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MIGRANT DOMESTIC WORKERS IN THE MASHRIQ: TOWARDS A RIGHTS-BASED REGULATORY FRAMEWORK

Rola Abimourched

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**Migrant domestic workers in the Mashriq:
Towards a rights-based regulatory framework**

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CARIM

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I. Introduction

Migrant domestic workers (MDWs) play a vital role in supporting the economies of countries in the Mashriq sub-region encompassing Jordan, Lebanon and Syria as well as of their origin. Mainly women from African and Asian countries migrate to the region to work in the homes of largely middle- and upper-middle class families. Domestic workers carry out a myriad of tasks: from cleaning and cooking to taking care of children and the elderly. Despite the importance of their work, MDWs often do not enjoy basic rights and are vulnerable to exploitation and abuse. In the absence of adequate government response to the care needs of societies in the Mashriq and the increasing labor force participation rates of women in the region, States opt to preserve a relatively cheap and pliant workforce to complete jobs in services and household care sectors.

The regulatory frameworks do not adequately address violations of workers' rights nor allow workers to negotiate for better treatment. Domestic workers are largely excluded from labor laws, and where coverage is extended to this category of workers special regulations govern their living and work conditions. Concomitantly, immigration regulations and weak enforcement of employers' obligations towards workers further contribute to domestic workers' vulnerability. In addition to these structural limitations, discrimination against workers because of their nationality, gender and class, as well as belief in gender norms that prescribe domestic work as women's work, circumscribe workers' role within host societies. Thus, migrant domestic workers¹ in the Mashriq countries are concentrated in low-status jobs and are relegated to the margins of society.

The similarities in the legal frameworks governing the recruitment and employment of MDWs in Jordan, Lebanon, and Syria point to the weaknesses of these systems in addressing the vulnerability of MDWs. At the same time, differences between these countries indicate the structural nuances in each country, as well as potential solutions to overcome. This paper will provide an analytic review of the regulatory framework in each country with a view towards presenting concrete recommendations to improve protection of migrant domestic workers and their rights. The first section looks at domestic work from a gender perspective; the second section provides some background information on MDWs in Jordan, Lebanon and Syria; the third offers an analysis of the legal framework in the three countries and the fourth the international obligations of each country and its impact on respect for MDWs' rights; and the final section provides conclusions and recommendations.

II. Gender and domestic work

Domestic work fulfils an important societal function despite categorization of such work as informal and unproductive. Gender norms often associate women with such work; although some men are employed in domestic work, the vast majority are women. Women employed as domestic workers often are responsible for a wide range of tasks from cleaning and cooking to care-taking of children and the elderly or the ill. Whereas men employed in this field are more likely to work as gardeners, drivers, and in offices. This link made between women's customary roles and care work, as well as discourses that describe domestic work as unique and unlike any other type of work define the limitations and violations commonly experienced by individuals employed in this sector. Women migrant domestic workers generally live within the house of their employer and more limitations are placed on their correspondence with others and their freedom of movement than male migrants working in this sector. The migration of women to perform domestic work in foreign countries is a global phenomenon that occurs in response to the restructuring and growing inequality accompanying globalization on the supply side and the shrinking availability of social services in developed

¹ For the purposes of this paper, migrant domestic workers will refer to women migrant workers unless otherwise stated, since the majority of MDWs employed in the countries under study are women.

countries. In recent years, developed countries have cut back on social services, forcing professional women to seek other affordable childcare or elderly care options. Simultaneously, the expansion of the high-income workforce reintroduces the notion of the “serving classes”; the immigrant woman has replaced the black female servant typical of pre-war United States.² Moreover, women in developing countries, who were once providers of reproductive care for their families,³ are now moving into the workforce, leaving a care vacuum.

In addition to these ‘pull’ factors, policies contributing to economic restructuring in poorer developing countries act as ‘push’ factors. Structural adjustment policies and trade liberalization force governments to curtail funding for social programs and make it harder for local enterprise to compete with foreign companies. “The major dynamics that compose globalization: the formation of global markets, the intensification of transnational and trans-local networks and the development of communication technologies”⁴ concomitantly encourage migration and create the conditions that limit local employment options, as well as render “traditional” strategies of survival ineffective. Sassen identifies this process as the “feminization of survival”; households and communities are increasingly dependent upon women for their survival.⁵ These processes have also led to changes in the family with grand-parents and other relatives or hired workers now caring for the children of migrants. This is especially the case when more than one bread winner per household has migrated for employment. Additionally, governments of some origin countries of migrant domestic workers actively encourage female labor migration as a means to alleviate unemployment and since the remittances of these workers are an important source of income for their families and origin countries. In 2009, international migrants sent to developing countries US\$ 307 billion,⁶ of which MDWs’ remittances form a part. For example, although data disaggregating the contribution of domestic workers is not available, in 2009, Filipino land-based migrants sent home US\$ 2.6 million⁷ and Sri Lankan migrants sent US\$ 2.1 million⁸ from the Middle East region.

These dynamics are also taking place in the Middle East. Demographic shifts and changes in gender roles and working patterns in Arab States along with an absence of comprehensive social care and welfare systems have resulted in an increasing need for care services.⁹ Women are expected to continue to assume responsibility for the care of the household and its members. Women migrant domestic workers play a vital role in responding to the care needs of families in this region; assisting many middle- and upper-middle income families in Lebanon, Syria, Jordan and Yemen, as well as the Gulf States.¹⁰ Over the period of 1998-2008, the Arab States region has experienced a 7.7 per cent increase in the number of women in the labor force; however, women only make up 33.3 per cent of the labor force, much less than other regions of the world.¹¹ Thus, employment of migrant domestic

² S. Sassen: *Globalization and Its Discontents*, New York: The New Press, 1998, 90.

³ Refers to the tasks of the household- including child and elderly care- that are usually considered women’s work.

⁴ S. Sassen: “Women’s Burden: Counter-Geographies of Globalization and the Feminization of Survival”,

Nordic Journal of International Law, 71, 2002, 256.

⁵ *Ibid*, 258.

⁶ S. Mohapatra et al., “Outlook for remittance flows 2011-12. Recovery after the crisis, but risks lie ahead”, *Migration and Development Brief 13*, World Bank, 8 November 2010.

⁷ Central Bank of the Philippines, 24 Overseas Filipinos’ remittances by country, by year. Available at: www.bsp.gov.ph/statistics/keystat/ofw.htm

⁸ Sri Lanka Bureau of Foreign Employment, *Annual statistical report of foreign employment*, Sri Lanka, 2009, T:77 Private Remittances (Rs. Million) 1991-2009. Provisional data for 2009.

⁹ ILO, Issue Brief 2 “Social care needs and service provisions in Arab States: Bring care work into focus in Lebanon”, ILO Regional Office for Arab States, 2008.

¹⁰ *Ibid*.

¹¹ ILO, Policy Brief 1 “Social care needs and service provisions in Arab States: Bringing care work into Focus in Lebanon”, ILO Regional Office for Arab States, 2008.

workers also reflects employers' aspirations to social status or a semblance of relative affluence.¹² Thus, employment of a migrant domestic worker is considered a marker of status, as well as a measure of affluence. This is further differentiated at the level of migrant domestic workers' country of origin. Filipinas are considered more educated and neater than Sri Lankan or Bangladeshi workers but also more depending of their rights. These perceived differentiations also reflect in migrant workers' salaries, with Filipinas earning more than workers from other countries.

Migrant domestic workers' vulnerability to exploitation and abuse is shaped by overlapping structural and normative factors. Patriarchal assumptions and practices encourage perspectives of domestic work as unlike any other type of employment, as well controlling and patronizing treatment of MDWs on the basis of workers' gender (i.e. since the vast majority are women). Concomitantly, assumptions concerning workers' nationality and class encourage acceptance of discriminatory practices towards MDWs and their marginalization in the host society. Immigration and labor regulations reinforce workers' low-status, providing little protect from unscrupulous employers or private employment agents who treat MDWs as commodities.

III. Migrant domestic workers in the Mashriq

Migrant domestic workers from African and Asian countries started coming to Jordan and Lebanon in the 1980s. Flows of migrant workers steadily increased at the conclusion of the Civil War in Lebanon in the early 1990s. In contrast, flows of MDWs to Syria were until recently small and geared towards non-Syrian residents, since prior to 2001 employment of foreign domestic workers by Syrians was illegal.¹³ Domestic workers employed in these countries come mainly from Sri Lanka, the Philippines, Ethiopia, Nepal, Indonesia, and Bangladesh; although in each country some nationalities are more or less represented than others because of immigration restrictions and/or bans imposed by origin countries. Data on stocks of migrant domestic workers in destination countries are few, and where they do exist, they may underestimate the population since figures are usually based on entry visas or work permits issued.

