

Appendix 10: Women migrant workers (See Articles 9 and 11)

Migrant domestic workers are peculiarly vulnerable to exploitation, trafficking and abuses of their human rights as recognised by the International Labour Organisation¹ and many international experts.² (See Article 6) This results from migrant's socio-economic conditions, lack of information about their rights and entitlement to protection in the UK, their personal family and emotional circumstances, attitudes towards the police, the low availability of personal and professional networks, but, most of all, from their immigration legal status.³ However, in April 2012 the UK Government removed the existing protections against exploitation and abuse from the Overseas Domestic Worker visa, principally the permission to change employer. This was in spite of evidence of continued vulnerability of migrant domestic workers to abuse including trafficking⁴ and of the importance of the protections within the visa.⁵ Migrant domestic workers who have entered the UK on a visa issued after 6th April 2012 breach their immigration status by leaving their employer even if escaping abuse and even if identified as trafficked for domestic servitude through the Government's own National Referral Mechanism (NRM). Additionally, from April 2013 there will also be no legal aid available for accessing redress for work based exploitation/abuse (except for trafficked persons). (See Appendix: 28)

In the cleaning sector women workers are in a majority. Cleaning is undertaken out of office hours, out of sight and is managed by external agencies rather than direct employers. This leads to increased isolation, making workers highly dependent on their supervisors who control access to work and determine the type of work done and high levels of abuse and exploitation.⁶ For example, 62% of Latin American migrant women are employed in elementary occupations, most of them experiencing a dramatic fall of their occupational status in the UK. Latin American migrant women workers in the UK are employed in low skilled jobs, mainly in the cleaning industry, 11% of Latin American workers earn below the national minimum wage and 40% experience abuse and discrimination at work. The most severe forms of discrimination at work are found in cleaning, catering and hospitality with undocumented migrant women experiencing much higher levels of harassment and abuse in the workplace.⁷ They also experience a high level of exclusion from public health services with one in five not registered with GPs.⁸

⁴ Lalani, M. (2011) *Ending the Abuse: Policies that work to protect migrant domestic workers*. Kalayaan: London <http://www.kalayaan.org.uk/documents/Kalayaan%20Report%20final.pdf>

⁵ House of Commons Home Affairs Committee (2009) *The Trade in Human Beings: Human Trafficking in the UK*, Sixth Report of Session 2008-09, Volume 1 <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmhaff/23/23i.pdf>

⁶ McKay, S., Craw, M. and Chopra, D (2006) *Migrant workers in England and Wales: An assessment of migrant worker health and safety risks*. Working Lives Research Institute: London <http://www.lhc.org.uk/wp-content/uploads/2012/12/rr502.pdf>

⁷ McIlwaine, C. (2011) *No Longer Invisible: The Latin American community in London*. Queen Mary University of London, Latin American Women's Rights Service and Trust for London. <http://www.trustforlondon.org.uk/No%20Longer%20Invisible%20report.pdf>

⁸ McIlwaine, C. (2011) *No Longer Invisible: The Latin American community in London*. Queen Mary University of London, Latin American Women's Rights Service and Trust for London. <http://www.trustforlondon.org.uk/No%20Longer%20Invisible%20report.pdf>

As outlined in CEDAW General Recommendation 26⁹ where migrant women are undertaking temporary work on farms or in factories, living conditions may be poor and overcrowded, there may be violations of employment rights, and vulnerability to sexual abuse and this has been documented in the UK.¹⁰ Despite this the Government has determined to effect a significant reduction in the regulation of temporary workers. The proposals aim to enable the Gangmasters Licensing Authority to concentrate on high-risk, criminal labour providers. However, by removing the process of inspection on first licence, by the lengthening of the period between inspections, and by the removal altogether of some sectors employing temporary workers, including specialist cleaning contractors (which have been highlighted as employing illegal migrant women), the Government is increasing the risks to migrant women in those sectors.

Migrant women are particularly at risk of poor health and safety at work and unfair dismissal. Knowledge of maternity rights amongst employees is variable and migrant workers face the additional barrier of language. Government information on entitlement to Maternity Allowance has significant gaps and inability to access maternity pay can prevent vulnerable migrant women from taking maternity leave.¹¹

The Equalities and Human Rights Commission (EHRC) inquiry into recruitment and employment in the meat and poultry processing sector found that poor treatment of pregnant workers was widespread in the industry. A significant proportion of workers in this sector are migrants. Women surveyed reported being forced to continue work that posed a risk to their health, including heavy lifting and extended periods of standing under threat of losing their job. Miscarriages were also reported due to lack of adjustments at work. Use of health and safety risk assessment was often non-existent.¹² This shows the need for stronger protection of health and safety at work for pregnant women and for effective action against pregnancy discrimination.

