



EUROPEAN POLICY BRIEF



The gap between law and reality: addressing human trafficking in the British domestic work industry

The British government has expressed its latest commitment to tackling trafficking in human beings (THB) under the Modern Slavery Act passed in March 2015. However, the evidence collected for this study on trafficking in the domestic work sector suggests that the Modern Slavery Act is likely to fall short of expectations. The structural reasons that lie behind the failure to protect domestic workers and deter abusive behaviour on the part of employers in the UK are: the strict immigration rules and political priorities of law enforcement agencies; the State's stake in organising and regulating the labour market; and, the state of the welfare regime protecting families and offering vulnerable individuals access to the rule of law.

June 2016

INTRODUCTION

Over the last decade successive British governments have been very upfront and vocal about the issue of human trafficking and slavery. Following the death of cackle pickers at Morecambe Bay in 2004, the British government instituted the Gangmaster Licencing Agency (GLA) with the aim of regulating employment agencies that provide labour in certain food industry labour markets. In 2009, the government passed the Coroners and Justice Act to address several legal gaps such as the definition of THB and the different forms it may take, including labour trafficking and domestic servitude. During the same year it introduced the National Referral Mechanism (NRM), which is the policy framework for identifying victims of human trafficking or modern slavery and ensuring they receive the appropriate protection and support in the UK. The British government has expressed its latest commitment to tackling trafficking in human beings (THB) under the Modern Slavery Act passed in March 2015.

THB within the domestic work sector has not attracted as much attention as sex trafficking or labour trafficking in the supply chains of corporate organisations. The figures on potential victims of trafficking in domestic work seem small in comparison to referrals for other forms of THB. From 2012 to 2014, around 13% of the NRM referrals made every year for potential victims of trafficking concerned cases of domestic servitude. In 2014, there were 305 cases of domestic servitude out of a total of 2,340 referrals for potential victims of trafficking. However, the numbers of people coming

to the UK to take up domestic work are not negligible. There are around 15,000 workers entering the UK every year on overseas domestic worker visas since the beginning of the economic crisis. There are also an unknown number of overseas nationals who come to work as au pairs for British families and work full-time for pocket money. Moreover, covering British families' housekeeping, childcare, and eldercare needs under private labour arrangements with domestic workers is expected to proliferate in a setting where the cost of social care is increasingly passed on from the state to the family. In this context, workers are vulnerable to severe forms of exploitation that could potentially lead to a THB situation in the expanding UK domestic work industry.

The main government policies aimed at addressing the demand-side of THB in domestic work are raising awareness and deterring criminal conduct among buyers of domestic labour through legislation. The evidence collected in this study suggests that the Modern Slavery Act is unlikely to resolve any of the specific conditions leading to exploitation in the sector. In part, this is because a number of factors driving demand on the part of employers (households) and intermediaries for exploiting and abusing domestic workers remain unaddressed.

The limited worker protection in the domestic work sector is a key factor increasing the risk of labour exploitation. Worker vulnerability is related to the fact that the association of domestic labour with work is often blurred under the familial or emotional intensive setting in which it takes place. Furthermore, the young age of some domestic workers (in many cases domestic workers are children and teenagers) renders these workers more vulnerable to exploitation by their employers. This case study indicates that the potential for exploitation widens because workers in this sector remain largely unprotected. In particular, strict immigration rules and priorities of law enforcement agencies, poor labour market inspections, and the existing public austerity regime in the UK contribute towards a favorable environment for the exploitation of domestic workers which may lead to THB.

EVIDENCE AND ANALYSIS

The evidence collected in this study suggests that the main **obstacles** to preventing exploitative situations within the domestic work industry are: a) the strict immigration rules and political priorities of law enforcement agencies, b) the involvement of the State in the organisation and regulation of the domestic work labour market, and c) the state of the welfare regime protecting families and offering vulnerable individuals access to the rule of law. These are the structural reasons behind the failure to protect domestic workers and deter abusive behaviour on the part of employers in the UK.

