

Access to Justice for Migrant Domestic Workers in Lebanon

PREFACE

Access to justice has become an important theme in international debates related to fundamental rights. The International Labour Organization (ILO) has placed this subject at the heart of its policy on protection of migrant workers, in particular during two recent tripartite meetings.

Indeed, experts at the ILO Meeting on Forced Labour and Trafficking for Labour Exploitation concluded, in February 2013, that the victims' access to justice should be facilitated and for this purpose, all appropriate legal and administrative procedures should be simplified. Emphasis has also been placed on the importance of imposing sufficiently effective and dissuasive penalties on the perpetrators of forced labour and of ensuring a strong criminal justice regime. In November 2013, the Technical Meeting of the ILO on Labour Migration noted, for its part, that in order to increase protection of migrant workers, the ILO should advance and disseminate knowledge through studies on the impact of migration policies and schemes, in particular with regard to equal treatment of migrant workers and nationals in accessing justice.

The Caritas Lebanon Migrant Center (CLMC), which has since 1994 been running a service of legal assistance for migrant workers victim of labour exploitation and forced labour, has also identified access to justice as the key element for protection and prevention efforts against these crimes to succeed. In Lebanon, forced labour and human trafficking are often related to an unsuccessful labour migration policy which leaves migrant workers particularly vulnerable to exploitation.

In order to better understand the obstacles that prevent migrant domestic workers from having access to justice in Lebanon, the ILO and the CLMC carried out together an ambitious research project. The joint research initiative formulates recommendations to improve the protection of victims and their ability to demand and obtain remedial action from legal institutions. By way of a qualitative research, the project analyses the efficiency of available remedies and offers Lebanese policy makers technical assistance that may help them make justice more readily accessible. Over 730 files of domestic workers assisted by the CLMC and the legal proceedings resulting thereof have been analyzed to highlight the evolution of jurisprudence as well as the legal, procedural and institutional challenges confronting workers.

This study is the first in a series of analyses that the ILO will conduct in 2014 dealing with the issue of access to justice for migrant workers who have been victims of forced labour practices. It has contributed to enhancing existing knowledge on this subject and will help improve access to justice, to ensure that migrant workers are better protected from unacceptable forms of exploitation.

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EXECUTIVE SUMMARY

This study analyses the legislative framework applicable to immigration and employment in the domestic work sector and traces back the evolution of the jurisprudence of Criminal Courts and of Labour Arbitration Councils since the year 2000 in cases involving migrant domestic workers (MDW) victim of labour exploitation. It also identifies obstacles preventing victims from gaining access to justice in Lebanon and makes recommendations aimed at improving their protection and their capacity to file a claim, and be awarded compensation by formal or informal judicial institutions.

In 2012, the International Labour Office (ILO) and the non-governmental organization Heartland Alliance led a research project resulting in the publication of the study *Tricked and Trapped: Human Trafficking in the Middle East*, which aimed at identifying the processes by which vulnerable migrant workers, in particular domestic workers, found themselves in situations of forced labour in the Middle East.¹ By means of a detailed analysis of this phenomenon, the ILO and Heartland Alliance were able to determine that the lack of access to justice by victims of human trafficking and of labour exploitation is due to the insufficient capacity of the law enforcement and of the judiciary to identify the victims and to refer them to proper channels.

Having come to this conclusion, the ILO decided to work in partnership with the largest provider of services to migrant workers in Lebanon, the Caritas Lebanon Migrant Center, in order to pursue a joint research. This report results from work conducted between January and December 2013. It is based on a rigorous analysis of the CLMC database containing 730 files of Ethiopian migrants assisted by the organization since 2007, on an in-depth study of 24 cases brought before Criminal Courts and Labour Arbitration Councils by CLMC lawyers and involving migrant domestic workers of various nationalities, and on 22 interviews with key participants.

The emphasis placed on Ethiopian migrant workers in this study is justified in as much as this group of migrants represents the largest community of domestic workers in Lebanon.² Among the 730 cases of Ethiopian migrant workers recorded in the database³, 453 were considered to be in a situation of forced labour, thus representing about two thirds of the Ethiopian domestic workers dealt with by CLMC since 2007. One cannot characterize the general condition of domestic workers in Lebanon by extrapolating from this proportion, as these figures only reflect the situation of those who came and sought assistance at CLMC centers and safe houses. However, this figure does allow us to see that the vast majority of people working under conditions of forced labour have not filed a claim in court, which led us to analyze the causes thereof. A review of the cases involving domestic workers of various nationalities indicates that

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

² In 2012, the Ministry of Labor granted a total of 189,373 work permits, 143,899 of which to domestic workers (representing more or less 76 per cent of all given work permits). Among these 143,899 permits, 62,448 were granted to Ethiopians, 32,846 to Bangladeshi nationals, 23,574 to Filipinos, 10,468 to Sri Lankans and 5,454 to Nepalese.

³ The database contained information concerning the degrading working and living conditions, the impossibility of changing employers and coercive measures.

the conclusions reached in the judgments of national courts were not influenced by the nationality of the workers involved.

