

Ending the Abuse



Policies that work to protect migrant domestic workers

by Mumtaz Lalani
Photography by Larry Herman

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ACKNOWLEDGEMENTS

Kalayaan gratefully acknowledges the funder of this research project, Trust for London.

Special thanks go to staff members and volunteers at Kalayaan, and particularly to Emile Dirks for his assistance with data collection and to Dilara Gurpinar for transcribing the research interviews.

Many thanks to the Management Committee for their support of this project and to those individuals who acted as expert readers of this report – Dr Bridget Anderson, Don Flynn, Diana Holland, Christopher Randall and David Ould.

Finally, thanks to all those individuals who gave their time for the interviews used in this report: Jamila Duncan-Bosu, Juliette Nash, Emily Gibbs, Clara Connolly, Marissa Begonia, Margaret Healy, Louise Harcourt, Camilla Brown and especially to all the migrant domestic workers whose experiences are documented within.

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Published May 2011

Contents

4	Executive Summary	
6	Introduction	
8	Chapter 1	Background to migrant domestic workers in the UK
8		The demand for domestic work in contemporary society
8		Migrant domestic workers in the UK
8		Migrant domestic workers: why so vulnerable?
10		Abuse and exploitation
12	Chapter 2	The 'Overseas Domestic Worker' (ODW) visa
12		Situation prior to the introduction of the ODW visa: 1979–1998
13		The impact of the concession: 'If workers don't have rights, of course employers will abuse them'
13		Establishment of visa protections 1998–2002
14		Proposed changes to the ODW visa in 2006
14		Protections afforded by the current 'Overseas Domestic Worker' visa
17		Methods of improving the protections available to migrant domestic workers
22	Chapter 3	Possible alternatives to the current system of protections afforded to domestic workers
22		The ODW visa and UK migration policy
23		The importance of a legal channel of migration
24		Could the UK's assistance measures to trafficked persons act as an alternative method of protection to migrant domestic workers?
32	Chapter 4	Migrant domestic workers accompanying diplomats
32		Vulnerability to abuse and exploitation
32		Increased incidence of trafficking
33		Inadequate response from authorities
33		Situation in other countries
34		The need for policy change
35	Conclusion and Recommendations	
38	Appendix	
39	References	
41	Endnotes	

Executive Summary

From June 2010 to January 2011 the London-based charity Kalayaan conducted research on the 'Overseas Domestic Worker' (ODW) visa system in the UK. Drawing on a combination of quantitative and qualitative data, the research identifies the importance of a legal channel of migration for migrant domestic workers (MDWs) to the UK and confirms that the ODW visa route is working as intended and as such has a negligible impact on net migration to the UK. It also demonstrates the effectiveness of the ODW visa in protecting the rights of MDWs and emphasises the need for similar protections to diplomatic domestic workers. Finally, the research findings indicate that the measures in place to identify and assist trafficked domestic workers in the UK could in no way act as an alternative system of protection to the protections currently afforded to MDWs through the visa. Home Office data for the period from January 2003 to August

The ODW visa has been successful in protecting the rights of MDWs and the protections it affords them will continue to be needed in the long term

2010 shows that 41 per cent of MDWs cited types of abuse or exploitation as their reason for changing employer. The right to change employer thus enables MDWs to escape from abusive employers. Interviews conducted by Kalayaan indicate that this right facilitates workers to negotiate fairer terms and conditions in their future employment, remaining visible in the UK whilst continuing to support their families by sending remittances home.

The visa's portability provision also plays a crucial role in facilitating domestic workers to pursue legal remedies against their employers. Indeed, between May 2009 and December 2010, 53 domestic workers brought employment tribunal cases against their employers; 34 of these cases had been concluded by December 2010. Taking such action would be unthinkable if the worker had to continue working for their employer and residing in their household and would be impossible if workers lost their right to remain in the UK when they fled from an abusive employer.

Further, the protections afforded to MDWs under UK employment law, and in particular, the right to legal remedy, arguably help to reduce the incidence of trafficking and forced labour among MDWs. Indeed, in 2009 the Home

Affairs Committee reported that the visa is one of the most important ways in which trafficking of MDWs can be prevented. As a result, the protections afforded to MDWs through the visa will continue to be needed in the long term.

The ODW visa route is working as intended and has a negligible impact on net migration to the UK

The overwhelming majority of MDWs accompany their foreign employers to the UK for a finite period of time. Estimates using United Kingdom Border Agency (UKBA) figures show that less than 5 per cent of domestic workers who enter the UK on an ODW visa go on to settle. In 2009, MDWs accounted for a mere 0.5 per cent of the individuals who were awarded settlement in the UK, thus showing that this immigration route has a negligible impact on net migration to the UK.

For the few domestic workers who remain in the UK, the route to settlement rids them of their underlying vulnerability by removing their dependency on employers to maintain their immigration status and facilitates their integration into UK society.

The research identifies the importance of a legal channel of migration for MDWs to the UK

In spite of the legal channel which currently exists for employers to bring their MDWs to the UK, this research shows that demand for specific MDWs is such that some employers are prepared to bring their workers by illegal routes. As such, it seems possible that removal of the ODW visa would result in an increase in undocumented workers who are brought into the UK by their employers to work illegally. The research also indicates that there is a higher incidence of trafficking among those brought to the UK on other visas than among those brought on the ODW visa. Therefore, it seems possible that removal of the ODW visa could increase the number of MDWs trafficked via illegal routes to the UK.

The measures in place to identify and assist trafficked persons would in no way act as a viable alternative to the current protections afforded to MDWs through the ODW visa

The measures in place to assist trafficked persons neither identify nor meet the needs of MDWs. First, MDWs experience difficulties when attempting to report trafficking crimes to the police. Second, an over emphasis on the individual's immigration status, poor decision-making and delays in decisions mean that even when referred to the National Referral Mechanism (NRM), the system frequently fails to identify trafficked domestic workers. Third, 102 out of the 157 MDWs who were identified as trafficked by Kalayaan during Operation Tolerance (May–September 2008) and from April 2009–December 2010 chose not to be referred to the NRM. Instead, most preferred to move on from their trafficking experience and find new employment. Such a statistic provides strong evidence that the measures to assist trafficked persons fail to meet the needs of trafficked domestic workers.

In addition, the NRM offers no protection at all to domestic workers who have been subject to forced labour but have not been trafficked. Further, the measures to protect trafficked persons are most effective and least costly when the individual in question has a valid ODW visa and the removal of the visa would therefore drastically increase costs. Indeed, estimates by Kalayaan show that without a valid visa and the right to change employer, an additional 78 individuals would have required assistance, including access to safe housing, at an estimated cost of more than £850,000 over the course of 25 months. Thus, the UK's protections to identify and assist trafficked domestic workers would be woefully inadequate as an alternative system of protections to those afforded to MDWs under the ODW visa.

Without the right to change employer domestic workers in diplomatic households are more at risk of being trafficked to the UK for domestic servitude

Diplomatic domestic workers experience similar levels of exploitation to domestic workers in private households yet are not currently afforded the same protections as the latter. Without the right to change employer, diplomatic domestic

workers' negotiating power vis-a-vis their employment terms and conditions is virtually non-existent. Further, when fleeing from abusive employers they automatically lose their immigration status and become vulnerable to further exploitation. This in combination with the diplomatic immunity of their employers dramatically increases the employer's power over the domestic worker and makes the latter particularly vulnerable to being trafficked to the UK for domestic servitude. Kalayaan has estimated that approximately 3.8 per cent of diplomatic domestic workers are trafficked compared to 0.2 per cent of domestic workers in private households. It therefore asserts that the UK government is failing in its due diligence to prevent contemporary forms of slavery and recommends that the government extends the right to change employers to diplomatic domestic workers as an urgent priority.

Despite the success of the ODW visa system in protecting the rights of migrant domestic workers, this research highlights the existence of certain gaps in the protections afforded to them. In light of this, Kalayaan makes the following recommendations:

Recommendations

- 1 Extend the right to change employer to domestic workers in diplomatic households
- 2 Provide information to migrant domestic workers on their rights and responsibilities when issuing visas
- 3 Institute a bridging visa for MDWs who have become undocumented through no fault of their own
- 4 Maintain the route to settlement for MDWs because it finally rids them of an underlying vulnerability
- 5 Introduce an amendment to the National Minimum Wage (NMW) Act 1998 which clarifies MDWs' entitlement to the NMW in all circumstances
- 6 Regulate the rate at which standby hours are remunerated
- 7 Provide safe housing
- 8 Enforce tax and National Insurance Contributions payments
- 9 Provide a residence permit for trafficked persons wishing to pursue compensation
- 10 Support and Ratify the ILO Convention on 'Decent Work for Domestic Workers'
- 11 Provide training to law enforcement officials on trafficking for domestic servitude

Introduction

SYNOPSIS

Given the current global attention on domestic workers,¹ the coalition government's review of the ODW immigration route to the UK provides an excellent opportunity to reflect on the effectiveness of previous and current policy around migrant domestic workers (MDWs) and to improve the protections available to them. For more than a decade, the London-based charity Kalayaan has observed the impact of policy relating to MDWs in the UK and specifically with regards to the 'Overseas Domestic Worker' (ODW) visa. Using a combination of quantitative and qualitative evidence, this report will highlight those areas of policy success as well as those areas in which change is needed in order to ensure the protection of this vulnerable group of predominantly female workers in the UK.

From June 2010 to January 2011 Kalayaan conducted research on the 'Overseas Domestic Worker' (ODW) visa system in the UK. The research assessed the effectiveness of the current protections afforded to migrant domestic workers (MDWs) through this visa and considered whether the measures in place to identify and assist trafficked MDWs in the UK could act as an alternative system of protection. It also investigated the effect of removing the legal route by which employers bring their migrant domestic workers to the UK and the impact of the ODW visa on net migration.

KALAYAAN

Kalayaan, (which means 'freedom' in Tagalog, the national language of the Philippines), is a charity that has over twenty years of experience in providing advice, advocacy and support services to migrant domestic workers (MDWs) in the UK. It was established in 1987 as a campaigning group aiming to change the immigration policy and practice that tied MDWs to their employers, even in cases of extreme abuse and exploitation. Advocacy remains an important component of Kalayaan's work and is informed by the advice and support work that the organisation provides to MDWs on immigration and employment rights. Kalayaan also provides MDWs with training in areas such as accessing healthcare, employment rights, and English for speakers of other languages (ESOL) classes.

Until 2009, Kalayaan's remit was to work only with those migrant domestic workers who had entered the UK on the ODW visa either with a private or diplomatic household. With the introduction of anti-trafficking measures in the UK, Kalayaan has now informally extended their remit to include

individuals it believes may have been trafficked to the UK for domestic servitude, even if that worker was brought via a different immigration route.

Kalayaan's work at the grassroots level has enabled it to develop considerable expertise with regards to the identification and support of trafficked persons. Indeed, following the introduction of anti-trafficking measures in the UK in 2009, Kalayaan was appointed by the government as one of the few first responders – certain named NGOs, the police or local authorities with experience in identifying trafficked persons – who have the authority to refer trafficked persons to the National Referral Mechanism (NRM).² As part of its role as a first responder, Kalayaan has co-delivered training to the UK Human Trafficking Centre (UKHTC)³ with the Poppy Project⁴ on how to identify MDWs who have been trafficked to the UK for domestic servitude.

Kalayaan's clients come from over 30 different countries, and 86 per cent are women aged between 19 and 59 years old. Approximately 350 new workers register with Kalayaan each year and services are provided to around 3,000 people. The organisation is registered with and regulated by the Office of Immigration Services Commissioner (OISC). It was granted charitable status in 2003. In 2006 Kalayaan was awarded a Centre for Social Justice Award and in 2010, Kalayaan was awarded the *Guardian* Charity Award in recognition of its excellence and achievement in supporting MDWs.

DEFINITION OF DOMESTIC WORK

The draft International Labour Organisation (ILO) Convention on Domestic Work defines domestic work as 'work performed in or for a household or households' and domestic workers as 'individuals who regularly perform domestic work within an employment relationship'.⁵ For the purpose of this report, the term 'migrant domestic workers' will be used to refer to foreign national women and men who are brought to the UK by their employers for the purposes of working in their private household. This definition includes people working full-time as housekeepers, maids, cooks, nannies, elder carers, chauffeurs and security staff.

METHODOLOGY

The research draws on a combination of quantitative and qualitative data. Quantitative data was collected and analysed from Kalayaan's database, which contains details on all MDWs that register with Kalayaan. Additional quantitative data was



supplied by the Poppy Project and UKBA in response to requests from Kalayaan.

Qualitative data was collected through 20 semi-structured interviews with MDWs. Ten interviews were conducted with MDWs who had been brought to the UK by their employer on the ODW visa using a random sampling from a list of clients who had approached Kalayaan for assistance within the last two years.⁶ A further ten interviews were conducted with MDWs who had been brought to the UK by their employers on other visas (e.g. visitors' visa) despite the fact that they were brought to the UK for the purpose of domestic work.⁷ These interviewees were selected using a random sampling method from a list of individuals who had been brought to the UK on other visas and had approached Kalayaan for assistance within the last two years.

Most interviews were conducted in English. On a few occasions, interpreters who had received training from Kalayaan were used. Each MDW provided their informed consent, either written or oral, prior to the start of the interview. Interviews were recorded with the exception of a few cases where the interviewee requested that only a written record of their responses was kept. Interview questions focused on the respondent's migration and employment history, their experiences of working in the UK as a migrant domestic worker and their immigration status.

A series of in-depth interviews was also conducted with key informants including North Kensington Law Centre, the Poppy Project, Justice 4 Domestic Workers and present and previous Kalayaan staff members.

Data collected through Kalayaan's employment law project was also used and primarily took the form of employment tribunal judgements which show the judge's independent findings about the treatment meted out to domestic workers. The project, which began in May 2009 and is funded by the

Barrow Cadbury Trust, provides support and employment advice to MDWs and has enabled a number of MDWs to take employment tribunal cases against their employers.

In addition to this primary research, the report also draws upon a wide variety of secondary sources including reports produced by governmental and non-governmental actors, and relevant academic publications.

OUTLINE OF THE REPORT

Chapter 1 looks at the growth in demand for domestic work in contemporary global society. It also outlines the terms and conditions of the ODW visa and examines the underlying reasons for MDWs' vulnerability to abuse, exploitation and human trafficking, and the incidence of these types of mistreatment among Kalayaan's clients.

The second chapter focuses on the current protections afforded to MDWs through the ODW visa and assesses the impact of these protections on this particularly vulnerable group. It also suggests methods of improving the current system to further reduce their vulnerability.

In light of the government's review of existing immigration routes to the UK, Chapter 3 examines the impact of the ODW visa on UK settlement figures and net migration to the UK and considers whether the identification and assistance measures for trafficked persons could provide an alternative system of protection to migrant domestic workers.

The final chapter examines the difference between the protections available to diplomatic domestic workers and migrant domestic workers in private households and the impact this has on the former's vulnerability.

The report concludes with an assessment of the ODW visa system's success in protecting the rights of migrant domestic workers and provides a list of key recommendations aimed at reducing the current gaps in the protection afforded to MDWs.

