

TRAPPED

Migrant Domestic Workers in Lebanon



This Research is Designed and Implemented by



This Research is Funded by



Preface

We live in a society which is stuck in debating how to dispose of its trash. Our politicians publicly exchange accusations of corruption with no hint of shame. Our political parties boast their international or regional affiliations, completely disregarding the sentiments of the (naïve) citizens who still believe that they live in a real country.

The activists of Insan Association belong to the above mentioned category. They are firm in their belief in a country ruled by the law and by human rights, even if this sometimes means debating the obvious with an administration which claims to know the best interest of the citizens more than the citizens themselves and which claims to serve the country more than those who dedicated their lives so that Lebanon can flourish.

This report looks into the right of Migrant Domestic Workers in Lebanon to choosing their place of residence and to their right to freedom of movement within Lebanon. This is as if those natural and basic human rights that every human being is born with can be debated, negotiated, granted or withheld. As if discussants have the authority to designate people as human beings or deprive them of their humanity.

There are some segments in Lebanese society who have restricted Migrant Domestic Workers' freedom of movement and their right to choosing their place of residence. Those segments have included not only employers of Migrant Domestic Workers but also officials whose task is to implement the law, protect the weak, and yield justice. This is despite that international conventions ratified by Lebanon, the Lebanese constitution, and Lebanese local laws combined, offer a clear recognition of human rights generally and in particular the rights to freedom of movement and to choosing one's place of residence. Despite all of this we find ourselves today forced to debate and discuss the obvious; which is the effectiveness of the law and its implementation in guarantying those rights.

Who holds whom accountable when the law is infringed? How are those who are tasked with implementing the law held accountable when they facilitate, participate in, or cover up a crime punishable by law up to life in prison with hard labor? How can those crimes pass by us, citizens, press and people of the law and security, unnoticed and undetected?

Yes, we can say 'how do we start and that everything needs to be rectified', yes you can say 'other issues have more priority', but the real questions that confronts us today is: in what country do we want to live? Do we want to live in a country governed by the law or do we want to live in a country whose ruler is the law?

Charles G. Nasrallah

Founder/ CEO
Insan Association

Table of Content

◆ Insan Association-----	
◆ Acknowledgments-----	
◆ Executive Summary-----	
◆ Introduction-----	
◆ Background and Purpose-----	
◆ Methodology-----	
◆ The Current Situation and its Relationship to----- Previous Directive on Children	
◆ Freedom of Movement is a Fundamental Human Right-----	
◆ General Security’ s Mandate on Migrant Workers in Lebanon-----	
◆ General Security: The Enforcement of the Standard Unified Contract--	
◆ Employers’ Restrictions on MDWs’ Freedom of Movement -----	
◆ Recommendations -----	

List of Acronyms

COC: Code of Obligations and Contracts

GS: General Security

ICCPR: International Covenant on Civil and Political Rights

MDW: Migrant Domestic Worker

MoL: Ministry of Labor

SUC: Standard Unified Contract

UDHR: Universal Declaration of Human Rights

UN: United Nations

WMDWs: Women Migrant Domestic Workers

TRAPPED: Migrant Domestic Workers in Lebanon

Copyright 2016 Insan Association

Literature Review

Samuel Bollier
Elie Haddad
Lilian Chammah
Venus Saadeh
Jean Paul El Asmar
Pamela El Koreh

Drafted the Report

Roula Hamati

Main Researcher
& Research Coordinator

Roula Hamati

Supervised the Research
& Developed Recommendations

Charles Nasrallah
Lala Arabian

Photography

George Jbeily
Insan

Legal Responsibility

Charles Nasrallah

Insan Association

Insan Association' s mission is to protect and promote the rights of the most vulnerable and marginalized individuals. Insan Association pursues this through holistic service delivery including education, psychological and legal services, advocacy and research. This report was undertaken by the Research and Advocacy Team. The Advocacy Department aims to influence the structures that deny people access to and the realization of their human rights. Through campaigning, awareness raising and lobbying, Insan endeavors to build the structures that give human rights recognition to those individuals.

Acknowledgments

We would like to express our sincerest gratitude to the Migrant Domestic Workers who have trusted us with their problems and their life stories and whose everyday problems are the inspiration for this report.

This report is the product of a team of dedicated Insan Association researchers. Samuel Bollier conducted an extensive review of the literature including international laws and Lebanese laws and edited report drafts. Elie Haddad, Liliane Chammah, Venus Saadeh, Jean Paul El Asmar and Pamela El Koreh contributed to the literature review and diligently researched Lebanese laws. Lala Arabian and Charles Nasrallah supervised the research and contributed to the development of the recommendations.

Roula Hamati coordinated the research including study design, review of the literature, analysis of the result, drafting of the report and development of the recommendations.

Executive Summary

The right to freedom of movement forms one of the cornerstones of the international human rights regime and the Lebanese legal system. It is a right that everyone ought to enjoy regardless of race, national origin, residence status, religion or any other criteria. Yet, an alarming 5% of people in Lebanon today do not enjoy this basic human right. Specifically, 250 000 Migrant Domestic Workers in Lebanon suffer from various degrees of restrictions on their freedom of movement. Those restrictions vary from limits on their right to go out of their employer's house outside of their work hours, to confiscation of passports, forced confinement, and official and unofficial restrictions on their ability to reside independently.

Responsibility is dispersed and falls equally on employers, recruitment agencies, and Lebanon's General Security[1]. Each has contributed to narrowing the prospects for the enjoyment of this right. This report closely examines the issue of restriction of the freedom of movement. Specifically, this report investigates the position of the law, both in the form of international treaties ratified by Lebanon as well as national legislation, on the restriction of MDWs freedom of movement. In doing so this report answers the following question: does the law warrant certain restrictions on MDWs freedom of movement? and if so under what conditions?

