

Submission to the Special Rapporteur on Contemporary Forms of Slavery

Jenny Moss, Community Advocate, Kalayaan

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Recommendations

Kalayaan believe that to end the slavery like conditions suffered by some domestic workers in the UK, the Government must do the following:

- **Recognize its achievements in protecting domestic workers from contemporary slavery, commit to maintaining the migrant domestic worker visa in the long term and review whether the protections can be *improved***
- **Ensure domestic workers are properly informed about their rights before coming to the UK, whether they be accompanying a diplomatic or private household**
- **Support a convention plus recommendation by the International Labour Organisation on “Decent Work for Domestic Workers, so that domestic workers may enjoy basic protections wherever they work in the world. Subsequently the UK should sign and ratify this standard.**
- **Extend the rights and protections of the overseas domestic worker visa, crucially the right to change employer, to those individuals brought to the UK as domestic workers by diplomats**
- **Be outspoken about what is expected from diplomats in relation to the staff they employ, and work with missions in the UK to create a system of model contracts and of checking compliance with these**
- **The UK should review its police training and operating procedures relating to trafficking and forced labour in light of the cases submitted**

- **The UK Secretary of State for the Home Office should review the immigration application refusals of Worker A, and Worker B (names deleted for publication)**
- **Ensure that domestic workers who suffer breaches of their rights are able to secure redress for these through the criminal and employment courts by issuing residence permits to victims of trafficking and forced labour for the purpose of pursuing compensation**

Kalayaan and our work

Kalayaan is a registered charity working with migrant domestic workers in the UK. Until last year our remit was to work only with those migrant domestic workers who had entered the UK on the overseas domestic worker visa either with a private or diplomatic household. We have now informally extended that remit to include individuals trafficked to the UK for domestic servitude, even if that worker was brought via a different immigration route.

Approximately 350 new migrant domestic workers register at Kalayaan each year. These migrant domestic workers register for different reasons such as immigration advice, help retrieving a passport withheld by an employer, employment rights advice, emergency accommodation, English class and others. Some of these workers report having been exploited and/or abused by their employers (the levels of abuse reported are given in the section below).

Kalayaan's record keeping and the trust shown to us by migrant domestic workers is well recognised. When introducing the domestic worker visa in 1998-2000, with the associated regularisation programme, the UK Government, chose to allow applications from any workers previously registered with Kalayaan.

Migrant Domestic Workers

Recommendation: The UK must recognize its achievements in protecting domestic workers from contemporary slavery, commit to maintaining the migrant domestic worker visa in the long term and review whether the protections can be *improved*

Recommendation: Ensure domestic workers are properly informed about their rights before coming to the UK, whether they be accompanying a diplomatic or private household

Recommendation: Support a convention plus recommendation by the International Labour Organisation on "Decent Work for Domestic Workers, so that domestic workers may enjoy basic protections wherever they work in the world. Subsequently the UK should sign and ratify this standard.

Migrant domestic workers are particularly vulnerable to trafficking and forced labour and consequently to abuses of their human rights (particularly articles 3, 4 and 6). Migrant domestic workers are dependent on their employer for their accommodation, their work, and their immigration status. They have no local network of support and are isolated in the house of their employer with no access to trade unions. Often migrant domestic workers do not speak English and/or have their movement restricted meaning they have to rely on their employer for any information about their rights in the UK. These issues create a dramatic power-imbalance between employer and employee and this is manipulated by unscrupulous employers to exploit workers. Those same employers use intimidation and threats such as telling migrant domestic workers they will become 'illegal' if they leave their position or that they will be 'arrested and deported'.

Some employers play on the domestic worker's impression of them as wealthy and influential people, warning that they have paid off police or, as in the case of one diplomat, that they have CCTV camera's that will follow the individual so that they can be brought back to the employer.

The following table shows the levels of abuse that are reported by migrant domestic workers newly registering with Kalayaan:

Abuse and exploitation statistics recorded at Kalayaan for every new Migrant Domestic Worker registered in 2008 & 2009		
Type of abuse/exploitation	2008(n=350)	2009 (n=332)
Control		
Not allowed out unaccompanied	69%	66%
Passport was withheld	58%	67%
Psychological Abuse	58%	60%
Abuse:		
Physical Abuse/assault	17%	15%
Psychological Abuse	58%	60%
Sexual Abuse/harassment	6%	5%
Did not get regular/sufficient food	21%	27%
Did not have own room (sleeping on living room or kitchen floor etc)	57%	46%
Exploitation		
Did not have any time off (i.e. Working 7 days a week)	60%	67%
Worked on call (i.e. Had to be available 24 hours)	68%	76%
Worked 16 hours or more per day	45%	51%
Received £50 or less per week in salary	50%	70%

