SUBMISSIONS TO THE JOINT COMMITTEE ON HUMAN RIGHTS

ON THE UNITED KINGDOM'S IMPLEMENTATION OF

C.N. V THE UNITED KINGDOM (APPLICATION NO. 4239/08)

Introduction

These submissions are made in response to the Joint Committee on Human Rights' call for evidence on the UK's positive obligations to investigate allegations of slavery, servitude, forced or compulsory labour, following the judgment of the European Court of Human Rights (ECtHR) in *C.N. v the United Kingdom (Application No. 4239/08)* in which the AIRE Centre was a third party intervener. The AIRE Centre is a non-governmental organisation founded in 1993 and based in the United Kingdom whose mission is to promote awareness of European law rights and assist marginalised individuals and those in vulnerable circumstances in asserting those rights. Kalayaan is a charity which gives advice and support to migrant domestic workers and is currently the primary specialist organisation working with migrant domestic workers in the UK.

These submissions focus on the continuing problems faced by victims of slavery and servitude, similar to the Applicant in *C.N.*, and the need for the UK government to do more to facilitate access to authorities in light of the Court's comments in this judgment, and to ensure the UK is complying with the full scope of its positive obligations under Article 4 of the European Convention on Human Rights (ECHR). Victims who fall foul of the prohibitions contained in Article 4 are subjected to many different forms of exploitation and in various business, occupational or private settings; all are entitled to the same level of protection under that Article. However, where there are now some procedures in place in the UK for victims of trafficking to be protected, in compliance with the positive obligations under Article 4 ECHR (and following the introduction of the Council of Europe Convention against Trafficking in Human Beings, the EU Directive 2011/36 and the ECtHR's ruling in *Rantsev v Cyprus and Russia (Application no. 25965/04)*), there are no corresponding procedures in place for victims of slavery, servitude or forced labour where there is no trafficking element. These individuals are often brought legitimately to the UK under the Overseas Domestic Worker visa and then exploited in private households. The situation faced by domestic workers has become worse following changes to the visa in April 2012, as a consequence of which domestic workers have been left without the limited protections they previously had. The AIRE Centre and Kalayaan are strongly of the view that the significant gap in protection for domestic workers in the UK (set out in detail below) should be urgently

reviewed by the UK government in light of the Court's judgment in *C.N. v the United Kingdom*.

These submissions are divided into two parts. The first part highlights to current situation of individuals who have been brought to the UK under the overseas domestic worker visa (under Rule 159 of the Immigration Rules) and who are subsequently forced into domestic servitude and, in extreme cases, into situations amounting to slavery. The second part of these submissions highlight the scope of the UK's positive obligations under Article 4 ECHR and the further steps that the Government should take in response to this judgment in relation to protecting victims and potential victims of slavery, servitude or forced or compulsory labour.

Part I: The Overseas Domestic Worker Visa

Kalayaan is a recognised expert organisation on migrant domestic workers in the UK and is the principle organisation which works to provide direct support and advice to these individuals. Kalayaan is also a recognised 'First Responder' and can refer individuals identified as potential victims of trafficking to the Government's National Referral Mechanim (NRM).

Since its inception in 1987, Kalayaan has provided advice, advocacy and support services to migrant domestic workers in the UK. The immigration rules at that time admitted migrant domestic workers to the UK under a 'concession' which tied migrant domestic workers to the employer with whom they entered the UK. There were no safeguards in place for domestic workers who were abused or exploited or for those who had become undocumented having fled abuse experienced in their domestic work place. In response to the evidence of widespead abuse of workers brought to the UK under the concession, the Overseas Domestic Worker visa was introduced in 1998. This gave important protection to the visa holders in the form of an immigration status which allowed them to change employer (though not sector) and recognition as a worker in the UK. These protections remained in place until the visa was changed and protections removed on the 6 April 2012. Under the new visa, the visa holder is tied to their original employer and the visa is not renewable beyond its initial 6 month duration. These changes have had a direct and significant impact on the level of control that can be now exercised by employers over their domestic workers and on the number of workers who are able to seek help and assistance.

