Migrant Workers' Rights
THE PASSPORT ISSUE

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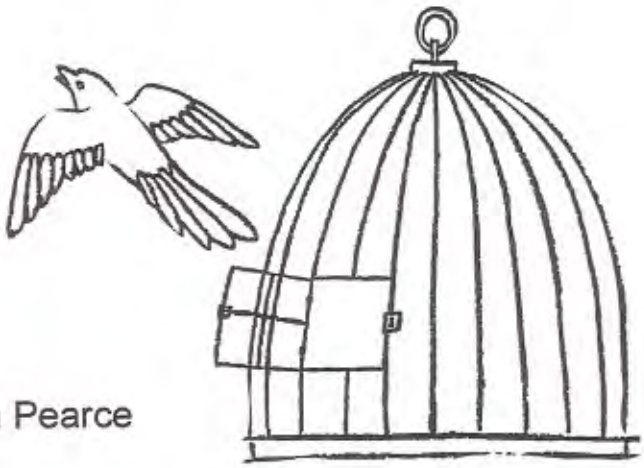
THE PASSPORT ISSUE

A report examining the withholding of migrant domestic workers' passports by employers: its impact and prevention

With thanks to all migrant workers



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This report has been produced by KALAYAAN, an NGO working with migrant domestic workers
Published London, July 2003

My employer took away my passport. I didn't know what visa I had. My employer threw me out of the house when she saw me talking to another part-time worker and I asked for a day off. They told me my passport was with their solicitor. I came to Kalayaan and they contacted the solicitor. It took three months before the solicitors would give me my passport back. A page had been ripped out – the page with the visa on. It took another three months for the British Embassy in Delhi to tell me what visa I had. In the end, my solicitor found out what visa I had – it was a domestic worker visa and it had expired.

Kumari, Nepalese worker who left her employer in August 2002

I came out. My passport was in my employer's hand. Five months after I left I applied for a new passport. The Sri Lankan embassy asked for a new visa copy and my old passport copy. I left in 1994, in 1998 my solicitor got me a copy of my old visa and applied for my stay. It's now 2003 and I am still waiting for the Home Office to respond. It's been there over four years.

Amara, Sri Lankan worker who left her employer in 1994

My employer kept my passport in a cupboard but I cleaned everywhere so I found it. I took it and ran away. I had a one-year visa but it finished when it was in the cupboard.

Sundari Indian worker, who left her employer in 2001

I am a member of Kalayaan and United Workers Association. I learned about them when they came over to the Philippine Embassy to help me. Having my passport withheld affected me in so many ways, such that my rights were limited and however many abuses I receive, I can never go away or run away easily since I haven't got my passport with me.

Jenny, Filipina worker, left employer in August 2000, without her passport

My employer kept my passport. He kept it in an attaché case, locked. I never tried to get it. The first year we came here one colleague jumped and they started to hide our passports in case we jumped too. They thought I would be too scared to jump without my passport but it didn't work. When I left I was worried about not having a passport. After two months, my solicitor sent a fax to my employers and asked for my passport. There were seven of us who jumped. I was the only one who got it. The others were too afraid to ask for it back as the employer said we had stolen from them and that they had hired police to search London.

Lolita, Filipina worker who left her employer in 2000

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The Transport & General Workers Union has been honoured to work for many years with Kalayaan, campaigning on behalf of migrant domestic workers. We strongly support the report regarding the withholding of passports by employers of migrant workers and this has been a key issue in our campaign. Migrant domestic workers must have independent recognised status. Without this, their position is equivalent to modern day slavery. Withholding of a passport denies a person's basic human existence. The campaign is highlighting serious problems and is a part of the ongoing campaign needed to ensure that the change to regulation means a new status for migrant domestic workers.

Bill Morris, General Secretary, T&G

Diana Holland, National Organiser, T&G

The European Trade Union Confederation fully supports the initiative taken by Kalayaan regarding the withholding of passports of migrant workers, a problem which leaves many migrant workers open to abuse and exploitation and which must be tackled urgently. Within the ETUC we are very concerned about the problems facing migrant workers across Europe today and are working hard to develop policies to support migrant workers, to improve their rights and working conditions. We join Kalayaan in calling on governments to act on this issue with the utmost urgency.

Catelene Passchier, ETUC, Belgium

Supporting organisations

Akina Mama wa Afrika, UK
Andolan (Organizing South Asian Workers), USA
Anti-Slavery International, UK
Babaylan, Femmes Philippines en France, France
Bangladesh Migrants Rights Foundation, Bangladesh
Break the Chain Campaign, USA
CASA of Maryland, USA
Cavite Association/Filipino Federation, France
Centro de Apoyo para las Trabadoreas (CENTRACAP), Guatemala
Centro de Capacitacion para Trabajadoras del Hogar, Peru
Centre for Filipinos (CF), UK
Churches Commission for Racial Justice, UK
Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA), USA
Commission for Filipino Migrant Workers International (CFMW), Netherlands
Commission on Filipinos Overseas, Philippines
Committee Against Modern Slavery (CCEM), France
December 18, Belgium
Domestic Workers United, USA
Douglass Simon Solicitors, UK
European Trade Union Confederation (ETUC), Belgium
European Women's Lobby, Belgium
International Human Rights Law Group, USA
International Movement Against All Forms of Discrimination, Japan
Joint Council for the Welfare of Immigrants (JCWI), UK
Kav LaOved, Israel
Magne & Co Solicitors, UK
Migrant Forum in Asia, Hong Kong
Moroccan Women's Association, UK
National Coalition Against Deportation Campaigns (NCADC)
National Union for Domestic Employees (NUDE), Trinidad and Tobago
Newham Asian Women's Project, UK
North Kensington Law Centre, UK
OXFAM, UK
PICUM, Belgium
PRAXIS, UK
Shared Communities, USA
Sierra Leone Family Association, UK
SOLIDAR, Belgium
Transnational Institute (TNI), Netherlands
Transport and General Workers Union (TGWU), UK
United Workers Association, UK
Visayan Forum, UK
Winstanley-Burgess Solicitors, UK
Womankind Worldwide, UK
Woman's Trust, UK

Thanks

This report could not have been produced without the help and contribution of many people and organisations. We would particularly like to thank:

all those migrant domestic workers who have shared their stories, especially Grace Baclagan, Happiness Brown, Adeline Sessou, Sundari Naidu, Sharaf El Din Ibrahim Ali, Karchung Tamang, Patience Etim, Nirosha Hettiarachchige and Amara Wathie;
The United Workers Association of Migrant Domestic Workers;
Kalayaan's Access Worker, Jenny Jones, for her encouragement and comments;
Kalayaan's Management Committee, especially Bridget Anderson, Chair, for their assistance and feedback;
Transport & General Workers Union for its unfailing support for migrant domestic workers and Kalayaan campaigns and events;
and all those organisations and individuals who are supporting this campaign.

Executive summary

Passport retention by employers of migrant workers (and other vulnerable groups of workers) is a worldwide phenomenon. It is found across many sectors: domestic work, sex work, seafaring, agriculture, catering, service work and other low-income or informal industries. Kalayaan's statistics reveal that an average of 49% of migrant domestic workers, entering the UK legally, have their passports taken by employers. This report examines the situation in the UK and, briefly, in other states, particularly USA, Netherlands and Israel.

Serious problems caused by the withholding of passports include:
(1) Lack of official identification and/or knowledge of immigration status
At worst, this can lead to arrest, detention and incorrect deportation. It also makes it very difficult, time-consuming and expensive for the worker to obtain new documents and immigration status. If immigration status is not renewed as required during this period, the worker may, unknowingly, become undocumented.
(2) Abuse and exploitation
Migrant workers whose passports have been withheld often feel unable to leave an employer. Abusive employers frequently emphasise such fear by telling workers that they are 'illegal' or will be deported or locked up if they leave. Power conferred by holding a passport allows the employer to intimidate workers and subject them to unacceptable working conditions and/or abuse.
(3) Obstacles to accessing essential services
Without a passport, migrants often have great difficulty in accessing healthcare, education (for themselves or for their children), financial services (e.g. opening a bank account or paying tax/NI), legal services, emergency housing or refuges. Even if services are available, many workers are too intimidated to access them.