Official records from the Ministries of Labor in Jordan and Lebanon indicate a large population of MDWs in each country. According to the Ministry of Labor figures for 2009, 114,933 work permits (both for the first time and renewals) were issued to migrant domestic workers in Lebanon.¹⁴ In Jordan, Ministry of Labor figures for 2009 show 70,000 MDWs in the country.¹⁵ However, the actual number of MDWs may be much higher as official figures miss workers who are in irregular status. There are no official estimates of MDWs in Syria. Unofficial estimates range from 15,000¹⁶ to 100,000¹⁷ MDWs in the country (See Table 1).

¹² P. Licuanan: "The socio-economic impact of domestic worker migration: Individual, family, community, country", *The Trade in Domestic Workers: Causes, Mechanisms and Consequences of International Migration*, vol. 1, ed. N. Heyzer; G. Nijeholt; N. Weerakoon, London: Zed Books, 1994.

¹³ S. Kahale: *Exploratory study on foreign domestic work in Syria*, IOM, Damascus, 2003: 10.

¹⁴ N. Houry: *Without protection: How the Lebanese justice system fails migrant domestic workers*, New York, HRW, 2010, 13.

¹⁵ IRIN: "Jordan: Government adopts anti-human trafficking law", 27 January 2009. According to the Ministry of Labor's Annual Report for 2009, about 26 percent (85, 807) of the registered foreign labor force was employed in personal or social services.

¹⁶ Kahale, 10.

¹⁷ Institute for War & Peace Reporting, Syria: "Growing abuse of foreign domestic workers", Issue 47, 24 February 2009.

Table 1. Estimates of Migrant Domestic Workers by Country of Destination

	Total	Countries of origin
Jordan	70,000a	Indonesia Sri Lanka Philippines
Lebanon	200,000b	Bangladesh Nepal Sri Lanka Philippines Ethiopia Madagascar
Syria	15,000-100,000c	Indonesia Ethiopia Philippines

a 2009 estimate.

b Official statistics for 2009 report 114,933 work permits issued for the first time and renewals. This estimate takes into consideration the number of migrant domestic workers in irregular status.

c There are no official statistics on migrant domestic workers. Estimates come from 2003 and 2010.

Reports of abuse and mistreatment of MDWs abound in all three countries, garnering national and international focus. Common violations identified are: passport retention, confinement in the employer's home, non-payment or underpayment of salaries, overwork, and physical, verbal and sexual abuse.¹⁸ In a survey of 610 Ethiopian, Sri Lankan and Filipino MDWs conducted in Lebanon, 31 per cent of respondents were not allowed to leave the house and 65 per cent worked more than 11 hours per day.¹⁹ In addition to these violations, a survey of 582 MDWs revealed that 52 per cent reported being yelled at and called names, 14 per cent were physically abused, and 7 per cent were sexually abused or harassed.²⁰ Additionally, reports of violations by private employment agencies demonstrate that migrant workers are often misled about their living and working conditions, have to pay a fee for placement (normally a salary deduction of the first three months of her employment)²¹, and are forced to work by the agent in several households without pay²². Indeed MDWs may find themselves trafficked or in forced labor situations upon their arrival in the destination country. Reports of suicide or accidental deaths of MDWs in Jordan and Lebanon seem to indicate the poor conditions in which many workers find themselves. Suicides are commonplace; according to Human Rights Watch, between 2007 and 2008 an average of one domestic worker per week died in Lebanon.²³ Most of these deaths were due to suicide, while falling was also identified as a common cause of death.²⁴ The high rate of deaths seems to continue to pose a problem in Lebanon. Nine cases of deaths of MDWs mainly due to suicides were reported in the media between August and September 2010.²⁵ In

¹⁸ For more detailed information see: Kahale; S. Esim; M. Smith, ed.: *Gender and migration in the Arab world: The case of domestic workers*, Beirut, ILO, 2004; F. Ta'amneh. *Law and practice on international labour migration: Jordan- a case study*, Background paper presented during the ILO General Discussion on Migrant Workers, September 2003.

¹⁹ R. Jureidini, "Trafficking and contract migrant workers in the Middle East", *International Migration* (forthcoming). Survey conducted in 2006.

²⁰ Ibid.

²¹ This is a common practice in all three countries. However, increased oversight by the Ministry of Labor in Jordan starting in 2007 seems to have reduced the occurrence of this practice. Interviews conducted the author of private employment agents and employers in 2007 revealed this outcome but also several interviewees stated that workers coming from the Philippines still had salary deductions to pay for the agency's commission in the origin country.

²² Anecdotal evidence suggests that agents may engage in this practice especially when an employee is returned to the agency within the first three months and the agent is trying to find another household or to recuperate the loss of commission incurred by the agent if the worker wants to return home. The author encountered two cases in which the agent or employer forced the worker to work in several households or employers without pay.

²³ HRW, "Lebanon: Migrant domestic workers dying every week", August 26, 2008. Available at: <http://www.hrw.org/en/news/2008/08/24/lebanon-migrant-domestic-workers-dying-every-week>

²⁴ Ibid.

²⁵ See Kafa (enough) Violence & Exploitation website. Silent Deaths. Available at: <http://www.kafa.org.lb/News.aspx?Newscode=13&title=Silent%20deaths>

Jordan, al-Ghad newspaper reported 25 domestic workers died in the first three months of 2009, while the Ministry of Labor announced that 14 Sri Lankan domestic workers attempted suicide in 2009.²⁶ Regulatory frameworks in the three countries under study do not adequately protect MDWs from violations and abuse, as will be discussed below.

IV. Limitations of the regulatory framework in the Mashriq

Migrant domestic workers' vulnerability to exploitation and their limited ability to demand for better conditions of work stem from the legal frameworks governing their employment and stay in the Mashriq countries. Generally, regulations in Jordan, Lebanon, and Syria focus on ensuring the temporary stay of workers rather than their rights; MDWs have no possibility of permanent settlement; they cannot seek employment in any other field, and are tied to their employers for the duration of their contracts. Jordan recently amended the Labor Law to include domestic workers under its coverage. In all three countries the protection of MDWs and their rights remain a major concern, generating national and international criticism. Also, the Lebanese Ministry of Labor recently released a draft law on regulating domestic work. While regulations do attempt to address some common abusive practices, and each country has taken steps to improve the protection of MDWs, there are still considerable gaps in achieving adequate levels of protection.

At the same time, the differences among Syria, Lebanon, and Jordan indicate different levels of awareness and acknowledgement of the situation of migrant domestic workers, as well as possible initiatives that could serve as models for the region. Mashriq countries regulate the entry and stay of migrant domestic workers to varying degrees. Syria has only recently passed legislation in 2001 (allowing Syrians to employ foreign domestic workers) and in 2006 (regulating the entry of migrant domestic workers and private employment agencies) that recognize the employment of migrant domestic workers by Syrian households and formalize their recruitment and employment. Prior to 2001, the Syrian government attempted to discourage the employment of foreign domestic workers by making it illegal for employers to hire such workers, thus MDWs' irregular status made them a particularly vulnerable group for exploitation. Notably, regulations introduced by the Syrian government specifically only address female migrant domestic workers, excluding male migrants from this type of employment. On the other hand, regulations concerning migrant domestic workers in Jordan and Lebanon were introduced in the late 1990s and early 2000s corresponding to a policy of openness to employment of these workers by households and acknowledgement of large flows of mainly migrant women to Lebanon and Jordan for work.

An important development is the introduction of unified contracts in Jordan and Lebanon in 2003 and 2009, respectively. Unified contracts are standard contracts that all migrant domestic workers and their employers are required to sign. Contracts often outline the rights and responsibilities of employers and employees as well as the conditions under which the contract can be terminated. Syria does not currently have one standard contract but regulations state some provisions that should be included in contracts for migrant domestic workers (See Table 2 for the regulations in the different countries).

In all three countries the Ministries of Interior and Labor play central roles in overseeing the recruitment and employment of MDWs. In Syria, the Department of Immigration and Passports (within the Ministry of Interior) and the Ministry of Social Affairs and Labor oversee private employment agencies and the processes for employing a foreign domestic worker. In Lebanon and Jordan, General Security (within the Ministries of Interior) and the Ministries of Labor are the key government agencies responsible for regulating the presence and work of MDWs in the country respectively. In Lebanon in particular, General Security plays a central role not only issuing and renewing MDWs' residence permit but also in resolving complaints between employers and domestic

²⁶ Amnesty International: *Amnesty International Report 2010 – Jordan*, 28 May 2010.

workers and overseeing the repatriation of workers in violation of immigration regulations or of those who lose their employer. This poses a problem for effectively responding to violations of migrant domestic workers' rights, since General Security is responsible for maintaining internal security and border control, authorities often see the cases of workers through a security lens rather than a human or labor rights abuse perspective. Indeed, the solution offered to workers who are victims of abuse and/or labor violations is often to return to their countries of origin rather than allow workers to find another employer.