In the UK the Government has recognised these vulnerabilities and has acted to prevent some of the worst exploitation by creating the "Overseas domestic worker" visa. This visa recognises migrant domestic workers as workers and confers on them the same rights in law as other employees. Importantly the visa allows domestic workers to change employers (not sectors) without losing their immigration status. This is crucial to the ability of migrant domestic workers to secure redress for violations of their human and working rights, as without independent status they would be powerless to leave the employer or pursue justice. This visa and the 'portability' of the permission to work have been instrumental in enabling migrant domestic workers coming forward and seeking justice through the police and the employment courts. Many migrant domestic workers have compelling reasons why they feel they cannot return home, including but not limited to debts they have taken out to migrate and find work, money needed for family illness or raising children, family violence and the proximity of their employer's families to their own. The visa allows people to move on with their lives and continue supporting their families whilst also remaining visible within the immigration system and contributing to the UK economy.

The Government have recognised the importance of the visa in affording protection to migrant domestic workers. Immigration minister in 2008, Liam Byrne stated:

“We are proud of the protection we afford Overseas Domestic Workers. The current ODW visa will be preserved and then reviewed as appropriate after the first two years’ operation of the reformed immigration system, when we have properly road tested our anti trafficking strategy.”¹

Baroness Scotland noted of the introduction of the visa that:

“we are conscious that the changes we brought about greatly benefited domestic workers in this situation”²

The UK Home Affairs Select committee also noted in their report printed May 2009 that:

“To retain the existing Migrant Domestic Worker visa and the protection it offers to workers is the single most important issue in preventing the forced labour and trafficking of such workers...We consider it likely that migrant domestic workers will need the special status afforded by the current visa regime for much longer than two years”³

In introducing the domestic worker visa, the UK Government has acted to prevent contemporary slavery in the UK and to ensure that victims have access to compensation for violations of their human and working rights through the employment tribunal. However, the UK has excluded one particular category of migrant domestic worker from these protections; those domestic workers who are brought to the UK by diplomats. I will go on to explain why this policy contributes to violations of these individuals human rights and can be said to facilitate the trafficking of individuals for domestic servitude, a contemporary form of slavery.

Domestic workers accompanying diplomats

Recommendation: Extend the rights and protections of the overseas domestic worker visa, crucially the right to change employer, to those individuals brought to the UK as domestic workers by diplomats

Recommendation: The UK must be outspoken about what it expects from diplomats in relation to the staff they employ, and should create a system of model contracts and a system of checking compliance with these, with diplomatic missions in the UK

Migrant domestic worker’s who have had their rights breached, have been abused, mistreated and exploited come to Kalayaan and find out about their rights. We informed them that they can leave a bad employer (in some cases they already have), that they can go to the police to report their passports stolen or assaults by their employers without fear

¹ Ministerial Statement from Liam Byrne (Home Office), Wednesday 25 June 2008 in response to the Government Consultation on Visitors

<http://tna.europarchive.org/20081023081743/http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/visitorsconsultationpaper/wms.pdf?view=Binary>

² Minister of State, Home Office, Baroness Scotland of Asthal, 26 March 2007, House of Lords, Hansard

³ “The Trade in Human Beings: Human Trafficking in the UK”, House of Commons, Home Affairs Committee, Sixth Report of Session 2008-09, Volume I, para 59, page 26

of deportation, and that if they wish they can pursue an employment case against their employers for any abuses to their working rights. As I have mentioned above, there is however one group of migrant domestic workers for whom the situation is much more difficult. Migrant domestic workers who accompany Diplomats to the UK do not have the right to change their employer. If they flee an exploitative or abusive employment they become undocumented.

Currently UK policy forces this group of migrant domestic workers into a situation which is in essence bonded labour, where, if their rights are breached, they have no effective recourse to justice. John Hemming MP described this predicament in an adjournment debate in the House of Commons on 17 March 2010, saying that:

“there is an arrangement that bonds an employee to an employer, which creates bonded or indentured labour, or slavery; there is no question about that. The test of whether somebody is in that position is whether they can run away. If they cannot run away without suffering serious sanctions, there is a problem.”⁴

Kalayaan has noticed that the levels of abuse reported amongst staff who register with us who have been working for diplomatic households is consistent with that reported to us by domestic workers generally.

