



**KALAYAAN**  
justice for migrant domestic workers

## **Human Rights Committee 114th session (29 June - 24 July 2015)**

### **26. Elimination of slavery and servitude (art. 8) (f) Measures taken to address cases of forced labour and abuse of migrant workers, including domestic workers;**

#### **UK changes to the ODW visa in April 2012 and corresponding increase in levels of abuse of Migrant Domestic Workers**

Since April 2012, migrant domestic workers who enter the UK with their employer on the Overseas Domestic Worker visa have been tied to this employer by the immigration rules. The visa is valid for six months, is not renewable and prevents them from leaving their employer, no matter the circumstance. If the worker leaves anyway, they have breached the immigration rules. This has led to an increase in exploitation and restrictions of freedom of a group of migrant workers already shown to be vulnerable to exploitation. In 2014, 16,753 individuals entered the UK on the Overseas Domestic Worker visa.<sup>1</sup> Little or nothing is known as to what happens to the majority of these workers once they have entered the UK. What is clear is that the reports of abuse made by workers who register with Kalayaan have been consistent over the three years since the tied Overseas Domestic Worker visa was introduced. These statistics show that the levels of abuse reported by those who entered on the original visa, and so who have some rights, remain unacceptably high. Even more concerning is that these already shocking levels are consistently higher for those workers who are tied to their employers.

When we look at the **reports of abuse made by workers to Kalayaan during the three years since the introduction of the tied visa in 2012**, we conclude that while levels of abuse reported by all workers on the Overseas Domestic Worker visa are unacceptable, those who are tied are consistently higher. In the **three years between April 2012 and the end of March 2015** Kalayaan registered a total of **590** new workers. **184 of these workers were tied** to their employers. Proportionally, the levels of abuse reported remain consistent.

- 14% of workers tied by their visa to employers reported physical abuse, compared with 9% who were not tied
- 66% of tied workers reported being prevented from leaving the house freely, compared with 41% of those who had entered on the original visa.
- 81% tied workers reported having no time off compared to 66%
- Reports by workers tied to employers were that 31% were not paid at all, compared with 11% who were not tied

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<sup>1</sup> <https://www.gov.uk/search?q=immigration+statistics+2014> (accessed 1.5.15)

- 74% of workers who were tied reported having their passport kept from them, compared with 50% who were not tied
- Kalayaan staff<sup>2</sup> internally identified 64% of the workers on a tied visa as trafficked, compared with 25% who were not tied

The number of workers coming to Kalayaan has consistently decreased since the introduction of the tied visa in April 2012. However, as mentioned above, the number of visas issued has increased slightly. Given that all available evidence shows that treatment has worsened, the smaller number of workers coming forward is not likely to mean an improvement in the circumstances of migrant domestic workers generally. It seems that fewer numbers are coming to Kalayaan because it is clear that the organisation can do far less to help them in practise since the immigration rules changed. **The majority of our clients find us through word of mouth and are likely to be told that they have breached the immigration rules, making them fearful of coming forward. The increase in reported restrictions on freedom suggest that it is also likely that fewer have the opportunity to escape.**

Migrant domestic workers are acknowledged internationally to be more likely to be exploited and abused than workers in a more visible and regulated workplace. If they live in (as the majority do) the boundary between work and leisure time is often (intentionally) blurred. Without colleagues, most are dependent on their employer for all information about the UK and their status and rights here. Their work is often not recognised as work, and many employers appear to believe that they have purchased the whole of the worker, who is not entitled to privacy, space or time off to develop her own relationships or identity. The current Home Office guidelines which stipulate that the employer's name appear on the worker's visa<sup>3</sup> can only help encourage this perception of ownership.

**The right to change employer is a first step which goes some way towards preventing abuse and allowing migrant domestic workers to challenge mistreatment.** This most basic of rights alone can never be the whole answer while the balance of power in the employment relationship remains so unequal and the domestic worker's workplace so unregulated. **The ability to change employer allows migrant domestic workers to leave their employer without breaking the law**, but if migrant domestic workers are to access justice in practise it must be supported by other measures. The UK Government should introduce a number of checks to clearly demonstrate that they are serious about the status of migrant domestic workers as workers and be prepared to enforce these measures.