In addition to examining common practices limiting MDWs' freedom of movement, such as forced confinement and the confiscation of passports, this report specifically looks at a more controversial and perhaps less recognized form of intrusion on the freedom of movement, namely restrictions placed on MDWs' ability to choose their own place of residence. As of recently, General Security has become particularly rigorous in requiring that MDWs reside with their employer as a condition for issuing or renewing their residence permits. Consequently, many MDWs who did not reside with their employers lost their legal right to reside in Lebanon and were subsequently deported. This has placed substantial limits on MDWs' ability to chose their own place of residence and/ or reside independently.

This report finds that the freedom of movement and the freedom of choosing one's place of residence are basic human rights recognized both under the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) that Lebanon has ratified. Those rights are also recognized under the Lebanese constitution. In spite of this, MDWs' right to freely choose their place of residence is undermined by General Security. From the cases we have documented, General Security is refusing to renew the residence permits of MDWs' who do not reside with their employers.

This report argues that while General Security is legally mandated to 'monitor' foreigners in Lebanon, it has no authority to enact measures that contradict provisions or legal principles enshrined in the Lebanese laws or constitution.

Additionally, while General Security has unequivocally interpreted the Standard Unified Contract [2] as requiring the worker to reside with her employer, such interpretation is not supported by a literal reading of the text of the contract. Interpreting the SUC as requiring the worker to reside with her employer restricts her legally sanctioned right to choosing her place of residence, and as a result invalidates the contract, as article 192 of the Lebanese Code of Obligations and Contracts (COC) clearly states that "any contract that entails an obligation which is not sanctioned by law is invalid".

The report also finds a connection between General Security's previous directive on the deportation of children of migrant workers and the current decision to refuse residency renewals for those migrant domestic workers who reside independently and whose overwhelming majority are MDWs who have children.

This report argues that the new rigor in enforcing the live-in requirement is an indivisible part of General Security's long term policy towards MDWs which has worked to tighten the sponsorship system and which has given General Security unrestrained control over the lives of MDWs in the country.

Finally, this report also finds that, in addition to amounting to a serious human rights violation, restrictions placed on MDWs' freedom of movement by employers and recruitment agencies constitute criminal acts that could be prosecuted as a criminal offense under the law of Lebanon. Article 569 of the Penal Code punishes the deprivation of liberty by a sentence up to life in prison. Deprivation of freedom under the Penal Code could apply to cases of forced confinement and confiscation of the worker's passport. Recruitment agencies that incite employers to deprive the MDWs of their liberty are also liable to prosecution.

Introduction

In Lebanon today it is estimated that there are around 250 000 Women Migrant Domestic Workers (WMDW), the vast majority of whom come from Ethiopia, the Philippines, Sri Lanka, Nepal and Bangladesh. Numerous previous studies have touched upon the human rights violations MDWs are subjected to; from confiscation of passports and unpaid wages, to threats and acts of sexual and physical abuse. A previous Insan Association (2014) study of both employers and Migrant Domestic Workers attitudes towards the current sponsorship system has revealed that 78% of employers confiscated the passport of the MDW they employ, while 26% of employer did not believe MDWs should be able to live outside of their place of their employment.

While there is little ambiguity in the minds of the Lebanese employers that sexual or physical abuse constitutes a human rights violation and a criminal act, restricting the MDWs' freedom of movement, through practices such as confinement or the confiscation of the worker's passport, is still culturally tolerated. This cultural tolerance of the restrictions placed on MDWs' freedom of movement has been reinforced by certain authoritative interpretation of the Standard Unified Contract [1] requiring MDWs to reside at their employer's house. In the past year, Lebanese General Security, which is the body that is legally mandated to deal with foreigner's residence in Lebanon, has expelled a significant number of regular workers who did not reside with their employers [3]. Recruitment agencies have also gained a reputation for encouraging employers to place multiple restrictions on the MDWs including the confiscation of passport and confinement inside the house.

The cultural tolerance and official encouragement of the restriction of MDWs' freedom of movement does not negate the fact that restrictions on the freedom of movement constitutes a serious infringement on the worker's human rights and an offense punishable by the law. It is our aim in this report to shed light on this serious human rights violation and to advocate, using both Lebanese and International Human Rights Law, for Migrant Domestic Workers' right to the freedom of movement, including her right to chose her own place of residence.

Background & Purpose

MDWs in Lebanon live in a case of 'exceptionalism' that reflects on all aspects of their life. Lebanese society has in fact constructed a differentiating discourse on MDWs whereby they are considered as minors and unfit to make their own decisions, and as needing parental supervision and protection (Insan 2014, Moukarbel 2009). It is within this dehumanizing tendency to regard MDWs as essentially different, with different applicable standards of rights and responsibilities, that the larger societal and official discourse on the necessity of residing with the sponsor is constructed and validated.

The issue of the domestic worker's place of residence predates the demographic shift to employing foreign labor. Prior to the Lebanese civil war, families employed young domestic workers from rural areas from a very young age. Rural girls were employed as domestic workers from as young as 10 years old based on an agreement with the girl's father (Jureidini 2002).

Given the young age of the domestic worker and the specific nature of this relationship, a norm has developed whereby the worker resides with the family that employs her until she eventually leaves her job in order to get married. With the advent of the civil war, the demography of domestic work changed drastically. Adult women from various Asian and African countries started coming to Lebanon to work as domestic workers (Jureidini 2002). This demographic shift only exacerbated the pre-existing prejudices against domestic workers by adding the category of 'foreign' to the previous categories of 'poor', 'young', 'rural' and 'vulnerable'. This has worked to strengthen societal discrimination and reinforce the societal norm of the necessity of residing with the sponsor.

Recruitment agencies have also played an important role in solidifying the discrimination against MDWs and fortifying the normative practices restricting MDWs' freedom of movement. Under the current employment system, recruitment agencies are liable to provide a replacement within the first three months of recruitment if the MDW decides to discontinue her work.

