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The Labyrinth of justice: **Migrant domestic workers before Lebanon's courts**

المفكرة القانونية
THE LEGAL AGENDA

International Labour Organization

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Introduction

Since the end of the Civil War at the beginning of the 1990s, the number of foreign women[1] recruited to work in domestic service in Lebanon has gradually increased. These workers are estimated to currently number more than 200,000. Numerous reports detail the injustices they suffer[2], at times rising in severity to the level of human trafficking. Cases often include situations where the worker does not know her working conditions, imprisonment within the home, confiscation of her passport, subjection to long, exhausting work hours (often amounting to forced labour), non-payment of wages, and physical abuse.

In recent years, media outlets and civil society institutions have reported on so-called suicides or suicide attempts. Usually, investigations into these cases end without any conclusions regarding the cause of the worker's death or injuries (suicide, murder or attempted murder). Neither is it questioned whether harsh working conditions incited or pushed the worker to commit suicide – something that would constitute a criminal offence under the Lebanese Penal Code.

These failings are primarily due to the absence of legal protections for two reasons: First, domestic workers are excluded from the Labour Code. Second – and most importantly – they are subject to the kafala (sponsorship) system. Specifically, their legal residency is contingent on the continuity of their employment contract with the employer. In practice, this second issue renders the worker's residency in Lebanon contingent on her submission to her employer's conditions and on their satisfaction with her.

If the contract ends, her status becomes illegal, which renders her liable to prosecution and deportation, despite the wrongs that may have been committed against her or the reasons for terminating the contract. Hence, under the sponsorship system, the worker may not transfer to another employer unless the first employer agrees to relinquish sponsorship of her, which compels her to settle any disputes with the employer or, in practice, abandon any complaint against them. Hence, in addition to the enormous real disparities between the two parties in terms of their social integration, knowledge, material capacities, and language, the law privileges the employer, who becomes her boss not just regarding her work, but also her residence.

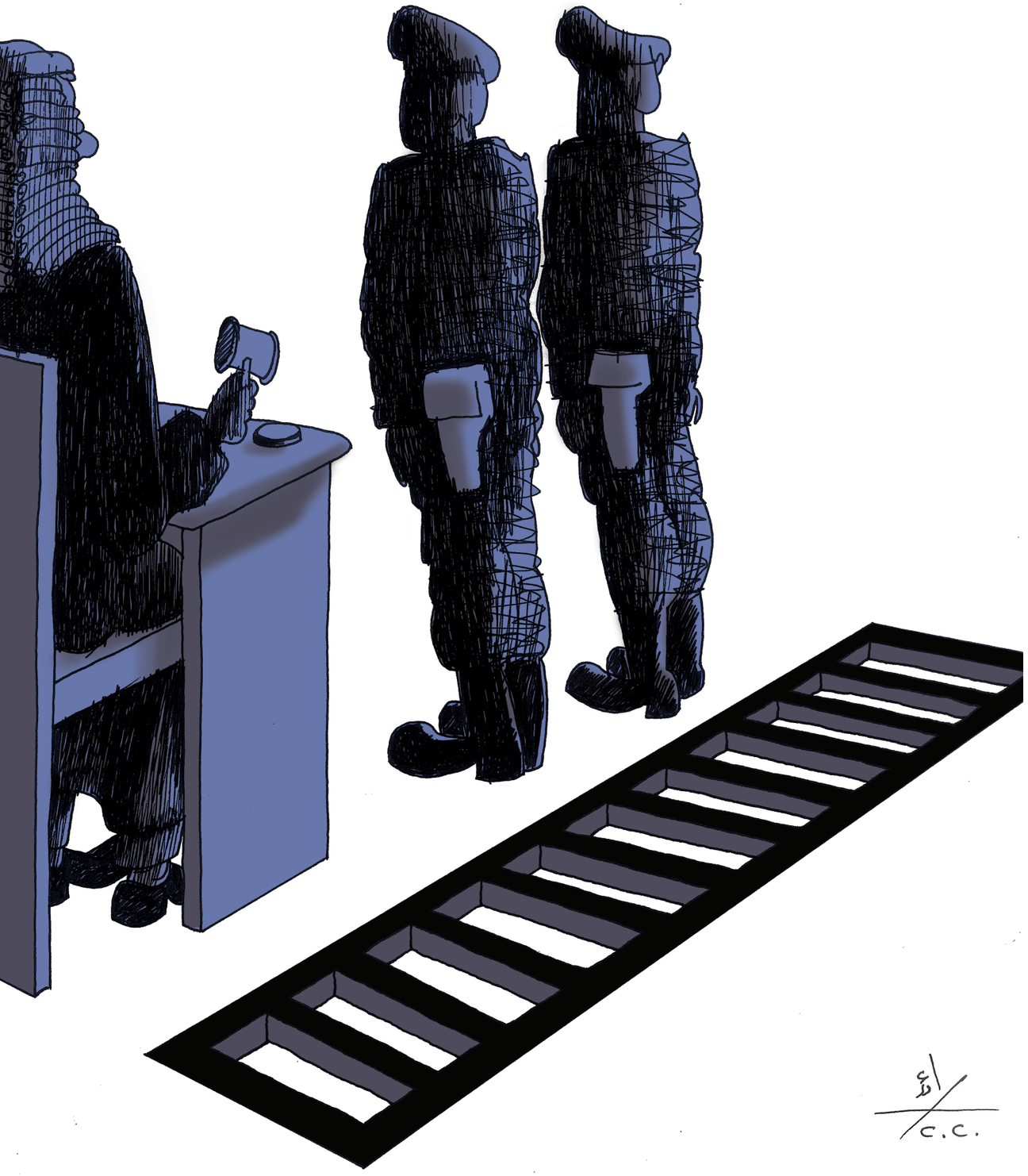
Under such a system, we must raise the question of the judiciary's role in restoring some balance to this relationship. What is the nature of the court disputes or trials involving domestic workers, and under what circumstances do they occur? Is the trial an opportunity to present the injustices committed against them? Or, to the contrary, is it another tool to strengthen the sponsorship system and, with it, the employer's privileges? What are the influences that govern judges' work in this area? Is their work affected by stereotypes and preconceptions? Or do they – or some of them – overcome discriminatory views pursuant to the principles of impartiality and equity, perhaps even producing jurisprudence that reduces the biases within the sponsorship system and the mechanisms accompanying it? Consequently, how do we evaluate the work of these judges in these cases (which are typical cases illustrating the current or possible positions of judges toward disadvantaged and socially marginalized groups or their abilities to change this situation)? Making this question more pressing, several reports have explicitly indicated the judiciary's failure to provide solutions in this area[3].

Given this painful situation, and given The Legal Agenda's commitment[4] to devoting much of its work to studying the judiciary's relationship with marginalized groups, in April 2013 the organization launched, in collaboration with the International Labour Organization (ILO), a programme to monitor domestic workers' cases before the Lebanese judiciary. The Legal Agenda was motivated by a sense that it could achieve four goals:

- **ONE,** to understand the practical consequences of the sponsorship system, especially with respect to workers' legal status, in order to frame a realistic diagnosis of the problem and a more comprehensive and realistic vision of the reforms needed;
- **TWO,** to identify any defects in judicial work, and whether they are attributable to administrative practices that deal with foreigners, Public Prosecutors, or trial judges;
- **THREE,** to act as a mirror so that judges can reflect on their practices in this domain of law, especially regarding the function they are expected to perform, as well as potential areas for jurisprudence and change;
- **FOUR,** to highlight the positive contributions of judicial work amid the failures of public authorities to make progress in this area, with the aim of documenting and stimulating the development of a protective jurisprudence.

Setting out from these questions, this report examined judgments and judicial cases pertaining to domestic workers that were set down either before judges who preside over criminal cases, or before councils that examine labour cases. From these, we developed a series of recommendations on future structural and judicial reforms.

[1] Currently, only women are permitted to enter Lebanon for the purpose of domestic work. Henceforth, foreign domestic workers will be referred to using feminine pronouns in this paper.
[2] Kathleen Hamill "trafficking of migrant domestic workers in Lebanon, A legal analysis", *Kafa (enough) Violence & exploitation*, March 2011; Ray Jureidini, "An exploratory study of psychoanalytic and social factors in the abuse of migrant domestic workers by female employers in Lebanon", *Kafa (enough) Violence & exploitation*, January 2011
[3] "Without protection How the Lebanese Justice System Fails Migrant Domestic Workers", *Human Rights Watch*, September 2010
[4] http://www.legal-agenda.com/en/mannahnou.php



Chapter 1: Methodology

1 Defining the study sample

Our research focused on documenting judgments issued by the criminal judiciary represented at the first level by single criminal judges in Beirut, Baabda, and Jdeidet el-Matn, as well as cases pending before the Labour Arbitration Councils in the governorates of Beirut and Mount Lebanon (Baabda). The study encompassed all judgments issued over two time periods: (1) the whole of 2013; and (2) the first 6 months of 2017. We examined these judgments, which were issued by a number of judges, in order to ascertain the prevalence of different kinds of judicial practices.

The reason for restricting our monitoring to the judgments rendered by, in the first instance, criminal courts is that they are the competent authority to examine and rule on misdemeanours, including violations of residency and employment regulations, as well as theft allegations. These misdemeanours are usually the basis upon which domestic workers are prosecuted, especially when they leave their place of employment. These cases are divided into two categories: (1) those in which the Public Prosecutor initiates an action against the domestic worker (known as "public right" cases); and (2) those in which the employer pursues a personal action against their worker (known as "personal right" cases).

The reason for monitoring the work of the Labour Arbitration Councils in domestic worker cases is that these councils are competent to examine problems arising from the contractual employment relationship. The questions put forward included: What is the role of these councils, given that the Lebanese Labour Code excludes domestic workers from benefiting from its provisions? And what role, if any, does the Ministry of Labour play in these cases?

2 Sample details

In 2013, judgments issued by the criminal court in Beirut, Baabda, and Jdeidet el-Matn encompassing 568 cases were observed. In 2017, 195 judgments issued by the criminal judiciary in Beirut, Baabda, and Jdeidet el-Matn (encompassing 211 cases) were observed. Hence, the study included a total of 779 casesout of the these, 94 case files were studied in depth. They were selected on the basis of the significance of the judgments issued on them such as meeting indicators of forced labour , nature of the abuse, and long unjustified arrest duration.

BEIRUT

Individual criminal judges in Beirut are divided into two sections, one examining "public right" cases and the other examining "personal right" cases. A total of 487 public and private right cases involving domestic workers that were examined by a single criminal judge in Beirut were observed. They were distributed according to table 1.

Table 1: Cases in Beirut by type of action

Type of action	2013	Jan to June 2017	Total
Public right	235	59	**294**
Personal right	111	82	**193**
Total	**346**	**141**	**487**

BAABDA

Labour cases in Baabda are not assigned to single criminal judges in the same way as in Beirut. Cases are referred to judges in the order they arrive, whether they are personal or public right claims. The Baabda courts issued 54 judgments in 2013 and 57 judgments in 2017. These cases were distributed as shown in table 2.

Table 2: Cases in Baabda by type of action

Type of action	2013	Jan to June 2017	Total
Public right	50	11	**61**
Personal right	4	46	**50**
Total	**54**	**57**	**111**

JDEIDET EL-MATN

In Jdeidet el-Matn, cases are assigned in the same way as in Baabda. Some 168 judgments issued in Jdeidet el-Matn were observed in 2013, whereas just 13 were observed in 2017.
These cases were distributed according to table 3.

Table 3: Cases in Jdeidet El-Matn by type of action

Type of action	2013	Jan to June 2017	Total
Public right	50	11	**61**
Personal right	4	46	**50**
Total	**54**	**57**	**111**

Table 4: Criminal judgments by type of action and region

		BEIRUT	JDEIDET EL-MATN	BAABDA	TOTAL
2013	Public right	235	162	50	**447**
	Private right	111	6	4	**121**
	Total	**346**	**168**	**54**	**568**
2017	Public right	59	10	11	**80**
	Private right	82	3	46	**131**
	Total	141	13	53	211

3 Means of accessing criminal judgments

The report combines an unpublished report done in 2013, and additional research done in 2017. To perform the search and obtain copies of the judgments and case files, the first step (in 2013) was to obtain approval from the Ministry of Justice for access. In 2017, approval was required from both the first president of the Court of Appeal in Beirut and the first president of the Court of Appeal in Mount Lebanon.

However, acquiring approval did not mean that obtaining copies of the judgments was straightforward. It is worth highlighting that, in Lebanon, criminal judgments are not recorded in a central registry. Nor are they held electronically. In some cases judicial officials had to consult the judge or judicial department president concerned. There were also difficulties related to how the Lebanese judiciary's records are kept and organized in the absence of computerization. Case details are recorded and maintained by hand, and no single method is followed. Sometimes the worker's name is notated using Roman letters, while other times it is transliterated into Arabic letters. Similarly, some records indicate the plaintiff and defendant's nationalities, while others do not. Moreover, not all records indicate the legal article upon which the action was based; rather, they merely record the defendant's name and categorize them as "foreigner". In order to identify cases involving domestic workers, we needed to either review the names of the parties or rely on judicial officials to specifically search for them. Therefore, it is possible that our search omitted a (small) number of judgments.

Another issue was judicial officials' time. Searching for judgments and copying them clashed with their other work pressures, especially since the public sector has reduced office hours. Furthermore, some registries lack photocopiers, requiring officials to leave the court house (Adliyeh) to perform photocopying, or use the local library. Nevertheless, where judgments indicated that a case was particularly significant, it was subject a throrough analysis to understand the trends and inform policy recommendations.

4 Regarding cases before the Labour Arbitration Councils

The Labour Arbitration Councils are situated in the governorate centres (Beirut and Baabda). While no judgments were issued by Labour Arbitration Councils during the two periods encompassed by the study, we observed 48 cases on the pleadings schedule for the Labour Arbitration Councils in Beirut and Baabda in 2013, and 13 in the first half of 2017. Note that the latter group included 11 cases inherited from 2013 and only two new ones were filed in 2014 and 2016. What happened to the cases that were scheduled for 2013? Were judgments on them issued during the period between 2013 and 2017? A review of the Baabda court files reveals that only two cases resulted in final judgments. The others were deleted from the schedule due to either the absence of both litigants from the hearings or to non-implementation of the council's orders to perform investigations.

