

## 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.<sup>1</sup>

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.

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<sup>i</sup> 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](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-41-Add1_en.pdf)