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# The Labor Code in Lebanon: Social Security after the Crisis

**Prepared by:**

*Manar Zeiter,*

Arab Non-Governmental Organizations  
Network for Development (ANND)





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# INTRODUCTION

Legislative reforms of Lebanon's Labor Code have always been minor and do not respond to the needs of the labor sector, mainly addressing rising youth unemployment, the continued expansion of informal labor at the expense of decent work, implementing ILO recommendations regarding the development of trade unions and workers' conditions, and enacting urgent radical reforms to revitalize arbitration boards and ensure their independence<sup>1</sup>. Studies also indicate widespread disparities in workers' rights, especially low-wage workers, women, refugees, migrant workers, informal workers, and children. Furthermore, gender equality at work remains elusive despite some legislation. Labor legislation also falls short of providing equal employment opportunities and access to persons with disabilities. Another deficiency in the Lebanese labor framework concerns the sponsorship (kafala) system imposed on migrant workers. Moreover, some aspects of social protection are limited by the Labor Code, which excludes some categories of workers from its provisions. Finally, labor legislation contains fundamental violations that impede the right to organize.

Many factors influence the above-mentioned labor rights violations, most notably current labor legislation and prevailing practices by private sector employers<sup>2</sup>. Stakeholder engagement with social dialogue processes is weak. Other factors are related to the country's political economy, the economic liberalization policies that seldom enhance employment or protection for workers, and the systematic efforts by the political parties in power to undermine the labor movement for decades. These problems are currently exacerbated as Lebanon faces a severe, multifaceted

crisis that threatens to permanently undermine its political, economic, financial, and social stability. Over the past decades, policies pursued by successive governments have led to an unprecedented economic, financial, and monetary decline. The so-called chronic "twin deficit" in the fiscal balance and the balance of payments has turned into a sovereign debt crisis coupled with monetary and liquidity crises and the collapse of the banking system, which has led to a severe economic contraction. The crisis has greatly affected the social environment, especially for the poor or those close to the poverty line. Its repercussions did not spare the middle class under a social protection system with a lack of funding and multiple structural defects. The situation coincided with the incapacity of the legislative, institutional, and policy structure of the labor market to adapt to emerging challenges.

According to the ILO's Regional Office for the Arab States, the conditions of the informal sector, the fragile situation of the most disadvantaged Lebanese citizens, and that of Syrian and Palestinian refugees residing in the country have worsened due to the deplorable and rapidly deteriorating social and economic conditions in the country. On May 12, 2022, the Central Administration of Statistics (CAS) in Lebanon and the ILO issued a nationwide labor force survey that notes labor underutilization, recording a significant increase from 16.2 percent in 2018-2019 to 50.1 percent in January 2022. According to the survey, the (narrowly defined) unemployment rate in Lebanon increased from 11.4 percent in 2018-2019 to 29.6 percent in January 2022, indicating that approximately one-third of the active labor force was

unemployed that month. Another ILO survey found that the percentage of workers in the informal economy is very high, amounting to 77.8 percent of all workers."

Although Lebanon lacks comprehensive and accurate official data on the matter, the worsening crises contributed to a huge increase in poverty<sup>3</sup>. Some estimates agree that poverty rates ranged between a quarter and a third of the population from the mid-1990s until the outbreak of the crisis in the fall of 2019. They conclude that nearly three-quarters of the population lives in a state of poverty or deprivation and cannot provide adequate living requirements after the outbreak of the crisis, which requires some form of support.

Moreover, the World Inequality Database indicates a state of severe inequality in Lebanon, agreeing with local sources. Only 1 percent of the population controls 23 percent of national income<sup>4</sup>, and 1 percent of bank depositors own half the deposits. According to the Bank of Lebanon regarding the distribution of deposits in 2020<sup>5</sup>, 1 percent of bank accounts (whose account value exceeds one million dollars) represents 46 percent of total bank deposits, while 62 percent of the total accounts (whose account value is less than 3,000 dollars represent less than 0.5 percent of total deposits.

Consequently, the required reforms seem many and structural. The legislative aspect intersects with the structural, the political, and the institutional. However, reforming the Lebanese Labor Code remains an essential starting point. Its achievement requires looking at legislation to identify its main shortcomings and comparing it with the laws of some regional countries. However, a single approach does not suit all countries. Cases and characteristics vary around the region. Thus, each country must develop its

own methods to enhance the labor market's administrative, legal, and institutional framework to create more and better jobs. However, these different approaches must lead to a minimum of common social standards and rights as a foundation for all their institutional frameworks.

Developed through an ongoing partnership between ANND and the Lebanese Observatory for Workers and Employees' Rights, it attempts to approach some Labor Code provisions in Lebanon and compare them with those in Jordan, Morocco, Saudi Arabia, and Egypt. While it does not cover all of the provisions, it addresses the most prominent issues related, in one way or another, to the repercussions of the current crisis and the law's effectiveness in establishing social security foundations and, subsequently, social public order. Moreover, the paper focuses on the legal text, not its applications. The paper addresses four basic issues: the inclusion of all in the Labor Code, its protection of the most vulnerable workers, continuity of work and protection from arbitrary dismissal, and, finally, union organization.

## I. LEBANON'S LABOR CODE: STAGNATION AND FRAGMENTATION

Lebanon's Labor Code is old and rarely amended. The main ones are the following:

- In 1975, Article 50 of the Labor Code was amended to guarantee workers' rights to compensation for unfair dismissal in indefinite employment contracts;
- In 2000, Article 26 of the Labor Code was amended to ensure non-discrimination between women and men with regard to "type of work, amount of pay, recruitment, promotion, vocational training, and dress";
- In 2010, Article 59 of the Labor Code was amended to exempt Palestinian refugees from paying work permit fees and guarantee them equal treatment;
- In 2014, Article 28 of the Labor Code was amended to increase maternity leave from 7 to 10 weeks;
- In 2017, Article 9 of the Social Security Law was amended allowing retirees to benefit from the sickness and maternity provisions of the National Social Security Fund (NSSF).

The development of the Labor Code has been slow, traditional, and partial. However, the trade union movement's programs have always called for its reform, especially since the above amendments failed to address the full text of the law to be consistent with modern times and international standards. Numerous attempts were made, and several proposals were submitted. However, attempts to pass a new law failed, and the Lebanese Parliament did not seek to approve a modern Labor Code. The Ministry of Labor's website still shows a copy of the

latest draft proposal<sup>6</sup>, being considered by the Ministry and which includes many gaps. However, the project follows the course that prevailed for years and the Parliament's fragmented approach to most laws, especially those related to rights and freedoms.

In contrast, many countries in the region adopted significant reforms between 2000 and 2023. The Saudi Labor Code was issued pursuant to a royal decree on 8/23/1426 AH (2005). It consists of a set of professional and practical laws that regulate labor in the Kingdom. The authorities announced new amendments to the Saudi Labor Code in 1442 AH. Royal Decree No. (14) was issued on 1/6/1442 AH (2021), amending Royal Decree (M/51), issued on 8/23/1426 AH.

In 2023, Jordan issued the Law Amending the Labor Code No. 10, which applies together with Law No. 8 of 1996 and its amendments as one law. It will come into effect two years from the date of its publication. On the other hand, Egypt applies Law No. 12 of 2003. Moreover, in 2022, the Egyptian Senate initially approved the final draft of a new labor law. It debated several articles, most notably those related to leaves and penalties. As for Morocco, the third discussion of implementing a liberal labor law began in 1994 and was not completed until 2003, allowing for some amendments.

## II. DEFICIENT CONSTITUTIONAL PROTECTION: THE LABOR CODE'S PHILOSOPHY AND RELATED DEFINITIONS

Lebanon's Labor Code has many sources. In addition to legislation and external Arab and international laws, other sources include institutional internal regulations subject to its provisions, collective labor contracts, customs, and jurisprudence. At the international level, Lebanon has concluded seven out of eight ILO conventions, with the exception of the convention relating to freedom of association and the effective recognition of the right to collective bargaining<sup>7</sup>. At the national level, several laws regulate various aspects of work in the private sector, mainly the Lebanese Labor Code (1946), the Social Security Law (1963), and their complementary decrees, in addition to Decree No. 7993 regarding trade unions (1952), Decree No. 1756 regulating the employment of foreign persons (1964), and the Collective Employment Contracts, Mediation and Arbitration Law (1964).

Before detailing the Labor Code's main provisions compared to other countries in the region, it is necessary to point out fundamental flaws on multiple levels.

In Lebanon, one of the most striking legal gaps is the weak constitutional protection of the right to work. The constitution did not address the fundamental principles enshrined in most state constitutions, such as freedom of work, equality in the workplace, combating discrimination, the freedom to join and withdraw from unions, and the right to strike. On the other hand, Chapter 31 of the Moroccan Constitution stipulates that the state, public institutions, and territorial communities aim to mobilize all available means to promote equal rights for men and women, including the right to

work. In Egypt, according to Articles 12 and 13 of the Constitution, work is a right, duty, and honor guaranteed by the state. In Jordan, Article 23 of Chapter Two of the Jordanian Constitution stipulates that work is a right for all citizens of the state, and the state must provide it for all Jordanians. In Saudi Arabia, Article 28 of the Public Order Law stipulates that the state shall facilitate access to work for all those capable of doing so and enact regulations that protect workers and employers.

