



International
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MIGRANT DOMESTIC AND GARMENT WORKERS IN JORDAN

A baseline
analysis of
trafficking in
persons and
related laws
and policies





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Fundamental Principles and Rights at Work Branch (FUNDAMENTALS)
International Labour Organization (ILO)



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ABBREVIATIONS

AHNC	National Committee for Combating Trafficking in Human Beings
AOFWG	Association of Owners of Factories, Workshops and Garments
CBA	Collective Bargaining Agreement
CEACR	ILO Committee of Experts on the Application of Conventions and Recommendations
GCC	Gulf Cooperation Council
GFJTU	General Federation of Jordanian Trade Unions
IFC	International Finance Corporation
ILO	International Labour Organization
IOM	International Organization for Migration
JGATE	Jordan Garments, Accessories, and Textiles Exporters Association
ITUC	International Trade Union Confederation
JOD	Jordanian dinar
JWU	Jordanian Women's Union
MDW	Migrant domestic worker
MOI	Ministry of Interior
MOL	Ministry of Labour
MOU	Memorandum of Understanding
NGO	Non-governmental organization
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSH	Occupational safety and health
PrEA	Private employment agency
PSD	Public Security Directorate (Jordan)
QIZ	Qualified Industrial Zone (Jordan)
UN	United Nations





Background

The Hashemite Kingdom of Jordan is a small but strategically located Arab country in Western Asia. It has experienced first-hand the consequences of grand scale human tragedies in Iraq, Palestine and Syria and currently hosts the largest refugee population in the region. The Arab Spring has also had effects in Jordan, as in other countries in the Middle East and North Africa, leading to multiple changes of Government since 2011.

Jordan today is home to 9.5 million people,¹ including approximately 2,100,000 Palestinians,² 655,990 Syrians,³ and approximately 315,000 registered migrant workers.⁴ Egyptians represent a large majority of the total migrant workforce (61.63%), followed by Bangladeshis (15.66%), Filipinos (5.37%), Sri Lankans (4.72%), and Indians (3.65%).⁵ The number of undocumented migrant workers is estimated to be anywhere between 150,000 and 250,000,⁶ bringing the total number of migrant workers much higher than the number officially reported, to a gross estimate of 440,000 to 540,000 migrant workers.

Historically, Jordan had opened its doors to an increasing number of migrant workers ever since the 1970s. Contrary to the Gulf Cooperation Council States, which saw a vast influx of migrants upon the discovery of oil and the subsequent start of large infrastructure projects, Jordan has no oil sector and its resources are limited to phosphates and agricultural produce. Yet, it has attracted unskilled and semi-skilled migrant workers destined to fill demand for low-wage workers in domestic work, agriculture, construction, and service industries. However, high unemployment rates among nationals combined with a large number of low-skilled foreign workers pushed Jordan to adopt a protectionist policy in 2007, aimed at replacing migrant labour with Jordanian nationals.⁷

Regarding Jordan's legal framework, it has currently ratified 26 ILO Conventions including seven of the eight fundamental conventions⁸, as well as several key UN Conventions, including the United Nations Convention against Transnational Organized Crime and its supplementing Protocol to Prevent, Suppress and Punish Trafficking in Persons. It is also one of the few countries in the Middle East to allow workers to organize and collectively bargain. However, Jordan has not ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize and Jordan's national labour laws greatly restrict the rights of migrant

1 Department of Statistics census data on Jordan population, 2015.

2 UNWRA, Facts and figures as of 1 July 2014.

3 UNHCR, Syria Regional Refugee Response, Statistics from September 2016.

4 Jordan Ministry of Labour. Annual Report 2015.

5 Jordan Ministry of Labour: *Annual Report 2015*, Annual distributions of registered foreign workers by nationality, number and percentage.

6 *Jordan National Employment Strategy*, 2012.

7 Migration Policy Center: *Migration Profile Jordan*, June 2013.

8 ILO Fundamental Conventions include: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182); Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111).





workers, who may join unions but are not allowed to establish them or run for office. Civil society actors and the media have been given a certain degree of autonomy in the field of migrant workers' rights, but some censorship remains.

The situation of migrants' rights in Jordan has been monitored closely by the Government, trade unions and civil society in the country, as well as externally. There have been several notable research endeavours that have shed light on the particularly difficult working conditions of migrant workers in certain sectors of the economy, including domestic work, agriculture, construction and the garment industry.⁹ These reports highlight the major protection gaps that persist in the country, and seek to understand the root causes that prevent decent working and living conditions and sometimes lead to situations of trafficking in persons. The Jordanian Anti-Human Trafficking National Committee has also started to publish reports on the response of the government to situations which may amount to trafficking in persons, noting in its first report that the Public Security Directorate had pursued 84 cases of trafficking between 2009 and 2013, in which 317 victims were identified¹⁰. In 2014 and 2015, the Anti-Human Trafficking Unit had pursued 85 cases, for which 248 victims were identified.¹¹

The ILO has established close cooperation with its Jordanian constituents. Jordan has adopted two subsequent Decent Work Country Programme strategies and was selected as one of nine countries globally, and the only country in the Arab States region, to pilot the Global Jobs Pact. The ILO is managing several technical cooperation projects in Jordan - which represent the biggest portfolio in the region - focusing on a number of areas including the prevention and reduction of child labour and forced labour and the improvement of labour migration governance.¹²

As migration is a process involving countries of origin and destination in which both play equally important roles in the protection of migrant workers, the ILO implements a large scale inter-regional programme called *Work in Freedom* that aims to minimize the risks of migration and empowers women at all stages in their quest for decent work and economic independence. The programme focuses on two sectors that are prone to labour exploitation and forced labour practices: domestic work and the garment industry. It selected Jordan as one of the key countries where the programme could work to strengthen protection efforts at the national level.

Despite the efforts undertaken to date to improve migrant workers' protection, there remain a number of key technical issues that require closer examination. This law and policy assessment tells the story of Jordan's efforts to create a legal framework to protect migrant workers from exploitation, including severe forms like trafficking in persons, and examines how those efforts have worked or failed to quell abuses. The achievement of decent work for domestic and garment workers in Jordan depends considerably on the establishment of a policy regime that operates beyond the parameters of labour and penal law and, more broadly, legal regulation. Thus, the analysis presented also tries to situate regulatory reforms undertaken in the country within the evolving socio-economic framework.

9 See: H. Harroff-Tavel; A. Nasri: *Tricked and Trapped: Human Trafficking in the Middle East*, ILO, (Beirut, 2013), pgs. 25-30.; Human Rights Watch, Tamkeen: *Domestic Plight How Jordanian Laws, Officials, Employers, and Recruiters Fail Abused Migrant Domestic Workers*, (New York, 2011); Tamkeen: *Forgotten Rights: The Working and Living Conditions of Migrant Workers in the Agricultural Sector in Jordan*, (Amman, 2014).

10 Anti-Human Trafficking National Committee: *First Report 2009-2013*, (Jordan), p. 8

11 Data from the Anti-Human Trafficking Unit for 2014 and 2015.

12 Protecting Migrant Workers' Rights in Jordan Project, financed by the Bureau of Democracy, Human Rights, and Labor (DRL), US Department of State, 2012-2014; See also ILO Migration and Governance Network Programme (MAGNET) and ILO Work in Freedom Program (WIF).





Overarching immigration and residency status framework

Jordan has no national policy on labour migration and the Government recently asked the ILO to provide technical support in the elaboration of a comprehensive policy and action plan to improve the institutional framework in this area. Currently, the legal apparatus is composed of several laws covering the entry, stay and exit of migrant workers from the Jordanian territory. The immigration framework is generally not sector or origin-specific and it can therefore be examined in a single section below. The analysis of laws and policies pertaining to the recruitment and the employment period will be done through case studies as it differs greatly from one sector to the other.

The influx of migrant workers beginning in the 1970s prompted the Jordanian Government to enact legislation that ties the residency of a migrant worker to his/her labour contract in order to retain full control over the number of workers entering and exiting the labour market. Central pieces of regulations governing migrant workers' entry and stay in Jordan are the Law No. 24 on Residence and Foreigners' Affairs **in 1973** (as modified in 1998), and the By-law No. 3 of 1997 regulating visas' requirements. The status of migrant workers in Jordan varies greatly according to the economic sector and the country of origin. Overall, immigration is considered temporary (even if in practice the residency can be over a long period of time), as a response to the needs of the national economy, which is legally protected from foreign competition. Arab nationals are privileged as far as entry, stay and access to citizenship are concerned.¹³ **This current immigration system, codified in law No. 24 of 1973, is called the kafala or sponsorship system.**

The rules enshrined in the *Law on Residence and Foreigners' Affairs* apply to workers in all economic sectors, including apparel and domestic work. All matters related to the residency status of foreigners are dealt by the Public Security Directorate (PSD), under the authority of the Ministry of Interior (MOI).¹⁴ Migrant worker cannot enter the country without being sponsored by an employer and cannot change employment nor leave the country without first obtaining explicit written permission from the employer. However, the worker can leave the country (except for Egyptians) unless his employer issued a felony complaint. The worker then will not be able to claim for his/her rights such as social security and his/her return ticket. The sponsor must report to the immigration authorities if the migrant worker leaves

¹³ For example Egyptians' entry, stay and exit are regulated by the MoU signed between both countries.

¹⁴ Article 3(a) of the Law No. 24 on Residence and Foreigners' Affairs of 1973.





his/her employment and must ensure the worker leaves the country after the contract ends, including paying for the flight ticket back home.¹⁵

Resident permits are issued after presentation of a Jordanian work permit and are only given for a period of one year, subject to renewal, even if the working contract is signed for a longer period (working contracts are generally signed for three years in the apparel industry and two years in the domestic work sector).¹⁶ Employers are responsible for renewing annually the work and residency permits of their workers, independent of the contract duration, which in many cases is longer than a year. Each residency permit costs 30 JOD (43 US\$), to be paid by the employer to the PSD¹⁷. However, a migrant worker who exceeds the legal residency duration and does not submit a request for an annual residency permit renewal within a month of its expiry will be fined 45 JOD (64 US\$) for every month of violation, or if part of the month, by 1.5 JOD for every day of that part.¹⁸ **This provision, which sanctions the worker for not renewing the residency permit, poses practical issues, as according to the law the employer should be the one to initiate the renewal of the permit.**¹⁹ In addition, this law has toughened criminal sanctions for employers who hire workers in irregular status, in stating that every company or employer hiring a foreigner without a residency permit shall be fined between 50 and 75 JOD (70 - 105 US\$) for every worker found in violation of the law.²⁰

The ILO Committee of Experts has noted that this *kafala* system, currently being used in Jordan, Lebanon and the GCC States, is one of the factors which, when combined with other elements, may be conducive to the exaction of forced labour from migrant workers.²¹ Indeed, **one key and problematic issue emerging from the immigration and employment laws is related to the worker's freedom to leave the employer** after the beginning of the contract. Under those laws, the contract of employment can only be terminated if both parties agree to terminate it, if the duration of the contract has expired, or if the worker dies or is no longer capable of working due to a disease or disability certified by a medical authority.

