the past five years according to the ODW system; how many migrant domestic workers have returned home again with their employer; how many have remained and renewed their visa; and how many have applied for settlement and the total number of grants of settlement.
2. Please provide information on the measures undertaken, or intended to be taken, to ensure that: all migrant domestic workers have the right to change employer, including those in diplomatic households; migrant domestic

workers are recognized as workers and entitled to labour rights, including the right to seek compensation for labour rights violations; migrant domestic workers who are in full-time domestic employment are able to apply to renew their visas; and migrant domestic workers retain the right to apply for settlement in the UK.

3. Kindly share with us the outcome of the three month consultation on the review of the ODW visa system and the next steps to be taken.

We would appreciate a response within sixty days. We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

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

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