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MID-TERM REPORT ON THE RECOMMENDATIONS RELEVANT TO MIGRANT DOMESTIC WORKERS

SUMMARY

There are over 250,000 migrant domestic workers working in private households in Lebanon. Despite the significant contribution they make to the Lebanese society and economy, they experience widespread abuse and exploitation, including situations of forced labour. Many are trafficked, and others fall into bonded labour as a result of costs incurred in the process of migrating for a job abroad, including transportation, recruitment and commission fees charged by the agent. Migrant domestic workers are particularly vulnerable to forced labour due to the unique and specific circumstances of working and living in a private household. This is combined with a legal and policy framework that exacerbates their vulnerability; domestic workers are excluded from labour legislation and social protection, and have a legal status tied to a particular employer under the *kafala* (sponsorship) system. They are denied the right to organise, join and/or establish unions. The nature of the recruitment system and role of recruitment agencies creates further vulnerability.

At its first cycle Universal Periodic Review (UPR) in November 2010, states addressed 123 recommendations to the Government of Lebanon. Of these, 83 recommendations were accepted by the Government and 40 were noted. At its second cycle UPR in November 2015, the Lebanese delegation received 219 recommendations. Of these, 128 recommendations were accepted and 89 were noted. The Government partially accepted two recommendations.

Out of the 219 recommendations Lebanon received during its second cycle Universal Periodic Review of November 2015, many were related to the situation of migrant domestic workers or situations of forced labour and trafficking to which migrant domestic workers are particularly vulnerable. Regrettably, some of the most targeted recommendations addressing the barriers in protection and redress for migrant domestic workers were noted by the Lebanese government. Nonetheless, the Government accepted a number of recommendations that are relevant to the situation of migrant domestic workers and the abuses that they are particularly vulnerable to.

This briefing compiles the most relevant recommendations on the issue of migrant domestic workers' rights, list the Government's position on these (accepted or noted), and provide our analysis of the extent to which they have been adequately implemented.

Given that migrant domestic workers are a group of workers that are particularly vulnerable to trafficking in Lebanon, this includes the accepted and noted recommendations on trafficking.

1. ABUSE, EXPLOITATION AND FORCED LABOUR OF MIGRANT DOMESTIC WORKERS

ACCEPTED RECOMMENDATIONS:

132.195 Take into particular consideration the vulnerable situation of migrants and refugees in the country, in particular women and children (Nicaragua); 132.199 Further strengthen the promotion and protection of rights of foreign workers (Bangladesh); 132.204 Strengthen efforts to improve the well-being of women migrant workers in Lebanon and their rights (Sri Lanka); 132.205 Improve the situation of the foreign workers including female domestic workers as they constitute a vulnerable group (Senegal).

Despite accepting recommendations to improve the situation of migrant domestic workers in Lebanon, the reality is that abuse of migrant domestic workers remains widespread and continuous. Migrant domestic workers in Lebanon report routine confiscation of their passports; long working hours; refusal by their employers to allow sufficient time off; forcible confinement to the work place; poor living conditions including lack of access to a private space within the house, forcing them to sleep in the kitchen, the living room, the balcony or share a room with their employer's children; delayed or non-payment of wages; and verbal, physical and sexual abuse. Migrant domestic workers in Lebanon report that they feel powerless to change their working conditions due to the debt accrued throughout the migration process and as a result of the employer's retention of their documents. They are also fearful of a violent reaction from their employers and of arrest, incarceration and deportation. Migrant domestic workers in Lebanon lack adequate protection in law, and access to justice and remedy when exploitation and abuse occurs is practically inaccessible. Levels of abuse and exploitation are so widespread that some countries of origin have banned their nationals from migrating to Lebanon for domestic work, although these bans are widely flouted.

