

‘Am I Free Now?’ Overseas Domestic Workers in Slavery

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This article examines the United Kingdom’s overseas domestic worker and diplomatic domestic worker visas in place since 2012. These visas tie workers to an employer by making it unlawful for them to change employer, even if they have been seriously exploited or abused. The article presents the findings of a qualitative study, a series of semi-structured interviews of overseas domestic workers. It explores how this vulnerable and difficult (for researchers) to reach group of workers experience these visas in practice. The workers reported instances of exploitation and abuse by the employers with whom they arrived in the UK. Having escaped abusive employers they have become undocumented, and report being trapped in ongoing cycles of exploitation. The article assesses what light this empirical exploration sheds on the question whether the visa is contrary to the prohibition of slavery, servitude, forced and compulsory labour in article 4 of the European Convention on Human Rights and the UK Modern Slavery Act 2015.

‘[The employers] did not give me to eat. Only once a day, limited food. I was hungry. That is why I said I made a sacrifice: you need to work, you sacrifice everything’.
(Geraldine, overseas domestic worker)

INTRODUCTION

Why would anyone in a society that values freedom feel required to sacrifice the satisfaction of basic needs in order to work? Should a liberal state tolerate such a situation? With these questions in the background, in this article, I explore the United Kingdom’s Overseas Domestic Worker (ODW) and diplomatic domestic worker visas in place since 2012, which tie workers to an employer by making it unlawful for them to change employer, even if they have been seriously exploited or abused. It has been suggested that these visas create situations of vulnerability that may lead to grave restrictions on freedom, which can also be classified as slavery or servitude.¹

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¹ B. Anderson, *Britain’s Secret Slaves: Migrant Domestic Workers in the UK* (1993); C. Costello, ‘Migrants and Forced Labour’, in *The Autonomy of Labour Law*, eds. A. Bogg, C. Costello, A. Davies and J. Prassl; J. Fudge and K. Strauss, ‘Migrants, Unfree Labour and the Legal Construction of

Nevertheless, the UK Modern Slavery Act that received royal ascent in 2015 left the visa regime intact, even though it had become a crucial political issue and severe criticisms had been expressed at various stages of the parliamentary debates.² The House of Commons rejected an amendment to the Bill, proposed in the House of Lords which would have protected migrant domestic workers admitted to the UK under the ODW and diplomatic visas. Baroness Butler-Sloss called the proposed amendment ‘almost blackmail’,³ because of the perceived risk that the Bill would be entirely blocked as a result of the disagreement between the two Houses on the issue of the amendment to the ODW visa. Eventually, however, the Bill was passed, leaving the domestic workers visa unreformed in spite of a Commons’ Amendment, and therefore leaving these workers exposed to exploitation owing to their inability to quit and find another employer.

The Modern Slavery Act 2015 codifies and consolidates existing offences, increases sentences for most serious offenders, introduces Slavery and Trafficking Prevention and Risk Orders, sets up the institution of an Anti-Slavery Commissioner, contains some provisions on protection of victims, and includes a section on businesses and transparency in global supply chains. The question to be examined here is whether the failure to include any significant reform to the domestic workers visa regime in the Act leads to the conclusion that, ironically, it in fact preserved rather than eradicated one instance of slavery.

For the purposes of the present article, I undertook a qualitative study, conducting a series of semi-structured interviews of overseas domestic workers. This was a first step in an attempt to explore how this vulnerable and difficult (for researchers) to reach group of workers experience these visas in practice, to examine if any of them are now undocumented because they escaped their employer, and to assess what light this empirical exploration sheds on the classification of the visa as one of enslavement.

The structure of the article is as follows. Before presenting the findings of the interviews, the article explains the meaning of domestic work and the challenges for its legal regulation, as well as the details and history of the ODW and diplomatic visas. I then turn to the question of how domestic workers experience these visas in practice in light of their interviews. The article presents some features of the group, explores their living and working conditions, their fears and hopes. According to the interviews, there is a pattern of exploitation and even physical abuse before the domestic workers arrive in the UK. This situation does not improve after arrival; indeed it sometimes deteriorates. Almost all interviewees are now undocumented migrants. Despite the exploitation and abuse that these workers report experiencing, by escaping from their employer they lost their legal status and all rights attached to it, on account of these very restrictive immigration rules. Moreover, the interviews

Domestic Servitude’, in *Migrants at Work*, eds. C. Costello and M. Freedland (2014); V. Mantouvalou, ‘What Is to Be Done for Migrant Domestic Workers?’, in *Labour Migration in Hard Times*, ed. B. Ryan (2013).

² See Report of the Joint Committee on Draft Modern Slavery Bill, session 2013-14, p. 100; Public Bill Committee, 14 October 2014; House of Lords, Hansard, 10 December 2014, Col. 1853 ff; House of Lords, Hansard, 25 February 2015, Col. 1689 ff; House of Commons, Hansard, 17 March 2015, Col. 645 ff; and finally House of Lords, Hansard, 25 March 2015, Col. 1426 ff.

³ Hansard, 25 March 2015, Col. 1436.

indicate that these workers are trapped in ongoing cycles of exploitation by subsequent employers who know about their status as undocumented migrants. It can, therefore, be said that the domestic workers visas, which do not permit workers to change employer lawfully, lead to the creation of an extremely vulnerable group of undocumented migrants that are prone to exploitation. In light of this empirical exploration, the article assesses afresh whether this visa can be classified as a visa of enslavement in breach of article 4 of the European Convention on Human Rights (ECHR) that prohibits slavery, servitude, forced and compulsory labour, and discusses some of the legal implications of this classification.

PAID DOMESTIC WORK TODAY

Paid domestic work is on the rise for many reasons, such as income inequality, the increased participation of women in the labour market outside home and the marketisation of care provision in many countries.⁴ Domestic workers are those undertaking various household tasks, such as cleaning, cooking, caring for children or the elderly. They are sometimes employed part-time, working for a few hours a day for different employers and sometimes full-time by one employer. Some domestic workers live in the employers' household. These live-in domestic workers are mostly migrants, both in the Western world and elsewhere.⁵ They migrate to work as domestic workers and send income generated through their work back to their families.⁶ This group of workers face challenges that other migrant workers may also face, such as language barriers, lack of friends and family in the destination country, lack of knowledge of existing networks of support and of their legal rights. For domestic workers these problems are accentuated: building new networks is almost impossible for those with very limited possibilities to develop social relations at work.

The great majority of domestic workers are women.⁷ Without paid domestic workers, the labour force would look different today because the women that have historically been in charge of household tasks, such as care work and cleaning, would not be able to work outside the home. Domestic work may set challenges to feminist thought. John Stuart Mill drew an analogy between women's treatment by the law in the 19th century and slavery, partly because women had no right to work outside the home.⁸ Today, women participate in the labour market outside the home. This is of course desirable because they achieve greater equality to men. But to do this they often have

⁴ See P. Hondagneu-Sotelo, *Doméstica* (2001) chapter 1; B. Ehrenreich and A. Russell Hochschild, 'Introduction', in *Global Woman*, eds. B. Ehrenreich and A. Russell Hochschild (2002); I. Shutes and C. Chiatti, 'Migrant Labour and the Marketisation of Care for Older People: The Employment of Migrant Care Workers by Families and Service Providers' (2012) 22 *J. of European Social Policy* 392.

⁵ Some data are available in the 2010 ILO Report 'Promoting Decent Work for Domestic Workers', para. 20. For analysis, see B. Anderson, *Doing the Dirty Work? The Global Politics of Domestic Labour* (2000).

⁶ See generally eds. B. Anderson and I. Shutes, *Migration and Care Labour: Theory, Policy and Politics* (2014).

⁷ ILO Report, as above, n. 3, para. 21. For analysis, see eds. B. Ehrenreich and A. Russell Hochschild, *Global Woman* (2002); H. Lutz, *The New Maids: Transnational Women and the Care Economy* (2011) 18.

