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纳入妇女人权和性别公平观

2006 年 1 月 18 日黎巴嫩常驻联合国日内瓦办事处
代表团致联合国人权事务高级专员办事处的信

继我 2006 年 1 月 4 日的信之后，谨向你转递 2006 年 1 月 16 日司法部总监事奥马尔·纳图尔法官的来文，事关贩卖人口问题、特别是贩卖妇女和儿童问题特别报告员来黎巴嫩访问与黎巴嫩当局讨论这一问题的报告(E/CN.4/2006/62/Add.3)。

司法部的意见对劳工部提供的意见作了补充，说明了一些与报告有关的事实和法律。

首先，司法部要感谢特别报告员以及高级专员办事处为编写这份报告所作的努力，司法部称，这份报告“反映了为协助黎巴嫩以及国际社会所采取的适当行动”。

司法部的意见论及黎巴嫩有关人权、特别是有关贩卖人口问题的法律和有约束力的公约，也谈到黎巴嫩为在本国不加任何歧视地增进和保护人权所作的努力。

我认为，司法部的信应当引起你们的重视，尤其是第 4 页最后几段中说，“黎巴嫩愿意弥补黎巴嫩签署或加入的有关国际公约与黎巴嫩国内立法之间的差距，完成监测其执行工作并起草有关报告的工作”。

在这方面，信中表示，希望高级专员办事处对此事给予适当重视，派遣合格的专家组织研讨会/讲习班，培训黎巴嫩公务员，并针对所有黎巴嫩公民发起宣传运动。

此外，信中还表示，黎巴嫩政府愿与国际社会合作处理此事，并希望高级专员办事处将黎巴嫩列入寻求技术援助解决贩卖人口问题的会员国名单。

最后，司法部在信中“高度评价”报告中所作的“所有全面和重要的建议”，并认为应该执行这些建议。

我真诚地希望在联合国人权委员会第六十二届会议期间，按照惯例公布我 1 月 4 日和 18 日的来信*中所载的司法部和劳工部的意见和评述。

常驻代表

大 使

吉卜兰·苏方(签名)

* 附件不译，原文和译文照发。

* Reproduced in the annexes as received, in the language of submission and English only.

Annex I

Subject: Comments on the factual and legal elements contained in the report of the Special Rapporteur on trafficking in persons, especially women and children, on her mission to Lebanon from 7 to 16 February 2005

Before clarifying some of the legal points and factual information contained in the report, we must express our sincere gratitude to the Office of the United Nations High Commissioner for Human Rights in general and Ms. Huda in particular for the efforts made to prepare this report, reflecting the appropriate initiative of assisting the Lebanese and global humanitarian community.

With regard to the legal elements and points:

- Ms. Huda found that the issue of human trafficking is not dealt with adequately, because: the Government falls short of fulfilling its international obligations, particularly those laid down in the Protocol to Prevent, Suppress, and Punish Trafficking in Persons supplementing the United Nations Conventions on Transnational Organized Crime, to which Lebanon acceded pursuant to Act No. 682 of 24 August 2005; the labour, law enforcement and social assistance authorities do not adequately and effectively respond to cases of trafficking; Parliament has not been sufficiently involved in reforming or amending legislation; and efforts have not been made to address the root causes of trafficking.

In this regard, it is important to mention that, as stated in the Constitution, Lebanon is a parliamentary democratic republic founded on respect for public freedoms, social justice, and equal rights. It is a founding and active member of the United Nations and abides by its Charter, as well as the Universal Declaration of Human Rights. It has ratified most international human rights treaties.^a

^a In addition to the treaties mentioned in footnote 1, p. 4, of the report, Lebanon has ratified or acceded to the following treaties on the protection of human rights:

- The United Nations Convention against Transnational Organized Crime;
- The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime;
- International Labour Organization Convention No. 182, concerning the prohibition and immediate action for the elimination of the worst forms of child labour (1999);
- The Cooperation Agreement on Tourism concluded between the Lebanese Government and the Government of the Federative Republic of Brazil on 4 December 2004. Under

In addition, the Lebanese State has set out to embed the principles of public freedoms and human rights in all areas and domains without exception. Thus:

- The Standing Committee for Human Rights was established pursuant to a National Assembly decision of 24 October 1994.
- The Higher Council for Childhood was established pursuant to Decree No. 23 in order to create a national consultative framework to follow up on the implementation of children's rights.
- The issue of children's rights is given precedence in policymaking and the media. Lebanon has made great progress with regard to the introduction of the legislative changes required to narrow the gap between the Convention on the Rights of the Child and domestic laws. Over the past decade, approximately 10 new laws were enacted or existing laws were amended, including laws dealing with the right to protection from exploitation at work, the protection of juvenile delinquents and juveniles at risk of delinquency, and compulsory basic education.
- An operational plan was devised for the cooperation programme which the Lebanese Government and UNICEF (the United Nations Children's Fund) concluded out of a desire to strengthen cooperation between them in support of the enjoyment by Lebanese children of the rights embodied in the Convention on the Rights of the Child. The period of cooperation extends from January 2002 to December 2006 and both sides declared their willingness to discharge their responsibilities in a spirit of amicable cooperation.
- The National Commission for Lebanese Women operates as an official national women's organization.
- Before the Protocol on Human Trafficking was signed, the General Directorate for General Security, the Caritas Lebanon Migrant Centre and the International Catholic Migration Commission signed a memorandum of understanding on the implementation of a project designed to protect and assist women victims of trafficking in Lebanon. The project involved: the establishment of a "safe house" to offer temporary shelter to trafficked women migrant workers or foreign women involved in and wishing to get out of prostitution; the delivery of beneficiaries' basic

article 8 of the Agreement, the two sides agreed to exchange information and the results of research and projects concerned with combating the exploitation of children and young persons in sex tourism;

- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

needs; and the creation of permanent solutions for these women, including voluntary repatriation. A complaints hotline was set up for them.

- A number of non-governmental associations which deal with women's and children's issues were established.
- We must explain that although Lebanon enjoys a relatively advanced level of social development, the numerous economic crises from which it has suffered have created social problems that adversely affect the basic structure of society leading to individual injustices or a deterioration in human relations and which can result in moral aberrations with unpredictable consequences.
- However, although some treaties have yet to be implemented on the ground, owing to the absence of appropriate implementation strategies, the mere fact that they have been signed or acceded to is a sign of significant progress on the legislative front, since such treaties take precedence over domestic laws and are a tool that can be used to bring pressure to bear and lobby for the realization of these rights.
- Since Ms. Huda's mission to Lebanon took place less than one month after the signing of the Convention on Human Trafficking, it is not surprising that she should have found shortcomings in the criminal laws that deal with this subject, given the shortness of time and the social, economic and institutional challenges which Lebanon is facing, especially its growing external indebtedness, the rising rates of unemployment and migration, the slow pace of public administrative reform, and the challenges posed by the reconstruction process in southern Lebanon.

In spite of the lack of implementation measures, Lebanese laws punish any form of exploitation or ill-treatment of children and women without discriminating on grounds of colour, race, sex or language.

- We can confirm that no Lebanese laws contain provisions based on racial or ethnic discrimination.
- As for the status of migrant domestic workers, we should like to explain that the fact that they are subject to the Code of Obligations and Contracts is not motivated by any form of racial or ethnic distinction or discrimination; their Lebanese counterparts in domestic service are also governed by the same Code. There are a number of reasons why the legislator does not apply the provisions of the Labour Code to this category of persons, the most important being:
 - The direct, private relationship existing between the worker and employer; domestic workers become members of the family with which they live.
 - The special nature of the work which domestic workers do precludes them from the application of the imperative norms of the Labour Code.

However, this does not exclude them from the provisions on industrial accidents.

- As for migrant workers engaged in work other than domestic service, they are entitled to receive the employment termination indemnity provided for under the Labour Code or to benefits provided by the National Social Security Fund.
- With regard to paragraph 38 of the report, which states that some forms of disciplinary beating are permitted, we should like to explain that this is illegal. If a domestic worker is beaten by her employer, she can bring a criminal complaint for battery. The Lebanese Penal Code applies to all persons in the territory without any discrimination on grounds of sex, race or colour.

As for the fact that foreign female artists are subject to a special law, this is only natural, given the special nature of their work. The law does not allow such artists to engage in prostitution, while female artists who are minors may only work in Lebanon with the permission of their guardians and as members of an artistic troupe. They are absolutely forbidden from having any social contact with patrons of places of entertainment. The Director-General of General Security can revoke the residence permit of a female artist, at her request, if he finds evidence that she is being subjected to arbitrary acts.