Kalayaan assists migrants who are trying to retrieve passports after leaving an employer. Unfortunately, only a low percentage of passports are ever returned to their holders. This report calls for key players – employers, police, Home Office, embassies of workers, embassies of employers, UK missions, trade unions and migrant groups – to work together to deal with this violation of workers' rights.

This reports outlines detailed recommendations aimed at policy makers and key players. Perhaps one of the most pressing of these recommendations is that legilsation is introduced to render passport retention a criminal offence. This would enable migrant workers to take legal action against employers, and would penalise employers who withhold passports. Without such a law, employers will continue to withhold, damage or destroy their employees' passports, with frequently devastating consequences for migrant workers. Kalayaan calls upon the UK Government to act on the issue of passport retention as a matter of urgency in order to protect the basic rights of migrant workers. As the 'Messages of Support' (pp. 30–32) demonstrate, Kalayaan is not alone in this view.

Many migrant workers have shared their experiences with Kalayaan and contributed their feedback and time to this project. We dedicate this report to their strength, courage and commitment to workers' rights.

Introduction

Passport retention by employers of migrant workers is a major problem for migrants around the world. In the UK, the problem is compounded due to issues concerning the ownership of the document. Legally, the passport belongs to the government that has issued the document, rather than the passport holder. Consequently, if an employer withholds a passport, the police are not legally obliged to intervene on behalf of its holder. Furthermore, in the UK, the withholding of identity documents is not currently classified as theft (as is the case in other states). Theft is legally definied as 'a permanent intention to deprive', and the police argue that the withholding of documents is not encompassed by this definition. In practice, therefore, no existing legilation protects workers from passport retention or assists them in retrieving their documents. Likewise, there are no penalties for employers who withhold passports.

Embassies of workers are equally reluctant (or unable) to intervene on behalf of their migrant nationals. Many migrant workers find that their embassies are not interested in the difficulties that they face, and even make it extremely difficult for them to apply for a new passport without a copy of their original documents. In Kalayaan's experience, many diplomats employ migrant domestic workers; some withhold their workers' passports and do not abide by UK employment law. Migrant domestic workers employed by diplomats are in a substantially more vulnerable position because, unlike all other migrant domestic workers, they are not allowed to change their employers. Kalayaan has been calling on the Home Office to ensure that migrant domestic workers employed by diplomats are not discriminated against in this way but, so far, the Home Office has not acted to protect their rights.

By withholding passports employers are breaking conventions of International Law which serve to protect the rights of migrants to freedom of movement. The UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, which came into force on 1 July 2003, explicitly states that no migrant worker, or member of his or her family, shall be arbitrarily deprived of property. No European state has agreed to ratify this convention; Brian Cafferey, Director of the INPD, stated recently that the UK would not sign up to the convention because migrants' rights were adequately protected by existing human rights legislation. As this report demonstrates, this is clearly not the case.

In response to this issue, Kalayaan has been running a programme which supports migrant domestic workers whose passports have been withheld and brings their experiences to the attention of policy makers and service providers. Kalayaan is calling for effective government strategy and legislation to reduce the number of passports being held; to facilitate the return of passports to their holders; and to penalise employers who withhold passports. This report is a culmination of the programme. It not only documents the issue, but also makes concrete recommendations for action. Kalayaan has received overwhelming support for this campaign from a wide variety of organisations worldwide. It is clear that migrant workers across the world have their passports withheld. It is time for all governments to recognise the contribution of migrant workers and to protect their basic rights.

Recommendations

These recommendations have been drawn from a varity of sources. Some come directly from migrant workers and Kalayaan's experience of working in this field. Others have been suggested by relevant organsiations, legal bodies and NGOs.

TO THE UK HOME OFFICE

1. New legislation should be introduced to make it illegal to withhold, damage or destroy the identity, or immigration, documents of another person.

2. Withholding of identity documents should be classified as 'theft', and police should be obliged to investigate accordingly.

Sanctions against employers either of an administrative or a criminal type. If, for instance, there was an immigration rule prohibiting the retention of a domestic worker's passport then it might be easier to seek to prevent employers travelling to the UK again. Chris Randall, Winstanley-Burgess Solicitors

3. A consistent written and verbal message should be given to employers contacting the Home Office that it is illegal to withhold workers' passports and that employers who withhold passports will be penalised.

4. Employers who withhold identity documents should be penalised appropriately.

5. A named member of staff in the Integrated Casework Directorate should be available to deal with enquiries from migrant workers who believe their passports have been returned to the Home Office; all passports sent by employers to the Home Office should be filed in an accessible manner and then returned to the worker's embassy.

6. Employers who are in possession of a workers' passport after the worker has left should be instructed to return the passport to the embassy of the worker by registered post and to retain the delivery number for 6 months. They should be instructed not to send the passport to their own embassy, the Home Office or the police.

7. The Home Office should not penalise workers who do not have their original passports when they apply to renew their immigration status. Renewals should be granted on Home Office paper (enabling the migrant to apply for a new passport).

8. The Home Office should ensure that all immigration officials (in the UK and overseas) are fully trained in the rules concerning migrant domestic workers. This should ensure that the correct entry clearance stamps are provided and that officials have an awareness of the issues facing migrant workers. Officials working at UK points of entry should be briefed to return all passports to their holders, not to the employer or employer's representative.

9. The Home Office should translate the leaflet for migrant domestic workers that is currently disseminated by UK missions. Only a very small percentage of migrant domestic wokers can understand the current leaflet. Many do not receive the leaflet, and say that all paperwork is passed to their employers.

It would be ideal if the leaflet for domestic workers was translated into the worker's language and if the ECOs required the personal attendance of the worker when returning the endorsed passport, i.e. the ECOs should return the passport and translated info/help leaflet to the domestic worker, not the employer. Mann Wey Li, CAB adviser

10. The Home Office should devise an information leaflet for employers of migrant domestic workers, which should be disseminated by UK missions. This should clearly detail the employment responsibilities of employers in the UK (minimum wage employment rights, tax/NI etc.) and inform the employer that it is illegal to hold workers' passports.

11. The name of the employer should never be included on the entry clearance stamp (this is still occuring on a regular basis and is time-consuming and complex to amend). Theoretically, a worker who changes employer without amending the name on their EC stamp could be deported (due to a mistake on behalf of the UK government).

TO UK MISSIONS

1. Staff in UK missions dealing with domestic workers and their employers should be fully trained in the rights of migrant domestic workers, and understand the problems and abuse they may face. Officials should have access to interpretation if required.

2. Staff should fully inform migrant domestic workers about the type of entry clearance that they are being granted, the date it expires, how it can be renewed, their right to change their employer in the UK, basic UK employment rights, and what to do if they experience abuse or exloitation.

3. All migrant domestic workers should be informed that it is their right to hold their own passport. Staff should provide all migrant domestic workers with a full copy of their passport without the knowledge of the employer. Endorsed passports should only ever be returned directly to the worker.

3. A clear written and verbal message should be provided to all employers stating that they cannot hold the passport of the worker under any circumstances. A leaflet outlining the responsibilities of the employer and the rights of the worker in the UK should be disseminated to all employers.

4. UK missions should keep accessible records of all entry clearance granted to domestic workers. Such records should be kept for as long as practically possible (sometimes these records are the only evidence available to the worker of their immigration status). In Kalayaan's experience, UK missions are generally fairly quick in providing this information, but there can be a problem with records only being kept for a short period.

The embassy official should inform the migrant that the passport should be in her own possession and the employer should be aware of this. This should be the immigration policy. Nonoi Hacbang, CFMW International

Embassy officials must tell the worker, 'you are entering the UK as a domestic worker' and show them the stamp. Not everyone knows that is what they are. Workers should be helped and made aware of the law. We have a fear of being sent back if we don't know the law. The employer's name should not be on the stamp. Happiness, Nigerian worker

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, "urges states to strengthen the human rights training and awareness-raising activities designed for immigration officials ... with particular attention to the human rights of migrants...." (Programme of Action, no.138).

TO THE POLICE

1. There should be centrally produced information (in leaflet form or online) about migrant domestic workers that is available to all police (see Appendix, pp.28–29).

2. Police likely to encounter migrant workers or their employers (particularly those stationed in wealthy areas of central London) should be briefed on the rights of migrant domestic workers and have a clear strategy for assisting them. They should notify Kalayaan so that appropriate support can be provided.

