
A Special Vulnerability: Migrant Domestic Workers Enslaved by The Non-renewable Overseas Domestic Worker Visa in the UK

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Image: still from the film 'Our Journey' co-produced by Dr Joyce Jiang from University of York, Tassia Kobylinska from Goldsmiths and The Voice of Domestic Workers



**The Voice of
Domestic Workers**



Background

What is an Overseas Domestic Worker (ODW) visa?

Each year the Home Office issues 16,000-19,000 ODW visas under its ‘domestic workers in private households’ scheme, which allows foreign employers to bring domestic workers to the UK. In 1998, the government introduced important reforms which allowed ODW visa holders to change employer and renew the visa leading to the Indefinite Leave to Remain and the UK citizenship. This clearly identified them as workers with access to UK employment law.

In 2012, the government introduced restrictions which removed the rights of ODW visa holders to change employers and renew visa. In 2016, following the publication of James Ewins’ review of the ODW visa¹, the government announced two reforms to this visa category:

1. ODW visa holders would be allowed to change employer for any reason within the first six month period they were admitted to the UK (but would not be eligible to extend their stay in the UK)
2. ODW visa holders who receive a positive conclusive grounds decision from the National Referral Mechanism would be eligible to apply to extend their ODW visa for up to two years.

What is the National Referral Mechanism (NRM)?

The National Referral Mechanism (NRM) is a framework for identifying and referring potential victims of modern slavery. In practice, the current support available for ODW visa holders can only be accessed once their exploitation has deteriorated so much that they meet the criteria of having been trafficked. Only once a ODW visa holder has been trafficked and identification has been confirmed through the NRM could one on the ODW visa apply to extend their visa for up to two years. The two year visa allows migrant domestic workers (MDWs) to work and change employers, whilst it limits the individual’s employment to one full time job as a domestic worker in a private household with no recourse to public funds.

Workers on the ODW visa can be referred to the NRM by a wide range of ‘first responders’². The case will be managed by one of the ‘competent authorities’ (either the National Crime Agency or the Home Office). The competent authority will first decide if there are ‘reasonable grounds’ to believe that the person is a victim (the ‘reasonable grounds’ [RG] decision) and, if the decision is positive, will proceed to investigate the case and decide whether, on the balance of probabilities, the person is a victim (the ‘conclusive grounds’ [CG] decision). Potential victims are expected to wait

¹ Ewins, J (2016) Independent Review of Overseas Domestic Workers. Retrieved from <https://www.gov.uk/government/publications/overseas-domestic-workers-visa-independent-review>.

² The current statutory and non-statutory First Responder organisations are Police forces, certain parts of the Home Office (UK Visas and Immigration, Border Force and Immigration Enforcement), National Crime Agency, local authorities, Gangmasters and Labour Abuse Authority, Health and Social Care Trust, Salvation Army, Migrant Help, Medaille Trust, Kalayaan, Barnardo’s, Unseen, Tara Project, NSPCC, BAWSO, New Pathways and refugee council.