In addition to collating judgments and related case files, we attended a number of trial hearings as case files do not necessarily reflect all details of the case. For example, normally a preliminary investigation report is written by judicial police or an investigator and case reports are written by the court's clerk, so the worker's voice is absent – a voice that we could sometimes only find in the courtroom. Moreover, some things can only be verified by attending the hearings (such as the worker's language proficiency, the presence of an interpreter or whether one was requested, how the judge interacts with the worker, and the extent to which the right to a fair trial is respected).

Chapter 2:
The sponsorship system: *A recipe for evading the judiciary and punishment*

In this chapter, we shall show, via the case files, how the sponsorship system has marginalized the judiciary and largely failed to protect domestic workers. This is the result of two factors. First, the limited options available for domestic workers, who prefer to remain silent or reach a settlement with their employers – however gravely their rights may have been violated – as they desire (or rather need) to continue working in Lebanon. Second, considerations about the legality of workers' residency take precedence over their rights. Therefore, the role of the immigration authorities takes precedence over the role of the judiciary. This is also reflected in cases that are successfully filed with the Labour Arbitration Councils (with the aid of lawyers working with charitable organizations), yet never go to trial – thus rarely producing a judgment. There are several reasons for this that we present below.

1 Limited options for workers: Satisfy the employer or leave

The defining feature of the situation for migrant domestic workers in Lebanon is their subjection to the *kafala* (sponsorship) system, which renders their lawful residency in Lebanon contingent on continued employment with an entity whom General Security customarily labels the *kafil* (sponsor). Consequently, the worker is subject to the employer's will, and refusal to work can render her liable to arrest and deportation.

We must point out that the General Directorate of General Security (GDGS) took it upon itself, in coordination with the Ministry of Labour and other public departments, to establish this system by issuing a number of internal instructions without reference to any legal text. Remarkably, Lebanese law actually contains no article that refers to a "sponsor" or to "relinquishing sponsorship".

The noose around the worker is further tightened by the fact that, in most cases, if she leaves her sponsor's employment she becomes vulnerable to criminal prosecution on one or more of the following grounds:

A failure to inform General Security within one week of changing address (article 7 of Decision No. 136 of 1969);

B commencing work for other people (article 15 and article 21 of Decree No. 17561 of 1964, which regulates the employment of foreigners and prohibits a worker from transferring to another establishment or changing the type of work they undertake without obtaining prior approval from the Ministry of Labour);

C failure to renew a residency permit (article 36 of the 1962 law on foreigners prescribes that foreigners must request a residency renewal within a specified time limit).

If the worker wishes to remain in Lebanon for whatever reason, she may feel compelled not to inform General Security of any changes in order to avoid arrest and deportation. Even if the worker finds an alternative employer, the sponsorship system and the privilege it grants the sponsor deprive her of the ability to obtain prior approval to transfer. Moreover, it is prohibited to renew residency without explicit approval from the sponsor.

Consequently, the system grants employers a contractual advantage and, subsequently, deepens the marginalization and precarity of domestic workers. Because of it, workers usually endure hardships and refrain from filing complaints, even when their rights are clearly violated (such as the non-payment of wages, mistreatment, or noncompliance with the contract) for fear of losing their right to continue working in Lebanon.

Even more problematic is the practice among employers of accusing workers of theft after they leave the sponsor's employment. Usually, such allegations lead to the worker's arrest, trial and deportation, even in cases where the sponsor provides no serious evidence of the theft and that, following a trial, end with the worker's acquittal. This practice clearly restricts the worker's options, as leaving the sponsor's employment will expose them to such risks. Despite the grave consequences of false accusations, the judgments showed no serious efforts to combat them.

Table 5: Articles related to the law on foreigners

LAW	ARTICLE	TEXT
Law on entry to, residency in, and exit from Lebanon (1962)	Article 36	Any foreigner who, without valid reason, neglects to request an extension to their residency permit within the regulation time limit shall receive a penalty of between one week and two months of imprisonment and a fine of between 6,250 and 62,500 Lebanese pounds (LBP), or either penalty only.
Law on entry to, residency in, and exit from Lebanon (1962)	Article 32	The following shall be punished with a term of imprisonment of between one month and three years, or a fine of between LBP62,500 and LBP312,500, and removal from Lebanon: - any foreigner who enters Lebanese territory without abiding by the provisions of article 6 of this law; - any foreigner who gives a false statement with the intent of hiding their true identity or who uses forged identity papers. A stay of execution may not be ordered, and punishment in all cases must not be less than one month of imprisonment.
Decision No. 136 of 20 September 1969, regulating the proof of residence of foreigners in Lebanon	Article 7	Any person violating the provisions of this Decision shall be subject to the punishments stipulated in article 770 of the Penal Code.
Penal Code	Article 770	Whoever violates administrative or municipal regulations issued in accordance with the law shall receive a penalty of up to three months of imprisonment and a fine of between LBP100,000 and LBP600,000, or either penalty only.
Decree No. 17561 of 18 September 1964, regulating the work of foreigners	Article 15	Whoever has a prior approval or work permit may not transfer to another establishment or change type of work unless the Ministry of Labour and Social Affairs[5] has given prior approval.
Decree No. 17561 of 18 September 1964, regulating the work of foreigners	Article 21	Whoever violates the prior approval provisions shall be punished according to the penalties stipulated in article 32 of the Law of 10 July 1962, and whoever violates the provisions of this decree, excluding those specified in the previous paragraph, shall receive a penalty as stipulated in article 2 of the Law of 17 September 1962, on the repeal and replacement of the text of article 107 and article 108 of the Lebanese Labour Code.

This reality can be seen in the judgments issued in cases related to domestic workers. The overwhelming majority of cases are actions filed against the worker by the Public Prosecutor or the employer, whereas there are virtually no criminal cases filed by workers. Of 568 cases observed in 2013, the worker was the defendant in 566 of them and the plaintiff in only two. The same proportion was observed in 2017, when defendants were invariably workers except in four cases that were filed by convicted workers who objected to the judgments issued against them.

Making matters worse, while the employer is granted an advantage, article 7 of the Lebanese Labour Code excludes domestic workers, whether foreign or Lebanese, from such guarantees and protections as the right to unionize, the right to annual leave, and the minimum wage.

Given the small number of cases filed by workers through the judiciary, it is clear that employers exploit their power by having workers prosecuted by the authorities. Only two criminal cases were filed by workers, one of which was against the employer for not paying wages[6] (crime of breaching trust). In the other case the worker filed against the Saint George pool for illegally denying her entry (the case ended in a reconciliation whereby the pool hung a sign against discrimination). Both workers were represented by a lawyer. It is notable is that no cases were filed by a worker against the owner of a recruitment agency (*maktab istiqdam* – a business that recruits labour from abroad).

In stark contrast to the figures for the criminal judiciary, all cases before Labour Arbitration Councils were filed by workers against employers. Of course, the fact that employers filed no cases before these councils does not mean that they faced no problems with their workers, for they filed hundreds in the criminal courts, alleging "flight" and theft. Rather, it confirms the advantage that the sponsorship system confers on employers. The criminal justice system provides a more effective means of prosecuting domestic workers than Labour Arbitration Councils, which must examine working conditions and their consistency with the employment contract.

SETTLEMENT

Besides the above, we must examine another extremely important issue that ultimately prevents workers' complaints from reaching the judiciary: namely, workers are compelled to settle during the period of preliminary investigation[7]. Evidence of this practice can be found, for example, in the criminal judgment issued on 31 October 2013 in Jounieh Dina Daaboul[8]. The case (outside of the sample) was filed by a domestic worker against her employer, claiming that the employer had severely beaten her and refused to pay wages. The judgment stated that "the worker absolved the employer in front of General Security", a phrase taken from the report of the GDGS investigation and from the special inspector whom the court summoned. By "absolved", the judgment meant that the worker had also retracted her complaint about being assaulted and hence waived her personal rights. This case is not unique. Rather, it reflects the general practice of striking a bargain whereby the employer agrees to relinquish his or her sponsorship to another person and the worker agrees to waive her rights with regard to the employer.

While such settlements obstruct workers' complaints from ever reaching the judiciary, there is another practice that results in workers' cases bypassing the courts. Namely, the GDGS deports the worker following the Public Prosecutor's order to leave the decision regarding residency in its hands.

Finally, the absence of a comprehensive and effective legal aid system constitutes an additional barrier that prevents workers from accessing the criminal justice system. The marginalization of the role of lawyers during the preliminary investigation stage exacerbates the problem.

2 The manufacture of trials in absentia

Studying the case files allowed us to form a clearer picture of the judicial situation concerning domestic workers, and allowed us to deduce that workers' rights to access justice are constantly violated – even when defending themselves against accusations. Such a situation could not have been established without the Public Prosecutor's approval, but is underpinned by the enabling of General Security to arrest and question the worker and decide her fate – usually deportation – before her case is referred to the courts.

Of course, this practice legitimizes the "illegality of the sponsorship system" and reinforces its ills. We observed cases wherein judgments were issued in absentia even though, in most of them, the worker was actually detained in the custody of the Office of the Public Prosecutor. Why are judgments issued against workers in absentia? How does this situation affect the judiciary's role? The following sections offer some answers.

GENERAL SECURITY FIRST, THEN THE JUDICIARY

In the cases we obtained, it was evident that the Public Prosecutor had, following General Security's investigations, persistently issued orders explicitly stating that it would "leave it up to General Security to resolve the worker's residency or deport her". This is a clear statement by the Public Prosecutor to General Security that the worker could be deported without first being presented to the judiciary. General Security was also granted the primary role in this regard in another case, which included the phrase "arrest the worker and place her in the Investigation Department's custody for deportation to her country; if she is not deported, arrest her and place her in the custody of its Prosecution Office". Evidently, the worker would be presented to the judiciary only after General Security finished its work and had not yet deported her. We found that the

[5] In 1964, the Ministry of Labour was Ministry of Labour and Social Affairs

[6] Some Court decisions ruled that non payment of wages might be considered as a "breach of trust" stipulated in article 671 of the Penal Code, see below Chapter 3.

[7] In June 2014, the Caritas Lebanon Migrant Centre issued a joint report with the ILO on the legal services it provides to exploited domestic workers. The report was prepared by Alix Nasri and Wissam Tannous and published in French under the title "Accès à la justice des travailleurs domestiques migrants au Liban". The Legal Agenda commented on the report in Sarah Wansa, "Taqrir Karitas 'an al-Musa'ada al-Qanuniyya li-'Amilat al-Manazil: al-Taswiya ghayr al-Musnifa li-l-Niza'at, ka-Juz' min Nizam al-Kafala" (Caritas report on legal aid for domestic workers: Unfair settlement of disputes as part of the kafala system), *The Legal Agenda, 20*, August 2014. In the report, Caritas states that "838 of 1279 cases we tracked – i.e. 65.52 per cent – were ended via out-of-court settlements." The report then reveals more detailed figures: Mediation was employed in 244 cases where the employer had not paid wages, and in 36 per cent of them, it led to a resolution via settlement ... The report adds that when a disagreement between a worker and employer arises and the latter refuses to pay wages, Caritas refers the case to the GDGS's Investigations Department, which conducts a preliminary investigation in its capacity as judicial police. The employer and worker are then summoned to be questioned about the sum demanded. The worker may either accept a sum less than her demand or refuse the settlement offered to her. In the latter case, the GDGS informs the Public Prosecutor, who sometimes verbally orders General Security officers to grant the employer a time frame to provide the wages and an airfare. If the employer refuses, then in principle, the GDGS should prosecute the employer. However, the report indicates that General Security usually refrains from prosecuting. Hence, the worker's friends or consulate endeavours to secure the airfare.

[8] Sarah Wansa, "Hukm Jiza'iyy Yarfudu Tahmish Dawr al-Qadi fi Himayat Huquq 'Amilat al-Manazil, wa-Yubtilu Muqayadat Tanazul "Kafil" 'an 'Amila Manziliyya bi-Tanazuliha 'an Huquqiha" (A criminal ruling rejecting the marginalization of the judge in protecting domestic workers' rights and annulling the bargain whereby the 'sponsor' gives up a domestic worker for her waiving her rights), *The Legal Agenda, 12*, November 2013.

same occurred in the cases first handled by the Internal Security Forces; they also contained orders from the Public Prosecutor to transfer the arrested worker from the station to General Security directly (i.e. before the judiciary examined her case) so that the validity of her residency could be checked.

Worse, one of these case files indicated that the arrest decision itself was initially taken by the GDGS without obtaining the permission of the Public Prosecutor, whose role is limited to confirming the decision. The worker reportedly told the investigator, "Yes, I received from you the decision that the General Directorate of General Security issued on 6 March 2012, ordering that I be arrested and placed in the custody of the Investigation Department for violating residency regulations". This means that the GDGS decides who to arrest, and the Public Prosecutor's order is then taken at a later stage. Clearly, General Security is given a blank cheque to act as it pleases, and detain individuals without time limits or deport foreigners without being subject to any controls. Moreover, in all these cases, the Public Prosecutor gave a green light to the investigator without requesting that the investigation of the worker be expanded to encompass the adequacy of her work conditions or the possibility that she was exploited or trafficked, or that the investigation of the employer be expanded to determine why they failed to renew the worker's residency (the employer is responsible for renewing residency under article 9 of the standard employment contract).

In all the sample cases that resulted in a conviction of the worker in absentia, the case files contained no information about the worker's fate. Hence, we do not know whether General Security deported her or whether she was detained but not transported to the hearings. Remarkably, many of the judges endeavoured to adjourn the case from hearing to hearing due to the worker's absence, yet none directed an inquiry about the worker's fate, or the reason for her absence, to General Security.

In summary, the judiciary's role in scrutinizing the criminal liabilities imputed to domestic workers is marginalized compared with the discretionary powers granted to General Security. In parallel, workers' rights to appear before a judge are deprived.