Table 2. Regulations/laws on MDWs in Jordan, Lebanon, and Syria

	Jordan	Lebanon	Syria
Labor Law	Amended in 2008/Implementation regulations No. 90 of 2009	Excluded (Article 7)	Excluded (Article 5)
Contract	Special Working Contract for Non-Jordanian Domestic Workers	Unified Contract for Female and Male Migrant Domestic Workers	No unified contract
Regulations for PEAs (includes provisions on the residence and employment of MDWs)	Law No. 89 of 2009, "Regulation on the recruitment and placement of non-Jordanian domestic workers by private employment agencies" - ----- Regulation No. 8 of 1996, "Regulation for organizing recruitment and employment of non-Jordanian household workers by private agencies issued pursuant to paragraph (c) of the tenth Article of the Labor Law No. 8 of 1996 and its amendments" ----- Regulation No. 3 of 2003, "Regulations for agencies licensing procedures and conditions related to the recruitment and employment agencies of non-Jordanian domestic workers, and the specification of the commitments in their regard as well as levied fees issued per Article (10)"	Regulation 1/13 of 2009, "Regulation of the work of recruitment agencies for workers in domestic service"	Act No. 81 of 2006, "The regulation governing private agencies for the recruitment and employment of non-Syrian female domestic workers and nannies"
Entry & Stay of Migrants	Law No. 24 of 1973 on Residence and Foreigners' Affairs	Regulation 1964/17561 amended by Regulation 14269 of 2005	Law No. 91 of 1959 - ----- Decree No. 29/KN of 2007, "Concerning provisions for the entry of female migrant workers and their stay at their employers' houses, and Arab and foreign nannies"

IV.1 Recruitment and entry of MDWs

In all three countries, MDWs cannot enter without the request of an employer and prior approval by the relevant Ministry. In Lebanon, the first step in bringing a foreign domestic worker is submission of a request by an employer as well as a 1,500,000 L.L. (approximately US\$1,000) bank guarantee to the Ministry of Labor. Once the Ministry approves the request, a visa will be issued for the entry of the migrant worker. Upon arrival of the worker, the employer must obtain the work and residence permits for his/her employee within a three-month period. This period is considered a probation period in which the employer and the domestic worker can request a change without requiring the approval of General Security. To obtain the work permit for MDWs, the employer must submit to the Ministry of Labor a copy of the employment contract signed by the employer and the worker at a Notary Public office, receipt indicating purchase of insurance for MDWs, a written document stating General Security's approval, and the test²⁷ results for the worker indicating that she is not pregnant and does not have HIV, Hepatitis B, and other STIs.²⁸ Once the work permit is issued, the employer can apply for the residence permit from General Security. Both permits have to be renewed annually.

Similar procedures apply in Jordan. Notably, the implementing regulations for the Jordanian Labor Law, amended in 2008, state the requirement of an employment contract signed by the domestic workers, his/her employer, and the agent with the approval of the Ministry of Labor. The regulations also state that the contract should be available in a language understood by the domestic worker and that the employer must renew his/her employee's work and residence permits annually.²⁹ Additionally, the approval of the Sri Lankan and Indonesian embassies is mandatory before the Ministry of Labor can endorse the contract of a MDW.³⁰ In Lebanon, the unified contract only exists in Arabic, even though it has been translated into 14 languages.

Regulations governing recruitment in Syria follow similar procedures; the Ministry of Social Affairs and Labor must approve the employer's request for a domestic worker, and upon the domestic worker's arrival in Syria, the employer, with the assistance of the employment agent, must submit a request for the worker's residence permit within 15 days of her date of entry. However, an important distinction is that these regulations target female domestic workers and nannies only. Additionally, married migrant domestic workers must provide proof of their husbands' agreement to their employment in Syria in order for an entry visa to be issued.³¹

In Jordan, Memorandums of Understanding (MOUs) and Bilateral Agreements with origin countries also govern the recruitment and employment of MDWs. The Jordanian government has agreements and/or MOUs with the governments of the Philippines, Sri Lanka, and Indonesia. MOUs and Bilateral Agreements allow countries to establish minimum standards in terms of recruitment and oversight of private employment agencies and could help prevent rights violations and placement of workers in abusive conditions through the exchange of information. Agreements on the exchange of

²⁷ Mandatory testing discriminates against migrant domestic workers by denying them employment on the basis of the results and violates international standards. According to the ILO Committee of Experts, "the refusal of entry or repatriation on the grounds that the worker concerned is suffering from an infection or illness of any kind which has no effect on the task for which the worker has been recruited, constitutes an unacceptable form of discrimination" (ILO, 1999, article 266).

²⁸ General Security (Lebanon) website. Available at: www.general-security.gov.lb.

²⁹ Hashemite Kingdom of Jordan, Regulation of Workers in Homes, No. 90, published in 2009.

³⁰ R. Cholewinski; K. Touzenis: "Irregular migration into and through Southern and Eastern Mediterranean countries: Legal perspectives", CARIM Analytic and Synthetic Notes 2009/01, European University Institute, Robert Schuman Centre for Advanced Studies, 2009: 7.

³¹ Ministry of Interior Affairs and Internal Security Forces Decree No. 29/KN concerning provisions for the entry of female migrant workers and their stay at their employers' houses, and Arab and foreign nannies. *Al Jarida Al Rasmiyah, Syria, 2007-04-18, Vol. 1, No. 16, pp. 878-879*

labor between the two countries in general concluded between the Philippines and Jordan and Sri Lanka and Jordan include these provisions, as well as an article stating that workers from either country will enjoy the rights and privileges accorded to workers of the host country in accordance to Labor Laws and Social Security Laws.³² The agreement between the Philippines and Jordan also includes an article allowing workers whose contracts have expired or been cancelled 30 days to seek other employment. Despite the inclusion of these articles, it appears that these do not apply to the case of domestic workers. A telling example is the MOU concluded between Jordan and Indonesia concerning Indonesian domestic workers. The MOU does not include similar articles but does specify other conditions, such as the contract between the employer and Indonesian domestic workers must be approved by the Indonesian Embassy and that employers have to open a bank account for their employees to prove payment of monthly salaries.³³

The Lebanese government is currently negotiating with a number of origin countries, such as Ethiopia and the Philippines. However, no agreement has yet been reached. In response to this situation several origin countries, including Ethiopia, Nepal, and the Philippines, currently ban their nationals from seeking employment as domestic workers in Lebanon. These bans have encouraged the irregular exit of MDWs, not to mention dubious recruitment measures, adding to their vulnerability to exploitation and trafficking. Agents in the origin countries often assist migrants to circumvent deployment bans by arranging travel first to a transit country or through bribery or deceit of immigration officials. Agents in both the destination and origin charge higher recruitment fees because of the greater difficulty of bringing workers to the destination. Also, MDWs whose countries have imposed deployment bans are not registered with the authorities and thus do not have access to welfare or insurance schemes or training programs.

MDWs who are pregnant, found to have a mental illness or a contagious disease such as Hepatitis B within the first three months of his/her entry must be repatriated by the agency. Concomitantly, MDWs cannot enter any of the countries under study without a request from an employer, meaning that the entry of MDWs is linked to a specified employer. Further regulations give private employment agencies a large role in facilitating the recruitment and placement of MDWs in households. Jordan, Lebanon, and Syria have all introduced regulations to regulate and oversee the operations of these agencies (these regulations will be discussed below). Review of these regulations demonstrates the objective of maintaining a temporary labor force that corresponds to the needs of households in each country.

IV.2 Regulation of private employment agencies (PEAs)

Enshrined in the regulations of the countries under study is the role of private employment agencies (PEAs), which are identified as the main mediators between employers and prospective migrant workers. According to the Jordanian Ministry of Labor website there are currently 95 licensed agencies operating in the Kingdom, while in Lebanon there are around 500 licensed agencies.³⁴ Not all of these agencies are actively recruiting MDWs for Lebanese households. According to a member of the Union of Owners of Recruitment Agencies for Migrant Domestic Workers maybe half of these agencies sell their licenses to other agencies that want to bring workers over the amount allotted to each individual agency (an act considered illegal by the government) or are not in operation. Prior to 2006, PEAs for MDWs were banned by the Syrian government. Estimates placed the number of illegal

³² Memorandum of Understanding between the government of the Democratic Socialist Republic of Sri Lanka and Jordan, 7 February 2006; Agreement on manpower between the government of the Republic of the Philippines and the government of the Hashemite Kingdom of Jordan, 2006.

³³ Memorandum of Understanding between the government of the Hashemite Kingdom of Jordan and the government of the Republic of Indonesia on the placement and protection of Indonesian domestic workers, 27 June 2009.