This obligation poses a significant financial risk on the agency. In order to minimize that risk, recruitment agencies often advise prospective employers to take various measures which sometimes amount to forced labor and trafficking to limit the freedom of movement of the MDW. Recruitment agencies have consistently advised prospective employers to lock the migrant worker inside the house of the employer, to confiscate her passport and restrict her communication with the outside world.

More dangerously, however, what started as a societal norm has been mirrored and magnified by the policies of the Lebanese administration. Specifically, General Security has enacted a number of administrative decisions that have fortified and legitimized this guardianship system, those include the directive on the deportation of children and the pledge banning familial or romantic relationships among others. Most recently however, General Security has unlawfully issued decisions of expulsion against 'regular' migrant domestic workers who did not reside with their employers. Although the live-in requirement is nowhere to be found in Lebanese Laws, General Security has repetitively insisted that a MDW must reside with her sponsor as a condition of her residency renewal.

This report sets out to prove that restricting Migrant Domestic Workers' freedom of movement, whether by employers, recruitment agencies, or by the Lebanese administration, specifically in cases where no crimes have been committed, constitutes a clear human rights violation both under international law and Lebanese law. By deporting MDWs on the grounds of not residing with their sponsors, this reports argues, General Security is violating the very same laws that it is entrusted with implementing.

This research offers an in-depth analysis of applicable laws both Lebanese and at the level of international human rights law. The analysis herein can be used as the basis to challenge, through the court system, cases of expulsion based on General Security's live-in requirement, as well as cases of confiscation of passports, and forced confinement by recruitment agencies or employers.

Findings from this report can also be used in advocacy and lobbying to exercise pressure on General Security to change its overall policy on MDWs. More directly, findings of this report can be used to lobby General Security to stop requiring that MDWs reside with their sponsors and to allow them to live independently without the threat of becoming undocumented or being deported. Results from this report also could be of interest to employers, many of whom may require that the MDWs they employ reside with them because they believe that there are no legal channels to employ a MDWs who lives independently. By clarifying that from a legal standpoint, there is no requirement for MDWs to reside with their employers, this report will help pave the way to a better and more flexible employment relationship based on the full knowledge of applicable laws. This in turn will help reduce many of the abuses that befall MDWs. Living independently could reduce the incidence of forced labor, long working hours, unpaid wages, as well as physical and sexual abuse and contribute to a more just and equal society.

Methodology

This report analyzes, from a legal standpoint, the right to freedom of movement and freedom of choosing one's place of residence as applicable to Migrant Domestic Workers in Lebanon. In doing so, this report draws a clear distinction between socially acceptable practices on the one hand and the provisions of the law on the other hand and explicitly advocates for the full implementation of the law: 1- by raising awareness on the legal obligations of both Lebanese employers and the Lebanese authority and 2- by highlighting the consequences of violating those obligations.

Primary data for this study consisted of legal texts including Lebanese legislations, binding international treaties that Lebanon has ratified, precedent rulings by Lebanese judges, and decrees and administrative decisions. Those texts were analyzed and contrasted using the method of textual analysis.

In addition, secondary data was extracted from INSAN's legal database; cases of restrictions of MDWs' freedom of movement were selected and analyzed. Resulting cases were classified by the type of restriction on the freedom of movement (passport confiscation, limits on her ability to leave the house or live outside the house etc...) and by the actor that imposed the restriction (employers, General Security, recruitment agencies, etc). This data was used to produce statistics on the frequency of this phenomenon, inform our understanding of General Security's policy with regards to MDWs who live independently, and support the claims made in this report by providing evidence from our cases.

Finally, interviews were planned with General Security. A written request was submitted on 10/05/2016 to the Director General of the General Security explaining the objectives of the research and requesting an interview [4].

The letter sent to General Security contained the following research questions:

- What are conditions that the MDW must satisfy in order to be granted a residence permit from General Security?
- Does the migrant worker have to reside with her sponsor in order to be granted a residence permit/ renewal?
- If yes:
- What do you base this requirement on, is it a legal text, and administrative decision. Can you share the text with us?
- And why is this requirement not listed with the requirement list on the General Security ' s website? Are there any additional requirements that are not on the website and how can we obtain them? And how can sponsors and MDWs be informed of those requirements not to violate them?
- What if the migrant worker cannot live with the sponsor for a certain reason, (the employer' s house is too small, full etc..) can she live outside in this case if both parties agree?
- How does General Security determine if the MDW resides with her sponsor, does General Security carry out inquiries in each and every case?
- If case investigation concludes that a MDW does not reside with the employer, what is the standard procedure, is she given a duration to fix the situation, is she deported, or does she have to pay a fine?

Up to this date, Insan Association did not receive an official reply from General Security.

The Current Situation & its Relationship to Previous Directive on Children



For the past few years, the human rights situation of Migrant Workers in Lebanon has been deteriorating. A tightening of the sponsorship system has been gradually taking place as result of a set of administrative decisions. As of early 2014, General Security began deporting Lebanon born children of migrant workers with one or both of their parents. Although General Security refused to officially comment on this issue, the unofficial justification for this decision was that migrant worker are in Lebanon to work and not start families and have children (Insan 2015). Following continuous pressure from Insan Association and other civil society organizations, the implementation of this decision was momentarily stopped.

A few months after the decision had been overturned and as of summer 2015, General Security began implementing stricter measures for the renewal of residence permits of MDWs in the country. As of recently, General Security is requiring that MDWs reside with their employers as a condition to renew their residence. We have documented more than a dozen cases, where MDWs were not granted residency renewal solely because they did not reside with their employers. General Security has in each of

those cases defended its decision through false allegations that the worker in question did not work for the sponsor.

However, even when employers made written assurances to General Security that the MDW they employ worked exclusively for them [5], General Security still refused to renew the residence permit. This demonstrates that General Security is in fact not basing its decision on whether or not the MDWs work for their sponsors but whether or not they reside with them. In other similar cases, residency renewals for MDWs who reside independently are unusually delayed; some one year residency renewal cases have been ongoing for more than 9 months. In even worse cases, MDWs with valid residence permits were detained, had their permits revoked and deported for not residing with their employers.

It is worth noting however that the rigor in applying the live-in requirement seems to only impact Migrant Domestic Workers who have children in Lebanon. In all the cases we have documented, migrant workers that were affected by General Security's live-in requirement were migrant domestic workers who had children. This strongly suggests this new General Security policy is in fact a continuation of the old policy of deportation targeting families of migrant domestic workers in Lebanon and which General Security felt compelled to discontinue as a result of pressure from civil society and human rights groups in the country. This point is even more evident as the number of MDWs who have children in Lebanon (estimated at around 10,000) constitutes only a fraction of the number of MDWs who live independently (estimated at around 85,000), yet the overwhelming majority of those who are deported are MDWs with children. By claiming that the decision to deport MDWs is based solely on the fact that they do not reside with or work for their sponsors, General Security is camouflaging the real target of their policy and using an excuse that would be easier to justify to civil society and the media.

Regardless of who is the real target of this policy, this report proves that right to choosing one's place of residence is a human right protected by national and international laws. This right, this report proves, applies to everyone within Lebanese borders, whether Lebanese or foreign, single or married, with or without children.

Freedom of Movement: A Fundamental Human Right



Far from being a practicality, the right to freedom of movement and to determining one's place of residence is a fundamental human right. It is so fundamental, that the Universal Declaration of Human Rights (UDHR), which Lebanon participated in drafting and which was subsequently adopted in 1948, recognized it under its charter.

Article 13 of the UDHR reads: "(1) Everyone has the right to freedom of movement and residence within the borders of each State" (UN General Assembly 1948)

The preamble of the Lebanese Constitution (1926) states that Lebanon is a founding member of the United Nations and that it is bound by its charter and by the Universal Declaration of Human Rights: "Lebanon is also a founding and active member of the United Nations Organization and abides by its covenants and by the Universal Declaration of Human Rights" .

Therefore, all rights set forth by the UDHR, including the right to freedom of movement and to choosing one's place of residence, form an intrinsic part of the Lebanese constitution, and as a result enjoy supremacy over national laws and international treaties following the principle of hierarchy of laws.

Furthermore, the International Covenant on Civil and Political Rights (ICCPR) which entered into force in 1966 and which Lebanon ratified in 1972 elaborates in more detail on the rights to freedom of movement and to choosing one's place of residence.

Article 12 states that:

“(1) Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

(2) Everyone shall be free to leave any country, including his own.

(3) The above-mentioned rights shall not be subject to any restrictions except those provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

(4) No one shall be arbitrarily deprived of the right to enter his own country” (UN General Assembly 1966).

By stressing that everyone lawfully within the territory of a state enjoy those rights, the ICCPR clearly repels any interpretation that different standards of rights should apply to citizens and noncitizens.

Further, Article 26 of the ICCPR reaffirms this idea of equality in front of the law in the enjoyment of those rights, irrespective of nationality, origin, and race:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (UN General Assembly 1966).

The Human Rights Committee, which is the body of experts tasked with monitoring the implementation of the ICCPR by its state members, in its General Comment number 27 elaborated on the right to freedom of movement and to choosing one's place of residence as it related to the concept of lawful presence articulated in article 12 of the ICCPR:

“Everyone lawfully within the territory of a State enjoys, within

that territory, the right to move freely and to choose his or her place of residence. In principle, citizens of a State are always lawfully within the territory of that State. The question whether an alien is "lawfully" within the territory of a State is a matter governed by domestic law, which may subject the entry of an alien to the territory of a State to restrictions, provided they are in compliance with the State's international obligations. In that connection, the Committee has held that an alien who entered the State illegally, but whose status has been regularized, must be considered to be lawfully within the territory for the purposes of article 12. 2 Once a person is lawfully within a State, any treatment different from that accorded to nationals, have to be justified under the rules provided for by article 12, paragraph 3. 3 It is, therefore, important that States parties indicate in their reports the circumstances in which they treat aliens differently from their nationals in this regard and how they justify this difference in treatment."

The Committee's comment interprets the treaty as establishing two exemptions from the right to freedom of movement. Conditions for those exemptions are met 1- if a person is present unlawfully in the country. In the case of an alien, the committee has limited the definition of unlawful presence to only to one case, namely, if this person has broken the law on entry of the country in question. This means that whoever enters the country legally and subsequently becomes undocumented is still considered lawful within the territory of the state. This scenario applies to almost all undocumented MDWs in Lebanon as the overwhelming majority enter the country lawfully and typically become undocumented when they leave the house of their sponsor or when their sponsor fails to renew their permits. The second scenario in which a state could be exempt from respecting the right to freedom of movement and choosing one's place to residence is 2- when a person poses a threat to "national security, public order, public health or morals or the rights and freedoms of others". This determination has to be made in accordance to law as required by the present convention. The second scenario could justify individual cases of deprivation of this right, but it certainly cannot justify the deprivation of an entire group or category of people of this right. Although general comments by the Human Rights Committee are not legally

Finally, it is notable that two concepts of the freedom of movement and freedom to choosing one's place of residence figure simultaneously in the text of the UDHR and the ICCPR. This is because freedom of movement is incomplete unless one has the right to chose his place of residence. Similarly, the freedom

of choosing one's place of residence amounts to confinement in one given place if deprived of the freedom of movement. Hence, freedom of choosing one's place of residence can be conceived as a crucial right that falls under the broader category of freedom of movement. This broad interpretation of the concept of freedom of movement as including the right to choosing one's place of residence has also been supported by the United Nations Higher Commission for Refugees (UNHCR), who defines the freedom of movement as consisting " of the right and ability to move and choose one's residence freely and in safety within the territory of the State, regardless of the purpose of the move" . Hence, in the analysis that follows measures that restrict MDWs ability to choosing their place of residence are also analyzed in the broader context of restrictions on their freedom of movement.

General Security's Mandate on Migrants Workers in Lebanon

As this report has previously highlighted, Insan Association has documented a number of cases where migrant domestic workers have been deported or had their permits revoked simply because they did not comply with General Security's requirements; namely they did not reside with their employers. In enforcing this regulation, General Security has also on occasions conducted investigations to verify whether the MDW in question resided with her employer or not by conducting home visits to the employer's house. The previous section has demonstrated that under Lebanon's international commitments, which are subsequently recognized by the Lebanese constitution and by Lebanese national laws, restricting a person's freedom of movement or limiting his/her right in choosing their place of residence constitutes a clear violation.

Despite this clear human rights violation, and despite the clear contradiction between the practice on the one hand and national and international law on the other hand, General Security continues to require that migrant workers reside with their employer. Which begs the very important questions of: What is General Security's exact jurisdiction on foreigners in Lebanon?

And does General Security have unlimited jurisdiction on foreigners granting it the right to override existing legislation and to violate rights that are enshrined in the constitution and in Lebanese laws?

To understand General Security's exact jurisdiction on foreigners in Lebanon, we have started the inquiry by researching all relevant laws, legislative decrees, and other decrees on all aspects of General Security's work. Materials were then filtered on the basis of relevance. A thorough examination of the literature yielded the following observations:

Whilst it is true that Lebanese laws and decrees do award General Security certain jurisdictions relating to the presence of foreigners on the Lebanese territory, the jurisdiction under the law are general and vague. General Security is legally mandated with "monitoring" foreigners in Lebanon.

Legislative Decree number 61 which was issued on 04/04/1953 and which has the force of law limits the jurisdiction of General Security in relation to foreigners in the following:

- “to monitor foreigners in all matters relating to their entry, stay and exit from the Lebanese territory, and to investigate their applications to enter Lebanon before granting them visa, to organize ID cards and temporary or permanent residence permits for them, and to monitor their movement and the kind of work they carry out
- to monitor foreigners and Lebanese passports and sign it by the director General in the name of the President after making sure that there is no reason that prohibiting travel such as judicial arrest warrants or threats to security
- to monitor refugees and homeless people
- to monitor hotels and furnished apartments
- to monitor the artistes “

Decree number 1736 which was issued on 25/ 04/1950 also limits the authority of General Security to “monitoring foreigners in all issues relating to their entry, stay and exit from Lebanese territories” .

Similarly decree number 5516 issued on 26/07/1951 reiterated General Security’ s jurisdiction in relation to foreigners as being limited to:

“Investigating foreigner’ s applications to enter Lebanon before granting visa, issuing IDs, temporary or permanent residence permits for foreigners residing in Lebanon, and monitoring their transportations and the kind of work they carry out, this is especially true for dancers (or artistes) in cooperation with the Ministry of Social Affairs” .

As evident from the decrees above, General Security is legally mandated with monitoring foreigners in Lebanon. Nothing in the texts above suggests that General Security has the authority to take measures limiting the rights for a certain category of people. This holds especially true for limiting the freedom of movement as it constitutes a fundamental freedom which can only be limited in exceptional times and in accordance to the law, and through decisions by the competent authority- in this case the courts. Furthermore, the jurisdiction to monitor foreigners cannot be interpreted as an authorization to impose restrictions that violate

principles and rights enshrined in Lebanese laws and constitution. The specific purpose of General Security' s task of monitoring can only be interpreted in its general context. In this case the context is monitoring the compliance of migrant workers with the text of the law. Hence, when clear legislative texts guarantee everyone' s right, including migrant domestic workers, to the freedom of movement and to choosing their place of residence, monitoring cannot be taken out of context to mean arbitrarily imposing restrictions on either of those rights without judicial or legislative authorization.

General Security: the Enforcement of the Standard Unified Contract

There has been considerable misconception about some of the obligations incurred on employers by the Standard Unified Contract, and in particular the obligation to provide workers with a decent place of living outlined in article 8 of the contract. Those misconceptions have been and continue to be capitalized on by General Security to impose and enforce the live-in requirement. The Standard Unified Contract which was adopted by the Lebanese Ministry of Labor in 2009 as an essential condition for issuing a work permit, requires employers to provide migrant domestic workers with a 'decent residence'. In practice, General Security has unequivocally interpreted article 8 as requiring the MDWs to reside with their employers. However, this interpretation can be easily refuted by having a closer look at the SUC.

Firstly, a literal analysis of the text of the SUC does not support this claim; the contract literally states that "the employer pledges to provide the Migrant Domestic Worker with food, clothing, and a place of residence to satisfy her needs". There is no detailed description of what would constitute a place of residence that would satisfy the MDW's need, nor is there any mention that the satisfaction of this need can only occur at the employer's residence.

Secondly, even if the contract explicitly required MDWs to reside with their employers, forcing the MDW to do so would constitute a violation of her legally sanctioned rights to freedom of movement and freedom of choosing one's residence and would therefore invalidate the contract. Article 192 and article 166 of the Lebanese Code of Obligations and Contracts (COC) states that: "Any contract that entails an obligation which is not sanctioned by law is invalid" (article 192).

Furthermore, "Contract law follows the principle of contractual freedom, individuals are free to arrange their legal relationships as they deem fit, as long as they follow public order, public morals, and compulsory legal provisions" (article 166).

Restricting someone's freedom of movement and freedom of choosing their place of residence constitutes an illegal act as previously demonstrated. Therefore, the SUC cannot create an obligation on employers that would incur illegal acts. The contractual obligation on employers to provide MDWs with a place to reside can be therefore realized either inside or outside of employers' residence. The determination of the worker's place of the residence is a matter that must be based on both parties' consent.

Finally, and most importantly, the failure to realize any obligation under the SUC including the obligation of the worker's residence constitutes a breach of contract and therefore should be dealt with through the appropriate juridical channels or through the Ministry of Labor. Hence, General Security has no authority to take action against the MDW for of breach of contract. General Security is only authorized to act if a formal complaint has been registered by the employer against the MDW they employ.

Employer's Restrictions on MDWs' Freedom of Movement



In addition to restrictions on MDWs' freedom of choosing their place of residence by Lebanon's General Security, Lebanese employers are responsible for many restrictions on the right on MDWs' freedom of movement. A previous survey conducted by Insan Association found that 78% of employers confiscate the identity documents of the MDW they employ (Insan 2014) to deter the migrant worker from 'running away'. This percentage is similar to what was reported in other studies. Jureidini (2002) found that 81% of MDWs were not in possession of their passports. He also found that an estimated 31% of Migrant Domestic Workers were subjected to forced confinement and were not allowed to leave the house of their employers at all times. In a study of "Sri Lankan House Maids in Lebanon" Nayla Moukarbel (2009) found that 80% of Sri Lankan MDWs were not allowed to leave the house on their own accord and could do so only when accompanied by a member of the household. Data from Insan's legal database indicates that 15% of MDWs who sought the legal assistance of Insan Association did so because their employers had confiscated the passports and/ or ID documents.

Restrictions placed by employers on MDWs' ability to choose their place of residence is also widespread and can be partially attributed to the misinterpretation of article 8 of the SUC. A previous survey by Insan (2014) indicated that 4% of employers who do not think MDWs should be able to live independently believe so because they think it is required by the contract. The misconception around article 8 of the SUC is also compounded by strict immigration requirements. As previously mentioned, General Security implicitly requires that MDWs reside with their employers as a condition for their residency renewal. General Security has ignored, on multiple occasions, pledges by employers of live-out domestic workers confirming that the live out domestic worker in question works as a full time employee for her sponsor and MDWs were consequently deported with no proof of wrongdoing. By doing so, GS denies MDWs the right to live independently by assuming that all MDWs who do not reside with their sponsors are in fact 'illegal' freelancers.

Furthermore, in many cases, employers of live-out domestic workers had to go through tedious and unnecessary bureaucracy; many sponsors that we were in contact with went through lengthy waiting processes, were summoned for investigation by General Security multiple times and had their statements taken by an investigating officer. Those measures amount to 'soft' harassment which is aimed at discouraging sponsors from employing live out domestic workers. In the overwhelming majority of those cases, General Security still rejected to renew the permit of the worker in question and insisted on the worker's deportation. In one case of a pending residence permit renewal, a sponsor had to go to General Security on average once a month for over a year with no progress in the case. Finally, the sponsor terminated the employment of the worker as he saw no prospects for solving this problem.

As previously demonstrated, restricting the worker's freedom of movement or their right to choosing their place of residence constitutes a violation to their rights guaranteed under the law. This is true regardless of whether the restriction was imposed on the worker by the employer, recruitment agency or General Security. MDWs right to freedom of movement was upheld for the first time by a court of law in 2014, when Summary Affairs Judge Jad Maalouf ruled in favor of a MDW plaintiff and ordered her employer to immediately return her passport, which she had

previously confiscated. Judge Maalouf elaborated in his ruling that the confiscation of ID documents constitutes an act whose sole purpose is to limit the worker's right to the freedom of movement. This right, Maalouf reasoned, is guaranteed by the preamble of the Lebanese constitution and the various human rights treaties that Lebanon has ratified including the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

Furthermore, the Lebanese penal code also criminalizes acts of deprivation of freedom with sentences that can vary between a couple of years to life in prison. Article 569 states:

Whoever deprives another person of their personal freedom via abduction or any other means, shall be punishable by temporary hard labor. They shall be sentenced with hard labor for life in any of the below listed cases:

- if the duration of the deprivation of freedom exceeds one month
- if the person whose freedom was deprived is subjected to physical or emotional torture

Acts of deprivation of freedom that fall under this definition include forced confinement, locking MDWs inside the house of the employers, or confiscating their passports with the intent of confinement. By committing any of the previously cited acts of deprivation of liberty, not only are employers violating MDWs human rights, but are also committing a crime punishable by prison. Furthermore, crimes committed by employers against MDWs usually contains one or more of the aggravating factors cited above as: 1- they almost always exceeds the one-month period, and 2- almost always involve an element of abuse either physical or emotional. The presence of those aggravating factors mean that the maximum sentence may apply.

While the same criminal liability applies to recruitment agencies who deprive MDWs of their freedom, agencies that incite employers to deprive the worker of her personal liberty are equally liable even when they do not commit the act of deprivation of liberty themselves. Article 217 of the Penal Code state "a person is considered as inciting a crime if they try to push someone else to commit a crime using any means". Under article 218 of the Penal Code, if a crime has been committed, the person who incited the crime receives the same sentence as

the one who has committed the crime. A reduced sentence is applied if no crime has been committed.

Despite the unambiguity of the law, the prosecution of cases of deprivation of freedom of movement has lagged behind. This is due to a variety of reasons but principally the cultural acceptance of such practices has pushed them away from prosecution. Secondly and equally important, is the fact that MDWs still face insurmountable challenges in accessing justice. Far too often, cases of deprivation of the freedom of movement never make their way to court for a variety of reasons. To begin with, the MDW in question might be too scared to come forward as a result her inability to work during the lengthy court proceedings or because of the risk of countercharges and subsequent detention. Even when the MDW is willing to come forward, she might face difficulties finding adequate legal representation as free legal representation is offered by a limited number of NGOs, many of whom have selection criteria, and is centralized in Beirut and its surrounding areas. Legal aid, which is offered by the Bar Association, is even more scarce and difficult to access. Finally, even when such cases make their way to court, this is no guarantee that justice will be served as many judges hold the same prejudices that are held by the Lebanese society at large. A 2010 Human Rights report which analyzed 114 Lebanese judicial decisions involving MDWs, found that “in June 2000, an investigative judge accused two Filipina workers of stealing ‘their identity papers,’ as well as gold and money from their employers’ house” (Human Rights Watch 2000: 42). The report also noted other instances where cases of confiscation of passports were dismissed because the judge ruled that it “was natural for the employer to confiscate and keep the maid’s passport ‘in case she tries to escape from his house to work in another without compensating him’ ” (Human Rights Watch 2010: 42).

Recommendations

To General Security

This report has shed light on the fact that Migrant Domestic Workers as any other individual in Lebanon have the right to freedom of movement and to freedom in choosing their place of residence. This right is guaranteed both under Lebanon's international commitments and under its local laws and constitution. Therefore, we recommend that General Security respects those rights and stops requiring that Migrant Domestic Workers reside with their employer as a condition to grant or renew their residence permits.

To the Ministry of Labor

The Ministry of Labor has taken important steps to regularize the Domestic Workers' sector. Most notably in 2009 when the MoL imposed signing the Standard Unified Contract as a mandatory condition for recruiting a MDW. However, this report has shown that the SUC and in particular article 8 has been interpreted to imply that Migrant Domestic Workers must reside with their employer. The SUC also suffers from other gaps; most notably it does not clearly recognize the MDW's right to go out of the house on her day off, and it renders the worker unable to terminate her employment contract unless under extreme circumstances including sexual and physical abuse and three months of consecutive non-payment of wages. This makes the SUC incompatible with the rights to freedom of movement and freedom of choosing one's place of residence guaranteed by the law. Another problem this report has uncovered was the dispersion of responsibility in enforcing the SUC. While the MoL is the official party responsible for the creation and enforcement of the SUC, General Security has at times worked to enforce their own interpretation of the contract.

Therefore, we recommend that the Ministry of Labor undertakes a revision of the Standard Unified Contract to be

more in line with the rights guaranteed for MDW by law and in particular the right to freedom of movement and of choosing one's place of residence. Amendments to the SUC should acknowledge both migrant workers' and employers' rights to agree on the worker's place of residence whether inside or outside the house of the employer. Two versions of the SUC must be made available for both live-in and live-out migrant domestic workers. Other provisions that would guarantee the worker's freedom of movement could include adding an extra provision that would prohibit employers from confiscating the worker's identity documents; including passports and residence permits. Finally, for those live-in MDWs, the right to go out of the house of the employer outside of working hours must also be clearly acknowledged.

We also recommend that all contractual disputes and breaches of contracts be handled by the Ministry of Labor as the responsible authority on the SUC and by the Work Arbitration Council as the judicial entity legally tasked with settling labor and contractual disputes.

Finally, this study recommends that the Ministry of Labor intensifies its efforts in monitoring violations committed by recruitment agencies. We specifically recommend recruitment agencies that incite employers to confine or restrict the freedom of movement of MDW be held accountable.

To Employers

This study has shown that many practices that employers view as culturally acceptable are in fact criminal under the law. Those include the confiscation of passports and forced confinement. This study has attempted to address the lack of awareness of the consequences of such acts on the part of employers. On the other hand, strict immigration requirements have also had a negative impact on employers, they have also affected their willingness to sponsor live out MDWs. This is despite the fact that there is a real need for live-out MDWs especially among employers who value the privacy of their homes or those who are in dire need of a worker but do not have the necessary space to accommodate her in their house.

Therefore, employers must make their collectively demand that General Security abolishes the live-in requirement.

Finally, those employers who continue to restrict the worker's freedom of movement by confiscating the identity documents of the workers or by forced confinement must realize that this constitutes a criminal act under the penal code punishable up to life in prison.

To the Judiciary

This study, which has documented the many illegally violations that befall MDWs, is considered as notice to the concerned authorities who should exercise rigor in prosecuting violations. The judiciary should not, for cultural considerations, hesitate to apply the laws outlined in this study as doing so results in strengthening culture of immunity and discrimination.

Conclusions

This report investigated a very serious human rights violation that befalls migrant domestic workers' rights in Lebanon, namely the violation of their rights to freedom of movement and to choosing their place of residence. This report has tackled the very practical questions of: 1-Can Migrant Workers live independently? 2- Is it really up to employers to 'allow' or 'not allow' the workers they employ to go out? To which the simple answer is respectively 1- yes and 2- no. In doing, so we have legally analyzed practices ranging from the confiscation of passports, forced confinement, to forcing MDWs to reside with their employers.

This report finds that the right of freedom of movement and to choosing one's place of residence is a basic human right guaranteed by the UDHR and the ICCPR, to which Lebanon is a state party. This right is also a right guaranteed under the Lebanese constitution and Lebanese laws. Any attempt to unlawfully interfere with those rights whether by General Security or any other entity constitutes a breach of those legally sanctioned rights. This includes measure aimed at forcing MDWs to reside with their employers. This also includes measures by employers or recruitment agencies restricting the workers' freedom of movement.

While the law does provide sufficient guarantees for the rights of all people, including MDWs, to freedom of movement and freedom of choosing one's place of residence, the real challenge remains in the culture of impunity that surrounds the actions of Lebanese employers and the Lebanese administration. This culture can only be eroded when perpetrators no longer trust that their violations will go unpunished. It is our hope that this report contributes to eroding the culture of impunity by clarifying the position of the law on this particular issue and by raising awareness on the potential consequences of such actions.

Endnotes

[1] Lebanon's General Security is the country's official intelligence agency. General Security handles all matters relating to foreigner's stay in Lebanon, including their visas and residence permit. The agency also gathers information and intelligence.

[2] The Standard Unified Contract (SUC) was out in place in 2009 by the Ministry of Labor. Both employers and Migrant Domestic Workers have to sign the SUC as a condition to issue the worker with a work permit.

[3] Based on interviews conducted with recruitment agencies.

[4] The letter can be found in appendix 2.

[5] See Appendix 1: Pledge signed by a MDW's employers assuring General Security that the MDW in question is employed full time but lives independently with her family.