3. Police should access interpreters when required.

4. Migrant domestic workers who have experienced abuse from their employers should have access to Community Safety Teams.

5. Police should emphasise to employers that they should not withhold passports or belongings, and should provide assistance to workers who are attempting to retrieve these items. The police should offer to visit the employer's home and make all efforts to retrieve the migrant's passport.

6. Passports that are returned to the police should be sent to the holder's embassy.

7. Police should assist workers who are applying for new passports by providing a report stating that the passport has been withheld by the employer (currently workers are often forced to report such passports as 'lost' because the police refuse to recognise that they have been withheld).

8. Police should never deport a migrant domestic worker because she or he is not in possession of her or his passport. Even if the worker's entry clearance has expired, the worker may still be able to renew it. Kalayaan can advise on this issue.

9. When employers report workers as missing, the police should enquire if the employer is holding the passport and ensure that it is returned to the holder or their embassy.

Education of police and encouragement to prosecute. Helen Tyrrell, North Ken. Law Centre

Liaison with police, information to police on this issue. Mann Wey Li, CAB adviser

Be patient – we don't always speak good English. Please use interpreters! Patience, Nigerian worker

TO EMBASSIES / HIGH COMMISSIONS IN LONDON

1. Embassies should ensure that migrant domestic workers are treated with respect and dignity. Their contribution to their home countries' economies should be fully recognised.

2. Staff at embassies with larger numbers of migrant worker nationals should be briefed in

their rights and how they can be assisted. A named member of staff could be assigned to deal with migrant workers' issues (this system is in place at the Philippine Embassy which serves as an example of better practice in this area).

3. As the passport fully or partially belongs to the government of the issuing country, embassies should provide greater assistance to workers attempting to retrieve their documents. Embassies should provide a standard letter which can be sent to employers requesting the immediate return of passports.

4. Embassies should offer an improved system for migrant workers who have to apply for a new passport after their original documents have been withheld. This service should be free or offered at a reduced rate (many workers have no money due to having had wages withheld). Embassies should not expect such workers to be in possession of original documents. British missions can be contacted for confirmation of the worker's original entry clearance.

5. Embassies should have information on their websites specifically for migrant workers.

6. Embassy staff who employ migrant domestic workers should ensure that they comply with UK employment law and set high standards in employment practice.

They should know more about the visas to enter the UK on and they should care about you. Sharaf, Egyptian worker

TO NON-GOVERNMENTAL ORGANISATIONS AND MIGRANTS GROUPS

1. NGOs, particularly in sending countries, should provide migrant workers with information about their rights and training on how to hold onto their own passports. All workers should be advised to keep copies of all documents in a safe place unknown to their employer.

2. NGOs should publicse this issue as widely as possiby, using translated materials, and advertise in places frequented by migrants. Publicity should also be targeted at employers.

3. NGOs should continue to work in partnership to improve migrant workers' rights.

4. NGOs should undertake campaign work on this issue, in addition to providing support.

Advertising in public places – e.g. embassies, churches, on radio & TV. Margaret Healy, ex-coordinator, Kalayaan

Where funding allows, organisations should print and distribute info/help leaflets translated into various languages, e.g. Tagalog etc. They should also write articles in newspapers or magazines likely to be read by domestic workers, explaining where workers could get help. Mann Wey Li, CAB adviser

...workers must be informed that withholding passports is vicious and that they have the right to defend themselves. They can already start by photocopying their documents. This does not prevent employers from withholding passports, but it's a first protection. Maria Noval-Jezewski, BABAYLAN, Femmes Philippines en France

Leaflets outlining the problem and where victims can get help distributed in a variety of places – GPs, supermarkets etc. Grace Macauley, Akina Mama wa Afrika

TO TRADE UNIONS AND LOBBY GROUPS

1. Trade unions should be aware of the issues facing migrant workers. They should encourage migrant workers to join trade unions so that their rights can be protected. (The T&G provides a reduced membership rate for migrant workers which is an example of good practice.) Translated materials should be available.

2. Trade unions should work with NGOs and community groups to ensure that they understand grassroots experience and expertise, and the needs and concerns of migrant workers. Community groups are essential partners in organising and recruiting migrant workers.

3. Trade unions should be aware that issues facing migrant workers in the informal economy can be very different from those facing workers in traditional settings.

4. Trade unions should fight for the rights of all migrant workers, those with documents and those without.

5. Trade unions should publicise the contribution of migrant workers, and should reassure UK workers that migrant workers do not threaten their jobs or conditions. Solidarity between UK workers and migrant workers should be promoted.

6. Trade unions should lobby governements (at UK, EU and International level) to protect the rights of migrants and ensure that workers' passports are not withheld.

7. Campaigning groups should use the UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families for lobbying governments. EU governments should be lobbied to ratify the convention. Article 15 of the convention states that, *no migrant worker or member of his or her family shall be arbitrarily deprived of property, whether owned individually or in association with others. Where…the assets of a migrant worker or a member of his or her family are expropriated in whole or in part, the person concerned shall have the right to fair and adequate compensation.*

8. Campaigning groups should use the two ILO conventions on migrants in their lobbying work: Migration for Employment Convention (Revised), 1949 (no.97) and the Migrant Workers (supplementary provisions) Convention, 1975 (no 143).

We should demand that the legislation is tightened up, to make it unlawful to withhold and retain passports of migrant domestic workers, but also we should demand tough penalties – imprisonment of offending employers and compensation to the domestic worker are serious considerations. Maureen Byrne, Women, Race and Equalities, Transport and General Workers Union

Kalayaan's experience

Kalayaan is a support and campaign group for migrant domestic workers of all nationalities. It was established in 1987 primarily to campaign for a change in the UK law. In 1979, the British Government devised a concession to allow wealthy employers and diplomats to bring their domestic workers to the UK. Under this concession, employers could bring in their worker under one of two categories; as 'visitors' or as 'persons named to work with a specified employer'. This meant that domestic workers were dependent on their initial employer for their immigration status. They frequently faced serious abuse (psychological, sexual and physical), but could not change employers legally. If they were forced to run away from an employer, they were immediately classed as Overstayers and could be deported.

Many migrant domestic workers ran away from abusive employers (some were even forced to climb from windows because they had been locked in the house). Kalayaan, together with United Workers Association (previously Waling-Waling – a self-help group organised entirely by migrant domestic workers), lobbied the British Government to give migrant domestic workers the right to change employers and to regularise the status of those who had become Overstayers. Kalayaan received substantial support from organisations and individuals; the active endorsement of the T&G union was crucial. In July 1998, the British Government finally announced that they were going to allow migrant domestic workers to change their employers. They also agreed to regularise the immigration status of migrant domestic workers who had become Overstayers as a result of the previous abusive system. Kalayaan supported (and continues to support) migrant domestic workers through the regularisation process, negotiating with the Home Office, assisting workers in collecting the necessary documentation, and referring to solicitors.

As well as assisting migrant domestic workers who have had their passports withheld, Kalayaan provides general and specialist support, advice and advocacy to migrant domestic workers and campaigns on relevant issues. Kalayaan offers a range of services including: advice and information on immigration, employment rights, benefits, healthcare, education etc.; emergency support and accommodation for clients who have run away from abusive employers; ESOL and computer classes; free legal surgeries; advocacy for clients who are undergoing legal process; outreach work; social space for clients to meet, collect post and make phone calls etc. Kalayaan also carries out specific project work, such as research, awareness-raising, networking and organising workshops and conferences.

STATISTICS

Home Office statistics show that approximately 14,000 domestic workers enter the UK legally each year (including multiple entries). Kalayaan sees an average of 30 new clients each month, and has a database of over 4,000 workers from over 35 countries. Sadly, many migrant domestic workers continue to suffer from abuse and exploitation. Kalayaan collects regular statistics on the abuses migrant domestic workers face, including non-payment of wages and physical, psychological and sexual abuse (see table below).

Abuse experienced by migrant domestic workers registered with Kalayaan in August 2000, 2001 and 2002

Type of Abuse	Aug 2000	Aug 2001	Aug 2002
Physical Abuse	28%	35%	69%
Psychological Abuse	65%	86%	98%
Sexual Abuse	5.4%	3.3%	9%
Locked in/not allowed to leave	40.5%	61%	83%
Inadequate food	51.4%	40%	80%
Lack of room	60.8%	68%	87%
Lack of bed	47.3%	50%	72%
Irregular pay	47.3%	45%	71%
Pay under £200/month	83%	94%	98%
Passport withheld	**71%**	**67%**	**65%**

On average, 49% of migrant domestic workers registered by Kalayaan have had their passports taken by employers. Between January 2001 and June 2003 this amounted to 511 migrant domestic workers having to leave employers without their passports.

