

Protection Framework

*Towards Increased Protection for Migrant Domestic
Workers in Lebanon*

March 2019

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Executive Summary

The current system of recruiting and employing migrant domestic workers (MDWs) in Lebanon generates abuse, inefficiency, and injustices. ALEF – Act for Human Rights has therefore produced this Protection Framework to analyze the problems and propose solutions to the MDW employment system.

The Framework will begin by describing the background situation. First, the Framework will summarize the current conditions of MDWs in Lebanon, with a particular focus on the legal structure that leaves MDWs vulnerable to abuse, burdens their employers with inappropriate risks, and allocates security and immigration decisions to private parties. This analysis shows that abuses and violations stem from the legal and administrative structure of labor migration itself, from labor practices, and from behaviors enabled by the weak legal system. The Framework will then contrast this structure with Lebanon's international, constitutional, and domestic legal obligations.

After summarizing this background, the Protection Framework will present a comprehensive alternative vision for MDW recruitment and employment. As suggested by the analysis of the current situation, reform will require changes in law, in labor practices, and in the behaviors of employers, recruitment agencies, and authorities.

In brief, the legal changes include separation of MDWs' residency status from their employment contract, the designation of a grace period of residency between periods of employment, a process of normalization for workers who currently lack documentation or residency, and ensuring that authorities can terminate a contract if necessary and grant the MDW the right to accept a new contract. Contract disputes involving MDWs should be referred to the Labour Arbitration Council to enable both MDWs and employers to quickly and efficiently resolve disputes. Workers' right to unionize should be recognized and the existing MDWs' union should be granted the necessary permits to operate. An independent visa system should be instituted. Finally, in the long run, a comprehensive labor law must be passed that includes MDWs and effectively prohibits race- and sex-based discrimination.

The labor practices that have emerged in the absence of legal protections also require modification. Specifically, the recruitment system should be reformed in accordance with the Code of Conduct adopted by the Syndicate of Recruitment Agencies in Lebanon (SORAL). In addition, the terms of the Standardized Unified Contract (SUC) should be modified to clarify responsibilities and enhance protections.

Finally, these legal changes and labor practice reforms will only be effective if coupled with behavioral changes from both authorities and employers. These changes include permitting MDWs to live in separate households from their employers. The Ministry of Labor (MOL) must fulfill its regulatory function by overseeing the execution of contracts and ensuring that only qualified employers and recruitment agencies can recruit workers. Police and other enforcement authorities must train their officers to respond appropriately to cases of abuse, “runaways,” and human trafficking. Embassies and consulates must abandon ineffective protection strategies such as migration bans in favor of effective ones, such as worker education. Finally, employers must alter a host of behaviors that infringe the human rights of workers, including the confiscation of documentation, denials of freedom of movement and privacy, and verbal, physical, and sexual abuses.

With these modifications, the current abusive and inefficient system can be transformed into a functional system of labor migration. This reformed system will respect and protect the human rights of workers, facilitate efficient employer-employee interaction, and empower the state to protect national security and set labor policy.

This Protection Framework was developed through desk research and consultative meetings with stakeholders. Over the course of three years, ALEF met with nearly twenty organizations representing these stakeholders, including migrant domestic workers themselves, worker collectives, civil society organizations, international non-governmental organizations, legal experts, SORAL, insurance companies, embassies and consulates of sending countries, and government ministries including the Ministry of Labor (MOL), Internal Security Forces (ISF), and Directorate General of General Security (DGGS). This Framework synthesizes and expands upon the stakeholder meetings to provide a comprehensive alternative to the current system. To the many individuals who provided their insights, experiences, and expertise—but especially to the workers who bravely shared their stories—ALEF offers its profound gratitude.

Background

Lebanon hosts over 250,000 MDWs, mainly from Africa, South Asia and Southeast Asia.¹ In recent years, the conditions faced by these workers have raised deep concerns from the workers themselves, embassies, civil society organizations, and some employers, recruitment agencies, and government actors. Violations include, but are not limited to, delayed or non-payment of wages, denial of weekly time-off, confiscation of passports, limitations on freedom of movement, sexual harassment, discriminatory application of immigration law, and verbal, physical, and sexual abuse.² These conditions have contributed to a high rate of suicides and attempted suicides among MDWs. According to DGGS, in 2016 an average of two migrant domestic workers died per week; many of these deaths were either suicides or unsuccessful attempts to escape intolerable abuse.³ The Philippines, Ethiopia, and Kenya have responded to the crisis by instituting partial or full bans to prevent their nationals from traveling to Lebanon for domestic work. However, such bans have proven ineffective at controlling either migration or the attendant abuses.⁴

1 For a more comprehensive picture of the situation of MDWs in Lebanon, see ALEF's *Baseline Report on the Status of Migrant Domestic Workers' Rights and Stakeholders' Roles in Lebanon*. See also ILO (2016). *A Study of the Working and Living Conditions of MDWs in Lebanon – "Intertwined: The Workers' Side"*. Retrieved from https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_524143.pdf (accessed 19.02.19); Human Rights Watch (2010, September 16). *Without Protection – How the Lebanese Justice System Fails Migrant Domestic Workers*. Retrieved from <https://www.hrw.org/report/2010/09/16/without-protection/how-lebanese-justice-system-fails-migrant-domestic-workers#> (accessed 19.02.19); Human Rights Watch (2018, April 6). *Lebanon: Migrant Worker's Abuse Account*. Retrieved from <https://www.hrw.org/news/2018/04/06/lebanon-migrant-workers-abuse-account> (accessed 19.02.19).

2 Ibid.

3 Su, A. (2017, May 15). *Slave Labour? Death Rate Doubles for Migrant Domestic Workers in Lebanon*. IRIN News. Retrieved from <https://www.irinnews.org/feature/2017/05/15/slave-labour-death-rate-doubles-migrant-domestic-workers-lebanon> (accessed 19.02.19); Allaw, S. (2011). *Dreams for Sale: The Exploitation of Domestic Workers from Recruitment in Nepal and Bangladesh to Working in Lebanon*. KAFA. Retrieved from <http://www.kafa.org.lb/studiespublicationpdf/prpdf-65-635457864461835048.pdf> (accessed 19.02.19); Khawaja, B. (2016, December 13). *Lebanon Deports Domestic Worker Rights Organizer*. Human Rights Watch. Retrieved from <https://www.hrw.org/news/2016/12/13/lebanon-deports-domestic-worker-rights-organizer> (accessed 19.02.19)

4 Jones, K. (2015, June 24). *FOR A FEE - The Business of Recruiting Bangladeshi Women for Domestic Work in Jordan and Lebanon*. ILO. Retrieved from https://www.ilo.org/global/publications/working-papers/WCMS_377806/lang--en/index.htm (accessed 19.02.19); Focus Group conducted by ALEF at Migrant Community Center, 21.05.2016.

Sources of Abuse

Exclusion from the Labor Code and the Sponsorship System

The abuses and violations can be traced to a few key sources. The largest contributing factor is the matrix of laws, administrative policies, and practices that regulates migrant domestic work in Lebanon.

Discussions of migrant domestic work and human rights regularly cite “the kafala system” as the source of abuses.⁵ Unfortunately, these discussions often fail to specify how the kafala system operates. The word “kafala” simply means “sponsorship” in Arabic. But it is not the abstract concept of “sponsorship” that produces abusive labor conditions. Rather, it is the way that sponsorship has been implemented through laws (and the absence of laws), administrative practices, and the non-enforcement or execution of human rights guarantees. Together, these factors produce a context in which abuses flourish. This Framework will detail the structures that together constitute the kafala system, and suggest specific reforms to laws, policies, and practices that produce abuse.

MDWs are excluded from all standard labor laws and protections in Lebanon, including the 1946 Labor Law which provides the framework for overall labor regulation. Article 7 of the law excludes domestic workers of any kind from its coverage.⁶ Instead, both the migration process and labor regulation of migrant domestic work is conducted primarily through DGGS and MOL decrees setting the requirements for receiving visas, residency, and work permits.

Currently, DGGS approves three-month visas for MDWs upon the submission of an authorization and a labor permit issued by the MOL, along with a visa request initiated at a general security bureau.⁷ Each of these steps requires the submission not only of the worker’s passport but of a copy of the identity card of the “interested party”—the employer. Once the visa is issued and the worker arrives, DGGS approves a one-year residency permit upon the submission of additional documentation—including not only the identity card of the employer, but their family civil registry.⁸ Renewal of the yearly residency likewise requires the submission of the employer’s identify card and family civil registry.⁹

5 See e.g. Broom, F. (2017, November 1). *Sponsored Abuse: Migrant Workers in Lebanon*. New Internationalist. Retrieved from <https://newint.org/features/2017/11/01/kafala-lebanon> (accessed 19.02.19) de Stone, R. & Suber, D.L.. (2018, May 17). *Migrant Workers Fighting for Freedom under Lebanon’s Kefala System*. Open Democracy: North Africa. Retrieved from <https://www.opendemocracy.net/north-africa-west-asia/roshan-de-stone-david-l-suber/migrant-workers-fighting-for-freedom-under-leba> (“migrant domestic workers are forced to work under the infamous Kafala system, a system of sponsorship that binds an employee to their employer in a slave-like relationship.”).

6 Nasri, A. & Tannous, W. (2014). *Access to Justice for Migrant Domestic Workers in Lebanon*. ILO. p. 7. Retrieved from <http://www.labor.gov.lb/Temp/Files/574b61dd-1233-4507-9da1-d4a3e3a6129a.pdf> (accessed 19.02.19).

7 General Security. *Domestic Workers*. <http://www.general-security.gov.lb/en/posts/23> (accessed 19.02.19).

8 Ibid.

9 Ibid.

These requirements form the core of the tie between legal residency and employer or “sponsor.” The worker’s legal status in the country, whether under a visa or a residency permit, is linked to the sponsor by requirements set by DGGS for applying for a visa or residency, or renewing the residency. Likewise, an application to the MOL for a labor permit requires an identity card from an “interested party.”

Under this system, the employer takes legal responsibility for the employee. Employees cannot leave their employer without securing both their employer’s approval, in the form of a signed waiver, and a new employer who will take over the role of “sponsor.” Even DGGS—the government authority tasked with maintaining security and administering migration policies in Lebanon—cannot bypass this waiver requirement. Workers who leave their employer without permission lose their legal residency status and are subject to deportation.

Despite their exclusion from the 1946 Labor Law, MOL has interpreted certain provisions of this law to apply to MDWs. Specifically, MOL representatives frequently cite Articles 91 – 92 of the labor law to explain the Ministry’s reluctance to recognize MDWs’ efforts to organize a union.¹⁰ Article 91 limits involvement in labor unions or syndicates to Lebanese nationals who are over the age of eighteen, members of the relevant profession, and who have not been convicted of a crime. Article 92 permits foreigners who otherwise meet the requirements of Article 91 regarding age, profession, and absence of criminal record to join existing unions, but restricts their ability to vote or be elected in the leadership of such organizations. Although MDWs are explicitly excluded from the labor law as a whole, the previous Minister of Labor cited the code to justify denying workers’ application for official recognition of their union.¹¹ A current MOL representative likewise cited these code provisions to justify workers’ exclusion from unionization rights.¹² However, the current Minister of Labor has not issued an official interpretation of the provisions, nor has he commented on MDWs’ right to unionize.

Article 7 also excludes three other categories of workers from the protections of the labor law: agricultural workers, family members employed in a wholly family-operated enterprise, and certain municipal or government officials. However, these other three categories of workers are each governed by a separate legal framework that provides some protection from abuse, frames the terms of employment, and which do not require sponsorship. The labor law specifically provides that agricultural and government workers will “be subject to a special law.”¹³ Although the terms of employment among family members are not dictated by law, the Law on the Protection of Women and Family Members from Domestic Violence provides some backstop of protection from violence within family relations (though it too has significant limitations).

10 Consultative meeting with Ministry of Labor (2018, October 10); Roundtable with Ministry of Labor, SORAL, Embassies and Diplomatic Missions, FENASOL, KAFA, ARM, and others (2019, February 26). See also Laura Kasinof, (2016, February 15). *Behind Closed Doors: Mobilising Lebanon’s Migrant Maids*. The Guardian. Retrieved from <https://www.theguardian.com/global-development/2016/feb/15/lebanon-migrant-maids-domestic-workers-union>.