The study's findings on national case law also demonstrate that the kind of work relationship established in domestic work exacerbates workers' vulnerability and increases employers' sense of impunity. In these cases of abused domestic workers, being in the service of the employer family from a very young age or being 'helped' by that family in the previous countries of employment blurs the fact that they have been treated as slaves. Domestic workers often have no awareness of their employment rights in the UK and would argue that their employer had been good as long as he/she did not physically abuse them. In many cases (including case law) the fact that the migrant domestic worker has consented to do this job for the abusive employer-household leads the police to assume that this is a case of labour dispute at most. The police looks for evidence of physical violence, bodily harm, or rape in order to investigate allegations of trafficking. However, as one NGO representative, who is a domestic worker herself notes, *'do we need to be beaten, to be raped in order to access protection?'*

1) Migration policy regime: restricting employment rights and dominating public policy priorities

British migration policy contradicts the implementation of a public policy intent on criminalising and stopping THB.

Prior to April 2012, overseas domestic workers received a 12-month visa, were allowed to change employers provided they continued to be employed as a domestic worker, and could apply for indefinite leave to remain after five years of continuous lawful residence. Since 6 April 2012, overseas domestic workers who have applied to enter the UK on or after that date are permitted to stay for six months in the UK or extend their visa for as long as their employment is needed and cannot change employer. This, in practice, means that domestic workers who legally entered the UK after April 2012 lose their residence status and rights as soon as they leave their employer.

Losing residence status means that it becomes extremely difficult for these workers to claim compensation on withheld wages or denounce their employers—and employers take advantage of this situation. Having no authorization to work under UK law, irregular residents have difficulty in claiming compensation because their claim is based on an employment relationship that legally is considered null and void. Nevertheless, courts in the UK have taken different decisions in this respect and might dismiss the illegality factor depending on the type and seriousness of the claim. National case law indicates that some employment tribunals or supreme courts have granted migrant domestic workers with irregular status the right to claim compensation from their employers. When domestic workers are in the employment of diplomats, it is more difficult to claim compensation. In 2015, in three cases of domestic servitude and forced labour, the Court of Appeal held that the victims could not pursue their claims for compensation because of the doctrine of diplomatic immunity protecting their diplomat employers.

Also, the UK's policy focus on the reduction of net migration levels trumps any labour trafficking and exploitation concerns. The migrant domestic workers who flee from their employers are first and foremost treated by the police as immigration law offenders. Corroborating other reports, this study noted several incidents where attempts to report trafficking resulted in immigration detention. The way the NRM identification mechanism operates is another example where concerns about the victim's immigration status tend to influence the decision of who is and who is not regarded a potential victim of THB. Attesting to this are the dramatic differences in rates of positive and negative decisions by the two competent authorities for NRM decisions. The Home office tends to reject at least 80% of all referrals whereas the UK Human Trafficking Centre only 20%.

Interestingly, it is not only the immigration priorities of the two NRM authorities that shift the focus away from trafficking indicators but also the immigration circumstances of the applicant/victim. When non-EU national victims escape from their traffickers, stopping deportation orders and getting a leave to remain becomes their imminent priority. Considering an asylum application is usually the first channel of action because it can buy victims more time and support than any other legal route. However, filing an asylum application to the NRM prior to making a trafficking identification claim is treated as an indication that the alleged victim of trafficking is not credible.

Last but not least, it should be noted that domestic workers' employment and/or human rights are difficult to safeguard in the UK irrespective of immigration rules. Notwithstanding the legal difficulties in inspecting private residences, the labour market control regime in the UK has a poor inspection record for niches of domestic social care, such as au-pairing and the home care industry. Employment agencies and agents have been involved in law cases of domestic servitude. However, they have neither led to any policy initiatives in regulating this industry nor have they resulted in prosecutions except in one particular case. In a country where social care is outsourced to private service providers, it would be sensible to extend the mandates of competent authorities like the GLA with the task of regulating providers in this industry and thus limiting the incentive to exploit.