A 2016 ILO study surveyed 1,541 migrant domestic workers in Mount Lebanon. The migrant domestic workers were interviewed outside households, therefore excluding those who are never allowed out of the household, meaning that living and working conditions are in reality worse than reported. Nevertheless, the findings reveal some alarming data. Forty percent reported being unable to read and understand their contracts. Those surveyed worked an average of 10.5 hours per day, with the exception of Nepalese migrant domestic workers who worked 13.5 hours per day. Only half (47%) reported receiving breaks as needed during the day. The Standard Contract provides for one day off per week, yet only 36% received this. Sixteen per cent got no time off at all, a share that rose to more than 25% among Sri Lankans, Bangladeshis, and African migrant domestic workers. As the sample is skewed towards migrant domestic workers who are allowed outside at least occasionally, the percentage who do not get any time off at all is expected to be significantly higher than this figure. Those interviewed earned an average monthly salary of around \$180, compared to the national minimum wage of \$450 (from which domestic workers are excluded), with significant inter-nationality discrepancies. Only half had their own sleeping quarters, a share that varies widely among nationalities (80% of Filipinas vs. 38% of Bangladeshis). Around one third

were sometimes locked inside their employer's homes. Around 40% reported verbal abuse (shouting, threats of deportation) and 11% reported physical abuse. Around 2% (29 cases) reported being sexually abused and 1% (12 cases) reported being forced to provide sexual favours. Sexual abuse is also usually underreported.¹

A study which surveyed the practices and perceptions of employers of migrant domestic workers in Lebanon² found similarly abusive practices despite the fact that favourable reporting was more likely. From this sample, 60 per cent of employers paid the migrant domestic workers' salary at the end of every month; 24.4% paid every few months; 13.6% paid when the worker asked; and 10 participants (about 1%) paid the salary at the end of the contract, meaning their migrant domestic worker worked for one year or more without receiving any sort of payment. Half of employers surveyed (50.7 per cent) did not abide by the Standard Contract provision of one full day of rest per week. Many employers restricted their worker's freedoms, by locking the worker in the house, retaining her passport and residency permit and/or requiring her to remain in the household or stay with its members during periods of daily and weekly rest. Of 582 employers who respected the worker's right to a full day of rest, only half allowed her to go out alone on her day off. One out of five surveyed locked the worker inside. Withholding their worker's passport was standard, with 94.3 per cent of employers engaging in this practice.³

The Government has not taken the necessary measures to address the abuse of migrant domestic workers. While small improvements have taken place over the years, such as the introduction of a Standard Contract and the later revision of this contract to improve its protections, they do not fundamentally change the root causes of migrant domestic workers' vulnerability to abuse, exploitation and forced labour; the exclusion of migrant domestic workers from the protection of the labour law and their tie to a single employer under the *kafala* system. Regrettably, as outlined in following section, the Government did not support ('noted') second cycle recommendations which called for the protection of labour law to be extended to migrant domestic workers and the replacement of the *kafala* system. The Government is therefore unable to address the widespread abuse and exploitation of migrant domestic workers, including situations of forced labour and trafficking to which they are particularly vulnerable.

2. IMPROVING THE PROTECTION IN LAW OF MIGRANT DOMESTIC WORKERS

ACCEPTED RECOMMENDATIONS

132.198 Improve the legal situation of migrant workers (Austria); 132.165 Pursue efforts to ensure that labour relations between workers and employers are in line with international labour standards (Iraq).

¹ A study of working and living conditions of migrant domestic workers in Lebanon: "intertwined: the workers' side" / International Labour Office; ILO Regional Office for the Arab States. - Geneva: ILO, 2016.

² A collaboration between the International Labour Organization, as represented by the ILO Regional Office for the Arab States and ILO Headquarters in Geneva; American University of Beirut (AUB); KAFA (enough) Violence & Exploitation; and Anti-Slavery International (ASI).

³ Intertwined - A study of employers of migrant domestic workers in Lebanon / International Labour Office, Fundamental Principles and Rights at Work (FUNDAMENTALS); Labour Migration Branch (MIGRANT) - Geneva: ILO, 2016

NOTED RECOMMENDATIONS

132.194 Abolish the “kafala” sponsorship system with regard to migrant domestic workers (Denmark); 132.197 Amend the Labour Code to extend legal protection to domestic workers equal to that afforded to other workers and reform the visa sponsorship system so that workers can terminate employment without sponsor consent (United States of America); 132.200 End the sponsorship system for migrant domestic workers (France); 132.201 Amend the labour code and visa sponsorship system to accord the necessary legal protection to migrant domestic workers on an equal footing with other workers (Kenya); 132.202 Take necessary measures to ensure that effective protection against discrimination in all aspects of their employment is provided to all migrant domestic workers (Albania); 132.208 Continue to enhance domestic legal frameworks promoting the human rights, security and well-being of refugees and migrants in Lebanon (Philippines); 132.163 Establish a monitoring mechanism to prevent abuse, guarantee decent working conditions and wage payments (Madagascar); 132.164 Ensure equal rights to all workers in the country in accordance with international standards (Nigeria).