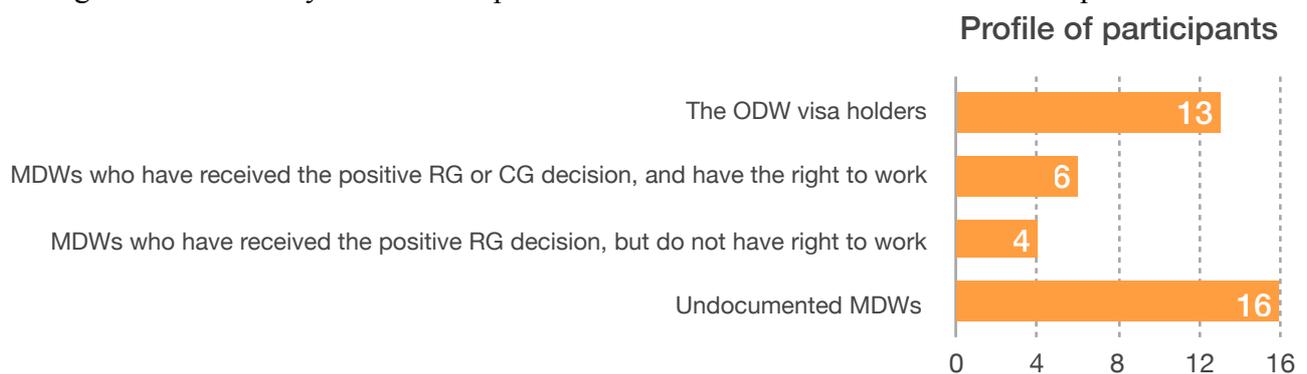
for a minimum of forty-five days to receive the CG decision. Not all MDWs referred to the NRM have the right to work while their cases are being processed. According to the ‘variation of leave order 2016’, if the person on the ODW visa receives the positive RG decision when their six-month ODW visa is still valid, they have the right to work while waiting for the CG decision. Their right to work lasts until the end of the twenty-eighth day after the date on which the competent authority sends a notice in writing of its conclusive decision. However, if they receive the positive RG decision after their six-month ODW visa expires, they have no right to work when their cases are being processed. They are expected to survive on the minimal subsistence payments provided by the government. These payments are the only income for the months and sometimes years that the NRM might take to reach the CG decision.

Even if the CG decision is positive, workers on the ODW visa still have no guarantee of permanent residence. They can only apply to extend their visa for up to two years. If workers on the ODW visa receive a negative decision from the NRM or have not been referred to the NRM, they will become undocumented after their six-month ODW visa expires. The Immigration Act 2016 introduced a criminal offence for undocumented working. This means that undocumented workers who report abuse to the authorities might face imprisonment or deportation.

The purpose of this study is to investigate the implications of the non-renewable six-month ODW visa for MDWs in the UK and explore how adequate the NRM is to protect the rights of MDWs.

Profile of participants

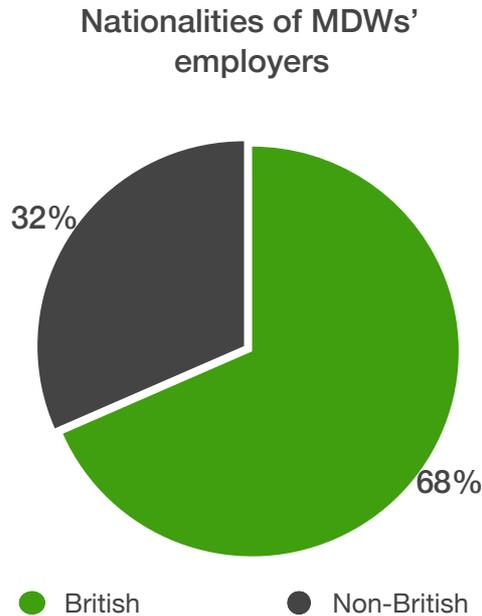
Three strands of data have been utilised in this study. First, a survey was conducted with thirty-nine MDWs from The Voice of Domestic Workers in July 2019. The participants of the survey include MDWs with a variety of visa statuses. All participants entered the UK with the ODW visa originally. By the time of research, thirteen MDWs was still holding the six-month ODW visa, while sixteen MDWs had become undocumented. Six MDWs received the positive RG decision when their ODW visa was still valid or had extended their ODW visa after they received the positive CG decision from the NRM, and thus had the legal right to work in the UK. Four MDWs received the positive RG decision from the NRM and were waiting for the CG decision. However, they did not have the right to work as they received the positive RG decision after their ODW visa expired³.