Jordanian *Law No. 8 of 1996 (Labour Code)* makes it difficult for a worker to leave his/her job for any other reason than the one cited above, without obtaining prior permission from the employer to “release” him.²² Article 26(b) of the *Labour Code* stipulates that if the employee wants to terminate a limited period work contract (which is the type of contract applicable to apparel and domestic workers), the employer has the right to claim the damages arising from that termination “provided that the amount that the employee shall pay shall not exceed the wage of a half month for each month of the remaining period of contract”.

15 Migrant Forum Asia: *Policy Brief No. 2: Reform of the kafala (sponsorship) system*.

16 Articles 22 and 26 of the Law No. 24 on Residence and Foreigners' Affairs of 1973.

17 Article 23 of the Law No.24 on Residence and Foreigners Affairs of 1973.

18 Article 34(a) of the Law No. 24 on Residence and Foreigners' Affairs of 1973.

19 Interview with the Director of the NGO Tamkeen, 12 January 2014.

20 Article 35 of the Law No. 24 on Residence and Foreigners' Affairs of 1973.

21 ILO: *Giving globalization a human face: General survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008*, Report III (1B), International Labour Conference, 101st Session (Geneva, 2012), pp. 126–127.

22 “Release” is a term used in countries applying the *kafala* system and that refers to the mandatory permission that an employer has to give to the worker in order for him to work for another employer.





Taking into account that contracts in the apparel sector are generally for three years, one can imagine the considerable financial means that a worker has to pay if he wants to break the contract or transfer to another employer. This provision aims to protect the rights of the employer who has paid recruitment costs but disproportionately puts the burden on workers who are often unable to pay and left with no other choice than to finish the term of their contract. Article 29 of the *Labour Code* enunciates some exceptions to this general rule in stipulating that a worker shall have the right to leave his/her work without prior notification while keeping his/her legal rights related to the end of service if the employer “(a) employ[s] him/her in a work significantly different from the one agreed in the contract (...); (b) employ[s] him/her in a way that entails changing his/her permanent place of residence (...); (c) transfer[s] him/her to another work of a lower degree (...); (d) reduce[s] his/her wage (...); (e) (...) if continuing his/her work will threaten his/her health; (f) if the employer or his representative assaulted him during work (...); (g) if the employer has defaulted in executing any of the provisions of this law (...)”.

However, in practice migrant workers find it very difficult to effectively transfer to another employer, even if one of the above conditions is met. As the Head of the Inspection Directorate explained, “in cases of proven practices of labour abuses or forced labour imposed by the employer, the Ministry of Labour (MOL) can provide a release for the worker, even if the employer does not want to give it. But the MOL did not use this right to oblige an employer to release a worker”.²³ In the future, the MOL should therefore envisage ensuring freedom to terminate contracts with reasonable notice, effective avenues for the transfer of migrant workers and a broadening of the situations in which workers may elect to change their employer.

.....
²³ Interview with the Head of Inspection Directorate, 26 September 2016.





Case study on the apparel sector

3.1 Labour migration and legislative trends in the apparel sector

The apparel industry is Jordan's main industrial sector and accounts for 17% of Jordan's total exports. Apparel exports, mostly to the United States of America, reached 1.5 billion US\$ in 2015, representing an increase of 10% over 2014. These exports are expected to rise of to 10% in 2016, according to the Jordanian Department of Statistics.²⁴ The apparel sector mainly produces men and women's apparel and most apparel factories are situated in one of 14 Qualified Industrial Zones (QIZs).²⁵ The apparel exports' industry employs over 60,000 workers, over three quarters of whom are migrant workers, mostly from South Asia and Southeast Asia (the majority originating from India, Sri Lanka, Bangladesh and with a small but growing number of Nepalese and Burmese workers²⁶).²⁷ Women represent 69% of the labour force of the sector.²⁸ According to the NGO Tamkeen, the increase in female workers started in 2011 and is partly explained by the fact that "employers generally perceive women as causing fewer problems because they are less inclined to go on strike and file complaints".²⁹ This high percentage of women migrant and national workers is also reflected in the factories established through a satellite project launched by the MOL to develop the apparel sector in the under-developed areas of Jordan.³⁰

The emergence of the apparel industry since the late 1990s has presented Jordan with challenges in drafting a comprehensive set of laws to regulate the working conditions in the sector and ensure its effective application. In response to the need for improved regulation, the Government has amended its Instructions on the conditions and procedures for bringing and

24 Better Work Jordan: *Garment Industry 7th Compliance Synthesis Report* (Amman, 2016), p. 7; Written interview with the Technical Officer of Better Work Jordan, 23 October 2014.

25 Better Work Jordan: *Garment Industry 7th Compliance Synthesis Report* (Amman, 2016), p. 7.

26 Interview with the Director of the NGO Tamkeen, 12 January 2014.

27 Better Work Jordan: *Garment Industry 7th Compliance Synthesis Report* (Amman, 2016), p. 7.

28 Better Work Jordan: *Garment Industry 7th Compliance Synthesis Report* (Amman, 2016), p. 7.

29 Interview with the Director of the NGO Tamkeen, 12 January 2014.

30 Written interview with the Technical Officer of Better Work Jordan, 23 October 2014.





employing non-Jordanian workers in the QIZ³¹ and is currently undertaking a revision of the *Labour Code*, which covers apparel workers. In parallel, the Government has set up a broad programme of action to improve labour administration and compliance, including a **reform of the inspection Directorate** and the **creation of a joint inspection team specialized in identifying trafficking in persons** between the MOL and MOI. Another key component of this national response was the **creation of Better Work Jordan** in 2008, a partnership between the ILO and the International Finance Corporation (IFC) to improve the competitiveness of the industry by enhancing economic performance at the enterprise level and improving legal compliance.

Over the years, the provision of Better Work Jordan services at the enterprise level, as well as the development of the legal framework, have contributed to a measurable improvement in compliance with national law and ILO labour standards in most factories.³² However, cases of labour exploitation are still reported and several contributing factors persist, including: limited freedom of association, discrimination in employment, illegal recruitment practices and poor dormitory conditions.³³

3.2 Regulatory framework on the recruitment of apparel workers in the QIZ

According to the legal framework, private recruitment agency licenses are restricted to recruitment in the domestic work.³⁴ Therefore, employers in the apparel industry are not allowed to use the services of Jordanian private employment agencies (PrEA) and should recruit migrant workers directly or through PrEAs based in countries of origin. In practice however, some employers do unofficially recruit workers through the assistance of Jordanian brokers. The recruitment process of Bangladeshis and Sri Lankans has seen improved regulation in recent years by their respective governments, which have established public organizations under their MOLs, responsible for standardizing and monitoring the recruitment of their nationals abroad. This formalization process has, over time, reduced deceptive practices and reinforced the rights of workers.³⁵

The reforms in these two countries of origin have not gone unnoticed in Jordan. According to the General Manager of Better Work Jordan, “with regard to the recruitment of Bangladeshis and Sri Lankans, for the past couple years it seems that nearly all workers coming to Jordan to work in the apparel sector go through the Bangladesh Overseas Employment and Services Limited (BOESL) and the Sri Lanka Bureau of Foreign Employment (SLBFE) processes”.³⁶ The Head of the Labour Inspection Directorate from the MOL added that “thanks to the formalization of the recruitment process, we have encountered fewer instances related to the payment of unauthorized recruitment fees, falsification of documents of minors, contract

31 Jordan, *Instructions on the conditions and procedures for bringing and employing non-Jordanians workers in the QIZs*, Issued by virtue of the provisions of article (4) of the Regulation on the fees of the employment permits for non-Jordanians workers No. 36 of the year 1997 and its amendments.

32 Interview with the General Manager of Better Work Jordan, 14 July 2014.

33 Better Work Jordan: *Garment Industry 7th Compliance Synthesis Report* (Amman, 2016), p. 15-25.

34 See Regulation No. 12 of 2015 Article (3) for the organization of private offices working in the recruitment of non-Jordanian domestic workers.

35 Interview with the General Manager of Better Work Jordan, 14 July 2014.

36 Interview with the General Manager of Better Work Jordan, 14 July 2014.





substitution and hidden health problems for nationals from these two countries”.³⁷ However, issues related to the recruitment process remain, specifically with workers coming from India and more recent countries of origin, like Myanmar, where the recruitment industry is less regulated and monitored.

Given the specific characteristic of the recruitment process in the QIZs and the high rate of labour law violations in the sector, a separate regulation covering those workers was needed. In 2012, new Instructions for the conditions and procedures of bringing and employing non-Jordanian workers in the QIZs were issued.³⁸ These Instructions determine the requirements that an employer must fulfil to recruit and employ migrant workers into its apparel company in the QIZs.³⁹ They contain both controls on abuse in employment practice, as well as positive incentives for law-abiding employers.

Employers have to be a registered company in the QIZ and submit several documents including:

- a) A certificate authenticated by the worker’s embassy attesting that he/she was recruited by a licensed PrEA in his/her country of origin and that, apart from fees stipulated by the law of his/her country of origin, no other fees were collected for his/her recruitment;
- b) An advertisement published in a newspaper of the country of origin mentioning the job description including salary, working hours, exact type of work, accommodation, catering and health insurance, with a mention that no fees will be collected for his/her recruitment other than those stipulated by the law in the country of origin of worker;
- c) A bank deposit according to the number of workers recruited; however, institutions within the golden list to be exempted from this condition⁴⁰
- d) The company registration certificate and proof of proprietorship.⁴¹

As noted above, the principle of free job placement for apparel workers in the QIZs was retained in article 3(a) of the *Instructions*, as one of the protection provisions to avoid induced indebtedness through recruitment fees. **The Instructions further grant one exception in mentioning that this prohibition does not include “fees stipulated by the law in the country of origin of worker”.**⁴² This provision is problematic as it introduces a gap in the protection of workers coming from countries of origin in which collection of fees is a common practice. Indeed, this remains a major issue that was highlighted in Better Work’s compliance report, as workers in “in nearly half of factories (47%)” were found to have paid unauthorized fees to recruitment agents”.⁴³As ILO Recommendation No. 198 on the employment relationship

37 Interview with the Head of the Inspection Directorate, 16 January 2014.

38 Available in Arabic at: http://www.aci.org.jo/development/admin/st_file_manager/user_uploaded_images/Conditions_and_Procedures_of_Employing_and_Recruiting_Non-Jordanian_Workers_in_Qualified_Industrial_Zones_of_2007.pdf.

39 There are very few apparel workers working in factories outside the QIZs. However, those are regulated by another piece of regulation: Instructions for the conditions and procedures of bringing and employing non-Jordanian workers, 2012, see article 10.

40 According to article 10 of the Instructions, the scale of the bank deposit varies according to the number of workers recruited: a) 1 – 100 workers: 30,000 JODs; b) 101 – 200 workers: 50,000 JODs; c) 201 – more workers: 75,000 JODs.

41 Instructions for the conditions and procedures of bringing and employing non-Jordanian workers in the QIZs, article 3.