The Government has not improved protection in law for migrant domestic workers since its second cycle UPR. Migrant domestic workers remain excluded from protections enjoyed by other workers in the country.

Lebanon operates a *kafala* (sponsorship) system. The sponsorship system is comprised of various customary practices, administrative regulations, and legal requirements that tie a migrant domestic worker’s residence permit to one specific sponsor in the country, who in virtually all cases is the employer, and the worker cannot unilaterally exit the employment relationship. The worker is not allowed to change employer unless she has a notarised written permission – a release paper – from the current employer. The employer therefore wields a great degree of power in determining the living and working conditions of the worker. The right to change employer is a fundamental safeguard against abuse, exploitation and forced labour. Under the current *kafala* system, those who flee an abusive employer are at risk of arrest, detention and deportation. Many migrant domestic workers feel forced to continue to suffer abuse and exploitation rather than lose their livelihood, accommodation and permission to stay in the country.

Migrant domestic workers are specifically excluded from the protections of the 1946 Labour Code. This denies them rights largely given to other workers such as national minimum wage, maximum work hours, the right to form associations and organise, and the right to resign with proper notification. This exclusion from the protection of labour legislation exacerbates the power imbalance between employer and employee created by the *kafala* system, and therefore their vulnerability to abuse, exploitation and forced labour.

While the Government has formed a national steering committee on domestic work and discussed various draft policies covering migrant domestic workers, none has passed into law. In the meantime, as domestic workers remain excluded from most laws and policies covering other workers, there is a clear gap in legal protection.

In addition to a gap in legal protections covering migrant domestic workers, there are also limitations to the Standard Contract. It does not address fundamental issues such as passport retention and freedom of movement. The contract is only available in Arabic and English. As such, migrant domestic workers who come from different national and linguistic backgrounds sign the contract without reading it or understanding its contents. The contract includes a

clause stating that the employer is obliged to guarantee acceptable working conditions and to provide her with food and clothing. The contract however does not define acceptable working conditions, nor does it provide guidance as to the amount or quality of food and clothing. Furthermore, the contract does not make any mention of the employer's obligation to provide a private living space to the worker.

3. THE RIGHT TO ORGANISE

NOTED RECOMMENDATIONS:

132.25 Ratify ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise, and implement it to ensure the right of all workers to freely organize (Sweden).

Migrant domestic workers are specifically excluded from the protections of the 1946 Labour Code. This denies them the right to form associations and organise. The Ministry of Labour rejected a request to form a Union for Domestic Workers. The Lebanese authorities have also deported migrant domestic workers with minimal notice or process for seemingly arbitrary reasons including advocacy and organising. This includes two Nepalese migrant domestic workers, Shusila Rana and Roja Limbu, who were deported in December 2017 and January 2018 respectively. Both were active members of the Domestic Workers Union in Lebanon (which continues to operate informally despite being refused registration) and had legal status in Lebanon. Following their deportation, they reported that they had been subjected to long hours of interrogation, in which they were accused of assisting the escape of fellow workers from the households of their abusive employers, accepting money from NGOs, and supporting the Domestic Workers' Union.

Without freedom of association and collective bargaining for migrant domestic workers, initiatives to reduce their vulnerability to abuse, exploitation and forced labour is unsustainable over the long run.

4. ACCESS TO JUSTICE FOR MIGRANT DOMESTIC WORKERS WHO HAVE BEEN SUBJECTED TO FORCED LABOUR AND TRAFFICKING

ACCEPTED RECOMMENDATIONS:

132.143 Identify, protect and support victims of trafficking and forced labour (Australia); 132.144 Continue efforts on achieving gender equality and fighting against human trafficking (Greece); 132.145 Continue intensifying the efforts aimed at combatting trafficking in person and guarantee the protection of victims (Jordan); 132.146 Pursue and enhance efforts to combat human trafficking as well as raising awareness as to the threat posed by this scourge and protect its victims (Qatar); 132.147 Adopt a National Action Plan on preventing and combating trafficking in human beings and pursue measures aimed at preventing trafficking and providing appropriate protection to victims (Republic of Moldova); 132.148 Continue efforts to strengthen equality between men and women and in combatting trafficking in persons (Russian Federation).