### **Insufficiency of the Modern Slavery Act to Prevent Exploitation or Abuse**

Reports by Human Rights Watch<sup>4</sup>, the Centre for Social Justice<sup>5</sup> and Andrew Boff<sup>6</sup> have all highlighted the negative impact of the tied visa on domestic workers.

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<sup>2</sup> Kalayaan is a recognised First Responder and has experience of identifying victims of trafficking since the National Referral Mechanism (NRM) was established in 2009. However we only make referrals to the NRM where the individual concerned has given their informed consent. Therefore number identified internally are higher than NRM referrals made.

<sup>3</sup> UK Visas and Immigration Guidance. Overseas Domestic Workers in private households:WRK2.1 Subsection 12

<sup>4</sup> Human Rights Watch, Hidden Away, March 2014

The Joint Committee on Human Rights called the decision to remove the right of domestic workers to change employer “*a backward step in the protection of migrant domestic workers*”.<sup>7</sup> The Joint Committee on the Draft Bill considered that “*tying migrant domestic workers to their employer institutionalises their abuse; it is slavery and therefore incongruous with our aim to act decisively to protect the victims of modern slavery*”.<sup>8</sup>

In addition, the UK may be at risk of not complying with its obligations under the European Convention on Human Rights. The Equality and Human Rights Commission in its submission on the amendment to the Modern Slavery Bill made by the House of Commons considered that the inability of domestic workers since the visa changes of April 2012 to change employers if in situations of exploitation ‘constituted a breach of Article 4 of the European Convention on Human Rights and the positive duty on the state to take steps to prevent human trafficking.’<sup>9</sup>

A similar view has been expressed by leading academics when discussing the European Court of Human Rights judgment where a visa regime for cabaret artistes did not provide effective protection against trafficking. States that continued to operate visa regimes that put domestic workers at risk of treatment contrary to Article 4 could on that reading be found in breach of their obligations under the Convention.<sup>10</sup>

Migrant domestic workers need to be recognised as workers and as people. The current immigration rules have disempowered this workforce and the UK needs to urgently address this. The Modern Slavery Act does not do so. Section 53 of the Act provides only that migrant domestic workers who have been trafficked may be granted a six month visa. Aside from the fact that six months is too short a time to realistically secure work which predominantly involves caring for a child or elderly person, it also does nothing to prevent abuse, nor for workers only exploited but not trafficked, nor for workers who are desperate to leave but need the reassurance that they are not breaking the law before doing so.

The UK Government must have a serious commitment to ending forced labour and abuses of migrant domestic workers. The legislative measures presently in force do not suggest that the UK is taking this issue seriously enough.

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<sup>5</sup> The Centre for Social Justice, *It Happens Here*, 2013,

<sup>6</sup> Andrew Boff, *Shadow City; Exposing Human Trafficking in Everyday London*, 2013, <http://glaconservatives.co.uk/wp-content/uploads/2013/10/Shadow-City.pdf>

<sup>7</sup> Joint Committee on Human Rights, *Legislative Scrutiny: (1) Modern Slavery Bill and (2) Social Action, Responsibility and Heroism Bill*, Third Report of Session 2014-2015. HL Paper 62, HC 779, 14 November 2014, para 1.95.

<sup>8</sup> Joint Committee on the Draft Modern Slavery Bill, Report, Session 2013–14, p225.

<sup>9</sup> Equality and Human Rights Committee, *Modern Slavery Bill Consideration of amendments by the House of Commons*, 17 March 2015: Briefing on the Amendments made in the House of Lords, p2.

<sup>10</sup> Siobhan Mullally, Cliodhna Murphy, *Migrant Domestic Workers in the UK: Enacting Exclusions, Exemptions and Rights*, *Human Rights Quarterly* 36 (2014) 397-427, p425. See also Virginia Mantouvalou, *Modern Slavery Bill: Written evidence submitted by Dr Virginia Mantouvalou (MS 28)*, <http://www.publications.parliament.uk/pa/cm201415/cmpublic/modernslavery/memo/ms28.htm>