

Could London Learn from Jakarta?: A Comparison of Wage Protection Regimes for Women Migrant Care Workers

Authors:

Annabronia Ospeck, a Postgraduate Law student at The City St George's, University of London.

Annabronia.Ospeck@citystgeorges.ac.uk

Fayza Bratanova Soebroto, an Undergraduate Law student at Udayana University.
fsoebroto@gmail.com

Carmelita Vondra Wijaya, an Undergraduate Law student at Udayana University.
carmelitawijaya@gmail.com

This work was written as part of a Gender Equality and Law: Transnational learning and co- producing research with students from Udayana University and City St George's, University of London, a year-long funded project by the British Council Going Global Partnerships and Research England Fund for Overseas Development Agency.

Introduction

Migrants who are care workers are especially vulnerable to abuse and exploitation because they are often employed in the informal economy and in less skilled work.¹ Globally, 76% of all unpaid care work is performed by women.² One of the key causes of the labour exploitation is the unscrupulous practices of some recruitment agencies and the informal brokers that charge high recruitment fees.³ These facts mean there is a significant barrier to women's labour market participation,⁴ and women migrant care workers often struggle to earn a living wage.

As a basic principle of equality, women migrant care workers should be entitled to a living/minimum wage. If states strengthened their legal protections for women migrant care workers, so that they were entitled to a basic wage, it would help achieve the elimination of prejudices and practices which currently reinforce the inferiority of women worldwide. This result would be consistent with obligations to which states have committed in international law.⁵

How do legal protections for fair wages for this group of women migrant care workers vary across states? We cannot be exhaustive here, but we contribute to discussions by comparing the legal protection in a state which generally sends women migrant care workers abroad (Indonesia) with a state which generally receives them (the United Kingdom). In the year ending December 2024, around 948,000 people migrated to the UK and 517,000 migrated out of it, leaving a net migration of 431,000,⁶ making it a receiving state. In the same year, Indonesia had a net migration of -38,469,⁷ making it a sending state. Studies comparing 'Global North' states like the UK with 'Global South' states like Indonesia, on topics involving gender equality and human rights, often imply that global South states need to learn from global North states. While that may be true in general, our investigation is asking the opposite question: can the UK learn from Indonesia in this specific situation?

¹ Md. Khaled Sifullah and Md. Salman Sohel, 'Mapping out the vulnerabilities of migrant women in the informal sector: A qualitative investigation in Dhaka city' [2023] 9(10) Heliyon 1-15

² ILO, Care work and care jobs for the future of decent work, 2018.

³ United Nations General Assembly, Resolution adopted by the General Assembly on 17 December 2015, 8 February 2016, A/RES/70/130.

⁴ International Labour Organization, Migrant Workers in the Care Economy (Policy Brief, 28 January 2024) <https://www.ilo.org/publications/migrant-workers-care-economy>.

⁵ Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13. CEDAW Article 5 (a): State Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

⁶ House of Commons Library, Migration Statistics (Research Briefing, 28 May 2025) <https://researchbriefings.files.parliament.uk/documents/SNo6077/SNo6077.pdf>. See pg. 12.

⁷ World Bank Group Data, 'Net migration - Indonesia' (World Bank Group Data, 2024) <https://data.worldbank.org/indicator/SM.POP.NETM?locations=ID>.

Our investigation is prompted by the idea that a sending state has a vested interest in protecting their citizens who are often likely to be among the most vulnerable. The laws of the sending state might offer protections not encompassed in the laws of the receiving state, allowing the receiving state to usefully learn from the law in the sending state.

