

Protecting domestic workers in Lebanon How to amend the labour code to better protect domestic migrant workers in Lebanon?

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EXECUTIVE SUMMARY

The 200,000 domestic migrant workers in Lebanon face many challenges, especially in relation to their rights. Although there have been calls to dismantle the kafala system (sponsorship) through reforming the current legislation to include domestic workers into the national labour code, regulating the aspects of private recruitment agencies, and addressing the migration aspect of MDWs, this was not successful. The plight of domestic migrant workers is being further exacerbated during times of crisis such as the local financial crisis and the COVID-19 pandemic which increased their vulnerability. This policy brief presents the current issues facing the domestic workers and why the reforms have failed to materialize so far. As a way forward, it proposes three recommendations in order to unlock the complex situation.

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KEYWORDS

Domestic Migrant Workers, Kafala system, Unified labour contract

Introduction

This policy brief intends to provide recommendations on how to better protect the domestic workers in Lebanon by amending the labour code. It reviews the situation of the employment conditions of the migrant domestic workers in Lebanon, which were lately exacerbated as a result of the COVID-19ⁱ. It is based on the analysis of the evidence captured from the discriminatory practices that have been impacting the employment conditions of this vulnerable category of workers for many years. Their situation requires urgent measures to put an end to labour exploitation, including cases that could amount to forced labour and human trafficking among migrant domestic workers, in accordance with international labour and human rights Laws.

This paper attempts to provide policy makers, human rights advocates and other relevant stakeholders with a framework for the implementation of a rights-based approach to the recruitment and employment of foreign domestic workers. In doing so, it also provides examples and lessons learned from other countries to guide in the development of this alternative policy. This brief argues that a new legal labour frameworkⁱⁱ should form an integral part of the long-awaited institutional reformsⁱⁱⁱ in Lebanon. Redressing this situation is a top priority and could be helped by support from the ILO, with a view to improving domestic legislation and promoting a rights-based approach.

The major challenge is nonetheless rooted in law and practice i.e. 1) absence of/or insufficient labour law coverage and 2) behavioral norms (of employers and recruitment agencies) that might hinder the effectiveness of Law.

From a standard point of view, Lebanon has ratified 7 out of 8 fundamental conventions (with the exception of C87)^{iv}. However, Lebanon has not yet ratified key instruments for migrant domestic workers namely the Domestic Workers Convention no. 189 of 2011, the Migration for Employment

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Convention C097 of 1949, the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and the ILO Private Employment Agencies, 1997(No. 181)^v. Lebanon's experience shows the need for bridging the legal gap between insufficient labour Law coverage necessary for the protection of migrant workers and International Law compliance.

Background

The migrant domestic workers have been excluded from Lebanon's labor law protections, prohibited from freely forming or joining trade unions, and their status in the country is regulated by the kafala system – a restrictive immigration regime of laws, regulations, and customary practices which ties migrant workers' legal residency to their employers. This lack of protection has further exacerbated their vulnerability against current crises (e.g. COVID 19, the recent explosion, the currency situation, etc.), causing almost a humanitarian crisis. A new standard unified contract^{vi} that includes vital safeguards against forced labor, labour exploitation and human trafficking has been put in place in 2019 through a Ministerial decree from the Ministry of Labor on 4 September 2020. It was prepared by a Working Group set up by the former Labour Minister, comprising representatives of the Ministry of Labour and international and national NGOs (namely Amnesty International, Human Rights Watch, Legal Agenda, Kafa, Caritas and the ILO which also coordinated the Working Group). The new decree was to go into effect on 20 October 2020; however, following a complaint by the Syndicate of the Owners of Recruitment Agencies (SORAL) to the Shura Council on September 21, the legislation was put on hold. In light of this new reality, the Lebanese authorities are confronted with a new dilemma as the new standard unified contract was considered as a temporary stopgap measure to dismantling the Kafala system^{vii}, while waiting for a final solution to unfold in the form of the adoption of a new labor law, amending the current labor code (article 7) and possibly supplemented by a separate law governing domestic work linked to the labour law. The long-awaited unified standard labour contract adopted in 2020 had indeed granted migrant domestic workers, like in the majority of countries, basic rights such as a guaranteed weekly rest day, overtime pay, sick pay, annual leave, the national minimum wage and the ability to resign at one month's notice or at will, if there is a violation of the contract^{viii}. It was speculated by some members of the civil society that the new contract was "too idealistic" to be truly implemented given its incompatibility with the existing set of domestic rules and laws.

Methodology

The primary audience for this policy brief is the policy-makers of the newly appointed Prime Minister including his cabinet, advisors and staff members of the Parliament. The main intention of this brief is to raise awareness to amend the Lebanese labour law and supplement it by a separate law governing domestic work linked to the labour law in order to better protect migrant domestic workers and progressively dismantling the Kafala system. This policy brief is based on evidence from ILO databases on domestic migrant workers, literature reviews from journals and academic papers, reports, data and interviews with members of relevant Ministries (mainly Labour, social affairs and interior), the social partners and other activists from civil society. This evidence was synthesized in this brief in order to present several policy recommendations. The policy brief was kindly reviewed by experts from the ILO Office Headquarters and Beirut Regional Office. This work can also be used as part of a communication strategy for influencing policy-makers in reforming the labour code in order to protect domestic migrant workers.

Policy process

Lebanon regulates its migrant domestic workers through mandatory standard employment contracts outside the scope of national labour legislation^{ix}. There are serious concerns as to the persistent exclusion of migrant workers outside the realm of policy-making on social and labour rights, which might lead a significant number of them to take refuge in the informal economy^x. The

primary purpose of including them in the labour law is to recognize that they are workers with the same labour rights and protections as all other workers.

Although there has been funding to initiate policy reforms i.e. two flagship projects^{xi} have been fully dedicated since 2011 relating to labour regulation among other initiatives taken by ILO, including PROWD 2011-2014 and MAGNET 2014-2015. These projects were piloted and developed into a diversified range of activities and resources aimed at improving working conditions for domestic workers while advocating for regulated and monitored environments that protect the rights of all labour migrants. The recommendations resulting from these two projects (PROWD and MAGNET) contributed to the design of the two ongoing projects: Work in Freedom (WIF) Programme and the FAIRWAY Programme. The projects are supporting the Kafala Working Group which led to the revised Standard Unified Contract. In addition, many workshops and capacity-building activities were held to help policy makers reform their domestic legislations to protect domestic migrant workers. This shows that the country should not further delay the legislative reform. There are resources, evidence and best practices available to guide the authorities. For example, while many GCC countries have since embarked on legislative reforms to resolve their controversial records of domestic rights violations in accordance with International Labour Standards^{xii}, Lebanon is still lagging behind. The model and successful experience of Qatar^{xiii} regarding the strategies and methodologies used to reform labour legislation and improve the rights of MDWs could be adapted and replicated to the Lebanese context. Consultations must be initiated with ILO to develop the appropriate technical cooperation programme dedicated for this purpose. Other partnerships in the form of common and joint projects, sponsored by civil societies from sending and receiving countries, were successfully realized. One such example includes the joint Anti-Slavery International with its local partners GEFONT in Nepal and KAFA in Lebanon which sought to improve working conditions of Nepalese migrant domestic workers in Lebanon and overall to provide better protection to them, through advocacy for policy change in both the countries of destination and origin^{xiv}.



Foreign domestic workers deprived of rights during pandemic survey, March 2020^{xv}

Recommendations proposed

While waiting for the Shura Council to pronounce its final decision^{xvi} on the unified labour contract and in view of the urgency of the issue, the Council of Ministers can already use its discretionary powers to promote and protect the rights of this vulnerable category of migrant workers with a view to building resilience among themselves from future shocks. It goes without saying that the new government should fully consult the social partners through the social dialogue mechanism before taking the required actions. **Based on the above, this brief puts forward the following interdependent and complementary policy recommendations:**

a) Place an immediate moratorium on the Kafala system and enact an urgent Ministerial draft law to replace it with an employment contractual system^{xvii} under the supervision of the Ministry of Labour^{xviii}. This measure will require the parliament to amend article 7 of the labour code and supplement it with the necessary legal provisions in line with Convention 189 (although not yet ratified but can be used including its Recommendation R201) and SDG Target 8.8^{xix}. This step will help relax the immigration regime of regulations and put an end to the discriminatory customary practices particularly with regard to changing employers while keeping their immigration status valid. Wage withholding, detention and deportation should finally come to an end^{xx}. This moratorium should be complemented with effective labour inspection of labour relations among migrant domestic workers and their employers.

b) Put into effect the code of conduct for private placement agencies and their syndicate as well as the decree on monitoring and regulating private placement agencies passed by the Ministry of Labour in early 2009. In this context, a potential regulation of the requirements needed to issue a recruitment agency license, as a preventive measure, must be considered for adoption, as well as setting up a strict inspection mechanism (with adequate normative and financial means) and accountability measures to stop abuses and violations.

c) Establish support services to address the grievances of migrant women^{xxi} through gender-sensitive, rights-based measures that can help prevent human and labour rights abuses. A good practice would be to restart and reactivate the ILO-funded hotline^{xxii} launched by the Ministry of Labour for reporting abuses and lodging complaints in the context of a dispute resolution system; the lack of trust in the system should also be dissipated and the lack of knowledge on the complaint process can be bridged by disseminating accurate information about its existence through info guides easily accessible to workers in place, in cooperation with the civil society.

Conclusion

Based on the above, this policy brief has argued that it would be fundamental to extend labour law coverage to domestic workers by means of either parliamentary ratification of ILO Convention 189 or reforming national Law. However, evidence-based policy intervention at the institutional and grassroots levels and building towards concrete measures for changing habits and practices are preconditions for bringing more opportunities and credits for Lebanon, especially when coupled with good practices and lessons emerging from regional experiences and other technical workshops, with a view to possible adaptation and replication of successful cases. Therefore, the ideal strategy to adopt would be to strike a balance between improving employment conditions and recruitment terms of migrant domestic workers and enhancing the authority and responsibility of the State. As a next step, in the future, the system should be further enhanced for instance to include all domestic workers, provided that the same basic standards apply regardless of nationality or gender. This will contribute preventing both a “forced labour trap” and a “race to the bottom” in regard to the regulated paid domestic work.

References

- 1) ILO Brief dated April 2020 entitled “Impact of COVID-19 on migrant workers in Lebanon and what employers can do about it”, https://www.ilo.org/beirut/publications/WCMS_741604/lang-en/index.htm
- 2) ILO Policy Brief, “Protecting migrant workers during the COVID-19 pandemic”, Recommendations for Policy-makers and Constituents, April 2020, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_743268.pdf
- 3) Article from the Guardian “Pandemic raises fears over welfare of domestic workers in Lebanon”, 16 April 2020, <https://www.theguardian.com/global-development/2020/apr/16/pandemic-raises-fears-over-welfare-of-domestic-workers-in-lebanon>
- 4) ILO Normlex, Ratifications for Lebanon https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103147
- 5) ILO Normlex, Conventions not Ratified by Lebanon, https://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210_COUNTRY_ID:103147
- 6) ILO Report “Domestic workers across the world: Global and regional statistics and the extent of legal protection”, 2013, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/-publ/documents/publication/wcms_173363.pdf
- 7) PROWD MAGNET, Dignity, Rights and Domestic Work in Arab states: Technical workshop on challenges and good practices https://www.ilo.org/beirut/events/WCMS_312538/lang-en/index.htm.
- 8) ILO study, Obstacles to justice for migrant domestic workers in Lebanon https://www.ilo.org/beirut/events/WCMS_245678/lang-en/index.htm.
- 9) Effective protection for domestic workers: A guide to designing labour laws, 2012, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/-publ/documents/publication/wcms_173365.pdf
- 10) Information on these initiatives is available at http://www.ilo.org/beirut/projects/WCMS_213497/lang-en/index.htm and http://www.ilo.org/beirut/projects/WCMS_222976/lang-en/index.htm
- 11) Dignity, Rights and Domestic Work in the Arab States Technical workshop on challenges and good practices, October 2014, https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/meetingdocument/wcms_324681.pdf
- 12) Progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO, GB.340/INS/11, https://www.ilo.org/gb/GBSessions/GB340/ins/WCMS_757599/lang-en/index.htm
- 13) Migrant Domestic Workers: “Nepal, Lebanon”, Silva Ferretti, November 2016, <https://www.antislavery.org/wp-content/uploads/2017/06/OSF-MDW-FINAL-REPORT.pdf>.
- 14) Policy Brief No. 2: “REFORM OF THE KAFALA (SPONSORSHIP) SYSTEM”, Migration Forum Asia <https://www.ilo.org/dyn/migpractice/docs/132/PB2.pdf>.
- 15) Exploitation of Migrant workers in Asia, MPI, December 11, 2014 <https://www.migrationpolicy.org/article/exploitation-migrant-workers-asia>.
- 16) ILO-funded hotline for women migrant domestic workers launched by Lebanon’s Ministry of Labour, ILO News https://www.ilo.org/beirut/media-centre/news/WCMS_377568/lang-en/index.htm