N=38

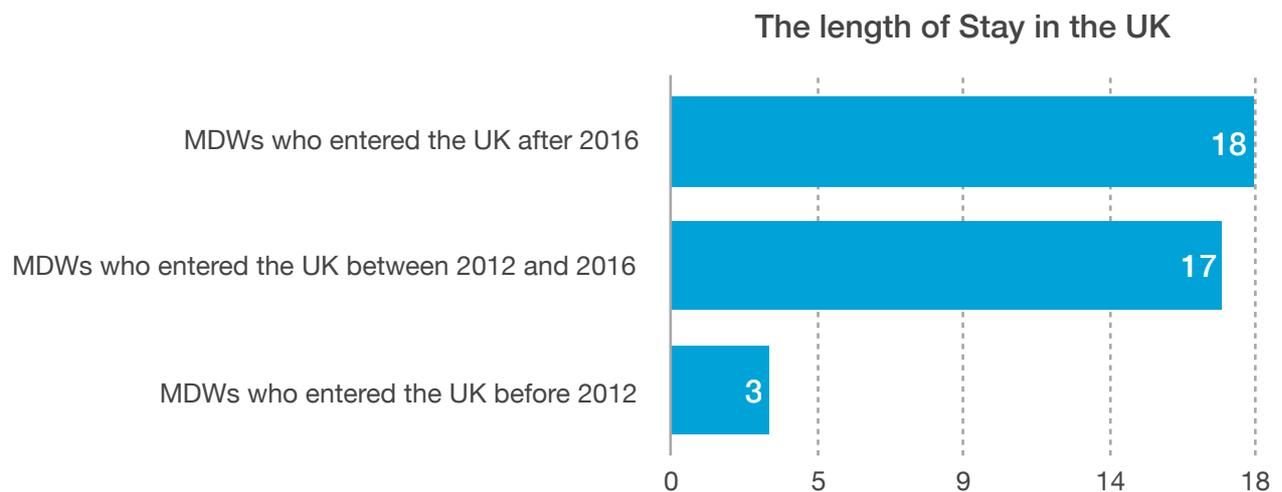
³ For people in the NRM, the ‘variation of leave order 2016’ applies. If the person on the ODW visa gets a positive reasonable grounds decision while their ODW visa is still valid, the validity of their visa is preserved until twenty-eight days after they receive a positive conclusive grounds decision. However, if the ODW visa expires before MDW get a positive RG decision, the leave is not ‘preserved’ during the NRM decision making time. They will not have the right to work during this time period.

Regarding the nationalities of the participants' employers, twenty-six MDWs reported that their employers are British, while twelve were working for non-British employers. These non-British employers are from France, Belgium, Russia, Poland, Canada, Italy, South. Africa, Lebanon, Sweden, Pakistan and Arabic countries.



N=38

Majority of the participants are post-2012 MDWs in this study. Eighteen MDWs came to the UK between 2012 and 2016, which is followed by seventeen MDWs who entered the UK after 2016. There are only three participants who entered the UK under the old ODW visa system before 2012.



N=38

The average monthly salary of MDWs in the survey is £1541. Correspondingly, they worked for 268 hours monthly on average. The average hourly rate was

£5.75, which is far below the National Minimum Wage. Fifty-nine percent of the participants (23/39) reported the abuses at work. The most commonly reported abuse was physical abuse, which is followed by verbal abuse and sexual abuse.

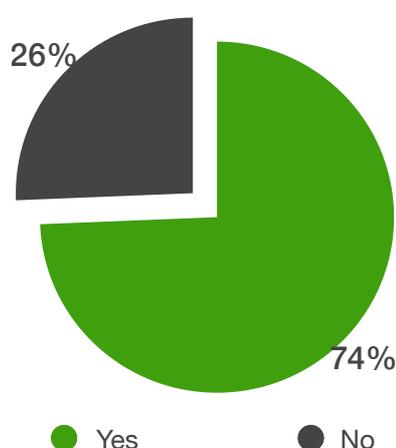
Moreover, a focus group discussion with ten MDWs was also carried out in July 2019. Eight of them had been referred to the NRM, and another two participants were undocumented and waiting to be referred to the NRM. Among those eight MDWs referred to the NRM, four received the positive RG decision and had the right to work; one received the positive RG decision, but had no right to work; one received the positive CG decision and had extended the ODW visa; one received the negative decision from the NRM and had become undocumented; and one was still waiting for the RG decision. Nine participants came to the UK in 2017 or 2018. Nine participants are female while one is male. Finally, a number of informal conversations were conducted with MDWs during and after the classes and social activities organised by the The Voice of Domestic Workers.