⁸ J.S. Mill, *The Subjection of Women* (1869).

to employ other, migrant women to work at home.⁹ This is why it has been suggested that the feminist project is unfinished.¹⁰

Domestic labour is notoriously difficult to regulate. The working conditions of domestic workers are special, in that they work in the household of the employer, away from the public eye. They are not visible to the authorities and are not easily accessible by labour inspectors. When they are live-in domestic workers, the employer's house is also their home, so their private space and time is even harder to measure.¹¹ Moreover, in part because they are very hard to access, domestic workers are generally under-unionised.¹²

In addition to the difficulties that stem from the nature of the job, domestic work is a disadvantaged sector of the labour market. Domestic workers are excluded from much labour protective legislation in many legal orders. In the UK, for example, domestic work is excluded from the Health and Safety at Work Act 1974,¹³ for reasons that involve the protection of the privacy of the employer's household. Regulation 19 of the Working Time Regulations excludes domestic workers in private homes from the majority of Regulations 4-8 on maximum weekly working time, maximum working time for young workers, length of night work, night work by young workers, and restrictions on the patterns of work that can be set by employers when there is risk to the health and safety of a worker.¹⁴ Domestic workers are also excluded from minimum wage regulation, when the domestic worker is viewed as a 'member of the family'.¹⁵ Elsewhere I have described the exclusion from protective laws or special regulation of this work sector as the 'legislative precariousness of domestic workers'.¹⁶ This disadvantage is not just a recent phenomenon. It has been argued that it is rooted in the category of 'domestic servant' and 'menial servant' in English law, a class of worker which historically received separate regulation.¹⁷ Paid domestic work is essential in the modern world, and many domestic workers are treated with respect. Exploitation is not endemic in domestic labour. Yet domestic workers are prone to exploitation because of the particularities of the job and their treatment by

⁹ Bridget Anderson shows how the employer of the domestic worker is the woman of the household. See B. Anderson, *Doing the Dirty Work: The Global Politics of Domestic Labour*, (2000); B. Anderson, 'Why Madam Has so Many Bathrobes: Demand for Migrant Domestic Workers in the EU', (2001) 92 *J. of Economic and Social Geography* 18-26.

¹⁰ B. Ehrenreich, 'Maid to Order', in *Global Woman* (2002) 103. See also Anderson, id., (2001).

¹¹ D. McCann and J. Murray, 'Prompting Formalisation through Labour Market Regulation: A Framed Flexibility Model for Domestic Work' (2014) 43 *Industrial Law J.* 319-348.

¹² See for instance, the Report 'Out of the Shadows - Organising and Protecting Domestic Workers in Europe: The Role of Trade Unions', 2005. For the challenges of unionization of domestic workers and a story of success in the UK, see B. Anderson, 'Mobilizing Migrants, Making Citizens: Migrant Domestic Workers as Political Agents' (2010) 33 *Ethnic and Racial Studies* 60-74. On Israel, see G. Mundlak and H. Shamir, 'Organising Migrant Care Workers in Israel: Industrial Citizenship and the Trade Union Option' (2014) 153 *International Labour Rev.* 93-116. See also E. Albin and V. Mantouvalou, 'Active Industrial Citizenship of Domestic Workers: Lessons Learned from Unionising Attempts in Israel and the UK' (2015) *Theoretical Inquiries in Law*, forthcoming.

¹³ Health and Safety at Work Act 1974, section 51.

¹⁴ For discussion and analysis, see G. Mundlak, 'Recommodifying Time: Working Hours of "Live-in" Domestic Workers', in *Labour Law, Work, and Family*, eds. J. Conaghan and K. Rittich (2005).

¹⁵ *Nambalat v. Taher & Anor; Udin v. Pasha & Ors* [2012] EWCA Civ 1249.

¹⁶ V. Mantouvalou, 'Human Rights for Precarious Workers: The Legislative Precariousness of Domestic Workers' (2012) 34 *Comparative Labor Law and Policy J.* 133-166.

¹⁷ E. Albin, 'From "Domestic Servant" to "Domestic Worker"', in *Challenging the Legal Boundaries of Work Regulation*, eds. J. Fudge, S. McCrystal and K. Sankaran (2012).

the law.

In recent years, the domestic work sector has attracted significant attention in many national and supranational fora.¹⁸ Perhaps the most significant development at international level was the adoption of the 2011 International Labour Organisation Convention No 189 and Recommendation No 201 on Domestic Workers, which contain concrete safeguards for this vulnerable work sector. Domestic workers and their organizations welcomed the Convention with enthusiasm. Academic scholarship was equally welcoming.¹⁹ The Convention was viewed as a positive development for bringing this disadvantaged work sector from the shadows of labour market regulation to the light and presenting domestic workers' rights as human rights, while also targeting the particularities of the sector.²⁰ The legal instruments were adopted with wide support (396 votes in favour, 16 against and 63 abstentions), but the UK abstained in the vote. The UK Government representative said: 'we do not consider it appropriate, or practical, to extend criminal health and safety legislation, including inspections, to cover private households employing domestic workers. It would be difficult, for instance, to hold elderly individuals, who employ carers, to the same standards as large companies'.²¹

OVERSEAS DOMESTIC WORKER AND DIPLOMATIC VISA

Against this background of the legislative precariousness of domestic labour as well as some political hostility against this disadvantaged work sector, this section examines the ODW and diplomatic visas, both of which tie the worker to the employer, in that the worker does not have a right to change employer. Since workers from the European Economic Area (EEA) have freedom of movement, it is only non-EEA citizens that are affected by the visas.

The ODW visa is not entirely new. Previously, until 1998, when migrant domestic workers arrived lawfully in the country accompanying an employer, they entered under a concession that tied them to this employer. Their residency status was lawful for as long as the employer with whom they entered the country employed them, with the result that the employer gained important means to control them. The wish of certain visitors coming into the UK to be accompanied by domestic workers, stemming from the personal relationship developed between them and the workers, together with the wish of domestic workers to retain their job while their employers

¹⁸ See G. Mundlak and H. Shamir, 'The Global Governance of Domestic Work', in *Migration and Care Labour*, eds. B. Anderson and I. Shutes (2014); A. Blackett, 'The Decent Work for Domestic Workers Convention and Recommendation 2011' (2012) 106 *Am. J. of International Law* 778-794 at 781-782;

¹⁹ E. Albin and V. Mantouvalou, 'The ILO Convention on Domestic Workers: From the Shadows to the Light' (2012) 41 *Industrial Law J.* 67-78; A. Blackett, id.; S. Fredman, 'Home from Home: Migrant Domestic Workers and the International Labour Organisation Convention on Domestic Workers', in *Migrants at Work*, eds. C. Costello and M. Freedland (2014); M. Oelz, 'The ILO's Domestic Workers Convention and Recommendation: A Window of Opportunity for Social Justice' (2014) 153 *International Labour Rev.* 143-172.

²⁰ Albin and Mantouvalou, id.

²¹ Statement by Ms Warwick, International Labour Conference Record of Proceedings 15 June 2011, 25 (rev), 22).

are abroad for a short period of time, explains why provision was made for overseas domestic workers in the UK immigration system.

In parliamentary debates, the concession from the standard immigration routes was described as a matter of national interest: ‘Looking at our national interest, if wealthy investors, skilled workers and others with the potential to benefit our economy were unable to be accompanied by their domestic staff they might not come here at all but take their money and skills to other countries only too keen to welcome them.’²² At the same time, when the concession was introduced for domestic workers from overseas, a humanitarian reason was also put forward: ‘Domestic workers who were unable to accompany the household to the UK could well lose their jobs, their homes and their livelihoods.’²³

This situation changed in 1998, when immigration rules allowed domestic workers to change employers (but not work sector). The 1998 change was the important outcome of a campaign by domestic workers, trade unions and other civil society organisations that supported them, which highlighted how domestic workers can be active agents.²⁴ Under the regime of 1998, there were two types of overseas domestic worker visas: one for workers employed in private households, and another for those employed in diplomatic households. A domestic worker who had been employed by his or her employer for at least one year abroad could accompany a foreign national who entered the country for a period of six or 12 months. After five years, the worker could apply for settlement. Even though the domestic worker had entered the country with a specific employer, he or she was not tied to that employer. The worker could change employer but not work sector. The impact of this route of immigration on net migration was negligible. According to UK Border Agency data, less than 5 per cent of domestic workers who entered under an ODW visa went on to settle in the country. In 2009, only 0.5 per cent of those awarded settlement in the UK were migrant domestic workers.²⁵

The Draft International Labour Organisation Multilateral Framework on Labour Migration of 2005²⁶ and the UN Special Rapporteur on the Human Rights of Migrants cited the 1998 ODW visa as best practice.²⁷ In the UK, it was viewed as an important safeguard against trafficking in human beings.²⁸ If domestic workers were ill-treated by the employer with whom they entered the country, they could move to another employer. The ability to change employer was an important safeguard for overseas domestic workers who would otherwise be totally dependent on the employer with whom they arrived.

