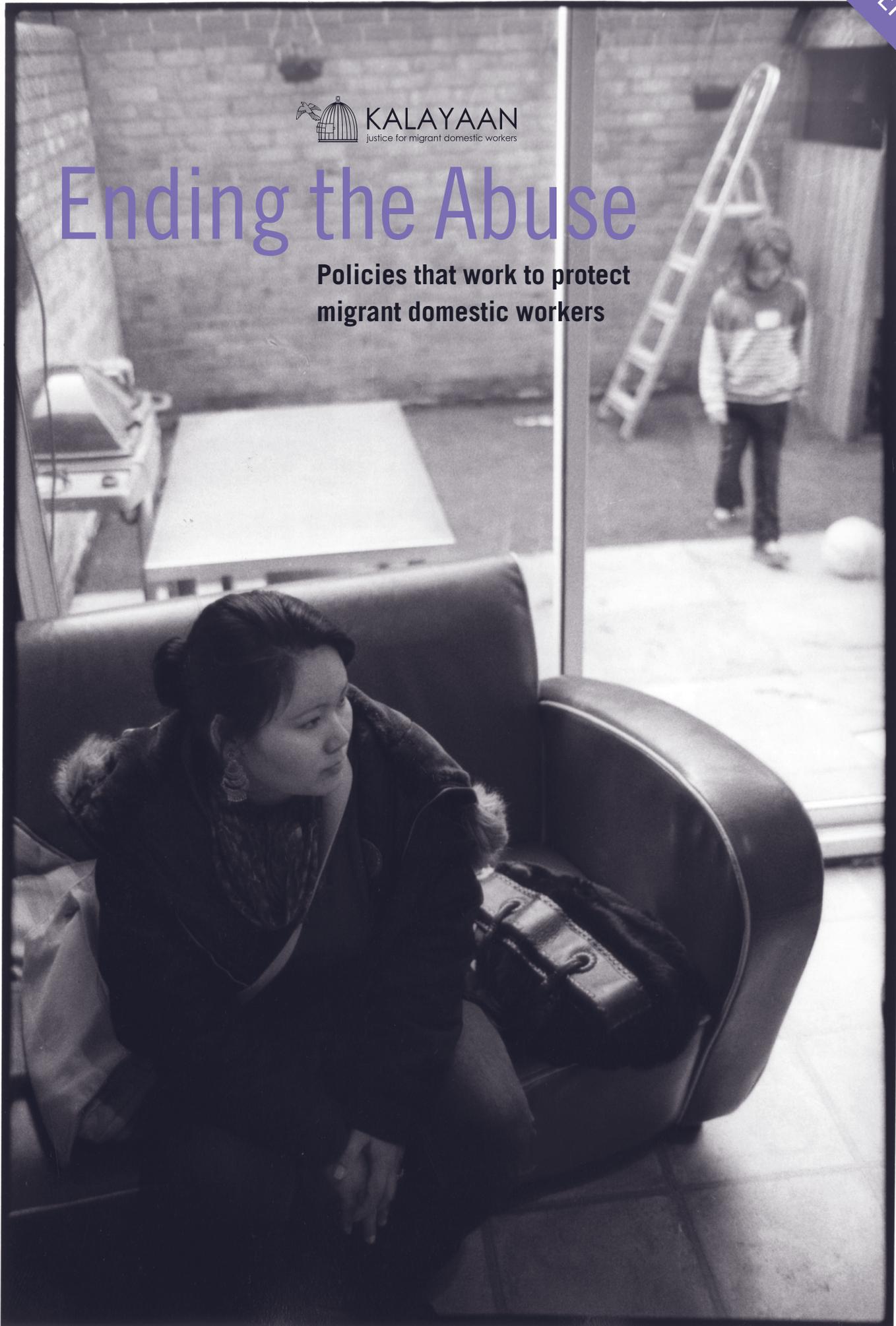




# Ending the Abuse

**Policies that work to protect  
migrant domestic workers**



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## POLICIES THAT WORK TO PROTECT MIGRANT DOMESTIC WORKERS

Evidence collected over the last decade by Kalayaan, the UKBA and in the employment tribunals has demonstrated that migrant domestic workers (MDWs) are highly vulnerable to abuse and exploitation. New research published by Kalayaan in May 2011 shows that the 'Overseas Domestic Worker' (ODW) visa is an inexpensive and effective method of protecting MDWs, and that without this legal channel trafficking of domestic workers via illegal routes could increase. There are, however, areas in which urgent action is required to improve the protections. The coalition government's review of the ODW visa route provides a timely opportunity to address these protection gaps.