Indonesia

Migration is often beneficial to sending states because it increases employment and helps improve the income of the migrant's extended family who remain in the sending state.⁸ Indonesia is a prominent sending state of migrant workers throughout the Global South. In 2023 alone, more than 270,000 Indonesians migrated abroad, with nearly two thirds (61%) comprising women.⁹ Malaysia and the Kingdom of Saudi Arabia were the receiving countries with the most Indonesian women migrant workers.¹⁰ Indonesian migrant care workers abroad are known to experience violence, rape, and the deprivation of wages.¹¹

Indonesia does not have any specific statutory law to grant the particular group of women migrant care workers wage protection. However, Indonesia does have specific statutory law regarding protections in general for Indonesian migrant workers abroad. This law includes wage protection.¹²

Law No. 18 2017 on the Protection of Indonesian Migrant Workers protects Indonesian migrant workers abroad. Law No. 18 2017 governs protections before work begins (registration & departure), during work (abroad), and after work ends (arrival in Indonesia).¹³ Its scope covers Indonesian migrant workers, of which Indonesian women migrant care workers are a subgroup. The law is in line with the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which Indonesia ratified in 2012.¹⁴

⁸Sitompul, Thomson. "Economic and social impact of migration." *Journal of Accounting and Management Innovation* 7, no. 1 (2023): 1-15.

⁹ International Labour Organization, "New PROTECT project supports women migrant workers and children in Indonesia," Joint Press Release. 14 May 2024. <https://www.ilo.org/resource/news/new-protect-project-supports-women-migrant-workers-and-children-indonesia>.

¹⁰ Renta, Prebia Prakarsa, and Arie Kusuma Paksi. 2023. "Efforts of Migrant Care and the Indonesian Government in Realizing the Protection of Indonesian Migrant Workers (PMI) Facing the Death Penalty in Saudi Arabia (2015 – 2018)". *Sociologia Y Tecnociencia* 13 (1):89-101. <https://doi.org/10.24197/st.1.2023.89-101>.

¹¹ Kemala Vinna Dinda and Eny Kusdarini. 2020. "Legal Protection of Indonesian Migrant Workers (TKI) Overseas (Case Study of BP3TKI North Sumatera Province)". *Fiat Justisia: Jurnal Ilmu Hukum* 14 (1):19-32. <https://doi.org/10.25041/fiatjustisia.v14.no1.1756>

¹² Law No. 18 2017 on the Protection of Indonesian Migrant Workers, Article 6 (1) (f): Every Prospective Indonesian Migrant Worker or Indonesian Migrant Worker has rights to: receive wage in accordance with the wage standard that applies in the destination country and/or agreement between two countries and/or Employment Contract.

¹³ Law No. 18 2017 on the Protection of Indonesian Migrant Workers, Art. 7.

¹⁴ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which Indonesia ratified in 2012; this is explicitly stated in the considerant of Law No. 18 Year 2017. The U.K. has not yet ratified this convention.

The main subject of Law No. 18 2017 is any migrant worker who is an Indonesian citizen who will work, currently works, or has worked, for a wage, outside of Indonesian territory.¹⁵ The provision includes workers who work for an individual employer or household.¹⁶ An Indonesian migrant worker is obligated to possess several documents as stated in Article 5 and Article 13.¹⁷ These include a passport, work visa, placement agreement, certificate of work competency, and employment contract. Criminal sanctions apply to Indonesian migrant workers who do not fill out forms correctly. Article 65 prohibits a person from providing inaccurate data and information in filling out the forms (as referred to in Article 13). If it is found that this person has deliberately provided inaccurate data and information with respect to the documents referred to in Article 13, the person will be liable to criminal sanctions such as a sentence of imprisonment for a maximum of 2 years and/or a fine of Rp200,000,000 (approximately 8,946 GBP).¹⁸ However, it is notable that persons who deliberately assign Indonesian migrant workers to roles that differ from their agreed contracts, including roles that violate existing laws, including those related to human trafficking, pornography, child protection, domestic violence, and human rights, are liable to much harsher criminal sanctions. They will be charged with a criminal penalty of a maximum imprisonment of 10 years (and fined a maximum of Rp15,000,000,000, approximately 670,869 GBP).¹⁹

As evinced by the above, Law No. 18 2017 requires Indonesian migrant workers to comply with proper immigration procedures, however, in practice the enforcement of the penalties for individuals who may not have had the proper documentation abroad are rarely enforced, and furthermore Law No. 18 2017 offers protection to any Indonesian migrant worker who is working abroad, regardless of whether they have complied with the proper immigration procedures.²⁰

If they want to rely on Law No. 18 2017, Indonesian workers can only work in a destination country that has legislation that protects foreign workers, has a written agreement between the government of the destination country and the Indonesian government, and/or has a social security system and or/insurance that protects foreign workers.²¹ Furthermore, Indonesian women migrant care workers'

¹⁵ Law No. 18 2017 on the Protection of Indonesian Migrant Workers, Art. 1.

