

KALAYAAN

justice for migrant domestic workers

Still enslaved: The migrant domestic workers who are trapped by the immigration rules

April 2014

*'Rights are a pure illusion unless they can in practice be fully exercised'*ⁱ

Migrant domestic workers, predominantly women from poor backgrounds who have had to migrate to support their families, have been widely recognised as being particularly vulnerable to abuse. However in 2012, the UK removed the most basic rights from migrant domestic workers, tying them to their employers and dramatically increasing their vulnerability to exploitation including trafficking for domestic servitude. Since 6 April 2012 migrant domestic workers have entered the UK on a 6 month long non-renewable visa and are prohibited from changing their employer. This leaves them unable to challenge any mistreatment or in practice to access their rights in UK employment law. Migrant domestic workers who enter the UK accompanying diplomats are also prevented from changing employers although they can remain in the UK with the same employer for up to 5 years. For these workers their inability to challenge mistreatment by their employers is compounded by their employers' claims to diplomatic immunity.

Two years on from the implementation of the tied visa it is clear that the tying of workers to their employers has resulted in the increased exploitation and abuse of migrant domestic workers in the UK. There is a need for urgent changes to the immigration rules to reinstate the original Overseas Domestic Worker visa and its associated protections and for domestic workers who have entered with diplomatic employers to be granted the same right to change employers. This would go a long way toward protecting this particularly vulnerable group of migrants and support Britain in its work to be recognised as 'a world leader in the fight against slavery'ⁱⁱ

Reports made to Kalayaan by workers who entered the UK on the tied Overseas Domestic Worker (ODW) visa and the Diplomatic domestic worker visa since the introduction of the tied ODW visa demonstrate how tying them to their employers has restricted their freedom and increased their exploitation. The implementation of such a system by this Government directly contradicts their stated aims to combat slavery. This system undermines the principles and the potential effectiveness of the proposed Modern Day Slavery Bill, by driving victims underground and criminalising them. Andrew Boff, GLA member and leader of the Conservative Group, who in 2013 authored 'Shadow City', a report on trafficking told the BBC:

*'...the changes in the domestic workers' visa mean that the Government is actually complicit in the slavery of domestic workers. I don't think it intends to be but the upshot is that it is actually licensing modern day slavery'*ⁱⁱⁱ

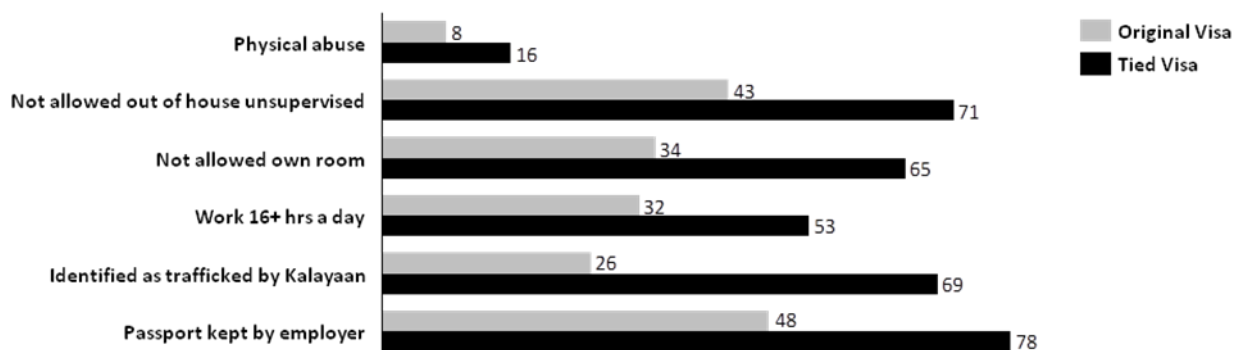
In the two years since the tied visa was implemented Kalayaan has registered 402 new workers. 120 of these workers were tied to their employers as they entered on the tied ODW visa or the diplomatic domestic worker visa^{iv}. New workers registering with Kalayaan give a report of their treatment in the job with which they entered the UK. It is noticeable that those who entered on a visa which tied them to their employers (the tied or the diplomatic domestic worker visa) had worse conditions and less freedom.

