

## Kalayaan's submission to the Home Affairs Committee inquiry into modern slavery

7 September 2018

By email: [homeaffcom@parliament.uk](mailto:homeaffcom@parliament.uk)

1. Kalayaan welcomes the opportunity to contribute to the Home Affairs Committee's inquiry into modern slavery and to provide evidence of the issues affecting migrant domestic workers since the Modern Slavery Act 2015.
2. Kalayaan was established in 1987 and is the leading UK charity offering advice, advocacy and support services to migrant domestic workers who have been brought to the UK by their employer to undertake domestic work in their private household; typically nannies, cleaners, cooks, drivers, gardeners and/or carers for their employer or a member of their employers' family. Kalayaan is a government designated 'First Responder' in terms of the National Referral Mechanism (NRM), the framework used in the UK to identify and support victims of human trafficking. We have extensive experience of identifying victims of trafficking for domestic servitude having held this status since the NRM was established in 2009.
3. Our expertise on issues effecting and experienced by migrant domestic workers in the UK has been widely recognised. Kalayaan gave evidence on the issue of migrant domestic workers to the All Party Parliamentary Group on Trafficking Inquiry into Data collection, the Modern Day Slavery Bill evidence review, the Joint Committee on the Draft Modern Slavery Bill, the Public Bills Committee on the Modern Slavery Bill and the Independent Review of the Overseas Domestic Worker Visa<sup>1</sup>. More recently, we provided evidence to the inquiry into long term support for victims, launched by Rt. Hon Frank Field and a joint submission with Anti-Slavery International to the UN Special Rapporteur on Contemporary Forms of Slavery on the domestic servitude of migrant domestic workers<sup>23</sup>.

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<sup>1</sup> Both the Joint Committee and Human Rights Committee on the Draft Modern Slavery Bill recommended reinstating the rights migrant workers had prior to 2012 which is cited internationally as good practice:

<https://www.publications.parliament.uk/pa/jt201314/jtselect/jt slavery/166/16602.htm>

<https://publications.parliament.uk/pa/jt201415/jtselect/jtrights/62/6203.htm#a22>

<sup>2</sup> [http://www.kalayaan.org.uk/wp-content/uploads/2018/05/QuestionnaireNGOs\\_EN-17-05-2018-K-ASI.pdf](http://www.kalayaan.org.uk/wp-content/uploads/2018/05/QuestionnaireNGOs_EN-17-05-2018-K-ASI.pdf)

<sup>3</sup> The UN Special Rapporteur's report was published on 27 July 2018 and found that workers must be free to change jobs in cases of abuse which can only be effective if a visa extension is of sufficient length to enable them to find an alternative employer: <http://www.kalayaan.org.uk/wp-content/uploads/2018/09/G1823572-July-2018.pdf>

4. Kalayaan is a member of the Anti Trafficking Monitoring Group and the Labour Exploitation Advisory Group and supports the views expressed in their submissions. This submission highlights issues directly affecting migrant domestic workers as suspected or recognised victims of modern slavery.

#### **Current provisions for migrant domestic workers**

5. Migrant domestic workers are a recognised group of workers who remain vulnerable to abuse and exploitation, including modern slavery. Parliamentary debates during the passage of the Modern Slavery Act prompted the government to commission an independent review<sup>4</sup> of the terms of the Overseas Domestic Worker visa which found there was no evidence that the imposition of the 'tied visa' did anything other than increase the risk of abuse. The review made 3 key recommendations: that the visa tie be removed; to allow all workers to renew their visa for a further 2 years giving them the time to find safe and decent re-employment and to ensure all workers remaining in the UK for more than 42 days attend a compulsory meeting where they would receive information, advice and support. These recommendations were evidence based and seen as the minimum required to ensure the effective protection of the rights and welfare of workers in the UK.
6. The government responded to the review in 2016 and accepted that workers should have an immediate escape route from abuse and be allowed to change employers, but only for the time remaining on their visa, which is initially issued for a maximum of 6 months. They remained concerned that if workers were able to remain in the UK and renew their visa, abusive and unscrupulous employers would go undetected. This response failed to heed the recommendation in the review that any change in employment be recorded with the authorities who could then consider commencing an investigation<sup>5</sup>. The government also agreed to implement the information and advice sessions and increased the period of time a domestic worker, as a recognised victim of modern slavery, could apply for further leave as a domestic worker, from 6 months to 2 years<sup>6</sup>. In October 2016, the government introduced the Immigration (Variation of Leave) Order<sup>7</sup> which gives workers permission to continue working whilst in the NRM, so long as they had been referred and issued a positive reasonable grounds decision whilst their original visa was still valid. No rationale was provided to Kalayaan as to why a