Secondly, Lebanon's Labor Code does not include a preamble that expresses its aim, such as a paragraph expressing its purpose. The same thing applies to the labor system in Saudi Arabia and the labor laws in Egypt and Jordan. On the other hand, the Moroccan Labor Code included a lengthy preamble stipulating the Kingdom's commitment to a modern labor code that encourages employment and investment. The preamble includes the rights this law protects, especially those recognized by ILO's main conventions.

The third gap relates to definitions. The Lebanese Labor Code only defines three concepts: the employer, the employee, and the union. In contrast, the laws of several Arab countries have established a list of basic definitions, which ensure a clear framing of their contents. The labor laws in Saudi Arabia, Jordan, and Egypt established an integrated list of definitions that include, for example, work, employer, labor office, original work, temporary work, casual work, seasonal work, part-time work, continuous service, basic wage, actual wage, commission, increases, grants or bonuses, in-kind benefits, basic wages, temporary work, casual work, work injuries, continuous service, events, work permits, trial period, warning period, daily worker, individual labor disputes, collective labor disputes, and other definitions.

In parallel, most Arab labor laws, such as in Egypt and Jordan, define the employment

contract as the contract under which the worker undertakes to work for the employer, under their management and supervision, in exchange for a wage. However, the definition of the employment contract is absent in Lebanese law, although labor arbitration councils tried to define its elements. According to the Law of Obligations and Contracts, three basic requirements must be met for the contractual relationship to be considered an employment relationship (Article 624), which are work, wages, and legal economic dependency.

### III. THE LABOR CODE'S COVERAGE OF WORKERS

#### 1. FARMERS

The agriculture and agri-food sectors are characterized by a high degree of informality. According to the latest statistics, 98.1% of farmers and agricultural workers in Lebanon work informally<sup>8</sup>. Agricultural workers face greater risks than those in other economic sectors, including health, economic, environmental, and social challenges, making them among the most vulnerable and least protected groups.

These challenges call for comprehensive protection for workers in the agricultural sector, which would allow its formalization by expanding the scope of social insurance to provide adequate coverage for workers and farmers. However, agricultural workers employed on farms "unrelated to commerce and industry"<sup>9</sup> have been explicitly excluded from the Lebanese Labor Code since its promulgation in 1946. The law only includes workers employed in businesses engaged in agriculture. Furthermore, the Social Security Law adopted in 1963 only included workers and farmers who work in agricultural industries that engage in commercial or industrial activities. Article 10 of the same law stipulates the inclusion of "all Lebanese employees, including workers, employees,

trainees, and apprentices, working on Lebanese territory in an agricultural facility" in a second implementation phase. However, this phase has not been implemented yet. Moreover, according to the National Social Security Fund (NSSF) Law, in a third implementation phase, a special law will determine "the conditions for mandatorily applying the social security system or some of its branches to persons to whom its provisions in the law have not yet applied" in the first and second phases (such as unpaid workers, independent workers, and employers)." The law was never drafted. Nevertheless, in December 2023, the Lebanese Parliament approved an important reform by adopting Law 319. The new legislation brings fundamental changes to the social security system by introducing a new retirement scheme in the NSSF and a comprehensive restructuring of its governance framework and operations. Under this new law, agricultural workers can optionally join the new pension system.

On the other hand, agribusiness workers (agri-food or business-related agriculture) are included in the Labor Code and, by legal mandate, have to be registered with the NSSF since the law's adoption. However, many companies in this sector do not comply with the Labor Code or the Social Security Law, leaving most workers without rights, benefits, and social security. To protect workers in the agricultural and agri-food sectors, it is necessary to find solutions that benefit from international social security agreements and regional and international experiences appropriate to the country's context.

Nevertheless, the matter goes beyond excluding farmers from the Labor Code, as there is no legislative framework that regulates the Lebanese agricultural sector<sup>10</sup>. Consequently, the Ministry of Agriculture is currently working on a draft law to establish and organize a farmers' registry, which is one of its strategic objectives. The registry would be a basis for drawing up and



implementing agricultural policies based on needs and aspirations to advance the agricultural sector and ensure its sustainability and prosperity. The text of the draft law has been completed but has not yet been submitted to the Council of Ministers<sup>11</sup>.

On the other hand, legislation in some countries in the region took a different direction through their inclusion in the Labor Code, as in Morocco, or regulating their situation under a separate law or code.

According to Jordan's Labor Law, agricultural workers, domestic workers, cooks, gardeners, and similar categories are subject to a separate code. In May 2021, the government issued the Agricultural Workers Code. Although late, the law was an important shift in the development of workers' rights and protections in the country and in regulating the relationship between employers and workers. It ended a long era of excluding the agricultural sector from the Labor Code, which had left its labor relations without regulation or oversight. The new code provides agricultural workers the right to obtain all the protections stipulated in the Labor Code<sup>12</sup>.

The situation in Saudi Arabia is the same as in Lebanon. Agricultural workers and similar categories are excluded from the Labor Code through Article 7 of the Saudi Labor Code. Similarly, in Egypt, there is no protective legislative framework for agricultural workers despite their large share of the labor force.

## **2. DOMESTIC WORKERS**

According to the ILO brief on "making decent work a reality for domestic workers,"<sup>13</sup> there are about 6.6 million domestic workers over the age of 15 in Arab countries, representing about 8.7 percent of the total number of domestic workers worldwide. The sector represents a large proportion of employment in the region, representing 12.3 percent of

total employment (compared to 2.3 percent worldwide). Domestic work is considered a very vital sector for women's employment. In Arab countries, 99.7 percent of domestic workers are excluded from social protection, the highest percentage of any region in the world, compared to 60 percent of all other (non-domestic) workers in the region. The vast majority of domestic workers in the region are migrants.

In the past decade, the vast majority of Arab States introduced some protection measures for domestic workers in line with Convention 189 and Recommendation 201. At least seven countries covered domestic workers either under the provisions of the General Labor Code (Bahrain 2012), or through separate legislation on domestic workers (Kuwait in 2015, Qatar<sup>14</sup> and the UAE in 2017, the Kingdom of Saudi Arabia in 2023), or by adopting specific secondary regulations on domestic workers such as Jordan in 2009 and the Sultanate of Oman in 2004.

Although domestic workers and similar categories are excluded from the Labor Code in Saudi Arabia, a new law for domestic workers was adopted on October 2, 2023, and entered into force in 2024. Its major amendments include a clear ban on passport confiscation, setting maximum working hours, and introducing occupational health and safety regulations. The new law regulates work hours, rest times, and contract termination cases. There is a multilingual complaints system through which migrant domestic workers can file a labor complaint or inquire about contracts. In Morocco, domestic workers are excluded from protection by Article Four of the Labor Code. However, Law No. 12-19 was issued in 2016 and entered into force on October 2, 2018. Despite several reservations, it was a positive step towards justice for this community, starting with changing its legal designation from "domestic servants" to "domestic workers" and ending with enacting a set of legal requirements that

benefit the rest of the workers. The law also assigned the task of mediation to the newly created private employment agencies, preventing brokers and self-intermediaries from intervening under penalty.

Similarly, in Egypt, the Labor Code excludes domestic workers from its provisions through Article 4. However, Articles 27 and 30 regulate the work of foreigners, and Article 28 regulates domestic work. Moreover, a draft bill has been submitted to the House of Representatives to regulate the employment of domestic workers.

In Jordan, the Domestic Workers, Cooks, Gardeners, and the like Regulations of 2009, issued under the Labor Code, guarantee the rights of domestic workers. It determines working hours, rest times, and matters related to wages. Despite its relevance, it raises several questions. For example, it does not oblige domestic employers to include domestic workers in social security. However, in 2020, an amendment was approved to the system regulating agencies working to recruit non-Jordanian domestic workers, specifying the conditions for obtaining and renewing licenses.

On the other hand, Lebanon's legislation did not define "domestic work", unlike the French Codes that defined it as all persons who work in the service of a family home on a regular basis, regardless of the method and pattern of paying their wages. Likewise, per Article 7, the Labor Code does not apply to domestic workers. Nonetheless, no other provisions have been issued to regulate the sector. Although domestic workers can be protected through the Law of Obligations and Contracts, this protection remains incomplete.

Women domestic workers, in particular, have a legal (or illegal) status under a particular legal system known as kafala [sponsorship] (although Lebanese legislation does not include any regulations

regarding the issue). The current system places domestic workers under the full control and discretion of employers. In 2009, the Ministry of Labor issued a unified mandatory employment contract for domestic workers. However, it has several deficiencies and is only available in Arabic. Moreover, it does not guarantee domestic workers' right to keep their passports or protect against arbitrary dismissal. However, it specifies why the worker may terminate the contract. They include the employer's failure to pay wages for three consecutive months, if a household member assaults or mistreats the worker, if the worker is subjected to sexual harassment or assault proven through medical, police, or Ministry of Labor reports, and if the employer employs the worker in another capacity without their consent.

Consequently, if a domestic worker does not have legal leave, cannot prove abuse, and is not given access to adequate sustenance and housing, these are not sufficient reasons to cancel the contract. On the other hand, according to Article 13 of the Unified 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 by Lebanese Law.