Abuse and exploitation statistics recorded at Kalayaan for new Migrant Domestic Worker (who had accompanied diplomats), who registered in 2008 (n27) & 2009 (n24)				
ABUSE	% of those that answered	People who answered	% of those that answered	People that answered
Physical Abuse	15%	27	11%	19
Psychological Abuse	59%	27	65%	23
Not allowed out	52%	27	74%	23
Sexual Abuse	19%	21	0%	22
Denied regular food	30%	23	32%	22
No private space (no own room)	52%	27	30%	23
No day off in the week	44%	27	71%	24
Working 16 or more hours a day	40%	25	64%	22
On call 24 hours	60%	15	89%	19
Salary of £50 or under per week	48%	25	75%	20
Passport withheld	100%	9	83%	23

Kalayaan is particularly concerned that the general vulnerabilities faced by all migrant domestic workers are amplified in a diplomatic household, by two factors. The first issue is the inability of workers to change their employer without losing their immigration status, the second is that their employers are immune to prosecution. Migrant domestic workers in the employ of those few unscrupulous diplomats are told things such as not to seek help from their community because “in the UK I am effectively the president of our people” or “if you leave my house you will be illegal” or “the police cannot touch me”.

⁴ John Hemming MP, Birmingham Yardley, 10.21am, 17 March 2010, House of Commons Debates, Hansard, Westminster Hall “Migrant Domestic Workers (visas)”

<http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100317/halltext/100317h0003.htm>

The previous UK immigration minister Phil Woolas noted in the same adjournment debate mentioned above that:

“The question is whether the ability to transfer the visa to another employer would provide better protection for people we are not aware of because they have not come forward with complaints. We are undertaking investigations, but the issue is complicated because of our relationship with the diplomatic service and our reciprocal diplomatic arrangements. **However, there is no question that we are putting those diplomatic relations above the interests of victims.**[emphasis added]”⁵

There is worrying evidence that the inability to change ones employer and diplomatic immunity act not only to prevent individuals from fleeing and seeking justice but also increase the potential for trafficking of migrant domestic workers. If one looks at the figures for Kalayaan’s referrals to the UK’s National Referral Mechanism (the Government scheme for identifying victims of trafficking), one finds that:

- **Between 1st April and 31st December 2009, Kalayaan referred 22 cases of trafficking for domestic servitude to the NRM**
- **Of these 22 cases, 9 were cases where the domestic worker had come to the UK to work with a diplomat**
- **If you compare the figures of referrals made under the NRM in this period with the relative number of visas issue in a year, you find that approximately 6.9% of diplomatic domestic workers are trafficked compared to 0.1% of domestic workers in private households⁶**

UK immigration rules allow one group of migrant domestic workers to change their employer without losing their immigration status for the express reason that this helps prevent exploitation and abuse and provides a viable escape route from that treatment. However, the UK Government, having been presented with evidence that domestic workers who work for diplomats experience the same levels of abuse (more if you look at trafficking figures), has not yet acted to afford this group of domestic workers the same protections. Diplomatic domestic workers are overwhelmingly female and from particular countries (predominantly Indonesia) and these groups are thus disproportionately affected by what amounts to an anomaly in UK policy. Since diplomatic immunity means these domestic workers are very unlikely to be able to secure compensation or justice for violations, it seems perverse that they be discriminated against in the law and are not allowed to change their employer to continue working. The ability to change employer may not solve the problem of abuse, trafficking and forced labour but it would act to rebalance the power in the employment relationship and may therefore go some way to preventing these evils. It would also allow the domestic workers to find a new job and earn vital wages that have often been denied them, even if they cannot obtain compensation.

The effect of denying migrant domestic workers who accompany diplomats the right to change employer is that when workers have been trafficked to the UK by diplomats escape, there have been a number of cases where these individuals have chosen not to be referred to the “National Referral Mechanism”, which is supposed to protect them, because they

⁵ Minister for Borders and Immigration (Mr. Phil Woolas), 10.46am, Ibid

⁶ **Please note that these figures must be treated with caution. The “number of visas” used in this calculation are taken from those visas issued in 2008, however, the victims of trafficking may have entered the UK in any year. As such these only reflect the relative proportions of individuals trafficked rather than actual proportions**

desperately need to work to pay off debts and support their families. Instead they wish to continue working in spite of the vulnerability that being an undocumented worker brings. Kalayaan is aware of cases where women have gone on to be re-exploited by employers who take advantage of their undocumented status. Kalayaan have raised this issue with the UK Borders Agency in four different steering group meetings over the course of the year and to other policy officials.

