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Domestic Work in the UK: A Raw Deal for Migrants

Ismail Idowu Salih *

1. Foreword

Cross-border migration, which has received increased attention in the last century¹, is facilitated by globalisation (IOM, 2003; Keeley, 2009; Tacoli & Okali, 2001; Wickramasekara, 2008) an improved mode of transportation and global alliance. Globalisation “offers great opportunities for human advancement, new opportunities for trade, investment and capital flows, advances in technology including information technology and offers great potential for raising living standards around the world; however, it also entails a considerable risk”².

Some people are forced to migrate³. Others choose to do so, perhaps in search of better opportunities⁴. The movement of people for labour purposes is being given increasing attention on a global level and it ranks

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¹ M. Sargeant, E. Tucker, *Layers of Vulnerability in Occupational Safety and Health for Migrant Workers: Case Studies from Canada and the UK*, Policy and Practice in Occupational Health and Safety, CLPE Research Paper N. 8/2009, vol. 7, n. 2, 2010, 51-73.

² A. Bonilla García, J. V. Gruat, *Social Protection: A Life Cycle Continuum Investment For Social Justice, Poverty Reduction and Sustainable Development*, Social Protection Sector, ILO, Geneva, November, 2003, 6.

³ Reasons for this may include: war, famine, prosecution, persecution, ethnic cleansing, and other forms of human expulsion.

⁴ See O. Muñiz-Solari, W. Li, and Y. Schleicher, *Migration Conceptual Framework: Why Do People Move to Work in Another Place or Country?* In M. Solem, P. Klein, O. Muñiz-Solari, and W. Ray, (eds.), AAG Center for Global Geography Education, 2010.

amongst the most contested public policies⁵. Perhaps one of the effects of cross-border migration is that it has changed the scope of contemporary domestic work in the UK through the introduction of a foreign component. Domestic work, which “is rooted in the global history of slavery, colonialism and other forms of servitude”⁶ has become a form of gainful employment for some 52 million people around the world, the majority of whom are women⁷. The International Labour Organisation (ILO) defines a domestic worker as a “wage earner working in a [private] household, under whatever method and period of remuneration, who may be employed by one or several employers, and who receives no pecuniary gain from this work”⁸. It follows that doing one’s daily chores and or looking after one’s children may not be considered remunerable labour. Migrant workers from the less developed countries are taking on the role that is highly unlikely to be occupied by British and or European Union (EU) workers⁹. For the purposes of issuing UK visas, the UK Border Agency (UKBA) sets forth that “domestic workers may include cleaners, chauffeurs, gardeners, and cooks, those carrying out personal care for the employer or a member of the employer’s family and nannies, if they are providing a personal service relating to the running of the employer’s household”¹⁰. This broadened description allows many jobs to fall under the definition of domestic work. Given that the list of tasks that could be regarded as domestic work is an extensive one, it is not surprising that many occupations have also been internationally classified and recognised as domestic jobs¹¹.

⁵ B. Anderson, M. Ruhs, B. Rogaly, and S. Spencer, *Fair Enough? Central and East European Migrants in Low-wage Employment in the UK*, Joseph Rowntree Foundation, York, 2006.

⁶ ILO, *Decent Work for Domestic Workers*, Report IV (1), International Labour Conference, 99th Session, ILO, Geneva, 2010, 1.

⁷ See ILO, *Domestic Workers across the World: Global and Regional Statistics and the extent of Legal Protection*, ILO, Geneva, 2013.

⁸ ILO, *The Status and Conditions of Employment of Domestic Workers*. Meeting of Experts, Geneva, 2-6 July 1951, Report 3, Document MDW/8.

⁹ See for instance, the International Organisation for Migration, *World Migration 2005: Costs and Benefits of International Migration*, IOM, Geneva, 2005. See also R. Münz, T. Straubhaar, F. P. Vadean, N. Vadean, *What are the Migrants’ Contributions to Employment and Growth? A European Approach*, Research Report, HWWI Policy Paper, N. 3/3, 2007, 5-7.

¹⁰ See UKBA, *Domestic Workers in Private Households, Border Force Operations Manual*, November 2011.

¹¹ The ILO, *International Standard Classification of Occupations*, Group 9131, ISCO-88, ILO, Geneva, 1990 classified a domestic worker as “a person employed part-time or full-time in a household or private residence in any of the following duties: cook, servant, waiter or waitress, butler, nurse, child minder, carer for elderly or disabled persons, personal

Ironically, household work is different from that performed in other workplaces. This is because the household is unusual, hidden or invisible¹² to the public. Those operating in the domestic work industry are among the lowest paid in the UK¹³. Domestic workers are considered unskilled, and often they are not acknowledged. Perhaps, this is due to the fact that “very little is known about the people who do such jobs or about the conditions in which they work”¹⁴. Household work is largely unregulated and falls within the informal labour sector. Although the exact figure for Overseas Domestic Workers (ODWs) in Europe is not known, “with rising female employment rates, changes in family structures and an ageing population leading to higher dependency ratios in the Organisation for Economic Co-operation and Development (OECD) countries, the need for household services is expected to increase”¹⁵. In the UK, data published by the Home Office shows that in 2011, around 16,432 visas were issued to ODWs and their dependants¹⁶. According to a parliamentary standard note, around 429 migrants entered the UK with a Tier 5 visa (International Agreement) in 2010/11¹⁷.

In addition, it is difficult to quantify the numbers of those who were trafficked to the UK for the purpose of domestic servitude¹⁸; those who

servant, barman or barmaid, chauffeur, porter, gardener, washerman or washerwoman, guard”.

¹² See A. Blackett, *Making Domestic Work Visible: The Case for Specific Regulation*, Labour Law and Labour Relations Programme Working Paper N. 2. ILO, Geneva, 1998. See also J. Elias, *Making Migrant Domestic Work Visible: The Rights Based Approach to Migration and the ‘Challenges of Social Reproduction’*, in *Review of International Political Economy*, vol. 17, n. 5, 2010, 840-859.

¹³ The low-paying sectors are defined “as those industries or occupations with a large number of minimum wage workers or those in which a high proportion of jobs are paid at the minimum wage”. See *National Minimum Wage: Low Pay Commission Report 2010*, Cm 7823, 25th March 2010, London: The Stationary Office, par. 44.

¹⁴ See Y. Evans, J. Herbert, K. Datta, J. May, C. McIlwaine, J. Wills, *Making the City Work: Low Paid Employment in London*, Department of Geography, Queen Mary University of London, November 2005, 6.

¹⁵ See ILO, *Report VI, Towards a Fair Deal for Migrant Workers in the Global Economy*, International Labour Conference, 92nd Session, 2004, 57.

¹⁶ The Home Office, *Statistical News Release: Immigration Statistics*, 24 May 2012. <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-q1-2012/> (Accessed May 11, 2013).

¹⁷ See M. Gower, *Immigration: Migrant Domestic Workers*, SN/HA/4786, Home Affairs Section: House of Commons Library, 20 March 2012.

¹⁸ According to the United Kingdom Human Trafficking Centre (UKHTC) Provisional Statistics 2012, the UK National Referral Mechanism (NRM) introduced in 2009 as part of the Council of Europe Convention on Action against Trafficking in Human Beings,

are working in breach of their immigration condition; and those who are working outright illegally. The previous Minister of State for Immigration, Damian Green (2010-2012) was of the view that low-skilled workers such as cooks and care workers are no longer welcome in the UK. He argued, as part of the coalition government strategy, that only the brightest and the best should come to Britain¹⁹. Consequently, a change in the UK immigration policy towards domestic workers in place since April 2012 has led to the deletion of ODW visas previously issued under part 5 of the UK Immigration Rules. Considering that the total number of migration flows to the UK in 2011 was estimated at 566,000²⁰, the 16,432 visas issued to ODWs will represent approximately 3% of inward migration. Since migrant domestic workers constitute a small fraction of migration flows to the UK, it is not clear how the eradication of ODW visas would assist the government in meaningful migration curtailment.