³⁴ Personal communication, Advisor to the Minister of Labor, Lebanon.

agencies at over 15.³⁵ The passage of Act No. 81, “The regulation governing private agencies for the recruitment and employment of non-Syrian female domestic workers and nannies”, has not lead to a great increase in the number of registered private employment agencies. There are 24 agencies registered according to the Ministry of Labor and Social Affairs.³⁶

Regulations on PEAs in all three countries are very similar. In particular, the regulations all specify that: a person applying for a license must be a citizen of the country for a specified number of years, should have no prior conviction for a serious offence, and should have a registered company. In addition, applicants for PEAs pay a fee for the license and a bank guarantee to cover expenses arising from breaches of commitments by the agency. In all three countries, agencies are prohibited from selling or transferring their licenses to other agencies and from bringing MDWs under fictitious employers or under his or her own name in order to employ the worker in several places on a daily or monthly basis. Agencies must also maintain files of MDWs brought to into the country, along with the name of his/her employer. Labor inspectors have the right to review the agencies files to ensure compliance with the regulations. Agents are also charged with ensuring that employers obtain the work and residence permits of MDWs, if the employer has not yet done so within the first three months of the workers’ entry into the country.

However, there are several variations that are important to point out, which demonstrate the extent to which agencies can intervene once the worker arrives in the country. In Jordan and Syria regulations prohibit the recruitment or employment of any MDW unless through a licensed agency.³⁷ This prohibition limits the ability of MDWs to enter these countries through social or familial networks. Another important variation is found in Lebanese regulations. According to Regulation 1/13, “Regulation of the work of recruitment agencies for workers in domestic service”, the role of agencies is confined to the recruitment procedures and the three-month probation period upon the arrival of the domestic worker.³⁸ Once the three months have passed, PEAs no longer have a legal role to intervene in disputes between employers and MDWs, although agents are still required to report any complaints received to the relevant authorities. In contrast, the Syrian Act No. 81, states that agencies shall call periodically employers and MDWs to ensure that the worker is “properly performing her job...and that she is not mistreated and she is getting all her entitlements” and inform the relevant department in case of a complaint against either party.³⁹ Additionally, the Lebanese Ministry of Labor grants agencies only 100 requests for domestic workers per year for each agency. Such limitations are not included in regulations found in Jordan and Syria.

Despite the limitations placed on agencies in order to prevent abuse and violations of workers’ and employers’ rights, implementation remains a challenge. For example, in Lebanon the existence of 500 licensed agencies makes it difficult for the Ministry of Labor to oversee each agency and to ensure compliance to the regulations. The Union of Recruitment Agencies has requested the Ministry of Labor to amend regulations that would increase the annual quota for each agency, allow agencies to intervene in the case of a dispute between an employer and his/her employee, and would make membership with the Union as a prerequisite to obtain a license. The increase in the annual quota could prevent agencies from operating informally since there would be less of a market for non-

³⁵ Kahale, 27.

³⁶ Email communication, ILO Regional Office for the Arab States.

³⁷ Hashemite Kingdom of Jordan, Ministry of Labor: Regulation No. 8 of 1996, “Regulation for organizing recruitment and employment of non-Jordanian household workers by private agencies issued pursuant to paragraph (c) of the tenth Article of Labor Law No. 8 of 1996 and its amendments”, Amman, 1996 and Regulation No. 3 of 2003; Syrian Arab Republic: Act No. 81, “The regulation governing private agencies for the recruitment and employment of non-Syrian female domestic workers and nannies”, 2006.

³⁸ Republic of Lebanon, Ministry of Labor: Regulation 1/13, “Regulation of the work of recruitment agencies for workers in domestic service”, 2009.

³⁹ Syrian Arab Republic: Act No. 81.

operating agencies to sell their quotas to other agencies. However, if such amendments do gain approval, they do not necessarily imply greater protection for MDWs and their rights given that MDWs work in the ‘private’ sphere of the house, which is difficult to monitor and corroborate workers’ complaints. More troubling is the central role given by governments in the Mashriq countries to agencies in the recruitment and employment of MDWs. Agents in some cases are the perpetrators of abuse and/or encourage employers to violate the rights of MDWs to protect their “investment” or force the worker to submit to poor living and working conditions. Studies have highlighted the fact that agents in many cases are the perpetrators of abuse, “teaching” workers who complain about working conditions a “lesson” through hitting, threats or withholding of salaries.⁴⁰

IV.3 Immigration regulations

Immigration regulations in Jordan, Lebanon, and Syria contribute to MDWs’ vulnerability and limited ability to claim their human and labor rights. Countries in the Mashriq require an entry visa and work and residence permits for most migrants seeking employment in domestic work.⁴¹ As stated above, in all three countries, the Ministry of Labor must approve the request to employ a foreign domestic worker prior to issuing an entry visa for the worker. Additionally, countries place restrictions on employment of foreigners in certain occupations or on certain categories of workers. For example, the Syrian government does not allow the employment of specifically African or Asian migrant workers unless he/she has skills or expertise needed by the private sector, are IT or technical specialists, are employed by an embassy or consulate or are female domestic workers or nannies.⁴² Lebanon and Jordan also impose different visa and employment requirements for nationals of different countries.⁴³ In both countries, migrants are prohibited from being employed in certain occupations (such as professional categories, i.e. as doctors or engineers, among others). Also, regulations that require the employer to prove that no qualified citizen can be found to fill the position and that set high costs for work and residence permits discourage the regular employment of migrants. In general, African and Asian women and men have few options for employment other than in low-skilled jobs such as domestic or service work in the Mashriq. This limitation indicates an attempt by countries in the region to maintain a temporary foreign labor force; it also means that migrant women and men employed in domestic work cannot easily seek employment in another field.

⁴⁰ See Human Rights Watch, *Exported and Exposed: Abuses against Sri Lankan domestic workers in Saudi Arabia, Kuwait, Lebanon, and the United Arab Emirates*, Vol. 19, No. 16 (c), New York: HRW, 2007; S. Esim; M. Smith, ed.: *Gender and migration in the Arab world: The case of domestic workers*, Beirut, ILO, 2004; S. Abdelrahim, *Servant, Daughter or Employee? A pilot study on the attitudes of Lebanese employers towards migrant domestic workers*, Beirut, Lebanon: KAFA (enough) Violence & Exploitation, 2010.

⁴¹ In Jordan, Law No. 24 of 1973 on Residence and Foreigners’ Affairs define the entry and stay requirements of migrants wishing to work in the Kingdom. In Lebanon, Regulation 1964/17561 amended by Regulation 14269 of 2005 establishes the requirements for employing a foreign worker. In Syria, Law No. 91 of 1959 defines foreigners as non-Syrians and non-Arabs in need of a work permit from the Ministry of Social Affairs and Labour, as well as a residence permit (Kahale, 23).

⁴² Syrian Arab Republic: Ministry of Interior Affairs and Internal Security Forces Decree No. 29/KN. Provision 6 states: Male and female workers from Asian and African countries are denied entry to Syria but for these exceptions: a) They have skills/expertise needed by the private sector; b) they have expertise needed by the private sector and that have been approved; c) born in the country and have long-term residence; d) IT or technical specialists needed but with the condition that they do not replace Syrians in this field; e) workers in one of the foreign embassies or consulates or international organizations; f) are female domestic workers or nannies (translated by the author).

⁴³ For example, in Lebanon, nationals from a combination of Asian, African and Latin American countries must receive approval prior to their arrival to obtain a three month visa for the purposes of work. See General Security (Lebanon) website.

Furthermore, Jordan, Lebanon and Syria prohibit marriages between MDWs and citizens in practice or by law.⁴⁴ A migrant domestic worker must leave the country and enter the destination country as the wife of the citizen in question in order for the marriage to be recognized by the authorities. Residence permits are required for children of MDWs born in the destination country, unless the father is a citizen of the country and acknowledges his child(ren)⁴⁵. In many cases, children of MDWs can be in irregular status either because their parent(s) are also in irregular status or the costs of obtaining a permit are too high for the parent(s) to bear. The prohibition on marriage to MDWs may indicate a discriminatory practice intended to limit “undesirable” populations in the destination country.