11 The Daily Star (2015, January 27). Lebanon Unions Denounce ‘Backwards’ Maid Protection Proposal. Retrieved from <http://www.dailystar.com.lb/News/Lebanon-News/2015/Jan-27/285510-lebanon-unions-denounce-labor-ministers-backwards-maid-protection-proposal.ashx> (accessed 11.03.2019). See also Human Rights Watch (2015, March 10). Lebanon: Recognize Domestic Workers Union. Retrieved from <https://www.hrw.org/news/2015/03/10/lebanon-recognize-domestic-workers-union> (accessed 11.03.2019).

12 Consultative meeting with Ministry of Labor (2018, October 10); Roundtable with Ministry of Labor, SORAL, Embassies and Diplomatic Missions, FENASOL, KAFA, ARM, and others (2019, February 26).

13 Ibid.

But this law specifically excludes non-family members from its terms.¹⁴ Domestic workers are thus excluded from the labor law (in part because they are considered part of the household as “domestic” workers) but excluded from the domestic violence law because they are workers, not household members. The result is a gap in protections that exposes MDWs to abuse. In sum, of the four categories of workers excluded from the labor law, only domestic workers are left completely out of any labor or other regulation.

Recruitment

Because workers’ immigration status depends on their employer, visa and work permit applications for migrant domestic workers require the worker to secure a sponsor before traveling to Lebanon. This fact has empowered recruitment agencies to act as brokers between employers seeking MDWs and individuals abroad seeking employment in Lebanon.

Unfortunately, information asymmetries between workers and recruiters, as well as the power differential between unskilled workers and experienced recruitment agencies, have transformed the economically important recruitment system into an industry rife with abuse. Recruitment agencies routinely mislead workers as to the type and terms of employment, charge workers recruitment fees, withhold passports or other documents, detain workers who are between contracts, fail to report abuses by employers, and continue to place workers with employers known to abuse their employees. Some recruitment agencies also engage in human trafficking, verbal, physical, and sexual abuse, and forced labor.¹⁵

The Standardized Unified Contract

Because MDWs are excluded from labor laws, their employment relationship is governed exclusively by the contract they sign with their employer. The Ministry of Labor (MOL) has instituted a policy mandating that all MDWs sign the same contract, the so-called Standard Unified Contract (SUC)—although this requirement, like others, is inconsistently enforced. Under the terms of the SUC, the employer is legally responsible for providing accommodations to the MDW and the worker in turn commits to work exclusively in the home of the employer.

The contract terms themselves are insufficient to protect either workers or employers from ambiguity and resultant disputes. For example, the current contract terms note that working hours should not exceed an average of ten non-consecutive hours per day, with at least eight continuous hours of rest at night. However, there is no space to specify which hours the MDW is expected to work. Likewise, there is no space in the contract for employer and employee to agree upon the twenty-four-hour rest period or the method of payment. This ambiguity contributes to frequent disputes about working hours, rest days, and payment. The SUC also fails to clarify certain rights that MDWs hold, such as the right to freedom of movement and the prohibition on

14 The law defines domestic violence as “an act, act of omission, or threat of an act committed by *any family member* against one or more *family members*... related to one of the crimes stipulated in this law, and that results in killing, harming, or physical, psychological, sexual, or economic harm.” (emphasis added).

15 Migrant-Rights.org (2014, April 5). *Ethiopian Domestic Worker “Disciplined” by Rape in Lebanon*. Retrieved from <https://www.migrant-rights.org/2014/04/ethiopian-domestic-worker-disciplined-by-rape-in-lebanon/> (accessed 19.02.19)

charging recruitment fees to workers. The frequent violations of these rights—through locking in and/or the deduction of recruitment fees—can be partially traced to lack of knowledge by both parties of the rights to which workers are entitled.¹⁶

In addition, DGGS and employers consistently interpret the contract to require cohabitation. However, examination of the contract text reveals that this requirement has no legal basis. The contract provides that the employer will “meet the requirements and conditions of decent work and fulfil [the worker’s] needs, including ... accommodations with which his/her dignity and right to privacy are respected.”¹⁷ This clear text requires only that the employer ensure that the worker has a decent place to live, not that they live together.

In consultative meetings with ALEF, DGGS has justified this interpretation with reference to unspecified “security threats” presented by MDWs living independently.¹⁸ They also argue that an independent residency raises the risk that the MDW will illegally work for more than one employer.

As a result of this interpretation, workers are extremely vulnerable to their employers: they may be locked inside the house, denied access to communications, and provided with substandard living conditions including windowless rooms or the floor of a common space such as a kitchen.¹⁹ Living inside their employer’s house also heightens the risk of other abuses, from violations of working hours limitations to sexual harassment and abuse to physical violence.

Barriers to Justice

The link between sponsor and legal residency and the contractual interpretation that mandates co-habitation contribute to a near total lack of access to justice for MDWs. First, restrictions on movement and communication enabled by cohabitation prevent workers from reporting abuse. Employers’ nearly universal practice of withholding workers’ identity documents as collateral against worker termination of the contract effectively prevents many workers from attempting to leave abusive situations, and renders them literally undocumented if they escape.²⁰ Those who

16 Saad, B. (2016, November 30). *The 5m² Maid’s Room: Lebanon’s Racist, Gendered Architecture*. Failed Architecture. Retrieved from <https://failedarchitecture.com/the-5m2-maids-room-lebanons-racist-gendered-architecture/> (accessed 19.02.19).

17 Work Contract for Migrant Domestic Workers, Unified Contract Decree No. 19/1 dated 31/12/2009, ¶8.

18 Consultative meeting between ALEF and DGGS (2018, October 16).

19 ILO (2016). *A Study of the Working and Living Conditions of MDWs in Lebanon – “Intertwined: The Workers’ Side”*. p. 27, 30. Retrieved from https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_524143.pdf (accessed 19.02.19) (“Only half of the [surveyed] MDWs have their own sleeping quarters. In other words, around half of the interviewed MDWs suffer from a complete lack of privacy at any time of the day...Around a quarter of the respondents reported that they were either always or sometimes locked inside the house...”). Saad, B. (2016, November 30). *The 5m² Maid’s Room: Lebanon’s Racist, Gendered Architecture*. Failed Architecture. Retrieved from <https://failedarchitecture.com/the-5m2-maids-room-lebanons-racist-gendered-architecture/> (accessed 19.02.19).

20 ILO (2016). *Intertwined: A Study of Employers of Migrant Domestic Workers in Lebanon*. p. 36. Retrieved from https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_524149.pdf (accessed 19.02.19). 95% of employers reported confiscating their workers’ passports, and more than 80% acknowledged that their employee could not recover her documents if she wanted them. Many employers cited the mistaken belief that the SUC grants them the right to confiscate documents; many others explained that the recruitment agency explicitly advised them that they have the right to confiscate documents and that this action was recommended.

do manage to report mistreatment are regularly met with hostility or apathy by authorities.²¹ Employers often respond to accusations of abuse with charges of theft, or by initiating criminal “runaway” charges—although leaving the employer’s home does not constitute a crime under the Lebanese Penal Code.²² Because the sponsorship system ties workers to their employers, employees who manage to escape abusive situations are nevertheless labeled “runaways” and are often simply returned to their employer without further investigation.

If workers do manage to report abuse, most face insurmountable obstacles to justice. First, the SUC contains explicit barriers in the form of differential standards of proof for employers and employees. The contract can be broken by the employer in cases of “mistake, neglect, assault or threat” by the MDW against the employer, when the worker causes “any damage to the interests of the [employer] or a member of his/her family,” or if the worker is convicted of an offense under Lebanese law.²³ No procedural or evidential minimum standards for employers to break their contract with the employee are specified in the contract.

In contrast, the contract can be broken by the worker if the employer fails to pay the worker’s wages, if the employer non-consensually employs the worker outside the home, or if the employer, a family member, or household resident “beats, assaults, sexually abuses or harasses” the worker—but only if such abuse “has been established through medical reports given by a forensic physician and investigation records provided by the Judicial Police or the Ministry of Labor.”²⁴

In short, whereas no procedures are specified to verify employer claims of employee misconduct, both medical reports and investigatory records are required to support allegations of employer misconduct. Furthermore, these requirements make it literally impossible for an employee to escape certain cases of abuse or harassment, including sexual harassment, because these forms of abuse do not generate medical evidence that could be documented by a forensic physician.²⁵ These disparate standards of proof block access to justice for workers.

The disparity is nominally justified with reference to the “investment” of the employer. Since they have usually paid high fees to recruit the worker, some employers argue that the contract should make it difficult for the worker to leave, in order to ensure the employer can enjoy “returns” (in the form of domestic services) on the recruitment fees paid.

This understanding of the employment relationship violates workers’ fundamental rights to “free choice of employment, ...[and]...to just and favorable conditions of work,” rights guaranteed in the Universal Declaration of Human Rights and affirmed in the Lebanese constitution.²⁶

21 Human Rights Watch (2010, September 16). *Without Protection – How the Lebanese Justice System Fails Migrant Domestic Workers*. Retrieved from <https://www.hrw.org/report/2010/09/16/without-protection/how-lebanese-justice-system-fails-migrant-domestic-workers#> (accessed 19.02.19).

22 El Mufti, K. (2011, October). *False Allegations of Theft Commonly Filed by a Lebanese Sponsor/Employer Against ‘Runaway’ Migrant Domestic Worker: A Legal Study*: p. 7f. Caritas Lebanon Migrant Center. http://mfasia.org/migrantforumasia/wp-content/uploads/2017/04/Annex-II-MDW_False-Theft-Study_Final-Version.pdf (accessed 19.02.19).

23 Work Contract for Migrant Domestic Workers, Unified Contract Decree No. 19/1 dated 31/12/2009, ¶ 16.

24 Work Contract for Migrant Domestic Workers, Unified Contract Decree No. 19/1 dated 31/12/2009, ¶ 17.

25 Human Rights Watch (2010, September 16). *Without Protection – How the Lebanese Justice System Fails Migrant Domestic Workers*. Retrieved from <https://www.hrw.org/report/2010/09/16/without-protection/how-lebanese-justice-system-fails-migrant-domestic-workers#> (accessed 19.02.19).

26 UDHR Article 23(1); preamble.

All workers have the right to leave employment—though certain contractual penalties may apply in some circumstances. There is a word for employing someone forcibly against their will: slavery. This too is prohibited by international and constitutional law.²⁷

Employers suffer from this construction of the employment relationship as well. By restricting the circumstances in which either party can terminate the relationship, the contract limits the employer's ability to find an employee with whom they get along. And by forcing workers to remain in positions they wish to leave unless they can prove—through “medical reports... and investigation records”—that the situation is abusive, the contract constructs a toxic working environment. This is particularly problematic in a domestic context, where the worker is employed within the employer's private home. Here, the value of a productive, trusting, and mutually-respectful working relationship is at its highest. Yet the contract poisons the work relationship by constructing the employee as one who must be restrained and the employer as a jailer.

Yet another barrier to justice comes from the link between residency and individual employers. Because a worker's residency permit is linked with their employer, they may be detained by DGGS for the duration of any legal proceedings. These detained workers are regularly denied access to an attorney because they are placed in administrative detention, where current DGGS policies deny access to attorneys. As a result, most MDWs do not know their rights or are unable to assert them.

Alternatively, workers who seek to press charges may be deported before their cases are resolved, and there are no provisions in place for workers to testify or otherwise pursue their complaints from abroad. These cases are therefore closed without resolution, depriving employees of years' worth of unpaid wages, justice for physical or other abuse committed against them, or both. Even if not detained or deported, MDWs cannot legally work during litigation unless they can secure a new sponsor (with the permission of their previous employer), leaving them with no means to support themselves or pay for court and attorneys' fees. The result of these practices is impunity and rampant abuse, as employers know that exploitation will almost certainly go un-punished.