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<sup>4</sup> <https://www.gov.uk/government/publications/overseas-domestic-workers-visa-independent-review>

<sup>5</sup> Ibid, paragraph 83

<sup>6</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Lords/2016-03-07/HLWS568/>

<sup>7</sup> <http://www.legislation.gov.uk/ukSI/2016/948/contents/made>

worker issued a positive reasonable grounds decision after their visa had expired could not work whilst they were in the NRM.

### Lack of prevention

7. The government has repeatedly said there are safeguards in place for workers as part of the visa application process, including the requirement to be seen alone and that they receive an information leaflet setting out their rights in the UK and who they can contact should they experience abuse. Kalayaan's own evidence would dispute these safeguards are operating effectively. Of those workers who registered with Kalayaan between 1 April 2016 and 31 March 2017:
  - 82% of workers issued a domestic worker visa before 6 April 2012 were accompanied to an interview with their employer
  - 73% of workers issued a domestic worker visa between 6 April 2012 and 6 April 2016 were accompanied to an interview with their employer
  - 65% of workers issued a domestic worker visa after 6 April 2016 were accompanied to an interview with their employer
  - 83% of workers issued a domestic worker visa before April 2012 were not issued any information regarding their rights in the UK
  - 94% of workers issued a domestic worker visa between 6 April 2012 and 6 April 2016 were not issued any information regarding their rights in the UK
  - 94% of workers issued a domestic worker visa after 6 April 2016 were not issued any information regarding their rights in the UK
  
8. Workers coming to Kalayaan do not know the terms of their visa. For those issued a visa under the current regime<sup>8</sup>, they do not know they have the right to leave an abusive employer. Many report to Kalayaan if they had known their rights, they would have exercised them a lot earlier and not stayed with their employer and endured abuse. Only 17% of workers who arrived on a visa after 6 April 2016 had possession of their passport when they registered at Kalayaan. Without proof of their leave to remain and permission to work, workers are left in a precarious position. Without recourse to public funds and without knowing whether or not they have valid leave to remain, they are resigned to having to accept any work offered to them or face becoming destitute. This leaves them at risk of going from one exploitative employer to another which undermines the underlying rationale for being able to change employer: to give workers

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<sup>8</sup> For workers issued an Overseas Domestic Worker visa after 6 April 2016

a safe way out of an abusive situation and find safe re-employment. Some unscrupulous employers exploit this vulnerability and offer exploitative work by telling workers they are taking a risk in hiring them without their documents and others refuse to hire with the introduction of the offence of illegal working in the Immigration Act 2016.

