KALAYAAN

justice for migrant domestic workers

Time to untie migrant domestic workers.

Briefing for Report Stage of the Modern Slavery Bill in the House of Lords

February 2015

Lord Hylton, Baroness Hanham, Baroness Royall and The Lord Bishop of Carlisle have tabled an important amendment to the Modern Slavery Bill 'Protection from slavery for overseas domestic workers' to be inserted after Clause 51 in the Bill. If passed on the 25th February, this amendment would transform the situation of migrant domestic workers in the UK. It would allow migrant domestic workers to change employer, so allowing them some bargaining power to challenge abuse, and escape if necessary, without breaking the law. It would allow these same workers to find alternative work as a domestic worker in a private household and so begin to rebuild their lives and provide for their families. If in this full time employment it would allow for them to apply to renew their visa. This would serve to keep them visible to the Home Office and allow officials to challenge any conditions or employment about which they have concerns. For those found to have been a victim of modern slavery there would be a three month temporary visa allowing them to look for decent work.

Since April 2012 migrant domestic workers have entered the UK on a six month long, non renewable visa, which prohibits them from leaving the employer with whom they enter. The employer's name is usually written on their visa. This leaves them little opportunity to challenge any aspect of their treatment or employment with an employer in the unregulated and hidden employment context of a private household. Migrant domestic workers usually depend on their employer for accommodation, employment and most information about their situation in the UK leaving them particularly vulnerable to abuse.

The findings of two parliamentary committees are that the current tied visa regime in place for migrant domestic workers dramatically increases their vulnerability to abuse and exploitation.

The Joint Committee on the Draft Modern Slavery Bill published in April 2014 found that *'In the case of the domestic worker's visa, policy changes have unintentionally strengthened the hand of the slave master against the victim of slavery. The moral case for revisiting this issue is urgent and overwhelming. Protecting these victims does not require primary legislation and we call on the Government to take immediate action'*.

The Joint Committee on Human Rights in its legislative scrutiny of the Bill in November 2014 reported that *'We regard the removal of the right of an overseas domestic worker to change employer as a backward step in the protection of migrant domestic workers, particularly as the pre-2012 regime had been cited internationally as good practice. We recommend that the bill be amended to reverse the relevant changes to the immigration rules and to reinstate the pre-2012 protections in the bill'.*

In her written evidence to the Public Bill Committee, submitted in October 2014, Dr Virginia Mantouvalou, Co-Director of the Institute for Human Rights and Reader in Human Rights and Labour Law, University College London (UCL), Faculty of Laws highlighted similar visa regimes which have been subject to legal challenges and raised concerns that the ODW visa regime could be subject to the same. She mentions the *Rantsev* case involving human trafficking in breach of

Article 4 of the European Convention on Human Rights (prohibition of slavery, servitude, forced and compulsory labour), in which the European Court of Human Rights ruled that a very restrictive visa regime – the artiste visa regime in Cyprus – led to a violation of the Convention and suggests that the same principles can be extended to cover the ODW visa.

What migrant domestic workers need

The Amendment asks for only the most basic of rights;

- To change employer, so allowing workers to negotiate with an employer, and to leave if necessary;
- To apply to renew their visa if in full time work as a domestic worker;
- For where there is evidence that the worker has been a victim of modern slavery, a temporary three month visa allowing the worker time to look for decent employment.

Similar rights (with the exception of the temporary visa) were in place prior to April 2012; these were introduced in 1998 in recognition of the exploitation of migrant domestic workers and resulted in a decrease in reported abuse to organisations such as Kalayaan. Kalayaan and others (including the Home Affairs Select Committee in 2009 which described maintaining the protections within the original visa as '*the single most important issue in preventing the forced labour and trafficking of such workers*') warned against the removal of these protections which have resulted in an increase in abuse reported to us by migrant domestic workers. We have been campaigning for the reinstatement of these rights without success.

In defending the tied visa regime Government has been keen to point out that migrant domestic workers were abused when they had the right to change employer. This is true, migrant domestic workers world over are known to be particularly vulnerable to abuse, and this is why their protections should have been build upon, not removed.

Including the Amendment in the Bill would provide an opportunity to build on these basic rights to ensure that employing a domestic worker is more formalised and open to some scrutiny. At present, with a worker coming to the UK for only 6 months their status is unclear. Are they a UK worker, or are they a visitor? Even if paid reasonably they would be unlikely to earn enough to register with the Inland Revenue for Tax and National Insurance contributions. If the Amendment were passed there could be a requirement that all employers registered with the Inland Revenue in conjunction with the first visa renewal application, so ensuring tax is paid but allowing for scrutiny of contribution levels as an indication of decent pay. Additional checks could be put in place; for example, all employers should be required to assist in opening a bank account in the worker's name and to provide the worker with payslips in order to assist in ensuring that a reasonable salary is being paid in on a regular basis. Currently, even in situations where workers are paid, salaries are often sent directly to families overseas, leaving the workers without any cash in the UK, increasing their dependence on their employer. Workers could have a regular meeting with a trusted authority or labour agency where they are asked about their employment and any concerns they have, or voluntary inspection scheme similar to that in place in Ireland could be introduced. There the National Employment Rights Agency (NERA) can invite employers to submit to an inspection to ensure that they are fully complying with employment legislation. However, without the right to change employer, workers will not disclose abuse as by doing so they would make themselves destitute and be unable to provide for their families. The Amendment will allow for such measures to become meaningful protections.

We need to protect, not review

On Monday 9th February the Government announced another review of the visa. It is unclear, given the clear and consistent recommendations of two parliamentary Committees why there is a need for a further review when all the evidence is that tying migrant domestic workers to their employers has

worsened their abuse. There is an opportunity in front of parliament to address this and the time for action is now. Every day we delay more migrant domestic workers enter the UK on a visa which has been found by two parliamentary committees to facilitate their abuse.