EXTENDED ADMINISTRATIVE DETENTION

The seriousness of the coalescence between the Public Prosecutor, the Internal Security Forces and General Security is confirmed by the finding that deportations do not appear to occur immediately. Rather, workers are detained by the Internal Security Forces and placed in the custody of General Security for periods often exceeding the maximum legal period (48 hours, renewable once) for detaining suspects during preliminary investigation. In this regard, we note the following:

- Out of 10 case files studied regarding judgments issued in 2017, the Internal Security Forces exceeded the maximum period in three. In these cases, detention lasted 5, 9, and 11 days.
- With respect to detention by General Security, the maximum period was systematically exceeded in all cases. These periods lasted far longer than those periods of detention by the Internal Security Forces.
- Detention by General Security was justified on two grounds: either investigation or deportation. While the case files contained adequate information about the former, which resulted in a referral to the Public Prosecutor, they usually contained no information about detention for the purpose of deportation. A third form of detention was found in a few cases, namely detention based on an order by the Public Prosecutor or judiciary. In this rare instance, the worker remains detained by General Security and is not deported until after a decision to release her has been issued. In these cases, the judicial detention order is an obstacle to the worker's deportation, and the decision to release her is usually a precondition for deportation.
- In two cases, the Public Prosecutor inquired about the worker's fate. However, this inquiry only came after 23 days in one case and 24 days in the other. The Public Prosecutor appeared to give General Security a grace period to do as it pleased. Additionally, in some instances, General Security evidently granted itself an additional grace period by sending its response to the inquiry 26 days later in one case and 21 days later in the other. When General Security's response was that it had deported the worker, the Public Prosecutor promptly charged the worker with the crime of "not renewing residency in Lebanon".

Making matters worse, the legally permitted period was exceeded without any justification and after the investigation was finished in most of these cases without the Public Prosecutor taking any action or pursuing any accountability. This strengthens the discretionary power of the judicial police, particularly General Security, at the expense of marginalizing litigants' fundamental safeguards[9]. Below, we present a typical case showing the extent to which the maximum detention period was exceeded.

[9] It is wothnoting that the fact that police is extending the duration of the preliminary investigation contrary to the law provisions increases the discretionary power.

CASE STUDY: NO LIMIT TO THE DETENTION PERIOD

In the course of our observations, we studied the case of a worker who entered Lebanon and left the house where she worked before obtaining an official residency permit. She was later arrested for breaking the law on foreigners and for the crime of abortion.

The case file reveals that preliminary investigations by the Internal Security Forces and General Security took approximately 41 days, during which the defendant was kept detained, though the Internal Security Forces completed their investigation in a single day. Hence, the judicial police exceeded, with the Public Prosecutor's full knowledge, the legally permitted period for detaining a suspect during preliminary investigation by a factor of ten. This is evident in the timetable below. In addition, the case was devoid of even the most rudimentary justification. General Security took the defendant's statement 8 days after she arrived. Worse, General Security took approximately 1 month to inform the Public Prosecutor of her statement and take directions. Needless to say, exceeding the time limit in this manner, without it prompting any investigation, objection, or reprimand from the Public Prosecutor, reflects a pervasive attitude of contempt for the basic safeguards of personal liberty as stipulated in the Code of Criminal Procedure.

TIMELINE OF EVENTS	
27 February 2013	A Bengali woman enters hospital and is investigated by the Internal Security Forces
28 February 2013	The case is referred to General Security
8 March 2013	Beginning of investigation by General Security
3 April 2013	The Office of the Public Prosecutor is contacted, and a Bengali man is summoned for interview
6 April 2013	The Bengali man is interviewed, and the Bengali woman is referred to the Public Prosecutor
8 April 2013	The Public Prosecutor charges the Bengali woman with voluntary abortion
8 April 2013	A request is received by the investigating judge

Source: *The Legal Agenda, "Ignoring the plight of Lebanon's foreign domestic workers: A Bengali woman's abortion", first published in Arabic in December 2017, under the title "'Ijhad' al-Akharin 'ala Ardina: Qissa Ghamida li-'Amila Banghaliyya".*

Reviewing this case reveals that the Public Prosecutor, from the outset, deliberately derogated from principles of justice by referring the worker to General Security and giving it absolute power to decide to detain and deport her, only to then initiate an action against her after making sure she was deported. This constitutes a premeditated arrangement of a trial in absentia.

Indeed, the overwhelming majority of judgments (91 per cent) by the criminal judiciary were issued in absentia. Thus, workers' voices went unheard and they were unable to present a defence or even relate what happened to them or expose what violations they might have suffered. Of course, this strips the trial of its essence and limits the prospects for debating the sponsorship system.

Note that the proportion of in absentia judgments declined from 91.7 per cent in 2013 to 89 per cent in 2017. There were slight regional variations, with the highest in Baabda (98.2 per cent), followed by Jdeidet el-Matn (92.5 per cent), and Beirut (87 per cent). The decline in the proportion of in absentia judgments over four years was accompanied by a decline in the percentage of public right cases from 78.5 per cent in 2013 to 38 per cent in 2017.

Table 6: Distribution of judgments by presence of defendant

Type of judgement	Year	Beirut	Baabda	Jdeidet el-Matn	Total
In absentia	2013	320	44	157	**521**
	2017	121	55	12	**188**
	Total	**441**	**99**	**169**	**709**
In presence or deemed to be in presence	2013	26	10	11	**47**
	2017	18	1	1	**20**
	Total	**44**	**11**	**12**	**67**

Note: *Three judgments issued in 2017 did not specify whether they were issued in absentia or in the presence of the defendent.*

Of course, the prevailing attitude might consider that the worker's deportation in this manner, irrespective of its legality, allegedly serves everyone's interests, including the worker herself. If deportation is inevitable because she has overstayed her residency or pursuant to the sponsorship system, does doing it immediately not, in practice, spare the worker the trouble of several months of detention while also decreasing prison crowding and sparing the Lebanese state the expenses associated with detaining her?

Perhaps there is support for this interpretation in some cases. In five, the worker surrendered herself to the security forces, asking to return to her country. We observed two instances where the worker had consulted her country's embassy and the embassy in turn communicated with General Security so that the worker might be permitted to leave the country. These cases might demonstrate a desire on the part of some workers at least to return to their countries, although such desire is questionable given the lack of options available to them. The choice becomes detention or deportation, with no possibility of renewing residency in Lebanon.

Another rationale for this practice may be the ambivalent view that the Office of the Public Prosecutor and General Security have towards migrants in general, as documented in reports by civil society organizations. Of note is the Frontiers Ruwad Association, whose reports have documented cases of refugees arrested, arbitrarily detained, and forcibly deported, even though the Public Prosecutor was notified of these cases[10]. In this regard, we must mention a circular that the public prosecutor in the Court of Cassation issued in 2004 (Circular No. 4662 of 2004, dated 16 December 2004). The circular required that "a foreigner who has finished serving his sentence be taken to the General Directorate of General Security so that their residency can be resolved", irrespective of the trial's outcome. Hence, there are several instances wherein judicial decisions to release foreigners were issued but did not result in their actual release; rather, General Security continued to detain them, usually in preparation for deportation.

Further scrutiny of the case files shows the flaws that plague this practice from three angles. First, the Public Prosecutor is not content to merely deport the worker. Rather, it files an action against her after making sure she has been deported so that she is tried in absentia.

Second, such a practice is based on the assumption that anyone who remains in Lebanon after their residency expires or becomes invalid due to leaving the sponsor must be deported and criminalized. However, the harsh conditions of domestic work should necessitate investigation into why the worker left the sponsor in the first instance and, specifically, whether doing so was a vital necessity or constitutes a legitimate excuse.

Third, such a practice usually hides various forms of exploitation, including the gravest forms such as human trafficking.

Hence, this practice not only gives General Security control over the worker's fate but also takes away her rights and the tools that could change or challenge the legitimacy of the decision or restore some balance to the relationship between domestic workers and employers. Consequently, the judiciary's work becomes largely pro forma.

Thus, instead of this "compassionate" practice reducing the worker's suffering, it establishes two processes that affect workers in various situations and erode their fundamental legal rights. The first is an administrative process that begins at the moment of arrest. The worker is transferred, based on the Public Prosecutor's order, to General Security, which is left to decide on her liberty and whether she can stay in Lebanon without her being able to seek assistance from a lawyer. The second is a judicial process wherein the worker is completely excluded. The judgment is issued with no trial, and whatever its content, it has no impact on her fate as General Security has already decided to detain and deport her.

This is clearly evident from the facts that appear in the case files, especially in a number of files that contained clear indications that it was the employer who was responsible for not renewing the worker's residency, which would give her an exculpating excuse, and indicate that the employer may have committed serious violations of the worker's fundamental rights.

What are the basic liabilities that could or should have emerged from a trial in presence, had it occurred? Many of the case files in our possession contained serious indications that the employer was at fault for either not renewing the worker's residency or for pushing her to leave the job through cruel and degrading treatment. Both of these constitute clear excuses for the worker and indicate sufficient reason to hold the employer liable for violations, including up to the charge of human trafficking. Holding trials in absentia only strengthens judicial biases in this area, a topic we shall cover in the second chapter.

Thus, it appears that the Office of the Public Prosecutor is neglecting to play its role in protecting persons who are strongly suspected of having been exploited, but instead helping to consolidate various forms of social injustice and normalize certain unjust practices.

[10] Frontiers Ruwad Association, "al-Luju' Ila al-Ihtijaz al-Ta'assufiyy: Siyasa Fawq al-Dustur" (Resorting to arbitrary detention: A policy above the constitution), Beirut 2010.
Frontiers Ruwad Association, "Abwab Mughlaqa: Dirasat Halat al-Laji'in al-'Iraqiyyin wa-l-Hajz al-Ta'assufiyy" (Closed doors: Case study of Iraqi refugees and arbitrary detention), Beirut, December 2008.

3 Depriving the judgments of any effect on the worker's status

Marginalization of the judiciary occurs not only via the manufacture of a trial in absentia, but also through decisions leading to the worker's prolonged detention and deportation during the trial with no regard for the judge's view or the presumption of innocence. This is evident in one of the cases, wherein the judge decided to release a worker for lack of evidence pending the end of the trial. Instead of implementing the judge's decision, General Security kept the worker detained only to deport her some time later without informing the judge or seeking his permission.

Interestingly, the record of two hearings explicitly included the sentence: "Mr. … appeared on behalf of the released defendant, who could not be brought [to court] as she is under arrest in the interest of General Security". This phrase is contradictory as it states that the worker was under arrest despite the judge's decision to release her, which constitutes a serious undermining of judicial decisions. Nevertheless, the judge did not take the initiative to refer the arbitrary detention issue to the Public Prosecutor. To the contrary, the hearing was postponed by 29 days to 12 March 2012. The judge thereafter endeavoured to adjourn the hearing dates for long intervals of approximately 1 month at a time, whereas at the beginning of the trial, the hearings had been adjourned for short periods (1–2 weeks). The judge seemed to concede that his judgment – a verdict of innocent – would not change the outcome for the worker, who was detained and deported in accordance with the sponsorship system. Her treatment was based on the employer's complaint, without the judge having any role in settling the dispute.

4 Labour Arbitration Councils: Cases without trials

In the previous section, we examined several cases that illustrated shortcomings in the sponsorship system such that foreign domestic workers are largely prevented from being heard by the judiciary, while employers' liabilities are overlooked. While the importance of the Labour Arbitration Councils, in principle, lies in their role in ensuring a balance in labour relations, we observed that they were likewise unable to bring to justice those responsible for the suffering inflicted on domestic workers.

This appears to be the result of a range of factors:

A All the cases without exception were filed by lawyers appointed by charitable organizations in the name of the plaintiff workers after the workers were deported. In other words, these trials were conducted and concluded (if they reached a conclusion) in the worker's absence.

B The preliminary investigations into these cases were usually conducted by the GDGS after the charitable organization reported it. While a lawyer was present in all except two of these cases, only six investigations occurred in the presence of an interpreter. The case files reveal an overwhelming presence of General Security in these investigations and a total absence of the Ministry of Labour, which is generally competent to investigate and mediate in labour cases. This stems from the link that exists in practice between the continuation of the employment contract and the right to residency, with the body vested with resolving residency issues taking precedence over the body vested with pursuing labour issues (i.e. the Ministry of Labour).

C The Public Prosecutor defers to General Security by giving the issue of the legality of the worker's presence in the country precedence over any other consideration, even when the investigation documents multiple violations against the worker, including the non-payment of wages.

D Investigations were generally very brief. Although a number of the statements of claim submitted by lawyers mentioned that the worker was working under "harsh and difficult conditions", the investigation reports avoided addressing these harsh conditions. No mention about working hours or days off appears in these reports.

E All the cases brought against employers aimed at compelling them to pay outstanding wages and compensation for terminating the "employment contract", yet none included a copy of a signed contract between the worker and employer. Hence, it was as though the only fault emerging from the employment relationship was the non-payment of owed wages, and addressing the other abuses or violations was tangential. This may indicate

that lawyers practice self-censorship when narrating the case facts to avoid stirring up matters that could make the case more sensitive, difficult, and complex, especially after the worker has been deported[11].

The deported worker and the pampered employer

In one of the cases pending before the Labour Arbitration Council in Baabda, the worker left her job because the employer had not paid 11 months of wages, totalling US$1,600. When questioned by General Security, the employer admitted to owing the worker wages but stated an amount smaller than that claimed by the worker. After the worker's statement was taken, the General Security investigator offered the worker a settlement, which she accepted after stating that she wants to return to her country "as soon as possible for family-related reasons". Subsequently, the Public Prosecutor ordered that until the employer fulfilled his pledge, the worker be left in the custody of the organization that had appointed her a lawyer. The employer did not honour his pledge and ignored General Security's phone calls (as documented in the report) for 20 days. Rather than taking action against the employer in one way or another, the Public Prosecutor ordered that "the decision be left to the General Director of General Security with regard to issuing an administrative complaint against the sponsor", ignoring the possibility that the worker was a trafficking victim. Similarly, the Public Prosecutor did not inform the Ministry of Labour so that they could take appropriate actions, such as refusing any new transactions from the employer.

