



KALAYAAN
justice for migrant domestic workers



anti-slavery
today's fight for tomorrow's freedom



Kalayaan, Anti-Slavery International, Unite the Union, and Justice for Domestic Workers: Supplementary response to the List of Issues: United Kingdom of Great Britain and Northern Ireland, seventh periodic report. June 2013

Committee on the Elimination of Discrimination against Women. Fifty-fifth session, 8-26 July 2013

1. Introduction

Kalayaan, established in 1987, provides advice, support and advocacy services to migrant domestic workers in the United Kingdom (UK).

Anti-Slavery International, established in 1839 and in consultative status with ECOSOC since 1950, works to eradicate all contemporary forms of slavery.

Unite the Union is the trade union that represents migrant domestic workers in the UK, working closely with J4DW - Justice for Domestic Workers, the TUC and other organisations.

Justice for Domestic Workers (J4DW) is a self-help organisation for and by migrant domestic workers campaigning for rights and welfare in the UK and is affiliated to Unite the Union.

This submission to the Committee on the Elimination of Discrimination against Women (hereafter the Committee) updates the information provided by our organisations in advance of the Committee's pre-session working group in October 2012¹.

It provides information on the situation of migrant domestic workers in the UK since the removal of safeguards under the Overseas Domestic Work visa, in response to **paragraph 21 of the List of issues and questions with regard to the consideration of periodic reports: United Kingdom of Great Britain and Northern Ireland (CDEAW/C/GBR/Q/7):**

Disadvantaged groups of women

21. "Please provide information on the removal of safeguards to migrant domestic workers, in particular women, under the Overseas Domestic Work visa, which reportedly increases the risk of women domestic workers being abused and exploited..."

¹ Please see *Kalayaan and Anti-Slavery International submission to the Committee on the Elimination of Discrimination against Women, Pre-session for the 55th session – United Kingdom, September 2012*

It also provides a critique of the **Replies of the United Kingdom of Great Britain and Northern Ireland to the List of Issues to be taken up in connection with the consideration of its seventh periodic report (CEDAW/C/GBR/Q/7/Add.1)**, with respect to paragraph 21.

This submission² demonstrates that since fundamental safeguards to migrant domestic workers were removed from the Overseas Domestic Work visa, the levels of abuse and exploitation suffered by migrant domestic workers has increased. Further, that the protection measures referenced in the Government's reply, are neither new, effective nor being applied in practice.

2. The impact of the removal of safeguards to migrant domestic workers

2.1 April 2012 changes to the Overseas Domestic Work visa

Following evidence of serious abuse, the Overseas Domestic Work visa introduced in 1998 meant that until 2012, the UK Government had a good record of protecting migrant domestic workers against the exploitations so prevalent when performing work in a private household. This protection ended on 6 April 2012 when the UK Government changed the Overseas Domestic Work visa and removed fundamental safeguards including the right to change employer and the right to renew the visa. The visa holder is now limited to a maximum of six months in the UK, with no extensions beyond this time, and permission to work is tied to one employer.

The motive behind these changes was to reduce net migration to the UK, despite the fact that migrant domestic workers make a tiny contribution to net migration generally because the vast majority of those entering the UK under the rules applying between 1998 and April 2012 left with their employer.³ There was no regard for the impact on migrant domestic workers, who are mostly women, in increasing their vulnerability to abuse, exploitation, forced labour and trafficking.

2.2 Increased abuse, exploitation and forced labour

Migrant domestic workers come to Kalayaan for advice and support, usually having fled abusive conditions of employment, and they record their reports of the treatment they have received. Kalayaan has found that migrant domestic workers on the new tied Overseas Domestic Work visa (the visa since April 2012 under which they do not have the right to change employer or to renew the visa) have reported markedly worse treatment than those who registered with the organisation during the same time period but had entered the UK on the original Overseas Domestic Work visa prior to the changes:

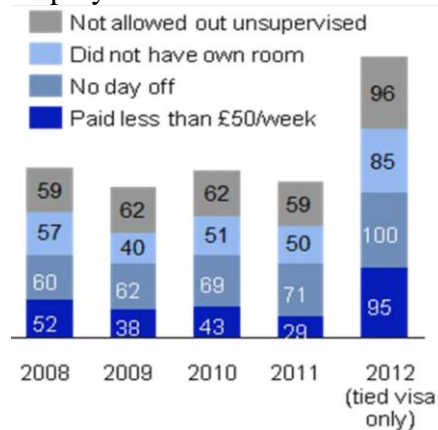
- All workers on the tied visa reported that they were paid less than £100 per week (US\$154), compared to 60% of those on the original visa;
- 62% of those on the tied visa were paid no salary at all, compared to 14% on the original visa;
- 85% of those on the tied visa did not have their own room so slept with the children in their care or in the kitchen or lounge, compared to 31% on the original visa;

² This submission can be posted on the CEDAW website for public information purposes

³ Jenny Moss, Migration Pulse, 18 August 2011, <http://www.migrantsrights.org.uk/migration-pulse/2011/it-s-numbers-game-could-we-please-use-right-ones>

- 86% of those on the tied visa had their passport and biometric permit retained by their employer, compared to 46% of those on the original visa;
- 96% of those on the tied visa were unable to leave the house unsupervised compared to 52% on the original visa.

