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ACCESS TO JUSTICE

OF MIGRANT DOMESTIC WORKERS IN LEBANON

ACCESS TO JUSTICE FOR MIGRANT DOMESTIC WORKERS IN LEBANON

Alix Nasri

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PREFACE

Access to justice has become an important issue in international discussions related to fundamental rights. The International Labour Organization (ILO) is committed to place this subject at the heart of its policy of protection of migrant workers, in particular following two tripartite conferences.

Indeed, the February 2013 ILO meeting of experts on forced labour and trafficking for labour exploitation concluded that the victims' access to justice should be facilitated, and all appropriate legal and administrative procedures should be simplified for this purpose. It has also emphasized the importance of imposing sufficiently effective and dissuasive penalties, in particular penal sanctions, on perpetrators of forced labour and to ensure a strong criminal justice system. In November 2013, the ILO technical meeting on labour migration has highlighted that, with a view to increasing protection, the International Labour Office should advance and disseminate knowledge on the impact of migration policies, and equal treatment of migrant workers and nationals in respect of access to justice.

Caritas Lebanon Migrant Center (CLMC), which since 1994 is implementing legal support service for migrant workers victims of exploitation and forced labour, has also identified the victims' access to justice as essential to the success of efforts to protect victims and prevent these crimes.

In Lebanon, forced labour and human trafficking is often linked to an ineffective migration policy that makes migrant workers particularly vulnerable to exploitation. To better understand the obstacles preventing migrant domestic workers from having access to justice in Lebanon, the International Labour Office and CLMC recently launched an ambitious research program. This initiative aims at issuing recommendations to improve the protection of victims and their ability to seek and obtain compensation through judicial institutions. Based on qualitative research, the project analyzes the

effectiveness of available remedies and provides Lebanese policymakers with technical assistance to make justice more accessible to migrant workers. More than 730 cases of domestic workers recorded by CLMC as well as the ensuing court cases were analyzed in order to highlight the development of case law as well as the legal, procedural and institutional challenges facing workers.

This study is the first in a series of analyses on the issue of access to justice for migrant workers victims of forced labour conducted by the International Labour Office in 2014. This study aims to expand knowledge of the subject and help advance access to justice and protect migrant workers from all forms of exploitation.

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ACRONYMS

PEA	Private Employment Agencies
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CLMC	Caritas Lebanon Migrant Center
COC	Code of obligations and contracts, Lebanon
GDGS	General Directorate of General Security (Ministry of Interior)
ISF	Internal Security Forces (Ministry of Interior)
LBP	Lebanese Pound
MoL	Ministry of Labour
MoSA	Ministry of Social Affairs
ILO	International Labour Organization
NGO	Non-Governmental Organization
SAP-FL	Special Action Program to Combat Forced Labour
MDW	Migrant Domestic Worker
USD	United-States Dollar

Writing convention : without discrimination against women, who represent the majority of domestic workers in Lebanon, but in order to facilitate the reading of this report, we use the masculine form in reference to both genders.

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This publication was subject to an external review conducted by Judge Samer Younes, Public Prosecutor in the Beirut Court of Appeal. The research project was made possible thanks to the funding provided by the European Union, the Swiss Agency for Development and Cooperation, and the U.S. State Department.

The ideas, opinions and comments expressed in this publication are the sole responsibility of the authors, and do not represent or reflect the policies of the European Union, the Swiss Agency for Development and Cooperation and the U.S. State Department.

RÉSUMÉ

This study analyzes the legal framework of immigration and employment in the sector of domestic work and traces the development of case law of criminal courts and Labour Arbitration Councils since 2000 in cases involving migrant domestic workers (MDWs) victims of labour exploitation. It also identifies the obstacles preventing these victims from having access to justice in Lebanon, and makes recommendations to advance their protection and their ability to seek and obtain compensation through formal or informal judicial institutions.

In 2012, the International Labour Office and the non-governmental organization Heartland Alliance conducted a research project that resulted in the publication of the study “Tricked and Trapped: Human Trafficking in the Middle East” whose objective is to identify means through which vulnerable migrant workers, including domestic workers, find themselves in situations of forced labour in the Middle East¹ Through a detailed analysis of this phenomenon, the International Labour Office and Heartland Alliance were able to identify the lack of access to justice for victims of human trafficking and labour exploitation as a result of the insufficient capacity of the repressive state apparatus and the judiciary to identify victims and refer them to appropriate channels.

Based on this, the International Labour Office decided to work in partnership with the largest provider of services for migrant workers in Lebanon, Caritas Lebanon Migrant Center, to conduct a joint research. This report is the result of the work carried out between January and December 2013. It relies on a rigorous analysis of the CLMC database including 730 files of Ethiopian migrants supported by the organization since 2007, on a comprehensive

¹ H. Harroff-Tavel, and A. Nasri, “Tricked and Trapped: Human Trafficking in the Middle East” (International Labour Office, April 2013).

study of 24 cases involving MDWs of different nationalities appearing before the criminal courts and Labour Arbitration Councils by CLMC lawyers, as well as on 22 interviews with key stakeholders.

Emphasis on Ethiopian migrant workers in the study of the database is justified by the fact that this group represents the largest community of domestic workers in Lebanon.² Out of the 730 cases of Ethiopian migrant workers in the database,³ 453 were considered to be in situation of forced labour, about two thirds of Ethiopian domestic workers' cases dealt with by CLMC since 2007. This proportion cannot be extrapolated to characterize the general situation of domestic workers in Lebanon, as these figures reflect only the situation of those who seek help from the CLMC. However, it shows that the vast majority of persons victims of forced labour has not filed a complaint to the courts and allows analyzing the causes. The study of cases involving domestic workers of different nationalities shows that the judgments rendered by national courts are not influenced by the nationality of the migrants concerned.

Since the early 2000s, the CLMC intensified its legal aid services to victims of exploitation at work. At the time, very few cases involving domestic workers were brought before the courts, the vast majority of conflicts were subject to an amicable settlement facilitated by NGOs or other stakeholders. In Lebanon, amicable or informal settlement of disputes is the most common conflict resolution method applied in cases involving a migrant domestic worker. Under the *kafala* (sponsorship) system, which implies that a domestic worker who leaves the employer's house may be subject to administrative detention, the employer is in a strong position to renegotiate and undermine the worker's rights. The high percentage of cases settled amicably, not only in cases of non-payment of wages, but also in cases of physical abuse, suggests that domestic workers are highly discouraged from taking legal action.

Domestic workers are also reluctant to file a complaint against their employer because they know it is very difficult to change employer without the latter's consent. Indeed, even when there are strong suspicion that a person is a victim of trafficking, the transfer from one employer to another is not guaranteed. The Public Prosecutor Office has no jurisdiction to order an employer to "free" the domestic worker, so that he/she can work for another employer.

² In 2012, the Ministry of Labour delivered a total of 189,373 work permits, including 146,326 permits to domestic workers (approximately 76% of total work permits). Out of these, 62,465 were granted to Ethiopians, 32,846 to Bangladeshis, 23,574 to Filipinos, 10,468 to Sri Lankans and 5,454 to Nepalese.

³ The database included information on poor living conditions, forced labour, the inability to change employer and measures of coercion.

Moreover, domestic workers victims of exploitation often do not file a complaint before the public prosecutor office or the police because we are in the presence of a “dual quality” judicial system. Indeed, in the case of exploitation at work or human trafficking, the domestic worker is considered a victim before the criminal court. However, by leaving the home of his employer without the latter’s consent, it is considered that the worker commits an offense in violation of the Decree on entry, stay, exit and work of foreign nationals⁴ as well as the Decision on proof of residence of foreign nationals in Lebanon. This duality makes access to justice very difficult⁵. This also sheds light on the structural shortcomings of the judicial system that discourages domestic workers from seeking justice and where they face accusations even when they are victims of serious violations of criminal and civil codes. Law No. 164 criminalizing human trafficking, however, limits the consequences of this situation by exempting the victim from any sanction in the case of illegal residence.⁶

In theory, the right of access to justice in Lebanon applies to both Lebanese and foreign nationals, and therefore all foreign domestic workers victims of a violation of the Lebanese Law may file a complaint before the public prosecutor office, the investigating judge or the single judge in cases of offense, or before the police in case of *flagrante delicto*. However, Article 7 of the Lebanese Labour Law excludes the domestic servants employed in private houses”from its scope of application.⁷ The non-application of the Labour Law to this category of workers should not prevent the civil courts from examining disputes related to employment contracts. However, through a rigorous analysis of cases brought before the courts by CLMC, it was found that, in practice, the victims’ ability to seek and obtain compensation through the civil courts is limited.

All complaints lodged before 2008 were rejected by the Labour Arbitration Councils based on the fact that according to Article 7 (1) of the Labour Code, this law does not apply to domestic workers; hence, the Labour Arbitration Council has no jurisdiction to examine the domestic workers’ claims.⁸ Since 2008, we have seen developments in case law -the Labour Arbitration

⁴ Articles 6, 8, 11 of the General Directorate of General Security Organizational Decree No. 2873 of December 16, 1959.

⁵ Interview with a judge of the Beirut Court of Appeal, February 6, 2013.

⁶ Law No. 164 of August 24, 2011 criminalizing trafficking in persons, article 586(8).

⁷ Article 7 of the Labour Law Code specifies the following: “Shall be exempted from the present Law: 1) Domestic workers employed in private houses; 2) Agricultural corporations which have no connections with trade or industry and which shall be subject to a special law; 3) Enterprises solely employing members of the family under the management of either the father, mother or guardian; 4) Municipal or government services in what concerns temporary or daily wage-earners and employees who are not governed by civil servants’ regulations. These officials shall be subject to a special law.

⁸ Labour Arbitration Council of Beqaa, Zahle, Application filed on October 18, 2005, *Askale against AB*, Award No. 32/2009 dated 15 January 2009.

Council declared that it enjoys jurisdiction to adjudicate cases concerning the withholding of wages of domestic workers.⁹ However, the cases are to date limited to disputes relating to non-payment of wages. This is mainly due to the fact that the contracts signed by domestic workers before 2010 generally included little or no provisions on rest days, freedom of movement, the right to keep one's own identity documents or the right to private living space in the employer's house.

However, the exclusion of domestic workers from the Labour Code does not entail discrimination before the criminal courts, which invoked certain provisions of the Criminal Code to sanction offenses related to human trafficking, such as sexual violence,¹⁰ personal injury,¹¹ forced prostitution,¹² or breach of trust and withholding of identity documents.¹³

The possibility to invoke articles of the Criminal Code does not, however, eliminate the need to criminalize human trafficking. That is why the parliament promulgated Law No. 164 criminalizing trafficking on August 24, 2011.¹⁴ This promulgation gave renewed hope to domestic workers victims of labour exploitation of obtaining compensation. Since the promulgation of this law, CLMC brought a case of human trafficking involving four workers before the Assize Court of Mount Lebanon. However, as of 1 March 2014, this case has not progressed since it was submitted to the Assize Court in September 2013; although it is a clear case of human trafficking, no decision has yet been taken by the Court. This raises the question of the slowness of the judicial system.

A number of obstacles to access to justice have been identified through the interviews conducted by the research team. The first obstacle is the absence of evidence. In fact, evidence on the conditions under which the contract is excuted remains within the confines of the workplace, the employer's home. The employer enjoys privileged access to the contract, while the burden of proof is borne by the domestic worker in his capacity as plaintiff. It appears

⁹ Labour Arbitration Council of Mount-Lebanon, Claim submitted on March 10, 2006, Chandrawathi vs. R.A.Z., Award No.261/2008 rendered on March 16, 2008; Labour Arbitration Council of Mount Lebanon, Application filed on March 20, 2006, Rizalin Tumaliuan Agub against R.Y.H., Award No. 90/2009 issued on January 27, 2009

¹⁰ Articles 503 to 506 of the Lebanese Criminal Code.

¹¹ Article 555 of the Lebanese Criminal Code.

¹² Articles 525 and 526 of the Lebanese Criminal Code. Article 525 specifies the following « shall be sanctioned with imprisonment from 2 months to 2 years and a fine from 50,000 to 500,000 Lebanese pounds any individual keeping a person against his/her will in a brothel or has coerced him/her to practice prostitution. »

¹³ Articles 670 to 673 of the Lebanese Criminal Code.

¹⁴ Speech of Judge Samer Younes on trafficking of children on March 27, 2012 during a workshop organized by the MoSA, the Higher Council for Childhood and World Vision.

that in some cases the reasons behind a decision¹⁵ are not disclosed and the right to evidence is violated, mainly due to the judge's misconceptions and undervaluation of domestic work.

The second obstacle is the marginalization of low-skilled migrant workers by various stakeholders, including the judiciary. In fact, CLMC's legal team reported that in cases involving migrant domestic workers the prosecutor did not take action against the alleged offender after being informed about a certain violation or crime, such as injury.¹⁶ This suggests the existence of a discretionary prosecution system,¹⁷ which can be problematic when used inappropriately by members of the judiciary to exclude domestic workers.

The third obstacle to access to justice is the widespread lack of knowledge of the law by foreign workers, especially among low-skilled workers such as domestic workers.¹⁸ The majority of domestic workers assisted by CLMC have indeed little or no knowledge of their rights during their stay in Lebanon, the clauses of the contract they signed before the notary public or the legal remedies available to them to claim their rights. The lack of awareness among workers deprives them from the power to take action. Finally, migrant domestic workers have few guarantees in terms of access to a fair trial within a reasonable timeframe. This is due to several factors such as the slowness of the judicial system and the limited access to legal aid service.

The Lebanese government, social partners and civil society have shown determination in fighting the many forms of exploitation, human trafficking and forced labour. The civil society has mobilized to provide increasing and sophisticated judicial aid services to domestic workers in distress. Moreover, through awareness and capacity building training programs for judges, lawyers and law enforcement officers, court decisions have increased since 2000. These are some positive effects of the fight against the exploitation of migrant domestic workers and the promotion of their rights.

¹⁵ Consecrated in articles 42, 68, 74, 80, 86, 92, 107, 108, 131, 155, 225, 274, 296, 298, 306 of the Code of Criminal Procedure and article 537 of the Code of Civil Procedure.

¹⁶ Article 5 of the Code of Criminal Procedure defines public prosecution. Articles 13, 24, 68, 140, 155, 360 of the Code of Criminal Procedure tackle the modalities of initiating public prosecution.

¹⁷ The principle of prosecution is not absolute in theory. Indeed, Article 50 of the Code of Criminal Procedure authorizes the public prosecutor office to dismiss a case only if it turns out that the act does not constitute a crime, that the evidence of the crime is insufficient or if the public action is prescribed for one of the reasons specified in Article 10 of the same Code.

¹⁸ Interview with an investigative judge, the First Instance Court of Mount-Lebanon, January 30, 2013.

It is essential to include access to justice for migrant workers in a national program of action against forced labour and human trafficking. Including domestic workers within the scope of application of the Labour law in Lebanon is essential to treat grey areas where many violations go unsanctioned and to provide judges with a comprehensive legal framework. In order to have a suitable legal text on domestic work, the Lebanese government, social partners and civil society actors should draw inspiration from the provisions of ILO Convention No. 189 of 2011 concerning domestic workers and the relevant Recommendation No. 201. Moreover, it is important to finalize the draft of the new unified Labour agreement for MDWs to better comply with international laws. It is also essential to continuously train lawyers who defend the rights of migrant domestic workers, criminal judges and the Labour Arbitration Council. Finally, the Lebanese government, together with the social partners and key civil society activists, can develop information tools on the main channels available to migrant workers to access justice. With such actions it is possible to increase access to justice for all to the benefit of national and migrant workers in particular.

CHAPTER 1:

OBJECTIVES AND METHODOLOGY

1.1 Objectives

According to the International Labour Office study “*Tricked and Trapped*” on the methods of trafficking in Lebanon, access to justice for victims is a major problem in the region.¹ Many countries of origin are increasingly concerned about the various forms of exploitation suffered by their nationals in the Middle East and the challenges they face in accessing justice in the countries of destination. Only a few qualitative and quantitative studies have been conducted on the specific issues relating to access to justice for domestic workers² in the region.

A better understanding of the judicial systems of the countries of destination is required to enable victims to readapt and obtain full compensation, and to prevent the repetition of such acts. Lebanon is the focus of this study, as it is one of the main countries of destination for Ethiopian domestic workers in the Middle East. In fact, the number of Ethiopian migrant workers in Lebanon has increased steadily since the early 2000s, despite the travel ban imposed by the Ethiopian government in 2008. However, only in 2012, Lebanese Ministry of Labour (MoL) renewed 34,194 work permits and granted 28,460 new permits to Ethiopian workers.³

In an attempt to increase the victims’ ability to seek justice, the International Labour Office decided to conduct a joint study with the biggest migrant workers reception center in Lebanon, Caritas Lebanon Migrant Center

¹ H. Harroff-Tavel; A. Nasri: *Tricked and Trapped: Human Trafficking in the Middle East* (ILO, April 2013), p. 157.

² According to Article 1(b) of ILO Convention No. 189 of 2011 on domestic workers, the term domestic worker means any person engaged in domestic work within an employment relationship.

³ The statistics of 2012 on the renewal of the granting of work permits delivered by the Ministry of Labour of the Lebanese Republic.

(CLMC). This report is the outcome of the work carried out between January and December 2013, based on a rigorous analysis of CLMC database including 730 cases of Ethiopian migrants supported by the organization since 2007, as well as on an in-depth study of several cases brought before the courts by CLMC lawyers. This research is also based on information collected during 22 interviews with key stakeholders, such as several judges from the Public Prosecutor Office, the Criminal Courts of First Instance and of Appeal, the Labour Arbitration Council, and three interviews with domestic workers victims of trafficking in persons, residing in the reception centers of CLMC.

The main objective of this research project is to analyze the decisions of the administrative and judicial authorities on cases of migrant domestic workers subjected to various forms of Labour exploitation, forced labour and human trafficking. This review allowed us to identify legal and practical obstacles impeding access to justice for victims. The results of this research will be brought to the attention of members of the Lebanese government, social partners and civil society in order to discuss the recommendations for action to guarantee to the victims of human trafficking and Labour exploitation effective access to justice.

This joint research project between the International Labour Office and CLMC was financially supported by three projects to promote the rights of migrant domestic workers. The first is a regional project of the International Labour Office in the Middle East funded by the Swiss Agency for Development and Cooperation,⁴ the second is an International Labour Office project in Ethiopia financed by the U.S. State Department⁵ and the third is a CLMC project funded by the European Union in Lebanon.

1.2 Legal framework of the study

1.2.1 Forced labour and trafficking in persons

This research is based on the definition of forced labour in Article 2 of ILO Convention No. 29 concerning forced labour. Forced labour shall mean all work or service provided by a person under the threat of some form of

⁴ For more information on the project entitled “Decent Work for Domestic Workers: Advocating Institutional Reform in the Middle East”, see http://www.ilo.org/beirut/projects/WCMS_226948/lang--en/index.htm. The Swiss Agency for Development and Cooperation also supports another regional project of the International Labour Office on migration governance and the fight against trafficking in persons. For more information, see:

http://www.ilo.org/beirut/projects/WCMS_222976/lang--en/index.htm

⁵ “Action to Prevent Human Trafficking Within and from Ethiopia” is a two-year project and is funded by the U.S. State Department. It was launched in August 2011.

punishment and against their will.⁶ The definition contains three essential elements: the work, the threat of punishment and the absence of free and informed consent. Forced labour can be imposed both by public authorities, and private companies or individuals. Under Article 1 of Convention No. 29 Member States should eliminate all forms of forced labour. According to Convention No. 105, Member States have the obligation to abolish forced labour as a means of coercion, discrimination, political persecution and punishment for expressing certain political or ideological views, and as a method of mobilizing the labour force or a disciplinary measure for participating in strikes.⁷ These two Conventions were ratified by Lebanon in 1977, which means that the country has the contractual obligation to comply with their provisions.

The concept of forced labour is strongly linked to trafficking in persons, as defined in Article 3 (a) of the Palermo Protocol⁸

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;⁹

Regarding children,¹⁰ the recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons,” even if this does not involve any of the means abovementioned.

⁶ ILO Convention No. 29 on forced labour, 1930, art. 2(1). This convention defines force labour and lists five circumstances in which Labour may be imposed without being considered forced labour, in particular work or service exacted in virtue of compulsory military service laws or civil obligations, cases of emergency or penitentiary labour when exercised under specific conditions.

⁷ ILO Convention No. 105 on the abolition of forced labour, 1957, art. 1.

⁸ Lebanon ratified the Palermo Protocol on August 24, 2005. See the status of ratifications:

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en.

⁹ Additional Protocol to United Nations Convention against Transnational Organized Crime to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, 2000.

¹⁰ Children are defined as persons under 18 years of age.

The Committee of Experts on the Application of Conventions and Recommendations of the ILO (CEACR)¹¹ noted that:

Another important element of the definition of trafficking in persons in the Palermo Protocol, from the point of view of the application of Convention No. 29, is the means of coercion used against an individual, which include the threat or use of force, abduction, fraud, deception, the abuse of power or a position of vulnerability, etc., which definitely exclude voluntary offer or consent of the victim. With regard to the latter, the Palermo Protocol contains a qualifying provision that the consent of a victim of trafficking to the intended exploitation shall be irrelevant where any of the abovementioned means have been used.¹²

Moreover, another essential component of the definition of trafficking is its purpose, namely the exploitation expressly including forced labour or services, slavery and practices similar to slavery, and various forms of sexual exploitation. The notion of exploitation at work included in this definition establishes the link between the Palermo Protocol and ILO Convention No. 29 on forced labour, and demonstrates that human trafficking for purposes of exploitation falls within the scope of the definition of forced labour in the Convention. This convergence facilitates the application of both instruments at the national level.¹³ According to the ILO, trafficking in persons can be considered to fall within the definition of forced labour.¹⁴ The only exceptions are cases of trafficking for organ harvesting, adoption or forced marriage, unless they lead to forced labour.