IV.4 The sponsorship system

The employer is an important actor in enforcing immigration regulations. In Jordan, Lebanon, and Syria, the presence of the worker is dependent upon his/her sponsorship by an employer. This system of immigration - the sponsorship (or kafala) system – attempts to control the flow of migrants by tying the worker to a single sponsor (or kafeel) for the duration of her contract.⁴⁶ The MDW enters the country of destination country under the name of an employer; he/she cannot change the employer, even in the case of abuse or exploitation, unless she obtains the release of his/her current employer to a new one. For example, The Syrian Ministry of Internal Security Forces Decree No. 333 the transfer of a foreign domestic worker to another employer requires the approval of the Department of Immigration and Passports.⁴⁷ Under the sponsorship system the employer assumes control over the worker’s freedom of movement, labor, and judicial action.⁴⁸

The regulations further stipulate that MDWs reside with their employers for the duration of their contracts. MDWs who work as “freelancers” (i.e. MDWs who have a sponsor but do not live with their sponsor) are often considered by the authorities to be in violation of immigration regulations, since the regulations assume that work and residence permits are issued on the basis of a “live-in” arrangement. An indication of this assumption is the stipulation that employers or agents are required to pick up workers upon their arrival at the airport. In Lebanon, domestic workers who have worked and resided in the country for a number of years must still be picked up by their employers; however, it seems that male migrants who are not entering Lebanon for the first time can leave the airport on their own.⁴⁹

MDWs who run away, even in cases of abuse, automatically become irregular. Since the regular status of the worker is tied to an employer, once she/he leaves her/his employer without obtaining a release she/he is considered in violation of immigration regulations. MDWs in irregular status face fines and imprisonment in detention centers, as well as deportation, even when the employer neglected to complete the necessary procedures to obtain the work and residence permits for the worker. In Lebanon, employers are required to report runaway domestic workers to General Security.⁵⁰ Additionally, a recent internal regulation issued by the Director General of General Security allows the transfer to another employer by MDWs only three times. General Security will only grant the transfer

⁴⁴ Personal communication, lawyer for KAFA MDW project; M. Olwan, “Gender and migration in Jordan”, *Gender and Migration Series*, CARIM Analytic and Synthetic Notes 2010/66, European University Institute, Robert Schuman Centre for Advanced Studies, 2010. In Syria, Decree No. 29/KN prohibits the marriage between Syrians and female Arab and non-Arab domestic workers and nannies.

⁴⁵ Women in Lebanon, Jordan, and Syria cannot pass on citizenship to their children if they are married to non-citizens.

⁴⁶ G.Calandruccio: “A review of recent research on human trafficking in the Middle East”, *International Migration*, vol.43, no. 1-2, 2005: 278-279.

⁴⁷ Syrian Arab Republic: Ministry of Internal Security Forces Decree No. 333, 2006.

⁴⁸ Calandruccio, 278-279.

⁴⁹ This issue was raised during a meeting with migrant community leaders.

⁵⁰ Republic of Lebanon: Regulation 14269 of 2005.

to another employer after the third time only in exceptional circumstances.⁵¹ This administrative regulation negatively affects MDWs who work for multiple employers and who have remained in the country for a number of years.

In combination with limited legal protections for MDWs, the sponsorship system creates a situation in which employers exercise a large degree of control over the living and working conditions of workers, as well as offers few opportunities to empower MDWs. This contributes to MDWs vulnerability to abuse and exploitation. Workers may accept bad working conditions and/or abusive treatment because of fear of deportation. The system also contributes to workers isolation in the homes of their employers and to their lack of knowledge of their rights. Rather than taking a rights-based approach, the sponsorship system is a framework for the control of low-skilled foreign workers that focuses on the rights of employers.

IV.5 Legal measures to protect MDWs

The legal framework in Jordan, Lebanon, and Syria provide migrant domestic workers with limited protection from exploitation and abuse. Institutional arrangements often attempt to preserve the interest of the employer in exchange for limitations on workers' rights. Notably, the exclusion of domestic workers from labor laws in the region means that workers' rights are governed by contractual law, and that these workers do not benefit from provisions concerning freedom of association and the right to join a union and social protection. Domestic workers' exclusion from labor laws also means that they do not have opportunities to benefit from vocational/skills training programs. Jordan is an exception in this regard. In 2008, the Jordanian Labor Law was amended to extend coverage to domestic and agricultural workers, however, special regulations apply to domestic workers, which will be discussed in more detail below.

Domestic workers in Lebanon and Syria remain excluded from the Labor Law, although the Lebanese government is considering a new law on domestic work that would apply to migrants as well.⁵² The Syrian Labor Law states that workers excluded from the labor law shall be subject to the provisions of their employment contracts, which should not prescribe fewer entitlements than those prescribed in the law. Also, the labor law regulates minimum wage and other employment issues for casual or temporary, which includes domestic workers.⁵³ Thus in both countries, MDWs' contracts are the main basis on which workers' can seek redress for abuse or violations of their rights. A unified contract for migrant domestic workers does not exist in Syria. Instead, Act No. 81, regulating PEAs, includes provisions on clauses that should be included within the employment contract, these are:

- The duration of the worker's contract and her monthly wages;
- The employer must provide for the worker clothing, food, medicine and appropriate accommodation and register the worker in the work related injuries fund in the public institution for social insurance;
- The worker's salary shall be paid at the end of each month;
- The employer shall "refrain" from mistreating or beating the worker, subject to legal liability.⁵⁴

Provisions do not mention occupational safety and health concerns nor provide guidance on when the employer and the domestic worker can terminate the contractual agreement. Provisions also make

⁵¹ Personal communication, officer at General Security.

⁵² Article 7 of the Lebanese Labor Law of 23 September 1946 and Article 5 of the Syrian Labor Law No. 17 of 2010 exclude domestic workers.

⁵³ Kahale, 23.

⁵⁴ Syrian Arab Republic, Act No. 81.

no mention of work hours and under what conditions, weekly and annual leave or the rights of workers to keep their passports and other identity documents. A unified contract would help resolve some of these gaps and provide one standard contract which every employer and domestic worker must sign.

In 2009, the Lebanese Ministry of Labor approved the Unified Contract for Female and Male Migrant Domestic Workers, making it the sole contract that employers and workers must sign prior to the issuance of the work permit. The contract:

- Delineates maximum hours of work (10 inconsecutive hours a day) and minimum hours of rest (8 consecutive hours a night);
- Requires the employer to pay the worker's salary at the end of each month of employment and to keep a written receipt ;
- Grants the worker a weekly rest day and a yearly annual leave of six days;
- Charges the employer with providing the worker with food, clothing and adequate accommodations and purchasing insurance for MDWs; and
- Sets the conditions in which the employer and worker can terminate the contract.

While the contract provides for some measure of protection for MDWs, it remains silent on several common violations of workers' rights, and includes provisions that place workers in a vulnerable position vis-à-vis employers. In particular, the contract does not prohibit the retention of workers' passports and other identity documents and does not guarantee the right to a day out; nor does the contract include a minimum wage standard, thus maintaining wage discrepancies between migrant workers of different nationalities. Additionally, the requirement of a written receipt certifying payment of workers' wages may not be a strong enough measure to prevent or prove non-payment or underpayment of wages, since workers could be forced to sign receipts. Employers can terminate the contract if the worker "commits a deliberate mistake, neglect, assault or threat, or causes any damage to the interests" of the employer and his/her family.⁵⁵ But the contract does not provide any guidance on what constitutes such violations and whether complaints against workers are legitimate. If the worker breaks the contract because of any of the circumstances mentioned, such as physical or sexual abuse, the only option provided is for the worker to return home at the expense of the employer.⁵⁶ The contract does not allow the worker temporary residence to seek other employment. In both Lebanon and Syria, the difficulty of enforcing employment contracts and of presenting a complaint in the courts on the basis of contracts act as a barrier to ensuring the protection of workers' rights and of providing redress in the case of violations. In addition to these limitations, contracts are currently only available in Arabic and English, languages that many MDWs may not be able to understand or read.⁵⁷

A draft law on domestic work was launched by the Ministry of Labor in February 2011.⁵⁸ Importantly the draft law strengthens the role of the Ministry of Labor in responding to complaints of labor and rights violations by appointing social workers who will investigate complaints and follow-up on cases to ensure compliance, as well as introduces penalties for violations committed by employers,

⁵⁵ Republic of Lebanon: Unified contract for female and male migrant domestic workers, unofficial English translation.

⁵⁶ Domestic workers can pursue cases in the criminal courts in the case of physical or sexual abuse, however, workers would have to prove that such abuse occurred, which generally requires witnesses and/or the report of a forensic doctor indicating that the worker was abused. Due to their isolation and confinement in the employer's house, MDWs may not be able to find witnesses to testify to the abuse or to leave the house in time for the traces of abuse to remain on their bodies. Other barriers to workers seeking redress in courts will be discussed in section IV. 6. Often the option available to domestic workers is return to their origin countries, even if a domestic worker pursues a case in court, she cannot seek other employment while her case is pending and usually temporary residence is not granted.

⁵⁷ The Unified Contract for Female and Male Migrant Domestic Workers, along with a guide for MDWs, will be translated into several languages of the major migrant communities. However, these translations have yet been published.