While employers could still sponsor their domestic workers to work in their private households in the UK, the latter would only be allowed a maximum of six month residence permit after which he/she must leave the country or face criminal prosecution and deportation.

According to Kalayaan²¹ this drastic change in policy towards migrant domestic workers sets the UK back to the years before 1998, when the abuse and exploitation of migrant domestic workers was endemic. In the UK, documented domestic workers are entitled to limited employment rights. UK laws that regulate labour issues exclude domestic workers from the protection they offer to the workers; and where protections do exist, there are either weak or lack enforcement mechanisms²².

Such exclusion from protection exposes both documented and undocumented domestic workers to high risks of vulnerability. However,

received 1186 referrals of potential victims of trafficking (PVoT) in 2012. This represents a 25% increase on 2011 referral totals.

¹⁹ The speech delivered at the Policy Exchange on Thursday 2nd February 2012 <http://www.homeoffice.gov.uk/media-centre/speeches/making-immigration-work> (Accessed May 10, 2013).

²⁰ OECD, 2012, *International Migration and the United Kingdom Report of the United Kingdom SOPEMI Correspondence to the OECD* (Accessed May 10, 2013).

²¹ Kalayaan is an NGO that specialises in the interests of migrant domestic workers in the UK. The Organisation which is recognised by the Home Office has published a number of papers on migrant domestic workers dilemmas in the UK. See the link www.kalayaan.org.uk.

²² For more on the government failure to enforce tax, see R. Croucherand, G. White, *Enforcing A National Minimum Wage: The British Case*, Policy Studies, vol. 28, n. 2, 2007, 145-161.

illegal migrants are more vulnerable to exploitation “due to the fear of job loss, incarceration, and deportation”²³. The fact that domestic chores are often considered unimportant²⁴ could explain the complexity in dealing with the problems facing migrant domestic workers. One of the reasons migrant domestic workers lack respect is the failure of most of society to recognise domestic work as “real work” and the attribution of low value to the work and to those performing it²⁵. Another reason why migrant domestic workers are often underrated in society is because very little or no attention is given to their economic importance. Although domestic work does not constitute a “productive” labour market activity²⁶, it contributes to the national economy all the same. In the UK, domestic workers on the pre-April 2012 ODWs visas must provide evidence of tax and national insurance contribution payment to the Home Office before their visas could be renewed. It must therefore be safe to argue that domestic workers contribute to the UK economy by paying tax and national insurance contributions. ODWs visas prohibit workers from claiming state benefits; all expenses borne by ODWs in the UK thus contribute to boosting the national economy. Further, the services rendered by ODWs allow their employers the opportunity to keep up with their daily activities without having to struggle or combine household chores, including child minding, with paid jobs²⁷.

On 16 June 2011, the ILO adopted Convention No. 189 aimed at setting a framework to deal with the dilemmas of domestic workers around the world²⁸. The UK government has argued that the convention was not compliant with national legislation on Health and Safety²⁹ and did not

²³ J. Benach, C. Muntaner, C. Delclos, M. Menéndez, C. Ronquillo, *Migration and “Low-Skilled” Workers in Destination Countries*. PLoSMed, e1001043, vol. 8, n. 6, 2011.

²⁴ See B. Anderson, *A Very Private Business: Employment in Private Households*, in *European Journal of Women’s Studies*, vol. 14, n. 3, 2007, 247-264.

²⁵ ILO, *The Gender Dimension of Domestic Work in Western Europe / Maria Galotti*; International Labour Office, International Migration Programme, International Migration Papers N. 96, ILO, Geneva, 2009, 1.

²⁶ See ILO, *Measuring the Economic and Social Value of Domestic Work: Conceptual and Methodological Framework / Debbie Budlender*, Conditions of Work and Employment Series N. 30, ILO, Geneva, 2011, 13.

²⁷ See A. Venturini, C. Villosio, *Labour Market Effects of Immigration: an Empirical Analysis Based on Italian Data*, CHILD Working Papers wp17_04, CHILD – Centre for Household, Income, Labour and Demographic economics – ITALY 2004.

²⁸ ILO, C189 – *Decent Work for Domestic Workers, Domestic Workers Convention*, 2011 (N. 189), 100th ILC session (16 Jun 2011), ILO, Geneva, 2011.

²⁹ Gov. UK, *Explanatory Memorandum on European Council Document 7939/13, COM (2013) 152 Final*, Cabinet Office, London, (Accessed May 11, 2013).

vote in favour of it. Notably, the European Commission has also presented a proposal for a Council Decision authorising Member States to ratify the Convention³⁰.

The UK government maintains that there are enough protective mechanisms in the UK which safeguard domestic workers. Yet a more detailed analysis of employment law and labour related regimes would suggest otherwise.

In *CN vs. United Kingdom*³¹, the European Court of Human Rights (EctHR) ruled in favour of the applicant – a Ugandan woman – who was forced into labour in the UK. The Court rebuked the UK government for failing to safeguard domestic workers, primarily by not implementing measures capable of criminalising forced labour and servitude which are contrary to Article 4 of the European Convention on Human Rights (ECHR). Although the UK has since implemented Section 71 of the Coroners and Justice Act³² to enable the prosecution of anyone who traffics people in the UK for domestic servitude, the victims of trafficking are still left with very limited means of seeking remedy from their traffickers. The doctrine of illegality in the UK, which prevents those who work illegally from suing their employers plays well into the hand of traffickers³³. Nonetheless, the ILO Convention 189, which has been ratified by a few countries and is due to come into force on 5th September 2013 is yet to be recognised by the UK government. This lack of recognition means that domestic workers in the UK are unlikely to benefit from the Convention provisions. Paradoxically, the UK, which has been widely praised for its immigration policy on migrant domestic workers since 2008³⁴, has missed the opportunity to convince the world that it is committed to the protection of vulnerable workers, such as migrant domestic workers. Consequently, unlike other workers in the UK private and public sectors, domestic workers are left with a raw deal, which further exposes them to increased vulnerability and uncertainty.

³⁰ European Commission, *Proposal for Council Decision*, COM(2013) 152 final, Brussels, 21.3.2013.

³¹ *Application N. 4239/08*, ECtHR, Strasbourg 13 November 2012, FINAL 13 February 2013.

³² *The Coroners and Justice Act 2009*, c. 25. London: Office of Public Sector Information. Available online <http://www.legislation.gov.uk/ukpga/2009/25/contents> (Accessed June 12, 2013).

³³ See *Elisabeth Kawogo v. the United Kingdom* (n. 56921/09) Communicated to the Government in June 2010.

³⁴ See the Human Right Watch, *Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States*, June 2001, vol. 13, n. 2 (G), 39.

