

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

Ref.: AL GBR 6/2022
(Please use this reference in your reply)

1 June 2022

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 updated 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.

We take this opportunity to thank your Excellency's Government for its response to the previous Special Procedures communication (GBR 6/2021) on the above mentioned subjects; however, based on information received, we are of the view that the response provided to the first question raised in AL GBR 6/2021 fails to fully address many of the core points made in the original communication.

We understand that, inter alia, the legislative changes introduced in 2016 were a reaction to evidence of labour and human rights abuses provided by overseas domestic workers and front line agencies supporting them, as well as the independent review conducted by James Ewins in 2015. However, in AL GBR 6/2021, it is noted that the direct link between the legislative changes made in 2012 and an increase in reported abuse is not accepted. This raises questions as it appears at odds with the UK Government introducing the changes it did in 2016, numerous statements over the years recognizing the vulnerability of the overseas domestic workforce to labour and human rights abuses, and the statement made in AL GBR 6/2021 that the UK Home Office has been in the process of developing proposals to reform the 'tied visa' immigration route as of this year.

As noted in AL GBR 6/2021, based on the changes made to the Overseas Domestic Worker Visa, only confirmed survivors of trafficking or slavery may apply for a two-year visa through the NRM. However, the problem persists that due to this threshold, migrant domestic workers are not in a position to report exploitation or abuse at an early stage and in a timely way. As a result, the efforts of the UK Government in effectively preventing trafficking of persons and contemporary forms of slavery have been undermined, in our view.

We would like to reiterate that not all abuse experienced by migrant domestic workers meets the threshold for a National Referral Mechanism (NRM) referral. This requires that a situation of abuse amounts to trafficking and/or slavery. There is no

consideration of or protection available to migrant domestic workers whose situation does not meet the threshold of contemporary forms of slavery or trafficking in persons, despite their labour rights being violated.

Information received asserts that the Overseas Domestic Worker visa (ODW visa) has increased vulnerability to abuses by restricting migrant domestic workers to a non-renewable six-month visa, which renders the right to change employer redundant and inaccessible in practice. Migrant domestic workers often face difficulties in securing decent new employment in the absence of them having the right to renew their visa and therefore, as a consequence of the policy framework in place, are forced to remain with abusive employers rather than lose their livelihood, accommodation and permission to stay in the UK. Those that do flee are at risk of destitution and further harm, including the risk of being trafficked or forced into other situations of labour exploitation.

With regard to access to justice and redress, discrepancies between migrant domestic workers who qualify for a NRM referral and those who have been exploited but do not meet that threshold continue to persist. Hence, the latter face disproportionate difficulties in accessing justice and remedy.

In its response, your Excellency's Government referred to safeguards during the visa application process, however these are reportedly not adequately and efficiently operating in practice. For example, information leaflets are reportedly not systematically issued at Visa Application Centres abroad and there is no monitoring of whether these are issued either. It is also not clear if the information leaflets, either in Visa Application Centres abroad or those provided to migrant domestic workers after their arrival, are linguistically accessible to those who may not read English or indeed, may be illiterate. The linked website with information on the Overseas Domestic Worker visa in the Government's response appears to only be available in English. The non-implementation of a 2016 commitment to introduce information meetings for migrant workers newly arrived in the UK is also a matter of concern, and it is not made clear in the response why the bids to conduct these sessions were both unsuccessful.

Once in the UK, migrant domestic workers report not knowing of the NRM or the function that it serves. Your Government's response does not address why migrant domestic workers with an expired visa cannot work whilst their case is considered under the NRM and does not appear to engage with the reasons why a worker's visa may have expired by the time they seek a referral. The response also refers to the commitment to introduce a Single Enforcement Body for employment rights, but it remains unclear how migrant domestic workers will be informed about this mechanism once it has been formally established (and for which no timeline is currently known). The response also does not address the barriers migrant workers will face in accessing this mechanism once their visa has expired. The response also fails to address the discrepancy between the obligation for victims of slavery and trafficking who receive Conclusive Grounds decisions that do not permit them Discretionary Leave to Remain to prove their financial solvency when applying for a visa, despite the fact that they cannot work and must rely on minimal public assistance during the period in which they are awaiting a decision. We note that your Government's response states that migrant workers who enter the NRM with a valid visa may be given continuing permission to work as a domestic worker while their conclusive grounds decision is under consideration;

however, it does not specify the circumstances in which a migrant worker is afforded this right and the circumstances in which they would be denied the same right.

We take note of your Government's statement that overseas domestic workers are subject to the same laws and scrutiny as UK-based employers employing settled workers and general efforts to improve the enforcement of employment rights. However, this does not elaborate upon specific efforts undertaken, if any, to monitor the conditions of migrant domestic workers, particularly live-in domestic workers, who by virtue of their situation work in conditions where any abuses that may occur are not readily visible to external parties and may therefore go unreported, which differs from the situation of other types of UK-based employers that employ a more visible workforce. It also does not appear clear which offences the Police and the Crown Prosecution Service (CPS) record in the event of abuse or exploitation of migrant workers and how this is done.