The changes to the visa were introduced, according to the UK authorities, to reduce net migration to the UK[1], despite the fact that migrant domestic workers make a tiny contribution to net migration generally because the vast majority of those entering the UK under the rules applying between 1998 and April 2012 left with their employer.[2] There was apparently no regard for the impact on migrant domestic workers, who are mostly women, in increasing their vulnerability to abuse, exploitation, forced labour and trafficking. UKBA figures (obtained using the Freedom of Information Act) show that between 2002 and 2012 the number of visas issued to domestic workers to enter the UK each year has remained at between 15,000 and just over 17,000. This figure illustrates the potentially very high number of victims facing exploitation behind closed doors.

[1] Employment-Related Settlement, Tier 5 and Overseas Domestic Workers, A Consultation; June 2011
[2] Jenny Moss, Migration Pulse, 18 August 2011, http://www.migrantsrights.org.uk/migration-pulse/2011/it-s-numbers-game-could-we-please-use-right-ones

Migrant domestic workers who enter the UK on the Overseas Domestic Worker visa accompany a named employer to work in their private household. The employer may be a foreign national who visits the UK, or a British expatriate. One of the conditions of the visa is that the employment relationship predates entry to the UK by at least 12 months and that the employer commits to complying with UK employment law. The worker is also supposed to be interviewed in person without their employer present at the overseas post in order to be able to disclose any abuse. This was the case both pre and post April 2012, and Kalayaan has long standing and documented concerns[3] as to the efficacy of these checks, particularly following reports from workers who have never been interviewed for their visa, who were simply asked to sign some documents in a langauge they could not understand or for who their employer interpreted at the embassy interview.[4] Many arrive in the UK accompanied by their employer never having had possession of their own passports at any point during the journey.

Research by Kalayaan[5] and others shows that migrant domestic workers are particularly vulnerable to abuses of their human rights including becoming victims of slavery and forced labour. These vulnerabilities are also well recognised by international and UK experts including Anti-Slavery International[6], the Poppy Project[7], at least three United Nations Special Rapporteurs (on contemporary slavery[8], on the human rights of migrants[9] and on violence against women[10]) and the Office of the Special Representative on Trafficking at the Organisation for Security and Cooperation in Europe[11]. The vulnerability of domestic workers is often rooted in factors such as the hidden and isolated nature of their work place; dependence on one unregulated employer for their immigration status, housing and employment; often having no family or contacts who they can go to for help and support; language difficulties - many migrant domestic workers speak little or no English and are dependent upon their employer for information about the UK and their situation here; and fear of the authorities which is often deliberately instilled by their employer. Kalayaan frequently hears of employers threatening to have domestic workers arrested or removed from the UK. The consequent power balance in favour of the employer is hard to overstate.

[3] The New Bonded Labour? The impact of proposed changes tot he UK immigration system on migrant domestic workers, Oxfam and Kalayaan, 2008

[4] Turning a Blind Eye; The British State and migrant domestic workers' employment rights. Nick Clark and Leena Kumarappan. The Working Lives Institute, August 2011

[5] See for example Ending the Abuse; Policies that work to protect migrant domestic workers, Lalani, M. 2011

[6] Skrivánková, K. Trafficking for forced labour: UK Country Report. Anti-Slavery International, 2006. http://www.antislavery.org/includes/documents/cm_docs/2009/t/trafficking_for_forced_labour_uk_country_report.pdf

[7] Stepnitz, A. Of Human Bondage: Trafficking in Women and Contemporary slavery in the UK. The Poppy Project, Eaves. June 2009.

[8] Shahinian, G. Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences. United Nations: Geneva, 2010. http://www2.ohchr.org/english/issues/slavery/rapporteur/docs/A.HRC.15.20_EN.pdf

[9] Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante: Mission to the United Kingdom of Great Britain and Northern Ireland. United Nations, Human Rights Council. 16 March 2010. http://www.unhcr.org/refworld/docid/4c0623e92.html

[10] Coomaraswamy, R. Report of the Special Rapporteur on violence against women, its causes and consequences, on trafficking in women, women's migration and violence against women. United Nations: Geneva, 2000. http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G00/113/34/PDF/G0011334.pdf?OpenElement

[11] Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude. 2010. http://www.osce.org/cthb/75804] and Report by OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, following her visit to the UK, 7-10 March 2011. http://www.osce.org/cthb/87013

Migrant domestic workers come to Kalayaan for advice and support, usually having fled abusive conditions of employment. Kalayaan has found that migrant domestic workers on the tied Overseas Domestic Work visa have experienced reported markedly worse treatment than those who registered with the organisation during the same time period but had entered the UK on the original Overseas Domestic Work visa prior to the changes. For workers registering with Kalayaan between 6th April 2012 and 5th April 2013:

- All workers on the tied visa reported that they were paid less than £100 per week (US $154), compared to 60% of those on the original visa;
- 62% of those on the tied visa were paid no salary at all, compared to 14% on the original visa;
- 85% of those on the tied visa did not have their own room so slept with the children in their care or in the kitchen or lounge, compared to 31% on the original visa;
- 86% of those on the tied visa had their passport and biometric permit retained by their employer, compared to 46% of those on the original visa;
- 96% of those on the tied visa were unable to leave the house unsupervised compared to 52% on the original visa.

Removal of the right to change employer

The right to change employer is a fundamental safeguard against abuse, exploitation, forced labour and trafficking. With no other option available, many migrant domestic workers will continue to suffer abuse and exploitation rather than lose their livelihood, accommodation and permission to work in the UK. Those who do flee an abusive employer are too scared to report the crimes committed against them by their employer and seek help from the authorities for fear of being deported. They believe that, having broken the terms of their immigration status by escaping abuse, it is they who will be treated as the criminal. Abuse and exploitation of migrant domestic workers in the UK appears to have increased and an apparent reason for this seems to be belief by employers that the threats that they make about illegality, detention and deportation will be enforced by the state. The inability to change employer essentially gives abusive employers the power to act with complete impunity.

The extent to which the abuse of migrant domestic workers in the UK appears to have been driven underground is demonstrated by the fact that a troublingly low number of workers on the tied Overseas Domestic Work visa have come to Kalayaan for help and support. Kalayaan is historically trusted by migrant domestic workers who are predominantly referred by word of mouth. The organisation usually sees around 300 new workers in any given year. However, in the year following the introduction of the tied visa (6th April 2012 to 5th April 2013) Kalayaan saw 156 on the original visa (who had entered the UK prior to the change) and only 29 on the new tied visa. As numbers entering the UK in terms of visas issued remain stable, this suggests that workers either fear the consequences of escaping and seeking help and are enduring appalling levels of abuse, or are escaping and working undocumented which will lead almost certainly to further exploitation.

The Government's response to criticisms of the visa tying workers to their employers is that "We do not consider that the ability to change employer is necessary to provide protection"[12].

[12] Home Office, Impact Assessment Changes to Tier 5 of the Points Based System and Overseas Domestic Worker routes of entry, IAHO0053, 15 March 2012

However, there is a wealth of evidence that counters this assertion. In a report on domestic servitude, the UN Special Rapporteur on Slavery identified the tying of visas to a particular employer as an element of "neo-bondage", and a factor creating an extreme dependency on an employer, making the migrant domestic worker easy to exploit.[13] The Special Rapporteur specifically recommended that States "Abolish immigration regimes that tie a visa to the sponsorship of a single employer, including for domestic workers employed by diplomats"[14]. The UN Special Rapporteur on the Human Rights of Migrants, following a country mission to the UK in 2010, specifically recommended retaining the [previous] visa safeguards and extending them to cover diplomatic domestic workers.[15] The OSCE Special Representative on Trafficking, have identified the practice of tying visas to a particular employer as one of the factors contributing to trafficking.[16]

The UK Government's response to the issue of protection

The Government has stated that despite the changes and the introduction of the tied ODW visa in April 2012, there are a range of options available to Overseas Domestic Workers to seek protection, such as:

- access to the National Referral Mechanism (NRM) if they have been trafficked to the UK; the NRM however has no provision for identifying victims of forced labour, slavery or servitude where there is no trafficking element;[17]
- the ability to report abuse or confiscation of a passport to the police;
- as workers, the right to access the Employment Tribunal service;
- to return home.[18]

Furthermore, the UK Government contends that the best way to prevent abusive relationships being brought to the UK is to restrict access to the route and to test the validity of the working relationship before a visa is issued, by:

- restricting the length of stay in the UK to 6 months;
- requiring 12 months prior employment and a signed statement of terms and conditions of employment in line with the National Minimum Wage;[19]
- A letter informing ODWs of their rights in the UK and where to get help if needed — which is provided in a range of languages.[20]

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[13] *Report of the Special Rapporteur on contemporary forms of slavery, including it causes and consequences, Gulnara Shahinian*, A/HRC/15/20, Geneva, 18 June 2010, paragraphs 33, 47, 48, 54

[14] *Report of the Special Rapporteur on contemporary forms of slavery, including it causes and consequences, Gulnara Shahinian*, A/HRC/15/20, op.cit, paragraph 96

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

[16] For example, the OSCE Special Representative on Trafficking: OSCE Occasional Paper series no.4, *Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude,*

[17] For those domestic workers whose cases raise trafficking issues and who consent to being referred, the NRM process has often been difficult and sometimes has caused more problems than it has solved. There have been delays in the identification process which has led to people living 'in limbo' for many months further compounding their trauma and delaying their recovery.

