

Frequently Asked Questions about the filing before the First Investigating Judge of Mount Lebanon by Legal Action Worldwide (LAW) on behalf of a former Migrant Domestic Worker

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On 8 October 2020, LAW filed a ground-breaking case on behalf of our client, Meseret Hailu, arguing that the conditions and treatment she was subjected to while a migrant domestic worker in Lebanon constituted crimes of slavery, slave trading, trafficking in persons, forced labour, deprivation of liberty and withholding personal documents, racial discrimination, gender discrimination and torture.

1. What are the facts of the case?

This case has been filed before the First Investigative Judge of Mount Lebanon, in Baabda, Lebanon, on behalf of an Ethiopian former migrant domestic worker (the plaintiff), against her *kafeel* (sponsor under the *Kafala system*), and the recruitment agency that facilitated her work contract and move to Lebanon. The plaintiff was forced to work for the *kafeel* for 8 years 7 months, during which time she cleaned and lived in the *kafeel*'s apartment. The plaintiff was paid for 13 months of the 8 years 7 months that she worked there. The plaintiff was locked in the apartment all day and night, apart from when she was taken to the *kafeel*'s place of work to clean there. When she was there, she was locked in again. The plaintiff did not have a day off, and worked 15 hours a day, every day. When the plaintiff insisted that she wanted to leave Lebanon and return to Ethiopia, the *kafeel* refused to let her go. She was physically and psychologically abused, denied food and denied medical attention.

2. Why is the case significant?

This is the first time that a case has been filed in a Lebanese criminal court on behalf of a migrant domestic worker (MDW) alleging that the conditions she worked in and the treatment she was subjected to constitute slavery, slave trading, torture, gender and racial discrimination. This case has the potential to be ground-breaking. If successful, it will open the door to legal redress for the many thousands of other MDWs who are held in similar conditions, and will highlight the widespread and egregious crimes that are committed under the banner of the notorious *Kafala system*.

3. Who are the defendants?

The first defendant is from Adma, Lebanon. She is the *kafeel*, who sponsored the plaintiff under the *Kafala system* in order for her to live and work in Lebanon, and for whom the plaintiff worked. The second defendant is the recruitment agency that facilitated the contract between the *kafeel* and the plaintiff and arranged for her travel from Ethiopia to Lebanon.

4. What is the subject matter of the legal filing?

This filing concerns allegations of torture and cruel, inhuman, or degrading treatment, servitude, slavery, slave trading, trafficking in persons, forced labour, deprivation of liberty and withholding personal documents under Lebanese law, and Lebanon's obligations under international law relating to racial discrimination, national discrimination and gender discrimination.

5. What makes this slavery?

The case argues that the conditions that the plaintiff lived and worked in constitute slavery. International law defines slavery as the exercise of powers attaching to the right of ownership over a person or persons. According to the International Criminal Court, this must be construed as "the use, enjoyment and disposal of a person who is regarded as property, by placing him or her in a situation of dependence which entails his or her deprivation of any form of autonomy." The *kafeel* treated the plaintiff as property and did not respect her freedom nor her wish to return to Ethiopia, her country home and to her family. The *kafeel* deprived the plaintiff of her freedom and her dignity and subjected her to physical and verbal abuse. All of these acts are in contravention of the International Covenant of Civil and Political Rights. When they are perpetrated with the intent to exercise rights of ownership over a person, they are also in contravention of the 1926 and 1956 Slavery Conventions. The actions of the Defendants therefore constitute a form of slavery.

6. What makes this slave trading?

The case argues that the *kafeel* and the recruitment agency are guilty of slave trading. The slave trade is defined in international law as acts involving capture of persons, acquisition of persons through sale or exchange, disposal of persons by sale or exchange, or trade and transport of persons, when committed with the intent to reduce such persons to slavery. Deceptive practices engaged in by recruiters, including dishonesty about the contract, discrepancies between actual wages and promised wages, and insufficient information about working conditions in general, are ways of acquiring persons into slavery. In this case, the recruitment agency, in combination with the *kafeel*, arranged for the plaintiff's travel to Lebanon and facilitated the contract between the *kafeel* and the plaintiff. Following her arrival in Lebanon, the Plaintiff's *kafeel* paid the first three month's salary to the recruitment agency. These actions were committed with the intent to reduce the Plaintiff into slavery. As such, they amount to slave trading.