42 Instructions for the conditions and procedures of bringing and employing non-Jordanian workers in the QIZs, article 3(a).

43 Better Work Jordan: *Garment Industry 7th Compliance Synthesis Report* (Amman, 2016), p. 7.





states, “in the context of transnational movement of workers: [...] where workers are recruited in one country for work in another, the Members concerned may consider concluding bilateral agreements to prevent abuses and fraudulent practices which have as their purpose the evasion of the existing arrangements for the protection of workers in the context of an employment relationship”.⁴⁴ Jordan could thus consider amending its *Instructions* to eliminate this exception, which opens the door for unfair labour practices.

In order to deter and affect employers engaged in unfair recruitment practices, article 11 of the *Instructions* provides for the suspension of employment permits for a period determined by the MOL. However no penal sanctions are provided, even if the infringement is of a severe nature. The *Instructions* also provide that recruitment activities by the employers should be monitored through a pre-approval inspection during the application procedure, carried out by the Jordan Investment Board and the MOL labour offices in the respective governorates.

Requirements contained in these *Instructions* aim primarily at controlling the recruitment processes of companies, but they also try to increase the effectiveness of the labour market in the QIZs by providing positive incentives for employers fulfilling the Golden List. This code of practice was developed in 2006 by the MOL and the Jordan Garments, Accessories, and Textiles Exporters Association (JGATE) to encourage employers’ compliance with Jordanian labour laws and international standards.⁴⁵ The *Golden List* contains specific criteria pertaining to the working and living conditions of migrant workers and the recruitment of Jordanian nationals.⁴⁶ The Jordanian labour inspectorate must first ascertain compliance, after which companies can be granted preferential treatment and are placed on the Golden List. For example, article 10(2) mentions that companies meeting 80% of the points set out in the *Golden List* should be exempt from the requirement to maintain a bank deposit, which an employer is normally required to have in order to recruit migrant workers.⁴⁷ The *Golden List* criteria could be reinforced by adding indicators on fair recruitment, like the non-charging of fees to the workers in Jordan and working with certified/licensed agencies that have a no-fees policy in countries of origin.

44 ILO Recommendation No. 198 on Employment Relationship, 2006, art. 7(b).

45 Better Work Jordan: *Guide to Jordanian Labour Law for the Garment Industry* (Geneva, 2013), p. 41.

46 Golden List criteria include among others compliance with: minimum wage limits, timely payment of wages, payment of social security scheme, maximum working hours per week, maximum and paid overtime, option given to the worker to keep his/her passport, proper accommodation conditions, etc.

47 ILO: *Labour inspection and private compliance initiatives: Trends and issues, Background paper for the Meeting of Experts on Labour Inspection and the Role of Private Compliance Initiatives* (Geneva, 2013).





Box 1. “Free” visas

According to civil society groups in Jordan, there are still some pitfalls in this recruitment system, which lies in the poor enforcement of the Instructions, and the way visas are granted to employers.

“The problem that remains is that smaller garment companies, which cannot recruit the number of workers they need to develop their business, hire workers recruited under the sponsorship of other bigger companies, with what we call a “free” visa. This illegal type of recruitment puts the worker in a very vulnerable situation and is in contradiction with the rules of the *kafala* system which link one sponsored company with one worker. Workers also need to pay illegal fees to the employers to renew their work permit each year, and this extortionist practice leads them to accumulate more debt. These recruitment practices persist, as some men migrant workers prefer to stay in an irregular situation at the mercy of the sponsor, as they know that if they go back to their country they might not be able to come back given the Jordanian government’s support for the recruitment of more migrant women and more nationals”.⁴⁸

Director of the NGO Tamkeen, 12 January 2014

3.3 Legal and policy framework on working and living conditions

The general legal framework governing the labour affairs of Jordanian and foreign workers consists of the **Jordanian** Law No. 8 of 1996 (the *Labour Code*) and its amendments. The provisions of the law apply to all employees and employers in Jordan as defined by article 2. It was complemented by regulations, instructions and decisions issued in accordance with its provisions.⁴⁹ In order to address several legal and enforcement gaps, the previous / dissolved House of Representatives of Jordan reviewed the 39 amendments proposed by the Labour Committee to the *Labour Code* and its related *Interim Act No. 26 of 2010*.⁵⁰

Other key acts should be considered in the scope of this baseline. For example, *Act No. 36 of 1997 concerning work permit fees for non-Jordanian workers*, issued under article 12 of the *Labour Code*, provides for the fees to be paid by the employer for the delivery of work permits. *Act No. 56 of 1996 concerning labour inspection* was promulgated under article 7 of the *Labour Code* and *Act No. 19 of 2001 on social security* provides for the establishment of the General Social Security Institution, that should give social insurance for all workers under sixteen with certain exceptions (seafarers, domestic workers and agricultural workers). It also deals with labour injuries, occupational diseases and death benefits.⁵¹

Apparel workers’ labour relations are governed by both the Jordanian *Labour Code* as well as specific regulations applying to the QIZs.⁵² These laws and decisions contain important provisions pertaining to working and living conditions which can reduce the vulnerability to forced labour if properly enforced.

⁴⁸ Interview with the Director of the NGO Tamkeen, 12 January 2014.

⁴⁹ ILO: *National Labour Law Profile: Jordan*, 2011.

⁵⁰ Interim Act No. 26 of 2010, Act amending the Labour Code www.ilo.org/dyn/natlex/docs/MONOGRAPH/85213/95323/F1112571864/JOR85213.pdf.

⁵¹ ILO: *National Labour Law Profile: Jordan*, 2011.

⁵² These specific regulations include: Work permit fee regulations for non-Jordanian workers No. 36 of 1997; Instructions for protection of workers and establishments from workplace hazards of 1988; Tripartite Committee for Labour Affairs Decision of 31 December 2011; Tripartite Committee for Labour Affairs Decision of 15 February 2012.





Employment contracts

Under the *Labour Code*, the employment contract of apparel workers should contain the following terms and conditions: the period and scope of employment, the hours of work, the location, the agreed wage⁵³ and benefits as well as the procedures for resigning from work (which are very limited for foreign migrant workers, given the current sponsorship system). It may be in writing or verbal form⁵⁴ but the practice in the apparel sector is a written contract in order to minimize deception and obtain working permits for workers. Written contracts should be in Arabic, and at least one copy must be provided to each party.⁵⁵ If a worker does not understand Arabic, a copy of the contract must be given in the worker's language.⁵⁶ In the apparel sector, contracts are generally signed for three years. Also, employers cannot deduct amounts from the worker's wage except in very limited situations.⁵⁷ This provision reinforces the prohibition of wage retention, which is a key indicator of trafficking practices.

Working hours and rest times

According to the *Labour Code*, the maximum number of working hours allowed is 48 hours per week and 8 hours per day.⁵⁸ However, the maximum of the weekly working hours and rest times might be distributed so that its total may not exceed eleven hours per day.⁵⁹ Workers should give consent to work beyond regular working hours. The employer can only require them to work overtime in order to: conduct yearly inventory, finalize the budget, close accounts, prepare for a sales period, avoid loss of goods, or to receive, deliver or transfer specific material.⁶⁰ Additional working hours must be paid at a minimum rate of 125% of the worker's regular salary for all ordinary overtime work and 150% for overtime hours on weekly rest days, religious feast and public holidays.⁶¹ In addition, Friday of every week is the employees weekly holiday unless the nature of work requires otherwise.⁶²

.....
53 Labour Law No. 8 of 1996 and its amendments, various articles provide guidance on the employment contract of apparel workers and their wage levels, refer to article 45.

54 Labour Law No. 8 of 1996 and its amendments, article 2.

55 Labour Law No. 8 of 1996 and its amendments, article 15.

56 Labour Law No. 8 of 1996 and its amendments, article 15.

57 Labour Law No. 8 of 1996 and its amendments, article 47: "No amount shall be deducted from the employee's wage except in the following cases: A. Getting back what the employer has provided of prepayments to the employee in such a manner that each instalment that is refunded of the prepayment shall not exceed (10%) of the wage. B. Refunding any amount paid to the employee in excess of his/her entitlement. C. The social security subscriptions and its due instalments on the employee, and the deductions that shall be made in accordance with the other laws. D. The employee's subscriptions in the savings fund. E. Deductions related to the housing facilities provided by the employer in addition to the other benefits or services according to the agreed upon rates or percentages between the parties. F. Each debt received as execution of a judicial verdict. G. The amounts imposed on the employee because of his/her violation to the provisions of the bylaw of establishment or work contract or against what the employee has destroyed of instruments or tools because of his/her neglect or mistakes in accordance with the special provisions stated in this law."

58 Labour Law No. 8 of 1996 and its amendments, article 56 A.

59 Labour Law No. 8 of 1996 and its amendments, article 56 B.

60 Labour Law No. 8 of 1996 and its amendments, article 57.

61 Labour Law No. 8 of 1996 and its amendments, article 59.

62 Labour Law No. 8 of 1996 and its amendments, article 60.





Paid annual, sick and maternity leave

Workers shall be entitled to annual leave with full pay for fourteen days for each year of service unless more than that period was agreed upon. Such an exception is possible provided that the annual leave shall be twenty-one days if the employee remains in the service of the employer for five successive years. Public holidays, religious feasts and the regular weekly holidays shall not be calculated from the annual leave.⁶³ Moreover, workers are entitled to 14 annual paid days of sick leave for medical reasons, which might be renewed for another 14 days if the worker is hospitalized. If the worker is not hospitalized during the 14 additional days, the worker may receive half wages if the medical leave is based on the report of an approved medical committee.⁶⁴

Under article 70 of the *Labour Code*, female workers are “entitled to maternity leave with full pay for ten weeks including rest before and after delivery.”⁶⁵ Leave following delivery must account for a minimum of six weeks, with any work prohibited before the expiry of the six week period.⁶⁶ For a one year period following delivery, female workers must be given the right to take off up to one hour per day, with pay, for the purpose of nursing.⁶⁷ However, with respect to migrant workers, these rights are often unenforced in practice and migrant workers are often repatriated to their country of origin when they get pregnant.

Social security and health insurance

The *Social Security Law No. 1 of 2014* applies “to all labourers who are not under sixteen years of age without any discrimination as to nationality, and regardless of the duration or form of contract, the nature and amount of wage”, provided they work in a sector which applies the standard minimum wage, such as the apparel sector.⁶⁸ It includes different types of insurance such as insurance against work injuries, insurance against old-age, maternity insurance, insurance against unemployment and health insurance.⁶⁹

Although all types of insurances are provided to all workers (except public workers and military workers), the following conditions should be met for the migrant worker to claim for unemployment insurance: 1- valid work permit, 2- valid residency permit and 3- migrant should not leave Jordan for more than 7 days. Therefore, in practice migrants do not benefit from that insurance.

In order to cover all insurance types, the monthly contribution that must be paid by the employer is 13.75 per cent of the wages of the insured (2 per cent as a rate of the wages for insurance against work injuries and occupational diseases, 10.5 per cent as a rate of the wage for insurance against old age, disability and death, 0.75 per cent as a maternity insurance and 0.5 per cent as unemployment insurance). Meanwhile, the monthly contribution deducted by the employer from the wages of an apparel employee is 6.25 per cent (6.25 per cent as a rate

⁶³ Labour Law No. 8 of 1996 and its amendments, article 61.

