

LEADERS

For Sustainable Livelihoods

THE LABOUR SECTOR IN LEBANON: LEGAL FRAMEWORKS, CHALLENGES, AND OPPORTUNITIES



FUNDED BY THE EUROPEAN UNION
EU REGIONAL TRUST FUND 'MADAD'
"مدد": الصندوق الائتماني الأوروبي



DRD DANISH
REFUGEE
COUNCIL



TABLE OF CONTENTS

	INTRODUCTION	3
	THE GENERAL LEGAL FRAMEWORK	
1	REGULATING LABOUR RELATIONS IN LEBANON	4
1.1	AN OVERVIEW OF INTERNATIONAL LAWS AND HUMAN RIGHTS INSTRUMENTS GOVERNING THE LABOUR SECTOR AND THEIR INFLUENCE ON LOCAL POSITIVE LAW	5
1.2	AN OVERVIEW OF DOMESTIC LAWS GOVERNING THE LABOUR SECTOR	9
	FORMS OF PROTECTION ENSHRINED IN POSITIVE LAW: ENTITLEMENTS AND GAPS	
2	FORMS OF PROTECTION ENSHRINED IN POSITIVE LAW: ENTITLEMENTS AND GAPS	14
2.1	GUARANTEES AND GENERAL PRINCIPLES IN THE CONTRACTUAL RELATIONSHIP	15
2.2	GUARANTEES AND GENERAL PRINCIPLES UPON TERMINATION OF THE CONTRACTUAL RELATIONSHIP	17
2.3	THE MOST PROMINENT RIGHTS NOT PROTECTED BY POSITIVE LAW	19
	MECHANISMS AVAILABLE TO RESOLVE LABOUR DISPUTES	
3	MECHANISMS AVAILABLE TO RESOLVE LABOUR DISPUTES	22
3.1	LABOUR ARBITRATION COUNCILS	23
3.2	ARBITRATION COMMISSION FOR THE RESOLUTION OF COLLECTIVE LABOUR DISPUTES	25
3.3	THE ROLE OF THE MINISTRY IN DISPUTES ARISING IN THE LABOUR SECTOR	25
4	NATIONAL SOCIAL SECURITY FUND	26
4.1	THE GENERAL SOCIAL SECURITY SYSTEM AND ITS BENEFICIARIES	27
	THE LEGAL STATUS OF FOREIGN WORKERS IN LEBANON	
5	THE LEGAL STATUS OF FOREIGN WORKERS IN LEBANON	31
5.1	DEFINING FOREIGN LABOUR AND THE MOST IMPORTANT RELEVANT REGULATIONS	32
5.2	FORMS OF FOREIGN LABOUR IN LEBANESE LEGISLATION AND TEXTS	33
6	FREE ECONOMIC ZONES	41
6.1	PRIVILEGES AND TAX EXEMPTIONS	42
6.2	IMPACT OF THE FREE ECONOMIC ZONE ON THE RIGHTS OF EMPLOYEES	42
	ANNEX: PROHIBITED FORMS OF LABOUR	43

INTRODUCTION

This study seeks to examine and analyze legislations and regulations governing the labour sector in Lebanon, including the legal frameworks governing social security, as well as addressing some of the problems related to vulnerable groups that do not benefit from several basic rights and guarantees, albeit this is in varying degrees. Plainly, the exclusion of this segment of people from social protections, and the enduring failure to develop fundamental components of social welfare, have further reduced the opportunities for them to participate in the labour market, benefit from social integration, and guarantee for themselves an adequate living standard and social and economic stability.

Before tackling this topic, it is necessary to clarify some points regarding the methodology that we followed and how we have approached the problems involved. In fact, a theoretical survey of the legal texts in force is not sufficient on its own to cover all the aspects of the research, as it quickly becomes apparent that many of them are overlapping, obsolete, and incompatible with the reality on the ground. In addition, employers often resort to practices that are not necessarily based on clear legislative or regulatory texts. Therefore, we have elected to complement the review and analysis of the texts with a practical and field-based approach that reflects the realities of the labour sector and their impact on many groups in society.

The goal is to help tackle some of these problems either through advocacy or through the implementation of certain projects of an economic, social or legal nature that fall within the scope of Oxfam's activities in Lebanon and the region. In each paragraph or section, we will refer to the most pertinent challenges and opportunities, to produce recommendations and proposals.

1

THE GENERAL LEGAL FRAMEWORK REGULATING LABOUR RELATIONS IN LEBANON

1.1 / An Overview of International Laws and Human Rights Instruments Governing the Labour Sector and Their Influence on Local Positive Law

Before addressing the most prominent milestones in international human rights laws and instruments pertaining, directly or indirectly, to the labour sector and social protection, it is important to overview the milestones that allowed the integration of basic rights and freedoms in the legislative and human rights processes in Lebanon.

THE INTEGRATION OF HUMAN RIGHTS IN LEBANESE POSITIVE LAW

Human rights principles were introduced into Lebanese positive law in two stages:

- In the first stage, Lebanon signed up to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), under the law implemented by Decree No. 3855 dated 1/9/1972.
- In the second stage, the Universal Declaration of Human Rights became part of the preamble to the Constitution under Constitutional Law No. 18 dated 21/9/1990, which was enshrined in the second paragraph of the preamble to the Constitution, reading as follows:

“Lebanon is Arab in its identity and in its affiliation. It is a founding and active Member of the League of Arab States and abides by its pacts and covenants. Lebanon is also a founding and active member of the United Nations Organization and abides by its covenants and by the Universal Declaration of Human Rights. The Government shall embody these principles in all fields and areas without exception.”

Thus the notion of basic freedoms and rights emerged in Lebanese positive law in addition to the old notion of general rights and freedoms.

Stage I: Lebanon’s Accession to the International Covenants of 1966

The ICESCR and ICCPR were adopted by the UN General Assembly on December 16, 1966. They are considered the practical instruments of the Universal Declaration of Human Rights adopted on 10 December 1948.

Generally speaking, international treaties adopted between states or through international organizations in accordance with specific mechanisms (the UN, the In-

ternational Labour Organization, the World Trade Organizations, and so on) constitute official sources that serve as a legal reference point in addition to domestic official sources such as ordinary laws.

In the second article of the Code of Civil Procedure, the Lebanese legislature accepted the principle that international conventions supersede ordinary law based on the principle of the 'hierarchy of rules': "The courts shall comply with the principle of the rules of hierarchy. In the event of conflict between the provisions of international treaties and those of ordinary law, the former shall take precedence over the latter."

Consequently, ICESCR and ICCPR, which Lebanon signed up for and ratified, are part of Lebanese positive law and supersede it.

Stage II: Enshrining the Universal Declaration of Human Rights as part of the Preamble to the Lebanese Constitution

The preamble to the Lebanese Constitution affirmed Lebanon's commitment to the United Nations Charter, international charters and the Universal Declaration of Human Rights. This preamble was added to the Lebanese Constitution by Constitutional Law No. 18/1990 (after the Taif Agreement that ended the civil war). Thus, the Universal Declaration of Human Rights was introduced materially into the Lebanese legal system after it became part of the preamble in 1990.

The Constitutional Council of Lebanon ruled fourteen months after its formation that the preamble was part of the Constitution, merging the preamble, together with the Universal Declaration of Human Rights, with the text of the constitution. This ruling was affirmed more than

once thereafter, with the Universal Declaration of Human Rights and the two international covenants complementing it becoming part of the 'constitutional bloc', which is the basis used when considering the constitutionality of laws.

These basic milestones in the evolution of the legislative process in Lebanon, have had a direct impact on litigation. They cleared the way for making grievances to protect fundamental principles and freedoms that are not explicitly enshrined in the local law. In other words, they allowed disputing parties to include in their legal arguments, in the context of lawsuits or appeals, principles and rights set out in international treaties and all the instruments enshrined in international human rights law. Thus, the judiciary acquired an essential role in protecting fundamental rights and freedoms, especially in the context of 'strategic litigation'. Over the recent period, there have been several initiatives that successfully advocated and safeguarded rights and secured protections for economically and socially marginalized groups in Lebanon as a result.

International Conventions Ratified by Lebanon

In addition to enshrining in its constitution the Universal Declaration of Human Rights as well as the ICESCR and ICCPR, Lebanon has ratified several international texts and charters. Together, these constitute essential human rights instruments that can help enshrine and activate principles and rights not addressed by national legislations or in some cases, that national legislations contradict. Although most of these instruments are not directly related to the labour sector and workers' rights, with the exception of those issued by the International Labour Organization (ILO)¹, the protection frameworks that

¹ A UN specialized agency which seeks the promotion of social justice and internationally recognized human and labour rights. It represents governments, workers, and employers in the member states. <http://www.ilo.org/beirut>

they provide can be essential means of strengthening social protections, based on the following:

- The Universal Declaration of Human Rights, which has become an integral part of the Lebanese Constitution: In addition to the fundamental rights it enshrines, such as the right to life, liberty security of the person, equality and freedom from slavery and forced labour, it guarantees the right to security in the event of unemployment, the right to equal pay for equal work, the right to form and join unions, the right to rest and leisure, including reasonable limitation of working hours, the right to work in safe and fair conditions, and the right to an adequate standard of living.
- The International Covenant on Civil and Political Rights (ICCPR), Article 8 of which prohibits slavery and human trafficking;
- The International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 6 of which enshrined the right to work; Article 7 the right to the enjoyment of just and favorable conditions of work, including the right to rest, leisure and reasonable limitation of working hours; Article 8 the right to form and join trade unions; Article 9 the right to social security including social insurance; and Article 11 the right of everyone to an adequate standard of living for themselves and his family.
- The International Convention on the Elimination of All Forms of Racial Discrimination, Article 5 of which enshrines the right to equality and freedom of movement;
- The Convention on the Rights of the Child, which, under article 32, enshrines the right of the child to be protected from economic exploitation and from performing any work that is likely to be dangerous or interfere with the child's education or to be detrimental to the child's health or its physical, mental, spiritual or moral development. The Convention also compels states to take appropriate measures to establish a minimum age for the admission of children to employment, to establish an appropriate system of working hours and appropriate regulation of the hours and conditions of employment, and impose appropriate penalties or other sanctions to ensure effective enforcement of this article.
- The International Convention on the Elimination of All Forms of Discrimination against Women, Article 11 of which enshrines the right to work, equal hours of work and the right to maternity leave, as well as equal pay for equal work;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which bans all forms of torture and other cruel, inhumane or degrading treatment or punishment and safeguards human dignity;
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which prohibits trafficking in persons, especially women and children, and stresses its suppression and punishment.

In addition, Lebanon joined the ILO in 1948. The ILO Regional Office for Arab States was established in Beirut in 1976, and was reopened after the end of the Lebanese civil war, in 1995.

The ILO issues a wide range of international conventions and instruments that can help regulate the labour sector, define criteria for conditions of work in certain areas or sectors, or set standards in relation to social groups that require special protections, such as domestic workers and child labourers, as well as promote equality between women and men in terms of remuneration, promotion and other work-related matters. Moreover, Lebanon's accession to the ILO allows filing complaints before the organization, which has the authority to consider them, conduct investigations, and make recommendations².

This happened in 2012, when the National Federation of Worker and Employee Trade Unions in Lebanon (FENASOL) lodged a complaint against the Lebanese government with the ILO Committee on Freedom of Association, requesting the Lebanese State to ratify Convention No. 87 issued by the ILO related to the Freedom of Association and Protection of the Right to Organize, demanding such right should not require obtaining a license from the Ministry of Labour and replacing this with giving the ministry prior notice pursuant to the principle of the freedom of assembly³.

وبالفعل، أصدرت ضمن اللجنة تقريرها السنوي الصادر توصية صريحة مفادها "أن لجميع العمال حق إقامة نقابات والانضمام إليها وأن على الحكومة أن تفسر كيف للعمال الذين لا يخضعون لقانون العمل أن يمارسوا جميع حقوقهم النقابية وأن تقوم بالتعديلات لتأمين تلك الحقوق لهم إذا تبين أنهم لا يتمتعون بها"⁴.

It should be recalled that although Lebanon has not ratified other ILO conventions, and regardless of the reasons, the Lebanese state is obliged to respect the fundamental rights enshrined in them as long as it remains a member of the ILO. The key conventions ratified by Lebanon and the most prominent rights enshrined in them are summarized as follows:

- Convention No. 98 on Freedom of Association and Collective Bargaining (1977);
- Conventions Nos. 29 and 105 on the Elimination of Forced Labour and Compulsory Labour (1977)
- Conventions Nos. 100 and 111 on Combating Discrimination in Employment and Occupation (1977);
- Conventions Nos. 138 and 182 on Minimum Age for Admission to Labour and Worst Forms of Child Labour (2003 and 2001);
- Convention No. 87 on Freedom of Association and Protection of the Right to Organize (2012), with reference to the fact that the Government of Lebanon expressed reservations regarding removing the requirement of prior authorization from the Ministry of Labour when establishing a trade union.

² Article 26 of the ILO constitution http://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO#A37

³ Lebanese labour law requires obtaining a license from the Ministry of Labour before establishing a trade union. It also excluded some categories of workers from the right to

form a union, especially those excluded from the scope of the Labour Law.

⁴ Besan Tai, "Seeking to establish a trade union for domestic workers, the Ministry of Labour responds to trade union demands with silence", Legal Agenda No. 9 <http://legal-agenda.com/article.php?id=401>

1.2 / An Overview of Domestic Laws Governing the Labour Sector

In this chapter, we review the most salient legislations governing the labour sector and the most important milestones of their development. We have dedicated separate chapters to address other issues, such as social protection and foreign labour, given their complexity.

TYPES OF EMPLOYMENT CONTRACTS

A number of laws regulate various aspects of private sector employment, the most important of which are the Lebanese Labour Law (1946) and the Social Security Law (1963) and their supplementary decrees, in addition to Decree No. 7993 on Trade Unions (1952) and Decree No. 1756 regulating the Employment of Foreign Persons (1964) and the Law on Collective Labour Contracts, Mediation and Arbitration (1964).

In general, the Labour Law aims at protecting the economically weaker party in the contractual relationship, that is, the wage earner. For this reason, its provisions are considered to be linked to the public order, which means that no condition or restriction that would diminish the rights of the workers enshrined in the law itself can be agreed in any contract. In the same vein, Article 43 of the Labour Law grants workers the right to benefit from the “provisions and regulations that are most beneficial to them when/if these provisions and regulations are amended”.

The Lebanese Labour Law did not define employment contracts. However, according to the Law of Obligations and Contracts (i.e. the General Civil Code of 1932), three basic requirements must be present to deem the contractual relationship one of employment (Article 624), namely, work, wage, and legal ‘economic subordination’. The latter constitutes the “fundamental criterion” that sets apart employment contracts from other contracts, such as project contracts or vendor contracts⁵.

This is due to the fact that the employee under this contract is subject to the supervision of the employer. Accordingly, for example, the employee is obligated in performing the work themselves without being entitled to commission another person to undertake it. On this basis, consultants working on specific projects are excluded from the Labour Law, because their contracts with the other party are considered project contracts given the absence of the subordination component represented in the direct supervision of the employer of the performance of the work⁶.

⁵ Judge Mohammed Ai al-Shukhaibi: *Al-Wajiz Fil Tashri' al-Ijtimai' al-Lubnani*, Sader Legal Publications, 1998, p.77

⁶ Ibid.

While Article 625 of the Obligations and Contracts affirmed in principle the freedom of setting the content of such contracts⁷, Article 626 stipulated that the contract should be issued by a competent person. Articles 627 and 628 of the Law of Obligations and Contracts invalidate any contract whose duration is for life, or any agreement whose purposes are “materially impossible” or “acts that violate the law, morals, or public order.” Article 12 of the Labour Law provides that “an employment contract may be either oral or in writing, and in both cases, they are subject to the provisions of ordinary law (...).” It should be noted here that it would be desirable to have the contracts in writing in order to clearly set out the employee’s rights, working hours, leave, promotion, and so on, and to facilitate clarity in the event of a dispute between the parties to the contract.

Lebanese law has distinguished between individual employment contracts and collective employment contracts: under the Collective Employment Contracts, Mediation and Arbitration Law (1964), a contract is a collective employment contract if an agreement to govern the contractual relationship and the terms of employment is concluded between a party representing one or more workers trade union and another party, who may be an individual employer, a group of employers, a representative of one or more professional body or union of employers.”

Collective employment contracts are designed to regulate the conditions of employment stipulated in individual contracts in a particular sector (e.g., banks, hospitals, etc.). Often, these contracts promote equality in contracting and reduce economic imbalance between the two parties; they may also empower employees to negotiate issues like paid leave, working hours, and other benefits. Some of these contracts have become akin to standard texts resembling bylaws for certain sectors, based on negotiations⁸.

CATEGORIES EXCLUDED FROM LABOUR LAW PROTECTION

Article 7 of the Lebanese Labour Law excluded certain groups from its protections and guarantees (minimum wage, rules governing arbitrary dismissal, the number of working hours, annual leave, and other public order provisions). The groups stated in the text of the article include:

- Domestic workers.
- Agricultural unions that have nothing to do with trade and industry, which are subject to special legislation.
- Institutions where only members of the family are employed by the father, mother or guardian.
- Government departments and municipal bodies with respect to employees, and day and temporary workers who are not covered by the personnel system and who are subject to special legislation.

In the chapter on foreign employment, we will highlight the main problems and the extent to which these exclusions affect the legal, economic and social status of these groups.

⁷ Article 625 of the Law of Obligations and Contracts

⁸ Judge Mohammed Ai al-Shukhaibi: *Al-Wajiz Fil Tashri' al-Ijtimai' al-Lubnani*, Sader Legal Publications, 1998, p.263

THE RIGHT TO FORM AND JOIN TRADE UNIONS AND THE ISSUE OF REPRESENTATION OF EMPLOYEES AND WORKERS

General Provisions

In principle, the constitution of Lebanon guarantees trade union freedom by enshrining the right to assembly as explained above. In reality, trade unions emerged in Lebanon even before the Associations Law was passed, with the formation of the Association of Railway Workers in 1908, followed by the establishment of the American Printing Press Association in Beirut in 1912 then the Syndicate of Printing Presses in 1913 under this law. The trade unions enjoyed the same freedoms that allow the simple establishment of associations, until legislators restricted this freedom, arguably because these blocs could threaten the economic, social, and political interests that govern the country⁹.

The Lebanese Labour Law was enacted in 1946. Contrary to its fundamental purpose of “protecting, promoting, and developing professions, defending their interests, and working towards their advancement in all economic, industrial and commercial aspects”, the legislator attached a special legal system governing trade unions. Although the law enshrined the principle of freedom of association (freedom to unionize or not to unionize), and the principle of the multiplicity of trade unions within the same profession, as well as granting guarantees to employers against employers, the Labour Law required for the establishment of trade unions the prior authorization of the Ministry of Labour, after consulting with the Ministry of Interior¹⁰.

The Lebanese Labour Law defines a trade union as a “group of employees or employers” belonging to one of the four categories of trade unions enumerated in Article 5 of the Labour Law: industrial trade unions, commercial trade unions, agricultural trade unions, and trade unions of the liberal professions. The law devoted a special section regulating the establishment and membership of trade unions¹¹. However, the legislator distinguished between public and private sector workers, and between Lebanese and foreign workers in terms of the right to establish trade unions.

Forms of Discrimination and the Issue of Representation

Lebanese laws, in terms of the provisions related to establishing trade unions, distinguishes between Lebanese public sector and private sector workers, and between Lebanese workers and foreign workers.

On the one hand, Article 15 of Decree No. 15703 of 6/3/1964¹² prohibits public sector employees from establishing or joining a trade union, engaging in industrial action, organizing petitions, and publishing articles or speeches on any issue¹³.

On the other hand, foreigners are not allowed to establish trade unions in Lebanon. Article 92 of the Labour Law expressly requires those who want to join trade unions

⁹ See Mohammed Ali Abdo, *Lebanese Labour Law A Comparative Study*, Zain Legal Publications, p.274

¹⁰ Articles 86, 87, and 88 of the Lebanese Labour Law.

¹¹ Section of the Labour Law

¹² This clause was added under Law 144 dated 6/5/1992.

¹³ Article 15 of Decree 15703 dated 1964: “The employee shall be prohibited from carrying out any act barred by the laws and regulations in force, in particular:

- To deliver or publish without written permission from the head of his department, speeches, articles, statements or writings in any matter whatsoever.
- To join professional organizations or trade unions.
- To strike at work or incite others to strike.”

to be Lebanese citizens; however, they are allowed to join unions if other requirements are met – practicing the profession, being 18 or older, and not being convicted of major offenses – if they are entitled to work in Lebanon (Though this raises other problems which we shall address). In this case, the foreign worker is not entitled to vote or be elected to the trade union council, but can delegate a person to represent him or her¹⁴. In addition, Article 93 of the Labour Law requires including a “nationality card” in union membership applications, which would make it impossible for stateless persons to establish or even join a trade union¹⁵.

We note that some regulatory texts issued after the enactment of the Labour Law and that are still in force, distinguish between trade unions on the basis of subjective and vague criteria or without any criteria. For example, in successive decrees, the authorities specified which the trade unions are most representative of employers and employees without mentioning the criteria that led to the classification¹⁶. In truth, this representative designation bestows certain powers on these bodies that guarantee certain rights, such as participation in the composition of the board of directors of the National Social Security Fund (NSSF), as well as privileges to conclude collective employment contracts.

It should be noted that some groups monitoring the work and performance of the General Confederation of Lebanese Workers (CGTL) has addressed several questions and criticisms to the latter, questioning its representative capacity and the extent of its commitment to the interests of workers in Lebanon, especially in light of positions it has taken on issues like the salary scale [TN: public sector wage hikes] and universal healthcare coverage in recent times¹⁷.

¹⁴ Article 92 of the Labour Law.

¹⁵ Article 93 of the Labour Code: “The application for membership shall be submitted to the union council and shall be accompanied by a nationality document, a work certificate attested by the Social Affairs Department indicating that the applicant is practicing the profession of the union. The council of the union shall make its decision

to accept the application or reject it by secret ballot within fifteen days”.

¹⁶ For example, compare Decree No. 390 of 25/03/1983 and Decree No. 2390 of 25/5/1992, which specify the most representative bodies in terms of the composition of the

Board of Directors of the Social Fund: the first listed 7 professional bodies that are more representative of the employers, and the second added an eighth body – the Association of Insurance Companies in Lebanon, bearing in mind that the two texts considered that the General Confederation of Lebanese Workers (CGTL) is the most representative of workers on all Lebanese territory.

¹⁷ Mirai Najmullah Shukr, Search for the roots of hierarchical organization in the labour movement: Where does the General Confederation of Lebanese Workers draw its representative status from? The Legal Agenda, 31/7/2012

Limited Legislative Reforms

The regulations governing the labour sector are often outdated, redundant, and in some cases contradictory or incomplete as we will show when we tackle some of the problems in the following paragraphs. The reforms introduced by the legislator to this day, despite their importance, are minor and do not respond to the necessities and needs of this sector today, notably the need to address soaring unemployment among Lebanese youth according to an ILO report from 2014¹⁸, and the need to implement the ILO's recommendations regarding the development of trade unions and conditions for workers¹⁹, as well as enact urgent radical reforms to reactivate arbitral councils and ensure their independence²⁰. The most prominent amendments to the labour laws to date today are as follows:

- 1975: Amendment of Article 50 of the Labour Law to guarantee the right of workers to compensation for arbitrary dismissal in indefinite employment contracts by:
 1. Introducing a notice clause for both parties to the contract (employer / employee) to inform the other party of the intention to terminate the contract in writing;
 2. Prohibiting employers from dismissing employees who are elected members of trade union councils before

consulting arbitration councils (Article 50, paragraph e);

- 2000: Amendment of Article 26 of the Labour Law to ensure that there is no discrimination between women and men in regard to “the type of work, the amount of remuneration, employment, promotion, vocational training and clothing”;
- 2010: Amendment of Article 59 of the Labour Law exempting Palestinian refugees from paying fees for work permits and ensuring equal treatment for them;
- 2014: Amendment of Article 28 increasing maternity leave from 7 to 10 weeks; bearing in mind that ILO standards recommend that the period of leave should not be less than 12 weeks, and noting that men do not benefit from paternity leave.
- 2017: Amendment of Article 9 of the Social Security Law allowing retirees to benefit from the provisions of sickness and maternity in the NSSF.

¹⁸ <http://m.assafir.com/Article/1/336695>

¹⁹ http://www.ilo.org/beirut/events/WCMS_535069/lang--ar/index.htm

²⁰ <http://legal-agenda.com/uploads/%D8%AF%D8%B1%D8%A7%D8%B3%D8%A9%20%D8%AD%D9%88%D9%84%20%D9%82%D8%B1%D8%A7%D8%B1%D8%A7%D8%AA%20%D9%85%D8%AC%D8%A7%D9%84%D8%B3%20%D8%A7%D9%84%D8%B9%D9%85%D9%84%20%D8%A7%D9%84%D8%AA%D8%AD%D9%83%D9%8A%D9%85%D9%8A%D8%A9%20%D9%81%D9%8A%20%D9%85%D8%AD%D8%A7%D9%81%D8%B8%D8%A7%D8%AA%20%D8%AB%D9%84%D8%A7%D8%AB.pdf>

2

**FORMS OF PROTECTION
ENSHRINED IN POSITIVE LAW:
ENTITLEMENTS AND GAPS**

2.1 / Guarantees and General Principles in the Contractual Relationship

THE CHARACTERISTICS OF THE CONTRACT OF EMPLOYMENT AND THE CONCEPT OF PUBLIC ORDER

In most countries of the world, texts regulating the labour sector are considered to be part of the public order, given the close link to the sovereignty of the state and its economic and social role. Indeed, such provisions of a public nature would enshrine social protection – the importance of which emerges particularly when the right to dismiss workers is abused, and the private and public rights of workers are restricted – and mandatory observation of provisions governing working conditions and limiting forms of exploitation.

The following are some of the most prominent terms and conditions enshrined in the legal texts and which are considered to be of the public order. That is, the parties to the contractual relationship must abide by them. They may not be modified or amended except in cases that enhance the status of the employee or grant him / her additional privileges or improve working conditions.

Duration of Employment

Article 31 of the Labour Law sets the maximum number of working hours during the week at 48 hours, which can be reduced in the case of “exhausting or hazardous work” or increased “in some cases, such as in restaurants and cafes by decision of the Minister of National Economy.” Article 36 stipulates that all workers should receive weekly rest periods of at least 36 hours without interruption. Article 34 of the same law stipulates that workers should benefit from at least one hour of rest per day if “working hours are above six for men and five for women” and 9 consecutive hours of rest every 24 hours for rest except in cases where circumstances dictate otherwise as long as this does not violate the maximum limits stated above.

Paid and Sick Leave

Article 39 sets annual leave at 15 days for employees who have been employed at the institution for at least one year, before increasing in number according to years of service. Article 40 of the Labour Law gives the workers the right to benefit from sick leave in cases of illnesses and accidents other than those that are occupation-related, but the article links the number of days that can be taken as sick leave and the amount of remuneration paid to the duration of service as follows:

- Half a month, with full pay, and half a month, with half pay, for the employee who spent between three months and two years in service;
- One month with full pay and one month with half a month’s pay for the employee who spent between two and four years in service;
- One month and a half with full pay and one month and a half with half pay for employees who spend between four and six years in service;
- Two months with full pay and two months with half pay for employees who spend between six and ten years in service;
- Two months and a half with full pay and two months and a half with half pay for employees who have been more than ten years in service.

Sick leaves are given on the basis of a report from the doctor who has treated the employee or the company doctor. The employer has the right to refer the report to another doctor for validation (Article 41 of the Labour Law). Finally, Article 38 gives workers the right to two days of paid compassionate leave in the event of the death of a parent, spouse, child, grandchild, or grandparent.

Minimum Wage

Article 44 of the Labour Law stipulates that the wage may not be lower than the minimum wage set by a decree issued by the Lebanese Council of Ministers upon the recommendation of the Minister of Labour. It is clear that to date, the authorities in Lebanon do not rely on an objective and scientific mechanism based on facts and statistics to establish the minimum wage in a manner commensurate with the cost of living and the economic and social reality of Lebanon, which severely restricts the scope of social and economic protections. Despite the high cost of living and rising prices in recent decades, the minimum wage has been amended only three times during the last twenty years and at rates that are not at all commensurate with the living and economic requirements as follows:

- The minimum wage between 1996 and 2007 was set at 300,000 LL. only;
- Adjusted in 2008 to 500.000 LL;
- The last amendment was in 2012, where the minimum wage became 675.000 LL.

The main problem in this area is the following: First is the absence of any objective, scientific mechanism or criterion on the basis of which wages are hiked according to statistics and figures that reflect reality. The second and more serious issue is the difficulty of enforcing the minimum wage, even though it is inadequate, in informal sectors, where, as is well known, the need for a minimum wage is more crucial because of the legal, economic and social vulnerability of the groups working informally.

FORMS OF PROTECTION FOR SOME VULNERABLE GROUPS

Provisions on Child Labour

The law sets the minimum age for the employment of juveniles at 13 years (Article 22). It prohibits the employment of juveniles in industrial projects, and in strenuous or hazardous work before they complete 15 years of age. It prohibits the employment of juveniles below 16 in work that is inherently dangerous or that poses a threat to life, health or morals (Article 23). The law also places the responsibility on the employer to verify the age of would-be workers before employment (Article 24).

At a late date, with the development of the labour market and the growing complexity of the issue of child labour, Decree No. 49/1 dated 6/2/1997 and 898 dated 29/09/2012 introduced additional age categories and expanded the types of professions prohibited to juveniles. In the enclosed table, (annex1) we summarize these professions set against age groups.

PROVISIONS ON FEMALE WORKERS

The Labour Law introduced special provisions for women. In addition to maternity leave and the prohibition of termination of contracts during pregnancy, the legislator introduced a fundamental reform of Article 26 in 2000 to prohibit employers from “discrimination between workers on the basis of gender with regard to the type of work, pay, employment, promotion, vocational training, and clothing.” However, despite the importance of this step, it has not been accompanied by any deterrent and punitive mechanisms to effectively reduce these unfair practices against women in the workplace. As with child labour, Article 27 of the Labour Law prohibits the employment of women in a number of industries and businesses listed in Annex 1 of the Labour Law.

2.2 / Guarantees and General Principles Upon Termination of the Contractual Relationship

THE DISTINCTION BETWEEN CONSENSUAL AND ARBITRARY TERMINATION OF EMPLOYMENT

The Lebanese Labour Law (after amending Article 50 in 1972) has established a number of guarantees that would provide protection to workers in case of termination of the employment contract. The law gave the right to the parties to the contract (the employer and the worker) to terminate the employment contract at any time, provided that a written notice is given within a period of time determined on the basis of the period of execution of the employment contract as follows:

- One month, in the event the contract of employment has been in force for three years or less,
- Two months for contracts in force more than three years and less than six years
- Three months for contracts in force more than six years and less than twelve years
- Four months for contracts in force for twelve years or more

It is noted that Article 52 of the Labour Law prohibits sending a notice of dismissal in three cases:

- To pregnant women starting from the fifth month of pregnancy.
- To a woman on maternity leave
- To all employees during normal or sick leave.

In addition to these cases, the law addressed cases of arbitrary or unjustified termination of the contract of employment (whether by the employer or the employee) and provided for the right of the parties to request material compensation for the termination, estimated by arbitration tribunals.

This article enumerates the cases in which dismissal by the employer is considered arbitrary as follows:

- If the grounds are unacceptable or not related to the worker's qualification or performance within the institution or the sound management of the institution and its work
- If the grounds pertain to the employee's membership or non-membership of a particular trade union or for carrying out a legitimate trade union activity within the limits of the laws and regulations applicable, or of a collective or private employment agreement,
- If the grounds pertain to the employee running for elections or being elected as member of a union's office or as workers representative in the given company for the duration of that mission,
- If the grounds pertain to the employee lodging in good faith a complaint to the competent departments regarding the application of the provisions of this law and the texts issued pursuant to it, or filing a lawsuit against the employer accordingly, for the exercise of his or her personal or public freedoms within the scope of the applicable laws.

On the other hand, the same article identifies cases where the employer is entitled to terminate the contract without compensation or prior warning as follows:

- If the employee impersonates a false identity;
- If the employee was employed on an probational basis and did not satisfy the employer within three months of being employed
- If the employee is found to have committed a deliberate act or omission intended to harm the employer's

material interests. However, the employer invoking these grounds must inform in writing the Social Affairs Department of this violation within three days of verification;

- If the employee, despite the written warnings directed at him or her, commits a major violation of the internal rules of procedure three times in one year;
- If the employee is absent without a legitimate excuse more than fifteen days in one year or for more than seven consecutive days.

In this context, it should be noted that the law addressed cases where the employee is entitled to terminate the contract before the expiry of the contract term and without a prior notice:

- If the employer or his/her representative has misrepresented the terms of employment at the time of making the contract, but the employee is not entitled to invoke this right after thirty days of entering service.
- If the employer does not fulfill his or her obligations towards the employee in accordance with the provisions of this law.
- If the employer or his/her representative commits an offense in breach of morals against the employee or a member of his or her family.
- If the employer or his/her representative commits acts of violence against the employee.

2.3 / The Most Prominent Rights Not Protected by Positive Law

THE DISTINCTION BETWEEN CONSENSUAL AND ARBITRARY TERMINATION OF EMPLOYMENT

Job Cuts

Paragraph e of Article 50 of the Labour Law authorizes employers to terminate “some or all contracts of employment in the enterprise if a force majeure or economic or technical conditions require such termination, such as reducing the size of the enterprise, replacing a production system with another, or ceasing to work permanently.” The article stipulates that employers must notify the Ministry of Labour and Social Affairs one month in advance of the intention to terminate such contracts. The employer must consult with the Ministry to establish a final schedule for the layoffs, taking into consideration the seniority of the workers in the institution, their specialties, their ages, their family and social statuses, and finally the means necessary for their re-employment.”

Compensation in Cases of Arbitrary Termination

As noted above, Article 50 of the Labour Law provides the right to compensation for both the employer and the employee in case the employment contract is terminated unlawfully. The labour arbitration council was given the power to estimate compensation according to criteria set by the same article, bearing in mind that the maximum amount of compensation required of an employee, in the event he or she terminates the contract arbitrarily, cannot exceed four months’ wage, while the maximum amount of compensation required from employers to their employees in the event of arbitrary dismissal is set at 12 months’ wage.

The first observation we make in this context is that the Lebanese Constitution and the Labour Law did not enshrine the right of individuals to employment on an equal footing or to unemployment compensation, as is the case of most advanced legislations and in conformity with the general principles and international conventions issued to date. In this regard, we note the absence (or non-activation) of the bodies and mechanisms that were established with a view to combat unemployment in Lebanon. In particular, we are referring to the inaction of the National Employment Office (NEO), despite the worsening unemployment problem we are witnessing today. The NEO was established in 1977 under Decree No. 80, which subordinated it to the oversight of the Ministry of Labour, noting that it enjoys both legal personality and financial and administrative independence. In accordance with Article 3 of the decree, the NEO “assumes the duties of” the design and implementation of employment policy in Lebanon in general and, in particular, handles the following:

- Establishment and supervision of employment offices in Beirut and all Lebanese regions.
- Combating unemployment by securing a high rate of employment.
- Improving the organization of the labour market.
- Promoting projects that impact on the labour market.
- Helping develop the skills of the labour force.
- Conducting studies and research aimed at determining the general employment policy.

In this context, the board of directors of the NEO included parties that are supposed to represent the parties concerned. In addition to the Minister of Labour and the Director General of the Ministry, the NEO includes 5 members representing employers in various economic sectors, 5 members representing the CGTL, and 3 members representing the Lebanese University, the Directorate of Professional and Technical Education, and the Center for Research and Development respectively. However, the work of the NEO was never activated in a serious spirit since its inception. Its first central office in Beirut was not established until 1995 and later on in Tripoli and Sidon²¹. The successive governments also failed to provide the NEO with the necessary human and material resources. In 2011, there was a 70 percent vacancy rate in the institution, whose role was limited to “acting as mediator between job applicants and the job offerors²².”

Note that Article 8 of the decree establishing the NEO prohibited the establishment of private employment offices or offices carrying out activities that may fall within the functions of the NEO. However, this article has not been respected. Indeed, hundreds of private recruitment offices operate in Lebanon today, as a result of ‘clientelist’ policies adopted and enforced by all political parties in Lebanon²³.

Discrimination

Separately, the Lebanese legislator by the time of writing had not offered a clear and explicit definition of the principle of non-discrimination and how to condemn discriminatory and racist acts and statements, regardless of their origins or targets.

With the exception of the preamble to the Lebanese Constitution, which enshrines the principles of equality and non-discrimination among Lebanese citizens²⁴, Positive Law still does not have explicit provisions condemning and punishing discrimination against individuals, regardless of circumstance or context. In particular, legislations regulating the labour sector do not contain any reference to this matter. It also appears that the legislator intervened only in exceptional cases, either in the interest of the religious communities - under the pretext of maintaining civil peace and not undermining the prestige of the state²⁵, or to prevent sectarian and racial tensions by restricting freedom of expression in publications, films, and theatrical works²⁶.

Clearly, the absence of these rights and principles in the legislations, and of provisions and protections related to discrimination, are a priority issue in light of the social, economic, and legal reality in Lebanon today. Moreover, the absence of these provisions constitutes a blatant

²¹ Sahar Nasser, the National Employment Office... Unemployed, Al-Akhbar, 4/7/2007.

²² Summary of an interview conducted by Al-Safir with the NEO director general on 31/10/2011, retrieved from <http://lkdg.org/ar/node/6641>

²³ Sahar Nasser, the National Employment Office... Unemployed, Al-Akhbar, 4/7/2007.

²⁴ Article C states: “Lebanon is a parliamentary democratic republic based on respect for public liberties, especially the freedom of opinion and belief, and respect for social justice and equality of rights and duties among all citizens without discrimination.”

²⁵ The Lebanese Penal Code referred in only two articles to the condemnation of racial or sectarian strife: the first under the section related to undermining the prestige of the state and patriotic sentiment. Anyone residing in Lebanon

during wartime or when war expected and engages in propaganda aiming to undermine patriotic sentiment or stirring sectarian or racial strife shall be detained (Article 295 of the Lebanese Penal Code). The second article falls in the chapter on crimes that undermine national unity or disturb communal peace, where it condemns “every act, every writing and every speech intended to provoke sectarian or racial strife or promote conflict between religious communities and components of the nation” (Article 317 of the Lebanese Penal Code).

²⁶ In the same vein, the legislator condemns literary, artistic and journalistic works that “awaken racial and religious prejudices” either through pre-censorship of such works for film and drama, or through prosecution for literary and journalistic publications. Here too, the legislator’s keenness to condemn any act or writing that would harm the interests of religious sects alone, but not others, is evident.

violation of the Lebanese Constitution and Lebanon's international commitments.

We will address legal discrimination in the context of employment from multiple angles. First, we will refer to the categories of individuals who are explicitly or implicitly excluded from the guarantees enshrined in the Labour Law; then we will address discriminatory legal restrictions imposed on public jobs, and de-facto discrimination against women in the labour market, to examine the extent to which the legislator should intervene to put an end to this marginalization. Finally, we shall overview discriminatory restrictions on the right to form or join trade unions given the direct impact these bodies have on the policies adopted by the public and private sectors.

As mentioned above, the Labour Law was amended on limited occasions since its enactment. Consequently, some basic rights and contractual relations remain outside the scope of the Labour Law's protections. To date, the right of protection against unemployment, that is the right of every individual to work, remains outside the framework of the Labour Law, and the same applies to protection against all forms of harassment in the workplace (sexual harassment, verbal, racial).

This is the focus of a draft law being discussed today before the Lebanese parliament²⁷, bearing in mind that the *Nasawiya* collective submitted a draft law against harassment in the workplace in 2012. There is also the issue of protection from racial discrimination, particularly at the level of treatment of Lebanese workers and foreign workers, in terms of: equal treatment, the right

to form unions, run in union elections, and other forms of discrimination that we address in detail in the section on foreign workers.

It is also noted that the Labour Law has not been updated to keep up with the development of contractual relations and the labour market. For example, consultancies have become commonplace, especially in the non-governmental sector, but this type of contracts is not considered an employment contract under the Lebanese law, and therefore, its parties are not protected by the Labour Law.

In this regard, we draw attention to the fact that the Lebanese State has refrained from ratifying a number of important conventions, and therefore the rights enshrined in them are yet to be guaranteed by Lebanese positive law, most notably:

- Migration for Employment Convention No. 97, which provides a basis for equal treatment between national workers and migrants under normal circumstances;
- Migrant Workers Convention No. 143, which was drafted at a time of growing concern about the number and rights of migrants working in abusive conditions;
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families guaranteeing that every child of a migrant worker has the fundamental right to education on the basis of equal treatment with nationals of the states concerned; in addition to the prohibition of restriction on access to government schools because of the irregular residence or employment of either parent, or because of the irregular situation of the child's residence in the state of employment.

²⁷ Rania Hamzah, Anti-Harassment Law withdrawn from parliament: Schadenfreude, mockery, and fear of slippery slopes, Legal Agenda website, 20/1/2017.

3

MECHANISMS AVAILABLE TO RESOLVE LABOUR DISPUTES

Mechanisms for resolving disputes arising from labour relations and social security issues can be divided into administrative control mechanisms under the supervision of the ministry and its subsidiary bodies, and those of a judicial nature considered before special councils that are the sole competent body to rule on these cases.

3.1 / Labour Arbitration Councils

Article 77 of the Labour Law provides for the establishment of a labour arbitration council in the center of every Lebanese governorate, authorized to deal with individual labour disputes arising from the application of the Social Security Law, as well as “differences arising from the determination of the minimum wage” and disputes arising from labour emergencies.

Labour arbitration councils constitute special judicial bodies with exclusive jurisdiction to adjudicate disputes in view of the latter’s nature and considerations of effectiveness and specialization. The composition of these councils is also different from civil or criminal judicial bodies. In addition to a judge, they include a representative of the workers, a representative of the employers, and a representative of the government and the Ministry of Labour. Representation of the conflicting parties in the council would ensure a social and economic approach to the problem presented in parallel with the purely judicial and legal approach.

The Labour Law allocates a number of sections and provisions to regulate the procedures of litigation before these councils. The following are some of the most prominent of these provisions and their effects on the course of the dispute. In this regard, it is noted that the Lebanese Penal Code, which was enacted before the Labour Law, criminalizes the act of abstaining from implementing the decisions of the labour courts under the provisions of Article 344, and in some cases this is punishable by up to a year of imprisonment.

FACILITATING ACCESS TO LABOUR COUNCILS

Because labour issues are linked to the individual's livelihood and the extent of their ability to continue to meet their needs at various levels, the law made it easier for workers to access arbitration councils in the event of a dispute with the employer to collect their material rights and social security contributions.

Accordingly, the law exempts the parties to the dispute from paying any judicial fees (Article 80 of the Labour Code), and exempts them from the obligation to seek legal counsel.

In the same spirit, Article 80 of the Labour Law provides that the labour arbitration councils shall consider the cases brought before them in an expeditious manner. Article 50 of the Labour Law gave the labour arbitration councils a period of three months to decide on the case before it. However, the studies have shown a very different reality from what was stated in the law, with the average duration of reaching a verdict in some cases reaching 4 years²⁸.

SETTING A TIME LIMIT FOR CLAIMING SOME RIGHTS

Despite some facilities provided by the law to guarantee the right of litigation and facilitate access to labour arbitration councils, the law slapped a time limit on the ability to claim some rights. The right to claim compensation for arbitrary dismissal expires within a month from the date of the notification of dismissal. The filing of a complaint with the Ministry of Labour, a move taken by some workers to resolve the dispute through negotiation with the employer prior to resorting to the judiciary, does not cut the time limit. Article 351 of the Law of Obligations and Contracts stipulates that the right of workers and trainees in respect of claiming wages, expenses, per diems and advances shall expire after two years from the date of termination of the contractual relationship. In the same vein, Article 48, paragraph 3, of the Social Security Law stipulates that the right to claim family compensation expires two years after it is due.

²⁸ A study on the decisions of the labour arbitration councils in three governorates: Beirut, Baabda, Tripoli: First half 2014, Legal Agenda, the Civil Observatory for the Independence and Transparency of the Judiciary, 2014-2015

3.2 / Arbitration Commission for the Resolution of Collective Labour Disputes

The Arbitration Commissions for the Resolution of Collective Labour Disputes was established by decree in 1964 and has the power to adjudicate collective labour disputes, which arise between a group of workers and the employer, regarding collective interests, over the interpretation of laws, decrees, regulations or contracts, especially with regard to wage increases, better working conditions or increased social benefits.

The commissions step in when mediation partially or fully fails after the dispute has arisen, or based on the request of one of the parties to the contract, or 15 days from the date of the collective cessation of employment²⁹.

As in the case with arbitral councils, arbitration commissions are composed of representatives of workers, representatives of the employers and representatives of the ministry³⁰.

The arbitral commission shall also adopt the time limits in considering the disputes before it. Article 56 of the Decree of 1964 stipulates that decisions must be issued “within one month from the date of the first session, and the commission shall have the power to extend this period by two weeks. Its decisions are final and cannot be appealed by any channels.”

3.3 / The Role of the Ministry in Disputes Arising in the Labour Sector

The Lebanese law granted a supervisory authority for the Ministry of Labour, handled by the Ministry’s inspectorate. The latter is entrusted with supervising compliance with the texts and legislation in force, in particular:

- Ensuring the application of legal provisions in terms of work conditions, protection of employees during the performance of their work, such as the provisions on working hours and hours of rest and wages, safety and health, care and occupational diseases, industrial accidents and work emergencies and the use of juveniles and other matters entrusted to labour inspectors,
- Providing technical information and advice to employers and employees regarding labour legislation and issues related to health and safety rules in order to adopt the most effective means of compliance with legal provisions,
- To monitor unions and professional associations at different levels to ensure that they do not exceed in their actions the limits permitted by law, and their bylaws and basic laws,
- Monitoring the procedures of prevention and safety in family institutions, especially in relation to functions that by their nature or the circumstances surrounding them may pose a risk to the life, health, or morals of the employees.
- Supervising private employment offices in coordination with the National Employment Office.

However, the labour inspectorate currently suffers from shortages of staff and resources, relative to the needs of the labour market, which constitutes an obstacle to fulfilling its supervisory role to the fullest. Therefore, the oversight of workplaces remains limited and non-methodological in its approach.

It is customary for workers to lodge complaints with the Ministry of Labour’s Inspectorate before filing a lawsuit, despite the possibility that some compromises may be made on rights due to the employee in order to avoid the long lead time before a verdict is issued.

²⁹ Article 47 of the Decree of 1964

³⁰ Article 49 of the Decree of 1964

4

NATIONAL SOCIAL SECURITY FUND

4.1 / The General Social Security System and Its Beneficiaries

GENERAL PROVISIONS

Social protection policy in Lebanese legislation is based mainly on the Social Security Law promulgated by Decree No. 13955 dated 9/1963. The law established the National Social Security Fund (NSSF), which currently includes three main branches: the sickness and maternity branch, the family compensation branch, and the end-of-service indemnity branch, although the law also provided for the establishment of a labour emergency branch, but it has yet to see the light in practice.

Article 9 of the law defines the categories of persons benefiting from the NSSF's contributions and sets out the stages in which the law is implemented gradually. Accordingly, for some of the categories mentioned in Law No. 18 which should benefit in principle from the payments of the NSSF, their entitlements were still pending the issuance of decrees by the Council of Ministers.

At a later date, the Board of Directors of the NSSF issued a number of regulations, such as the Enrollment and Registration System [Regulation No. 7 of 1965], which also defined the categories that benefit from the NSSF payments, how to benefit from these payments, and the fees and contributions.

Article 1 of the Enrollment and Registration System of the NSSF specifies the various categories of Lebanese wage earners benefiting from the four branches of the NSSF as follows:

- Permanent wage earners (employees)
- Seasonal wage earners, that is, wage-earners who perform less than 12 months of work each year. However, Article 9 of the Social Security Law suspended their entitlements from the NSSF pending a decree from the Council of Ministers, which to date has not been issued.
- Trainees, i.e. all the wage earners who are still in training.

Following the enactment of Law No. 27 dated 10/2/2017, retirees could benefit from the contributions of the sickness and maternity branches of the NSSF. However, despite the importance of this step, the amended law imposed a requirement that excludes a wide range of contract workers from its scope, namely that the duration of the beneficiaries' actual enrollment in the NSSF must not be less than twenty years.

Despite the enactment of the Social Security Law of 1963, some groups remain outside the scope of its protection. Benefiting from NSSF payments awaits a decree from the Council of Ministers, for example for municipal workers, writers, and artists.

SOME FORMS OF DISCRIMINATION IN RELATION TO NSSF ENTITLEMENTS

Foreign Workers

Article 5 of the Enrollment and Registration System of the NSSF stipulates contributions must be paid to the Fund for foreign workers in Lebanon. However, the same article links their right to benefit from the NSSF payments to the principle of “reciprocity” [TN: e.g. in their country of origin regarding Lebanese workers]. This excludes Palestinian wage-earners, except for the possibility of benefiting from end of service benefits, and stateless persons.

Gender-Based Discrimination

Unlike men, a wage-earning woman cannot extend her NSSF coverage to her spouse except in two cases: if the husband is at least 60 years old, or is unable to work because of a physical or mental disability. By contrast, a male worker covered by the NSSF is entitled to extend benefits to his unemployed spouse. The Social Security Law also restricts the right to benefit from NSSF payments to legal spouses and legal children.

Problems Associated to the Pension System

In 2001, the Chairman of the Technical Committee of the NSSF submitted a draft law to develop the end-of-service branch in the Fund into a Pension and Social Protection System. Following the approval of the Council of Ministers of the draft, it was referred to parliamentary committees, which in turn submitted it to the General Assembly of parliament after four years of study.

To date, the draft law continues to be over-studied, revised, and discussed, most recently with an actuarial study - a statistical assessment based on age averages and expectancies, prepared by ILO experts who proposed some recommendations and amendments to the bill³¹.

As of the time of writing, Lebanese legislation still does not contain any provisions that enshrine the right to benefit from a system of retirement pensions and social protection that provides health insurance and lifetime pension otherwise necessary for an effective and comprehensive social protection policy.

Just like the Social Security Law, current legislations lack any provisions relating to the right to social protection and retirement. A draft law has therefore been prepared to amend certain provisions of the Social Security Law and to establish the pension and social protection system through the replacement of the end-of-service system with the pension system, which was studied by the parliamentary committees study as indicated above.

The most important reforms proposed by the draft law is the establishment of a retirement and social protection system for senior citizens, to replace the end-of-service indemnity system with all its rights and obligations. It offers the following entitlements:

- Retirement pension;
- Disability pension;
- Pension for inheritors of the retiree
- Sickness and maternity payments³²

The project’s importance lies in the fact that it “provides health insurance and a life-long pension, and has a significant positive impact on the regular income of private sector workers by providing them with secure income through a predictable and stable pension. (...) This reform would also enhance the regularity of contributions and obligations of employers in the social security system. The new pension system would also help ensure the right of the worker to his full pension benefits throughout their career by facilitating transition between jobs³³.”

³¹ The content of the study and its findings and recommendations can be found on the website of the Research and Training Group for Development Action at <http://www.lkdg.org/en/node/9763>

³² Articles 49-1 and 40-5 of the draft law.

³³ See: “Managing the Pension and Social Protection System, fundamental points of disagreement preventing its adoption.” Wednesday, 29 May 2013, retrieved from <http://www.lkdg.org/en/node/9731>

The system provides a pension for workers covered by the NSSF after the age of 64. It also regulates early retirement for NSSF beneficiaries who have reached the age of 58, and are in a physical or mental state that does not allow them to work without causing serious harm to health, their unfitness having been proven medically³⁴.

The draft law also guarantees the right to disability pension in the event of permanent or total disability, whether physical or mental, that is not due to an emergency or occupational illness, which reduces a worker's ability to work or earn by two-thirds, and prevents performing any work that provides an income³⁵.

In addition, the project regulates the conditions and the value of the pension for the heirs of the retired NSSF beneficiary³⁶, while maintaining the current provisions for sickness and maternity.

The draft law identifies the sources of funding for the "pension and social protection" system³⁷; it also provides for a set of provisions and measures to administer the transitional period; it requires periodic studies to be conducted to determine the financial position of the Fund³⁸ and establishes a committee to amicably review disputes of a financial and administrative nature, arising from the application of the provisions of the law³⁹, and an investment committee that would invest the funds of the Fund in the short, medium and long terms⁴⁰; as well as amending the composition of the Board of Directors of the Fund.

In 2011, former Labour Minister Boutros Harb, with the assistance of the ILO, introduced a project on retirement and social protection, which was referred to parliament by Decree No. 13760 dated 15/12/2004. It was amended by the Sub-Committee of the Joint Parliamentary Committees, then studied and amended by the Joint Parliamentary Committees and approved on 17/10/2008⁴¹. But it has not been passed to date, and continues to meet with many obstacles, most notably that it needs several amendments to determine which party would implement it given the conflict of interest, the candidates being the Ministry of Labour, the Ministry of Health, the NSSF, or a new independent body established for this purpose, amid suggestions that the project must be accompanied by a reform package for the NSSF.

³⁴ Section II of the draft law

³⁵ Section III of the draft law

³⁶ Section IV of the draft law

³⁷ Article 54 of the draft law

³⁸ Article 54-5 of the draft law

³⁹ Article 4 of the draft law

⁴⁰ Article 5 of the draft law

⁴¹ Lebanese Trade Union Training website

OPTIONAL SOCIAL SECURITY: PROBLEMS AND ISSUES

Prior to 2000, the social security system did not undergo any modification, although many of the services it provides are still suspended since the law was enacted in 1963. Under Law No. 248 dated 9/9/2000, the NSSF branches were expanded to Social Security Branch, the Sickness and Maternity Branch, and a special branch for optional health insurance for elderly beneficiaries with a separate accounting department that was tasked with achieving 'financial balance'. The law stipulates that every Lebanese has the right to opt in to this system under the following conditions:

1. The beneficiary has reached the age of sixty-four
2. The beneficiary must not be direct or indirect beneficiary of other health benefits such as by being a member of:
 - a. Cooperative of state employees.
 - b. Health schemes for military personnel, general security and state security forces.
 - c. Cooperative of judges and any other similar mandatory cooperatives.
 - d. Other branches of the National Social Security Fund.
 - e. Schemes related to professional trade unions of all kinds, if they cover the health benefits of registered retirees⁴².

In 2002, Decree No. 7352 was issued, aiming to begin the implementation of optional social security in the Sickness and Maternity Branch of the NSSF. Since then, optional social security has been in a state of flux. Recently, it stopped being able to offer its services to its beneficiaries.

The crisis started from the moment it was put into effect in early February 2003. It was plagued by many problems, most notably the lack of sufficient funds to cover the cost of hospitalization for beneficiaries. The contributions collected from the members were not sufficient to cover the costs. As a result, the optional social security department has suffered from a deficit in payments that it has yet to overcome⁴³.

The deficit forced the optional social security to be suspended several times, the first of which was in 2005 by a decision of NSSF management, and the second by a decision of hospitals which now refused to admit optional NSSF beneficiaries because of the accumulated debts of the Fund. The paralysis in the department continued throughout 2011, when the director general of the NSSF issued a memo reopening enrollment to those who leave work or are over 64 for a period of three months only.

This reality pushed the number of members of optional social security (most of whom were senior citizens) to drop sharply, from 33679 in 2005 (the peak) to 23697 in mid-2008 and 7000 only in 2013⁴⁴. Although the hospitals no longer receive patients with optional NSSF insurance, the Fund continues to collect contributions from the remaining members until such a time comes when a decision is taken to resolve the optional social security crisis.

⁴² Article 2 of Law 248 dated 9/9/2000

⁴³ <http://www.albayanlebanon.com/news.php?IssueAr=69&id=2932&idC=>

⁴⁴ <http://www.almodon.com/economy/2015/4/14/%D8%A7%D9%84%D8%B6%D9%85%D8%A7%D9%86-%D8%A7%D9%84%D8%A5%D8%AE%D8%AA%D9%8A%D8%A7%D8%B1%D9%8A-%D8%A7%D8%B3%D8%AA%D9%86%D8%B3%D8%A7%D8%A8%D9%8A>

5

THE LEGAL STATUS OF FOREIGN WORKERS IN LEBANON

5.1 / Defining Foreign Labour and the Most Important Relevant Regulations

FOREIGN WORKERS

With the exception of Palestinian refugees registered with the Ministry of Interior, ordinary legislation in Lebanon lacks special regulations for refugees, economic migrants or special groups from other backgrounds resident on Lebanese territory. Thus, a foreigner is every real person who is not a Lebanese national under the Foreigners Law. A foreign worker is a person resident on Lebanese territory with a work permit issued by the General Security for one renewable year on the basis of the work permit, pursuant to Article 6 of the same law: "A foreigner entering Lebanon to engage in a profession or work must obtain prior approval from the Ministry of Labour unless he is an artist who must obtain this approval from the General Security."

In the same vein, we read in Article 2 and 3 of the Decree on Organizing the Work of Foreigners:

"Any foreigner wishing to enter Lebanon to engage in a profession or work, with or without remuneration, must obtain the prior approval of the Ministry of Labour and Social Affairs before his arrival, unless he is an artist, who must obtain this approval from the Directorate of General Security" (Article. 2);

"Foreigner abroad shall apply for prior approval from the Ministry of Labour and Social Affairs through representatives of Lebanon abroad or an official agent in Lebanon" (Article 3).

Accordingly, the residence of foreigners on Lebanese territory, which is primarily handled by the General Directorate of General Security (Ministry of the Interior), is closely linked to the Ministry of Labour's approval. Consequently, the legal status of foreign workers is influenced by the policies and circulars of these two parties. The study will show however that these are often contradictory and inconsistent, sometimes in violation of general laws and principles.

PRINCIPLES GOVERNING FOREIGN LABOUR IN LEBANON

As in most national legislations, Lebanese legislators adopted binding principles that regulate foreign labour in Lebanese territory in order to protect the local labour force, including the principle of reciprocity and restricting some professions to Lebanese nationals, as well as giving the latter preference in hiring. However, the practices adopted by the competent authorities, headed by the Ministries of Labour and Interior, exceeded greatly the limits set by these principles and their natural applications to the extent that they have cemented various forms of discrimination against categories of foreign workers on the basis of their gender, nationality and the type of profession they practice, as we shall refer to⁴⁵.

⁴⁵ To explore how these principles are applied in Lebanese legislation, see Dr. Iman Khazal, *Foreign Employment in Lebanon*, Sader, 2014

5.2 / Forms of Foreign Labour in Lebanese Legislation and Texts

By analyzing the regulations in force, three criteria emerge – nationality, profession, and wage – on the basis of which we can approach the issue of foreign labour, bearing in mind that this division is not comprehensive but we have adopted it because of the problems and complications that result from it.

FOREIGN LABOUR IN TERMS OF NATIONALITY

Palestinian Refugees Born on Lebanese Territory and Officially Registered in the Records of the Ministry of the Interior and Municipalities

Lebanon offers a degree of implication in terms of residency obtaining work permits at reduced fees⁴⁶ for this group.

Syrian Nationals

It is important here to differentiate between the policy adopted before and after the Syrian refugee crisis in Lebanon. Since May 2014, General Security in a selective manner began requiring some Syrian refugees to obtain work permits to renew their residency or otherwise leave Lebanese territory. Before the crisis in Syria, under bilateral agreements between Lebanon and Syria, Syrian workers would enter Lebanon without visa, where they received temporary 6-months residency permits at the border⁴⁷. This did not mean that they were exempted from the requirement to obtain work permits. In practice, however, the Lebanese employer or the Syrian wage earner rarely went through these procedures, while the authorities concerned, especially the Ministries of Labour and Public Security, consistently turned a blind eye⁴⁸.

In the beginning of 2015, an announcement was made by the General Directorate of General Security - Ministry of the Interior to tighten the conditions for residency for Syrians who entered Lebanon before 2015 and imposed a visa regime on the border for newcomers except in some cases⁴⁹.

The announcement specified seven different categories on the basis of which Syrian nationals could enter Lebanon: Tourism, business visit, shopping, owning or renting property, study, transit to another country, medical treatment, and foreign embassy appointments. In the event

⁴⁶ See the successive decrees issued by the Ministers of Labour in respect of the professions to be restricted to the Lebanese only

⁴⁷ <https://www.lp.gov.lb/Temp/Files/a11680de-ffc8-4128-839d-080ab1d14d7a.pdf>

⁴⁸ According to official figures by the Department of Syrian Workers in the Ministry of Labour, there were 650 people

officially registered in 2012-2013, including 200 workers who have renewed their work permits"; Legal Status of Individuals fleeing Syria, Syria Needs Analysis Project, June 2013, available on the following address: http://reliefweb.int/sites/reliefweb.int/files/resources/legal_status_of_individuals_fleeing_syria.pdf

⁴⁹ http://www.general-security.gov.lb/news_det.aspx?d=194

one of the conditions and documentary evidence for each category cannot be met (e.g. bank account, cash, hotel reservation, embassy or medical appointment etc.), Syrian nationals could not enter Lebanon unless a Lebanese national sponsors them.

For Syrians who already resided in Lebanon prior to the announcement, and cannot renew their residence on the basis of other criteria such as, e.g. property ownership, tourism, business trip etc., they can either renew their residency on the basis of a valid UNHCR registration document (renewal of residence according to the remaining period of the validity of the registration document); or renew if sponsored by a Lebanese national (often an employer) who in turn makes a commitment to the General Security to “obtain a proper work permit and assume responsibility for the worker and their activities, and any action that could harm others or have security implications, and responsibility for their health care and accommodation.”

Regarding the Ministry of Labour, it is not yet clear whether it will respond to these requests and what criteria and conditions it will observe. The current Minister of Labour has stated on more than one occasion that the applications for work permits submitted by Syrians will not be accepted in order to “protect the Lebanese labour force”. In face of this reality, Syrians face two options: they either have to refrain from practicing a profession in Lebanon, in other words, to relinquish any chance for income to them or their family members; or accept the sponsorship system that the Ministry of the Interior has recently introduced⁵⁰.

Nationals of Countries that Treat Lebanese Similarly

Fees are reduced or waived and procedures are simplified for work permits for nationals of Iraq, Egypt, the US, Brazil, Greece, Morocco, Britain, and Germany.

Individuals Coming from Other Countries

There is no discrimination in theory, but in practice General Security bars the entry of some nationals on the basis of their countries of origin or professions, as we will explain in the next paragraph.

⁵⁰ <http://www.lcps-lebanon.org/featuredArticle.php?id=41>

FOREIGN LABOUR IN TERMS OF NATURE OF PROFESSION AND WAGES

Restricting Some Professions to Lebanese Nationals

For the government, the guiding principle in this area is to limit the right to practice some professions to Lebanese nationals, determined by decisions issued in a discretionary manner by the Minister of Labour without applying any objective or organized criteria under clear legislative provisions⁵¹.

The most recent decree issued by the current Minister of Labour, Mohammed Kabbara, on 28/2/2017, restricted the following professions to Lebanese nationals⁵²:

“Administrative, banking, insurance and educational activities of all kinds, in particular: the president, dean, manager, deputy manager, office director, treasurer, accountant, secretary, clerk, stenographer, computer officer, archivist, commercial representative, marketing representative, warehouse - salesman - jeweler - tailor - sewer- electrical fitter - paint works - mechanics- maintenance - glass installation - chef oriental food - usher - guard - driver - waiter - barber - tiling - paper fitter- plasterer- aluminum, iron and wood and decoration - teaching - nursing - all jobs in pharmacies, pharmaceuticals, laboratories, - esthetician- blacksmith - upholstery, e-business, surveyor - estimator - sea fishing, driver, engineering of various specialties, teaching at primary, intermediate and secondary levels, with the exception of teaching foreign languages. When necessary, and in general all jobs and professions and teaching jobs where Lebanese nationals are available to occupy [are prohibited to foreigners]”.

Exceptions to the Principle of Restricting Professions to Lebanese

Some individuals have been excluded from the application of this principle. For example:

- The husband and children of a Lebanese woman, but not the wife of a Lebanese man, since 2013 can work and obtain a work permit.
- Palestinian refugees except for liberal professions and all other organized professions stated in legal texts restricted to Lebanese nationals.
- Syrian workers in agriculture, sanitation and construction sectors;
- Director or representative of a foreign company registered in Lebanon;
- Resident in Lebanon since birth;
- A specialist or technical expert whose work cannot be done by a Lebanese, provided that this is proven by a statement issued by the National Employment Office.

Division in Terms of the Nature of the Profession and the Wage

In the latter case, and taking into account the principle of preference for Lebanese, non-Lebanese labour and the professions in which they work are subject to the provisions and mechanisms of occupations confined to Lebanese and are distributed as follows⁵³:

- Category 1: Employers and employees whose salaries are three times the minimum wage;
- Category 2: Technical workers whose salaries are twice to thrice the minimum wage;
- Category 3: cleaning workers, porters and similar professions, whose salaries range from one to two times the minimum wage;
- Category 4: domestic workers.

⁵¹ Decree No 1/197 dated December 2014

⁵² Published on the Ministry of Labour website

⁵³ Decree organizing foreign labour No. 17561 of 18/6/1964 and annexes

PROBLEMS AND ISSUES RELATED TO FOREIGN DOMESTIC WORKERS

Article 7 of the Lebanese Labour Law listed the categories excluded from the provisions of the Labour Law as follows: "The following shall be excluded from the provisions of this law:

- Domestic servants;
- Agricultural unions that have nothing to do with trade and industry, which will have special legislation;
- Institutions where only family members are employed by the father, mother or guardian;
- Government departments and municipal bodies with respect to employees, daily and temporary workers who are not covered by the personnel system and who shall be subject to special legislation. "

The exclusion of these categories results in depriving these workers of the most basic rights enshrined in the Labour Law and others imposed by international labour conventions, such as the minimum wage, paid annual leave, recourse to arbitration councils, maximum daily working hours and other guarantees.

Domestic workers in particular have a legal status - or non-legal - where they are subject to a special legal system known as the kafala [sponsorship] (although Lebanese legislation does not include any regulation on this concept).

The current system places domestic workers under the full control and discretion of the employer. Domestic workers cannot change employers except with the agreement of the former employer (similar to a debt/debtor relationship rather than an employer/employee relationship). In 2009, the Ministry of Labour issued a unified compulsory labour contract for domestic workers, but it still has many shortcomings. It is only available in Arabic, and it does not guarantee the right of domestic workers

to keep possession of their passports. With regard to termination, the contract gives two sets of grounds based on which the contract can be terminated for the workers and employers respectively, creating a wide loophole for arbitrariness and discretion that can be exercised by the stronger party.

Article 14 enumerates the reasons under which the worker may terminate the contract, including if the employer fails to pay wages for three consecutive months, if one of the occupants of the house assaults or abuses the worker, or one of them harasses or sexually assaults the domestic worker, provided that this is established through medical reports, police reports, or by the Ministry of Labour, and if the employer employs the worker in another capacity without his or her consent. This means that if the domestic worker does not obtain legal leave, cannot prove assault, is not given access to adequate sustenance and accommodation, then none of this is sufficient grounds for revoking the contract.

In contrast, in accordance with Article 13 of the standard contract, the employer may terminate the contract if the domestic worker commits an "error or negligence" (without specifying what constitutes an error or negligence) or an act punishable under Lebanese law. Despite the existence of this contract, domestic workers are unable to benefit from the provisions of the Labour Law and remain under the control of their employer because of the sponsorship system, especially since General Security prevents foreign workers (not only domestic workers) from changing sponsorship without the approval of the relevant authorities, yet does not specify what the authorities with that power are⁵⁴. It is also prohibited for a foreign worker to transfer their sponsorship more than twice during the period of employment in Lebanon.

⁵⁴ http://www.general-security.gov.lb/Arabic/News/Pages/new_n3r3.aspx

PROBLEMS RELATED TO THE 'FEMALE ARTISTS' CATEGORY

Lebanese law defines a foreign artist as “a person who performs in places where spirits are sold in retail and where shows are performed with music, with or without food served”. Their entry to Lebanon is subject to the approval of the General Security Directorate without the Ministry of Labour, unlike other categories of workers. The 1962 Decree established a regulatory framework for the work of these artists, as well as rules controlling their movements, isolating them, and stigmatizing them, measures that have larger implications for female foreign artists.

In addition to the provisions of the law, the General Security Directorate (which monitors the artists from the moment they enter to Lebanon and throughout the period of their work) has developed regulations that serve as internal memoranda to regulate the status of female artists, in a manner that has exacerbated their isolation and the discriminatory measures against them. This category generally includes women from Eastern Europe who work in nightclubs.

In addition to these, there are foreign female artists already residing in Lebanon. Under a law in 1931, the Police Directorate, and then since 1991, the Office for the Protection of Morals of the Directorate General of the Internal Security Forces, is the party responsible for giving them permits to work as barmaids. This category generally includes Syrian, Palestinian, and Iraqi women refugees.

Finally, some General Security regulations deal with other foreign female workers, such as “masseuses” or “models”. Masseuses work in the so-called recreational massage clubs, which are category 4 clubs that differ from those operated by the provinces and / or the Ministry

of Tourism and the Ministry of Health. As for “fashion models”, their entry into the Lebanese territory is subject to fees in the event the period of their work exceeds 20 days, or if this coincides with the start of the so-called annual shopping month and the summer festival, based on circulars issued by the Ministry of Tourism and / or the Ministry of the Interior.

Some of the measures of isolation and discrimination against them include:

- Detention of the foreign “artist” upon arrival until she is subjected to a medical examination and the results of the tests are known. Detention may last days, with all expenses borne by the worker without any help from the club owner. If the artist is found to have a sexually transmitted disease she is deported immediately;
- The artist is forced to sign a contract upon arrival setting the conditions of her movement and work in a way that severely restricts her personal freedom;
- The artists’ freedom to reside, sign contracts, or even travel is severely restricted. They are only permitted to live in “hotels or licensed accommodations”. The owner of the club selects the hotel, which is subject to inspection by the General Security, to ensure that certain conditions and guarantees are in place. The most important of these conditions is to isolate the artists on a separate floor by placing doors and barbed wire on the stairs and taking measures to prevent the use of the electric elevator by others to reach their floor or by them to reach other floors. They are not permitted to leave between 5 am and 1 pm except in exceptional cases approved by the General Security;
- The artists are denied many basic civil rights such as the right to self-defense or the right to lodge grievances. The decree gave broad powers to the director of General Security to take administrative decisions

up to deporting them and banning their return in the event of committing any irregularities without these decisions being associated with any judicial guarantees or even the right of self-defense, and even in the case of arbitrary sacking;

- The imposition of unequal standard contracts: Apart from the fact that the contract falls in one page only, it states that the “artist or artists” must work “without objection and under the rules of procedure in force in the institution”. It also restricts the principle of freedom of employment and contracting in its seventh clause: It prohibits the worker “even after the expiry of the contract” from working for another club “without the written consent of the employer”, except after traveling outside Lebanon without restricting the ban to a certain period of time. The protection provided is limited to vague and general material devoid of any real substance.

THE DIVISION ADOPTED IN TERMS OF FOREIGN WORKER’S COUNTRIES OF ORIGIN

A study of the conditions for entry visas to Lebanon shows the Lebanese system adopts a clearly discriminatory policy in dealing with foreigners. As we shall explain below, the relevant agencies adopt non-objective criteria based on assumptions and prejudices vis-à-vis the nationals of developed and oil-rich countries, a negative discrimination based on financial preference, compared to restrictions, exceptions and material burdens imposed on nationals of so-called Third World and labour-exporting countries. We stress here our objection to these classifications followed by the Lebanese government. When studying the mechanism of granting visas, it becomes clear that conditions differ depending on the nationality, gender, profession, of the applicant, as well as the type of sojourn sought. We will briefly present the most striking contradictions associated with the visa terms.

Discrimination Between Female and Male Nationals of the Same State

In Decree No. 29 dated 31/10/2002, the Council of Ministers listed the foreign countries whose nationals visiting for the purpose of tourism can obtain a free one-month visa extendable to three months (France, Russia, Brazil, China, Japan, Venezuela, and others)⁵⁵. However, it excluded females aged 17 to 25 from some of these countries deemed as exporters of labour, artists, masseuses, and models. They are required to present a round-trip ticket to the airport General Security, the ticket being non-refundable, with a hotel reservation or a clear full address with a local phone number. If these conditions are met, the visa applicant is given a one-month free visa, renewable for a period of three months.

⁵⁵ http://www.general-security.gov.lb/Arabic/Visas/Pages/visa_lebanon.aspx

Countries that have been considered as foreign exporters of labour, artists, masseuses, and models: Armenia-Azerbaijan-Belarus-Bulgaria-China (Peoples Republic)-Croatia-Czech Republic-Estonia-Georgia-Hong Kong (SAR) China-Hungary-Kazakhstan-Kirgizstan-Lithuania-Macau (SAR)-Macedonia-Moldova-Montenegro-Poland-Russia-Romania-Serbia-Slovakia-Slovenia-Tajikistan-Ukraine-Turkmenistan-Uzbekistan-Yugoslavia

In some cases, some women have been exempted from the two conditions mentioned above, the majority of them are related to the condition that they be accompanied by a Lebanese spouse or a Palestinian refugee residing in Lebanon, and not to have worked previously in Lebanon as a masseuse, a model or an artist⁵⁶.

Concerning women married to Lebanese abroad, and who have worked previously in Lebanon, they are given a visa if more than one year has passed since they left Lebanon in accordance with the rules of their nationality. If less than a year has passed since they left Lebanon, visas require pre-authorization from the General Security.

Patriarchal and sexist attitudes are rooted in the Lebanese visa system, where female nationals of the labour-exporting countries are exempted from the conditions mentioned above, if they are married to Syrians and have not worked previously as artists or masseuses, provided they come to Lebanon with their spouses. The wife of a non-Arab foreigner who has previously worked in Lebanon is exempted from the two conditions, provided that she is accompanied by him and that she left Lebanon more than one year prior. However, she is not granted an entry visa in case she is not married, regardless of her nationality or age, if she previously worked in Lebanon as artist or masseuse and less than a year has passed since she left Lebanon, except with the approval of the Directorate General of General Security⁵⁷.

Discrimination Between Nationals of Arab Countries (GCC and Other Arab Countries) Coming for Tourism

Citizens of the Gulf Cooperation Council (GCC) coming for tourism are granted a free visa and residence (at any border center) for three months, renewable for up to one year. On the other hand, non-GCC Arab nationals⁵⁸ who come to Lebanon for tourism must show a non-refundable airfare, a hotel reservation or a private address, and the equivalent to two thousand dollars in cash or check, to obtain a visa at Beirut airport. The visa is valid for one month extendable to period of three months. It seems that non-GCC Arab nationals coming for tourism cannot obtain a visa at land crossings, with specific enforcement instructions having been issued for Iraqi and Yemeni nationals coming through land borders for example⁵⁹.

Discrimination Based on the Profession of the Visitor

Procedures for entry visas and residence permits for Arab and foreign investors are simplified. Two categories have been defined in this regard: The first category deals with the entry of investors, businessmen, bankers, managers, employers, traders, patients, people of Lebanese origin and family members, and tourist delegations. The second category concerns businessmen, managers, employers, doctors, engineers, lawyers and the like, who have valid GCC residence permits. The first category is granted a visa and residency from any border point valid for 6 months, while the second category is granted a visa and residence valid for 11 months⁶⁰.

⁵⁶ Conditions 1 and 2 are waived for women who enter under a stamp at border posts pre-issued by the Directorate General of General Security, in addition to the following cases:

- The wife of a Lebanese man who has not previously worked as an artist or a model or a masseuse in Lebanon after presenting a valid marriage document duly registered. If they are nationals of states that do not have automatic visa rights, they must obtain prior approval from the General Security.
- The wife of a Palestinian refugee in Lebanon or a holder of 'under-consideration' ID [stateless] who

has not previously worked as an artist, a masseuse or a model in Lebanon after presenting a document attesting to this marriage. http://www.general-security.gov.lb/Arabic/Visas/Pages/visa_lebanon.aspx

⁵⁷ http://www.general-security.gov.lb/Arabic/Visas/Pages/visa_lebanon.aspx

⁵⁸ Egypt, Sudan, Tunisia, Morocco, Algeria, Libya, Somalia, Djibouti, Mauritania, Comoros, Yemen, Jordan and Iraq

⁵⁹ http://www.general-security.gov.lb/Arabic/Visas/Pages/visa_lebanon.aspx

⁶⁰ Ibid.

Unlike all facilities provided to investors and bankers, nationals of labour-exporting countries are granted entry visas only after obtaining the prior approval of the General Directorate of General Security⁶¹.

Finally, it should be noted free visas are granted to GCC nationals and nationals of foreign countries coming for tourism, Arab and foreign diplomats, investors and businessmen valid for one month during the shopping month⁶².

Discrimination Against Palestinian Wives of Lebanese Nationals and Wives of GCC Nationals

The Decision of the Council of Ministers No. 29 issued on 31/10/2002 treats differently some categories, especially the Palestinian wife of a Lebanese woman or the wife of a GCC national. The following categories have been obliged to obtain the prior approval of the General Directorate of General Security to be able to enter Lebanon:

- Holders of transit passports, including Jordanian passport given to Palestinians;
- Servants and companions for non-Lebanese and Gulf families and non-members of the diplomatic corps;
- Artists in accordance with the law of 10/7/1962 and the application decree No. 10267 dated 6/8/1962;
- Foreign nationals coming to work in Lebanon
- The category of persons on the list of undesired persons, terror lists, and Interpol lists in accordance with the law of 10/7/1962 and Decree No. 10188 dated 28/07/1962.
- Emergency passport holders except France, Sweden, the Netherlands and Australia, and holders of the Ukrainian Travel Document of Child, as well as holders of passports marked "aliens"⁶³.

⁶¹ Angola-Bangladesh-Benin Republic-Bosnia-Botswana-Burkina Faso-Burundi-Cameroon-Central Africa Republic-Chad-Chinese Taipei(TW)-Comers Island Democratic Republic of Congo (Zaire)-Djibouti-Eritrea-Ethiopia-Fiji-Gabon-Gambia-Guinea-India-Indonesia-Kenia-Liberia-Madagascar-Malawi-Mali-Mauritania-Mauritius-Mozambique-North Korea-Namibia-New Guinea-Nicaragua-Niger-Pakistan-Palau Islands-Paraguay-

Philippines-Rwanda-Seychelles Island-Sierra Leone-Salvador-Somalia-South-Africa-Sri Lanka-St. Lucia-St. Vincent & Grenadines-Suriname-Tanzania-Togo-Trinidad & Tobago-Thailand-Honduras Uganda- Vietnam-Zambia-Zimbabwe

⁶² http://www.general-security.gov.lb/Arabic/Visas/Pages/visa_lebanon.aspx

⁶³ Ibid.

6

FREE ECONOMIC ZONES

6.1 / Privileges and Tax Exemptions

In 2008, the Lebanese Parliament passed Law No. 18 establishing the Free Economic Zone for the city of Tripoli. The law grants companies operating within this zone several tax and customs exemptions. It also specified the type of activities allowed in the zone, restricting them to commerce, industry, services, storage, and other investment projects with the exception of tourist services. In 2015, the Council of Ministers approved a similar zone for the town of Batroun⁶⁴.

The law also established a body called the General Authority for the Special Economic Zone in Tripoli, full with legal personhood and administrative and financial independence. The body has the power to manage and regulate activities in the zone⁶⁵. While the authority was set apart from public organizations⁶⁶, it was given similar sweeping powers, with the right to undertake all legal actions and procedures, control movable and immovable property necessary to achieve its objectives⁶⁷, and grant administrative licenses and building permits in accordance with the master plan and the general detailed outline of the area, in addition to the power to assign natural or moral persons, Lebanese or foreign nationals, to operate and exploit the free zone⁶⁸. But most significantly, the body was given the right to consider and decide on applications for foreign workers in the zone, after merely notifying the Ministry of Labour⁶⁹. Law No. 18 also grants companies operating in the economic zone many tax and customs exemptions, such as exemptions from value added tax and import and export fees for the machinery, equipment, materials and goods required by the project.

6.2 / Impact of the Free Economic Zone on the Rights of Employees

Article 28 of Law No. 18 explicitly provides for the exemption of employers from complying with the Labour Law, removing the contractual relationship between the worker and employer from the protection of the Labour Law. Article 31 expressly excluded the workers of the Free Zone from benefiting from the coverage of the NSSF, and expressly exempted employers from the obligation to declare and register them in the NSSF.

The law imposed on employers who wish to benefit from tax and customs exemptions the only requirement of “providing health benefits to their employees and their dependents, which would be similar or superior to those provided by the National Social Security Fund.” The law also stipulates that no less than 50 percent of the total labour force in the zone must be Lebanese to qualify for income tax exemption, while the remaining exemptions remain valid anyway.

⁶⁴ Charbel Nahhas, Al-Akhbar, 1/5/2015

⁶⁵ Article 2 of Law No. 18 dated 5/9/2008

⁶⁶ Article 2 of the law exempts the body from the provisions of Decree No 4517 dated 13 December 1972 relating to the general regulations of public organizations.

⁶⁷ Article 2

⁶⁸ Article 8 of the Law No. 18

⁶⁹ Article 8

ANNEX

AGE GROUP	LEGAL TEXT	PROHIBITED FORMS OF LABOUR BY AGE GROUP
0-18	Decree No. 8987 dated 29/09/2012	<p>1 / Acts with physical risk</p> <ul style="list-style-type: none"> • Activities that require the use of explosives, carrying weapons, participating in combat, war or any other recruitment-related acts, or carrying out any tasks during wars, such as cooking, cleaning, surveillance, etc., since such activities imply mental as well as physical risks. • Work in mines, caves, quarries and crushers, whether above or below ground. • Activities that cannot be undertaken without wearing personal protective and preventive equipment to avoid immediate and direct danger. • Activities that expose children to carcinogenic substances, ionizing radiation, or substances that may cause infertility or congenital malformations. <p>2 / Acts with mental risk</p> <ul style="list-style-type: none"> • Any forced labour, including slavery and servitude. • Domestic work. • Work anywhere that requires sleeping and staying in, or outside the parents' home. • Work in the streets. • Begging. • Work in preparing and burying corpses. <p>3 / Acts with moral risk</p> <ul style="list-style-type: none"> • Any work that exploits or benefits from the body for sexual, pornographic, eroticist or similar purposes. • Gambling, derbies and similar acts. • Any act or activity that is unlawful or contrary to penal laws such as the transfer, sale, marketing, promotion or use of drugs of any kind. <p>4 / Acts that limit educational attainment</p> <ul style="list-style-type: none"> • Acts that prevent the child from receiving educational attainment, regular vocational training or tutoring.
	Resolution No. 49/1 of 6/2/1997	<p>The use and work of children and juveniles under the age of 18 in non-industrial occupations shall not be permitted unless an accurate medical examination indicates that they are fit for the work in question.</p>
	Decree No. 8987 dated 29/09/2012	<p>1 / The works that expose the working child to any of the following occupational risks</p> <p>1.1 / Chemical risks, including dust and fiber</p> <ul style="list-style-type: none"> • Carcinogenic substances, including but not limited to: asbestos, benzene, chromium, etc. • Substances that cause infertility, congenital or physiological deformation, or poor growth of the fetus or the infant. • Substances that lead to allergies (allergens). • Substances harmful to the nervous system and to mental development. • Substances that lead to major diseases after long-term exposure, or to permanent symptoms and health effects.

AGE GROUP	LEGAL TEXT	PROHIBITED FORMS OF LABOUR BY AGE GROUP
		<p>1.2 / Physical risks</p> <ul style="list-style-type: none"> • Noise. • Atomic/ionizing radiation. • Other (non-atomic/non-ionizing) radiation (i.e. infrared, electromagnetic radiation). • High atmospheric pressure (through diving for instance). • Concussions. • High temperature. • Low temperature. <p>1.3 / Bacterial risks (viruses/ bacteria / parasites and others)</p> <ul style="list-style-type: none"> • Transmitted directly through the carrier of the infection such as bugs, flies and rodents. • Transmitted through exposure to human and other fluids contaminated with bacterial diseases. • Transmitted directly through touching or dealing with animals; especially dead animals. <p>1.4 / Agronomic risks (human compatibility with the machine and work equipment)</p> <ul style="list-style-type: none"> • Work in inappropriate positions of the spine, joints and muscles, such as squatting, twisting, stretching or shrinking for long periods. • The use of machines and tools not compatible with the size or measure of the hand or body in general. • Pushing or dragging weights that require more than the child's energy. • Carrying and transferring weights that require a capacity that exceeds the capacity of the child. <p>2 / Works that juveniles shall not undertake:</p> <p>2.1 / Agribusiness (including family projects) that require</p> <ul style="list-style-type: none"> • Driving tractors and agricultural machinery or working with them. • Mixing, transferring or spraying pesticides or agricultural fertilizers. • Harvesting, touching or dealing with toxic plants (such as tobacco leaves that produce toxic nicotine). • Climbing high trees or stairs. • Using sharp tools such as the use of obelisk when stitching the leaves of tobacco. • Working for more than 4 hours per day. <p>2.2 / Fishing in the open sea, diving, and using fishing rifles, explosives or electricity.</p> <p>2.3 / Working in slaughterhouses and slaughtering animals.</p> <p>2.4 / Working with dangerous, wild and toxic animals.</p> <p>2.5 / All kinds of work in factories of tile, rocks and such.</p>

AGE GROUP	LEGAL TEXT	PROHIBITED FORMS OF LABOUR BY AGE GROUP
		<p>2.6 / All types of work in manufacturing or production industries that employ more than twenty workers. Examples of manufacturing or production industries employing more than twenty workers:</p> <ul style="list-style-type: none"> • Manufacturing food and beverage products. • Fabric and clothing manufacturing. • Leather tanning and bag making. • Manufacturing wood products. • Manufacturing paper and paper products. • Manufacturing chemicals. • Manufacturing cement, clay and construction materials. • Manufacturing rubber and plastic products. • Manufacturing non-mineral mine products (such as manufacturing glass products). • Manufacture of metals and metal products. • Manufacturing various machines, equipment, vehicles and trailers. • Manufacturing furniture. • Recycling all kinds of waste. <p>2.7 / All kinds of work in the extension of electricity, gas, water and steam.</p> <p>2.8 / All kinds of construction work such as demolition, excavation, building, hitting the sand and climbing heights.</p> <p>2.9 / Working in trade, industry and services institutions of small size (less than 20 workers) where occupational risks are high. Examples of small-scale trade, industry and services institutions (less than 20 workers) where occupational risks are high:</p> <ul style="list-style-type: none"> • Mechanics (maintenance and repair of cars and transport vehicles). • Blacksmiths. • Welding shops. • Spray painting shops. • Places for cooking blood or bones and grease. • Places for cleaning and tanning animal skins. • Manufactures of pottery, glass or crystal. • Places for fusion, casting, and painting metals. • Places for dry cleaning. • Places for sawing wood and painting furniture. • Places for animal slaughtering and meat selling. • Places for the work of plumbers. • Places for the preparation of fertilizers and pesticides for houses and others. • Places for cutting paper and cardboards. • Printing houses. • Places for ice production and cooling. • Places for extracting lead from car batteries. • Places for the silvering of mirrors with mercury. • Places for filling cylinders with compressed gases.

AGE GROUP	LEGAL TEXT	PROHIBITED FORMS OF LABOUR BY AGE GROUP
		<p>2.10 / Working in hotels, restaurants, casinos and Internet cafes that may expose juveniles to the following:</p> <ul style="list-style-type: none"> • Transferring, selling or consuming alcoholic beverages. • Transferring or selling cigarettes and tobacco, including delivering of water pipes (hookahs) to houses. • Home delivery of purchases to individuals without a company or a monitor. • Singling out the child in a room, a corner or a place away from the eyes of the supervisors. • Using sharp machines and tools such as those in kitchens and others. <p>2.11 / Working in any means of land, sea or air transport.</p> <p>2.12 / Working in places for the exchange of currencies and the transfer or preservation of funds, jewelry and other valuables.</p> <p>2.13 / Working in health and medical centers that expose the child to:</p> <ul style="list-style-type: none"> • The risk of contact with patients, human fluids, and medical waste, and the risk of transmission of infections. • The risk of exposure to chemicals, medications, gases and radiation. • Psychological distress such as dealing with cases of death or incurable diseases. <p>Except in cases of work for the public benefit where juveniles are assigned to avoid the risks mentioned above and where juveniles are supervised by specialists.</p> <p>2.14 / Working in social development centers with the elderly or the disabled, or with those suffering from congenital, mental, psychological or addictive disabilities (except for short intermittent periods and under the direct supervision of social specialists and psychologists knowledgeable about dealing with juveniles).</p> <p>2.15 / Working in centers of protection or personal escort services.</p> <p>2.16 / Working in cleaning, collecting or separating waste, sewage and waste water channels.</p> <p>2.17 / All kinds of work that require the protection or prevention of others from potential dangers, such as working as lifeguards at the sea and swimming pools.</p> <p>2.18 / Working in the field of derbies and what accompanies horse racing activities.</p>
<p>IMPORTANT NOTE: The use of juveniles over the age of 16 in the herein mentioned works, shall be permitted under the following conditions:</p> <ul style="list-style-type: none"> • To provide them with full protection for their health, safety and moral conduct. • That such juveniles have received special education or appropriate vocational training in the field in which they will be employed, unless the type of work or danger is strictly prohibited to persons under the age of 18 years. 		

AGE GROUP	LEGAL TEXT	PROHIBITED FORMS OF LABOUR BY AGE GROUP
0-15	Labour Code	<p>It is prohibited to use juveniles in industrial projects and work that is burdensome or harmful to their health before they reach the age of fifteen. The aforementioned are the following industries and works:</p> <ol style="list-style-type: none"> 1 / Working underground in mines and quarries and all works that require extracting stones. 2 / Working in industrial furnaces designed to dissolve, filter and cook metal products. 3 / Silvering mirrors with mercury. 4 / Manufacturing and dealing with explosives with hands. 5 / Casting and cooling glass in the specific ovens. 6 / Welding metal pieces through partial dissolving. 7 / Manufacturing alcohol and all alcoholic beverages. 8 / Painting in the deco style. 9 / Flipping, processing or converting lead ash and extracting silver from lead. 10 / Installing of welding mix or metal mixtures containing more than 10% of lead. 11 / Manufacturing of litharge, maceco, aluminum, orange seros, sulphate, carbonate or lead silicate. 12 / The process of treatment with tartar in the manufacture or repair of electrical reservoirs. 13 / Cleaning the factories or laboratories in which the works mentioned under numbers 9, 10, 11 and 12 are performed. 14 / Driving vehicles of large engines. 15 / Repairing or cleaning vehicles with engines while they are rotating. 16 / Making asphalt. 17 / Tanning works. 18 / Working in warehouses of fertilizers extracted from feces, zebra, bone or blood. 19 / Skin shedding of animals. <p>Acceptance of juveniles in a factory or laboratory for the purpose of education or technical preparation shall not be considered as use, provided that the factory or laboratory has obtained a license from the Ministry of Public Health for that purpose.</p> <p>The employment of children in the following industries and works shall be prohibited and shall be subject to obtaining a license for the employment of juveniles:</p> <ol style="list-style-type: none"> 1 / Cooking blood. 2 / Cooking bones. 3 / Cooking soap. 4 / Cooking fat. 5 / Cooking fertilizers. 6 / Any process related to the manufacture of leather. 7 / Manufacturing glue. 8 / Cemento. 9 / Cotton harvesting (working in machine-picking shops). 10 / Manufacturing glass. 11 / Manufacturing sugar. 12 / Cotton pressing.

AGE GROUP	LEGAL TEXT	PROHIBITED FORMS OF LABOUR BY AGE GROUP
		<p>13 / Printing. 14 / Fixing ripped clothes and its manufacture. 15 / Manufacturing cannabis, linen and wool. 16 / Engraving and cutting marble and other stones. 17 / Copper craft. 18 / Tobacco industry. 19 / Spinning, weaving and knitting of silk, cotton and linen by machines. 20 / Construction works, excluding buildings in the countryside, whose height does not exceed the maximum height of eight meters. 21 / Installing paint and glossing paint. 22 / Blacksmithing. 23 / Transferring passengers or goods on the normal, iron and river roads and transporting goods within warehouses, pavements, bridges and sidewalks. In these industries, the use of juveniles requires submitting a medical certificate.</p>
0-17	Decree No. 8987 dated 29/09/2012	Vocational training and technical preparation for juveniles who have not completed 17 years of age in one of the factories or laboratories shall not be considered as use and shall be subject to the approval of the Ministry of Labour. The juvenile shall receive a medical certificate from the Ministry of Public Health.
0-13	Labour Code	The minimum age for the juvenile to work is 13 years. The professions and businesses listed above are all prohibited for those between 13 and 16. The juvenile must not be employed prior to taking medical examination to ensure that he/she is fit for the work in question.

This publication has been produced with the assistance of the European Union Regional Trust Fund in Response to the Syria Crisis - The Madad Fund, and the Regional Development and Protection Program (RDPP). The contents of this publication are the sole responsibility of LEADERS Consortium and can in no way be taken to reflect the views of the European Union or of RDPP.