[11] One case was distinguished by its request that the court "issue a decision prohibiting the defendant and those residing with her from contracting domestic workers in order to protect them because she fits the description of a human trafficker, and notify the Ministry of Labour and General Security of this prohibition". The request cited Article 586 of the Penal Code as amended by Law No. 164 of 2011 (on human trafficking). It was discovered during a case in which the employer had a history of not paying wages. The General Security investigation reports attached to the lawyer's statement of claim reveal that another worker had filed an action against the same employer a year earlier for not paying wages. The worker in the current case stated that she was willing to resume working for the employer, who pledged to pay her eight months of wages. However, another investigation report that emerged a year later revealed that the employer "surrendered" the worker to a charitable organization without paying her wages for a year. Although the lawyer's statement of claim mentioned that the worker was beaten and abused, during the investigation the questioning of the employer – which occurred in the presence of a lawyer – did not address this issue.

Chapter 3:
The judiciary's general performance:
Biases against workers

In this part, we shall address the various forms of judicial work that show bias against domestic workers. These biases do not necessarily occur consciously or deliberately (e.g. because of a fixed desire to give employers the upper hand); rather, many are probably the result of prevailing social perceptions regarding domestic work, perceptions that most judges automatically reproduce without any scrutiny or debate. Hence, this chapter aims not only to document the bias but also to open a debate about the gravity of these perceptions and their negative effects on judicial work, which is supposed to be impartial and at an equal distance from all parties. Before presenting these biases, we will first present the direct factors that prevent these perceptions from being overcome or reconsidered.

Lebanon's judicial ethics charter, 2005

One of the most important things that the document[12] borrows from the Bangalore document in this area, and which takes into account the sectarian division (as well as other divisions and diversities in Lebanon), is the statement that the principle of equality manifests practically in "the judge's realization that his society includes individuals and groups divided by religion, doctrine, ethnicity, color, nationality, age, gender, civil status, physical and mental capabilities, and various other qualities. When performing his judicial duties, he must refrain, in speech, actions, and decision making, from being partial to one group or another."

Source: Nizar Saghieh and Myriam Mehanna, "al-Qadi al-Batal wa-l-Qadis fi Mudawwanat Akhlaqiyyat al-Quda: Akhlaqiyyat li-'Alam Akhar, Mu'addaha Hirman Hadha al-'Alam min Qada' Fa'il" (The heroic and saint-like judge in the judges' ethics code: Otherworldly ethics that deprive this world of an effective judiciary), published in a special issue about the regular judiciary in Lebanon, *The Legal Agenda*, January 2018.

What prevents or inhibits the prevailing perceptions from being overcome?

We shall restrict our range of answers to the factors directly connected to or influencing judicial work and leave aside the factors that give rise of these perceptions within society as a whole, which are outside the scope of this report.

TRIALS IN ABSENTIA

Because of the sponsorship system and the practices connected to it, most trials occur in absentia. As we discussed earlier, our sample of judgments from 2013 and 2017 revealed that approximately 90 per cent of all judgments issued during both periods were issued in absentia. The sample also showed that all labour cases are filed after the worker concerned has been deported. Consequently, the workers and their stories are kept away from judges' eyes and ears, which spares social issues from any scrutiny. None of these cases included the kinds of stories of injustice found in documentary films and social studies.

BREACHING FAIR TRIAL STANDARDS

The few trials that occurred in the worker's presence (approximately 10 per cent) lacked certain standards, meaning that, once again, workers' voices and their ability to recount their narrative before the court were extremely limited. Workers were heard only if the judges themselves took the initiative and had enough time to plug the gaps in the trial. The most important standards breached included the following:

- Workers only appeared before the court following theft allegations, as is evident from the files pertaining to trials where the worker was present in the 2017 sample (13 cases). All hearings were initiated following a theft complaint filed by the employer. Consequently, when workers appear before the judge they attend not as potential victims but as persons bearing the stigma of theft.

[12] THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT 2002 (The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002)

B Of those 13 cases, only two workers were able to bring a lawyer with them, and neither lawyer submitted a written or oral pleading. In one case, the head of the Beirut Bar Association assigned one lawyer to defend a worker before the investigating judge pro bono, but the lawyer took no subsequent action, neither accompanying her to the hearings nor defending her.

C There was no interpreter in court to help the workers in any of these cases. Only in two of the seven cases whose files we possess did the record of proceedings state that the worker was proficient in Arabic. In one of the cases of theft and flight, the accused worker, who understands little Arabic, agreed to have her employer act as an interpreter for her before the judicial police. The worker then had no interpreter before the court. Rather, the judge merely recorded that she attended, repeated her statements, and claimed the broadest of mitigating factors. Worse, in one case, the advocate-general decided to forgo taking the worker's statement because she was not proficient in Arabic. Hence, instead of securing an interpreter, he used ignorance of the language to leave the defendants' testimonies unknown. Contradictions also appear in some cases, the first being the same case just mentioned. After the advocate-general requested that interviewing the workers be forgone, one of the workers stated during her interrogation that she did not want an interpreter appointed because she speaks Arabic well. The same was evident in another case: The military police indicated in one of the reports that they could not record the names of the workers arrested because they did not speak Arabic, but one of the workers later stated in another investigation report that she was proficient in Arabic. She was then interviewed without an interpreter. These contradictions raise the following question: Did the judge verify the worker's language ability rather than contenting himself with the worker's statements and the preliminary investigation reports? We encountered this in one of the cases we were able to attend: The judge asked the worker in two hearings whether she was proficient in Arabic. He verified her proficiency by asking her to repeat what had been explained to her, and she then did so in detail.

D In five cases, the plaintiffs (employers) appeared before the judge in person. In another five cases, they were represented by lawyers. Even when the plaintiffs appeared in person, the defendants (workers) were not able to question them, and the judges did not confront them with evidence given by the workers. Hence, even in the rare instances where confrontation occurred, it seemed pro forma. In one case, the judge insisted that the employer attend so that he could conduct a meeting between the employer and the defendant. Four hearings then occurred before the trial concluded. The first two were attended by the employer's lawyer without the employer, and the defendant was not transported to attend. In the third hearing, the lawyer sought an adjournment so that his client could attend. In the fourth hearing, forty days after the judge's decision to conduct the meeting (during which the worker remained under arrest), the lawyer justified his client's absence by arguing that the client "would like to waive her personal rights regarding the defendant, who pledged to pay her travel expenses in a previous hearing". Hence, the trial concluded without the employer attending and without him actually waiving those rights. In other cases, the plaintiff lawyers expressed personal convictions about the case facts. For example, in one hearing a lawyer affirmed, "I am content that [the worker] ventured to steal". Except for one case where the judge dismissed the claim of theft on the basis of the plaintiff's absence, judges did not impose any sanctions for such absences.

E In many of the cases (for which we possess the judge's records or where the judgment recorded the number of hearings convened), workers were not transported to their trial hearings. The number of workers who were not transported to the trial remains very high, as shown by the cases whose files we obtained. Among seven cases, the defendant was brought to the court for a total of 12 of the 21 hearings. In other words, in 43 per cent of hearings the defendant was absent. Additionally, in two cases (for which we do not possess the judge's reports and the number of hearings convened was not mentioned), the worker was brought only to the closing hearing. Making matters worse, on no occasion did the judge inquire into the reasons the worker was not brought to the hearing. We found no traces of justification for this in the files studied. One of the records stated that the registry had noted that "the worker would not be transported to the hearing" without mentioning why. This prolongs the workers' arrest and subsequently prompts judges to hand down harsher punishments to cover the period of remand. In some cases, the remand period exceeded the period of imprisonment handed down.

JUDGMENT TEMPLATES AND ABSENCE OF THE WORKER

Of the sample of 779 judgments, 539 (69 per cent) were recorded on a standard template in which the worker's personal information (e.g. name and nationality) and the type and extent of the punishment were simply filled in. Details concerning the grounds of the case or the mandating reasons upon which the judgment was made were not available. All judges who issued judgments in domestic workers' cases used templates for some of their judgments. In 2013, 96 per cent of the judgments based on templates were issued in absentia; the figure was slightly lower (93.5 per cent) in 2017.

This is significant for several reasons. On one hand, the template denies the worker any uniqueness regarding the substance of her case, thereby depriving the trial of its essence and importance. On the other hand, the template raises doubts about the trial's fairness. It may also reflect a feeling among trial judges that exploring the case or exercising interpretation is not important as the worker's fate (arrest and deportation) normally occurs irrespective of the judge's findings. From this angle, the case against the worker becomes an unimportant judicial matter requiring no attention or examination.

Note that the rate of template usage was 80.3 per cent among the 2013 judgments, whereas it fell to 41.7 per cent among the 2017 judgments. This decline may be connected to the fall in the percentage of judgments made in absentia and judgments pertaining to a public right action.

JUDICIAL BIASES

The study reveals a number of judicial biases against domestic workers that struggle to hold up to any serious legal debate. The biases usually begin with an incomplete description and narration of the facts and end with an imbalanced determination of rights and civil and criminal liabilities, especially in the relationship between workers and employers, thereby entrenching the sponsorship system and strengthening the employer's advantage associated with it. Before presenting this, we must first point out primary biases that constitute discrimination based on skin colour, ethnicity, or social class. This discrimination goes as far as denying workers their human rights – rights that the Preamble of the Lebanese Constitution considers inherent to every human being, and which permits no discrimination.

DENYING HUMAN RIGHTS FOR WORKERS

These biases appear in a number of preconceived stances, most prominently the denial of the worker's right to personal liberty (especially the liberty to leave her employment) and, most importantly, their right to privacy. To this can be added practices that suggest a denial of their most basic rights as litigants. Recently, such practices were sharply criticized by Justice Jaad Maalouf, who went so far as to classify them as practices that violate the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women[13]. This we shall address when discussing the positive judicial practices that confront or mitigate the sponsorship system.

DENYING THE WORKERS' RIGHT TO PERSONAL LIBERTY

The most telling indicator of this inclination is the description of the worker's departure from her job as "flight" or "escape", which implies a denial of her right to personal liberty, particularly her right to leave her employment. This is evident in the judgments encompassed in the period of study: 14 of 17 judges whose judgments were studied in 2013, and 15 of 19 whose judgments were studied in 2017, used the term firar (flight), its synonym hurub (escape), or the phrase "snuck out of work" when referring to the domestic worker's departure from her workplace. We also found that the terms "flight" or "escape" appeared in 43.5 per cent of these judgments. These terms were used not only in the narration of the facts, but also in the section addressing the law, which exacerbates the concern regarding repercussions following the judges' conclusions.

In reality, "flight" is a term used in law only to refer to persons who flee from prison or lawful detention. The use of this term without any legal basis to refer to a worker's departure from her place of work indicates just how prevalent the inferior stereotype of domestic workers is. These workers are considered akin to hostages retained by the employer until the costs of their recruitment has been recouped. In this way, domestic workers are objectified and their humanity denied. This perception goes hand-in-hand with the prevalence of a number of protective practices, the most prominent of which are retaining workers' documents[14], locking the residence when the family goes

[13] Sarah Wansa, "A judicial blow to Lebanon's sponsorship system: Employer must return domestic worker's passport", The Legal Agenda, first published in Arabic, issue 19, July 2014, under the title "Darba Qada'iyya fi Samim Nizam al-Kafala: Qadi al-Umur al-Musta'jila Yulzimu Sahib al-'Amal bi-I'adat Jawaz Safar al-'Amila".

[14] This was documented by a study issued by the ILO in cooperation with the American University in Beirut in 2016. In the study, approximately 94 per cent of employers stated that they retain the worker's passport, and 51 per cent said they thought that the contract explicitly allowed them to do so (which is untrue).

out[15], not giving the worker a key for her to leave and enter the home, and, in many cases, not allowing her to leave the home alone as a precaution against flight[16]. Of course, this perception and these practices would never have become mainstream were it not for the relatively significant recruitment costs and the fear of loss when the workers leave their employment. Hence, this perception is akin to a measure the public authorities, including the Office of the Public Prosecutor and the judiciary, adopt either consciously or unconsciously to protect broad segments of society from the fear of losing their "investments" through their workers' flight and, in practice, to protect the entire sponsorship system. Just as flight/runaway was considered the primary threat to the slavery system and demanded the establishment of an extremely strict penal arsenal to combat it, workers' departure from their jobs constitutes a key threat to the sponsorship system and a cause for adopting restrictive measures to protect this system.

The danger of these preconceived stances is not limited to their symbolic implications. Rather, they usually have a direct effect on how rights and liabilities are determined. This is evident from three angles:

1 Flight is considered prima facie evidence of theft, as demonstrated by the Public Prosecutor's stances and also in many of the judgments. The acceptance of such evidence is at odds with reality in two regards:

- **A** Under the current sponsorship system, flight is the only exit available to a worker who finds herself subjected to intolerable forms of exploitation and abuse (such as forced labour, non-payment of wages for months, and violence) if she wants or is compelled by her circumstances to continue working in Lebanon.
- **B** Employers are accustomed to filing theft allegations against workers who leave their workplaces, usually without any evidence, so that search and investigation warrants are issued against them. Hence, theft allegations seem to be explained by flight more so than flight serves as indicative of theft[17].

2 The concept of flight is used to link a public right to employers' personal rights. Contrary to the profile of crimes and violations committed by foreigners against residency and employment laws (not renewing residency, not informing the public authorities of a change of address, and changing type of employment or employer without approval by the Ministry of Labour), which are all based on public considerations, this concept allows workers' violations of laws to be connected to damaging employers' rights when workers leave their jobs. Because of the conditions governing foreigners' residency in Lebanon, this then paves the way for the criminal judicial bodies to accept personal right actions by employers and award employers personal compensation. Hence, employers become the inevitable "victims" of these violations. We shall return to this point later in the section on the deficient determination of liabilities and reciprocal obligations.

3 Flight is considered an issue so grave that the workers must be deprived of the chance to voice any excuse to justify why they left the employment. Telling examples of this tendency included the denial of the right of a worker who left her employment because her wages had not been paid for many months and received no compensation as the Labour Arbitration Council deemed her responsible for the contract's termination.