It is also important to recall that forced labour is distinguished by exploitative working conditions or conditions that do not meet the standards. Various indicators can be used to determine whether a situation amounts to forced labour, such as restrictions on the workers' freedom of movement, confiscation of wages or identity documents, physical or sexual violence, and threat or intimidation. Forced labour may result from internal or cross-border movements that make some workers particularly vulnerable to fraudulent

¹¹ The Committee of Experts on the Application of Conventions and Recommendations was created in 1926 to examine how States give effect to the conventions they ratified. It provides a regular, impartial and technical assessment of the application of international Labour standards.

¹² The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR): *Eradication of forced Labour: General survey concerning Convention No. 29 of 1930 on forced Labour and Convention No. 105 on abolition of forced Labour of 1957* (Geneva, 2007), para. 79, p. 43.

¹³ *Ibidem*, pp. 42-43.

¹⁴ However, Article 586 (1) of the Lebanese law sanctioning the crime of trafficking in persons stated that forced labour is one of the aspects of the exploitation of persons that may lead to human trafficking. In this law, human trafficking is a crime, while forced labour is one of the aspects of this crime. This distinction is necessary at the level of definitions; however, it should not affect the practical aspect. What matters from the judicial perspective is that trafficking is punished and repressed in its various aspects, including forced labour.

recruitment or coercive practices.¹⁵ Moreover, CEACR also stated that coercive sexual exploitation and forced prostitution fall within the scope of the definition of forced and compulsory labour in Article 2 (1) of Convention No. 29.¹⁶

1.2.2 Access to justice for migrant workers, domestic workers in particular

The term access to justice refers to “the victims’ ability to claim their rights.”¹⁷ This ability is an essential for any victim to regain his/her rights, to obtain the conviction of perpetrators and request compensation for the damage caused by others.

The right to justice finds its roots in Articles 8 and 10 of the Universal Declaration of Human Rights, which recognizes that everyone has the right to “an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law” and the right to equality in terms of fair and public hearing by an independent and impartial tribunal [...].¹⁸ Justice must then be accessible without hindrance or discrimination, and the judge must be free, that is to say, completely independent and impartial. Other international and regional instruments recognize the right to justice, including the International Covenant on Civil and Political Rights and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.¹⁹ The fundamental principles that emerge and that the victims may invoke are the right to restitution, access to effective judicial means of recourse and the right to adequate, effective and prompt compensation.²⁰ The Arab Charter on Human Rights also guarantees equality and access to justice, the protection

¹⁵ International Labour Office: *Questions and Answers on Forced Labour* (June 1st, 2012). http://www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS_181922/lang--it/index.htm.

¹⁶ The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR): *Eradication of forced Labour: General survey concerning Convention No. 29 of 1930 on forced Labour and Convention No. 105 on abolition of forced Labour of 1957* (Geneva, 2007), p. 43.

¹⁷ The victims’ ability to claim their rights consists of the right to be reinstated in one’s rights, the right to obtain the conviction of perpetrators, the right to be recognized as a victim and, finally, the right to compensation for damages suffered.

¹⁸ A. Daher: «L’accès au juge: liberté et entraves», in *Cours judiciaires suprêmes francophones* (AHJUCAF). See: www.ahjucaf.org/L-acces-au-juge-liberte-et.html.

¹⁹ See International Covenant on Civil and Political Rights, Art. 2 (3); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 83; International Convention on the Elimination of All Forms of Racial Discrimination, Art. 6; Arab Charter on Human Rights of 2004, art.12.

²⁰ The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly Resolution 60/147 of December 16, 2005, paras. 5-11.

of judges against interference, coercion or threat, and the right to a fair trial for all persons.²¹

By virtue of Article 25 of the ILO Convention No. 29, it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are adequate and strictly enforced on any person guilty of forced labour. This repressive aspect under Convention No. 29 also plays a preventive role since the effective punishment of the guilty parties encourages victims to file complaints and has a deterrent effect. CEACR added in this regard that, given that victims of forced labour are in a vulnerable position (specially domestic workers who often perform work which is not visible by the society outside of the household members), it is the responsibility of the state to ensure that the law enforcement authorities are able to “conduct rapid, effective and impartial investigations and, where appropriate, initiate prosecutions against those responsible for violations.”²² The CEACR also urged governments to take measures to guarantee that victims of forced labour fully enjoy all of their rights before the national authorities, and obtain compensation for material and moral damages.²³ However, it noted that, in practice, the procedures for obtaining compensation are not always easy for victims, as they sometimes involve civil action in addition to criminal proceedings.

The Palermo Protocol does not mention the right to file a complaint, but provides compensation mechanisms, requiring that “Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.”²⁴ This protocol does not provide a substantive right in terms of compensation, but rather focuses on judicial mechanisms and procedures. The Lebanese Republic has ratified the Palermo Protocol on August 24, 2005, which led to the enactment of Law No. 164 against trafficking in persons, boosting legal protections for victims of this crime. This law states inter alia that all assets seized from the convicted party shall be deposited in a special fund administered by the Ministry of Social Affairs to provide adequate

²¹ The Arab Charter on Human Rights was adopted in 2004 and entered into force in 2008, articles 12 and 13.

²² CEACR : *General survey on the fundamental conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization* (Geneva, 2008), para. 322, p. 149.

²³ See CEACR, Convention No. 29, Guatemala, direct request on Trafficking in Persons, 2013; CEACR, Convention No. 29, Nepal, observation on the measures giving migrant workers access to justice and other complaint and compensation mechanisms, 2013; CEACR, Convention No. 29, Mauritania, observation on mechanisms of compensation for victims of physical injury and material damage, 2013

²⁴ Additional Protocol to United Nations Convention against Transnational Organized Crime to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, article 6 (6).

protection to victims entitled to physical and moral assistance, housing or education.²⁵

Although this law entered into force, migrant workers in Lebanon are victims of human trafficking and still face many obstacles to the full exercise of their rights before courts. This has weakened this Law's deterrent effect on employers, thus rendering migrant workers even more likely to be exploited.

The international instruments on the rights of migrants also provide specific guarantees of access to justice. For example, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families states that "migrant workers shall have the right to equality with nationals of the State concerned before the courts." The Convention also provides specific guarantees concerning the rules of fair trial when a migrant is charged with a criminal offense.²⁶

According to Article 83, each State Party to the present Convention shall undertake:

- (a) to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any persons seeking such a remedy shall have his or her claim reviewed and decided by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.²⁷

Several ILO conventions, recommendations and resolutions also enlighten State Members about the specific measures to be taken in terms of access to justice for migrant workers.²⁸ ILO Convention No. 97 on migrant workers states that "Each Member [...] undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favorable than that which it applies to its own nationals in respect of: [...] legal proceedings relating to the matters referred to in this Convention."²⁹ Convention No. 143 concerning migrant workers adds that "in case of dispute about the rights arising out of past employment

²⁵ Law No.164 of August 24, 2011 criminalising trafficking in persons, art. 586 (10).

²⁶ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, art.18.

²⁷ *Ibidem*, art.83.

²⁸ ILO, Recommendation No. 151 on Migrant Workers, 1975, paras. 34(1) and 34(2).

²⁹ ILO, Convention No. 97 concerning Migration for Employment (revised), 1949, art. 6(1)(d).

as regards remuneration, social security and other benefits, the worker shall have the possibility of presenting his case to a competent body, either himself or through a representative.”³⁰ Recommendation No. 151 concerning migrant workers states that “the migrant worker should have the same right to legal assistance as national workers and have the possibility of being assisted by an interpreter.”³¹ Moreover, the Resolution concerning a fair deal for migrant workers in a global economy adopted in 2004 by the International Labour Conference calls on governments to create channels for migrant workers to lodge complaints and seek remedy without intimidation.³²

Special measures for domestic workers should be implemented. Indeed, ILO Convention No. 189 concerning domestic workers of 2011 called on all Member States Each Member to take measures to ensure that all domestic workers have effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favorable than those available to workers generally. According to this Convention “Each Member shall establish effective and accessible complaint mechanisms and means of ensuring compliance with national laws and regulations for the protection of domestic workers.”³³

Recommendation No. 201 provides in its Article 21 (1) that Member States should consider additional measures to ensure the effective protection of domestic workers and, in particular, migrant domestic workers, such as:

Providing for a public outreach service to inform domestic workers, in languages understood by them, of their rights, relevant laws and regulations, available complaint mechanisms and legal remedies, concerning both employment and immigration law, and legal protection against crimes such as violence, trafficking in persons and deprivation of liberty, and to provide any other pertinent information they may require.³⁴

To summarize, complaint procedures and remedies for violations should be freely available to all migrant workers; they should have the right to voice grievances without fear of intimidation or retaliation and enjoy access to legal aid services. Moreover, destination countries should be aware of and promote migrant workers’ rights to file a complaint and seek compensation if their rights are violated. Finally, trade unions should be able to promote and help them claim their social rights.³⁵

³⁰ ILO, Convention No. 143 on Migrant Workers (Supplementary Provisions), 1975, articles 9(1) and 9(2).

³¹ ILO, Recommendation No. 151 concerning Migrant Workers, 1975, art. 33.

³² ILO, Resolution concerning a fair deal for migrant workers in a globalized economy, 2004, point 24.

³³ ILO, Convention No. 189 on domestic workers, 2011, articles 16-17.

³⁴ ILO, Recommendation No. 201 concerning decent work for domestic workers, 2012, art. 21 (1)(f).

³⁵ International Labour Office: *Protecting the rights of migrant workers: A shared responsibility* (Geneva, 2010), p. 19.

1.3 Research methodology

1.3.1 Characteristics of the sample

Caritas Lebanon Migrant Center provides counseling for domestic workers who require support, particularly legal assistance, if the worker is accused of an offense by the employer, or when his/her rights have been violated and he/she wants to seek compensation. Some of these cases are brought before the courts, while others are settled outside the court by the administrative authorities of the General Directorate of General Security (GDGS), or through mediation and negotiation conducted by CLMC lawyers.

When a migrant domestic worker files a claim for compensation, he/she will be interviewed by a CLMC employee who gathers personal information about the worker (demographic data), and about his/her living and working conditions with the employer. The collected data are later entered into a database. Then, with the legal support provided by CLMC, the judicial and non-judicial procedural steps are registered in the database. These data on Ethiopian domestic workers, collected since 2007, were analyzed for the first time in this report. The analysis of the database is limited to Ethiopian workers, who represent the largest community of migrant domestic workers in Lebanon.

This database contains demographic information on 1,146 Ethiopian migrants; the analysis is limited to 730 migrant workers whose relationship with the employer was described. Unfortunately, in numerous files, there are variables that were not filled in, which considerably limits the analysis. The characteristics of the sample are presented in Table 1.

Table 1: Detail of the sample in the database

Category	Number of cases	Detail
Domestic workers	1146	1 005 women, 4 men (137 without complete information)
Employers	730	720 Lebanese, 10 foreigners 134 women, 100 men (496 not documented)
Number of cases handled by CLMC	1279	838 cases settled outside the courts and 441 cases brought before the courts (394 with the capacity of accused, 45 with the capacity of plaintiff, 2 not documented) ^a
Distribution by jurisdiction/ region		121 in Meten, 75 in Mount-Lebanon, 46 in Jounieh, 25 in Beirut, 24 in North-Lebanon, 19 in Keserwan, 125 in several other jurisdictions

^a A domestic worker may have several court cases related to his case.

Figure 1: Map of the Lebanese administrative regions ³⁶



1.3.2 Primary sources

The data were analyzed to determine i) if the domestic worker was or not in a situation of forced labour, and ii) the extent to which cases brought before the courts were successful.

³⁶ Carte du Liban, Direction Géographique du ministère des Affaires Etrangères, 1999. Voir www.libanvision.com/images/image/carteliban2.gif

1.3.2.1 Analysis of forced labour indicators

This analysis follows the theoretical framework proposed by the International Labour Office³⁷ for identifying forced labour in the context of qualitative or quantitative surveys. In particular, the identification of a situation of forced labour is determined for each worker by the existence of one of the four dimensions of forced labour as defined below (Table 2).

Table 2: Dimensions of forced labour

Dimension	Definition
<i>Non-free Recruitment</i>	Recruitment is not free if it results from practices using force or deception. Deception may relate to the nature of the work, its place or, the working conditions. Recruitment by deception is a type of non-free recruitment and it is flawed, since consent was based on false information.
<i>Degrading living conditions and work under constraint</i>	The dimension of “degrading living and working conditions under constraint” covers both the quantity of work required by the employee (number of hours per day, days per week) and the lack of the required minimum insurance coverage, inhumane housing and food conditions (if they are provided by the employer), and restrictions on individual freedom.
<i>Inability to change employer</i>	A particular form of limitation of freedom is the imposition of violence, coercion, intimidation or threat to prevent the employee from leaving his employer within the reasonable notice period.
<i>Measure of coercion</i>	Constraints may be exercised during the recruitment of a worker to get him/her to accept a job, to force an individual who is already employed to perform tasks not included in the agreement at the time of recruitment or to prevent him/her from leaving his/her job. These constraints include the confiscation of documents, violence or threat of violence.

It is a situation of forced labour when a measure of coercion (threats, deceit, and physical or psychological constraint) is used at any stage -at the time of recruitment, during employment or in the case of termination of the employment relationship by the worker.

The data collected by CLMC during interviews with Ethiopian domestic workers are not sufficient to determine whether recruitment was free or forced. The analysis is restricted to the two other dimensions and the existence or not of constraint. More specifically, twelve indicators based on information provided by the worker during his meeting with CLMC representatives were applied to the analysis of each of these dimensions (Table 3).

³⁷ International Labour Office: *Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children* (Geneva, June 2012).

Table 3: Indicators of forced labour coded in the CLMC database

Indicator	Variable of CLMC Database
<i>Degrading working and living conditions under constraint</i>	
Additional hours	<ul style="list-style-type: none"> • More than 12 working hours per day • 7 days per week
Continuous work day and night	<ul style="list-style-type: none"> • More than 15 working hours per day
Deprivation of freedom and communication	<ul style="list-style-type: none"> • Does not leave home • Cannot receive or make phone calls • Cannot send or receive mail
Unacceptable living conditions	<ul style="list-style-type: none"> • Insufficient food • Sleeps on the balcony, in the employer's living room, the room of the sick person to be cared for, the bathroom, or the children's room
Very low salary	<ul style="list-style-type: none"> • Salary less than USD 150^a per month
Work in places other than the employer's home ^b	<ul style="list-style-type: none"> • Must work in places other than the employer's home
No social benefits	<ul style="list-style-type: none"> • No medical treatment in case of need • No health insurance
<i>Inability to leave the employer's home</i>	
Withholding salaries	<ul style="list-style-type: none"> • Monthly salary unpaid or partially paid
<i>Constraint Measures</i>	
Confiscation of documents by the employer or recruitment agency	<ul style="list-style-type: none"> • Passport kept by the employer or recruitment agency • Work permits kept by the employer or recruitment agency • Residence permits kept by the employer or recruitment agency
Sexual Violence	<ul style="list-style-type: none"> • Sexual abuse • Sexual harassment
Physical Violence	<ul style="list-style-type: none"> • Violence
Psychological Violence	<ul style="list-style-type: none"> • Injuries, threats

^a United States Dollar.

^b This indicator does not include situations where the domestic worker follows his employer to a holiday destination.

The above twelve indicators were created for each domestic worker within the limits of the available information, before being combined to determine whether the worker is or not in a situation of forced labour. The distribution by indicator is shown in Table 4 below.

Table 4: Domestic workers affected by the forced labour indicators

Dimension	Indicator	Number of domestic workers
Degrading living and working conditions under constraint	Additional hours	392
	Continuous work day and night	217
	Deprivation of liberty and communication	431
	Unacceptable living conditions	234
	Very low salary	130
	Must work in places other than the employer's home	162
	No social benefits	321
Impossibility to leave the employer	Withholding of salaries	244
Constraint measures	Confiscation of documents	415
	Sexual violence	70
	Physical violence	224
	Psychological violence	193
Total of forced labour		453

Out of the 730 cases,³⁸ 453 were found in a situation of forced labour, which represents about the two thirds of the total number of cases of Ethiopian migrants workers assisted by CLMC since 2007. Moreover, more than half of the migrants were victims of abusive practices, such as confiscation of documents, deprivation of liberty and communication as well as the obligation to work unpaid overtime hours. These figures cannot be used to generalize the situation of all Ethiopian domestic workers in Lebanon; they reflect the situation of those who seek help from CLMC centers and homes only.

1.3.2.2 Interviews with key persons and victims

To confirm and substantiate the data contained in the CLMC database, the research team conducted 22 semi-structured interviews with key persons in the regions of Beirut, Mount Lebanon and Tripoli. Six interview guides were created according to the function of the speaker and validated by the International Labour Office and CLMC. These guides allowed us to know the opinions of investigative judges, court judges and public prosecutors on the Lebanese judicial system and its challenges in terms of access to justice for

³⁸ Information on living and working conditions.

domestic workers. In addition, we also consulted the staff in charge of domestic workers' affairs at the Ministry of Labour and the GDGS in order to understand the gaps in the system. . Meanwhile, the experiences and findings of the Ethiopian Consulate in Beirut enlightened the research team about the migratory situation of Ethiopian workers in Lebanon and the Middle East as well as the protection problems they face in destination countries.

1.3.2.3 Cases brought by CLMC before the courts

The results of this research were consolidated by an in-depth study of 24 major judgments rendered by various Lebanese courts, selected by CLMC lawyers. The analysis is not limited to judgments involving Ethiopian domestic workers but includes all cases concerning migrant domestic workers in Lebanon. The objective of this approach is to highlight the development of the case law regarding exploitation and forced labour of domestic workers between 2000 and 2013. It is worth mentioning that the reviewed judgments treat all migrant workers on an equal footing, whether Ethiopian or of other nationalities.

Therefore, the conclusions of this report are based on the analysis of three main sources of information: CLMC database, semi-structured interviews with key stakeholders and relevant judgments rendered by the civil and criminal courts and the Labour Arbitration Council.

CHAPITRE 2: BACKGROUND

2.1. Overview of domestic workers' migration to Lebanon, Ethiopian workers in particular

Before the 1970s, the practice of domestic work in Lebanon was mostly seen among upper classes and involved the employment of mainly Lebanese and Syrian women. This began to change during the 1970s: the increase of Lebanese women's participation in the labour market (which, in turn, increased the demand for domestic services), rising living standards, the fragmentation of the community and the direct and indirect effects of the wars are some of the reasons behind the virtual disappearance of domestic workers of Arab origin.¹

In parallel to this loss of local and regional work force, the demand for domestic labour has steadily increased, requiring the recruitment of foreign workers. In the 1980s, the majority of migrants were from Southeast Asia; in the 1990s, this migration flow reached East and West Africa.² Figures from the Ministry of Labour show that Lebanese authorities renewed and issued 189,373 work permits to foreign workers, including 146,326 to domestic workers in 2012.³ 99 per cent of these workers are women and are employed as live-in domestic workers⁴ It is worth mentioning that many believe these official figures are not representative of the migrant community in general, since numerous domestic workers live and work illegally in Lebanon. There is

¹ A. Dahdah, «Mobilités domestiques internationales et nouvelles territorialités à Beirut (Liban): le cosmopolitisme Beirutin en question», in *Espace, Populations, Sociétés*, Vol. 2-3, 2010, p. 267.

² *Ibidem*, p. 270.

³ Statistics of 2012 relating to the renewal and allocation of work permits issued by the Ministry of Labour of the Lebanese Republic.

⁴ Domestic workers mostly come from the following countries: Ethiopia, Philippines, Bangladesh, Sri Lanka, Madagascar and Nepal. To a lesser extent, some domestic workers in Lebanon are from Benin, Cameroon, Ghana, Pakistan, Senegal and Togo. Statistics for renewal and allocation of work permits, the Ministry of Labour of the Republic of Lebanon, 2012.

no national estimate to date of the total number of migrant domestic workers with either legal or illegal residence status. The International Labour Office has meanwhile recently estimated there are 2,107,000 domestic workers in the Middle East.⁵

The Ministry of Labour issued and renewed 62,465 work permits for Ethiopian domestic workers only in 2012. The Ethiopian Consulate in Beirut believes that this number includes about 20,000 domestic workers residing illegally in Lebanon, commonly known as freelancers.⁶ Even if only the number of workers with legal residence is taken into account, Ethiopians alone account for 43% of domestic workers and are thus the largest migrant community in Lebanon in this sector.⁷

Ethiopian consular authorities have noted that migrants come mainly from rural areas. According to the consulate, most of these migrants have a low level of education and do not always speak the official languages, Amharic and Oromo, which makes communication between migrants and the consulate difficult.⁸ Following several cases of exploitation and trafficking in recent years, the Ethiopian government has officially banned the migration of domestic workers to Lebanon in 2008. However, Ethiopian domestic workers interviewed for this study indicated that migrants circumvent the ban through Kenya, Djibouti, Sudan, Yemen, the United Arab Emirates and Bahrain.⁹ The road through Sudan is not only the most frequently retained, but also the most dangerous one because it involves crossing the border by land all the way to Khartoum. The travel routes that allow circumventing the immigration ban from Ethiopia demonstrate that the number of migrants in the domestic work sector in Lebanon has not decreased after the ban but rather increased. Moreover, employers do not usually seek the services of recruitment agencies. These employers benefit from the employee's already-established family and friendship networks to bring in the latter's friends, cousins and aunts, without having to pay agency fees. Unlicensed private employment agencies also continue to operate in Ethiopia and Lebanon, and often use deception to convince future workers to use their services.¹⁰

⁵ International Labour Office *Domestic workers across the world: Global and regional statistics and the extent of legal protection* (Geneva, 2013), p. 20.