7. What makes this gender, national and racial discrimination?

The Lebanese state has obligations under international law to ensure that state institutions and systems are non-discriminatory. This filing argues that treatment of MDWs under the *Kafala system* is:

1. Discriminatory on grounds of gender: Male and female MDWs are dealt with under separate visa categories, male MDW occupy different jobs and are usually drivers, cooks or gardeners which are considered more skilful jobs, speaking to a deeply engendered view of work and relative value. In addition, General Security does not enforce a live-in requirement for male migrant workers, meaning they are able to come and go more easily.
2. Discriminatory on grounds of Nationality: Fees and salary scales differ depending on the MDWs nationality and are based on assumptions about their level of education, their level of English, and social prestige attached to certain nationalities. For example, a *kafeel* who employs a Filipino will pay them more, and will pay more upfront to the recruitment agency.
3. Discriminatory on grounds of race: Salaries differ depending on the race of the MDW. MDWs from Africa are generally paid less than those from Asia. Public manifestations of this come in the form of segregated beaches and swimming pools where MDWs are not permitted to enter the water, and reports of African MDW being forced to clean bathrooms after use due to a belief that they are dirty.¹

8. What will happen if the defendants are found guilty?

Under the Lebanese Penal Code, the penalty for a finding of guilt for the crime of slavery is 5 – 10 years depending on the situation and the position of the defendant.

9. What was the impact of the treatment for the plaintiff?

The impact for the plaintiff has been enormous and will last a lifetime. She was physically, psychologically and emotionally abused during her time in Lebanon and continues to suffer the consequences after leaving the country. The plaintiff suffers from depression and has been unable to find work in Ethiopia as a result of her mistreatment in Lebanon.

10. What is the *Kafala system*?

The *Kafala system* is the system that regulates the flow of cheap foreign labour into Lebanese households; '*kafala*' is the Arabic word for 'sponsorship'. MDWs are excluded from Lebanese labour law, and the *Kafala system* renders their residency status contingent on their employment relationship, or sponsorship. If the worker wishes to change their employer, they need the consent of their current sponsor. If the MDW breaks the contract they risk losing their residency status, and risk detention and deportation.

11. Is this treatment common under the *Kafala system*?

Approximately 250,000-300,000 migrant workers, primarily from Ethiopia, the Philippines, Nepal, Bangladesh and Sri Lanka live and work in Lebanon. The vast majority are women, and are required to live in the apartments and houses that they work in. The treatment they receive varies, and very much depends on the *kafeel*, however because MDWs are excluded from the protection of Lebanese labour laws, MDWs effectively have no access to legal recourse when they are mistreated. The requirement for the consent of the *kafeel* if a MDW wants to change their contract, leads to a dangerous inequality of power; compiled with racial and gender discrimination which has led to a commonality of reports of mistreatment as seen in this case. Reports include rape; physical and psychological abuse, deprivation of liberty, restricted access to passports and refusals to pay salaries. The *Kafala system* enables

treatment like that seen in this case to be widespread, and many thousands of domestic migrant workers have experienced some degree of it.

12. What is the goal of the filing for the plaintiff and for LAW?

The goals for this filing are two-fold. First, LAW and the plaintiff want to see a thorough investigation into the facts of the case and for redress for the plaintiff on those facts. That includes a finding of guilt on the part of the defendants, payment of the wages withheld, reflective of the current minimum wage in Lebanon, and compensation for the harm suffered. Second, LAW and the plaintiff want to highlight the discriminatory nature of the *Kafala system*, to further mobilise public and political will to bring about legislative change to ensure the law that governs MDWs in Lebanon meets international standards and the State's obligations.

13. What are the next steps?

The First Investigating Judge will investigate the case himself or refer it to another judge working with him. The police will not be involved in the investigation. We know that investigations do not usually take place in these situations and that it can take up to 5 months to launch the investigation. We hope that an investigation will be launched this year because of the seriousness of the crimes alleged. The Investigating Judge can decide at any point to issue arrest warrants for the defendants, or to detain them if they think it will benefit the investigation. If the Investigating Judge finds sufficient evidence, the case will be referred to the competent court (criminal), where there will be a full trial.

The process can take a long time. The Investigation stage alone is likely to take at least a year.

14. What is the new unified contract?

In recent months there has been an increase of international attention on the *Kafala system*, with mounting calls for its abolition. On 30 August 2020, Qatar became the first country in the Middle East to abolish the system, enshrining rights for migrant workers with the passing of two laws in the country. On 4 September 2020, Lebanon's caretaker Minister for Labour, Lamia Yammine, announced a new unified contract which claimed to abolish the system. While the new contract is a step in the right direction, it remains crucial that the rights provided under the contract are enforceable for MDWs to be protected from the abusive treatment that has become a norm under the *Kafala system*. The contract has not yet come into force, and it will not have retroactive effect when it does. Thus, MDWs subjected to historic abuses and violations under the system will find no redress under the new contract.