A judgment ordering compensation for "flight/runaway"

An employer filed a personal action against a domestic worker wherein the former stated that the latter "fled from her home" after "stealing a sum of money belonging to her father". The court refused to examine the request for compensation for the crime of theft as the "stolen item" belonged to the plaintiff's father, who had not filed a personal action, and decided to examine only the damages incurred by the plaintiff as a result of the worker's failure to notify the security forces of her new place of residence. The court decided that the damages were "the amounts incurred by [the plaintiff] to recruit the defendant, taking into account the expenses paid to obtain her residency and work permits". Hence, the judgment ordered the worker to pay LBP3,900,000 in damages to the personal plaintiff.

Source: Criminal judgment issued in Beirut, 27 February 2013.

[15] In the aforementioned study, 23.6 per cent of employers stated that they lock the worker in the home (13.9 per cent stated that they always do so, and the others stated that they do so occasionally).

[16] In the aforementioned study, no more than 25 per cent of the employers stated that they allow the worker to go out alone on her weekly day off. The published study included no responses about the possibility of going out on work days after work hours are over. These two facts reflect a certain normalization of the phenomenon of forcing the workers to remain in the workplaces for reasons unrelated to work needs. This phenomenon is also another indication of the absence of a concept of fixed work hours in this type of contracting.

[17] Saada Allaw, "Kitab 'Adl Lubnaniyy Yuharridu 'ala al-Iftira' bi-Haqq 'Amilat al-Manazil: wa-Ra'is Majlis Kuttab al-'Adl Yaruddu bi-Wu'ud li-Tahsin Awda'ihinna" ("Lebanese notary incites making false accusations against domestic workers: President of Council of Notaries responds with promises to improve their circumstances"), *The Legal Agenda* website, 8 October 2018.

What happens when a worker leaves an employer who has not paid her wages for 3 months?

In 2013, the plaintiff, an Ethiopian national, left the residence where she had been working. She sought help from Caritas, which immediately informed General Security. General Security began its investigation into the matter (the request to help the worker) after summoning both the worker, who attended with a lawyer appointed by Caritas, and her former employer. During the investigation, the worker stated that she worked for the employer for four years and that all she received during this period was US$1,500 in two payments. She stated that the employer still owed her US$4,500 and that the employer constantly used the excuse that her financial situation was bad and she needed a medical operation. The worker also said that she left the home because her wages were unpaid, she was beaten, and her residency was not renewed. She asked that the employer be compelled to pay her dues and declared that she would like to return to her country. As for the employer, she stated that she paid the fee for the worker's residency due at the time of the investigation, though the worker's passport and residency permit were missing. Regarding the wages, the employer denied she owed the worker anything, but she was unable to present evidence that the worker had been paid. During the investigation, the employer retracted her allegation against the worker (most likely a flight allegation), stating that she had no objection to the worker's deportation and pledging to provide an airfare if requested. Subsequently, the Public Prosecutor was contacted, and it ordered that the worker be left in the care of Caritas, leaving the decision on her residency up to the General Director of General Security.

On 28 October 2015, the Labour Arbitration Council in Beirut issued a decision compelling the employer to pay the worker the US$4,500 of owed wages on the basis that she was unable to prove she had paid them. On the other hand, the decision dismissed the other claims concerning compensation for dismissal and lack of warning "because the employer did not terminate the employment contract; rather, the worker is the one who left the employment".

Source: "Lebanese domestic workers: Deportation without compensation", The Legal Agenda, first published in Arabic in issue 53, February 2018, under the title "Madha Yahsulu Hina Tatruku al-'Amila Manzilan La Yusaddidu Ujuraha li-Thalath Sanawat? Tarhil min dun Ta'wid".

DENYING THE RIGHT TO PRIVACY

Another area of distinct judicial discrimination against workers is judges' acceptance that workers have no right whatsoever to privacy and the effects this has on judicial orientations. In this regard, judges' positions are in complete harmony with the general perception of the relationship existing between employers and workers. This was demonstrated by the study that Dr Sawsan Abdulrahim of the American University in Beirut conducted in cooperation with the ILO in 2016. The study showed that there is virtually a consensus among employers to deny the worker her right to a private life on the grounds that she came to Lebanon to serve them and that any such right would inevitably affect her diligence at work[18]. This belief is accompanied by a series of practices. Besides the aforementioned practices that restrict her liberty to leave and return freely to the residence, the clear division between work hours and non-work hours often disappear, especially on regular workdays. Hence, even though the standard employment contract specifies 10 work hours per day, the worker is supposed to remain ready to work at any moment during workdays[19].

These practices are rendered even more grievous by the fact that many workers actually have no day off even though the standard employment contract stresses their right to 24 hours off a week[20]. Second, even in cases where workers are given a day off, most are effectively banned from leaving the home[21].

Many of the case files suggest a virtual acceptance that for the worker to enjoy privacy, she must seek prior permission from the employer. For example, in the preliminary investigation in one file, the worker was asked whether it was true that "the head of the household, i.e. the plaintiff's husband, caught her sneaking out of the [her] room". This question reveals two beliefs: First, it is wrong for the worker to leave the home without the employer's authorization. If she does, the incident is described as "sneaking out". The use of the word khulsatan (sneakily) reveals a relationship characterized by domination and supervision over everything the worker does to the extent that she must even ask permission to go out after working hours. Second, the employer's discovery of the worker's attempt to go out in this manner constitutes "catching" her, which implies that the employer has the authority to detain her when she exercises her right to privacy.

ACCEPTANCE OF INFRINGEMENT ON THE RIGHT TO PRIVACY

The denial of the worker's right to privacy is apparently widely accepted. This is evident not only in that employers are never prosecuted on this basis, but also, no less gravely, in the validity granted to evidence obtained via blatant invasions of the worker's privacy and the subsequent use of such evidence to convict the worker. This is illustrated in the following examples.

House key?

In one case, it was established that the employer deprived the worker of liberty. The worker stated, "When I am left home alone, the door is locked, and I have no house key". These words were an incidental remark made in the context of an inquiry into why the worker possessed a key to the apartment. The investigating judge apparently saw no issue in the worker being detained like any arrestee, prisoner, or slave; rather, what concerned him was that the worker had acquired a key to the home (and, therefore, her liberty), which he saw as presumptive evidence of her criminal intentions. The investigating judge's stance concurred with the employer's complaint, which claimed that the worker stole a spare house key found hidden in the worker's closet.

Searching the worker's personal effects for evidence

In the same case, the employer alleged that the worker stole a watch worth US$1,500. Her only evidence was that she found this watch, which she claimed she took back, when she, of her own accord and in the absence of any public authorities, searched the worker's room and personal effects. After recovering the stolen watch (as she claimed), she then filed an action against the worker. Although the employer admitted that she seized and retained the worker's mobile phone without any legal justification, the judicial police took no issue with this behaviour. Rather, they seemed to agree with the employer. What interested them was how the worker used her mobile phone. Ultimately, the worker was convicted of theft and sentenced to one month of imprisonment and a fine.

Source: Nizar Saghieh, "Lebanese domestic worker denied wages, charged for theft", *The Legal Agenda* website, first published in Arabic on 6 June 2018, under the title "al-Inhiyaz al-Qada'iyy Yuhaddidu Huquq 'Amilat al-Manazil: Idanat 'Amila Lam Taqbid Ujuraha mundhu Sana bi-Sirqat Sa'a".

Taking back one's passport is considered theft

"The defendant's denial that she committed theft is not accepted because it has been established that she took her passport from within a closet in the plaintiff's personal home."

Source: Criminal judgment issued in Beirut, 29 May 2017.

ENJOYING PRIVACY: A BASIS FOR ACCUSATIONS

Some cases suggest a tendency among the judicial police and various judicial bodies to consider the workers' enjoyment of privacy a cause for suspicion, or even evidence, that they committed a criminal act. A number of the investigations focused on various aspects of the worker's private life and attempted to connect them with misdemeanours, particularly theft.

For example, in one case in 2013, the employer stated that she found among the worker's belongings a mobile phone and that the worker never told her about it before . . Note, first, the employer's belief that workers should ask permission if they want to get a mobile and her belief that overpassing her prior authorisition should be brought to justice as an evidence on the involvement of the worker in an illegal activity. Adding to the egregiousness of the invasion of the worker's privacy, the employer stated that she searched the worker's personal belongings and checked her mobile phone data, the names of callers, and the messages sent and received. She did this in the worker's absence, without the worker's knowledge, and without supervision by the security forces. The judicial police recorded this fact as though it constituted a lead to uncover the thief. The judge's interrogation of the worker generally followed the same vein as the interrogation by the judicial police. The worker's personal life was again addressed. The plaintiff was asked whether the defendant leaves the home, and she stated that she does so once a month. The plaintiff was also asked about the last time the worker went out. The court then interrogated the worker about her private life, whether she had any friends, and the places she goes when she leaves the home. Once again, it appears that any private relationship the worker has outside of work is subject to suspicion.

In one case in 2017, after the employer admitted confiscating and retaining the worker's mobile phone without any legal justification, and the judicial police seemed to be in harmony with the employer's stance. What interested them was how the worker used her mobile: "Do you steal money and call somebody to give it to him?". The worker's response was very telling of the extent to which her privacy was breached:

Besides the fact that she had to stress that the employer was the one who bought her the phone and left it in her possession, in order to refute that she used it for theft, she had to disclose the identity of every person with whom she was in contact. She stated, "I used my phone only at night when I finished work to contact my family in Ethiopia and three Ethiopian girlfriends whom Ms Huda knows, and she's the one who allows me to call them".

The love ban

In early May 2015, The Legal Agenda learned that notaries were requesting employers of foreign workers to sign a pledge stating that the latter do not have any marital or intimate relationship with any non-Lebanese person in Lebanon. Under this new stipulation, the sponsor was obliged to inform General Security of any planned marriage involving the worker so that they could be deported. The Legal Agenda determined that this practice was based on Circular No. 1778, issued on 1 October 2014 by the Ministry of Justice at the request of the GDGS. The circular pertained to the pledges employers must undertake in order to obtain residency permits for foreign workers of the third category (low-income male workers) and fourth category (domestic workers).

On 13 May 2015, seven civil bodies submitted a letter to the Ministry of Justice demanding that it retract the circular. The letter made several arguments, the most important being that the circular conflicts with Lebanon's commitment to ban bondage and slavery, with the ban on arbitrary interference in personal life and the right to marry and establish a family, with the International Convention on the Elimination of All Forms of Racial Discrimination, with the principles of the Labour Code, and with the State's obligation to promote complete and effective respect for human rights and freedoms.

In response, General Security first sought to defend the circular in a reply to The Legal Agenda, stating that the circular was merely "a precautionary measure that aims not to prohibit marriage or interfere in personal affairs but to preserve the family as an institution with a role in society and to respect residency requirements". It also stated that "the sponsorship system in effect might not permit the formation of a family living under one roof" and that General Security "studies each case individually with regard to family ties and marriage not impacting on the labour system in effect or the residency system specified by the law governing General Security's work".

On the other hand, the Council of Notaries announced its compliance with the retraction request in two letters it directed to the Ministry of Justice and the Ministry of Interior. They stated, "We refuse to have such wrongs recorded in our registries and in Lebanon's historical record, wrongs that we consider a black mark against Lebanon, which contributed actively to the development of the human rights charter".

Because of this interplay, the Ministry of Justice directed a new circular officially retracting the prohibition of love – or the "enslavement circular" – on 3 July 2015, marking a successful closure of the issue.

Source: "Revoking the love ban or the enslavement circular: The backlash and the success", The Legal Agenda website, originally published in Arabic on 31 July 2015, under the title "Ilgha' Ta'mim Man' al-Hubb aw al-Isti'bad: Fi Isti'ada li-Mahattat al-Taharruk wa-Jard li-Makasibih".

DENYING WORKERS' BASIC RIGHTS AS LITIGANTS

Besides the above, many judges have a tendency to deny workers their most basic rights as litigants, reflecting a denial of the right to a fair trial. This tendency manifests itself in a number of ways. While we explained earlier that the Office of the Public Prosecutor leave it up to the GDGS to decide on matters of the worker's residency in Lebanon, the case files are devoid of any information about General Security's decision in this regard. In cases where the worker was deported, they also do not record her residency abroad or contact details. Yet, judges appear to make no effort to enquire about the worker's fate.

As a result, the courts tend to deliver judgments on the basis of the preliminary investigations without really holding a trial. The situation is little better when workers are present in spite of the absence of an interpreter and lawyer. The cases are generally treated more like numbers than cases concerning people who may have suffered grave violations because of the sponsorship system. For example, convicted workers are stripped of their identities; the 26 judgments examined by the study never referred to the worker's nationality, and one judgment issued against a worker stated that her nationality was "African".

BIAS IN ASSESSING AND INVESTIGATING EVIDENCE

This bias reveals a flaw not only in the justice system available to domestic workers but in the justice system as a whole. Namely, evidence presented by the stronger party is given much greater weight than evidence presented by the weaker party. As such, the consideration of evidence depends on the power of the parties that provide it. Usually, this issue is accompanied by another bias in

[18] *A study of the Employers of Migrant Domestic Workers in Lebanon: Intertwined*, ILO, 2016.
[19] In the study mentioned in the previous footnote, more than 11 per cent of employers stated that their workers work for more than 10 hours per day (3 per cent work for more than 12 hours a day), whereas 53 per cent stated that their workers work more than 8 hours each day. The real situation here is likely worse, especially since 14 per cent of employers answered that they did not know the number of working hours. The high percentage of these employers suggests that the concept of fixed working hours in domestic work is not the norm. These figures must also be interpreted in light of the high ratio of workers who work seven days a week, as previously mentioned.
[20] In the aforementioned study, more than 57 per cent of employers stated that the workers work seven days a week (i.e. they have no weekly day off). Furthermore, the few of those who have such a day off can enjoy it as they like outside the workplace. The study contained no responses concerning festive and official holidays or paid annual holidays, which reflects a certain normalization of the lack of such holidays.
[21] In the aforementioned study, no more than 25 per cent of the employers stated that they allow the worker to go out alone on her weekly day off.

the investigation of evidence: judicial bodies tend to conduct investigations that prove the weaker party's guilt rather than those that might exonerate it (these are dismissed as unnecessary).