A comparison of Kalayaan’s records under the tied visa with those collected from workers on the original visa during the previous four years show clearly that abuse has increased profoundly since migrant domestic workers lost the right to change employer and renew their visa:



While the Government claims in its reply to the List of issues that “since the introduction of the new rules we have not seen any evidence that these changes have led to an increase in abuse or trafficking”⁴, the data above shows that the evidence is clearly to the contrary. In tying migrant domestic workers to their employers, all protections have been removed; workers can in no way challenge their conditions of employment, which have worsened correspondingly.

2.3 Access to justice denied - Enduring abuse or driven underground

The right to change employer is a fundamental safeguard against abuse, exploitation, forced labour and trafficking. With no other option available, many migrant domestic workers will continue to suffer abuse and exploitation rather than lose their livelihood, accommodation and permission to work in the UK. Those who flee an abusive employer are too scared to report the crimes committed against them by their employer and seek help from the authorities for fear of being deported. They believe that, having broken the terms of their immigration status by escaping abuse, it is they who will be treated as the criminal. Abuse and exploitation increases because employers know that there will be no realistic sanction for their actions, and that the threats that they make about illegality, detention and deportation will be enforced by the state. The inability to change employer essentially gives abusive employers the power to act with complete impunity. Migrant domestic workers are effectively prevented from challenging any abusive treatment they receive from the employer or enforcing their most basic of rights, such as time off, contact with their family or payment of a wage.

⁴ Replies of the United Kingdom of Great Britain and Northern Ireland to the list of issues to be taken up in connection with the consideration of its seventh periodic report, CEDAW/C/GBR/Q/7/Add.1, 5 February 2013, paragraph 176

A disturbingly low number of workers on the tied Overseas Domestic Work visa have come to Kalayaan for help and support. The organisation usually sees around 300 new workers in any given year. However, since the introduction of the tied visa they have seen 156 on the original visa (who had entered the UK prior to the change) and only 29 on the new tied visa. In 2012, 15,745 Overseas Domestic Work visas were issued⁵, which is very much in line with numbers issued in previous years. As numbers entering the UK remain stable, this suggests that workers either fear the consequences of escaping and seeking help and are enduring appalling levels of abuse, or are escaping and working undocumented which will lead almost certainly to further exploitation.

The Government states that “We do not consider that the ability to change employer is necessary to provide protection”. Yet, there is a wealth of evidence that counters this assertion. In a report on domestic servitude, the UN Special Rapporteur on Slavery identified the tying of visas to a particular employer as an element of “neo-bondage”, and a factor creating an extreme dependency on an employer, making the migrant domestic worker easy to exploit.⁶ The Special Rapporteur specifically recommended that States “Abolish immigration regimes that tie a visa to the sponsorship of a single employer, including for domestic workers employed by diplomats”.⁷ The UN Special Rapporteur on the Human rights of Migrants, following a country mission to the UK in 2010, specifically recommended retaining the [previous] visa safeguards and extending them to cover diplomatic domestic workers.⁸ Trafficking experts, such as the OSCE Special Representative on Trafficking, have identified the practice of tying visas to a particular employer as one of the factors contributing to trafficking.⁹ Crucially, the UK’s introduction of a tied visa system is in direct contradiction with General Recommendation 26 of the Committee, paragraph 26(f), which recommends that migrant women workers be covered by employment legislation and that residence status should be independent of an employer.

3. Flawed “protection” measures

The Government has stated to the Committee that there are a range of options available to Overseas Domestic Workers to seek protection, such as:

- access to the National Referral Mechanism (NRM) if they have been trafficked to the UK;
- the ability to report abuse or confiscation of a passport to the police;
- as workers, the right to access the Employment Tribunal service;
- return home.¹⁰

⁵ FOI response from the Home Office dated 10 April 2013. FOI Reference: 26515

⁶ *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian, A/HRC/15/20, Geneva, 18 June 2010, paragraphs 33, 47, 48, 54*

⁷ *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian, A/HRC/15/20, op.cit, paragraph 96*

⁸ *Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante, Mission to the United Kingdom of Great Britain and Northern Ireland, A/HRC/14/30/Add.3, 16 March 2010*

⁹ For example, the OSCE Special Representative on Trafficking: OSCE Occasional Paper series no.4, *Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude,*