Chapter 1

BACKGROUND TO MIGRANT DOMESTIC WORKERS IN THE UK

THE DEMAND FOR DOMESTIC WORK IN CONTEMPORARY SOCIETY

Over the past few decades there has been substantial growth in the demand for paid domestic work which largely relates to the feminisation of the labour force. In the UK, for example, there has been a dramatic increase in women's employment in well-paid occupations which are classed as 'professional', such as law, medicine and research, as well as in low paid and part-time work.⁸ For many, the employment of a domestic worker continues to be the only way in which women can envisage negotiating their multiple responsibilities of work, home and children. In recent years there has also been a noticeable increase in the demand for elder care in private households, the reasons for which are complex and relate to the privatisation of care, the ageing population and other economic and social changes.⁹

As in other low-wage, low-status sectors, demand for migrants is related to their cost and flexibility. In the domestic work market, such demand is reflective of migrants' flexibility with regards to the hours they work and their willingness to live in their employer's household but is also inextricably linked to gender and race. Indeed, a survey conducted in 2006 with a cross-section of domestic recruitment agencies around the UK estimated that up to 70 per cent of the demand for domestic work is met by non-EEA nationals, most of whom are on domestic worker visas or who have Indefinite Leave to Remain (ILR) but are likely to have come to the UK on the ODW visa.¹⁰

MIGRANT DOMESTIC WORKERS IN THE UK

Migrant domestic workers enter the UK accompanying their employer or a member of their employer's family. The requirements to be met by a person seeking leave to enter the United Kingdom as a domestic worker in a private household are that he or she:

- (i) is aged 18–65 inclusive;
- (ii) has been employed as a domestic worker for one year or more immediately prior to application for entry clearance under the same roof as his employer or in a household that the employer uses for himself on a regular basis and where there is evidence that there is a connection between employer and employee;
- (iii) that he intends to travel to the United Kingdom in the

company of his employer, his employer's spouse or civil partner or his employer's minor child;

- (iv) intends to work full time as a domestic worker under the same roof as his employer or in a household that the employer uses for himself on a regular basis and where there is evidence that there is a connection between employer and employee;
- (v) does not intend to take employment except within the terms of this paragraph; and
- (vi) can maintain and accommodate himself adequately without recourse to public funds; and
- (vii) holds a valid United Kingdom entry clearance for entry in this capacity.¹¹

“The claimant being a domestic servant from Nigeria, was treated less favourably in that she was verbally abused and assaulted”

Employment Tribunal case, Tribunal Case number: 2202608/2009 and 3304061/2009, Watford Employment Tribunal, 2010.

In order to be eligible to renew their visa, MDWs must remain in continuous full-time employment in a private household for the duration of their stay in the UK and must continue to fulfil the requirements above. MDWs are usually required to renew their visa every six months or every year depending on the expected length of their employer's stay in the UK. After five years in the UK, MDWs are allowed to apply for ILR, and can settle in the country.

Approximately 16–18,000 MDWs enter the UK each year and of these approximately 6 per cent renew their visas each year.¹² Table 1 below shows the number of domestic workers entering the UK each year since 2003; some of these annual applications are likely to be from the same individuals re-entering the country. It indicates that the number of MDWs entering the UK has remained steady. Indeed, the previous Immigration Minister, Phil Woolas, confirmed that these numbers show that the ODW visa route has not been abused.¹³

MIGRANT DOMESTIC WORKERS: WHY SO VULNERABLE?

The vulnerability of low-wage migrant workers is widely recognised in the UK.¹⁴ Migrant domestic workers are

TABLE 1: Numbers of migrant domestic workers entering the UK on the overseas domestic worker visa route each year

Year	Domestic worker (other)	Domestic worker (visitor)	Domestic worker (diplomatic)	Total
2003	989	15,977	228	17,194
2004	1086	15,663	227	16,976
2005	1399	15,550	236	17,185
2006	1626	16,302	329	18,257
2007	1651	15,013	253	16,917
2008	1720	14,749	191	16,660
2009	1740	13,152	245 ¹⁵	15,137

Source: UKBA¹⁶

particularly vulnerable due to structural reasons relating to their dependency on their employers and because of the nature of their workplace. Domestic work takes place in the private household away from the outside world and the oversight of regulatory bodies. In the UK, many MDWs also live in their employer's household, which exacerbates their isolation and invisibility.

Under the UK immigration rules, MDWs are dependent on their employers for their work, their accommodation and in order to maintain their immigration status. In order to successfully renew their visa, MDWs must show evidence of their employment, usually through payslips and a letter or contract from their employer confirming their employment. Given that the employment relationship between MDW and employer is often invisible to the outside world, some unscrupulous employers use this dependency as a means to exploit workers by paying them lower wages, refusing to give them time off, refusing to pay their tax and national insurance contributions and taking advantage of their lack of familiarity with employment and immigration law in the UK. Such tactics are particularly damaging when the worker in question is illiterate.¹⁷ This reinforces the master–servant relationship, which traces its history back to the nineteenth century when the ‘master’ was able to exercise control over how, what, where and when the work had to be done by the ‘servant’.¹⁸

Further, the demand for domestic work is highly gendered and racialised.¹⁹ The former relates to the fact that domestic work is largely outsourced to women, although there are a small number of male domestic workers. The latter can impact MDWs' experiences of work at the point of entry into work and within the job itself. Previous research by Kalayaan shows that certain nationalities experience differential treatment by their employer in terms of the amount of work they are expected to do as well as the types of tasks, with certain workers emphasising the degrading tasks they are expected to perform.²⁰

A domestic worker with her child. Due to their long hours of work, only a few domestic workers are able to have their own children with them.



When migrant domestic workers experience racial discrimination, it can be extremely difficult to deal with since there is no one to whom the worker can report the incident. Employment tribunals are therefore an important way in which MDWs are able to seek legal remedy against their employers. The quote below from one such employment tribunal judgement provides more detail into the types of racial discrimination claim which are upheld vis-a-vis domestic workers:

The claimant being a domestic servant from Nigeria, was treated less favourably in that she was verbally abused and assaulted...This would not have been the case had the comparator been someone who was a domestic servant but British or British-based...No adequate explanation being provided [by the Respondent], we accept the claimant's account. She was discriminated on racial grounds being an employee on a domestic servant visa from Nigeria [...] Accordingly, we find that the direct race discrimination claim has been proved.²¹

ABUSE AND EXPLOITATION

As a result of the factors discussed above, migrant domestic workers are highly vulnerable to abuse and exploitation. Indeed, the statistics below demonstrate that over half of the workers who registered with Kalayaan between January 2008 and December 2010 were subject to psychological abuse from their employer, while close to 20 per cent experienced physical abuse. Approximately 5 per cent of workers also reported being sexually abused or harassed by their employer although the true figure is likely to be higher since many prefer not to report such experiences to Kalayaan.²² Exploitation of migrant domestic workers is also prevalent in the UK. Within the aforementioned time period, 65 per cent of workers registering at Kalayaan described working seven days a week with no day off or significant rest period and 57 per cent stated that they received a wage of £50 a week or less.

Although it is difficult to assess how representative these figures are of the experiences of MDWs in the UK as a whole, it is evident that those who are generally treated well would be unlikely to register with Kalayaan; conversely those experiencing the highest levels of abuse and exploitation would be less likely to ever learn of Kalayaan's existence.

TABLE 2: Types of abuse and exploitation experienced by clients registering with Kalayaan

Type of abuse/exploitation	2008	2009	2010
1 Control			
Not allowed out unaccompanied	63% (n ²³ =340)	56% (n=240)	60% (n=284)
Passport was withheld	59% (n=92) ²⁴	68% (n=319)	65% (n=290)
2 Abuse			
Psychological abuse	59% (n=344)	60% (n=319)	54% (n=285)
Physical abuse/assault	16% (n =342)	15% (n=316)	18% (n=283)
Sexual abuse/harassment	5% (n=273)	5% (n=265)	3% (n=239)
Did not receive regular/ sufficient food	22% (n=336)	27% (n=311)	26% (n=279)
Did not have own room (e.g. sleeping on kitchen or living room floor)	43% (n=340)	46% (n=311)	49% (n=281)
3 Exploitation			
Working seven days a week with no time off	60% (n=340)	67% (n=317)	67% (n=287)
Had to be available 'on call' 24 hours	67% (n =239)	76% (n=264)	58% (n=239)
Worked 16 hours a day or more per day	50% (n =322)	51% (n=282)	48% (n=252)
Received a salary of £50 or less per week	56% (n =315)	59% (n=281)	56% (n=238)

Source: Kalayaan database

TABLE 3: Types of abuse and exploitation recorded in recently concluded employment tribunal cases

Type of abuse/exploitation	Number of individuals experiencing abuse/exploitation	Number of individuals experiencing no such abuse/exploitation	Number of individuals for which no data was available
Passport withheld	10	4	3
Not allowed out the house unaccompanied	12	4	1
Psychological abuse	13	2	2
Physical abuse	6	10	1
Sexual abuse	4	12	1
No time off	14	1	2
Received a salary of less than £50 per week	12	4	1

Such statistics are however in keeping with the findings of employment tribunals that have adjudicated upon a number of cases brought by migrant domestic workers against their employers. The table above shows the incidence of abuse and exploitation in the 34 cases involving MDWs which have been concluded between May 2009 and December 2010.²⁵

As with the racial discrimination claim mentioned previously, employment tribunals provide an important way for migrant domestic workers to document the mistreatment they experience from their employers. The extract below from an employment tribunal judgement indicates the level of the ill-treatment that they sometimes receive:

We find that when Mrs E. [the employer] was angry, she verbally abused the claimant. The claimant's fear was that she would be thrown out of the flat because she had nowhere else to go. She did not have her passport in her possession, had no money and knew very little about this country [...] [On one occasion], the claimant refused [to return the mobile phone that had been given to her] and was struck in the face by Mrs E. The other Respondent, Mr K., then assaulted her. He kicked her in the stomach. At that point the claimant handed to them the mobile phone. Mr K. then pretended to speak to the Police by telephone. The respondents then told the claimant she would be sent back to Nigeria and that her child would be killed [...] The claimant was then evicted from their premises with a warning that if she contacted the police, she would be reported and returned to Nigeria.²⁶

“She did not have her passport in her possession, had no money and knew very little about this country”

Employment Tribunal case, Tribunal Case number: 2202608/2009 and 3304061/2009, Watford Employment Tribunal, 2010.

Chapter 2

THE 'OVERSEAS DOMESTIC WORKER' VISA

INTRODUCTION

This chapter assesses the effectiveness of the current protections afforded to migrant domestic workers through the ODW visa system. It draws on the long campaigning history associated with migrant domestic workers' rights in the UK in order to contextualise these protections and in doing so emphasises the fundamental role of these protections in reducing MDWs' vulnerability to abuse and exploitation. It also highlights certain gaps in the current protections available to them and provides suggestions on ways to further alleviate their vulnerability.

Situation prior to the introduction of the 'Overseas Domestic Worker' visa: 1979–1998

Migrant domestic workers entering the UK typically accompany wealthy employers including businessmen, diplomats, tourists and expatriates returning from abroad. When the Conservative government abolished work permits for MDWs in 1979, they recognised the importance of continuing to attract the skilled and wealthy to the UK:

The government thought it would be unreasonable for a domestic worker for an employer [...] abroad to be prevented from coming to the United Kingdom if the employer came here. This is both humanitarian and pragmatic. [...] Looking at our national interest, if wealthy investors, skilled workers and others with the potential to benefit our economy were unable to be accompanied by their domestic staff they might not come here at all but take their money and skills to other countries only too keen to welcome them.

(Lord Reay, speaking in a House of Lords debate on overseas domestic workers, 28 November 1990, Hansard col. 1052.)²⁷

A concession was therefore devised under which the employer could bring in their worker under one of two categories, as 'visitors' or as 'persons named to work with a specified employer'.²⁸ In practice, though, the particular stamp issued was largely arbitrary and migrant domestic workers were admitted to the UK on a wide variety of visas. Some workers accompanying the extremely wealthy entered the UK without any immigration control at all. Thus, 'although the Concession appeared to give some structure to the immigration status of MDWs accompanying their employers, the reality was very different.'²⁹

“Looking at our national interest, if wealthy investors, skilled workers and others with the potential to benefit our economy were unable to be accompanied by their domestic staff they might not come here at all but take their money and skills to other countries only too keen to welcome them.”

Lord Reay, 28 November 1980

Margaret Healy, who co-founded the Commission for Filipino Migrant Workers (CFMW) in 1979 described the situation which resulted from the concession, saying:

They [domestic workers] were literally tied to that employer. Outside the household of that employer they had no rights whatsoever in the UK. In fact they were considered non-persons. They had even fewer rights than tourists or visitors who had overstayed because they at least would have had the right to appeal, whereas domestic workers had no right. They just had no rights whatsoever.³⁰

Applications to change employer were denied on the basis that no work permit had been granted on entry to the UK. As a result, employers wielded exceptional power and control over their migrant domestic workers who were entirely dependent on their employer in order to retain any legal right to remain in the country, as well as for their accommodation, their work and the salaries their families relied on. Abuse of migrant domestic workers was common and followed a certain pattern: 'no passport, unpaid wages, no belongings and disturbing reports of brutal conditions.'³¹ When MDWs fled from abusive employers, they immediately became undocumented. There was no opportunity for them to recoup unpaid salary or to go to the police to report a crime as they were afraid of being deported, and as a result there were absolutely no sanctions on abusive employers. In the early 1980s, an increasing number of MDWs began to approach

TABLE 4: Comparison of the levels of abuse and exploitation experienced by MDWs in 1996 and 2010

Type of abuse/exploitation	1996	2010
Denied time off	89%	67%
Psychological abuse	87%	54%
Physical abuse	39%	18%
Sexual abuse	12%	3%
Passport withheld by employer	62%	65%
Were given insufficient food	38%	26%
Worked an average of 17 hours a day	100%	48% (worked 16 hours a day or more)

the CFMW for assistance which prompted the establishment of an organisation of undocumented migrant domestic workers called Waling-Waling³² in 1984. The CFMW and Waling-Waling began to work closely together providing practical support to MDWs who had recently escaped from abusive employers.³³

THE IMPACT OF THE CONCESSION: 'IF WORKERS DON'T HAVE RIGHTS, OF COURSE EMPLOYERS WILL ABUSE THEM'³⁴

The inhumane treatment experienced by many MDWs during the period in which the concession was in operation received substantial media coverage (see case study overleaf), largely as a result of the campaign which is discussed in the following section of this chapter. The results from a 1996 Kalayaan–CFMW survey conducted with 1,000 MDWs are shown above and a comparison is made with Kalayaan's registration statistics from 2010.³⁵ The high levels of abuse and exploitation which remain today are reflective of the underlying vulnerabilities associated with domestic work discussed in the background chapter. Nevertheless, the statistics demonstrate that without the basic rights afforded to migrant domestic workers under the ODW visa, the incidence of almost every type of abuse and exploitation was even higher than it is today. The particular importance of the right to change employer is indicated by the fact that the only type of abuse to have increased since the 1990s is that of employers withholding a worker's passport, presumably as an attempt to stop the worker from being able to change employers. The following section of the report discusses the ways in which these basic protections help to reduce MDWs' vulnerability.