⁵⁸ Ministry of Labor, Lebanon, "Draft law on regulation of decent work for workers in domestic service", Beirut, 10 February 2010. [مشروع قانون يتعاق بتنظيم العمل اللائق للعاملين في الخدمة المنزلية.]

private employment agencies, and employees. In addition to these, the draft law bans violating employers from employing a migrant domestic worker for a period of three to five years and makes it possible for a worker and employer to prove physical or sexual abuse without the report of a forensic doctor. However, the draft law is separate from the Lebanese Labor Law and does not amend the law to include domestic workers. Furthermore, the draft law remains silent on the practice of withholding the workers' passport and other identity documents, denies domestic workers' freedom of mobility, and makes it illegal for MDWs to work for anyone other than their sponsor. While the draft law includes important provisions as well as strengthens the role of the Ministry of Labor, it does not go far enough to guarantee MDWs' human and labor rights or in addressing their particular vulnerabilities vis-à-vis employers.

Jordan provides one example of the expansion of coverage of the labor law to domestic workers. Although, as will be discussed below, domestic workers inclusion in the Jordanian Labor Law is limited and not all provisions of the law apply to this category of workers. The implementation regulations No. 90 of 2009 clarify domestic workers' incorporation under the Labor Law. Notably, the regulations define the term domestic worker⁵⁹ and give the Ministry of Labor a clearly defined role in investigating complaints and resolving disputes between employers and domestic workers. The regulations include provisions that:

- Defines maximum hours of work (10 inconsecutive hours) and minimum hours of rest (8 consecutive hours per night);
- Guarantees the worker one day of rest and 14 days annual leave, as well as sick leave;
- Charges the employer with providing the worker with health care and other material needs;
- Requires the employer to pay the worker's monthly salary and provide a written receipt as proof of payment;
- Affirms the worker's right to privacy and to communicate with his/her family;
- Charges the Ministry of Labor with following up on any complaints;
- Allows inspection of the employing household upon obtaining the permission of the employer; and gives the employer one week to comply with regulations; if he/she does not then a fine will be issued and the necessary legal steps will be taken as defined by the Labor Law.⁶⁰

At the end of the contract period, the employer and domestic worker must issue a statement in front of a representative of the Ministry of Labor certifying that both parties received their due entitlements and that rights were respected. The regulations also charge the employer with treating the worker with dignity and ensuring decent work conditions, and the worker to complete his/her tasks with honesty and to preserve the privacy of the house; stipulations that would be difficult to delineate or enforce in real-life situations.

These regulations reflect many of the provisions found in the Special working contract for non-Jordanian domestic workers, which the Ministry of Labor approved in 2003. For example, the contract outlines similar responsibilities and rights of employers and workers that the implementation regulations No. 90 state. Notably, the contract specifies that the worker must perform her/his duties without violating social and moral norms and Jordanian law and that the work cannot leave the employing household without the employer's permission. In addition, the contract also specifies the

⁵⁹ Domestic work is defined as work related to the regular activities of the family, which can be performed by any member of the family and include: cleaning, cooking, ironing, preparing meals, care-taking, caring for children, and grocery shopping.

⁶⁰ The Jordanian Labor Law, No. 8, 1996, article 3, section B and Regulation of Workers in Homes, Home Kitchens and Gardens, and their Like [نظام العاملين في المنازل وطهايتها وبستانبيها ومن في حكمهم] No. 90, published in the Official Gazette No. 4989, 2009.

length of the contract period (2 years, renewable for an additional year), as well as the provision that the employer does not have the right to take the worker's passport.⁶¹

Beyond the somewhat unclear terms used to delineate employers' and workers' responsibilities, the implementation regulations and the Special working contract present similar gaps as those identified for the Unified contract for female and male domestic workers. Regulations do not include a minimum wage standard, as well as do not prohibit retention of the worker's passport and other identity documents by the employer, although this is prohibited in the Special Working Contract for non-Jordanian domestic workers. Workers are not granted the freedom to leave the employing household. The regulations require the worker to obtain the permission of the employer before leaving the house and to inform employers of their whereabouts. The regulations also remain silent on the issue of minimum wage, maternity leave and overtime, which most likely indicates the exclusions of MDWs from these benefits. In addition to these limitations, MDWs cannot join unions and are excluded from social protection provisions.

In all three countries, contracts and other provisions to protect MDWs do not address occupational safety and health concerns. Since domestic workers are excluded from labor laws and when included as is the case in Jordan, they do not enjoy equal treatment with nationals in terms of social protection, maternity leave or measures addressing occupational safety and health. Also, despite the fact that Jordan and Syria ratified the Equality of Treatment (Social Security) Convention, 118 (1962), domestic workers do not enjoy social security rights in both countries. MDWs who become pregnant or contract a communicable disease (such as Tuberculosis or an STI) while in the destination country will be returned to their origin countries. In other cases, migrant domestic workers may require minor medical care such as antibiotics for an infection but they may not receive such care if their employers are unwilling to cover the costs of a doctor's visit and medication. Jordan, Lebanon, and Syria require employers to purchase insurance for MDWs; however, it is not medical/health insurance but functions more as accidental or life insurance and thus it may not adequately provide for workers' health needs. Insurance policies often cover hospitalization, death, and repatriation while workers are under contract but do not cover long-term care due to a work-related injury or preventive measures, such as gynecological or other health check-ups. For example, insurance policies for MDWs in Lebanon cover hospitalization and repatriation of workers who suffer accidents on the job and repatriation of workers who die of natural causes or due to accidents while in the destination country but do not cover usual medical needs or long-term treatments.⁶² If a death of a worker is determined to be a suicide, then the insurance company will not cover any expenses incurred.⁶³

IV.6 Dispute settlement mechanisms

Another factor contributing to MDWs' vulnerability in the Mashriq is that workers have few avenues to seek redress for rights violations and/or abuse. On the one hand, few mechanisms are in place to effectively reach MDWs who are often isolated in their employers' homes and who lose their regular status once they leave their employers' home, thus their right to remain in the country. On the other hand, discriminatory practices discourage MDWs from seeking redress in the courts and favor the employer in most disputes. In this regard, non-governmental organizations and embassies/consulates of MDWs play a key role in representing workers and mediating disputes between employers and domestic workers. Private employment agencies may also play a role in resolving disputes, although each country determines the different levels and extent to which agents can mediate. In many cases domestic workers fear agents, who generally side with employers even in cases of mistreatment and

⁶¹ Ministry of Labor, Jordan, *Special Working Contract for non-Jordanian Domestic Workers*, Amman, 2003.

⁶² "Insurance for MDWs: What does it cover?", *The Newsletter for Migrant Domestic Workers*, Issue no. 2, KAFA (enough) Violence & Exploitation, 2010.

⁶³ Ibid.

who are perpetrators of abuse themselves. Trade unions in the region have shown little interest in the situation of migrant domestic workers or initiative to advocate on workers' behalf. This may be due to the fact that some trade union representatives are also employers of MDWs or private employment agencies who recruitment and place migrant women in Arab households. Migrant community leaders and informal migrant associations also provide support to vulnerable MDWs by providing them with shelter and however, such associations are not recognized by the destination country and thus cannot full represent MDWs or lobby for their rights.

In contrast to Lebanon and Syria, Jordanian regulations indicate a clear system for settling disputes. According to the recent regulations implementing the amendment to the Labor Law, a committee, called the Committee for the Affairs of non-Jordanian Domestic Workers, will be formed within the Ministry of Labor.⁶⁴ This committee consists of individuals from the Ministry of Labor, General Security, and the Union of Owners of Private Employment Agencies. The regulation also gives the Ministry of Labor the power to investigate complaints submitted by employers and domestic workers and to call for an inspection of the household by a labor inspector if the complaint is connected to the household in which the workers is employed. Employers must first agree to an inspection before it can take place. If employers are found to be in violation of the regulations, he/she has one week to rectify the situation or face other penalties or legal consequences. The Ministry of Labor also has the power to render decisions on complaints and to set penalties in accordance to the Labor Law if employers do not comply with the decision of the Ministry.

In Lebanon and Syria, MDWs have recourse to mainly contractual law to claim their rights. Since domestic workers are excluded from Labor Laws of Lebanon and Syria, the penalties and punishments expressed in the law do not apply to this category of workers. Thus, MDWs must seek redress based on violations of their contracts, which includes weaker penalties against employers. In Syria, Act No. 81 requires PEAs to maintain a list of employers and domestic workers whom the agent is required to contact periodically to ensure that both the rights of the employer and employee are respected and to alert the relevant authorities in the case of violations. In Lebanon, agents' roles are limited to the first three months of the worker's arrival, after which employers or workers can contact the Ministry of Labor in case of a dispute or seek redress in the courts. However, PEAs are required by the Ministry of Labor to maintain files on migrant workers he/she places in households and to submit these files to the Ministry of Labor. In practice, oversight of the operations of PEAs is weak.

