



# KALAYAAN

justice for migrant domestic workers

**For the Modern Slavery Bill to protect migrant domestic workers it must ensure basic rights.**

**March 2015**

**Kalayaan briefing ahead of 17<sup>th</sup> March 2015 debate in the House of Commons on the Modern Slavery Bill.**

On the 25<sup>th</sup> February the House of Lords voted to include Amendment 72, tabled by Lord Hylton, Baroness Royall, Baroness Hanham and Lord Bishop of Carlisle to protect migrant domestic workers in the UK against slavery. When news of this vote was announced Marissa Begonia, herself a domestic worker and Coordinator of the self help group Justice 4 Domestic Workers described how she received texts from workers asking her 'Am I free now'. Unfortunately the answer is not yet.

Until this clause was voted into the Bill by the Lords the Modern Slavery Bill contained nothing to address the tying of migrant domestic workers to their employer. This tied visa system was introduced with a change to the immigration rules in April 2012 and means that since that time migrant domestic workers have entered the UK with a named employer on a 6 month none renewable visa. This replaced a system recognised as best practise for migrant domestic workers which allowed workers to change employer to another full time job as a domestic worker in a private household and (so long as they had no recourse to public funds and could evidence their employment) apply to renew their visa.

This original Overseas Domestic Worker visa was introduced in 1998 in response to well documented abuse of migrant domestic workers and provided important protections. Allowing workers to change employer and apply to renew their visa with a different employer meant they could challenge abuse and leave if necessary without giving up hope of working and providing for their families. Keeping domestic workers documented meant they were visible and able to report crimes against them to the police and take cases to employment tribunal providing a real deterrent against abuse. In contrast, since April 2012 workers who challenge or question any element of their treatment risk being sacked, made destitute and removed from the UK and any prospect of repaying the debts which drove them to migrate in the first place.

**Lord Hylton's clause, which is now in the Bill, needs to remain there.** It asks only for the most basic of protections; a) to change employer but remain restricted to domestic work in one household, b) if in full time work as a migrant domestic worker in a private household, the option to apply to renew the visa, c) in instances of slavery a three month visa to allow the worker to look for decent work. Without it we leave in place a system found repeatedly during the almost three years it has been in place to facilitate the abuse, including trafficking of migrant domestic workers<sup>1</sup>. In the words of Baroness Hamwee, Liberal Democrat Peer, speaking during the House of Lords debate on the amendment 72 on the 25<sup>th</sup> February;

*'I do not say this lightly but if I were not to support this amendment, I would feel complicit in slavery and servitude'*

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<sup>1</sup> Report of the Joint Committee on the Draft Modern Slavery Bill, Joint Committee on Human Rights in their legislative scrutiny of the Bill, Centre for Social Justice 'It Happens Here', Andrew Boff Conservative Leader of the GLA 'Shadow City', Human Rights Watch 'Hidden Away'. See also briefings by Kalayaan including 'Still Enslaved: the migrant domestic workers who are trapped by the immigration rules'

## Kalayaan's critique of the Government's objections to the Lord's Amendment

The Government has been quick to point out that changing employer is not going to solve the abuse of migrant domestic workers and have highlighted the fact that domestic workers were abused when they had this basic right. **This is true, migrant domestic workers are particularly vulnerable to abuse and this amendment does not claim it will eradicate domestic servitude. This not a reason to deny migrant domestic workers these most basic of rights which have been proven to significantly improve their situation, both in terms of preventing abuse and making escaping and seeking help possible.** Kalayaan continued to deliver advice and support to migrant domestic workers during the time they had this right, between 1998 and 2012, and published annual statistics of reported abuse of migrant domestic workers by employers. Our statistics confirm that **with the introduction of the right to change employer in 1998 abuse went down**<sup>2</sup> but also that migrant domestic workers, by the very nature of being migrants, dependent on their employer in the unregulated hidden workplace of the employers home for their work, their accommodation and their immigration status, are particularly vulnerable to abuse. Many workers coming to Kalayaan describe how they have 'sacrificed' themselves for the well being of their wider family. They do not self protect in the way that someone with more choices would expect. Many explain that they are prepared to put up with practically any amount of mistreatment if they can provide for their children and ensure that they same won't happen to them. It is usually when they are not paid so unable to send money home that many run away.