2) The effect of the governmental austerity policy

Over the last five years the British welfare state and overall public sector resources have been pulled back substantially. The withdrawal of welfare benefits and affordable welfare services leads more and more British families to cover their needs for care and housekeeping through individual informal domestic work arrangements. In this framework of restraint on public expenditure and rising demand of domestic work arrangements, two further developments have aggravated the

state of vulnerability of potential victims of THB in domestic work: one, support and legal aid provisions for potential victims of THB are being curtailed; and, two, criminal justice actors have experienced substantial cuts in their budgets which eventually affect their efficiency in tackling the crime of THB.

The ever-rising costs of childcare in the UK and deeper welfare cuts and sanctions by the British government, coupled with the practically unregulated domestic work industry, create an environment fostering more exploitative employment relationships in domestic work. Households that cannot afford to cover their childcare or eldercare needs in an environment of retracted public services and benefits may do so cheaply by getting someone to work irregularly. Doing this when there is little chance of being caught becomes a realistic economising strategy for households.

The British government cut £350 million from civil legal aid since 2013. Also, challenging the lawfulness of decisions made by public bodies in NRM trafficking identification applications (what is also known as a judicial review) has become increasingly untenable. The Government no longer pays legal aid until a judicial review has been approved by the High Court. In practice, this means that individuals with non-asylum immigration applications no longer receive legal aid. This, in turn, creates a strong financial disincentive for civil law solicitors to prepare an NRM application for identifying a victim of THB or a relevant judicial review as they would have to do this *pro bono*. Criminal law defence solicitors who represent THB victims accused of a crime (e.g. theft, benefit fraud, drug offences) not only have no financial incentive to do so but also a very high threshold for proving that the defendant migrant worker committed the crime under compulsion.

Regardless of the government's austerity agenda, the specialist support provided by the NRM to potential victims of THB is also too short; it lasts for a mere 45-50 days.

The decision whether or not to positively identify, investigate, or prosecute a potential offence of trafficking or servitude of a domestic worker is influenced not only by immigration priorities but also by other law enforcement priorities and structures that are in place. The two key British criminal justice system actors, police and prosecutors, have historically developed enforcement resources and priorities over different areas of crime. Any improvements in their capacity to identify, investigate, and prosecute across the different forms of THB would require an investment of resources that would have to be sustained for a period long enough to influence established everyday policing routines and structures. However, prevalent public concerns about the size of the public sector in the UK have led to substantial cuts in criminal justice actors' budgets. The amount spent by the Home Office on the police has been reduced by 20% since 2011. Police forces are facing a 5% cut in government funding in 2015/2016 and deeper cuts are forecast over the next five years. Similar problems arise in prosecution, with the Crown Prosecution Service (CPS) enduring significant cuts in recent years. Characteristically, according to the CPS Business Plan 2010-2011, the CPS budget is planned to shrink by 25% by 2015. These cuts ultimately challenge the capacity of the British legal system to defend victims and prosecute traffickers. As all the interviewed solicitors noted, when police have fewer resources, they are more likely to charge suspects based on the facts before them rather than conduct a more thorough investigation.

POLICY IMPLICATIONS AND RECOMMENDATIONS

- Domestic work arrangements are largely unregulated in the UK and this reinforces a regime of impunity for unscrupulous employers and labour provider agencies. In order to address this situation, the British State needs to create conditions in which labour inspections will become applicable in the domestic environment. One way to do this is to re-organise the domestic work industry in such a way that *individual* domestic work arrangements gradually become redundant. Introducing a domestic work voucher system which offers tax exemptions to households making use of home care and childcare agencies would be one possible avenue in bringing domestic work arrangements closer to scrutiny and limiting the employment of vulnerable individuals in the sector.