MDWs workers can file complaints in civil and criminal courts, as well as labor courts, despite their exclusion from the Labor Law. Decree No. 3572 of 1980 expanded the Labor Court's jurisdiction to any conflict that arises from a relationship the fits the definition of work as delineated in the Law on Obligations.⁶⁵ In all three countries, it is likely that MDWs who face violations of their work contracts and their rights will be sent to their origin countries rather than be given the opportunity to seek redress for violations and/or to seek employment in another household. This is clearly alluded to in the Unified Contract, which states that employers are obligated to return their employees to his/her country if the worker terminates the contract for one of the specified reasons detailed in the contract. The contract and Lebanese immigration regulations do not give MDWs temporary residence in order to seek other employment.

While MDWs have filed cases against their employers in Lebanon, a study by Human Rights Watch (HRW) found that the Lebanese justice system fails to protect MDWs' rights, in many instances the system actually discriminates against workers. In 84 of the 114 cases reviewed by HRW, MDWs were defendants and only in 20 cases were they plaintiffs.⁶⁶ The few cases in which MDWs

⁶⁴ The Hashemite Kingdom of Jordan: Regulation of Workers in Homes, Home Kitchens and Gardens, and their Like, No. 90 of 2009.

⁶⁵ Houry, 33-34.

⁶⁶ Ibid, 10.

were plaintiffs may be a result of the reluctance of workers to pursue a complaint against their employer because of the costs associated with filing a case plus the long time it takes to reach a verdict, and the fact that workers lose their right to work and reside in Lebanon if they file a complaint against their employer. Additionally, it has been emphasized that in many instances when MDWs have sought assistance from the police that they have often been returned to their employers and no investigation was pursued. MDWs who file complaints against their employers can also face countercharges of theft and end up in pre-trial detention for several months.⁶⁷ Furthermore, HRW found that courts generally favored employers over MDWs and gave more credence to employers' testimonies rather than workers'. Courts often placed the burden of proof on MDWs to demonstrate that they had not received their salaries rather than on employers. When MDWs did receive a favorable ruling forcing employers to comply with the verdict presented an additional challenge, and in many cases verdicts were very lenient. For example, in a case of physical abuse, the court found the employer guilty and sentenced her to one month in prison but replaced the jail sentence with an increased fine.⁶⁸

It is likely that similar findings could be found in Jordan and Syria. Particularly since women migrants in domestic work are not treated with equality with respect to other workers in terms of labor standards and their isolation in their employers' homes makes it more difficult for them to prove violations and/or abuse than other migrant workers employed in other sectors. In addition to these obstacles, the issue of discrimination against MDWs in the justice system is a grave one that needs to be addressed in order to protect workers' from exploitation and prevent violations of their rights.

V. International conventions and the Mashriq countries

Jordan, Lebanon, and Syria are signatories to a number of international conventions, such as the Convention to Eliminate all Forms of Discrimination Against Women, most of the eight ILO fundamental conventions, and the Protocol to Prevent, Suppress and Punish Trafficking Persons, especially Women and Children (or the Palermo Protocol). Syria also ratified (although it did not sign) the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, unlike Jordan and Lebanon. Countries signatory to these conventions must report on steps taken to comply with these standards. Additionally, national and international NGOs have highlighted countries' international obligations to lobby for better regulations and protection of MDWs' rights. All three countries have not ratified the ILO conventions that specifically deal with labor migration: Convention 97, Migration for Employment (1949) and Convention 143, Migrant workers, Supplementary Provisions (1975), which constitute two of the eight ILO fundamental conventions (See Table 3 for conventions ratified by the three countries). These conventions should be respected and realized by all ILO member States, even if they have not ratified them. Additionally, all three countries have ratified other ILO conventions that are relevant to the protection of MDWs, such as Convention 118. However, as discussed above Jordan, Lebanon, and Syria have not fully applied the provisions of these conventions to regulations concerning the living and working conditions of MDWs.

⁶⁷ Ibid, 46-47. Workers could be held for three months in pre-trial detention in cases of theft and an average of 21 months in felony cases.

⁶⁸ Ibid, 39.

Table 3. Relevant International and ILO Conventions

		Jordan	Lebanon	Syria
ILO Fundamental Conventions				
Migration for Employment	Conv.97	n/a	n/a	n/a
Migrant workers (Sup. Provisions)	Conv.143	n/a	n/a	n/a
Freedom of association and collective bargaining	Conv. 87	1960
	Conv. 98	1968	1977	1957
Elimination of forced and compulsory labor	Conv. 29	1966	1977	1960
	Conv. 105	1958	1977	1958
Elimination of discrimination in respect of employment and occupation	Conv. 100	1966	1977	1957
	Conv. 111	1963	1977	1960
Abolition of child labor	Conv. 138	1998	2003	2001
	Conv. 182	2000	2001	2003
Other International Conventions				
Conv. to Eliminate all Forms of Discrimination Against Women		1992	1997a	2003a
Protocol to Prevent, Suppress and Punish Trafficking Persons		2009a	2005	2009
Conv. on the Protection of the Rights of All Migrant Workers and Members of their Families		n/a	n/a	2005a

a: accession

Countries have especially moved quickly to introduce anti-trafficking legislation. Jordan in 2009 and Syria in 2010 have introduced legislation making trafficking in persons a crime, as well as defining penalties for individuals who are found to be traffickers. In Jordan, the law on anti-trafficking establishes a commission to oversee its implementation.⁶⁹ The commission is affiliated to the Ministry of Labor and includes officials from the police and Ministry of Justice. A shelter for victims is also planned. A draft law on the punishment of trafficking in persons is currently being debated in Lebanon. While as States party to these conventions governments agree to incorporate principles laid out in the conventions into national legislation and open themselves up to international review, ratification has had only a minor impact on the protection of MDWs' rights. As demonstrated above, the legal frameworks in the three countries often doubly exclude migrant domestic workers as migrants and as domestic workers. Countries in the Mashriq generally do not apply international standards to MDWs. For example, MDWs do not enjoy maternity rights in any of the countries under study, and regulations often limit workers' freedom of association and movement to preserve the interest of the employer.

Despite the difficulties in using international conventions to bolster protection for MDWs' rights, the response of Jordan, Lebanon, and Syria to the proposed ILO convention on domestic work may indicate

⁶⁹ IRIN: "Jordan: Government adopts anti-human trafficking law".

a willingness on the part of these governments to extend greater rights to domestic workers. At the same time, the responses highlight the points of contention in regards to establishing a legal framework that promotes decent work for domestic workers and for migrant domestic workers, in particular.

V.1 The proposed ILO Convention on domestic work⁷⁰

Recognizing the importance of domestic work for maintaining and sustaining households and as a source of employment for female migrants, as well as the fact that domestic work remains undervalued and poorly regulated, the ILO Governing Body decided to place an item on decent work for domestic workers on the agenda of the 99th Session of the International Labor Conference in 2010 for standard setting purposes.⁷¹ The International Labor Office (the Office) identified three main objectives of the new instrument(s), these are: “Ensure broad coverage to reach as many domestic workers as possible; facilitate wide, immediate ratification and continuous improvement of domestic workers’ working and living conditions and access to social security; and provide sufficient guidance and incentives to enable the provisions to be meaningfully implemented into practice.”⁷² The Office considers that the proposed instrument(s) should emphasize that domestic workers enjoy equal treatment with other workers in terms of living and working conditions. All international labor Conventions and Recommendations should be applied to domestic workers, particularly in terms of access to social security, including maternity protection.⁷³ In this regard, the provisions of the proposed Convention would build upon national regulatory frameworks that reflect the specificity of domestic work and would seek to circumscribe some practices that contribute to the vulnerabilities of domestic workers.⁷⁴

The Office initiated the process with a preliminary report, which examined the law and practice on domestic work in various countries, accompanied by a questionnaire sent to the governments of member States. Governments, in consultation with workers’ and employers’ organizations, were invited to submit replies to the questionnaire.⁷⁵ Responses and the preliminary report were discussed during the 99th Session of the International Labor Conference in June 2010; the conclusions of which are the basis of the proposed text of the Convention and Recommendation on decent work for domestic workers.⁷⁶ Member States were invited to comment on the proposed Convention and Recommendation, which will be discussed in the 100th Session of the International Labor Conference in 2011.

Responses to the questionnaire were received from Jordan, Lebanon, and Syria, however, employers’ and workers’ organizations did not comment, except in the case of Jordan (Jordan Chamber of Commerce (JCC)), the following presents these responses. All three governments agree to the adoption of an instrument on decent work for domestic workers, although Syria responded that the instrument should take the form of a recommendation while Lebanon opted for a convention with a supplemental recommendation and Jordan a convention with binding and non-binding principles. The JCC opted for a convention with a supplemental recommendation. The responses of Jordan, Lebanon, and Syria to these two central questions demonstrate awareness of the often poor living and working

⁷⁰ This section draws upon ILO, *Decent work for domestic workers*, Report IV (2), International Labor Conference, 99th Session, 4th Item, International Labor Office, Geneva, 2010.

⁷¹ ILO, “Introduction”, *Decent work for domestic workers*, Report IV (1), International Labor Conference, 99th Session, 4th Item, International Labor Office, Geneva, 2010. See ILO, *Gender equality at the heart of decent work*, International Labor Conference, 98th Session, 6th Item, International Labor Office, Geneva, 2009 for background information.

⁷² ILO, *Decent work for domestic workers*, Report IV (1), 95.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ ILO, “Introduction”, *Decent work for domestic workers*, Report IV (2).

⁷⁶ ILO, *Decent work for domestic workers*, Report IV (1), International Labor Conference, 100th Session, 2011, 4th Item, International Labor Office, Geneva, 2010.

conditions of domestic workers, as well as each country's commitment to a binding instrument. Responses by the three countries and to the one employers' organization to some key questions further indicate each country's willingness to promote decent work for domestic workers. Box 1 below lists key questions and responses by the three governments and the JCC:

Box 1. Responses on ILO questionnaire from Jordan, Lebanon and Syria

Qu. 7: instrument applies to all workers
Jordan/Lebanon: Yes Syria: No. Instrument should only apply to female domestic workers JCC: It is important not to discriminate between workers and to ensure equality between national and migrant workers and men and women.
Qu. 9(a) freedom of association and right to collective bargaining
Lebanon: Yes Jordan: No. The relationship between workers and employers is private, thus domestic workers should not be included in unions or associations. JCC: Yes. See ILO Convention No. 98
Qu.12(c) right to social security, including maternity protection
Lebanon: Yes. The principle of reciprocity must be applied with regards to social security for migrant workers. Jordan: No. A study is needed to determine the additional burden on employers since workers' contracts are of a limited duration. Syria: Other. Would depend on recruitment conditions JCC: Yes. Extensive studies should be carried out into social security for domestic workers, as their period of work is often of limited duration and such provisions would create an additional burden for employers.
Qu.15 domestic workers enjoy minimum wage coverage
Lebanon/Syria: Yes. Lebanon states that minimum wage should include in-kind payments. Syria minimum wage should be equal to the national minimum wage. Jordan: No. This should be left to the discretion of the state. JCC: No. The circumstances, interests and sovereign decisions of States vary regarding minimum wages.
Qu. 18 member States ensure domestic workers are not required to reside in the home of the employer
Lebanon: Yes. Provided that it is specified in the employment contract Jordan/Syria: No. Jordan states that a distinction should be made between national and migrant workers. JCC: No. Domestic workers must stay in the house, respect habits, traditions and religious beliefs, and are under the employer's responsibility and protection.
Qu. 21 member States ensure domestic workers ensure that domestic workers are not bound to remain in the household during rest periods
Syria: Yes Lebanon/Jordan: No. Jordan states that this must be agreed upon by the parties, since it could negatively impact the employer's family. JCC: No. To be agreed upon between the parties.
Qu. 29 prohibit employers from keeping passport or identity documents of domestic workers
Lebanon/Syria: Yes Jordan: No. A text should be agreed upon that allows employers to keep these documents, provided that they are given back once the employee leaves work or finishes his/her contract. JCC: No. Keeping these documents is necessary to prevent workers from running away or stealing, for example.

Surprisingly, Lebanon's responses seem to indicate a willingness to address some of the common problems MDWs confront, such as passport retention and the loss of the worker's regular status as soon as she leaves the house of her employer, despite the absence of these measures in current regulations or the Unified Contract. However, Lebanon in its response to specific recommendations given during its recent Universal Periodic Review did not support recommendations to revoke the sponsorship system and to extend the protection of the labor law to domestic workers.⁷⁷ On the other hand, Jordan's responses clearly indicate the reluctance of authorities to interfere in the relationship between employers and domestic workers, which is considered private because of the nature of this type of work. The responses also indicate the Jordanian government's desire to protect employers' interest in maintaining a relatively affordable and compliant workforce. At the same time, the JCC's responses are for the most part in-line with the Jordanian government's responses. The response of the JCC to question 29 on the prohibition of the retention of workers' passports and other identity documents is particularly troubling and highlights the need for a combination of advocacy for the rights of domestic workers and regulations to protect them.

In general, the responses of all three countries emphasize the main points of contention, namely, workers' freedom of movement, freedom of association, and the burden on the state and employers if social protection and maternity benefits were extended to domestic workers. Recommendations to strengthen protections of workers' rights within the different regulatory frameworks would need to address these points.

VI. Conclusions and recommendations

Countries in the Mashriq are at various stages in terms of regulating the employment of MDWs and responding to their vulnerabilities. On one end of the continuum is Jordan, which recently extended coverage of the labor law to domestic workers. At the other end is Syria; recognizing that its policy of prohibition failed to discourage Syrians from hiring foreign domestic workers, the Syrian government introduced new regulations to organize the recruitment and employment of these workers in 2001 and 2006. Lebanon occupies the middle of the continuum. Introduction of the Unified Contract in 2009 presents a positive, but small step, towards increasing protection for MDWs.

Yet these reforms are not enough to empower domestic workers to negotiate for better working conditions or claim their rights. Their exclusion from trade union membership and the lack of recognition of informal migrant associations contributes to their lack of "voice". While national NGOs have somewhat filled this voice vacuum, without the active participation of migrant domestic workers reforms have not adequately responded to their needs. The regulatory frameworks on the entry and stay of MDWs in each country continue to contribute to their vulnerability, as demonstrated in section IV. Immigration regulations give employers a great amount of control and responsibility over foreign domestic workers, since workers' presence in the destination country their employer. Additionally, exclusion or only partial inclusion of domestic workers under labor laws discriminates against workers in terms of access to social protection and other benefits, such as the right to join a union. Discriminatory practices during investigations and court proceedings discourage MDWs from seeking redress while encouraging unscrupulous employers and employment agents to act with impunity. An improved regulatory framework would need to tackle these key factors in migrant domestic workers' vulnerability, while also addressing the security and financial concerns of States in the region.

⁷⁷ Human Rights Council: *Draft report of the Working Group on the Universal Periodic Review – Lebanon*, A/HRC/WG.6/9/L.16, Geneva, 1-12 November 2010.

VI.1 Recommendations

- **Include domestic workers under the labor law.** Domestic workers should benefit from provisions concerning minimum wage, occupational safety and health, access to social protection and association and collective bargaining rights. If special regulations are introduced to govern the employment of domestic workers, these regulations should be inline with the provisions of the labor law. Since the financial burden on the State and employers is a concern, reciprocity agreements with origin countries or a special insurance scheme could potentially lessen the burden on destination countries. Special tribunals or committees created to investigate and affirm allegations of abuse and mistreatment should not impose weaker sentences. Additionally, the Ministry of Labor and not the Ministry of Interior (or General Security) should be the main agency overseeing complaints submitted by employers and MDWs.
- **Introduce a unified employment contract or review existing ones to ensure that provisions are inline with labor law regulations.** Contracts should include a minimum wage and delineate living and work conditions and the duties to be carried out by the worker. Vague language that relate to the responsibilities of the work, such as clauses that charge the worker to complete her duties in accordance to the values of the host country, should be avoided.
- **Revoke the sponsorship system.** A major factor in MDWs' vulnerability to exploitation is her dependence upon her employer for her legal presence in the country. Regulations should decriminalize workers who run away because of violations and abuse, as well as those who have sponsors but do not live with them. Migrant communities in the three countries exist; the sponsorship system does not effectively prevent communities from forming but instead encourages limitations on workers' freedom of movement and association as well as situations of forced labor and/or trafficking.
- **Increase oversight on the operations of PEAs.** In Jordan tougher regulations concerning issuing and renewal of licenses for agencies could provide a good example. A lack of oversight may also be due to limited capacities of Ministries in the region. Outside support may be needed for hiring and training labor inspectors effectively oversee the operations of agencies and ensure compliance with the regulations as well as respect for workers' rights and promoting ratification of Private Employment Agencies Convention, 181 (1997), which provides a normative framework.
- **Strengthen penalties against employers and agents who commit violations.** Tougher penalties against abusive employers introduced in Singapore may serve as a model for countries in the Mashriq. Tougher penalties could discourage employers from acting with impunity. At the same time, efforts should be made to ensure MDWs' access to courts to challenge exploitation and abuse. Strengthening of the labor inspectorate and training inspectors on the problems and constraints facing domestic workers could ensure that violations are addressed and workers can access justice.
- **Grant temporary residence to MDWs who file complaints against their employers in court.** Granting temporary residence to MDWs would encourage more workers to seek redress for violations and protect those who do decide to file a complaint in court.
- **Promote the principles of non-discrimination and gender equality in government institutions and among front line officials.** Training of judges, police, ministry officials, and others on human rights, gender and migration could help combat discrimination against MDWs in investigations and other proceedings.

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