



## **Policy Paper on Reforming the “Sponsorship System” for Migrant Domestic Workers:**

### **Towards an Alternative Governance Scheme in Lebanon**



KAFA (enough) Violence & Exploitation

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**KAFA (enough) Violence & Exploitation** is a Lebanese non-profit, non-political, non-confessional civil society organization committed to the achievement of gender-equality and non-discrimination, and the advancement of the human rights of women and children.

KAFA's mission is to work towards eradicating all forms of gender-based violence and exploitation of women and children through advocating for legal reform and change of policies and practices, influencing public opinion, and empowering women and children.

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## Table of Contents:

|                                                                                  |           |
|----------------------------------------------------------------------------------|-----------|
| <b>Executive Summary .....</b>                                                   | <b>5</b>  |
| <b>1. Introduction .....</b>                                                     | <b>9</b>  |
| <b>2. The Lebanese “sponsorship system” .....</b>                                | <b>11</b> |
| 2.1. Authorization for employment and residence .....                            | 11        |
| 2.2. How the system operates .....                                               | 12        |
| 2.3. “Sponsorship system” - Dependency and master/servant relationship .....     | 13        |
| 2.4. “Sponsorship system” - Lack of employment mobility .....                    | 16        |
| 2.5. “Sponsorship system” - Power imbalance.....                                 | 18        |
| 2.6. Recruitment practices .....                                                 | 18        |
| 2.7. The Lebanese government and the “sponsorship system” .....                  | 20        |
| 2.8. Sponsorship for migrant workers in other sectors.....                       | 21        |
| <b>3. Comparison to other countries.....</b>                                     | <b>23</b> |
| 3.1. United Kingdom (UK).....                                                    | 23        |
| 3.2. Hong Kong (HK).....                                                         | 26        |
| 3.3. Bahrain .....                                                               | 29        |
| <b>4. Alternate approaches to the “sponsorship system”: Lebanon .....</b>        | <b>33</b> |
| 4.1. Increase labor mobility of migrant domestic workers.....                    | 34        |
| 4.2. Decouple the employer/employee relationship .....                           | 37        |
| 4.3. Improve recruitment process .....                                           | 38        |
| 4.4. Decrease the number and vulnerability of migrants in irregular status.....  | 40        |
| 4.5. Ensure social protections and legal recourse.....                           | 42        |
| 4.6. Establish national coordinating body - Build capacity of NEO .....          | 43        |
| <b>5. Conclusion.....</b>                                                        | <b>45</b> |
| <b>6. Appendix: Best Practices with Respect to Migrant Domestic Workers.....</b> | <b>46</b> |
| <b>7. References .....</b>                                                       | <b>51</b> |

## Preface

In recent years, the “sponsorship system” (*kafala*) in Lebanon and in other countries in the region has been identified as a core problem leading to the exploitation and abuse of migrant domestic workers. Previous studies published by KAFA (enough) Violence & Exploitation have argued that “sponsorship” is one root cause for migrant domestic workers’ vulnerability to forced labor, physical and sexual abuse, as well as trafficking.<sup>2</sup> This policy paper on the alternatives to the “sponsorship system” builds on previous research conducted by KAFA which called for the reform and/or abolition of this regulatory and customary system, and addresses gaps in existing research that fell short in proposing concrete measures.

The policy paper attempts to provide policy makers, human rights advocates and other relevant stakeholders with a framework for the implementation of a rights-based approach to the recruitment and employment of foreign domestic workers, as well as examples and lessons learned from other countries to guide in the development of this alternative policy. We hope it will offer all relevant stakeholders a new discussion platform to debate and develop alternative immigration and employment mechanisms for migrant domestic workers that protect their rights and effectively prevent trafficking and exploitative situations from occurring.

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<sup>2</sup> See Sawsan Abdelrahim, *Servant, Daughter or Employee? A Pilot Study on the Attitudes of Lebanese Employers towards Migrant Domestic Workers*, Beirut, Lebanon: KAFA (enough) Violence & Exploitation, 2010; Kathleen Hamill, *Trafficking of Migrant Domestic Workers in Lebanon: A Legal Analysis*, KAFA (enough) Violence & Exploitation, 2011; Ray Jureidini, *An Exploratory Study on Social and Psychoanalytical Factors in Abuse of Migrant Domestic Workers by Female Employers in Lebanon*, KAFA (enough) Violence & Exploitation, 2011.

## Executive Summary

The “sponsorship system” in Lebanon is comprised of various customary practices, administrative regulations, and legal requirements that tie a migrant domestic worker’s residence permit to one specific sponsor in the country. Migrant domestic workers are excluded from the Lebanese labor law, denied their freedom of association, and not guaranteed freedom of movement.

On a structural level, the restrictiveness of the “sponsorship system” makes migrant domestic workers vulnerable to exploitation and compromises their rights; in effect the system reinforces the dependency, the master/servant dynamic, and the power imbalance between Lebanese employers and migrant domestic workers. The system also severely compromises the employment mobility of workers.

This paper identifies policy reforms for consideration in Lebanon. First, it defines the main problems associated with the “sponsorship system” for migrant domestic workers. Next the paper highlights best practices and compares how governments in the United Kingdom, Hong Kong, and Bahrain<sup>3</sup> regulate the employment and residence of migrant domestic workers.

Finally, this paper recommends concrete improvements, and it suggests practical ways to reform the current system in order to establish a rights-based approach to the employment and residence of domestic workers in Lebanon.

The main policy recommendations of this paper are as follows:

**Increase labor mobility of migrant domestic workers** by installing - like in the United Kingdom - employment-based visas which do not specify the name of the individual employer, nor tie a worker exclusively to one individual employer, but rather allow migrant domestic workers the possibility of resigning and terminating their employment contracts. A one-month notification would constitute an adequate requirement to be processed by a

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<sup>3</sup> Although Bahrain’s recent reform efforts do not extend to migrant domestic workers, the country’s Labor Market Regulatory Authority serves as a noteworthy example of how governments may work towards increasing the labor mobility of migrant workers more broadly.

system managed and moderated by the Ministry of Labor. Such a resignation notification system would offer various options depending on the circumstances; this would include a telephone hotline service, a written resignation process, and an online system. In addition, automatic grace periods at the end of a migrant domestic worker's employment contract would facilitate labor mobility and reduce the power each employer has to summarily terminate an employee's work contract and then abruptly repatriate her at a moment's notice. Moreover, visa extensions would also provide workers with greater flexibility and mobility - especially at the end of their contracts - when changing from one employer to another. Migrant domestic workers would be eligible to apply for visa extensions in order to extend their legal residence in the country for at least one month if not longer.

**Decouple the employer/employee relationship** by ensuring that workers are free to leave the household during their time off and to enjoy vacations and statutory holidays, such as those stipulated under Hong Kong law. It would also mean guaranteeing migrant domestic workers the freedom to live out of the workplace/household if they so choose. In addition, it is important to diminish employers' sense of legal and financial responsibility for their employees during their stay in the country. The Ministry of Labor and General Security would also remove all expectations that employers must have domestic workers live in their homes. Employers would not need to report "runaway" domestic workers to the police in order to relinquish themselves of any corresponding legal or financial responsibilities. And finally, the Government would remove the requirement that employers must pay for the return airplane ticket if a migrant domestic worker resigns, leaves, or terminates her contract before it expires.

**Improve the recruitment process** by only approving work permits for migrant job-seekers with embassy-level diplomatic presence in Lebanon including full-time labor attachés, translators, and attorneys. Improving the recruitment process would also include regulating private agencies more strictly and ensuring that employers use only licensed agents. Agencies would need to be licensed through a rigorous inspection process, scrutinized regularly, and closely monitored in order to maintain their recruitment operations and to keep their business running. An alternative to agencies altogether would be online, government-facilitated recruiting options. Due diligence measures during recruitment would ensure that job-seekers are familiar with the terms of the Standard Unified Contract for

migrant domestic workers, relevant Lebanese laws and regulations, and the details of their particular household (how many family members, their ages, particular work expectations, and living conditions, etc.). Moreover, policy measures must improve the recruitment process by going further to alleviate steep initial fees paid by employers to agencies. In this sense, the Government could: 1) create government-sponsored escrow funds to hold recruitment fees for the employer until the domestic worker has served the duration of her contract; 2) create a system whereby employers pay recruitment fees to agencies in installments on a pro-rated basis for the duration of the employment contract; and/or 3) require the second employer to pay the balance of recruitment fees following employment transfers.

**Decrease the number and vulnerability of migrants in irregular status** by utilizing easy exit procedures and bridge visas. Easy exit procedures would allow workers the option to come forward to the authorities at any point, would exempt them from fees or detention, and would permit them to leave the country automatically. Alternatively, bridge visas would allow undocumented workers to remain in the country for several more months to try and locate a new employer.

**Ensure social protections and legal recourse mechanisms within the Ministry of Labor.** This would involve conducting regular interviews with workers, investigating workers' complaints seriously, facilitating the adjudication of labor claims before Labor Tribunals, and offering free legal services to migrant domestic workers. It is important to maintain a system where migrant domestic workers who have disputes with their employers have the right to remain and work in Lebanon. Legal resources would be available in the languages of migrant domestic workers, and workers themselves would have the legal and practical ability to take their employers to court or to labor tribunals for any grievances, whether large or small. When migrant domestic workers make labor-related grievances, the Ministry of Labor needs to take action, to make inquiries, and to verify allegations.

**Establish national coordinating body - Build capacity of NEO:** Lebanon's National Employment Office (NEO) may be one possible vehicle for centralizing government functions concerning migrant domestic workers. The NEO is a public office with a tripartite structure under the authority of the Ministry of Labor. Similar to the Labor Market

Regulatory Authority in Bahrain, the NEO (whose mandate is to develop and implement national employment policies, to provide vocational training, and to study the labor market) would serve as a central coordinating body responsible for regulating Lebanon's labor market with respect to migrant workers. It is well-situated to streamline the required steps necessary for entry, residence, employment, transfer, and departure of migrant domestic workers in the country. This prospect would be viable with proper strategic planning, capacity building, and adequate funding.

## **Conclusion**

The current system is flawed. It leaves migrant domestic workers in an extremely vulnerable position where they are inextricably tied to their employers with very limited legal redress once they arrive in the country. We hope that policy makers in the Lebanese government - and especially the Ministry of Labor - will take the recommendations in this paper into consideration.

Reforming the "sponsorship system" in Lebanon is only one part of a comprehensive reform process that needs to include migrant domestic workers in the labor code, improve social security policies, and institute minimum wage requirements among other considerations.

## 1. Introduction

This paper explores alternative approaches to the “sponsorship system” for migrant domestic workers in Lebanon.<sup>4</sup> The “sponsorship system” in Lebanon is comprised of various customary practices, administrative regulations, and legal requirements that tie a migrant domestic worker’s residence permit to one specific employer or sponsor in the country. In practice, migrant domestic workers are situated in a context that explicitly excludes them from the labor law, denies their freedom of association, and does not guarantee their freedom of movement. On a structural level, the restrictiveness of the “sponsorship system” in this context makes migrant domestic workers vulnerable to exploitation and severely compromises their rights. For this reason, policy reforms are in order.

First, the paper seeks to explain the main problems associated with the “sponsorship system” in Lebanon. Next, the paper identifies best practices and compares how governments in other countries regulate the employment and residence of migrant domestic workers. Then the paper makes suggestions for concrete improvements and practical ways to reform the current system.

Lebanese government officials and policy makers are not the only individuals who can take action to address problems related to the recruitment and employment of migrant domestic workers in Lebanon. A broad range of stakeholders are also interested in engaging in policy debates in order to reform the current system. These stakeholders include migrant workers, community leaders, union representatives, civil society activists and organizations, among others. Lebanese society must hold itself - and its government – accountable for cultivating and perpetuating the current “sponsorship system”.