[18] *Replies of the United Kingdom of Great Britain and Northern Ireland to the list of issues to be taken up in connection with the consideration of its seventh periodic report*, CEDAW/C/GBR/Q/7/Add.1, paragraph 176

[19] The National Minimum Wage rate per hour depends on your age and whether you are an apprentice. As of July 2013, it stands as £6.19 if you are 21 years old and over, and £4.98 for 18 to 20 year olds.

[20] *Replies of the United Kingdom of Great Britain and Northern Ireland to the list of issues to be taken up in connection with the consideration of its seventh periodic report*, CEDAW/C/GBR/Q/7/Add.1., paragraph 175

However, the reality is that these measures are minimal when looked at in light of the obligations under Article 4 ECHR, and in many cases not being applied in practice. Kalayaan's experience of the new tied visa is that the removal of the right to change employer has prevented a number of victims of exploitation from approaching the authorities and reporting the abuse. In doing so, they will inevitably have to leave their employer and will consequently be in breach of the conditions attached to their right to stay in the UK.

The National Referral Mechanism

As stated above, the NRM is only an option in cases which raise the issue of trafficking of which the exploitation is just one part. In cases involving domestic workers who have been trafficked to the UK, the NRM decision makers are usually asylum caseworkers whose focus is primarily on the credibility of individuals. The Anti Trafficking Monitoring Group, which Kalayaan is a member of, criticise the focus on credibility at reasonable grounds stage pointing out that victims are reluctant to fully disclose the situation to authorities early in the process, particularly when they have been taught to fear the authorities by their traffickers. Decision making in the NRM is also variable and largely based on discretion. The UK Government's approach of leaving trafficking policy and decision making at the discretion of officials is criticised in both the 2010 and 2012 Anti-Trafficking Monitoring Group Reports as being in contravention of the legal obligations of the UK towards victims of trafficking.[21] The effect of this variability in decision making, and the lack of an appeals process, is that First Responders cannot give the victims of trafficking they are supporting any certainty about how the authorities will treat their case.

Kalayaan has received decisions that claim that victim's accounts are not credible for reasons that demonstrate a serious misunderstanding of the nature of trafficking from the decision makers. In one decision[22] the UKBA criticise an individual for not disclosing at the point of applying for entry clearance that she was being mistreated in the Gulf country she was living in and state that if she really was being mistreated in the way she said she was then she would have come forward at that stage. A domestic worker, with no education, under the control of a trafficker might conceivably not trust the British authorities. It is unlikely that she appreciated the difference between the British and Gulf country authorities and in any case even if she had done, the British authorities would only have the power to refuse her visa. The UKBA have confirmed in a meeting that this is the approach they would take is she had disclosed at this point; they would not offer her any assistance.

Reporting treatment and exploitation to the Police

Kalayaan has noted that since the introduction of the tied ODW visa in April 2012, there has been a corresponding drop in the numbers of migrant domestic workers coming into contact

[21] Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude. 2010. http://www.osce.org/cthb/75804 and Report by OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, following her visit to the UK, 7-10 March 2011. http://www.osce.org/cthb/87013

[22] Decision letter dated 22 January 2010 relating to Kalayaan database identifier 1330

with the police[23] and the UKHTC reports that referrals for domestic servitude have decreased by 59%.[24]

Even prior to the changes to the visa a positive response from the authorities to strong indicators of trafficking, slavery and forced labour was far from guaranteed; in the period April 2011 – December 2011, 36 domestic workers who came to Kalayaan without their identity documents were assisted by Kalayaan to report this to the police. In many cases they reported other incidents of mistreatment and crime at the same time. These were often not followed up as they were seen by the police to be civil matters or because the domestic workers' overriding concern was to retrieve her identity documents and the police often overlooked other indicators of trafficking and forced labour and did not follow up on those issues subsequently.