- Migrant domestic workers (MDWs) who were tied to their employers were twice as likely to report having been physically abused to those who were not tied (16% and 8%).
- Almost three quarters of those tied reported never being allowed out of the house where they lived and worked unsupervised (71%), compared to under half on the original visa (43%).

- 65% of tied MDWs didn't have their own rooms, so shared with the children or slept in the kitchen or lounge, compared with 34% of those not tied
- 53% worked more than 16 hours a day compared to 32% of those who had the right to change employer.
- 60% of those on the tied visa reported pay of less than £50 a week, compared with 36% on the original visa.
- Kalayaan staff internally assessed more than double (69%) of those who were tied as trafficked in contrast with 26% of those who had not been tied. Two thirds of referrals into the National Referral Mechanism for identifying victims of trafficking made by Kalayaan were of domestic workers who were tied to their employers.^v

Comparison of abuse reported to Kalayaan, in percentage terms

Apr. 12 – Apr. 14



No support or recourse to justice

14- 15,000 visas are issued each year to migrant domestic workers who accompany employers to the UK^{vi}. Kalayaan has registered around 200 new migrant domestic workers a year since 2012, and 300-350 prior to this; a tiny proportion of those who enter on this route. It is hoped that the majority of the entrants on the visa are in good employment relationships and that they enter and leave the UK with their employer without issue. However it is not clear what happens to domestic workers who were tied to their employers but who escape regardless. For many, the first they hear of the immigration rules is having left and sought advice. At Kalayaan our role has changed dramatically since the tied visa was implemented; from being able to offer practical help with the support of the authorities for redress and to move on, to currently having to tell workers that they have broken the rules and that a visit to the police station is more likely to result in their detention and removal than the crimes against them being addressed. One of our concerns is that numbers of new registrations coming to Kalayaan have dropped by a third while numbers of visas issued remains consistent. Together with the increased levels of abuse reported by those who do make it to us this suggests that increased numbers of workers are either being physically prevented from leaving, are told about the new rules and as a result are too scared to come to us, or on learning about the new rules are also told that in practise there are now real limitations as to how we can help them. Many leave our offices, don't return and without doubt go underground to further exploitation.

CASE STUDY: 'Maria', a Philippine national, came to the UK from Qatar, where she had worked for her employers for 2 years earning equivalent to £200 a month for a 14 hour day with no day off. She was regularly insulted and told that she was worthless. She slept on the floor in the children's room and explained that she was constantly tired. Once in the UK her employers stopped paying her. Maria is a single mother who migrated to support her daughter. She told to her employers that her daughter couldn't survive without her sending money home regularly. They refused to pay her in spite of this. Maria decided she had no option but to escape. She left without her passport and without knowing her immigration status. When we explained the rules to her she was tearful, and explained that she had to work and support her daughter. She did not come back to our offices again.

Why can't they just go home?

Migrant domestic workers are typically women who have migrated as they have no other way to support their families. They have often incurred debts when migrating and cannot afford not to send money home. In Kalayaan's experience workers often report that they were prepared to work without time off and endure shocking conditions and lack of freedom. It was when they were not paid that they had to run away. If they were to go home they would be more vulnerable than ever with the added debt to repay. Domestic workers tell us they would have to immediately take steps to migrate again, only they would have even less choice as to the terms on which they would do this due to their debts.

What about anti trafficking protections and employment law?

