



Policy Brief

The Kafala system in Lebanon: How can we obtain dignity and rights for domestic migrant workers?

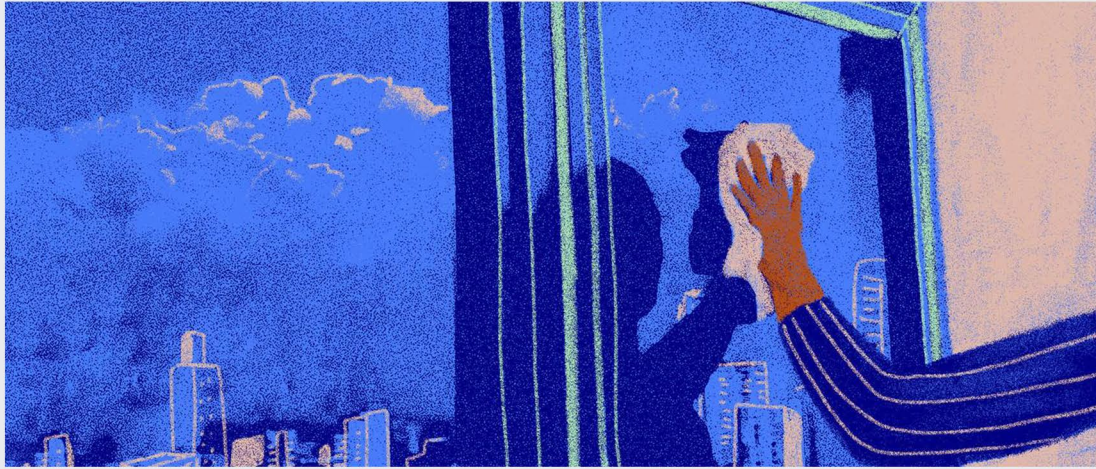
Introduction

This policy brief describes past and ongoing efforts to reform the kafala system in Lebanon, considering their appropriateness and effectiveness in light of a growing recognition that the recruitment and status of migrant domestic workers amounts to slave trading and slavery under international law. The brief concludes with key recommendations for strengthening the protections available to migrant domestic workers in Lebanese law and policy, in a way that leads to a recalibration of the system to the benefit of workers.



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Background



Amnesty International: "Protect Migrant Domestic Workers."

In Lebanon, it is estimated that between 250,000-300,00 migrant domestic workers are employed to work in private households. The vast majority of migrant domestic workers are women, with the Ministry of Labour reporting, as of November 2018, that 186,429 women held new or renewed work permits issued to them by the ministry. Sending countries are mainly located in Africa and Asia, with five countries of origin supplying 72% of the migrant labour.

The system that regulates the flow of cheap foreign labour into Lebanese households is named for *kafala*, the Arabic word for 'sponsorship'. With roots stretching back to the time-honoured Bedouin tradition of hospitality, the *kafala* system as it exists today is less a fully realized legislative and policy framework, and more of a formalized social practice, overlaid with piecemeal attempts at regulation. The legal framework, such as it is, amounts to a collection of laws, decrees, ministerial decisions, regulations, and customary practices.

The *kafala* system arose in a legal vacuum. Prior to the civil war, Lebanese households tended to employ young women from poor and rural areas in Lebanon. Some households hired Syrian, Palestinian or Egyptian women. By the time the civil war was over, the position of domestic maid was seen as degrading. From 1993 onwards, there was a major proliferation in recruiters marketing the import of cheap domestic labour, particularly from Sri Lanka and the Philippines.

From the 1990s onwards, large numbers of women entered Lebanon to undertake work that was excluded from the Lebanese Labour Law of 1946¹. Moreover, Lebanese immigrations laws only provided the barest outline for the system that would be needed to sustain the flow of cheap domestic labour.² It would be left to government agencies and officials, individual employers, and recruiters, to fill in the details, giving rise to the sponsorship system now recognizable as *kafala*.

"Domestic work began to be perceived as low-paid work and became racialized, regarded as work performed by migrants. Because of society's perception of domestic work as lowly, dirty work, Lebanese women refused to take such employment as to do so was deemed shameful and would ruin their chances of marriage." Gulnara Shahinian, Special Rapporteur³ on contemporary forms of slavery, including its causes and consequences.

1. Lebanese Labour Law of 1946, Article 7.

2. Relevant legal instruments include: the 1962 Law regulating the entry of foreigners into Lebanon, their stay and their exit from Lebanon; Decree No. 17561 of 1964 regulating the work of foreigners, and; Decision No. 136 of 1969 regulating the proof of residence of foreigners in Lebanon. None of these instruments run to more than 31 articles.

3. Human Rights Council, Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian Un Doc. A/HRC/21/41/Add.1 (4 July 2012), para. 6.

Overview of the Kafala System

Kafala involves a huge delegation of responsibility from the state to private individuals over the regulation of migrant labour.