Many women with 'no recourse to public funds' (See Appendix: 8) are unaware that they are entitled to Maternity Allowance as well as Statutory Maternity Pay. Maternity Action¹³ found significant gaps in the information available on Government websites and telephone advice. The vast majority of women who are entitled to Maternity Allowance are on low incomes and in low-paid roles, so Maternity Allowance is likely to be a significant proportion of their household income.¹⁴

⁹ CEDAW General Recommendation No. 26 Women Migrant Workers (forty-second session, 2008) http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf

¹⁰ Equality and Human Rights Commission (2010) *Inquiry into recruitment and employment in the meat and poultry processing industry*. EHRC: London <http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-the-meat-and-poultry-processing-sectors/>

¹¹ Ward, R (2011) *Health and equality impacts of well paid parental leave*. Women's Health and Equality Consortium and Maternity Action: London <http://www.whec.org.uk/wordpress/wp-content/uploads/downloads/2011/10/HealthandEqualityImpactsofWellPaidParentalLeave2011.pdf>

¹² Equality and Human Rights Commission (2010) *Inquiry into recruitment and employment in the meat and poultry processing industry*. EHRC: London <http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-the-meat-and-poultry-processing-sectors/>

¹³ Maternity Action <http://www.maternityaction.org.uk> Accessed: 13/04/13

¹⁴ Maternity Action (2010) *Improving access to maternity pay for migrant women: Maternity Allowance* <http://www.maternityaction.org.uk/sitebuildercontent/sitebuilderfiles/maternityallowancereport.pdf>

Migrant domestic workers

CEDAW General Recommendation 26¹⁵ highlights the fact that domestic workers in private households are often subjected to poor working conditions and even abuse from the employing families, and experience their employment as a form of bonded labour. Years of campaigning in the UK led some years ago to improvements in their rights, namely to be able to obtain permission to change employer, and to eventually apply for settlement. However in April 2012, the Immigration Rules were amended to remove these rights for domestic workers. In response to criticism, the Home Secretary proposed that at the visa application stage, visa officers would ensure that applicants knew and understood the terms of their employment contract. However this clearly provides no solution once the migrant worker is in the UK and experiencing the exploitative conditions. There is also evidence that these questions are routinely ignored, or asked with the employer present, or even translating, when the worker is in no position to disclose abuse.¹⁶

Our concern is about tying domestic workers to one employer because:

- (a) this removes any bargaining power they have and increases the level of control employers can exert, making domestic workers far more vulnerable to abuse
- (b) their undocumented status makes them far less able to pursue justice after fleeing
- (c) this has already led to domestic workers going underground with all the associated vulnerabilities as they are so desperate to continue working to support their families.¹⁷

In a similar way to women who do not satisfy the requirements for the Domestic Violence Rule, even if the only eventual immigration option is for the migrant worker to return home, she may well have no money, or any documents, and will need access to social assistance of some kind and access to some kind of temporary status akin to the Destitution Domestic Violence Concession, to extricate herself safely from the exploitative situation. (See Appendix: 8)

¹⁵ CEDAW General Recommendation no 26 on women migrant workers December 2008 states: “While States are entitled to control their borders and regulate migration, they must do so in full compliance with their obligations as parties to the human rights treaties they have ratified or acceded to. That includes the promotion of safe migration procedures and the obligation to respect, protect and fulfil the human rights of women throughout the migration cycle. Those obligations must be undertaken in recognition of the social and economic contributions of women migrant workers to their own countries and countries of destination, including through caregiving and domestic work..... Thus, the scope of this general recommendation is limited to addressing the situations of the following categories of migrant women who, as workers, are in low-paid jobs, may be at high risk of abuse and discrimination and who may never acquire eligibility for permanent stay or citizenship, unlike professional migrant workers in the country of employment. As such, in many cases, they may not enjoy the protection of the law of the countries concerned, at either *de jure* or *de facto* levels. These categories of migrant women are:

- (a) Women migrant workers who migrate independently;
- (b) Women migrant workers who join their spouses or other members of their families who are also workers;
- (c) Undocumented women migrant workers who may fall into any of the above categories.

The Committee, however, emphasizes that all categories of women migrants fall within the scope of the obligations of States parties to the Convention and must be protected against all forms of discrimination by the Convention.”

¹⁶ Lalani, M. (2011) *Ending the Abuse: Policies that work to protect migrant domestic workers*. Kalayaan: London <http://www.kalayaan.org.uk/documents/Kalayaan%20Report%20final.pdf>

¹⁷ Begonia, M and Roberts, K. (2013) ‘Migrant Domestic Worker organisations mark 12 months since the abolition of residence permit that protected their rights’, *Migrant Rights Network website*, 6th April 2013 http://www.migrantsrights.org.uk/news/2013/migrant-domestic-worker-organisations-mark-12-months-abolition-residence-permit-protected-?utm_source=Migrants+Rights+News&utm_campaign=61fac9885f-MRN_News_8-4-2013&utm_medium=email

Question:

How does the UK reconcile its recent immigration changes – namely the tying of domestic worker visas to one employer - with the CEDAW Committee recommendation in general recommendation No. 26 and the 2008 concluding observations about migrant women?