Passport retention of migrant domestic workers registering with Kalayaan between January 2001 and June 2003

Year	2001			2002			2003 (6 months only)		
	Emp	Self	Other	Emp	Self	Other	Emp	Self	Other
%	52%	40%	8%	50%	43%	8%	35%	57%	8%
No.	248	188	36	208	178	28	55	89	13

SUPPORTING WORKERS WITHOUT PASSPORTS

Kalayaan supports workers whose passports have been withheld in the following ways:

Contacting the ex-employer

Many migrant domestic workers ask Kalayaan not to contact their ex-employer concerning their passport. This is due to workers fearing that their employer will find and punish them, or inflict harm on their families overseas. Sometimes, employers have already left the UK and it is therefore impossible to contact them. Employers who have withheld passports have frequently flouted other UK employment legislation, and may owe wages or have abused the worker. In Kalayaan's experience, workers generally do not wish to take cases against abusive or exploitative employers. Many want to retrieve their passports and then to move on with their lives and forget their traumatic experiences. However, Kalayaan does try to encourage and facilitate workers in taking legal cases against employers (and has recently supported a worker in taking a case to an employment tribunal at which she was awarded £40,000 for non-payment of the minimum wage). Another worker took a criminal case for assault and received £8,000 (after legal costs) in an out-of-court settlement.

When Kalayaan staff do contact ex-employers about withheld passports, they generally face anger and verbal abuse. Employers generally claim that they 'treated the worker well' and are very angry that the worker has run away. They are nearly always ignorant of the fact that they should not be holding the worker's passport, and of the rights and immigration conditions of the worker. Many say that they are having the worker's visa 'cancelled' so that the worker cannot get another job in the UK. Others say that they have reported the worker to the police so she or he will be deported. Many make allegations that the worker has neglected their duties (particularly childcare) and/or stolen money or jewellery from them. In fact, in Kalayaan's experience, many workers remain in extremely abusive situations for additional weeks or months in order to ensure that children are not left alone, and employers have always dropped theft allegations when police begin investigations.

The Home Office/UK missions do not provide clear instructions to employers about not withholding passports. Neither are employers informed about action to take if they are left in possession of a passport of a worker who has run away. Employers therefore usually take one of the following options: dispose of, or damage, the passport; take the passport to the police; send the passport to the Home Office; send the passport to their embassy in London; send the passport to the worker's embassy in London (rare); send the passport to the recruitment agency in the sending country. In only about 10% of cases are Kalayaan staff able to retrieve a passport. It is generally very difficult, or impossible, to retrieve passports from the Home Office, police or employers' embassies.

Contacting the police

Migrant domestic workers are often forced to leave their jobs without taking their belongings or telling their employers because they are in abusive situations (and are often forbidden from leaving the house at all). Many employers then report workers as missing persons, generally not because they fear for their safety, but because they wish to create problems for the worker and believe that the police will ensure that they are deported. Employers are also concerned that if workers have run away from them, it will be more difficult for them to obtain permission to bring new domestic workers to the UK. They believe that reporting workers as missing persons will demonstrate that the worker has not run away as a result of abuse (particularly if this is accompanied by accusations of theft or neglect of duties).

Kalayaan has developed relationships with many missing persons officers at local London police stations. Police officers investigating missing persons who are domestic workers often call Kalayaan for assistance. Kalayaan is able to contact the police if the worker is known to us, or even accompany the worker to the police station so that they can be removed from the missing person list.

If Kalayaan staff decide to go directly to the employer's home to try to retrieve a passport, they frequently contact the police to request assistance. It is more likely that an employer will hand over a passport if the police are present. However, the police generally refuse to intervene unless Kalayaan requests their presence in order to 'prevent a breach of the peace'. The obstacle to police involvement is that withholding identity documents is not currently classified as 'theft'. Many solicitors firms have encountered this problem when contacting the police on behalf of their clients. Magne & Co were informed that the police did not consider passport retention as theft because 'the property does not belong to the individual lodging the complaint, but to the government'.

Good practice case study

In June 2003, an employer reported her Bengali domestic worker as a missing person. The worker came to Kalayaan for assistance, she was extremely nervous – the employer had told her that she would kill her if she went back to her home country. A Kalayaan staff member contacted Willesden Green police station and spoke to Detective Constable John Richmond. At first, he implied that the worker had acted irresponsibly by disappearing from the employer's house, but he became sympathetic to the client's situation when Kalayaan explained her case. He was concerned about the client's immigration status because he'd already retrieved her passport from the employer (the visa was valid). A Kalayaan volunteer accompanied the client to meet with DC Richmond. The worker was then able to describe her treatment and situation. DC Richmond contacted the employer immediately and told her that the worker's belongings must be handed in to the police station straight away. He followed up the case when the employer did not comply. As the worker was too afraid of returning to the police station, the police delivered her belongings to Kalayaan.

Referring to solicitors

Kalayaan refers clients to several immigration solicitors who have expertise in this area. Sometimes, a letter on solicitors' headed paper will persuade the employer to return the passport. However, unless Legal Aid is obtained, solicitors' services are expensive for those on low incomes. Unscrupulous solicitors frequently attempt to exploit migrant workers in a vulnerable situation. Sometimes, solicitors are simply not well informed about the rights of migrant domestic workers.

Contacting employer's embassies

Employers often inform Kalayaan that they have sent the passport to their own embassy. Kalayaan generally finds that staff of the employer's embassy are unhelpful and unaware of the rights of migrant workers. In the majority of cases, the embassy denies any knowledge of the passport. If they have received it, they generally send it to the Home Office (but frequently do not send it recorded delivery which means that is almost impossible to trace).

Getting a new passport

Many workers have no choice but to apply for a new passport. However, this can be very difficult, if not impossible, without original documents.

The Philippine embassy is generally considered to have best practice in this area (sometimes due to lobbying from migrants' groups). The Philippine embassy in London will issue a new passport if the worker provides an original certified birth certificate with receipt from the National Office of Statistics; original certified marriage certificate; an affidavit of loss; four photographs and a fee of £83 (plus an additional £12 for the Embassy to authenticate the original passport details).

The Indian embassy (after much lobbying from Kalayaan) agreed to issue a new passport to migrant workers if the worker provides a photocopy of their old passport, proof of immigration status (occasionally waived), confirmation from the Home Office that the migrant does not have British nationality, a statutory declaration authorised by a notary public (costing around £30), twelve photographs, a police report that the original passport was lost/stolen and a fee of £84.

The Sri Lankan embassy requires the worker to provide a photocopy of their old passport, proof of immigration status, an original birth certificate and National Identity card (with two photocopies of each), original marriage certificate, a declaration signed before a Commissioner of Oaths/solicitor declaring that the applicant holds Sri Lankan nationality and has not acquired any other nationality, six photographs, a police report that the original passport was lost/stolen and a fee of £211.

Some embassies are extremely unhelpful to enquiries from migrant workers or Kalayaan staff. Kalayaan has also found that many diplomats and embassy staff are themselves employers of domestic workers, but frequently flout UK employment law and the rights of such workers (see casestudy opposite).

Case study

Wulan, an Indonesian worker, called the Indonesian embassy on behalf of her friend (a domestic worker whose passport had been withheld). Embassy staff told her that both she and her friend were 'illegal' and therefore 'not entitled to a passport'. Wulan explains, *The women is shouting at you, she is very, very rude. I think, I don't want to call them, I don't want to go there. She said 'I can't give a passport. I'm sure that you are a runaway, so we can't give you a new passport as it is with your madam. You just want to enjoy London....' She said so many bad things you know. She said 'If you want your passport, go back to your employer'.* Wulan, Indonesian migrant worker

A Kalayaan staff member was informed by the Indonesian embassy that, *'the migrant should have registered with the embassy on entering the UK, so we would have details of the passport.'* Embassy staff are often misinformed about the entry clearances granted to migrant workers. Sharaf, an Egyptian worker told Kalayaan, "*The Egyptian embassy didn't even know that a visa for domestic workers exists. Mine was the first one they had seen. They were nice, but they didn't know anything. They don't care about you.*"

The Nepalese embassy asks for proof of entry and a police report that the passport has been lost/stolen. They refuse to issue a new passport without a photocopy of the old one. A Kalayaan staff member was told, *'If they don't have, they don't get.'* (22 July 2003). Karchung, a Nepalese worker, says, "*It's hard and they were so rude. They said, 'What is this? Maybe you have applied for asylum?' They didn't want to help at all and they didn't look at my papers properly.*"

On applying to the Benin embassy for a new passport, one worker was told that she had to go to Benin to make the application. She was issued with a travel document and she had to pay for a trip to Benin in order to apply.