⁶ Interview with le Consul et Vice-consul of the Federal Democratic Republic of Ethiopia, 31 January 2013, Lebanon.

⁷ Statistics of 2012 relating to the renewal and allocation of work permits issued by the Ministry of Labour of the Lebanese Republic.

⁸ Interview with the Consul and Vice-consul of the Federal Democratic Republic of Ethiopia, January 31, 2013, Lebanon.

⁹ The Consulate General of Ethiopia in Beirut reported that the route most commonly taken by migrant workers to come to Lebanon is to Sudan from Ethiopia (often by land) then from Sudan to Yemen and finally from Yemen to Lebanon (by air). Interview with the Consul and Vice-Consul of the Federal Democratic Republic of Ethiopia, Jan. 31, 2013, Lebanon.

¹⁰ R. Stevenson: "Ethiopia seeks full investigation into suicide of maid beaten in Beirut", in *the Guardian* (Beirut, March 20, 2012).

“Ethiopia has several bilateral agreements with neighboring countries allowing our citizens to travel to these countries without a visa, such as in Kenya and Sudan. At the airport in Ethiopia, the migrant claims she is going to another country to meet her family, and from there she heads to Beirut. The problem is that, according to our Constitution, any person who has valid documentation has the right to travel. Numerous unlicensed recruitment agencies do not mention to future migrants the travel ban and its consequences.”

Consulate General of the Federal Democratic Republic of Ethiopia, Lebanon, January 2013

The Ethiopian and Lebanese governments have yet to sign a bilateral agreement or a memorandum of understanding to facilitate an organized and regulated migration of Ethiopian workers, avoid excessive migration costs and reduce exploitative working conditions. The head of the syndicate of Private Employment Agencies (PEA) that “the problem lies in the lack of will by both governments; this situation affects us. We are against the ban because it allows gangs and mafias in Ethiopia to recruit workers in return for high fees; if there was no ban, we could control the practices of these agencies.”¹¹

Such an agreement would fill some legal gaps affecting the domestic sector in Lebanon, which is not covered by the Labour Code. In fact, efforts to introduce a new legislation governing employment of domestic workers have failed thus far. In February 2011, the Minister of Labour proposed a text to regulate employment conditions of migrant domestic workers, which still retains the *kafala* or sponsorship system,¹² but the draft was abandoned due to a change of government. In early 2012, the new Minister of Labour announced that he would consider abolishing the *kafala* system, but resigned a month later without finalizing his commitments. The previous minister submitted to the Council of Ministers the special draft law prepared by his predecessor with some revisions in March 2013.¹³ Meanwhile, gaps in legal protection of domestic workers remain.

It is in this context that each year thousands of migrant women arrive in Beirut to work as domestic workers in Lebanese homes. Many of them are subjected to exploitative practices at work, which sometimes constitute

¹¹ Interview with the Chairman of the Lebanese Trade Union of Owners of Recruitment Agencies, Beirut, Feb. 5, 2013.

¹² According to the *kafil* system, any foreigner wishing to live and work in Lebanon needs a *kafil*, who is the legal guardian and guarantor of the latter's presence in the country. It can be said that through this system the State delegates its prerogatives to the private sector.

¹³ Lebanon 24: “Jeissati sent the draft law on the organization of the work of domestic workers,” 2013. For example, annual holidays were increased from 6 to 15 days and no longer require the prior approval of the employer.

forced labour and human trafficking. The information contained in the CLMC database corroborates reports on this subject. As a matter of fact, labour exploitation suffered by female domestic workers in Lebanon sparked the interest of human rights activists and researchers over the past ten years. In addition, reports analyzing the specific situation of Ethiopian domestic workers are scarce.¹⁴ Two reports from the International Labour Office and the NGO Kafa highlighted the most common violations suffered by Ethiopian workers. These include the non-payment of wages, confiscation of documents, deprivation of liberty and psychological abuse by employers.¹⁵ Some regional reports examine the working conditions of domestic workers in several countries in the Middle East, including Lebanon, and analyze advancements in terms of reform of the immigration system, responses of the police and courts, and actions performed by trade unions and civil society.¹⁶ Some authors have in turn attempted to elucidate the psychological or psychosocial factors involved in the exploitation of domestic workers in Lebanon.¹⁷ One of the identified factors explaining the fact that migrant domestic workers are more easily exploitable is that they have no or little access to justice, and that employers have therefore little concerns about legal prosecutions. The discriminatory attitude towards migrant domestic workers has also been identified as a factor leading to non-conviction of the employer, mainly of Lebanese citizens, even in case of a criminal offense.¹⁸

The special rapporteur on contemporary forms of slavery noted that “Most domestic servitude cases reported do not make it to court; [...] and the employer is not prosecuted.”¹⁹ Human Rights Watch also reported that the

¹⁴ For further information, see the International Labour Office: *Trafficking in Persons Overseas for Labour Purposes: The Case of Ethiopian Domestic Workers* (Addis Abeba, 2011); K. Beydoun: “The trafficking of Ethiopian Domestic Workers into Lebanon: Navigating through a Novel Passage of the International Maid Trade”, in *Berkeley Journal of Law*, 1009 (2006); International Labour Office: *Ethiopia: An assessment of the international labour migration situation: the case of female labour migrants* (2002, Geneva).

¹⁵ International Labour Office: *Trafficking in Persons Overseas for Labour Purposes: The Case of Ethiopian Domestic Workers* (Addis Abeba, 2011), pp. 51-52; K. Hamill: *Trafficking of Migrant Domestic Workers in Lebanon: A Legal Analysis*, KAFA (Beirut, March 2011).

¹⁶ Human Rights Watch: *Slow Reform: Protection of Migrant Domestic Workers in Asia and the Middle East* (New York, April 2010).

¹⁷ B. Anbesse et al.: “Migration and Mental Health: a Study of Low-Income Ethiopian Women Working in Middle Eastern Countries”, in *International Journal of Social Psychiatry* (2009), 55: 557.

¹⁸ R. Jureidini: *An Exploratory Study of Psychoanalytic and Social Factors in the Abuse of Migrant Domestic Workers by Female Employers in Lebanon*, KAFA, (Beirut, January 2011), pp. 9-10; K. Ali Beydoun: « The Trafficking of Ethiopian Domestic Workers into Lebanon: Navigating through a Novel Passage of the International Maid Trade », in *Berkeley Journal of Law* 1009 (2006), pp. 6-9.

¹⁹ United Nations General Assembly: Report of the Special Rapporteur on contemporary forms of slavery, including her causes and consequences, Gulnara Shahinian (Geneva, July 4, 2012), paras. 130-133.

lack of accessible mechanisms, lengthy judicial procedures and restrictive visa policies dissuade MDWs from filing complaints against their employers.²⁰ Regional analysis of the International Labour Office on the processes of human trafficking in the Middle East attributes the lack of access to justice for victims to the inability of prosecutors and other stakeholders to identify victims.²¹ Finally, a recent CLMC report examines the issue of false accusations of theft made by employers against their domestic worker when the latter leaves his/her job.²²

Also, investigations examining the obstacles to access to justice in the country of origin have emerged recently and stressed the need to strengthen the capacity of embassies and consulates of countries of origin in the Middle East in order to provide a solid legal assistance to migrant workers victims of labour exploitation.²³

2.2 Lebanese administrative and legal frameworks

Despite the growing number of migrant workers, particularly domestic workers, and the developments at the international level, the legislative framework for immigration and employment of foreigners in Lebanon has a limited scope and has undergone only a few changes since the 1960s.²⁴ The Ministry of Labour and the Ministry of Interior manage the issues of migrant workers with a temporary employment contract. In addition, several national institutions play a direct role in assuming the responsibility for the challenges faced by domestic workers.²⁵

2.2.1 Role of the Ministry of Labour and the General Directorate of General Security

The Ministry of Labour (MoL) has a mandate to develop a national policy on labour and employment. Every year, it sets a quota of work permits to be granted to foreigners based on sectors and nationalities.²⁶ Its main

²⁰ Human Rights Watch: *Without Protection: How the Lebanese Justice System Fails Migrant Domestic Workers* (New York, Sept. 2010).

²¹ H. Harroff-Tavel; A. Nasri: *Tricked and Trapped: Human Trafficking in the Middle East*, International Labour Office (Geneva, April 2013), p. 157.

²² CLMC: *False accusations of theft commonly filed by Lebanese sponsors/employers against «runaway» migrant domestic workers: a legal study* (Beirut, 2012).

²³ Open Society Foundations: *Migrant Workers' Access to Justice at Home: Indonesia* (New York, 2013), p. 155.

²⁴ CLMC: *La situation des travailleurs migrants dans les prisons libanaises, The situation of migrant workers in Lebanese prisons* (Beirut, 2011), p. 20.

²⁵ N. A. Diab: *Le droit libanais relatif aux migrations internationales*, IUE-RSCAS (2006), p. 3.

²⁶ Decree-Law No. 8352 of December 30, 1961 on the organisation of the Ministry of Labour; Decree No.17561 of September 18, 1964 regulating the work of foreigners.

responsibilities are managing work permits applications, monitoring working conditions in coordination with the department of inspections, ensuring prevention and safety, and the application of labour laws and regulations in force.²⁷

In parallel, the mandate of the General Directorate of General Security (GDGS; subordinate to the Ministry of the Interior) regarding foreign workers consists of controlling the entry, residence and exit of any foreigner to and from Lebanese territory.²⁸ This mandate is also overseen by internal directives of the GDGS, covering all aspects related to the presence of foreign workers in Lebanon. The directives have also dealt with the working conditions of domestic workers in the past few years.²⁹ In practice, labour and employment conflicts are managed by the GDGS and not by the MoL, which has only 20 labour inspectors covering all of the Lebanese territory.³⁰

“The role of the GDGS is to grant and renew residence permits for migrant workers, to monitor the work they do and ensure that it complies with applicable laws, and to arrest domestic workers who violate these laws and deport them to their country.”

General, GDGS, July 8, 2013

To be able to settle and work in Lebanon, domestic workers must obtain both a residence permit and a work permit. This is why every foreign domestic worker needs to have a guarantor, who is the legal representative of the worker and responsible for his/her presence and work on Lebanese territory. He/she is also the sole employer of the domestic worker. This is commonly known as the *kafala* or sponsorship system. Each guarantor seeking to recruit a domestic worker must first submit a work permit application for a domestic worker to the MoL.³¹ These applications are amere formality, since in practice 95% of them are accepted by the MoL without additional verification.³²

²⁷ Decree-Law No. 8352 of December 1961 on the organisation of the Ministry of Labour, art. 20 on the control of the work of foreigners.

²⁸ Decree No. 10188 of July 28, 1962 on the implementation of the Law of July 10, 1962 concerning entry to Lebanon, residence and exit from the country; Decree-Law No. 139 of June 12, on the organization of the General Directorate of General Security ; Interview with a Captain from the detention center of the GDGS, Beirut Feb. 6, 2013.

²⁹ For example, the GDGS issued in 2011 an internal directive by virtue of which domestic workers may only change their guarantor twice subject to the latter's authorization.

³⁰ Interview with a representative of the Ministry of Labour, Beirut, Sept. 19, 2013.

³¹ Decree No. 17561 of September 18, 1964 regulating the work of foreigners, Art. 2 According to Article 4, prior application requires the following documents: passport copy of the migrant worker, nature of work, the worker's qualifications and a copy of the identity card of the employer submitting the application.

³² Interview with a representative of the Ministry of Labour, Beirut, Sept. 19, 2013.

Once prior approval is obtained, the guarantor sends a work visa request to the GDGS.³³ The request must be accompanied by a written undertaking by the guarantor stating that he/she assumes responsibility for the deportation fees in the event of termination of the employment contract. If the visa application is approved, the guarantor then heads to Beirut International Airport to welcome the migrant worker. A 3-month visa including the name of the guarantor is attached to the worker's passport upon his/her arrival.³⁴ Within the first three months following the worker's entry to Lebanon, the employer is bound to obtain a final work permit from the MoL.³⁵ Once the work permit is obtained, the guarantor must appear with the worker before the GDGS so that the worker obtains a residence card for a period of one year.³⁶ The issuance of this card is based on the submission of several documents, including a one to three-year employment contract signed by both the worker and the employer before the notary public.³⁷ The final decision to accept a foreign worker goes back to the GDGS.³⁸

³³ Letter from the Head of the Bureau in charge of matters relating to foreigners nationality and passports, Beirut, July 8, 2013. The visa requires the following documents: a copy of the passport of the domestic worker valid for at least a year and a half; a written engagement by the employer stating his responsibility for paying the repatriation fees, signed before a notary public; copy of the identity card of the guarantor; a salary certificate or a copy of the savings book of the guarantor; a stamp of 1,000 LBP.

³⁴ Decree No. 10188 of July 28, 1962 on the implementation of the Law of July 10, 1962 concerning entry, residence and exit. The employer must pay a visa fee of 50,000 LBP (USD 33).

³⁵ Order No. 1/1 of Jan. 3, 2011 regulating the work of foreign workers recruitment agencies, Art. 20. Moreover, the recruitment agency must contact the employer to inform him/her that he/her must obtain a work permit. If it appears to the agency that the employer has not taken this step it must notify the MoL. In order to obtain the residence permit, the domestic worker must undergo a series of medical tests upon arrival whose costs are borne by the employer; these include HIV, malaria, tuberculosis, jaundice, syphilis, paranoid personality disorder (PPD) and a pregnancy test for women. This test is necessary to obtain medical insurance (Decision of the Ministry of Labour No. 263/1 of 22 June 1995 Article 2 (4). Standard application form for a work permit, Ministry of Labour, Republic of Lebanon). A decision issued by MoL in 2011 specifies that if the pregnancy test is positive, the private employment agency is obliged to bear the cost of repatriation of the employee and offer the employer another domestic worker (Order No. 1/1 of January 3, 2011 regulating the work of foreign workers recruitment agencies, Art. 18).

³⁶ An annual residence permit is granted if the following documents are provided : a copy of the work permit issued by MoL; a copy of the employment contract; a copy of the identity papers of the worker and the guarantor; a photo of the worker; fees paid by the guarantor LBP 300,000 (USD 200). Letter from the Head of the Bureau in charge of matters relating to foreigners nationality and passports, Beirut, July 8, 2013.

³⁷ Order No. 2/1 of July 16, 2013 governing the prolongation of the work permit. This order indicates that the maximum duration of the work permit is of three years.

³⁸ Interview with a representative of the Ministry of Labour, Beirut, Sept. 19, 2013. *Ibidem*, Art. 20.

During the first three months of employment, the private employment agency (PEA) is solely responsible for the repatriation of the worker if he/she wants to leave his/her employer.³⁹ Following this period, the worker remains under the legal responsibility of the guarantor who has the obligation to pay the tax duties on the employment contract, work permit and the residence permit. The worker is not authorized to change jobs or leave the country without the notified authorization of his guarantor.⁴⁰ If the latter agrees, the domestic worker can change guarantor, maximum twice. According to an official this unilateral internal decision by the GDGS aims to “limit cases of trafficking in persons in which the guarantors give away their domestic worker to others to make money.”⁴¹

The Ministry of Labour has no institutionalized system of monitoring PEAs. In fact, Lebanon lacks a comprehensive body of regulations oversee the practices of PEAs.⁴² With a total of 20 labour inspectors entrusted to cover all Lebanese territory, it is difficult to envisage an on-site verification of the information or field audits, something that grants the PEAs important decision-making power on the fate of migrant domestic workers.⁴³ Since this control system is virtually non-existent, the Ministry of Labour does not update a “black list” of PEAs that have not complied with the conditions for granting the license and that have exploited domestic workers. Moreover, the MoL decision that regulates the granting of licenses hardly mentions anything about the conditions under which such licenses may be revoked in case of abuse. The only exception is to prohibit the PEA from charging fees to the domestic worker and putting the PEA at risk of losing its license. Articles 16 and 17 of this decision encourage domestic workers to file a complaint before the Department of Labour and Professional Relations of the MoL in case of conflict, or use of physical or verbal abuse by the agent.⁴⁴ A representative of the MoL noted that when the MoL receives a complaint against a PEA, it sends inspectors who may order the closure of the PEA if the violations are proven.⁴⁵ This closure is ordered based on Article 103 of the Criminal Code which states that the establishment in which an offense is committed may be closed between one month and two years. In 2012, the

³⁹ Order No. 1/1 of Jan. 3, 2011 regulating the work of foreign workers recruitment agencies, Art 18.

⁴⁰ *Ibidem*, Art.20

⁴¹ Interview with a Captain from the GDGS, responsible for matters related to the residence permit, Beirut Feb. 8, 2013.

⁴² Only Order No. 1/1 of Jan. 3, 2011 regulating the work of foreign workers recruitment agencies determines rules on the organization of private employment agencies recruiting migrant domestic workers of the 4th category.

⁴³ The Ministry of Labour has trained eight social workers whose mission is to intervene in the dispute between domestic workers and employers. However, a member of the MoL mentioned that the team was not operational in 2013.

⁴⁴ *Ibidem*, articles 16 and 17.

⁴⁵ Interview with a representative of the Ministry of Labour, Beirut, Sept. 19, 2013.

GDGS ordered the closure of a PEA which transferred domestic workers to other employers four times with no remuneration granted to the worker.⁴⁶ The MoL had not ordered the closure of any PEA throughout the duration of this research project (January to December 2013).

In practice, it is the GDGS that takes measures against a PEA that carries out fraudulent practices (several agencies were closed as a result of the GDGS investigations), and against employers who abuse their workers. Agencies and employers may be blacklisted.⁴⁷

“The GDGS has a blacklist of employers and a blacklist of domestic workers. The list of employers contains the names of those who employed someone illegally and did not act as a guarantor of the worker. The blacklist of domestic workers contains the names of those who committed a crime or offense during their stay. All domestic workers on this list are banned from entering Lebanese territory for a period of 5 years, according to Directive No. 85 of December 29, 2005 issued by the GDGS.”

Captain, Center of detention of the GDGS, Beirut, Lebanon, February 6, 2013.

2.2.2 Characteristics of the Lebanese judicial system

Lebanese tribunals are courts of ordinary law. They examine civil and criminal cases involving a domestic worker. The Civil Courts are regulated by the new Code of Civil Procedure of 1983, the law on the judicial system⁴⁸ and the law governing the organization of the courts.⁴⁹ There are three levels of jurisdiction. The first is the Grand Instance Court, which is composed of either a single judge or a chamber of judges. Single judges have territorial jurisdiction over districts (cazas or qadha') (26 in Lebanon), while the chambers of judges are territorially competent for governorates (mohafazat). The second is the Court of Appeal and it is responsible for upholding or overturning first instance decisions. They are territorially competent for the mohafazat. The third is the Court of Cassation, which is the Supreme Court of the judicial order. There is only one Court of Cassation, based in Beirut. It comprises several chambers and decides on the law and not on factual issues.⁵⁰

⁴⁶ Telephone interview with the President of the Syndicate of Recruitment Agencies in Lebanon (SORAL) on December 3, 2013

⁴⁷ Interview with a lawyer from CLMC, October 2, 2013, Beirut

⁴⁸ Legislative Decree No. 150 of September 16, 1983 on the organization of the judicial system.

⁴⁹ *Ibidem.*

⁵⁰

The criminal courts are regulated by virtue of the new Code of Criminal Procedure of 2001. There are two sorts of criminal courts: the first are criminal courts adjudicating crimes: they comprise assize courts for first instance cases and the Criminal Chamber of the Court of Cassation for appeal cases. The case is first examined by an investigating judge and then by the Indictments Chamber before it is dealt with by an assize court. The second are criminal courts decide on offenses. They comprise a single criminal judge in first instance cases, the Court of Appeal for misdemeanors in appeal cases and the Criminal Chamber of the Court of Cassation.⁵¹

The Lebanese judiciary includes sitting judges and standing judges also called Public Prosecutors. The Public Prosecutor represents the interests of society before civil and criminal courts. In criminal matters, the role of the Public Prosecutor is to initiate public action, that is to say, to instigate criminal proceedings against the alleged author of an offense. The Public Prosecution Offices are governed by a very strict hierarchy. They are subject to the Public Prosecutor at the Court of Cassation who, by virtue of Articles 13 and 16 of the Code of Criminal Procedure, has absolute authority over all public prosecution offices. There is a Public Prosecutor's Office at the Court of Appeal in each muhafazah, chaired by a public prosecutor with the assistance of one or more attorneys general.⁵²

The judicial system also includes special courts like the Labour Arbitration Council. The Council is composed of a worker representative, an employer representative, a commissioner from the Department of Labour as well as a chief judge.⁵³ The Labour Arbitration Council is responsible for settling individual disputes over private employment contracts, which is the case of domestic workers with legal status.⁵⁴

⁵¹ M. W. Mansour; C. Y. Daoud: Lebanon, the Independance and Impartiality of the Judiciary, (Copenhagen, 2010), pp. 11-12.

⁵² *Ibidem*

⁵³ Decree No. 3572 of October 21, 1980 pertaining to the competence of the Arbitral Labour Councils, amending Article 77 of the Labour Law.