¹⁶ Law No. 18 2017 on the Protection of Indonesian Migrant Workers, Art 4(b). Unlike England and Wales, there is no legal status distinction between a “worker” and “employee” in this law as it is considered equal in every Indonesian labour legal framework.

¹⁷ Law No. 18 2017 on the Protection of Indonesian Migrant Workers, Art. 5 (e): “Every Indonesian Migrant Worker who will work abroad must fulfill these requirements: possessing the required documents.” Law No. 18 2017 on the Protection of Indonesian Migrant Workers, Art. 13 (h): “In order to be placed abroad, Prospective Indonesian Migrant Workers are obligated to have the following documents: Employment Contract.

¹⁸ Law No. 18 2017 on the Protection of Indonesian Migrant Workers, Art. 79.

¹⁹ Law No. 18 2017 on the Protection of Indonesian Migrant Workers, Art. 82.

²⁰ Tanti Kirana Utami, “Regulation of Legal Sanctions against Perpetrators of Non-Procedural Placement of Indonesian Migrant Workers: A Human Trafficking Perspective,” [2024] 10 Cogent Social Sciences 1. See pg. 7.

²¹ Law No. 18 2017 on the Protection of Indonesian Migrant Workers, Art. 31.

relationship with their employer must be based on a contract that clearly states the job specification, wage, and rights and duties of both parties.²²

Enforcement

To enforce the protection of Indonesian migrant workers abroad, Law No. 18 2017 uses the government assigned labour attaché,²³ who has diplomatic status and employment competency.²⁴

This route of enforcement has been successfully invoked to protect Indonesian women migrant care workers abroad. For example, in 2022, the Indonesian government formally stopped sending Indonesian migrant workers to Malaysia due to violation by the Malaysian government of the Memorandum of Understanding on the placement and protection of Indonesian migrant workers in Malaysia that had been agreed upon by both countries under Article 31 of Law No. 18 2017. The Indonesian Embassy in Malaysia found that hundreds of migrant workers in the domestic sector were in trouble due to the Maid Online recruitment system. The system allowed Malaysian employers to hire Indonesian domestic workers without going through an agency, allowing middle class families in Malaysia to afford to hire Indonesian migrant care workers since they could avoid expensive agency costs.²⁵ The online platform involved no employer details, no training, rights, facilities, and no protection or clarity on wage entitlement for workers.²⁶ This practice directly contradicted Article 6 of Law No. 18 2017 which entitles every Indonesian Migrant Worker to the right to be provided with documents and a formal employment contract.²⁷ To date, the Indonesian government has stood firm in its stance, and this likely will not change until there is an improvement in the Malaysian system.

In most cases, women migrant care workers in Malaysia receive salaries from their employers at the end of the contract period. This is to prevent the workers from running away, a rationale which undermines their dignity and autonomy. Employers claim they will deposit the worker's pay in a separate savings account.²⁸ In practice this often does not happen. As a part of enforcement of Article 7 of Law No. 18 2017, the Indonesian Ministry of Foreign Affairs has been assisting Indonesians abroad in recovering their financial rights, including their wages. Throughout 2024, the Ministry reclaimed a total of Rp 212 billion, or approximately 9,483,539 GBP worth of unpaid

²² Law No. 18 2017 on the Protection of Indonesian Migrant Workers, Art. 14 & Art. 15.

²³ Law No. 18 2017 on the Protection of Indonesian Migrant Workers, Art. 22.

²⁴ Employment competency means the labour attaché has the capacity to assist Indonesian migrant workers abroad who are facing labour issues.

²⁵ Syifa Khairunnisa and Monica Bening Maeria Anggani, 'Malaysian Maid Online System (SMO): Indonesian Migrant Domestic Workers' Protection At Stake' [2020] 7(1) *Juris Gentium Law Review* 41-52. See pg. 43.