The wide-scale employment of migrant domestic workers in Lebanon gives rise to numerous policy questions and challenges. There are nearly 200,000 migrant domestic workers employed in Lebanon, a country of 4 million. The unemployment rate in the country is

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<sup>4</sup> For purposes of this paper, migrant domestic workers are referred to as women who migrate to Lebanon on a temporary basis to work as live-in maids from across Africa and Asia - primarily from Ethiopia, the Philippines, Bangladesh, Sri Lanka, and Nepal.

significant, and the current minimum wage is 500,000 Lebanese Lira (or US\$333/month).<sup>5</sup> Lebanon's minimum wage and unemployment rates suggest that the economy could benefit from creating caretaking jobs in-country. Instead of authorizing foreign workers to be hired for housekeeping, cleaning, childcare and elderly care needs, Lebanon would be wise to make a concerted effort to cultivate its labor market more efficiently and responsibly.

The specific problems addressed in this paper concern the sponsorship of migrant domestic workers by individual employers. The paper analyzes how the current “sponsorship system” operates. By exploring policy dilemmas and possibilities, the paper also seeks to examine the role of the participants – including operators and beneficiaries - in the “sponsorship system”:

- Who are the participants in the “sponsorship system”?
- How are they bound by the system? How do they benefit from the system?
- What sacrifices do they make and what risks do they take when they enter into the system?
- What are the consequences of the current system? What are some possible ways forward?

Although the problems associated with the “sponsorship system” are deeply entrenched in practice, it is possible that policy measures to address them may be quite straightforward.

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<sup>5</sup> Lebanon's real GDP in 2010 (adjusted to inflation) was 43,225 billion Lebanese Lira (or \$28.6 billion USD and the real per capita GDP was approximately \$7,340 USD) according to World Bank and IMF estimates. The latest official unemployment rate in Lebanon is 9% according to the World Bank (2007).

## **2. The Lebanese “sponsorship system”**

Sponsorship systems form the legal basis for the residency and employment of migrant domestic workers in several countries around the world including the Gulf Cooperation Council countries as well as Lebanon and Jordan.<sup>6</sup> Varying degrees of restrictiveness exist in each country.<sup>7</sup> The system in Lebanon is similar to the situation in the Gulf countries because each migrant domestic worker in Lebanon is legally required to have a sponsor who exercises considerable control in practice over her legal status in the country as well as her freedom of movement and her employment mobility. In virtually all cases, domestic workers’ sponsors are also their employers. The function of sponsorship for immigration and residence, however, is distinct from the function of sponsorship for work and employment. All countries in the world have regulatory systems that govern the employment and residence of migrant workers, but the distinctive characteristics of the Lebanese “sponsorship system” will be explored here.

### **2.1. Authorization for employment and residence**

The process of migration begins with Lebanon’s Ministry of Labor, which issues preliminary work authorization to potential migrant domestic workers. Lebanon’s Interior Ministry then issues entry visas to migrant domestic workers through the General Directorate for General Security (“General Security”), the government agency responsible for monitoring the entry, residence, and departure of all foreigners, including foreign workers. This authorizes the legal entry of migrant domestic workers into the country as well as their subsequent work permission and residence upon arrival. Relevant work and residence permits are intertwined and yet they are separate. In all cases, the sponsor’s name is written inside the domestic worker’s entry visa as well as her residence and work permits. In practice, sponsors are expected to assume financial and legal responsibility for migrant domestic workers while they are present in the country.<sup>8</sup> This includes maintaining the up-

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<sup>6</sup> See Azfar Khan and Helene Harroff-Tavel, *Reforming the Kafala: Challenges and Opportunities Moving Forward*, 20 ASIAN AND PACIFIC MIGRATION JOURNAL 293 (2011).

<sup>7</sup> Personal interviews conducted by author with attorneys participating in the Lawyers Beyond Borders network convened by the Migrant Forum in Asia (Bangkok, Thailand - 23-25 Nov. 2011).

<sup>8</sup> See General Security Communiqué No. 25056-18/05/2004. Interestingly this assumption of financial responsibility does not necessarily include paying wages in full or on time. Employers are known to withhold

to-date employment and residence permits of the worker, providing insurance, reporting to immigration authorities if the worker absconds, and ensuring that the worker returns to her country of origin by paying for her plane ticket after the termination of her employment contract.<sup>9</sup>

As in most countries throughout the world, there is a close link in Lebanon between government authorization for purposes of employment and government authorization for purposes of residence. Again, the two are independent yet interrelated. Without valid employment permission, migrant domestic workers are not entitled to enter Lebanon or reside in the country for purposes of work. By the same token, workers are not entitled to work in the country without valid residence permission. Similar to migrant workers in other employment sectors in Lebanon, migrant domestic workers may not currently enter the Lebanese labor market as free agents. Rather, migrant job seekers first need to secure an employment offer. Then they must comply with the country's specific entry and residence regulations before they begin to work. In turn, migrant domestic workers are expected to remain gainfully employed by their sponsor while they reside in the country as well.

## **2.2. How the system operates**

Domestic workers migrate to Lebanon to serve as live-in housemaids. This usually requires few, if any, vocational skills, qualifications, or prior experience. They work primarily inside their employers' home and often in isolation. Domestic workers are explicitly excluded from the Lebanese labor code, and they are not protected by minimum wage requirements. Their channels of communication are often restricted, and legal redress is practically inaccessible to them.<sup>10</sup> Meanwhile, many employers regularly lock domestic workers inside the house to prevent them from leaving - even on their days off. Although it arguably contravenes the Lebanese law, employers exert further control over domestic workers by confiscating their

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workers' wages with vague promises to "make up the difference" at the end of a worker's employment contract. By the end of their contracts, however, workers (and their families) become increasingly desperate for their back wages. This breeds anxiety and apprehension because workers fear that their employer will never pay the overdue wages but will simply repatriate them without settling accounts.

<sup>9</sup> *ibid.*

<sup>10</sup> See Human Rights Watch *Without Protection: How the Lebanese Justice System Fails Migrant Domestic Workers* (2010). Note that despite their explicit exclusion from the labor code, migrant domestic workers may still bring claims against their current or past employers in the labor courts – and win. However, this seldom happens in practice.

passports and identity documents.<sup>11</sup> Employers also use scare tactics, sometimes threatening migrant domestic workers with the prospect of arrest, detention or criminal charges. As operators of the “sponsorship system”, individual employers are in a position to exercise extraordinary control over the migrant women who work for them. Not all employers exert this control to the full extent. Indeed many employers make concerted efforts *not* to take advantage of the ample latitude that the system affords them. Nonetheless all migrant domestic workers are vulnerable to the possibility of exploitation and abuse as a result of the “sponsorship system” in Lebanon and how it operates.

In terms of the current regulations, there is nothing inherently problematic about the Lebanese government requiring migrant workers to secure a job offer before they migrate to Lebanon. Similarly there is nothing inherently problematic about the Lebanese government linking a migrant domestic worker’s valid immigration status to her employment in the country. But employer-tied residence permits pose problems in the context of Lebanon because of the fact that the Government is turning a blind eye to routine and widespread abuses. While regulation is necessary and important, the issues discussed here are *how* the system operates and *what* improvements may be possible.

### **2.3. “Sponsorship system” - Dependency and master/servant relationship**

The current “sponsorship system” in Lebanon is not working well. Among other reasons, this is because migrant domestic workers - and their employers alike - are locked into a master/servant relationship. While employers are the primary operators in the system, migrant workers take risks and make sacrifices as participants. The system provides little to no accountability that would require employers to treat workers with dignity, to pay them on time, or to give them time off from work. Indeed, many employers are suspicious of domestic workers and treat them as potential thieves. As a female employer in Beirut commented,

When sponsoring domestic workers, my friends act like they are taking a criminal into their home – someone who would rob them at any given opportunity. They treat the domestic worker as a thief, but a thief that is a necessary evil and essential in order to do the dirty work: clean the house, do the laundry, care for children, etc. Unfortunately you

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<sup>11</sup> It is possible to challenge routine passport confiscation, but rarely does this happen in practice. Not only do Lebanese authorities turn a blind eye to this customary practice, but they usually give migrant domestic workers’ passports directly to their employers upon arrival in Lebanon. In addition, agents actively advise employers to keep migrant domestic workers’ passports.

do not see the business model of making your employee – here the migrant worker – content and fulfilled as a means of keeping them in your employ. Somehow employers of migrant domestic workers do not seem to think that is bad for business to exploit or abuse them. Rather a master/servant relationship prevails with all of the trappings instead.<sup>12</sup>

The “sponsorship system” also involves private recruitment and employment agents. These agents charge substantial fees and commissions. They cultivate and feed off of the relationship of dependency between workers and employers because this dependency earns them a living. In other words, agents are beneficiaries of the relationship between employers and workers. As participants in the “sponsorship system”, agents are also beholden to its confines and the way it entraps domestic workers with very few escape hatches. Agents are responsible for domestic workers during their first several months in Lebanon while migrant workers are still in the preliminary “trial period” with their new employers. But agents perpetuate the current “sponsorship system” on an ongoing basis because they make it their business to find and sell cheap labor to the Lebanese market while making substantial commissions through these transactions.

When employers in Lebanon hire migrant domestic workers, they are in a position of investing in labor up-front. This investment pressures them to make sure that the relationship endures and to make sure that the worker does not abscond. Recruitment inevitably includes considerable expenditures for transportation, visas, government processing fees, medical tests, commissions to local brokers and sub-agents, and sometimes bribes as well.<sup>13</sup> Steep recruitment fees can push many employers to take extreme measures in order to make sure that the worker does not “run away” or request to vacate her position before the conclusion of her employment contract for any number of reasons such as illness, homesickness, family problems in her country of origin, or a better job offer elsewhere in Lebanon.

The actual parameters of relationships between employers and migrant domestic workers are determined by legal provisions, administrative immigration regulations, societal norms and customary practice. The 1962 Foreigner’s Law stipulates in Article 36 that foreigners without a valid residence permit shall be under penalty of fines and imprisonment. This law

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<sup>12</sup> Personal interview, “LK” [name withheld at request of interviewee], Beirut, Lebanon, 15 Oct. 2011.

<sup>13</sup> For a detailed breakdown of recruitment costs see Kathleen Hamill, *Trafficking of Migrant Domestic Workers in Lebanon: A Legal Analysis*, KAFA (enough) Violence & Exploitation, March 2011, p. 40.

is regularly applied to migrant domestic workers. In practice, once a domestic worker leaves her place of employment without permission from her employer, then she is subject to arrest and detention. At the same time, societal norms permit employers to exert far-reaching control over the lives of migrant domestic workers in their employ. As mentioned, this includes keeping workers' passports, confining them to the household, restricting their communications, and taking other "self-defense" measures such as withholding wages to protect their "interests" and minimize their risks.<sup>14</sup>

The Lebanese government, meanwhile, lacks a coherent, rights-based policy that would regulate the employment and residence of migrant domestic workers and diminish the prevalence of exploitation. At present, the Government seems to have adopted a concerted policy of providing Lebanese employers with cheap labor for purposes of domestic work but without a clear labor policy. The presence of these workers is then treated by the Government as a security matter: their rights are not prioritized or protected. Employers may take advantage of domestic workers simply because they can get away with it and because of workers' position of vulnerability. Sometimes such mistreatment of migrant domestic workers can amount to abuse, forced labor, and even trafficking.<sup>15</sup> Even in the best of cases, the "sponsorship system" still cultivates a master/servant relationship between employers and workers since the personal relationship between two individuals and their capricious moods serves as the basis for a migrant domestic worker's legal status in the country.