This impunity can be seen in prosecution statistics. In a review of 114 court cases involving MDWs, Human Right Watch found that only twenty-one cases were brought by workers against their employers, despite widespread and well-documented abuse by employers.²⁸ Of these twenty-one, the thirteen criminal cases took an average of twenty-four months to be resolved—a period during which the MDW was likely detained, and could not work. Moreover, in the cases reviewed, Human Rights Watch found no instances of prosecutions for certain types of serious abuse, including “locking in,” passport confiscation, overwork, and denial of food, despite official allegations by MDWs of these practices on the record.²⁹

27 UDHR Article 4: “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”

28 Ibid.

29 Ibid.

The passage in 2011 of the anti-human trafficking law was intended to address all forms of trafficking, including the kind of labor exploitation MDWs tend to face. However, between 2015 and 2017, only two cases of exploitation of domestic workers were reported by the Anti-Human Trafficking and Morals Protection Bureau. No prosecutions were reported related to these cases.³⁰

Discrimination

MDWs face discrimination on the basis of race, sex, and nationality. Because MDWs are excluded from the 1946 Labor Law, their work permits are governed by MOL and DGGs decree—and these decrees implicitly discriminate on the basis of sex. The industry also suffers from pervasive racial discrimination.

MOL Decree No. 42/2 of 1971 divides migrant workers into four categories depending on the nature of their work and their salary.³¹ These categories are not explicitly discriminatory, but when read in conjunction with the DGGs requirements for obtaining a residency, the categories reinforce the twin ideas that domestic work is inherently female and that it is less valuable than other types of work.

Under the MOL decree, domestic workers fall into the fourth category of foreign workers. These work permits are issued exclusively to “domestic workers” whose wage is less than the Lebanese minimum wage.³² “Domestic workers,” in turn, are defined by the DGGs requirements for obtaining residency as this type of worker. In order to apply for a residency, the worker and their employer must submit their passports and other documentation. They must also pay the residence fee, which explicitly distinguishes between male and female workers: the fee is set at 300.000 Lebanese pounds for a female domestic worker and 400.000 for a male domestic worker.³³ However, the text of these requirements in Arabic uses the female word for worker, “عاملة,” when listing the requirements for both male and female workers.³⁴ In contrast, throughout other similar publications, DGGs regulations are careful to include both male and female forms of relevant nouns.

Codifying one class of workers as subject to less-than-minimum wages reinforces the idea that this work does not need to be remunerated at similar rates to other work—that there is something fundamentally different about domestic work that makes it possible to pay these workers less. The residency permit requirements, meanwhile, reveal the conviction that this work is inherently female—even male workers who might theoretically perform the work are designated using the female construction.

30 Frangieh, G. (2018, September 18). *Human Trafficking Crimes Before the Court: In the Shadow of Prosecution*. Legal Agenda. Retrieved from <http://legal-agenda.com/en/article.php?id=4828> (accessed 19.02.19).

31 Category 1 workers are expert or professional workers whose salaries exceed three times the Lebanese minimum wage (450 USD per month). Category 2 workers are workers whose salary ranges from two to three times the minimum wage, as well as media correspondents and technical personnel regardless of salary. Category 3 workers are those whose salaries range from the minimum wage to double the minimum. Decree No. 2900 dated 31/10/1992 (Formation of Government); Decree No. 17561 dated 18/9/1964 (Organization of the Work of Foreigners); Law No. 61/88 dated 12/8/1988 and amendments.

32 Ibid.

33 General Security. *Domestic Workers*. Retrieved from <http://www.general-security.gov.lb/ar/posts/23> (accessed 19.02.19).

34 Id. (عاملة في الخدمة المنزلية “ذكر” 400 000-ل. ل. عاملة في الخدمة المنزلية “أنثى” 300 000-ل. ل.).

Together, these regulations codify stereotypes that domestic work is both inherently female and inherently of low value. The regulations implicitly endorse assumptions about domestic work and about women—including ideas about the low value of domestic work, women’s place in the home, and who is fundamentally suited to perform domestic labor. In this way, the terms of the labor decree impede gender equality not only for MDWs but for all Lebanese women and men.

The MOL implicitly recognizes the gender-specific vulnerability that this system produces by prohibiting single men who live alone from hiring MDWs. This prohibition demonstrates that the MOL understands that mandating cohabitation for an all-female set of workers with their employers places the workers at risk of exploitation. However, it misunderstands the extent, causes, and limits of this risk. The risks that would be faced by MDWs in a home alone with a single male employer are also faced by MDWs living with families, couples, or single women, as demonstrated by the rampant abuses—including widespread sexual harassment and assault³⁵—which persist in this industry despite the hiring restriction. The risks are generated by the cohabitation requirement and by the officially-sanctioned discrimination embodied in the wage and residency regulations of DGGS and MOL, regulations which implicitly endorse gendered stereotypes that contribute to abuse.

Informal practices of racial discrimination also pervade this industry. It is common for recruitment agencies to charge differential amounts for recruitment of MDWs and for wages to vary based on the race or nationality of the worker.³⁶ For example, in one survey, eighty percent of Bangladeshi MDWs earned 200 USD or less per month, while forty percent of Filipinas earned 400 USD or more per month.³⁷ More than a quarter (twenty-seven percent) of Ethiopian workers earned only 150 USD per month.³⁸

Some of these disparities are nominally justified with reference to differential rates of education among sending countries—workers from the Philippines are regarded as more likely to be literate, for example. But these justifications are based on stereotypes—recruitment agencies do not charge more for individual workers who are actually literate; rather, they charge more for populations considered as a whole to be more literate.

Other wage disparities can be traced to the policies of sending countries. The Philippines has imposed a minimum wage which nominally guarantees its nationals employed as MDWs a monthly wage of 400 USD. Yet only thirty-seven percent of Filipinas earn the minimum wage, indicating poor enforcement of contractual wage guarantees. Other sending countries have not imposed minimum wage standards.³⁹

35 Human Rights Watch (2010, September 16). *Without Protection – How the Lebanese Justice System Fails Migrant Domestic Workers*. Retrieved from <https://www.hrw.org/report/2010/09/16/without-protection/how-lebanese-justice-system-fails-migrant-domestic-workers#> (accessed 19.02.19). All three accounts of rape documented by Human Rights Watch in this report were perpetrated by married men living in a household with both male and female members.

36 ILO (2016). *A Study of the Working and Living Conditions of MDWs in Lebanon – “Intertwined: The Workers’ Side”*: p. 19-20. Retrieved from https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_524143.pdf (accessed 19.02.19)

37 Ibid.

38 Ibid.

39 Ibid., p. 19.

This patchwork approach to wages contributes to discrimination within the industry. The nationals of less-powerful countries—those unable to negotiate and enforce minimum wage rates—receive substandard wages for identical work, as a result of their home country’s relatively disadvantaged bargaining position. The differential rates contribute to stereotypes about the value or quality of workers, creating a labor market where wages depend on race or nationality rather than services provided.

Informally, racist and sexist stereotypes pervade the industry as well. These stereotypes manifest in countless ways, from gendered verbal abuse⁴⁰ to residence restrictions based on vague “security threats,”⁴¹ to passport confiscation based on claims that these workers are particularly prone to losing their documentation,⁴² to casual and unfounded claims that if the workers are permitted freedom of movement, they will engage in prostitution.⁴³

Race- and sex-based discrimination constitute violations in their own right, and substantively contribute to many of the other violations these workers face. These violations include sexual harassment and assault by employers, recruitment agencies, and authorities. In a survey, the ILO found that two percent of workers reported being sexually abused by their employer, while one percent reported being forced to provide sexual favors.⁴⁴ However, the ILO notes that “It is likely that the shares are much higher in reality because such abuses tend to be underreported.”⁴⁵ In other surveys, eleven percent of workers reported sexual harassment by their employer, including groping and being forced to watch pornography.⁴⁶ Cases of rape are rarely reported due to stigma and the control exerted over employees by employers, but Human Rights Watch documented at least three cases of rape in 2010 interviews.⁴⁷

The vulnerability generated by the legal and policy environment places MDWs at risk for systematic sexual exploitation outside the workplace as well. Workers seeking to escape abusive conditions become extremely vulnerable when they lose their legal residency, and criminal associations take advantage of this vulnerability to traffic workers into the sex trade.⁴⁸ Here, racism plays out in perverse disparities of “price.” One trafficker explained in an interview, “Let me tell you how it works...I charge \$30 for a Filipino and \$20 for an Ethiopian. You give me the money, and I make the call.”⁴⁹

40 Human Rights Watch (2010, September 16). *Without Protection – How the Lebanese Justice System Fails Migrant Domestic Workers*. Retrieved from <https://www.hrw.org/report/2010/09/16/without-protection/how-lebanese-justice-system-fails-migrant-domestic-workers#> (accessed 19.02.19) (reporting that “A Filipina worker told Human Rights Watch, ‘Madame called me a sharmouta [whore] because I did not clean the cupboard properly.’”)

41 Consultative meeting between ALEF and DGGs (2018, October 16).

42 Consultative meeting between ALEF and Embassies and Consulates of Sending Countries (2018, October 12).

43 Consultative meeting with Ministry of Labor (2018, October 10) (Summarizing DGGs perspective).

44 ILO (2016). *A Study of the Working and Living Conditions of MDWs in Lebanon – “Intertwined: The Workers’ Side”*: p. 31. Retrieved from https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_524143.pdf (accessed 19.02.19).

45 Ibid.

46 Human Rights Watch (2010, September 16). *Without Protection – How the Lebanese Justice System Fails Migrant Domestic Workers*. Retrieved from <https://www.hrw.org/report/2010/09/16/without-protection/how-lebanese-justice-system-fails-migrant-domestic-workers#> (accessed 19.02.19).

47 Ibid.

48 Nashed, M. (2014, May 17). *To be Raped or To Become a Prostitute in Beirut*. Vice News. Retrieved from https://news.vice.com/en_us/article/59aj7z/to-be-raped-or-to-become-a-prostitute-in-beirut (accessed 19.02.19)

Quoting a taxi driver who ferries human trafficking victims between their trafficker and “buyers”: “Some of the foreign girls didn’t have a choice...Even if they didn’t want to have sex, what could they do? Run to the police?”

49 Ibid.

Overburdened Employers and A Weakened State

In sum, the legal and administrative framework contributes to the vulnerability of MDWs in a variety of ways. But the harms are not limited to workers. Employers and the state are exposed to increased risks by this system as well.

Employers

Under the sponsorship system as it is currently implemented, employers pay high fees to recruitment agencies in order to hire a migrant worker, generally without interviewing or exchanging any significant information with the worker. Once they are matched with an employee, there is a three-month trial period, following which neither the employee nor the employer is free to alter the employment relationship for the duration of the year-long contract. This rigidity contributes to inefficiency and abuses: unable to terminate the contract if the relationship deteriorates and having paid substantial recruitment fees, employers frequently confiscate identity documents, restrict movement, or lock employees in the house in order to “protect their investment.”

Furthermore, the linking of employment contracts with immigration status shifts state responsibilities—managing the flow of migrant workers and their presence in the country—onto the shoulders of individual private citizens. Employers, as sponsors, assume responsibility for every aspect of their employee’s well-being, from housing to medical care. Many employers also wrongly believe that any criminal acts by the MDW are legally attributable to the employer, who can be investigated and fined for the misdeeds of their employee.⁵⁰ Although this impression of legal liability is incorrect, employers may be investigated and questioned if their employee commits a crime.⁵¹ Interviews with Lebanese employers conducted by the International Labour Organization (ILO) reveal that nearly one third (29.9%) of employers find this burden excessive.⁵² One employer explained, “Kafala is not good for the employer because it throws the responsibility on him. This is a huge responsibility. We are talking about taking care of an individual.”⁵³

This misallocation of responsibility, like the rigid contracts, encourages abuse. Seeking to limit their liability, employers are incentivized to restrict their workers’ freedom of movement. Employers also shoulder responsibility for immigration decisions: if an employer decides to break the contract, the worker loses their legal residency status. Employers are thereby tasked with administering not only their own households, but the migration policy of Lebanon.

50 ILO (2016). *Intertwined: A Study of Employers of Migrant Domestic Workers in Lebanon*. p. 39. Retrieved from https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_524149.pdf (accessed 19.02.19).

51 ALEF consultative meeting with legal expert Lara Saade (2017, August 8).

52 ILO (2016). *A Study of the Working and Living Conditions of MDWs in Lebanon – “Intertwined: The Workers’ Side”*: p. 25. Retrieved from https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_524143.pdf (accessed 19.02.19).