Case Study

In 1996 *The Times* published an article about Samantha, a Filipina domestic worker employed in the house of a Middle Eastern family living in the UK. It describes how on the second day of her employment in the house, her employer raped her: 'He lay on my bed and said that it was part of my duty to give him pleasure. I cried and begged him to leave me alone, but he grew angry and began to hit me around the head and call me

bad names. I cannot remember what happened next – I must have passed out. When I woke up my face was swollen and bruised and my pyjamas were ripped and torn on the floor. There was blood on my body and I hurt everywhere.'³⁶ Samantha is also quoted regarding the privations she experienced while being employed by that family: 'They told me I could not eat food from the fridge – only scraps that they left from their meals. I was hungry and frightened. I could not understand why they were treating me like an animal they didn't like [...] I cried with gratitude when they were nice and then they would start to hurt me again. I thought I was going mad.'³⁷

Establishment of Visa Protections: 1998–2002

Over the next ten years, Kalayaan campaigned vigorously on migrant domestic workers' rights with the assistance of the trade unions, particularly the Transport and General Workers Union as well as refugee and migrant organisations and the church sector.³⁸ In the run up to the 1997 election, the following campaign demands were made: MDWs should be admitted as workers with the right to change employers and eventually apply for indefinite leave to remain. Moreover, those MDWs who had entered the country with their employer and subsequently become illegal should have their status legalised. When the new government came to power in 1997, Kalayaan's demands were met and the government recognised the vulnerabilities of MDWs and the need to offer them a system of protection.³⁹ In doing so, the government instituted the ODW visa first as a policy, and on 18 September 2002 they incorporated its protections into the immigration rules by formally changing MDWs' immigration status.⁴⁰

Without the basic rights afforded to migrant domestic workers under the ODW visa, the incidence of almost every type of abuse and exploitation was even higher than it is today.



A domestic worker enjoys the Kalayaan Christmas party at St Francis of Assisi Community Centre.

Proposed changes to the ODW visa in 2006

In March 2006, the government unveiled its plans for the new Points Based System. At a meeting with Kalayaan on 10 March 2006, the Immigration and Nationality Directorate (IND) proposed changes to the visa system for domestic workers. According to these proposals, MDWs would enter the UK on a six-month non-renewable amended business visitor visa and would now become known as ‘domestic assistants’ rather than as ‘domestic workers’.⁴¹ In addition to only being allowed to remain in the UK for six months, MDWs would have been unable to change their employer without losing their immigration status and would have effectively lost access to any employment rights.

Evidence presented in this report indicates the real danger that removing MDWs’ right to change their employer without jeopardising their immigration status, would have increased

their vulnerability to abuse and exploitation (see statistics above demonstrating the situation prior to 1998). Further, MDWs would have been unable to access their employment rights, including the right to pursue legal remedies, without the right to remain in the UK or to find alternative employment to support themselves during a lengthy legal process. Without any de facto legal protections for workers and with the prospect of impunity for transgressions of employment law, the new proposals also posed an increased risk that unscrupulous employers would recruit MDWs abroad for the purpose of trafficking them into forced labour in the UK.

The proposed time limit of six months also posed significant practical problems. Many employers come to the UK for longer than six months, and were unlikely to ask their nanny or elder-carer to leave the UK before them. For reasons concerning the power of employers in a domestic work setting which have already been elaborated upon, there was a very real concern that measures which restricted migrant domestic workers to relatively short periods of employment would have led to an increase in the number of MDWs becoming undocumented.

In response, Kalayaan mounted a campaign with the support of Unite the Union and other NGOs and published a report with Oxfam entitled ‘The New Bonded Labour?’ which outlined the impact of the proposed changes to the UK immigration system on MDWs.

Ultimately, after two years of campaigning by Kalayaan, the short sightedness of these proposals was recognised. In June 2008, Liam Byrne, the then Home Office Minister for Immigration, announced that they would be dropping proposals to bring MDWs as ‘Business Visitors’. He also described how he was ‘proud of the protections we afford to overseas domestic workers’ and announced that the current ODW visa system would be maintained for at least the first two years implementation of the Points Based System.⁴² Further, in a letter to Diana Holland of Unite the Union, he recognised the vulnerability of migrant domestic workers and stated that no changes would be made to the current protections for migrant domestic workers unless ‘an appropriate package of safeguards against abuse and exploitation is in place’.

Protections afforded by the current ‘Overseas Domestic Worker’ visa

When the ODW visa system was introduced in 1998 as a policy and later included into the Immigration Rules, migrant domestic workers were afforded certain fundamental protections. They were formally recognised as workers, which entitled them to basic rights under UK employment law including the right to pursue legal remedies against their employer. Crucially, they were also afforded the right to

“Whilst the process of both preparing and appearing in court is often a very emotionally challenging experience, workers have reported how transformative the process can be.”

Community Advocate, Kalayaan

change their employer within the domestic work category without losing their immigration status.

EMPLOYMENT RIGHTS

MDWs’ right to protection under UK employment law is confirmed on the UKBA website.⁴³ Their basic rights include the right to the national minimum wage (NMW), working time rights (including breaks, holiday pay and statutory sick and maternity pay), the right to a contract and wage slips and a notice period. These basic protections are essential since not only do they give MDWs the right to pursue legal remedies against their employers in the case of mistreatment but also because they provide leverage to domestic workers and to some extent redress the power imbalance inherent in the ‘master-servant’ relationship. Without these rights and the ability to enforce them, the exploitation of migrant domestic workers would increase (as the statistics from 1996 demonstrate). The right to pursue legal recourse is intrinsically linked to the right to change employer, since taking a case against an employer who a domestic worker continued to live with and work for would be untenable.

Although the ability to take legal action against their employers is clearly of fundamental importance to domestic workers who have experienced mistreatment and wish to obtain justice, it also poses many challenges for them. Perhaps most importantly they fear losing their jobs, which are often the sole source of income for workers and their families. However, other factors do play a role including unfamiliarity with English law, illiteracy in English and in their mother tongue, and feelings of fear and intimidation at the prospect of having to face their

employer in court, particularly in cases where serious abuse has occurred.⁴⁴ Given these challenges, the fact that 87 migrant domestic workers have been referred to employment lawyers for advice between May 2009 and December 2010 demonstrates that when given the right to change employer, and the requisite assistance to negotiate the English legal system, MDWs do wish to pursue cases to enforce their rights. This is not only important in terms of achieving justice for these workers but also in acting as a deterrent to unscrupulous employers who realise that they cannot act with impunity.⁴⁵ The majority of these workers – 61 per cent (53 individuals) – chose to make employment tribunal claims against their employers. North Kensington Law Centre (NKLC), which has worked in partnership with Kalayaan on many of these cases, explains this preference saying that unlike in criminal cases where the claimant is not in control of the way the case proceeds, employment tribunals ‘...put domestic workers in the driving seat. For the first time you are in charge and you make the decisions. Do you want to take the case? What claims do you want to bring?’⁴⁶

Of the 53 cases in which employment tribunal claims were made, the majority brought multiple claims against the employer including claims of race discrimination, failure to pay the national minimum wage (NMW), breaches of working time regulations and failure to provide employment particulars such as written contracts (see table below for a full breakdown).⁴⁷

Of the 53 employment tribunal claims that were made by domestic workers, 34 have been concluded thus far. Of the 14 claims brought to hearing 8 claims were successful on all grounds, in three several heads of claim were successful and in only three were the claims unsuccessful. 20 of the concluded claims have been settled. The average amount awarded through an employment tribunal judgement was £87,394 with a total of £786,548 being awarded. Meanwhile, the average size of the settlement was £11,743 with a total of £234,865 awarded. The remainder of the cases are either still in the pre-action phase or the hearing has been listed.⁴⁸

It should be noted, however, that none of the tribunal awards have been received thus far. This is due to existing legal and financial obstacles to enforcement.⁴⁹

TABLE 5: Breakdown of employment tribunal claims brought by MDWs

Claim	Number brought	Successful	Settled ⁵⁰	Unsuccessful
Unfair dismissal	34	2	6	1
National Minimum Wage	41	4	10	2
Sex discrimination	3		1	
Race discrimination	36	4	6	2
Working time regulations	38	2	8	2
Failure to provide employment particulars	35	3	6	0

However, as a Community Advocate at Kalayaan indicates,

for many clients the motivation to take a case to tribunal is justice as opposed to financial gain. Whilst the process of both preparing and appearing in court is often a very emotionally challenging experience, workers have reported how transformative the process can be simply as a result of being treated with respect and understanding by their legal representatives.⁵¹

She provides the example of a migrant domestic worker from Nigeria who had a life-changing experience in court when she witnessed the employer who had physically abused her and exploited her for so many years being publicly reprimanded by the judge for her behaviour:

This moment proved to her that her employer was not omnipotent as she had previously believed and gave her the confidence to continue to speak out for domestic workers' rights.⁵²

The discussion above underlines the impact that these basic employment rights can have on the lives of individual migrant domestic workers. Without the ODW visa, migrant domestic workers would find it almost impossible to take cases against their employers since the tribunal would be powerless to enforce what would be viewed as an illegal contract. In addition, workers would be unable to support themselves financially, and would have no permission to remain in the UK while awaiting the outcome of the tribunal hearing.

THE RIGHT TO CHANGE EMPLOYER

The right to change employer, or 'portability' of permission to work, enables MDWs to escape from abusive or exploitative employers without becoming undocumented. This means that migrant domestic workers can report crimes to the police and seek justice through the courts without fearing deportation. It also ensures that they remain visible to the immigration authorities, paying visa fees and taxes while at the same time supporting their families in their countries of origin. When MDWs change employers, they are requested to write to the Home Office providing details of their new employer and citing a reason for the change in employer. Home Office data for the period from January 2003 to August 2010⁵³ shows that 969 out of 2378 (or 41 per cent) of migrant domestic workers cited abuse/exploitation as the reason for changing their employer.⁵⁴ Given that many MDWs prefer not to reveal their personal experiences to the Home Office, the figures are likely to be much higher in reality. Nonetheless, this statistic serves to underline the importance and necessity of the right to change employer in terms of enabling MDWs to escape from exploitative employment relationships. The table below provides a breakdown of the types of abuse or exploitation cited by MDWs.

Semi-structured interviews were conducted by Kalayaan with 10 MDWs who had previously changed employer in order to provide insight into the impact of the right to change employer on their employment experiences. 8 out of the 10 individuals who were interviewed went on to have significantly better experiences with their subsequent employer.⁵⁵ The table below shows the ways in which their employment experiences improved while the case study demonstrates how the visa portability provision facilitates MDWs to escape from exploitative situations and to negotiate fair employment terms and conditions.

TABLE 6: Breakdown of the types of abuse or exploitation cited by MDWs when writing to the Home Office regarding their change of employer

Reason given for changing employer (abuse/exploitation only)	Number
Exploitation	343
Maltreatment/mistreatment	313
Low pay	282
Long hours/overworked/excessive workload	227
Abuse	279
Little or no time off	98
Poor conditions	54
Other (e.g. non-payment of tax and NIC, retention of worker's passport)	102
Total	969

Source: UKBA (Note: some ODWs provided more than one type of abuse/exploitation as a reason for changing employer, all types have been recorded therefore the figures will not sum to 969.)

TABLE 7: Reasons stated by MDWs for their improved employment experience

Reason stated for improved employment experience	Frequency
New employer provided better salary	8
New employer agreed to the domestic worker having a day off each week	8
New employer agreed to pay tax and National Insurance contribution	3
Better general treatment of domestic worker (i.e. no verbal abuse, threats etc)	4
New employer provided domestic worker with regular food	1
Worked better hours	3
Domestic worker now has own room	4
Total	8

(Note: Some MDWs cited more than one reason for their improved employment experience and as a result the figures do not sum up to 8.)

Case Study

Miriam (not her real name), a Filipina domestic worker who worked as a nanny, accompanied her Saudi Arabian employer to the UK in 2008. Prior to their arrival in the UK, the employer had promised to employ an additional domestic worker to cook and clean and it was only on this basis that Miriam agreed to come to the UK. However, after arriving in the UK, no other worker was ever hired and Miriam was simply expected to do the cooking and cleaning in addition to acting as a nanny for her employer’s children. Miriam did not have her own room and had to sleep with one of the children that she looked after. She only received £350 a month, was expected to be available to work 24 hours a day and was never given a day off. She experienced verbal, and on occasion, physical abuse from her employer. Her passport was also withheld. She became increasingly exhausted and unhappy and eventually decided to leave her employer. After receiving support from Kalayaan to retrieve her passport, she subsequently found a new job through a friend. She now works as a housekeeper for an elderly British woman from Monday to Friday from 7.30am to 7pm with a two hour rest break each day. She receives a monthly salary of £1,200 and has her own room. She describes herself as much happier in her new job and hopes to continue working for her new employer for the foreseeable future.

When MDWs leave their employers, they frequently become homeless. Without access to safe housing, they sometimes have to accept unfavourable terms and conditions in the interim but subsequently move on to find better jobs. Indeed, the two workers interviewed whose employment experiences did not substantially improve after changing employer indicated that they swiftly sought further employment through an employment agency.⁵⁶ One domestic worker described how her second employer paid a salary of only £320 per month for full-time work and refused to pay her tax and NI contributions.⁵⁷ The other also indicated that she was unhappy with her second employer and the low salary that she was paid of £250 per

month.⁵⁸ With the assistance of the employment agency, both went on to negotiate better working terms and conditions with their third employers. One of them described the terms of her new job in detail stating that she now works from 7am–8pm with one and a half days off per week. She now receives a higher salary, although it is still below the NMW, and described how the treatment she received from her employer was also better: ‘They [the new employer] count me as their family and their children are also nice. I am much happier now.’⁵⁹

THE RIGHT TO HEALTHCARE

MDWs’ right to free healthcare for the duration of their employment in the UK is recognised on the UKBA website.⁶⁰ Yet they are frequently denied the possibility to register with their local GP because of the confusion which exists among Primary Care Trusts over who is deemed to be ‘ordinarily resident’ in the UK and thus entitled to free healthcare.⁶¹ Such matters are complicated by the fact that MDWs’ employers often withhold their passports and consequently migrant domestic workers are rarely able to provide a form of identification. Clarification of the term ‘ordinarily resident’ and the various groups to which it applies, including migrant domestic workers, is urgently required.

Methods of improving the protections available to migrant domestic workers

INFORMATION ON RIGHTS

Much of this chapter has outlined the legal rights and protections afforded to migrant domestic workers under the current ODW visa. However, the statistics on abuse and exploitation presented in Chapter 1 demonstrate that there is a large gap between law and practice. To some extent, this is related to domestic workers’ lack of awareness of their legal rights and their resultant inability to enforce those rights. However, other factors are also at play, including

TABLE 8: Number of Kalayaan’s clients who received interviews and information on their rights at the 16 diplomatic posts issuing the largest number of ODW visas to Kalayaan’s clients between January 2008 and December 2010.

Country/Post	Number of visas issued (to Kalayaan clients)	Number of workers who were interviewed	Of those workers who were interviewed, number of those interviewed without employer present	Number of workers who received information about their rights
Bahrain	37	21	8	4
Brunei	34	8	4	1
China (mainland)	15	6	4	0
Hong Kong	25	11	9	2
India	192	92	31	4
Indonesia	22	11	5	0
Kuwait	71	47	15	2
Nigeria	31	15	3	0
Oman	22	11	3	1
Pakistan	15	3	0	0
Philippines	25	13	7	1
Qatar	54	34	6	1
Saudi Arabia	137	71	15	10
Singapore	20	6	1	1
Sri Lanka	15	9	6	1
United Arab Emirates	151	93	17	6

Source: Kalayaan database⁶⁵

the difficulty of upholding employment rights in the private household.

Guidance from UKBA states that any British diplomatic post⁶² issuing an ODW visa should interview the domestic worker on their own, at least on their first application, to ensure that they understand the terms and conditions of the employment and that they are willing to travel to the UK.⁶³ It is particularly important that MDWs are interviewed on their own, away from their employer, so that they feel able to ask questions freely on any matters pertaining to their rights. If their application is successful, MDWs should also be provided with an information leaflet explaining their rights under the UK’s criminal and employment laws. Crucially, to be of use, this should be in the MDW’s own language, but has only ever been printed in English. The UKBA website indicates that MDWs can also be referred to the website address www.direct.gov.uk for information explaining their rights.⁶⁴ Such a recommendation is clearly absurd given that some workers are illiterate even in their mother tongue, not to mention that the majority are unlikely to have the requisite computer skills to access this website. Statistics above demonstrate that the majority of these Consulates are failing

to meet these basic requirements, particularly with regards to providing workers with information on their rights.