⁶⁴ Labour Law No. 8 of 1996 and its amendments, article 65.

⁶⁵ Labour Law No. 8 of 1996 and its amendments, article 70.

⁶⁶ Labour Law No. 8 of 1996 and its amendments, article 70.

⁶⁷ Labour Law No. 8 of 1996 and its amendments, article 71.

⁶⁸ Social Security Law No. 1 of 2014 article 4, 24, 29, 42, 45, 48, and 59.

⁶⁹ Social Security Law No. 1 of 2014.





of the wage for insurance against old age, disability and death and 1 per cent as unemployment insurance).⁷⁰

The Government of Jordan has clearly demonstrated its commitment to create a protective working and living environment for workers in the apparel sector. There is nonetheless scope to introduce additional positive measures that revise some outstanding and problematic provisions of the *Labour Code* and of the Decisions of the Tripartite Committee for Labour Affairs.

Box 2. Identified legal and enforcement gaps in the Labour Code and the Decisions of the Tripartite Committee for Labour Affairs

The first gap relates to **discrimination against migrant apparel workers regarding the minimum wage**. Indeed, while the monthly minimum wage for Jordanian workers in the apparel sector was increased from JOD 170 (US\$ 240) to JOD 190 (US\$ 268) on the 1st January 2013, the basic monthly minimum wage for migrant workers in the apparel sector remained at JOD 110 (US\$ 155) per month.⁷¹ As a result, the minimum wage of migrant workers has remained constant since 2006. And on the 1st February 2012, migrant workers began receiving a monthly seniority bonus of JOD 5 for each year employed by the same employer and for up to four years of uninterrupted employment.⁷²

The new CBA signed on 17 August 2015 introduced the road for eliminating the discrimination in wages by 2017 especially that related to benefits calculation, where overtime pay and other benefits were calculated by employers based on the basic monthly wage of JOD 110 and not the full wage and in-kind payment according to national law. It is also worth mentioning that this violation still exist in all factories recruiting migrant workers, except two.⁷³ The ILO CEACR has also found that setting a lower minimum wage for migrant workers may discriminate against them with respect to terms and conditions of employment on the basis of race or colour.⁷⁴ It is thus advisable to continue tripartite discussions in order to remove the minimum wage discrimination.

The *Labour Code* does not limit the maximum overtime which may be worked during a specified period in case of permanent or temporary exceptions. Neither do *ILO Convention No. 1* or *Convention No. 30*, which leave the establishment of specific limits to the competent authorities. However, according to the ILO “this does not mean that such authorities have unlimited discretion in this regard. Taking into account the spirit of the Conventions and in the light of the preparatory work, it is appropriate to conclude that such limits must be “reasonable” and they must be prescribed in line with the general goal of the instruments, namely to establish the eight-hour day and 48-hour week as a legal standard of hours of work.” Moreover, considering that, according to the ILO, in certain circumstances an obligation to work overtime beyond the limits set by national legislation or collective agreement might violate the *Forced Labour Convention No. 29* and that important overtime issues have been reported in Jordan (relating both to their involuntariness and non-payment), the maximum overtime allowed should be better regulated.

Regarding maternity protection for garment workers, although Jordan has not yet ratified *ILO Convention No. 183* on maternity protection,⁷⁵ which provides expanded protections (e.g. 14 weeks of maternity leave), all migrant workers are covered under maternity insurance. This being said, Jordan has not yet fully implemented maternity insurance and cash benefits under the *Social Security Law*. The ILO Decent Work Programme in Jordan has been working with the Social Security Corporation to improve >>

70 Social Security Law No. 1 of 2014

71 Tripartite Committee for Labour Affairs Decision of 31 December 2011; Tripartite Committee for Labour Affairs Decision of 15 February 2012.

72 Better Work Jordan: *Garment Industry 6th Compliance Synthesis Report* (Amman, 2015), p. 6.

73 According to Better Work Jordan Manager on 26 September 2016.

74 ILO CEACR: *Direct Request to Jordan, 2013, ILO Convention No. 111*.

75 ILO Maternity Protection Convention, 2000 (No. 183).





capacity and assess the maternity insurance programme and the maternity cash benefits scheme initially implemented in 2011.⁷⁶

A significant gap, as previously identified in Section II, relates to **limitations on the right to terminate contracts**. The *Labour Code* stipulates that a contract can be terminated in various circumstances, namely a) if both parties agree to terminate it; b) if the duration of the contract has expired or the work is completed; c) or if the worker dies or is no longer able to perform the work.⁷⁷ For limited period contract, as in the case of apparel workers, it can be terminated before its expiry date by both parties.⁷⁸ The worker may terminate the employment before the end of the contract, without notice and keeping his/her legal rights related to the end of service and eventual compensations of damages for very limited reasons.⁷⁹ If a contract for a specified period is terminated by the worker for none of those reasons, the employer may claim damages from the worker, which is, in a situation of forced labour, a key constraint for leaving the employer. **Where termination claims are brought, only “beating” and “degradation” are included as reasons for legally terminating the contract, but no other indicators of forced labour are mentioned in the law.** Furthermore, the *Labour Code* does not explicitly address issues where there has been contract substitution by an employer or recruiter, despite heightened risks of such practices with respect to migrant workers in the garment or domestic work sectors. Provisions on contract substitution and additional offenses linked to the crime of trafficking in persons could be added to ensure coherence with international standards and practices on this topic and to increase protection for workers.

Recent improvements

A landmark Collective Bargaining Agreement (CBA) was signed on 27 May 2013 by the Jordan Garments, Accessories & Textiles Exporters' Association (JGATE), the Association of Owners of Factories, Workshops and Garments (AOFWG), and the General Trade Union of Workers in Textile, Garment & Clothing Industries in an unprecedented step to strengthen their partnership, promote social dialogue and improve the working conditions of approximately 50,000 workers in the sector, including over 6,000 workers employed in non-exporting factories. The sector-wide CBA is considered to be one of the most comprehensive of its type in the apparel sector in the world. While some of the provisions were already established in the sector, others have been only recently introduced, such as the right of unions to exist and to access factories, annual seniority bonuses for all workers regardless of their nationalities, settlement mechanisms to deal with contract disputes, and the creation of a unified contract for all workers. The ILO assisted in this last issue by drafting a model unified contract for garment workers that meets ILO standards.

Upon expiry of the previous CBA, a new agreement was signed and additional provisions were added such as:

1. ... overtime pay shall be paid and the employer is obliged to present all the information regarding wages through a standardized detailed pay-slip in the worker's language

⁷⁶ ILO: Decent Work Country Programme 2012-2015 report, (Jordan, 2012), p. 31.

⁷⁷ Labour Law No. 8 of 1996 and its amendments, article 21.

⁷⁸ Labour Law No. 8 of 1996 and its amendments, article 26.

⁷⁹ Labour Law No. 8 of 1996 and its amendments, article 29. Those reasons include: the work is markedly different in nature from that agreed in the contract of employment; the work conditions necessitate a change of residence and this was not stipulated in the contract; the worker has been downgraded from the agreed level of employment; the worker's remuneration was lowered; a medical report has been issued by a medical authority that proves that the work, if continued, could be hazardous to the worker's health; the employer, or the person acting on his/her behalf, assaulted the worker by beating or degradation; if the employer has defaulted in executing any of the provisions of this law or any regulation issued by its virtue provided that the employer had received a notification from a competent authority at the Ministry entailing his/her abidance by such provisions.





2. employers to comply with the provisions that set out the basis of the labour wages of which the overtime work, social security and the union membership dues shall be calculated as agreed in the memorandum signed in 8 November 2014
3. approve offering the migrant workers one day off per year on the occasion of their national days
4. migrant workers shall be hired or renewed under the terms of a single unified contract in the language of the worker, and guaranteed that no fees arising from the hiring process shall be borne by the worker whether in home country or in Jordan.

Box 3. New standard contract for migrant garment workers

In 2014, the ILO, in collaboration with the Jordan Garments, Accessories and Textiles Exporters' Association, the Association of Owners of Factories, Workshops and Garments, as well as the General Trade Union of Workers in Textile, Garment and Clothing Industries, drafted a *Collective Employment Agreement for Expatriate Workers in the Garment Industry*, and on 17 August 2015, the CBA was renewed. This agreement is more protective than previous agreements, and contains several new and important provisions for workers. For example, the contract foresees a probation period of three months during which the party may terminate the employment contract without advance notice or the payment of compensation.⁸⁰ This could give migrant workers the opportunity to learn more about the employer and the expected work duties and, in case of deception, terminate the contract more easily. Moreover, one of the main provisions of the agreement is the unified contract that got approved by relevant stakeholder on December 2015. The unified contract stipulates that the employer should provide to the employee a free airplane ticket to come and to return to the home country. If the worker terminates the contract before completing one full year of employment, the contract also provides that the employer shall cover a portion of the term of employment completed by the employee.⁸¹ The unified contract also states that the employer shall be responsible for completing the employment process including the worker's travel arrangements. The worker shall not be subject to any charges or fees except for the official fees due in his/her home country.

80 Collective Employment Agreement for Expatriate Workers in the Garment Industry, section (21) a.

81 Standard contract for non-Jordanian workers in textile, garment and clothing industries, section (4) b.





Case study on domestic work

4.1 Labour migration and legislative trends in the domestic work sector

South Asian domestic workers began arriving in Jordan in the 1980s, replacing the relatively few local domestic workers. This influx can be explained by two main factors, including a higher demand for domestic services in order to provide Jordanian families with more social and employment opportunities, and a perceived higher social status, as well as being a result of an increase in unemployment and household poverty in certain countries of origin which has created, what some have called, the “feminization of migration”.⁸²

According to the MOL’s latest statistics, in 2015 there were 53,882 registered migrant domestic workers (MDWs) in a regular situation in Jordan, the vast majority of whom were women.⁸³ However, as noted by the Ex-Director of the domestic worker’s unit at the MOL, Borders and Residence Department estimate 50,000 MDWs in irregular situation, while he estimates approximately 20,000 MDWs working in an irregular situation that should be added to this official number. In 2015, it was estimated that MDWs in a regular situation come mainly from Bangladesh (24,864), the Philippines (16,756), Kenya (4,568), Sri Lanka (3,968), Egypt (1,742), Indonesia (1,374), and Ethiopia (451).⁸⁴

In order to enhance the protection of domestic workers’ rights through legal instruments, **Jordan amended its Labour Code in 2008, repealing the provision excluding domestic workers from its scope** of protection and mandating the Ministry of Labour to issue regulations on domestic work. **In 2009, an initial regulation⁸⁵ was issued, setting out the respective obligations of employers and workers.** This regulation was complemented by another regulation to organize the private offices of recruiting and hiring non-Jordanians house workers.⁸⁶ **In February 2015, a new regulation⁸⁷ updated and replaced the 2009 regulation on organization of private offices of recruiting and hiring foreign domestic workers.**

⁸² G. Moreno-Fontes: “Domestic Workers: Little Protection for the Underpaid”, Migration Policy Institute, April 2005.