Alternatively, a rights-based approach would ensure that residence permits for migrant domestic workers are not tied to individual employers. Instead, this alternative would create an employment-based system of residence for foreign workers in Lebanon. As explained later in this paper, it would also guarantee that migrant domestic workers would have the legal ability to resign, to change jobs, and to seek meaningful redress against their employers while continuing to reside and work in the country. Such a system would include checks, balances, oversight, and accountability measures. The Ministry of Labor would serve as the central point of authority as the government coordinating body.

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<sup>14</sup> See Ray Jureidini, *An Exploratory Study of Psychoanalytic and Social Factors in the Abuse of Migrant Domestic Workers by Female Employers in Lebanon*, KAFA (enough) Violence & Exploitation, January 2011.

<sup>15</sup> Hamill, *supra* note 14.

Currently, the “sponsorship system” for migrant domestic workers in Lebanon creates a situation of dependency where domestic workers rely upon their employers not only for their legal status in the country, but also for their lodging, food, medical care, and other necessities. The fact that workers often cannot leave the workplace without their employers’ permission reinforces the dependency that arises from this system. As noted by a senior ILO representative based in Beirut, “With the ‘kafala’ system, you are creating a total dependency of the worker on the employer for her food, sleeping, health, everything. Total dependency creates total vulnerability and opens the door wide to exploitation.”<sup>16</sup> A Lebanese Coalition of Civil Society Groups also pointed to the situation of dependency created by the “sponsorship system” in Lebanon:

The system of sponsorship ‘kafala’ creates total dependence of the migrant worker on the employer, and *de facto* denies them the right to take their employer to court. Furthermore there are no governmental mechanisms for monitoring the employment process, the employment agencies, or employers’ abuse. This has led to slavery-like conditions, labor exploitation, restriction of movement, physical and sexual abuses, and an alarming rate of suicide and deaths.<sup>17</sup>

#### **2.4. “Sponsorship system” - Lack of employment mobility**

Domestic workers cannot resign or terminate their employment contracts without first obtaining their employer’s formal consent. In other words, domestic workers cannot terminate their contracts at will.<sup>18</sup> This may only come in the form of a notarized “release.” The release must be accompanied by a notarized pledge from another employer to hire and assume full responsibility for the domestic worker. But often the permission to transfer comes at a high price. It is within the power of the initial employer whether to release the employee or not, and to determine how much this will cost.

However, Lebanon’s Standard Unified Contract does stipulate three specific situations where a domestic worker may unilaterally terminate her contract. They include: 1) non-payment of wages for three consecutive months or more; 2) physical or sexual abuse if

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<sup>16</sup> Simel Esim, ILO Senior Regional Gender Specialist, TV Interview - (2010) *available at* <http://ethiopiansuicides.blogspot.com/2010/04/future-tvs-tawasul-dependency-creates.html>

<sup>17</sup> See Coalition of Civil Society Groups Active in Lebanon, Joint Stakeholder Submission, Section 33, Universal Periodic Review (2010).

<sup>18</sup> See General Security regulations in relation to migrant domestic workers *available at* <http://www.general-security.gov.lb/Arabic/SiteUtils/HomePage/Pages/HomePage.aspx>.

medically certified; and/or 3) employment in a capacity other than domestic work without consent.<sup>19</sup> Yet these three are difficult to document and prove in most circumstances. Lebanon's Standard Unified Contract for migrant domestic workers spells out these situations. Due to the narrow range of justifications for a migrant domestic worker to end her contract, some women find themselves inextricably tied to their employers and even trapped in situations of forced labor.<sup>20</sup> Domestic workers would still need to obtain their employer's notarized "release" in order to work for another employer even in abusive situations, and they cannot work during legal proceedings without a specific court order.

This leads to an increase in the number of irregular migrants in the country who may have no other choice but to "run away" from their employers to escape maltreatment. In such cases, in which a migrant worker leaves her employer, she effectively forfeits the legality of her residence status in the country. This then complicates her ability to bring subsequent legal claims before the courts. The employer, meanwhile, typically notifies the police or immigration officials when a migrant domestic worker absconds in order to relinquish himself/herself from any future responsibility or liability.<sup>21</sup> In turn, when an employer reports that a worker has "escaped", then General Security officers proceed to cancel the worker's residence permit and issue orders for her detention.<sup>22</sup>

One leading Lebanese attorney offered his reflections on the problems migrant domestic workers face when they seek to be released from their employers:

This "sponsorship system" is very bad. In thousands of cases, I have contacted employers on behalf of migrant domestic workers. I have agreed to pay money to these employers so that they will agree to "release" their employees to another employer. Usually the amount of money depends on the period of time that the domestic worker has already served – but not always. If the sponsor paid \$3,000 in recruitment fees, then the sponsor will usually ask for \$3,000 to release her. If the maid has already worked for one and a half years, then the sponsor will tell the maid, "Okay. Give me \$1,700 if you want to switch employers." If the sponsor is generous, then he will say, "No problem. I don't need anything in exchange." But in some cases

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<sup>19</sup> See Article 16 (1) A-C of Lebanon's Standard Unified Contract for Migrant Domestic Workers.

<sup>20</sup> See Hamill, *supra* note 14.

<sup>21</sup> See General Security Communiqué, *supra* note 9, spelling out the employer's obligation to report to the authorities if the worker absconds: "If the housemaid absconds, then the employer must submit a complaint against her to the relevant Public Prosecution office and register it later at the General Security so that a search statement may be issued against her. Following this, the sponsor is discharged of any payments for the required fees during this period. He will only be obliged to provide the airfare when deporting her."

<sup>22</sup> By filing specious claims against workers - typically for theft - employers often ensure that the worker will be detained and investigated on criminal charges instead of the employer him/herself.

- even if the sponsor paid only \$2,000 to the agency in initial recruitment fees, then he will say, “You must pay \$3000 because you are bad, and you must be punished.”<sup>23</sup>

## **2.5. “Sponsorship system” - Power imbalance**

Migrant domestic workers have very little leverage when it comes to negotiating with employers because the “sponsorship system” creates a significant power imbalance in their relationship. Workers are at an automatic disadvantage if they raise any issues or requests related to their working and/or living conditions. Common complaints by migrant domestic workers include delayed or non-payment of salaries, excess workload, overtime expectations, untreated medical and dental needs, limitations on free movement, restrictions on communications with friends and family, confiscation of passports, and violence. Yet when domestic workers question their employers about these issues, the workers have very little bargaining power. They may not withdraw their labor, seek another job, or even resign - except under the three extreme circumstances mentioned above and stipulated in the Standard Unified Contract (Article 16). Since workers generally are not permitted to leave the workplace without their employer’s permission, this exacerbates the extreme power imbalance even more.

The combination of dependency and power imbalance can potentially lead to situations similar to slavery. There has been a growing recognition that immigration sponsorship systems in the region contribute to domestic servitude, slavery-like conditions, and human trafficking. In 2010 Human Rights Watch, for example, warned, “Governments in the Middle East should reform the current visa “sponsorship system”. When employers have near-total control over migrants' ability to change jobs, and sometimes to leave the country, workers can get trapped in exploitative situations in which they are forced to work without wages, get beaten or face other abuses.”<sup>24</sup>

## **2.6. Recruitment practices**

A serious problem with the Lebanese “sponsorship system” is the lack of accountability for private placement agents. The lack of regulatory scrutiny over agents exacerbates the vulnerability of migrant domestic workers. Regarding the “sponsorship system”, recruitment

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<sup>23</sup> Personal Interview with Attorney Roland Tawk, Beirut, Lebanon, 8 Dec. 2010.

<sup>24</sup> Human Rights Watch, *Middle East: End “Sponsored” Gateway to Human Trafficking* (2010) Press Release.

practices and profit motives are problematic. Recruitment practices are problematic because agents may: 1) deceive workers about the conditions that await them in Lebanon; 2) mislead workers about their wages and contract terms; 3) instruct employers to withhold workers' salaries; 4) offer employers "free replacement" policies for the first several months of employment during a worker's trial period. Similarly, profit motives are problematic because agents require employers to pay all recruitment-related expenses up front - usually in the range of USD \$1,500-3,500 per worker. This creates a relationship in which employers effectively purchase the domestic servitude of their employees for several years at a time.<sup>25</sup> Because of steep recruitment fees and relatively low salaries, employment relationships are not necessarily grounded in fair labor standards. Meanwhile, when domestic workers request early termination of their employment contracts, then employers must either relinquish their significant up-front recruitment expenses or barter with domestic migrant workers for their freedom. Certainly this does not leave the typical Lebanese employer with many options.

One senior ILO representative commented on the perils of the "sponsorship system" in relation to recruitment practices:

Many employers of domestic workers say, "We pay a lot of money and we want to protect our investment," holding domestic workers hostage, by not allowing them outside. It may be true that they do pay a lot, but if one compares what percent of that money actually goes to the worker and how much goes to the agencies, then it is not hard to conclude that the sponsorship system, as is, is functioning as an unfair business that is largely unregulated and needs to be critically reviewed and substantially revised (Simel Esim, ILO Senior Regional Gender Specialist, 28 Sept. 2011).<sup>26</sup>

Essentially, agents make money by brokering one person's right to control another in domestic servitude - rather than hiring them on fair terms for labor and services. Agents often coerce workers into staying with abusive employers, and they also abuse workers themselves - especially when workers get "returned" back to the agency by unsatisfied customers (e.g. employers). In turn, agents are often perceived to be unscrupulous because they knowingly allow migrant domestic workers to become trapped by their employers in a system that denies workers their rights.

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<sup>25</sup> Domestic workers' monthly salaries amount to a fraction of the recruitment fees paid by their employers at the outset. See Hamill, *supra* note 14.

<sup>26</sup> See Josh Wood, "Lebanon Begins to Address Abuse of Domestic Workers," *NY Times*, 28 Sept. 2011.

## 2.7. The Lebanese government and the “sponsorship system”

Despite repeated calls to reform the system, the Lebanese government has resisted any changes to date. During Lebanon’s Universal Periodic Review (UPR) at the United Nations Human Rights Council in November 2010, several State representatives from other countries asked questions and made recommendations related to migrant domestic workers and the “sponsorship system”. For example, Norway’s UN representative called on Lebanon to revoke the current “sponsorship system” and replace it with regulations that comply with international standards. Likewise, during the UPR Canada expressed concern about the situation of migrant workers in Lebanon. In particular, Canada pointed to the “vulnerability of domestic workers who arrive through a sponsorship system prone to abuse by employers.” Similarly, UPR stakeholder submissions by members of Lebanese civil society also called for the end of this system.<sup>27</sup>

While the Lebanese government was receptive to a few suggestions concerning migrant domestic workers made during the UPR, it flatly rejected most. Lebanon’s UPR delegation welcomed, for example, Sri Lanka’s generally worded recommendation to regulate labor relations in the country with respect to migrant domestic workers. The Lebanese delegation also supported Bangladesh’s general suggestion to cooperate with social workers in monitoring the working conditions of migrant domestic workers. However, the delegation rejected all specific suggestions (made by France, Norway, and Poland) regarding the inclusion of migrant domestic workers under the country’s labor code. The delegation also refused to consider any suggestions regarding the “sponsorship system” made during the UPR process. Lebanon’s formal, written UPR response stated in no uncertain terms that the Government would not reform - or even review - the “sponsorship system” at all.

It remains to be seen how Lebanon’s new government will address the “sponsorship system”. The country’s current Minister of Labor, Charbel Nahhas, appears poised to make reforms. The Minister is known for taking progressive stances and for taking swift action on policy reforms. He has already identified this issue as a serious concern.<sup>28</sup>

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<sup>27</sup> See 2010 UPR Stakeholder submissions by Lebanon’s Joint Civil Society Coalition and by KAFA (enough) Violence & Exploitation *available at*

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRLBStakeholdersInfoS9.aspx>.

<sup>28</sup> Press conference in Beirut, Lebanon (26 Sept. 2011).

## 2.8. Sponsorship for migrant workers in other sectors

Within Lebanon, sponsorship regulations apply to migrant workers who are employed in sectors other than domestic work. This includes, for example, foreigners employed as public sanitation workers, grocery store employees, primary school teachers, and airline company personnel.<sup>29</sup> These migrant workers in other sectors encounter similar regulations that apply to migrant domestic workers in Lebanon. Specifically, their residence permits require a single guarantor, or a *kafeel* - whether it is an individual, a company, or an academic institution. But generally speaking, restrictions that apply to other migrant workers are less controlling and less confining than those restrictions that apply to migrant *domestic workers* in particular.

The situation of Lebanon's public sanitation workers employed by Sukleen provides an interesting comparison to the situation of migrant domestic workers.<sup>30</sup> While the company does not divulge the standard terms of its employees' contracts, Sukleen acknowledges that its foreign workers are indeed covered by Lebanese labor law and are paid the national minimum wage. Sukleen's head of human resources, confirmed that Sukleen's foreign employees are permitted to terminate their employment contracts before they expire; this typically happens for personal reasons when a migrant worker has a sick family member, plans to get married, or is unhappy in Lebanon and just wants to leave the country.<sup>31</sup> Sukleen employees typically enjoy freedom of movement and are not confined to their place of work during their days off. While Sukleen mandates that workers sleep in dormitories on company premises where they also receive full board, the workers may exit and enter the compound during their free time. Their movement in and out is permissible, but it is monitored. Likewise, many migrant workers who often staff Lebanon's supermarkets generally sleep in quarters close to the store. Like Sukleen employees, they can exercise their freedom of movement in Lebanon, and in practice they are not restricted to their place of employment during their time off from work.

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<sup>29</sup> The sponsorship regulations do not include diplomats and UN officials.

<sup>30</sup> In Lebanon, the State contracts public sanitation work to private companies. One of the primary companies in this domain is Sukleen, which holds the contract for greater Beirut and Mount Lebanon (excluding Jbeil Caza). The company employs roughly 2,000 workers who are deployed on a daily basis throughout the city to pick up litter and debris in public spaces. In terms of labor management, Sukleen hires foreign workers as well as Lebanese nationals to do the job. The foreign workers come from Syria, Bangladesh, and India among other countries in South and South East Asia.

<sup>31</sup> Phone interview with Sukleen's human resources head, Layal Darwish, 19 Oct. 2011.

As discussed above, migrant domestic workers face an increased degree of vulnerability due to the “sponsorship system” within the particular context of Lebanon. Vulnerability arises from common practices, such as requiring workers to live in the employing household, as well as restrictive immigration regulations, lack of labor protection, and limited avenues for legal redress. As a result, domestic workers are at a serious disadvantage when it comes to engaging in dialogue with their employers, negotiating the terms of their working conditions, or terminating their employment contracts early - let alone demanding their rights. Again, although not all employers exploit their employees, the system itself is ripe for exploitation.

### **3. Comparison to other countries**

The circumstances of migrant domestic workers in Lebanon may also be compared to the situation of migrant workers in other countries. A comparative approach is useful for purposes of identifying best practices and for envisioning the full scope of practical possibilities that might be worth exploring in Lebanon. While research for the present analysis included a review of relevant practices in dozens of countries, three specific examples were selected for closer examination.

Lebanon is unique in many ways, but the following three examples were chosen because they provide instructive points of comparison: the United Kingdom, Hong Kong, and Bahrain. The demographics and dynamics are distinct in each, and the percentage of migrant domestic workers compared to the local population varies considerably. But several points are worth examining: entry and exit requirements, employment mobility, contract termination provisions, notice requirements, transfer rights, visa extensions, grace periods, and bridge visas. Each one of these points invites critical thinking when analyzing the “sponsorship system” in Lebanon more broadly. In turn, this type of comparison has the potential to contribute to a rights-based approach towards reforming the “sponsorship system” for migrant domestic workers in Lebanon. Concrete recommendations for reform will follow in the final section of this paper with specific reference to the Lebanese context.

#### **3.1. United Kingdom (UK)**

The Nationality Immigration, and Asylum Act 2002 (18 Sept 2002) specifies how the UK manages the entry, residence, and employment of migrant domestic workers in the country. The UK uses a points-based system for the governance of immigration, which allows UK-based employers to hire low-skilled workers from overseas under very specific circumstances. But the UK’s immigration rules recognize the particular vulnerability of migrant domestic workers to exploitation and incorporate fundamental protections as a result. As such, migrant domestic workers are treated as a separate class of workers and are eligible for a unique type of visa.

Although UK residents may not hire foreign domestic workers directly from overseas, the Overseas Domestic Worker (ODW) visa is available to migrant domestic workers accompanying foreign employers to visit or work in the UK.<sup>32</sup> This is a sector-specific visa issued by the UK's Home Office, the government agency responsible for matters related to immigration and passports. Migrant domestic workers must apply to the UK Border Office for an immigration visa under their own name in order to qualify for entry into the country. This application for entry clearance into the UK includes questions about the domestic worker's relationship with the employer in order to evaluate her candidacy and determine her eligibility for temporary residence. These prequalifying questions seek to ascertain that the worker has a pre-existing employment relationship with her employer. The process is very stringent with significant barriers to entry for migrant workers during the preliminary application stages.<sup>33</sup>

Yet despite stringent barriers to entry, migrant domestic workers remain relatively independent from their employers once they arrive in the UK. In particular, their immigration status and visas are independent from their employers. While the employer must pay the worker's salary according to the UK's minimum wage, the employer does not serve as the worker's immigration sponsor. During the work visa application process, each migrant domestic worker must demonstrate that she is legitimately employed, but no individual employer's name appears on the migrant worker's entry clearance, immigration visa, or passport for purposes of sponsorship. According to UK immigration guidelines:

The entry clearance endorsement should read "as a domestic worker in a private household valid for up to 12 months" or, where the employer is entering as a visitor, "D: For employment with a visitor as a Domestic Worker in a Private Household for periods up to 180 days". **The endorsement should not give the employer's details.** (UK Immigration Guidelines<sup>34</sup>)

Domestic workers may enter the country independently provided there is no excessive time lapse from when their employer enters the UK and provided there is satisfactory evidence, such as a letter from the employer, explaining why she is traveling alone.

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<sup>32</sup> It is important to note that these provisions are currently being challenged and that the UK government is considering withdrawing the right to change employers, among other aspects of the ODW visa. *See* BBC News, "Domestic Workers Demonstrate Over UK Visa Changes," 04 Sept. 2011.

<sup>33</sup> According to Jenny Moss, Community Advocate at UK rights group, Kalayaan, roughly 50% of all applications for ODW visas are rejected by the UK Border Office.

<sup>34</sup> *See* Section 3.1 of UK Immigration Directorates' Instructions Dec. 2006 available at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/idischapter5/section12/section12.pdf?view=Binary>

The degree of independence enjoyed by migrant domestic workers in the UK may be measured by several factors. Each worker fills out her own visa application in her own name. This is significant because it assumes that migrant domestic workers are independent from their employers from the start - even though it is in fact an employer-led visa application process. Domestic workers are required to work on a full time basis for one employer, but they are not required to live under the same roof as their employers. If they do, however, the employer is obliged to provide a separate bedroom.

Migrant domestic workers may leave the workplace regularly without their employer's consent. In addition, a domestic worker may resign freely and of her own volition without first obtaining the consent of her employer. Similarly, a worker does not need to register her intent to resign or terminate her employment contract with any UK government authority. When the domestic worker resigns, she may simply give one week's notice and then leave without explanation. In such cases, the employer is not beholden to the UK government in any sort of financial or legal capacity. Nor is the employer beholden to the domestic worker herself in any capacity - such as paying for her return airplane ticket back to her country of origin, for example. Further, the employer has no responsibility to report the worker's resignation to the police and UK immigration authorities or to make sure the domestic worker leaves the country upon the expiration of her visa. Instead, once the domestic worker resigns or leaves her employer, then the UK government absolves the employer of all prior obligations to pay wages or any other related expenses.<sup>35</sup>

When asked about the UK's regulation of migrant domestic workers, Jenny Moss, a community advocate for migrant domestic workers at Kalayaan, shared her reflections.<sup>36</sup>

Perhaps the word sponsorship is a red herring when we are discussing migrant domestic workers. The word implies some degree of the worker being tied to the employer. In the UK under current immigration rules, a domestic worker is free and independent from her employer. She has full employment mobility within the domestic worker sector. Her visa remains valid regardless of her immediate employment status. In other words, she does not have to notify the UK Home Office at the time she changes from one employer to another. This is necessary only at the time of the visa renewal each year. Even at that point, she only needs to provide documents from her current employer in order to show evidence of present

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<sup>35</sup> In other words, for employers there is no obligation to pay a domestic worker the balance of what she would be owed under a contract if she leaves before the contract expires.

<sup>36</sup> Background information about Kalayaan available at [www.kalayaan.org.uk](http://www.kalayaan.org.uk).

employment status and not because her employer must serve as some sort of immigration guarantor.<sup>37</sup>

In terms of employment mobility, the UK system permits all domestic workers in private households to change employers regardless of their reasons for leaving the original employer. Again, this does not automatically jeopardize their legal status in the country. Visa extensions and grace periods generally are not necessary for migrant domestic workers in the UK. This is because domestic workers have employment-based immigration visas.<sup>38</sup> In addition, migrant domestic workers are protected by UK labor law, are entitled to the national minimum wage, and may claim the same labor rights as UK citizens. When bringing claims before the labor tribunal or criminal court, meanwhile, migrant domestic workers do not jeopardize their immigration status. Their claims cannot be derailed by threats of retaliation from employers in the form of counter charges or detention. Significantly, migrant domestic workers may continue to work legally in the UK while their claims proceed in the labor tribunal or criminal court.

In sum, the UK has an employment-based visa system for migrant domestic workers. The system respects workers' rights because it recognizes them as individuals for the reasons described above. Migrant domestic workers in the UK are not tied to one specific employer in order to maintain their legal status in the country. They can exercise their own agency as independent individuals within a rights-based framework.

### **3.2. Hong Kong (HK)**

In Hong Kong, migrant domestic workers may also exercise their rights more freely than in Lebanon. While the situation in Hong Kong is far from perfect, migrant domestic workers are not bound to their employers inextricably during their stay in Hong Kong. This is due in large part to the absence of the more restrictive sponsorship requirements that prevail in Lebanon. As one Hong Kong immigration official said,

In Hong Kong, we do not call this “the sponsorship system” but we do require someone to be the guarantor for the foreign domestic helper while she is working here. In fact, all

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<sup>37</sup> Phone Interview with Kalayaan Community Advocate, Jenny Moss, 26 Sept. 2011.