'Protections' currently on the table will not be effective in practice.

In addition to a review the Government has announced a number of measures which they claim will provide 'further protections' to migrant domestic workers. It is difficult to see how these will provide effective protection while a visa regime that ties domestic workers to their employers remains in place making it impossible in practice for migrant domestic workers to challenge abuse or to access their rights. These 'further protections' include:

- Piloting a visa interview programme in unspecified African locations. Interviews have been a theoretical requirement for many years. Under this proposal, domestic workers will be interviewed in private by UKVI staff. However workers are already meant to be interviewed separately to their employers so an interview is not a new measure, we are also unclear what will happen to a worker who discloses abuse. If she will not be protected, it is very unlikely any abuse will be disclosed.

- A new contract covering key terms of employment as well as issues such as retention of passports. Contracts are also required currently yet Kalayaan frequently encounters cases where the domestic workers terms and conditions of employment including salary are not in accordance with those stated in their contract. To be effective, contracts of employment must be easily enforceable in the UK. The tied visa combined with the recent cuts to legal aid serve to deny domestic workers the opportunity in practice to enforce employment rights through an Employment Tribunal.

- A requirement that a caseworker examining an ODW visa application be satisfied that the National Minimum Wage (NMW) will genuinely be paid. A far more effective strategy for ensuring that the NMW is paid in the UK would surely be to remove barriers to domestic workers from enforcing this right in the UK as well as scrutinising bank accounts and payslips with visa renewals.

- A commitment to work with the Foreign and Commonwealth Office to consider the way domestic workers in diplomatic households are protected. Diplomatic immunity means that domestic workers employed by diplomats find it particularly hard to access justice. Earlier this month the Court of Appeal found that diplomatic immunity trumped trafficking when it refused the claim of two domestic workers found by the UK's National Referral Mechanism to have been conclusively trafficked by their diplomatic employers (Reyes and Suryadi vs Al-Malki). If we are interested in protecting these workers we must allow them to leave their diplomatic employers. If we want to go further, a landmark Court of Appeal Case, heard also in February; Benkharbouche & Janah vs Sudan & Libya where these workers were employed directly by the embassy issued a declaration of incompatibility under the Human Rights Act 1998 in order that the workers could take a claim. Ensuring workers are employed by the embassy rather than individual diplomat could do much to facilitate their access to justice.

- Referral into the National Referral Mechanism as a victim of trafficking. This does not protect against nor prevent trafficking. It identifies someone as having been trafficked. Less than half of the domestic workers whom Kalayaan staff have identified as trafficked consent to be referred into to NRM. In 2014, Kalayaan staff considered that 54 domestic workers who registered in that year were victims of trafficking. However, only 25 were referred to the NRM in the same year. For those without immediate short term support needs such as accommodation, the NRM offers little protection to domestic workers.

- Support to return to their country of origin. For many domestic workers Kalayaan encounters returning to their country of origin is not an option in the short to medium term. Some

domestic workers have described being in situations of debt bondage as they have no choice but to borrow money in order to cover agency fees and flights and subsequently discover that their salary was too small to make realistic repayments. Some domestic workers have borrowed to pay the costs of hospital care and medicine for an ill relative and become indebted for considerable periods as they try to make repayments from small salary. Many domestic workers have indicated to us that they would seek work abroad again if they had to return home for any reason as they have no other way of supporting their families. There is a real risk that they would be re-trafficked

'Maria', came to Kalayaan having run away from the employer with whom she entered on the tied ODW visa. She had been helped by other Filipinas who had suggested she come to Kalayaan. Maria described how she had worked for her Middle Eastern employer for several years. During this time her passport was kept from her, she worked an average 19 hour day and was made to sleep next to the baby's cot at night. She was not allowed out of the property except when taking the children out, during which time she was accompanied by a 'watcher'- a man employed by the household to keep an eye on her. Maria explained that she did not speak to the male employer but the female employer would often scream at her and call her 'stupid'. She had no days off and was paid £50 a week which was sent home to her family. She often wouldn't be given anything to eat at all during the day.

Maria eventually left because her mother was hospitalised with kidney failure. Maria said she was paid too little by her employers to pay for her Mother's treatment, and her employers refused to help or to pay her more so she decided she had to escape. She came to Kalayaan without her passport knowing nothing of her immigration status. We explained the terms of the visa and that she was not permitted to renew her visa and work in the UK. As there were indicators of trafficking we discussed a referral to the National Referral Mechanism for victims of trafficking and Maria consented. She received a positive Reasonable Grounds decision. She also agreed to a referral to the police.

However Maria then disappeared. She would not answer the phone or come to appointments. Eventually she texted, apologising, and explaining that she was working. She knew this was not permitted but said she had no choice. Her new employers were also exploiting her and did not allow her out of the house but she explained that she could not risk losing the job as she was paying for her mother's dialysis. Without this her mother would die. We have been unable to establish further contact with or to help Maria. She is one of the workers on the tied visa who have been driven underground to further exploitation.

The Joint Committee on the Draft Modern Slavery Bill has described the tied visa as 'incongruous with our aim to act decisively to protect the victims of modern slavery'. Tied visa regimes are condemned by Human Rights organisations internationally. Shamefully the tied ODW visa has been in place in the UK almost three years. The proposed amendment to the Modern Slavery Bill is an opportunity to restore basic rights to migrant domestic workers in the UK. For this group of workers, well recognised as vulnerable to exploitation including slavery and trafficking, it will put meaning behind the intention to eradicate slavery in the UK. It is an opportunity we cannot miss.

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