2. The Dilemmas of Migrant Domestic Workers

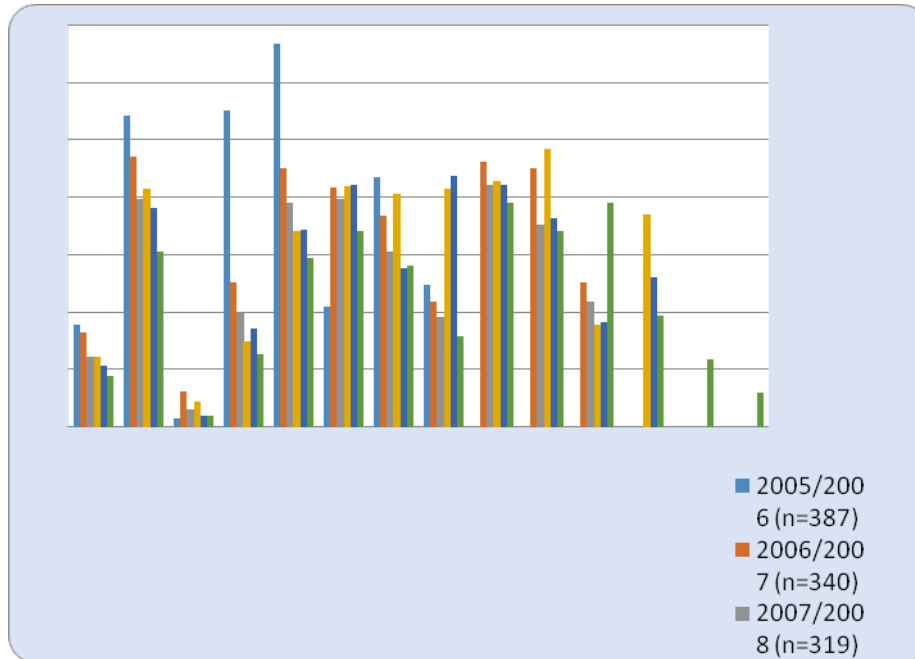
The data obtained from the Kalayaan database confirms the argument put forward in various documents – either printed or digital – that migrant domestic workers experience a high level of abuses and exploitation. Of the 281 domestic workers that approached Kalayaan in 2011, more than 50% reported psychological abuse by their employers (see Table No. 1 and 2). It could be inferred that domestic workers often work long hours without sufficient rest. They do not receive payment for on-call labour; and their accommodation is inadequate. Their passport is often retained by their employers who do not let them out of the household.

Table No. 1: Problems reported to Kalayaan by service users 2005-2011.

PROBLEMS REPORTED	2005/2006 (n=387)	2006/2007 (n=340)	2007/2008 (n=319)	2008/2009 (n=356)	2009/2010 (n=343)	2010/2011 (n=281)
Physical abuse	89	82	61	61	53	45
Psychological abuse	271	235	198	207	191	153
Sexual abuse	8	31	16	22	10	10
Food deprivation	275	126	99	75	86	64
Work over 16 hrs. / Day	333	225	195	171	172	147
Not allowed out	105	208	198	210	211	171
No own room	217	184	153	203	138	141
Passport retention	124	109	96	207	218	79
No day or time off	n/a	231	211	214	211	195
No meal break/ On call	n/a	225	176	242	182	171
No own bed	n/a	126	109	89	91	195
Paid below £50 / Week	n/a	n/a	n/a	185	130	97
Paid below £100/Week	n/a	n/a	n/a	n/a	n/a	59
Received no salary	n/a	n/a	n/a	n/a	n/a	30

Source: Kalayaan database.

Table No. 2: Problems reported to Kalayaan by service users between 2005 -2011.



Source: Kalayaan database.

3. Conceptual Framework

To elucidate the dilemma faced by migrant domestic workers in the UK, it would be necessary to adopt a suitable conceptual framework. There are different types of conceptual frameworks in the study of migration and employment. Muñiz³⁵ uses the Migration Conceptual Framework (MCF) to examine why people move to work in another place or country. However, the reason for migration, and perhaps the effect of migration in itself, could not explain why some migrant workers in the UK are more vulnerable than others. The ‘power imbalance’ framework was introduced

³⁵ O. Muñiz, *Labor Migration Patterns*. In O. Muniz, Chile: Research Trends in Geography, AAG Panel on US and Latin America. Collaboration in Geographic Research and Education. Race, Ethnicity, and Place Conference, Texas State University, San Marcos, 1-November 4, 2006. Available online. [http://www.aag.org/galleries/project-programs-files/US and Latin American Collaboration.pdf](http://www.aag.org/galleries/project-programs-files/US%20and%20Latin%20American%20Collaboration.pdf) (Accessed July 12, 2013).

by Bewley and Forth³⁶ in their investigation of the features that make employees more or less vulnerable to adverse treatment in the workplace. The self-restricted nature of this framework to the relationship between the employer and the employee makes it inadequate to explore the dilemma of domestic workers.

Domestic workers' vulnerability is not limited to the workplace, because the factors that predispose them to vulnerability are both workplaces and non-workplace related. Given that every individual on this planet is vulnerable at various stages in their life³⁷, vulnerability can be understood as being on a "continuum"³⁸. Further, vulnerability could be referred to as "a dynamic and relative concept that varies over time and across space and is not evenly distributed amongst all men and women"³⁹. According to Fitzgerald *et al*⁴⁰, vulnerability comes in varying degrees such that all vulnerable workers are not exposed to the same degree of risk. It is thus possible that workers who are in the same precarious employment and perform similar tasks may not be susceptible to vulnerabilities in the same way⁴¹. Consequently, the experiences of individual domestic worker may vary significantly.

Luna argues that vulnerability is not a label but a kind of layer, which is influenced by economic, social and political exclusion⁴². Luna employs the "layers of the vulnerability framework" to study the experience of migrant workers and concludes that this might originate from different variables. The "layers of vulnerability framework" have also been described by the OECD as a life cycle where the nature and degree of vulnerability change

³⁶ H. Bewley, J. Forth, *Vulnerability and Adverse Treatment in the Workplace*, Employment Relations Research Series 112, Department for Business Innovation and Skills, London, 2010, 6.

³⁷ See United Nations, *Report on the World Social Situation, Bureau of Social Affairs, International Labour Office*, United Nations Department of Economic and Social Affairs, New York, 2001.

³⁸ H. Bewley, J. Forth, *op. cit.*, 6.

³⁹ A. Bonilla García, J. V. Gruat, *op. cit.*

⁴⁰ I. Fitzgerald, J. Stirling, I. Manborde, *How Vulnerable is it up North?* Paper for Annual Conference of the British Universities Industrial Relations Association (BUIRA), 2010, 2, London: Manchester Metropolitan University.

⁴¹ See TUC, *Commission on Vulnerable Employment*, Hard Work, Hidden Lives: The Full Report of the Commission on Vulnerable Employment, TUC, London, 2008.

⁴² F. Luna, *Elucidating the Concept of Vulnerability: Layers Not Labels*, *International Journal of Feminist Approaches to Bioethics*, in *Transnational Dialogues*, vol. 2, n. 1, 2009, 121-139.

with time⁴³. In their assessment of risks of occupational health and safety hazards amongst migrant workers, the layers of vulnerability framework were also used by Sargeant and Tucker⁴⁴, who found that migrant workers are exposed to the risk of wage theft, exploitation and occupational health and safety hazards in varying degrees. The authors explained that this risk could intensify in accordance with the treatment the workers receive from their employers.

It follows that the layers of vulnerability framework could provide a more adequate perspective through which the dilemmas of domestic workers could be understood. This framework could also assist in elucidating the precarious nature of domestic work and its many impacts on the vulnerability of domestic workers.