However, this type of contract does not mean domestic workers could benefit from the Labor Code's provisions. They remain controlled by employers under the sponsorship system, especially since the Department of General Security prevents foreign workers (and not just domestic workers) from changing sponsorship without authorization. However, it has not been determined who has this authority. Foreign workers are also prohibited from transferring their sponsorship more than twice during their stay in Lebanon. The high degree of control over the lives of workers under the kafala system has led to many cases of human trafficking, forced labor, and abuse. On the other hand, human rights

organizations attempted to regulate the situation of migrant workers through a unified employment contract. However, the Lebanese State Shura Council, the highest administrative court in the country, dealt a strong blow to the rights of migrant domestic workers by suspending its implementation. The Unified Contract, adopted by the Labor Ministry on September 8, 2020, included new protections for migrant domestic workers, including critical safeguards against forced labor. It would have been a significant first step toward abolishing the abusive kafala system<sup>15</sup>.

### 3. INFORMAL WORKERS

The Lebanese Labor Code divides waged labor into workers and employees, distinguishing itself from other laws that adopt the term "worker" to designate a person who performs manual or office work. By adopting this division, the nature of the work in each category became a legal criterion for discrimination between them. The Court of Cassation also adopted this division and considered that workers perform manual or mechanical work while employees assist employers in their industry or trade with written work, intellectual production, or administrative management. However, this division did not impact the rights of employees or workers. Their entitlements are guaranteed by law, regardless of what they are called, except for "daily workers," who receive their wages on a daily basis. Furthermore, regardless of whether employees receive their wages daily, weekly, or monthly, it is necessary to first determine if they have a permanent, continuous connection to their employers to submit to them. It is not a question of how employees collect their wages but the nature of their connection to their employers or institutions.

The majority of workers in Lebanon are in the informal sector, which poses a major challenge to workers' rights, including their access to basic rights and principles at work,

social protection, and decent working conditions.

Many (mainly small) companies are not registered, most of them in sectors like agriculture, construction, transport, and trade. Likewise, the rate of informal employment is very high. and, according to the latest statistics, has increased in recent years from 54.9% in 2018-2019 to 62.4% in January 2022 (Central Administration of Statistics and ILO 2022). There are multiple reasons for the high rates of informal work. Many companies prefer this to escape the costly duties of official registration and employment in the country, and the state itself does not provide basic social protection and services and is unable to enforce or supervise the implementation of labor or social security laws (ILO 2021).

Moreover, many foreign workers and refugees cannot obtain official work permits and are forced into informal work relationships. The proportion of workers in the informal economy - that is, work that is not subject to national labor legislation, income tax, social protection, or benefits such as paid leave - is very high, amounting to 77.8% of all workers. The formal work status applies only to 22.2% of the sample, while 67.4% of all working individuals work in the informal sector. The percentage of Syrians and Palestinians working in the informal economy is very high, reaching 95% and 93.9%, respectively. In comparison, 64.3% of Lebanese workers from vulnerable families work in the informal economy<sup>16</sup>. Nonetheless, since 2019, and in light of the worsening social, economic, and political crisis in the country, informality rates have increased for Lebanese or foreign workers. It has become the prevailing employment relationship, especially in the service sector and, more specifically, the food and beverage industry<sup>17</sup>.

Legally, Lebanese laws do not cover informal workers, who are often unrecognized and underrepresented or

excluded from social dialogue institutions and processes. Without organization and representation, they cannot pursue their work interests through collective bargaining or pressure on policy-makers on issues such as access to infrastructure, property rights, taxation, and universal social security.

The situation is similar in the Arab region, despite some initiatives that fall short of the required adjustment to protect workers in the informal sector.

In Morocco, there is no explicit provision regarding the inclusion of informal sector workers, such as street vendors, within the scope of the law's enforcement. Furthermore, the law does not explicitly provide temporary, seasonal, and part-time workers to the Social Security Fund<sup>18</sup>.

On the other hand, Egyptian legislation does not clearly define the concept of informal labor. The Unified Labor Law No. 12 of 2003 stops at describing labor relations according to their nature as "seasonal, occasional, and temporary," without a specific reference or definition of formality/informality. The only exception is stated in Article 26, which includes references to informal employment in specific jobs. According to the law, the competent ministry is responsible for drawing up a policy and following up on the employment of informal workers. The competent minister, in consultation with the relevant ministers and the General Federation of Egyptian Trade Unions, may also issue decisions to determine the rules regulating the employment of these categories, their safety, health, transportation, and subsistence requirements, and the financial and applicable employment regulations<sup>19</sup>. The draft of the new labor law establishes a fund to protect and employ informal workers.

In Jordan, the informal economy's significant expansion prompted the government, in cooperation with the ILO, to publish a "National Framework for Transition to the Formal Economy in Jordan." It aimed

to limit the informal economy's further expansion. The past five years witnessed numerous attempts to establish labor unions for some workers in economic sectors where informal labor is widespread, including construction workers, drivers, and agricultural workers.

However, the Independent Construction Workers Union was unable to continue due to security pressures. However, the Independent Drivers Union, established in 2012 continues to operate. All its members are informal, and have been actively protesting for years. Their main demand is to be covered by social security. Moreover, the Union of Agricultural Workers was established in 2015<sup>20</sup>.

## IV. PROTECTING THE MOST VULNERABLE GROUPS

Equality has been a main focus of ILO conventions. Its fundamental convention on discrimination in employment and occupation explicitly prohibits discrimination based on race, color, sex, religion, political opinion, national origin, or social origin. Later, through General Comment No. 18, the Committee on Economic, Social, and Cultural Rights added criteria such as physical or mental incapacity, health condition (including HIV), sexual orientation and gender identity, civil, political, social, or other status. In contrast, the Labor Code does not provide protection for the most vulnerable groups.

### 1. WOMEN IN THE LABOR CODE

Before addressing the Labor Code's approach to women's conditions, it is necessary to point out a structural gap at the constitutional level. Although Article 7 stipulates that all Lebanese are equal before the law, the constitution does not mention equality on the basis of gender. In contrast, some countries in the region successfully avoided this deficiency. For example,

Chapter 19 of Morocco's constitution states that men and women equally enjoy civil, political, economic, social, cultural, and environmental rights and freedoms it enshrines. On the other hand, legislation in Saudi Arabia does not include any gender equality provisions and does not prohibit discrimination on the basis of sex or gender. However, the Labor Code contains specific provisions that explicitly prohibit discrimination against women. Amendments were made to Articles 2 and 3 to emphasize the inclusion of "women" in the definition of workers, as stipulated in the law.

The law also explicitly affirms that citizens have the equal right to work without any discrimination on the basis of gender, disability, age, or any other form of discrimination, whether when performing their work, during recruitment, or in advertising.

However, according to Article 11 of the Egyptian Constitution, the state guarantees the achievement of equality between women and men in all civil, political, economic, social, and cultural rights. According to Article 53, citizens are equal before the law. They are equal in rights, freedoms, and public duties, without discrimination on the basis of religion, creed, gender, origin, race, color, language, disability, social level, political affiliation, or geographical or any other reason. Nevertheless, the Labor Law does not specifically prohibit gender-based discrimination sex, but discrimination in wages due to differences in sex, origin, language, religion, or belief is prohibited in Article 35.

In Jordan, Article 6 of the Constitution stipulates the principle of equality among all citizens. Its text states: "Jordanians are equal before the law, without discrimination in rights and duties, even if they differ in race, language, or religion." Although reference to the rights of Jordanians in the Constitution includes both men and women, Article 6

does not explicitly stipulate non-discrimination on the basis of gender. However, in an important amendment on January 2, 2020, the Jordanian House of Representatives agreed to add the word "Jordanian women" to the title of Chapter Two of the Constitution of the Hashemite Kingdom of Jordan so that the title became "The Rights and Duties of Jordanian Men and Women." In turn, Article 69 of the Labor Code prohibits discrimination on the basis of gender between employees that would prejudice equal opportunities.

On the other hand, the Lebanese Labor Code contains many positive and protective provisions for women. For example, the law prohibits employers from discriminating on the basis of gender between male and female workers with regard to "the type of work, wages, employment, advancement, promotion, vocational training, and dress". The Code stresses that pregnant women and those on maternity leave must not receive warnings. Dismissing women due to pregnancy is prohibited<sup>21</sup>. The law entitles women to ten weeks of maternity leave with full pay. However, despite the importance of the above provisions, many gaps remain in the Lebanese Labor Code.

Firstly, it does not address indirect discrimination. In light of the deteriorating conditions suffered by women, legislation related to work cannot be neutral and unaware of the challenges they face. Genuine equality requires an approach that addresses vulnerabilities based on historical social structures and power relations that determine women's capacities to enjoy rights, challenge stereotypes, stigma, prejudice and violence, transform institutional structures and practices that are often patriarchal and ignores women's issues and experiences, and facilitate Social inclusion and participation<sup>22</sup>. The Lebanese Labor Code does not address in any of its articles temporary mechanisms and measures to promote equality and bridge gaps related to discrimination and inequality

as enshrined in CEDAW's Article 4 and the General Comment No. 16 issued by the Committee on Economic, Social and Cultural Rights (CESCR) in 2005<sup>23</sup>.