However, in 2012 the Government introduced a visa regime that does not permit domestic workers to change employer. This change occurred against the background of the so-called Points-Based-System. Under this system, the policy is to not grant

²² Lord Reay, 28 November 1990, Hansard Col. 1052.

²³ *id.*

²⁴ See Albin and Mantouvalou, *op. cit.*, n. 12.

²⁵ M. Lalani, *Ending the Abuse – Policies that Work to Protect Migrant Domestic Workers* (2011).

²⁶ Draft ILO Multilateral Framework on Labour Migration, available at <<http://www.ilo.org/public/english/standards/realm/gb/docs/gb295/pdf/tmmflm-1.pdf>> para. 82.

²⁷ See <<http://www.refworld.org/cgi-bin/tehis/vtx/rwmain?docid=4c0623e92>>, paras. 60-61.

²⁸ Home Affairs Committee, *The Trade in Human Beings: Human Trafficking in the UK*, Sixth Report of Session 2008-2009, Volume I, 9 June 2011.

visas to low-skilled migrants, so domestic workers – typically viewed as low-skilled workers – did not fit.²⁹ Under the new regime, when migrant domestic workers arrive lawfully in the country accompanying an employer, their visa status ties them to this employer.³⁰ Their residency status is lawful only for as long as the employer with whom they entered employs them, to a maximum of six months. The six-month period is not renewable. Like ODW workers since 2012 and before 1998, diplomatic domestic workers are also tied to their employer. They do not have the six-month restriction of those with an ODW visa, but are likewise very vulnerable, not only for the reasons that affect all tied migrant domestic workers but also because of the diplomatic status and immunity enjoyed by their employers.³¹ For diplomatic domestic workers, there is no requirement that the employment relationship pre-exists entry to the country.

When the 2012 regime was introduced, the Government acknowledged that ‘the [overseas domestic worker] routes can at times result in the import of abusive employer/employee relationships to the UK’.³² The following safeguards were said to protect against this: that the employment relationship is in existence for at least 12 months before arrival; that there is strong evidence for the existence of the relationship; that written terms and conditions are agreed between the employer and the worker before entry in the UK; that information is given to the workers by UK authorities, before they arrive, on their rights and avenues for help while they are in the country.³³ These policies were in place before 2012, and had been previously criticized.³⁴

Between 15,000 and 16,000 ODW visas are issued each year, according to statistics provided by the Home Office, and about 250 diplomatic domestic worker visas. The Home Office does not provide any further information on the arrivals but produces data on the nationality of the employers. About 80% of the employers under the ODW visa come from a very small number of countries in the Middle East: 4,894 from the United Arab Emirates; 3,996 from Saudi Arabia; 2,581 from Qatar; 1,005 from Kuwait; and 257 from Oman.³⁵

²⁹ B. Anderson, *Us and Them* (2013) 175. See further discussion of the system in M. Ruhs, *The Price of Rights – Regulating International Labor Migration* (2013) 92.

³⁰ See Immigration Rules, 159A-159H, available at <<http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part5/>>.

³¹ C. Murphy, ‘Researching Barriers to Access to Justice for Migrant Domestic Workers in Diplomatic Households’ (2013) 42 *Industrial Law J.* 447-453. See also *Reyes & Anor v. Al-Malki & Anor* [2015] EWCA Civ 32.

³² Statement by Home Secretary Theresa May, Written Ministerial Statements, 29 February 2012, Col. 35WS.

³³ Home Office, Statement of Intent: Changes to Tier 1, Tier 2 and Tier 5 of the Points Based System; Overseas Domestic Workers; and Visitors, February 2012, available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/117953/tiers125-pbs-overseas-soi.pdf> <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/299022/ODW_v10.0E_XT.pdf>

³⁴ See, for instance, N. Clarke and L. Kumarappan, ‘Turning a Blind Eye: The British State and Migrant Domestic Workers’ Employment Rights’, Working Lives Research Institute, August 2011; K. Roberts, ‘Non Priority Slaves?’, Migrants Rights Network, 20 December 2013.

³⁵ Lord Bates, 25 February 2015, Hansard Col. 1701.

The domestic workers' visa is not the only example of a visa that ties a worker to a particular employer. Sometimes high-skilled workers are tied to an employer.³⁶ However, the fact that domestic work is a disadvantaged sector, excluded from much labour protective legislation, compounded by restrictive visa regimes, means that it is not comparable to other sectors. The interconnection between the sectoral problems and the extremely tight immigration rules creates unprecedented challenges.³⁷ At the same time the UK ODW and diplomatic visas are more restrictive than similar regimes affecting domestic workers in other legal orders, such as Canada.³⁸

In this context, Kalayaan, the main UK-based NGO specialising in the labour rights of migrant domestic workers, published statistics on the immigration rules in April 2014.³⁹ These showed that workers registered with the NGO who entered the UK on the new visa reported significantly worse treatment than those that were not tied to their employer during the same period of time but under the previous regime. More precisely, they found that migrant domestic workers with a visa that ties them to their employers were twice as likely to report having being physically abused to those who were not so tied (16% and 8%); that almost three quarters of workers that were tied to the employer were not allowed to leave the house unsupervised, which is again a significantly larger number than workers under a non-tied visa; that 65% of the domestic workers did not have their own rooms; that the majority work more than 16 hours a day, and a greater number of them than previously were assessed as more susceptible to human trafficking. A further concern was that the number of people registered with Kalayaan dropped by a third, while the number of visas issued remained consistent. In 2015 the organization's new statistics confirmed that the abuse reported by workers under the tied visa are proportionately consistently higher than the abuse reported by other workers. The immediate effects of the visa were also explored in a study by Human Rights Watch, 'Hidden Away',⁴⁰ which reported labour exploitation and other types of abuse, such as physical or psychological abuse. Following a mission to the UK, the UN Special Rapporteur on violence against women further highlighted the problems of the visa for domestic workers.⁴¹ In relation to diplomatic domestic workers in particular, research suggests that it was always clear that the incidence of exploitation and abuse affecting them was higher.⁴²

³⁶ See the discussion in J. Carens, 'Live-In Domestic, Seasonal Workers, and Others Hard to Locate on the Map of Democracy' (2008) 16 *J. of Political Philosophy* 419-445.

³⁷ E. Albin, 'The Sectoral Regulatory Regime: Where Work Migration Controls and the Sectorally Differentiated Labour Market Meet', in *Migrants at Work*, eds. C. Costello and M. Freedland (2014).

³⁸ See the discussion in J. Fudge, 'Precarious Migrant Status and Precarious Employment: The Paradox of International Rights for Migrant Workers' (2012) 34 *Comparative Labor Law and Policy J.* 95-132, 106 ff.

³⁹ Kalayaan, 'Slavery by Another Name: The Tied Migrant Domestic Worker Visa', available at <<http://kalayaan.org.uk/documents/Slavery%20by%20a%20new%20name-%20Briefing%207.5.13.pdf>>.

⁴⁰ Human Rights Watch, 'Hidden Away', March 2014. See also Centre for Social Justice Report, 'It Happens Here', March 2013; A. Boff, 'Shadow City, Exposing Human Trafficking in Everyday London', GLA Conservatives, October 2013; F. Field MP, 'Report of the Modern Slavery Evidence Review', December 2013.

⁴¹ UN Special Rapporteur on Violence Against Women, 15 April 2014, <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14514&LangID=E>>.

⁴² Lalani, op. cit., n. 25, chapter 4.

EXPERIENCES OF MIGRANT DOMESTIC WORKERS IN THE UK

Against this background, for the purposes of the present study, I conducted interviews with 24 migrant domestic workers that arrived in the UK on a visa that ties them to the employer (ODW and diplomatic domestic workers).⁴³ For reasons that were developed earlier in this article, the nature of the job means that there are obvious barriers in accessing ODW and diplomatic domestic workers. I approached the interviewees through Kalayaan, which used its database of registered workers and arranged the interviews using its relation of trust with these workers. Domestic workers approach Kalayaan to learn about their labour rights, to get support, to build a social network, to attend English classes and for other such reasons. I was introduced to them as a trustee of Kalayaan, and conducted the interviews in the offices of the organisation with the help of interpreters, when needed.