<sup>38</sup> Domestic workers, for example, may choose to resign from their employer after working for one month in the UK. Then they may choose to search for a new employment position as a domestic worker in another household while living on their own or with friends in the meantime.

foreign workers are required to have guarantors – also known as sponsors. In the case of foreign domestic helpers, these sponsors are also the individual employers. The sponsor's main function is to make sure that the foreign worker goes back to her home country at the end of her contract.<sup>39</sup>

The dynamics and demographics in Hong Kong and Lebanon are similar in many respects. As in Lebanon, domestic workers migrate on a temporary basis to serve the local population on a wide scale. In Hong Kong there are over a quarter of a million migrant domestic workers and a total population of seven million. In both Hong Kong and Lebanon, domestic workers generally live in their employers' home, work long hours, may be "on call" both day and night, and experience physically demanding work conditions. Unlike Lebanon, however, the HK government does not tacitly authorize employers to serve as quasi-immigration officials. In HK, the Department of Labor governs most matters concerning migrant domestic workers and is the primary point of contact for settling disputes between workers and employers.<sup>40</sup>

Nevertheless, in practice, Hong Kong's system for labor management does share other similarities with Lebanon. Private agents place domestic workers with employers in individual households while often providing them with "free replacements" if they are not satisfied with their first employee. Holly Allan, Hong Kong-based Director of Helpers for Domestic Helpers, commented,

Migrant domestic workers often pay considerable amounts of money to employment agencies in order to get a job and may lose their job within days after having paid substantial fees. In HK, agencies also collude with lending companies to cover up the charging of placement fees. For agencies in HK, it is a lucrative business, and it is very easy for them to circumvent the law. Very few agencies are prosecuted for charging domestic workers illegal commissions because it is hard to prove. Even if an agency's license is revoked or if they are prosecuted, they can easily open another agency under a different name.<sup>41</sup>

Approximately 1,000 such agents operate this type of recruitment business in Hong Kong while 500 agencies are licensed by the Ministry of Labor in Lebanon. The Hong Kong Labor Department licenses private placement agencies, and it also monitors compliance with workers' employment contract terms. The Hong Kong Immigration Department handles all

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<sup>39</sup> Phone Interview, Hong Kong Immigration Official, 17 Oct. 2011.

<sup>40</sup> The HK Department of Labor is concerned with the rights, entitlements, and obligations of all employees in HK including migrant domestic workers to whom HK's Employment Ordinance also applies.

<sup>41</sup> Personal email correspondence with Director of Helpers for Domestic Helpers, Holly Allan, Oct. 2011.

processing requirements for entry and residence visas which must be approved before employment contracts can become valid.

In contrast to Lebanon, migrant domestic workers in Hong Kong do come under the labor law, must be paid the minimum allowable wage, and are legally entitled to statutory holidays.<sup>42</sup> As in the UK, domestic workers may enter Hong Kong independently, and their employers are not required to retrieve them from the airport upon arrival in the country. In addition, all migrant domestic workers are entitled to an automatic 14-day grace period if their employment contract ends prematurely.<sup>43</sup> These distinctions are not insignificant. They determine the context in which migrant domestic workers experience relatively more independence from their employers than workers in Lebanon. The key features in Hong Kong's labor management system for migrant domestic workers include relative employment mobility, automatic grace periods, eligibility for visa extensions, mandatory notice prior to termination of employment contracts, and the option to resign before the end of an employment contract.

In Hong Kong either party - employer or employee - may terminate the employment contract before it expires. A one-month notice period applies to both parties. By giving notice, the domestic worker may leave the employer for any reason - or for no reason at all. Alternatively, either party may also pay one month's wages to the other party in order to terminate the employment contract immediately. If dismissed without notice or payment *in lieu*, migrant domestic workers regularly resort to the Labor Relations Division of the Hong Kong Labor Department.<sup>44</sup> Regardless of the circumstances surrounding contract termination, both parties are required to notify the Hong Kong Immigration Department within seven days. But not surprisingly, adherence to labor standards is still a challenge. According to Holly Allan,

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<sup>42</sup> The Hong Kong labor tribunal regularly issues penalties against employers who fail to pay the minimum allowable wage to migrant domestic workers in their employ. Yet the penalties often constitute minimal fines and do not sufficiently dissuade repeat offenders in practice. In most cases, abusive employers are just more careful the next time to avoid being caught. In addition, enforcement of the law in Hong Kong is weak, and many migrant domestic workers are underpaid and denied rest days. In practice, employers may simply require them to sign false receipts or statements about their wages.

<sup>43</sup> During automatic grace periods, workers generally live with their friends, in shelters, or anywhere else they choose. They are not required to live under the same roof as their former employer during this two-week grace period following the early termination of their employment contracts.

<sup>44</sup> Note that in Hong Kong domestic workers are generally not permitted to work if they are pursuing litigation after termination of the work contract.

In Hong Kong, exploitation of foreign domestic helpers (FDHs) is widespread. They may find themselves the victims both of the rapacity of the employment agencies that recruit them and of unscrupulous employers who abuse them physically and/or verbally or require them to work in multiple households. They are sometimes forced to undertake non-domestic work in offices, restaurants and factories which is a breach of their condition of stay and which puts them at risk of prosecution. Contracts are frequently terminated for the flimsiest reasons, often late at night and the helper simply put out on the street. Immigration controls are enforced with great rigor, which means that FDHs are vulnerable to finding themselves before the criminal courts on charges of overstaying their visas or working in unapproved employments. Even more common are false allegations of crime made by employers who want to get rid of their helpers without having to pay their statutory entitlements. Sentences can be severe.<sup>45</sup>

Despite its obvious shortcomings, the Hong Kong system provides a useful point of comparison for exploring alternative approaches to sponsorship in Lebanon. Migrant domestic workers in Hong Kong enjoy at least somewhat more independence and mobility than their counterparts in Lebanon.<sup>46</sup> While still lacking, Hong Kong's system for managing the entry, residence, and employment of migrant domestic workers within its territory is less restrictive on balance than Lebanon's current system of governance for migrant domestic workers.

### **3.3. Bahrain**

Several Gulf Cooperation Council countries have grappled with the "sponsorship system" and how to reform it. Throughout the Gulf, public discourse has acknowledged the negative consequences of this system both on the labor market and on the working conditions for migrant laborers.<sup>47</sup> In this regard, the ILO has provided policy advice to several Gulf countries on how to implement alternatives.<sup>48</sup> Although none of the Gulf countries have included migrant domestic workers within the scope of their proposed reforms to date, the policy dialogue surrounding reforms to the "sponsorship system" in the Gulf still provides noteworthy insights for purposes of this paper.

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<sup>45</sup> Personal email correspondence with Director of Helpers for Domestic Helpers, Holly Allan, Oct. 2011.

<sup>46</sup> In practice, migrant domestic workers can transfer to another employer in Hong Kong without leaving the territory in several specific circumstances. These include the following: if the employer has died or emigrated, if there is evidence of abuse, or if the contract was terminated due to the employer's financial situation.

<sup>47</sup> See "End Sponsor System: UN Official Tells Gulf States," *The Peninsula Qatar*, 20 April 2010. See also "Other Gulf States May also Scrap Sponsorship System," *Gulf News-UAE*, 7 May 2009.

<sup>48</sup> See Khan and Haroff-Tavel, *supra* note 6.

In the Gulf region, Bahrain has made significant modifications to the sponsorship system for migrant workers, even though these reforms do not apply to domestic workers. Central to these reforms, Bahrain established the Labor Market Regulatory Authority (LMRA) in 2006 by Act No. 19/2006. This government entity now centralizes various procedures in relation to migrant workers including their recruitment, preliminary visa approval, entry into the country, work authorization, transfer to another employer, and employment termination. In particular, the LMRA allows for labor mobility and thereby addresses one of the most restrictive elements of the sponsorship system that is characteristic of Gulf countries where rights-based government policies for migrant workers are generally lacking.

The LMRA arranges and coordinates all aspects of government visas and permits for migrant workers. It allows them to obtain their work visas and residence permits immediately upon arrival at the Manama airport. Prior to the reforms that established the LMRA, migrant workers were eligible only for “limited” contracts. They received entry clearance into Bahrain in the form of a no objection certificate commonly known as an “NOC”. The legality of their work and residence in the country hinged upon their employers to sponsor the visa process, and they were not permitted to leave the country without their employer’s permission. Ending this dependence of migrant workers upon their employers during the entry and exit process already constituted a significant development in Bahrain. Now with the LMRA, migrant workers are no longer immediately and exclusively dependent on their employers for the legality of their residence and employment in the country. Additionally, all contracts are now “unlimited” and migrant workers are automatically eligible for multiple entry visas. This facilitates their departure and re-entry back into Bahrain. The LMRA also curbed the “free visa” problem that Bahrain faced when recruitment agents enticed migrant workers into the country with ghost employers and jobs that did not exist.

Perhaps most significantly, the new system now provides some degree of employment mobility. The mobility process came into effect in 2009, and it allows workers to terminate their employment contracts after one year with their first employer as long as they give reasonable notice to their employer of at least 30 days. Likewise, by notifying the LMRA of their intent to transfer, migrant workers may begin the process of changing jobs on their own.

It is necessary to understand the mechanics of how migrant workers in Bahrain use the LMRA to transfer to a new employer and how the system actually functions in practice. Without an official release, migrant workers may not simply walk off the job once they have given reasonable notice to their employers. Rather, workers must first notify the LMRA of their intent to resign and/or transfer to another employer. But once they do so, workers can still leave their employers and resign even if the employer continues to withhold consent. Now that this escape hatch exists for migrant workers through the LMRA, employers are less likely to deny requests to transfer. According to LMRA representative, Amr Selim, “Ninety percent of migrant workers’ requests to transfer are now uncontested, and workers may usually transfer without difficulty.”<sup>49</sup>

When employers refuse to acknowledge a migrant worker’s resignation, then workers follow a standard procedure for terminating their employment contracts early, which involves the Post Office. Workers request the Post Office to deliver a certified copy of their resignation letter to their employers. Upon delivery, the worker obtains a receipt documenting delivery. If the employer still refuses to respect the worker’s intent to transfer, then the worker can use this receipt as proof of the employer’s refusal to release. Similarly, if an employer refuses to accept the worker’s resignation letter, the Post Office plays a critical role by providing workers with an official certified document demonstrating proof of the worker’s resignation. This evidence may then be used as proof for purposes of notifying the LMRA as well. In this way, Bahrain’s LMRA currently provides a procedural escape hatch where workers have a way to leave difficult employment-related situations and may transfer to another job or employer if they wish.<sup>50</sup>

With Bahrain’s transition to the LMRA, some commentators have suggested that sponsorship has shifted away from the employer and over to the LMRA instead. Zahra Babar of the Center for International and Regional Studies (CIRS) in Qatar, for example, observed, “Under the changes, an independent body, the Bahrain Labor Market Regulatory Authority, has been given the authority to oversee the changes to the sponsorship law and

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<sup>49</sup> Phone Interview with Amr Selim, head of the LMRA’s Customer Relationships Management, 20 Oct. 2011.

<sup>50</sup> Despite LMRA provisions, employers in Bahrain can still cancel a migrant worker’s visa without his/her knowledge. Then after the thirty-day grace period lapses, workers will find themselves in an irregular status. So in effect, employers still have the power to jeopardize a worker’s immigration status, to block their transfer requests, and to retaliate against workers for resigning in search of a better job.

has in essence become the direct sponsor of all contractual workers in the country.”<sup>51</sup> This, however, is somewhat of a misnomer because the government of Bahrain is not necessarily assuming the same restrictive grip that employers previously held. Indeed, the LMRA was developed in part to alleviate the restrictiveness of the previous sponsorship system.

In contrast to Babar’s assertions referred to above, other commentators contend that Bahrain no longer has a sponsorship system at all. Unlike other countries in the region, the LMRA’s Amr Selim explained,

Expats in Bahrain do not need sponsorship to live and transact in the country. The relationship between the employer and the employee is not of a sponsorship or a “guarantor” nature, it is just a pure work relation that does not legally extend beyond the limit of the work place or work hours in anyway.