⁸³ Ministry of Labour Statistics on the number of work permits delivered to foreign domestic workers, per nationality, 2015.

⁸⁴ Ministry of Labour Statistics on the number of work permits delivered to foreign domestic workers, per nationality, 2015.

⁸⁵ Regulation No. 90 of 2009 for home workers, cooks, gardeners and similar categories, Issued pursuant to article 3(b) of the Labour Code No. 8 of 1996, amended in 2008.

⁸⁶ Regulation No. 89 of 2009 for the organization of private offices working in the recruitment and hiring of non-Jordanians working in the homes, Issued pursuant to paragraphs B and C of article 10 of the Labour Law No. 8 of 1996.

⁸⁷ Regulation No. 12 of 2015 on the organization of the private offices of recruiting non-Jordanian house workers, Issued pursuant to paragraphs B and C of article 10 of the Labour Law No. 8 of 1996.





This reinforcement of the legal apparatus to protect domestic workers has not altogether curbed labour exploitation and trafficking practices in the sector. Hundreds of complaints are submitted each year to the Ministry of Labour⁸⁸ and the joint trafficking inspection unit hotline,⁸⁹ as well as through assistance channels at NGOs and the embassies of countries of origin. Grievances include unpaid and illegal deduction of wages, forced overtime, restrictions on freedom of movement, identity papers retention, threats and physical violence.⁹⁰

In its first report, the Jordanian Anti-Human Trafficking National Committee identified capacity and implementation issues as key challenges to ensure an effective response to trafficking cases.⁹¹ Recommendations included continuing to train judicial and law enforcement bodies to identify trafficking in persons, and providing financial resources to establish shelters, complete training schemes and conduct national capacity-building. While the new *Regulation No. 12*, issued in 2015, has included specific reference to the creation of a safe house for migrant domestic workers, it is hoped that implementing instructions will ensure that the initiative is adequately financed and supported.⁹²

While *Regulation No. 90* does indicate that the Ministry of Labour, in the case of complaints or tips on the violations of workers' rights, shall summon the home owner and worker to resolve the complaint and have an investigator inspect the housing areas, capacity and additional obstacles in the regulation reduce its effectiveness.⁹³ For example, in the inspection of a worker's housing areas both a female and male labour inspector must be present and must have the prior approval of the home owner.⁹⁴ These provisions can further limit the capacity of the inspectorate to investigate and identify cases of trafficking in persons. In addition, the regulation does not specifically mandate a committal of resources for the investigation of such cases.

4.2 Regulatory framework on the recruitment of domestic workers

The MOL is responsible for regulating and monitoring the establishment and work of private employment agencies (PrEAs) in Jordan. Unlike, in the apparel sector, PrEAs in Jordan are permitted to recruit and place migrant domestic workers. This distinction is largely due to administrative capacity, as it is significantly easier to facilitate large-scale placement in multiple-worker apparel factories as opposed to one-to-one placements of migrant domestic workers in private homes. However, the Jordanian Government has drafted specific legislation relating to the private recruitment of migrant domestic workers.

88 In 2015 the MOL received 704 complaints of domestic workers (676 of whom were solved), (MoL Annual Report 2015)

89 Once the unit receives a complaint through the hotline, they transfer it to the complaints Department which studies and refers it to the inspection focal point in the local labour offices. If any inspector suspects a case of forced labour/human trafficking, he/she informs the liaison officer of the MOL, who then informs the joint anti-trafficking unit. The total number of complaints received through the hotline between April 2013 and January 2014 is 17 (among which 12 from workers in the QIZs and 5 DWs).

90 H. Harroff-Tavel; A. Nasri: *Tricked and Trapped: Human Trafficking in the Middle East*, (Beirut, 2013).

91 See Anti-Human Trafficking National Committee: First Report 2009-2013, (Jordan), p. 21,

92 Article 16 of Regulation No. 12 of 2015.

93 Regulation No. 90 of 2009 for home workers, cooks, gardeners and similar categories, Issued pursuant to article 3(b) of the Labour Code No. 8 of 1996, amended in 2008, Article 11.

94 Regulation No. 90 of 2009 for home workers, cooks, gardeners and similar categories, Issued pursuant to article 3(b) of the Labour Code No. 8 of 1996, amended in 2008, Article 11.





The large demand for cheap foreign domestic labour in the past decade has created a lucrative market for PrEAs specializing in placing domestic workers in Jordanian households. Adequate regulation to counter reported practices of deception and abuse from PrEAs in the domestic work sector was thus necessary.⁹⁵ The first attempt to regulate the industry in order to quell abuses dates back to 2003, with the adoption of the first regulation on PrEAs.⁹⁶ In 2009, the Parliament issued Regulation No. 89 for the organization of private offices working in the recruitment and hiring of non-Jordanian domestic workers (Regulation No. 89).⁹⁷ In 2015, *Regulation No. 89* was replaced by the new Regulation No. 12 of 2015 on the organization of private offices recruiting non-Jordanian house workers (Regulation No. 12).⁹⁸ This regulation determines the legal status of PrEAs⁹⁹ and the conditions governing their operation, as set out in article 3 of *ILO Convention No. 181*. Starting in 2009, these regulations have put in place a system of registration and licensing of PrEAs, which according to the MOL, “helps to screen applicants and keep track of recruitment agencies on the Jordanian soil”.¹⁰⁰

Regulation No. 12 stipulates rather strict conditions for issuing a license. First of all, PrEAs are required to put up a bank deposit of 100,000 Jordan Dinar (JOD) (141,143 US\$) before starting their operations, as a safeguard to ensure that the PrEA complies with all required conditions and to guarantee the payment of imposed fines.¹⁰¹ PrEA owners must also be above 30 years old, be a Jordanian citizen, not have any previous court convictions and not be the partner or owner of a PrEA whose licence was previously revoked by the MOL.¹⁰² This follows an effort to reduce the risk of PrEA owners exploiting MDWs. In addition, and to avoid practices of visa trading and trafficking persons, *Regulation No. 12* mentions that PrEAs are not allowed to recruit MDWs except through their offices and are not permitted to assist in recruiting non-Jordanian workers for other forms of work.¹⁰³

The license is issued for a limited period of 12 months and must be renewed annually upon an application demonstrating that the licensing conditions are fulfilled.¹⁰⁴ The MOL can take several measures in the case of a violation of *Regulation No. 12*, including a permanent shut down of the agency and cancellation of its licence if the latter committed a violation that is considered a serious breach of human rights or applicable regulations such as: recruiting a worker unlawfully or with forged documents; recruiting a worker below the legal working age; economically exploiting a worker or withholding wages; physically or sexually assaulting or mistreating a worker, or facilitating such mistreatment; or, transferring the worker unlawfully to another country.¹⁰⁵ *Regulation No. 12* also allows for the final cancellation of a licence if a

⁹⁵ ILO Convention No. 189, article 15(1)(a) states that Members shall “determine the conditions governing the operation of private employment agencies recruiting or placing domestic workers, in accordance with national laws, regulations and practice”.

⁹⁶ Regulation No. 3 of 2003 on organizing the private offices brining and employing non-Jordanian domestic workers has been cancelled and replaced in 2009.

⁹⁷ Issued pursuant to paragraph B and C of article 10 of the Labour Code No. 8 of 1996.

⁹⁸ Regulation No. 12 of 2015 on the organization of the private offices of recruiting non-Jordanian house workers, Issued pursuant to paragraphs B and C of article 10 of the Labour Law No. 8 of 1996.

⁹⁹ Articles 3 and 4 of Regulation No. 12 of 2015.

¹⁰⁰ Interview with the Head of the Domestic Work Unit, 16 January 2014.

¹⁰¹ Article 3 of Regulation No. 12 of 2015.

¹⁰² Article 3 of Regulation No. 12 of 2015.

¹⁰³ Article 3 and 7 of Regulation No. 12 of 2015.

¹⁰⁴ Article 4 of Regulation No. 12 of 2015.

¹⁰⁵ Article 11(E) of Regulation No. 12 of 2015.





PrEA does not rectify conditions which have resulted in temporary closure by the MOL within one year after having been closed.¹⁰⁶

A Committee for the affairs of PrEAs recruiting non-Jordanian domestic workers has been established with the responsibility of issuing and renewing licenses of the PrEAs, verifying the validity of the data and documents and taking the necessary measures against PrEAs in case of violations. The existence of this Committee is referenced in the new *Regulation No. 12* which notes that it will be headed by a ministry employee nominee of the Minister, and that its membership will be composed of relevant actors.¹⁰⁷ and that the future structure, composition and competencies of this committee will be detailed in the decision to set up the Committee.¹⁰⁸

The new *Regulation No. 12* has, promisingly, included a provision relating to the transferability of workers which had not been included in the text of *Regulation No. 89*. Under article 15(D) of *Regulation No. 12*, if, within 60 days of entering Jordan, a domestic worker refuses to work for their first employer but would like to remain in Jordan to work, they may transfer their contract to a new employer.¹⁰⁹ With the new insurance scheme relating to this new regulation, it is expected that such transfers may be facilitated by the Committee without need to secure the consent of the first employer. The new employer would pay the PrEA recruiting cost for the transferred worker and then the first employer would be able to secure a new worker from their PrEA without any additional cost, as described in article 15(D).¹¹⁰

This licensing system for the operation of PrEA in the domestic work sector has led to the creation of a public register of all licensed PrEAs, which is available on the MOL website.¹¹¹ Such a public register (which contains information on licensed agencies, their addresses and contact details) ensures more transparency in a sometimes opaque market, and gives employers the possibility of verifying whether the PrEA they wish to contract is legitimate.

New provisions in *Regulation No. 12* also appear to establish a three tiered categorization of PrEAs.¹¹² The regulation outlines three categories (A, B, and C) with bank guarantee requirements in the amount of 50 thousand, 60 thousand and 100 thousand, respectively.¹¹³ The regulation notes that the Minister may also grant additional privileges to PrEAs which are classified under category A, based on committee recommendations.¹¹⁴ The implementing instructions were issued to classify PrEAs, whereby an “A” classified agency will have its license renewed automatically and will be awarded a Certificate of Excellence upon submitting a) a bank deposit renewal letter and b) a no criminal record. The instructions also state that PrEAs classification will be published on the Ministry website (although this has not been implemented until 15 September, 2016). Many criteria were included in the instructions and were divided into basic criteria (which include obligation of the PrEA to advertise on the terms of recruitment, the fees charged by the agency, and the monthly wages, the

¹⁰⁶ Article 11(D) of Regulation No. 12 of 2015.

¹⁰⁷ Article 9 of Regulation No. 12 of 2015.

¹⁰⁸ Article 9 of Regulation No. 12 of 2015.

¹⁰⁹ Article 15(D) of Regulation No. 12 of 2015.

¹¹⁰ Article 15(D) of Regulation No. 12 of 2015.