THE EMPLOYER'S ARGUMENT SUFFICES

The most concerning issue includes the Public Prosecutor's tendency to charge workers for theft based solely on employers' complaints and, occasionally, the worker's flight. In most cases, such accusation occurs following the worker's flight in order to provoke her arrest. Subsequently, the worker is detained for a long period pending the end of the investigation or trial, and may be deported, based simply on the employer's accusation. This practice is rendered even more problematic by other issues.

The Office of the Public Prosecutor continues to embrace these complaints even though they know full well that such complaints lack credibility. There is an abundance of documented information – some of it judicial – demonstrating that employers' complaints are usually nothing more than a standard method of making intentionally false accusations they are advised to make so that the worker is arrested and the cost of recruiting her is not lost.

Public Prosecutor and judges try a "runaway" worker for theft without evidence

In one of the cases in 2013, the employer went to the police station and filed a complaint and a personal action against the worker for flight and theft. However, the employer returned to the police station the following day and stated that the worker's embassy had called her and told her the worker was there. The employer *renounced* her personal right and asked that the worker be deported to her country. Accordingly, the police station notified the appellate Public Prosecutor. The latter requested that the report be completed and referred to him/her, who in turn launches the public prosecution against the domestic worker by referring the case to the investigating judge in Beirut to conduct the necessary investigations and arrest the worker. Remarkably, the text of the referral indicated that the worker was suspected to have "stolen a gold piece belonging to her employer and fled to an unknown destination", even though the place was recorded as her country's embassy. Of course, the appellate public prosecutor referral of the case to the investigating judge without any further examination of the available evidence is also remarkable, especially as the plaintiff had renounced her personal right to take action the day after filing the theft complaint, and had requested that the worker be deported rather than tried[22].

Nevertheless, the investigating judge scheduled a hearing for 5 February 2009, but neither party attended. On that date, the judge issued an arrest warrant "in light of the nature of the crime in question and what appeared in the investigations" and referred the case to the Public Prosecutor to issue its opinion on the case's merits. This opinion followed the same vein: It set aside the new facts that the plaintiff (who had renounced her personal right) had delivered, deeming those she had originally stated to have been corroborated by "the allegation, the preliminary investigations ... [and] the presumptive evidence constituted by the defendant's flight". The Office of the Public Prosecutor concluded its opinion by asking the investigating judge to indict the defendant for the crimes of theft and flight, stating that she should be tried before a criminal judge in Beirut. On 23 February 2009, the investigating judge in Beirut issued an indictment against the defendant under article 636 of the Penal Code and article 7 of Decision No. 136 of 1969.

Later, when the case was referred to the criminal judge in Beirut who examines personal right cases, the plaintiff appeared before him and declared that she had renounced her right regarding the defendant. She also stated that "what was stolen was only a gold brooch, and she lost it and is not certain that the defendant stole it". Accordingly, on 29 November 2011, the aforementioned judge issued a decision to refer the case to the criminal judge examining public right cases "as it is evident from page 3 of the preliminary investigation report that the plaintiff renounced all her rights before the Public Prosecutor filed the action". On 3 January 2013, the latter judge issued a judgment in absentia, convicting the worker of the crime stipulated in article 636 (theft), and ordered her to pay a fine of LBP1,000,000. The judgment also convicted the worker of the crime stipulated in article 7 of Decision No. 136, sentencing her to two months of imprisonment and fining her LBP1,000,000. It ordered that the two sentences be cumulative.

Source: Criminal judgment issued in Beirut on 31 January 2017.

When the employer refused the confrontation, yet the court convicts the worker based on employer's statement

In one of the cases observed, the Public Prosecutor initiated an action against a worker for theft and violating residency and employment laws after she left the workplace. From the evidence available in the case file, it is clear that the Public Prosecutor relied on the employer's statements and the fact that the worker left the employer without warning.

The complaint lodged by the employer's lawyer stated, "After arriving home, the plaintiff was surprised by the maid's absence. He waited several hours in case she came home, believing that she might be doing some shopping. However, the plaintiff realized that she had fled without prior notice. He then searched the home and discovered that before fleeing, the defendant maid had stolen, among other things, a sum of money, a gold bracelet, two diamond rings, and a Samsung phone".

The Public Prosecutor initiated an action against the worker (who was in hiding at the time) for theft and violating residency and employment rules based on the accusation that she had stolen the items. The investigating judge then, without interviewing her, indicted her for theft and violating residency rules. Based on the plaintiff's statements, the Public Prosecutor valued the stolen items at US$7,000.

When the worker was found and her trial began, she completely denied the theft. At that point, the court decided to conduct a confrontation between her and the employer. The employer did not attend the following two hearings, and the worker was evidently not transported to them. In the third hearing following the confrontation decision, the plaintiff's lawyer sought an adjournment so that his client could attend. In the fourth such hearing, which occurred two months after the confrontation decision, the lawyer stated that his client was absent because he wanted to renounce his personal rights regarding the defendant, who had pledged to pay the costs of leaving Lebanon in a previous hearing.

Subsequently, the court forwent interviewing the employer, only to then convict the worker of theft on the basis of the employer's statements, and imprisoned her for three months with a fine of

Source: Criminal judgment issued in Beirut on 31 January 2017.

The employer's lawyer as a witness to theft

Some of the reasoning surrounding such cases includes flimsy arguments that withstand no serious debate. For example, the judgment issued by the criminal judge in Beirut on 29 May 2017 implicitly considered the employer's lawyer akin to a witness to the theft and accepted the worker's admission that she took back her own passport as evidence of theft.

"The plaintiff's attorney stated with a clear conscience that the defendant did steal and that she [the lawyer] had been following the matter since the beginning."

Source: Criminal judgment issued in Beirut on 29 May 2017.

In some of these cases, the trial judges interpreted the legal characterization of the worker's actions as a crime under article 636 of the Penal Code. This was evident in a judgment issued in Baabda on 9 May 2017. After the judge allocated three lines to recounting the facts according to the employer's statement and stated in two lines that these facts corresponded with those found in the preliminary investigation and all documents.

Of course, this was actually unfair because the sole basis for both sets of facts was the employer's statement and the worker totally denied the theft. His judgment stated, "The act of taking property from the home of her employer, the personal plaintiff, constitutes aggravated theft under article 636 in conjunction with article 257 of the Penal Code". The judge sentenced the worker to three months of imprisonment, a fine of LBP200,000, and LBP6,000,000 in compensation for all damages.

TUNNEL VISION

The bias goes beyond any unbalanced assessment of the probative value of employer's allegations to occasionally reach the extent of tunnel vision. There were a number of case files wherein judicial authorities convicted workers of theft or not renewing residency without paying any attention to grave violations committed by the employer.

Worker convicted of theft, but what about the non-payment of her wages for an entire year?

In one case in which a worker was prosecuted for theft, remarkable facts emerged indicating that the employer had committed grave wrongs that verged on forced labour and human trafficking, thus far exceeding the gravity of the theft charges. The judicial authorities examining the case focused on the theft while totally ignoring these violations.

Besides the employer's non-renewal of the worker's documents, the worker stated that the employer had not paid her wages for more than a year. Nevertheless, the trial judge posed no question about this matter, and his judgment made no mention of it. The case file also shows that the worker had not been granted annual or weekly leave during the three years in which she worked continuously in Lebanon. The employer deprived the worker of liberty as the same file also recorded that the worker stated that when she was left home alone, the door was locked, and she had no house key.

Source: Nizar Saghieh, "Lebanese domestic worker denied wages, charged for theft", op. cit.

INVESTIGATIONS THAT NEVER OCCUR

Strong suspicions of human trafficking crimes, such as forced labour, emerged from some of the case files. Nevertheless, these issues are ultimately only partially addressed – the law on foreigners and related legal texts are applied, but no further investigations occur.

In this regard, we must mention the investigations that the GDGS carries out in cases of potential human trafficking. From 2013 to 2017, General Security investigated 150 complaints from workers who were considered

[22] The fact that the legal residency in Lebanon is linked to the employment agreement upon the sponsorship system, the termination of the agreement following the worker's flight justifies the deportation of the worker.

"potential victims" of human trafficking. The number of complaints declined from 55 in 2013 to just 11 in 2017. Information that The Legal Agenda received indicates that all the workers left Lebanon before their cases were referred to the judiciary, with the exception of those who agreed to return to work for their sponsors. Similarly, many of these investigations ended either in General Security declaring the allegation unproven, or in a settlement despite the gravity of the alleged acts (torture, beating, mistreatment, and non-payment of wages). One thing is certain: none of these cases found their way to the Criminal Court. A number ended up as disputes before the Labour Arbitration Councils. In a special issue on human trafficking The Legal Agenda noted that the criminal courts of Beirut and Baabda were devoid of cases regarding forced labour[23].

Additionally, a number of the case files contain serious evidence that the worker suffered grave violations that necessitated leaving the home. For example, in one case from 2013, the worker left her employment because she was beaten by the employer, stating that the employer "sometimes tried to throw me down the stairs and keep me without food; for these reasons, I fled the home". In another case from 2013, a worker was forced to leave the home and employment because the employer's children "harassed and beat" her. She was then arrested for not possessing identity documents. Furthermore, most of the preliminary investigations in the case files in our sample contained no questions whatsoever about why the worker left her employment.

Bias in determining rights and liabilities

This bias is an inevitable consequence of the aforementioned biases. In this regard, we shall only address the cases that showed a recurring and revealing bias. We excluded from our study many biases that appeared in the court's work but which did not reflect a general trend within the judiciary. The most prevalent biases that can be considered to constitute a such a trend are discussed in the following sections.

CRIMINALIZING RESIGNATION

Is leaving employment considered a crime? The case files reveal a multitude of legal texts applied to workers whose status contravenes residency or employment laws, as explained in the first chapter.

In this regard, there is a judicial discriminatory practice that consists in expansively applying legal texts to encompass acts that do not obviously fall under them. One of the most prominent forms of this bias is in the application of articles 15 and 21 of Decree No. 17561 of 1964, which regulate the employment of foreigners and punish anyone who transfers to another employer or changes the type of work without obtaining approval from the Ministry of Labour. These articles are often misapplied to workers who leave their job (and are on the run), even in the absence of any evidence that they started another job. This bias renders flight in and of itself a crime, especially as the Ministry of Labour is reluctant to grant approval to change jobs without approval from the sponsor.

While many judges applied these two articles to cases of flight without any explanation, other decisions went as far as to substitute the phrase "type of work" with "place of work" in order to apply article 15.

Does resigning from a job necessarily imply a job change ?

"The defendant's act of changing her place of work without obtaining the Ministry of Labour's prior approval ... combines the elements of the crime under article 15 and article 21 of Decree No. 17561 of 1964 regulating the employment of foreigners."

Source: Criminal judgment issued in Beirut, 8 June 2017.

CRIMINALIZING THE WORKER FOR NOT RENEWING HER RESIDENCY

This issue may constitute the greatest bias in the courts' work. All the judgments concerning non-renewal of residency encompassed by the study followed two trends: First, they disregarded the employer's liability for not renewing the worker's residency despite substantial evidence that the employer caused the non-renewal by retaining the worker's documents. The only exception was one case in which the court convicted both the worker and the sponsor, although this case concerned a dummy sponsor (i.e. a sponsor who registered the worker without the worker actually working for them). The conviction of the sponsor was probably aimed more at punishing dummy sponsors than at providing justice for domestic workers[24].

Second, they convict workers virtually automatically without enabling them to argue force majeure. This disregard for the constraints put upon workers by their employers is in contradiction with article 36 of the law on foreigners, which only criminalizes foreigners who neglect to request a residency renewal within the legal time limit without an acceptable excuse, and article 227 of the Penal Code, which stipulates, "There shall be no punishment for whomever is compelled by a physical or moral force they cannot resist".

The most revealing files in this regard included the following cases:

- In 2013, a worker reported that she had been asking to return to her country for a year because she was ill and wanted to see her children. She said, "This was impossible once I learned from her [the employer] that the owner of the [recruitment] agency ... had not given me my identity papers, including my passport, and that I had not obtained a residency permit for six years". She also stated, "I entered Lebanon under the sponsorship of someone called ... I do not know her identity or address and I have never seen her as the agency picked me up from the airport, put me to work in a house for about fifteen days, and then brought me to the house of the employer whom I still work for today". On the strength of this information, the prosecutor ordered General Security to arrest the worker, release the employer in return for proof of residence, and investigate the employer "to record her testimony about employing the maid for seven years without obtaining a residency permit for her". The prosecutor also requested that the full identity of the owner of the recruitment agency be obtained. General Security contacted the agency and it appeared that the owner was abroad. After being informed of this, the prosecutor decided "to disregard summoning the Lebanese [person]", even though the employer stated while being interrogated that she had been recruiting maids for 15 years and carries out all transactions through the same agency.
- In 2013, a worker stated that she went with her employer's wife to the General Security station to settle her status and renew her residency. The employer's wife reported that she had not renewed the residency due to a medical condition she suffered from. She also stated that she would like the employment relationship between them, which had begun four years earlier, to continue and that she was willing to pay the necessary fines to settle the worker's status. The interrogation of the worker was limited to a single question about the reason her residency had not been renewed, to which she did not know the answer. General Security also took the worker's statement in the presence of the employer's wife, which conflicts with basic investigative procedure. Ultimately, the Public Prosecutor decided, for reasons unclear, to prosecute the worker not only for the crime of failing to renew residency but also on the basis of articles 15 and 21 of Decree No. 17651 (breaching residency and employment regulations).
- Five workers were arrested in 2013 directly by the GDGS after they and their employers were "lured" to the GDGS station for failing to renew residency permits. The investigations into these five cases were very brief – employers were not asked why they failed to renew the residency permits, nor were the workers asked about their working conditions.

Failure to renew residency: An inescapable liability

In 2017, a worker was held responsible for not renewing her residency, even though the employer had continued to employ her for 10 months after her residency expired without taking any initiative to renew it. Two aspects of the case file are remarkable: (1) the employer had explicitly pledged in the standard contract signed before a notary to obtain the necessary work and residency permits at their own expense, and pledged to renew these documents so long as the employment continued (article 10 of the contract); and (2) General Security had given the worker – and, implicitly, the employer – a one-month deadline to renew the residency. This deadline elapsed without any initiative from the employer.