Finding

The non-renewable six-month ODW visa vs. employers' demand for long-term domestic workers

Seventy-four percent of participants reported that their employers look for long-term domestic workers and expect MDWs to work for them for more than one year.

Does your employer expect you to work for long term (more than 1 year)?



N=38

The non-renewable six-month ODW visa has created enormous difficulties to the change of employers when MDWs come across abusive employers. If they leave their abusive employers, it is difficult for them to find new jobs as many employers are not willing to take MDWs who can only work within the remaining time of their six-month ODW visa. This is particularly true for employers who have young children. As some MDWs commented,

'When employers have little kids. They always look for someone who can work for them for long. Then they get to know young kids. They will also develop a bonding with kids. Having the same worker for kids for long is good.'

'Whenever I have job interviews, employers will always ask me "how long can you work for us?" They want someone who can work for long. I really want to work for them, but I don't have a long visa. I don't know whether I can receive the conclusive grounds decision. Even if I receive a positive decision from the NRM, I still can't stay long. It only gives me two years.'

Inability to complete the Employment Tribunal process within six months

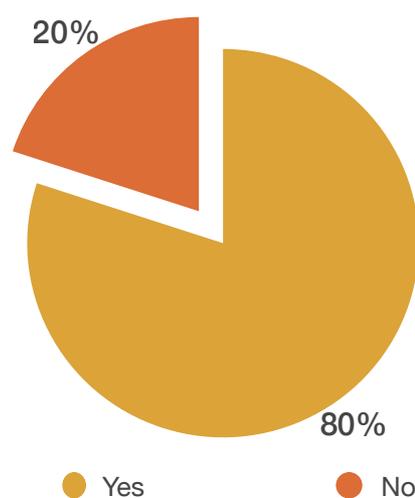
Like other types of workers, MDWs have the right to make claims against their employers to the Employment Tribunal. However, the average waiting time towards a hearing had reached 207 days in the 12 months to 31 March 2018, compared with 204 days in 2016/17 and 195 days in 2015/16, shows Ministry of Justice's data obtained by the law firm GQ Littler. This means that MDWs who have been suffering from abusive employers will not have enough time to complete the Employment Tribunal process before the ODW visa expires. As Marissa Begonia, the coordinator of The Voice of Domestic Workers, has commented,

'Under the old visa system before 2012, we had a working group within our organisation. MDWs will help each other to make claims against employers to Employment Tribunal. Quite a few have made successful claims and won compensations. However, the new MDWs who don't have the right to renew their work visa won't have time to complete the process.'

Becoming undocumented: 'I'm hidden now'

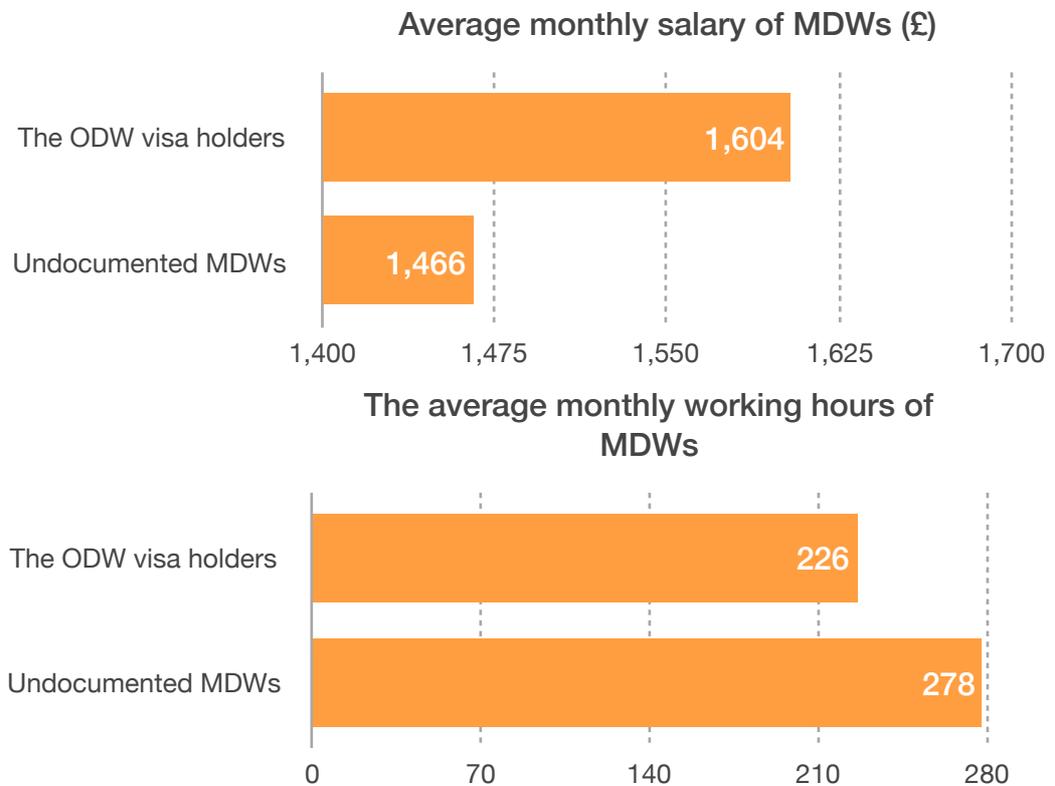
The survey with 539 MDWs conducted by The Voice of Domestic Workers during August 2018 shows that approximately eleven percent of MDWs consented to be referred to the NRM. This indicates that a significant proportion of ODW visa holders will become undocumented in the current immigration environment. The sixteen undocumented MDWs in this survey were all employed by the time of research. However, eighty percent of them have reported that their working and living conditions have deteriorated after their ODW visa expired.