- Extending the remit, resources, and powers of the GLA to monitor and license agencies operating in the domestic work industry (among other unregulated labour markets) is the second necessary step without which the labour provider agencies will be added to the direct employers as parties who have not only a stake but also a good chance of exploiting labour without being penalised.
- Sustainable and long-term funding across potential first responders and criminal justice actors is required in order to improve their capacity for identifying and investigating THB crimes in the domestic sector. Cuts in police, CPS, and legal aid budgets will need to be reversed. Next to criminal justice actors, the social services, family law courts, and other public sector first responders will also need funding in order to adapt their resources towards identifying and acting on situations that may be harbouring THB crimes.
- NGOs have been raising awareness of the employment rights of domestic workers in their day-to-day activities but this is insufficient. Awareness campaigns about domestic worker rights specifically targeting employers of domestic workers should be considered as another avenue of action. These campaigns would have to be organised at both a national and local government level in order to reach the target population.
- Victims of THB will have to be facilitated to access the criminal justice system. The abolition of the tied domestic worker visas, the extension of the NRM reflection and support period to potential victims of THB from 45 days to 1 year, and the restoration of the legal aid system are key steps in this process.

RESEARCH PARAMETERS

This national study is part of the DemandAT country studies on trafficking in human beings (THB) in the domestic work sector conducted in seven European countries: Belgium, France, Greece, Cyprus, Italy, Netherlands, and UK.

The key objectives of research were to i) investigate types of situations in domestic work that may involve extreme forms of exploitation and trafficking, ii) examine the motivations and factors driving and shaping the demand as well as iii) examine the gaps in legislations and policies.

This study combined secondary desk research and primary data collection. A literature review was carried out to examine relevant publications, national and international legislation, legal guidance and case law. This literature review was discussed against primary research material collected from 10 interviews with key stakeholders from different sectors: solicitors and barristers who have been involved in known case law on THB and were knowledgeable of cases of THB in domestic work; NGO representatives and case workers (both official NRM first responders and unofficial first responders); and a Crown Prosecution Service officer. Extensive documentation and analysis of case law and stories of victims in websites of Kalayaan, a well-known NGO first responder and ATLEU, a well-known charity providing legal representation to victims of trafficking and labour exploitation, was also carried out. Workshops on trafficking prosecutions and trafficking-related issues were also attended to identify key national actors and potential interviewees.

References

Maroukis, T. (2016) Case study report addressing demand in the context of THB in the domestic work sector in the UK. DemandAT Country Study No. 6. ICMPD: Vienna.

ATMG (2013) *In the Dock: Examining the UK's Criminal Justice Response to Trafficking*, Anti-Slavery International for the Anti-Trafficking Monitoring Group.

Balch (2012) Regulation and Enforcement to Tackle Forced Labour in the UK: A Systematic Response? Joseph Rowntree Foundation.

Kalayaan (2015) *Britain's forgotten slaves; Migrant domestic workers in the UK three years after the introduction of the tied Overseas Domestic Worker visa*, London: Kalayaan

Lalani, M. & Metcalf, H. (2012) Forced Labour in the UK: The Business Angle. Joseph Rowntree Foundation.

PROJECT IDENTITY

PROJECT NAME	Addressing Demand in Anti-Trafficking Efforts and Policies (DemandAT)
COORDINATOR	Albert Kraler ICMPD Co-ordinator ICMPD Headquarters Gonzagagasse 1, 5th Floor A-1010 Vienna, Austria Tel: +43 (0)1 504-4677-2345 albert.kraler@icmpd.org
CONSORTIUM	International Centre for Migration Policy Development Vienna, Austria University of Bremen – Arbeitsbereich Interkulturelle Bildung Bremen, Germany University of Edinburgh – School of Social and Political Science Edinburgh, United Kingdom La Strada International Association Amsterdam, The Netherlands Lund University – Department of Social Anthropology Lund, Sweden University of Durham – Department of Geography Durham, United Kingdom European University Institute – Robert Schuman Centre for Advanced Studies Florence, Italy Geneva Centre for the Democratic Control of Armed Forces Geneva, Switzerland La Strada Czech Republic - Czech Republic Prague – Czech Republic
FUNDING SCHEME	FP7 Framework Programme for Research of the European Union – Collaborative project Activity 8.5 – The Citizen in the European Union
DURATION	1 January 2014 – 30 June 2017 (42 months).
BUDGET	EU contribution: 2,498,553 €.
WEBSITE	www.demandat.eu
FOR MORE INFORMATION	Contact: Project Coordinator, Albert.Kraler@icmpd.org Policy Brief Author: Thanos Maroukis, thanosmaroukis@gmail.com