Hence, the judges at the three levels (the Public Prosecutor, the investigating judiciary, and the trial court) held the worker alone responsible for not renewing her documents, without scrutinizing the reasons for non-renewal. None of these authorities even asked who possessed the worker's documents, despite the common practice of employers illegally confiscating such documents. In this regard, the judges' stances reflect the erroneous but frequent judicial practice of holding domestic workers responsible for not renewing their documents when, in fact, renewal cannot occur without the employer's consent.

These questions are more pressing given that the investigating judge's indictment hastened to attribute to the worker a narrative regarding the non-renewal that implicitly absolved the employer of responsibility. The indictment (as well as the preliminary investigation report) stated that the worker "was not able to renew her residency as she was in the process of obtaining a new passport from the Ethiopian embassy". While this phrase suggests that the worker and her embassy bear exclusive liability for not renewing the residency, the case documents reveal that this portrayal is far from the truth.

First, the worker never stated that she was unable to renew her residency. Rather, according to the

[23] Ghida Frangieh, "Human trafficking crimes before the courts: In the shadow of prosecution", The Legal Agenda, first published in Arabic in issue 56, July 2018, under the title "Jara'im al-Itjar bi-l-Bashar amama al-Qada': Bayna al-Hadir wa-l-Gha'ib".

[24] Hala Najjar, "Hukm Qada'iyy Yu'aqibu IKhtilaq 'Jurm al-Firar'" (A judgement punishing the fabrication of the "crime of flight"), *The Legal Agenda*, 51, September 2017.

Internal Security Forces report, she stated that, "they were late in renewing my residency", which indicates that she never considered herself authorized or capable of renewing it herself. The indictment's substitution of the phrase "they were late" with "she was unable" indicates a bias that shifts the liability for the non-renewal. Making this aspect of the indictment even more problematic, the investigating judge did not ask the worker to explain the issue; rather, he seemed content with the distorted report.

Second, and most importantly, the copy of her passport on file clearly shows that the reason the worker gave is not accurate, but reflects her ignorance of her legal status. Her passport was actually renewed on 27 June 2016, and remains valid until 26 June 2021. This suggests that the employer renewed and retained the worker's passport without following the procedures to renew her residency with General Security for reasons that went unquestioned.

If this is true, then, contrary to the judgment, the employer is contractually and legally liable for not renewing the residency, whereas the worker may claim force majeure in that the employer had confiscated her documents.

Source: Nizar Saghieh, "Lebanese domestic worker denied wages, charged for theft", op. cit.

ORDERING WORKERS TO PAY EMPLOYERS COMPENSATION FOR VIOLATING IMMIGRATION LAWS

Another common bias in the application of the law is the endorsement of the claim of the plaintiff (the employer) to compensation on the basis that the worker violated residency and employment regulations. This occurred in 31 judgments issued by the courts examining personal right cases in Beirut in both 2013 and 2017. The remarkable aspect of these decisions is that not only were workers convicted for fleeing their employment, but they were ordered to pay damages to their employers. A small number of the judgments explained how the amount of damages was determined by referring to the expenses of recruitment and obtaining a residency permit.

In one case, the court refused to examine the question of compensation for the crime of theft as the "stolen item" belonged to the plaintiff's father, who had not filed a personal action, and decided to examine only the damages incurred by the plaintiff as a result of the worker's failure to notify the security forces of her new place of residence. The court decided that damages amounted to "the amounts incurred by [the plaintiff] to recruit the defendant, taking into account the expenses paid to obtain her residency papers and work permit", and ordered the worker to pay LBP3,900,000 in damages to the employer.

Source: Criminal judgment issued in Beirut, 27 February 2013.

Because of this tendency, in practice the judge examining a worker's criminal liability compels her to pay the employer compensation for an act of a civil nature (leaving employment), whereas the judge should examine the compensation claim within the scope of the employee-employer relationship, which falls within the jurisdiction of the Labour Arbitration Councils.

When a criminal judge does otherwise, he or she has ultimately conflated crimes related to foreigners' conditions of residency in Lebanon with the workings of the employment contract. This conflation adds to the criminal judge's powers the powers of the Labour Arbitration Council and thereby strengthens the employer's advantage while stripping the worker of her employment rights.

Making matters even more problematic, some judges went as far as to compel the worker to pay the employer compensation for not respecting residency laws (article 7 of Decision No. 136 of 1969) even though they acquitted her of the alleged theft due to insufficient evidence.

Compensation despite suspicion of false accusations

"Regarding the theft misdemeanour, this act lacks sufficient corroborating evidence in light of the information available in the case file. It is not possible to rely on the presumption deduced from the defendant's flight in the absence of any other evidence in the file corroborating it, and the defendant denied the theft imputed to her. Regarding the damages claim, it must be accepted in view of the material and moral damages sustained by the plaintiff as a result of the flight. Their total value is LBP700,000."

Source: Criminal judgment issued in Beirut, 23 March 2017.

WHO COMPENSATES WHOM?

The judgments in the sample show that criminal judges ordered the worker to pay the employer compensation in 59 cases, distributed as follows:

- 48 cases in which the worker was convicted of theft (including 35 in which she was also convicted of violating employment and residency rules);
- 10 cases in which the worker was convicted only of violating employment and residency rules;
- one case in which the worker was convicted of forgery.

These cases comprise 28 per cent of all the cases. In 33 cases, the compensation was LBP2,000,000 or less, and in 26 cases it exceeded LBP2,000,000.

Additionally, the criminal judges ordered the workers to return the stolen items in 22 cases. This number could have been much higher had the employers not been absent from trial (73 cases) or not renounced their rights regarding the workers, which sometimes occurs after the workers pledge to take responsibility for securing an airfare and any other financial burden (23 cases). During this period, none of the Labour Arbitration Councils or criminal courts in these two governorates issued judgments ordering compensation for a worker.

Hence, we can discern another aspect of the catastrophic effects of the sponsorship system in Lebanon: Not only does it pave the way for all kinds of abuse and exploitation while protecting employers from accountability by manufacturing trials in absentia and denying the right to a fair trial, it also goes further by portraying them as victims whose damages the judiciary seeks to redress.

The number of judgments issued against workers compelling them to pay their employers compensation compared with those issued against employers to pay their workers compensation indicates an enormous flaw in the justice system.

Chapter 4:
Judicial efforts to alleviate the sponsorship system

Some judges have taken approaches that challenge the manufacture of trials in absentia and the practices of General Security and the Office of the Public Prosecutor in arranging such trials. Several judgments, both from within the sample and beyond it, have avoided the prevailing pattern with varying effects on the sponsorship system.

APPROACH 1:

Acquittals combined with referral to the Public Prosecutor for false accusations

In both the 2013 and 2017 samples, we observed 17 judgments in total that acquitted the worker accused of theft due to insufficient evidence, arguing that "flight does not constitute evidence sufficient to convict [the worker] of theft unless it is supported by other evidence … Doubt always favours the defendant in the trial courts".

From another angle, we noticed a criminal judgment, not included in the sample, issued in Tripoli on 29 November 2012, regarding a theft allegation that an employer filed after her worker left the home. The judgment indicated that the plaintiff admitted that she filed an action against the worker not because of a theft but because the worker left the home due to the work overload and that she dropped the action when the worker returned. The judgment then not only acquitted the worker of theft for insufficient evidence but also referred the case to the "Appellate Public Prosecutor in North Governorate to take the position it sees fit regarding charging the plaintiff who dropped her action for filing a false accusation".

The same judge went even further in another case. After finding that the worker left the home because the employer beat and mistreated her, he acquitted her of theft and referred "the papers to the Appellate Public Prosecutor in North Governorate to take the position it deems fit regarding charging the plaintiff … for the crime of beating and abuse".

Despite the issuance of a significant number of similar judgments acquitting the worker by several judicial authorities, sometimes based on the employer's own confession, we found no cases filed against employers for making false accusations. A number of judges attributed this lack to the Public Prosecutor's failure to act after the case files were referred to it. Yet such tactics have become necessary to put an end to this heinous practice of accusing this vulnerable social group of theft.

In a case whose judgment we observed in 2017, a domestic worker turned to her sponsor to purchase an airfare for her to leave Lebanon. The sponsor filed a complaint against her for the crime of flight. During the preliminary investigation, the sponsor stated that the worker never worked for her; rather, because of the small size of the sponsor's home, the worker worked for herself and she was the one who did not take any step to renew her residency or inform General Security. When the sponsor was asked whether she received any sum of money from her, she stated that the worker gave her US$600 to buy an airfare, only to later claim that the money was spent on settling her status. Facing this blatant contradiction in the sponsor's statements, the Public Prosecutor further investigated the worker and ultimately found that the sponsor fully agreed to have the worker work for other people, that she kept in contact with the worker, and that she was therefore an accomplice to not renewing residency. Consequently, the Public Prosecutor charged the employer with filing a false accusation, as well as charging the worker for violating administrative regulations.

In this regard, we must also mention the judgment issued by the criminal judge in Batroun in 2010. The judge fined the employer who abused her right to litigate by falsely accusing the domestic worker of theft. It was noted that there was a "clear, flagrant, and blatant contradiction" in the employer's statements[25].

APPROACH 2:

Judgments convicting employers of breach of trust for refusing to pay workers' wages

This approach compensates for the ineffectiveness of the Labour Arbitration Councils, which, for several reasons, remain incapable of initiating trials or issuing prompt judgments that deter such practices.

In 2013 a domestic worker filed against her employer for refusing to pay wages. The judge in Baabda, Justice Nader Mansour (10 July 2013), convicted the employer of the crime of "breach of trust" stipulated in article 671 of the Penal Code[26], sentencing her to two months of imprisonment and a fine of LBP500,000. He also ordered her to reimburse the plaintiff worker the US$3,750, in addition to LBP1,500,000 in damages.

This judgment represents another step by the judiciary towards protecting domestic workers after the judgment rendered in 2000 by the Misdemeanours Court of Appeal in Jdeidet el-Matn[27]. The 2000 judgment held that the employer's non-payment of wages owed to the domestic worker was a breach of trust. The court ordered the employer to pay damages, but not the wages owed, deeming the latter to fall under the jurisdiction of the civil courts. In 2005, the same court delivered another judgment declaring its jurisdiction to examine this type of case, but it imposed a condition on the worker (plaintiff), namely that she must produce proof that she entrusted sums of money to her employer.

Hence, the new judgment built upon the works of the Court of Appeal in Jdeidet el-Matn, adding new points. After deeming that the court has jurisdiction to examine this type of case, the judgment convicted the employer and ordered her to pay the wages owed (contrary to the abovementioned previous judgments) along with LBP1,500,000 in damages. More importantly, it handed down a relatively harsh sentence on the employer – 2 months of imprisonment.

APPROACH 3:

Ruling to nullify the settlement

In this respect, we refer to a very important judgment rendered in Jounieh Dina Daaboul on 31 October 2013, rejecting the judiciary's marginalization in the protection of domestic workers. This occurred in a case that a domestic worker filed against her employer for severely beating her with an iron and a belt, which caused "injuries [to] over 70 per cent of her body".

When the defendant claimed that a settlement had been reached and that the complaint filed against her before General Security had been dropped, the court summoned a special inspector from the GDGS to clarify certain aspects of the investigation report, particularly the phrase "the worker discharged the employer before the GDGS". The General Security officer told the court that when financial rights are waived, remarkably, only this waiver is recorded, whereas the use of the term "bara'at dhimmi" (discharged) means that the worker also dropped the abuse complaint, and "this was clarified to her". However, the court took a very proactive stance, challenging any attempt to "wrap up the case" outside the scope of the judiciary. The court held, "We cannot establish that the action was dropped and effect the relevant legal consequences based on what the investigator intended during the course of investigation. Otherwise, legal texts would be inert, and judgments would be based on intent, which is not constant to begin with. Hence, everything stated in this respect must be rejected"[28].

APPROACH 4:

Deduct the period of arbitrary administrative detention from the sentence

Another judgment tackled General Security's practice of arbitrarily detaining foreigners without any court order. Rendered on 8 January 2014 in Jdeidet el-Matn, Justice Tanios Saghbini convicted three people, including a domestic worker, of several crimes, including theft. It specified that the "period of her detention after her release" should be deducted from the fine. After the judgment underscored that detention in General Security's jail was arbitrary, it affirmed the need to deduct the period of detention that occurred "illegitimately and outside of judicial procedure from the fine handed down". Hence, it ultimately ordered that the worker be immediately released as she had already completed the sentence. If General Security refused to implement the judgment, it called for "referral to the Cassation Public Prosecution to take the necessary action"[29].

APPROACH 5:

Condemning the practice of retaining passports and denying freedom of movement

On 23 June 2014 and 27 July 2016, a summary affairs judge in Beirut, Justice Jaad Maalouf, issued two similar judgments deeming that

[25] "Khutwa Qada'iyya Ula li-Idanat Mumarasat al-Iddi'a'at al-Kadhiba didda Khadimat al-Buyut" (A first judicial step to condemn the practice of false accusations against domestic workers), The Legal Agenda, 4, March 2012.
[26] "Al-Mufakkira Tuqabilu Rulan Tawq bi-Sha'n Idanat Sahib 'Amal bi-Isa'at al-Amana li-Takhallufihi 'an Tasdid Ujur 'Amila Manziliyya" (The Agenda interviews Roland Tawk about the conviction of an employer of breach of trust for failing to pay a domestic worker's wages), The Legal Agenda website, 13 August 2013. Article 671 of the Penal Code states,

[27] "Without protection: How the Lebanese justice system fails migrant domestic workers", Human Rights Watch, September 2010.
[28] Sarah Wansa, "Hukm Jiza'iyy Yarfudu", op. cit.
[29] The Legal Agenda, "Man'an li-l-Zulm al-Muzdawij, Taniyus al-Saghbini Yahsim Muddat al-Tawqif ghayr al-Mashru' Lada al-Amn al-'Amm min al-'Uquba" (To prevent dual injustice, Tanios Saghbini subtracts the period of illegal detention by General Security from sentence), *The Legal Agenda* website, 3 February 2014.
[30] arah Wansa, "A judicial blow", op. cit.; Civil Observatory for the Independence and Transparency of the Judiciary, "Lebanese judge: Passport retention of domestic workers violates international Law", first published in Arabic in *The Legal Agenda*, 44, October 2016, under the title "Qarar Thanin Didda al-Tamyiz al-'Unsuriyy: Jawazat 'Amilat al-Manazil wa-Hurriyyatuhunna Laysat Lana".
[31] *A study of the employers*, op. cit.

employers' retention of domestic workers' passports is a breach of fundamental rights guaranteed in the international agreements that Lebanon has ratified, foremost among them freedom of movement[30]. Justice Maalouf also refuted some of the popular arguments used to justify this practice, notably the fear of losing the money spent in bringing the worker to Lebanon, by deeming that the "deprivation of liberty cannot be a means of ensuring these rights". A study recently issued confirmed the prevalence of this practice, showing that approximately 94 per cent of a representative sample of employers (1,200) stated that they retain the worker's passport[31]. The study also revealed that this practice is coupled not only with actual restriction of freedom of movement but also with depriving the worker of her right to rest and privacy. It found that no more than 25 per cent of employers stated that they allow their workers to go out alone on their weekly day off and that more than 57 per cent stated that the workers work seven days a week (i.e. without any weekly rest). There is also virtually a consensus among employers on refusing workers the right to a private life on the basis that they come to Lebanon only to serve them.

APPROACH 6:

Guaranteeing access to justice

In this regard, we refer to a decision issued by the summary affairs judge in Beirut on 27 July 2016, which contained one very important *whereas* clause. The employer, responding to the demand that she hand over the worker's passport, "questioned" whether a foreigner in violation of residency conditions and the employment contract could resort to the judiciary. In this regard, the decision was categorical. It stated that even if a crime was committed and the sponsor harmed, the foreigner still possesses his or her fundamental rights, and the Lebanese State is still obliged to guarantee their right to access a fair court to fulfil its commitment to the covenants.

This *whereas* clause opens a broad discussion about how this right can be guaranteed under the sponsorship system, wherein a worker who leaves her job for any reason becomes an outlaw liable to be arrested and administratively deported before she can even appear before the judiciary.

APPROACH 7:

Linking discriminatory practices against workers to the State's duty to combat gender-based and racial discrimination

This approach also emerges from a series of decisions issued by Justice Jaad Maalouf. Besides the two decisions he issued on 23 June 2014 and 27 July 2016, concerning the illegality of seizing workers' passports, he also issued an extremely important decision on 13 March 2017 to dismiss a request to repossess a foreign worker[32]. These three decisions constituted an important opportunity to link a number of practices against domestic workers to racial discrimination and to present them as a violation of the International Convention on the Elimination of All Forms of Racial Discrimination.

In these decisions, Justice Maalouf was not content with just explaining that the discriminatory practices against the workers are illegal. Rather, he went as far as to put them in the context of racial and gender-based discrimination. He thereby directed an extremely important critical message to all social groups, especially those that employ domestic workers. This message warned them of the consequences of slipping into racial and gender-based discrimination, namely, the restoration of enslavement as per the legal definition of the concept. To this message criticizing social patterns, Justice Maalouf attached a reminder of the first Article of the Universal Declaration of Human Rights: "All human beings are born free and equal in dignity and rights, and they are endowed with reason and conscience and should act towards one another in a spirit of brotherhood". He seemed to be adding to the message his vision of how society should be.

The third decision pertained to an elderly man's demand to recover a worker from his granddaughter on the basis that she had brought the worker to Lebanon at his request and his expense so that the worker could provide him with domestic service required. The granddaughter had later taken the worker back following a disagreement with her grandfather over a property and subsequently refused to return the worker to him.

APPROACH 8:

Applying laws on domestic violence to protect domestic workers

Although modest, another approach has recently emerged, which considers domestic workers to be among those family members protected by the law on domestic violence. It appeared in a protection order issued in Metn by Justice Antoine Tohme on 23 June 2016. After the judge noted that article 2 of this law does not explicitly mention "servants" as family members, he nevertheless included them in the order, explaining:

> Given the situation of a maid, who leaves her country to stay in her employer's home to provide him service for a given wage, her departure from said home [sic], her attention to the needs of the family members (especially the children), and her cohabitation with that family day and night, she must be considered among the family members in the sense of the domestic violence law, who must be provided protection from violence occurring within the family, in order to preserve her human dignity[33].

This judgment opens a crack in the sponsorship system. Should this approach become commonplace, the worker will be able to benefit from measures of protection against her sponsor (in a restoration of balance to the relationship) without terminating her employment contract, rendering her status illegal, or preventing her from resorting to the courts. Hence, by virtue of this approach, the prevailing formula of "work in Lebanon or demand justice" may witness a significant shift.

While we recognize the importance of the order's content and dimensions, it warrants two reservations. First, under this order, the worker's protection occurs not on the basis that she is a worker but on the basis that she is a family member. This conflicts with efforts to establish her rights as a worker. Though this reservation is important, the order does put a stop to a more pressing policy, namely the use of a split discourse that strips domestic workers of protection under any label. While they were traditionally exempt from the Labour Code on the grounds that their domestic work and residence resembled a role more akin to family members, legislators had no qualms about excluding them from the definition of family when they developed the law on protecting family members from violence. Hence, the law ultimately exempted domestic workers from the definition without strong opposition, not even from feminist groups, who focused on strengthening protections for women against their husbands and relatives. This law defines the family as comprising a group of persons linked by kinship, affinity, or any familial tie without mentioning domestic workers at all.

The second reservation stems from the procedures followed in the aforementioned case. The request to protect the worker came not from her but as part of a request filed by the employer's wife. Similarly, the judge did not interview the worker. Instead, he drew on a notarized letter in which the worker stated that the husband had regularly molested her. In principle, such a letter is not sufficient to ascertain her true wishes. If this approach is adopted, the fear is that we may be establishing a new practice of dehumanizing the worker.

[32] Civil Observatory for the Independence and Transparency of the Judiciary, "Beyond combating modern slavery: Developing the judge's social role", first published in Arabic in The Legal Agenda, 49, April 2017, under the title "Ab'ad min Mukafahat al'Ubudiyya al-Haditha: Hukm bi-Tatwir al-Dawr al-Ijtima'iyy li-l-Qadi)".ondemn the practice of false accusations against domestic workers), *The Legal Agenda*, 4, March 2012.
[33] Civil Observatory for the Independence and Transparency of the Judiciary, "Al-'Amila al-Manziliyya, 'Amila Am 'Adw fi Usra? Ta'liq 'ala Qarar Himaya Didda al-'Unf al-Usriyy fi Lubnan" (The domestic worker: A worker or a family member? A comment on a domestic violence protection order in Lebanon), *The Legal Agenda* website, 9 October 2018.

Chapter 5:
Recommendations

Recommendations to the legislative and executive branches

A Abolish the exemption of domestic work from the Labour Code and add clauses that address the issues related to domestic labour (most notably the issues of inspection of homes and work hours upon request and ensuring privacy).

B Ratify the Domestic Workers Convention, 2011 (No. 189), concerning Decent Work for domestic workers.

C Amend the Penal Code to criminalize employers' retention of workers' identification documents.

D Amend the law on foreigners to: (i) absolve workers whose employers are found to have retained their identification documents of any punishment on the basis that such circumstances constitute an acceptable excuse; and (ii) absolve workers from any punishment for not renewing residency, or not reporting their new address, if they submit a request to resolve their status within six months of the expiry of their residency permit.

E Amend the GDGS's instructions in order to:

i- revise the sponsorship system, specifically the linking of the legality of a foreign worker's residency in Lebanon to the sponsor or to the sponsor's agreement to relinquish sponsorship to another person;
and
ii- grant the worker a time frame to find other employment, especially in cases where the employment contract is terminated by the employer or because of a wrongdoing on the employer's part.

F Activate the Ministry of Labour's role in approving a worker's change of employer, with certain conditions.

G Activate the Ministry of Labour's role in inspecting and investigating domestic workers' cases, just as it does in cases concerning other types of workers in Lebanon.

H Adopt the standard domestic labour contract that the ILO and Ministry of Labour announced in 2012.

I Establish a comprehensive and effective system of legal aid in coordination with the Ministry of Justice and both bar associations.

Recommendations to the judicial branch

RECOMMENDATIONS TO ENSURE THE JUDICIARY'S ROLE IN PROTECTING DOMESTIC WORKERS' RIGHTS

A Issue a circular from the Cassation Public Prosecution ordering the following:

i- (The Public Prosecutor is to refer workers who are in Lebanon with expired residency permits or who have committed any other violation of the laws applied to foreigners to the judiciary and ensure they are heard before asking the GDGS to decide whether to deport them. The aim is to enable the judiciary to determine the reasons for the worker's infraction, the degree to which the employer directly or indirectly caused it, and the appropriateness of extending the worker's residency during the proceedings or exempting her from punishment. All this may prevent what we labelled the "manufacture of trials in absentia", whereby the worker's case is referred to the judiciary after her deportation.

ii- The Office of the Public Prosecutor is to promptly and earnestly supervise investigations in order to avert any form of bullying, threatening, or extortion to prompt the worker to renounce her rights, and they are to examine the validity of such renouncements when they occur.

B Grant workers wishing to file cases before the Labour Arbitration Councils regarding unpaid wages or compensation for termination of the employment contract for which the employer is liable, a reasonable time frame to file the cases and appear before the councils before their deportation.

GENERAL RECOMMENDATIONS TO IMPROVE JUDICIAL PERFORMANCE IN DOMESTIC WORKERS' CASES

A Introduce into the Institute of Judicial Studies subjects underscoring the importance of raising judicial work above social stereotypes and prejudices in cases concerning marginalized groups.

B Guarantee workers a fair trial on an equal footing with employers.

C Perform self-review of the explanations for judgments in order to ensure that judicial work is unaffected by social stereotypes or prejudices. Examples include reconsidering the use of the term "flight", and elaborating explanations in order to develop legal knowledge in this area, and ensure transparency and that this self-review is carried out properly.

D Interpret events and legal provisions in light of the true conditions of domestic work and the way foreigners are treated. For example, given the conditions surrounding domestic work, a worker's flight should not be considered presumptive evidence of theft without examining the possibility that the employer abused or mistreated her.

E Do not use judgment templates.

RECOMMENDATIONS CONCERNING THE OFFICE OF THE PUBLIC PROSECUTOR AND THE CRIMINAL JUDICIARY

A Do not charge or indict without serious evidence, especially as doing so has severe consequences and encourages employers to file arbitrary allegations to deny domestic workers their rights.

B Ascertain whether there are justifying factors, such as force majeure, given that many employers mistreat domestic workers. This is especially important when prosecuting a worker for failure to renew her residency, as her identification documents may have been retained by her employer.

C Ascertain why the workers left their workplaces, especially when they argue that they were subjected to exhausting or degrading work conditions or unpaid wages. Investigate whether the conditions of forced labour or human trafficking are met when there is evidence or indications that it has occurred.

D Do not accept evidence that employers obtained via illegitimate means, especially by violating the worker's privacy.

E Make appropriate judicial decisions that combat the most prevalent phenomena, such as requiring workers to drop litigation against employers so that the latter renounce their sponsorships, employers arbitrarily alleging theft without evidence (false accusations), retaining workers' passports and identification documents, and subjecting workers to forced labour.

F Ascertain whether the broadest extenuating circumstances are met due to unfair work conditions.

RECOMMENDATIONS TO THE LABOUR ARBITRATION COUNCILS

A Take into consideration workers' residency status and the possibility of deportation in order to shorten the time frames of trials and thereby ensure that workers are heard prior to being deported.

B Exercise legal interpretations to ensure fair compensation based on the Code of Obligations and Contracts and commensurate with the damages workers incur as a result of employers' wrongdoings, with the aim of mitigating workers' exclusion from protections under the Labour Code.

ANNEX 1

Brief on the relevant aspects of the Lebanese Judicial System

1 The Lebanese Judicial System is generally inspired by the French Judicial System.

2 The judges are mainly recruited through competition. Most of the candidates are among newly degreed law students. The competition allows them to enter to the institute on judicial studies and to become judges after three years of studies and practical training at the institute. All prosecutors are appointed among judges and are considered as part of the same professional body. Judges might be appointed at any time and alternatively prosecutors, investigation judges or court members

3 The criminal proceedings include three phases:

- The preliminary investigation which is generally implemented by the Judicial Police under the supervision of the prosecutor office. Following this phase, the prosecutor office decides on the legality and basis of the prosecution. In case of prosecution, the prosecutor office might refer the case to an investigation judge or directly to the competent jurisdiction for trial. Only in cases of felonies, the referral to the investigation Judge is mandatory. In other cases, it is an option left to the prosecutor and the referral is generally made when facts and responsibilities are vague and need more investigation. It is worth mentioning that the prosecution is subject in Lebanon to hierarchical organization: the highest prosecutor is the public prosecutor at the level of the Court of Cassation: He might address individual as well as general instructions to all prosecutors in Lebanon. The prosecution at the level of first instance or appeal is ensured by the appellate public prosecutor and his assistants.
- The investigation phase is ensured by a judge of investigation. The investigation judges' decisions are subject to appeal before the accusation chamber. Following this phase, the investigation judge might drop charges or refer the accused person to the competent jurisdiction for trial.
- The competent jurisdiction for trial is the single judge for crimes subject to a maximum sanction of 3 years jail. In the other cases (felonies), the competent jurisdiction is the Criminal Court. Most criminal cases involving domestic workers for theft, flight or other violation of laws on foreigners are handled by single judges. In the event that the domestic worker is deported before the beginning of the trial, she is then tried in absentia. The decisions are then subject to appeal before the Court of appeal.

4 The labor cases are tried in front of the specialized labor court. Although the domestic workers are not subject to the provisions of labor law, all rights arising of the labor contract are subject to the jurisdiction of the labor court. The proceedings before this court last in practice for years despite the short deadlines provided by Law. The labor decisions are subject only to cassation before the Cassation Court.