

## **Kalayaan submission to the Universal Periodic Review October 2011**

### **Submitting organisation**

1. Kalayaan was established in 1987. It is a charity that gives direct advice and practical support to migrant domestic workers, including immigration and employment rights advice and assistance retrieving identification documents from employers. Kalayaan campaigns with migrant domestic workers, helping them raise their voices to policy makers. Kalayaan's is a recognised expert on migrant domestic workers in the UK.<sup>1</sup>

### **Executive Summary**

2. This submission discusses migrant domestic workers in the UK. Migrant domestic workers are particularly vulnerable to violations of their human rights. The UK currently has a visa system that offers some protection to migrant domestic workers but this is under threat. This submission argues that the current protections must be maintained, that the UK should improve the system and extend the safeguards to cover domestic workers in the employ of diplomats.

### **Introduction to migrant domestic workers in the UK**

3. Migrant domestic workers have been recognised as vulnerable to serious violations of their rights by a number of United Nations (UN) and regional human rights bodies including the International Labour Organisation, the UN Special Rapporteur on Contemporary forms of Slavery and the Council of Europe. Violations include of the right to be free from slavery, from inhuman and degrading treatment and the right to effective remedy.
4. The vulnerability of migrant domestic workers to violations of their rights stems from their isolation in the private house in an under-regulated working environment. They are dependent on their employer for their work, accommodation and immigration status as well as for information about their rights in the UK. They are further isolated by their lack of English language skills.
5. Approximately 15,000 individuals are issued with 'overseas domestic worker' visas to work with a private household each year. In a written answer to parliament on 13 September 2010 the Immigration Minister stated that 14,892 visas were issued in 2009.<sup>2</sup> The figure for 2010 is 15,350.<sup>3</sup>
6. Approximately 350 migrant domestic worker register with Kalayaan each year, 85% are female. Of the 332 who registered in 2010, 15 approached Kalayaan as they had become homeless having fled an employer, 45 had no passport or identity documents at that time.

---

<sup>1</sup> Kalayaan documents were accepted by the UK in a 1999 regularisation process for migrant domestic workers. Kalayaan sits on the UKBA chaired inter-departmental steering group on migrant domestic workers.

<sup>2</sup> This was later reported by the UKBA as 10,100 visas in the UK Border Agency consultation on employment-related settlement, Tier 5 and overseas domestic workers. <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/employment-related-settlement/employment-related-consultation?view=Binary>

<sup>3</sup> ibid

7. Migrant domestic workers who registered with Kalayaan in 2010 reported that their passports had been withheld by employers (65%), they had not been allowed out of the house unaccompanied (60%), had been abused psychologically (54%), physically (18%) and sexually (3%). Many reported having to work seven days a week with no rest day (67%), being 'on call' 24 hours a day (58%), working 16 hours a day or more (48%) and receiving a salary far lower than the national minimum wage; 56% received under £50 per week.
8. Trafficking for domestic servitude is a problem in the UK; 201 referrals of adult victims trafficked for domestic servitude were made to the National Referral Mechanism in its first 24 months.<sup>4</sup>
9. Domestic workers working with diplomats report similar levels of abuse to those in private households and are found by Kalayaan to be 20 times more likely to have been trafficked. Relative rates of 3.8% trafficked persons on the diplomatic domestic worker route compared to 0.2% on the private household route.<sup>5</sup> Kalayaan believes this difference is due to the fact that the diplomatic domestic worker route does not provide the right to change employer.

### **Legislative and Policy framework**

10. Migrant domestic workers accompanying private households enter the UK on the 'overseas domestic worker' visa. This visa was introduced in 1998 in recognition of the vulnerability of migrant domestic workers to abuse and exploitation. Domestic workers cannot apply to enter the UK independently. The employer wishing to bring them to the UK must evidence that they have been employing the domestic worker for at least twelve months. However the visa is an independent status for domestic workers, which gives them the right to change employer (though not employment sector); recognises them as workers in the UK protected by employment legislation; and allows them to renew their visa (if in full time work). After five years continuous residence migrant domestic workers become eligible for settlement.
11. Migrant domestic workers who enter the UK to work in a diplomat's private house ('diplomatic domestic workers') have always been treated as a separate immigration category. The most notable difference being that they are not able to change employer outside of the specific mission with whom their employer is posted. In 2008 the route on which diplomatic domestic workers entered the UK was subsumed into the larger category of 'Tier 5 International Agreement' under the points based system. It is therefore no longer possible to identify how many diplomatic domestic workers enter the UK. Diplomatic domestic workers retained some rights others on Tier 5 International Agreement do not have, notably the right to renew their visa and to apply for settlement.
12. The UK ratified the Council of Europe Convention on Action against trafficking in 2008. The 'national referral mechanism' (NRM) was introduced to provide identification and support to victims of trafficking. This includes a 45 day stay on removal proceedings and access to safe accommodation.