Unscrupulous employers take advantage of MDWs’ lack of knowledge about their rights in order to exert control over their worker. Indeed, a Community Advocate at Kalayaan describes how, ‘one of the coercive tools used by the employer is to misinform the worker, telling them that they don’t have any rights or protection and, especially, that they should fear the police.’⁶⁶ MDWs often only learn about the terms of their visa through information they receive at Kalayaan or from other domestic workers. An obvious way to avoid such situations is to provide training to consular officials overseas to ensure they understand the vulnerabilities associated with domestic work and actively inform MDWs of their rights when issuing ODW visas. Knowledge of their rights and of where to turn to for support would help to reduce the abuse and exploitation experienced by migrant domestic workers. It would also ensure that those who experience abuse and exploitation can seek help from the authorities at the onset of their mistreatment rather than enduring it out of lack of awareness that they are entitled to certain rights, as is sometimes the case.



BRIDGING VISA

As Chapter 1 demonstrates, MDWs' dependence on their employers to maintain their immigration status is an underlying cause of their vulnerability to exploitation and can result in workers becoming undocumented through no fault of their own. In Kalayaan's experience, this can occur when employers withhold their worker's passport, when a worker escapes an abusive employer without their passport or when an employer promises to renew their visa but does not in order to gain more control over the worker (as can occur in cases of trafficking or forced labour).

One method of alleviating the invisibility and exploitation associated with undocumented work would be to institute a bridging visa, similar to those in operation in Canada and Ireland.⁶⁷ Under this system, workers who find they have become undocumented through no fault of their own would be provided with a three month interim domestic work permit. During this time they would be expected to find new employment and could then apply to regularise their status as a migrant domestic worker by making an ODW visa application. If, at the end of this period, the individual was unable to find regular employment, their case would be referred to the UKBA for a final decision on their immigration status.

Such a scheme would provide some fairness, providing individuals who have fallen out of the system through no fault of their own with the chance to reintegrate within the system.

It would also prevent the invisibility associated with undocumented work, dramatically reduce the vulnerability of migrant domestic workers and when applied to trafficked persons may save the Government significant sums in accommodation and support (see Chapter 3).

ENFORCING DOMESTIC WORKERS' RIGHT TO THE NATIONAL MINIMUM WAGE (NMW): THE FAMILY WORKER EXEMPTION (FWE)

Although MDWs are theoretically entitled to the NMW, it is evident from the statistics and case studies presented earlier in this report that they routinely experience difficulties in obtaining this. This relates to the interaction between the family worker exemption, a legal loophole contained in the NMW legislation in the UK, and the lack of clear policy and guidance around the NMW.

Legislation

The family worker exemption appears in Regulation 2(2) of the NMW Regulations 1999 and sets out the following conditions which need to be satisfied in order for the exception to apply:⁶⁸

- The worker resides in the family home of the employer
- The worker is not a member of the family but is treated as such, in particular as regards the provision of accommodation and meals and the sharing of tasks and leisure activities

- The worker does not have to make any payment to or suffer deduction in respect of provision of accommodation or meals; and
- The worker shares in the tasks and activities of the family

MDWs often reside in the home of their employer, and are frequently required to participate in the leisure activities of the household. They may, for example, accompany the family on holiday in order to perform their regular duties, including caring for members of the family. However, their participation is as workers, and they are not involved on the same basis as other family members in the leisure activities of the household.

In employment tribunals, the central defence of employers for non compliance with the NMW is the FWE, even in cases where the worker has been recognised as a victim of trafficking by the UKBA.⁶⁹ In the majority of cases brought before employment tribunals to date, the court has recognised that the MDW has not been treated as a member of the family, and the MDWs' right to the NMW has been upheld. However, the nature of domestic work means that there are seldom external observers who can comment on their working arrangements, leaving tribunals with no choice but to adjudicate between the employers' and the workers' accounts. This means that tribunals can find that workers are not entitled to the NMW on the basis of the Exemption. In Kalayaan's experience, this is particularly likely to occur in cases where workers have been otherwise fairly treated by their employers, and are not able to document other examples of extreme mistreatment.⁷⁰

It is unclear exactly why the FWE was originally included in the NMW Act and Regulations. Hansard texts from the time indicate that there was some discussion about the au pair system where young, typically European workers come to the UK on a cultural and language exchange and do a few hours cleaning or babysitting a day in return for board, lodging and some pocket money. Such a scenario contrasts with migrant domestic workers, who migrate for the purposes of full-time work, often under huge pressure to support their families.

Policy and Guidance

As a result of the FWE, there have been difficulties in establishing MDWs' right to the NMW. Differing policy and guidance across government departments on this subject causes further confusion. For example, the UKBA have stated that they believe MDWs are entering as workers and say as much on their website but guidance to caseworkers and diplomatic posts still states that visas should not be refused purely on the basis of non-payment of the NMW.⁷¹

As part of its mandate, the Pay and Work Rights helpline provides advice to individuals, workers and employers on their rights and responsibilities. Following discussions with Kalayaan, specific questions were included into the scripts

of the helpline workers in August 2009. The purpose of these questions is to identify MDWs so that advisers can establish their entitlement to the NMW.⁷² However, it is Kalayaan's experience that these questions are still only able to detect the most exploited and abused domestic workers. The questions can still lead an employer to assume that provided they treat their worker in a respectful manner, they are under no obligation to pay the NMW. This is because the helpline can only advise based on what the NMW Act says. It is the wording of the exemption itself that is problematic.

In light of the discussion above it is clear that the scope for misinterpretation of the family worker exemption of the NMW Act 1998 and NMW Regulations 1999 makes MDWs unnecessarily vulnerable to underpayment and breaches of their right to the NMW. In addition to the confusion it causes for enforcement agencies and employers, it is used as a means by unscrupulous employers to exploit this particularly vulnerable group. Women are disproportionately represented amongst migrant domestic workers and as such the effect of the exemption is also highly discriminatory. Kalayaan therefore recommends that an amendment should be introduced to the NMW Act 1998, which clarifies that MDWs are entitled to the NMW in all circumstances. UKBA guidance should be amended in line with this.

Some workers, facing the prospect of becoming homeless and destitute, feel they have no choice but to remain in a situation of exploitation and abuse.

SAFE HOUSING

When migrant domestic workers flee from abusive employers, they frequently become homeless because many MDWs also live in the household in which they are employed. This problem is exacerbated by the fact that MDWs have no recourse to public funds and are therefore ineligible for other shelter facilities which operate at a local or national level. This lack of provision has two significant and damaging consequences. First, some workers, facing the prospect of becoming homeless and destitute, feel they have no choice but to remain in a situation of exploitation and abuse. When workers do finally escape, they are scared and vulnerable. Yet Kalayaan is forced to house them with other MDWs who may not have the emotional reserves or time necessary to support them. Second, this lack of safe housing means that migrant domestic workers who do escape are often relying on strangers to house and feed them and as such feel significant pressure to obtain any new job in order to support themselves. This leaves them vulnerable to further exploitation.

The Committee on the Elimination of Discrimination against Women (CEDAW) highlights that protections for female migrant workers, including those involved in domestic work, should not only entail access to complaint mechanisms but also temporary shelters for those workers wishing to leave abusive employers.⁷³ In the UK, such shelters exist only for those MDWs whose situation corresponds to the narrow definition of trafficking, and even then places are very limited in number. In recognition of their vulnerability to homelessness, Kalayaan recommends that state-funded, short stay refuge places should be provided for MDWs escaping from situations of abuse, exploitation, forced labour and trafficking.

PAYMENT FOR 'ON CALL' DUTIES

As statistics from Kalayaan's database demonstrate, a high percentage of migrant domestic workers (68 per cent of workers registering with Kalayaan in 2010) are expected to be on standby and available to work 24 hours a day without additional pay outside of their normal working hours. This is particularly true for those who perform care work and are often called upon during the night to assist care users without additional payment or rest breaks.⁷⁴ Respect for domestic workers' right to the NMW and their need for proper rest breaks, needs to be married with a realistic assessment of an employer's needs, otherwise situations such as that cited above become the norm, leaving MDWs exposed to exploitation. An obvious way of tackling this problem is to regulate the rate at which standby or on-call hours are remunerated as the draft of the ILO Convention on Domestic Workers stipulates.⁷⁵

In some countries legislation is already in place which combines maximum working hour protections with limited 'on call' duties to arrive at fair and realistic solutions to regulate working hours. In France, for example, caregivers who are repeatedly called upon during the night for several nights must be remunerated for the hours during which they hold on-call responsibilities. These hours are considered 'heures de presence responsable' and have to be paid at a rate that is not less than two thirds of the standard salary. In addition, 25 per cent of those hours are to be remunerated at the full rate even when all of the day time responsibilities are not being fulfilled.⁷⁶

PAYMENT OF TAX AND NATIONAL INSURANCE

Payment of domestic workers' tax and National Insurance Contributions (NIC) are the responsibility of their employers. However, as indicated in this report, some employers refuse to do so. Previous research by Kalayaan has also shown that employers sometimes take advantage of domestic workers' dependency on them for maintaining their immigration status by paying them lower wages, refusing to pay their tax and NIC and refusing to give them time off.⁷⁷ This is very frustrating for

MDWs who want to pay their tax and NIC and ensure they are following the rules, but whose visa states they must be 'employed', thus prohibiting them from paying their own tax through self-employment. If employers refuse to make these payments, the domestic worker can still be liable for them. Further, without proof of these payments, MDWs are unable to register for English and other classes at local colleges, nor are they entitled to other benefits such as pensions. Kalayaan therefore recommends that whenever an ODW visa is issued in the UK by the UKBA, registration of new employers with the HMRC should be mandatory. Doing so would ensure that the requisite contributions to the UK's revenue are being paid and that MDWs are able to access their full employment rights.

CONCLUSION

This chapter highlights the importance of the protections afforded to migrant domestic workers through the ODW visa and demonstrates their success in reducing MDWs' vulnerability to abuse and exploitation and improving their ability to seek justice through the authorities. Most notably, the right to change employer enables them to escape from abusive employers without losing their immigration status. This in turn facilitates the majority of MDWs to go on to negotiate better employment terms and conditions. Inextricably linked to the portability provision of the visa is the right to pursue legal remedies against exploitative employers which plays an important part in achieving justice. In the words of one domestic worker,

The visa saves the life of the domestic worker, it helps them to rebuild their life because they can escape, they find out they have rights and that they can change their employer, they can go to court and get justice and address their complaints.⁷⁸

As such, Kalayaan concurs with the assessment of the Home Affairs Select Committee in 2009 that the visa is one of the most important ways in which trafficking of migrant domestic workers can be prevented and that it is likely that MDWs will need the special status afforded by the current visa regime for much longer than two years.⁷⁹

Finally, this chapter notes several legislative and policy areas relating to domestic work which lack sufficient regulation or require improvement in their enforcement. These include the need for diplomatic missions to fulfil their mandate to provide MDWs with information about their rights, enforcement of domestic workers' right to the NMW and the institution of a bridging visa. It is anticipated that the solutions offered here will be useful in extending the protections available to this particularly vulnerable group of workers.

Chapter 3

POSSIBLE ALTERNATIVES TO THE CURRENT SYSTEM OF PROTECTIONS AFFORDED TO DOMESTIC WORKERS

INTRODUCTION

In light of the current government review of all immigration routes to the UK, this chapter examines the impact of the overseas domestic worker visa on UK settlement figures as well as considering the possible repercussions of its removal. It also assesses whether the measures introduced by the government in April 2009 to identify, protect and assist trafficked persons could serve as a possible alternative to the current protections afforded to migrant domestic workers through the ODW visa.

The ODW visa and UK migration policy

There has been much debate over the policy of capping migration from non-EEA countries which was introduced in the Conservative party manifesto and confirmed in the coalition agreement. It is beyond the scope of this report to provide an in-depth discussion of the merits and limitations of this policy. Nevertheless, on the assumption that the government will review all existing immigration routes to the UK, it is useful to assess the impact of the ODW visa on UK settlement figures and annual net migration. Although MDWs are eligible to apply for settlement after five years of continuous employment in the UK, estimates show that less than 5 per cent of migrant domestic workers who enter the UK on an ODW visa go on to settle (see table below). As a comparison, recent government figures indicate that 29 per cent of those entering the UK on the work (leading to citizenship) route in 2004 were granted settlement after five years in comparison to 4.7 per cent of migrant domestic workers. Put another way, out of the 176,470 individuals who were granted settlement in 2009, a mere 0.5 per cent of these had entered the UK on a domestic worker visa.⁸⁰

Out of the 176,470 individuals who were granted settlement in 2009, a mere 0.5 per cent of these had entered the UK on a domestic worker visa.

Evidently then, the ODW visa route is working as intended, with the vast proportion of MDWs accompanying their employers to the UK for a finite period of time and returning with their employers after the planned period in the UK. For the small percentage of workers who remain in the UK to work with their employers, the route to settlement is particularly important as it finally eradicates one of the key causes of their vulnerability. Crucially, upon obtaining indefinite leave to remain, MDWs are no longer dependent on their employers in order to maintain their immigration status. This leads to a restructuring of the power relations between employer and worker, ridding employers of excessive control over MDWs and enabling the latter to negotiate fairer employment terms and conditions. Achieving settlement means that if workers do experience unfair treatment, they can leave their employer immediately and pursue legal remedies as appropriate. Further, settlement enables MDWs to work for multiple employers, as is common in other European countries such as Germany.⁸² This means that if they encounter mistreatment from one employer, they can immediately stop working for them without the fear of losing their entire income or of becoming homeless, since many MDWs working for multiple employers prefer to rent their own private accommodation. Such a situation contrasts with an individual yet to achieve settlement who, encountering similar mistreatment, may feel obliged to remain with an abusive employer either because

TABLE 9: Estimated numbers of MDWs who settled recently in the UK

Year of entry to the UK	Number of individuals entering on the ODW visa	Settlement year in question	Number of grants of settlement	Grants of settlement as a proportion of visas issued five years ago
2003	17,194	2008	745	4.33%
2004	16,901	2009	795	4.70%

Source: UKBA⁸¹

of the necessity of sending remittances home or if their visa renewal date is imminent. Living in rented accommodation and managing their own time enables migrant domestic workers to integrate more quickly into their local community through volunteering at their local church or other religious organisation, or perhaps through enrolling in a class at the local college. Such community involvement is seldom possible when workers are confined to their employer's house.

The importance of a legal channel of migration

Another key point to consider in any review of the ODW visa route is the fact that in spite of the legal channel which currently exists for employers to bring their migrant domestic workers to the UK, some employers still bring MDWs on other visas to work illegally in private households. It is impossible to estimate the numbers involved, particularly because these individuals are less likely to seek assistance from Kalayaan as the services are advertised as being only for people on the ODW visa. However, interviews with ten migrant domestic workers who were brought to the UK by their employer on other visas provide insight into their experiences.