Expat employees can register their mobility intention with the LMRA at anytime as long as they still have one-month validity in their permit/visa. This step blocks the automatic permit renewal process with the same employer, and it automatically terminates the permit/visa on its expiry date. So in this way, an expat who has terminated his employment contract can also move freely to another employer.<sup>52</sup>

As in the rest of the Gulf, the system of labor management in Bahrain is still restrictive. The LMRA provides a new approach, but it does not yet apply to migrant domestic workers. Despite indications of incremental reform, other countries in the Gulf have not yet taken a comprehensive overhaul of the sponsorship system for migrant workers on a structural level.

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<sup>51</sup> See Zahra Barbar, “Bahrain’s Decision to Repeal the Kafala System,” *CIRS Research Update* (2010).

<sup>52</sup> Phone Interview with Amr Selim, head of the LMRA’s Customer Relationships Management, 20 Oct. 2011.

#### **4. Alternate approaches to the “sponsorship system”: Lebanon**

By considering best practices, Lebanon is well positioned to implement reforms and to set an intelligent example in the region more broadly. No other country in the region has yet to embark on reforms to the “sponsorship system” for migrant domestic workers specifically. This opens the door for Lebanon to break new ground in policy and practice. After identifying relevant policy objectives, specific steps need to be taken to move forward towards reform. The implementation of reforms will require input and participation from all active stakeholders. Of course reforming the “sponsorship system” in Lebanon is only one part of a comprehensive reform process that also needs to include migrant domestic workers in the labor code, improve social security policies, and institute minimum wage requirements among other considerations. The “sponsorship system” is part of a broader framework governing migrant domestic workers including their entry, exit, residence, and employment in the country.

**The primary policy objective recommended in this paper is to ensure that governance of labor migration is determined by a rights-based approach to the employment and residence of domestic workers in Lebanon.** Related policy objectives may seek to ensure smooth, efficient, and productive functioning of the labor market on the whole. Yet, the specific focus in this paper is the development of policy measures to address the particular situation and vulnerability of migrant domestic workers. Reforming the system for migrant domestic workers will benefit employers in Lebanon as well. Ideally, some of the burden will be lifted from their shoulders once the Government stops expecting them to serve as quasi-immigration officials. If implemented, such reforms will also serve to reduce the significant number of irregular workers within the country.

##### **In Lebanon, reforms must aim to:**

1. Increase the labor mobility of migrant domestic workers
2. Decouple the employer/employee relationship
3. Improve the recruitment process
4. Decrease the number and vulnerability of migrant workers in irregular status
5. Ensure social protections and legal recourse for workers
6. Establish national coordinating body; Build capacity of National Employment Office

**Recommended policy measures to implement reforms include the following:**

- **Resignation notification system**
- **Grace periods**
- **Visa extensions**
- **Employment-based visas**
- **Guarantees that workers may live outside of the workplace/household**
- **Statutory holidays**
- **Due diligence during recruitment**
- **Bridge visas**
- **Easy exit procedures**
- **Contract termination rights and notice requirements**
- **National coordinating body**

#### **4.1. Increase labor mobility of migrant domestic workers**

The main policy reform strongly recommended here is to increase the labor mobility of migrant domestic workers in Lebanon. This would mean allowing domestic workers the possibility of resigning and terminating their employment contracts. In other words, workers would end their contracts simply by giving reasonable notice of their intent to leave or to work for another employer instead. Here, one month would suffice and constitute an adequate notice requirement. In addition, automatic grace periods would allow workers to remain in the country for a reasonable period after the early termination of their contracts. This would remove the power of employers to abruptly terminate a worker's employment contract and forcibly repatriate her at a moment's notice.

After giving one month notice of resignation, a migrant domestic worker would then be permitted to return to her country of origin of her own volition. She would do so without paying penalties and without facing fines, detention, or immigration sanctions. Nor would she face the prospect of being "returned" (as if she were damaged goods) to the private employment agency that recruited her to come to Lebanon. Again, the primary idea suggested here is **to create a mechanism that would allow a domestic worker to simply resign without the oppressive caveat of being compelled or forced to work for another employer.**

This employment mobility measure also would allow domestic workers the important option of identifying new employers independently, and electing whether or not to work for them.

This measure is not intended to encourage freelance work, but rather to allow domestic workers to have flexibility and to seek mutually compatible working situations. Presumably workers would have the ability to seek out employers who would offer more lucrative compensation or preferable working conditions.

Given the Lebanese context, one way to implement this policy measure would be to allow migrant domestic workers to notify their employers of their intent to resign through a system managed and moderated by the Ministry of Labor. Such a **resignation notification system** would offer various options depending on the circumstances; this would include a telephone hotline service, a written resignation process, and an online system. In all cases, the notification system would provide sufficient documentation of a migrant domestic worker's resignation and intent to leave or transfer to a new employer. With such measures, domestic workers would no longer be inextricably linked to one single employer. Nor would they be constrained by the current limit of three transfers since this also restricts labor mobility.<sup>53</sup> Here, any such reforms would need to be accompanied by awareness-raising campaigns to make sure that migrants know about and can utilize these provisions.

Meanwhile, this proposed policy measure - which aims to increase labor mobility - would also impose tough criminal sanctions against employers seeking to extort money from domestic workers in exchange for “allowing” them to resign or for returning their passports and identity documents. In addition, the Government would need to develop and disseminate standard operating procedures with instructions on cost-sharing and pro-rating fees (visas, permits, insurance, plane tickets, etc.). The Government would issue a standard formula for employers to use when distributing and dividing recruitment costs among each other. Compliance with such a schedule would require strict supervision and enforcement.

In addition, **automatic grace periods** at the end of a migrant domestic worker's employment contract are worth considering - specifically when contracts are terminated early in cases of dismissal or resignation. This measure would facilitate labor mobility and provide migrant domestic workers with a way to plan their next steps and to determine if they want to stay in Lebanon or return to their country of origin. As indicated, automatic

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<sup>53</sup> See General Security's administrative regulations concerning current transfer applications *available at* <http://www.general-security.gov.lb/Arabic/News/Pages/tanazol.aspx>.

grace periods would also reduce the power each employer has to summarily terminate an employee's work contract and then abruptly repatriate her. Significantly, grace periods would enable domestic workers to maintain their legal immigration status in the country even if they run into conflict with their employers. In such situations, workers would have more mobility, flexibility, and leverage. In contrast to the current system, workers in distress would not be faced with the stark choice between staying with an abusive employer or "running away" thereby risking detention, fines, retaliatory charges, and repatriation.

**Visa extensions** would also provide workers with greater flexibility and mobility - especially at the end of their contracts - when changing from one employer to another. Migrant domestic workers would be eligible to apply for visa extensions in order to extend their legal residence in the country for at least one month if not longer. This would facilitate the process of switching employers, in case of any difficulties with the transfer process. Flexibility in the system is an important way of diminishing the vulnerability of domestic workers who may seek to switch employers for a number of reasons during their stay in Lebanon. In such cases, the Ministry of Labor or another government entity such as the National Employment Office would be involved in order to oversee the transfer process and to ensure that both parties are sufficiently protected.

A large-scale alternative to the "sponsorship system" would be to modify the employer-tied visa for migrant domestic workers in Lebanon. In contrast, **employment-based visas** would no longer specify the name of the individual employer, nor would they tie a worker exclusively to one individual employer. Instead employment-based visas would allow migrant domestic workers to serve as relatively free agents in the domestic work sector. As in the UK, this would address some of the problems arising from the power imbalance between employers and migrant domestic workers. The recruitment process would still be employer-led because job-seekers would still need a firm job offer in order to begin the visa application process, but the outcome would not be employer-tied. In other words, one individual employer would no longer have the unchecked power to control and oversee a domestic worker's stay in the country. Instead, these women would have the ability to withdraw their labor freely and to select their preferred employers on a proactive basis.

#### 4.2. Decouple the employer/employee relationship

Increasing and enabling the independence of domestic workers would mean taking steps to ensure that workers are free to leave the household during their time off and to enjoy vacations and statutory holidays as well. It would also mean guaranteeing migrant domestic workers the **freedom to live out of the workplace/household** if they so choose. In practice, this would require revising General Security's administrative regulations. It would also require exploring the feasibility of collective, affordable, and decent housing arrangements. While Sukleen workers live in dormitories on the company compound, migrant domestic workers could live in apartment buildings with their compatriots as many already do. Such private living quarters could be subsidized by the State at least until migrant domestic workers are recognized under the Labor Law and paid the minimum wage. Meanwhile, all General Security regulations relevant to migrant domestic workers would need to be published in detail on the internet. Making these regulations widely available would increase transparency in the system.

Additionally, policy measures to increase the independence of migrant domestic workers would involve the observance of country-wide, mandatory holidays for all domestic workers such as those stipulated under Hong Kong law. Each year all migrant domestic workers would have a minimum number of statutory days off from work, mandated by the Government, (such as New Year's Day) in addition to their annual leave. In this way, migrant domestic workers could not be kept inside at the perpetual insistence of their employers. With the visible presence of workers in public spaces and their corresponding solidarity in numbers, migrant domestic workers would have occasion to enjoy these **mandatory, statutory holidays** together outside of the work environment. Statutory holidays would provide workers with another type of safety hatch to loosen the confines of the "sponsorship system".

In addition, it is important to diminish employers' sense of legal and financial responsibility for their employees during their stay in the country. The Ministry of Labor and General Security would also remove all expectations that employers must have domestic workers live in their homes. Employers would not need to report "runaway" domestic workers to the

police in order to relinquish themselves of any corresponding legal or financial responsibilities. And finally, the Government would remove the requirement that employers must pay for the return airplane ticket if a migrant domestic worker resigns, leaves, or terminates her contract before it expires.

Taking such steps to decouple the relationship between the employer and domestic worker would diminish the master/servant relationship that presently exists and begin the process of creating a more balanced relationship. By changing these policies and practices, the power becomes more equal between employer and employee. This would also allow for healthier and more productive work relationships to develop. Meanwhile, unscrupulous employers would be discouraged from taking advantage of workers.

#### **4.3. Improve the recruitment process**

First, the Government would only approve work permits for migrant job-seekers with embassy-level diplomatic presence in Lebanon including full-time labor attachés, translators, and attorneys. Improving the recruitment process would also include regulating private agencies more strictly and ensuring that employers use only licensed agents. Agencies would need to be licensed through a rigorous inspection process, scrutinized regularly, and closely monitored in order to maintain their recruitment operations and to keep their business running. This would discourage them from condoning abuses and from acting as temporary employment agencies for migrant domestic workers, among other activities. Instead of housing migrant domestic workers in their offices, for example, agencies would be expected to find a suitable solution where workers could live on their own and look for another employer independently. No longer would agency owners, their family members, and associates be permitted to skirt current Ministry of Labor regulations. Agencies would be strictly forbidden from sponsoring multiple migrant domestic workers at the same time and from farming them out on a part-time (or short-term basis) for their own financial benefit.

An alternative to agencies altogether would be online, government-facilitated recruiting options. Overseas job seekers and employers in Lebanon would locate each other through a government-run website that would serve as a recruiting clearinghouse. This would eliminate - or at least reduce - the need for intermediaries. It would also mean lower up-front

costs to employers, and it would have the potential to individualize the recruitment process. It would make sense to synchronize this option with government recruitment processes in countries of origin as well. Countries like Bangladesh, for example, have already started using online registration processes for their nationals seeking employment abroad. This government process involves registration by SMS as well as smart cards containing basic information such as passport number, date of birth, family name, and contact phone numbers in their country of origin.<sup>54</sup>

On the Lebanese side, reforms would also incorporate some measure of due diligence absent from the current system. **Due diligence measures during recruitment** would ensure that job-seekers are familiar with the terms of Standard Unified Contract for migrant domestic workers, relevant Lebanese laws and regulations, and the details of their particular household (how many family members, their ages, particular work expectations, and living conditions, etc.). Typically, workers now walk into a Lebanese household of which they know virtually nothing about.<sup>55</sup> Likewise, employers often select domestic workers just on the basis of a picture and a simple profile. If domestic workers were able to assume a more active role in screening their employers, then this would help to ensure a better employment match in the end. An improved hiring process would involve a meaningful dialogue to discuss mutual expectations as well as questions and concerns with the participation of translators if necessary.