---

<sup>4</sup> Letter from immigration minister Damian Green to Baroness Cox dated 03 October 2011.

<sup>5</sup> Lalani, M. Ending the abuse: Policies that work to protect migrant domestic workers. Kalayaan May 2011.  
<http://www.kalayaan.org.uk/documents/Kalayaan%20Report%20final.pdf>

It should also include access to legal advice although Kalayaan has found that in practice this is difficult because of a lack of legal aid capacity.

13. The Asylum and Immigration Act 2004 criminalises trafficking for forced labour, including domestic servitude in the UK. There has not yet been a successful prosecution for trafficking an adult into domestic servitude. Section 71 of the Coroners and Justice Act 2009 provided a stand-alone offence of holding someone in forced labour or servitude. There has been one successful prosecution since the offence came into force.<sup>6</sup>

### **Good practices**

14. Kalayaan considers that the UK visa for domestic workers is best practice at preventing abuse and exploitation, though it should be improved and extended (see below). There has been good cooperation between the UK Government and Kalayaan. In 2008 an inter-departmental Government steering group was established, with representation from Kalayaan and Unite the Union. We do not feel this cooperation has been extended into the process of reviewing the route and the Government's proposals for the visa.

### **Major concerns**

15. Kalayaan have major concerns with regards to promoting and protecting the human rights of domestic workers, particularly because the UK Government does not acknowledge there is an issue to address. There is no mention of migrant domestic workers in the UK's response to the committee for CEDAW<sup>7</sup> or in its current action plan on trafficking.<sup>8</sup> Our main concerns are that Government proposals threaten the safeguards provided by the visa, that whilst the visa is recognised as good practice and has dramatically improved the situation for domestic workers the system must be improved to further prevent rights violations, and finally that the system of safeguards needs to be extended to diplomatic domestic workers.

### **Concern 1: Safeguards under threat**

16. The UK Government, has, as part of its drive to reduce net migration proposed to either remove the domestic worker visa or alter it so that there is no right to change employer; no recognition as a worker protected by employment law; no right to renew the visa; and no eligibility for settlement or to bring dependents to the UK. Kalayaan is particularly concerned about removing the right to change employer as there is strong evidence that this provision has dramatically reduced incidence of abuse and exploitation. In 1996, prior to the introduction of the visa, when domestic workers were brought to the UK on visit visas with no associated employment or immigration rights, 89% of those surveyed by Kalayaan reported being denied time off and 100% worked an average of 17 hours per day. The proportion of people reporting physical abuse (39%) was over twice that reported in 2010, and the proportion reporting sexual abuse (12%) was four times as high as in 2010. There were also far higher levels of psychological abuse (87%) reported.

---

<sup>6</sup> Figures for prosecutions relating to the trafficking or forced labour of domestic workers cannot be confirmed officially as data is not held 'by exploitation type'.

<sup>7</sup> UK Seventh Periodic Report to Convention on the Elimination of Discrimination Against Women

<http://www.homeoffice.gov.uk/publications/equalities/international-equality/7th-cedaw-report?view=Binary>

<sup>8</sup> Human Trafficking: The Government's Strategy, July 2011, <http://www.homeoffice.gov.uk/publications/crime/human-trafficking-strategy?view=Binary>

17. The visa has been recognised as good practice by the International Labour Organisation<sup>9</sup>, the United Nations Special Rapporteur on the Human rights of Migrants specifically recommended retaining the visa safeguards and extended them to cover diplomatic domestic workers.<sup>10</sup> General recommendation 26 of the CEDAW committee also recommends that migrant women workers be covered by employment legislation and that residence status should be independent of an employer.<sup>11</sup>
18. What concerns Kalayaan is the fact that the UK has suggested no alternative ways in which the trafficking, exploitation and abuse of domestic workers will be prevented. Removing the visa is only likely to drive the problem 'underground'.
19. The issue of how domestic workers will be able to assert their rights to fair treatment at work if they lose their legal stay the moment they flee an abusive employer has also not been addressed. Employers will know that if the visa of a domestic worker is tied to that specific employer, the worker will have no option but to submit rights violations. Legislation in the UK criminalising trafficking and forced labour, which is already of limited effect, will be unworkable if victims are too scared to approach the authorities for fear of deportation.