### WHY ARE MIGRANT DOMESTIC WORKERS VULNERABLE TO ABUSE AND EXPLOITATION?

MDWs are highly vulnerable to abuse and exploitation by their employers. Such vulnerability is related to MDWs' structural dependency on employers for their work, their accommodation and their immigration status. It is also due to the invisible and isolated nature of their work in a private household.

As a result, many MDWs experience poor living and working conditions. They work extremely long hours; the majority are required to be 'on call' and available to work 24 hours a day. Few are paid what they are promised let alone what they are legally entitled to under the National Minimum Wage. Others are not given a bed or allowed regular meals. Many employers withhold the passport of the MDW in order to exercise further control over them.

Lack of knowledge about their employment rights and the pressure to send remittances home can cause MDWs to remain with their employers even if they mistreat them.

Kalayaan's registration statistics from January 2008 to December 2010 demonstrate the incidence of abuse and exploitation amongst its clients:

58% were psychologically abused

16% were physically abused

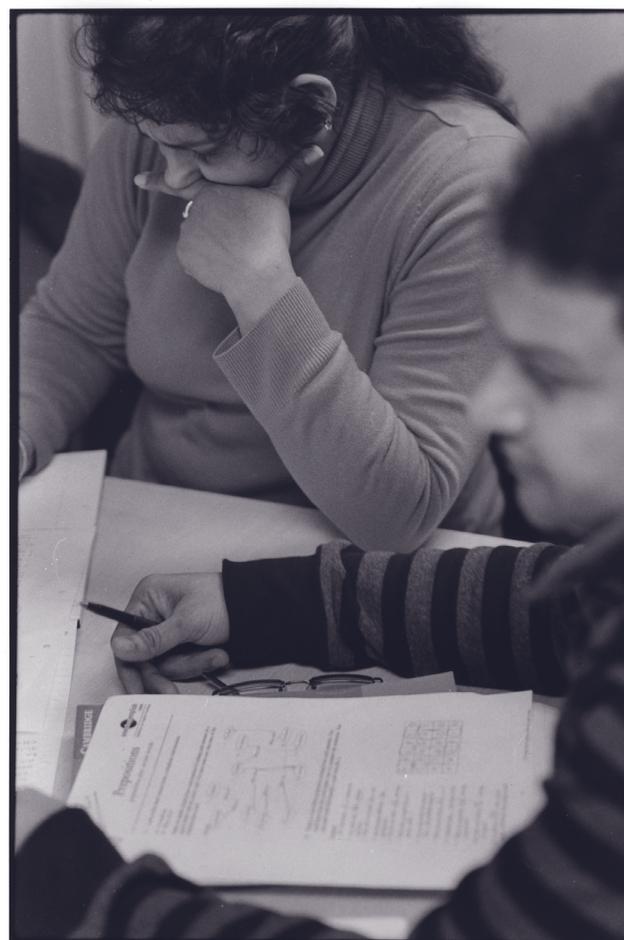
64% work seven days a week with no day off or significant rest period

5% were sexually abused or harassed; the true figure is likely to be higher since many prefer not to report such experiences to Kalayaan

57% receive a wage of £50 a week or less

50% worked 16 hours per day or more

65% had their passports withheld by their employers



Domestic workers study prepositions with the Workers' Educational Association.



## Research Findings

From June 2010 to January 2011, the London-based charity Kalayaan conducted research on the ODW visa system in the UK. Drawing on quantitative and qualitative evidence, the research found that:

### **1 The ODW visa has been successful in protecting the rights of MDWs and the protections it affords them will continue to be needed in the long term.**

Home Office data for the period from January 2003 to August 2010 shows that 41 per cent of MDWs cited types of abuse or exploitation as their reason for changing employer. The right to change employer enables MDWs to escape from employers that mistreat them. Interviews conducted by Kalayaan indicate that this facilitates workers negotiating fairer terms and conditions in their future employment, and remaining visible in the UK whilst continuing to support their families by sending remittances home.

The visa's portability provision also plays a crucial role in facilitating MDWs to pursue legal remedies against their employers. Indeed, between May 2009 and December 2010, 53 MDWs brought employment tribunal cases against their employers. Taking such action would be unthinkable if the worker had to continue working for their employer and residing in their household and would be impossible if

workers lost their right to remain in the UK when they fled from an abusive employer. Successful cases may have the further advantage of acting as a deterrent with regards to mistreatment of other workers.