In a similar vein, the Lebanese government would hold job fairs for migrant domestic workers - either online or in person - that would ensure a better opportunity for workers and employers to get to know each other, or at least have an initial conversation to determine if they are suited for each other. In such cases, migrant domestic workers would come to Lebanon at their own expense and participate in a professionally run job fair designed to match job seekers and employers. This type of a process would operate similar to the way job fairs are conducted in other employment fields in Lebanon. If domestic workers were to migrate to the country at their own expense and under a “job fair” visa, then this would substantially reduce the up-front recruitment costs to employers seeking to hire domestic

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<sup>54</sup> Anbarasan Ethirajan, “Technology Boosts Bangladesh Migrant Job Search,” BBC News, 1 Nov. 2011.

<sup>55</sup> In Nov. 2011, domestic workers arriving in Lebanon started receiving a general information booklet published by Caritas Migrants Center to help manage their expectations and to provide a general reference guide.

help in Lebanon. Also, if workers themselves did not have to pay recruitment fees to agents in their countries of origin, then they would have money to pay their own roundtrip airfare.<sup>56</sup> This opportunity may be particularly useful for migrant domestic workers who previously worked in Lebanon and are familiar with the language and the local context.

Policy measures must improve the recruitment process by going further to alleviate steep initial fees paid by employers to agencies. At present, these fees contribute to a sense of entitlement and ownership among employers - especially since domestic workers' salaries are US\$150-300 dollars a month on average. In comparison, the initial amount that employers in Lebanon must pay to recruit and hire migrant domestic workers is roughly between US\$1,500-3,500. Possibilities for the Government to consider include: 1) creating government-sponsored escrow funds to hold recruitment fees for the employer until the domestic worker has served the duration of her contract; 2) creating a system whereby employers pay recruitment fees to agencies in installments on a pro-rated basis for the duration of the employment contract; and/or 3) requiring the second employer to pay the balance of recruitment fees following employment transfers. Each possibility would require the Government to mandate new rules and enforce standard operating procedures across the board. Each one of these three scenarios would need to be monitored closely so that agencies would conduct fair operations and so that employers would not impede workers' independence in order to protect their own labor investment.

#### **4.4. Decrease the number and vulnerability of migrants in irregular status**

Decreasing the number and vulnerability of irregular migrants would be achieved by utilizing easy exit procedures and **bridge visas**. In Lebanon, General Security occasionally opens "amnesty periods" for migrant domestic workers. These amnesties usually occur once every few years and last for several weeks or months at a time. The amnesties give undocumented domestic workers the option to come forward and "surrender" themselves to immigration authorities with the promise that General Security will not detain them on account of their irregular status. Rather, workers applying for amnesty are only required to pay accumulated fines for staying in Lebanon without proper government visas and permits.

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<sup>56</sup> In the example of Bangladesh, Khurshid Alam Chowdhury, Director General, Bureau of Manpower said that female workers going from Bangladesh to work in Jordan used to spend up to \$1,500 dollars, whereas due to government-to-government contracts the migration cost has now come down to just \$120. *Supra* note 57.

In exchange, General Security allows irregular migrants to leave the country without facing detention during these amnesty periods. Workers may sometimes transfer to a new employer during the amnesties if they manage to obtain their first employer's consent, but the precise rules governing these transfers are often unpredictable, as are the amnesties themselves.

Instead, Lebanon would be wise to create an **“easy exit” process**. This would provide a viable option for migrant domestic workers who have overstayed their visas and who cannot obtain the requisite permission from their sponsors in order to regularize their immigration status.<sup>57</sup> Workers would have the option to come forward to the authorities at any point, would be exempt from fees or detention, and would be able to leave the country automatically. This would be similar to the current amnesty periods, but the easy exit process would be more established and regulated.

Alternatively, **bridge visas**, such as those considered in Ireland among other countries, would allow undocumented workers to remain in the country for several more months to try and locate a new employer. These visas would allow workers to regularize their status in a predictable and accessible way. Embedding this mechanism in Lebanon's immigration system would increase protections available for migrant domestic workers in the country. It would provide another way to loosen the grip of the “sponsorship system” over workers and increase their labor mobility. Otherwise, if apprehended, irregular migrants in Lebanon face months in detention for immigration violations with limited access to legal assistance. Maintaining the *status quo* means that undocumented migrant domestic workers are excluded from the formal workforce, vulnerable to exploitation, and trapped in the shadows of Lebanese society.

Another policy measure would be for the Ministry of Labor to place a limit on the number of migrant domestic workers that each individual household in Lebanon may hire during the course of one year. This would encourage employers to place a higher premium on their employees, to treat them more respectfully, and possibly pay them more as well. This measure would also encourage employers to make sure that there is a good fit before they hire a domestic worker. If employers knew that they could not afford a high turnover of

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<sup>57</sup> See explanation of Spain's regularization program available at [http://www.ilo.org/dyn/migpractice/migmain.showPractice?p\\_lang=en&p\\_practice\\_id=23](http://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=23)

domestic workers in their households, then this would remind them to make greater efforts to keep domestic workers satisfied with their job. In turn, this would protect workers from the “disposable people” syndrome in which many employers have little incentive to cultivate a decent employment relationship because of an abundant labor supply.

#### **4.5. Ensure social protections and legal recourse**

The Lebanese government would develop proactive mechanisms for ensuring social protections and legal recourse within the Ministry of Labor. This would involve conducting regular interviews with workers, investigating workers’ complaints seriously, facilitating the adjudication of labor claims before Labor Tribunals, and offering free legal services to migrant domestic workers.

It is important to maintain a system where migrant domestic workers who have disputes with their employers have the right to remain in Lebanon. They would have the right to work for another employer in order to support themselves while their claims are being adjudicated. The Ministry of Labor would provide work visas to workers engaged in litigation or have complaints pending against their employers. In all cases, legal resources would be available in the languages of migrant domestic workers, and workers themselves would have the legal and practical ability to take their employers to court or to labor tribunals for any grievances, whether large or small. This would include routine claims based on unpaid wages, confiscation of passports, or forced confinement to the workplace as well as other more extreme forms of abuse such as forced labor and physical or sexual assault.

Meanwhile, when migrant domestic workers make labor-related grievances, the Ministry of Labor needs to take action, to make inquiries, and to verify allegations. This is not currently the case. Proactive involvement of the Ministry of Labor would increase the accountability of employers and ensure greater protection for workers. It is necessary that an employee - or anyone connected to her - have the option of filing official complaints leading immediately to credible investigations. This would include the possibility of an interview with the domestic worker in person. Such interviews, however, would not require social workers or government inspectors to enter the home; this has been called for previously to no avail. Rather they would make contact with the worker first by phone, and then they would seek to

interview her outside of the employing household if possible. If these various measures were to be implemented seriously, this would increase transparency in the current system.

#### **4.6. Establish national coordinating body - Build capacity of NEO**

Lebanon's National Employment Office (NEO) may be one possible vehicle for centralizing government functions concerning migrant domestic workers. The NEO is a public office with a tripartite structure under the authority of the Ministry of Labor. The NEO's mandate is to develop and implement national employment policies, to provide vocational training, and to study the labor market, but it is currently understaffed and underutilized. In order to enhance the NEO's capacity with respect to migrant domestic workers, it would need a bigger budget and specific regulations. Article 8 of Decree Law 80 (1977) states that "no permit will be issued to any private employment agency or office with objectives similar to those mandated for the NEO." In this regard, private employment agencies have usurped the NEO's legal authority by operating recruiting services and placing migrant domestic workers with individual employers, effectively encroaching upon the NEO's mandate in contravention of Decree Law 80 (1977). Currently, the NEO focuses on providing services to Lebanese job seekers and not to migrant workers. In particular, the NEO's website ([www.neo.gov.lb](http://www.neo.gov.lb)) offers employment recruiting functions for the purpose of matching Lebanese employers with Lebanese job seekers only.

Nonetheless, it would be possible for the Ministry of Labor to request the NEO to focus on migrant workers as well. Indeed it would be within the NEO's current mandate to undertake studies on the local labor market, unemployment rates, and local demand for foreign domestic workers. The Ministry of Labor would request the NEO to evaluate how foreign labor impacts local wages and employment levels. Additionally, the NEO would conduct feasibility studies on ways in which the local Lebanese labor supply could meet ongoing needs for caregiver work and household labor.

Similar to the Labor Market Regulatory Authority in Bahrain, the NEO would serve as a central coordinating body responsible for regulating Lebanon's labor market with respect to migrant workers. This would include issuing entry visas and work permits, facilitating employment transfers, and serving as a general clearinghouse for the migrant labor force. The NEO is well-situated to streamline the required steps necessary for entry, residence,

employment, transfer, and departure of migrant domestic workers in the country. This prospect would be viable with proper capacity building and adequate funding.

Enabling the NEO would include the need to establish information channels to notify foreigners of the procedures concerning migrant labor in the country, such as the proper regulatory channels to follow, and the consequences for noncompliance such as fines, penalties, and sanctions for immigration violations. They would ensure that migrants, their legal representatives, and community advocates have access to relevant and current information about new immigration procedures, documents, and requirements.

Meanwhile, the Ministry of Labor would oversee policy coherence in the management of the labor market with particular regard to migrant domestic workers. Similarly the Ministry of Labor would coordinate the work of different ministries and the NEO to ensure the good governance of the migrant domestic worker labor force. Such coordination would also serve to cultivate the national labor force more effectively, efficiently, and responsibly and to chip away at the stigma currently associated with domestic work. In addition, the Ministry of Labor's efforts would seek to ensure that wages are no longer deflated in the caregiver/domestic work sector and would seek to moderate the migration of domestic workers into Lebanon.

However, while utilizing the NEO is an important measure, it is not the solution to remedying the root of the problems within the Lebanese "sponsorship system". A unified government body is not the answer in and of itself either. The NEO would be an important part of regulating the recruitment and employment of migrant domestic workers. Yet it is the actual system itself that needs to be reformed. The primary focus needs to be on the regulations and policies governing migrant domestic workers' entry, residence, and employment in the country. All stakeholders must work together towards this goal.

## **5. Conclusion**

This policy paper intends to shed light on problems with the Lebanese “sponsorship system”, to offer new ways to think about this system, and to suggest improvements. This current system is flawed and leaves migrant domestic workers in a vulnerable position where they are inextricably tied to their employers with very little legal redress once they arrive in the country. Policy makers in the Lebanese government - and especially the Ministry of Labor - would benefit from considering some of the suggestions for reform provided in this paper. These include: grace periods, bridge visas, labor mobility, termination rights, notice requirements, visa extensions, and employment-based visas for migrant domestic workers in Lebanon.