Has your working and living conditions got worse after your 6-month visa expired?



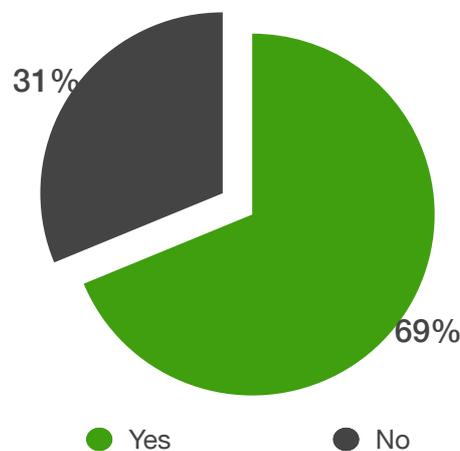
The surveys show that undocumented MDWs all tend to work more, but earn less compared to ODW visa holders. **While ODW visa holders earned £1604 a month on average, undocumented-**

ed MDWs only earned £1466. Correspondingly, ODW visa holders worked for 226 hours a month. Undocumented MDWs, however, worked for 278 hours monthly. There was one undocumented MDW who only earned £420 a month while working for seven hours a day and six days a week.



Sixty-nine percent of the undocumented MDWs have reported they have experienced more abuses at work without the ODW visa. Among those MDWs who reported the increasing abuses after their visa expired, fifty percent of them have claimed that they have suffered from physical abuse.

Have you experienced more abuse at work after your 6-month visa expired?



A few undocumented MDWs have made further comments on how they had been exploited.

'They want me to work long time without overtime pay. They don't pay my holidays. They just want me to work.'

'Extension of jobs after working hours. Asking working for weekends. Long hours and no pay for holidays.'

'They always pay me late, discriminate me, and give me too much work.'

'Sometimes I don't have days off. I have to work on Saturday and Sunday.'

Since one's immigration status is tied to employment rights, it is literally impossible for the undocumented workers to protect themselves in workplace as they do not have legal status in the UK. Many MDWs have reported that they were afraid of negotiating employment rights with their employers as there is no guarantee of jobs when they are undocumented. This is echoed by MDWs in the focus group discussion.

'They know I don't have paper now. They can exploit me. I have to work long and earn less money. They shouted at me if they are not happy. They know I won't say anything. I can do nothing now because I lost my paper. I'm hidden now. I'm afraid of losing jobs.'

'I have been undocumented for several years. I can't see my children. Before I found The Voice (The voice of Domestic Workers), I wanted to kill myself.'