Contacting the Home Office

If Kalayaan is informed that a worker's passport has been sent to the Home Office, staff will lodge a request for it to be returned. However, in practice, passports are often not returned due to administrative problems at the Home Office. Unless the worker has a case pending at the Home Office or the passport has been sent by recorded delivery and the worker has the delivery number, it is generally almost impossible to trace the passport. Officials at the Home Office often appear very surprised that anyone would send a passport to them without an application, and staff are often unsure of where to look for such documents.

Passports are only very occasionally retrieved from the Home Office, usually many months after the initial enquiry (see casestudy below).

Case study
Allam, an Indian national, entered the UK in 2000 with his employer. His employer physically and psychologically abused him, making him work more than 16 hours a day, paying £20 a month, not allowing him to practise his religion or leave the house. Allam managed to run away from his employer in January 2001 and his employer reported him as a missing person. Allam left without his passport or belongings. Kalayaan and Douglass Simon Solicitors tried to assist Allam in retrieving his passport and belongings from the Indian High Commission (where they had been sent). After numerous calls, letters and visits, it was confirmed in September 2002 that Allam had been granted an official Government passport to work for a named individual at the Embassy. Because Allam was no longer working for that named individual he was no longer 'legal' in the UK and was told he could not apply for a new passport and would have to return to India.

On occasion, Kalayaan writes to the Integrated Casework Directorate providing a list of workers who have had their passports withheld. Kalayaan has not received any response to these letters. It is difficult to speak directly to an appropriate member of staff at the Home Office, which is frustrating for both Kalayaan staff and for migrant domestic workers.

Case study
Cristeta, a Philippine worker, left her employer in August 2000. Her employer sent her passport to the Saudi Arabian embassy, which forwarded it to the Home Office. In February 2001, Kalayaan faxed the Home Office about the passport. The Home Office responded in March 2001 confirming that they had Cristeta's passport, but that her original employer was named on the visa. However, Cristeta's solicitor had already sought to regularise her stay

Contacting UK missions
UK missions provide entry clearance stamps for migrant domestic workers. Applications must be made by employers, who must have employed the worker for at least 12 months prior to the application. Theoretically, UK missions should interview the worker alone (without the employer or employer's representative); give the endorsed passport directly to the worker; and give the worker a leaflet with information about her rights in the UK and where to go if she requires support. This leaflet was updated in May 2002 with some input from Kalayaan. It clearly states: "*Can my employer keep my passport? Your passport is proof that you have permission to stay in the United Kingdom. It is an important document and you should keep it in a safe place. Your employer should not keep it for you. If your employer is keeping your passport without your permission and has refused to return it, you should report this to the police and your embassy.*".

Kalayaan continues to lobby the Home Office on this issue. In October 2002, Kalayaan received a letter from Graeme Hopkins, INPD, stating, "*...the Home Office is opposed to the retention of domestic workers' passports by their employers. This is made clear in the information leaflet and during our ongoing discussions with UK Visas we will ask that the diplomatic posts abroad reinforce this message by reminding employers that the retention of the employee's passport is considered unacceptable. Where such retention occurs then the domestic worker or a representative should consider reporting the matter to the police.*" (25 October 2002). However, as we have seen, reporting passport retention to the police or to an embassy will not prove effective until it is legally defined as theft.

It is also clear from Kalayaan's statistics that UK missions are generally not treating migrant domestic workers in line with Home Office guidelines. Nearly all workers are accompanied by their employer or employer's representative to the mission. Although many are briefly interviewed alone, most report that either they cannot communicate with the official due to language problems, or that they are too scared to say anything other than what they have been told to say by their employer. Most report that all the paperwork is carried out by employers and any leaflets etc. are given to employers. In 2001, only 10% of workers interviewed at Kalayaan had received the Home Office information leaflet; in 2002 the figure fell to 5%. Only a small percentage of these workers were able to read in English. Most workers do not see their passports following their endorsement.

If Kalayaan cannot retrieve the worker's passport, staff frequently contact the relevant UK mission to get confirmation of the type of entry clearance granted and the length of its validity. In Kalayaan's experience, UK misssions are generally prompt in responding, although in some cases a response has not been forthcoming for up to three months. Obviously, it is crucial that Kalayaan obtains a prompt response because the entry clearance may expire during this period.

In some cases the worker's records cannot be found; sometimes this is due to records only being kept for a relatively short period (e.g. four years). In other cases, it is found that, unknown to the worker, the employer has applied for an incorrect entry clearance (most commonly 'visitor' or 'tourist'). Another problem is that the passport is wrongly endorsed by including the employer's name on the entry clearance stamp. This means that the worker may be technically in breach of their immigration conditions if they change employers, although they have the right to do so. Most solicitors advise workers to get the endorsement corrected immediately which is generally time-consuming and expensive. Although Kalayaan has raised this issue with the Home Office and has been assured that clear instructions have been sent to all UK mission officials, mistakes still appear common. Since 2000, Kalayaan has seen over 50 cases of incorrect endorsements, including those issued by the Home Office for renewals. Incorrect endorsements have been issued from countries including Egypt, Saudi Arabia, Bahrain, India, Philippines, Qatar, Singapore, Kuwait, Indonesia, Lebanon and Malaysia.

Your passport, your life

Withholding passports is a means of control which allows employers to force workers to accept bad working conditions. As one Eritrean migrant domestic worker working in Athens said, "*When somebody is holding your passport, where do you go? Your passport is your life.*" (Anderson, 2000: 179). This sections examines the problems migrant workers face if their passport has been withheld.

Identification and status

In the most obvious sense, without passports migrants do not have any identification. Many migrants do not even know the details recorded in their passports because employers or agencies have applied for documents on their behalf. This often leads to inaccurate details being recorded in passports which may later cause the migrant problems. Recruitment agencies often provide incorrect details to embassies in order to ensure that workers fulfil entry clearance requirements (e.g. they are old enough, or that they are married).

Many migrants are also unclear as to their immigration status. Entry clearance is often dealt with solely by an employer or agency, and many employers are keen to maintain the worker's ignorance in this area. Although migrant domestic workers may be interviewed at a UK mission before travelling, they are often accompanied by employers, may not speak English and are not properly informed about the entry clearance that they are being granted. "*I don't know what is exactly in my passport. She (the employer) brought back two pieces of paper and asked me to sign…so when I did that the driver took the two pieces of paper back and for a week after that the passport was ready. I do not know how they make it happen, even my age….So the passport was ready and it was time now to get the visa….So she answered the questions, she said, yes she is coming with me and she will help me to care for the children when I go out, and she's going to do some studying….So I really have nothing to do with the visa and the paper.*" (Anderson 1999: 6–7).

Migrants without passports are also extremely vulnerable to deportation. Kalayaan has witnessed cases in which migrant domestic workers (who do not have their passports and have not received confirmation of their status from a UK mission) have been picked up by police and immediately deported. This can take place within 48 hours and, once the process has started, it can be very difficult to halt, even with the support of solicitors.

Fear and abuse

Many migrant workers work in fear of their employers and state authorities. Without a passport and a known immigration status, this fear is increased, rendering the worker dependent on the whims of their employer. As one worker comments, "*Sometimes if I make a mistake my boss say, as a joke, 'I am calling the police'. Our boss will joke to me, 'You're under arrest'. We have a security bell at work, and if they know it is me who is answering, when I ask who it is they say they are the police.*" (Anderson 1999:11–12). Employers frequently tell workers that they have renewed their immigration status when they have not, leaving the worker with no rights and vulnerable to deportation. Alternatively, employers tell workers that they do not have the correct papers and that they will be reported to the Home Office if they request better working conditions.