- Naturally, if a foreign female artist is physically exploited in any way or coerced into committing immoral acts, she will be dealt with according to the Penal Code.
- We should like to stress that the Lebanese State accords great importance to human rights in general and the issue of human trafficking in particular and has expressed its desire to bridge the gap between international treaties and domestic laws and to meet the challenge of monitoring their implementation and drafting reports thereon. In this context, it should like to request the Office of the United Nations High Commissioner for Human Rights to give this matter due attention by sending human rights experts to run training courses for all civil servants in all fields and spheres and to organize conferences, publicity campaigns and awareness programmes that reach out to all citizens.
- As for the factual elements of the report and the cases of human trafficking to which the Special Rapporteur refers, we cannot deny that these incidents occurred. However, we should point out that they were first and foremost the result of individual acts which received no encouragement or support from the State or its laws. All the acts in question are punishable by law. The problem is that, because of the challenges mentioned above and the shortage of financial and budgetary resources, the State is unable to create appropriate institutions to deal with, and follow up on, this issue.

The Lebanese Government should therefore like to express its desire for international cooperation and hopes that the Office of the United Nations High Commissioner for Human Rights will include Lebanon on a list of States requesting material and moral assistance.

- Finally, we appreciate all Ms. Huda's very important and comprehensive recommendations. In our view, earnest and vital efforts are needed to take account of, and to implement, these recommendations.

With regard to the request that trafficked persons should not be prosecuted for their illegal presence in Lebanon, we should like to mention the humanitarian initiative which Lebanon took following the Tsunami disaster, when it pardoned the nationals of the affected States and paid for them to return to their home countries without prosecuting or fining them.

Annex II

Further to your note referred to above, concerning the report by Ms. Sigma Huda, the Special Rapporteur on trafficking in persons, especially women and children, on her mission to Lebanon from 7 to 16 September 2005, and further to the letter indicating that the Lebanese Government may, if its wishes, clarify a fact or law in the report, the Ministry of Labour should like to provide the following clarifications about the issues mentioned in the report that pertain to its functions and areas of competence:

Paragraph 14

With regard to the information in the report about the complaints office established by the General Security Department, we should like to point out that the Ministry of Labour also has a complaints office for domestic workers. Complaints are submitted by agencies which recruit domestic workers, the embassies concerned, or the workers themselves.

Paragraph 15

With regard to the information in this paragraph about legislation relating to children, we should like to provide the following additional clarifications:

1. Lebanon acceded to the International Labour Organization Convention No. 182, concerning the worst forms of child labour, pursuant to Act No. 335 of 2 August 2001.
2. The period of the night during which children are prohibited from working is from 7 p.m. to 7 a.m.
3. Article 23 of the Labour Code, as amended by Act No. 536 of 24 July 1996, prohibits the employment of minors below 15 years of age in industrial enterprises and in such heavy work and work that is harmful to health as is listed in tables 1 and 2 annexed to the Code.
4. Decree No. 700 of 25 May 1999, in accordance with article 23 of the Labour Code, also prohibits the employment of minors below 16 or 17 years of age in hazardous work that endangers life, health and morals. Table 1 of the Decree lists the types of work that meet these criteria.

Paragraph 16

This paragraph indicates that domestic workers are excluded from the protection of the Labour Code and that they do not have access to the labour courts which specialize in labour issues. In this connection, we should like to make the following points:

- Legislation is currently being drafted on domestic migrant workers, and efforts are under way to follow up on the workshop held in October 2005, in conjunction with relevant international organizations, to raise awareness about domestic migrant workers in Lebanon. The Ministry of Labour is in the process of forming a steering committee, comprising representatives of relevant ministries, to follow up on the workshop's recommendations.

- Domestic migrant workers can submit administrative complaints to the Ministry of Labour. They also have the right to bring cases before the labour courts in accordance with the law implementing Decree No. 3572 of 21 October 1980, concerning the competence of labour arbitration tribunals to hear individual labour disputes and disputes arising from the application of the Social Security Act. Article 1 of the Act states:

The provisions of this Act, as regards jurisdictional norms and review procedures, apply to:

“(a) Individual labour disputes arising from labour relations within the meaning of article 624, paragraph 1, of the Code of Obligations and Contracts ...”.

Article 624, paragraph 1, of the Code defines a service contract as a contract under which one contracting party undertakes to place his work at the service of the other contracting party under the direction of that other party and in exchange for a wage which the other party must pay.

The employment contracts of domestic migrant workers are covered by the terms of article 624.