Nine Key Recommendations

LAW makes nine practical and implementable recommendations towards the achievement of a more holistic response in addressing problems arising from the recruitment and mistreatment of MDWS:

1. Immediately: The Ministry of Labour must ensure that agencies and kafeels adopt the new standard unified contract (SUC) suggested by the International Labour Organisation and Ministry of Labour. The new SUC provides improved conditions including freedom of movement, for migrant domestic workers (MDW) to remain in possession of passports and ID documents, an allowance to keep a phone and make and receive calls, and the right not to

be locked in the home of the kafeel. It also regulates working hours, and the right for the worker to terminate the contract if they wish to.

2. Immediately: The Ministry of Labour should provide adequate and free housing for MDW that have been evicted by their sponsors and the Ministry of Health should provide free psycho-social care as needed.

3. Residency status of MDW should be linked to the individual worker and not the kafeel. The legal stay of the MDW must not be linked to the sponsor, and MDW should be able to work with different kafeels if they chose to, and to “live out” if they please.

4. Lebanese Labour Law should be amended to provide protection to MDW including legal rights to minimum wages, annual leave, working hours and social security.

5. Kafeels and agencies who have acted unlawfully and abusively should be held accountable within a reasonable period of time.

6. The General Security Office (GSO) must investigate allegations by MDW promptly, fairly and impartially. This includes an estimated two deaths per week as well as credible allegations of slavery; torture and forced labour. A rapid deployment investigation team should be established within the GSO that is trained to deal with cases involving MDW and their investigation reports should be submitted to the Minister of Labour and Minister of Justice.

7. Lebanese women's organisations to create an open and inclusive dialogue to review the status of female domestic migrant workers and advocate for legal rights and protection of female domestic migrant workers within Lebanon.

8. Member states, international organisations, INGOs and NGOs should develop and implement a domestic worker policy to ensure all domestic workers employed by their staff are paid and treated fairly and in accordance with the law.

9. Appoint an independent Special Representative for MDW, Lebanon who can champion the rights of MDW and assist in ‘bridging the gap’ between the MDWs, the Government of Lebanon, recruitment agencies and kafeels.

ⁱ Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-41-Add1_en.pdf



Domestic Workers Policy

Introduction

LAW is a human rights organisation which provides innovative legal assistance and works towards equality of all before the law and to deliver access to justice to those who need it most.

Legal Action Worldwide (LAW) is a unique non-profit organisation which provides innovative legal assistance and works towards equality of all before the law and to deliver access to justice to those who need it most – victims and survivors of human rights violations and abuses in conflict-affected and fragile environments. LAW uses creative legal strategies to improve access to justice and provide legal redress to the most vulnerable in conflict-affected and fragile regions. LAW’s areas of focus are: gender equality and non-discrimination; sexual and gender-based violence; rule of law and accountability and transitional/transformational justice.

This policy is applicable to all LAW staff who employ national or migrant workers as domestic workers either live in¹ the household; short or on a long term basis and therefore must ensure all domestic help/workers receive fair treatment during the course of their employment,

“Domestic Worker” is defined in the ILO Domestic Workers Convention, 2011 (No.189) representing any person engaged in domestic work, performed in or for a household or households, within an employment relationship, whether full-time or part-time employment.

The code of conduct and its policy is guided by the International Labour Organization’s Domestic Workers Convention, 2011 (No 189) which came into force on 5 September 2013, extending basic labour rights to domestic workers around the globe.

The international human rights standards and principles, including core labour standards such as ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and Domestic Workers Convention, 2011 (No.189). It takes note of any national legal framework and any standard unified contract for Migrant Domestic Workers adopted locally.

In employing a domestic worker, all LAW staff must ensure fair conditions and terms of employment including a safe and decent working environment and living conditions.

1. Scope

This policy is applicable to LAW staff, workers, fellows/interns and consultant /subcontractors with a minimum contract of 3 months;

LAW staff and consultants do not engage with child labour and therefore the minimum age for employing any domestic worker is above 18 years old.

1.2 Violence and harassment

¹ Lebanon only allows for live-in Migrant Domestic Workers.