I really want to leave with my passport. I told him (the employer) I want it for English classes, but he's always giving excuses. I'm not leaving without my passport because I don't know if I can get another one from my embassy and I don't know my visa.
Senegalese worker, interviewed by Kalayaan, still with employer.

Nisha Varia from Andolan, an organisation working with South Asian workers in New York City, comments that, "*especially in an era of anti-immigration laws and sentiment, confiscation of important legal documents makes workers incredibly vulnerable to exploitation, including low pay, long hours, and abuse. Workers often do not know what options they have to break free of the situation*".

Access to Services
Without a passport and proof of immigration status, many services and entitlements are closed to migrant workers.

Technically, healthcare is available to all migrants entering the UK to live and work for longer than 6 months. However, many migrants find it difficult to register with a doctor (GP) or to access the National Health Service. Guidelines for registering with GPs state that it is '*totally unacceptable*' for the '*process of establishing liability to impose a special burden of proof on any group of people living in the country*', i.e. that GPs should not ask for proof of immigration status when registering patients. But in Kalayaan's experience, GP receptionists often ask for such proof if the potential patient only speaks limited English. Kalayaan has also supported workers who, when taken into hospital for emergency treatment, were asked about their immigration status. In these instances, a letter from the worker's solicitor had to be provided. Many migrant workers are afraid to access healthcare services in case they are detained or deported. This can cause very serious problems, particularly for workers who become pregnant.

If they have no proof of their immigration status, most migrants will, inevitably, avoid all official bodies, particularly the police. This fear is well-placed as Kalayaan has experience of migrant workers being deported due to not being in possession of their passports, although in fact they had valid entry clearances. It also means that crimes against migrants (including domestic violence and physical or sexual abuse) are going unreported.

Most trade unions are reluctant to accept members without immigration status. The T&G accepts migrant domestic workers without status, and, increasingly, trade unions are updating their policy in this area, although there is still a long way to go. In Germany and the Netherlands, no trade unions will accept members without immigration status.

Without a passport, migrants are unable to apply for a National Insurance number. This can make it more difficult to find employment and prevents migrants from claiming certain benefits. It also makes it difficult to register to pay tax, which is an offence.

Other services that are often inaccessible include financial services, such as opening a bank account; English classes and other education; schooling for children etc. Many services, such as libraries, clubs, internet cafes etc. ask for proof of address, which generally proves difficult for migrant workers. Most do not have utility bills in their names and many do not have employers or landlords who are prepared to write a letter on their behalf.

a worldwide issue

Currently, there are around 175 million migrants worldwide, documented and undocumented, about half of whom are women. Many of these female migrants are migrant domestic workers coming from the least developed and developing countries (Migrants Rights International Statement, 1 July 2003). Although Kalayaan works primarily with migrant domestic workers in the UK, our research demonstrates that passport retention can be experienced by any vulnerable group of workers. The problem is prevelent in sectors such as sex work, agriculture, seafaring, the service industry and other low-income, informal industries. Passports can also be withheld by agents other than the employer, such as unscrupulous immigration advisers, recruitment agencies, gangmasters or even relatives. This section briefly examines the experiences of migrants working on ships, and the situation in some other states, focusing on the USA, Netherlands and Israel.

'Sweatships'

War On Want are currently drawing the world's attention to the conditions migrants face when working on cruise ships. War On Want have found that cruiseship jobs, terms and wages are determined by workers' gender, nationality and skin colour. (A similar racist hierarchy is perpetuated in many other low-income sectors, including domestic work.) Conditions on cruiseships include: indemnities being taken from employees to prevent them from breaking their contract, long hours, no regular time-off, limited employment protection, and withholding passports. Companies often register ships in countries such as Panama, the Bahamas and Liberia, where there is minimal labour protection legislation.

The National Union of Maritime & Shipping Transport (NUMAST) notes that many Philippine seafarers on UK ships are being employed on terms and conditions below international minimums. They comment that "those working in UK waters are apparently being denied the UK national minimum wage of £4.20 per hour out of ignorance of their rights and the Government's lack of concern for their plight. We are also concerned at the general lack of employment rights for all seafarers on UK ships, particularly evident for those who do not reside in the UK." (Mark Dickinson, Assistant General Secretary, NUMAST).

Legal withholding of passports

In some countries, such as Singapore, it is legal for employers to withhold passports, and the practice is sometimes encouraged by governments. In the United Arab Emirates, the employer bears total responsibility for his or her domestic workers. It is standard practice for the employer to hold the passports and official papers of all domstic workers whom he or she employs (Sabban, 2002). If workers leave such employers, they become what has been termed as 'stranded workers'. The *Manila Times* reported on this increasing phenomenon in Saudi Arabia, 'The practice of employers keeping foreign workers' passports has been blamed for this new phenomenon. Because they cannot leave the kingdom without their travel documents and appropriate exit visas, foreign workers...are often 'trapped' and left to fend for themselves", Jose M. Galang, Jr, 'Stranded' Filipinos Trapped in Saudi Limbo, *Manila Times*, 2 October 2002. The *Manila Times* also reports that, when Filipino workers approach their embassy for assistance, the embassy will help only women workers – men are told to work their own way out.

Sweatshops

Migrants who are forced to pay an agent to get them into a country often have their passports taken by the agent and are then forced to work in abusive or exploitative conditions. Leah Platt documents an example of this in El Monte in California where, in 1995, "*72 Thai migrants were found held against their will in a warren of apartments that doubled as a garment factory. To pay off their travel debts, the migrants were stripped of their passports and forced to work at sewing machines for more than 80 hours a week at a negligible wage, surrounded by barbed wire. After the operation was raided by federal and state agents, the perpetrators pleaded guilty to indentured servitude in order to avoid more severe kidnapping charges and were sentenced to between two and seven years in prison.*" (Platt 2001). However, it is crucial to remember that migrants working in such conditions without documents are nearly always deported following police raids. Abusive employers and agents will continue to exploit workers until workers are granted proper employment rights and are no longer in fear of deportation.

Worldwide evidence of passport retention

Syed Saiful Haque of the Bangladesh Migrants Rights Foundation comments that many Bangladeshi workers migrate to Middle Eastern and South East Asian countries and, "*employers in these countries hold the passports of millions of our migrants*". As a consequence, the Bangladeshi government has stopped granting visas to women wishing to work as domestic workers in countries that are known to have abusive conditions. Nimalka Fernando of the International Movement Against All Forms of Discrimination works with Sri Lankan migrants in Japan. She says that workers "*have faced hardship as the travel document is removed from their hands by the employer on arrival*". The problem may also occur in situations of internal migration. Paulina Luza from the Centro de Capacitacion para Trabjodoras del Hogar in Peru, comments that workers who migrate from the countryside to the cities in Peru have their documents withheld by employers or agencies. Documents are held for at least six months, effectively tying the worker to the employer.

USA

Migrant domestic workers generally enter the USA on one of three visas. A-3 visas are issued to domestic workers of ambassadors, diplomats, consular offices, public ministers and their families. A-3 visas are renewable and are usually granted for a period of 2 to 3 years. G-5 visas are issued to domestic workers working for officers, foreign ministers and employees of international organisations and their families. G-5 visas are renewable and are usually granted for a period of 2 to 3 years. B-1 visas are issued to domestic workers accompanying other foreign nationals or US citizens who have permanent residency abroad but are visiting the US or are assigned to the US temporarily for no more than 4 years (or foreign nationals with non-immigration status in the US).

Many NGOs and migrants' groups in the USA testify that diplomats and employees at international organisations frequently confiscate the passports of their workers. NGOs such as Break the Chain Campaign, CASA of Maryland, Shared Communities and Domestic Workers United use publicity and the media to pressurise employers into returning passports. Domestic Workers United in New York City reported, "*One case was with the Egyptian Embassy – the employer who worked there owed 5 weeks' wages and kept the*

passport of the worker. We protested outside his house. The passport was cancelled, but he lied and said he'd give it back. We're not sure she'll get a passport now. Also he says he'll pay the 5 weeks' pay, but he wants us to grovel. That's what it feels like.".