53 Ibid.

The Lebanese State

The state of Lebanon also suffers from this misallocation of responsibility. Rather than setting a unified immigration policy, the state is subject to uncoordinated and unregulated migration based on the aggregated employment decisions of private citizens. For example, even in cases of demonstrated abuse, DGGs lack the power to waive the requirement that the first (abusive) employer give permission in order for another sponsor to take over. This chaotic system means that the state cannot plan for or even influence migration flows; it has ceded this power to individual employers. Misinformation and corruption in the recruitment system further weakens the state as recruiters use false documents, elaborate travel itineraries, and bribery to mislead and traffic workers, and to evade entry bans imposed by sending countries.⁵⁴ Such corruption delegitimizes the state and undercuts rule of law.

As a result, the state cannot reliably know who is entering and leaving the territory, or for what purposes. It cannot plan for migration flows, offer protection to either workers or employers, or negotiate with foreign states regarding the treatment of their nationals in Lebanon. The state cannot fulfill its prerogatives as a state as long as this fragmented system persists.

Proponents of the sponsorship system argue that it is necessary in order to protect national security. They claim that designating employers as the legal caretakers of their employees will incentivize them to control their employees' behavior and will provide the state with a citizen point of contact for each migrant worker in the country.

However, the simple fact is that this system is not working. National security is undercut, not improved, by allocating migration decisions to private citizens. Meanwhile, employer impressions of legal liability for employee behavior *over-incentivizes* employer control, which leads directly to human rights abuses such as locking employees inside the house. This practice in turn forces MDWs to take desperate measures to protect their own rights by "running away." As noted above, required cohabitation means that MDWs who leave their employers' homes—even to escape abusive conditions—lose their legal residency status, and because many employers also confiscate passports, these workers are left completely undocumented.

It is this situation—in which undocumented workers have no means to regularize their status—that creates national security risks and undercuts national labor policies. These workers are forced to adopt crisis coping mechanisms to survive. In consultative meetings, the Ministry of Labor has acknowledged this pattern, noting that many workers remain in the country without documentation, working informally until they can raise the funds to pay the fines that have accrued due to their undocumented status.⁵⁵ These workers become extremely vulnerable to human trafficking, forced prostitution, and other exploitation, and the state has no means whatsoever to monitor or regulate their behavior. In short, the link between immigration status and employer produces the very result that national security agencies seek to avoid.

54 Human Rights Watch (2010, September 16). *Without Protection – How the Lebanese Justice System Fails Migrant Domestic Workers*. Retrieved from <https://www.hrw.org/report/2010/09/16/without-protection/how-lebanese-justice-system-fails-migrant-domestic-workers#> (accessed 19.02.19).

55 ALEF Consultative meeting with Ministry of Labor (2018, October 10).

Legal Obligations

The legal system, labor practices, and informal behaviors described above contravene Lebanon's international, constitutional, and domestic legal obligations. The ongoing and increasingly public violations of these obligations tarnish Lebanon's international reputation and weaken the authority of the state. Reforms to these laws, practices, and behaviors are necessary if Lebanon is to live up to its own commitments.

International Law

Lebanon is a party to numerous international human rights conventions which protect the rights of persons on its territory. These include the Universal Declaration of Human Rights (UDHR), International Convention on Civil and Political Rights (ICCPR), International Convention on Economic, Social, and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and International Convention on Elimination of All Forms of Racial Discrimination (ICERD) as well as Conventions 105 and 111 of the International Labor Organization (ILO) dealing with abolition of forced labor and discrimination in employment respectively.

These instruments commit Lebanon to the protection of life, liberty, and security,⁵⁶ dignity,⁵⁷ access to justice,⁵⁸ freedom of movement,⁵⁹ respect for voluntary employment and the prohibition of forced labor,⁶⁰ the right to unionize,⁶¹ and freedom from discrimination on the basis of sex or race.⁶²

During the recent Universal Periodic Review of Lebanon's compliance with its human rights commitments, numerous recommendations were addressed to the conditions faced by MDWs in Lebanon. International partners urged Lebanon to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,⁶³ as well as various ILO Conventions protecting labor rights and the right to unionize.⁶⁴ Nations also recommended that Lebanon increase its efforts to eliminate gender discrimination,⁶⁵ arbitrary detention and mistreatment of migrants,⁶⁶ human trafficking,⁶⁷ and to improve working conditions.⁶⁸ Denmark, Norway, and France explicitly recommended the abolition of the kafala sponsorship system;

56 UDHR Art. 3.; ICCPR Art. 6, 9, 11 (Prohibiting imprisonment "merely on the ground of inability to fulfil a contractual obligation.")

57 UDHR Art. 1; ICCPR Art. 17.

58 UDHR Art 6, 7, 8, 9, 10; ICCPR Art. 2(3), 14.

59 UDHR Art. 9, 13; ICCPR Art. 9, 12, 13.

60 UDHR Art 4, 23; ICCPR Art. 8; ICESCR Art. 6, 7; ILO Convention Art. 105.

61 ICCPR Art. 22; ICESCR Art. 8

62 UDHR Art. 2, 7, 23; CEDAW Art. 2, 3, 11; ICCPR Art. 2(1), 3, 26; ICESCR Art. 2(2), 3; ICERD Art. 2; ILO Convention Art. 111.

63 UPR. *Database of Recommendations*. Retrieved from https://www.upr-info.org/database/index.php?limit=0&f_SUR=94&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=300&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly (accessed 19.02.19) (Recommended by Senegal, Honduras, Madagascar, Sierra Leone, Philippines, and Uruguay).

64 Ibid. (Recommended by Philippines, Sweden).

65 Ibid. (Recommended by Italy, Laos, Pakistan, Uruguay, Serbia, Chile, Djibouti, Croatia, Singapore, Algeria, Spain, South Korea, Spain, Norway, Algeria, Bahrain, Syria, the United States)

66 Ibid. (Recommended by Ghana, Ecuador).

67 Ibid. (Recommended by Australia, Greece, Jordan, Qatar, Moldova, Russia, Nicaragua, Iran, Bahrain, Jordan, Sri Lanka).

68 Ibid. (Recommended by Madagascar, Nigeria, Iraq, Saudi Arabia).

the United States urged Lebanon to amend its labor code to “extend legal protection to domestic workers equal to other workers, and to reform the visa sponsorship system so that workers can terminate employment without sponsor consent.”⁶⁹ France likewise urged Lebanon to “extend the protection of the Labour law to domestic workers and ensure that the rules concerning the right to stay do not put them in a situation of dependence from their employers.”⁷⁰ Others, including many sending countries of MDWs, recommended broadly that Lebanon improve the legal situation of migrant workers, especially migrant domestic workers.⁷¹ These recommendations articulate Lebanon’s international legal commitments as specifically applied to MDWs—and the ways in which Lebanon’s policies currently fall short of their commitments.

Constitutional Law

The Lebanese Constitution explicitly incorporates international law as binding domestic law: “Lebanon is...a founding and active member of the United Nations Organization and abides by its covenants and by the Universal Declaration of Human Rights. The Government shall embody these principles in all fields and areas without exception.”⁷²

The Constitution also affirms principles of justice, human rights, and liberty: “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.”⁷³ Freedom of expression and of assembly and association are also constitutionally guaranteed.⁷⁴ These guarantees apply to everyone, not only Lebanese citizens.

In 2014, a Judge of Urgent Matters explicitly applied these constitutional guarantees to a case of employer abuse of a MDW.⁷⁵ The judge ordered an employer who had confiscated a MDW’s passport to return the document immediately. This judge cited Lebanon’s constitutional commitment to both international legal instruments—including the UDHR, ICCPR, and ICERD—and constitutional principles of liberty which prohibit restrictions on movement except as prescribed by law.⁷⁶ The judge noted that in this and similar cases, MDWs’ passports are confiscated by a private employer rather than a public official for the express purpose of restricting the movement of the worker. The judge concluded that this practice violates the Lebanese Constitution, stating that “any restriction of freedom can only take place in exceptional cases, in accordance with a legal text, on the part of a public authority and under the supervision of a legal one.”⁷⁷

69 Ibid.

70 Ibid.

71 Ibid. (Recommended by Austria, Bangladesh, Kenya, Albania, Sri Lanka, Senegal, Philippines, Iran, Brazil, Algeria, Norway, Poland, Canada, France).

72 The Lebanese Constitution, Preamble ¶ 2. See also Constitutional Court Decision 2/2001 10 May 2001 Appeal by Nazh Mansour et al v. Article 1 Law 296/2001, available at <http://www.cc.gov.lb/node/2584>

73 Lebanese Constitution, Article 8.

74 Ibid. Article 13 (“The freedom to express one’s opinion orally or in writing, the freedom of the press, the freedom of assembly, and the freedom of association shall be guaranteed within the limits established by law”).

75 Jad Maalouf, Summary Affairs Judge in Beirut (2014, August 14) Domestic Worker Passport Ruling In the Name of the Lebanese People. Retrieved from <http://legal-agenda.com/en/article.php?id=640&folder=articles&lang=en#.U-ypwaNacRQ> (accessed 19.03.19).

76 Ibid.

77 Ibid. See also Lebanese Constitution, Article 8.

In short, the state of Lebanon has a constitutional obligation to respect and ensure that the rights of all persons on Lebanese territory, including MDWs, are being respected in accordance with international human rights law and their own constitutional guarantees. The state has a further obligation to ensure accountability for violations.

Domestic Law

In addition to the international legal commitments Lebanon has made and enshrined in its constitution, the current treatment of MDWs contravenes domestic laws, both criminal and civil. These laws include general prohibitions on physical assault, including assaults which lead to death (Articles 550, 554 – 559). Other laws criminalize sexual assault (Article 503 – 506) and forced prostitution (Article 525 – 526).

As of 2011, Lebanon specifically prohibits human trafficking (Law No. 164 of August 24, 2011, Article 586(8)). This law exempts the victims of human trafficking from sanctions for illegal residency and should therefore prevent deportations of workers subjected to trafficking from deportation. Lebanon also has specific laws criminalizing “abuse of trust” or “abuse of confidence” (Article 670 – 673) which apply to withholding of wages or passports. Although domestic workers are excluded from the Labor Code, the Labor Arbitration Council has held that it enjoys jurisdiction over contractual disputes involving domestic workers, including non-payment of wages.⁷⁸

These laws apply with equal force to the employers of MDWs as they do to any person in Lebanon and both criminal and civil courts as well as the Labour Arbitration Council have jurisdiction over the violations. Yet the laws are systematically violated in the context of domestic work, as detailed in the Background section. The failure to enforce domestic laws undercuts rule of law generally. It is in the interest of all Lebanese citizens and residents that police, courts, and employers abide by and enforce the laws as written.

78 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. See also Nasri, A. & Tannous, W. (2014). *Access to Justice for Migrant Domestic Workers in Lebanon*. ILO. Retrieved from <http://www.labor.gov.lb/Temp/Files/574b61dd-1233-4507-9da1-d4a3e3a6129a.pdf> (accessed 19.02.19); ILO (2016). *A Study of the Working and Living Conditions of MDWs in Lebanon – “Intertwined: The Workers’ Side”*: p. 17. Retrieved from https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_524143.pdf (accessed 19.02.19).

Reforms

Legal Reform

The first category of reforms recommended by the Framework is legal. Although numerous international, constitutional, and domestic laws nominally prohibit abuse (as detailed above), other laws fail to protect workers and create conditions of impunity for violations. Reform will require changes in these laws and policies.

Separate Residency from Contract

As described above, linking MDWs' legal residency to their employer produces myriad abuses, overburdens employers, and weakens the state. The single most essential reform, therefore, is to decouple the legal residency from the individual employer. The Framework proposes that the DGGS and MOL remove the requirements related to sponsors from regulations governing applications for visas, residency, and work permits for MDWs.

As described in the *Sponsorship* section above, the applications required by DGGS and MOL for visas, residency permits, and work permits all require that workers specify an "interested party," or sponsor. This requirement forms the key legal and administrative link between employer and legal status.