Paragraph 22

With regard to this paragraph, which states that most of the persons who are trafficked and exploited are female domestic migrant workers, we should like to explain that these women who come to Lebanon legally and have sponsors are not trafficked or exploited. They have regular employment contracts and a bond is deposited for each such worker. Employers also have other obligations to protect them.

Paragraph 24

This paragraph indicates that there are no reliable official statistics on the number of domestic migrant workers currently present in Lebanon. In this regard, we should like to point out that the figures on work permits are accurate and that there are official records on this subject.

Paragraph 26

This paragraph refers to the bond which must be paid to ensure that the foreign worker leaves Lebanon at the end of his or her contract. We should like to explain that the purpose of the bond is to provide for cases in which the sponsor fails to meet all his financial obligations towards the foreign worker or migrant domestic worker.

Paragraph 27

This paragraph states that domestic migrant workers are not allowed to change employers during their stay, unless their employer initiates the change within the first three months of employment. On this point, we should like to make the following clarifications:

- The first three months begin on the date on which the worker enters domestic service in Lebanon.
- This measure was adopted in the past because domestic workers were being brought into Lebanon under the sponsorship of fictitious persons.

The General Security Department adopted a measure aimed at preventing the original sponsor from passing the worker on to another sponsor. It will revoke this measure in the near future.

Paragraph 34

This paragraph states that domestic workers are often prohibited from leaving the house without permission. On this subject, it is worth stating that oriental social traditions and customs regulate human relations in such a way that even among family members the done thing is to inform the other members of one's family when one leaves the house. Then, there are other considerations to be taken into account, such as the fear that the migrant domestic worker might abscond not because she is being ill-treated but simply because she wants to earn more elsewhere. Usually, the worker arranges such matters through contacts with other persons.

Paragraph 37

This paragraph states that inspectors do not periodically visit and inspect households employing domestic workers. We should like to explain that the prevailing legislation does not permit unannounced inspections of households as and when the need arises, since homes are regarded as inviolable. There are legal procedures which have to be followed. When the legislation on domestic migrant workers is drawn up, due attention will be paid to the conditions and procedures for the conduct of such inspections.

Paragraph 40

This paragraph indicates that domestic migrant workers are excluded from access to the labour courts. In this regard, we should like to point out that domestic workers are entitled to bring cases before the labour courts, provided that they are in possession of a valid residence permit and work permit. They may also bring proceedings before the ordinary courts.

Paragraph 42

This paragraph makes reference to the fact that the embassies of some of the home countries of migrant workers have introduced a system to secure payment of wages to their nationals by holding recruitment agencies legally liable for such payments.

In this connection, we should like to point out that embassies have no legal right to play this role and that it is the employer who is legally liable. Thus, the competent Lebanese authorities are responsible for dealing with this issue.

Paragraph 46

This paragraph states that, if a domestic migrant worker absconds, her employer must report her immediately to the authorities in order to avoid being held responsible for the cost of her deportation. It also says that the motive for running away is abuse or exploitation.

Here, we should like to explain that domestic migrant workers do not necessarily abscond because of abuse and exploitation, which are not that common; they may abscond for other reasons, including the desire to find well-paid work through persons who arrange their escape for material gain.

At the same time, we should like to point out that, even if a worker does run away from the home, the original sponsor (the employer) is still responsible for paying for the worker's ticket home.

Paragraph 62

On the subject of child labour, we should like to point out that the national strategy on the prevention of child labour and the elimination of the worst forms of child labour will be presented to the Cabinet at the earliest opportunity. The central components of the strategy are designed to lay the foundations of child labour prevention programmes and to establish practical modalities for dealing with this problem.

Paragraph 85

This paragraph states that the Ministry of Labour should interview and inspect the households of persons wishing to hire a domestic migrant worker and that persons who are not capable of offering adequate living conditions to a domestic worker should not be allowed to sponsor an entry visa.

On this subject, we should like to explain that the Ministry of Labour dispatches labour inspectors to visit households whenever employers apply for permission to recruit a domestic migrant worker and when the Ministry has compelling reasons for doing so. If the labour inspectors ascertain that the employer's material and social circumstances and the state of the household are such as to preclude the recruitment of this kind of worker, the Ministry of Labour will refuse permission to recruit.

Paragraph 86

This paragraph outlines the type of information that could be included in an employment contract (type of work, working hours, weekly holiday, annual leave, and living conditions).

We should like to explain that the above-mentioned items, and others, are covered by bilateral agreements between Lebanon and the States concerned.

(Signed): Ratib Saliba
Director-General
Ministry of Labour

3 January 2006