Migrant domestic workers are a group of workers that are particularly vulnerable to forced labour and trafficking. Yet, they experience huge barriers in access to justice and remedy while prosecutions of employers for abuse of their domestic worker are very low.

A lack of accessible complaint mechanisms, lengthy judicial procedures, and restrictive visa policies dissuade many workers from filing or pursuing complaints against their employers. Migrant domestic workers lack knowledge about the available complaint and compensation avenues, and the high costs associated with lawsuits and the complicated and slow procedures of the Lebanese justice system act as significant barriers. Migrant domestic workers are often isolated, meaning that the opportunity to contact NGOs and lawyers is limited, as is their knowledge of the services offered by their countries' diplomatic missions in Lebanon. For some nationalities, there is no diplomatic representation in Lebanon.

Even when migrant domestic workers file complaints, the police and judicial authorities regularly fail to treat certain abuses against domestic workers as crimes. Migrant domestic workers are often returned by the police to the employer that they sought to lodge a complaint against or find themselves detained for not having legal residency status or because the employer has filed a complaint against them for stealing.⁴ The risk of counter-charges by their employer is significant; a migrant domestic worker will then face months in pre-trial detention and a trial in which international standards of due process are not always respected. Complaints filed against employers languish in courts for months and sometimes years. When convictions are obtained, sentences are extremely lenient.

A major and reoccurring obstacle to migrant domestic workers' access to justice is the limitations placed on their ability to remain in Lebanon after they have left their employer. As soon as a legal complaint is in process, the employer can terminate his or her sponsorship obligation rendering the migrant domestic worker an illegal resident, even if it is the employer that has breached the Standard Contract. The slow procedures of the Lebanese justice system, along with the restrictions put in place by the *Kafala* system, mean that remaining in the country is often not an option for migrant domestic workers, who often have families at home depending on their income. As such, they normally avoid resorting to judicial remedy and are forced to instead leave the country, forfeiting their wages or any other compensation that would arise from the harm inflicted upon them.

“Escape” from a place of employment or an employer’s house is not criminalised under Lebanese law. However, Lebanese courts have adapted and used laws that punish foreigners for not informing the Lebanese authorities of a change of address in order to punish migrant domestic workers who have fled their employer’s house without their approval.⁵ Judges overseeing these “runaway” cases did not examine the reasons that the migrant domestic worker had sought to escape but instead solely examined the legal link between the worker and her sponsoring employer. In such cases, migrant domestic workers were usually without a lawyer and in most cases were tried in absentia due to the fact that they were deported during the trial.

5. INTERNATIONAL STANDARDS ON DOMESTIC WORK

NOTED RECOMMENDATIONS

⁴ Human Rights Watch, *Without Protection, How the Lebanese Justice System Fails Migrant Domestic Workers*, 2010.

⁵ Article 5 of decision 136 issued on 30/09/1969 (Proof of Presence of Foreigners in Lebanon): Foreigners in possession of Annual or Permanent Residence cards from the General Directorate of General Security must inform General Security of any change of address of their residence within a week of the change.

132.23 Ratify various international human rights statutes and conventions, including the Rome Statute, the Convention on the Rights of Persons with Disabilities, and the ILO Conventions Nos. 87, 169 and 189 (Ghana); [Partially accepted: The accepted part is the one referring to the ratification of the Convention of the Rights of Persons with Disabilities.]; 132.24 Take steps toward accession to ILO Convention 189 (Philippines).

The Government did not support second cycle recommendations to consider ratifying ILO Convention No. 189 on Domestic Workers. This is regrettable as the Convention and the accompanying Domestic Workers Recommendation, 2011 (No. 201), are milestones towards improving the working conditions of millions of domestic workers across the world. With specific protections for both migrant domestic workers and child domestic workers, the instruments recognise that domestic workers have the same right to benefit from social and labour protection as other workers, while addressing the special characteristics and vulnerabilities of domestic work. In a context of widespread abuse and exploitation of migrant domestic workers in Lebanon, we consider it crucial to ratify this Convention and implement it into national law, which would require extending the coverage of national labour legislation to domestic workers, recognising domestic work as work, and guaranteeing, without discrimination based on nationality, their right to fair wages, limits on working time, sufficient rest and leave periods, the freedom to dispose of their time outside working hours, the right to privacy and family life, and the right to retain their identity and travel documents.