**This is why the pre 2012 rights contained within the original Overseas Domestic Worker visa should have been embraced by any Government committed to combating slavery and built upon.** In 2009 the Home Affairs Select Committee in its inquiry into trafficking said that retaining the visa was *"the single most important issue in preventing the forced labour and trafficking of such workers"*<sup>3</sup>. Of the 585<sup>4</sup> new migrant domestic workers who have registered with Kalayaan since the tied visa was introduced in April 2012 Kalayaan staff internally identified 214 of these workers as having been trafficked. This clearly demonstrates the particular vulnerability of this sector of workers to abuse. No one is naive enough to imagine that the exploitation of domestic workers would be abolished by such minimal protections but they would certainly be an improvement to a situation where they are bonded to their employer by the immigration rules. With these most basic of rights in place it would be possible to build on these, introducing policy changes to further facilitate migrant domestic workers to access justice. Measures could include annual inspections, checks with the Inland Revenue to ensure that employers have registered and are making reasonable levels of contributions, annual meetings between the worker and a trusted authority. Of course none of these measures would work if domestic workers were too fearful of losing their livelihood to disclose abuse.

However the Government has claimed, referencing police officers working on Modern Slavery, that allowing migrant domestic workers to escape abuse will prevent them coming forward to the authorities allowing 'perpetrators [to] remain free to recycle their abuse and misery onto the next domestic worker'<sup>5</sup>. This makes no sense. In the almost three years during which migrant domestic workers have been tied to their employers, fewer workers known to Kalayaan have gone to the authorities, not more, because they are too scared. They have been made undocumented and criminalised by the act of escaping criminal abuse committed against them. The Government's proposed amendment would not change this current situation, as it offers no protection to any workers until they have gone to the authorities. The worker, terrified, and threatened, escaping abuse is expected to take a leap of faith. It is not happening now and we cannot see how it will change. **Of the 214 workers who Kalayaan internally identified as trafficked since April 2012 only 63 have consented to a referral into the NRM. In the same time period only 25 workers consented to us supporting them to go to the police.** There remains no upheld conviction for trafficking an

<sup>2</sup> See 'Ending the Abuse; Policies which work to protect migrant domestic workers' Kalayaan May 2011, Table 4 <http://www.kalayaan.org.uk/documents/Kalayaan%20Report%20final.pdf> (accessed 15.3.15)

<sup>3</sup> 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

<sup>4</sup> Not all of these workers will have been on the tied ODW visa, some have entered the UK prior to April 2012 on the original ODW visa and others will have entered under tier 5 with employers who are diplomats. The latter are also tied to their employer and would be permitted to change employer by the Lords amendment 72.

<sup>5</sup> Statement from Chief Constable Shaun Sawyer, National Policing Lead for Modern Slavery, 13 March 2015

adult to the UK for domestic servitude. While domestic workers remain insecure and criminalised they are not in a position to think about justice.

In contrast, prior to April 2012 Kalayaan regularly supported workers to go to the police, usually to report the theft of workers' passports by an employer, a clear indicator of trafficking. In the period April 2011 – December 2011, 36 domestic workers who came to Kalayaan without their identity documents were assisted by Kalayaan to report this to the police. In many cases they reported other incidents of mistreatment and crime at the same time. These were often not followed up as they were seen by the police to be civil matters or because the domestic workers' overriding concern was to retrieve her identity documents and the police often overlooked other indicators of trafficking and forced labour and did not follow up on those issues subsequently<sup>6</sup>. However, it is reasonable to hope that, with the increased awareness and understanding of trafficking by the police and other authorities, were domestic workers again in the position that in leaving their employer they had not broken the law, and requested assistance from the police in numbers similar to previously, the response would be more effective.

The Government has also suggested that were migrant domestic workers able to apply to renew their visa they could be exploited (in the UK) for longer, Baroness Garden of Frognal has said 'if the had power to extend their visas indefinitely then the employer could keep them in the country indefinitely<sup>7</sup>'. This misses the point that if workers are visible and documented not only is it more likely that the worker will challenge abuse and come forward but also, that if the authorities are concerned about abuse of migrant domestic workers the annual renewal of the visa would allow for them to put systems in place which monitor their employment, putting the onus on the employer to demonstrate that they are meeting their obligations, rather than on a worker who has been abused to come forward. Allowing for annual renewals of the visa would mean easy scrutiny of the workers employment contract and pay. If there are concerns as to employment conditions the worker can be interviewed, but of course this will only be effective if the worker knows they can disclose abuse without jeopardising their livelihood. It is when the worker is kept temporary with unclear status as a worker able to enforce employment rights when abuse will go unchecked. It is very likely that the majority of workers on the tied visa who escape abuse but are too scared to come forward will go on to work undocumented, themselves criminalised until they become pregnant or sick and are then thrown out, exposed to the authorities and removed from the UK.