The right to change employer and to pursue legal remedy helps to reduce the incidence of trafficking and forced labour among MDWs. Indeed, in 2009 the Home Affairs Committee reported that the visa is one of the most important ways in which trafficking of MDWs can be prevented. As a result, the protections afforded to MDWs through the visa will continue to be needed in the long-term.

### **2 The ODW visa route is working as intended and has a negligible impact on net migration to the UK**

The overwhelming majority of MDWs accompany their foreign employers to the UK for a finite period of time. Estimates using United Kingdom Border Agency (UKBA) figures show that less than 5 per cent of migrant domestic workers who enter the UK on an ODW visa go on to settle. In 2009, MDWs accounted for a mere 0.5 per cent of the individuals who were awarded settlement in the UK.



Domestic workers with their volunteer English teacher at the Kalayaan Christmas party.

### 3 The continued need for a legal channel of migration for MDWs to the UK

In spite of the legal channel which currently exists for employers to bring their MDWs to the UK, this research has shown that the demand for specific domestic workers is such that some employers are prepared to bring their workers to the UK by illegal routes, e.g. visit visas. As such, removal of the ODW visa could result in an increased number of employers bringing workers via illegal routes to work undocumented in the UK. The research indicates higher levels of trafficking amongst those MDWs brought via unlawful routes suggesting trafficking would increase were the route removed.

### 4 The measures in place to identify and assist trafficked persons would in no way act as a viable alternative to the current protections afforded to MDWs through the ODW visa

MDWs experience difficulties when attempting to report trafficking crimes to the police and as such are not identified as victims of trafficking nor do they receive justice. Poor decision making and delays in decisions mean that even when referred to the National Referral Mechanism (NRM),<sup>1</sup> the system frequently fails to identify trafficked MDWs. Out of 157 MDWs who were identified as trafficked by Kalayaan during Operation Tolerance<sup>2</sup> (May–September 2008) and from April 2009–December 2010, 102 individuals chose not to be referred to the NRM. Instead most found new employment. Such a statistic provides strong evidence that the measures to assist trafficked persons fail to meet the needs of trafficked MDWs.

The NRM offers no protection at all to migrant domestic workers who have been subject to forced labour but have not been trafficked.

The measures to protect trafficked persons are most effective and least costly when the individual in question has a valid ODW visa, since the right to change employer means that trafficked MDWs do not have to rely on government-funded accommodation. Removal of the visa would therefore drastically increase costs. Indeed, estimates by Kalayaan show that without a valid visa and the right to change employer, an additional 78 individuals could have required assistance, including access to safe housing, at an estimated cost of over £850,000 over the course of 25 months.

### 5 Without the right to change employer, domestic workers in diplomatic households are more at risk of being trafficked to the UK for domestic servitude

Domestic workers in diplomatic households experience similar levels of exploitation to migrant domestic workers in private households yet are not currently afforded the same protections as the latter. They do not have the right to change employer and as such diplomatic domestic workers' negotiating power vis-a-vis their employment terms and conditions is virtually non-existent. Further, when fleeing from abusive employers they automatically lose their immigration status and become vulnerable to further exploitation. This in combination with the diplomatic immunity of their employers dramatically increases the employer's power over the domestic worker and makes the latter particularly vulnerable to being trafficked to the UK for domestic servitude. Kalayaan has estimated that approximately 3.8 per cent of diplomatic domestic workers are trafficked compared to 0.2 per cent of domestic workers in private households. It therefore asserts that the UK government is failing in its due diligence to prevent contemporary forms of slavery.

Premana suffered in her first job. She worked long hours with no rest day, for only £25 per week, she was told she was not allowed out of the house alone and her employers kept her passport. She endured this treatment for two long years because she didn't know she had any other option.

“I was so scared then, they used to shout and insult me all the time. In my new job I still work long hours but the employers treat me well and I get a good salary. Now I have a day off and go and meet the new friends I made. I'm so much happier.”

“I agreed to have my photo taken because I want other domestic worker to know that whatever their employers tell them, they don't need to be scared; in the UK they have rights.”



# Recommendations

The immigration route for migrant domestic workers has a negligible effect on net migration as most domestic workers leave the UK with their employers and do not renew their visas, the Government would not achieve its stated aims on immigration by removing the route and would instead put many more women at risk of trafficking. The domestic worker visa, particularly the right to change employer, clearly works to protect migrant domestic workers and enables them to seek legal redress against employers, which in turn acts as a deterrent to the mistreatment of other workers.