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ⁱILO Brief dated April 2020 entitled “Impact of COVID-19 on migrant workers in Lebanon and what employers can do about it”. https://www.ilo.org/beirut/publications/WCMS_741604/lang--en/index.htm. See also ILO Policy Brief, “Protecting migrant workers during the COVID-19 pandemic”, Recommendations for Policy-makers and Constituents, April 2020, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_743268.pdf. See also Article from the Guardian “Pandemic raises fears over welfare of domestic workers in Lebanon”, 16 April 2020, <https://www.theguardian.com/global-development/2020/apr/16/pandemic-raises-fears-over-welfare-of-domestic-workers-in-lebanon>.

ⁱⁱIt is extremely important to amend the labour law to recognize domestic work. However, the reference to dismantle the Kafala (sponsorship) system is crucial to ensure protection of MWs. The labour law may afford the protection granted in the labour law but does not address the migration aspect which often traps MDWs in forced labour or irregular status.

ⁱⁱⁱReforming the way in which domestic work is regulated could have some positive impacts on the provision of quality services to household employers.

^{iv}ILO Normlex, Ratifications for Lebanon. https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103147.

^vILO Normlex, Conventions not Ratified by Lebanon. https://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210_COUNTRY_ID:103147.

^{vi}This is the revised Standard Unified Contract for the employment of (migrant) domestic workers, which replaced the original contract adopted in 2009, and provides domestic migrant workers with a common set of standards to protect them from human rights abuses.

^{vii}This is a process that needs action on a number of fronts. In this regard, the Working Group referred to above also proposed an Action Plan on Kafala Reform, which included a number of measures that need to be taken, in addition to adoption of the revised contract, to dismantle the Kafala system in Lebanon.

^{viii}Other important provisions in the revised contract that address indicators of forced labour include the prohibition on withholding the passport/personal documents of domestic workers and the right to freedom of movement (i.e. to leave the household during the rest day/rest periods).

^{ix}In 2009, the Ministry of Labour adopted the first Standard Unified Contract which is very brief and acknowledges few rights for MDWs.

^xILO Report “Domestic workers across the world: Global and regional statistics and the extent of legal protection”, 2013, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/-publ/documents/publication/wcms_173363.pdf.

^{xi}PROWD MAGNET, Dignity, Rights and Domestic Work in Arab states: Technical workshop on challenges and good practices https://www.ilo.org/beirut/events/WCMS_312538/lang--en/index.htm.

^{xii}Which have not resulted in some of the scenarios that some policy-makers had feared.

^{xiii}Progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO, GB.340/INS/11, https://www.ilo.org/gb/GBSessions/GB340/ins/WCMS_757599/lang--en/index.htm.

^{xiv}“Migrant Domestic Workers: “Nepal, Lebanon”, Silva Ferretti, November 2016, <https://www.antislavery.org/wp-content/uploads/2017/06/OSF-MDW-FINAL-REPORT.pdf>. Partly funded by the ILO’s Work in Freedom Technical Cooperation programme.

^{xv}<http://www.examiner.org.hk/2020/03/20/foreign-domestic-workers-deprived-of-rights-during-pandemic-survey-says/news/hongkong/>.

^{xvi}As information, both Human Rights Watch and Amnesty International have criticized the original Shura Council decision.

^{xvii}Effective protection for domestic workers: A guide to designing labour laws, 2012, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/-publ/documents/publication/wcms_173365.pdf.

^{xviii}Policy Brief No. 2: “REFORM OF THE KAFALA (SPONSORSHIP) SYSTEM”, Migration Forum Asia <https://www.ilo.org/dyn/migpractice/docs/132/PB2.pdf>.

^{xix}Target 8.8: on protecting labour rights and promoting safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.

^{xx}Exploitation of Migrant workers in Asia, MPI, December 11, 2014. <https://www.migrationpolicy.org/article/exploitation-migrant-workers-asia>.

^{xxi}E.g. violence, non-payment of wages, non-renewal of permits, confiscation of passports, confinement, etc.

^{xxii}ILO-funded hotline for women migrant domestic workers launched by Lebanon’s Ministry of Labour, ILO News. https://www.ilo.org/beirut/media-centre/news/WCMS_377568/lang--en/index.htm.