Costs are routinely passed on to the migrant domestic worker herself, either by charging the migrant domestic worker for her own travel arrangements or collecting fees indirectly through wage deductions by the kafeel. This practice is, in fact, illegal in Lebanon.

One of the distinctive characteristics of kafala as an immigration system is the prominent place given to the employer-employee relationship, or, more accurately, the relationship between the worker and her kafeel (sponsor). In fact, kafala involves a huge delegation of responsibility from the state to private individuals over the regulation of migrant labour. The power imbalance engendered by this arrangement, with one party essentially acting as an organ of the state and the other barely recognized in law, sheds light on the coercion and abuse that pervades the system.

Before entering the country, a migrant domestic worker must have a kafeel, who must also be her employer. Typically, prospective kafeels will approach a recruiter, where they will be able to select from a dossier of migrant domestic workers. The role of Lebanese recruiters, which includes both formal recruitment agencies and unlicensed individuals, or brokers, is to collate information on migrant domestic workers and connect them with a kafeel in Lebanon. Lebanese recruiters can either use the intermediary services of their counterparts in sending countries, or they can recruit the women themselves directly. The Ministry of Labour reports, as of 2019, that there are 569 authorized recruitment agencies in Lebanon.

Fees are the backbone of a recruiter's business model, with profits generated from the difference between the fee charged to the kafeel and the cost of air travel, medical tests, and permits for the migrant domestic worker. To maximize profits, there is a huge incentive to avoid paying these costs altogether. As a result, they are routinely passed on to the migrant domestic worker herself, either by charging the migrant domestic worker for her own travel arrangements or collecting fees indirectly through wage deductions by the kafeel. This practice is, in fact, illegal in Lebanon.

The machinery of the state operates in such a way as to place MDWs at the mercy of their kafeels. This machinery kicks in from the moment of arrival in Lebanon. When a migrant domestic worker arrives at the airport in Beirut, the kafeel is personally required to meet her at the airport. General Security (GSO) will not allow the migrant domestic worker to leave the airport without her kafeel – a practice that is grounded in custom, rather than law. An officer from GSO will call the kafeel from the exit gate. At this point, the officer will be in possession of the worker's passport, which he will relinquish directly to the kafeel rather than the worker.

Lebanese law does not require the role of migrant domestic worker to be a "live-in" position. However, General Directorate of General Security In Lebanon enforces a live-in requirement for domestic workers as a matter of policy, which it justifies as a "precautionary regulatory measure" to protect them from "criminal exploitation." A migrant domestic worker who leaves the home of her kafeel may be arrested by GDGS for illegal residence and placed either in the administrative detention center of Beirut or a regional prison.

Regulating Kafala

Governmental regulation of kafala has been insufficient. Although the Ministry of Labour has responsibility for regulating the activities of recruiters, officially known as private employment agencies (PEAs), in Lebanon, in practice there is no monitoring system. On-site inspections and audits are rare, with only a small number of labour inspectors covering all of Lebanon in all labour matters. According to credible sources, the Ministry of Labour keeps a blacklist of recruiters who have violated the regulations, though details of the blacklist are not public.

“Lebanon lacks a comprehensive body of regulations [to] oversee the practices of PEAs. With a total of 20 labour inspectors entrusted to cover all Lebanese territory, it is difficult to envisage an on-site verification of the information or field audits, something that grants the PEAs important decision-making power on the fate of migrant domestic workers”-International Labour Organization. (2014)

In 2009, the Ministry of Labour introduced a unified standard contract to settle the rights and obligations of migrant domestic workers and their kafeels. The standard contract requires the kafeel to pay the full salary owed to the worker at the end of each month, restricts the maximum number of working hours to 10 a day, with eight hours continuous rest at night, and entitles the worker to a 24-hour weekly rest period, as well as paid sick leave and annual leave. However, the terms of the standard contract afford migrant domestic workers limited protection, and the contract cannot be assessed in isolation from the web of coercive practices that give form to the kafeel-worker relationship from the very beginning:

Rights of migrant domestic workers under 2009 standard contract

Migrant domestic workers need the consent of their kafeel to be able to change to another kafeel. In many cases, they fear that they will be forced to renounce claims for unpaid wages or for abuse that they have suffered, or that they will be falsely accused of theft, in retaliation for leaving. As a result, migrant domestic workers rarely attempt to exercise this option.

A migrant domestic worker also needs the consent of her kafeel to resign. Under the terms of the standard contract, a migrant domestic worker can only terminate the contract if her kafeel does not pay her salary for three consecutive months, if she is forced to undertake work other than domestic work, or if she is subjected to violence. Other breaches of contractual obligation by the kafeel, such as the failure to provide adequate accommodation, or preventing the worker from contacting her family, are not grounds for termination by the employee.