NRM: 'We are workers, not victims'

A common theme arising from the focus group discussion and the survey is that many MDWs feel uncomfortable about being referred to as 'victims' of human trafficking instead of workers. Many identified themselves as workers who are capable of supporting their family and their employers' family, and making contributions to the economy and society. Depriving them of their right to work has disempowered them in reality.

'I came here to work. I want to work, pay tax and send the money back to my children in The Philippines. I don't want to accept the material assistance from the government. It cost their money. I can work and my employer needs me.' (MDW who had been referred to the NRM and received the positive CG decision)

'I have applied to the NRM, but I feel this is something imposed on me. I don't have any other choice. I want my work visa to be renewed. But the only support available to me is the NRM. I'm a worker. I came here with a worker visa.' (MDW who had been referred to the NRM and received the positive RG decision)

Employers not understanding NRM

Among the ten MDWs in the survey who had been referred to the NRM, **fifty percent of them have reported that their employers had no idea of what NRM means.** If MDWs receive the positive RG decision when their ODW visa is still valid, they have the right to work while they are waiting for the CG decision. Their right to work lasts until twenty-eight days after they receive the positive CG decision. Employers often have difficulties of understanding their immigration status and right to work during this time period. As one MDW noted,

‘I have the right to work. I received the positive RG decision when my work visa was still valid. So I can still work when I’m waiting for my CG decision. But my employer doesn’t understand this because I don’t have a proper worker visa. I showed them the Home Office paper, but they always ask me “when can you receive your appropriate worker visa?”’ (MDW who received the positive RG decision when her ODW visa was still valid)

What discourages MDWs from consenting to be referred to the NRM?

The most commonly mentioned reasons of not consenting to be referred to the NRM in the survey include **the sense of fear, the sense of uncertainty and the difficulty of providing evidences.**

Working in private households and being closely monitored by their employers, MDWs often found it difficult to keep records of the abuses at work.

‘I was beaten. I don’t have proper accommodation. But I don’t have evidence. They took my phone. I can’t use internet in the house. I can’t even take a photo.’

‘They brought me here in a private airplane. I was monitored, from Abu Dhabi going here, I was monitored. Going to the house, I was monitored. Going anywhere, any park in London, I was also monitored. There is CCV inside and outside.’

Many MDWs also reported that the sense of uncertainty is the main reason which discouraged them from contenting to be referred to to the NRM. The sense of uncertainty often comes from the unpredictable waiting time of the CR decision and the ambiguous assessment criteria of the NRM.

‘They say you might receive your conclusive grounds decision within 45 days, but it can be very long. I’ve heard from other workers here. Some cases took years. That will be very stressful.’

‘How the case is evaluated is not clear. We don’t have clear evidence. We can only share our stories. Sometimes they think it’s slavery. Sometimes they don’t. It’s not like applying for the worker visa. If we submit all documents, very likely we will receive the visa.’

Many MDWs were fearful of reporting the abuse to the NRM. If they receive a negative decision from the NRM, they face the risk of being removed from the UK.

‘The result is too unpredictable. If I fail, they might remove me from this country. I feel scared.’

Other reasons of not reporting the abuse to the NRM provided by some MDWs include **financial cost and language barriers**. It is difficult for MDWs to access legal aid for representation. Due to limited language capacities, some found it difficult to provide a full amount of their experiences. A few MDWs reported that they had no idea of what NRM means.

‘NRM is not adequate to protect us’

MDWs who receive the positive RG decision after their ODW visa expires do not have the right to work. While they are waiting for the CG decision, they can only rely on governmental aid for survival. Many MDWs who have received the positive RG decision, but have no right to work reported that it was often difficult to survive on the minimal subsistence payments from the government.

‘I received positive reasonable ground decision which gave me Leave to remain temporary for 45 days or more. But during this period I am not allowed to work because my visa was lapsed already when I signed to NRM. This is difficult because I couldn’t work and my children needs my financial support. I had to remit to them my weekly allowance as traffic victim of £35 per week. My friends would help me with my other needs. This is how I’m surviving all these years.’