Furthermore, between May 2008 and June 2010, of the 37 domestic workers who actually reported the crime of trafficking (the majority accompanied by a Kalayaan advocate), only 12 cases were recorded as trafficking by the police and investigated as such. In 14 of the cases no crime was recorded at all, in 3 more only the passport element was recorded and two further cases were only recorded as 'crime related incidents'. Kalayaan's subsequent discussions with police revealed that one of the primary reasons for cases not being classified as trafficking was due to a poor and inconsistent understanding amongst police desk staff and some officers as to what trafficking means.

Employment Tribunal

It would be exceptionally difficult, if not impossible, for a migrant domestic worker on the tied visa to secure redress through an employment tribunal. With a 6 month non-renewable visa, the terms of which have been broken by having left an employer, they effectively do not have permission to remain in the UK to take the case and will not be able to work to support themselves whilst they do. Legal aid cuts mean that even domestic workers who have experienced serious breaches of their rights are finding it almost impossible to get legal representation. To date, almost one and a half years after the introduction of the tied visa only one domestic worker on this visa known to Kalayaan is attempting a case in the Employment Tribunal.

Kalayaan has also supported domestic workers on the previous visa with Employment Tribunal claims however these have been for most part unsatisfactory due to a lack of understanding of the status of domestic workers and their particular vulnerabilities.

The above information is intended to illustrate that domestic servitude, forced labour and modern day slavery is an increasing problem in the UK which has been exacerbated by the more restrictive Overseas Domestic Worker visa. A large number of individuals find themselves in the same situation as the Applicant *C.N.* but without recourse, assistance and

[23] Conversation between Kalayaan staff member and police officer in a Missing Persons Unit on 5.9.13. The Officer reported that since the changes to the immigration rules it has been harder to close missing person files for domestic workers as they are not coming forward. Kalayaan are also supporting far few workers who are making reports to the police.

[24] UKHTC: A Strategic Assessment on the Nature and Scale of Human Trafficking in 2012. Serious Organised Crime Agency Intelligence Assessment. August 2013 http://www.soca.gov.uk/news/608-human-trafficking-assessment-published accessed 13.9.13 However in a conversation with a Kalayaan staff member on the 9.9.13 the Head of the UKHTC suggested that some of the difference should be attributed to differences in data collection between 2011 (when individuals identified as trafficked by Kalayaan but not referred were included) and 2012 (when they weren't)

support from the UK authorities. The cases that Kalayaan staff deal with on a day to day basis show that in order to fully and properly comply with its obligations under Article 4 ECHR, and following the judgment of the ECtHR in *C.N. v UK* the United Kingdom government has to put in place mechanisms for the identification of such victims, for effective investigation of the relevant offences, and for appropriate support to be provided to the victims. The full extent of the positive obligations of a State under Article 4 ECHR are set out below.

Part II: The Scope of the UK's Positive Obligations under Article 4 ECHR

It is established case law of the European Court of Human Rights that the positive obligations of States under Article 4 ECHR are comparable to those under Article 3.[25] Article 4 enshrines one of the basic values of democratic societies making up the Council of Europe and does not make provision for exceptions or derogations.[26] In *Siliadin v France* and *Rantsev v Cyprus and Russia*, the Court provided insight into the range of positive obligations States have under Article 4 in cases of forced labour and human trafficking, including finding, crucially, that 'States are not permitted to leave…a victim of an Article 4 violation unprotected or to return her to a situation of trafficking and exploitation'[27] (emphasis added).

States are under the positive obligation 'to adopt criminal-law provisions which penalise the practices referred to in Article 4 and to apply them in practice'.[28] Fulfilment of this obligation requires the 'penalisation and effective prosecution of any act aimed at maintaining a person in such a situation'.[29] In *Siliadin*, the Court found that 'that the criminal-law legislation in force at the material time did not afford the applicant, a minor, practical and effective protection against the actions of which she was a victim'[30] and therefore found a violation of Article 4.[31]

In *Rantsev v Cyprus and Russia*, the Court added that in cases of trafficking, 'in order to comply with this obligation, member States are required to put in place a legislative and administrative framework to prohibit and punish trafficking.'[32] In assessing whether Article 4 has been violated, 'the relevant legal or regulatory framework in place must be taken into account'.[33] This framework must 'be adequate to ensure the practical and effective protection of the rights of victims or potential victims of trafficking. Furthermore, a State's immigration rules must address relevant concerns relating to encouragement, facilitation or tolerance of trafficking'.[34]