### **Improvements are needed to promote and protect human rights**

20. Many domestic workers are unaware of their rights and this makes them vulnerable to violations. The UK Government should ensure that information is provided to domestic workers, at the point of application and in their own language, about their rights in the UK and where they can seek advice and support.
21. Undocumented migrant domestic workers are particularly vulnerable to violations of their human rights. The UK should consider providing bridging visas similar to the Irish scheme, that allows domestic workers whose legal stay has expired through no fault of their own (normally because an employer has withheld their identity documents and misled the domestic worker) to obtain short term permission to work and stay. This would allow them to get back into work and apply to regularise their status with a new employer.
22. Even domestic workers who have valid visas find it difficult to challenge abusive practices, in part because they are misled about the nature of their visa and do not know their rights. In part however this is because the 'no recourse to public funds' rule in the UK excludes migrant domestic workers from publically funded safe housing. Short term safe housing to facilitate move on from abusive employment should be provided to domestic workers who do not meet the trafficking criteria.

### **The visa safeguards need extending to cover diplomatic domestic workers**

---

<sup>9</sup> Draft ILO Multilateral Framework on Labour Migration Non binding principles and guidelines for a rights- based approach to labour migration, Geneva, 31 Oct- 2 Nov 2005. Annex II 'Examples of best practise, VI Prevention of and protection against abusive migration practises', pt 82

<sup>10</sup> Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante, Mission to the United Kingdom of Great Britain and Northern Ireland, A/HRC/14/30/Add.3, 16 March 2010

<sup>11</sup> [http://www2.ohchr.org/english/bodies/cedaw/docs/GR\\_26\\_on\\_women\\_migrant\\_workers\\_en.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf)

23. As discussed above, diplomatic domestic workers are demonstrably more vulnerable to trafficking and rights violations than domestic workers in a private house. General vulnerabilities are exacerbated by their employer's immunity to prosecution and the fact that they cannot flee without losing their immigration status.
24. Diplomatic domestic workers need to be able to change employer in order to challenge and escape rights violations. The right to change employer would not in and of itself conflict with diplomatic immunity. It would however allow domestic workers to test the limits of diplomatic immunity in the civil and criminal courts as they would be able to come forward without fearing deportation. This would arguably prove a deterrent to diplomats treating future domestic workers in this way.
25. Kalayaan are particularly concerned at the lack of a monitoring mechanism for potential rights violations by diplomats. At present the UK Government is only aware of cases where the police have officially asked the Foreign and Commonwealth Office to request a waiver of immunity from the embassy concerned. In a German Institute of Human Rights report<sup>12</sup>, the Foreign and Commonwealth Office stated that they knew only of three cases of alleged violations of domestic worker rights by diplomats whereas Kalayaan have referred nine cases of trafficking by diplomats through the national referral mechanism and eight cases have been reported to the police.
26. Most criminal investigations do not get to the stage of requesting a waiver of immunity because the police turn the victim away either because they are unable to identify the indicators of trafficking or they are not aware that they can investigate a diplomat. In any case trafficking cases are notoriously difficult to prove and as such are often abandoned before they are fully investigated. There are also other authorities who have information on potential rights violations perpetrated by diplomats including the NRM and the employment courts.

**Key priorities for the UK with regard to slavery and domestic workers (Recommendations)**

27. Retain the domestic worker visa including the right to change employer, to renew the visa and eligibility for settlement.
28. Improve protections for migrant domestic workers by (a) providing them with information about their rights and where to go for help (b) instituting a bridging visa for migrant domestic workers who have become undocumented through no fault of their own and (c) providing safe housing to migrant domestic workers who do not fit the criteria of trafficked person
29. Extend the protections of the domestic worker visa to diplomatic domestic workers, most notably the right to change employer, and institute a system to monitor alleged rights violations by diplomats
30. Sign and ratify the ILO convention 189 on 'Decent Work for Domestic Workers'

---

<sup>12</sup> Kartush, A. Domestic Workers in Diplomats' Households: Rights violations and access to justice in the context of diplomatic immunity. German Institute for Human Rights. [http://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/Publikationen/Studie/domestic\\_workers\\_in\\_diplomats\\_households.pdf](http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Studie/domestic_workers_in_diplomats_households.pdf)