The purpose of the study was not to find a representative sample or to produce quantitative analysis of the numbers of workers under this visa regime, which would not be possible in the case of this group. Workers that approach Kalayaan may not be a representative sample in that they may be more empowered, confident, knowledgeable or abused than other domestic workers. However, this organization is the only one that has evidence involving a workforce that is hidden and on which we have no other data available.

All the workers that participated in the study were women, and almost all of them were already migrant workers before coming to the UK. Originally, they came from countries in Southeast Asia (such as the Philippines or Indonesia), South Asia (India) or North Africa, and they migrated to work for employers in the Middle East or North Africa, and they arrived in the UK from these countries.⁴⁴ The ages of the interviewees ranged between 18 and 65 years old. Their educational background was very diverse: from those who had attended only primary school to university graduates. Almost all domestic workers interviewed said that they had dependents in their country of origin and migrated in the first place in order to support those dependents. Even though I did not aim to interview only domestic workers that had already escaped their employers, almost all interviewees had left their employers. This was inevitable because often workers have left abusive employers by the time that they approach Kalayaan.

The interviews of this study were conducted as a step in exploring the experiences, views and understanding of the visa regime of a group of marginalised individuals who are usually very difficult for researchers to reach. The purpose of this empirical exploration was to attempt to identify some common themes in their experiences in relation to their living and working conditions before and after arrival, and to understand what may be some of the long-term effects of the visa on those that have escaped their employers. This section presents some findings of the interviews

⁴³ Prior to conducting the interviews, ethical approval was granted by UCL's Research Ethics Committee (Project ID 5949/001). All the names of the interviewees have been changed in order to protect their anonymity. The interviewees were offered a £20 super-market voucher in appreciation of their time. Their travel expenses were also covered. Most interviews were recorded and transcribed, unless the interviewee preferred not to be recorded in which case I kept notes only.

⁴⁴ No further information on the nationality of the interviewees will be provided, in order to protect their anonymity.

organised according to themes: it explores domestic workers' experience of the living and working conditions before and after arrival, as well as their fears and hopes.⁴⁵

1. Work and life before and upon arrival

Almost all interviewees arrived from Gulf countries. The dramatic state of the rights of migrant workers in the Middle East is well documented.⁴⁶ A 2014 Report on Qatar, where some of the interviewees came from, suggested that these workers are in a legal vacuum and are seriously abused.⁴⁷ One of the gravest problems faced by migrant workers there is the use of the *kafala* (sponsorship) system that links a migrant worker to a single employer.⁴⁸ There are different variations of *kafala* in different Gulf countries. In Qatar, for example, the *kafala* system means that the worker is linked to the sponsoring employer, and cannot work for anyone else or indeed leave the country, unless the employer agrees to it. This has been heavily criticized by labour and human rights organisations.⁴⁹ The UN Special Rapporteur on the Human Rights of Migrants said that '[t]he *kafala* system enables unscrupulous employers to exploit employees. Frequent cases of abuse against migrants include the confiscation of passports, refusal to give "no objection" certificates (allowing migrants to change employer) or exit permits and refusal to pay migrants' plane tickets to return home'.⁵⁰ In 2010, the UN High Commissioner for Human Rights urged the Gulf states 'to replace the *kafala* system with updated labour laws that can better balance rights and duties'.⁵¹ In light of this situation of dependency of the worker on the employer, it was no surprise that the interviewees in the present study reported that the employers held their passports both before and after arrival in the UK.

The interviewees, live-in domestic workers, said that their tasks covered every aspect of housework: caring for children or elderly people, cleaning, shopping, cooking and serving. Their salaries were reported to be as low as £50 per month, and to generally range between £100-250 per month. Interviewees reported working between 12 and 20 hours a day, depending on the needs of the children of the families or depending on when the employers needed them more generally. Almost all the workers interviewed said that they were not allowed out of the house unaccompanied. They also explained that they worked every day of the week, with no day off. By way of an example, one domestic worker who had one day off per month said that she was

⁴⁵ Themes of potential relevance were identified through two pilot interviews.

⁴⁶ On the working conditions in Qatar, for instance, see the Report of the UN Special Rapporteur on the Human Rights of Migrants, 23 April 2014, <http://www.ohchr.org/Documents/Issues/SRMigrants/A-HRC-26-35-Add1_en.pdf> On Saudi Arabia, see Al-Jazeera, 'The Plight of Migrant Workers in Saudi Arabia', <<http://www.aljazeera.com/programmes/insidestory/2013/01/201311116530348352.html>> and Human Rights Watch, 'As If I Am not Human', July 2008. On the United Arab Emirates, see Human Rights Watch, 'Domestic Workers Trapped, Exploited and Abused in the UAE' <<http://mm.hrw.org/content/domestic-workers-trapped-exploited-and-abused-uae>>.

⁴⁷ Report on Qatar, id., paras. 48-50.

⁴⁸ For further details, see M. Ruhs, *The Price of Rights – Regulating International Labor Migration* (2013) 97.

⁴⁹ A. Khan, 'Why it's Time to End Kafala', *The Guardian*, 26 February 2014; *The Economist*, 'The Middle East's Migrant Workers: Forget About Rights', 10 August 2013.

⁵⁰ Op. cit., n. 66, para. 25.

⁵¹ 'Human Rights and the Gulf Region', Address by UN High Commissioner for Human Rights, 19 April 2010, <<http://www.ohchr.org/ch/NewsEvents/Pages/DisplayNews.aspx?NewsID=9997&LangID=E>>

refused a second day off in one month, when she requested this after nine years employed by the same employer.⁵² She also said that she was refused a rise of her £200 monthly salary. Another worker responded to the question whether she had any time off: 'Yes, [my employer] gave me time off to help her relatives'.⁵³ When I explained to her that time off means time away from work, she said that she only had about six hours off every month. A worker who asked for some time off said: 'I told [the employers]: "Please let me rest. I will be sick." And they said: "No. Who are you? A Madam?"'. She later added: '[My employer] never let me sit on the chair, she got me to sit on the floor'.⁵⁴

As these workers are live-in domestic workers, their home is in the employers' household, which is also their own workplace. This sets obvious obstacles to calculating their working time and protecting their privacy. Some of the interviewees said that they had their own room, but others said that they had to share a room with the children of the family. One interviewee said that she was staying in the storage room in the employers' house. Many interviewees said that they did not eat at the same time as the employers and that nutrition was not always sufficient. One interviewee said: 'I had dinner/meals in the kitchen. I was not allowed to join them. After they finished eating, they allowed me to eat. I cried every day'.⁵⁵ Another interviewee said:

I was very skinny because I didn't have food... [I was] very hungry. When they ate, they treated me like an animal. They sat at the table but I stayed on the other side. They gave me food just like you give food to animals.⁵⁶

Interviewees reported psychological and physical abuse. Some workers recounted that the employers shouted at them and some also reported violent behaviour, such as slapping. One interviewee said: 'If I did something wrong with my work or if the baby kept crying and I could not handle it, they hit me'.⁵⁷ Others explained that they did not react to the employers' ill-treatment because they knew that they might be physically abused if they did. Some interviewees reported being sexually harassed or assaulted by their employers; one worker said that she was sexually harassed by other domestic workers, but that the employers took no action to protect the worker, even though the harassment had been brought to their attention. One of the interviewees said that she had attempted to commit suicide because of the harassment that she suffered.

Despite the ill-treatment that they reported in their interviews, the interviewees said that they felt that they could not escape while they were there. One interviewee explained that she was not locked in, but she still felt unable to escape:

They just didn't let me go out. I was also afraid to go out on my own in Qatar because all their relatives lived in the area. If I wanted to go out, I

⁵² Angie.

⁵³ Sarah.

⁵⁴ Dina.

⁵⁵ Monica.

⁵⁶ Ella.

⁵⁷ Angel.

only went with my employer when she wanted to go to the market. I never went on my own.⁵⁸

When asked why she did not escape from her employers, another interviewee said ‘[t]hat’s why I did not run away there; because there are no human rights in Qatar’.⁵⁹ One interviewee explained to me that she went to the agency that assigned her to the family for which she worked to tell them that she was being ill-treated by her employer. However, the agency did nothing about it, because her employers were ‘important [...], they had all the power’ and the agency ‘knew these people and were afraid of them’.⁶⁰

Another worker that arrived from Saudi Arabia responded to the same question as follows:

Everything is in control of the employer. I am telling you, there are no human rights in that country. Even if you pay them back for your visa and how much they spent for you and say “I want to go back now”, you will die.⁶¹

Regarding the safeguards that are supposed to be in place through the ODW visa in order to prevent the exploitation of these workers and to provide them with information and support in the UK, such as an employment contract and information on labour rights at the Embassy or at the airport, the interviewees reported that these were either not implemented in practice or were ineffective. The workers interviewed said that the employers hold their passports and, in the majority of the interviews, the workers said that they were not given information at the UK Embassy in the country from which they arrived.

Very few interviewees said that they saw and signed a contract. Moreover, those that did explained that they did not understand it or that the terms of their work did not comply with it in reality. One interviewee said, for example: ‘Yes, I saw a paper. But I don’t know how to read. So, they gave me a paper and said “sign here”’.⁶² The workers interviewed said that they were not given information at the airport, upon arrival. They explained that they arrived with their employer, which on their view is the reason that they were not given this information at the airport. From the interviews, it emerged that they felt that the employer was ‘in charge’ of the situation at the Embassy and the airport.

The interviewees said that they did not know about the details of their visa prior to arrival in the UK. Only a few of them said that they had been informed that the visa would not be renewable or that they would not be permitted to change employers. They also said that they had extremely vague knowledge about UK labour rights, such as a minimum wage or maximum working time.

⁵⁸ Marie.

⁵⁹ Ella.

⁶⁰ Pennie.

⁶¹ Bianca.

⁶² Dina.

The experience reported by the interviewees that the safeguards that are supposed to exist are not implemented in practice also supports the conclusions of the Centre for Social Justice Report, 'It Happens Here', which suggested that the information letter is not issued in many cases and contains no information on possible grave abuse of labour rights. It also says very little about workers' rights in the UK and has no further guidance on where information can be found.⁶³ The Centre for Social Justice used by way of an example the statement that the letter refers to the 'ACAS helpline', without explaining what ACAS stands for or what it can offer.⁶⁴

For reasons explained below, even if these safeguards were in place, however, they would not provide sufficient protection to domestic workers.

2. Work and life after arrival

Some of the interviewees explained that they did not want to come to the UK, but that the employers required them to do so. One of the workers said:

I did not want to come here. Because her son [for whom they wanted me to work in the UK] is too... I don't like him... his attitude. They forced me to come here.⁶⁵

In this particular example, the interviewee suggested that the employers abused the domestic worker visa regime in order to transfer the worker to another employer (their son in this case). Similarly, another worker said that the employer brought her to work for his sister who was ill and needed a carer. This was contrary to the worker's own wishes, as she said, but she reported that she was required to do it because that woman's domestic worker could not accompany her for the reason that she had not been working for her for one year (as the ODW visa requires). A worker who was brought in the country to work for the employers' daughter while she was a student, reported that she asked the employer to renew her visa when it expired, but that the employer refused her request. This worker did not know that her visa was not renewable.

After arrival in the UK, the interviewees reported that their working conditions did not improve. To the contrary, some interviewees said that their living and working conditions deteriorated. Sometimes they said that they stayed in less spacious accommodation (in hotel rooms that they shared with the employers) than in the country from where they arrived. One of the interviewees recounted that in the UK she slept on the bathroom floor because of a lack of space, which made the employment relationship more tense than it was before coming to the UK.⁶⁶ She explained that because she slept there, she could hardly get any rest.

Interviewees said that no pay increases took place while in the UK, even if the employers had agreed with the workers or the authorities prior to arrival that they

⁶³ Centre for Social Justice, op.cit., n. 25, 94.

⁶⁴ The letter in question is available here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/265823/dworkers-informationsheet.pdf.

⁶⁵ Amanda.

⁶⁶ Evelyn.

would pay the worker a higher salary. In fact, some of those interviewed said that they were not paid at all while in the UK. One of the workers, for example, explained that the employers stopped sending her salary to her family in the Philippines during the four months that she worked for them in London. Another worker said that she asked her employer to pay her salary in accordance with her contract, but that the employer responded: ‘That is only in the papers’.⁶⁷

The workers interviewed said that their hours of work remained extremely high in the UK and that they were still not allowed to go out unaccompanied. One interviewee explained that, when she was in the UK, the employers locked her up in the flat, which is something that did not happen before arrival, perhaps because, as she suggested, there was nowhere to go.

One of the disturbing findings during the interviews was that these domestic workers are used to, and do not object to, extremely low living standards and the absence of labour rights in the country from which they arrive. They have already worked for long periods in countries with no labour protection and with serious exploitation of migrant workers. From the interviews, it emerged that they take the abuse for granted.

(a) Dependency, fear and intimidation

According to the interviewees, while in the UK, the employers still kept the workers’ passports and sometimes threatened them that, if they escaped, the police would arrest, imprison and deport them. One of the workers interviewed also said that she received death threats from her employer.

One night ... [the employer] was very angry with me because he wanted food but at that time the market was closed so I came back home and told him ‘sorry, it is closed’. If you want tomorrow you can eat. It’s late. And he said ‘what are you saying? I’m giving you your salary and what are you telling me that it is late and the market is closed?’ ‘There is no market open by now; it’s too late’. And he threw me some things and told me: ‘I can kill you and throw you into the sea. It is an ocean there’. And I was scared. It was the two of us in his flat. I was scared about what would happen to me. What would I really do? I didn’t know.⁶⁸

Even workers who said that they had been abused, still showed elements of loyalty to their employers:

I ran away. I left them sleeping. I didn’t want to make it risky for the child by leaving it behind in a hotel. So in the middle of the night, when they were sleeping, I packed my things and ran away without any documents, without any pocket money. I just had my stuff and myself that cold night.⁶⁹

A worker who reported sexual abuse by her male employer said:

⁶⁷ Marie.

⁶⁸ Amanda.

⁶⁹ Bianca.

I needed the money and the work and [...] my Madam treated me nice. Also, I could not leave my Madam because of her illness, even though my male employer was treating me like that.⁷⁰

The interviewees appeared to be extremely fearful when discussing their employment experience. They expressed fear of abusive employers, fear of the authorities and fear of acting in any way that may be considered illegal. Some interviewees also expressed the belief that the employers remain unaccountable because they are very powerful or because there is no legal route to hold them to account, as they have been informed when they are in the UK.

Despite the abuse and exploitation reported by the interviewees, most of them said that they have not been or would not go to the police or immigration authorities. Even though they said that they miss their loved ones who are in their country of origin, they explained that they fear deportation because of their economic need which led them to migrate in the first place.

(b) Escape and being undocumented

Almost all the domestic workers interviewed are now undocumented for periods ranging from a few months to two years because they escaped their employers. The workers that ran away said that the escape was not part of a plan. It was a sudden decision:

I decided to leave them suddenly because I couldn't handle living with them any more ... I left without anywhere to go and then I met someone outside. I did not go to the police, because I did not know how to go to the police.⁷¹

The interviewees said that they still did not have their passports when they escaped. One of the workers recounted that she asked her former employer to return her passport to her, and the employer said that she had to pay £2,000 in order to have it. Another worker said:

[W]hen I left the hotel of my employer, my mother told me: 'if they don't give you the passport, why don't you call the police?'. Because they [the employers] did not tell me anything about it. I didn't know what to do. I only knew that they took my passport for some reason, eg. maybe they thought that I would not be going back to them. I don't know. Because if the police asked me while I was going there about my passport, they would put me in jail – if I didn't have a passport. I didn't know the situation. They didn't tell me. I thought it was ok not to take my passport from my employer.⁷²

The majority of the interviewees said that they only learned after they escaped that they had no right to remain in the country or work for a new employer. Some

⁷⁰ Geraldine.

⁷¹ Angel.