TABLE 10: Type of visa issued or means by which MDWs were brought to the UK

Type of visa	Frequency
Visit visa	4
Business visitor visa	1
False passport	1
No visa – domestic worker brought by car	1
Unknown ⁸³	3
Total	10

In many of these cases, MDWs were made false promises by their employers with respect to their immigration status. For example, a Filipina domestic worker who was brought to the UK by car explained that her employer had tried to obtain a UK visa for her in France. She said that

I had no idea [that they hadn't obtained a visa] until they pushed me into the car. All they said is just trust them because it's all their responsibility what may happen. So I trusted them.⁸⁴

In another case, an East African domestic worker described how she was brought over by her employer on a six months visit visa. Being unfamiliar with the immigration system, she questioned her employer about whether this was the appropriate visa and was told that once they reached the UK

Removal of the ODW visa would almost certainly increase the number of migrant domestic workers trafficked via illegal routes to the UK.

the employer's sister, who was a lawyer, would arrange for a new visa. Following her arrival to the UK, she repeatedly asked her employer about her visa and her employer continued to assure the worker that the visa had been arranged. However, since her employer withheld her passport, she was never able to verify this.⁸⁵ In other cases MDWs did not even see the visas on their passports as these were never in their possession,⁸⁶ or their illiteracy prevented them from reading the visa,⁸⁷ and only realised they were undocumented after escaping from their employers and arriving at Kalayaan for assistance. Once they arrived in the UK, seven of the ten MDWs interviewed experienced significant exploitation and abuse at the hands of their employers and all of these seven were identified as having been trafficked upon assessment by Kalayaan.

These descriptions indicate that some wealthy employers are prepared to use any means available to ensure that their own domestic staff accompany them to the UK and are willing to break the rules even when a legal channel for such migration exists. As such, it seems possible that removal of the ODW visa would result in an increase in the number of undocumented workers who are brought into the UK by their employers to work illegally. Further, given the high percentage of these individuals that were identified as having been trafficked, removal of the ODW visa would almost certainly increase the number of MDWs trafficked via illegal routes to the UK. The wide age range of the workers interviewed (from 16 to 50 years old) and spread of nationalities including Chinese, Zambian, Indonesian and East African reflects the difficulties involved in profiling potential victims but nevertheless indicates the need for further awareness training among consulate officials.



Could the UK's assistance measures to trafficked persons act as an alternative method of protection to migrant domestic workers?

Given the aforementioned government review of all immigration routes to the UK, the remainder of this chapter considers whether the current measures to protect trafficked migrant domestic workers could provide an alternative system of protection to MDWs in lieu of the ODW visa. In doing so, it reveals the existence of serious problems relating to the failure of these measures to identify and meet the needs of migrant domestic workers who have been trafficked. In addition, this section highlights the increased cost associated with protecting MDWs under current anti-trafficking measures rather than through the visa. It further demonstrates that those workers who are subjected to forced labour but who are not trafficked are not protected at all by the anti-trafficking

measures in place. All of the above indicate that such measures are only helpful to MDWs when used in conjunction with the protections afforded to them through the ODW visa.

FAILURE OF LAW ENFORCEMENT TO IDENTIFY TRAFFICKED MIGRANT DOMESTIC WORKERS

At the outset, Kalayaan has noted that migrant domestic workers who have been trafficked are not being adequately identified as such. Indeed, MDWs frequently encounter difficulties when attempting to report their mistreatment to the police. The reasons for this relate both to a flawed understanding of trafficking for domestic servitude and to the low priority awarded to trafficking cases in some geographical areas. The quote below from an interview conducted by the Anti Trafficking Monitoring Group (ATMG)⁸⁸ with a law enforcement official demonstrates the extent of this lack of understanding:

Sometimes domestic workers are brought here on false pretences, but they are not illegal. No domestic worker is a trafficked victim, because they are legal. They may be victims of many crimes, abuse, locked in, exploitation, but none had been forced, nor were brought over under force. Until they come here they don't run away. They run away here because they want to live a Western life, it is more attractive, more freedom.⁸⁹

While this quote only represents one individual's perspective, Kalayaan's experience of supporting migrant domestic workers to report incidences of trafficking to the police suggests that such attitudes may be more commonplace. Such a quote is indicative of a common misconception that only illegal migrants can be trafficked. Trafficking of MDWs who have been brought to the UK legally on the ODW visa can and does occur. However, as discussed above, those MDWs who have brought to the UK via an illegal route are more vulnerable to exploitation and trafficking.

The table below demonstrates that only 12 out of 37 MDWs who attempted to report trafficking crimes to the police between May 2008 and June 2010 were successful in doing so. Given that in the majority of cases, workers were accompanied to the police by representatives from Kalayaan who were able to explain how the individual's case met the necessary conditions to be classified as trafficked, such statistics are significant and underline the need for urgent training. In some cases the trafficking crimes were narrowly investigated as assault or false imprisonment. However, in most instances the individuals were turned away with either no crime or a minor crime being reported. In three of these cases, workers actually took cases against the police for failing to investigate their case properly.⁹⁰ The police subsequently investigated these cases and found one employer guilty of

assault and awarded compensation to the MDW involved. They also arrested four individuals in relation to the second case. The third case was due to appear in court in September 2010 but has been adjourned.

There is the additional problem that trafficking has not been made a priority by borough commanders. Thus, in some instances, officers have said to Kalayaan’s clients that they are unable to give time to trafficking cases since priority is given to assaults and robberies. In the case of one domestic worker, Maria, who tried to report her trafficking experience to the police, it took three and a half months and ten phone calls from Kalayaan before the officer in charge spoke to her.⁹¹ Following a letter of complaint issued by Kalayaan regarding the inept handling of some of the trafficking cases highlighted below, Kalayaan has provided training to 121 police officers in the Royal Borough of Kensington and Chelsea. However, training on the identification of trafficked persons, including those trafficked for domestic servitude, is urgently required in other areas of London and the UK. Without the ability to correctly identify trafficked persons, there is a real risk that the individual will be returned to their employer not to mention the negative effect this will have on a domestic worker’s ability to seek justice and access support through the NRM.

TABLE 11: Type of crime recorded by police when MDWs attempted to report cases of trafficking

Crime recorded by police	Number of cases
Trafficking	12
False imprisonment	2
Assault	3
Assault and false imprisonment	1
Stolen passport	1
Lost passport	2
Crime-related incident report	2
No crime	14
Total	37

Source: Kalayaan database

FAILURE OF THE NATIONAL REFERRAL MECHANISM (NRM) TO IDENTIFY TRAFFICKED DOMESTIC WORKERS

The NRM is the system that has been established to identify trafficked persons as part of the UK’s implementation of the Council of Europe’s Convention on Action Against Trafficking in Human Beings. Since its establishment in April 2009, there have been considerable criticisms relating to the system’s identification procedures.⁹² The discussion below will demonstrate that the system does not adequately identify

Without the ability to correctly identify trafficked persons, there is a real risk that the individual will be returned to their employer.

migrant domestic workers who have been trafficked and as such would not be an appropriate alternative to the protections afforded to them under the ODW visa.

First, decision-making by the competent authorities is at odds with the definitions contained in the Convention. This is evident when examining some of the decision letters which Kalayaan’s clients have received from the competent authorities. In several of these letters, as with a series of conclusive negative decisions referred to in a report produced by the ATMG in June 2010, the conclusions have stated that despite acknowledging that the individual had been trafficked, they had not been identified as a victim of trafficking ‘for the purposes of the Convention.’⁹³

*In summary, it is accepted from your evidence that you were trafficked into the UK from Nigeria [...] However, taking into account your personal circumstances, it is considered that you have had a period of time to reflect on the events which have happened and are also not currently involved with any police investigation. Consequently, it is considered that you do not require the assistance or protection the Convention affords [...] whilst it is accepted that you were trafficked into the UK, you are not considered to be a victim of trafficking for the purposes of the Convention.*⁹⁴

The Convention defines a victim of trafficking as someone who has been subject to acts as defined in its definition: ‘victim’ shall mean any natural person who is subject to trafficking in human beings as defined in this article [i.e. in the definition of trafficking].⁹⁵ No further conditions are attached in order for an individual to be identified as having been trafficked such as the requirement to pursue a police investigation, or a time limit on when someone ceases to

“Whilst it is accepted that you were trafficked into the UK, you are not considered to be a victim of trafficking.”

UKBA Conclusive grounds decision letter regarding the NRM referral for a domestic worker

be a victim of trafficking. As a result, the aforementioned negative conclusive decisions clearly contravene the Convention.⁹⁶ Further, the implication that there is a time limit on an individual ‘qualification’ for protection, shows a gross lack of understanding of the potential long-term psychological effects of being trafficked. This is particularly true for cases such as the one cited above where the individual in question was subject to serious physical abuse including being whipped with belts and beaten until she bled.

Second, delays in decisions mean that the NRM is not able to identify trafficked persons as intended and as such can be detrimental to the individuals concerned. Competent authorities⁹⁷ are supposed to respond to initial referrals within five days with a reasonable grounds decision. Following this, further investigations are to be made during the 45 day reflection period and a conclusive decision is supposed to be made at the end of this period. However, Kalayaan has found that the competent authorities have taken substantially longer to reach their decisions. Between April 2009 and December 2010 Kalayaan has supported 43 migrant domestic workers who have been referred to the NRM.⁹⁸ For the 12 individuals who have received conclusive decisions so far, the average

length of time they waited for a decision was 190 days. Five individuals are still waiting for reasonable grounds decisions while 12 are still awaiting conclusive decisions.⁹⁹ For those migrant domestic workers who have a valid domestic worker visa, the delay in conclusive decision making is immaterial. Having received a positive reasonable grounds decision, they are able to avail themselves of accommodation and support in order to recover from their experiences and when they are ready they can find a new job in order to continue supporting their families.

Such delays have caused significant distress for those MDWs who were brought via unlawful routes, who came with diplomats and as such became undocumented when they left their employer or whose visas have expired. They are effectively left in limbo, unable to work, unable to plan for their future and unable to recover. One domestic worker described her feelings on the delay in her decision as follows:

I feel so worried, I don't know what's going to happen – this worries me more. My solicitor is still waiting for the Home Office. Sometimes I wake up in the middle of the night and I'm crying, I just want to know what is happening with my case...I keep thinking when is this going to be over.¹⁰⁰

Third, it appears that individuals who are referred to the NRM may be subject to certain types of discrimination within the decision making process. Between 1 April and 30 November 2009, the competent authorities made decisions on 477 cases referred to the NRM.¹⁰¹ Of these, 91 individuals were formally identified as trafficked giving an overall positive identification rate of 19 per cent. A breakdown of positive decisions by country of origin reveals considerably disparity between the chances of a UK national, EU national or non-EU national being officially recognised by the competent authorities as trafficked. Indeed, while 76 per cent of UK nationals referred to the NRM were officially recognised

TABLE 12: Breakdown of the reasons why Kalayaan’s clients chose not to be referred to the NRM

Reason not referred	Number of Kalayaan’s clients
Trafficking was historical and the individual had found new employment	12
The individual possessed a valid visa and wanted to find new employment	56
Individual did not want to be referred as they were afraid that the authorities would focus excessively on their immigration status	9
Individual did not want to be referred because they needed to send remittances home and preferred to work undocumented	6
Other	19
Total	102

Source: Kalayaan’s database

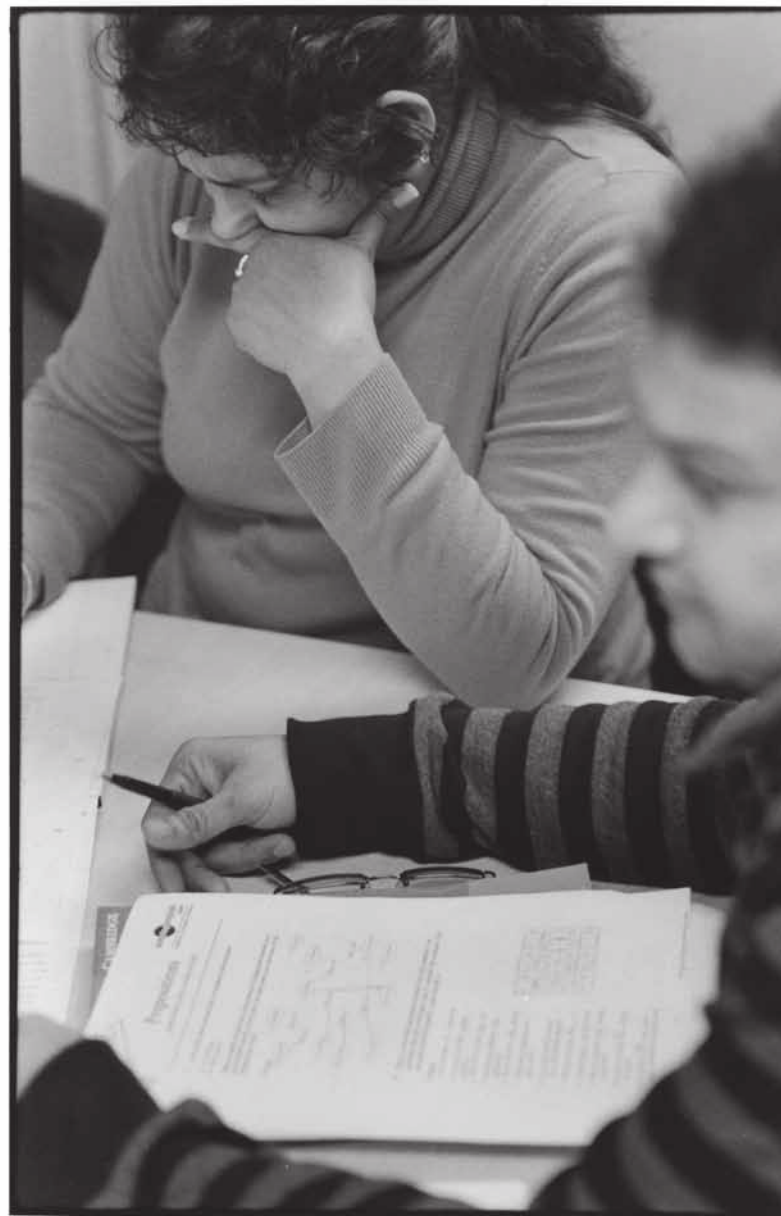
“Sometimes I wake up in the middle of the night and I’m crying. I keep thinking when is this going to be over.”

Domestic worker interviewed for research

as trafficked, only 29 per cent of non-British EU nationals and 12 per cent of non-EU national referrals were recognised as trafficked. Given that all of Kalayaan’s clients are non-EU nationals, such statistics are worrying and merit further investigation by the Home Office to ensure that individuals are not the subject of discrimination based on their nationality or gender, in the decision-making process.¹⁰²

FAILURE OF THE NRM TO MEET THE NEEDS OF MIGRANT DOMESTIC WORKERS

Perhaps the strongest evidence that the UK’s anti-trafficking measures are failing in their mandate to provide protection and assistance to individuals trafficked for domestic servitude is the fact that so many of them choose not to be referred to the NRM. Indeed, figures combined from Operation Tolerance¹⁰³ (May–September 2008) and from April 2009 (when the Convention came into force in the UK) to December 2010, show that 102 out of the 157 migrant domestic workers who were identified as trafficked by Kalayaan chose not to be referred to the pilot project or the NRM.¹⁰⁴ It should be noted that by choosing not to be referred to the NRM, MDWs are not precluded from taking criminal and employment cases against their employers and in fact many do. Table 12 shows that the majority of these 102 preferred to find new employment. In some cases, MDWs even chose to be employed as an undocumented worker rather than be referred to the NRM since their overriding need in spite of their experiences was to support their families and pay off debts in their countries of origin. In addition, some indicated a fear that the authorities would focus excessively on their immigration status. These statistics demonstrate that the NRM is not meeting the needs of domestic workers. Rather than being referred to the NRM, the majority of vulnerable MDWs are actively choosing to move on from their trafficking experience and find new employment. The ability to do so is the direct result of the ODW visa and the accompanying right it affords to MDWs to change their employer without becoming undocumented. Undeniably, then, it is this protection that is central to the needs of domestic workers. Without it, the evidence from the period between 1979 and 1998 suggests that the number of undocumented workers would increase while the NRM’s focus on immigration status would arguably continue to dissuade workers from being referred. The result would be an increase in the number of invisible, exploited migrant domestic workers in the UK.