Kalayaan is a 'First Responder' which means we can refer people who we identify as trafficked, and who consent to a referral, in to the National Referral Mechanism for identifying victims of trafficking (NRM). This is purely an identification system which can provide some short term support (45 days). Many of the workers who we see at Kalayaan display clear indicators of trafficking. However the majority of the workers we see are not interested in being referred in to a system which identifies them to the Home Office and which does not give them an option to remain in the UK, and to work, which is what, above all else, they need to do. Instead we see workers leave us and disappear. We have real concerns for these women, penniless and many without even their passports and the exploitation their situation will make them vulnerable to. The Government claims that migrant domestic workers on the tied visa can access protections under UK employment law. However in practice we do not see how this is possible. Changes to legal aid have substantially increased the difficulty in finding a legal representative, and it is unclear as to how a worker living and working in their exploiters house would take steps to do so, particularly when the majority have their freedom so severely restricted. Once they leave their employer they are in breach of the immigration rules and have no means to support themselves while they take the case.

There is no doubt that one of the direct impacts of tying domestic workers to employers is that those who escape abuse are criminalised and driven underground rather than recognised and protected as victims.

Britain's chance to be a real world leader^{vii}: Prevention of and protection against abuse

The Home Secretary has stated that tackling slavery is her personal priority^{viii} and in December 2013 the Draft Modern Slavery Bill was published. However while migrant domestic workers remain tied to their employers it is unlikely that they will benefit from the Bill which in draft form focused strongly on prosecution. There were 141 referrals for domestic servitude into the Government's National Referral Mechanism for identifying victims of trafficking (NRM) in 2013, up 18% from 2012^{ix}. In 2009 the Home Affairs Select Committee in its inquiry into trafficking said of that that retaining the visa was "*the single most important issue in preventing the forced labour and trafficking of such workers*"^x. The reports by workers coming to Kalayaan since the implementation of the tied visa confirm this and a recent report by Human Rights Watch^{xi} is highly critical of the impacts of the tied visa and finds that the current system, rather than protecting against abuse, makes it harder for workers to escape. Two years on it is time to recognise that migrant domestic workers in the UK need the protections which worked well for over 10 years. **If the Government is serious about addressing domestic servitude the original migrant domestic worker visa must be reinstated as a first priority and these rights extended to domestic workers employed by diplomats.**

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ⁱ Lord Hylton, Hansard debate 'Overseas Domestic Workers' 28 November 1990
<http://hansard.millbanksystems.com/lords/1990/nov/28/overseas-domestic-workers> (accessed 30.3.14)

ⁱⁱ 'Establishing Britain as a world leader in the fight against modern slavery' is the title of the Modern Slavery Bill Evidence Review. Published in December 2013 and Chaired by Frank Field MP.

ⁱⁱⁱ Andrew Boff. GLA member and leader of the Conservative Group. Also author of Shadow City a report on human trafficking published in 2013 quoted on Britain's Modern Slaves. BBC Asian Network Report by Divya Talwar aired on 31.3.14.

^{iv} 92 entered on the tied ODW visa and 28 on the diplomatic domestic worker visa. The remainder entered on the original ODW visa prior to the 2012 changes or had Indefinite Leave to Remain (ILR).

^v Kalayaan is a First Responder and so is able to make referrals into the NRM. However we can only do so when the client gives their informed consent. The majority of the domestic workers who we register at Kalayaan do not consent to such a referral either because they are fearful of the implications of such exposure to the authorities or because they do not see how it would be in their interest as they need to continue working and sending remittances home.

^{vi} According to Government figures 13,503 visas were issued in the first 3 quarters of 2013, and 15,550 in 2012. These figures are consistent with previous years.

^{vii} 'Establishing Britain as a world leader in the fight against modern slavery' is the title of the Modern Slavery Bill Evidence Review. Published in December 2013 and Chaired by Frank Field MP.

^{viii} See 'Slaves may work in your nail bar too'. Theresa May, The Telegraph. 24 November 2013.

^{ix} UKHTC NRM Statistics 2013. Published 20/1/2014 by the NCA.

^x House of Commons Home Affairs Select Committee, The Trade in Human Beings: Human Trafficking in the UK, Sixth Report of Session 2008-2009, Volume 1, 6 May 2009, p26

^{xi} Hidden Away. Human Rights Watch, March 2014.