9. Kalayaan considers it vital that workers can quickly and safely find out when their visas expire to ensure they are kept safe and not put at risk. Kalayaan has previously spoken with the Home Office about establishing a system to access this information, rather than having to make applications for disclosure under the Data Protection Act 1998 which can take 40+ days to receive, during which time a worker remains at risk. (This issue is now compounded by the inclusion of an immigration exception to the Data Protection Act 2018, which hands the government the power to deny migrants access to their data if they consider it is for the maintenance of effective immigration control<sup>9</sup>.) In response the Home Office has told Kalayaan that workers should report stolen passports to the police, approach their embassy for a replacement emergency document and then apply for a replacement vignette from UK Visas and Immigration. This response fails to acknowledge that workers are too fearful to approach the authorities. They are lied to by their employers that they will not be helped or believed should they report what has happened to them. Several embassies require a fee to apply for a replacement passport which many workers cannot afford and the processing time can take several months at which time workers remain at risk.
10. Despite recommendations to improve the delivery of information at visa application centres in the 2015 review,<sup>10</sup> we understand no changes or improvements have been made.
11. This issue is now compounded by the government's decision not to make attendance at information meetings in the UK mandatory. The Home Office has informed Kalayaan there is no provision in law to make attendance a condition of the visa but would 'strongly signpost workers to the existence of the information meetings during the application process.' This is at complete odds with the recommendation made in the independent review which discusses why a voluntary system would be wholly inadequate and why all evidence points to a mandatory condition to ensure workers' fundamental rights are protected. Kalayaan is deeply concerned that workers who have no or severe restrictions placed on their freedom, those who need this information the most, will not be in a position to attend which undermines the purpose behind these meetings. The Home Office admission that the email and contact details provided in the

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<sup>9</sup> See Schedule 2, part 1, paragraph 4 of the Data Protection Act 2018:

<http://www.legislation.gov.uk/ukpga/2018/12/schedule/2/enacted>

<sup>10</sup> See paragraph 62: <https://www.gov.uk/government/publications/overseas-domestic-workers-visa-independent-review>

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visa application may not be for the individual worker means more control is handed to employers and increases the dependency of workers for information from their employers.

12. After the Home Office announced the procurement timeline for the information meetings in January 2018, Kalayaan worked in partnership with a number of experts and front line practitioners to produce some minimum standards that we consider are essential to informing the scope and delivery of the meetings. We also included recommendations on the visa application process through to arriving in the UK and being requested to attend a meeting<sup>11</sup>. Kalayaan worked closely with the Home Office as part of the tendering process but were disappointed that some of our recommendations were dismissed as they were not within the scope of the pilot due to start later this year<sup>1213</sup>.

### Reforms to the National Referral Mechanism

13. In October 2017, the government announced a package of reforms to the National Referral Mechanism (NRM) to improve decision making and victim support<sup>14</sup>. The reforms included an independent panel to review all negative conclusive grounds decisions, adding significantly to the scrutiny the cases receive and digitizing the NRM, making it easier for those on the frontline to refer victims for support and to enable data to be captured and analyzed to better aid prevention and law enforcement.
14. Kalayaan remains concerned that negative reasonable grounds decisions will not be reviewed. Currently, a positive reasonable grounds decision is the gateway to support under the Victim Care Contract and access to legal aid. Kalayaan has assisted a number of workers who have been referred to the NRM by another first responder and issued a negative reasonable grounds decision. These were only overturned following an intervention by Kalayaan and a reconsideration request challenging the findings made and relied upon by the Competent Authority.
15. Kalayaan is also concerned by any discussion that victims will no longer be required to sign to give their informed consent to a referral to the NRM<sup>15</sup>. Without providing a

<sup>11</sup> <http://www.kalayaan.org.uk/news/kalayaan-and-experts-publish-minimum-standards-for-odw-information-meetings/>

<sup>12</sup> <http://www.kalayaan.org.uk/news/tendering-process-for-odw-information-meetings-undermines-governments-stated-aim-to-empower-workers-and-penalize-exploitative-employers/>

<sup>13</sup> See also: The Anti-Trafficking Monitoring Group, *Before the harm is done: Examining the UK's response to the prevention of trafficking*, 2018.

<sup>14</sup> <https://www.gov.uk/government/news/modern-slavery-victims-to-receive-longer-period-of-support>

<sup>15</sup> Kalayaan attended a meeting with the Home Office in August 2018 with other NGOs and first responders when it was confirmed victims would no longer be required to sign to provide their consent to a referral.

signature, there are serious concerns that a suspected victim will not have had the NRM framework explained to them or that they understand and agree to the information being provided to the competent authority.