### **The Government's proposed Amendment on migrant domestic workers**

The Government's proposed amendment suggested in lieu of the Lords Amendment 72 is discussed in more detail in ILPA's briefing 'Modern Slavery Bill. Ping Pong- House of Commons 16 April 2015<sup>8</sup>'. We are in agreement with ILPA's briefing and will not duplicate it here. Suffice to say that from a support perspective we cannot see how the measures in the Government's amendment will enable us to persuade more migrant domestic workers to leave abusive employment and come forward to the authorities for the following reasons;

- **Leave to remain will only be granted to migrant domestic workers once they have been determined to be a victim of slavery or human trafficking-** there are no safeguards in place for them until after they have gone to the authorities and we can offer them no guarantees before then; they must take a leap of faith- not very realistic for someone who is in a situation of slavery or trafficking, is controlled by their employer and is terrified.
- **There is no element of prevention in this amendment.** It leaves a system in place which has been found by two Joint Committees to facilitate the trafficking and exploitation of migrant domestic workers. In contrast the right to change employers goes some way towards preventing abuse. Both employer and worker know the law will not prevent them leaving if mistreated.

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<sup>6</sup> Witness Statement, Jenny Moss, 2012 Secretary of State for the Home Department Vs Kalayaan.

<sup>7</sup> 10 December 2014, cols 1869-1870

<sup>8</sup> <http://www.ilpa.org.uk/resources.php/30797/ilpa-briefing-for-ping-pong-modern-slavery-bill-house-of-commons-16-march-2015> (accessed 15 March 2015)

- **Migrant domestic workers may not get a positive National Referral Mechanism (NRM) decision even if they have been exploited** -there has been much criticism over NRM decision making to date, there is no right of appeal or legal aid funding for a negative Reasonable Grounds decision. The Anti Trafficking Monitoring Group has found the NRM decision making to be unfair and discriminatory: “Dramatic differences in the number of positive NRM decisions granted by the two Competent Authorities (CAs) exist. In 2012, over 80% of EU/ EEA national referred to the system received positive trafficking identification decisions. In comparison, less than 20% of third country nationals referred received positive identification. The UKVI is responsible for decisions related to third country nationals. There is valid concern that the immigration status of a trafficking victim inappropriately influences NRM decisions and that hence the decision making is unfair and discriminatory<sup>9</sup>.
- **Even if a worker gets a positive Conclusive Grounds NRM decision they still only may have leave to remain in the UK.** This would be another 6 month non renewable visa on which they are entitled to work as a domestic worker (one full time job) with no recourse to public funds. This is very restricted leave. Already someone in this position may get a year’s Discretionary Leave to Remain with no restrictions on type of work and with recourse to public funds. This 6 month non renewable domestic worker visa does not improve the currently dire options on offer for migrant domestic workers.
- **It is very unlikely that anyone with a 6 month duration non renewable visa would find decent work as a domestic worker.** Kalayaan has discussed the proposed amendment with a specialist recruitment agency who has stated. ‘From a commercial point of view who would employ someone for less than six months in a care, childcare or housekeeping position? It is just not long enough<sup>10</sup>. Without recourse to public funds on such a time limited visa there is also a risk that the worker out of desperation re- enters exploitative employment.
- **We understand that this is a Modern Slavery Bill but this amendment offers no protection or way of escape for someone who has been seriously abused- for example raped- by her employer but not trafficked or in Modern Slavery.** This cannot be right and gives no recognition of the continuum of exploitation<sup>11</sup>, that there is no clear line as to where decent work ends and labour exploitation begins, and where labour exploitation ends and forced labour begins.
- **Rights and protection should not be conditional on cooperation with the authorities.** The Government’s amendment takes someone from who choice has been removed and then further removes choice from them. Many migrant domestic workers are terrified of repercussions for family overseas if they go to the authorities. It is wrong that these people should stay in exploitation.
- **If migrant domestic workers are seen as having a motive to allege abuse it will be harder to achieve prosecutions.** If a visa, however minimal, is dependent on the worker being abused employers will claim that they are making it up in order to stay in the UK. In the private household, where the majority of evidence is hidden, this will make criminal prosecutions challenging.

Professor Bridget Anderson, Deputy Director Centre on Migration, Policy and Society (COMPAS), University of Oxford has said of the amendment; “It is the tying to their employers which effectively invisibilises migrant domestic workers. To then put the onus on the workers to present themselves to the authorities that at the same time threaten them with illegality is perverse. It seems that the government is only able to see domestic workers as abject victims, as objects, and the solution to their problems envisaged as a combination of rescue and prosecution. Key to the solution to abusive employers is to empower domestic workers and enable them to take their lives into their own hands”.

Migrant domestic workers will only begin to be protected, and those who abuse them held to account, when they are really recognised as workers, without the right to change employer, allowing them to resign, that most basic of

<sup>9</sup> Hidden in Plain Sight. ATMG, October 2013. Page 8

<sup>10</sup> Julia Harris, Managing Director, The Housekeeper Company, A Division of The Childcare Recruitment Company Ltd

<sup>11</sup> <http://www.jrf.org.uk/sites/files/jrf/forced-labour-exploitation-full.pdf> (accessed 15.3.15)

negotiating rights, this will not happen in practise. The Lords Amendment which will enable this most basic of rights must stay in the Modern Slavery Bill and we urge you to vote to keep it there.

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