²⁶ Nurfarah Nidatya, "Indonesia's Foreign Policy : Suspends Sending Indonesian Migrant Workers (PMI) to Malaysia After the Establishment of the Online Maid System (SMO) by the Malaysian Government," *Jurnal Desentralisasi Dan Kebijakan Publik (JDKP)* E-ISSN: 2722-5259 Vol. 04 No. 01 (March 2023). DOI: 10.30656/jdkp.v4i1.6363.

²⁷ Law No. 18 2017 on the Protection of Indonesian Migrant Workers, Art. 6 (1) (m).

²⁸ Helfi Agustin, "Kekerasan pada Setiap Tahap Penempatan TKI Asal Propinsi Sumatera Barat Tahun 2006," *Jurnal Kesehatan Masyarakat Nasional* Vol. 1, No. 4, February 2007, 173.

wages, insurance, and compensation. Data shows that 23.6% of this recovered money was unpaid wages. Some 22.1% was compensation, followed by insurance at 13.9%.²⁹

Enforcement of the protection of Indonesian migrant workers abroad, specifically 'during work protection', is also provided for through Article 21 of Law No. 18 which provides Indonesian migrant workers with legal assistance.³⁰ For example, the Indonesian Embassy in Kuala Lumpur has aided a domestic helper who was a victim of forced labour in Malaysia by appointing them a lawyer and by suing their employer in Malaysia (for an estimated amount of Rp 683,035,000 (or 30,556 GBP). Furthermore, the Ambassador wrote a letter to the Malaysian Minister of Home Affairs so that the domestic helper was not deported back to Indonesia without being able to pursue their claim in Malaysia.³¹

Although enforcement of Law No. 18 2017 is not mainly through legal channels, such as litigation, the recovered amounts show that diplomatic enforcement efforts may be an effective tool to protect wages of women migrant care workers.³²

²⁹ Jayanty Nada Shofa, 'Indonesian Migrants Reclaim \$13 Million in Unpaid Wages, Insurance' (Jakarta Globe, 14 February 2025) <<https://jakartaglobe.id/news/indonesian-migrants-reclaim-13-million-in-unpaid-wages-insurance>>

³⁰ Law No. 18 2017 on the Protection of Indonesian Migrant Workers, Art 21 (f): During work protection as referred to in Article 7 point b covers assistance, mediation, advocacy, and legal assistance provision in the form of advocate services by Central Government and/or Indonesian Missions as well as guardianship in accordance with the local State law.

³¹ Daniel Ahmad Fajri, 'Pembantu Indonesia Tak Digaji 9 Tahun di Malaysia, KBRI Siap Gugat Majikan' (TEMPO, 19 February 2022) <<https://www.tempo.co/internasional/pembantu-indonesia-tak-digaji-9-tahun-di-malaysia-kbri-siap-gugat-majikan--424344>>

³² Hence, rights to wage enforcement for Indonesian women migrant care workers abroad have a more collective, public, character through a diplomatic channel rather than private and individual from the worker herself. The law has also been successful in getting wages back for Indonesian care workers in Saudi Arabia. For example, The Consulate General of the Republic of Indonesia (KJRI) in Jeddah helped an Indonesian migrant care worker retrieve Rp 523 million (32,324 USD) in past wages. See: Yuni Sinaga, 'KJRI Jeddah bantu selamatkan gaji pekerja migran Indonesia Rp523 juta' (ANTARA, 17 March) <<https://www.antaranews.com/berita/2764937/kjri-jeddah-bantu-selamatkan-gaji-pekerja-migran-indonesia-rp523-juta>>

England and Wales

Migration also brings benefits to countries receiving women migrant care workers. The care sector in England and Wales is valued at 162 billion GBP a year,³³ and is heavily reliant on migrant work, with migrants making up 16% of all care staff in nursing and residential houses.³⁴ This migrant work is vital as the care sector in England and Wales currently has 131,000 estimated vacancies.³⁵ Immigration in this sector clearly brings benefits to England and Wales. However, women migrant care workers in England and Wales often struggle to exercise their right to a basic, minimum or living wage. A survey conducted by the trade union UNISON of migrant care workers from November 2024 to January 2025, found that 31% of survey respondents had issues with wages; 27% reported they were paid less than the minimum wage, and 14% said they were paid less than their non-migrant care worker counterparts.³⁶ The Care Act 2014, which provides specific statutory legal protection for care workers in England and Wales, is not relevant to solving the problem of underpaid care workers in England and Wales as the Act excludes as ‘carers’ adults who intend to provide care under or by virtue of a contract,³⁷ and does not provide carers with a legal entitlement to wage.

Women migrant care workers working in the jurisdiction obtain their entitlement to the national minimum wage through the generally-applicable National Minimum Wage Act 1998.³⁸ A woman migrant care worker in England and Wales who meets the legal definition of a worker,³⁹ who currently works or ordinarily works in the United Kingdom under a contract, and who is not of compulsory school age, should meet the qualifications for entitlement to the national minimum wage under s. 1(2) of the National Minimum Wage Act 1998.⁴⁰ To be a citizen of the UK is not a required qualification for entitlement to the national minimum wage under s. 1 (2). Notably,

³³ For the year 2021. Approximately 222 billion USD. See Petrillo M and Bennett M, Valuing Carers 2021: England and Wales (Carers UK, 2021) <https://www.carersuk.org>.

³⁴ UNISON, Caring at a Cost: A Survey of Migrant Care Staff Working in the UK (UNISON 2023) <<https://www.unison.org.uk/content/uploads/2025/02/Migrant-care-worker-report-2025.pdf>>.

³⁵ UNISON, Caring at a Cost: A Survey of Migrant Care Staff Working in the UK (UNISON 2023) <<https://www.unison.org.uk/content/uploads/2025/02/Migrant-care-worker-report-2025.pdf>>.

³⁶ UNISON, Caring at a Cost: A Survey of Migrant Care Staff Working in the UK (UNISON 2023) <<https://www.unison.org.uk/content/uploads/2025/02/Migrant-care-worker-report-2025.pdf>>.

³⁷ The UK has the Care Act 2014 which tries to account for a type of unseen care work in England & Wales. The act defines “Carer” as ‘an adult who provides or intends to provide care for another adult (an “adult needing care”)’ (s. 10 (3)) but this is subject to s.10 (9) & s.10 (10):

(9) An adult is not to be regarded as a carer if the adult provides or intends to provide care—

(a) under or by virtue of a contract, or

(b) as voluntary work.

³⁸ The National Minimum Wage Act 1998.

³⁹ Many ‘women migrant care workers’ are considered ‘workers’ under the Employment Rights Act 1996. Employment Rights Act 1996, s 230(3)(a)–(b). Workers are individuals who have entered into or work under either a contract of employment or any other contract (express or implied or oral or in writing) whereby the individual undertakes to do or perform personally work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carries on by the individual.

⁴⁰ The National Minimum Wage Act 1998. s. 1 (2) (a) -(b): A person qualifies for the national minimum wage if he is an individual who—(a) is a worker; (b) is working, or ordinarily works, in the United Kingdom under his contract; and (c) has ceased to be of compulsory school age.

s.1(2) of the 1998 Act does not explicitly exclude migrant workers nor illegal migrant workers from this entitlement.

If a woman migrant care worker has come over to the UK on an Overseas Domestic Worker (ODW) visa,⁴¹ the (visa) decision maker must have been satisfied of the employer's genuine intention to pay her 'at least the National Minimum Wage' for the duration of her employment in the UK.⁴² While this appears to be a good wage protection, it is unclear how effective the protection actually is. Experts argue that non-compliance with the requirement has only 'negative ramifications for the worker' (as opposed to the employer) as it is the worker who risks becoming 'undocumented' and therefore subjected to further penalties.⁴³ In addition, workers on the ODW visa are restricted from working in the UK longer than 6 months and are barred from changing employers.⁴⁴ The ODW restrictions effectively tie the worker to their employer, contributing to patterns of continuing exploitation⁴⁵ of workers by employers with knowledge of their undocumented legal status.⁴⁶

It is clear that immigration status can be a barrier to receiving a just wage. Not being in proper compliance with the immigration law can thwart any entitlement a migrant worker might have to a basic wage. In 2016, the Immigration Act 2016 amended the Immigration Act 1971 to create the offence of illegal working. Currently, a migrant worker in England and Wales who is subject to immigration control commits an offence of illegal working if they work at a time when they are disqualified from working by reason of their immigration status, and at that time the migrant worker knows or has *reasonable cause to believe* that they are disqualified from working by reason of their immigration status.⁴⁷ What counts as disqualifying the migrant worker from working by reason of their immigration status, can be a lack of the granting of leave to enter or remain in the United Kingdom, or leave to enter or remain which is

⁴¹ Domestic work is a larger feminised category of work which includes 'care work' along with cleaning work and cooking work.

⁴² *Immigration Rules*, Appendix Overseas Domestic Worker, ODW 5.5.

⁴³ Natalie Sedacca, 'A crucial and long-needed step against the devaluation of domestic work: "family worker" exemption dis-applied in *Puthenveetil v Alexander & ors*' (UK Labour Law Blog, 1 March 2021). And, Virginia Mantouvalou and Natalie Sedacca, 'Trapped in Cycles of Exploitation: The UK Overseas Domestic Worker Visa 10 Years On' (UK Labour Law Blog, 6 April 2022) <https://uklabourlawblog.com/2022/04/06/trapped-in-cycles-of-exploitation-the-uk-overseas-domestic-worker-visa-10-years-on-by-virginia-mantouvalou-and-natalie-sedacca/>.

⁴⁴ *Immigration Rules*, Appendix Overseas Domestic Worker, ODW 5.7.

⁴⁵ Virginia Mantouvalou, 'Restrictive Visa Schemes and Global Labour Justice' in Anne Trebilcock and Brian Langille (eds), *Social Justice and the World of Work: Possible Global Futures* (Bloomsbury Publishing 2023) https://discovery.ucl.ac.uk/id/eprint/10161404/2/Mantouvalou_Mantouvalou-%20Restrictive%20Visa%20Schemes%20and%20Global%20Labour%20Justice%20%281%29.pdf

⁴⁶ Advocates for migrant workers have long called for the ODW visa to be reinstated with the protections it had before 2012, such as the unconditional right to change employers. See "Kalayaan, *Kalayaan Report 2024* (June 2024) https://www.kalayaan.org.uk/wp-content/uploads/2024/06/Kalayaan_Report_2024_.pdf.

⁴⁷ Immigration Act 1971. s. 24B (1): "A person ("P") who is subject to immigration control commits an offence if--- (a) P works at a time when P is disqualified from working by reason of P's immigration status, and (b) at that time P knows or has reasonable cause to believe that p is disqualified from working by reason of P's immigration status.

invalid, has ceased to have effect, or is subject to a condition preventing the person from doing work of that kind.⁴⁸ If found guilty of the offence, the migrant worker is liable to confiscation of wages that were borne out of the illegal work under the Proceeds of Crime Act 2002,⁴⁹ in addition to summary conviction to a fine or six months' imprisonment. It follows that a woman migrant care worker who is convicted of the offence of illegal working under s. 24B(1) of the Immigration Act 1971, would encounter severe difficulties when trying to claim their entitlement to the national minimum wage. In addition, the Immigration and Asylum Act 1999 is explicit that detained persons in removal centres can be disqualified from their entitlement to the national minimum wage.⁵⁰

Furthermore, several Minimum Wage Regulations have disqualified women migrant care workers from the minimum wage entitlement. For example, an Indonesian national working as a domestic worker for a family in England and Wales in 2012 was held to be not entitled to be paid the English national minimum wage due to the fact the Employment Appeal Tribunal considered the worker to have shared in the "tasks and leisure activities" of the family such that she was genuinely being treated as a member of the family unit and thus qualified under the family treatment exemption (formerly Minimum Wage Regulation 2(2)).⁵¹ This regulation is no longer applicable since the EAT decision of *Thukalil* [2023]⁵² which disappplied the National Minimum Wage family worker exemption on the basis of indirect sex discrimination (towards women). However, the time work⁵³ Minimum Wage Regulation still exists, and it prevents workers from claiming their entitlement to the national minimum wage during all the hours when they are permitted to sleep (on a sleep-in shift) unless they are 'awake for the purposes of working'. With good reason, it has been argued that this regulation is discriminatory towards women and particularly towards women care workers.⁵⁴ Commercial pilots, who are paid while sleeping and are even required to sleep on long haul flights, are an example of a profession where employees are paid while sleeping. Note that commercial pilots have a higher socio-economic status than care workers.