⁷² Sarah.

interviewees said that they believed that they would have more rights in the UK. One said, for example: ‘In Saudi Arabia I could not leave them. Here I could go anywhere and disappear because it is a country with more freedom’.⁷³

The workers interviewed said that they know that they are now undocumented and seemed embarrassed by their status. They said that they are driven underground: they explained that they do not want to return to their employers because of the abuse and exploitation that they suffered. Most of the interviewees said that they do not have a case pending in court against the former employers. They also said that they do not want to return to their country of origin either, because they have dependents to support who are in desperate economic need. They spoke about their needy children, spouses or parents in their country of origin. One interviewee who reported serious exploitation while in the UK said:

I am afraid that if I don’t get a visa and have to go back to my country, the owner of the house [where my mother lives] will kick her out. And it is really difficult to find a job in Indonesia. [...] Once I was two weeks late to pay my mom’s rent and they kicked her out [...] I think about my mom being alone there without family... Other members of our family have passed away. We don’t have any family. My brother was sick and my mom didn’t tell me. She borrowed money from the neighbors. That’s why I was working here. I just finished paying the money back for when my brother was in the hospital. I just finished paying this and then I lost my job.⁷⁴

After becoming undocumented in the UK, many of these workers said that they find part-time jobs for a few hours a week. They explained that the new employers sometimes know about their illegality and are reluctant to hire them full-time as live-in domestic workers, so very few have full-time jobs. Some said that they found full-time work initially but were subsequently dismissed because of their legal status. Most of the interviewees therefore said that they have a couple of jobs every week, with different employers for 3-4 hours a week. Some said that they live with friends and share living costs with them, and a few also said that they work as domestic workers for the people with whom they share accommodation. They explained that any income that they send to their families covers basic material needs like electricity, nutrition and education. The interviewees said that they have to work in order to support their dependents, and most said that they would like to have full-time jobs as live-in domestic workers but that they cannot find such jobs because they are undocumented.

The workers interviewed said that their hourly or weekly pay is sometimes in accordance with the law and even above the minimum wage (about £10 per hour), but that sometimes the new employers, knowing of their status as undocumented migrants, exploit them further by paying them below the minimum wage (£5-6 per hour or less),⁷⁵ getting them to work very long hours or dismissing them without

⁷³ Michelle.

⁷⁴ Pennie.

⁷⁵ The hourly rate of £5-6 is below the minimum wage, as these workers are not live-in domestic workers so there is no accommodation offset that the employers can deduct.

reason and with no compensation. Some of the workers said explicitly that they know that they are being exploited. One interviewee said, for example:

Sometimes if you have an interview and you tell [the prospective employers] that you don't have papers, they take advantage of you and they give you a small salary.⁷⁶

Despite this, the interviewees said that they would not consider going to the authorities because they are afraid of deportation. Some of the interviewees told me that they were afraid to use the £20 super-market voucher that I offered to them after the interview in appreciation of their time, because they feared that this might lead to their arrest, detention and deportation. They are 'deportable' and hence easily 'disposable' by their employers.

Most of the workers interviewed say that they are isolated in the UK. They may now know some people, often another migrant domestic worker from their country of origin, but their opportunities to be part of groups or networks of support are very limited. Above all, they explained that it is their fear that makes them prefer this isolation. This became particularly evident when I asked them if they are or if they would consider becoming members of a trade union, which for domestic workers can serve as a forum for social interaction.⁷⁷ Most interviewees said that they were not aware of the existence or meaning of trade unionism, but when I explained it to them, some explicitly said that they would be scared to join any organization other than a small number of NGOs (mainly Kalayaan) that they have come to trust.

Some of those interviewed further suggested that they know other domestic workers that are now undocumented, but who are not registered with Kalayaan. One worker said for example:

There are so many [undocumented domestic workers in my situation] here but they do not want to go out because they are scared. Last week I brought one in the group. She has been here almost two years but she does not have a passport and she did not register with Kalayaan. Everyone around her told her not to speak to anyone, that the police could catch you etc.⁷⁸

The isolation of these workers is not only from the broader society but also isolation from their loved ones. Some interviewees explained that their undocumented status means that they cannot travel back to their country of origin because, if they do, they will not be allowed to return to the UK. A situation that is probably inconceivable for most people is just another fact of life for these undocumented workers.

In light of this empirical study, the longer-term implications of the visas that tie domestic workers to the employer, therefore, appear to involve the creation of a workforce that lives undocumented, underground, invisible and fearful, even more prone to exploitation than other domestic workers, or arguably, due to the fact that

⁷⁶ Ella.

⁷⁷ Albin and Mantouvalou, *op. cit.*, n. 12.

⁷⁸ Marie.

they are employed in private households away from the public eye, more prone to exploitation than the labour force as a whole.

VISA OF ENSLAVEMENT

The interviewees reported living hidden lives: hidden from the authorities and very often also hidden from other networks of support, such as civil society organisations. They experience a situation of greater legislative precariousness than other domestic workers, situated in the shadows of the law.⁷⁹ It has been argued that in cases of exploitation of migrant workers, it is the individual employer or trafficker that is viewed as evil, but in fact '[t]he state is responsible for the maintenance of a legal framework within which certain occupations and sectors are deregulated, and exist outside labour protection rules; and it is complicit in permitting third parties to profit from migrants' labour...'.⁸⁰ Through human rights law, state obligations can become central because this body of law was primarily developed to protect individuals from state action. Most human rights documents incorporate state obligations to respect and secure individual rights.⁸¹ The obligations of state authorities would come to the forefront in the present context if the overseas domestic worker visas were classified as visas that may lead to slavery and servitude.⁸² If there is a link between the visas explored here, on the one hand, and conditions of slavery, on the other, the state that enacted this visa regime may be responsible for a violation of the workers' human rights. The subsections that follow examine the definition of slavery and servitude under the ECHR and then turn to the more concrete state obligations under human rights law. The Modern Slavery Act 2015 provides that the terms 'slavery' and 'servitude' must be construed in accordance with article 4 of the ECHR.⁸³

1. *Slavery and Servitude*

On the traditional legal definition of classical slavery, its key feature is that individuals are treated as property. The 1926 UN Slavery Convention provides the following definition: 'Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised'.⁸⁴ Referring to this Convention, the European Court of Human Rights (ECtHR) in *Siliadin v. France*,⁸⁵ which involved a migrant domestic worker, explained that her situation could not be classified as slavery because there was no legal right of ownership over her in French law, but that it constituted 'servitude', which also fell within the scope of article 4 of the ECHR that prohibits slavery, servitude, forced and compulsory labour. The Court defined 'servitude' as 'an obligation to provide one's services that is imposed by the

⁷⁹ Mantouvalou, as above, n. 11. B. Anderson, 'Migration, Immigration Controls and the Fashioning of Precarious Workers' (2010) 24 *Work, Employment and Society* 300-317, 310.

⁸⁰ B. Anderson and R. Andrijasevic, 'Sex, Slaves and Citizens: The Politics of Anti-trafficking' (2008) 40 *Soundings* 135-145, 144.

⁸¹ See, for example, article 1 of the ECHR.

⁸² *Op. cit.*, n. 1.

⁸³ Section 1, Modern Slavery Act 2015.

⁸⁴ UN Slavery Convention, article 1.

⁸⁵ *Siliadin v. France* (App 73316/01) judgment of 26 July 2005. See V. Mantouvalou, 'Servitude and Forced Labour in the 21st Century: The Human Rights of Domestic Workers' (2006) 35 *Industrial Law J.* 395.

use of coercion, and is to be linked with the concept of “slavery”⁸⁶. Factors that contributed to this classification included the living and working conditions of the applicant, her fear that was nurtured by her employers, the fact that her passport had been confiscated and that she was not allowed to leave the household. The legal implication of this classification as a result of *Siliadin* was that France had a positive obligation under the ECHR to criminalise this type of exploitative relations.

The *Siliadin* judgment did not examine a visa regime but explored a situation of exploitation of an undocumented minor. But legal challenges to visa regimes that were associated with situations of slavery have arisen in courts. A regime very similar to the ODW visa that tied workers to one employer in Israel was found by the Israeli Constitutional Court to violate human dignity and to breach the Constitution by creating a situation that was described as foreign to labour law principles and to the contract of employment.⁸⁷ One of the Court’s judges said that the visa constitutes a modern form of slavery.⁸⁸

In Europe, in a case on sex trafficking in breach of article 4 of the ECHR, the ECtHR ruled that a very restrictive visa regime – the artiste visa regime in Cyprus – led to a violation of the Convention.⁸⁹ This was because it did not afford ‘practical and effective protection against trafficking and exploitation’.⁹⁰ *Rantsev* involved a young woman from Russia who was trafficked to Cyprus under an ‘artiste visa’. An ‘artiste’ was defined in the legislation as ‘any alien who wishes to enter Cyprus in order to work in a cabaret, musical-dancing place or other night entertainment place and has attained the age of 18 years’.⁹¹ Under this scheme, Ms Rantseva received a temporary work and residence permit. Having worked at a cabaret for three days, she escaped, only to be captured soon after and taken to the police. Since her immigration status was not irregular, the police returned her to her employer. Later that night she was found dead on the street below the flat where she was staying. An application was submitted to the ECtHR by Ms Rantseva’s father, who claimed that Russia and Cyprus had breached Article 4 of the Convention (among other provisions). The judgment of the Court did not distinguish between slavery and servitude, but said that human trafficking is covered by article 4.