⁵⁴ Labour Law of September 23, 1946, Art. 78 and 79

CHAPITRE 3:

KEY FINDINGS

3.1 Weakness of the judicial system in terms of guaranteeing access to justice for migrant domestic workers victim of exploitation

3.1.1 The Lebanese body of law guaranteeing access to justice for foreign workers

3.1.1.1 The right to have access to a judge without discrimination

The right of access to justice in Lebanon is recognized to any person, whether Lebanese or of another nationality. Therefore, a foreign domestic worker, victim of a violation of Lebanese law may file a complaint before the prosecutor, the judge or the single judge in offense-related matters or to the police in cases of flagrante delicto.

Article 7 of the Lebanese Codes of Criminal and Civil Procedure recognizes to any person, natural or legal, Lebanese or foreign, the right of access to justice regardless of race, origin or nationality. This is in line with Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination of 1965,¹ which guarantees the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the right to equal treatment before and all other organs administering justice.

Article 68 of the Code of Criminal Procedure confirms this principle of non-discrimination with respect to access to justice by specifying that “any

¹ Article 7 of the New Code of Criminal Procedure, Law No. 328 of August 7, 2001 as amended in Act No. 359 of August 16, 2001 specifies that “Any aggrieved person may assume the status of a civil party before the First Investigating Judge in the case of a felony or misdemeanor, or before the Single Judge in the case of a misdemeanour or contravention. A civil party may also join the public prosecution before the Criminal Court.” Code of Civil Procedure, Decree No. 90 of September 16, 1983, Art.7.

victim of a felony or misdemeanour may file a complaint directly with the First Investigating Judge who has jurisdiction over the area in which the offence was committed, the place of residence of the defendant or the place in which he was arrested. The victim can file a complaint with civil action that automatically triggers the opening of an investigation.”²

A foreign litigant in civil proceedings is not required to pay a deposit. However, there is a difference in treatment in criminal proceedings, since this surety is required from the foreigner during criminal prosecution in order to guarantee direct action on the case by the investigating judge³ or the single judge.⁴ The complainant is exempted from paying the advance if the subject-matter of the action is qualified as a crime. If it is a misdemeanour, the judge may, by means of reasoned judgment, exempt the complainant holding a foreign nationality from the payment of the advance⁵ only if he or she is financially unfit to do so.

“The right of access to justice is not reserved only for Lebanese citizens. It is also recognized to any person, regardless of nationality, race, colour, sex, occupation and social status. It is the right of any victim, of any person, to instigate legal action, to have recourse to a judge, and to seek compensation and protection.”

Judge of the Court of Appeal of Beirut, Lebanon, February 6, 2013

The right of access to justice in Lebanon is also expanded by the fundamental principles of a fair trial under the articles governing proceedings in the Civil and Criminal Codes of Procedure.⁶

3.1.1.2 The right to fair trial

The trial is essential to the concept of access to justice. This trial must be framed by rules establishing a series of guarantees that prevent the proceedings from becoming arbitrary, in particular in cases involving a foreign worker against a Lebanese employer. All of the principles recognized by the Lebanese law apply without discrimination on the basis of nationality.

The first guiding principle is that both parties must be heard.⁷ It implies that

² New Code of Criminal Procedure, 2001, Art. 68.

³ New Code of Criminal Procedure, 2001, Art. 168.

⁴ New Code of Criminal Procedure, 2001, Art. 155.

⁵ The judge fixes the amount of the deposit by virtue of an order. According to the interviews conducted for this study, this amount usually ranges between LBP 200 000 and 300 000 (i.e. USD 132 to 200).

⁶ Code of Civil Procedure, Decree No. 90 of September 16, 1983, Articles 363 to 377.

⁷ *Ibidem*, Art. 373.

no one may be judged without having been heard or summoned, and that the parties should notify each other in a timely manner of the facts on which they base their allegations, the elements of evidence they produce and pleas in the merits that they invoke in order to support their defense. For his part, the judge must make sure the parties abide by the contradictory principle and know the charges against them. In other words, he may only take into consideration the pleas, explanations and submitted documents that the parties have had the opportunity to refute.

The second guiding principle is the right to defense.⁸ The parties may defend themselves, except in cases where representation is compulsory, or choose their lawyer either either represent or assist them in accordance with the law. Articles 74 to 83 of the Code of Criminal Procedure recognize these guarantees to the defendant by establishing the right of all victims to be represented by a lawyer before the judge.⁹ Victims have the right to be accompanied by a sworn translator during the investigations of the instruction judge.¹⁰

The third principle focuses on the judge's impartiality. In civil proceedings, the judge has the power to order the legally admissible investigative measures and the parties have an obligation to cooperate. The criminal judge has the obligation to examine the prosecution and the defense.

With regards to the evidence, the role of the parties concerning the facts is essential. The investigating judge must be actively involved, especially in the search for evidence and elements that could justify the parties' allegations. He may take into consideration the facts that the parties did not specifically invoked but that are relevant to the debate; he may call the parties to provide explanations that he deems necessary for the settlement of the dispute.¹¹

According to the analysis of Lebanese law, the right of every worker in Lebanon (legal or illegal)¹² to resort to the court is unconditional; the filing of an admissible claim must be settled by the judge, under accusation of committing a denial of justice within the meaning of Article 4 of the Code of Civil Procedure. However, the principle of equitable access to justice is weakened by gaps in the law on domestic workers' protection in Lebanon.

⁸ *Ibidem*, Art. 372.

⁹ New Code of Criminal Procedure, Law No. 328 of August 7, 2001, Art. 78.

¹⁰ *Ibidem*, Art. 81(3).

¹¹ Code of Civil Procedure, Decree No. 90 of September 16, 1983, articles 367 and 368.

¹² Article 7 of the New Code of Criminal Procedure of 2001 does not mention that victim must be residing legally to be able to file a complaint before the judge.

3.1.2 Legal remedies/Complaint mechanisms

3.1.2.1 Shortcomings of the Labour Code compromising access to civil courts

Limited Protection due to exclusion from the Labour Code

Article 7 of the Lebanese Labour Law excludes “domestic workers employed in private houses from its scope of application.”¹³ As indicated above, several labour ministers developed draft laws to regulate employment and work conditions for domestic workers, but no proposal has yet been submitted to the Parliament for approval. The resignation of the Prime Minister in March 2013 left Lebanon without a government, an event that prevented the Parliament from legislating until the formation of a new government in February 2014.

There were mixed opinions on the ways to go about the creation of a new law or the amendment of the existing law. The President of the Labour Arbitration Council stated that she was “in favor of a special law on domestic work and not in favor of an amendment of the Labour Law, as there are articles in the Labour Law that are impossible to apply to the case of domestic workers, such as the provisions governing working hours.”¹⁴ Moreover, some key players explained the benefits of a special law that can be “adopted within a much faster time-limit.” In contrast, others believe that a special law may lead to further discrimination and stigmatization of MDWs by codifying less protective standards.¹⁵ Contrary to the Labour Law, the special draft law contains no mention of the right to freedom of association of MDWs.

The non-application of articles of the Labour Law on domestic workers should not prevent the civil courts from settling disputes related to the employment contract. However, according to a rigorous analysis of cases brought before the courts by CLMC, we found that the ability of victims to seek and obtain compensation through the civil courts is limited.

¹³ Labour Law of September 23, 1946 as amended on December 31, 1993 and July 24, 1996. Article 7 specifies the following: “Shall be exempted from the present Law: 1) Domestic workers employed in private houses; 2) Agricultural corporations which have no connection with trade or industry and which shall be governed by a special law; 3) Establishments employing only family members under the management of the father, the mother or the guardian; 4) Employees and provisional wage-earners and daily-workers working in municipal or government services and to which the civil servant regulations do not apply. These workers shall be governed by a special law.”

¹⁴ Interview with a CLMC Lawyer, January 30, 2013.

¹⁵ For further information on designing labour laws governing domestic workers, see: International Labour Office: *Effective Protection for Domestic Worker: A Guide to Designing Labour Laws* (Geneva, 2012).

The cases brought before the Labour Arbitration Council are limited to violations relating to non-payment of wages. This is mainly due to the fact that the contracts signed by domestic workers before 2010 generally contained little or no provisions on rest days, freedom of movement, the right to keep identity papers or the right to private space in the house of the employer. On December 31, 2009, a National Steering Committee introduced standard contract containing the rights and obligations of the employer and the domestic worker aiming to improve the legal protection of domestic workers; however, the contract is not systematically used by PEAs and notary publics.¹⁶ A new text for a standard contract based on the fundamental principles of the ILO Convention No. 189¹⁷ on decent work for domestic workers was submitted to the MoL in 2012, but it has not been endorsed yet.

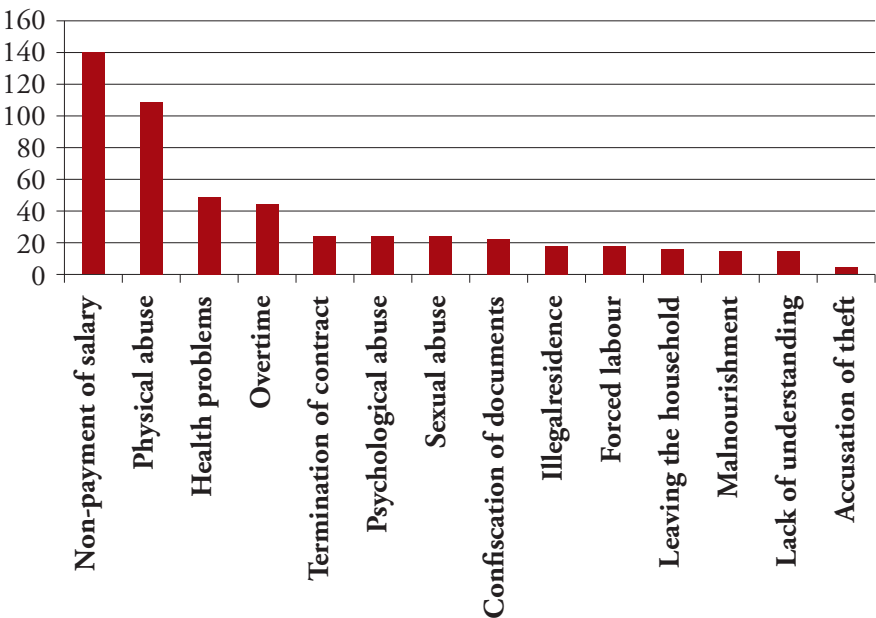
Lack of legal protection for domestic workers is characteristic of Middle East countries, with the exception of Jordan, which promulgated a regulation to establish reciprocal obligations of employees and domestic employers in 2009.¹⁸

¹⁶ Decree No. 1/19 of December 31, 2009, on the unified contract.

¹⁷ With respect to wage-related rights, Article 11 of ILO Convention No. 189 specifies that “Each Member shall take measures to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination based on sex”. In addition, Article 12 specifies that “Domestic workers shall be paid directly in cash at regular intervals at least once a month.”

¹⁸ Regulation No. 90 of 2009 on domestic workers, cooks, gardeners and similar categories, Jordan.

Figure 2: Object of 730 cases subject to informal dispute resolutions / out-of-court settlement procedure (730/1000 scale)¹⁹



As demonstrated by the graph, out of the 730 cases of Ethiopian migrants analyzed for this study, 141²⁰ involved workers who were victims of non-payment of wages, the most common violation in cases treated by the CLMC.²¹ To resolve such disputes, CLMC lawyers held 141 informal negotiations of which 36% led to a peaceful settlement.

In Lebanon, there is neither an institution that offers mediation services nor a national code of conduct for mediators. This informal is subject to the prior agreement of the parties and is the most common method of settlement of disputes in civil and criminal cases involving a migrant domestic worker. This can be explained by the fact that the MoL, which should be responsible for conducting the negotiations between employers and employees, does not offer such service and is excluded from the administration of this type of cases.

Under the *kafala* system, which implies that a domestic worker who fled the home of his employer may be subject to administrative detention, the employer may be in a strong position to negotiate and reduce the rights of

¹⁹ Data collected in the CLMC database.

²⁰ 244 cases addressed in 141 cases.

²¹ The wage non-payment indicator existed in 33,4% of the analyzed cases in this study.

the worker. The high percentage of cases settled amicably, not only in cases of non-payment of wages, but also in cases of physical abuse, suggests that domestic workers are quickly discouraged from filing a legal complaint.

These negotiations between employers and domestic workers, who are usually facilitated by CLMC and other key players of civil society or consulates, lead directly to a compromise. When the employer refuses to pay the amount of wages requested by the domestic worker, CLMC refers the matter to the department of investigation of the GDGS, which conducts a preliminary investigation in its capacity as judicial police. The GDGS summons the employer and the domestic worker for interrogation. During the first meeting of the investigation, the employer and the worker discuss the unpaid wages.

During the process, there are two possible scenarios. In the first instance, the worker agrees to be paid less than what is owed by the employer in order to speed up deportation to his/her country.²² Workers remain in a standstill for the whole duration of the procedure, without a job or an income. They often want to return to their countries as soon as possible in order to apply for a new job through the PEA. In other cases, the worker refuses the proposal of the employer who provides no evidence of payment of wages. At this stage, the GDGS, in its capacity as judicial police acting under the supervision of the Public Prosecution Office, has the obligation to inform the General Public Prosecutor. Sometimes the Public Prosecutor makes an oral request to the GDGS investigator to give the employer a deadline to pay the wages to the domestic worker. If an employer pays the money by the deadline, the case is closed, and the worker is hosted by the CLMC until a *laissez-passer* and/or identity documents are issued by the embassy and his airfare is paid by the guarantor or by other sources.

However, not all cases of non-payment of wages are as easily settled. In fact, despite the notification of the General Public Prosecutor, some guarantors refuse to pay the airfare and/or the total amount of unpaid wages. In this case, the GDGS is theoretically obliged to prosecute the guarantor for breach of the undertaking signed before a notary public, stating that he/she shall bear responsibility for repatriation in the event of an interruption of employment contract. Nevertheless, the interviewed CLMC lawyers explained that this

²² Examples of cases in this situation followed by CLMC: 1) Haimanot, an Ethiopian domestic worker, in Lebanon since 2012, repatriated to Ethiopia, three interrogations at the department of investigation of the GDGS on 08/14/2013, 22/08/2013 and 08/27/13, 13 months of unpaid wages equivalent to USD 1,950, has agreed to receive USD 500; 2) Desta, an Ethiopian domestic worker, in Lebanon since 2010, repatriated to Ethiopia, two interrogations at the department of investigation of the GDGS on 07/08/13 and 13/08/13, 9 months of unpaid wages, has agreed to receive USD 400; 3) Shtu, an Ethiopian domestic worker, in Lebanon since 2012, repatriated to Ethiopia, three interrogations at the department of investigation of the GDGS on 10/09/2013, 17/09/13 and 09/19/13, USD 1,550 unpaid, has agreed to receive USD 500.

process, in cases where the employer does not pay the due wages, is not always enforced by the GDGS. Embassies and consulates, as well as friends and relatives, sometimes collect the money needed to buy the return travel ticket of the domestic worker. If the employer failed to submit proof of payment during the preliminary investigation conducted by the GDGS, the worker may then file a complaint to the Labour court to obtain compensation, especially in the case of non-payment of wages. CLMC Lawyers request an original copy of the investigation report and a power of attorney from the domestic worker to refer the matter to the Labour Arbitration Council.

Analysis of legal proceedings related to non-payment of wages

a) Breach of trust by the employer

CLMC intensified its legal aid services to victims of exploitation at work during the early 2000s. At the time, very few cases involving domestic workers were brought before courts. The vast majority of disputes were settled amicably.

The first argument made by CLMC lawyers at the time to obtain compensation in cases of non-payment of wages was that there was *a breach of trust*²³ on the part of the employer, who intentionally withheld or misappropriated the workers' salaries. These actions have been successful in some judgments. In 2000, in the case of *Jamila Berro vs. A.K. et D.R.*, the judge ruled that, by virtue of Articles 670-673 of the Criminal Code, the employer had committed a breach of trust regarding the payment of wages of the domestic worker recruited, as stated on the contract of emolument; the judge ordered the employer to pay an amount corresponding to the unpaid wages of 22 months in addition to 9% on the total amount of such wages as compensation to the domestic worker.²⁴

“There is a working relationship between two parties, an employer and an employee. Therefore, it is the employer's obligation to pay the employee the amount of money specified in the contract, which is the salary. In this case, the employer did not submit proof of payment of salary for 22 months. Moreover, the failure to pay wages to the domestic worker each month is equivalent to an

²³ Article 670 of the Lebanese Criminal Code tackles breach of trust as follows: “Any person who intentionally conceals, misappropriates, wastes, damages or disrupts a title of deed containing a commitment or release or any other movable property which he has been entrusted for lease, security or mortgage, or to work for a wage or unpaid position, charged with returning it or not, or to make a given use of it, shall be punished by imprisonment from two months to two years, and to a fine ranging between one-quarter to half of the value of the restitutions and damages, and not less than fifty thousand [Lebanese] pounds.”

²⁴ Court of Appeal of Mount-Lebanon, Appeal lodged on December 9, 1999, *Jamila Berro vs. A.K. and D.R.*, Decision rendered on October 25, 2000.

ordinary deposit in the hands of the employer by virtue of Article 695²⁵ of the Code of Obligations and Contracts. However, the deposit is based on the parties' consent. If the employee requests to retrieve the deposit and the employer refuses then the latter would be guilty of breach of trust by virtue of Article 670 of the Criminal Code."²⁶

This judgment reflects the interest of the criminal court to protect and compensate domestic workers, even if the protection does not normally fall within the scope of competence of the criminal court -although the civil court is the only responsible for sanctioning a violation of the contractual obligation of the employer, such as non-payment of wages. Nevertheless, the most recent case law shows that judges refuse to deem the non-payment of salary a criminal character to the detriment of the law, for the sole aim of protecting the victim. In the case of *Angelita Malbas vs. E.K. and C.S.*, the judge of the Court of Appeal of Mount-Lebanon said that a violation such as the non-payment of wages is only subject to civil law and thus cannot be qualified as a breach of trust.²⁷

b) Disputes related to the employment contract

Following these judgments, CLMC lawyers decided to resort to Labour Arbitration Councils to obtain compensation.²⁸ For any violation of the provisions included in an employment contract, domestic workers may theoretically file a complaint before one of the five Labour Arbitration Councils,²⁹ which examine individual disputes over an employment contract under private law.³⁰ Just like in other economic sector, members of the Labour arbitration councils are responsible for reconciling the parties or issuing a judgment. All complaints before 2008 were rejected by the Labour Arbitration Councils on the basis of a restrictive interpretation:

²⁵ Article 695 of the Code of Obligations and Contracts specifies that "Deposit occurs by mere consent of the parties and by the delivery of the thing. Feigned delivery is satisfactory when the depositary is already in possession of the thing to be deposited for another reason."

²⁶ Court of Appeal of Mount-Lebanon, Appeal lodged on December 9, 1999, *Jamila Berro vs. A.K. and D.R.*, Decision rendered on October 25, 2000.

²⁷ Court of Appeal of Mount-Lebanon, *Angelita Malbas vs. E.K and C.S.*, Decision No. 249/2005 rendered on April 11, 2005.

²⁸ The President of the Labour Arbitration Council of Beirut indicated that average duration for obtaining an award from the Council is of 9 months.

²⁹ There are five Labour Arbitration Councils in Lebanon in Beirut, Mount Lebanon, North Lebanon, South Lebanon and Bekaa. Decree No. 6304 of October 5, 1973, integrated into the Labour Law of September 23, 1946, Chapter III, Art. 77. Each Council is composed of a workers' representative, an employers' representative, a representative of the MoL and a presiding judge. The Arbitration Council was closed from August 15, 2011 to May 1st, 2012, which prevented granting any award during this period.

³⁰ Labour Law of September 23, 1946, Articles 78 and 79.

The jurisdiction of the Labour Arbitration Council must be interpreted in a strict sense. As domestic workers are excluded from the scope of application of the Labour Law by virtue of Article 7 (1), the Labour Arbitration Council declared that it lacks jurisdiction to examine the claims submitted by domestic workers.³¹

After 2008, we have seen a development of the case law, as the Labour Arbitration Council declared it had jurisdiction to examine cases concerning the withholding of wages of domestic workers.³² The decisions issued in the cases of *Chandrawathi vs. R.A.Z* and *Rizalin Tumaliuan Agub vs. R.Y.H.* are one of the most significant developments in case law in recent years; they opened a small door towards effective access to justice for domestic workers, regarding not only non-payment of wages, but also other violations of the employment contract. All subsequent cases dealt with by CLMC followed the same path, particularly the decision in the case of *Jennyfer Caluya vs. L.A.* issued in 2013.³³

“The Labour Arbitration Council examines cases of non-payment of wages, whether in the case of domestic workers or other workers. Judges who declared that they lack competence invoking the exclusion of these workers from the scope of application of the Labour Law have committed a mistake.”

Judge, President of the Labour Arbitration Council of Beirut, February 6, 2013

All cases involving domestic workers brought before the Labour Arbitration Council have until now been limited to disputes relating to non-payment of wages. The President of the Labour Arbitration Council of Beirut further explained: “We have not examined cases concerning excessive working hours, non-compliance with rest days or annual leave in the case of domestic workers, since most of the time these conditions are not mentioned in their contract, and therefore we do not have a legal basis to settle these cases.”³⁴ In light of the current state of the law, the Labour Arbitration Council can not apply the provisions of the Labour Law and therefore refers only to general law included in the Code of Obligations and Contracts (COC).³⁵ In the case of *Rizalin Tumaliuan Agub vs. R.Y.H. in 2009*, the Labour Arbitration Council of Mount Lebanon stated that:

³¹ Labour Arbitration Council of Bekaa, Zahle, Claim submitted on October 18, 2005, Askale vs. A.B., Award No.32/2009 rendered on January janvier 15, 2009.