¹⁰ *Replies of the United Kingdom of Great Britain and Northern Ireland to the list of issues to be taken up in connection with the consideration of its seventh periodic report, CEDAW/C/GBR/Q/7/Add.1, paragraph 176*

Further, that it considers the best way to prevent abusive relationships being brought to the UK is to restrict access to the route and to test the validity of the working relationship before a visa is issued, by:

- restricting the length of stay in the UK to 6 months
- requiring 12 months prior employment and a signed statement of terms and conditions of employment in line with the National Minimum Wage¹¹.
- A letter informing ODWs of their rights in the UK and where to get help if needed — which is provided in a range of languages.¹²

However, the reality is that these measures are either not effective in addressing the issues, and in many cases are not being applied in practice:

The **National Referral Mechanism** is an identification system for those that have been trafficked. It does not prevent or protect against trafficking. Indeed concerns have been expressed about the ability of the NRM to consistently identify and assist trafficked people. The Anti-Trafficking Monitoring Group (ATMG)¹³ found that the NRM is flawed; operated by staff who have received minimal training, which puts more emphasis on the immigration status of the presumed trafficked person than the alleged crime against them, and uses flawed legal guidance relating to who should be identified as a trafficked person. For example, in numerous cases, the authorities concluded that as the person had agreed to come to the UK, they could not have been trafficked despite the fact that under international law, deception and abuse render any consent irrelevant. The ATMG noted that many trafficked people are not referred into the system, primarily because they did not see the benefit or were fearful of the consequences.¹⁴ This is because being referred into the NRM provides little support beyond a possible 45 days reflection and recovery period. Even in a case where a migrant domestic worker receives a positive trafficking identification it does little to improve their personal situation, secure redress for substantial abuse and unpaid wages, or guarantee them any legal advice or representation. Finally, the NRM offers no protection to migrant domestic workers who are subjected to abuse, exploitation or forced labour but have not been trafficked.

Access to the police: As noted above, the tying of employment status to a particular employer renders those who flee an abusive employer too scared to go to the police since they justifiably fear that they will either be deported or treated as a criminal themselves having broken the terms of their immigration status by escaping abuse. In Kalayaan's experience, if a migrant domestic worker with uncertain immigration status went to the police they would indeed be likely to be detained as an immigration offender, and the crimes against them would not be investigated.

¹¹ The National Minimum Wage rate per hour depends on your age and whether you are an apprentice. As of July 2013, it stands as £6.19 if you are 21 years old and over, and £4.98 for 18 to 20 year olds.

¹² *Ibid.*, paragraph 175

¹³ The Anti-Trafficking Monitoring Group, established in May 2009, monitors the UK Government's implementation of the Council of Europe Convention on Action against Trafficking in Human Beings in the UK. It comprises nine leading UK-based anti-trafficking organisations: Amnesty International Northern Ireland, Anti-Slavery International, BAWSO, Bristol Counter-Trafficking Coalition, ECPAT UK, Helen Bamber Foundation, Kalayaan, POPPY project and TARA.

¹⁴ The Anti-Trafficking Monitoring Group, *Wrong kind of victim?*, op.cit

Access to an Employment Tribunal: It would be exceptionally difficult, if not impossible, for a migrant domestic worker to secure redress through an employment tribunal. With a 6 month non-renewable visa, the terms of which may have been broken by having left an employer, they effectively do not have permission to remain in the UK to take the case and will not be able to work to support themselves whilst they do. Legal aid cuts mean that even domestic workers who have experienced serious breaches of their rights are finding it almost impossible to get legal representation. New proposals on legal aid would mean that migrant domestic workers on the tied visa would be denied access to legal aid altogether since they could not meet the residence requirement of 12 months legally resident in the UK.

Proof of an existing employment relationship: Checking that migrant domestic workers have been employed for 12 months prior to entry by their employer is a measure that has been in place since 1990. It did not, and will not, in itself guarantee that it is not an abusive employment relationship.

Requiring the employer and domestic worker to sign a contract in line with the National Minimum Wage: Whilst signing a contract prior to departure can be an important measure to protect against abuse, it does not in itself ensure that the employment relationship is free from exploitation. It can only be effective if there is some way to enforce it. Under the tied visa, migrant domestic workers have no way to enforce their contractual rights. They cannot change employer without losing their right to work and stay in the UK; they have no bargaining power. Kalayaan has encountered numerous cases in which domestic workers do not know what is in the contract that they are signing. Research also shows that visas have been granted even in cases where contracts were submitted which breached statutory employment standards. In one case, a contract that was submitted for a domestic worker's entry clearance application, and approved by UK Border Agency (UKBA), stated that she would be working full time and paid the equivalent of £350 per month (US\$539), which is less than half the National Minimum wage. In reality, the domestic worker was made to work 16 hours a day, 6 days a week, meaning that her salary was actually the equivalent of 80 pence per hour (US\$1.2). In another case, a domestic worker was interviewed at the UK immigration desk in front of her employers; she disclosed she would be paid a salary equivalent to less than 35 pence per hour (US\$0.5). The UKBA officials told the employers that they hoped they would treat her better in the UK and then allowed them to enter. Claiming that domestic workers are entitled to the National Minimum wage is entirely meaningless if the UKBA allows employers to bring people to the UK on contracts that state they will be paid well below it.