It is Kalayaan's assertion that the UK are failing in their due diligence to prevent contemporary forms of slavery amongst this group and we recommend they act to reform the visa system for domestic workers entering the UK to work with diplomats to allow them the ability to change employer without losing their immigration status. The previous immigration minister recommended this change in principle⁷ and admitted that the granting of the ability to change employer has not led to abuses of the domestic worker immigration route, also that there are very few domestic workers who enter with diplomats each year (approximately 300)⁸. He did not however enact the change before leaving office.

Particular cases

Recommendation: The UK should review its police training and operating procedures relating to trafficking and forced labour in light of the cases submitted

Recommendation: The UK Secretary of State for the Home Office should review the immigration application refusals of Worker A and Worker B (names deleted for publication)

Owing to confidentiality considerations it is difficult to give details of each of the cases Kalayaan has dealt with and in fact in the most extreme cases such as those of sexual assault or rape, we have taken the view that the individual is unlikely to consent. However, attached to this submission is a redacted copy of an employment tribunal judgement heard in default against a diplomat who had sexually and physically assaulted the domestic worker employed by him. I can also provide two case examples as mentioned below.

Please see the two case studies submitted for follow up with the UK Government, plus a third case study where the victim requires she remains anonymous because of her fears for her and her family's safety.

- **Worker A**
- **Worker B (and associated complaint letter to the police)**
- **Confidential (UK Employment Tribunal Judgement attached)**

⁷ In principle recommendation noted in minutes for the third Overseas Domestic Worker steering group (Chaired by UK Borders Agency) on 06 October 2009.

⁸ Meeting between Minister for Immigration (Phil Woolas), Kalayaan and members of the All Party Parliamentary Group on Trafficking, 24 November 2009

Compensation for breaches of human rights

Recommendation: The UK should provide residence permits to victims of trafficking on the basis of pursuing compensation

Most victims of trafficking for domestic servitude were vulnerable to trafficking in the first place because of the extreme poverty of their home lives, sometimes coupled with other family or social difficulties. Access to compensation for human rights violations associated with having been trafficked, is a victims right under the Council of Europe Convention on Action Against Trafficking. It is also important that trafficked domestic workers do not return home to face the same vulnerabilities before (they may indeed become more vulnerable to trafficking because of debts they took out to migrate previously). It is therefore very important, in order to prevent the re-trafficking of migrant domestic workers, that they be able to access compensation where their rights have been breached.

In the UK, access to compensation for migrant domestic workers who are brought to the UK on the domestic worker visa is theoretically good. However in practice, a lack of secure immigration status prevents victims staying in the UK to pursue compensation. Victims of trafficking for domestic servitude who were brought to the UK can in theory access compensation through the Employment Courts (for breaches of their working rights), through the County Court (for breach of contract), through the Criminal Injuries Compensation Authority (predominantly for any ongoing health problems sustained through being a victim of crime) and through the Criminal Courts if a compensation order is made when a trafficker is prosecuted.

Kalayaan has found that the most effective way for victims to pursue compensation is through the UK system of Employment Tribunals. Kalayaan has had a number of clients who have had their Employment Tribunal claims upheld or have settled out of court with their employers. This type of compensation comes directly from the pockets of the traffickers and thus has a deterrent effect, whilst does not carry a criminal penalty for the employer (which some domestic workers feel would put them at too great a risk).

At present however, the UK **does not** provide residence permits to victims of trafficking for pursuing compensation. This means that in many cases, victims are liable to removal from the UK before their case appears at Tribunal. This is particularly problematic for domestic workers who accompany diplomats or whose employer has allowed their visa to expire. Even where a domestic worker is given a rest and reflection period in the UK and this period is extended indefinitely owing to non-decision by the UK Border's agency (such as in Worker A's case attached), there is the additional problem that the domestic worker has no way of supporting themselves while they wait for their case to come to Tribunal.

In the case of domestic workers trafficked to the UK by diplomats, there is the additional difficulty of the employer's immunity to prosecution.

Appendix

The additional documents supplied are as follows

Item	File Name
Case of Worker A (on SR form)	Deleted
Case of Worker B (on SR form)	Deleted
Complaint letter to police about the handling of Worker B's report of crime	Deleted
Employment Tribunal Judgement in the case of a diplomatic domestic worker v. diplomat	Deleted
The New Bonded Labour? (Kalayaan report of 2008 in response to the proposal to remove the domestic worker visa in 2006)	http://www.kalayaan.org.uk/documents/Kalayaan%20Oxfam%20report.pdf