Domestic workers study prepositions with the Workers’ Educational Association.

Rather than being referred to the NRM, the majority of vulnerable MDWs are actively choosing to move on from their trafficking experience and find new employment.



Domestic workers with their volunteer English teacher at the Kalayaan Christmas party.

THE PROVISION OF SAFE HOUSING: THE COST IMPLICATIONS OF USING TRAFFICKING PROTECTIONS AS AN ALTERNATIVE TO THE ODW VISA

The provision of safe housing is one area in which the measures to protect trafficked persons have met with some success. Access to such accommodation is an obvious improvement to the existing protections available to migrant domestic workers, particularly for those who have experienced significant trauma through their trafficking experience. Indeed, 25 out of the 43 clients referred to the NRM between April 2009 and December 2010 requested safe housing. This was provided by a range of organisations including the Poppy Project, Medaille Trust, Migrant Helpline and Southall Black Sisters. However, at least ten out of these 43 clients sought new employment as a result of the need to continue sending remittances home and were housed by new employers.¹⁰⁵

“If someone has a valid visa and they want to go back to work . . . they move on relatively smoothly and quite quickly..”

Senior Support Worker, Poppy Project.

These statistics once again demonstrate the importance of the protections afforded to MDWs under the ODW visa, specifically the right to change employer, in enabling individuals to move on swiftly from their trafficking experiences. The discussion below on the cost implications of providing accommodation and assistance to trafficked persons emphasises this point further.

Estimates from the Poppy Project indicate that it costs an average of £420 a week to provide accommodation and support to a trafficked person.¹⁰⁶ On average MDWs accessing safe housing through the Poppy Project require accommodation for about 190 days or 27 weeks. This means that the average cost of providing housing and support to each domestic worker is roughly £11,340.¹⁰⁷

An interview with a senior support worker at Poppy revealed that the length of time over which support is required varies significantly depending on whether or not MDWs possess a valid ODW visa when they are referred to the NRM. She describes how,

*if someone has a valid visa and they want to go back to work... they move on relatively smoothly and quite quickly depending on when the visa runs out...so usually they will go within a couple of months.*¹⁰⁸

Some MDWs are referred to Poppy with an expired visa or occasionally without a visa that entitles them to work. As previously discussed, this is usually through no fault of their own. Often these cases take far longer to conclude and by implication cost a great deal more for the organisation that is housing the individual and for the government.¹⁰⁹

The discussion above demonstrates that the protections associated with the ODW visa, particularly the right to change employer, prevent trafficked MDWs from relying on government-funded accommodation. Even for those who do require some time to recover, the quotes above demonstrate that they are able to move on swiftly provided they have a valid visa. The effect of these savings should not be underestimated. Indeed, 68 of the 102 identified trafficked MDWs mentioned above who chose not to be referred to the NRM, did so because they had a valid visa and sought new employment. If the visa were removed and the measures to assist trafficked persons were instituted as an alternative system of protection, it could be argued that these 68 MDWs would have required

a referral to the NRM for accommodation and support while they recovered from their trafficking experience and received legal advice about their future (since they would be unable to work). It could be similarly argued that the 10 MDWs cited above who were identified as trafficked by the NRM but who sought new employment rather than safe housing would also have required assistance. This could have cost the Government more than £850,000 in additional accommodation and support fees over the course of just 25 months.

TRAFFICKING IS A NARROW CONCEPT WHICH DOES NOT PROTECT MDWS WHO ARE SUBJECT TO FORCED LABOUR

The UK Government recently recognised that trafficking is a concept which does not successfully capture all of the manifestations of modern day slavery, including forced labour. A criminal offence for subjecting an individual to forced labour or domestic servitude was thus introduced in the Coroners and Justice Bill 2009, carrying the same sentence as that of trafficking.

Forced labour is defined as any type of work which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.¹¹⁰ Indicators of forced labour include violence or the threat of violence by an employer, the withholding of an individual's passport, non-payment of the agreed wage and the provision of false information about their legal and employment rights.¹¹¹ As indicated below, a number of Kalayaan's clients meet these criteria. Some MDWs are also trafficked for the purpose of forced labour. In order to be recognised as such, evidence of the individual's recruitment, transportation, and the means by which they were controlled (e.g. deception or the threat or use of force) is needed in addition to evidence that they have been subject to forced labour. However, regardless of whether they have been trafficked, individuals who have been subject to forced labour are highly vulnerable and in need of protection. As a result, the introduction of a stand-alone offence for forced labour was welcomed by human rights organisations in the UK.

Between January 2008 and December 2010, Kalayaan identified 118 individuals who were subject to forced labour but who had not been trafficked to the UK and who would thus not have been eligible for assistance under the current anti-trafficking measures.¹¹² Indeed, a briefing paper published by Liberty and Anti Slavery International in 2009 highlights the case of one such domestic worker who was refused support by the Poppy Project during Operation Tolerance. Although the refusal of support is understandable given that the mandate of this project was specifically to deal with trafficked persons, it serves to underline the existence of extremely vulnerable individuals who have not been trafficked but who are in need of protection. Such individuals are

currently protected through the ODW visa by having an immigration status that enables them to change employer and seek justice through the employment and criminal courts. Given this, it is clear that the current measures to identify and assist trafficked persons are only appropriate if used in conjunction with the ODW visa system.

IMPROVING THE MEASURES AVAILABLE TO ASSIST TRAFFICKED MIGRANT DOMESTIC WORKERS

The discussion above has already indicated several ways in which the current measures to identify and assist trafficked migrant domestic workers require alteration in order to fulfil their mandate. Before concluding this chapter, it is useful to briefly examine two further ways in which the current system could be improved.

This could have cost the Government more than £850,000 in additional accommodation and support fees over the course of just 25 months.

1 Institute a bridging visa to enable trafficked migrant domestic workers to move swiftly back into work

Some trafficked MDWs who are particularly vulnerable clearly need access to the accommodation and support provided by organisations such as the Poppy Project. However, as has been discussed, for many individuals the overriding desire is to work again. Instituting the bridging visa system recommended in Chapter 2 which is not reliant on a conclusive decision by the competent authorities would enable MDWs to move on more quickly. This in turn would significantly reduce the cost of providing assistance to them and would provide further savings to the government. Such a visa would allow MDWs three months within which to find new employment and later enable them to apply for an ODW visa again. This would result in them remaining visible and paying tax, NIC and visa fees.

2 Issue residence permits to trafficked persons wishing to pursue compensation

The right to pursue compensation is recognised in Article 15 of the Convention and plays an important part in the rehabilitation process for those who have recently exited from exploitative employment relationships.¹¹³ Under the current system, MDWs are eligible for compensation through various means: employment tribunals, the Criminal Injuries Compensation Authority (CICA), civil litigation and by issuing a compensation order following criminal proceedings.¹¹⁴ As Chapter 2 indicates, employment tribunals are the most

commonly used mechanism by domestic workers, although a few have also made claims through CICA.¹¹⁵

However, the right to pursue compensation is meaningless for those MDWs with insecure immigration status since they are unable to remain in the country in order to do so. Residence permits should therefore be issued to persons wishing to pursue compensation until their claim has been resolved. Such a recommendation is in keeping with the Organisation for Security and Co-operation in Europe (OSCE) which describes residence permits as one of the ‘essential ancillary rights without which access to compensation is restricted.’¹¹⁶ MDWs should be given permission to work for the duration of their residence permit and as such would not be a burden on the public purse. Without the provision of a residence permit to trafficked persons wishing to pursue compensation, the current trafficking measures are woefully inadequate for trafficked migrant domestic workers who do not have a valid ODW visa, and prevent trafficked persons from seeking justice.

CONCLUSION

This chapter has demonstrated that the ODW visa has a negligible impact on UK settlement figures and net migration. For the few MDWs who remain working in the UK, the route to settlement finally rids them of their underlying vulnerability and facilitates their integration into UK society. This chapter also indicates that the demand for specific migrant domestic workers is such that some employers are prepared to bring their MDWs by any means available, including the use of illegal routes, in order to ensure that

their domestic staff accompany them to the UK. Removal of the ODW visa is therefore likely to exacerbate this problem and could in turn potentially threaten the integrity of the immigration system. It could also lead to an increase in the number of MDWs who are trafficked to the UK given the high incidence of trafficking among the MDWs who were brought illegally to the UK on other visas.

Current measures to protect trafficked migrant domestic workers are woefully inadequate since they neither identify them nor meet their needs. They also treat individuals as victims rather than as individuals that possess agency and have the capacity to make their own decisions about their lives. It is thus very telling that the majority of MDWs choose not to be referred to the system, preferring instead to move on from their trafficking experience and find new employment. In addition, this chapter has demonstrated that the current measures to support trafficked persons are most effective and least costly when the individual in question has a valid domestic worker visa and that the removal of the visa could dramatically push up costs. There are ways in which the system could be improved such as by issuing residence permits to individuals wishing to pursue compensation and through the establishment of a bridging visa that would enable MDWs to return to work quickly and reintegrate within the immigration system. Ultimately, however, the current measures offer no protection to MDWs who are subject to forced labour but who are not trafficked. Thus, in conclusion the current measures in place to identify and assist trafficked persons could in no way act as a viable alternative to the protections afforded to MDWs under the ODW visa.

Current measures to support trafficked persons are most effective and least costly when the individual in question has a valid domestic worker visa.



Chapter 4

MIGRANT DOMESTIC WORKERS ACCOMPANYING DIPLOMATS

INTRODUCTION

This chapter examines the lack of substantive legal protections afforded to domestic workers in diplomatic households and the abuse and exploitation some of these workers experience at the hands of their employers in the UK. In doing so, it demonstrates that the inability to change employer without losing their immigration status combined with their employers' diplomatic status increases the likelihood that this group of migrant domestic workers will be trafficked to the UK. It therefore urges the UK government to mitigate the effect that diplomatic immunity has on diplomatic domestic workers' ability to obtain justice, and to provide an escape route from abuse by extending the portability provision currently afforded to migrant domestic workers in private households to include this particularly vulnerable group of migrant domestic workers.

“Bonded or indentured labour, or slavery; there is no question about that . . . If they cannot run away without suffering serious sanctions, there is a problem.”

John Hemming MP.

INCREASED VULNERABILITY TO ABUSE AND EXPLOITATION

Approximately 300 MDWs accompany their diplomatic employers to the UK each year.¹¹⁷ Domestic workers in diplomatic households share the same underlying vulnerabilities as migrant domestic workers in private households which are outlined in Chapter 1. Indeed, statistics from Kalayaan's database shown below demonstrate that levels of abuse and exploitation among migrant domestic workers in diplomatic households are similar to those reported by migrant domestic workers generally. Some statistics are particularly startling such as the high incidence of diplomatic domestic workers whose passports are withheld by their employers, since diplomats could be expected to have particular knowledge about the implications of such an action. Diplomatic domestic workers' vulnerability to exploitation is exacerbated by their employers' diplomatic

status in the UK and their resultant immunity from sanctions under the 1961 Vienna Convention on Diplomatic Relations. Indeed, some diplomats use their status to intimidate their domestic staff. For example, one worker described how her employer told him that in the UK he was effectively as powerful as the president of his country.¹¹⁸ This leaves such workers feeling they have little choice but to accept whatever treatment is meted out to them. Despite this, diplomatic domestic workers in the UK are not afforded the same protections as other domestic workers, most notably the right to change their employer. Those workers who flee from abusive or exploitative employment in a diplomatic mission automatically lose their immigration status and become undocumented. As a result, in an adjournment debate in the House of Commons John Hemming MP recently described the situation as 'bonded or indentured labour, or slavery; there is no question about that. The test of whether somebody is in that position is whether they can run away. If they cannot run away without suffering serious sanctions, there is a problem.'¹¹⁹

INCREASED INCIDENCE OF TRAFFICKING

As Chapter 2 demonstrates, employers wield substantial power over their workers when they are unable to change jobs without losing their immigration status. In the case of diplomatic domestic workers, this power is exacerbated by their employer's ability to invoke diplomatic immunity. The result is an increase in the likelihood that diplomatic domestic workers will be trafficked to the UK for domestic servitude. Figures from Kalayaan's database shows that a third (31 per cent) (or 17 out of 55 referrals) of the trafficking cases that were referred to the pilot project Operation Tolerance, and the NRM (between 1 April 2009 and 31 December 2010) had come to the UK to work with a diplomat, whereas the ratio of diplomatic domestic workers entering the UK in comparison to MDWs in private households is one fiftieth. Put another way, when comparing the number of referrals made under the pilot and the NRM during this period with the relative number of visas issued in 2007 and 2008 combined, it appears that approximately 3.8 per cent of diplomatic domestic workers are trafficked compared to 0.2 per cent of MDWs in private households.¹²⁰ Furthermore, denying diplomatic domestic workers the right to change employers has meant that some individuals who have been trafficked by diplomats

TABLE 13: Comparison of the percentages of MDWs in diplomatic households and MDWs in private households experiencing various abuse and exploitation

Type of abuse/exploitation	Domestic workers registering with Kalayaan reporting abuse/exploitation					
	In diplomatic households in 2008	In all households in 2008	In diplomatic households in 2009	In all households in 2009	In diplomatic households in 2010	In all households in 2010
Not allowed out (unaccompanied)	52% (n=27)	63	74% (n=23)	56	63% (n=19)	60
Passport withheld	100% (n=9)	59	83% (n=23)	68	58% (n=19)	65
Psychological abuse	59% (n=27)	59	65% (n=23)	60	47% (n=19)	54
Physical abuse	15% (n=27)	16	11% (n=19)	15	11% (n=19)	18
Sexual abuse	19% (n=21)	5	0% (n=22)	5	6% (n=18)	3
Denied regular food	30% (n=23)	22	32% (n=22)	27	32% (n=19)	26
No private space (no bedroom)	52% (n=27)	43	30% (n=23)	46	37% (n=19)	49
No day off during the week	44% (n=27)	60	71% (n=24)	67	63% (n=19)	67
Working 16 hours or more hours a day	40% (n=25)	50	64% (n=22)	51	53% (n=17)	58
On call 24 hours a day	60% (n=15)	67	89% (n=19)	76	41% (n=17)	48
Salary of £50 or below per week	48% (n=25)	56	75% (n=20)	59	50% (n=18)	56

Source: Kalayaan database

(Note: For 'all households' the 'n' numbers can be found in table 2 on page 10)

have chosen not to be referred to the NRM since they desperately need to find a new job in order to send remittances home or pay off debts. By choosing to continue working despite the vulnerabilities that are associated with being undocumented,¹²¹ these diplomatic domestic workers further highlight the failure of the current trafficking protections in the UK vis-a-vis the needs of domestic workers.

INADEQUATE RESPONSE FROM AUTHORITIES

Kalayaan has raised the issue of diplomats trafficking migrant domestic workers with the Immigration Minister and the Foreign and Commonwealth Office (FCO). Their response has been that only two such cases of abuse by diplomats have been brought to their attention.¹²² Such a figure is reflective of several factors. First, the identification system of such cases within the Foreign Office is lengthy and inadequate. Thus, for example the FCO has not requested to be informed by the UKHTC of cases where diplomatic domestic workers are recognised as having been trafficked and instead relies on police officers to follow the correct protocol of reporting these cases. However, as the table below shows, such cases are rarely handled correctly in practice. Second, it reflects the fact that diplomatic domestic workers are often too scared to report mistreatment to the authorities as they fear deportation not to mention that they cannot afford to support themselves through the process of an employment tribunal without the right to work. Third, as the table below demonstrates, even when cases

of abuse are reported by diplomatic domestic workers, the police frequently mishandle the case and do not investigate it fully even before diplomatic immunity is invoked. While this remains the case, the UK government will not be able to verify the true incidence of such crimes committed by diplomats. The resultant effect is that diplomats who violate the UK's human rights legislation do so with impunity.