### Victim identification

16. There are 3 possible outcomes for a migrant domestic worker referred to the NRM and issued a positive conclusive grounds decision:
- a) Accepted as a victim of trafficking but granted no leave
  - b) Granted discretionary leave to remain with recourse to public funds (normally for minimum of 12 months and no more than 30 months)
  - c) Application for leave to remain as a domestic worker for up to 2 years with no recourse to public funds (for individuals who originally entered the UK on an Overseas Domestic Worker visa)
17. Currently, a recognized survivor of human trafficking has just 14 days to exit support services and find alternative accommodation and means to survive<sup>16</sup>. The lack of a guaranteed pathway to further support coupled with only 14 days for a recognized survivor to access mainstream services leaves them at real risk of homelessness, destitution and re-trafficking.

#### Case Study A: Recognised victim of trafficking granted discretionary leave to remain

Rosamie was referred to the NRM by Kalayaan in 2014. She was issued a positive conclusive grounds decision in 2017 and granted discretionary leave to remain for 12 months. Whilst she was waiting for a final determination, she was provided with accommodation and support by a sub-contractor of the Salvation Army. Rosamie also has a young child and gave birth whilst in safe accommodation. Rosamie has an ongoing protection claim but is not eligible for NASS support because she was granted discretionary leave with recourse to public funds. The sub-contractor had to request extensions to allow her to remain in safe accommodation whilst they waited for Rosamie to be issued a National Insurance Number and then help her register a claim for welfare support. The sub-contractor also contacted the local authority about move on accommodation but was told Rosamie could not access housing until she was in receipt of welfare support. This issue was compounded as Rosamie's biometric residence permit had to be returned to the Home Office as the details on it were

<sup>16</sup> The government has announced its intention to increase move on support from 14 days to 45 days but Kalayaan understands this will not come into effect until 2019 when the new Victim Care Contract is renewed in England and Wales

recorded incorrectly. Because the sub-contractor had to exit Rosamie from their services, they arranged for her and her newborn baby to be accommodated by a charity offering refuge to BME women. The refuge has explained to Kalayaan that they will allow Rosamie to stay with them so that she can show a local connection to the borough which will then allow her to become eligible for services from the local authority.

18. The risk of being forced into exploitative working and living arrangements is compounded for migrant domestic workers who are accepted as trafficked but not granted discretionary leave to remain. The Modern Slavery Act 2015 states that provision must be made for a migrant domestic worker to apply for further leave to remain as a recognised victim of trafficking, however this leave is restricted to work as a domestic worker in a private household without recourse to public funds. An application for further leave needs to be made within 28 days of being formally recognised and documentary evidence provided on how the domestic worker will maintain and accommodate themselves without recourse to public funds. This will be impossible for those residing in safe house accommodation, who have not had permission to work whilst they are waiting for their trafficking claim to be determined<sup>17</sup> and are then made to leave support services within 14 days of being identified.

#### Case Study B: Recognised victim of trafficking applying for further leave to remain as a domestic worker

Jonalyn was referred to the NRM by Kalayaan in 2014 and issued a positive conclusive grounds decision in 2017. She was not granted discretionary leave to remain and the conclusive grounds decision letter failed to inform her that she had the right to apply for leave in the UK as a domestic worker who had been determined to be a victim of trafficking<sup>18</sup>. Her application was submitted within 28 days and provides documentary evidence of her ability to maintain and support herself with help from her local community. She has received an acknowledgment from the Home Office that says her application raises issues concerning the European Convention on Human Rights and cannot be processed in accordance with standard timescales. She has no form of identification in the UK as the Home Office request her passport is submitted with her application. She is not entitled to any form of support whilst she is waiting for her application to be processed and is reliant on the community for accommodation and financial assistance until the Home Office processes her application and issues her with documents confirming she has permission to work. She has been waiting for a decision for over 9 months.

<sup>17</sup> See the Immigration (Variation of Leave) Order 2016

<sup>18</sup> This is in breach of Competent Authority guidance, see page 120:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/521763/Victims\\_of\\_modern\\_slavery\\_-\\_Competent\\_Authority\\_guidance\\_v3\\_0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/521763/Victims_of_modern_slavery_-_Competent_Authority_guidance_v3_0.pdf)

19. Additionally, if a migrant domestic worker has an outstanding protection claim, their application for further leave will not be processed until their protection claim is determined first. This leaves recognised victims of trafficking facing an undeterminable length of time waiting, no longer eligible for support as a victim and without permission to work. This is inconsistent with those victims granted discretionary leave to remain who have outstanding protection claims who can otherwise work or access financial support.