4. The Vulnerability of Domestic Workers

According to the UN, vulnerability is “a state of high exposure to certain risks; a reduced ability to protect oneself against these risks; as well as the ability to cope with their negative consequences”⁴⁵. Nonetheless, when we talk of vulnerable workers, we often refer to those groups of workers with the highest layers of variables which predispose them to the risk of vulnerability. Being an unusual workplace, the household is the least regulated and/or scrutinized location⁴⁶; hence, employment in this sector predisposes workers to a greater risk of vulnerability⁴⁷. The historical link of domestic work to the unpaid household chores⁴⁸ could explain the complexity in dealing with the problems facing today’s migrant domestic workers.

⁴³ E. Cain, *Social Protection and Vulnerability, Risk and Exclusion across the Life-Cycle*, in *Promoting Pro-Poor Growth: Social Protection*, Organisation for Economic Cooperation and Development, DAC Network on Poverty Reduction (POVNET), Paris, 2003, 129-153.

⁴⁴ See M. Sargeant, E. Tucker, *op. cit.*

⁴⁵ United Nations, *op. cit.*, 201.

⁴⁶ H. Lutz, *When Home Becomes a Workplace: Domestic Work as an Ordinary Job in Germany?* In H. Lutz, (ed.): *Migration and Domestic Work: A European Perspective on a Global Theme*. Ashgate, Aldershot, 2008, 43-60.

⁴⁷ R. Fevre, T. Nichols, G. Prior, I. Rutherford, *Fair Treatment at Work Report: Findings from the 2008 Survey*, Employment Relations Research Report N. 103, Department for Business Innovation and Skills, London, 2009.

⁴⁸ See for instance, B. Anderson, *A Very Private Business: Employment in Private Households*, in *European Journal of Women’s Studies*, vol. 14, n. 3, 2007, 247-264.

5.1. Occupational Hazards

The link between precarious employment – such as domestic work – and occupational health and safety hazards has been extensively discussed in literature (Clarke et al, 2007; Scott-Marshall and Tompa, 2011; Kim *et al.*, 2008; Santiago and Carvalho, 2008; Underhill and Quinlan, 2011). The UK Health and Safety law excludes the household from its jurisdiction. Consequently, employers of domestic workers are not legally liable for any workplace injury sustained by their employees. In addition to psychological problems and physical injury, migrant domestic workers in the UK are prone to sleep deprivation and inadequate rest⁴⁹.

The impact of domestic work on health includes a high risk of occupational hazards such as musculoskeletal pain, cuts, burns, trips and falls. According to the Trade Union Congress (TUC), about “20,000 people die prematurely each year as a result of injury or illness caused by the work they do”⁵⁰. Since employers do not have to report to the Health and Safety Executives (HSE)⁵¹, the injuries suffered by their household workers are not tracked and recorded adequately. As a point of comparison, in Singapore the injuries sustained by domestic workers in the private households are well documented, some of which have been fatal⁵². More importantly, the data available on the EU Injury Database show that more than 40% of all home and leisure accidents occur “at home” (residential area)⁵³, (See Figure No. 1).

⁴⁹ See V. Wittenburg, *The New Bonded Labour? The Impact of Proposed Changes to the UK Immigration System on Migrant Domestic Workers*, Kalayaan and Oxfam, Kalayaan, London, 2008.

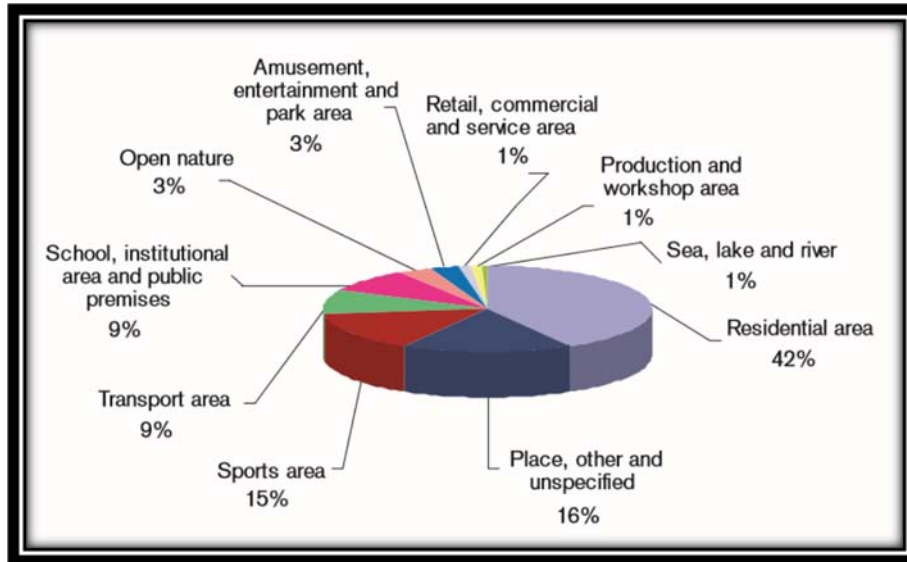
⁵⁰ TUC, *The Case for Health and Safety*, TUC Publications, London 2010, 11.

⁵¹ Section 51, Health and Safety at Work etc. Act 1974, c.37, London: OPSI.

⁵² See report by D. Choo on Yahoo News, Yahoo! Newsroom - Saturday, April 28, 2012 which suggests so far in 2012, up to 8 foreign domestic workers in Singapore have fallen to their death whilst cleaning windows, <http://sg.news.yahoo.com/eighth-foreign-domestic-worker-falls-to-her-death.html> (Accessed April 17, 2013).

⁵³ European Association for Injury Prevention and Safety Promotion (EuroSafe): *Injuries in the European Union Statistics summary 2002 – 2004*, EU Injury Database, EuroSafe, Vienna, 2006.

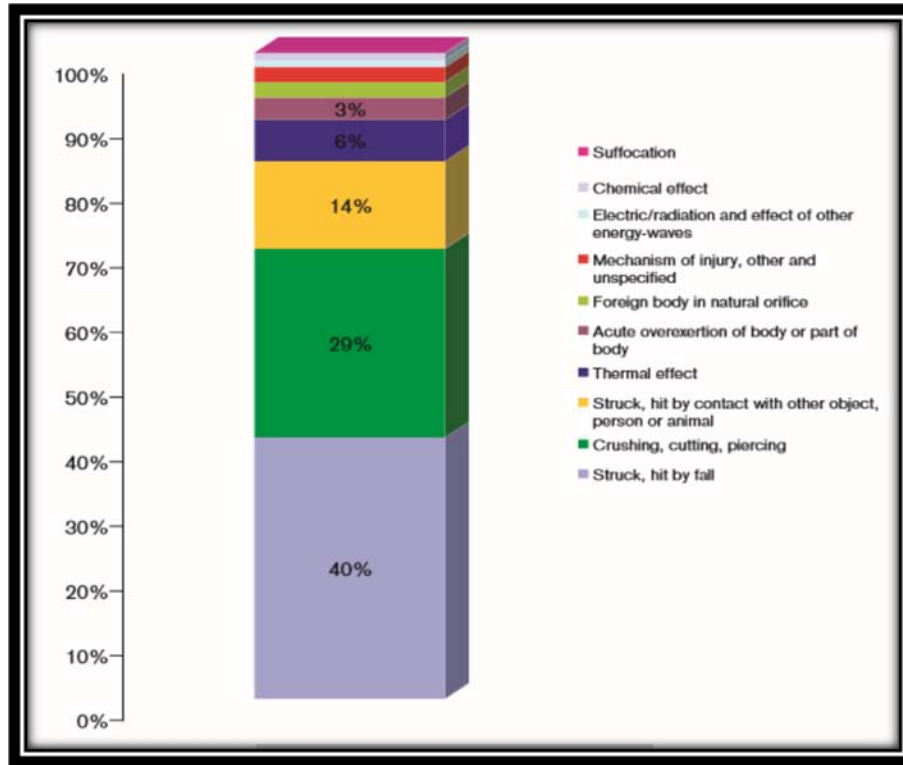
Figure No. 1 – Place of Occurrence at the Time of Injury.