SITUATION IN OTHER COUNTRIES

Exploitation of diplomatic domestic workers is not unique to the UK. Other European NGOs in Germany, the Netherlands, Austria, Ireland and France have also dealt with cases of such abuse and are working with their respective governments to increase the protections for those MDWs brought to their countries by diplomats.¹²³ For example, the Austrian government has put provisions in place to interview diplomatic domestic workers once a year regarding their residence permits and uses this opportunity to give workers information about their rights and to refer any who are being mistreated

Approximately 3.8 per cent of diplomatic domestic workers are trafficked compared to 0.2 per cent of MDWs in private households.

TABLE 14: Summary of cases reported to the police by diplomatic domestic workers with Kalayaan’s assistance between April 2009 and January 2010.

Outcome following the DDW’s attempt to report instances of abuse by their employer to the police	Frequency
Police interviewed the worker but concluded that no crime had been committed despite the fact that the worker presented with many indicators of trafficking.	1
Police concluded that no crime had been committed before even interviewing the worker.	1
The worker repeatedly attempted to report her trafficking experience to the police. Despite persistent efforts by Kalayaan, the case was closed without any investigation. On advice from the UKHTC, the police eventually referred the worker to the NRM. A letter of complaint was later issued by Kalayaan to the Independent Police Complaints Commission (IPCC) as a result of the inept handling of this case.	2
Case is ongoing – police have not yet interviewed the worker.	1
Worker tried to report mistreatment by her employer to the police on two occasions. On the second occasion, the worker was told to phone the diplomatic group who responded saying that their job was to protect diplomats not investigate them. Kalayaan then assisted the worker to report her trafficking experience. The case has been closed as the embassy refused to allow the investigating officer to talk to the diplomat in question.	1
Police investigation is now closed since the diplomat was sent home.	1
Mistreatment by the employer was reported to the police and the worker was interviewed. The police officer assigned to the case later contacted Kalayaan to say that because the employer involved was a senior diplomat (First Secretary) their diplomatic immunity could not be waived for this type of offence unless other similar claims were also lodged against the same diplomat. The police officer in question stated that charges of trafficking and false imprisonment would otherwise have been made.	1

to Lefoe (a local NGO supporting victims of trafficking). In Germany, the Ministry of Foreign Affairs has brokered monetary settlements from Embassies to MDWs for labour law breaches by diplomats. In Ireland, migrant domestic workers have protested outside the house of the South African Ambassador who invoked immunity to avoid proceedings in the Irish labour courts.

THE NEED FOR POLICY CHANGE

In the UK, the Home Affairs Select Committee indicated its belief that the right to change employer is ‘the single most important issue in preventing the forced labour and trafficking of such workers.’¹²⁴ Indeed, the evidence shown in Chapter 2 demonstrates that the right to change employer has resulted in MDWs being able to remove themselves from exploitative employment relationships, seek justice where appropriate and most importantly find alternative employment and negotiate fairer employment terms and conditions with subsequent employers.

In conclusion, Kalayaan concurs with the previous Immigration Minister’s assessment that ‘there is no question that we [the government] are putting diplomatic relations above the interests of victims.’¹²⁵ It further asserts that while

diplomatic immunity is a difficult and seemingly intractable problem, the UK government is currently failing in its due diligence to prevent contemporary forms of slavery amongst diplomatic domestic workers. Kalayaan therefore recommends a reform to the visa system for this group to allow them to change employer without losing their immigration status. This will allow them an escape route from abusive practices and the chance to have their cases heard by the authorities. Such a recommendation was noted as an in-principle recommendation by the previous Immigration Minister¹²⁶ and is in keeping with the opinion of international experts, including the United Nations Special Rapporteur on Contemporary Forms of Slavery.¹²⁷ In order to guard against the route being used to traffic individuals into the UK for domestic servitude Kalayaan recommends that pre entry requirements for domestic workers accompanying diplomats are strengthened. Kalayaan also urges the FCO to take up the recommendation of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings to implement procedures that will ensure that domestic workers in diplomatic households remain in possession of their travel and identity documents and are informed about their rights and the support available to them.¹²⁸

Conclusion and Recommendations

This report has identified the continued need for a legal channel of migration for migrant domestic workers to the UK. The results of the research have demonstrated that the ODW visa is working as intended with the overwhelming majority of MDWs accompanying their foreign employers to the UK for a finite period of time. Indeed, in 2009, migrant domestic workers accounted for a mere 0.5 per cent of the individuals who were awarded settlement in the UK, thus showing that this immigration route has a negligible impact on net migration to the UK. For the few MDWs who remain in the UK, the route to settlement rids them of their underlying vulnerability by removing their dependency on employers to maintain their immigration status and facilitates their integration into UK society.

It is evident that MDWs continue to be vulnerable to abuse, exploitation and trafficking, and that the ODW visa system has been successful in protecting migrant domestic workers and that the protections it affords them will continue to be needed in the long-term. Indeed, this report has demonstrated that the right to change employer enables workers to escape from abusive employers and go on to negotiate fairer terms and conditions in their future employment, remaining visible in the UK whilst continuing to support their families by sending remittances home. The visa's portability provision also plays a crucial role in facilitating MDWs to pursue legal remedies against their employers. Taking such action would be unthinkable if the worker had to continue working for their employer and residing in their household and would be impossible if workers lost their right to remain in the UK when they fled from an abusive employer. Further, when MDWs are successful at taking cases against their employers, the latter become aware that they cannot act with impunity which arguably has a deterrent effect in the future.

This report has also shown that both the police and the NRM frequently fail to identify migrant domestic workers who have been trafficked. The system of protections designed to support and assist trafficked persons also fails to meet the needs of MDWs. In the majority of cases, MDWs who are identified as trafficked by Kalayaan choose not to be referred to the NRM, instead preferring to move on from their trafficking experience and find new employment. In addition, the NRM offers no protection at all to MDWs who have been

subject to forced labour but have not been trafficked. Further, the existing measures to protect trafficked persons are most effective and least costly when the individual in question has a valid ODW visa and the removal of the visa would therefore drastically increase costs. As such, the UK's protections to identify and assist trafficked domestic workers would be woefully inadequate as an alternative system of protections to those afforded to MDWs under the ODW visa.

Despite the success of the ODW visa system in protecting the rights of migrant domestic workers, this report has highlighted the existence of certain gaps in the protections afforded to them. In light of this, Kalayaan makes the following recommendations:

1 Extend the right to change employer to domestic workers in diplomatic households

This research has shown that diplomatic domestic workers experience similar levels of abuse and exploitation to migrant domestic workers in private households, yet are not currently afforded the same basic protections as the latter. Without the right to change employer, diplomatic domestic workers' negotiating power vis-a-vis their employment terms and conditions is virtually non-existent. Further, when fleeing from abusive employers they automatically lose their immigration status, become vulnerable to further exploitation and are unable to report their experiences to the authorities. This in combination with the diplomatic immunity of their employers dramatically increases the employer's power over the worker and makes the latter particularly vulnerable to being trafficked to the UK for domestic servitude. Kalayaan therefore asserts that the UK government is failing in its due diligence to prevent contemporary forms of slavery. It recommends that the government extends the right to change employers to diplomatic domestic workers as an urgent priority.

2 Provide information to migrant domestic workers on their rights and responsibilities when issuing visas

British diplomatic posts are routinely ignoring guidance from UKBA which states that migrant domestic workers who are issued with an ODW visa should be provided with information about their rights in the UK. Knowledge of their rights and of where to turn to for support would reduce

MDWs' vulnerability to abuse and exploitation. It would also enable them to seek help from the authorities at the onset of their mistreatment rather than enduring it out of a lack of awareness of their rights. As a result, Kalayaan recommends that the UK government provides training to all diplomatic missions overseas to ensure they understand the vulnerabilities associated with domestic work and that they actively inform MDWs of their rights when issuing ODW visas. The information leaflet provided to MDWs should be translated to ensure that MDWs receive information in their own language and are thus able to understand it.

3 Institute a bridging visa for MDWs who have become undocumented through no fault of their own

MDWs' dependency on employers for their immigration status is an underlying cause of their vulnerability to exploitation and can result in some workers becoming undocumented through no fault of their own. In light of the invisibility and heightened vulnerability to exploitation associated with undocumented work, Kalayaan recommends that the government institute a three month interim domestic work permit for MDWs who have fallen out of the system through no fault of their own. This would enable them to find new employment and later apply to regularise their status through an ODW visa application. The institution of such a system would not only prevent the aforementioned invisibility and reduce MDWs' vulnerability to exploitation but could also reduce undocumented working. In addition, when applied to trafficked individuals could save the government significant sums in accommodation and support costs.

4 Maintain the right to settlement for MDWs because it finally rids them of an underlying vulnerability

Upon obtaining indefinite leave to remain, MDWs are no longer dependent on their employers in order to maintain their immigration status. This leads to a restructuring of the power relations between employer and worker, ridding employers of excessive control over MDWs and enabling the latter to negotiate fairer employment terms and conditions. The route to settlement also enables migrant domestic workers to work for multiple employers and so if they encounter mistreatment from one employer, they can immediately stop working for them without the fear of losing their entire income or of becoming homeless. Living and working independently also provides MDWs with the opportunity to integrate into UK society through volunteering locally or enrolling in an evening class, something which is rarely feasible when they are living in their employer's home.

5 Introduce an amendment to the National Minimum Wage (NMW) Act 1998 which clarifies MDWs' entitlement to the NMW in all circumstances

This report has demonstrated that the current scope for misinterpretation of the Family Worker Exemption of the NMW Act 1998 and NMW Regulations 1999 makes MDWs unnecessarily vulnerable to underpayment and breaches of their right to the NMW. Women represent a disproportionately high percentage of MDWs and consequently the exemption is highly discriminatory. Kalayaan therefore recommends that an amendment be introduced to the NMW Act 1998 which clarifies that MDWs are entitled to the NMW in all circumstances. The guidance issued on the UKBA website should also be amended to reflect this legislative change.

6 Regulate the rate at which standby hours are remunerated

Statistics provided in this report indicate that the majority of Kalayaan's clients are expected to be on standby and available to work 24 hours a day without additional payment outside of their working hours. Such figures indicate that MDWs' right to the NMW and proper rest breaks are not being respected by the majority of those employing Kalayaan's clients. In order to prevent such exploitation, Kalayaan recommends that the UK government regulates the rate at which standby or on-call hours are remunerated as the draft ILO Convention on Domestic Work stipulates.

7 Provide safe housing

Since MDWs in the UK often live and work in the same household, they face the prospect of becoming homeless if they decide to flee from an abusive employer. As a result, many feel they have no option but to remain in a situation where they are being mistreated. When they do finally escape, their lack of recourse to public funds means that safe housing is not available to them. Kalayaan therefore recommends that state-funded short-term refuge places should be available for MDWs escaping from situations of abuse, exploitation, forced labour and trafficking.

8 Enforce tax and National Insurance Contributions (NIC) payments

Employers are legally obliged to pay MDWs' tax and NIC. In some cases, when they refuse to do so, MDWs become liable for these payments and this prevents them from accessing their full employment rights. In light of this, Kalayaan recommends that whenever an overseas domestic worker visa extension is issued in the UK, registration of new employers with the HMRC should be automatic thus ensuring that the requisite contributions are being made to the UK's revenue and that MDWs are able to access their full rights.



Domestic workers studying English with the Workers' Educational Association.

9 Provide a residence permit for trafficked persons wishing to pursue compensation

Under the current protection measures available to them, trafficked persons are eligible to pursue compensation through various means. In reality, though, those MDWs with insecure immigration status are unable to remain in the country in order to do so. In such situations, the right to pursue compensation becomes meaningless and prevents trafficked MDWs from seeking justice. Residence permits should therefore be issued to trafficked persons with insecure immigration status wishing to pursue compensation until their claim has been resolved. During this time, MDWs should be given permission to work since this is clearly desired by them and as such they would not be a burden on the public purse.

10 Support and Ratify the International Labour Organisation (ILO) Convention on 'Decent Work for Domestic Workers'

The evidence shown in this report underlines MDWs' particular vulnerability to abuse and exploitation. It also highlights the importance of the protections afforded to MDWs through UK employment legislation. In recognition of this fact, Kalayaan urges the UK government to show strong leadership at the International Labour Conference in 2011, supporting the ILO

Convention and later signing and ratifying such a Convention. This Convention will ensure that domestic workers in the UK and abroad enjoy basic legislative protection.

11 Provide training to law enforcement officials on trafficking for domestic servitude

MDWs who have been identified as trafficked by Kalayaan frequently encounter difficulties when attempting to report trafficking and related crimes to the police. Without the ability to correctly identify trafficked persons, there is a real risk that the individual will be returned to their employer not to mention the negative effect this will have on a migrant domestic worker's ability to seek justice and access support through the National Referral Mechanism. In light of this, Kalayaan recommends that training be provided to law enforcement officials in the UK on the identification of persons trafficked for domestic servitude.