I myself have a friend (Kenyan) whose boss refused to give out her passport. Since 1998 up to now (July 2003) her boss kept saying that she doesn't have her passport, that she hand it over to Immigration. Immigration was asked but there was nothing to be found. My friend went to the Embassy so as she could get a new passport but her former boss works there and she could not get the passport. Up to now she hasn't got a passport from her country...This affects her a lot because there is nothing showing her original country...
Alice Benjo, Break the Chain Campaign, New York City, USA

In 2000, the Victims of Trafficking and Violence Protection Act was introduced in the US. This makes it a crime knowingly to destroy, conceal, remove, confiscate or possess any relevant document of another person. It includes sentences of up to 5 years for offenders. However, the legislation does not protect migrant domestic workers unless they have been 'trafficked' into the US. The post 9/11 climate also means that the USA government is clamping down on migrants' rights. The National Employment Law Project, based in New York, produced a booklet in early 2001 which details the rights of domestic workers. The booklet states that if an employer takes a worker's passport, the worker may file a report of stolen property with the police. However, the group now says that they would no longer give this advice becuase police are increasingly acting merely to enforce immigration control.

NETHERLANDS

Most migrant domestic workers enter the Netherlands on *Au Pair* visas (ironically *au pair* is French for 'an equal'), because 'domestic worker visas' do not exist. Immigration law constructs *au pairs* not as paid workers, but as 'visitors' on 'cultural exchanges', who are paid 'pocket money' and are merely 'helping' in the house. However, it is evident that *au pairs* are often used as cheap labour, and this is particuarly the case now that many *au pairs* do not come from wealthy Western European states, but from Eastern Europe and other poorer states. *Au pairs* frequently experience similar situations to other migrant workers, and sometimes have fewer rights because they are not deemed to be 'workers'.

The Commission for Filipino Migrant Workers International campaigns for migrants' rights in the Netherlands. Fe Jusay, Women's Programmes Co-ordinator, states, "*A Filipina* au pair *came to the Netherlands in 2002. She complained about her situation, but the employer didn't listen – it's normal. All the time her passport was with the employer. The employer said 'to make it safe' or 'so it won't be lost'. She wanted to run away. The child, who was nine or ten, was bigger than her. There is a tendency for kids to be rough and hit you. That was one of her complaints and the 'light housework'! The family went on vacation to Rome. Her plan was to say 'I need my passport', so all the way she had her passport. They were in Rome in November 2002, she asked, 'Am I allowed to go out? I want to go and explore Rome'. She had her passport and ticket (she asked to keep it with her). She had a plan to run away. She had an address in Rome of a friend – another Filipina domestic worker. She went out and ran to that friend. She had her visa to get back to Holland and her ticket so she went back. She is now undocumented.*"

ISRAEL

In Israel, migrant workers are often tied to their employer (or a recruitment agency) because their visa belongs to their employer. Therefore, if a worker's employment is terminated, the worker's presence becomes 'illegal'. In Israel, passport confiscation is a criminal offence punishable by a years' imprisonment (this was introduced in 1994 through Clause 376a of the Penalty Law). However, Kav LaOved, an organisation working with migrant workers in Israel, reports that since this law was introduced, no indictment has been issued, although many thousands of complaints have been lodged (Kav LaOved, July 2002: 3). In many such cases, the police will return the passport to the employer rather than to the worker. Israeli law also requires the presentation of ID upon request. Workers caught without their passports are considered criminals and are usually deported.

Kav LaOved received a call regarding a worker, who was about to be deported for demanding her passport. The caller said she was maltreated and beaten. Her boss, who saw her talking to our agents, yelled at the worker and attacked her. The police had to be called to rescue the worker. The police then decided to arrest the worker, who lost her visa upon leaving her employer. Kav LaOved leaflet, 'Rule of law' or 'Banana Republic'?

Kav LaOved explain that most migrant workers have their passports confiscated by employers and that the worker can then be illegally 'traded' between employers. The worker does not know who has their passport and cannot press charges. Some agencies use extreme measures to find workers who have escaped. This includes creating 'Wanted' posters, similar to those used by the police for criminal offenders. These contain photographs and personal details of workers, and offer financial rewards for information leading to their capture. If workers are found, the agency then ensures that they are deported.

Kav LaOved staff often go to employers' houses to demand that passports are returned to workers. The organisation also sues employers (usually private agencies) which withhold passports. Kav LaOved has found that filing suits in the Labour Courts has resulted in passports being successfully returned to workers.

One verdict given in May 2002 by Judge Khalif in the Worker's Court in Beersheba determined that: "*A person's freedom is not to be considered 'property', and confiscation of his passport constitutes a violation of a basic right given him by the constitutive law: Human Dignity and Freedom. ... The actions of employers who confiscate workers' passports are shameful and harm Israel's reputation, in a manner which no subsequent explanation can amend. This is an inappropriate custom which should be uprooted. Therefore it is decided that the respondent shall pay the plaintiff court expenses, regardless of the results of the main suit, of 3,000 shekels.*" (Kav LaOved, July 2002: 4–5).

Conclusion

Migrant workers all over the world have their passports or documents withheld by employers or agencies. This report has highlighted the extent of this problem, focusing on the experiences of migrant domestic workers in the UK, but also briefly examining a more global context. This report also details the specific problems that are caused by passport retention. The recommendations of this report have been drawn from Kalayaan's research with migrant domestic workers and from many other relevant organisations and individuals. It is vital that policy-makers and other key-players act on these recommendations as quickly as possible at local, national, European and International levels to ensure that migrants' rights are adequately protected. Passport retention is a crime that must be stopped.

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KALAYAAN BRIEFING SHEET FOR POLICE, 2002

1. What is Kalayaan?
Kalayaan is a non-governmental organisation that supports migrant domestic workers. Its services include advice (immigration, employment, healthcare etc.), information and guidance; ESOL and IT classes; support and advocacy during legal cases; referrals; networking; research etc.

2. Who are migrant domestic workers?
Migrant domestic workers (sometimes called 'overseas domestic workers') enter the UK legally, usually with an employer or a member of the employer's family, in order to work for them as a domestic worker in the UK. Migrant domestic workers are generally granted visas for between six months and four years. These visas give the worker the right to work as a domestic worker in the private household. In Kalayaan's experience, the police most often come into contact with migrant domestic workers when they are reported as missing persons by their employers (see below) or when they run away from abusive employers.

3. What problems do migrant domestic workers commonly face?
The majority of Kalayaan's clients have experienced psychological abuse; many have experienced physical abuse; and some also endure sexual abuse. The majority are severely exploited – either being paid extremely low wages or no wages at all. Kalayaan can support migrant domestic workers in taking criminal cases or employment tribunals against abusive or exploitative employers. Over 60% of migrant domestic workers also have their passports withheld by the employer.

4. Should the employer be holding the passport of the domestic worker?
NO. Employers should never withhold their worker's passport. The Home Office has condemned this practice. If the police are aware that the employer is in possession of the worker's passport, Kalayaan would urge that they request that it is handed in to the police station or returned to the embassy of the worker (it is very difficult for the worker to retrieve the passport from either the Home Office or the embassy of the employer). Passports can also be sent to Kalayaan where we will hold them for one month and then return them to the embassy of the worker if the owner is unknown to us. If employers report workers as missing persons, the police can contact Kalayaan and, if the person is known to us, we can arrange for the passport to be directly returned to its owner.

5. Do migrant domestic workers have the right to change their employer?
YES. Since 1998, all migrant domestic workers have had the right to change their employer as long as they continue to work in the same sector (i.e. continue to carry out domestic work in the private household). The name of the employer should NOT be included on the worker's visa. If the name of the employer is written on the worker's visa, this is a mistake on the part of the immigration official and the worker can apply to have it removed. This does not prevent the worker from finding a new position with a different employer.

6. If the migrant domestic worker's visa has already expired, does s/he have the right to apply for a new one?
YES. Very often, migrant domestic workers' visas expire because her/his employer has not

renewed it. The employer frequently withholds the worker's passport (see below) and the worker is therefore unaware of the expiry date of her/his visa. In these cases, the worker can still apply to the Home Office, which deals sympathetically with workers who have experienced abuse or exploitation.

7. Do migrant domestic workers have the right to the minimum wage?
YES. All migrant domestic workers have the right to be paid the minimum wage and have basic employment rights under UK law. Kalayaan can assist workers in taking minimum wage claims (or other employment claims) against employers. Non-payment of the minimum wage is a criminal offence.