Source: IDB Hospital treated patients – Absolute numbers; Place of occurrence at the time of injury; AT, DK, FR, IT, IE, NL, PT, SE, UK; 2002 – 2004; ($n=983800$).

The EU Injury Database further shows that the most frequent causes for accident in domestic work are falls (40%), “crushing, cutting, piercing” 29% and collisions 14% (see Figure No. 2 and 3).

Figure No. 2 – Domestic Work and Injury Mechanism.



Source: IDB Hospital treated patients – Absolute numbers; Domestic work and injury mechanism at the time of injury; AT, DK, FR, IT, IE, NL, PT, SE, UK; 2002 – 2004; (n=50082).

Figure No. 3 – Domestic Work and Products Involved in the Accident.



Source: IDB Hospital treated patients – Absolute numbers; Domestic Work and product involved in the injury; AT, DK, FR, IT, IE, NL, PT, SE, UK; 2002 – 2004 Only cases where a product was involved in the injury (35%) are included; (n=17583).

The HSE 2009/10 report shows that workplace illness costs the public about £8.5 billion, while workplace injury in the same year costs up to £5.4 billion⁵⁴. Migrant domestic workers are insecure due to their exclusion from health and safety protection as well as other legal safeguards provided to other workers, leaving them with a raw deal. According to the relevant literature, most migrant domestic workers are the breadwinners of their family⁵⁵.

Whereas a migrant domestic worker becomes incapacitated and the employer refuses to remunerate him/her – or supply adequate compensation upon dismissal – the effects would be devastating for the worker and his/her family. In a survey conducted on domestic workers in London, Clark and Kumarappan found that more than a third of those surveyed had suffered injuries at work and nearly three-quarters suffered

⁵⁴ HSE, *Costs to Britain of Workplace Injuries and Work-related Ill Health: 2009/10 Update*, Health and Safety Executives, London.

⁵⁵ See R. S. Parreñas, *Migrant Filipina Domestic Workers and the International Division of Reproductive Labor*, *Gender & Society* vol. 14, n. 4, 2000, 560-80. See also Pei-Chai Lan, *Maid or Madam*, *Filipina Migrant Workers and the Continuity of Domestic Labor*, *Gender & Society*, vol. 17, n. 2, 2003, 187-208.

from regular aches and pains. Clark and Kumarappan argue that society often turns a blind eye at the suffering of domestic workers⁵⁶. Considering that the UK government refused to sign ILO Convention No. 189 on domestic workers on the ground that it would interfere with UK Health and Safety law, domestic workers in the UK are at a continued risk of occupational hazards. Despite increasing media coverage on the plights of migrant domestic workers⁵⁷, there appears to be very little support for their cause; and government policies towards them are often less sympathetic, if at all.

5.2. Wages Thefts

Migrant domestic workers are often “overworked and underpaid”⁵⁸. According to Maitre *et al.*, “low-paid employees are much more likely to be in vulnerable households than those who are not low paid”⁵⁹. Research conducted by the ILO has shown that the majority of migrant domestic workers are unprotected by labour law⁶⁰. Migrant domestic workers in the UK are paid well below the national minimum wage, and there is evidence of “wage theft”⁶¹ by unscrupulous employers. Perhaps what gives some employers the audacity to pay their domestic workers lower than the

⁵⁶ N. Clark, L. Kumarappan, *Final Report Published: 'Turning a Blind Eye: The British State and Migrant Domestic Workers' Employment Rights'*, Working Lives Research Institute, Nuffield Foundation, London, 2012.

⁵⁷ See BBC Radio 4 Programmes – File on 4, *Domestic Servitude*, 27 June 2010, (Accessed May 5, 2013); H. Khaleeli, *How Domestic Workers Become Slaves*, *The Guardian* 6 August 2010, (Accessed May 5, 2013). A. Fishburn and H. Garlick, *Migrant Domestic Workers: 'I was in a Prison, a Cage, just like a Slave'* in *The Times*, January 21, 2010 (Accessed May 5, 2013).

⁵⁸ Trade Union Congress, *Overworked, Underpaid and Over Here: Migrant Workers in Britain*, TUC, London, 2003.

⁵⁹ B. Maitre, B. Nolan, C. Whelan, *Low Pay, In-work Poverty and Economic Vulnerability: A Comparative Analysis Using EU-SILC* (“Statistics on Income and Living Conditions”), *The Manchester School*, vol. 80, n. 1, 2012, 112.

⁶⁰ A. D’Souza, *Moving Towards Decent Work for Domestic Workers: An Overview of the ILO’s Work*, Bureau for Gender Equality, Working Paper 2, ILO, Geneva, 2010.

⁶¹ The term wage theft is commonly used in the USA to mean an unauthorised deduction of wages. See US Government Account Office (GAO), *Wage and Hour Division’s Complaint Intake and Investigative Processes Leave Low Wage Workers Vulnerable to Wage Theft*, Testimony before the Committee on Education and Labour, House of Representatives, Department of Labour, USA, 2009.

national minimum wage is their legal exclusion from the Minimum Wage Regulations⁶². This exclusion has been recognised by UK Courts⁶³. In *Nambalat v Taber and Udin v Chamsi-Pasha*⁶⁴, the Court of Appeal adopted the ‘officious-bystander’ test in holding that a worker would not be entitled to minimum wage payment if the employer could show on the balance of probability that the domestic worker was treated as a ‘family member’. A requirement must be satisfied according to which the tasks shared by the employer and the domestic worker are in the proportion that it is equitable to infer a ‘family member’ relationship. It is therefore possible that domestic workers could be legally paid below the national minimum wage. Domestic workers are in a position of disadvantage also when it comes to working time, rest period and holiday pay⁶⁵. Migrant domestic workers are not entitled to extra payment for working after hours or being on call without enough or adequate rest. A report published by Kalayaan also reveals that most migrant domestic workers work between 16-20 hours a day.⁶⁶ Despite case laws^{67, 68} indicating that time spent on-call could constitute payable working time, many migrant domestic workers are still negatively treated by their employers. It follows that “while some workers are excessively privileged, others are excessively exploited even to the point of death”⁶⁹.

⁶² Under Regulation 2 (2) (ii) of the National Minimum Wages Regulation 1999, Statutory Instrument, N. 584, London: OPSI; if a domestic worker is treated by the employer as a member of the family, the employer does not need to pay him/her according to the national minimum wage.

⁶³ The Employment Appeal Tribunal in *Julio & Ors v Jose & Ors* UKEAT/0553/10/DM ruled that a household worker who is treated as a family member is not entitled to national minimum wage. However, what remains unresolved is the definition of “family member”; in this instance, the court held that the sharing of any task which is outside the contract of employment would suffice it.

⁶⁴ [2012] EWCA, Civ 1249.

⁶⁵ Under part III of the Working Time Regulations 1998, Statutory Instrument N. 1833, London: OPSI, domestic workers in private households are excluded from the safeguards available to other workers, whereby exposing them to a high degree of vulnerability.

⁶⁶ See V. Wittenburg *op. cit.*, 17.