With respect to the immigration rules, in *Rantsev* of particular concern was the fact that cabaret managers made an application for an entry permit for the artiste in a way that rendered the migrant dependent on the employer or agent. This artiste visa scheme made individuals vulnerable to traffickers.⁹² In addition, the Court found that the obligation of the employers to inform the authorities if an artiste leaves her employment is a legitimate means to the end of monitoring compliance with immigration law. However, it is only the authorities that should take steps in the event of non-compliance. Monitoring compliance cannot be the duty of the manager. This is why the Court was particularly troubled by the practice of asking cabaret owners and

⁸⁶ *Siliadin*, para. 124.

⁸⁷ *Kav-Laoved v. Government of Israel*, HCJ 4542/02, 2006. See analysis in E. Albin, ‘The Sectoral Regulatory Regime: Where Work Migration Controls and the Sectorally Differentiated Labour Market Meet’, in *Migrants at Work*, eds. C. Costello and M. Freedland (2014).

⁸⁸ Cited in Albin, *id.*

⁸⁹ *Rantsev v. Cyprus and Russia* (App. No. 25965/04, Judgment of 7 January 2010).

⁹⁰ *id.*, para. 293.

⁹¹ *id.*, para. 113.

⁹² *id.*, paras. 89, 91, 94, 100.

managers to lodge a bank guarantee to be used to cover artistes they employed. *Rantsev* shows, then, that a visa regime, which is very restrictive and creates strong ties between the worker and the employer, creating the opportunity to exercise control over her, may breach the Convention. It can be said that the Cypriot visa regime that was found to violate the Convention in *Rantsev* was more restrictive than the ODW visa. However, the *Rantsev* principles can be extended to cover this visa too. Indeed domestic workers may be viewed as more vulnerable than those under the artiste visa, for reasons such as their invisibility and isolation.

In a manner similar to the Cypriot artiste visa, the ODW and diplomatic visas do not create a legal right of ownership of the employers over the workers. However, many of the domestic workers that were interviewed reported having been treated like objects and having faced serious coercion. One of the interviewees who did not know that her visa was not renewable and asked her employer to have it renewed was told:

Who are you? You are just a worker. Don't complain about the visa, otherwise I'll send you back to Indonesia and you will never come to London or Dubai again.⁹³

The domestic workers interviewed used words that conveyed that they felt objectified. They often said that the employers 'brought them' to the country, sometimes against their will, and did not let them leave the household unaccompanied. One of the workers explained that she had previously worked for other employers who had 'transferred' her to the employer with whom she entered the UK. At the airport, upon arrival, the workers suggested that they felt that the employer was in charge of the situation. This sense of objectification may be reinforced by the fact that the visa on the workers' passport mentions the name of the employer. The workers themselves seem to have accepted their objectification, having realized that they have no reasonable alternative exactly because of their great economic need.

It may be suggested that these workers do not really face conditions of slavery because they still have an option to return to their home country. However, this was not a real alternative for the interviewees, who all explained that their dependents in their country of origin are in great economic need.⁹⁴ It is therefore very questionable whether they can be viewed as free, because this would reflect a very poor understanding of freedom.⁹⁵ This empirical exploration indicates that the system that ties the workers to the employer creates a unique power of control, with the only alternative for the worker being escape that leads to illegality. With the power that the law gives to the employer to treat workers as property, it should not come as a surprise that the Joint Committee on the Draft Modern Slavery Bill said: 'Tying domestic workers to their employer institutionalizes their abuse; it is slavery and is therefore incongruous with our aim to act decisively to protect the victims of modern slavery'.⁹⁶

2. State obligations

⁹³ Victoria.

⁹⁴ See for instance, the statement of Pennie, text accompanying n. 74.

⁹⁵ See generally, J. Waldron, 'Homelessness and the Issue of Freedom', in *Liberal Rights* (1993).

⁹⁶ Report of the Joint Committee on Draft Modern Slavery Bill, op. cit., n. 2.

The UK immigration regime imports, tolerates and facilitates situations that are uncomfortably close to slavery, and this may give rise to a violation of both positive and negative state obligations under the ECHR.⁹⁷ Positive obligations under article 4 were first discussed in *Siliadin*⁹⁸ and further developed in *Rantsev*. These may, for example, arise when state authorities are ‘aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked or exploited [...]’. In the case of an answer in the affirmative, there will be a violation of Article 4 of the Convention where the authorities fail to take appropriate measures within the scope of their powers to remove the individual from that situation or risk’.⁹⁹ Together with the despair of undocumented workers who arrived in the country under the ODW or diplomatic visa that was evident in the interviews that I conducted, the evidence of exploitation and abuse is growing. The reality that some of the interviewees have been recognized as victims of human trafficking reinforces the belief that these visas can raise issues under the Convention. The Government cannot claim that it was not aware of the ill-treatment suffered by many overseas domestic workers. That it does not put in place effective legislation and safeguards to protect them from this abuse may thus lead to a breach of its positive obligations under article 4, such as the duty to take positive operational measures in order to protect individuals.

In addition, the restrictions of the visa regime itself can give rise to a violation of the negative obligations under the Convention. Here I will focus on state obligations to refrain from action that puts individuals at risk of a violation of human rights. Such a violation would occur, for instance, if a state that imprisons individuals (positive action) does not take further action to ensure that prison conditions are decent and that prisoners are not at risk of abuse. In the case of the visa, the violation of negative obligations arises because the visa restrictions lead workers to be undocumented, and hence further prone to exploitation, exactly because of their undocumented status. Many of the workers interviewed reported being exploited by employers after they became undocumented and said that it is their undocumented status that made them more vulnerable to exploitation. Moreover, there is little that they can do to hold the new employers to account, not only because they are very fearful, as emerged from this study, but also because of other aspects of the law. Any employment relationship in which the interviewees enter after they escape is based on an illegal contract, which cannot be enforced, for the reason that they are undocumented and do not have a right to work. The legal implications of an illegal employment contract were examined in the 2014 UK Supreme Court decision *Allen v. Houna*.¹⁰⁰ An undocumented migrant domestic worker, Ms Houna, who had been exploited, abused and dismissed, was unsuccessful in her contractual claims, such as for unfair dismissal, unpaid wages and holiday pay, but was successful in her race discrimination claims because, the Court held, she was probably a victim of human trafficking when she was a minor. Some of the interviewees in the present study said that the authorities have recognized them as

⁹⁷ On positive obligations, see D. Spielmann, ‘The European Convention on Human Rights, the European Court of Human Rights’, in *Human Rights and the Private Sphere*, eds. D. Oliver and J. Fedtke (2007).

⁹⁸ See H. Cullen, ‘*Siliadin v France*: Positive Obligations under Article 4 of the European Convention on Human Rights’ (2006) 6 *Human Rights Law Rev.* 585.

⁹⁹ *Rantsev*, para. 286.

¹⁰⁰ See *Houna v. Allen and Another* [2014] UKSC 47 on appeal from [2012] EWCA Civ 609. For analysis, see A. Bogg and S. Green, ‘Rights Are Not Just for the Virtuous: What *Houna* Means for the Illegality Defence in the Discrimination Torts’ (2015) 44 *Industrial Law J.* 101.

victims of trafficking, so they might enjoy limited legal protection if they bring a tort claim, on the basis of *Hounga*; but not all of them are recognized as victims of trafficking. At the same time, being a victim of trafficking does not mean that the individual will not be deported.¹⁰¹ With the narrow exception that was recently developed in *Hounga*, the law leaves the rest of these undocumented workers powerless, trapped in ongoing cycles of exploitation.

Against this background, and given the willingness of both the ECtHR and the UK Supreme Court to address some of the problems faced by migrant domestic workers in recent years,¹⁰² there is good reason to believe that some courts may be open to examining human rights challenges against the overseas domestic workers visas.