Whether the case is one of forced labour or of human trafficking, it is clear from the Court's jurisprudence on Article 4 that it is not enough simply to have legislation and administrative provisions in place if these cannot be effectively accessed. For the domestic remedies available to the victim to be adequate, they must meet the level set out by the European

[25] *Siliadin v France*, Application no. 73316/01, 26 July 2005, paras. 82 and 112.
[26] *Siliadin v France*, Application no. 73316/01, 26 July 2005, paras. 86, 112.
[27] *Rantsev v Cyprus and Russia*, Application no. 25965/04, 7 January 2010 para. 271.
[28] *Rantsev v Cyprus and Russia*, Application no. 25965/04, 7 January 2010 para. 89.
[29] *Siliadin v France*, Application no. 73316/01, 26 July 2005, para. 112.
[30] *Siliadin v France*, Application no. 73316/01, 26 July 2005, para. 148.
[31] *Siliadin v France*, Application no. 73316/01, 26 July 2005, para. 149.
[32] *Rantsev v Cyprus and Russia*, Application no. 25965/04, 7 January 2010, para. 285.
[33] *Rantsev v Cyprus and Russia*, Application no. 25965/04, 7 January 2010, para. 285.
[34] *Rantsev v Cyprus and Russia*, Application no. 25965/04, 7 January 2010, para. 285.

Convention on Human Rights[35] and in accordance with the guidance provided by the Court. Domestic remedies must 'be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State'[36] (emphasis added). The Court has considered in detail the necessary proponents for an effective remedy for violations of Article 3 ECHR in *Aksoy v Turkey*, and it is submitted that, following the Court's reasoning in *Siliadin v France*[37], this same standard should be applicable to violations of Article 4.

In the case *C.N. v the United Kingdom*, the Court reaffirmed that the UK authorities had a positive obligation to investigate the applicant's complaints (see §73-74) and found the investigation to be inadequate:

> "*It is clear that the domestic authorities did investigate the applicant's complaints. However, the applicant submits that the investigation was deficient because the lack of specific legislation criminalising domestic servitude meant that it was not directed at determining whether or not she had been a victim of treatment contrary to Article 4 of the Convention.*
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> *74. It is not in dispute that at the time the applicant alleged that she was subjected to treatment falling within the scope of Article 4 of the Convention, such conduct was not specifically criminalised under domestic law. There were, however, a number of criminal offences which criminalised certain aspects of slavery, servitude and forced or compulsory labour. In particular, the Government directed the Court's attention to the offences of trafficking, false imprisonment, kidnapping, grievous bodily harm, assault, battery, blackmail and harassment...*
>
> *[The Court] cannot but find that the legislative provisions in force in the United Kingdom at the relevant time were inadequate to afford practical and effective protection against treatment falling within the scope of Article 4 of the Convention.[…]*."

Meeting the standard of effectiveness under the Convention requires 'a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure'[38]. The broader context of the positive obligation under Article 4 includes the obligation to 'require a State to take operational measures to protect victims, or potential victims, of trafficking [or slavery, servitude or forced labour]'.[39] In relation to the UK and its migrant domestic worker visa regime, certain measures, if applied generically, would reduce the risk of violating Article 4 in specific cases. These measures should focus on the training of front line staff and police officers to identify victims, initiating investigations whenever information about potential violations of rights under Article 4 is presented, and having in

[35] Under Article 13 of the Convention
[36] Aksoy v Turkey (Application No. 21987/93), 18 December 1996, para 95.
[37] 'The Court considers that, together with Articles 2 and 3, Article 4 of the Convention enshrines one of the basic values of the democratic societies making up the Council of Europe.' *Siliadin v France*, Application no. 73316/01, 26 July 2005, para 82
[38] Aksoy v Turkey (Application No. 21987/93), 18 December 1996, para 98
[39] *Rantsev v Cyprus and Russia*, Application no. 25965/04, 7 January 2010, para. 286.

place support mechanisms for victims including secure immigration status that will enable victims to pursue criminal complaints or cases before the Employment Tribunal.