Secondly, while the Labor Code stipulates equal pay, it does not address the matter of equal pay for work of equal value<sup>24</sup>. However, other countries attempted to include the broad requirement of equal pay for work of equal value as per Convention No. 100 in one legal provision. In contrast, 13 countries have enacted an explicit legal text regarding equal pay for work of equal value, namely: Jordan, the United Arab Emirates, Bahrain, Algeria, the Syrian Arab Republic, Djibouti, Somalia, Iraq, the State of Palestine, Libya, Morocco, the Kingdom of Saudi Arabia, and Yemen.

The Labor Code also includes restrictions on professions open to women and night-time work. The same is true in 14 Arab countries, where legislation imposes restrictions on the jobs that women can hold<sup>25</sup>. Legal restrictions are imposed on women working at night in some Arab countries, with the exception of Jordan, the UAE, Bahrain, Djibouti<sup>26</sup>, and Saudi Arabia. In Egypt, Minister of Manpower Resolutions 43 and 44 lifted restrictions on women working in some professions, businesses, industries, and during night hours.

Moreover, like most Arab countries, with the exception of Djibouti, Libya, Somalia, Iraq, and Morocco, Lebanon adopts maternity leave. However, it does not meet ILO standards, which recommend a period of no less than 14 weeks in Article 4 (1) of Convention No. 183 regarding maternity protection. Nevertheless, Lebanon has not acceded to this convention.

On the other hand, paternity leave is not mentioned in the Labor Code, despite many efforts on the issue. On December 19, 2017, the Council of Ministers approved a draft law giving fathers three days of paid leave when they have a baby. In the same context, the

Arab Institute for Women at the Lebanese American University and the National Commission for Lebanese Women submitted a proposal for a new law endorsed by seven MPs. Regionally, some countries like Jordan, the UAE, Tunisia, Palestine, Algeria<sup>27</sup>, and Morocco, grant paternity leaves that remain symbolic in terms of duration and do not contribute to societal trends to enhance the role of fathers in childcare.

Furthermore, Lebanon's Labor Code completely neglects nurseries. However, labor laws in 10 Arab countries address the question of children's nurseries. They are Jordan, UAE, Syria, Iraq, Kuwait, Libya, Egypt, Morocco, Saudi Arabia, and Yemen.

Another fundamental gap is that covering maternity benefits in Lebanon, as in most countries in the region, falls on employers rather than the social insurance system, which impacts decisions to employ women of reproductive age. Paid maternity leave is covered by the social insurance system in only four Arab countries: Jordan, Tunisia, Algeria, and Morocco. In Egypt, it is covered through a mixed system (75 percent from social insurance and 25 percent from the private sector employer). In Jordan, the social protection system can contribute to covering the costs of nurseries in the first six months after the end of maternity leave, under the social protection regulations linked to maternity insurance No. 93 of 2020.

This legal approach to women's family responsibilities is inconsistent with most of the literature, which considers unpaid reproductive and family burdens borne by women to be a major challenge to their ability to perform vital economic roles.

Finally, regarding protection from harassment in the workplace, Lebanon has not acceded to ILO Convention No. 190 on the Elimination of Violence and Harassment. Likewise, the Labor Code does not

criminalize sexual harassment. However, the law related to sexual harassment and the rehabilitation of victims, approved by Parliament on December 21, 2020, applies in this case. The penalty for sexual harassment in the workplace in Law 205 could reach six months to two years in prison and a fine of ten to twenty times the official minimum wage, or one of these two penalties if the crime of harassment is against a subordinate or with a work relationship. However, this law only looks at the punitive aspects, ignoring preventive measures, Labor Codereforms, monitoring,, and civil remedies. Moreover, it does not assign any role to the civil judiciary, labor arbitration councils, or to mediation.

In a parallel context, the law on sexual harassment in Saudi Arabia, adopted in 2018 pursuant to Royal Decree No. M/96 appears to be advanced. Article 5 stipulates that the relevant authorities in the government and private sectors must put in place the necessary measures, including a filing mechanism, for receiving complaints.

In Egypt, as in Lebanon, the Labor Code does not address sexual harassment in the workplace. However, all forms of violence against women are criminalized by law. Sexual harassment in the workplace is considered a violation of labor laws for which the perpetrator may be fired. In 2021, important amendments were adopted in terms of increasing penalties if committed by someone with authority. The prison sentence could be up to seven years and includes harassment by work superiors or colleagues, even if it occurs outside the workplace.

In Jordan, the latest amendments to the Labor Law in 2023 imposed fines on sexual harassers in the workplace. According to this amendment, if the Minister is aware of an assault by an employer or their representative, which involves physical violence or any form of sexual assault or harassment against their employees, the

employer, the institution's director, or representative shall be punished with a fine between two thousand Jordanian dinars (2,800 US dollars) and five thousand dinars (\$7,000). The fine is doubled in the event of repetition, taking into account the provisions of other legislations in force.

In Morocco, sexual harassment employers is illegal. According to the Labor Code, arbitrary dismissal includes when employees leave their jobs due to a serious error committed by the employer or the head of the institution, including the use of any type of violence, assault, sexual harassment, or incitement to corruption<sup>28</sup>. The Moroccan Penal Code, in its first version issued in 1962, did not include a specific text criminalizing sexual harassment. The matter was later added to the Penal Code's Chapter 1-503, which says that "any person who uses orders, threats, means of coercion, or any other means, exploiting the authority granted them by their duties, for purposes of a sexual nature shall face punishment for the crime of sexual harassment." That is, the law emphasized the relationship of dependency between the harasser and the victim.

## **2. PERSONS WITH DISABILITIES**

Persons with disabilities (PwDs) in Lebanon face structural barriers making them more vulnerable to living in poverty. There is little data on their true numbers or socioeconomic status. Despite the quota system established by Law No. 220/2000, PwDs are largely excluded from the labor market. Between 71% and 80% of them do not work or have never worked, resulting in poverty and marginalization<sup>29</sup>. On the other hand, Lebanon ratified the Convention on the Rights of Persons with Disabilities in 2023, years after signing it and adopting Law No. 220/2000 on the rights of persons with disabilities, which still awaits implementation decrees to go into effect.

None of the Lebanese Labor Code's articles address discrimination against PwDs in the

workplace. However, legislation in some countries in the region approach PwD rights differently.

In the Moroccan Constitution, Chapter 34 instructs public authorities to develop and implement policies directed at persons and groups with special needs. Morocco's Labor Code also addressed the issues of workers with disabilities and regulated issues related to PwDs retaining their jobs and being assigned work that does not exceed their capacity. It also covered health prevention conditions and occupational safety.

In Jordan, Article 6 of the Constitution protects the rights of PwDs and promotes their participation and integration in various aspects of life. Article 12 of Jordan's Labor Code stipulates that the Minister or their authorized representative, based on the recommendation of the Ministry of Social Development, may exempt a severely disabled person or their guardian from paying fees for the work permits issued to all Jordanian workers. According to Article 13, employers must employ the percentage of workers with disabilities specified in the Law on the Rights of Persons with Disabilities and in accordance with its conditions. They must send the Ministry statements specifying the jobs occupied by PwDs.

Likewise in Saudi Arabia, the Labor Code (Articles 3, 28 and 29) prohibits discrimination on the basis of disability. It instructs employers of 25 workers or more to hire PwD's at a rate of at least 4%, as long as the nature of the work allows employing professionally rehabilitated and qualified PwDs nominated by Employment Units or others.

### **3. DISCRIMINATION BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY/EXPRESSION**

Article 534 of the Lebanese Penal Code punishes sexual intercourse contrary to nature, same-sex relations, and diverse

gender identities and expressions<sup>30</sup>. Despite several judicial decisions deeming homosexuality to be the exercise of a basic right and personal and private freedom, the judiciary remained divided over the interpretation of the text. Decisions continue to vary between criminalization and its rejection. Moreover, there is no explicit legal text in Lebanon that allows and protects gender transition and regulates its procedures. Nevertheless, Lebanese civil courts allow the possibility of sexual conversion through long-standing texts dealing on the correction of registries.

As a consequence, members of the LGBT community are often excluded from employment opportunities due to their sexual orientation or gender identity. Many also lose their jobs for the same reason without compensation<sup>31</sup>. Discrimination and ill-treatment on the basis of sexual orientation and gender identity occur at all stages of the work cycle (recruitment, promotion, training, compensation, and termination). The way human resources departments collect data, including by requiring information on partner and family status, can open the door to discrimination<sup>32</sup>. According to a study by Helem Association and the Lebanese Observatory for Workers and Employees' Rights<sup>33</sup>.

In addition to criminalization under the Penal Code, the Labor Code does not prohibit discrimination on the basis of sexual orientation and gender identity. However, the right to a work environment free of violence is guaranteed in the Code's Article 75, Paragraph 4. Since the 1950s Lebanese courts have tended to expand the concept of acts of violence beyond the physical to include acts of a psychological or moral nature, considering them equivalent to physical violence. This concept frames its comprehensive view of violence<sup>34</sup>. However, the Labor Code should include a clear text prohibiting discrimination on the basis of sexual orientation or gender identity.



The situation around the region is similar. Non-conformist sexual orientations and gender identities are still criminalized, in the absence of laws protection discrimination on that basis.

## V. TRADE UNIONS IN LEBANON'S LABOR CODE

Freedom of association is an essential condition for achieving social justice and ensuring a balance of power between capital, i.e. employers, and labor, i.e. workers. It is a principle that lies at the heart of the ILO's values, standards, and protection mechanisms<sup>35</sup>. At the regional level, the Arab Labor Organization's (ALO) constitution set the development and preservation of trade union rights and freedoms as one of its aims<sup>36</sup>.

At the national level, there are doubts about the extent of the binding nature of Convention No. 87 of 1948, which Lebanon did not join, although it concluded Convention No. 98 of 1949. However, Convention No. 87 remains a binding normative framework for the Lebanese state because the ILO adopts its basic principles and rights, which every member must respect, even if they had not ratified it. Thus, non-compliance with Convention 87 impacts freedom of association in Lebanon. The Labor Code devotes a separate section regulating the establishment and membership of trade unions. However, despite the legal regulation of professional unions, many gaps continue to impact the principle of freedom of association as addressed in the Code. However, the need for a fundamental preliminary discussion on the role of trade unions in Lebanon persists. Moreover, the dialectical relationship between political action (i.e. the interaction of unions as players in the public political space and clarifying their position on authority) and trade union action (i.e. limiting the role only to securing the interests of union members) must be considered.

## 1. THE PURPOSE OF UNIONS

The trade union movement in Lebanon developed beyond the traditional framework set by law. It played an influential role in economic and social life. However, the law should have stipulated that trade unions be actively involved in the various agencies and bodies that have the authority to discuss or make decisions on various issues. They include commenting on economic matters, such as the broad lines of economic policy and strategy, expressing opinions on issues being considered, or participating in councils and committees concerned with collective agreements, developing prices, improving production, and so on.

However, Article 84 of the Labor Code limits the purpose of unions to matters related to protecting and promoting the profession, upholding its status, defending its interests, and working for its advancement in all fields. However, some countries, like France, for example, expanded the scope of union activities and developed their purpose. Thus, they became involved in studying and protecting rights along with the material and moral interests, individual and collective, of their constituency. In France, unions' right to litigation was expanded and strengthened. They were given the power to act judicially and adopt the status of claimant in individual disputes.

The situation of other countries in the region is similar to the Lebanese laws. The role of unions concerns defending the economic and social rights and interests of the segments they represent and improving their situation (Morocco, Egypt, Jordan). The situation in Saudi Arabia is similar but also includes the provision of funds for peaceful strikes to cover financial burdens due to work stoppage, establishing savings funds to compensate workers for the financial penalties incurred due to union work, and financing social and cultural activities that serve Saudi workers.

## 2. FREEDOM OF ASSOCIATION

Article 90 of the Labor Code established the principle of freedom to join or not to join unions. It also protects union members from any abuse due to their union affiliation. Discrimination in the workplace due to union affiliation is prohibited. Thus, employment cannot be conditioned on the lack of union membership or abandoning union membership. Employees cannot be dismissed or discriminated against if they participate in union activities outside working hours or during working hours if approved by the employers. Article 50 of the Labor Code provided some protection for these provisions. The dismissal of employees due to their affiliation or non-affiliation to a specific professional union or for carrying out union activities within the limits of the law or applicable regulations are considered to be forms of arbitrary dismissal.

Despite its relevance, according to the ILO's Committee of International Experts, protections must be enhanced through effective and legitimate legislative procedures. These procedures must guarantee protection in practice through measures and penalties related to interventions and discrimination that impedes the employees and employers from exercising their union activities.

For example, the Trade Union Law in Egypt specifies a financial penalty for every employer, facility owner, or person responsible for its management who dismisses or penalizes workers to force them to join or not to join a trade union organization or withdraw from legitimate trade union activities. This rule is also applied in the Labor Codes in Tunisia and Kuwait.

In France, the courts stressed that any normal penalties for violating a fundamental freedom such as freedom of association should not only be represented by compensation, but also by restoring the

situation to what it was before the violation. Employees dismissed due to union affiliation or activities are not merely entitled to compensation, but can also return to their jobs.

## 3. DISCRIMINATION BETWEEN WORKERS

Workers must enjoy the right to form organizations as they choose, without discrimination or prior authorization. They also have the right to join these organizations to promote and defend their interests, provided that they adhere to their regulations. In this context, the term worker applies to all employees and workers in the public and private sectors. The few exceptions include the armed forces, who must be regulated by national laws.

In Lebanon, Article 15 of Decree No. 15703 dated 3/6/1964 prohibits public sector employees from establishing or joining a union. In turn, the decree regulating public service, issued in 1959 and amended in 1992, explicitly prohibits public sector employees from establishing unions in Article 15. However, employees of public institutions with an investment nature were allowed to form unions. As a consequence, the idea of establishing associations in the public sector has spread. They include the Association of Full-Time Professors at the Lebanese University, the Association of Public Primary Education Teachers, the Association of Public Education Teachers, and the Association of Veteran State Employees. As a result, the Civil Service Council called for amending the provisions of Paragraphs 2 and 3 of Article 15 of Legislative Decree No. 112, that is, the system of state employees. It called for allowing the public sector employees to join professional unions in addition to the right to strike according to certain rules. However, the Lebanese state has not responded to this position to date.

Furthermore, foreigners are not allowed to

form trade unions in Lebanon. Article 92 of the Labor Code explicitly requires those wishing to join trade unions to be Lebanese citizens. However, they could join unions under some conditions. Similarly, Article 93 of the Labor Code requires the inclusion of the "nationality card" in union membership applications, making it impossible for stateless persons to establish or even join labor unions.

Looking around the region,<sup>37</sup> Morocco allows the freedom to establish trade unions for all workers.

Workers in Egypt have the right to form unions without discrimination. Trade union bylaws and internal regulations should not include any rules that discriminate between members due to religion, creed, gender, origin, race, color, language, disability, social status, age, political affiliation, and other reasons. However, some segments, such as fishing workers, pensioners, or retirees are denied the right to organize, despite the distinguished experience of the current Pensioners Union, which is one of the most influential unions over the past years, capable of representing its members and expressing their interests and demands. Article 11 of the law also stipulates that union committees should include no less than 150 members, which deprives workers in smaller establishments from forming union committees. Thus, a significant proportion is denied the right to establish unions. Nonetheless, according to the ILO, it is preferable not to require a certain number of members to establish a union. However, if national lawmakers deem it necessary, the number should not exceed twenty members, so that regulating the right does not lead to its disruption.

In Tunisia, members of professional unions charged with managing or coordinating unions must originally be of Tunisian nationality or having obtained it at least five prior. However, foreigners can be appointed or elected for the union's management plan,

provided that they have obtained the approval of the Secretary of State for Youth, Sports, and Social Affairs at least fifteen days before the union is formed or its administrative council renewed through elections or otherwise.

On the other hand, the Saudi law specifies the categories of workers who could participate in unions. They are: all workers in the private sector, including factories, institutions, or various establishments, agricultural workers, domestic and other services workers, seasonal and irregular workers, and workers in the public business sector and the cooperative sector.

The situation in Jordan is similar to Lebanon, where Article 98 of the Labor Code requires that trade or employers union founders must be Jordanian.

#### **4. THE PRINCIPLE OF UNION FREEDOMS**

The law in Lebanon enshrined the principle of freedom of association, that is, the freedom to join or not to join unions and the principle of union pluralism within one profession. However, the Labor Code stipulated the establishment of trade unions with a prior license from the Ministry of Labor after consulting the Ministry of the Interior, in accordance with Article 86 of the Labor Code. The establishment decision must be published in the Official Gazette, in accordance with the second paragraph of Article 87 thereof, in order for it to be considered a legitimate union. Prior authorization, as imposed by the legislator in the Labor Code, is a violation of freedom of association, as the Ministry of Labor has absolute and discretionary authority to accept or reject applications.

The dissolution of unions follows a similar track to their establishment. Article 105 of the Labor Code referred to dissolution, saying: "If a union council fails to fulfill its duties or performs work that does not fall within its jurisdiction, the government has the right to dissolve the council, provided

that a new council is elected within 3 months from the date of dissolution." Moreover, Article 12 of Decree 7993 stipulates that "in the event that the Council is dissolved based on Article 105, the head of the Trade Unions Department in the Ministry of Labor shall be entrusted with carrying out the purely administrative work entrusted to the President of the Union Council, pending the election of the new Council body." Article 14 of the same decree which stipulated that "in the event of the annulment of decisions to establish a union, the Unions Department in the Ministry of Labor shall be charged with liquidating its funds in accordance with its bylaws."

This context contradicts international standards that stress that the establishment of a union must not be restricted by conditions to grant it legal personality. Clarifying its position on prior authorization, the Committee on Freedom of Association and Industrial Relations stated, in its 1948 report, that "States are free to stipulate formalities in their legislation according to what they deem appropriate to ensure the normal functioning of professional organizations. However, in practice, such conditions should not be equivalent to prior authorization conditions or constitute such an obstacle to the establishment of the organization that it would in practice amount to an outright prohibition." These are considered acceptable formalities that do not weaken the guarantees contained in Convention No. 87. As for dissolving a union, Article 4 of Convention No. 87 stipulates that "the administrative authority may not dissolve workers' and employers' organizations or stop their activities." In this regard, the summary of the work of the Committee on Trade Union Freedoms from 1985 included the following: "Even if some circumstances justify taking measures leading to withdrawing the legal personality from a labor union and freezing its funds, these measures should be carried out through the judiciary and not through the administration, in order to avoid any

arbitrary decisions" provided that "the judiciary examining the case is an independent and impartial judicial body that has the authority to consider the case in the first place."

Around the region, the Labor Code in Morocco appears to be advanced in this field. It emphasizes the freedom to establish unions and recognizes the right to organize unions in its introduction and preamble, then through Articles 396 to 429, whereby a union can be established with complete freedom and without a prior license from administrative authorities or their interference, so as not to violate the principle of union freedoms. In case the dissolution is justified, it must only happen through the courts and coordination with the public prosecutor.

In Tunisia as well, upon the establishment of professional unions, their founders must deliver a written communication with, guaranteed delivery, notification of reception, and in five copies to the center of the district where the union's headquarters are located. Dissolution of unions must occur through a court decision. Unions that were not established according to legal provisions, those that deviate from their customary and professional role, or whose activity is in violation of the laws, may be dissolved pursuant to a judicial ruling issued by a court of first instance in the locality, at the request of the Public Prosecutor.

Also in Egypt, union administrative councils may not be dissolved except by a court decision.

On the other hand, the Jordanian law is similar to the Lebanese law, as it requires submitting an application to register unions to the registry of unions at the ministry. The decision regarding registration must be issued within a maximum of 30 days from the date of submitting the application. If approved, a certificate is issued to register the union and the decision are published in the Official Gazette. The decision to reject

the application can be appealed before the Supreme Court of Justice.

The principle of freedom of association entails that unions manage their own affairs. According to international standards, workers' organizations must be independent and voluntary. They must remain free from all interference, coercion, or repression. Workers' organizations are entitled to formulating their bylaws and administrative regulations, organizing their administration and activities, and electing their representatives with complete freedom. Public authorities must refrain from interference that would restrict this right or limit its legitimate exercise.

In Lebanon, the Labor Code and Decree 7993 regulate the mechanisms to set union internal regulations, the method of holding elections, and the manner of managing its internal and financial affairs. There are many articles that restrict unions from freely establishing their bylaws, such as Article 88 of the Labor Code, which requires that "the permit application must be accompanied by copies of the bylaws." Article 89 requires "certification from the Ministry of Labor for the bylaws to be effective." On the other hand, Article 1 of Decree 7993 stipulates in detail what must be included in their internal regulations about how they conduct their affairs.

Added to the list of rights and freedoms that unions must enjoy is "the right of labor organizations to freely elect their representatives." In this context, Article 3 of Decree 7993 specifies the mechanism for holding elections by notifying the head of the union council and the head of the union department, at least 15 days before the date. If the union council fails to set a date for holding these elections, the Minister of Labor assumes this task after warning the president of the union council or its representative.

Likewise, Articles 5 and 6 of the decree

specifies the method of public authority supervision of the electoral process through a polling office (whose members are appointed by the union council) and a representative appointed by the Trade Unions Department in the Ministry of Labor.

The polling office must sign a report on the vote count and submit it to the Trade Unions Department in the Ministry of Labor. More significantly, Article 7 stipulates that "the election is not considered final unless it is accompanied by the ratification of the Trade Union Department in the Ministry of Labor." It seems clear that the Ministry of Labor is involved in the electoral process, starting from setting its date ending with its certification, through expressing its opinion of the candidates through the criminal record and managing the electoral process through supervision and control.

On a related note, Lebanese laws do not allow union councils to obtain loans or receive grants without the approval of the general assembly and the Labor Minister's ratification. Thus, all loans and grants are subject to prior approval of administrative authorities.

On 28 March 2012, the National Federation of Workers and Employees in Lebanon (FENASOL) submitted a request to the ILO's Freedom of Association Committee, which included three complaints about preventing state employees from establishing and joining unions, obstacles to establishing independent unions for private sector employers, and the government's refusal to encourage a comprehensive and beneficial social dialogue among the productive forces. The Committee's commented as follows:

- Regarding the exception of some job categories from the Labor Code, the Committee emphasized in its conclusions that all workers have the right to establish and join unions and that the government must explain how workers who are not subject to the Labor Code can exercise all their union rights.

- Regarding prior authorization to establish a union or prior approval of internal union regulations, the Committee stated that the principle of freedom to establish and join associations cannot be respected and may even remain a dead letter if workers and employees are forced to obtain prior approval to form unions, whether the approval is directly related to their establishment or drafting their internal regulations.

- Regarding the government's right to dissolve unions, the Committee confirmed that the dismissal of some union officials is a clear violation of the principle of freedom of association, which gives workers and employees the right to elect their representatives with complete freedom.

- Regarding the government's right to monitor union elections to ensure the respect of laws and the principle of freedom of choice and elections, the Committee stressed that authorities must not interfere in union elections, whether to determine the eligibility of officials for election or to how the elections are held. In addition, the Committee emphasized that in the event of a dispute over the election results, the case must be considered by the courts, not the government.

- The requirement that the Ministry of Labor approves collective labor contracts concluded by unions for them to be implemented and given the necessary force was considered by the Committee to be contrary to the principles of collective negotiations and International Treaty No. 98.

## **VI. WORK CONTINUITY: PROTECTION FROM ARBITRARY DISMISSAL**

Several international attempts have been made to ensure the continuity of work by adopting modern standards that prevent exceeding the purpose for which the principle of contract termination was established. The French concept expanded to consider a dismissal arbitrary if it occurs without an actual and serious justification or

if it does not respect legal, regulatory, or contractual procedures. It identified eleven cases that justify expulsion, in addition to grave error. In Egypt, the Labor Code follows the general rules adopted in most countries regarding written notification, prohibiting termination except within the limits of the law, and compensation for damage.

However, in Lebanon, the matter differs between fixed-term and indefinite-term contracts. Employers must respect the terms of temporary contracts. In the event of termination, compensation must be demanded in accordance with the principles of contractual responsibility, estimated by the labor court. On the other hand, in indefinite-term contracts, either party is free to terminate the contract even after the amendments to Article 50 of the Labor Code pursuant to Law 2/6/1975. Lebanese lawmakers, influenced by ILO Recommendation No. 119/1963, subjected the termination of employment relationships to two basic principles. The first is the principle of freedom of contract and the second is the inadmissibility of misusing the right, as approved by Articles 124 and 248 of the Law of Obligations and Contracts. Therefore, contract termination could be acceptable if it is reasonably related to workers eligibility, their behavior, or the proper management of the organization and work within it<sup>38</sup>.

The Lebanese Labor Code (after amending Article 50 in 1972) established several guarantees that would provide protection for workers when the employment contract expires. The law allows both parties to the contract (employers and workers) to terminate the employment contract at any time, provided that a written notice is provided within a period determined based on the duration of the contract's implementation<sup>39</sup>.

The Labor Code gives employers and employees the right to suspend the validity of the employment contract in exchange for

compliance with Chapter 5 of the Labor Code regarding compensation and prior knowledge. In September 2016, the Ministry of Labor considered that the verbal notification of employees of the dismissal is not official and not recognized by the Ministry. Therefore, employers are prohibited from dismissing employees without a written warning explaining the reasons for dismissal in accordance with the provisions of Article 50/C of the Labor Code. The Labor Code also requires that warnings addressed to employees be in writing and communicated to the person concerned. The law did not intend this notification merely to send a letter to this effect by registered mail or the like, regardless of the fate of this letter, but rather that it be notified by the person concerned in accordance with the law (Court of Civil Cassation, Decision No. 78 dated 7/23/1993).

Labor legislation permits the two contracting parties or one of them to terminate indefinite employment contracts at any time, provided that the other party is notified in advance as specified by law or by agreement between the two parties. However, this right of termination remains conditional on not being used in an arbitrary manner inconsistent with the general principles governing contracts. The requirement to prove this matter is very delicate. Thus Lebanese laws allow labor arbitration councils the possibility of conducting extensive investigations into the circumstances of dismissal<sup>40</sup>.

Despite the Code's important provisions to protect against arbitrary dismissal, some gaps continue to limit the implementation of the desired protection. To begin with, a structural gap appears in paragraph a of Article 50 of the Labor Code, which gives both parties the right to terminate the contract and ignores the different impact of termination on both parties. Termination of the contract by employees, a fundamental right to preserve the freedom to work, often leads to a temporary disruption of the

employer ability to conduct business. On the other hand, termination by the employer often leads to instability in the employee's situation and puts them and their families in a state of destitution, especially during economic crises. This discrepancy has prompted many countries to develop their labor laws to provide protection for workers by extending the legal notice period or restricting employers' discretionary power to terminate the employment contract without justification or any other reason.

## **1. WHEN DOES DISMISSAL BECOME ARBITRARY**

Article 52 of the Labor Code prohibits sending dismissal notices in three cases: to pregnant women starting from the fifth month of pregnancy, to women on maternity leave, and to all employees during regular or sick leave. In addition, Paragraph D of Article 50 of the Labor Code specifies the cases in which dismissal is considered a rights violation. They are

- When the reason is unacceptable or unrelated to the worker's eligibility or behavior within the organization or to the proper management of the organization and its functioning, such as dismissal due to pregnancy, childbirth, illness, judicial arrest, strike, or false reasons.
- When it is due to the workers' affiliation or non-affiliation to a specific professional union or for carrying out legitimate union activity within the limits of applicable laws and regulations or a collective or private labor agreement.
- When workers stand for election to a union office or to serve as representatives of workers in the institution, throughout the mission's period.
- When worker submit, in good faith, a complaint to the competent departments related to the application of the provisions of the Labor Code and related texts or file a

lawsuit against the employer accordingly.

- When workers exercise their personal or public freedoms within the scope of applicable laws.

French legislation is advanced in stipulating some cases that do not constitute a valid reason for terminating an employment contract in Lebanese laws. It considered dismissal from service based on citizenship, sexual orientation, disability, customs, color, or religious and political belief to be invalid. Similarly in Egypt, according to Article 120 of the Labor Code, and in Morocco, according to Article 36 of the Labor Code, discrimination based on race, color, sex, marital status, family responsibilities, creed, political opinion, national or social origin, or disability is prohibited. Moreover, in Jordan, employers or their representative who assault workers during or because of work by beating, humiliation, or any form of sexual assault or sexual harassment are punished according to the laws in force.

## 2. COMPLAINT DEADLINE

The other problem relates to the deadless for claiming redress. Paragraph B of Article 50 of the Labor Code specifies the procedures for claiming unfair dismissal compensation. It stipulates is a period of one month from the date of notifying the employee of the termination. The arbitration council must decide on the case in less than three months.<sup>41</sup> In contrast, in Jordan, the claim must be submitted within sixty days from the date of dismissal.

## 3. BURDEN OF PROOF

Moroccan legislation shifted the burden of proving the error that justifies dismissal from work, placing it on the employer. If the employee files a lawsuit claiming that the dismissal is arbitrary and that the reason relied upon by the employer does not justify the dismissal penalty, then the burden of proof is borne by the defendant (the

employer) and not the plaintiff, the employee.

## 4. DISMISSAL FOR ECONOMIC REASONS

Article 50 of the Lebanese Labor Code allows the termination of some or all employment contracts in an establishment due to force majeure and economic or technical circumstances, such as downsizing, changing the production system, or completely stopping work. In these cases, employers must inform the Ministries of Labor and Social Affairs of the desire to terminate these contracts one month ahead. They must consult with the Labor Ministry to develop a final program for termination, taking into account workers' seniority in the organization, their specialization, ages, family and social status, and the means necessary for their reemployment. Failure to notify the Ministry of Labor is considered a breach of a fundamental condition and makes the dismissal unacceptable and arbitrary. Paragraph G of the aforementioned article gave workers dismissed for these reasons the priority right to return to work in the establishment from which they were dismissed, for a period of one year starting from the date they left work, if work in the institution returned to normal and they could be employed in its new functions. Failure by the employer to adhere to this obligation leads to dismissal occurring due to economic conditions being considered arbitrary dismissal requiring compensation. This obligation is mandatory, relates to public order, and aims to protect employees, the weakest party economically and socially<sup>42</sup>.

In the first stage of the dispute, the Ministry does not intervene between workers and employers. Instead, it sets a date for a meeting between the two sides. If they fail to solve their problems on their own, the Ministry intervenes in the second stage to bring the points of view closer together. It gives advice for concluding agreements that



preserve the continuity of work for employees, such as reducing working hours in exchange for receiving half a salary. The Ministry cannot impose its opinion, which is ultimately advisory. If it cannot perform its role in resolving the dispute, it asks employees to file complaints before the Labor Arbitration Council within the legal period (one month from the date of dismissal). Continuing to implement the dismissal decision after informing the Ministry of Labor and failure to wait for the results of consultations constitutes a violation of the applicable procedures. Thus, the dismissal is considered an abuse and violation of the right to dismiss, and the employee has the right to demand compensation. Employers who adhere to the formal matters mentioned in Article 50 of the Labor Code, informing the Ministry of Labor without waiting for the consultation or its results, are circumventing the law. Their behavior could be considered an abuse of the right, committing an act of arbitrary dismissal.

In Jordan, if the employers' economic or technical circumstances require reducing the volume of work, replacing one production with another, or completely stopping work, resulting in the termination of indefinite employment contracts or the suspension of all or some of them, they must inform the Minister in writing, along with justifications, before taking any action. The Minister shall form a committee of the three production parties to verify the integrity of the employer's procedures and submit recommendations to the Minister within a period not exceeding fifteen days from the date of submitting the notification. The Minister shall issue a decision regarding the recommendation within seven days from the date of submission to approve or reconsider the employer's procedures. Any person aggrieved by the Minister's decisions may file an appeal within ten days from the date of being notified of the decision before the competent court of appeal, which will examine the appeal carefully and issue its

decision within one month from registering the appeal in the court's registry. Workers whose services have been terminated accordingly shall have the right to return to work within a period of one year from the date of their leaving work if work returns to normal and they can be reemployed. Workers whose employment contracts were suspended due to economic or technical circumstances have the right to leave work without notice while retaining their legal rights upon termination of service.

## **5. COMPENSATION**

Lebanese law stipulates compensation in cash and not in kind for arbitrary dismissal. If the termination is done by the employer, the compensation is estimated on the basis of the type of work and worker's age, the length of service, family and health status, and the extent of damages and abuse of the right, provided that the compensation is not less than two months' wages and not more than twelve months' wages. This is in addition to the legal compensation the worker may be entitled to as a result of dismissal, such as warning compensation, compensation for not obtaining annual leave, and the end-of-service compensation from the NSSF, equivalent to one month for each year of service.

However, some laws contradict the rule adopted by the Lebanese Labor Code in setting a maximum limit for compensation due to terminating a fixed-term employment contract arbitrarily. They linked the value of this compensation with the number of years of service. In France, for example, the Labor Code stipulates that "compensation for dismissal from service shall not be less than one-fifth of the monthly wage for each year of service (1/5), in addition to two fifths (2/5) of this wage for each year exceeding ten years of service." In Egypt, "the Labor Law does not permit this compensation to be less than two months salary for each year of service."

## CONCLUSION

Although, there is no single legal system identical to the idea of social public order in comparative law. The concept is in constant flux and is greatly influenced by the economic and social conditions it regulates and tries to address. Moreover, neoliberal economic globalization consolidates the authority of the market system and promotes contractual freedoms. Currently, the pendulum leans more to the economic approach of profit-oriented capital than the social approach based on protecting workers and achieving social justice<sup>43</sup>.

This paper shows that laws around the region are not exemplary. However, they are somewhat ahead of Lebanese legislation in several areas. Hence, the Labor Code must be amended to serve as a foundation for the relationship between the main economic and social actors or players in the labor market. It is also a major component of democracy.

The Lebanese Labor Code must be amended to be able to adapt to the economic and social challenges of the modern world and establish a legal system that facilitates individual and collective productive labor relations leading to a productive economy. Labor legislation provides a framework for employers, employees, and their representatives to interact on matters related to work. This legislation is also a vital tool to achieve harmonious industrial relations built on democracy in the workplace. It is a permanent and clear reminder, which guarantees the widely socially accepted fundamental principles and rights related to work.

### **Finally, it is necessary to consider the following issues:**

1- First of all, experience shows that suggestions imposed from above are less effective. Social dialogue is the best way to establish a balance at the national level between the needs of workers on the one hand and confronting the pressures of competition on the other. Strong social actors who are able to participate in effective social dialogue contribute to better labor market management and employment generation.

2- Secondly, any incentive procedures or measures for investors, aiming at competitive efficiency, should be contingent on ensuring workers' rights to decent work.

3- Thirdly, the absence of freedom of association empties unions of their effectiveness. They cannot flourish under the intertwined interventions and interests that have kept them from becoming a force pressuring for workers' rights and the profession's interests. Lebanese civil society organizations must play a positive role through cooperation with existing workers' frameworks, which have not been tamed politically or on a partisan basis, to improve access to informal workers and organizing them in grassroots formations<sup>44</sup>.

4- Lastly, a comprehensive approach that produces modern and contemporary legislation is critical to keeping up with global and local transformations. It must account for new worker categories entering the market. Legislation must extend to these new categories, such as gig workers, remote work, temporary employment, and daily work.