This Framework recommends the elimination of this link. Under the proposed reformed system, no sponsor will be designated in labor permits, visas, or residency permits. DGGS will review MDWs' documents prior to their arrival in Lebanon to screen for security concerns (and for human trafficking indicators). The MOL, in turn, will review MDWs' applications in order to monitor and execute national labor policies, including ensuring that the Standardized Unified Contract (SUC) is consistently used, and will regulate the flow of labor into the country. Visa applications should simply indicate that the prospective MDW is employed and by whom, and should note the recruitment agency (if any) that facilitated the employment. The employer's name should be noted in the visa application to facilitate follow-up by DGGS and MOL. But neither the residency nor the labor permits should be tied to the individual employer, nor should they require that the employee remain with a specific employer in order to be granted or to renew a permit.

The three-month entry visa will coincide with the trial employment period: during this time, either the employer or the worker can terminate the contract for any reason without penalty. Upon the expiration of the three-month visa, the employee will apply for a year-long residency permit if they wish to remain in Lebanon with the same employer. If not, they will be able to seek another employer in Lebanon (see *infra*, *Implement a Grace Period*) or to return to their home country. Termination of the original contract following the three-month trial period should be adjudicated by the Labour Administration Council (see *infra*, *Reform Dispute Settlement*).

The key distinction between the proposed system and the current system is that the employee's relationship to the employer will be strictly contractual. The employee's immigration status will not depend on their contract with a single employer.

This reform will rebalance the relationships among the employee, employer, and the state. Employers will know that they do not bear limitless legal liability for the acts of their employees, nor will they be tasked with administering labor and migration policies that should properly fall to the state. The MDW's legal residency status will no longer be tied to a single employer, enabling employees to extricate themselves from abusive situations without fear of deportation or prosecution. Violations of the labor contract by either party will be dealt with as exactly that: contract violations, with appropriate contractual remedies (see *infra*, *Reform Dispute Settlement*). Finally, under the reformed system, DGGs and the MOL will be fully empowered to regulate and monitor the presence of foreigners in Lebanon, preserving state prerogatives rather than allocating them to private employers.

Implement a Grace Period

Currently, the link between residency and employer means that any break in employment—no matter how brief, and no matter how long is left on the residency permit—invalidates the residency. This system contributes to impunity for employers: in response to any dispute, the employer can simply terminate the employment, subjecting their former employee to detention or deportation. It also produces inefficiencies in the labor market: employers cannot locate and employ experienced workers because any available workers (those not currently employed) automatically lose legal status and are deported or forced into the margins of society.

Under the proposed Protection Framework, the MDW's immigration status will be decoupled from a particular employer. Immigration status will instead depend on employment status: in order to remain in the country with this immigration status, the worker generally must be employed. However, a reasonable period of time must be provided for the worker to secure new employment in situations where the employment relationship changes, including cases in which the contract is broken because of violations or abuse.

Accordingly, this Protection Framework recommends a grace period of one month between periods of employment for MDWs. Upon the termination of the previous contract, the worker would inform the MOL of the contract termination and update their place of residence with DGGs, if necessary. During the grace period, the MDW must seek new employment. Their residency will remain valid for the duration of the grace period, enabling them to search for employment freely and without fear of deportation.

This system will enable MDWs to extricate themselves from abusive situations and enhance MDWs' access to justice by allowing them to remain in the country legally and find new employment while contractual or legal disputes are resolved. It will also benefit employers, who will be able to secure the services of experienced MDWs already present in Lebanon rather than being forced to start the recruitment process from scratch (and pay the hefty recruitment fees) each time they seek a new employee. Finally, the grace period will formalize a process of re-employment that already takes place: MDWs who leave their employer for any reason often remain in Lebanon, working informally without documentation and at high risk for exploitation (see *supra*, *Discrimination and Barriers to Justice*). By providing a grace period in which workers check in with DGGS while seeking work, the state will gain oversight and control over this currently unregulated process.

Reform Dispute Settlement

Judicial delays also contribute to impunity and inefficiency. Even simple disputes between employers and employees take months or years to resolve, if they are resolved at all. Overwhelmingly, these cases are dropped as workers are deported—voluntarily or involuntarily—before the final judgment.⁷⁹

This Framework recommends that contract violations or disputes, such as the non-payment of wages, be referred to the Labour Arbitration Council. This existing quasi-judicial body specializes in labor disputes of all kinds. It therefore has the necessary expertise to resolve labor and contract disputes between MDWs and employers efficiently. In fact, the Labour Arbitration Council has already established that it enjoys jurisdiction over wage disputes between domestic workers—including migrants—and their employers.⁸⁰ However, immigration and detention policies combine to block MDWs' access to this body (see *supra*, *Barriers to Justice*).

To address these issues, the Framework recommends that DGGS refrain from deporting any worker who is engaged in an ongoing legal dispute. If a rapid determination of the worker's residency is required, the case should be referred to a Judge of Urgent Matters for expedited processing.⁸¹ These judges have already demonstrated the capacity to rapidly adjudicate MDWs' cases while taking relevant domestic and international laws into account.⁸² In no case should deportation substitute for substantive justice. Standard wage and labor disputes should be referred to the Labour Arbitration Council for resolution that takes advantage of this body's expertise.

79 Human Rights Watch (2010, September 16). *Without Protection – How the Lebanese Justice System Fails Migrant Domestic Workers*. Retrieved from <https://www.hrw.org/report/2010/09/16/without-protection/how-lebanese-justice-system-fails-migrant-domestic-workers#> (accessed 19.02.19).

80 ILO (2016). *A Study of the Working and Living Conditions of MDWs in Lebanon – “Intertwined: The Workers’ Side”*: p. 18. Retrieved from https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_524143.pdf (accessed 19.02.19).

81 See Articles 579-588 of the Civil Procedure Law. Retrieved from <http://www.legallaw.ul.edu.lb/LawArticles.aspx?LawTreeSectionID=259950&lawid=244565> (accessed 19.02.19).

82 Jad Maalouf, Summary Affairs Judge in Beirut (2014, August 14) Domestic Worker Passport Ruling In the Name of the Lebanese People. Retrieved from <http://legal-agenda.com/en/article.php?id=640&folder=articles&lang=en.U-ypwaNacRQ> (accessed 19.03.19).

In addition, DGGs should amend its policies regarding access to legal council in administrative detention. No matter the reason for detention, access to council is a fundamental right. Anyone detained—whether in criminal, administrative or protective custody—should have access to an attorney. Pro bono attorneys should likewise be permitted to contact detainees to offer their services. To this end, DGGs should also develop a process to enable lawyers to enter detention facilities in order to contact unrepresented clients to offer representation. DGGs should also coordinate with legal service providers including NGOs and the Beirut Bar Association to share a list of available pro bono attorneys and their contact information, in appropriate languages for MDWs to access the information.

Finally, other abuses of MDWs such as physical violence, sexual assault or harassment, restrictions on freedom of movement, and human trafficking constitute violations of criminal and human rights laws in addition to contractual provisions. It is essential that these violations be treated with the seriousness they merit. These cases must be investigated and tried under criminal laws, including the prohibitions on assault and human trafficking in the Penal Code.

Institute Waiver and Normalization Procedures

Further changes to administrative policies should be implemented immediately. First, DGGs should alter the policy that gives employers absolute power over the re-employment of MDWs who exit their contracts for any reason. As it stands, a MDW must secure the agreement of their first employer in order to sign a new contract with a second employer. There is no provision to waive this requirement under any circumstances, even if the first employer is shown to have violated the contract.⁸³ Yet in such cases, the working relationship between the employer and the MDW has generally deteriorated past the point where continued employment in the home of the employer is feasible. Nevertheless, the requirement grants employers control over their employees' lives—and under current policy, even DGGs cannot waive this requirement. The policy deprives the state of fundamental prerogatives to regulate labor relations.

Accordingly, this policy should be revised to allow for DGGs to waive the requirement that the first employer agree to a transfer of sponsorship in cases of demonstrated abuse or contract violations. Instead, DGGs or MOL should be empowered to approve transfers to a new employer without the approval of the previous employer in cases of abuse, contract violations, or ongoing legal proceedings.

The second policy change that could be immediately undertaken under the discretion of DGGs is a process of normalization for the thousands of workers whose legal status has expired, been revoked, or lost. As long as these workers are undocumented, the state cannot regulate, monitor, or protect these workers. The absence of any regularization mechanism also deprives the labor market of this population of experienced workers. Instead of tapping into this existing pool of labor within the country, employers are forced to recruit inexperienced workers from abroad, pay high recruitment fees, and risk a poor match between employee and employer, or to hire undocumented workers through underground or illicit channels.

83 Consultative meeting between ALEF and legal expert Lara Saade (2017, August 8); Consultative meeting between ALEF and DGGs (2018, October 16); General Security. *A Transfer of Guarantor*. Retrieved from <http://www.general-security.gov.lb/en/posts/170> (accessed 19.02.19): "A discharge engagement must be signed by the old employer, and a guarantor commitment must be signed by the new one, both should be done via a notary."

DGGS should provide an immediate path towards normalization for these workers, most of whom are already employed informally. This regularization process would reduce the extreme vulnerability of undocumented workers and improve security and labor regulation. It would also enable employers to recruit these experienced workers locally and legally rather than continually bringing new workers into the country.

Recognize the MDWs' Union

Workers have been active in advocating for their own rights, culminating with the creation of a union with the support of the Federation of Trade Unions of Workers and Employees in Lebanon (FENASOL) and the ILO. The workers submitted a request for MOL recognition of the union in December of 2014, but received no official response. Nevertheless, then-Labor Minister Sejan Azzi stated to press outlets that the union was “illegal.”⁸⁴ The new Minister of Labor has not yet issued a statement regarding the recognition of the MDWs' union.

As noted above, MDWs are excluded from the labor law entirely, and thereby excluded from limitations on foreigners' participation in unionization (see *supra*, *Exclusion from the Labor Code and the Sponsorship System*). Moreover, under Lebanon's international commitments, these workers have the right to unionize.⁸⁵

The Framework recommends that MOL recognize the MDWs union and issue the necessary approvals to permit the union to operate on a basis of equality with other unions, in affiliation with FENASOL. The creation of the union poses no threat to either security or other workers; instead, this union could organize and coordinate the voices within MDWs' communities, enabling them to engage with ministries, recruitment agencies, employers, and civil society efficiently and productively to advance workers' rights.

Pass a Comprehensive Labor Law

Other legal reforms will require more time to implement. Yet these changes are essential to truly transform the industry to protect workers, employers, and the state. These longer-term changes include the passage and implementation of a labor law that provides a firm legal framework for the entire MDW industry and the elimination of legally-sanctioned discrimination.

The labor law must be amended to incorporate the realities faced by MDWs. Parliament must pass and the government must implement a law specifically governing domestic workers, including migrant domestic workers. It is likely not feasible to incorporate these workers into the existing Labor Law—which requires snap inspections of the workplace—given that the workplace in this case consists of private homes. Instead, a law tailored to the particularities of this type of work must be adopted. In shaping such a law, Lebanon need not reinvent the wheel. It should look to the experiences of numerous countries that have found ways to regulate domestic work to protect the interests of workers, employers, and the state. Determining the specific provisions of this law will be a long-term cooperative process, and ALEF stands ready to collaborate with all stakeholders to shape the law.

84 Human Rights Watch (2015, March 10). Lebanon: Recognize Domestic Workers Union. Retrieved from <https://www.hrw.org/news/2015/03/10/lebanon-recognize-domestic-workers-union> (accessed 11.03.2019).

85 ICCPR Art. 22; ICESCR Art. 8.

Although the drafting of a new labor law is a long-term imperative, some elements which must be included in the law are already clear. First, a comprehensive labor law must include the establishment of a uniform minimum wage for MDWs. The existing exemption from wage minimums is nominally justified by the fact that migrant domestic workers are presumed to live with their employer, thereby suggesting that room and board ought to be deducted from their salaries. However, the exemption of MDWs from Lebanese minimum wage regulations produces a patchwork of discriminatory wage rates (see *supra*, *Discrimination*). Meanwhile, the accommodations provided by many employers are substandard.⁸⁶

The comprehensive labor law should include a standard minimum wage for all MDWs, regardless of their country of origin. This wage may be lower than the standard Lebanese minimum wage to reflect the inclusion of room and board in those circumstances where the MDW lives with their employer. However, this reduction should only apply where the employer actually provides adequate and decent living conditions. The Framework recommends that MDWs' minimum wage match the minimum wage for all unskilled migrant workers, with a deduction if the employer establishes, through MOL inspection of the accommodations provided to the worker, that decent accommodations are included in the salary.

Finally, the new labor law must include the elimination of gender-based discrimination. As noted above, the current regulations governing migrant domestic work subtly discriminate on the basis of sex.⁸⁷ This subtle bias is matched by blatant discrimination in recruitment and hiring. The result is that in practice, there are essentially no men employed as MDWs in Lebanon, and gendered stereotypes proliferate within the industry.

This discrimination is arbitrary: the sex or gender of an employee has no bearing on the type of work they perform or the legal protections to which they are entitled. Moreover, the distinction is in violation of Lebanon's legal commitments to non-discrimination in the workplace (see *supra*, *Legal Obligations: International Law*). Finally, workplace distinctions based on gender perpetuate gendered stereotypes for all members of Lebanese society. In sum, DGGS should immediately amend its regulations to remove all distinctions based on gender, and to recognize that workers' ability to perform domestic tasks is unrelated to gender. Any comprehensive labor law must include this recognition. Finally, Lebanon must work to fulfill its international commitments to non-discrimination by protecting all workers—male and female—from discrimination based on gender.

86 ILO (2016). *A Study of the Working and Living Conditions of MDWs in Lebanon – “Intertwined: The Workers’ Side”*: p. 27, 30. Retrieved from https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_524143.pdf (accessed 19.02.19).

87 Decree No. 2900 dated 31/10/1992 (Formation of Government); Decree No. 17561 dated 18/9/1964 (Organization of the Work of Foreigners); Law No. 61/88 dated 12/8/1988 and amendments; General Security. *Domestic Workers*. <http://www.general-security.gov.lb/en/posts/23> (accessed 19.02.19) <http://www.general-security.gov.lb/ar/posts/23>. See analysis *supra*, *Discrimination*.

Establish an Independent Visa System

A revised labor law must also realistically address the issue of freelance work. Freelance work—or working for more than one employer rather than a single employer/sponsor—is currently prohibited because both work and residency permits are tied to the single employer. Nevertheless, many MDWs work for multiple employers. Often, these workers have lost their legal residency status. They are therefore extremely vulnerable to abuse by subsequent employers, authorities, and private citizens. Their undocumented status also complicates the execution of national security and labor policies.

In the short term, those freelance workers who have lost their legal status should be afforded an opportunity to normalize their immigration status (see *supra*, *Institute Waiver and Normalization Procedures*). In the long run, however, a realistic system of migrant work must include the ability to work for more than one employer, including a visa specifically designed for employees who freelance. In this area, Lebanon can draw on the experience of other nations with significant labor migration. Some systems, such as the German approach requiring documentation of everything from rental contracts to projected income to a CV, does not translate to the Lebanese context, where many workers have limited literacy.⁸⁸ Other systems, however, provide useful models.

The French approach to freelance domestic work requires the employee to sign a contract with a management company. This company becomes the technical employer, and arranges invoices, payments, and other paperwork. However, the employee determines their own client list and schedule, empowering workers to determine when and with whom they work.⁸⁹

This Framework recommends that Lebanon adopt a similar system. Under such a system, workers would come to Lebanon under an independent visa and would have the option of signing a contract with one of these management companies; workers who currently freelance informally and without documentation would also be able to normalize their status and sign management contracts if they preferred. The companies would compete to offer the best terms of compensation, insurance, and other benefits to MDWs, but workers would not be required to partner with any management company. Employers could hire workers directly, or could seek a list of qualified workers from the management company. Employers could thereby tailor their employment terms to only those services they require, saving money and reducing the incentive (created by the recruitment-based sponsorship system) to subject MDWs to overwork. Finally, such a system would enable MOL and DGGS to better manage and regulate systems of migration and work by regularizing and structuring already-existing freelance domestic labor.

88 SympatMe. *Getting a Freelance Visa in Germany*. Retrieved from <https://www.sympat.me/steps-getting-freelance-visa-permit-germany/> (accessed 19.02.19).

89 Expatica (2018, December 9). *Becoming a Freelance or Self-Employed Worker in France*. Retrieved from http://www.expatica.com/fr/employment/How-to-set-up-a-small-business-or-become-self-employed-in-France_445986.html (accessed 19.02.19).

Labor Practices

The legal changes detailed above are necessary to protect the inherent rights of MDWs in Lebanon. However, legal changes alone are not sufficient to protect workers' rights. Nor is it necessary to wait for legal reforms to begin respecting these rights. Many labor practices and structures exist in a legal gray area, and these practices contribute significantly to the harms faced by MDWs. Reform of these labor practices is both immediately possible and necessary.

Implement SORAL's Code of Conduct

As described in the introductory section, the vast majority of MDWs come to Lebanon through recruitment agencies, a process which routinely results in abuse. Reform of these recruitment practices is immediately necessary and possible—indeed, the industry itself has already recognized the urgency of reform.

The Syndicate of the Owners of Recruitment Agencies of Lebanon (SORAL), in collaboration with the International Labour Organization (ILO) and the United Nations Office of the High Commissioner for Human Rights (OHCHR), developed a Code of Conduct to coordinate, professionalize, and eliminate abuse within the recruitment industry. This Code makes significant progress towards a labor recruitment system that respects the rights of workers, ensures transparency for all involved, and professionalizes the industry. However, numerous key provisions of the Code are underspecified. Those that are well-specified lack implementation mechanisms, or have not in fact been executed.

This Framework recommends the immediate specification and execution of the provisions of the Code of Conduct. ALEF has provided to SORAL a complete analysis of the Code with detailed recommendations and a set of tools to enable the implementation of the Code (collectively, the *Toolbox to Advance the Implementation of SORAL's Code of Conduct* or *Toolbox*). This Framework urges the adoption of the changes recommended therein.

In brief, the Toolbox recommends that recruitment agencies adopt pre-employment information sharing procedures and a post-trial period questionnaire to increase transparency and accountability between workers and employers in the terms of employment. The Toolbox further recommends that SORAL implement a complaints mechanism and referral mechanism to enable proper responses to instances of abuse. SORAL should also adopt an information system and monitoring framework capable of collecting and processing information on abuse, complaints, and referrals to enable the Syndicate to respond to broader patterns in the industry.

Finally, SORAL should publicize the existence of the Code, its signatory agencies, any agencies in violation, and annual updates to the state of the industry. These annual reports and the blacklist of violating agencies would enable government agencies and conscientious employers alike to respond to abusive agencies through regulatory and market pressure.

SORAL has resisted calls to publish the blacklist, citing concerns that the publication of the list could lead to defamation charges.⁹⁰ Yet SORAL's own Code of Conduct explicitly calls for the publication and wide distribution of the blacklist to relevant ministries, the diplomatic representations of workers' home countries and to local and international civil society organizations.⁹¹ SORAL should honor this commitment.

Finally, representatives of SORAL have suggested that the syndicate could conduct workshops and trainings for recruitment agencies throughout Lebanon to raise awareness of both the Code of Conduct and the substantive rights and duties owed to workers.⁹² The Framework recommends that these training programs be initiated as soon as possible.

For full details of the recommendations to SORAL, please see the Toolbox, available from ALEF upon request.

Reform the Standardized Unified Contract

Another element of current labor practice is use of a Standardized Unified Contract (SUC). Although MDWs are excluded from the Labor Law, MOL regulations mandate that the working relationship between MDWs and their employers be governed by the SUC. However, the terms of the SUC are insufficient to protect workers' rights and ensure a stable employment relationship. Moreover, not all MDW sign the SUC, or they sign multiple different contracts. These contradictory and insufficient contract terms contribute to confusion and abuse.

As described above (see *supra*, *Standardized Unified Contract*), the SUC lacks key terms to protect workers and fails to clearly define the responsibilities of both employers and employees. These gaps predictably generate labor disputes that lead to broken contracts, abuse, and inefficiencies. In consultative meetings, representatives of the MOL have acknowledged some of the gaps in the SUC and voiced a willingness to amend the contract to address these gaps.⁹³

In brief, the Framework recommends that the Standardized Unified Contract (SUC) be reformulated to include the anticipated working hours and day of rest, the method of payment, the prohibition on charging recruitment fees to the worker, and the process for breaking the contract. The contract should also explicitly note that the worker is free to leave the house during non-working hours and should clarify that the employee has the right to retain their documentation, including passports, at all times. The termination procedures should include a compensation clause assessing a reasonable fee to the party who breaks the contract in some circumstances.

90 Consultative meeting with Ministry of Labor (2018, October 10); Roundtable with Ministry of Labor, SORAL, Embassies and Diplomatic Missions, FENASOL, KAFA, ARM, and others (2019, February 26).

91 Code of Conduct for the Syndicate of Owners of Recruitment Agencies in Lebanon (SORAL), Implementation Mechanism (3) The Blacklist. Section 3 states "The Syndicate's Board shall be responsible for regularly publishing and circulating the blacklist to stakeholders including the embassies of the countries of domestic workers, Ministry of Labour, General Security, civil society organizations, international organizations and recruitment agencies in other countries."

92 Consultative meeting with Ministry of Labor (2018, October 10); Roundtable with Ministry of Labor, SORAL, Embassies and Diplomatic Missions, FENASOL, KAFA, ARM, and others (2019, February 26).

93 Consultative meeting with Ministry of Labor (2018, October 10); Roundtable with Ministry of Labor, SORAL, Embassies and Diplomatic Missions, FENASOL, KAFA, ARM, and others (2019, February 26). Specifically, the representative voiced a willingness to add a contract clause prohibiting the confiscation of worker documentation by employers.

First, the SUC should articulate the terms of employment more clearly, including the working hours and day off. Since different employers may need different services, the contract should add a space for the employer to specify the working period they expect the worker to be available—not to exceed ten non-continuous hours per day—and whether they expect the eight hours of rest to be provided during the day or night. This will reduce conflicts over working hours and will increase employer awareness of the legal restrictions on working hours.

Likewise, the contract should provide a space for the MDW and the employer to agree upon the twenty-four-hour period each week on which the employee will take the rest day. This will similarly reduce conflicts and heighten employer awareness of legal protections.

It is essential that employees be permitted freedom of movement, both in recognition of their inherent human dignity and rights, and to prevent the abuses associated with employers locking employees inside the house. The contract should therefore explicitly note that the employee shall be allowed to exit the house during non-working hours, including on the day off.

It is also extremely common for employers to confiscate workers' identity documents, as noted *supra*, *Barriers to Justice*, and to cite the mistaken belief that the SUC grants them the right to do so.⁹⁴ To address this mistaken belief, the SUC should explicitly note that workers have the right to retain their documentation and that any attempt by the employer to restrict this access constitutes a material breach of the contract.

As noted above, a comprehensive labor law should include a standard minimum wage not lower than the Lebanese minimum, except where an employer demonstrates, through MOL inspection, that they can provide adequate accommodations to justify a standard reduction. The SUC should specify these wage rates and terms. The SUC should also include automatic adjustments for increases in the cost of living in Lebanon.

Disputes over the payment of wages are among the most common conflicts between employers and employees. The contract should therefore provide a method of tracking payments, to provide security for both parties. This could entail bank transfer receipts, wire transfer documentation, or specialized checks issued by the Ministry of Labor. Stakeholders should engage with each other and with the financial technology sector to decide the best method for assuring and documenting the payment of wages. The contract should specify the method, whichever is eventually selected.

Some recruitment agencies charge high fees to the workers they place, despite a prohibition on recruitment fees in SORAL's Code of Conduct.⁹⁵ This prohibition should be repeated in the contract: the SUC should specify that no fees may be charged to the worker for recruitment, including through salary deduction. This will raise the awareness of both workers and employers that workers should not pay recruitment fees and that employers may not deduct recruitment fees from their employee's wages.

94 ILO (2016). *Intertwined: A Study of Employers of Migrant Domestic Workers in Lebanon*. p. 36. Retrieved from https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_524149.pdf (accessed 19.02.19)

95 SORAL Code of Conduct, 3(a): "The recruitment agency shall not deduct any amount from the worker's salary or charge the worker any fee at any point."