Some literature has raised concerns about associating the overseas domestic workers visas (or more broadly other labour rights issues) with human rights and slavery.¹⁰³ One line of criticism suggests that linking the visa to slavery and its prohibition by human rights law will require criminalization of the employer, while paying insufficient attention to the protection of workers' rights. This concern is important. It is problematic to focus only on the most extreme situations of abuse, those of slavery and servitude, and to disregard the labour rights of domestic workers more generally (such as in relation to the minimum wage or health and safety). However, the urgency of the current problem of the visa and the degree of ill-treatment explains why it is viewed as an issue of priority by proponents of workers' rights. In addition, the problems of slavery and servitude, on the one hand, and other labour rights violations, on the other, are not disconnected.¹⁰⁴ The normative challenges may be qualitatively different and separate but they should all be addressed, and the approaches can complement each other. It is true that the ECtHR ruled that lack of criminalization of a situation of 'servitude' in *Siliadin* violated article 4 of the Convention. Yet there is nothing in the case law that implies that criminalization of the employer's conduct is the *only* requirement under human rights law. In fact, the Court said in *Rantsev* that 'the duty to penalise and prosecute trafficking is only one aspect of member States' general undertaking to combat trafficking. The extent of the positive obligations arising under Article 4 must be considered within this broader context'.¹⁰⁵ An implication of *Rantsev* was the requirement that a very restrictive visa regime be abolished.

To conclude this section, a clear implication of the association of the overseas domestic worker visas with situations of slavery concerns the state's obligations. What needs to be done about overseas domestic workers? A return to the previous visa regime would be an essential first step. Domestic workers must have a right to change employers and remain in the UK. In order for them to be able to find new employment as domestic workers, they need to have a right to stay for long periods if

¹⁰¹ See the critique of trafficking policies in R. Andrijasevic and B. Anderson, 'Anti-trafficking Campaigns: Decent? Honest? Truthful?' (2009) 92 *Feminist Rev.* 151-155.

¹⁰² *Siliadin*; *CN v. UK* (App. No. 4239/08, Judgment of 13 November 2012); *Hounga*.

¹⁰³ J.A. Chuang, 'Exploitation Creep and the Unmaking of Human Trafficking Law', *Am. J. of International Law*, forthcoming; V. Munro, 'Of Rights and Rhetoric: Discourses of Degradation and Exploitation in the Context of Sex Trafficking' (2008) 35 *J. of Law and Society* 240-264; H. Shamir, 'A Labor Paradigm for Human Trafficking' (2012) 60 *UCLA Law Rev.* 76-136.

¹⁰⁴ See further V. Mantouvalou, 'Are Labour Rights Human Rights?' (2012) 3 *European Labour Law J.* 151.

¹⁰⁵ *Rantsev*, para. 285.

employed, as they did before 2012. The ratification of the ILO Convention on Domestic Workers that contains many labour rights is also very important, both symbolically and practically.

In the context of the Modern Slavery Bill, the House of Lords supported a legal provision that would empower domestic workers. Lord Hylton proposed Amendment 72 which provided a number of legal protections, including a right to change employer and renew their visa for consecutive periods of twelve months. The Amendment was rejected by the House of Commons, however, which replaced it with a clause that gives domestic workers that have been formally identified as victims of trafficking or servitude a possibility of being granted a six-month visa as a domestic worker with no recourse to public funds.¹⁰⁶ Given the fear that these workers experience and the fact that almost none of them wishes to go to the authorities while their immigration status is not secure, it is unlikely that the new provision will help address their plight.¹⁰⁷

It should also be appreciated that a change in the law that would no longer tie the worker to a particular employer would not be sufficient without further safeguards in place; employers may be prepared to break the law, as some already do. One additional safeguard may be the provision and renewal of a special ID card or visa, which the employee will collect personally from the authorities, unaccompanied by their employers.¹⁰⁸ A personal interview in this process can help review living and working conditions. Additionally, the requirement that the employers open a bank account in the sole name of the domestic worker and make payments in that bank account (rather than in cash) can also help guarantee that the worker is paid, and that the payment is in accordance with the law.¹⁰⁹ Other safeguards should include information and a contract in a language that the domestic worker can understand. Protections such as these can help a group of workers who are currently not only in a position of subordination typical of the employment relation, as Kahn-Freund famously argued,¹¹⁰ but in a state of true objectification.

CONCLUSION

Sometimes the obvious has to be stated. A liberal country must not condone situations of severe exploitation, it should not import situations of slavery and servitude, nor should it legislate in ways that trap workers in situations of abuse and exploitation. The sacrifice that the domestic worker in the introduction of this article believed that she had to make – sacrifice of the satisfaction of her basic needs in order to have a job

¹⁰⁶ Section 53, Modern Slavery Act 2015. The Government also set up a review of the ODW visa.

¹⁰⁷ See, further, Immigration Law Practitioners' Association 'Briefing for Ping Pong, Modern Slavery Bill, House of Commons', 17 March 2015, available at <<http://www.ilpa.org.uk/resources.php/30797/ilpa-briefing-for-ping-pong-modern-slavery-bill-house-of-commons-16-march-2015>> and the Briefing of 23 March 2015, available at <<http://www.ilpa.org.uk/resources.php/30835/ilpa-briefing-for-modern-slavery-bill-ping-pong-house-of-lords-overseas-domestic-workers-25-march-20>>.

¹⁰⁸ Report of the Organisation for Security and Co-operation, 'How to Prevent Human Trafficking for Domestic Servitude in Diplomatic Households and Protect Private Domestic Workers', 2014, p. 37.

¹⁰⁹ Austria has such a system. See OSCE Report, id., p. 36.

¹¹⁰ P. Davies and M. Freedland eds., *Kahn-Freund's Labour and the Law* (1983, 3rd ed) 18.

– is one that a liberal society should not tolerate.¹¹¹ The experience reported by the workers interviewed in this study indicates that there is a need for reform of the law and for further effective safeguards to be in place. At the same time, there is scope for further research. For example, it is important to appreciate that there may be many other individuals that are affected by the regime. These people need to be reached. The role of the employment agencies that some of these workers said that they used when they migrated in the first place also needs to be further investigated. The type of safeguards that can effectively protect migrant domestic workers should be carefully considered and assessed.

In 2014, the Committee on the Draft Modern Slavery Bill explained in relation to the ODW visa: ‘One of the factors that we found most distressing was that those that are contacted by these workers are now often unable to help as the victims are in effect tied to their employer’.¹¹² The Committee recommended that the visa be reversed to the pre-2012 regime.¹¹³ Following Lord Hylton’s proposed amendment, Marissa Begonia, co-ordinator of the self-help group Justice for Domestic Workers, reported that she received messages from domestic workers under the 2012 visa asking: ‘Am I free now?’.¹¹⁴ The answer is sadly no. The Modern Slavery Act 2015 opted to tolerate slavery.

In response to criticisms of the overseas domestic worker visas, the Minister for Modern Slavery and Organised Crime said that the existing reports used small samples that are not representative.¹¹⁵ This response is unsatisfactory for two reasons. First, larger samples are not available for reasons that have to do with the nature of the work sector and the information that the government makes available on the visas, as explained earlier in this article. Second, crucially, the objectification through the law of even a few people, such as the migrant domestic workers that were interviewed in this study, is a situation that should not be tolerated or facilitated in a liberal state as a matter of principle. There is now enough evidence in place and a pressing need to address the problem.

The single fear that interviewees that participated in this research unanimously voiced now that they are undocumented was a fear of the authorities, imprisonment and deportation. Their single hope was to become legal and be able to work in the UK for a period of time, in order to send some income to their dependents who are in desperate economic need. It is to be hoped that the immigration rules will soon be changed and this type of visa will not be reintroduced whenever there is a surge in anti-immigration sentiment. A liberal state must not tolerate slavery. It should, instead, protect the labour and human rights of domestic workers.

¹¹¹ On liberal states and immigration policies, see M. Tushnet, ‘Immigration Policy in Liberal Political Theory’, in *Justice in Immigration*, ed. W.F. Schwartz (1995).

¹¹² *Op. cit.*, n. 2.

¹¹³ *id.*, p. 101.

¹¹⁴ House of Lords, Hansard, 25 March 2015, Col. 1440.

¹¹⁵ Modern Slavery Bill Factsheet, Minister for Modern Slavery and Organised Crime, Karen Bradley, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/348370/Factsheet_on_Overseas_Domestic_Workers.pdf