A letter informing about rights in the UK: Only one migrant domestic worker registered with Kalayaan had received this letter. Regardless of the information contained within it, the fact remains that without the right to change employer, workers have very little way of enforcing any employment rights in practice.

Restricting the length of stay in the UK: The fact that migrant domestic workers are limited to six months in the UK does not reduce abuse. Instead, it means that domestic workers who have suffered abuse in the UK are not legally here long enough to pursue justice.

Returning home: The suggestion that a migrant domestic worker can simply ‘return home’ is not in any sense an appropriate response to the Government’s positive obligation to protect migrant domestic workers against abuse and exploitation. Furthermore, it does not reflect an understanding of the causes and circumstances under which women migrate to the UK for domestic work. Many migrant domestic workers incur debt to secure their first job, and it is unrealistic to expect them to return home without any payment. This strategy also presents a risk of re-trafficking since the worker will be in a worse situation than when they first migrated for domestic work.

Restricting migrant domestic workers from coming to the UK: Treating abuse and exploitation of migrant domestic workers as an immigration problem rather than a human rights problem is flawed as a protection strategy. The Government should focus on protecting victims and prosecuting offenders.

4. Conclusion

The removal of fundamental safeguards to migrant domestic workers in the Overseas Domestic Work visa, particularly the right to change employer, has been deeply damaging for the protection of migrant domestic workers in the UK. It leaves hundreds vulnerable to abuse, exploitation and forced labour with no escape route. As a result of these changes, the immigration system operated in the UK effectively prohibits migrant domestic workers - both those working in private households and those working in diplomatic households - from being able to access and enforce their employment rights. Abuse and exploitation has clearly increased. While the Government has defended its policy change to the Committee with talk of protections for migrant domestic workers, the reality is that these measures are neither new nor effective. In some cases they are also not being applied in practice.

In its 2008 Concluding Observations, with respect to vulnerable groups of women, the Committee called on the UK to “keep under review and carefully monitor the impact of its laws and policies of women migrants, refugees and asylum-seekers with a view to taking remedial measures that effectively respond to the needs of those women.”¹⁵ Far from responding to the needs of migrant women, the removal of fundamental safeguards to migrant domestic workers has led to an increased vulnerability to abuse, exploitation, forced labour and trafficking. The changes are also in direct contradiction with General Recommendation 26 of the Committee, which calls for migrant women workers to be covered by employment legislation and that residence status should be independent of an employer.

The previous Overseas Domestic Work visa, which was introduced in 1998 in response to widespread documented levels of abuse against migrant domestic workers, had been showed to work well. It had been recognised internationally as an example of good practice; for example by the International Labour Organisation¹⁶.

¹⁵ Concluding Observations of the Committee on the Elimination of Discrimination against Women, United Kingdom of Great Britain and Northern Ireland, CEDAW/C/UK/CO/6, Forty-first session, Geneva, 10 July 2008, paragraph 296

¹⁶ Draft ILO Multilateral Framework on Labour Migration Non binding principles and guidelines for a rights- based approach to labour migration, Geneva, 31 Oct- 2 Nov 2005. Annex II ‘Examples of best practise, VI Prevention of and protection against abusive migration practises’, pt 82

The UK Parliament's Home Affairs Select Committee had stated that retaining the visa was "the single most important issue in preventing the forced labour and trafficking of such workers".¹⁷ For those who had been exploited in spite of its protections, it allowed recourse to justice.

We therefore urge the Committee to express concern at the impact of the changes to the Overseas Domestic Work visa on migrant domestic workers; which has increased abuse and exploitation, including situations of forced labour, and denies them the ability to access and enforce their rights without fear. Further, to call on the UK Government to:

- Reinststate the rights of migrant domestic workers to change employer, to renew the visa if in full-time employment as a domestic worker, to apply for settlement after 5 years, and to bring dependents to the UK.
- Extend the right to change employer to domestic workers in the employ of diplomats.
- Sign and ratify ILO Convention No189 on Decent Work for Domestic Workers.

¹⁷ House of Commons Home Affairs Select Committee, The Trade in Human Beings: Human Trafficking in the UK, Sixth Report of Session 2008-2009, Volume 1, 6 May 2009, p26