Finally, the contract should expand the provisions applicable in cases in which it must be terminated. As discussed above (see *supra*, *Barriers to Justice*), the SUC currently imposes disparate barriers of proof on employers and workers who wish to terminate the contract. These barriers are explicitly designed to restrain workers' ability to terminate an employment relationship at will; this restraint is nominally justified by the perceived need for the employer to recoup their "investment" in the recruitment of the worker.

However, the proper remedy in a circumstance when either party wishes to terminate an employment contract is not to forcibly continue the employment relationship, but to compensate each party for losses resulting from the termination, as appropriate. The contract must also recognize that while the parties are equal in terms of their rights and dignity, in practice, employers wield more power than employees. This is generally the case in all employment contracts, but especially in the context of unskilled migrant work. As in other employment contexts, this inequity of power should be reflected in the terms upon which the contract can be terminated.

This Framework recommends that the SUC include a clause establishing that either party has an equal right to terminate the contract, subject to a limited compensation clause. This compensation would not operate as a penalty; rather, it would be designed to remedy unjustified losses by the non-breaching party without forcing either party to continue a relationship that has become unworkable. For example, a worker whose contract is terminated early would be entitled to damages equal to their expected wages for the duration of the contract. To reflect the power disparity between workers and employers, the damages available to employers should be strictly limited to damages directly caused by early termination if the termination is shown to be arbitrary. If the termination is related to a mismatch between employer and employee, fraud or misinformation in recruitment, or other dispute attributable to the recruitment agency, then the agency—rather than the employee—will be held accountable for the compensation clause. Meanwhile, employee breaches motivated by employer mistreatment or non-payment are breaches for cause; the employer, not the employee, is liable for these breaches. Employers are also responsible for mitigation of losses in cases where a worker's breach is found to be arbitrary and results in losses. The compensation would decrease over the length of the contract to reflect benefits already obtained by the non-breaching party.

The circumstances in which a breach triggers a compensation clause will vary and can best be assessed by the Labour Arbitration Council. This body has experience determining whether a breach is for cause or at will, and the appropriate remedy. Disputes regarding contract termination should therefore be referred to the Council rather than adjudicated as criminal or civil matters (as described *supra*, *Reform Dispute Settlement*). Allegations of abuse or theft should be referred to criminal courts. In these courts, reasonable and equal burdens of proof must apply to each party.

Together, these changes to the SUC will clarify the rights and responsibilities of all parties. This will lead to better protection of those rights, and reduce conflicts over working conditions, payments, and the termination of the contract.

Behavioral Changes

Many violations stem not from gaps in the law or in labor regulations, but from behaviors and customs that have become common in this industry. Behavioral changes are therefore necessary. These include changes in the practices of public authorities including the DGGs, the MOL, prosecutors, and police, international actors such as the embassies and consulates of sending countries, and private parties such as insurance agencies and employers.

Whereas the reforms described in the previous sections will generally require political, legal, or administrative changes—changes that are badly needed but that may take more time—the changes recommended in this section can be implemented immediately, at the discretion of each entity. There is no reason to delay any of these behavioral changes. The Framework urges their immediate adoption.

Directorate General of General Security

The link between legal residency and employment contract has produced perverse effects in DGGs practices. For example, the immigration status of workers who have been recruited by an unlicensed recruitment agency may be invalidated upon the discovery by DGGs or ISF that the agency is operating illegally. While the agency may face only nominal fines, the worker is summarily deported, leaving them unemployed in their home country and often without any assets or access to income.⁹⁶ In other cases, employers seeking to avoid the expense of a residency permit fail to secure residency for their worker. Yet upon the discovery of their illegal status, DGGs regularly deport the worker without inquiring into the causes of the violation.

Until broader reforms to this system are adopted, the Framework recommends that these practices of extrajudicial deportation cease immediately. Deportations must only take place pursuant to a judicial order with the possibility of appeal. In cases of contract irregularities, such as when the recruitment agency was operating illegally, workers' legal status should not be impacted. Rather, the worker should be given the opportunity to find new employment within a specified period to (as described above, *Implement a Grace Period*). In this situation, because the worker's status was called into question as a result of the recruitment agency's unregistered status rather than any choices by the worker, the worker should be given supplemental time to secure new employment. The Framework recommends three months.

Finally, in order to minimize these situations overall, DGGs should conduct regular inspections of recruitment agencies to ensure that their operations fulfil legal requirements. DGGs should further refrain from issuing visas to any workers recruited by agencies that have not been fully inspected.

As noted *supra*, *Standardized Unified Contract*, DGGs interprets the contract term requiring employers to provide decent accommodations for their employee to compel cohabitation despite its clear terms. The Framework recommends that DGGs instead interpret the SUC in accordance with its terms: to require that employers provide housing in some form, but not to require cohabitation. This will empower both employers and employees to make decisions about their living arrangements and reduce the current rigidity which enables abuse.

96 Consultative meeting with Ministry of Labor (2018, October 10); Roundtable with Ministry of Labor, SORAL, Embassies and Diplomatic Missions, FENASOL, KAFA, ARM, and others (2019, February 26).

In addition, the initial signature of the SUC and its annual renewal should be supervised by the DGGS. As the entity tasked with regulating immigration, this agency has the responsibility to ensure that recruitment agencies and employers only bring workers into the country who understand and have acquiesced to the terms of their employment. Specifically, when processing the visa application before the worker arrives, DGGS should require a copy of the contract signed by both the employer and the worker. If the worker does not speak Arabic, the signed copy should be accompanied by a full translation into the worker's native language. Upon arrival at the airport, the DGGS should again verify that the worker retains a copy of the contract. They should further ensure that the worker knows how to contact their embassy or consulate in case of emergency.

The occasion of the annual renewal of the residency provides another opportunity for DGGS to exercise oversight. DGGS should require the employer and worker to both be present for the renewal of the residency. The employee should be interviewed individually, without the employer present, to detect indicators of abuse, trafficking, or conflict. DGGS should also provide the worker with an opportunity to contact their embassy or consulate to enable the worker to report any concerns and to facilitate the provision of services.

Finally, the Framework recommends that DGGS streamline procedures for the repatriation of workers who are ill or otherwise urgently need to return to their home countries. Diplomatic representatives report that this process can take years, and workers sometimes die before they can return home.⁹⁷ DGGS should reform the procedures that produce these delays in order to enable workers to return to their home country promptly when necessary.

Internal Security Forces and the Judiciary

Practices of interrogation, investigation, detention, and prosecution to which MDWs are subjected violate their rights and contribute to impunity for abuses committed by others (see *supra*, *Barriers to Justice*). This Framework urges the adoption of comprehensive reforms to these investigatory and prosecutorial practices.

Specifically, the Framework recommends the full investigation of all allegations of abuse. These investigations should include private interviews with any worker who alleges abuse, with an interpreter present if the worker does not speak Arabic, and without the presence of the employer. Allegations of theft should be investigated, but the burden of proof must rest with the plaintiff—the employer—as in any civil suit. As discussed above, the abolition of the link between residency and sponsor is essential—and in the context of investigations and prosecutions, this means that workers must not be detained during the investigation of their cases, nor deported before they are able to seek justice. In any case, ISF should immediately and automatically inform the diplomatic representation of any foreigner who is detained of the detention and the reasons for it. Finally, in cases in which a worker does return to their home country before the conclusion of a case, provision should be made to allow testimony by video link or other remote access to justice.

⁹⁷ Consultative meeting with Ministry of Labor (2018, October 10); Roundtable with Ministry of Labor, SORAL, Embassies and Diplomatic Missions, FENASOL, KAFA, ARM, and others (2019, February 26).

The ISF, DGGS, and judiciary should also redouble their efforts to combat human trafficking. The passage in 2011 of a law specifically designed to combat trafficking has raised investigators' awareness of this issue broadly. However, enforcement remains inadequate to address the forms of trafficking experienced by MDWs (see *supra*, *Barriers to Justice*).⁹⁸ This Framework recommends that ISF, DGGS, the Anti-Human Trafficking and Morals Protection Bureau tasked with enforcing the anti-trafficking law, and the judiciary all expand their trainings to explicitly include the forms of trafficking that MDWs experience. While continuing to investigate and prosecute all forms of human trafficking, these entities should be alert to trafficking for labor exploitation, in addition to sexual exploitation. Not all forms of trafficking include forced prostitution, and enforcement agents must be trained to recognize these other forms.

Ministry of Labor

The Framework also encourages MOL to exercise its regulatory authority to ensure the orderly enforcement of contract terms in the context of domestic work. In consultative meetings, the MOL highlighted its complaints hotline available to MDWs in need of assistance. They also stated that they have blacklisted both employers and recruitment agencies found to violate contract terms.

The Framework supports initiatives to enforce labor laws and urges the MOL to intensify these efforts. The existence of a blacklist of employers and recruitment agencies is essential in rooting out abuse—indeed, such a list is a central part of both SORAL's Code of Conduct and ALEF's recommendations regarding the Code (see *supra*, *Implement SORAL's Code of Conduct*). However, the usefulness of a blacklist depends on its publication. Public access to the blacklist will enable conscientious employers to avoid abusive recruitment agencies, NGOs and service providers to concentrate their efforts where they are most needed, and embassies to advise migrant workers in order to protect their rights. Crucially, public access to the blacklist will also act as a powerful check on potential corruption by providing transparency on the blacklisting process. The Framework therefore urges the immediate publication and regular updating of any blacklists maintained by the MOL. Beyond general publication, blacklists of recruitment agencies and employers who commit abuses must also be proactively shared with workers' diplomatic representation in Lebanon, to enable home countries to effectively protect their citizens. A representative of the MOL has voiced support for this practice.⁹⁹

The Framework likewise supports the MOL's initiative to provide MDWs with a hotline where they can be apprised of their rights and seek resources. However, repeated attempts to contact this hotline in the course of this research have never succeeded in reaching assistance. Moreover, the usefulness of a hotline depends on its comprehensiveness. To be an effective resource for workers and a functional tool to enforce labor policies, the Framework recommends that the hotline be fully staffed, receive complaints on all subjects, respond consistently and rapidly, and operate in appropriate languages. Reports received at the hotline must be treated with the weight of a complaint filed in a police station.

98 U.S. State Department (2018). *Trafficking in Persons Report: Lebanon*. Retrieved from <https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282691.htm> (accessed 19.02.19)

Frangieh, G. (2018, September 18). *Human Trafficking Crimes Before the Courts: In the Shadow of Prosecution*, Legal Agenda. Retrieved from <http://legal-agenda.com/en/article.php?id=4828> (accessed 19.02.19) See also *supra*, *Domestic Law*.

99 Consultative meeting with Ministry of Labor (2018, October 10); Roundtable with Ministry of Labor, SORAL, Embassies and Diplomatic Missions, FENASOL, KAFA, ARM, and others (2019, February 26).

To fulfill its labor regulatory function, MOL should also monitor the payment of wages. Upon the yearly renewal of the contract and work permit, MOL should review the history of wage payment for that year (whether by bank transfer or receipt book) to ensure that all wages were paid on time.

Finally, because of its power as a regulatory actor, MOL has a unique opportunity to advance the rights of migrant domestic workers through employer trainings and public advocacy. First, MOL should implement mandatory employer training prior to the placement of workers. These trainings would focus on alerting employers to the key rights and responsibilities articulated in the SUC, and could take the form of a video that each employer must watch before securing the work permit at MOL. Both MOL and workers' diplomatic representatives have voiced enthusiasm for this suggestion, and discussions on collaboration between the diplomatic missions and the ministry should be undertaken as soon as possible.¹⁰⁰

Next, MOL should partner with diplomatic representatives and civil society actors to coordinate the provision of information to the public at large on the rights of MDWs. These public awareness campaigns should focus on dispelling common myths and misconceptions regarding MDWs' status and rights, including the mistaken beliefs that employers have the right to confiscate documentation and to lock workers inside their homes. As the agency tasked with enforcing state labor policies, it is the Ministry's responsibility to ensure that these policies are well-understood by the public so that they can follow them. Both employer training and public awareness campaigns are essential to fulfilling this responsibility.