⁴⁸ The Immigration Act 1971. s.24B (2) (a) – (b).

⁴⁹ The Proceeds of Crime Act 2002. s. 6.

⁵⁰ The Immigration and Asylum Act 1999. s. 153A: A detained person does not qualify for the national minimum wage in respect of work which he does in pursuance of removal centre rules.

⁵¹ *Julio & Others v Jose & Others* [2012] IRLR 180; see paras 33- 38 & paras. 54-58.

⁵² *Thukalil and another v Puthenveetil and another* [2023] EAT 47.

⁵³ The National Minimum Wage Regulations 2015. s. 32(1): "Time work includes hours when a worker is available, and required to be available, at or near a place of work for the purposes of working unless the worker is at home." & The National Minimum Wage Regulations 2015. S. 32 (2): "In paragraph (1), hours when a worker is "available" only includes hours when the worker is awake for the purposes of working, even if a worker by arrangement sleeps at or near a place of work and the employer provides suitable facilities for sleeping."

⁵⁴ See LJB Hayes, 'Discrimination by Legal Design? UK Supreme Court in *Mencap v Tomlinson-Blake* Finds Care Workers Are Not Protected by Minimum Wage Law for Sleep-in Shifts' (2022) 51(3) Ind Law J 696.

Enforcement

Employers in England and Wales who do not pay their workers their national minimum wage entitlement are subject to criminal sanctions.⁵⁵ The same is true of employers who employ illegal migrant workers to work in England and Wales.⁵⁶

If women migrant care workers who are lawfully working in England and Wales believe they are not getting paid their proper wage entitlement, they can rely on provisions within the general employment law, equality law, and modern slavery law such as the Employment Rights Act 1996,⁵⁷ the Equality Act 2010, and, in cases of the most extreme wage right violations, the Modern Slavery Act 2015. However, the Modern Slavery Act 2015 has been criticised as being an insufficient vehicle for protection for workers in the care sector as the threshold for modern slavery is high. For example, both non-payment of the national minimum wage and working long hours without breaks may not meet the high threshold for modern slavery.⁵⁸

Moreover, even if women migrant care workers succeed in proving they are survivors of trafficking and modern slavery through the Modern Slavery Act 2015, the recovery process for compensation from their trafficker is arduous. This is because legal aid is not readily available for compensation claims for trafficking and modern slavery, one reason being the rates for the fixed claims are very low.⁵⁹ Currently, there is no single law that allows a survivor of trafficking or modern slavery to recover compensation from their trafficker. Survivors must instead weave together many different claims to recover the totality of compensation owed.⁶⁰ This is why civil society organisations like

⁵⁵ The National Minimum Wage Act 1998. See s. 31 (1): “If the employer of a worker who qualifies for the national minimum wage refuses or willfully neglects to remunerate the worker for any pay reference period at a rate which is at least equal to the national minimum wage, that employer is guilty of an offence.” & s. 31 (9): “A person guilty of an offence under this section shall be liable – a. on conviction on indictment, to a fine, or on summary conviction, to a fine not exceeding the statutory maximum”.

⁵⁶ This was made an indictable offence in 2006. See Immigration, Asylum and Nationality Act 2006. Asylum and Immigration Act 2016.s. 21 (1A) of the Immigration, Asylum and Nationality Act 2006 defines the offence as when the employer employs a person who is “disqualified from employment by reason of the employee’s immigration status.

⁵⁷ Most women migrant care workers are ‘workers’ under the Employment Rights Act 1996 and are entitled to several fundamental wage rights under the ERA 1996 such as the right not to suffer unauthorised deduction of wages (ERA 1996 s. 13 (1)(a)-(b)) and the right to an itemised pay statement (ERA 1996 s. 8 (1)).