The failure in any instance to identify an individual as a victim of treatment contrary to Article 4 constitutes a violation of that provision. The failure to provide an environment in which an individual who has been a victim of such treatment can reasonably be expected to disclose to the police what she has experienced also constitutes a violation of Article 4. Likewise, the failure to take forward investigations because of a lack of understanding of the vulnerable position of domestic workers and the power imbalance inherent in the relationship between victims of forced labour and/or trafficking and those who subject them to such treatment also constitute 'a failure to take all appropriate steps to safeguard' (*Opuz v Turkey* (2009), para 128) such victims and, therefore, also violate Article 4 of the Convention. The Court in *C.N. v the United Kingdom* specifically noted that "*domestic servitude is a specific offence, distinct from trafficking and exploitation, which involves a complex set of dynamics, involving both overt and more subtle forms of coercion, to force compliance". A thorough investigation into complaints of such conduct therefore requires an understanding of the many subtle ways an individual can fall under the control of another.*"(See §80).

The Overlap Between Trafficking and Domestic Servitude

Many victims of domestic servitude will also be victims of trafficking who were trafficked to the UK for the purposes of exploitation in a private household. For these individuals, the Court has brought the protection provisions contained in the Council of Europe Convention on Action against Trafficking in Human Beings to inform the positive obligations under Article 4: *'The Court considers that the spectrum of safeguards set out in national legislation must be adequate to ensure the practical and effective protection of the rights of victims or potential victims of trafficking. Accordingly, in addition to criminal law measures to punish traffickers, Article 4 requires member States to put in place adequate measures regulating businesses often used as a cover for human trafficking. Furthermore, a State's immigration rules must address relevant concerns relating to encouragement, facilitation or tolerance of trafficking….member States are required to put in place a legislative and administrative framework to prohibit and punish trafficking. The Court observes that the Palermo Protocol and the Anti-Trafficking Convention refer to the need for a comprehensive approach to combat trafficking which includes measures to prevent trafficking and to protect victims, in addition to measures to punish traffickers…The extent of the positive obligations arising under Article 4 must be considered within this broader context.'*[40]

The AIRE Centre and Kalayaan are of the view that these same positive obligations should necessarily be extended to victims of the other violations contained in Article 4 even where there is no trafficking element, in order to ensure compliance with the positive obligations under that Article. Furthermore, where there is a trafficking element, the UK now has to comply with the provisions contained in the EU Directive 2011/36 on preventing and combating trafficking in human beings and protecting its victims[41]. The deadline for transposition of this Directive into UK law passed on 6 April 2013.

[40] *Rantsev v Cyprus and Russia (Application No. 25965/04) at paragraphs 284-285*

[41] Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

Following the Treaty of Lisbon (2009), the United Kingdom has the ability to opt out of certain pieces of EU legislation. The UK first decided to opt out of the Directive, considering that it was already compliant with its provisions. However, in July 2011, the UK applied to the Commission in order to opt in, which was accepted in October 2011. The UK is thus bound by the provisions of the Directive as any other Member State of the European Union and is required to adjust national law in order to comply with the minimum standards contained in the directive.

The provisions contained in the Directive closely mirror those in the Council of Europe Trafficking Convention and include obligations on Member States to ensure that:

- assistance and support are provided to victims (Article 11)
- victims have access to legal counselling and legal representation including for the purpose of claiming compensation (Article 12)
- secondary victimisation during investigation and prosecution is prevented by avoiding, among other things, visual contact between victims and defendants during the giving of evidence and the giving of evidence in open court (Article 12)
- victims have access to compensation schemes (Articles 17, 12 and 15)
- a guardian or representative is appointed for a child victim from the moment the child is identified as a victim by the authorities (Article 14)

The provision of support and assistance contained in Article 11 of the Directive is triggered from when a potential victim of trafficking is identified and continues until a conclusive decisions is made as to whether or not they have been trafficked: "*2. Member States shall take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have* ***a reasonable-grounds indication*** *for believing that the person* ***might have been*** *subjected to any of the offences referred to in Articles 2 and 3.*" (emphasis added). Therefore domestic workers who may have been trafficked to the UK should be treated as trafficking victims under this Directive until it is clear that all the required elements for trafficking did not take place. At that stage, however, if the individual had nevertheless been subjected to exploitation contrary to Article 4 ECHR, similar identification, investigation and support provisions should then be made available to them directly stemming from that Article.