There are areas in which the Government must act to better protect migrant domestic workers from exploitation and abuse. Kalayaan recommends that the Government do the following:

## **1 Extend the right to change employer to domestic workers in diplomatic households**

Kalayaan recommends that the government extends the right to change employers to domestic workers who accompany diplomats to the UK as an urgent priority. This would require the strengthening of pre-entry requirements for the route to guard against trafficking of workers.

## **2 Provide information to MDWs on their rights and responsibilities when issuing visas**

Knowledge of their rights and of where to turn to for support would reduce MDWs' vulnerability to abuse and exploitation. Kalayaan recommends that the UK government provides training to all diplomatic missions overseas to ensure they understand the vulnerabilities associated with domestic work and that they actively inform MDWs of their rights when issuing ODW visas.

## **3 Institute a bridging visa for MDWs who have become undocumented through no fault of their own**

In light of the invisibility and heightened vulnerability to exploitation associated with undocumented work, Kalayaan recommends that the government institute a three month interim domestic work permit for migrant domestic workers who have fallen out of the system through no fault of their own. Such a system would not only prevent the aforementioned invisibility and reduce MDWs' vulnerability to exploitation but could also reduce undocumented working. In addition, if such a visa were applied to trafficked individuals, the government could save significant sums in accommodation and support costs.

## **4 Maintain the route to settlement for MDWs because it finally rids them of an underlying vulnerability**

The route to settlement rids MDWs of their dependency on their employers in order to maintain their immigration status and facilitates their integration into UK society. Migrant domestic workers account for only 0.5% of all those individuals achieving settlement in the UK.

## **5 Introduce an amendment to the National Minimum Wage (NMW) Act 1998 which clarifies MDWs' entitlement to the NMW in all circumstances**

The current scope for misinterpretation of the Family Worker Exemption of the NMW Act 1998 and NMW Regulations 1999 makes MDWs unnecessarily vulnerable to underpayment and breaches of their right to the NMW. Women represent a disproportionately high percentage of MDWs and consequently the exemption is highly discriminatory.

## **6 Regulate the rate at which standby hours are remunerated**

The majority of Kalayaan's clients are expected to be on standby and available to work 24 hours a day without additional payment or adequate rest breaks. Kalayaan recommends that the UK government regulates the rate at which standby or on-call hours are remunerated.

## **7 Provide safe housing**

Since MDWs in the UK often live and work in the same household as their employers, they face the prospect of becoming homeless if they decide to flee an abusive employer. As a result, many feel they have no option but to remain in a situation where they are being mistreated. Kalayaan recommends that state-funded short-term refuge places should be available for MDWs escaping from situations of abuse, exploitation and forced labour.

## **8 Enforce tax and National Insurance Contributions (NIC) payments**

Employers are legally obliged to pay MDWs' tax and NIC. Kalayaan recommends that whenever a domestic worker visa extension is issued in the UK registration of new employers with the HMRC should be automatic.

## **9 Provide a residency permit for trafficked persons wishing to pursue compensation**

Trafficked persons are eligible to pursue compensation through various means. In reality, though, those migrant



Male domestic workers are brought to the UK as drivers, security guards and cooks.

domestic workers with insecure immigration status are unable to remain in the country in order to do so. In such situations, the right to pursue compensation becomes meaningless and prevents trafficked MDWs from seeking justice.

#### 10 Support and Ratify the International Labour Organisation (ILO) Convention on 'Decent Work for Domestic Workers'

Kalayaan urges the UK government to show strong leadership at the International Labour Conference in 2011, supporting the ILO Convention and later signing and ratifying such a Convention. This Convention will ensure as in the UK, domestic workers abroad will enjoy basic legislative protection.

#### 11 Provide training to law enforcement officials on trafficking for domestic servitude

MDWs frequently encounter difficulties when attempting to report trafficking and related crimes to the police. Kalayaan recommends that training be provided to law enforcement officials in the UK on the identification of persons trafficked for domestic servitude.

#### ENDNOTES

- 1 The system established in April 2009 to identify trafficked persons as part of the UK's implementation of the Council of Europe's Convention on Action Against Trafficking in Human Beings
- 2 A UKBA pilot project to identify and support victims of trafficking for forced labour

The UK government is failing in its due diligence to prevent contemporary forms of slavery.



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