**Case Study C: Recognised victim of trafficking applying for further leave to remain as a domestic worker (with outstanding protection claim)**

Gosia was referred to the NRM by Kalayaan in 2014 and issued a positive conclusive grounds decision in 2017. The Home Office accept that she has been diagnosed with Post Traumatic Stress Disorder as a result of her trafficking ordeal. As she was not granted leave to remain, she was exited from support services. Gosia submitted an application for further leave to remain as a domestic worker who has been conclusively accepted as a victim of trafficking within 28 days. This application is pending as she has an outstanding protection claim with the Home Office.

Gosia was not permitted to work whilst her trafficking claim was being determined. She is also prohibited from working whilst her protection claim is outstanding. She is staying amongst friends in the community but they cannot provide her with any financial support. Kalayaan assisted her in making an application for NASS subsistence at £37.75 a week. This has to pay for the cost of travel to appointments with her solicitor, having to report to UKVI, calls to her friends and family, her solicitor and Kalayaan, toiletries and clothes.

20. Kalayaan is deeply concerned that this regime places recognised victims of trafficking in positions of destitution and danger when they should be provided with support and protection and a reasonable chance to look for decent work. The option to apply for leave to remain as a domestic worker as a recognised victim of trafficking leaves them either at risk of becoming homeless and destitute in 14 days or institutionalises their poverty and dependency on the state (NASS) or charitable support by denying them the right to work.
21. The independent review into the Overseas Domestic Worker visa shared the same concern:

*The Government should nonetheless give consideration to the interaction between this 'no recourse to public funds' condition, which would remain in effect even under the provisions of s.53 upon a conclusive grounds decision of the NRM, and the effect of a residence permit granted on the basis of discretionary leave, for example to a victim who is helping police with their enquiries. Such leave does permit the recipient to have*

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*recourse to public funds. In circumstances of such extreme abuse as to result in a positive conclusive grounds decision, recourse to public funds is plainly appropriate as victims may well require more than another job to aid their recovery. The provisions of s.53 should be amended accordingly. A possible model for such is the Destitution Domestic Violence Concession granted to victims of domestic violence, which gives access to public funds for a limited period.<sup>19</sup>*

22. The current legislative framework and administrative system is continuing to fail migrant domestic workers who have been determined to be a victim of trafficking in spite of recent provisions. They remain at risk of becoming homeless or destitute with no support and have their poverty maintained whilst they are denied the right to work<sup>20</sup>. Identification as a victim of trafficking must carry status and meaning.
23. Kalayaan fully supports the Modern Slavery (Victim Support) Bill<sup>21</sup>, currently awaiting second reading in the House of Commons, which sets out the minimum standards of support victims should receive whilst in the NRM and once conclusively recognised as a victim. The bill creates a statutory duty for all confirmed victims of trafficking to be granted discretionary leave for at least 12 months with access to benefits and services to facilitate their recovery and rehabilitation, thereby ensuring continuity of care and a period of stability.
24. This would ensure that migrant domestic workers, along with other recognised victims of exploitation, will be safe and protected and avoid risk of further harm, exploitation or re-trafficking.

For further information, please contact Avril Sharp, Policy Officer at [avril@kalayaan.org.uk](mailto:avril@kalayaan.org.uk).

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<sup>19</sup> See paragraph 112:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/486532/ODWV\\_Review\\_-\\_Final\\_Report\\_6\\_11\\_15\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486532/ODWV_Review_-_Final_Report_6_11_15_.pdf)

<sup>20</sup> Further issues facing migrant domestic workers accepted as victims of trafficking:

<http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Kalayaan-Peers-briefing-Modern-Slavery-Victim-Support-Bill.pdf>

<sup>21</sup> <https://services.parliament.uk/bills/2017-19/modernslaveryvictimsupport.html>