Since the start of the 21st century, CLMC has reinforced its provision of legal assistance to the victims of labour exploitation. At that time, very few cases involving domestic workers were ever brought to court, the vast majority of conflicts being settled out-of-court, with NGOs or other stakeholders serving as facilitators. In Lebanon, out-of-court resolution is the preferred means of settlement of conflicts in cases involving migrant domestic workers. Under the *kafala* regime which provides, among other things, that a domestic worker who flees the residence of his employer can be detained administratively, the employer may be placed in a position of strength to negotiate and restrict the rights of the worker. The high percentage of cases settled out-of-court, not only for non-payment of salary but also for physical abuse, leads one to believe that domestic workers are rapidly dissuaded from bringing charges.

Migrant domestic workers are equally reluctant to file a case against their employer as they know it is very difficult to change employers without their consent. Indeed, even when there is a strong presumption that someone is a victim of trafficking, the transfer from one employer to another is not guaranteed. The Prosecutor's Office does not have authority to order an employer to "free" the domestic worker in order that he could work for another employer.

Furthermore, domestic workers subject to exploitation are often led not to lodge a complaint before a prosecutor or with the police, as they are in a "dual" situation. Indeed, in a case of labour exploitation or of human trafficking, the domestic worker is considered as a victim by a criminal judge. However, if the domestic worker leaves the residence of his employer without the latter's consent, the worker commits a violation of the decree on the entry and stay of foreign nationals in Lebanon, and on their exit, and their occupation⁴, and breaches as well the decision on proof of the presence of the foreign national in Lebanon. The duality resulting from this situation makes access to justice very difficult.⁵ It also brings to light the structural loopholes of this legal system which discourages domestic workers by placing them in the position of defendants, even when they are victims of serious violations of the Penal and Civil Codes. However, Law n°164 which makes human trafficking a criminal offence, limits the consequences of such a situation by exempting from penalty a victim unlawfully residing in the country.⁶

In theory, in Lebanon the right to access to justice in Lebanon applies to Lebanese and foreigners alike, and therefore any foreign domestic worker who is a victim of a violation of Lebanese law may lodge a complaint before the prosecutor, the investigating judge or the sole judge empowered to deal with matters of criminal offences, or to the police in cases of flagrant violation. However, article 7 of the Lebanese Labour Code excludes from its scope "domestic servants employed in private houses".⁷ The fact that articles from the Labour Code do not apply

⁴ Decree No. 2873 of 16 December 1959 on the organization of the GDGS, articles 6, 8, 11.

⁵ Interview with a Judge of the Court of Appeals of Beirut, 6 February 2013.

⁶ Law No. 164 of 24 August 2011, which punishes the crime of human trafficking, article 586(8).

⁷ Article 7 of the Code of Labour mentions: « Are exempted from the present Law : 1) Domestic servants employed in private houses; 2) Agricultural corporations which have no connection with trade or industry and which shall be the object of a special law ; 3) Family concerns employing solely members of the family under the management either of the father, the mother or the

to this category of workers should not prevent Civil Courts from litigating disputes arising from a work contract. Nonetheless, through a rigorous analysis of cases CLMC brought before the courts, the research found that, in practice, the ability of victims to demand and obtain redress by way of civil courts remains limited.

All complaints filed before 2008 have been dismissed by the Labour Arbitration Councils on the grounds that according to article 7(1), the Labour Code does not apply to domestic workers and consequently, that the petitions of domestic workers do not fall under the jurisdiction of the Labour Arbitration Councils.⁸ Since 2008, there has been a Case Law evolution, following a decision of the Labour Arbitration Council that it was competent to rule on cases concerning the retention of domestic workers' salaries.⁹ However, until the present time, cases have been limited to disputes concerning the non-payment of salaries. This is essentially due to the fact that contracts signed by domestic workers before 2010 generally included very few provisions, if any, concerning days of rest, freedom of movement, the right to keep one's identity papers or the right to have a private area in the house of the employer.

Nevertheless, the fact that domestic workers are excluded from the Labour Code does not imply discrimination in criminal courts which have cited provisions of the Penal Code to punish offences related to human trafficking, such as sexual violence¹⁰, personal injuries¹¹, forced prostitution¹² or breach of trust and the retention of identity documents.¹³

However, the possibility of referring to articles of the Penal Code has not eliminated the need to criminalize human trafficking as such. This is why, on 24 August 2011, Parliament adopted Law No.164 which aims at codifying human trafficking as a criminal offence.¹⁴ This promulgation gave domestic workers victim of labour exploitation renewed hope of obtaining compensation. Since this law was adopted, CLMC has submitted one case of human trafficking, involving four workers, to the Criminal Court of Mount Lebanon. However, this case has not moved forward since it was submitted to the Criminal Court in September 2013 and, as of 1 March 2014. In spite of the fact that it involved criminal offence of human trafficking, the Court has come to no decision and this raises the question of how slowly the judicial system operates.

Through the interviews they conducted, the research team was able to identify various impediments to access to justice. The first impediment had to do with how difficult it is to

guardian; 4) Municipal or government services in what concerns the employees and casual wage earners and journeymen, who are not governed by the civil servants regulations. These agents will be the object of a special law. »

⁸ Labour Arbitration Council of the Bekaa, Zahlé, Petition filed on 18 October 2005, *Askale vs A.B.*, Decision No. 32/2009 of 15 January 2009.

⁹ Labour Arbitration Council of Mount-Lebanon, Petition filed on 10 March 2006, *Chandrawathi vs. R.A.Z.*, Decision No. 261/2008 of 18 March 2008 ; Labour Arbitration Council of Mount-Lebanon, Petition filed on 20 March 2006, *Rizalin Tumaliuan Agub vs. R.Y.H.*, Decision No. 90/2009 of 27 January 2009.

¹⁰ Articles 503 to 506 of the Lebanese Penal Code.

¹¹ Article 555 of the Lebanese Penal Code.

¹² Articles 525 and 526 of the Lebanese Penal Code. Article 525 of the Lebanese Penal Code mentions that: *a person who, through means referred to in the preceding article, maintains another person against his/her will in a brothel or coerces him/her into prostitution, shall be punished by imprisonment of anywhere from two months to two years and by a fine of 50'000 to 500'000 Lebanese pounds.*

¹³ Articles 670 to 673 of the Lebanese Penal Code.

¹⁴ Judge Samer Younes address of 27 March 2012 to a workshop organized by the Ministry of Social Affairs, the High Council for Childhood and World Vision on child trafficking.

provide evidence. Indeed, evidence pertaining to the way a work contract is implemented on the premises, - in this case, at the residence of the employer - who, undeniably, has privileged access, while the burden of the proof rests on the domestic worker as a plaintiff. It has even been found that in certain criminal cases, the principle of a reasoned decision¹⁵ and that of the right to evidence have been breached, due in particular to the conception certain judges have of what domestic work entails.

The second impediment is the marginalization imposed by various actors and in particular by the judiciary, on low-skilled foreigners. Indeed, the legal team of CLMC found that in certain cases involving migrant domestic workers, where the report sent to the Public Prosecutor's Office makes reference to the fact that offences, such as damage or injuries took place, the Prosecutor did not initiate legal proceedings against the alleged offender.¹⁶ This observation suggests that the system set up to determine whether or not a case should be prosecuted is not intangible¹⁷ which might be a problem when it is used improperly by certain members of the judiciary, to set aside domestic workers.

The third impediment to access to justice is due to the ignorance of the law by foreign workers, in particular by low-skilled workers such as domestic employees.¹⁸ The majority of domestic workers received by CLMC know very little, if anything, about their rights during their stay in Lebanon, about the clauses of the contract they signed before the notary or about the legal remedies available to them to assert their rights. Such lack of awareness on the part of the workers thus effectively deprives them of their ability to act. Finally, migrant domestic workers are offered few guarantees that they will have access to a fair trial within a reasonable timeframe. This is due to several factors including the slow pace of the judicial system and the limited access granted to legal aid services.

The Government of Lebanon, social partners and civil society have demonstrated determination in their fight against the many forms of labour exploitation, human trafficking and forced labour. Civil society has mobilized to provide distressed domestic workers with ever more effective services of legal aid, and with programs aimed at raising the awareness of judges, lawyers and those responsible for implementing the law, as well as with programs aimed at strengthening the capacity of these actors. As a result, the number of legal decisions has multiplied since the year 2000. This progress demonstrates that the fight against the exploitation of migrant domestic workers and for the promotion of their rights takes place in the context of a positive dynamic.

From here on, it is important to integrate the subject of the access to justice of migrant workers into a national action programme against forced labour and human trafficking. The inclusion of domestic workers in the scope of the Lebanese labour law is essential to eliminate the grey zones in which many violations still go unpunished, and to provide the judges with a complete

¹⁵ Established in articles 42, 68, 74, 80, 86, 92, 107, 108, 131, 155, 225, 274, 296, 298, 306 of the Code of Criminal Procedure and in 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 deal with the modalities under which to initiate public prosecution.

¹⁷ The principle of prosecution is not, in theory, an absolute one. Indeed, Article 50 of the Code of Criminal Procedure only authorizes the Public Prosecutor to dismiss a case if it has been established that the act does not constitute an offence, that there is insufficient evidence that an offence has been committed, or that the public prosecution has been extinguished for one of the reasons set out in Article 10 of this Code.

¹⁸ Interview of an Investigating Judge, Mount Lebanon Court, 30 January 2013.

legislative framework. In order to reach a satisfying legislative text on domestic labour, the Lebanese government, social partners and the actors of civil society should take inspiration from the provisions of the ILO Domestic Workers Convention (No. 189) of 2011 and from the corresponding Recommendation No. 201. In addition, in order to better comply with international standards, it is important to finalize the project of a new, unified work contract for MDWs. It is also essential to steadily improve the training of lawyers who defend the rights of migrant domestic workers, of criminal judges and of the Labour Arbitration Council. Finally, the Lebanese government could, with the assistance of the social partners and of key players in civil society, develop information tools on the channels available to migrant workers for them to have access to justice. Such actions could contribute to a genuine improvement in the access all may have to justice, thus benefiting national and migrant workers.