³² Labour Arbitration Council of Mount-Lebanon, Claim submitted on March 10, 2006, Chandrawathi vs. R.A.Z., Award No.261/2008 rendered on March 16, 2008; Labour Arbitration Council of Mount-Lebanon, Claim submitted on March 20, 2006, Rizalin Tumaliuan Agub vs. R.Y.H., Decision No.90/2009 rendered on January 27, 2009.

³³ Labour Arbitration Council of Beirut, Claim submitted on February 28, 2008, Jennyfer Caluya vs. L.A., Award No.223/2010 rendered on March 17, 2013.

³⁴ Labour Arbitration Council of Beirut, Claim submitted on February 28, 2008, Jennyfer Caluya vs. L.A., Award No.223/2010 rendered on March 17, 2013.

³⁵ Interview with the President of the Labour Arbitration Council of Beirut, February 6, 2013.

“By virtue of Decree No.3572, the Labour Arbitration Council is competent to settle disputes arising from a contract of employment as defined in Article 642 of the Code of Obligations and Contracts. Thus, even if Article 7 (1) of the Labour Law excludes domestic workers from its scope of application, we are still in the presence of an employment contract between an employer and an employee, which shall be governed by the Code of Obligations and Contracts.”³⁶

The Labour Arbitration Council of Beirut relied on the same argument, but added that its jurisdiction is based on Articles 1 and 2 of Decree No.3572 as well as on the principle of non-discrimination included in Article 7 of the Code of Civil Procedure recognizing for any person, natural or legal, Lebanese or foreign, the right to file a complaint and defend his/ her cause before the court.³⁷

It is worth mentioning that the domestic worker is not bound to file a complaint immediately after the violation of non-payment of wages, but may do so within two years after the termination of the employment contract with the employer.³⁸ Moreover, the President of the Labour Arbitration Council of Beirut pointed out that “if a domestic worker filed a complaint well after the violation, this does not prove in any case the worker’s tacit consent to accept a lower wage; therefore the employer may be subject to sanction even after months of unreported violations.”³⁹ This impossibility of tacit consent is based on Article 633 of the COC, which states that “the employer is bound to pay the salary or remuneration according to the conditions provided for by the contract or by local practices.”⁴⁰

Articles 624, 630, 631, 633 and 634⁴¹ of the COC govern the amount and payment of wages. Since 2008, in cases involving a victim of non-payment, the Labour Arbitration Council decided that compensation should be paid by the employer to the domestic worker of an amount equal to the unpaid wages in addition to 9% on the amount of such wages as damages⁴². In a decision rendered in 2009 in the case of *Poaline Hilda vs. M.A.S.*, the Labour Arbitration Council of Beirut ordered, for the first time, the payment of

³⁶ Labour Arbitration Council of Beirut, Claim submitted on March 20, 2006, *Rizalin Tumaliuan Agub contre R.Y.H.*, Award No.90/2009 rendered on January 27, 2009.

³⁷ Labour Arbitration Council of Beirut, Claim submitted on November 20, 2006, *Poaline Hilda vs. M.A.S.*, Award No.258/2009 rendered on April 22, 2009.

³⁸ Integrated laws supplementing, repealing or replacing articles of the Law of March 9, 1932 publishing the basic text of the Code of Obligations and Contracts, Art. 351 (4).

³⁹ Interview with the President of the Labour Arbitration Council of Beirut, February 6, 2013.

⁴⁰ Integrated laws supplementing, repealing or replacing articles of the Law of March 9, 1932 publishing the basic text of the Code of Obligations and Contracts, articles 633 and 625.

⁴¹ Interview with the President of the Labour Arbitration Council of Beirut, February 6, 2013.

⁴² Lebanese Code of Commerce, Decree-Law No. 304 of December 24, 1942, Art. 257.

compensation for unfair dismissal equivalent to an amount USD 2,750, in addition to repayment of the total amount of unpaid wages by the employer from 1992 to 2006 (USD 34,800) and an extra 9% in damages.⁴³ In the abovementioned case, the judge invoked Article 652 of the COC, which specifies that the employer must give the employee a notice period of two months if the contract has been executed for more than three years, which was the case here.⁴⁴ In order to determine the amount of compensation to be paid by the employer for unfair dismissal, the judge relied on Article 656 of the COC which states that “if the contract is terminated by the employer and that termination is not justified by the non compliance with the clauses of the contract or by the employee’s fault, the employee is then entitled to indemnity equal to a month’s pay or salary for every year starting from the first five years, and to half a month’s pay or salary for every year starting from the remaining years.”⁴⁵

c) Substitution of the contract and validity of consent

The analysis of the CLMC database revealed that one of the main constraints suffered by Ethiopian victims of exploitation is very low wages. Moreover, interviews with the staff of CLMC showed that numerous Ethiopian beneficiaries were victims of deception; they are affected by the discrepancies between the amount that was promised by the PEA upon their recruitment in Ethiopia and the wages imposed by the employer when they arrived to Lebanon. Although this is a common form of exploitation of domestic workers, it is difficult in the current state to assert this element before a court in Lebanon, since domestic workers rarely have a copy of the contract signed in the country of origin with the PEA and/or the employer in Lebanon. Moreover, due to the ban to migrate to Lebanon, no Ethiopian domestic worker signs a contract with the PEA in Ethiopia. Hence, the parties conclude an oral contract at best. CLMC Lawyers are exploring the possibility of holding the PEA liable in Lebanon where the worker has signed a different contract containing other rights with the PEA in his country of origin.

⁴³ Labour Arbitration Council of Beirut, Claim submitted on November 20, 2006, *Poaline Hilda vs. M.A.S.*, award No.258/2009 rendered on April 22, 2009. It is worth mentioning that in this case the judge referred to Article 248 of the COC to justify that “the party that terminated the contract is liable to the payment of damages by misusing his termination right, that is, if he uses it contrary to the spirit of the law or of the contract”.

⁴⁴ Article 652 of the COC governing the notice period between the parties to the contract in case of termination specifies that “if the period of engagement has not been fixed in the contract or does not result from the nature of the job to be performed, each party is free to terminate it by serving notice to the other. The notice time-limit shall be for one month if the contract has been executed for a period of three years or less, and two months if the said contract was for a period over three years.”

⁴⁵ Integrated laws supplementing, repealing or replacing articles of the Law of March 9, 1932 publishing the basic text of the Code of Obligations and Contracts, Art. 656.

Some judges believe the signature of the employment contract at the notary public office in Lebanon is a consensus ad idem by the employer and the domestic worker, which excludes any evidence of deception.

“We cannot take into consideration the arguments of deception or fraud on salary since all domestic workers who have legal residence sign a contract with the employer upon their arrival to Lebanon. This contract is signed before a notary public and ratifies the consensus ad idem of both parties, so it is inadmissible to say that the employee was deceived about the conditions of the contract.”

Judge, President of the Labour Arbitration Council of Beirut, February 6, 2013^a

^a *Ibidem*, art. 202 “vitiating consent.”

In accordance with Articles 43 and 57 of the Labour Law, in the event of two employment contracts, one signed in the country of origin and the other in the country of destination, the most protective contract in terms of working conditions shall apply. However, since domestic workers are excluded from the scope of application of the Labour Law and the COC does not mention anything about the application of two conflicting contracts, the only contract that is deemed true and valid is the one signed before the notary public in Lebanon. Therefore, it is impossible to invoke the contract in the country of origin even if it is more protective.

To make sure that the domestic worker is not deceived and to hold the PEA liable for fraudulent practices, the International Labour Office and CLMC encourage the conclusion of a single contract by the employer, the employee and PEA in the country of origin and the country of destination. This would prevent deception on the amount of wages, and living and working conditions. It is only when we reach such a solution that the employer and/or the PEA who deceived the employee may be prosecuted for fraud, according to Articles 208 and 209 of the COC.

When the domestic worker signed an employment contract similar to the standard unified contract developed by the National Steering Committee in 2009, CLMC lawyers filed complaints in January 2014 alleging breach of clauses concerning weekly days off,⁴⁶ payment of salary at the end of each

⁴⁶ The standard unified contract of 2009 specifies in clause 12: “The first party shall agree to grant the second party a weekly rest period of at least 24 consecutive hours, whose conditions of use should be determined by virtue of agreement between the two parties”.

month,⁴⁷ the prohibition to deduct recruitment fees from the wages and to work for several employers,⁴⁸ as well as of articles 624 and 633 of the COC. We will soon know the outcome of these complaints. It is difficult to gather evidence on cases related to the non-application of the provisions of the contract, such as instances where the employee had worked for more than 8 hours per day or had notified the employer of his intention to terminate the contract one month and a half before the expected date of termination.

These complaints about non-payment of wages are sometimes the tip of the iceberg of a more serious situation of exploitation constituting the crime of trafficking in persons. In 2013, CLMC filed a complaint for non-payment of wages of an amount of USD 1,500 before the Labour Arbitration Council, presenting the claim that the domestic worker was a victim of human trafficking as additional evidence for the first time. The CLMC lawyer responsible for this case emphasized the aggravating circumstances indicating that the non-payment of wages was one of the elements constituting the crime of forced labour. CLMC decided to file a complaint before the Labour Arbitration Council rather than before the Criminal Tribunal to obtain higher compensation.⁴⁹

d) Extension of residence

Concerning mechanisms for coordination between the Labour Arbitration Council and the GDGS, it should be noted that when the Council receives a complaint from a domestic worker who still works with his/her employer and has a valid residence card, the Council has theoretically no need to notify the complaint to the GDGS. However, in most cases, the domestic worker subject to a situation of exploitation at work will leave her place of work to find refuge in a CLMC home or her embassy. The problem lies in the fact that by leaving the workplace, the worker would have violated Article 21 of Decree No.17561 of 1964 regulating the employment of foreigners in Lebanon⁵⁰ and Decision No.136 of September 20, 1969. Therefore any complaint filed before the Labour Arbitration Council will be notified to the GDGS to obtain a copy of the residence card and be able to open the proceedings. This kafala system does not encourage employees in exploitative

⁴⁷ Clause 6 of the standard unified contract of 2009 specifies that: "The first party shall undertake to pay to the second party at the end of each month his/her full pay, of an agreed amount of ... without undue delay [...]."

⁴⁸ 2009 Standard unified contract, clause 3.

⁴⁹ Labour Arbitration Council of Mount-Lebanon, Claim No.756/2013 submitted on November 25, 2013, Case of Alemnesh Bakala vs. J.A.T., Case pending before the Arbitration Council.

⁵⁰ Decree No. 17561 of September 18, 1964 regulating the work of foreigners. Article 21 refers to Article 32 of the Law of July 10, 1962 on the entry, residence and exit of foreigners from Lebanon, which fixes the period of detention between one month and three years.

situations to file complaints about the withholding of wages, even after years of violation.

“The Labour Arbitration Council may request the General Security to grant the plaintiff a special extension of the residence so that he/she can stay during the beginning of the trial. However, the General Security may refuse this request and deport the plaintiff to his/her home country. This is beyond our making.”

Judge, President of the Labour Arbitration Council of Beirut, February 6, 2013

Thanks to the memorandum of understanding signed with the GDGS in 2005, any domestic worker victim of trafficking or other abuses related to labour exploitation arrested by the police should, after examination of his/her situation, be authorized to stay in one of the CLMC homes for the necessary duration of the court hearings.⁵¹ In 2008, in the case of *Analy Sayson Portugal vs. W.J.M.*, the GDGS responded favorably to the CLMC’s request to extend the right of residence of a domestic worker victim of non-payment of wages and assault. In this decision rendered issued on October 31, 2013, the single criminal judge of Keserwan ordered the employer to three months in prison and a fine of LBP 10 million⁵² (USD 6,650) in damages by virtue of Article 555 of the Criminal Code on personal injury.⁵³ The judge relied on the medical examiner’s report confirming the burns and beatings suffered by the worker and asked for the testimony of the GDGS’s investigator, which is relatively rare.

Concerning applications for extension of residence cards of domestic workers victims of Labour exploitation, the foreigners’ office with the GDGS noted that:

“The GDGS is an entity that assists the courts and operates according to the recommendations of the competent courts with respect to all procedures. Therefore, if the court requests us to extend the residence permit of a migrant worker for reasons related to the investigation and trial, the GDGS will do so.”⁵⁴

⁵¹ The right to reside in CLMC homes does not amount to an extension of the residence permit. The only law which establishes the possibility of obtaining such an extension is Law No. 164 of August 24, 2011 criminalizing trafficking in persons. See the Chapter *Lacunae of Law No. 164 of August 24, 2011 criminalizing trafficking in persons.*

⁵² Lebanese Pounds.

⁵³ Assize Court of Keserwan, Complaint filed on May 13, 2008, *Analy Sayson Portugal vs. W.J.M.*, Decision No.748/2013 rendered on October 31, 2013.

⁵⁴ Written response by the Head of the Department of Nationality Affairs, Passports and Foreigners, July 8, 2013.

3.1.2.2 Insufficient Guarantees in the Criminal Code

Retrospective of legal remedies before the adoption of the law on human trafficking

“Even if domestic workers are not covered by the scope of application of the Labour Law, these workers have exactly the same rights as other foreigners and Lebanese citizens before the criminal courts if they are victims of a crime, including human trafficking.”

Investigative Judge with the Court of Baabda, January 30, 2013

The Lebanese Criminal Code does not contain provisions defining the constituting elements of forced labour or labour exploitation. Nevertheless, the Lebanese Government has indicated in this regard that judges may, in such circumstances, refer to Article 569 of the Criminal Code, which provides for sanctions against those who would deprive others of their liberty⁵⁵ and to Article 8 (3) (a) of Decree No. 3855 of September 1, 1972, which prohibits forced or compulsory labour. However, no information has been forwarded to the CEACR, since its first request in 1998, regarding judicial proceedings on the ground of Article 569 of the Criminal Code or Article 8 (3) (a) of Decree No.3855 that would have condemned the perpetrators of forced labour practices.⁵⁶

However, before the adoption of Law No.164, other provisions of the Criminal Code criminalizing offenses committed in the context of practices or forced labour or trafficking were relied upon by the judges to punish the perpetrators of sexual violence,⁵⁷ personal injury⁵⁸ forced prostitution⁵⁹ or breach of trust, and the confiscation of identity documents.⁶⁰ According to

⁵⁵ Article 569 of the Criminal Code titled “deprivation of freedom” specifies that : “[a]nyone who deprives another person of his individual liberty by kidnapping or by any other means, will be punished by hard Labour.”

⁵⁶ CEACR, Convention No. 29, Lebanon, Observation on the Penal sanctions for the exaction of forced or compulsory labour, 2013.

http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO::P13100_COMMENT_ID,P13100_LANG_CODE:3134134,en:NO

⁵⁷ Articles 503 to 506 of the Lebanese Criminal Code.

⁵⁸ Article 555 of the Lebanese Criminal Code.

⁵⁹ Articles 525 and 526 of the Lebanese Criminal Code. Article 525 specifies that “any individual that keeps a person against his/her will in a brothel or coerces him/her to practice prostitution shall be sanctioned with imprisonment from 2 months to 2 years and a fine from 50,000 to 500,000 Lebanese Pounds.”

⁶⁰ Articles 670 to 673 of the Lebanese Criminal Code.

the team of CLMC lawyers, offenses such as deception,⁶¹ fraud⁶² and injuries⁶³ have never been cited in a judgment involving a domestic worker since it is difficult to obtain a prima facie evidence once the domestic workers leaves the home of the employer.

In 2006, in the case of *Alma Tapassa vs. D.J.A.E.*,⁶⁴ which marked a turning point in terms of protection of the rights of migrant domestic workers, the criminal judge of the Criminal Court of Mount Lebanon convicted the employer of a Philippine domestic worker of assault and sentenced the employer to one month in prison by virtue of Article 554 of the Criminal Code and to the payment of LBP 2 million (USD 1,330) in damages. The court also prohibited the employer from hiring a domestic worker for five years, according to Article 94 of the Criminal Code on the prohibition to exercise an activity.⁶⁵ Thereafter, the Court of Appeal of Mount Lebanon confirmed this judgment and increased the amount of damages to LBP 4 million.⁶⁶ This ruling was confirmed in subsequent cases with similar facts, as in the case of *Samanthi Warnakula vs. J.S.*⁶⁷ In the 2013 case of *Analy Sayson Portugal vs. W.J.M.*, the single criminal judge of Keserwan sentenced an employer to three months in prison and to a fine of LBP 10 million (USD 6,650) in damages for repeated assault and burns inflicted on the domestic worker at the place of domicile under Article 555 of the Criminal Code. This sentence further reinforces the relevant case law.⁶⁸ In cases of sexual violence is difficult to provide prima facie evidence to file a credible complaint. In order to improve the chances of success of cases, CLMC is currently discussing with

⁶¹ Articles 507 and 508 of the Lebanese Criminal Code.

⁶² Article 655 of the Lebanese Criminal Code.

⁶³ Article 584 of the Lebanese Criminal Code.

⁶⁴ Assize Court of Mount-Lebanon, Complaint No.3913 filed on November 7, 2005, *Alma Tapassa vs. D.J.A.E.*, Decision No.737/2013 rendered on March 29, 2006.

⁶⁵ The prohibition from hiring a domestic worker is based on Article 94 of the Criminal Code, which states that “The exercise (...) of an activity subject to the approval authority (...) may be prohibited for any person convicted for a crime or misdemeanor committed in violation of the professional duties or obligations inherent in this activity (...).”

⁶⁶ Court of Appeal of Mount-Lebanon, Appeal lodged on April 11, 2006, *Alma Tapassa vs. D.J.A.E.*, Decision No.244/2007 rendered on November 21, 2007.

⁶⁷ Assize Court of Jbeil, Complaint filed on September 12, 2007, *Samanthi Warnakula vs. J.S.*, Decision rendered on June 24, 2010; Court Appeal of Mount-Lebanon, *Samanthi Warnakula vs. J.S.*, Appeal lodged on July 5, 2010, Decision No.12/2011 rendered on January 31, 2011.

⁶⁸ Assize Court of Keserwan, Complaint filed on May 13, 2008, *Analy Sayson Portugal vs. W.J.M.*, Decision No.748/2013 rendered on October 31, 2013.

the Internal Security Forces (ISF), the GDGS, the MoL and the Ministry of Economy ways of coordinating investigative efforts to gather evidence within a shorter timeframe.⁶⁹

Following this development of the case law, there was another important decision tackling the sensitive issue of confiscation of the passport. In the case of *Ghislaine KLA Affoue vs. N.M.Z.E.D.* the judge of the Assize Court of Saida ordered an employer to pay a fine of LBP 700,000 (USD 465) for having confiscated the passport of her domestic worker by virtue of Article 670 of the Criminal Code on breach of trust. The judge stated that:

“While it was deduced from the data of the file that the defendant has confiscated the passport of the plaintiff who came to work for him/her and that the defendant traveled abroad without giving back the passport to the worker, the act of confiscation constitutes an offense by virtue of Article 670 of the Criminal Code (...).”⁷⁰

Shortcomings of Law No.164 of 2011 criminalizing trafficking of persons

The possibility to invoke articles of the Criminal Code does not, however, preclude the need to criminalize trafficking in persons. That is why in 2005, through its participation in the National Steering Committee to combat human trafficking - including the Minister of Justice, the Minister of Interior, Minister of Social Affairs, the Human Rights Institute of the Beirut Bar Association, the trade union of recruitment agencies as well as some local and international organizations - CLMC started advocacy work against human trafficking. For six years, CLMC, in collaboration with a network of local NGOs working on human trafficking, advocated strengthening the rights of migrants in the proposed law and lobbied for its promulgation by the Lebanese Parliament.⁷¹ These efforts culminated on September 1, 2011 with the entry into force of Law No.164 criminalizing the trafficking in persons,⁷² which defines the elements constituting this crime and may be invoked by

⁶⁹ Other criminal cases are currently underway. For example, in the highly publicized 2012 case of an Ethiopian domestic worker who was thrown into a car by her agent in front of the premises of the consulate of Ethiopia, the Ethiopian consulate, which had received power of attorney from the family, did not file a complaint before the ISF. The Consulate referred the case to CLMC on May 16, 2012, which then requested a power of attorney from the husband of Alem and filed a joint complaint on December 4, 2012 before the Public Prosecutor on the basis of Article 564 of the Criminal Code governing homicides. The next hearing was held before the single criminal judge of Beirut.

⁷⁰ Assize Court of Saida, Complaint filed on September 28, 2006, *Ghislaine KLA Affoue vs. N.M.Z.E.D.*, Decision No.172/2008 rendered on April 24, 2008.

⁷¹ This network against human trafficking was composed of the following organizations: CLMC, KAFA, Heartland Alliance, World Vision, ALEF, and ICMPD.

⁷² The speech of Judge Samer Younes on May 27, 2012 during the workshop organized by the Ministry of Social Affairs, The Higher Council of Childhood and World Vision on combating human trafficking.

victims and law enforcement authorities. This promulgation has given new hope for domestic workers victims of human trafficking to seek compensation and protection.

Law No.164 criminalizing trafficking in persons contains some progressive provisions. Article 586 (8) is the key feature, especially in cases involving migrant workers. It states that the victim cannot be prosecuted or held liable for the violation of the conditions of his/her residence card or work permit due to the situation of human trafficking. This is a major principle that eliminates certain rules of the *kafala* system in terms of victims of trafficking. In addition, the article states that the investigative judge or the judge examining the case may render a decision allowing the victim to reside in Lebanon during the period of time necessary for investigation. The extension of the residence card, which was sometimes used on an ad hoc basis, is now codified in a law. This strengthens the judge's power by facilitating the investigation procedure.⁷³ Moreover, a judge with the Beirut Public Prosecution Office pointed out that:

“The judge may grant the foreign victim the right to reside in Lebanon until the end of the proceedings, in the event that his/her residence in Lebanon is illegal. In this case, the GDGS is required to ensure the execution of this decision aiming to reassure the foreign victim, who has violated the residence law.”⁷⁴

Despite the increase in penalties for traffickers, there are still many fundamental gaps in the text. In fact, Law No.164, which aims to define the constituting elements of the crime of human trafficking and to codify the penalties that traffickers are liable for, disregarded any provision on prevention of crime and protective measures to ensure the physical, psychological and social recovery of victims.

International instruments provide clear guidance for the protection of victims. For example, the Palermo Protocol recommends that States parties, to the extent allowed by the national law, must “protect the privacy and identity of victims of trafficking in persons.”⁷⁵ Other provisions specify that victims shall have access to the physical safety, and should receive assistance and information on relevant judicial and administrative proceedings so that their views are heard and taken into consideration at the appropriate stages

⁷³ Article 586(8) of Law No. 164 criminalizing trafficking in persons specifies the following: “A victim who proves that he was compelled to commit acts that are punishable by law or that he was compelled to violate the terms of [his] residence or work [permit] shall be given amnesty from punishment. The investigating judge or the judge who is hearing the case may issue a decision allowing the victim to reside in Lebanon during the period of time required for the investigation procedures.”

⁷⁴ Interview with a Judge from the Court of Appeal of Beirut, February 6, 2013.

⁷⁵ Additional Protocol to United Nations Convention against Transnational Organized Crime to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, 2000, Art. 6.

of the criminal process. States members are also invited to facilitate the repatriation of victims without undue or unreasonable delay.⁷⁶ The Office of the United Nations High Commissioner for Human Rights, through its recommended principles and guidelines, also encourages State Members to ensure, in partnership with NGOs, that victims have access to medical care, advisory services and “legal and other assistance in relation to any criminal, civil or other actions against traffickers/exploiters.”⁷⁷

In Law No.164, the only protective measures provided for in Article 370 (2) apply only to witnesses.⁷⁸ Moreover, the definition of a victim is not linked to a clear mechanism for identification, protection and legal assistance. However, granting of protection and appropriate assistance is in the interest of the victim as well as the prosecutions against the offenders, since it creates a virtuous circle through better identification of victims, fewer cases of re-victimization, higher rates of prosecution and a subsequent decrease in cases of trafficking.⁷⁹ Inadequate protection of victims may discourage them to seek help before the courts for fear of ill-treatment, detention, expulsion or risk to their safety.⁸⁰ A judge with the Public Prosecution of Beirut explains: “the crime of human trafficking can be complex, especially when committed within an organized context, and which sometimes appears to be legal.”⁸¹

The procedures and measures embedded in Law No.164 are crucial but remain insufficient to achieve their goal. According to a judge at the Public Prosecutor Office:

“The legal system must be coherent and effective to allow the identification of the victim according to specific standards and offer legal protection and physical, emotional and psychological support from the beginning of the investigation, throughout the trial and even after the issuance of the final decision.”⁸²

It is specifically these shortcomings that create an imbalance in Law No.164, between the criminal aspect and the protection element, which was a major concern during the drafting of the law. As a matter of fact, several interviewed judges indicated that protection considerations were at the center of discussions before the adoption of the draft law, since most of the offenses were already specified in the Criminal Code.⁸³

⁷⁶ *Ibidem*, Art. 7.

⁷⁷ OHCHR: *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (Geneva, 2002), pp. 9-10, Directive 6.

⁷⁸ These measures of protection of witnesses are limited to protection of identity.

⁷⁹ The International Labour Office, 2013. Report IV (1): Strengthening Action against Forced Labour, [International Labour Conference, 103rd Session (Geneva) p. 35.

⁸⁰ UNODC Model Law against Trafficking in Persons (2010), p. 58.

⁸¹ Speech of Judge Samer Younes on trafficking of children on March 27, 2012 during a workshop organized by the MoSA, the Higher Council for Childhood and World Vision.

⁸² *Ibidem*.

⁸³ *Ibidem*.

Law No.164 confers Minister of Justice the power to enter into agreements with institutions or NGOs specialized in providing assistance and protection to victims. It also specifies that the money obtained from criminals through a penalty imposed by the court shall be deposited in a special account with the Ministry of Social Affairs to assist the victims of this crime. The success of this aspect of protection depends largely on cooperation between the Ministries of Justice and Social Affairs.

No program or other measure to prevent human trafficking is provided in Law No.164; but these could be added in the future, as encouraged by Article 9 of the Palermo Protocol.⁸⁴ These preventive measures such as research, information and media campaigns, or social and economic initiatives are essential to address the root causes of trafficking in persons and forced labour.⁸⁵ The OHCHR's recommendations and guidelines encouraged states to modify policies that may compel people to work illegally and under lack of security, as well as laws relating to immigration of workers who may have discriminatory consequences on women. Promoting the migration of the work force by the State should depend on the existence of regulatory and control mechanisms to protect the rights of migrant workers.⁸⁶

It is also interesting to note that Law No.164 poses challenges of interpretation to the bodies in charge of its implementation. The Lebanese Criminal Code defines certain concepts contained in the definition of trafficking of persons as prostitution or the exploitation of the prostitution of others, but leaves to the judge the freedom to interpret the expression "forced or compulsory labour and practices similar to slavery." An interviewed judge explained that according to his interpretation "we are dealing with a case of forced labour if the employment contract is merely a facade to impose humiliating tasks. The limitations of this concept are delicate. To circumvent them, the behavior of the exploiters must be criminalized in the criminal code."⁸⁷

The application of this law since its adoption in 2011 remains poor. A judge of the Assize Court of Mount Lebanon in Baabda stated that "to my knowledge, no case of human trafficking based on the new Law No.164 has reached the stage of a final judgment in Lebanon. Therefore, I cannot comment on the

⁸⁴ Additional Protocol to United Nations Convention against Transnational Organized Crime to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, November 15, 2000, Art. 9.

⁸⁵ The International Labour Office, 2013. Report IV (1): Strengthening Action Against Forced Labour, [International Labour Conference, 103rd Session (Geneva) p. 23.

⁸⁶ OHCHR: *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (Geneva, 2002), pp. 10-11, Directive 7.

⁸⁷ Interview with the public prosecution judge, Justice Palace of Beirut, Feb. 6, 2013. These crimes are defined in Articles 573 to 578 of the Criminal Code.

mechanism of compensation that has not yet been implemented.”⁸⁸ Another judge with the Public Prosecutor Office of Beirut added that:

“In the case of trafficking in persons, the damage is not only physical, but also moral, given the pain and suffering experienced during the trafficking period, and the deprivation of liberty and dignity. Judges have discretionary - even arbitrary - power in the absence of a general policy and objective criteria for determining damages.”⁸⁹

Since the adoption of Law No.164, CLMC brought a case of trafficking involving four workers before the Assize Court of Mount Lebanon. In this case of *Gloria, Yvan, Faith, Jennifer vs. B.N. and P.F.* four Nigerian domestic workers - who were recruited by a Lebanese PEA in 2010 to work in various shops of a shopping mall in Beirut - have been victims of trafficking according to CLMC. These workers were recruited by the PEA under the name of four fictional sponsors. Several charges were made against the Lebanese manager of the PEA and his Nigerian assistant, accusing them of fraud with respect to salary, and living and working conditions, according to Articles 219 and 655 of the Criminal Code⁹⁰ as well as of the crime of trafficking by virtue of Article 586 of Law No.164 of 2011 against human trafficking and Articles 15 and 21 of Decree No.17561 of 1964. The public Prosecutor referred the matter to the Court of Cassation of Mount Lebanon on September 7, 2012. The investigative judge examining the case, after questioning the defendant and taking the opinion of the Public Prosecutor, could have issued an arrest warrant against those responsible for the PEA, by virtue of Article 107 (3) of the Code of Criminal Procedure, which states that the judge may take such decision if the offence with which the defendant is charged is punishable by more than one year's imprisonment.⁹¹ However, the latter did not do so, but decided to release the defendants. This case brought before the Assize Court of Mount Lebanon on September 7, 2013 showed no progress as of April 1, 2014, although this is a crime of human trafficking; no decision has been taken by the Court.

Finally, it is interesting to note that domestic workers are often reluctant to file a complaint against their employers because they know it is very difficult to change employer without the latter's consent. In the case where there are strong presumptions that a person is a victim of trafficking, the transfer from

⁸⁸ Interview with an investigative Judge, Court of First Instance of Mount-Lebanon, January 30, 2013.

⁸⁹ Interview with a judge from the Court of Appeal of Beirut, February 6, 2013.

⁹⁰ Assize Court of Mount-Lebanon, Complaint filed on March 21, 2012, Case of Gloria, Yvan, Faith, Jennifer vs. B.N. and P.F., Conclusions of the Public Prosecution Office filed on August 3, 2012, adversarial decision of the Investigating Judge issued on August 23, 2012, File transferred before the Court of Cassation of Mount-Lebanon on September 7, 2013, Case pending before the court.

⁹¹ Which is the case in this action since the crime of trafficking in persons may be sanctioned by imprisonment for up to ten years.

a first employer to another is not guaranteed. The public prosecution office does not have jurisdiction to order an employer to “free” the domestic worker so that he/she can work for another employer. As one judge explained “on the other hand, when the final sentence is rendered in relation to a crime committed by the employee, agent or a third party, the person who committed the crime shall lose his rights over the employee. But normally, during the issuance of the final sentence, the domestic worker would have been already deported to his country, so the possibility of a transfer to another employer has no meaning.”

“Decisions on the transfer [of a worker] from one employer to another fall within the jurisdiction of the GDGS. The latter has discretionary power generally exercised without being subject to supervision by the courts, which may lead to an arbitrary action and even to abuse in the exercise of this practice.”

Judge with the Court of Appeal of Beirut, Lebanon, January 2013

An internal decision of the GDGS indicates that it is not possible for a domestic worker to change employer more than twice, even with the current employer’s consent. According to a staff member of the GDGS, “this measure aims to prevent trafficking of domestic workers, which could be sold and bought by several employers to make a profit.” The Ministry of Labour does not intervene in this decision, despite its relevance to the fundamentals of the relationship between employer and employee. According to a civil servant at the Ministry of Labour, “there is no legal basis that prohibits domestic workers to change employer more than twice, but the Ministry of Labour has no power over this issue. The employer must first apply to the GDGS, and if the application is accepted, then the MoL intervenes to record the transfer on the work permit.”⁹²

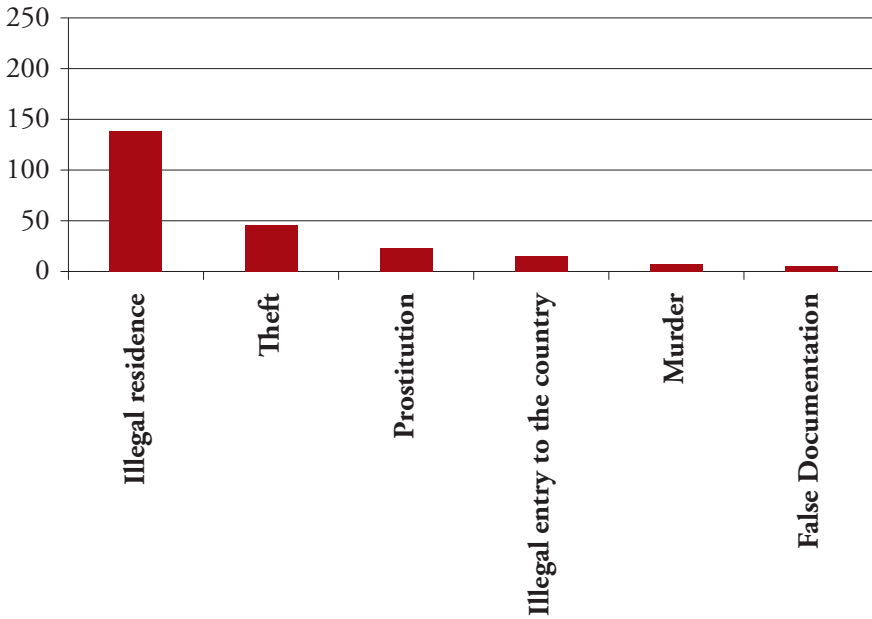
3.1.3 Dichotomy of “quality” arising from the *kafala* system

3.1.3.1 Prosecution for illegal residence

The analysis of the CLMC database revealed that 441 cases involving 378 Ethiopian domestic workers were brought before the civil and criminal courts, between 2008 and 2012. Out of these 441, only 45 were brought before the courts by workers as plaintiff, while in the other 394 cases the worker was a defendant. Out of these 394 cases, 191 were related to a charge of illegal residence, 75 to a charge of theft, 29 to a charge of prostitution, 18 for illegal entry and 5 for murder.

⁹² Interview with an official from the Ministry of Labour, Beirut, February 6, 2013.

Figure 3: Charges against the 730 Ethiopian domestic workers ⁹³



A judge with the Public Prosecutor Office explained that “workers victims of exploitation tend not to file a complaint fearing prosecution for their illegal residence and ignoring the protection guaranteed to them by Law No.164.” In fact, the domestic worker is considered a victim before the criminal court in a case of human trafficking. However, by leaving the home of his employer without the latter’s consent, the worker also commits an offense by violating a) Articles 6, 8, and 11 of Decree No.2873 of 1959, which empowers the GDGS to control the entry, residence and exit of foreigners and their work,⁹⁴ b) Articles 5 and 7 of Decision No. 136 of September 20, 1969 regulating the proof of residence of foreigners in Lebanon and c) Article 770 of the Criminal Code on the non-application of administrative and municipal procedures according to which the person will be sentenced to imprisonment of three months and a fine ranging between LBP 100,000 and 600,000 (USD 66,400).⁹⁵ An interviewed judge confirmed that “this dual situation coupled with ignorance of the law prevent the victim from filing a complaint in court and pushes him/her to remain in an illegal situation.”⁹⁶

As mentioned above, the rules governing the relationship between the worker and the guarantor/employer are part of the *kafala* or sponsorship system. According to this system, the management and control of foreign labour

⁹³ Data collected in CLMC database.

⁹⁴ Decree No. 2873 of December 16, 1959 on the organization of GDGS, Articles 6, 8, 11.

⁹⁵ Lebanese Criminal Code, art. 770.

⁹⁶ Interview with a judge of Beirut Court of Appeal, February 6, 2013.

force are transferred to the private sphere, which, according to some key players, would facilitate access to services and allow addressing social needs that the State did not or could not provide.⁹⁷ A representative of the Ministry of Labour clarified this by stating that “the rules of *kafala* are not written or codified in a text. It is a denomination given to a set of rules that organize the work of foreign workers in Lebanon. This leads the worker to submit to the sponsorship system.”⁹⁸ Decree No.2873 of 1959, which prohibits the worker to leave the residence of his/her employer, is one of the pillars of the *kafala* system. It hinders the right of access to justice by providing that illegal residence is an offense, due to a breach of contract, termination and / or non-renewal by the employers.⁹⁹ In fact, from the moment the worker leaves the residence of his employer without permission, he/she may resort to irregular work, be detained in the administrative detention center in Beirut or in other regional prisons and deported. This fear of reprisals and deportation may be considered as a “threat” according to the definition of forced labour contained in Convention No. 29.¹⁰⁰

This finding highlights the fact that a domestic worker may not be able to terminate his contract of employment without being accused of escaping by his employer and sued by the GDGS. The applicable standard contract of 2009 specifies only three cases in which the domestic worker may terminate the contract when: the employer does not pay the employee a salary for three months; the domestic worker is a victim of physical violence and a medical examiner report, and a police report or a report from the MoL are drafted; the employer uses the worker in a job different from that for which he/she was recruited. The new draft standard contract remedies the shortcomings of the first standard contract and states in articles 13-15 all cases in which the employer and the employed may terminate the contract, including the possibility to terminate the contract at their own will for reasons of convenience, as it is the case for contracts of employment in other sectors in Lebanon.

These results highlight the structural deficiencies of the judicial system that discourage and intimidate domestic workers and put them in a position of defendant, not only towards the public prosecutor office, but also before the criminal court, even when they are victims of serious violations of the criminal and civil codes. If these provisions of the *kafala* system are not reformed, equitable access to justice for foreign workers will remain limited.

⁹⁷ CLMC : *The situation of migrant workers in Lebanese prisons* (Beirut, 2011), p. 21.

⁹⁸ Interview with a representative of the Ministry of Labour, Beirut, September 19, 2013.

⁹⁹ CLMC: *The situation of migrant workers in Lebanese prisons* (Beirut, 2011), p. 22.

¹⁰⁰ International Labour Office : *Report of the committee set up to examine the representation alleging non-observance by Qatar of the Forced Labour Convention, 1930 (No. 29) made under article 24 of the ILO Constitution by the International Trade Union Confederation and the Building and Wood Workers International*, (2014), p. 16.

3.1.3.2. Manipulation of theft complaints filed by employers

In this study, researchers have analyzed the causes of theft charges filed by employers against domestic workers. A survey conducted in 2011 by CLMC showed that 11.8% out of the 1,215 cases brought before public prosecutors of Beirut and Mount Lebanon against domestic workers between January 1 and June 30, 2008 were cases of theft.¹⁰¹ Out of these, 136 cases of thefts that reached the stage of final judgment and only 10 domestic workers were convicted.¹⁰² This high incidence of non-prosecution before trial is due to the fact that employers often use the filing of these complaints of theft to put pressure on the domestic worker to abandon and withdraw his/her claim based on indicators of human trafficking; the discontinuation of prosecution may be also due to lack of evidence. A CLMC lawyer stated:

“When the domestic worker flees the home of his employer, the employer shall notify the GDGS, which shall proceed to the administrative detention [of the employee]; this has no legal repercussions. However, when the employer files a complaint for theft to the police, this triggers investigations by the Internal Security Forces (police), which are responsible for arresting the domestic worker for investigation. It is for the purpose of encouraging police action that most guarantors accuse their domestic worker of theft.”¹⁰³

When a domestic worker is arrested by the police outside the Beirut area, the police may order his preventive detention for 24 hours, which may be extended to 72 hours. It is then that the domestic worker must be summoned by the public prosecutor for questioning.¹⁰⁴

“The problem with the *kafala* system is that from the moment a domestic worker runs away from his employer’s home because he does not have decent working conditions, the employer rushes to the police station to file a complaint of theft against the worker. It is not good for anyone to be bound to another person and this is why this system should be subject to reform.”

Consulate-General of the Federal Democratic Republic of Ethiopia, Lebanon, January 2013

Such misuse of complaint for theft by employers resulted in some interesting cases. In the case of *Daisy Largosa Baluyo, Arlyn Gonida Duron and Queenie*

¹⁰¹ Representing 136 cases.

¹⁰² CLMC: *False accusations of theft commonly filed by Lebanese sponsors/employers against « runaway » migrant domestic workers: a legal study* (Beirut, 2011), p. 29.

¹⁰³ Interview with a CLMC lawyer, Beirut, January 30, 2013.

¹⁰⁴ Interview with a CLMC lawyer, Beirut, February 1, 2013.

Ghofulpo Geguiera vs. D.Y.M. in 2013¹⁰⁵, the single criminal court of Damour sentenced three Filipino domestic workers for aggravated theft by virtue of Articles 636 and 257 of the Criminal Code, based solely on the fact that the domestic workers have fled their employer's home. Moreover, the judge also relied on Articles 5 and 7 of Decision No.136 of September 20, 1969, which state that any foreigner with an annual residence card has one week to notify the GDGS of changing his/her address.¹⁰⁶ The three domestic workers were sentenced to one year in prison and to the payment of a fine of LBP 200,000 (133 USD) for illegal residence, the payment of stolen items equivalent to USD 60,000 and the payment of damages of LBP 2 million (USD 1,330). In this case, the criminal judge did not rely on material evidence and did not request more evidence from the employer; the judge relied only on the contradiction of the testimonies provided by the domestic workers, although all of them have always denied stealing jewelry and money. CLMC lawyers lodged an appeal against this decision before the Court of Appeal of Mount Lebanon for lack of evidence and arguments. The judge declared the innocence of the three domestic workers for lack of evidence, citing the fact that the employer has failed to provide any admissible evidence to prove the theft¹⁰⁷ and conspiracy to commit theft.

In more recent cases, theft complaints filed by employers against their employee have not been successful and the workers were declared innocent for lack of evidence. For example, in the complaint filed before the Assize Court of Beirut, on March 20, 2012, by *Z.Z against Aliah Dulatif Samir and Cicih Sukaesih Dulhalim Uma*, a Saudi employer residing in Lebanon has accused his two domestic workers of theft of USD 2,100 and a diamond wedding ring worth USD 12,000. The two workers denied the theft and the judge declared them innocent for lack of evidence.¹⁰⁸ In the case of *H.J.K. vs. Charisse Carla Collante and Mohammad Abdalla Rihan*,¹⁰⁹ an employer accused his/her domestic worker of having stolen diamonds and gold for USD 500,000 with the help of the building's caretaker. The judge declared Charisse Carla Collante innocent for lack of evidence. In the case of *Zarfe*

¹⁰⁵ Assize Court of Damour, *Daisy Largosa Baluyo, Arlyn Gonida Duron and Queenie Ghofulpo Geguiera vs. D.Y.M.*, Decision No.217/2013 rendered on June 25, 2013.

¹⁰⁶ Decision of the GDGS No. 136 of September 20, 1969 regulating the proof of presence of foreigners in Lebanon, Articles 5 and 7.

¹⁰⁷ Court of Appeal of Mount-Lebanon, Appeal No.470/2013 lodged on July 9, 2013, *Daisy Largosa Baluyo, Arlyn Gonida Duron and Queenie Ghofulpo Geguiera vs. D.Y.M.*, Decision No.3922/2013 rendered on November 7, 2013.

¹⁰⁸ Assize Court of Beirut, Complaint filed on 20 March 2012, *Z.Z against Aliah Dulatif Samir and Cicih Sukaesih Dulhalim Uma*, Decision n° 301/2012 of 20 March 2012 ; Court of Appeal of Beirut, complaint files on 2 April 2012, *Z.Z. against Aliah Dulatif Samir and Cicih Sukaesih Dulhalim Uma*, Decision n° 251/2012 rendered on 19 September 2012.

¹⁰⁹ Assize Court of Mount-Lebanon, Complaint filed on June 6, 2009, *H.J.K. vs. Charisse Carla Collante and Mohammad Abdalla Rihan*, Decision No.677/2012 rendered on May 30, 2012.

Warke vs. F.K. in January 2014, the criminal court of Zgharta also declared the Ethiopian MDW and her sister accused of stealing jewelry and other property innocent for lack of evidence by virtue of Article 636 of the Criminal Code.¹¹⁰

CLMC lawyers have so far failed to obtain compensation in cases of mala fide on the part of employers. In the case of *Bernadette Cotello vs. J.A.*, a domestic worker had arranged the direct recruitment of her sister to replace her after her departure in agreement with the employer. The employer paid the recruitment fees through a PEA in Lebanon directly linked with the sister of the worker in the Philippines. Thereafter, Bernadette's sister changed her mind and refused to come to Lebanon. The employer then filed a complaint for fraud by virtue of Article 655 of the Criminal Code. The complaint was rejected by the single criminal judge and the employer then filed an appeal against this decision. The Court of Appeal did not qualify the behavior of Bernadette as constituting fraudulent maneuvers. "Bernadette Cotello is a third party with respect to the contract that must bind the employer and her sister; by trying to facilitate the recruitment of her sister, she did not act in mala fide."¹¹¹ "With the help of the CLMC and in accordance with articles 402 and 403 of the Criminal Code on the simulation of violation and false allegation Bernadette filed a complaint against the employer who knew that Bernadette was not responsible for the act of her sister and that by requesting the decision of the single judge the latter delayed her return flight."¹¹² However, due to insufficient evidence, the single judge did not consider that the employer had referred to a violation that he knew was not committed and did not qualify the recourse to appeal as an act of mala fide.¹¹³ The employer was therefore acquitted.

Examining these cases, which indicate that the victims rarely receive an adequate compensation, leads to questioning the efficiency of the Lebanese legal mechanisms to ensure a real protection to victims of exploitation and human trafficking.

3.2 Procedural and institutional obstacles

Through the interviews held by the research team, various obstacles were identified, preventing the victims from having access to justice.

¹¹⁰ Assize Court of Zgharta, *Zarfe Warke vs. F.K.*, Decision rendered on January 23, 2014.

¹¹¹ Assize Court of Beirut, Complaint No.2368/2009, *Bernadette Cotello vs. J.A.*, Décision No.1696/2008 rendered on December 23, 2008. Court of Appeal of Beirut, *Bernadette Cotello vs. J.A.*, Decision No.46/09 rendered on October 15, 2009.

¹¹² Ibidem.

¹¹³ Assize Court of Beirut, Complaint No.2368/2009, *Bernadette Cotello vs. J.A.*, Décision No.1696/2008 rendered on December 23, 2008.

3.2.1 Difficulty of establishing proof

Evidence occupies a central place during any litigation. In other words, the obligation to provide proof makes anything that has not been proven fall outside the law.¹¹⁴ This is where difficulty for migrant domestic workers victims of human trafficking and exploitation at work lies: proving the validity of their claims to the violations that they suffered. The lack of evidence or prima facie evidence has been often cited, whether by the judges or the domestic workers themselves, as a major obstacle for filing a complaint before a court and reaching an equitable solution during the negotiations held at the GDGS, or conducted by the CLMC and the Consulate.

“Collecting sufficient evidence to initiate a legal action before the court is a challenge. In the case of unpaid salaries or visible acts of physical violence, we can easily rely on tangible evidence such as receipts of payment, Western Union transfers or injuries. We always resort to the services of a medical examiner in case of acts of violence; the medical report serves as a basis for filing the complaint. However, for the other elements that constitute crime of human trafficking, the matter is complicated. For example, how can we prove that the domestic worker has worked for additional hours, night and day, and that he/she was deprived of his/her freedom? In these cases, it is the allegation of the employer, the strongest party in the relation, against the allegation of the employee.”

Lawyer, Legal Department of the CLMC, February 1st, 2013.

The evidence related to the relationship between the employer and the domestic worker is governed by Articles 131 to 142 of the Lebanese Code of Civil Procedure.¹¹⁵ However, civil matters are based on the formal equality of the parties, which is absent in an employment relationship defined as a relationship of power. This inequality between the employer and the domestic worker stems from the legal subordination of the employee. This subordination is reinforced by the *kafala* system. In fact, the evidence of the conditions of execution of the employment contract is confined within the privacy of the workplace, which in this case is the employer's home. Therefore, it is undeniable that the latter enjoys a privileged access to the evidence related to the employment relationship, while the burden of proof lies with the domestic worker (who is the plaintiff in cases related to violations of the employment contract). A CLMC lawyer explains:

¹¹⁴ Carbonnier J., *Flexible droit, textes pour une sociologie du droit sans rigueur*, LGDJ, 9th edition (1998), p. 28.

¹¹⁵ Article 10 of the Code of Civil Procedure specifies that the right to sue and defend is limited to good use or employment. Each claim, defense or evidence invoked arbitrarily subjects the author to the payment of compensation for the damage sustained.

“It is very difficult to prove, for example, that the domestic worker was forced to work unpaid overtime, since the employer who is absent from home on a daily basis can argue that the worker was not working without interruption but was taking rest periods during the day, and thus the ten working hours per day specified in the contract were not exceeded.”

The difficult task of establishing proof has discouraged some migrant workers and their legal counselor to file complaints before the civil courts, fearing that the evidence will not be taken into consideration by the judge and that the complaint would be dismissed. This is why the cases brought before the Labour Arbitration Council have so far been limited to violations relating to non-payment of wages, which are easier to prove.

Criminal proceedings, including cases of human trafficking are much less strict in terms of evidence, since they are governed by the principles of freedom of evidence that authorizes the use of any form of evidence.¹¹⁶ The criminal procedure is governed by the principle of personal conviction of the judge according to which there is no absolute proof; the judges decide according to the effect produced by the balance of probabilities based on their own judgment. On the one hand, this is a principle of assessment of evidence that confers to the judges the discretion of whether to take into consideration the evidence submitted to them or not; on the other hand, it is a principle of decision implying that judges must make a decision according to their conviction. However, the judge's discretion in the assessment of evidence is limited by two fundamental principles: the obligation to motivate judgments and the adversarial discussion between the parties.

In some cases involving domestic workers, principles of motivation of the decision¹¹⁷ and the burden of proof were violated. As noted above, in the judgment of the case of *Arlyn Duron, Daisy Baluyo, Quenie Geguiera vs. D.Y.M.* in 2013,¹¹⁸ the single criminal judge of Damour sentenced three Filipino domestic workers on accounts of aggravated theft according to Articles 636 and 257 of the Criminal Code. The judge limited his ruling to

¹¹⁶ This freedom is governed by Articles 402-404 of the Criminal Code, which criminalizes filing false allegations before the court. Article 402 sets forth a penalty of imprisonment not exceeding 6 months and a fine of LBP 100,000 or any of the two penalties. False accusation of misdemeanor or a contravention is punishable by one month to three years imprisonment. If the attributed act constitutes a crime, the author of the false allegation shall be subject to a maximum sanction of 10 years imprisonment at hard labour.

¹¹⁷ Consecrated in Articles 42, 68, 74, 80, 86, 92, 107, 108, 131, 155, 225, 274, 296, 298, 306 of the Code of Criminal Procedure and Article 537 of the Code of Civil Procedure.

¹¹⁸ Court of Appeal of Mount-Liban, Appeal No.470/2013 lodged on July 9, 2013, Daisy Largosa Baluyo, Arlyn Gonida Duron and Queenie Ghofulpo Geguiera vs. D.Y.M., Decision No.3922/2013 rendered on November 7, 2013

the allegations of the plaintiff (i.e. the employer) according to which the three domestic workers fled his/her home and took his/her diamonds and gold. However, the three domestic workers denied the theft and no other evidence was submitted by the employer or appeared in the police report. This insufficiently motivated decision was subsequently overturned by the Court of Appeal, which considered that the requirement to state evidence was an essential component of the right to a fair trial. The court of Appeal stated that “no credible evidence has been submitted by the employer to condemn the three domestic workers, and the fact of escaping on the same day, cannot be regarded as evidence of theft (...) the evidence relied on is not sufficient to incriminate the defendants.”¹¹⁹ The breach of the principle of burden of proof as illustrated in the judgment rendered by the Criminal Court of Damour may be due, according to a judge with the public procuration office, to the negative and demeaning misconception some judges have of domestic work.¹²⁰

“The judge has, sometimes unknowingly, the values of the society to which he belongs. Thus, in the absence of a general policy, firmness in regards to the exploiter depends on the judge’s conception of human rights.”

Judge with the Court of Appeal of Beirut, Lebanon, January 2013

Some elements of the crime of human trafficking are more difficult to prove. A CLMC lawyer explains “the difficulty of establishing proof in criminal cases lies mainly in cases of rape, because the victim domestic worker often arrives to the CLMC home few days after the act. Moreover, even if CLMC immediately contacts the medical examiner, the conducted medical examinations cannot always prove the act.”¹²¹

3.2.2 Marginalization due to the low-skilled status of the foreigner

By the Judiciary

As mentioned above, a foreign domestic worker leaving the home of his/her employer may be arrested by the GDGS for illegal residence and placed either in the administrative detention center of Beirut or a regional prison. The GDGS then conducts an investigation and a report is issued. The report transcribes the findings and declarations of the parties, in this case, the domestic worker, the employer and sometimes the PEA or others parties involved in the case. The GDGS then notifies the public prosecutor of the facts transcribed in the report. When the GDGS informs the prosecutor

¹¹⁹ *Ibidem*.

¹²⁰ Interview with a Judge before the Public Prosecution, the Courthouse of Beirut, Lebanon, January 2013.

¹²¹ Interview with a CLMC lawyer, January 2, 2013.

of an offense and the latter decides the measures to be taken regarding the allegations.

The CLMC legal team found that in some cases involving foreign domestic workers where the investigation report informed the Public Prosecutor of the commission of offenses, such as injuries, the latter did not initiate a legal action against the perpetrator.¹²² This shows that the implementation of the system of prosecutorial discretion can be problematic, because it allows some members of the judiciary to exclude domestic workers.

It is also surprising to note a lack of uniformity in the practice of public prosecutors in initiating public action in cases of illegal residence. In the vast majority of CLMC cases referred to the public prosecutor, the latter accepts that the illegal domestic worker be placed in the CLMC home awaiting his return to his country and does not initiate the public action in violation of Articles 34 and 36 of Decree No. 10188 of 28 July 1962 on the implementation of the Law of 10 July 1962. However, in some cases referred by CLMC and in most cases not referred by CLMC, the public prosecution office brought the action against the domestic worker and sentenced him/her to pay a fine. For example, in the case of *Tiruye Yilezu Meperia vs. K.A.*, the employer had withheld from his/her domestic worker the equivalent of USD 3,400 in unpaid wages over a period of 29 months of work. CLMC then referred the case to the GDGS, which ordered the employer to pay that sum. The employer did comply and the GDGS transferred the report to the public prosecutor who condemned the domestic worker for non-renewal of his residence card and work permit under Article 36 of Decree 1962 and ordered the latter to pay a fine of LBP 200,000 (USD 133).¹²³ *Tiruye Yilezu Meperia* was deported before the sanction was imposed by the judge. This judgment demonstrates disparities in the application of the law by public prosecutors.

¹²² Article 5 of the Code of Criminal Procedure defines the public action. Articles 13, 24, 68, 140, 155 and 360 tackle the means of initiating the public action.

¹²³ Assize Court of Beirut, Complainte No. 3586/2010, *Case of Tiruye Yilezu Meperia vs. K.A.*, Decision No. 286/2010 rendered November 21, 2010.

By the GDGS

CLMC noted a change in the practice of immigration officers who submit the passport of the domestic worker to the employer when the MDW arrived at the airport. This illegal practice has markedly decreased since 2012.¹²⁴ In September 2011, the GDGS, in collaboration with CLMC, launched a new project to improve the welcoming of migrant domestic workers by the staff of the General Security in Beirut Rafik Hariri International Airport. The GDGS officers received several trainings by CLMC, including trainings on the rights of migrant workers, the problem of trafficking in persons, the content of awareness materials distributed to each migrant worker, the welcoming of workers upon their arrival at the airport or other borders, and the provision of appropriate assistance in case of problems.

The interviewed domestic workers and several civil society organizations have repeatedly spoken about the lack of seriousness with which the GDGS responds to some concerns and complaints by domestic workers. The interviews showed that, for example, when the GDGS orders the employer to pay the unpaid wages to the worker in accordance with prior written undertakings and said employer does not comply, no enforcement action is taken to compel the employer to pay. Yet, in its capacity as judicial police, the GDGS has the means and the mandate to implement its own decisions.

Moreover, the interviewed key players mentioned the lack of action by the GDGS when it receives distress calls from a third party who has detected a situation of exploitation at work of a domestic worker. This raises the question of whether the responsibilities of the GDGS should not be better defined. In the future, it will be essential to clarify these exact responsibilities as specified in Decree-Law No. 139 of June 12, 1959 on the organization of the GDGS. For example, what does the notion of control of foreigners' "residence" on Lebanese territory include? And how does this task fit into the inherent responsibilities of MoL, which is to control the period of employment of foreigners?

¹²⁴ Several judges have argued that this practice is illegal under Article 569 of the Criminal Code on the deprivation of liberty which states that "anyone who deprives another person of his individual liberty by kidnapping or by any other means will be temporarily imprisoned;" Article 651 on the fraudulent use of property of another individual, which states that "any person who uses, without a right or any intention, what belongs to another shall be liable, if the incident is susceptible of causing harm, to a penalty of up to six months imprisonment and a fine between fifty thousand to two hundred thousand pounds or either of them;" Article 670 on the breach of trust also prohibits anyone from intentionally embezzling or concealing a title deed containing a commitment or release that has been entrusted to him as a deposit. Furthermore, Article 8 of the Lebanese Constitution states that "Individual liberty is guaranteed and protected by law. No one may be arrested, imprisoned, or kept in custody except according to the provisions of the law. No offense may be established or penalty imposed except by law."

By the employers

In the majority of cases in Lebanon, the employer keeps the employee's identity documents; therefore, when the employee escapes the employer's home he/she sometimes has no passport or residence card, or even a copy of the contract signed before the notary public. In this respect, a judge of the public prosecution office highlighted the practical difficulties in filing a complaint:

“Although in theory a domestic worker can appear directly before the public prosecution office or the police to file a complaint; how is it possible for the judge to instigate an action on the basis of an allegation by a party whose name and nationality cannot be verified? Practically, it is impossible.”¹²⁵

The head of the office of foreigners with the GDGS indicated that: “any migrant worker wishing to file a complaint before the court in Lebanon must first have a valid residence permit, allowing him to appear before the Court. This person must also have his/her identity documents. If these two conditions are met, nothing prevents the foreign worker from filing a complaint before the Court.”¹²⁶ This statement is somewhat ironic given that the vast majority of domestic workers have their passports confiscated by their employer and can only file a complaint once they escape the home of their employer, which makes their residence card invalid and places them in a position of violation.

By the Consulate of Ethiopia in Lebanon

According to Proclamation No. 632 of 2009 on the employment exchange services, the public employment service of the Ministry of Labour and Social Affairs of Ethiopia is tasked with facilitating the resolution of disputes that may arise between workers and Ethiopian private employment agencies, and ensuring conciliation services and legal advice.¹²⁷ This proclamation reiterates the function of protecting the rights, safety and dignity of Ethiopian workers living abroad incumbent upon embassies and consulates. Yet, this proclamation does not specifically include legal support for Ethiopian workers in the destination countries.¹²⁸ However, the provision of legal services is essential for the migrant workers to defend themselves and have access to justice.

¹²⁵ Interview with an investigative judge, First Instance Court of Mount-Lebanon, January 30, 2013.

¹²⁶ Letter from the Head of the Bureau in charge of matters relating to foreigners nationality and passports, July 8, 2013

¹²⁷ Ethiopia, Proclamation No. 632/2009, Employment Exchange Services Proclamation, 2009.

¹²⁸ For further information on the Ethiopian Public Employment Service, see: www.molsa.gov.et/English/EPro/Pages/Public%20Employment%20Service.aspx.

Ethiopia has only a consulate in Lebanon and not an Embassy, which limits its scope of action. According to interviews with several CLMC social workers, in most cases of labour exploitation, the Consulate of Ethiopia in Beirut refers the concerned person to the CLMC home or other NGOs. The Consulate is accessible by phone, but has no hotline or foster homes to house domestic workers who would run away from their employers. The Ethiopian domestic workers held demonstrations in 2012 to express their frustration with the consular officers' apathy and callousness towards issues affecting Ethiopian nationals as well as the inefficiency of the consulate's conflict resolution services.¹²⁹

The Ethiopian Consulate has no labour attaché to cover the affairs of the large number of workers in Lebanon. This poses a problem when it is necessary to handle cases of human trafficking for the purpose of labour exploitation, requiring follow-up and specific actions that take time.

“At the Consulate, we generally do not directly contact the courts when we receive a case of exploitation at work. We first try to find the address of the employer and contact him/her to negotiate directly. We do our best to solve the problem amicably. If we do not succeed by these means, we normally call the CLMC and the GDGS. In case of abuse, we may consider putting the private employment agency that recruited the worker on a black list, but with the prohibition of deployment of our workers to Lebanon, it is impossible to do that.”

General Consulate of the Federal Democratic Republic of Ethiopia, Lebanon, January 2013

The social worker from the Tripoli CLMC noted that in January 2013 there were about 20 Ethiopian domestic workers in Tripoli prison and that “the Ethiopian Consulate rarely visits the prison to check on its nationals, only a few times a year.”¹³⁰

The marginalization of domestic workers by different actors highlights the lack of a coordinated State policy regarding the protection of victims of trafficking.¹³¹

¹²⁹ J. Salhani: “Ethiopians in Lebanon protest their consulate's apathy and callousness”, in *The Daily Star* (Beirut, 1er avril 2012).

¹³⁰ Interview with the social worker in the CLMC in Tripoli, February 2, 2013.

¹³¹ The International Labour Office has launched a new project in Ethiopia, funded by the European Union, aimed at strengthening the capacity of the government and social partners to develop mechanisms to improve the protection of Ethiopian migrant workers in the Middle East. For more information, see http://www.ilo.org/beirut/projects/WCMS_226943/lang--en/index.htm

3.2.3 Lack of knowledge of the law and the available legal remedies

According to an investigative judge “one of the main obstacles to access to justice, is ignorance of the law by the foreign workers, especially low-skilled workers such as domestic workers.”¹³² The majority of domestic workers received by the CLMC have little or no understanding of their rights during their residence, the terms of the contract they signed before the notary public or the judicial complaint mechanisms available to them to assert their rights. A recent study on access to justice for Indonesian workers tackled this element and indicated that “this lack of awareness among workers about their rights and complaint mechanisms deprives them of all power of action, and this is due, inter alia, to a lack of formal education (...).”¹³³ In order to address this problem, some members of the judiciary have stressed the importance of “drafting a national policy of awareness so that low-skilled workers coming to Lebanon undergo a ten-day training on their rights and obligations during their stay and on the possible complaint mechanisms in case of problems. This training should be partially conducted in their country of origin and partly in Lebanon.”¹³⁴

Moreover, methods of recruitment in Ethiopia by agents and intermediaries acting illegally do not allow the worker to understand his/her rights or available options to make an informed decision. This situation places the employee in a position of total vulnerability when he/she arrives in Lebanon, especially since he/she does not receive any training in Lebanon. Several small guides containing emergency numbers, rights and responsibilities and the relevant terms in Arabic were drafted by CLMC and distributed by the GDGS agents at the airport. However, these guides do not yet contain information on possible complaint mechanisms in case of violations of the workers’ rights.

3.2.4 Lack of trust in the judicial system

In practice, migrant domestic workers have little guarantee of access to a fair trial within a reasonable timeframe. This is due to several factors, such as the slowness of the judicial system and the limited access to legal aid service.

¹³² Interview with an investigative judge, First Instance Court of Mount-Lebanon, January 30, 2013.

¹³³ Open Society Foundations: *Migrant Workers’ Access to Justice at Home*: Indonesia (New York, 2013), p. 127.

¹³⁴ Interview with investigative judge, First Instance Court of Mount-Lebanon, January 30, 2013.

Slowness of the Lebanese judicial system

The slowness of the judicial system has been cited repeatedly as a major obstacle to obtain compensation in Lebanon. In the case of migrant workers victims of Labour exploitation by their employers, the slowness of the judicial process is discouraging because it implies that the worker shall remain in the CLMC homes for the duration of a trial that could take years without knowing if he/she can be transferred to another employer and meet his/her needs. This slowness has a profound impact not only on the victims but also their families, who experience high levels of stress during this waiting period. This explains the high rate of migrant domestic workers who prefer to resolve their conflict by negotiating a compensation agreement with the employer.

The slowness of the system strengthens even more the already strong position of the employer who takes advantage of this inefficiency to push the worker to resolve the dispute outside the court. Delays in the judicial processes and judgments are mainly due to a complex bureaucracy and shortage of judicial personnel. For instance, the Assize Court of Mount Lebanon has files yet to finalize since they were deposited in 2005.¹³⁵ Moreover, given the large number of files, the judiciary gives priority to cases in which the accused is in detention, since the courts do not have the time to investigate and hold hearings.

This slowness of judicial procedures has also contributed to the overcrowding of the administrative detention center. In this respect, a judge with the public prosecution office of North Lebanon, based in Tripoli, noted that “since the administrative detention center is overloaded, sometimes domestic workers who are incarcerated for illegal residence in Tripoli prison must wait weeks in order to have a date set for the preliminary investigation with the GDGS, which is required prior to their deportation.”¹³⁶ Moreover, the social worker from the CLMC center of Tripoli noted that “in the past, most domestic workers did not attend their hearing since transportation was not arranged to bring them from the detention center to Beirut. Today the transportation situation has improved and only in a minority of cases hearings are missed due to unavailable transportation.”¹³⁷

¹³⁵ Interview with CLMC legal team, Beirut, February 2, 2013.

¹³⁶ Interview with the General Public prosecutor, Courthouse of Tripoli, February 1, 2013.

¹³⁷ Interview with a social worker in the CLMC center in Tripoli, February 1, 2013.

Lack of official translators during investigations

In Lebanon, the rights of defence are stated in the articles of the codes of criminal and civil proceedings.¹³⁸ Regarding the proper understanding of the judgment, a judge stated that “the victim can only be questioned in the presence of an interpreter; this is based on the principle of transparency, which is a guarantee that ensures the rights to defence. These are the same rules that apply before the police, the judge or the criminal court.”¹³⁹ A GDGS official also stated that “all migrant domestic workers are entitled to the service of a translator during the investigations of the GDGS.” This right to a licensed or sworn translator is guaranteed by Articles 47, 81, 88 and 254 of the Code of Criminal Procedure.

However, in practice, the interviewed migrant workers and CLMC staff mentioned that the translators were often other migrant workers who spoke Arabic and the language of the concerned person, or translators sent by the consular authorities.¹⁴⁰ This can be problematic since a professional and objective interpretation during negotiations with the employer is necessary for the worker to make informed decisions regarding the available actions he may take. The possibility to receive an accurate translation is reassuring for migrant workers, since their view is transcribed reliably and they can make their voice heard. Indeed, the lack of communication during preliminary interrogations of the GDGS can be extremely frustrating and may discourage migrant workers to lodge complaints before the courts.

Absence of lawyers during preliminary investigations

In Lebanon, the right to a lawyer is guaranteed by law in all stages of criminal prosecution, except during the preliminary investigation conducted by the judicial police. In the case of migrant workers followed up by CLMC lawyers under the memorandum of understanding between the GDGS and CLMC, a lawyer from the CLMC team may be present during the preliminary investigation, but only as an observer.¹⁴¹

A judge with the public prosecution office of Beirut stated that “the law is not clear on this point, because it does not expressly state that the lawyer may participate in the preliminary investigation. This ambiguity must be clarified. It is not always the application of the law that constitutes the obstacle but

¹³⁸ For example, in Article 78 on the right to be represented by a lawyer; in Articles 86, 87, 88, 96 and 107 on the right to hear witnesses, in Articles 77 and 180 on the right to remain silent.

¹³⁹ Interview with a judge with the Court of Appeal of Beirut, February 6, 2013.

¹⁴⁰ Interview with a social worker in the CLMC home, February 1, 2013.

¹⁴¹ Interview with a CLMC Lawyer, February 1, 2013.

rather the law itself.”¹⁴² Another judge stated that the fact that lawyers cannot attend the preliminary investigation is due to a contrario interpretation of Articles 47 and 49 of the Code of Criminal Procedure. In fact, Article 49 provides that the Prosecutor may himself be in charge of the preliminary investigation. If this is the case, the suspect may benefit from the presence of his lawyer during interrogation. But when the Prosecutor is not himself in charge of the investigation, the suspect may not benefit from the presence of his lawyer.¹⁴³

The contested efficiency of the legal aid system

Access to justice is a right that can be hampered by the cost of justice. In Lebanon, legal aid exists and is fully managed and financed by the Bar Associations of Beirut and Tripoli. The legal aid system is governed by Articles 425-441 of the Code of Civil Procedure. It is an arrangement to support those who lack the financial capacity to assume the expenses of a trial¹⁴⁴ so that they can initiate and proceed with the trial and make the necessary investigations until the notification of the judgment without having to pay the fees fixed by law or by the court, whether on a provisional or final basis as the case may be.¹⁴⁵ It is possible to apply for legal aid in legal processes or defense. The beneficiaries of the legal aid are people who have the right to seek justice in court, i.e. natural persons or legal entities, whether Lebanese or foreign. However, legal aid is granted to foreign nationals residing in Lebanon, provided they are nationals of a country which also gives this possibility to Lebanese nationals residing in their territory.¹⁴⁶ Key interviewees mentioned that very few migrant workers were using this system, mainly since they were not aware of this possibility.

In order to be represented by a lawyer, the migrant domestic worker must sign a power of attorney document before the notary public. This power of attorney costs between LBP 35,000 and 50,000 (USD 24 and 34). Then the chosen lawyer must register with the office of the Bar Association of Beirut or Tripoli, which costs 40,000 LBP (27 USD). To avoid paying these amounts in order to represent its clients at the detention center, CLMC negotiated with the Beirut Bar Association in 2013 so that it refers all cases of migrant domestic workers to its lawyers through the legal aid system. This solution was adopted for two claims filed by CLMC, but the change of the Council of the Beirut Bar Association in 2013 led to reconsideration and CLMC lawyers must now renegotiate this option with the new Council.

¹⁴² Interview with a judge of the Court of Appeal of Beirut, February 6, 2013.

¹⁴³ Interview with the Public prosecutor, Courthouse of Mount-Liban, February 1, 2013.

¹⁴⁴ Article 425 of the Code of Civil Procedure specifies that any party may ask for legal aid if it cannot afford the trial fees and expenses.

¹⁴⁵ For further information see: *Tripoli Bar Association: Judicial aid system*, <http://www.nlbar.org.lb/english/judicialaid/judicialaid.aspx>

¹⁴⁶ Code of Civil Procedure, Art. 426.

The proper functioning of the legal aid system remains questionable, particularly in cases involving migrant workers whose needs are not considered a priority compared to those of Lebanese nationals with no financial means. The cost of the justice system for domestic workers is therefore a major obstacle to an efficient right of access to justice.

CHAPITRE 4:

THE WAYS FORWARD

This chapter includes recommendations for technical cooperation between all ILO constituents and civil society to improve access to justice for migrant domestic workers exploited at work. This component should be included as a priority in a national action program of the Lebanese Government

4.1 Improving the legislation

4.1.1 Migrant domestic worker shall benefit from the same judicial protection enjoyed by workers in other economic sectors

It is essential to include domestic workers in the scope of application of the labour law in Lebanon in order to adequately protect them and tackle the grey areas in which numerous violations go unpunished. In fact, discrimination against MDWs and their exclusion from the labour law has a direct impact on their ability to seek and obtain compensation, since it drastically limits the rights that can be invoked before the courts. The development of a detailed body of labour laws covering MDWs will lead to the harmonization of the case law and to a decrease in the number of arbitrary and subjective decisions.

By promulgating the draft law on domestic work in accordance with relevant international standards, the Lebanese government will guarantee a broader abundance by the principles of equal treatment and equal opportunities, particularly in terms of access to justice.¹ The International Labour Office wishes to continue providing technical support to constituents to expand the legislative framework for domestic workers in Lebanon. In order to reach a satisfactory law on domestic work, the Lebanese government, social partners and civil society must be guided by the provisions of ILO Convention No.189 on domestic workers of 2011 and the corresponding Recommendation No.201.

¹ See CEACR, Convention No. 29, Lebanon, Observation, Vulnerability of migrant domestic workers and the exaction of forced labour, 2013.

4.1.2 Reforming the management systems of migration of MDWs to Lebanon

Rethinking the management model of the migration of MDW and of migrant workers in general is essential for allowing equitable access to formal and informal mechanisms of justice. The drafters of the special draft law on domestic work should take into consideration the fact that reforming the *kafala* system is key to enabling migrant workers to have full access to their rights. The current system marginalizes the mandate of MoL, leaving the employment relationship to the private sector and the GDG at the expense of the rights of MDWs. A future alternative may lie in strengthening the responsibilities of the MoL, so that it can monitor not only the recruitment process in coordination with the countries of origin, but also the labour relations throughout the residence period of the MDWs in Lebanon. Moreover, the MoL may establish a department for handling complaints of workers and employers and mechanisms of monitoring accusations of abuse of MDWs.

For its part, the Ethiopian government should reevaluate the efficiency of the system of deployment ban of MDWs to Lebanon. As a matter of fact, the ban seems to have marginalized Ethiopian MDW in Lebanon even further, promoted fraudulent recruitment practices and reduced the spectrum of possibilities of legal assistance from the Ethiopian consular authorities in Beirut.

4.1.3 Amending and implementing Law No.164 criminalizing trafficking in persons

Meeting its international commitments, including the ratification of the Palermo Protocol in the 2000s and by adopting Law No.164, the Lebanese government strengthened the Lebanese Criminal Code with a set of measures aimed to suppress human trafficking. Despite this important legal advance, prosecutions and convictions for acts of human trafficking in cases followed by the CLMC are still rare. This can be explained by both the slowness of the processes, the lack of knowledge of the new law by some judges and the deterrent effect of the current lack of protection measures on the victims' willingness to request legal assistance.

The Lebanese law remains incomplete in some respects and the ILO is ready to offer its legal support to help the government address these gaps. Indeed, all forms of exploitation specified in Law No.164 are not defined in the Criminal Code, leaving a legal vacuum to interpret certain terms such as forced labour. In order to facilitate the work of judges, the crime of forced labour could be defined and criminalized in the Criminal Code by drawing on ILO Convention No.29.

The existence of a specific body of laws on human trafficking has so far resulted only in rare convictions of perpetrators. This lack of prosecution can partially be attributed to the insufficient capacity of the law enforcement officers and other stakeholders to identify victims. In addition, Lebanon lacks a database of all cases of human trafficking due to the absence of a centralized system for collection of judgments, both at the regional and national levels. Policymakers may consider the establishment of such a system to collect relevant judgments that would be useful to judges in order to interpret the law.

4.1.4 Developing the body of laws on the control of private employment agencies

A comprehensive legislation is essential to establish an environment of trust for victims who wish to file a complaint against PEAs that have violated their rights; hence, Lebanon should develop regulations governing PEA.² The International Labour Office stands ready to provide assistance to the Lebanese State in implementing such legislation. Currently, only a decision of the Ministry of Labour on the organization of Private Employment Agencies exists to regulate the legal status and conditions governing the operation and licensing of these PEA. The capacities of the MoL in charge of the implementation of this decision are limited to the issuance of licenses.

Once a PEA obtains its license, it is important to monitor its recruitment activities. In collaboration with employers and workers organizations, a more comprehensive and specific legislation for PEAs recruiting MDW should be developed. This legislation could focus on PEA control systems including inspection mechanisms prior to obtaining the license and regular subsequent inspections visits.

In case of non-compliance with the regulations, sanctions should be imposed. This is under *inter alia* Article 10 of ILO Convention No.181, which requires states to “ensure that adequate mechanisms and procedures, involving as appropriate the most representative employers and workers organizations, exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies.”³ This regulation of sanctions must be adapted to the enforcement capacities available to the Lebanese government and may also include incentives for the PEAs that abide by the law.

² As specified in ILO Private Employment Agencies Convention (No. 181), the legal status of private employment agencies shall be determined in accordance with national laws and practices, and the conditions governing the operation of private employment agencies shall be determined in accordance with a system of licensing or certification.

³ Convention No. 181 on Private Employment Agencies, 1997, Art. 10.

The efficiency of the sanctions system is central to deter PEAs engaged in fraudulent practices. The Lebanese government should ensure effective implementation of these rules throughout the country. For this purpose, it is important to establish an operational mechanism for dealing with complaints.

4.2 Strengthening the capacities of key players

4.2.1 Consolidating the training of the judicial staff on the body of laws applicable to MDWs

To strengthen the implementation of the rights of domestic workers, the International Labour Office and CLMC wish to offer their expertise to improve the ability of lawyers who defend these workers. This support could include the training of social partners, law enforcement authorities and civil society key players to identify forced labour and human trafficking, including a training on Law No.164, other useful provisions of the Criminal Code, Labour Law Code, the Code of Obligations and Contracts and the provisions of Convention No.189.

In order to increase the number of qualified lawyers willing to defend migrant domestic workers, law schools in Lebanon should strengthen their training courses on employment law, labour law, contract law, human rights and criminal law. They could also establish legal aid clinics in partnership with the clinics in the main countries of origin,⁴ thus enhancing legal cooperation between countries and ensuring that new generations of lawyers have the necessary knowledge and resources for providing a better defense of the rights of migrant workers. In addition, the Human Rights Institute of the Beirut Bar Association should continue its efforts to train lawyers on Law No.164 and include the rights related to the employment relationship in its curriculum. Also, the Institute of Judicial Studies, responsible for recruiting and training judges, could focus in its program of judicial training on the body of laws applicable to situations of exploitation at work of domestic workers.

Finally, the creation of a public prosecution office competent to examine violations and crimes breaching the fundamental rights of all human beings, including human trafficking, could be considered. The objective of such a reform is to create a public prosecution department specialized in areas whose complexity requires special skills and knowledge. This would allow domestic workers to complain directly to the public prosecutor without having to refer to the GDGS, and thereby reduce the duration of procedures.

⁴ Open Society Foundations: *Migrant Workers' Access to Justice at Home*: Indonesia (New York, 2013), p. 158.

4.2.2 Reinforcing the measures of direct assistance and long-term support

Lebanon should strengthen its protection system to encourage victims to participate in legal proceedings against those who exploit them. To improve the protection of MDWs victims of human trafficking, the GDGS and CLMC have developed several mechanisms for close collaboration. The Memorandum of Understanding signed in 2005 allows CLMC to host victims of human trafficking in its centers. This Memorandum is currently being renegotiated in light of the new structure of the detention center managed by the GDGS. The CLMC shelter opened in 2005 and permanently hosts up to 30 victims of trafficking in persons, generally migrant domestic workers and Iraqi refugee victims of exploitation. Also, the GDGS should create a specific department for emergency calls with a continuously active line day and night.

In order to identify victims more efficiently, the Lebanese government should strengthen the capacity of the Ministry of Labour and Ministry of Social Affairs in this area. At present, the MoSA has regional reception centers that cannot handle all cases of migrant workers and has no reference system for civil society key players specialized in the field.

Whereas unions represent key partners in the fight against forced labour and labour exploitation, the International Labour Office should strengthen the capacities of workers' organizations in Lebanon to expand their competence in legal defense in the domestic work sector, where the risk of forced labour is high and where working conditions are not subject to labour inspection. The International Labour Office could provide technical assistance to union officials and members who need training to identify and document cases of abuse, complaints and claims for compensation brought before Lebanese courts. Furthermore, the International Labour Organization programs in the Middle East can strengthen the capacity of unions to organize domestic workers by implementing pilot projects in Beirut, which shall extend their activities over the entire Lebanese territory. A wider network of domestic workers can allow the dissemination of knowledge about the appropriate means to access justice in the event of abuse.

4.2.3 Consolidating assistance by the Consulate of Ethiopia and other diplomatic missions in Lebanon

The Ethiopian government could implement specific information and training programs for embassies and consulates on the rights of migrant domestic workers in Lebanon and all possible means of recourse in the country of destination in order to guide and assist their citizens appropriately. A labour attaché in each diplomatic mission could help provide a more

comprehensive assistance and follow-up on employment contracts of MDWs in such a way that all discrimination cases are brought to the attention of Lebanese authorities.

In the future, CLMC wishes to work more closely with the Ethiopian consulate and other diplomatic missions to set a list of translators of Ethiopian languages, including Amharic, which could be sent to the GDGS, the ISF and the courts. An emergency number for the Consulate should be available seven days a week to respond to requests for assistance from migrant workers.

4.2.4 Documenting and implementing mechanisms of control of employers

Efficient law enforcement is a key factor to combat practices of impunity of human trafficking and related offenses. If the use of forced labour is seen as a practice carrying minimal risk, unscrupulous employers assume that they make a profit without worrying about law enforcement agents.

Employers' organizations are key actors in the fight against forced labour. With the support of the International Organization of Employers, employers' organizations in Lebanon should address issues related to domestic work and approach those who are not normally part of any employers' organizations.

A computerized wage payment control system could be considered through a partnership with the banking sector, requiring the employer to pay wages to the domestic worker by bank transfer. Any delay in payment would be detected by the system which directly notifies the employer to pay the due amounts.

The DGDS and the MoL could also strengthen their capacity to control employers suspected of violating the law by hiring additional inspectors and investigators and improving their training. An alternative system of labour inspection based on the intervention of social workers is still under discussion in the MoL. This reflection must continue in order to achieve an efficient mechanism for proper identification of victims.

4.3 Developing Prevention mechanisms

Prevention of human trafficking for labour exploitation purposes requires the efficient implementation of a series of protection measures against exploitation. These measures should increase the knowledge of the victims on the means of recourse available to them and strengthen their rights in the contract.

4.3.1 Creating mechanisms of information on available legal remedies

The Lebanese government, with the help of the social partners and key players in civil society, can create information tools including the main rights of migrant workers and relevant articles of law. These pieces of information could be added to the “Welcome to Lebanon” guide developed by CLMC in collaboration with the GDGS. A special brochure on procedures and possible means of recourse to file a complaint before the Labour Arbitration Council and the criminal courts, as well as the necessary documents to submit an admissible claim, should be developed in a simple and direct language. These various information leaflets could be distributed to the MDWs upon their arrival at Beirut airport by the offices of the MoL, GDGS and embassies of the countries of origin. These documents could also be developed in collaboration with the governments of countries of origin, prompting MDWs to be in regular contact with their embassy, listing the documents for recruitment and filing of complaints against fraudulent PEAs when back in the country of origin.

The MoL may, in collaboration with the union of private recruitment agencies, study the feasibility of establishing a public system for monitoring contracts, so that MDWs victims of violation may obtain quickly a copy of their contract signed in Lebanon. An electronic system for centralization of applications for work permits involving all key documents would accelerate procedures and allow lawyers to have access to all necessary information on filing complaints.

4.3.2 Adopting a standard contract in line with international law

The Lebanese government and the social partners should finalize the new draft standard employment contract for MDWs and adopt the text to better comply with international standards, particularly Article 6 (3) of ILO Recommendation No. 201 on decent work for domestic workers. If such standard contract is made mandatory across Lebanon and available to stakeholders, it may help protect migrant workers and prevent their exploitation at work. In this study, we found that the contracts signed by domestic workers upon their arrival in Lebanon lack important provisions. Although the situation has improved since the first unified contract in 2009 entered into force, some provisions are missing, including the right to terminate the contract at the end of the probation period. The revised standard contract should make explicit reference to applicable minimum standards of pay, termination, working hours, paid annual leave, periods of daily and weekly rest, food and accommodation, repatriation and right of representation. The Lebanese government and the social partners should seize the opportunity to bring this type of contract in line with the provisions of ILO Convention No.189. Moreover, if the proposed new unified contract

submitted to the Ministry of Labour in 2012 is adopted, it would allow the judges of the Labour Arbitration Council to refer to the provisions concerning working conditions and not just the violations related to non-payment of wages. Pending the adoption of a special law governing migrant domestic workers, this instrument would also be a minimum safeguard against forced labour.⁵

The formalization of the employment relationship between employer and employee may also be facilitated by requiring mandatory translation of the employment contract in the original language of the MDW prior to its signature before the notary. Thus, if the translation of the text is not provided at the time of signature, lawyers may invoke a misunderstanding of the provisions of the contract as a vitiated consent⁶ in order to terminate the contract. In order to avoid fraudulent practices of deception on the living and working conditions of MDWs, the International Labour Office and CLMC recommend that a written job offer or an enforceable employment agreement is sent to the worker in his/her country of origin to make him/her aware of the specific employment conditions before agreeing to leave his/her country and finding himself/herself in the obligation to sign a contract different from what he/she has been promised in his home country.⁷

4.3.3 Guaranteeing the right to unions and organize collectively

Migrant workers in Lebanon, as elsewhere, should have the right to form unions and organize collectively. Article 2 of ILO Convention No.87 on Freedom of Association and Protection of the Right to Organize of 1948 applies to “workers and employers, without distinction whatsoever.” Migrant domestic workers should be able to form a union of their choice and to join a union. Only this freedom of association allows migrant domestic workers and employers to join together to efficiently negotiate working conditions. These fundamental rights are essential to ensure decent work.

Article 68 of the Code of Criminal Procedure confirms this principle of non-discrimination with respect to access to justice by specifying that “any

⁵ See CEACR, Convention No. 29, Lebanon, Observation, Vulnerability of migrant domestic workers and the exaction of forced labour, 2013

⁶ Articles 202 to 219 of the COC.

⁷ Article 8(1) of Convention No. 189 of 2011 on decent work for domestic workers reads as follows: “National laws and regulations shall require that migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer, or contract of employment that is enforceable in the country in which the work is to be performed, addressing the terms and conditions of employment referred to in Article 7, prior to crossing national borders for the purpose of taking up the domestic work to which the offer or contract applies.”

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