The Failure to Investigate Domestic Servitude Offences

As highlighted in Part I of these submissions, Kalayaan has extensive experience of cases where reports made to the police were not followed up and no investigation into the circumstances of the victim was undertaken. Such investigations have now been made even more difficult following the complex situation a victim finds themselves in under the new tied visa - having broken the conditions of their leave by escaping from their employer, and through have a non-renewable six month visa which does permit them to remain in the UK to pursue investigations or to find alternative domestic worker employment in the UK while any investigations are ongoing.

Although there is now a legislative framework in place in the UK criminalising acts of forced labour, slavery and servitude, there are no corresponding protection or identification provisions set out in legislation. The criminalisation provisions are also not without practical difficulties. On 12 November 2009, section 71 of the Coroners and Justice Act, which came

into force on 6 April 2010, created an offence of holding another person in slavery or servitude or requiring them to perform forced or compulsory labour[42]. It states that:

> ‘‘71 Slavery, servitude and forced or compulsory labour
> (1) A person (D) commits an offence if—
> (a) D holds another person in slavery or servitude and the circumstances are such that D knows or ought to know that the person is so held, or
> (b) D requires another person to perform forced or compulsory labour and the circumstances are such that D knows or ought to know that the person is being required to perform such labour.
> (2) In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention (which prohibits a person from being held in slavery or servitude or being required to perform forced or compulsory labour).

However, as raised by the Equality and Human Rights Commission (the Commission) in its intervention in *CN v the United Kingdom* (see §63), section 71 of the Coroners and Justice Act 2009 did not go far enough and was not of assistance in order to ensure the adequate investigation and / or prosecution in forced labour and servitude cases. Indeed, section 71 does not define any of the offences, but merely refers to article 4 of the European Convention on Human Rights, which in turn does not define forced or compulsory labour, slavery or servitude.

These offences should be framed, defined and explained under UK law, as the Commission pointed out, "*in light of present day conditions*"(See § 63). According to the Commission, "*there was therefore a risk that the new statute would not result either in clear deterrence or effective prosecutions, and would not improve failures in investigation*".

A report by the Group of Experts on Action against Trafficking in Human Beings (GRETA) released in October 2012[43] drafted following a visit to the UK, highlights the fact that various provisions regarding the offence of trafficking in human beings are contained in numerous pieces of legislation and that *"a dedicated legislation on human trafficking would provide legal status to victims of trafficking, including the right to a recovery and reflection period, as well as other provisions of the Convention which reflect the human rights-based approach to action against trafficking*"[44].

The AIRE Centre and Kalayaan would similarly welcome dedicated legislation for offences relation to slavery, servitude and forced or compulsory labour which not only contains criminalisation of the acts and the power to investigate and punish perpetrators, but also contains obligations to have appropriately trained staff to identify, support and protect victims.

[42] "First Annual Report of the Inter-Departmental Ministerial Group on Human Trafficking" presented to Parliament by the Secretary of State for the Home Department by Command of her Majesty October 2012.
[43] Greta (2012) 6, "Report concerning the implementation of the Council of Europe Convention on action against trafficking in human beings by the United Kingdom", first evaluation round, Strasbourg 12 September 2012, p.83, available at http://www.coe.int/t/dghl/monitoring/trafficking/docs/Reports/GRETA_2012_6_FGR_GBR_en.pdf
[44] Ibid

Conclusion

Kalayaan's experience of supporting migrant domestic workers in the UK clearly shows the continuing difficulties in initiating and conducting investigations into allegations of slavery, servitude or forced labour. The situation has worsened considerably since the changes to the Overseas Domestic Worker visa introduced in the Immigration Rules in 2012, leading to many of those subjected to breaches of Article 4 too scared to come forward to the authorities. For any who do so, the immigration restrictions of the tied ODW visa makes any investigation into their abuse almost impossible in practice.

Although the introduction of the offence contained in section 71 of the Coroner's and Justice Act is a good initial step, the AIRE Centre and Kalayaan nevertheless remain of the view that the UK Government can introduce a number of other measures in order to fully comply with its positive obligations under Article 4 ECHR. If no further steps are taken, the UK will inevitably face further litigation before the ECtHR by victims who have been subjected to treatment contrary to Article 4 and who have been unable to obtain any redress in the UK.

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Kate Roberts, Community Advocate
Kalayaan

Saadiya Chaudary, Interim Director
The AIRE Centre