¹¹¹ Available in Arabic at <http://mol.gov.jo/Pages/PrivateOffices.aspx>

¹¹² Article 5 of Regulation No. 12 of 2015.

¹¹³ These bank guarantees are held in trust to settle any monetary claims made against the PrEA. The PrEAs are required to keep those trust accounts current, and at the prescribed minimum amount, in order to be eligible for renewal of their licences. See Article 5(B) of Regulation No. 12 of 2015.

¹¹⁴ Article 5(D) of Regulation No. 12 of 2015.





agency commitment not to recruit workers on daily basis, not to violate workers' rights, not to confiscate their passports and never charge fees to the worker) and administrative criteria.¹¹⁵

Concerning the early termination of an employment contract, the new *Regulation No. 12* provides for several specific scenarios where an employer may secure from the PrEA a replacement worker without additional fees and conditions. They include: if the worker fails to arrive in Jordan;¹¹⁶ if a worker is required to leave Jordan or elects to leave Jordan within the first thirty days of entering;¹¹⁷ if, within three months of arrival, the worker fails Ministry of Health examinations or is pregnant;¹¹⁸ if a worker refuses to work for the employer in the first thirty days of entering and is transferred out of the country;¹¹⁹ if, as detailed above, within sixty days the worker refuses to work for their first employer and is subsequently transferred to another employer.¹²⁰ The Instructions on Insurance Scheme of MDWs issued pursuant to article 13 of Regulation 12 of 2015 states that in case the migrant domestic worker refuses or leaves work, flight tickets will be covered at a maximum amount of 370 JDs (522 USD). The percentage drops to 50 percent in case the insured is physically unfit, or did not pass the medical examination upon entering Jordan or is pregnant.

The new *Regulation No. 12* has also, in article 16, provided for the creation of a safe house for migrant domestic workers who have refused or left work.¹²¹ The article notes that it will be organized and funded in conjunction with the appropriate authorities and it is hoped that the forthcoming instructions will require the allocation of sufficient resources for the safe house programme to be successfully implemented.¹²²

Regarding recruitment fees, Article 7 of the *Instructions of Regulation 12 of 2015* is based on the principle of free job placement services codified in *ILO Convention No. 181*, and states that:

- a. The office shall collect fees from the house owner according to [...]: 10% of the total wages of the worker for the whole term of the contract agreed upon between the house owner and the worker;
- b. fees must not exceed 2% of the total wages for the whole term of the contract agreed upon between the house owner and the worker, when renewing the permit through the office. [...]
- c. Amounts specified are inclusive of all fees of the office for all services provided to the house owner, and the office may not collect further amounts.
- d. **The office is prohibited from collecting any amounts from the workers, in any case.** [...]"¹²³

¹¹⁵ Instructions on classification of private offices of recruiting non-Jordanian house workers, 2015.

¹¹⁶ Article 15(A) of Regulation No. 12 of 2015.

¹¹⁷ Article 15(B) of Regulation No. 12 of 2015.

¹¹⁸ Article 15(C) of Regulation No. 12 of 2015.

¹¹⁹ Article 14 of Regulation No. 12 of 2015.

¹²⁰ Article 15(D) of Regulation No. 12 of 2015

¹²¹ Article 16 of Regulation No. 12 of 2015.

¹²² Article 16 of Regulation No. 12 of 2015.

¹²³ Instructions on the conditions and procedures for licensing and organizing of private offices bringing and employing non-Jordanian Domestic workers, 2009, article 8.





Box 4. Innovative insurance schemes on recruitment costs

Under the *kafala* system¹²⁴ in place in Jordan, the question of who should bear the costs associated with a MDW absconding from an employer is a complex one and has been the cause of many conflicts between the PrEA, the employer and the worker. According to the Instructions on classification of private offices of recruiting non-Jordanian house workers, the PrEA is not mandated to replace the worker who has “run away” and reimburse the employer for the costs incurred, except if:

- 1) “[...] during the first 90 days, if it is shown that the domestic worker is affected with any infectious or current disease or with any disease abstaining him from performing the required work or constituting a danger to others and if the domestic worker is physically or mentally ill according to a medical report issued from the competent official parties” or
- 2) [...] In case that the domestic worker didn’t reach the kingdom for any reason”.¹²⁵

Hence, the new *Regulation No. 12* added specific provisions on insurance for migrant domestic workers to support employers to recover the investments they made in recruiting a MDW, if the worker decides to terminate earlier the employment without any fault of the employer. Where PrEAs must obtain proof of insurance from employers which covers: financial losses suffered by the employer resulting from a migrant domestic worker leaving or refusing to work; accidental injury or death of a migrant domestic worker; and, medical coverage in case of hospitalization of a migrant domestic worker.¹²⁶ Yet and although new Instructions on Insurance Scheme of MDWs were issued, the insurance only covered disability, death and work injuries. On 20 April 2016, enforcement of the insurance scheme took place, and shall cover the financial losses suffered by the employer, yet coverage is excluded in the following cases:

- 1) the insured is beaten by employer,
- 2) the reason behind the worker leaving work or refusal, is because the employer asks the worker to work outside the house and/or work for someone else and or in another occupation,
- 3) the reason behind leaving or refusing work is due to unpaid wages.

Despite these positive efforts and the issuance of a new Regulation, several key **gaps remain that should be addressed**.

For clarity, *Regulation No. 12* could be amended to replace the term “office”, with “private employment agency” as defined by article 1 of *ILO Convention No. 181*. It would also be advisable to use the term “migrant domestic worker” instead of “non-Jordanian working in the homes”, in accordance with *ILO Convention No. 189*.

While prohibitions on fee charging are followed in general practice, several key informants interviewed by the ILO indicated that “abuses were happening from time to time, as some employers retain the first salary month of the MDW” to cover recruitment costs or some Jordanian PrEAs have collected “illegal fees [upon] the arrival of the worker in Amman”.¹²⁷

Regulation No. 12 and other applicable Jordanian laws do not provide a well-defined joint liability scheme or include joint liability clauses with respect to the recruitment of migrant domestic workers and the responsibilities of PrEA. Recruitment processes, in this context, often span international borders and involve a wide range of intermediaries. As abuses can often begin in the migrant’s

¹²⁴ Through the *kafala* system, a migrant worker’s immigration status is legally bound to an individual employer for his/her contract period.

¹²⁵ Article (5) of the Instructions on the conditions and procedures of licensing for recruitment offices of non-Jordanian domestic workers, issued according to the provisions of article (19) of regulation No. 12 of 2015.

¹²⁶ Article 13 of Regulation No. 12 of 2015

¹²⁷ Interview with the Director of the NGO Tamkeen, 12 January 2014.





country of origin, without strong joint liability clauses the enforcement of labour regulations and laws will struggle to effectively target and prosecute all of the culpable national actors.

Also, as shown by earlier evidence, the practices of contract substitution, deception as to living or working conditions and illegal wage-deduction are very much present in the domestic work sector.¹²⁸ Regulations could therefore be amended to specify among the tasks of the PrEA the responsibility of verifying that the contract signed upon arrival in Jordan is the same as the contract or the offer accepted by the migrant in his/her country of origin.¹²⁹ In addition, regulations could provide for the establishment of clear procedures for the investigation by labour inspectors of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies.

In the past, amendments to *Regulation No. 89* were introduced without consulting workers' and employers' organizations and, occurred despite strikes organized by the Jordanian Recruitment Agency Association (RAA). In particular, concerns had been raised regarding requirements on PrEAs to bear the cost of replacing workers who refused to work or who left Jordan. This legislation was weighted towards protecting employers, rather than towards more traditional liability extension, which is intended to protect the worker. As the Head of the Association explained:

“The recruitment industry felt that these amendments¹³⁰ were unfair as they transfer all the responsibility for replacing the worker on the PrEA in case of conflict, whereas the employer should also bear part of the responsibility. The Government did not consult our Association before amending Regulation No. 89, so we went on strike”.

Following the 2014 amendments to the previous *Regulation No. 89*, the RAA took the initiative to submit a draft text to replace the actual regulation to the Minister of Labour, who signed it in July 2014 and sent it to the Prime Minister's office for consideration. According to the Head of the RAA, core articles of this draft regulation are that “MDWs should be able to change employer on arrival, during the first 30 days. In that case, the first employer will not have to pay neither the work permit fees nor the recruitment fees which will be entirely covered by the second employer. Also, the draft regulation includes a system of rating of Jordanian PrEAs engaged in the domestic work sector and with different types of penalties associated with violations, to balance between positive incentives mechanisms and stronger sanctions in case of violations. We also included a blacklist system of employers violating the penal code”.¹³¹ While it is positive to note that many of these recommendations, as detailed above, have been reflected in the new *Regulation No. 12*, it also highlights the importance and value of increasing consultation with all social partners and other key stakeholders in advance of issuing new amendment and regulations. Such consultations should thus be extended further and should include workers' representatives.

Regarding the involvement of workers' representatives, it should be noted that to date there is no trade union of (migrant) domestic workers in Jordan. This creates a significant imbalance in the bargaining power of migrant domestic workers and effectively prevents them from providing

¹²⁸ H. Harroff, A. Nasri: *Tricked and Trapped: Human Trafficking in the Middle East*, (Geneva, 2013).

¹²⁹ Comments on Jordanian domestic worker draft law from the forced labour perspective, Rosinda Silva, 14 March 2014.

¹³⁰ Amendments to *Regulation No. 89* included requiring recruitment agencies to bear the full cost of replacing domestic workers for employers, within 45 days, if they do not meet health requirements or are pregnant within the first three months of their employment.

¹³¹ Interview with the Head of the Jordanian Recruitment Agency Association, 22 May 2014.





input in consultations and committees regarding laws, instructions and decisions pertaining to the sector. Such a trade union may be made possible with the support of local unions and the government, as has been evidenced by recent changes in Lebanon. Indeed, in Lebanon, a specific migrant domestic workers' union was established in February 2015 with the support and under the auspices of the Federation of Workers and Employees Unions in Lebanon (FENASOL). A similar initiative in Jordan would help to provide a balanced dialogue in consultations going forward, and protect the human rights of workers.

With respect to monitoring employers, the Domestic Work Department of the MOL only has a blacklist of PrEAs who commit fraudulent or abusive practices and has not yet created a blacklist for employers. The MOL is currently working on creating a blacklist of employers, which will imply that if an employer abuses a worker, all his/her family will be banned from recruiting a worker for a certain period of time. The role of embassies of countries of origin, which receive, and shelter abused migrant workers will be essential in order to identify those employers who will be blacklisted and the MOL should establish a clear coordination mechanism with those bodies to that effect. In 2015, the MOL closed down twenty three PrEAs¹³², and while this monitoring and enforcement is important, it needs to be accompanied by closer scrutiny of suspected abusive employers. No inspections in private homes had been done in 2015, even when the MOL received complaints and abuses were proven.¹³³ Enforcement liaison officers attached to the main embassies of countries of origin have been trained by the MOL but their visits to embassies remain infrequent according to several labour attachés. It is clear that while more enforcement efforts are necessary, there is also a need to develop clear procedures to inspect the domestic work sector, and define clear criteria for punishment for abusive PrEAs.

The Jordanian legislation regulating the recruitment of MDWs meets most of the requirements set out in *ILO Convention No. 181*. However, the efficacy of *Regulation No. 89* had been challenged by the lack of enforcement capacities of the Jordanian MOL and MOI and the lack of an effective social dialogue process in the drafting of Regulation and Instructions, undermining fair recruitment. With the introduction of *Regulation No. 12* no specific commitments regarding inspection or enforcement have been included, and that such commitments were not even stated in the implementing instructions issued in 2015.

4.3 Legal framework covering working and living conditions of domestic workers

Standard Contract for Migrant Domestic Workers

In 2003, Jordan became the first Arab country to issue a Special working contract of two years for migrant domestic workers. Before the adoption of *Regulation No. 90 of 2009 for Home Workers, Cooks, Gardeners and their Like (Regulation No. 90)*,¹³⁴ it was the primary document

.....
¹³² Ministry of Labour report of 2015.

¹³³ Interview with the Ex-Head of the Domestic Work Unit, 25 September 2016. According to article 11 of the Regulation No. 90, "[w]henver the complaint is about the accommodation of the worker, the accommodation shall be inspected for compliance with the present Regulation by two labour inspectors, male and female, with the consent of the householder." But if the employer does not consent "[t]he Minister may take any measures he deems appropriate".

¹³⁴ Regulation No. 90 of 2009 for home workers, cooks, gardeners and similar categories, Issued pursuant to article 3(b) of the Labour Code No. 8 of 1996, amended in 2008.





governing the relationship between the employer/sponsor, the agent, and the worker, setting the responsibilities of all the parties engaged. Special working contracts are still required and each employer, agent, and domestic worker must sign the contract and abide by its regulations. However, in practice, some migrant domestic workers can be found working without a special contract.

The contract lasts for 2 years, and can be extended by signing the annexed contract once the 2 years are completed. The contract further stipulates the rights of the workers, in line with the provisions of *Regulation No. 90*. The employer agrees to pay a round-trip ticket, work and residency permits of the worker, on the salary and one rest day per week,¹³⁵ provides the worker with meals, clothing, accommodation and medical care. In addition, the contract stipulates that the employer is not allowed to take the worker's passport, cannot employ the worker to work anywhere except the employer's home and cannot place any restrictions on the worker's correspondences.¹³⁶

However **several key labour rights remained absent from this standard contract**. As a result of these gaps, some embassies of countries of origin have created standard “addendum” to the special contract that both the PrEA and the employer should sign, which include several more protective provisions.¹³⁷ For example, article 13 mentions that “any dispute between the employer and the employee should be resolved amicably, with the involvement of the employment agency and when necessary using the good offices of the embassy”. It does not specify any penalty in case of breach of contract. However, when severe violations are detected, the contract should provide migrant domestic with the right to complain in front of a relevant court before even going through an amicable settlement of dispute. Some provisions are weakly drafted, not granting workers the full exercise of their rights. For example, although the contract states that workers are entitled to one rest day per week, it also mentions that workers shall not leave the employer's house without his/her permission. While under amendments to *Regulation No. 90* this has been changed to a requirement that the employer is notified of a worker's intent to leave the premises, such a requirement remains problematic.¹³⁸ Furthermore, there are no provisions in the standard contract which detail normal hours of work, ensure that rest periods are provided on a daily basis or which provide for paid leave. There are also no provisions ensuring access to telephone or mobile phone use by the worker, or other means of communication which would allow them to access complaint mechanisms. The standard contract should thus be reviewed in light of *ILO Convention No. 189* standards.¹³⁹

It is also important to note that the contract is only in English and Arabic. Therefore, in 2006 the MOL created a guide for MDWs translated into the languages of origin countries (Sinhalese, Tagalog, and Indonesian) and requires all PrEAs to distribute it to newly arriving migrant workers. However, while guides can provide important information and their use should be encouraged in addition to full translations of contracts, they are not sufficient substitutes for a fully translated contract. *Regulation 90* supplements this requirement,

.....
135 As in *Regulation No. 90*, the Special working contract stipulates that “the worker shall be given one rest day weekly provided that the employee shall not leave the residence without the permission of the Employer”.

136 ILO: Special Working Contract for Non-Jordanian Domestic Workers, Good practices database, http://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=28.

137 Interview with the Counsellor, Head of the Labour section, Embassy of the Democratic Socialist Republic of Sri Lanka, 19 January 2014.

138 Regulation No. 49 of 2011, amending section 5, paragraph A, article 5 of regulation No. 90 of 2009.

139 See ILO Convention No. 189 (2011) articles 5, 7, 9, 10, 16 and 17.





indicating that contracts be provided in Arabic “and a language understood by the worker,” however efforts should be made to ensure that, in practice, this results in a fully translated contract in the worker’s native language.¹⁴⁰

Regulation No. 90/2009 for Home Workers, Cooks, Gardeners and their Like

Domestic workers were, until 2008, excluded from the *Labour Code*. Today, their working conditions are defined under Regulation No. 90 of 2009 for Home Workers, Cooks, Gardeners and their Like, issued pursuant to article 3¹⁴¹ of the *Labour Code* and amended in 2011 by *Regulation No. 49*. The enactment of this specific labour regulation considerably improved the situation of domestic workers. They were recognized for the first time in the Middle East as workers, with rights, and helped end the practice of informal work arrangements to a more formalized employment relationship.

Regulation No. 90 describes the rights and obligations of the domestic worker and the employer during the duration of the contract. Moreover it contains several provisions ensuring better protection of migrant domestic workers, thus reducing their risk of becoming victims of forced labour.¹⁴²

It is worth mentioning that, in order to ensure the payment of domestic workers’ salaries on time, decision No. 99/3893 was taken in 2011. The law, which applies exclusively to domestic workers, **requires every employer to open a bank account in the name of the domestic worker**, give him/her an ATM bank account card, and keep bank receipts of each salary payment in case of inspection.¹⁴³ Despite the fact that the Government had signed an agreement with the Bank of Cairo, to ensure that all bank account be opened in that bank and to facilitate the monitoring of payments by employers¹⁴⁴, this decision was not enforced.

Some provisions of Regulation No. 90 remain problematic. The most significant issue relates to article 5(a)(5), introduced by *Regulation No. 49* in 2011 as an amendment to the Regulation and which stipulates that the domestic worker “should notify the householder before leaving, departing or being absent from the house”.¹⁴⁵ It constitutes a further **restriction to the worker’s freedom of movement**.¹⁴⁶ The ILO Committee of Experts has found that “any restriction of the workers’ freedom of movement may increase the workers vulnerability, which may lead to the imposition of forced labour and to violation of workers’ rights, including the right to file a complaint against the employer.” The Committee therefore requested the Government to

¹⁴⁰ Article 3 of Regulation No. 90 of 2009.

¹⁴¹ Law No. 48 of 2008 amending the Labour Law. Article 3(b) was amended as follows: “Agricultural and domestic workers, cooks and gardeners, as well as assimilated persons are covered under by laws to be issued for this purpose. Such text shall regulate their contracts, rest hours, inspection and any other issues concerning their employment.”

¹⁴² In short, it stipulates the employer shall sign the contract in two languages: Arabic and a language that the domestic worker understands, that either party shall keep a copy of the contract, the right of the Ministry to send a one-week warning to the employer to settle a certain breach under threat of prosecution, the responsibility of the employer for issuing residence and work permits, paying the monthly salary, providing health care, covering expenses related to the worker’s food, clothing and accommodation. The worker is also entitled to respect, decent work, one free phone call per month, fourteen days of paid annual leave which may be postponed until the end of the employment contract, fourteen days of paid sickness leave, one day off per week and privacy. The Regulation also limits the number of working hours per day to eight hours, with a minimum of eight hours of sleep per day (however, the law does not specifically indicate that these eight hours must be continuous).

¹⁴³ Decision No. 99/3893, of 7 June 2011, based on Article 4(b) of Regulation No. 90 of 2009.

¹⁴⁴ Interview with the Head of the Recruitment Agency Association, 22 May 2014.

¹⁴⁵ Regulation No. 49 of 2011, amending section 5, paragraph A, article 5 of regulation No. 90 of 2009.

¹⁴⁶ Comments on Jordanian domestic worker draft law from the forced labour perspective, Rosinda Silva, 14 March 2014.





provide clarification as regards to section 5 of the Regulation.¹⁴⁷ In addition, it should be specified that domestic workers can freely communicate with persons of their choice at their own cost outside working hours.

Discrimination in the scope of labour protection provided to migrant domestic workers is further illustrated by the fact that *Regulation No. 90* **does not establish or refer to a minimum wage for migrant domestic workers**.¹⁴⁸ The ILO CEACR has considered that setting a lower minimum wage for migrant workers may discriminate against workers with respect to terms and conditions of employment on the basis of race and colour.¹⁴⁹ It is thus advisable to clarify in *Regulation No. 90* that the minimum wage in the domestic work sector should be the same for Jordanian and migrant domestic workers. The Regulation should also be amended to establish a maximum number of permissible overtime hours as well as a scheme of compensation that requires rates of pay in excess of wages.

Another gap relates to the **absence of a provision mentioning the maximum duration of the employment contract**. Durational provisions are of particular importance in this context, as they facilitate contract renegotiation and increase clarity and certainty. For example, article 4 of *Regulation No. 90* requires the employer to grant a return ticket after two years of employment and thus a durational contract of two years provides certainty to the worker that, upon completion of the contract, they will be entitled to either renegotiate or secure their return to their country of origin. The ability to renegotiate at the termination of a durational employment contract also allows workers to request raises or changes in working condition. The inability to negotiate these issues on indefinite contracts leads many workers to abandon their employers for the informal market in search of better wages or conditions, or because they feel trapped in an exploitative work environment. Moving into the informal market however creates an even greater risk of abuse and largely results in workers having no access to protection, complaint or remedy mechanisms. Duration limits on employment contracts also help to clarify probationary periods and simplify the assessment of damages in cases of early termination.¹⁵⁰

Labour legislation should ensure that domestic workers enjoy legal protection from discriminatory treatment. However, Jordanian labour legislation in general does not provide sufficient and effective protection against direct and indirect discrimination in employment and occupation. A recent review conducted by the ILO and the National Steering Committee for Pay Equity (NSCPE)¹⁵¹ proposes the amendment of section 4 of the *Labour Code* to prohibit direct and indirect discrimination “on the basis of real or perceived gender, race, colour, religion, political opinion, national extraction, social origin in, marital status, family responsibility, disability, or HIV status with respect to any employment working conditions, rights or benefits, promotion at work, training or termination”.¹⁵² In the context of the on-going *Labour Code* review process, and in the view to harmonize labour legislation, it would be important that **any amendment of the Labour Code concerning equality and non-discrimination be extended to domestic workers**.

147 ILO CEACR: *Direct Request to Jordan*, published 102nd ILC session (2013), Forced Labour Convention, 1930 (No. 29) - Jordan.

148 ILO: *Report IV(1): Decent work for domestic workers*, International Labour Conference, 99th Session (Geneva, 2010), p. 40.