In contrast, the standard contract gives the kafeel the power to terminate the contract if the worker “commits a deliberate mistake, act of negligence, assault or threat, or causes any damage to the interests of the employer or a member of his/her family.” The contract does not specify what is meant by a deliberate mistake or act of negligence, and the kafeel is not required to present supporting evidence. **This provision establishes the kafeel as judge and jury in matters relating to the worker’s employment, and, by extension, her migration status.**



MDWs have nowhere to turn to complain about their treatment. The Ministry of Labour is empowered to receive and hear complaints from migrant domestic workers. However, the complaints mechanism for migrant domestic workers is weak, and “thousands of cases rarely reach the complaints stage because of lack of trust in the system, and lack of information on how and where to present a complaint.” In addition, the complaint procedure has been seen to automatically assume the interests of the kafeel.

Labour Arbitration Councils have established jurisdiction over certain cases involving MDWs.³ However, the cases adjudicated by the Council have been limited to disputes over non-payment of wages. These cases take on average 26 months to be concluded.

In 2010, Human Rights Watch examined 114 criminal complaints from migrant domestic workers and was unable to find a single instance in which the kafeel was prosecuted.

Migrant domestic workers fare no better when it comes to the operation of criminal law. When presented with criminal complaints from migrant domestic workers, both the police and the judiciary have responded by “fail[ing] to treat certain allegations as potential crimes, deal[ing] with some complaints meekly, or else ignore[ing] them entirely.” In 2010, Human Rights Watch examined 114 criminal complaints from migrant domestic workers and was unable to find a single instance in which the kafeel was prosecuted.

Updated 2020 Standard Unified Contract

In March 2020, ILO and the Ministry of Labour presented an updated Standard Unified Contract, which would grant migrant domestic workers limited working hours, the right to freedom of movement, the right to travel documents, and greater power to terminate the contract.

However, the proposals stalled due to strict lockdown measures and an economic crisis in 2020. The Minister of Labour stated her intention to improve the conditions for migrant domestic workers in the new Labour Law, and to give them additional rights, such as work permits not linked to the kafeels. However, following the Beirut explosion on 4 August 2020, two prime ministers have now resigned, and no new cabinet has been appointed.

The Beirut explosion has placed migrant domestic workers and other migrant workers even more at risk, as many of them were living in Burj Hammoud, Geitawi and Gemmayze – areas that were hit the hardest. Many MDW are homeless as a result, and in addition may have lost passports, work permits and other civil documentation that can prove their legal status. They are also at increased risk of sexual violence.

3- Ibid. at p.17-18.

4- Human Rights Watch, Without Protection How the Lebanese Justice System Fails Migrant Domestic Workers (New York, 2010) at p.3.



The kafala system as slavery and the slave trade

“Many migrant domestic workers are not seen as equals to the Lebanese with the same rights, but as commodities, thereby further entrenching the idea that Lebanese employers own and have full control over their workers.” Gulnara Shahinian, Special Rapporteur on contemporary forms of slavery, including its causes and consequences, 4 July 2012.

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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 status of MDWs in Lebanon under the kafala system bears all the hallmarks of slavery. The vulnerability of migrant domestic workers arises from their insecure residence status, which hangs on the continuation of an employment contract that they may or may not understand, and which, in the vast majority of cases, binds them to a single kafeel for the duration of their stay in Lebanon. Their situation is made all the more desperate by coerced isolation, with many cut off from friends, family members, and a wider social network. In many cases, kafeels will attempt to control the sexuality of the migrant domestic work by preventing them from forming romantic relationships, a practice which amounts to an assertion of exclusivity.

MDWs are subjected to restrictions on their freedom of choice and movement, with the unified standard contract recognizing the kafeels’ right to decide on such matters. Kafeels enact measures to prevent or deter escape, including by withholding passports and other identity documents, denying the workers time off outside, and locking the worker in the home. The Lebanese government reinforces the kafeel’s authority by enforcing a live-in requirement for migrant domestic workers under threat of arrest and administrative detention.

Lebanese kafeels routinely use threats, including the threat of deportation, the threat of physical violence, and the threat of false accusations of theft. Threats are issued to deter the worker from leaving the house or effecting a change of employment, and thus amount to a form of mental coercion. Migrant domestic workers experience physical violence, cruel treatment and abuse, including slapping, beating, choking, and hair pulling.

The environment in which migrant domestic workers perform their duties is characterized by a climate of fear, heightened by the constant threat of deportation, de-humanizing and derogatory language, psychological abuse, beatings, and the risk of sexual violence. **These conditions make the expression of free consent impossible. As such, the expectation of 10.5 hours of work for 7 days a week amounts to the exaction of forced labour.**

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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. Individual kafeels can also be responsible for reducing migrant domestic workers into slavery.



The Lebanese government is obliged under Article 8 of the International Covenant for Civil and Political Rights to prohibit slavery and the slave trade;



The Lebanese government has an obligation to take all necessary measures to prevent and suppress the slave trade and to bring about the complete abolition of slavery in all its forms.

As Lebanon looks to build a new future after the explosion and the economic crisis, those in power must begin to take their international legal obligation to stamp out slavery and the slave trade seriously, starting with the following priority actions.



Amnesty International: "Protect Migrant Domestic Workers."

Nine Key Recommendations

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





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