- 1.2.1 Individuals are treated by all members of the household and any visitors at all times with dignity, respect and without any discrimination;
- 1.2.2 Individuals are rightly protected from any form of sexual harassment, abuse or violence by members of their household, or any other form of verbal, physical or psychological abuse or inhumane treatment in the workplace. LAW staff and workers should not disregard any complaints and act on, and ensure follow ups of violence or harassment raised by domestic workers;
- 1.2.3 Domestic workers must be informed or made fully aware of how to lodge complaints in case of violation and/or dispute without coercion or intimidation.
- 1.3 **Working Time and Regulations** To ensure domestic workers do not work more than an average of 10 consecutive hours a day, and as such they have sufficient rest periods in between that are taken.
 - Entitled to uninterrupted daily rest of at least eight continuous hours and a weekly rest of minimum 24 continuous hours spent in accordance with their choice such as where and how they chose;
 - Right to fair and additional compensation in case s/he agrees to work past his/her contractual working hours and that overtime hours are accurately recorded;
 - No obligation to remain in the household or with household members outside the agreed hours of work and that time spent by the domestic workers accompanying the household members on holiday will not count as part of their paid annual leave;
 - Right to fully paid sick leave and annual leave of a minimum fifteen days.

1.4 Remuneration

- Domestic workers are to be paid their salary in full as outlined in their contract, on time and on a monthly basis, personally or into a bank account and with signed receipts and have full control of their salaries;
- No deductions will be made from the salary of the domestic workers for fees charged by employment agencies²;
- The salary cannot be under the minimum wage in line with the official minimum wage in the country³;
- Receive all end of service benefits including payment of all days worked, overtime compensation, balance of any remaining leave and return ticket.

1.5 Personal Documentation

- Domestic workers are entitled to keep their official papers and documents in their possession, such as passport, residency papers, work permit, employment contract, and health insurance policy;

² National regulations prohibits private recruitment agencies to charge fees to workers. Should an agency ask the employer for such a deduction, employers are encouraged to report the agency to the labour inspectorate at the Ministry of Labour.

³ The minimum wage for workers included in the Labour Law in Lebanon is 675,000 LBP



- Sponsor are only entitled to keep photocopies of such documents as required.

1.6 Accommodation and Meals

- To be provided with a separate, private room that is suitably furnished, adequately ventilated and equipped with a lock, of which the key should be given to the domestic worker;
- The room should have adequate lighting and, as appropriate, heating and air conditioning in keeping with prevailing conditions within the household;
- Access to suitable sanitary facilities, shared or private;
- No deductions may be made from the financial remuneration with respect to the accommodation provided;
- To be provided adequate meals of good quality and sufficient quantity, also if required to be adapted reasonably in line with the cultural and religious requirements of the domestic worker.

1.7 Occupational Safety and Health

- Domestic workers should never be pressurised or forced to work outside the agreed provisions of their contracts, nor to perform dangerous tasks or be exposed to health and occupational hazards;
- Employer should discuss with the domestic workers the general safety and health risks concerning their work and ways of mitigating them, for example, explaining how to use household appliances safely and how to operate fire extinguisher;
- Whereby work-related medical testing is required under national law, employees and contractors shall respect the principle of confidentiality and privacy in respect of domestic workers employed by them.

1.8 Social Security

- The domestic worker should be fully covered by appropriate health insurance, paid by the employer which should be effective from their first day of work. This should be valid throughout the full period of employment with access to healthcare services including for reproductive health;
- The employer must also cover policy for work related accident insurance effective from the first day of work and during the full term of employment;
- The domestic worker should be entitled to appropriate compensation in case of work-related accidents or injury.

1.9 Written Contract

- Employers are required to provide a written contract in accordance with country legislation for example minimum conformity with the standard unified contract if such exists. The Contract must be translated and provided in a written form in the native language of the domestic worker and must verbally be explained to the domestic worker to ensure that s/he has full understanding of the contract before s/he signs.



1.10 Fundamental Principles and Rights at Work

- Right to freely interact and associate themselves with trade unions and non-governmental organizations providing assistance in defence of their rights and interests;
- Right to engage in collective bargaining;
- Enjoy freedom of movement, i.e. at no times or occasions to be locked inside their workplace or their room or forced to remain in the household outside working hours;
- Right and freedom to practice their religion or own beliefs;
- Access provided to telecommunication with their families, friends or diplomatic missions if they are migrants.

LAW staff and workers should be fully aware of their obligations according to the domestic workers and to uphold and respect the provisions of their contracts at all times.

LAW staff who transfer to another duty station should complete a process of transfer of sponsorship or purchase a return ticket for the migrant domestic worker.

2. Breach of Contract

LAW staff and workers have a duty to, and are encouraged to raise concerns and provide any information regarding allegations of inappropriate treatment or abuse of domestic workers.

This should be escalated to the Head of Office or with Human Resources as appropriate and necessary.

If LAW becomes aware of staff or workers that are not adhering to the domestic workers policy and Code of Conduct, such matter will be investigated, and a breach of the policy may result in a disciplinary action or termination of employment/service agreement.

I hereby declare that I have read and understood the policy

Name:

Position:

Signature:

Date: