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Legal Analysis Paper on Non-Payment of Wages to Migrant Domestic



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Non-Payment of Wages to Migrant Domestic Workers: Between Contractual Breach and Criminal Exploitation

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SUMMARY & KEY FINDINGS

This paper examines the legal framework related to the non-payment of wages to migrant domestic workers in Lebanon. Given the vulnerable status of migrant domestic workers stemming from their isolated working and living conditions, insufficient legal protections, and their subjection to the kafala system- this legal analysis seeks to answer the following question: **Can the non-payment of wages to a migrant domestic worker go beyond a mere contractual breach as per the Lebanese law, and be considered a form of exploitation that constitutes part of a criminal offense?**

To answer this question, it is essential to begin with the legal framework established under Article 586(1) of the Lebanese Penal Code, pursuant to the Law on the Punishment of Human Trafficking. This provision defines the crime of human trafficking for adult victims. According to the article, three elements must be fulfilled for the crime to be constituted: an act (recruiting, transporting, receiving, detaining, or sheltering a person), a means (threat or use of force, abduction, deception, abuse of power, exploitation of a situation of vulnerability, giving or receiving sums of money or benefits, or using such means with someone who has authority over another person), and a purpose. The required purpose must be to **exploit the victim or to facilitate exploitation of the victim by others. Such exploitation can take various forms, including "slavery or practices similar to slavery" and "forced or compulsory labor."** Moreover, key international instruments ratified by Lebanon **prohibit slavery and similar practices**, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Convention, 2000).

The Lebanese law, however, **lacks explicit definitions for slavery, slavery-like practices, or forced labor**, thus necessitating reliance on their internationally accepted definitions. Based on these definitions, the paper analyzes the non-payment of wages to migrant domestic workers as constituting a criminal offense.

SLAVERY

Slavery is fundamentally based on the notion of one person exercising a right of ownership over another. In jurisprudence, property rights grant exclusive and permanent control over an object. Applying this reasoning, if an employer systematically withholds wages from a migrant domestic worker—already in a position of heightened vulnerability—over a prolonged period, it may amount to an exercise of ownership over her. This effectively transforms the worker from a contractual employee to an object used by the employer without any obligation of compensation.

Therefore, in certain circumstances, **non-payment of wages may constitute a form of slavery**, in accordance with relevant international conventions and legal jurisprudence¹. This is particularly the case when **wage denial is accompanied by other behaviors consistent with slavery, such as physical confinement, withholding identity documents, threats, or any other conduct indicative of exploitation.**

PRACTICES SIMILAR TO SLAVERY

¹ Among these conventions is the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. Jurisprudence includes, inter alia, judgements and analysis provided by the European Court of Human Rights, and the International Criminal Tribunal for the former Yugoslavia, and Rome Statute of ICC.

² Working Group on Trafficking in Persons, Vienna, 27–29 January 2010 CTOC/COP/WG.4/2010/2

Practices similar to slavery “mean the economic exploitation of another person on the basis of an actual relationship of dependency or coercion, in combination with a serious and far-reaching deprivation of fundamental civil rights”². In such context, **non-payment of wages can constitute a form of economic exploitation rooted in the employment relationship’s dependency.** It may be accompanied by physical or psychological coercion and involves **deprivation of basic rights—foremost among them, the right to receive wages.** However, **such deprivation must be both serious and**

prolonged – such as the non-payment over an extended period. This analysis can be further supported by the concept of “domestic slavery,” which, while not formally defined in law, has been cited in legal literature and by the European Parliament committee reports. **Domestic slavery typically includes forcing a victim to work without remuneration or for minimal pay, often under physical and psychological threats, restrictions of movement, and conditions that amount to inhumane or degrading treatment.**

FORCED OR COMPULSORY LABOR

Forced or compulsory labor, as defined by the International Labor Organization (ILO) Forced Labor Convention of 1930 (No 29), refers to “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. The ILO has identified several key indicators that may signify a situation of forced labor. These indicators include: 1) Physical or sexual violence (or the threat of), which may also include psychological abuse such as blackmail, defamation, the use of offensive or degrading language, and other forms of mistreatment; 2) Restriction of the worker’s movement and confinement to the workplace or a limited area; 3) Debt bondage or work in repayment of a debt, including the withholding or refusal to pay wages, 4) Confiscation of passports and identity documents, preventing the worker from leaving the location or proving their identity or legal status; and 5) Threatening to report the worker to the authorities. **The non-payment of wages to a migrant domestic worker may be a strong indicator of forced labor, provided there is proof that she is compelled to work against her will and under coercion.** It is important to note here that an employment relationship may initially be consensual, but the victim may later be subjected to forced labor. The worker’s full and willing consent to begin the job does not deprive her of the right to discontinue it.

CONCLUSION

While the prevailing view is that non-payment of wages constitutes a civil breach of contract, the situation may differ in the case of migrant domestic workers.

Here, such conduct may escalate to a form of exploitation tantamount to slavery, slavery-like practices, or forced labor, or a combination thereof. This form of exploitation is a constitutive element of human trafficking, as defined in Article 586(1) of the Penal Code pursuant to the Law on Punishment of Human Trafficking. As such, the perpetrator may be prosecuted under this criminal offense, provided the other two elements—the act and the means—are present in the given case. Typically, the domestic worker resides in the employer’s household and may often be detained there due to locked premises or lack of access to her identification documents, thereby fulfilling the “act” element. Likewise, “means” is often satisfied through abuse of power or exploitation of the worker’s vulnerability.

In this context, this study’s findings, legal references, as well as comparisons with international practices and case law from human rights-oriented courts can be instrumental in demonstrating the element of criminal exploitation, thereby **challenging the prevailing perception that disputes over unpaid wages are merely civil in nature.**

The study recommends **leveraging relevant judicial precedents and international practices to build a strong legal case that highlights criminal exploitation and encourages a shift in the justice system’s approach to such cases.**



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