⁵⁸ House of Lords, ‘Corrected oral evidence: The Modern Slavery Act 2015’ (Modern Slavery Act 2015 Committee, 25 March 2024) <<https://committees.parliament.uk/oralevidence/14714/html/>> See Peter Wieltschnig remarks.

⁵⁹ Compensation claims for trafficking and modern slavery, although complex, reside in the ‘miscellaneous’ category which has the lowest fixed fee of £79 (compared to employment law £207 and £259 public law) see Joint submission by anti trafficking labour and exploitation unit (ATLEU), Focus on Labour Exploitation (flex), Hope for Justice, Simpson Millar, and SurvivorCollective, ‘Joint response to the Legal Aid Means Test Review: Access to Legal Aid for Survivors of Trafficking and Modern Slavery’ (Joint response to the Legal Aid Means Test Review: Access to Legal Aid for Survivors of Trafficking and Modern Slavery)

<<https://labourexploitation.org/app/uploads/2022/06/ATLEU-FLEX-HfJ-SM-SC-Joint-submission-Legal-Aid-Means-Test-Review-FINAL.pdf>> See pg. 6.

⁶⁰ Joint submission by anti trafficking labour and exploitation unit (ATLEU), Focus on Labour Exploitation (flex), Hope for Justice, Simpson Millar, and SurvivorCollective, ‘Joint response to the

the Anti- Trafficking And Labour Exploitation Unit have called for the creation of a corresponding civil offence for trafficking and modern slavery to allow for easier recovery for compensation for victims from their trafficker.⁶¹

Conclusion

Indonesia is a sending state of women migrant care workers, whilst the UK is a receiving state of women migrant care workers. Women migrant care workers who travel from Indonesia to work in Malaysia have their wage rights protected by specific statutory law, Law no. 18 2017 on the Protection of Migrant Workers, applicable to Indonesian Migrant Workers in general. Women migrant care workers have used it to enforce their wage rights abroad through consular and diplomatic activities. On the other hand, women migrant care workers in England and Wales must enforce their rights through the generally applicable labour law, which all too often clashes with the immigration law. One characteristic of the Indonesian legal regime protecting women migrant care workers in Malaysia that distinguishes it from the regime protecting all workers in England and Wales is that in practice, it depends on negotiation rather than the letter of the law.

Despite this significant limitation, Law No. 18 2017 seems to be an effective mechanism for protecting the vulnerable population of Indonesian women migrant care workers abroad. It has succeeded in getting back Rp 212 billion (approximately 9,483,539 GBP) in unpaid wages and insurance for the year 2024. It has been effective in Malaysia and Saudi Arabia. The question remains, could it be effectively invoked by women migrant care workers in the UK? As Law No. 18 2017 is enforced through diplomatic channels, the answer would most likely depend on the diplomatic relationship between the U.K and Indonesia. As there are few Indonesians in the UK working as care workers, it seems unlikely that a relevant Memorandum of Understanding is in place, and we were unable to find a publicly available record of one.

It is important, for both sending and receiving countries, that migrant workers in both regular and irregular situations shall be protected and not suffer exploitation. We have shown that the UK (specifically England and Wales, as the jurisdiction on which we focused) can be inspired by Indonesia's Law Number 18 2017 to not criminalise women migrant care workers working in irregular situations.⁶² Our investigation shows that - in this specific situation - the normal assumptions that global South states need to learn from global North states in matters of equality and human rights are inverted. Could London learn from Jakarta? Emphatically, yes.

Legal Aid Means Test Review: Access to Legal Aid for Survivors of Trafficking and Modern Slavery' (Joint response to the Legal Aid Means Test Review: Access to Legal Aid for Survivors of Trafficking and Modern Slavery) <<https://labourexploitation.org/app/uploads/2022/06/ATLEU-FLEX-HfJ-SM-SC-Joint-submission-Legal-Aid-Means-Test-Review-FINAL.pdf>> See pg. 6.

⁶¹ ATLEU, 'Access to Compensation' (ATLEU Anti Trafficking And Labour Exploitation Unit, September 2023) <<https://www.atleu.org.uk/publications/#compensation>>

⁶² This commitment is in line with Article 5(a) and 11(d) of CEDAW.