Appendix

DESCRIPTIVE STATISTICS FOR MDWS INTERVIEWED IN THE RESEARCH

CHART 1: Nationality of MDWs interviewed

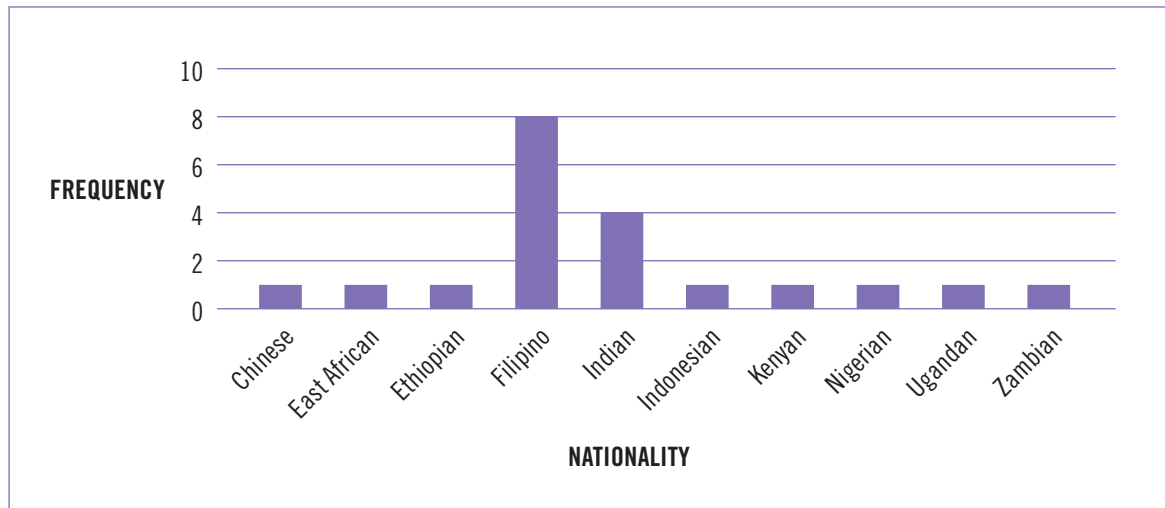
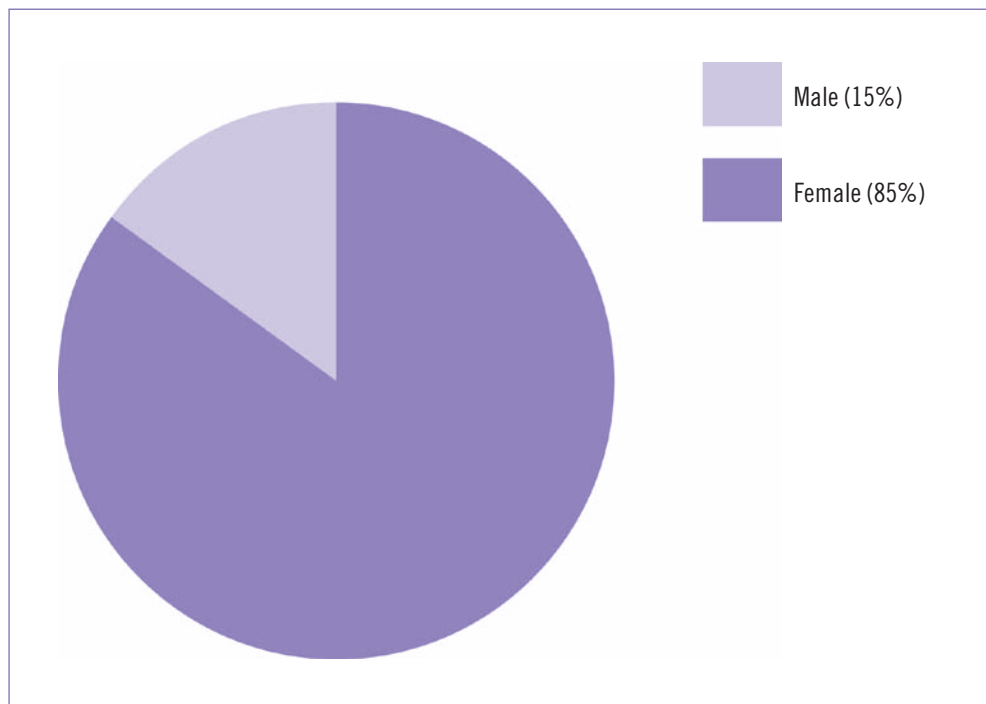


CHART 2: Gender of MDWs interviewed



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- 1 See draft ILO Convention on Decent Work for Domestic Workers 2011 accessed 5 November 2010. http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_143337.pdf
- 2 The NRM is the system that has been established to identify trafficked persons as part of the UK's implementation of the Council of Europe's Convention on Action Against Trafficking in Human Beings.
- 3 The UKHTC is a statutory agency to which first responders refer presumed trafficked persons. The UKHTC and the UKBA are known as 'competent authorities.' They make decisions on whether a presumed victim is considered to have been trafficked and whether to grant a reflection period to the presumed trafficked person for a period of up to 45 days to recover and consider whether they want to cooperate with a police investigation.
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- 22 Interview with Marissa Begonia, Justice 4 Domestic Workers, 18 June 2010.
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- 24 Data for this criterion only began to be collected in September 2008, so the n number is lower than in subsequent years. Prior to September 2008, MDWs registering with Kalayaan were asked the question 'Who has your passport?'
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- 28 Ibid. p. 3.
- 29 Ibid. p. 2.
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- 43 UK Border Agency website, 'Domestic workers: What to expect', accessed 12 September 2010. <http://www.ukba.homeoffice.gov.uk/workingintheuk/othercategories/domesticworkers/whatoexpect/>
- 44 Interview with Jamila Duncan-Bosu and Juliette Nash, North Kensington Law Centre (NKLC), 22 July 2010.
- 45 59 of these cases were referred to NKLC, 3 to Brent Law Centre, 4 to Lovells, 1 to Russell, Jones and Walker and 1 to Hammersmith and Fulham Law Centre. Information provided by Camilla Brown, Community Advocate, Kalayaan.
- 46 Interview with NKLC, op. cit.
- 47 Statistics provided by Camilla Brown, Community Advocate, Kalayaan.
- 48 Copies of the tribunal judgements and settlements were provided by Camilla Brown, Community Advocate, Kalayaan.
- 49 See Citizens Advice Bureau, *Hollow victories: an update on the non-payment of Employment Tribunal Awards*, March 2005 accessed 12 October 2010 http://www.citizensadvice.org.uk/hollow_victories
- 50 The claims in this column were made against employers by MDWs and the cases were settled using mediation.
- 51 Interview with Camilla Brown, Community Advocate, Kalayaan, 23 July 2010.
- 52 Ibid.
- 53 Home Office data is available for the period from January 2003 to September 2007 and subsequently from January 2008 to August 2010.
- 54 Home Office Research Report, 'A review of the literature on the abuse/exploitation of overseas domestic workers in the UK', March 2009; 2008–2010 data supplied to Kalayaan on 6 September 2010 by Dr. Olga Evans, UKBA.
- 55 It should be noted that one of these workers was forced to leave her second employer in the UK following a protracted illness and later encountered mistreatment by her subsequent employer. Such a case underlines the necessity of the right to change employer as required by MDWs.
- 56 Interview with D1 and D2, Filipina domestic workers.
- 57 Interview with D2, Filipina domestic worker.
- 58 Interview with D1, Filipina domestic worker.
- 59 Ibid.
- 60 UKBA website, 'Domestic workers: What to expect', accessed 5 November 2010. <http://www.ukba.homeoffice.gov.uk/workingintheuk/othercategories/domesticworkers/whatoexpect/>
- 61 British Medical Journal (BMJ) website, 'Lack of clarity to entitlement leaves Migrant Domestic Workers excluded from primary health care', Camilla Brown, 22 December 2006, accessed 5 November 2010. <http://www.bmj.com/content/333/7561/259.1/reply>
- 62 The term 'diplomatic post' includes British Embassies, High Commissions and other diplomatic posts across the world.
- 63 UKBA website, *Immigration Directorate's Instructions, Chapter 5 Section 12, Domestic workers in private households*, December 2006 accessed 29 October 2010. <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDs/idischapter5/section12/section12.pdf?view=Binary>
- 64 It was agreed that MDWs should be provided with a leaflet containing information about their rights upon introduction of the ODW visa in 1998 and in more recent steering group meetings. UKBA, WRK 2.1 Overseas domestic workers in private households, accessed 29 October 2010. <http://www.ukvisas.gov.uk/en/ecg/worknonpbs/domworkerprivate#21886949>
- 65 It should be noted that in a few clients' cases this data was not available and as such these figures should be treated as estimates.
- 66 People Management website, 'Migrant domestic workers unsure of employment rights', 2 September 2010, accessed 22 October 2010. <http://www.peoplemanagement.co.uk/pm/articles/2010/09/migrant-domestic-workers-unsure-of-employment-rights.htm>
- 67 ILO, *Report IV (1) Decent work for domestic workers*, International Labour Conference 99th Session, 2010, accessed 22 October 2010. http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_104700.pdf; "'Bridging visa" plan for certain immigrants', *The Irish Times*, 15 September 2010, accessed 22 October 2010. <http://www.irishtimes.com/newspaper/ireland/2009/0915/1224254553272.html>
- 68 The National Minimum Wage Regulations, 1999 No. 584, accessed 25 October 2010. <http://www.legislation.gov.uk/ukSI/1999/584/made>
- 69 Interview with NKLC, op. cit.
- 70 Interview with Camilla Brown, op. cit.
- 71 We understand from a steering group meeting on 6 October 2009 that the UKBA are considering amending this guidance.
- 72 Interview with Camilla Brown, op. cit.
- 73 Office of the High Commissioner for Human Rights (OHCHR), 'International Human Rights instruments and their applicability on the promotion and protection of the human rights of Migrant Domestic Workers in Europe', Discussion Paper by Silvia Gonzalez del Pino, May 2010.
- 74 Gordolan and Lalani, op. cit.
- 75 ILO, *Report IV (1) Decent work for domestic workers*, International Labour Conference, 100th Session, 2011, accessed 25 October 2010 http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_143337.pdf
- 76 Blackett, A., 'Making domestic work visible: The case for specific regulation', Labour Law and Labour Relations Programme Working Paper No. 2. Geneva: ILO, 2009.
- 77 Gordolan and Lalani, op. cit.
- 78 Interview with Marissa Begonia, Justice 4 Domestic Workers, 18 June 2010.
- 79 House of Commons Home Affairs Committee, *The Trade in Human Beings: Human Trafficking in the UK*, Home Affairs Committee, Sixth Report of Session 2008–9, Volume 1, House of Commons, London, The Stationery Office, 14 May 2009, p. 26.
- 80 The Home Office, 'The Migrant Journey Research Report 43 Executive Summary', Appendix B, September 2010, accessed 26 September 2010 <http://rds.homeoffice.gov.uk/rds/pdfs10/horr43c.pdf>. It should be noted that this figure does not include dependents of MDWs. However, in Kalayaan's experience very few MDWs actually bring their dependents to the UK because many domestic workers live-in with their employers and are thus unable to provide their dependents with the requisite accommodation. Some MDWs also find it difficult to prove their level of income because of the problems they encounter with ensuring that their tax and NIC are met by their employers.
- 81 Figures gathered from a number of separate requests for UKBA data, including number of individuals entering the UK in various years and the number of settlements by year. Calculations by Kalayaan.
- 82 see Lutz, H., 'When home becomes a workplace: Domestic work as an ordinary job in Germany', in Lutz, H. (ed.), *Migration and domestic work: A European perspective on a global theme*, Ashgate, 2008.
- 83 It is suspected that one domestic worker was brought over on a visit visa and another on a false passport.
- 84 Interview with D13, Filipina domestic worker.
- 85 Interview with D14, East African domestic worker.
- 86 Interview with D18, Ethiopian domestic worker.

- 87** Interview with D19, Kenyan domestic worker.
- 88** A group of nine UK-based organisations set up the ATMG in May 2009 to monitor the implementation of the Council of Europe's Convention on Action against Trafficking in Human Beings which came into effect in the UK on 1 April 2009. The organisations belonging to the ATMG are Amnesty International UK, Anti-Slavery International, End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes (ECPAT UK), Helen Bamber Foundation, Immigration Law Practitioner's Association (ILPA), Kalayaan, Poppy Project (of Eaves Housing), The Trafficking Awareness Raising Alliance, of Glasgow Community and Safety Services (TARA) and UNICEF UK. The ATMG produced its first report in June 2010.
- 89** Arocha, L. and Dottridge, M., 'Wrong Kind of victim? One year on: An analysis of UK measures to protect trafficked persons', Anti Trafficking Monitoring Group, June 2010, p. 28.
- 90** Statistics taken from Kalayaan's database.
- 91** Moss, J., *British-Group Inter-Parliamentary Union's Review Magazine*, Summer 2010.
- 92** See Anti-Trafficking Monitoring Group report.
- 93** Arocha, L. and Dottridge, M., op. cit., p. 31.
- 94** Negative Conclusive Decision letter 7.
- 95** Council of Europe Convention on Action against Trafficking in Human Beings, 2005, Article 4 accessed 24 September 2010. <http://conventions.coe.int/Treaty/EN/Treaties/Html/197.htm>
- 96** Arocha, L. and Dottridge, M., op. cit., p. 31.
- 97** The UK authorities have restricted the role of identifying and referring trafficked persons to specific government agencies who are known as the 'competent authorities.' In the UK, this competent authority role is fulfilled by officials from the UKHTC and the UKBA.
- 98** Whilst Kalayaan has directly referred most of these individuals, some have been referred by the police or the eventual accommodation provider
- 99** Statistics from Kalayaan's database. The result of some decisions are unknown as other service providers are responsible for this part of the individuals cases.
- 100** Interview with D17, Nigerian domestic worker.
- 101** These cases involved individuals who had been trafficked for domestic servitude as well as individuals trafficked for other purposes including forced labour, sexual exploitation and multiple forms of exploitation.
- 102** ATMG, Discrimination briefing supplied to Kalayaan, forthcoming 2010.
- 103** A UKBA pilot project to identify and support victims of trafficking for forced labour.
- 104** Statistics from Kalayaan's database.
- 105** In a few cases the status of the individual's accommodation is unknown.
- 106** Although this estimate is for an individual that has been trafficked for sexual exploitation, the costs are very similar for all trafficked persons.
- 107** Information provided by the Poppy Project to Kalayaan on 23 August 2010.
- 108** Interview with senior support worker at the Poppy Project, 14 July 2010.
- 109** Ibid.
- 110** ILO Forced Labour Convention 1930 (No. 29), Article 2 accessed 5 November 2010. <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C029>
- 111** Ministry of Justice, 'Slavery, servitude and forced or compulsory labour: Implementation of section 71 of the Coroners and Justice Act 2009', Circular 2010/07 accessed 5 November 2010. <http://www.justice.gov.uk/publications/docs/circular-07-2010-coroners-justice-act-section-71.pdf>
- 112** Statistics taken from Kalayaan's database.
- 113** Council of Europe Convention on Action against Trafficking in Human Beings, 2005, Article 15 accessed 29 September 2010. <http://conventions.coe.int/Treaty/EN/Treaties/Html/197.htm>
- 114** Lam, J. and Skrivankova, K., (2008) 'Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK', *Anti-Slavery International*, 2008.
- 115** Interview with NKLC, op. cit.
- 116** Organisation for Security and Cooperation in Europe (OSCE)/Office for Democratic Institutions and Human Rights (ODIHR), *Compensation for Trafficked and Exploited Persons in the OSCE Region*, 2008 Warsaw, p. 11
- 117** Diplomatic domestic workers were included in Tier 5 of the points-based system in 2008 but retained the same rights as under the previous domestic worker (diplomat) visa including the right to renew visa and the right to settlement.
- 118** Advice session with MDW from Central Africa, April 2010.
- 119** John Hemming MP, Birmingham Yardley, 10.21am, House of Commons Adjournment Debate on 'Migrant domestic workers (visas)', *Hansard*, Westminster Hall, 17 March 2010.
- 120** The 'number of visas' used in this calculation represents the number of visas issued in 2007 and 2008. We have used two years visa figures as the referrals also span two years. However, the trafficked persons may have entered the UK in any year. As such, these figures reflect the relative proportions of diplomatic domestic workers trafficked and domestic workers in private household trafficked rather than the actual proportions.
- 121** Kalayaan is aware of cases where women have been subject to further exploitation by employers who have taken advantage of their undocumented status, for example by withholding their wages.
- 122** House of Commons, Adjournment debate, op. cit.
- 123** OSCE, Conference on Unprotected Work, Invisible Exploitation: 'Trafficking for the Purpose of Domestic Servitude', Vienna, 17–18 June 2010; Meeting of European NGOs on diplomatic domestic workers, 7 September 2010, London, UK.
- 124** House of Commons Home Affairs Committee report 2008–9, op. cit.
- 125** House of Commons, Adjournment debate, op. cit.
- 126** In principle recommendation noted in minutes of Third Overseas Domestic Worker Inter-Ministerial steering group meeting (chaired by UKBA), 6 October 2009
- 127** OHCHR, 'Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences', Gulnara Shahinian, 18 June 2010, accessed 6 October 2010. http://www2.ohchr.org/english/issues/slavery/rapporteur/docs/A.HRC.15.20_EN.pdf ; The 2010 Trafficking in Persons Report published by the US State Department's Office to Monitor and Combat Trafficking in Persons issued similar guidance to governments wishing 'to prevent abuse and offer protection' to consider several questions including whether diplomatic domestic workers are legally able to transfer to another employer.
- 128** OSCE, Keynote Address of Dr Maria Grazia Giammarinaro, OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, at the 10th Alliance against Trafficking in Persons Conference: 'Unprotected work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude', Vienna 17–18 June 2010.



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