⁶⁷ *Sindicato de Medicos de Asistencia Publica (SIMAP) v Conselleria de Sanidad y Consumo de la Generalidad Valenciana* (C-303/98) [2001] All E.R. (EC) 609 applied in the Employment Appeal Tribunal case of *MacCartney v. Oversley House Management* [2006] I.C.R. 510.

⁶⁸ *Gallagher v. Alpha Catering Services Ltd* (t/a Alpha Flight Services) [2004] EWCA Civ 1559.

⁶⁹ J. O’Reilly, J. MacInnes, T. Nazio, J. Roche, *The United Kingdom: From Flexible Employment to Vulnerable Workers*, in *Gender and the Contours of Precarious Employment* (GWDCPD), Working Paper Series, 2009.

It would therefore appear that “the lack of legal protection sends the message that treating workers unfairly and unequally is acceptable”⁷⁰.

The Trade Union Congress refers to vulnerable workers as “those who are in the bottom third of the hourly income distribution and who do not have their pay and conditions determined by a trade union agreement”⁷¹, finds support from Pollert, who describes a vulnerable worker as “someone who is earning below median pay and lacking collective voice and labour power in terms of scarce skills or seniority”⁷².

The majority of migrant domestic workers are not trade union members and they are not aware of their right to membership. The Justice for Domestic Workers⁷³, Kalayaan, and the Trade Unions have been raising awareness on domestic workers, however it is difficult to integrate all domestic workers with a good number of them still hidden in households. Being a union member would empower migrant workers, allowing them to familiarise themselves with their rights. Further, it would send a strong signal to employers that they should not exploit or abuse their domestic workers, in a way shifting the balance of power towards the workers.

5. Factors of Vulnerability

The 2007 European Parliament Policy Statement identifies the three main factors of vulnerability as risk, personal, and environmental⁷⁴. Risk factors relate to the job or task to be performed. Some workers are exposed to avoidable risks due to their personal characteristics and the type of job in

⁷⁰ TUC, *op. cit.*, 8.

⁷¹ TUC, *The Hidden One-in-Five: Winning a Fair Deal for Britain's Vulnerable Workers*, in M. Hudson, *A Report for the TUC by the Policy Studies Institute*, TUC, London, September 2006, 7.

⁷² A. Pollert, *What Do Unorganised Workers Do About Problem at Work?* Paper presented to the 24th Annual International Labour Process Conference April 10-12, Based on research funded by ESRC 2006, 6.

⁷³ The Justice for Domestic Workers (J4DW) established on 15th March 2009 is an organisation of migrant domestic workers who work in private houses in the UK. See more information on their [website](#) (Accessed May 7, 2012).

⁷⁴ European Parliament, Directorate-General Internal Policies Policy Department C, *Citizens Rights and Constitutional Affairs: The Conditions in Centres for Third Country National (Detention Camps, Open Centres as well as Transit centres and Transit Zones) with a Particular Focus on Provisions and Facilities for Persons with Special Needs in the 25 EU Member States*, STEPS Consulting Social study for European Parliament, December 2007 (Accessed April 30, 2013).

which they are engaged⁷⁵. Personal factors relate to the individual attribute such as immigration, age, gender, disability – physical and mental health condition – religion, education, language and family status. Environmental or job factors are those inherent in the workplace⁷⁶.

5.1. Job Factor

The informal sector or informal economy, which continues to thrive in the UK⁷⁷ includes employment in the household. The household provides employment for both documented and undocumented workers⁷⁸. However, its cloistered nature means that abuses of these workers are often not visible to the public. Migrant domestic workers are often required to perform tasks lasting over long hours, as is evident from the data collected by Kalayaan (see Table No. 1 and 2). Domestic work often includes the “three-D” jobs – dirty, dangerous, and demanding⁷⁹ – and it is also characterised by uncertainty and insecurity. Any “employment that is uncertain, unpredictable, and risky from the point of view of the worker” is a precarious job⁸⁰. Precarious employment exposes workers to the risk of vulnerability, “erosion of earnings potential, exposure to workplace hazards and social risks, or to a broader spectrum of social risks”⁸¹. In addition, precarious employment “gives rise to instability, lack

⁷⁵ See B. Barrett, M. Sargeant, *The Health, Safety and Well-being of Vulnerable Workers*, in M. Sargeant, M. Giovannone, (eds.) *Vulnerable Workers, Health, Safety and Well being*, Gower Publishing, Surrey, 2011, 1-20.

⁷⁶ For more on vulnerability factors, see M. Sargeant, *Health and Safety of Vulnerable Workers in a Changing World of Work*, Associazione per gli Studi Internazionali e Comparati sul Diritto del lavoro e sulle Relazioni Industriali (ADAPT), Working Paper ADAPT, 27 novembre 2009, n. 101, 2.

⁷⁷ See, for example, the article by S. Chant, *The Informal Sector and Employment*. In V. Desai and R. Potter (eds.) *The Companion to Developmental Studies*, Hodder Education, London, 2002.

⁷⁸ See for instance, K. Cuff, N. Marceau, S. Mongrain, J. Roberts, *Optimal Policies with an Informal Sector*, *Journal of Public Economics*, vol. 95 n. (11/12), 2011, 1280-1291.

⁷⁹ A. Belin, T. Zamparutti, K. Tull, G. Hernandez, *Occupational Health and Safety Risks for the Most Vulnerable Workers*, Study, Directorate General for Internal Policies, Policy Department A, Economic and Scientific Policy, Committee on Employment and Social Affairs, IP/A/EMPL/ST/2010-03, Brussels: European Parliament, August 2011, 96.

⁸⁰ A. L. Kalleberg, *Precarious Work, Insecure Workers: Employment Relations in Transition*, *American Sociological Review*, vol. 74, 2009, 2.

⁸¹ See D. Weil, *Rethinking the Regulation of Vulnerable Work in the USA: A Sector-based Approach*, *Journal of Industrial Relations*, vol. 51, n. 3, 2009, 412.

of protection, insecurity, and social and economic vulnerability”⁸². This further exposes them to the risk of physical and psychological abuse, exploitation and discrimination. The precarious nature of domestic work, coupled with workers’ vulnerability, shifts the balance of power in favour of their employers.

5.2. *The Migrant Factor*

It is settled that the immigration status of a worker could have a significant effect on his/her degree of vulnerability in the host country⁸³. Consequently, anyone who works outside the remit permitted by his/her immigration status is deemed to have worked illegally. This illegality could expose the worker to a series of criminal and civil liabilities. It could also constitute a constriction to the worker’s entitlement and access to justice. The Citizens Advice Bureau⁸⁴ argues that migrant workers are the most vulnerable ones in the labour market.

Research has shown that migrant workers in the UK are faced with two major barriers⁸⁵. On the one hand there is exploitation on the part of their employer, and on the other hand, a certain form of retribution by politicians and the general public, who see them as job grabbers. However, what is unclear is how many British passport holders would be interested in working as live-in domestic workers⁸⁶. Although, the previous Immigration Minister, Damian Green agreed on the fact that immigration has enriched the British culture and strengthened its economy, he was of the opinion that stiffer immigration controls must be

⁸² E. Tompa, H. Scott-Marshall, R. Dolinschi, S. Trevithick, and S. Bhattacharyya, *Prearious Employment Experiences and Their Health Consequences: Towards a Theoretical Framework*, *Work*, 28, 2007, 209.

⁸³ See for instance, D.G. Papademetriou, M. Sumption, W. Somerville, *Migration and Economic Downturn: What to Expect in the European Union*, Migration Policy Institute, Washington DC, 2009.