These minimal payments are expected to be the only income of the MDWs for the time period the NRM takes to reach the CG decision. One MDW has reportedly waited for almost two years for the CG decision. As she was referred to the NRM after her ODW visa expired, she was in deep financial distress during the two years.

Some MDWs who were referred to the NRM after their ODW visa expired commented that it was not their intention of reporting the abuse to the NRM late, and it was mainly because there was a long waiting list in some first responder organisations. There are limitations on resources and capacities in some first responder organisations.

‘I want to be referred to the NRM as soon as possible. My worker visa will be gone soon. There are only two months left. If I’m referred after my visa is gone, I can’t work anymore. But there is a long waiting list in this organisation. There are people ahead me. I don’t know how long I need to wait. I will try other organisations. But I don’t know how quickly we can do this.’

MDWs have also criticised the effectiveness of the NRM in preventing the abuse at work. Only MDWs who have actually suffered from the abuse can they be referred to the NRM. Those who are in danger of the potential severe abuse are excluded from the NRM framework.

‘My male employer would suddenly touch my waist down to my bottom, I pushed him away each time and would follow me around in the house including in the toilet. I had phobia whenever he is near me because he always looked at me and sit near me. I wasn’t safe at all being alone with my male employer because I slept in the living room, so I had to run away. I did not want anything bad to happen to me so I had to escape. I thought of my husband and my children. I knew I was doing the right thing to save myself from possible rape. I was referred for National Referral Mechanism assessment. I was told my case was too weak so I didn’t pursue this NRM.’

Conclusion and recommendations

MDWs is one of the most vulnerable worker groups in the UK due to the private and individualised nature of the workplace, social isolation, language barriers and precarious immigration status. Their vulnerability has been further strengthened by the non-renewable six-month ODW visa introduced by the government in 2012. The non-compliance with the National Minimum Wage and abuse is prevailing in this sector. Within the non-renewable ODW visa system, it is difficult for MDWs to find new employment opportunities within the remaining time of their ODW visa, if they leave abusive employers. Six months is also not enough for MDWs to make a claim against their employers to the Employment Tribunal. The average processing of a case in the Employment Tribunal is longer than six months. Overall, the non-renewable six-month ODW visa had made it difficult for MDWs to get access to UK employment law in practice. The non-renewable ODW visa does not benefit the UK employers neither. The survey shows that seventy-four percent of the surveyed MDWs' employers look for long-term domestic workers in a private household.

There has been a significant number of MDWs who have become undocumented after their ODW visa expires. They suffer from an intersection of labour exploitations, discrimination and gendered abuse. However, the Immigration Act 2016 introduced a criminal offence for undocumented working. This means that it is almost impossible in practice for undocumented MDWs to claim rights at work. If they report abuse to the authorities, they might face imprisonment and deportation.

The NRM as the only support available to MDWs does nothing to prevent abuse. Workers can only access supportive facilities once their exploration has deteriorated to the extent that they are enslaved. MDWs have reported more problems about the NRM, such the difficulty of providing evidences, the unpredictable processing time, the limited resources and capacities of some first responder organisations, ambiguous assessment criteria and the difficulty of surviving on the minimal subsistence assistance from the government. Even if they receive a positive CG decision from the NRM, they can only extend their ODW visa for up to two years, which has no direct implications on permanent residence. For those who receive a negative decision from the NRM, they face the risk of being removed from the UK.

The report concludes that the NRM has not clearly identified MDWs as workers, neither has it effectively prevented abuses at work. Instead, it treats MDWs as victims who can only access to support if they conditions have been condemned to modern slavery. Recognising MDWs' worker status and allowing them to renew the work visa can potentially be beneficial to both the employers and the MDWs. Ninety percent (35/39) of the participants in the survey have reported they will have more confidence to negotiate their employment rights if they are allowed to renew their ODW visa. In this regard, we recommend:

- A reversion to the ODW visa that existed before 2012 that allowed MDWs to change the employers and renew the ODW visa, provided they were in full time employment as a domestic worker in a private household.

- The criminal offence for undocumented working in the Immigration Act (2016) to be repealed and employment rights separated from immigration status so workers can claim work rights regardless of their visa status.

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