In respect of migrant domestic workers employed by diplomats, it reportedly remains challenging to enforce their rights, given the diplomatic immunity enjoyed by the employers including in the event of a contemporary forms of slavery and/or trafficking claim. This suggests that the scope of diplomatic immunity may be too broad. We are aware a case was brought by a migrant domestic worker to the UK Supreme Court in October 2021 in which they challenged the defence of diplomatic immunity. In particular, the Special Rapporteur on trafficking intervened through an amicus brief, in which she recalled that "The scope of diplomatic immunity must be defined with reference to States' positive obligations arising under international human rights law, including article 4 ECHR, which prohibits slavery, servitude, and forced or compulsory labour. These positive obligations include the prevention, investigation, and prosecution of trafficking for the purpose of labour exploitation and are linked to duties to ensure access to the courts (article 6 ECHR) and to effective remedies for human rights violations (article 13 ECHR, article 15 ECAT, article 2 ICCPR, and articles 2 (e) and (f) CEDAW)". We look forward to reading the judgement when it is handed down.

We are also aware that an amendment was tabled by peers in the UK House of Lords to the Nationality and Borders Bill in respect of restoring the pre-2012 visa regime to migrant domestic workers, including the right for workers to renew their visa annually. We understand this amendment was withdrawn. In response to the amendment, the Minister of State said that policy officials would meet with NGO representatives to hear directly from those who encounter and support migrant domestic workers, including those who fall between the cracks of labour abuses and modern slavery. It has been reported that a meeting has already taken place between policy officials and NGOs who report that restoring the pre-2012 visa route is not being considered an option, despite numerous peers in the House of Lords calling for this. We call on your Excellency's Government to take seriously the concerns that workers and NGOs have in this consultation process.

Currently, most asylum seekers are not entitled to work while their case is being reviewed which forces them to rely on governmental programmes for basic housing support and essential living needs. According to reports received, without access to work and a very low level of income, migrant workers risk being pushed into poverty, facing higher risks of being trafficked and/or pushed into exploitative work. We take

note of a review undertaken by your Government regarding the right of asylum seekers to work, as published in December 2021.

We would also like to express concern regarding the summary rejection by the House of Commons on 22 March 2022 of all amendments to the Nationality and Borders Bill proposed by the House of Lords. We believe that several of the amendments the House of Lords had proposed are critical to safeguard the human rights of vulnerable populations including migrants, refugees, asylum-seekers, and victims of modern slavery and human trafficking. We have raised these concerns in previous communications including GBR 3/22 and GBR 11/2021.

As United Nations human rights experts, we firmly believe that the rights of migrant workers to change their employer as a means of preventing instances of trafficking in persons and/or contemporary forms of slavery should be made effective in practice. We urge your Government to undertake relevant legislative and policy changes in this regard.

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 allegations.
2. Kindly indicate whether your Government intends to amend the current Immigration Rules, for example by reinstating the pre-2012 visa regime as part of the ongoing consultation process between policy officials and NGOs supporting migrant domestic workers.
3. Please specify through which measures your Government intends to ensure access to justice and redress by migrant domestic workers, including those who do not meet the threshold of an NRM referral, and regardless of their immigration status.
4. Please indicate for what reasons migrant domestic workers who enter the NRM with an expired visa are not granted the right to work while a final decision on their claims is pending, and whether these victims are granted access to other forms of protection and/or assistance to enable them to effectively seek justice.
5. Please indicate what specific measures, if any, are undertaken to monitor the working conditions of migrant domestic workers, particularly live-in domestic workers. If no measures have been taken, please explain why.

6. Please indicate which offences the Police and the Crown Prosecution Service (CPS) record in the event of labour exploitation of migrant domestic workers and please also indicate how the data is recorded.
7. Please indicate if the UK Government is undertaking awareness raising, information campaigns or similar activities in order to raise awareness amongst migrant domestic workers about the National Referral Mechanism and whether any such plans will be made in respect of the Single Enforcement Body when it is introduced.
8. Please indicate if there have been cases where immunity of diplomatic personnel has been waived following allegations of contemporary forms of slavery/trafficking in persons and/or if compliance action has been taken against any sponsor with diplomatic status under existing immigration laws.
9. Please indicate if your Government is planning to take additional measures to ensure new migrant workers' access to information about their rights and duties in a culturally and linguistically accessible manner.
10. Please indicate what efforts will be made to ensure the Nationalities and Borders Bill is in line with relevant national and international legislation that the UK has already adopted, domesticated, or ratified, including, *inter alia*, the 1951 Convention on the Status of Refugees and its Optional Protocol, the 1961 Convention on the Reduction of Statelessness, the Council of Europe Convention on Action Against Trafficking in Human Beings, and the Modern Slavery Act 2015.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. 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. Such measures would include, *inter alia*, reviewing the threshold for overseas domestic workers to be able to report abuses and seek protection and legal redress through the NRM or other channels providing an equivalent level of protection, reviewing the period and renewability of the six-month visa for overseas domestic workers, expanding efforts to inform overseas domestic workers of their rights in an accessible manner at visa application centers and elsewhere, and increasing labour inspections and efforts to monitor the working conditions of migrant domestic workers.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press

release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

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Annex

Reference to international human rights law

In connection with above alleged facts and concerns, 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. In this context we would like to bring your attention to recommendations made by Group of Experts on Action against Trafficking in Human Beings (GRETA) in their Recommendation of the Committee of the Parties to their third evaluation to the United Kingdom, published in December 2021 and which contain also specific recommendations regarding guarantees of accessing remedies for domestic workers.

We would also 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).

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:
 1. 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

2. 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 states 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”.