⁸⁴ Citizens Advice Bureau, *Nowhere to Turn – CAB Evidence on the Exploitation of Migrant Workers*, CM 5387, CAB, London, 2004.

⁸⁵ See for instance, A. Morgan, J. Finniear, *Migrant Workers and the Changing Psychological Contract*, in *Journal of European Industrial Training*, vol. 33, n. 4, 2009, 305-322.

⁸⁶ See R. Münz, T. Straubhaar, F., Vadean, *What are the Migrants Contributions to Employment and Growth: A European Approach*, OECD, 2007 (Accessed April 30, 2013).

implemented for government to gain public confidence in the immigration system⁸⁷.

Prior to 1998, migrant domestic workers in private households could accompany their employers to the UK under visitor-like visas, which allowed them to only work for a specific employer. Domestic workers in diplomatic households are also unable to change employers. Their visas, which are issued under the Vienna Convention on Diplomatic Relations, are under the Tier 5 (Temporary Worker International Agreement) points-based system. Following a series of campaign by various Non-Governmental Organisations (NGOs), trade unions, and other campaign groups which exposed the extent of abuses and exploitation of migrant domestic workers, in 1998 the UK government changed the conditions attached to ODW visas to allow the workers to change employer in the UK. The concession also allowed domestic workers to settle in the UK after a period of qualifying residence. The then government agreed that the concession would allow domestic workers to escape ruthless employers, whereby reducing the risk of exploitation and abuses. In 2002, this concession was subsequently incorporated into part 5 of UK Immigration Rules⁸⁸. The international community, especially the International Labour Organisation and the UN Special Rapporteur on the Human Rights of Migrants praised the UK government for taking the lead in protecting domestic workers⁸⁹. With the persistent abuse and exploitation of domestic workers, and the intention on the part of the current coalition government to limit migration flows to the UK, the ODW visas were cancelled with effect from 5 April 2012.

Starting from 6 April 2012, migrant domestic workers coming to the UK would only be allowed a maximum stay of six months, and will not be allowed to change their employer whilst in the country. However, considering that in 2011, migrants on ODW visas accounted for less than 3% of migration flows to the UK, it is difficult to see how the curtailment of ODW visas would help the UK government reduce migration flows in any meaningful way. Belin *et al.*⁹⁰ Argue that language and cultural barriers

⁸⁷ See the Minister of State for Immigration, Damian Green Immigration (Work & Settlement), Consultation Paper, Thursday, 9th June HOME OFFICE, London, 2011.

⁸⁸ See HC 395 of 1993-4 as amended by CM 5597 of 22 August 2002.

⁸⁹ See ILO, *Report of the Special Rapporteur on the Human Rights of Migrants*, Mission to the United Kingdom of Great Britain and Northern Ireland, 16 March 2010, 15-16, 19-20.

⁹⁰ A. Belin, T. Zamparutti, K. Tull, G. Hernandez, *Occupational Health and Safety Risks for the Most Vulnerable Workers*, Study, Directorate General for Internal Policies, Policy Department A: Economic and Scientific Policy, Committee on Employment and Social Affairs, IP/A/EMPL/ST/2010-03, European Parliament, Brussels, 2011.

are a major risk for migrants. Difficulties in understanding occupational health and safety rules as well as cultural barriers which include poor knowledge of the labour market can put migrant workers in a dangerous situation. Migrants who have none or a basic command of English, lack qualification and those who are illegal are among the most vulnerable groups (Anderson, 2010). The Trade Union Congress suggests migrant workers' vulnerability in the labour market is unique because they experience problems such as language barriers and immigration constraints, which national workers may not experience⁹¹. The inequalities between national workers and migrant workers are the result of differences in "migration status, condition of recruitment, sector of employment or occupation, employment in the informal sector, lack of freedom of association and collective bargaining rights, discrimination and xenophobia in the workplace"⁹².

Sargeant and Tucker identify communication and language constraints as a major barrier to migrant workers' settlement in the host country and as one of the major risks in terms of occupational health and safety. Migrant domestic workers in the UK need some command of English in order to understand their rights and entitlement. Thus, migrant workers' disadvantages in the UK labour market are exacerbated by their lack of English language skills⁹³. Poor language knowledge could raise the risk of adverse treatment, limit the workers' outside job options and increase their reliance on their employers. It appears that the "migrant worker factor" contributes to frequent labour market policy reforms and increases the role of the state in the economy"⁹⁴.

⁹¹ TUC, *op. cit.*

⁹² M. Sargeant, E. Tucker, *op. cit.*, 52.

⁹³ See for instance E. Kofman, S. Lukes, A. D'Angelo, N. Montagna, *The Equality Implications of Being a Migrant in Britain*. Equality and Human Rights Commission 2009, Research Report, 19.

⁹⁴ C. Devitt, *The Migrant Worker Factor in Labour Market Policy Reform*, in *European Journal of Industrial Relations*, vol. 16, n. 3, 2010, 259.

6. Raw Deal for Domestic Workers

6.1. Legal Protection

In the views of Leighton and Painter, vulnerability represents a disadvantage in terms of legal protection⁹⁵. In addition to the “migrant factor”, the vulnerability of migrant domestic workers is precipitated by the lack of legal protection and respect for domestic workers. As highlighted above, domestic workers in the UK are excluded from the majority of labour law and health and safety regimes. Consequently, domestic workers are often denied the status of “real worker”⁹⁶. The recognition by the ILO that domestic workers are often faced with legal dilemmas⁹⁷ led to the adoption of Convention No. 189 aimed at setting an international framework for the protection of these workers. Meanwhile, the continued policy of the UK government to keep migrant domestic workers outside the Health and Safety regime is a key reason for UK abstention from voting the International Labour Convention 189, which is tailored at providing maximum protection for domestic workers around the world.

6.2. Access to Justice

A key dilemma faced by migrant domestic workers who have not been employed in accordance with their visas or those who have been trafficked for the purposes of domestic servitude is the issue of illegality. In the UK – England and Wales in particular – the doctrine of illegality is a *trahit law*⁹⁸ under which the Courts would normally refuse to entertain grievances; especially contracts that are tainted with illegality. The essence of this is to avoid legitimising illegal acts.

⁹⁵ P. Leighton, R.W. Painter, *Who are Vulnerable Workers?* in P. Leighton, R.W. Painter (eds.) *Vulnerable Workers in the UK Labour Market: Some Challenges for Labour Law*, Employee Relations, vol. 9, n. 5, 1987, 3-8.

⁹⁶ See A. Blackett, 1998, *op. cit.*

⁹⁷ J.M. Ramirez Machado, *Domestic Work, Conditions of Work and Employment: A Legal Perspective*, Conditions of Work and Employment Programme, Conditions of Work and Employment Series N. 7, ILO Publications, Geneva, 2003.

⁹⁸ See *Hall v Woolston Hall Leisure* [2000] IRLR 578 CA (CivDiv) applied in *Vakante v. Governing Body of Addey and Stanhope School* (No 2) [2005] ICR 231.

In the case of *Hounga vs. Allen*⁹⁹, the Court of Appeal refuses the application of a domestic worker who has been trafficked into the UK for domestic servitude because it could not be shown that she did not collide with her traffickers *ab initio*. Although “common law” suggests a claim of discrimination is an exception to the illegality rule¹⁰⁰, the Court of Appeal in *Hounga* re-affirms that if the discrimination and the illegal act are intrinsically linked, the discrimination claim would also fail. The implication for new domestic workers coming to the UK since April 2012 is that they would not be able to bring any claim against employers who mistreat them after their visas have expired but they continue to work illegally.