8. How can Kalayaan assist the police?
8.1 When migrant domestic workers are reported to the police as missing persons, Kalayaan can inform the police if that person is known to us. We can also accompany missing persons to our nearest police station (Nottinghill Gate) in order that they can show they are safe and well. In order to access this service, please telephone Kalayaan (0207 243 2942), and provide all the details of the missing person. We hope that this could save substantial amounts of police time.

8.2 If the police encounter a migrant domestic worker and require any advice or expertise about their legal status or other issues, Kalayaan can provide telephone advice and outreach assistance to migrant domestic workers. It is helpful if an appointment is booked in advance for this service, although we can also provide assistance on an emergency basis.

8.3 Kalayaan can encourage and facilitate domestic workers to report situations of violence, abuse and exploitation to the police where appropriate. In general terms, the development of a relationship between Kalayaan and the police will strengthen community relations and build the confidence of vulnerable people from ethnic minorities in dealing with the police.

9. How can the police assist migrant domestic workers?
9.1 If the police encounter persons who have entered the UK as domestic workers, we would be grateful if Kalayaan could be notified so that appropriate support can be provided. Police should be aware that migrant domestic workers are often victims of physical, psychological or sexual abuse and, if possible, they should be dealt with by the Community Safety Team or a female police officer. Migrant domestic workers can usually apply to remain in the UK even if their visas have expired; they will therefore need to see a representative from Kalayaan or a solicitor who is familiar with this specialised area of immigration law.

9.2 Police can make every effort to ensure that passports/belongings are not withheld by employers, or are returned to their owners as often as possible.

9.3 Police should be aware that employers frequently make accusations of theft against domestic workers who have run away from them. Although Kalayaan is fully aware of the police's obligations to investigate such accusations, we would be grateful if Kalayaan is informed so that we can provide advice and moral support to the worker. In Kalayaan's experience, 100% of these allegations have been dropped.

Messages of support

Anti-Slavery International supports the call by Kalayaan for the UK Government and the Home Office to take a much more pro-active stance in protecting migrant domestic workers' rights to retain their own passport and where necessary to provide the necessary police action to reclaim the passport from recalcitrant employers.
Anti-Slavery International, David Ould, Deputy Director

We are pleased to know that the issue of withholding passports will be taken up on a wider scope and, hopefully, on a higher level. This is a problem that plagues domestic workers, especially in the Middle East. We have come across cases in France, too. This is a problem which underscores the attitude of certain employers who seem to consider domestic workers as lesser human beings or even as non-human. We hope that governments will communicate on the issue, and influence each other positively, knowing that the protection of domestic workers' rights can only be beneficial for every society.
BABAYLAN, Femmes Philippines en France, Maria Noval-Jezewski

BMRF pledges its solidarity and support to Kalayaan to protect migrant domestic workers.
Bangladesh Migrants Rights Foundation, Bangladesh, Syed Saiful Haque

The robbery of passports should be addressed as the crime that it is. Domestic workers are categorically being deprived of their personal property. We urge the Government to help stop this theft and support non-citizens during their time in the UK.
Break the Chain Campaign, USA, Joy Zarembka

Holding someone's passport should be illegal around the world, we need to work together so everybody can have a passport and we can stop the abuse of honest workers.
CASA of Maryland, USA, Silvia Navas

Nobody has the right to withhold passports. Lots of migrant workers are hostaged by this situation, employers are taking advantage for profit and perhaps to abuse the person. It is difficult to stop this, but with people like you, it could be abated in the near future.
Cavite Association/Filipino Federation, France, Jesus Gomez

CHIRLA is requesting that no one should withhold the passports of migrant workers because the passports represent a key to their identity. It is immoral to control the movement of migrant workers.
Coalition for Human Immigration Rights of Los Angeles, USA, Ossee S. Desmangles

I urge the British Government – and all governments – to protect the rights of migrant domestic workers as full and equal workers under the law.
International Human Rights Law Group, USA, Margaret Huang

The migrant domestic worker has the right to hold her own passport. Nobody, even the employer, can withhold this personal document , which is the property of the owner. Withholding this document should be a violation of fundamental and basic human rights.
Commission for Filipino Migrant Workers International, Netherlands, Nonoi Hacbang

Our primary concern is the enforcement of the rights of migrant workers. The economy in the UK relies heavily on migrant workers and it is vitally important that migrants are awarded the same rights as British nationals, otherwise it's just a one-way system. Migrant domestic workers are particularly prone to exploitation and their needs are heightened as a result. The Government, Home Office and Foreign & Commonwealth Office should take a more proactive stance. They should understand that when workers come to regularise their stay in the UK they may not have all the documentation at hand, and that they can't return to their countries because their employers have withheld their passports.
Joint Council for the Welfare of Immigrants, Tauhid Pasher, Legal Policy Officer

The withholding of passports is a worldwide problem. It is extremely important to fight for the worker's rights as a worker and as a person. When the passport (visa) is in the name of the employer, the worker depends on his decisions, and can be easily abused. It is very important to prevent it by law and to work for the enforcement of such law.
Kav LaOved, Israel, Reut Barak

We fully support Kalayaan's campaign to try and remedy this very common problem which leaves domestic workers even more vulnerable.
North Kensington Law Centre, UK, Helen Tyrrell

Migrant domestic workers make a significant contribution to this country's economy, and to the lives of working women especially, in many countries. Their rights should be respected and their lives and jobs protected. The UK must be an example of good practice in protecting vulnerable workers in this country – how else can we promote good labour protection elsewhere?
Oxfam, UK, Thalia Kidder

A passport is a valuable document that gives migrants legal and psychological power. Taking it away from them makes them very vulnerable and completely dependent on their employer. This is a situation that should be avoided at any cost. Therefore PICUM fully supports the campaign of Kalayaan.
PICUM, Belgium, Nele Verbruggen

It is disturbing that even after changes in legislation this problem remains. There is an overwhelming urgency to fight all modern forms of slavery, including that of domestic workers. The reality of migrant "irregular" workers is emerging as an issue which must be addressed from the perspective of humanity, equal rights, human rights and social justice.
PRAXIS, Vaughan Jones

Having a passport is every individual's right – having a passport is not a privilege, it is a birthright.
Shared Communities, USA, Y. Palis

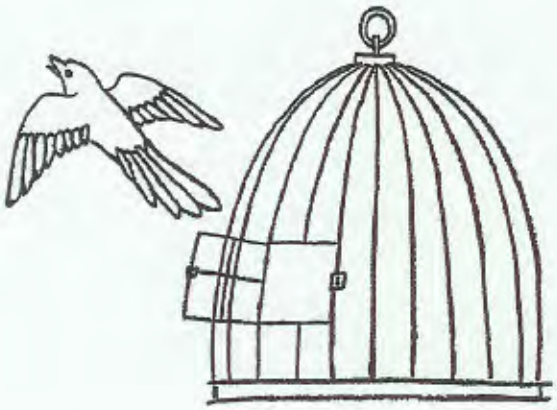
Withholding someone's passport has a devastating impact. The government needs to be aware of it and stop it.
Sierra Leone Family Association, Claudia Macauley

I write on behalf of myself and Winstanley-Burgess in support of this campaign. We agree that there is a problem where employers retain the passports of domestic workers. We support campaigns to amend law and practice to seek to prevent this abuse.
Winstanley-Burgess Solicitors, Chris Randall

Please help stop theft of passports and the subsequent imprisonment of migrant domestic workers!! Employers should not be allowed to abuse workers in their homes and prevent them from seeking any legal recourse. Without their passports, workers cannot prove their status or raise complaints against their employers. So their passports represent not only their legal identity but also their ticket to fair employment and human rights. Please do your part in ensuring these rights for all migrant domestic workers by providing assistance to those whose passports have been withheld and prevent similar cases of injustice.
Anibel Ferus-Comelo, UK

The power to withhold passports from migrant domestic workers is a tool of exploitation of an already vulnerable group. I support Kalayaan's campaign to challenge this practice.
Arun Kundnani, UK

I would like to urge the MPs Karen Buck and Michael Portillo particularly to press the government to act on this issue immediately. The government should act to alleviate the problems of thousands of workers who are suffering silently and being exploited due to their ignorance of their rights.
Kensington CAB, Mann Wey Li, UK



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