References

- Human Rights Watch, 2010. Without Protection; how the Lebanese legal system fails migrant domestic workers. Human Rights Watch, New York.
- Human Rights Committee, 1999. General Comment 27, Freedom of Movement (Art.12), U.N. Doc CCPR/C/21/Rev.1/Add.9(1999).
Accessible at: <https://www1.umn.edu/humanrts/gencomm/hrcom27.htm>
- Insan Association, 2014. "The Kafala System; when employers also accepted to share their perspective". Insan Association, Beirut.
- Insan Association, 2015. "Shattered Dreams; children of migrant workers in Lebanon". Insan Association, Beirut.
- Jureidini, R., 2002. "Women Migrant Domestic Workers in Lebanon". International Migration Papers. The International Labor Organization, Geneva.
- Moukarbel, N., 2009. Sri Lankan House Maids in Lebanon; A case of symbolic violence and everyday forms of resistance. Amsterdam University Press, Amsterdam.
- UN General Assembly, 1948. The Universal Declaration of Human Rights.
- UN General Assembly, 1966. International Covenant on Civil and Political Rights, United Nations, Treaty Series, vol. 999, p. 171.
- UNHCR. "Liberty and Freedom of Movement", In, Handbook for the Protection of the Internally Displaced Persons. Actions Sheet 8.
Accessible at: <http://www.unhcr.org/4794b4702.pdf>

Legal References

The Lebanese Penal Code 1943.

The Lebanese Code of Obligations and Contracts 1932.

The Lebanese Constitution 1926.

Appendix 1

مستند رقم - ٤ -

جنوالة السيد

رقم الهاتف

أنا - الموقعة أدناه : [redacted] ، [redacted] ، [redacted]

[redacted] ، أنيد بآه الحاملة السريفة ، [redacted]

[redacted] ، زوجة البنتلا دشي [redacted]

وتحمل أجازة عمل وإقامة بلفا لتنا تحت الرقم :

[redacted] ، جواز سفره [redacted]

تملأ من الساعة التاسعة صباحاً لغاية الثالثة

أو الرابعة بعد الظهر ، وتذهب بعدها إلى بيتل في

مع زوجها والودها ؛ هي وابنة [redacted]

وهي من العاملات المخلصات ، الجيدات ، وملتزمة

ولنا فيها كل الثقة .
بيروت ٤ : ٢٥١٤ ، ١٢ ، ٩
٩ ، ١٢ ، ٢٥١٤

بيروت، في ٢٠١٦/٠٥/١٠

BSN: #139.05/16

جانب مدير عام الأمن العام،

سعادة اللواء عباس ابراهيم،

المستدعية: "جمعية انسان: دفاعاً عن حقوق الانسان" الممثلة بشخص رئيسها السيد شارل نصرالله
الموضوع: طلب اجراء مقابلة لعرض أهداف البحث الذي تقوم به الجمعية حول مكان سكن العمال الاجانب والحصول على بعض المعلومات الاضافية.

تحية طيبة وبعد،

جمعية انسان دفاعاً عن حقوق الانسان هي مؤسسة مستقلة ، لا تتوخى الربح. تعمل من اجل حقوق الانسان فتدعم الافراد والاسر والاطفال الذين ينتمون الى المجتمعات الاكثر تهميشاً في لبنان بمقاربة شمولية وبدون اي تمييز، وهم بمعظمهم عمال مهاجرين او لاجئين او طالبي لجوء. تقوم جمعية انسان بتقديم الخدمات النفس-اجتماعية والدعم القانوني والتعليمي فضلاً عن حملات المناصرة بهدف حصول هذه الفئات على حقوقها. كما تتعاون الجمعية مع عدد من الجهات الرسمية والغير رسمية بهدف حماية حقوق الفئات الأشد ضعفاً في المجتمع.

تتقدم جمعية "انسان دفاعاً عن حقوق الانسان" من جانبكم بطلب مقابلة مع من ترونه مناسباً للوقوف على بعض القوانين والاجراءات المتعلقة بعمل الأجانب في لبنان وعرض اهداف دراستنا والتوسع بالنقاط المذكورة أدناه:

- ١- ما هي الشروط التي يجب على عاملات المنازل الأجنبية التقيدها للاستحقاق على الإقامة السنوية؟
- ٢- هل ان السكن في منزل الكفيل شرط أساسي لاعطاء وتجديد الإقامة؟ وفي حالة الإيجاب، على ماذا يستند هذا الشرط؟ هل هناك نص قانوني أو قرار اداري يفيد بذلك؟ وهل يمكننا الاضطلاع عليه؟
- ٣- لماذا لا يرد هذا الشرط في تعداد الشروط الواردة على موقع الأمن العام على شبكة الانترنت؟ وهل هناك شروط أخرى غير موجودة على الموقع وكيف يمكننا الحصول عليها؟ وكيف يمكن للكفيل والعاملة الأجنبية أخذ العلم بها تجنباً لانتهاكها؟

- ٤- اذا تعذر على العاملة الإقامة مع الكفيل لسبب ما، هل يحق لها الإقامة خارج منزل الكفيل اذا تم الاتفاق على ذلك مع هذا الأخير؟
- ٥- كيف يحدد الأمن العام اذا ما كانت العاملة تقيم مع الكفيل أم لا؟ هل ان الأمن العام يجري تحقيقاته في كل حالة على حدى؟
- ٦- في حال تبين في التحقيقات أن العاملة لا تقيم مع الكفيل، ما هي الاجراءات التي تتخذ؟ وهل يتم اعطاء العاملة مهلة لتسوية وضعها القانوني؟ أو يتم ترحيلها أو تغريمها؟
- ٧- في حال لم يكن مكان العمل هو نفسه مكان سكن الكفيل، مثلاً اذا تكفلت امرأة متزوجة بعاملة أجنبية لتعمل في منزل والدتها العاجزة، اين يتوجب على العاملة أن تقيم؟

مع الامل بتعاونكم، تفضلوا بقبول فائق الاحترام والتقدير،

رئيس جمعية انسان دفاعاً عن حقوق الإنسان،

شارل ج. نصرالله