Since 2008, the economic downturn in the UK has led the government to introduce measures, which have far-reaching effects for domestic workers. The introduction of Legal Aid, Sentencing and Punishment of Offenders Act 2012, which came into effect on 1 April 2013 has led to the abolition of the Legal Aid Commission and the withdrawal of Legal Aid in most civil cases (such as unfair dismissal and non-payment of wages)¹⁰¹. Shortage of funding has also led to the closure of many law centres and citizens advice bureaus. The majority of migrant domestic workers earn nothing or too little to be able to instruct paid solicitors. Many domestic workers are thus likely to face hurdles in order to access justice. In a recent amendment to UK labour law, a period of 2 years of continuous employment is required for an employee to file claims concerning “unfair dismissal”¹⁰². Given that the newly-introduced domestic worker visas would only allow domestic workers to work in the UK for a maximum period of six months, it follows that new domestic workers would not qualify to bring unfair dismissal claims. In addition, instead of a panel, a new amendment to the tribunals composition mean that only one judge would sit in an unfair dismissal claim¹⁰³. The likely problem with this rule is that cases brought by migrant domestic workers are usually more complex with issues such as the threat of deportation, other forms of

⁹⁹ *Mary Hounga v Adenike Allen & Anor* [2012] EWCA Civ 609.

¹⁰⁰ See *Leighton v Michael* [1996] IRLR 67 approved in *Hall v Woolston Hall Leisure* [2000] IRLR 578.

¹⁰¹ Legal Aid, Sentencing and Punishment of Offenders Act 2012 c.10, Part 1, Section 38, London: OPSI.

¹⁰² See section 108 of the Employment Rights Act 1996 as amended by article 3 of the Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order 2012 (SI 2012/989), OPSI, London.

¹⁰³ See the Employment Tribunals Act 1996 (Tribunal Composition) Order 2012, Statutory Instrument, N. 988, OPSI, London.

intimidation and discrimination. Besides, it is not uncommon that the evidence before the Tribunal would rest essentially on the “word of mouth” from both parties.

In this instance, it would be more appropriate for a panel to hear the claim. Migrant domestic workers in diplomatic households are at the mercy of their employers’ immunity. If employed directly by the foreign mission, the State Immunity Act¹⁰⁴ would apply such that the domestic worker may find it difficult to bring any claim against the state. In the same vein, if directly employed by a diplomat¹⁰⁵ or consular personnel¹⁰⁶, the Vienna Convention would operate to prevent the employer from being sued. Although UK Courts have signalled that diplomatic or State immunity may not apply in all circumstances¹⁰⁷, enforcing a Court judgement on the State or the individual who is claiming diplomatic immunity is another big challenge faced by domestic workers in the diplomatic households.

6.3. Trafficking for Domestic Servitude

The National Referral Mechanism (NRM) is a measure introduced by the UK government on 1 April 2009 in response to the Council of Europe Convention on Action against Trafficking¹⁰⁸, with the aim of identifying and assisting victims of trafficking. However, this measure could only allow Government to recognise the status of the trafficked person for a period of 45 days after which the victim would have to return to his/her own country except where there is a genuine case why he/she should not return. As of 3 April 2013, out of a total of 332 referrals of potential victims of trafficking (PVoT) made into the NRM between October and December 2012, only 131 have received a positive conclusive decision (CD) and were therefore found to have been trafficked¹⁰⁹. The granting of CD status means that the victim would not be deported from the UK.

¹⁰⁴ 1978 c.33, London, OPSI London.

¹⁰⁵ The Vienna Convention on Diplomatic Relations, Vienna on 18 April 1961, United Nations, *Treaty Series*, vol. 500, 95.

¹⁰⁶ The Vienna Convention on Consular Relations, Vienna, 24 April 1963, United Nations, *Treaty Series*, vol. 596, 261.

¹⁰⁷ See for instance, *The Federal Republic of Nigeria v Ogbonna* UKEAT/0585/10/ZT.

¹⁰⁸ The Council of Europe Convention on Action against Trafficking in Human Beings CETS N.: 197, Warsaw, 16.V.2005.

¹⁰⁹ See Serious Organised Crime Agency, *National Referral Mechanism Statistics – October to December 2012, Intelligence Report*, April 2013 (Accessed April 29, 2013).

However, a closer look at the country of origin of those most likely to be granted CD status shows with the exception of the Philippines, PVoT from countries outside the European Economic Area are less likely to be granted CD status (see Figure No. 4).

Figure No. 4 – Breakdown of the 10 Most Referred Countries of Origin.

Breakdown of the 10 Most Referred Countries of Origin for Adults and Minors by Reasonable Grounds (RG) and Conclusive Decision (CD)

Country of Origin	Referrals as at Q4				Reasonable Grounds Decision				Conclusive Decision			
	Suspension of Consideration	Withdrawn	RG Decision Not Yet Made	Negative RG Decision	Positive RG Decision	Suspension of Consideration	Withdrawn	Conclusive Decision Not Yet Made	Negative Conclusive Decision	Positive Conclusive Decision		
Albania	0	1	12	10	21	0	0	11	7	3		
Nigeria	0	0	6	13	21	0	0	12	5	4		
Vietnam	0	0	5	4	25	3	0	16	4	2		
Lithuania	0	0	0	0	30	0	0	0	1	29		
Slovakia	0	0	0	2	23	0	0	0	5	18		
Romania	0	1	0	0	21	0	0	0	0	21		
Philippines	0	0	0	0	15	0	0	2	0	13		
China	0	0	2	5	7	0	0	3	3	1		
Pakistan	0	0	1	3	4	0	0	2	1	1		
Afghanistan	0	0	0	3	4	0	0	1	0	3		
Total	0	2	26	40	171	3	0	47	26	95		

Source: UK Serious Organised Crime.

7. Conclusion and Recommendation

Migrant domestic workers are directly targeted by national law which often excludes them from legal protection. Given that the vast majority of migrant domestic workers are women, the lack of protection for migrant domestic workers is tantamount to sexual discrimination. Further, the lack of respect and the failure to recognise the importance of migrant domestic workers in the labour market is illustrative of the continued prejudice against women. This prejudice has no place in our modern world and must be tackled with all seriousness at all levels. Vulnerability does not exist in isolation¹¹⁰. It is argued that while the risk of vulnerability may exist in all forms of employment, the degree of domestic worker's vulnerability could be lowered if the condition(s) that predispose the worker to vulnerability are well taken care of. Migrant domestic workers might be at risk of vulnerability but if their job is none or less precarious, the detriment they may suffer in the labour market could be reduced or become non-existent. The power to prevent and or protect migrant workers' vulnerability in the labour market rests almost entirely on the government who has the power to formulate law and administer social and political policies¹¹¹. Workers' vulnerability could be contained if the factors such as social injustices that predispose workers to it are reduced. This could be achieved through "social integration on the basis of human rights or an inclusion framework"¹¹². The fact that the Home Secretary has chosen to amend rather than erase ODWs visas is evident that domestic workers are still relevant in the UK. However, the removal of immigration and employment protections from this group of workers simply means that the only offer being made available to them in the UK is a raw deal. Perhaps the correct starting point is to respect these workers and accept that they deserve similar rights as those of other workers. In line with the ILO legal framework set out in the 189th Convention and its corresponding Recommendation 201, the UK government needs to review the current policy on ODWs.

¹¹⁰ TUC, 2008, *op. cit.*, 11.

¹¹¹ TUC, 2008, *op. cit.*, 11-12.

¹¹² United Nations, 2001, *op. cit.*, 211.

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