## 6. Appendix: Best Practices with Respect to Migrant Domestic Workers

| INDICATORS                                                                                                                                                                   | Hong Kong                                                                                                                                                                                                                                                                                                                                                                                       | U.K.                                                                                                                                                     | Lebanon                                                                                                                                                                                                                                                              |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| It is Not Permitted for Agents and Employers to require Migrant Domestic Workers (MDWs) to Pay Recruitment Fees or to Deduct Fees from MDWs' Salaries in Destination Country | <b>Yes</b><br>Employment agencies in HK are permitted to charge an amount of commission not exceeding 10% of a worker's first month's wages                                                                                                                                                                                                                                                     | <b>Not Applicable</b><br>MDWs are not recruited directly from overseas, but rather they accompany their employers into the UK                            | <b>Yes</b><br>General Security officially prohibits the payment of recruitment fees by agents and employers, but it happens in practice                                                                                                                              |
| Entry Visa Does Not Specify Employer's Name                                                                                                                                  | Entry visa <b>does</b> specify employer's name                                                                                                                                                                                                                                                                                                                                                  | Entry visa <b>does not</b> specify employer's name                                                                                                       | Entry visa <b>does</b> specify employer's name                                                                                                                                                                                                                       |
| According to practice and regulations of immigration authorities, MDWs May Leave the Airport in Destination Country Independently and Unaccompanied by Employer/Sponsor      | <b>Yes</b>                                                                                                                                                                                                                                                                                                                                                                                      | <b>Yes</b>                                                                                                                                               | <b>No</b>                                                                                                                                                                                                                                                            |
| Regulations Concerning Work and Residence of MDWs is Available in Detail Online for Destination Country                                                                      | <b>Yes</b><br>Many rules and regulations are available online, yet MDWs themselves are not necessarily aware of this or may not have the means to access them                                                                                                                                                                                                                                   | <b>Yes</b><br>Rules and regulations are available online, yet MDWs themselves are not necessarily aware of this or may not have the means to access them | <b>Yes</b><br>Some rules and regulations are available online, yet MDWs themselves are not necessarily aware of this or may not have the means to access them                                                                                                        |
| MDWs Covered by Labor Law                                                                                                                                                    | <b>Yes</b>                                                                                                                                                                                                                                                                                                                                                                                      | <b>Yes</b>                                                                                                                                               | <b>No</b><br>Excluded as per Article 7 of Labor Law                                                                                                                                                                                                                  |
| MDWs Enjoy Freedom of Association                                                                                                                                            | <b>Yes</b>                                                                                                                                                                                                                                                                                                                                                                                      | <b>Yes</b>                                                                                                                                               | <b>No</b>                                                                                                                                                                                                                                                            |
| MDWs Legally Entitled to a Minimum Wage                                                                                                                                      | <b>Yes</b><br>MDWs are entitled to Minimum Allowable Wage (MAW) set by the Immigration and Labor Department which is different from the "Minimum Wage" applicable to local workers. However, the MAW is easily circumvented and few employers are penalized for underpaying MDWs which is a very common situation. The fines are small so that it still pays off for employers to underpay MDWs | <b>Yes</b>                                                                                                                                               | <b>No</b><br>MDWs are not eligible for the legal minimum wage. No minimum wage provision appears in the Standard Unified Contract. In practice, salaries are agreed upon on an individual basis but often they are determined informally on the basis of nationality |

## Best Practices for Regulations Governing Migrant Domestic Workers (cont'd.)

| <b><u>INDICATORS</u></b>                                                                                                                              | <b>Hong Kong</b>                                                                                                                                                                                                                                                                                                                                                                    | <b>U.K.</b> | <b>Lebanon</b>                                                                                                                                                                                                                                                                                                                                                  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>MDWs May Live Outside of Employer's Household without Violating Local Laws and Immigration Regulations</b>                                         | <b>No</b><br>Immigration regulations make it clear that MDWs may not live outside of their employer's household, but in practice it happens anyway                                                                                                                                                                                                                                  | <b>Yes</b>  | <b>No</b><br>Despite internal General Security guidelines, immigration regulations are not entirely clear on this question. But in practice workers sometimes live outside of their employer's household                                                                                                                                                        |
| <b>In Practice, MDWs May Go Out of Workplace/Household without Employer's Permission During Working Hours</b>                                         | <b>No</b><br>HK law/contract is silent on this, but in practice it is often used by employers to justify summary dismissal                                                                                                                                                                                                                                                          | <b>Yes</b>  | <b>No</b><br>Lebanese law and the Standard Unified Contract are silent on this, but in practice MDWs need permission to go outside the household/ workplace. Guidelines issued previously by General Security reinforce this customary practice                                                                                                                 |
| <b>In Practice, MDWs May Go Out of Workplace/Household without Employer's Permission on: Weekly Day Off, Annual Vacation Days, Statutory Holidays</b> | <b>Yes</b><br>Technically yes, but many employers expect MDWs to ask for permission because the employer may want to switch the day off. MDWs generally have to consult the employer on the period of annual leave, but yet they do not have to spend their annual leave time with employer. They do not have to stay in employer's the household on nation-wide statutory holidays | <b>Yes</b>  | <b>No</b><br>Lebanese law and the Standard Unified Contract are silent on this, but in practice MDWs need permission before going out of the household/workplace. Guidelines issued previously by General Security reinforce this customary practice                                                                                                            |
| <b>MDWs May Resign Freely, Leave Employer, and Terminate Employment Contract at Will</b>                                                              | <b>Yes</b><br>By giving one month's notice or paying one month's wages in lieu of notice. In addition, the legal concept of "constructive dismissal" is widely recognized and used in practice when employers are in breach of their contract obligations. In such cases, MDWs may consider themselves contractively dismissed and may leave without notice                         | <b>Yes</b>  | <b>No</b><br>Lebanon's Standard Unified Contract stipulates only three specific situations in which a MDW may terminate her contract unilaterally. These include: 1) non-payment of wages for three consecutive months or more; 2) physical or sexual abuse if medically certified; and/or 3) employment in a capacity other than domestic work without consent |

## Best Practices for Regulations Governing Migrant Domestic Workers (cont'd.)

| <b><u>INDICATORS</u></b>                                                                                            | <b>Hong Kong</b>                                                                                                                                                                                                                                                                                                                                       | <b>U.K.</b> | <b>Lebanon</b>                                                                                                                                                                                                                                                                                                                                           |
|---------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>MDWs May Change Jobs in Same Field with or without Employer's Consent</b>                                        | <b>Yes</b><br>MDWs in Hong Kong may resign from their first employer, locate a second employer, and then request a new work permit while they are still in HK. In certain situations they are allowed to remain in HK for the entire transfer process. In others, they must leave HK as a formality and return to HK once their new paperwork is ready | <b>Yes</b>  | <b>No</b><br>MDWs need a signed and notarized release form in order to obtain consent from their first employer before they may change jobs                                                                                                                                                                                                              |
| <b>It is Legal for MDWs to Have More Than One Official Employer</b>                                                 | <b>No</b>                                                                                                                                                                                                                                                                                                                                              | <b>No</b>   | <b>No</b><br>Lebanon's Standard Unified Contract specifies that MDWs may work for only one employer, but in practice many MDWs work for several employers on an informal basis in violation of this standard                                                                                                                                             |
| <b>MDWs Must Work on Full Time Basis for One Employer Only</b>                                                      | <b>Yes</b>                                                                                                                                                                                                                                                                                                                                             | <b>Yes</b>  | <b>Yes</b>                                                                                                                                                                                                                                                                                                                                               |
| <b>MDWs May Work on Part Time Basis for Other Employers if Working on Full Time Basis for One Official Employer</b> | <b>No</b>                                                                                                                                                                                                                                                                                                                                              | <b>No</b>   | <b>No</b>                                                                                                                                                                                                                                                                                                                                                |
| <b>Keeping MDW's passport/ identification documents is prohibited and actively discouraged by authorities</b>       | <b>Yes</b>                                                                                                                                                                                                                                                                                                                                             | <b>Yes</b>  | <b>No</b><br>It is possible to challenge routine passport confiscation, but this rarely happens in practice. Not only do Lebanese authorities turn a blind eye to this customary practice, but they usually also give MDWs' passports directly to their employers upon MDWs' arrival in Lebanon. Agents actively advise employers to keep MDWs passports |

## Best Practices for Regulations Governing Migrant Domestic Workers (cont'd.)

| <b>INDICATORS</b>                                                                                                                                                  | <b>Hong Kong</b>                                                                                        | <b>U.K.</b>                                                                                                                                                                                      | <b>Lebanon</b>                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>MDWs' Employers NOT Required to Report "runaway" MDWs to Police or Immigration Authorities</b>                                                                  | <b>Yes</b>                                                                                              | <b>Yes</b>                                                                                                                                                                                       | <b>No</b><br>In practice, employers routinely report "runaway" workers to the authorities in order to absolve themselves of any further responsibilities as the worker's sponsor. Internal guidelines issued by General Security (2004) reinforce this customary practice, "If the housemaid absconds, her employer must submit a complaint against her to the relevant Public Prosecution office so that a search statement can be issued against her" |
| <b>MDWs Eligible for Visa Extensions if engaged in litigation</b>                                                                                                  | <b>Yes</b><br>for at least 2 weeks regardless of their employer's consent/participation in the process. | <b>Yes</b><br>MDWs are eligible to renew their ODW visas based on their legitimate employment in the UK as a domestic worker – but not based on their relationship with one particular employer. | <b>No</b><br>MDWs are not eligible for visa extensions. They need the consent and participation of their sponsor/employer in order to renew their annual residence permit and 2 year work visa.                                                                                                                                                                                                                                                         |
| <b>MDWs Enjoy Automatic Grace Period if Employment Contract Terminates Prematurely and Before Residence Permit Expires</b>                                         | <b>Yes</b><br>MDWs are entitled to an automatic 2 week grace period.                                    | <b>Yes</b><br>Built-in assumption of ODW visas.                                                                                                                                                  | <b>No</b>                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>In Practice, MDWs May Continue to Reside and Work Legally in Destination Country While Pursuing Legal Claims Against Employer in Court or in Labor Tribunal</b> | <b>No</b>                                                                                               | <b>Yes</b>                                                                                                                                                                                       | <b>No</b>                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>In Practice, MDWs Must Be Given Reasonable Notice of Contract Termination by Employers or Payment In Lieu</b>                                                   | <b>Yes</b>                                                                                              | <b>Yes</b>                                                                                                                                                                                       | <b>No</b><br>In practice, MDWs are often summarily dismissed by their employers and repatriated at a moment's notice                                                                                                                                                                                                                                                                                                                                    |

### Best Practices for Regulations Governing Migrant Domestic Workers (cont'd.)

| <b><u>INDICATORS</u></b>                                                                                        | <b>Hong Kong</b>                                                        | <b>U.K.</b>                                                    | <b>Lebanon</b>                                                |
|-----------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|----------------------------------------------------------------|---------------------------------------------------------------|
| <b>In practice, MDWs May Not be Summarily Dismissed Without Cause and Repatriated at Will by Employer</b>       | <b>Yes</b>                                                              | <b>Yes</b>                                                     | <b>No</b>                                                     |
| <b>MDWs May Terminate Employment Contract Prior to Expiration for Any Reason – or No Reason</b>                 | <b>Yes</b>                                                              | <b>Yes</b>                                                     | <b>No</b>                                                     |
| <b>In Practice MDWs Pay Employers for “Release” to Terminate Employment Contract Early</b>                      | <b>No</b><br>not necessary because MDWs have option to resign.          | <b>No</b><br>not necessary because MDWs have option to resign. | <b>Yes</b>                                                    |
| <b>MDWs Required to Obtain Exit Visa Stipulating Employer’s Express Consent Allowing Departure from Country</b> | <b>No</b>                                                               | <b>No</b>                                                      | <b>No</b><br>but employer can obstruct departure in practice. |
| <b>MDWs Eligible to Apply for Permanent Residence in Destination Country</b>                                    | <b>No</b><br>But this issue is currently being challenged in HK courts. | <b>Yes</b><br>after 5 years                                    | <b>No</b>                                                     |
| <b>MDWs Required to Pay for Air Transport to/from Country of Origin</b>                                         | <b>No</b>                                                               | <b>Not Necessarily</b>                                         | <b>No</b>                                                     |

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