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- <sup>2</sup>INEQUALITY IN LEBANON: QUESTIONING LABOR, SOCIAL SPENDING, AND TAXATION, AUB & OXFAM, 2020
- <sup>3</sup>[https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms\\_844837.pdf](https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_844837.pdf)
- <sup>4</sup>Lydia Assouad, "Rethinking the Lebanese economic miracle: the extreme concentration of income and wealth in Lebanon, 2005–2014" (2021), p. 12
- <sup>5</sup>The popular movement on October 17, 2019 led to the press obtaining the reports of the central bank's Banking Control Commission on the distribution of deposits in Lebanon according to the size of the deposit. For years, BdL had failed to publishing these figures and only revealed distribution of loans. The reports were published in most Lebanese newspapers at the time.
- <sup>6</sup><https://www.labor.gov.lb/laborDraft.pdf>
- <sup>7</sup>They are the agreements related to the Declaration of Fundamental Principles and Rights at Work, adopted by the International Labor Conference in 1998 and which Lebanon joined. It declared that member states "even if they have not ratified the Conventions in question, have an obligation to respect "in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions. When adopted, the Declaration covered freedom of association and the effective right to collective bargaining; the elimination of all forms of forced and compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation."
- <sup>8</sup>CAS & ILO, 2022.
- <sup>9</sup>Hammoud, May 2021, "Reviewing legislation/amending the regulatory framework for the agricultural sector," ILO: According to Article 6 of the Trade Act, a business is defined, among other things, as the purchase of goods in order to sell them at a profit. Accordingly, farmers who sell/trade the produce of their lands are not considered to be engaging in business, because they are not buying to sell. Thus, they are excluded from the Labor Code per Article 7.
- <sup>10</sup>On January 18, 1955, Legislative Decree No. 31 defined the tasks of the Ministry of Agriculture. On June 5, 1994, Legislative Decree No. 5246 was issued and remains in effect. It set down the organization of the Ministry of Agriculture. In 2020, Law No. 158 organized organic production.
- <sup>11</sup>The Ministry of Agriculture has initiated the development of the register. The draft defines farmers as "every natural or legal person, or group of natural or legal persons, who carry on their agricultural activity in the capacity of owner, lessee, or agricultural investor, wholly or partially, in an agricultural holding."
- <sup>12</sup>However, the system excluded those working for employers of three or fewer workers from the provisions regarding working hours, vacations, holidays, and social security. This exception is unjustified. It was severely criticized by human rights organizations and workers in the sector, due to the confusion it causes in relations and complicating oversight. It affects rights and obligations, causes great difficulties in court procedures, and deprives large categories of workers of fundamental rights.
- <sup>13</sup>ILO, "Making decent work a reality for domestic workers in the Middle East: Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 (No. 189)," International Labour Organization, 2021, <https://www.ilo.org/publications/making-decent-work-reality-domestic-workers-middle-east-progress-and>.
- <sup>14</sup>Qatar witnessed a significant development regarding the minimum wage for domestic workers. In March 2021, the non-discriminatory national minimum wage law came into effect in the country. It applies to all workers regardless of nationality or sector. One promising practice introduced in Qatar in 2021 is a unified platform for work-related complaints by workers and whistleblowers, which allows private sector employees and domestic workers (or any other parties) to submit complaints through an electronic system. Complainants can report without revealing their identity, and they have the right to submit their complaint in Arabic or English, although there are guides explaining the complaint procedures in nine languages.
- <sup>15</sup>"Lebanon: Blow to Migrant Domestic Worker Rights - Reinstate Contract; Amend Labor Law," Human Rights Watch, 2020.
- <sup>16</sup>[https://www.ilo.org/beirut/projects/WCMS\\_816649/lang--en/index.htm](https://www.ilo.org/beirut/projects/WCMS_816649/lang--en/index.htm)
- <sup>17</sup>CASUALISATION, PRECARIY, AND PERMANENT INSTABILITY OF INFORMAL WORKERS, A look at the working conditions of waiters and bartenders in Lebanon, CESRA 2023.
- <sup>18</sup><http://www.annd.org/uploads/summernote/161614355282.pdf>
- <sup>19</sup><http://www.annd.org/uploads/summernote/121614355057.pdf>
- <sup>20</sup><http://www.annd.org/uploads/summernote/211614355485.pdf>
- <sup>21</sup>Lebanon's Labor Code, Articles 29 and 52.
- <sup>22</sup>"The intersection between work and women's economic, social and cultural rights," ESCR-Net, March 2016.
- <sup>23</sup>General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant)," CESCR, 2005.
- <sup>24</sup>Labor Code, Article 26; Law No. 207 of May 26, 2000 amending Articles 26, 28, 29 and 52 of the Labor Code (September 23, 1994). <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/59176/65219/F00LBN01.html>
- <sup>25</sup>In Libya, the law did not address night work hours. However, Article 24 mentioned the possibility of reducing working hours for women in some professions and businesses.

<sup>26</sup>According to Article 84 of the Labor Code, the legal working hours for employees, regardless of their gender and the method of calculating their wages, are limited to forty-eight per week in all institutions except agricultural ones. The Labor Law, in Articles 94, 95 and 96, regulates night work and does not impose any restrictions except on youth labor.

<sup>27</sup>Law No. 11/90 of 1990, Article 54.

<sup>28</sup>Labor Code, Articles 40 and 41.

<sup>29</sup>Emilie Combaz, "Situation of Persons with Disabilities in Lebanon," K4D (2018), p. 19, and Social Promotion Foundation, Ministry of Social Affairs and International Medical Corps, "Disability and Health Situation Analysis," Lebanon Report 2019–2020, p. 107.

<sup>30</sup><https://lebanon.un.org/ar/126954-byan-mwhwd-llamm-almthdt-fy-lbnan-fy-alywm-aldwly-lmnaht-afal-alkrahyt-ddw-almthlyt-aljnsyt>

<sup>31</sup>FES, "Civil Society Organization Reports 2020," Third Round of the Universal Periodic Review, Lebanon.

<sup>32</sup><https://undocs.org/ar/A/74/181>

<sup>33</sup>[file:///Users/MariamTaym/Downloads/HelemLebanon\\_UPR37\\_LBN\\_E\\_Main.pdf](file:///Users/MariamTaym/Downloads/HelemLebanon_UPR37_LBN_E_Main.pdf)

<sup>34</sup><https://legal-agenda.com/%d9%85%d8%b1%d8%a7%d9%81%d8%b9%d8%a9-%d9%86%d9%85%d9%88%d8%b0%d8%ac%d9%8a%d8%a9-%d9%84%d9%85%d9%83%d8%a7%d9%81%d8%ad%d8%a9-%d8%a7%d9%84%d8%aa%d8%ad%d8%b1%d9%91%d8%b4-%d9%81%d9%8a-%d9%85%d9%83%d8%a7/>

<sup>35</sup>In January 1950, the ILO, in agreement with the UN Economic and Social Council (ECOSOC), created a special mechanism for implementing the rules of freedom of association. It addresses the complaints received by the ILO regarding violations of the rules of freedom of association, whether submitted by trade unions, employers' organizations, or even governments.

<sup>36</sup>Arab Agreement No. 1 of 1966 regarding work standards and Arab Agreement No. 6 of 1976 affirmed the right of workers to form unions and the freedom of union work. Later, the ALO confirmed its commitment to union rights and freedoms emerged in Convention No. 8, which stated that freedom of association is part of the public freedoms stipulated in international conventions.

<sup>37</sup>For example, the Bahraini legislator did not distinguish between citizens and non-citizens in the freedom to join and establish labor organizations. However, Bahrain prohibits the establishment of unions in the government sector in accordance with Circular No. (1) of 2003 issued by the Civil Service Commission on February 10, 2003, despite the establishment of six unions in The Ministry of Health, Electricity, Housing, and Works, the Postal Administration, and the Ministry of Interior. In Kuwait, although migrant workers are prohibited from forming unions, there is no explicit legal prohibition on them joining them. This is helped by the presence of a small number of non-governmental groups that are active in preparing campaigns to protect and promote the rights of migrant workers in the country. For example, a group of volunteer Filipino workers recently created the first membership-based organization for migrant domestic workers in the Gulf.

<sup>38</sup>Dr. Abdel Salam Shouaib, "Work and Social Security."

<sup>39</sup>As follows: one month if the employment contract is for three years or less, two months for contracts in force that are more than three years and less than six years, three months for contracts in force that are more than six years and less than twelve years, and four months for contracts in force for twelve years or more.

<sup>40</sup>Article 50 of the Lebanese Labor Code requires that the dismissal notice be in writing and communicated to the person concerned. The latter has the right to ask the sender to explain the reasons for the dismissal if they are not included in the notice in a clear manner. This explanation is important, as the court has the right to request the sender of the warning to explain the reasons for dismissal if the warning does not contain them. Refusal to explain those reasons is considered evidence of error.

<sup>41</sup>"The Labor Arbitration Council in Mount Lebanon, in its Decision No. 318 dated 7/23/1969, affirmed that the period during which the employee is required to remain at the workplace is considered an integral part of working hours. It is agreed upon in knowledge and diligence that the time spent by the employee at the disposal of the employer is considered part of working hours even if he does not perform actual service during that time." (Nicola Aswad, Lessons in Labor Law and Social Law, p. 80).

<sup>42</sup>(Labor Arbitration Council in Mount Lebanon, No. 156 dated 3/16/2015. Also: No. 39 dated 3/24/1997. Also: Labor Arbitration Council in North Lebanon, No. 82 dated 12/1/1992. And also: Civil Court of Cassation, No. 102 dated 12/21/1993).

<sup>43</sup>Abdel Salam Shouaib, "Public Order and the Labor Code under Globalization," Lecture presented at the Bar Association on 11/4/2007.

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