Embassies and Consulates

Embassies, consulates, and governments of sending countries have an important role to play in protecting the rights of their nationals in Lebanon. However, certain practices contribute to rather than alleviate the abusive atmosphere MDWs encounter. These practices include the institution of entry bans nominally designed to protect nationals and minimum wage laws. In other cases, representatives of sending countries have failed to respond effectively to their nationals' needs; for example, some consulates expressly acquiesce in the practice of passport confiscation—citing stereotypes about the tendency of these “girls” to lose their passports.¹⁰¹ While some embassies operate shelters for MDWs fleeing abuse, others offer only unofficial hospitality, inviting workers to stay at the private homes of consulate or embassy officials.¹⁰²

This Framework urges changes to these policies. Entry bans have proven to be ineffective at preventing the arrival of new workers; instead, these bans encourage trafficking to evade the prohibition and increase vulnerability for workers present without embassy protection.¹⁰³ Likewise, minimum wage laws designed to protect workers encourage discrimination without

100 Ibid.

101 ALEF Consultative Meeting with Embassies and Consulates (2018, October 12).

102 Ibid.

103 ILO (2016). *Intertwined: A Study of Employers of Migrant Domestic Workers in Lebanon*. p. ix, 7, 17-18. Retrieved from https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_524149.pdf (accessed 19.02.19).

providing effective wage guarantees.¹⁰⁴ Efforts to secure bilateral agreements between each sending country and the relevant government agencies in Lebanon have only worsened the patchwork effect of uncoordinated diplomatic efforts. Moreover, these bilateral efforts are highly inefficient as each embassy or consulate waits months or years to receive a response to their proposed agreement or MOU.¹⁰⁵ The duplication and inefficiency of this approach does not protect workers.

Embassies and consulates should instead focus on advocating for better conditions for all MDWs, including through support of the reforms in this Framework, rather than attempting to enforce ineffective entry bans and a patchwork of minimum wage laws and bilateral agreements. A representative of the Philippines embassy alluded to this approach in consultations, suggesting that the MOL might standardize any procedures or rights that it has granted in bilateral agreements to apply to all MDWs, thereby reducing both inequality and administrative burdens.¹⁰⁶ The Ministry representative voiced openness to this suggestion. She stated that the principle of non-discrimination between workers supports such standardization, which she described as a positive step.¹⁰⁷ She also observed that differences in benefits sometimes correspond to additional training or skills that workers receive before arrival, but stated that in such cases, the standards should note the reason for the disparity.¹⁰⁸

The Framework recommends this standardization, and further recommends that any differences in benefits be directly tied to actual training and skills, as opposed to nationality. Embassies and consulates should also adopt formal procedures for dealing with workers who come to them for aid. Relying on private hospitality of embassy or consulate employees is an insufficient response, since this shelter may not always be available. Moreover, this is a particularly inappropriate response to cases where a worker is fleeing abuse or exploitation as it places them at risk for further exploitation. Sending countries' representatives should instead provide formal shelters where possible, or sign memoranda of understanding with NGOs within Lebanon who can provide shelter to their nationals. Furthermore, sending countries should encourage their nationals to retain possession of their passports at all times, and should not tolerate the confiscation of workers' documentation. The approach taken by the Philippines—to immediately cancel passports that have been confiscated and reissue new identity documents to their nationals—is recommended.¹⁰⁹

Some other practices by embassies and sending countries are effective and should be widely adopted. Trainings provided by the Philippines to their workers before they travel abroad correlate with a more informed population who are better able to assert their rights.¹¹⁰

104 Despite the institution of a \$400 minimum wage over a decade ago, more than 60% of Filipina MDWs continue to receive a wage of less than \$400/month. ILO (2016). *A Study of the Working and Living Conditions of MDWs in Lebanon – “Intertwined: The Workers’ Side”*: p. 19-20 Retrieved from https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_524143.pdf (accessed 19.02.19).

105 Consultative meeting with Ministry of Labor (2018, October 10); Roundtable with Ministry of Labor, SORAL, Embassies and Diplomatic Missions, FENASOL, KAFA, ARM, and others (2019, February 26).

106 Ibid.

107 Ibid.

108 Ibid.

109 ALEF Consultative Meeting with Embassies and Consulates (2018, October 12).

110 ILO (2016). *A Study of the Working and Living Conditions of MDWs in Lebanon – “Intertwined: The Workers’ Side”*. Retrieved from https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_524143.pdf (accessed 19.02.19).

Where possible, sending countries should develop and institute such training programs. These programs would increase the ability of sending countries' nationals to assert their own rights, fulfilling the primary responsibility of governments to protect their nationals whether abroad or at home. Moreover, the initial costs of such programs may be partially offset by this increased awareness of rights including the right to prompt payment of wages, which would translate into increased remittances in home countries. Trainings that involve participation from nationals who have returned after working in Lebanon have proven to be particularly effective in communicating key information to potential migrant workers before departure. The Framework recommends that sending countries adopt this type of training.

Insurance Companies

MOL and DGGS policies require that employers provide health insurance and access to health care to migrant domestic workers. Indeed, the current SUC not only requires the purchase of an authorized insurance plan, it states that the employer will “pledge to *guarantee* medical care for the Second Party.”¹¹¹ Yet many MDWs continue to be denied access to medical care in direct violation of the contract. This is due in large part to the behavior of health insurance companies.

Some of these companies exploit loopholes in the law to sell policies that, in practice, provide no coverage to MDWs. For example, some companies sell a single policy to multiple employers or to cover multiple employees, resulting in the rapid exhaustion of benefits.¹¹² Other companies simply sell fake policies which are not accepted at any hospitals or clinics.¹¹³ Although mental health care is technically included in the policies issued for MDWs, access to this service is almost impossible in practice.

Still other companies exploit a contractual technicality to deny coverage for most conditions. Because MDWs' contracts require yearly renewal, the insurance companies claim to be issuing a new policy annually—and for the first eight months of coverage, many medical needs are considered “pre-existing conditions.” They are therefore not covered by the new policy. By issuing a new policy each year—even for MDWs who have been working in Lebanon for decades, insured by the same company—companies avoid liability for the majority of claims eight months out of every year for every policy—while charging employers the full rate for year-long coverage.

These practices must cease immediately. They violate MDWs' human right to health care¹¹⁴ as well as their clear contractual rights as embodied in the SUC. These practices also generate liability for the employers of MDWs, who are legally required to “guarantee medical care” for their employee. Employers may believe they have purchased insurance that fulfills their contractual obligations, yet find that, due to these fraudulent and abusive insurance practices, their employee's condition is not covered by their policy. The employer then faces the prospect of either paying for necessary care out of pocket, or ignoring the health condition and permitting their employee to suffer, or terminating the contract so that the employee may return to their country of origin—leaving the employer to go through the expensive and time-consuming process of securing a replacement worker.

111 Work Contract for Migrant Domestic Workers, Unified Contract Ministerial Decision No. 19/1 dated 31/12/2009, ¶19 (emphasis added).

112 ALEF consultative meeting with Hussein Makki, owner of insurance company (2016, June 10).

113 Ibid.

114 Universal Declaration of Human Rights Art. 25: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services...”

The Framework calls on insurance companies to fulfill their mandate to provide meaningful access to health care for those covered by their policies. The Framework further encourages regulatory agencies to monitor and enforce laws governing the insurance industry in Lebanon.

Employers

Although the state bears responsibility for the protection of the human rights on its territory, employer behavior inevitably shapes whether migrant workers experience a respectful work environment or an abusive one. Each employer has the power to choose to treat their employee with the respect and dignity that they are entitled to as fellow human beings. Yet it has become commonplace for employers to engage in a variety of abusive behaviors, as detailed extensively above.

This Framework calls on all employers to halt these practices, from confiscation of passports to wage theft to physical abuse. Employers must provide decent accommodations, prompt wage payment, and a safe and respectful work environment, as guaranteed in the legally binding contract that they sign, and as required by basic human decency.

Conclusion

The conditions faced by MDWs in Lebanon are inhumane, inefficient, and unsustainable. These conditions not only violate the rights of workers but also burden employers with excessive responsibility, weaken Lebanon's ability to execute policy, and undercut the state's domestic and international legal commitments.

The reforms recommended by this Framework are designed to tackle these wide-ranging sources of abuse. Although the abuses are interlocking and complex, the key features that enable them are neither mysterious nor inevitable. The much-discussed kafala system is not a nebulous cultural institution but a series of concrete regulations, decisions, and omissions that create conditions of abuse. Together, the reforms recommended in this Framework present a comprehensive alternative approach to the governance of migrant domestic work.

In brief, the Framework calls for the separation of sponsorship and legal residency; grace periods to allow for regulated labor mobility; normalization for undocumented workers; prompt referral of disputes to appropriate adjudicators including the Labour Arbitration Council and Judges of Urgent Matters as necessary; the creation of an independent visa for freelance workers; and the passage of a non-discriminatory, comprehensive labor law. The Framework urges SORAL to fully implement its Code of Conduct, in accord with the Toolbox provided by ALEF, and for the Standardized Unified Contract to be revised to include key terms and rebalance power between employer and employee. The Framework further recommends that DGGS, ISF, and MOL enhance their protection of MDWs and oversight of contract execution. Sending countries should likewise improve their protection of workers by emphasizing worker education rather than ineffective entry bans. Finally, private parties including insurance companies and employers must cease abusive practices. Together, these reforms can foster a system of labor migration that efficiently meets the needs of Lebanon's households while respecting the rights of all parties.

Annexes

Summary of Reformed Migration Process

A MDW applies with the Directorate General of General Security for a visa to travel to Lebanon, either independently or through a recruitment agency.

The application requires a copy of the worker's passport, a notarized copy of the Standardized Unified Contract signed by both the employer and the employee, and a signed translated copy of the contract (if the worker does not speak Arabic). The application also requires a bank guarantee of 1.500.000 L.L. and a notarized guarantee to DGGS.

DGGS screens documents for security concerns and indicators of human trafficking and issues the visa if appropriate.

Next, the worker applies for a labor permit with the Ministry of Labor.

The labor permit application requires a copy of the worker's passport, a copy of the visa issued by DGGS and of the signed, notarized contract. The application also includes proof of valid insurance and medical tests.

Upon issuance of the labor permit and visa, the worker travels to Lebanon.

Upon arrival at the airport, DGGS verifies that the worker retains a copy of the contract and has the contact information for their embassy or consulate in case of emergency.

For the first three months—the duration of the visa—either the employer or the employee has the right to break the contract at any time, without adjudication of fault. After this trial period, if both parties are satisfied, the employee applies for a residency permit by re-submitting to DGGS a copy of their passport with the visa, the work permit, the contract, and the residency fee.

Once granted, the residency permit remains valid even if the employment relationship is terminated. Upon termination, workers notify DGGS of the termination and, if applicable, their new place of residence. Workers then have one month to find new employment. Upon securing new employment, the worker updates their employer of record and place of residence with DGGS and the MOL.

Each year, the worker and employer return to DGGS and MOL offices to renew the residency and work permit, respectively. At each office, authorities confirm with the worker in a private interview that they wish to continue their employment. They also provide workers the opportunity to contact their embassy or consulate. Workers who do not wish to renew their annual contract have a one-month grace period to secure new employment or may return to their home country immediately.

Workers currently in Lebanon are incorporated into the new process upon the next renewal of their residency; within one year, all MDWs will be covered by the new system.

Summary of Proposed Stakeholder Responsibilities

Employer	Fulfill responsibilities under the employment contract
	Pay wages on time, provide safe and respectful working environment, ensure adequate food and shelter, purchase valid health insurance policy
	Pay fees for visa and residency
Employee	Perform tasks described in employment contract
	In case of contract termination, inform MOL and DGGS and seek new employment within 30 days
General Directorate of General Security	Grant residency permit independently from employer following the three-month visa
	Interview MDWs annually upon residency renewal to detect abuse or human trafficking
	Stop requiring cohabitation of workers and employers
Recruitment agencies	Conduct ethical and fair recruitment following the SORAL code of conduct
Embassies	Enhance presence before and during recruitment, and throughout workers' time in Lebanon
Ministry of Labor	Push for legislative reform to include migrant domestic workers in the labor law or draft a law that ensures the right of domestic workers
	Approve work permits independently from employer based on visa or residency status
	Enforce the reformed Standardized Unified Contract
Ministry of Justice	Refer contractual disputes to the Labour Arbitration Council
	Refer allegations of criminal abuse or exploitation to criminal courts

Visual Mapping of Process