149 ILO CEACR: *Direct Request, 2013, Discrimination (Employment and Occupation) Convention, 1958 (No. 111) – Jordan*.

150 Comments on Jordanian domestic worker draft law from the forced labour perspective, Rosinda Silva, 14 March 2014.

151 ILO, MOL, Jordan National Commission for Women: *Towards pay equity: A legal Review of Jordanian National Legislation*, (Beirut, May 2013).

152 Comments on the Draft Jordanian Domestic Workers Law, K. Landuyt, NORMS/EQUALITY, 14 March 2014.





If it is not the case, legal protection against discriminatory practices, including harassment and sexual harassment, would have to be specifically provided under the *Regulation No. 90*.

As to the other general rights such as the **conditions to terminate the contract, end of service indemnity, overtime payment, public holidays or maternity leave protection**, Regulation No. 90 **remains silent**. Domestic workers should have the possibility to terminate the contract with a reasonable notice period. In principle, conditions of the termination are defined in the general *Labour Code* and should apply to domestic workers. However, as studied below in the analysis of the jurisprudence, in practice **many judges are confused as to whether they should apply articles of the Labour Code that are not covered by Regulation No. 90 to domestic workers**.¹⁵³ This confusion leads to an inconsistent application of the *Labour Code* and deprivation of domestic workers from the general rights defined by the *Labour Code*. Accordingly, *Regulation No. 90* has institutionalized discrimination against migrant domestic workers by affording them lower working standards and benefits than other workers covered by the *Labour Code*. In parallel, it has only slightly limited the implications of the sponsorship system as described above.

Several judges pointed out this irregularity in the jurisprudence when dealing with rights not included into *Regulation No. 90* but embedded in the other part of the *Labour Code*. As a civil judge specialized in labour issues mentioned: “*Regulation No. 90* is included under the labour law, it is not a specific separate law, so in my opinion all articles present in the *Labour Code* that are not specified in *Regulation No. 90* shall apply to domestic workers, except if they are in contradiction with some of its provisions. For example regarding monthly payment of salaries, I apply articles 4 and 46 of the general *Labour Code* in cases of domestic workers”.¹⁵⁴ **One of the main gaps mentioned by judges lies in the national social security scheme (including with respect to maternity), from which domestic workers are still excluded**. The civil judge also explained the obstacles faced in court: “I took up some cases in which I asked for social security coverage for the domestic worker but the Appeal court rejected it, arguing that it was not specifically mentioned into the labour code”.¹⁵⁵

Regulation No. 90 provides for a **weak monitoring mechanism**. Indeed, article 11 states that “in case the Ministry receives any complaint or information regarding the violation of workers’ rights or the obligations of either party, the Ministry shall summon the householder and the worker to the Ministry to reach an amicable settlement of the complaint”. Article 11 continues in mentioning that whenever the complaint is related to the accommodation of the worker, the MOL should send “one male and one female labour inspector to verify the implementation of the provisions of this regulation, after seeking the approval of the home owner. The Minister may take any measures he deems appropriate in case the householder does not consent to the inspection visit. The householder shall be admonished to correct the violation, if any, within one week from being notified thereof. Otherwise, the householder shall be fined and the measures set forth under the *Labour Code* in force shall apply”. As officials from countries of origin mentioned, **the inspection system set out in Regulation No. 90 is based on the pre-approval of the employer and thus limits considerably the power of labour inspectors**.¹⁵⁶

¹⁵³ Interview with a civil judge, Court of Justice of Amman, 19 January 2014.

¹⁵⁴ Interview with civil judge, Court of Justice of Amman, 19 January 2014.

¹⁵⁵ Interview with civil judge, Court of Justice of Amman, 19 January 2014.

¹⁵⁶ Interview with the Counsellor, Head of the Labour section, Embassy of the Democratic Socialist Republic of Sri Lanka, 19 January 2014.





Also, the capacity of the five labour inspectors working in the Domestic Workers Department is limited. Three of these inspectors have the responsibility of liaising with main embassies of country of origin to solve cases in distress, however there have been issues with the implementation of this program, some embassies reporting that visits were rare and insufficient. In addition, this possibility to correct the behaviour does not seem commensurate with the offense described, which could constitute forced labour and trafficking in persons. Hence, the householder should be subjected to penal sanctions and regular labour inspections should be carried out according to the standards contained in *Regulation of Labour Inspectors No. 56 of 1996*.¹⁵⁷ A decision was taken lately to close the Inspection Section in the Domestic Workers Department and move inspectors to different Inspection Directorates / Offices.

Regulation No. 90 does not include any provisions on providing compensation to workers in cases of identified maltreatment. Nor are there any articles providing for specific complaint or settlement mechanisms for domestic workers, or translation or legal services. As such, a Domestic Workers Committee should be permanently established in the MOL to examine complaints, ensure timely resolution of conflicts through non-judicial dispute resolution mechanisms and efficient referral to civil and/or penal courts if appropriate. To guarantee access to justice of MDWs, it would be advisable to include a provision on the extension of residency rights for domestic workers during the duration of the trial before the court.

In order to fill the above-mentioned gaps, the Jordanian Government drafted a more comprehensive regulation, which the ILO reviewed in accordance with international labour standards early 2014. A workshop with parliamentarians and key governmental stakeholders was subsequently organized to present the legal assessment performed and shape a way forward to effectively govern the work of MDWs in the country. The hope is now that a revised version of the draft law taking into accounts ILO's suggestions is passed by the Parliament to ensure adequate protection of all domestic workers in Jordan.¹⁵⁸

¹⁵⁷ Comments on Jordanian domestic worker draft law from the forced labour perspective, Rosinda Silva, 14 March 2014. See: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/45691/84921/F771201479/JOR45691.pdf>.

¹⁵⁸ ILO Technical Meeting to Discuss Draft Law for Domestic Workers in Jordan, 8 - 9 September 2014. See http://www.ilo.org/beirut/media-centre/news/WCMS_304643/lang-en/index.htm.





National legal framework on the elimination of trafficking in persons

Chapter two of the Jordanian *Constitution* establishes a number of workers' rights, reducing the vulnerability to forced labour.¹⁵⁹ **Article 13 specifies that no compulsory labour shall be exacted from any person, but provides for exceptions in respect of emergencies and prison labour in terms corresponding to article 2(2) of the ILO Convention No. 29.**¹⁶⁰

Later developments of the national legislation, especially through the penal law, have reinforced the legal apparatus to combat extreme labour exploitation of workers, including trafficking in persons. Several elements composing the crime of trafficking in persons are today codified in the Jordanian legislation, and were used before the adoption of the specific trafficking legislation to punish those crimes.

5.1 Penal Code provisions codifying elements of the crime of trafficking in persons

The Jordanian *Criminal Code of 1960 (Penal Code)* includes several provisions punishing actions that may also be elements of the crime of trafficking in persons, such as **threats of murder or of assault, battery, assault, rape, driving someone to suicide, torture, forced confinement and murder.**¹⁶¹

.....
¹⁵⁹ Constitution of the Hashemite Kingdom of Jordan of 1952, article 23. This includes the right to: equitable working conditions, limited working hours per week, weekly and annual paid rest, special compensation given to workers supporting families and on dismissal, illness, old age and emergencies arising out of the nature of the work, special condition for the employment of women and juveniles and free trade unions organization within the limits of the law.

¹⁶⁰ Constitution of the Hashemite Kingdom of Jordan of 1952, Article 13 on compulsory labour states that: "Compulsory labour may not be imposed on any person, but any person may be required to do any work or to render any service in circumstances prescribed by law, as stated hereunder: (i) In a state of necessity, such as a state of war, the occurrence of a public danger, or fire, flood, famine, earthquake, serious epidemic among human beings or animals or animal diseases, insects or pests or any other similar events, or in any other circumstances which might endanger the safety of the population, in whole or in part. (ii) As a result of the conviction of the person concerned by a court of law, provided that the work is done and the service rendered under the supervision of an official authority and provided further that no convicted person shall be hired to, or be placed at the disposal of, any persons, companies, societies or public bodies".

¹⁶¹ Jordanian Criminal Code of 1960 (Penal Code) and its amendments, articles 13, 208, 292, 326-330, 334, 339, 343, 344, 346, 350, 352.





To complement these provisions, it is important to mention the *Passport Law No. 5 of 2003* which, in article 18(b), adds that anyone found in possession of a passport or travel documents in an illegal manner shall be punished by imprisonment between six months and three years, and/or by a fine between 500 JOD and 1,000 JOD. This provision is an important as the retention of a worker's travel documents by an employer may be a key indicator of a situation of trafficking in persons or forced labour.

5.2 Specific law to combat trafficking in persons

Jordan has ratified ILO *Convention No. 29* and *Convention No. 105*, both of which aim to suppress forced labour. The Government also ratified the *UN Convention against Transnational Organised Crime, the adjoining Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children* (Palermo Protocol on trafficking in persons) in June 2009 and consequently adopted the first *Anti-human Trafficking Law No. 9* in March 2009. The new law defines the crime of trafficking in persons in article 3 as a combination of the different elements presented in the box 5 below.

Box 5. Constituent elements of the definition of trafficking in persons in Law No. 9

Actions:

- Transporting, moving, lodging or receiving of people for the purpose of exploitation
- Transporting, moving, lodging or receiving people under the age of eighteen for the purpose of exploitation, even if this exploitation is not accompanied by threat or use of force or other methods as mentioned in the previous article.

Means used:

- Threat or use of force or other forms of coercion;
- Abduction, fraud, deception, abuse of power or of a position of weakness; or
- Offering or receiving payments or privileges to secure the consent of a person having control over these persons.

Purposes of exploitation:

- Forced labour;
- Slavery or servitude;
- Removal of organs;
- Acts of prostitution; or
- Any form of sexual exploitation.

The *Anti-human Trafficking Law* punishes trafficking in persons with imprisonment for a period of not less than six months or a fine of an amount not less than 1,000 JOD (1,413 US\$) and not more than 5,000 JOD (7,066 US\$) or both penalties¹⁶² and in aggravated circumstances¹⁶³ with imprisonment with hard labour for not less than ten years and a fine not

¹⁶² Anti-Human Trafficking Law of 2009, article 8.

¹⁶³ Aggravated circumstances are "1. If the person who committed the crimes has established or controlled or managed an organized gang or joined or participated in the same.





less than 5,000 JOD and not more than 20,000 JOD (28,260 US\$).¹⁶⁴ The Public Prosecutor may also decide to close a business place, in which the owner, its directors or any of its employees commits any of the crimes of trafficking for a period not exceeding six months¹⁶⁵ and the court may decide to seize any assets acquired or earned by committing the crime.¹⁶⁶

The *Anti-Human Trafficking Law* contains several progressive provisions that have significantly improved the ability of victims to access justice and get compensated. First, a **non-criminalization clause** was introduced, allowing the Public Prosecutor to stop prosecution against any of the victims of trafficking in persons and injured crime victims.¹⁶⁷ Second, before the adoption of the *Anti-Human Trafficking Law*, the *Penal Code* only punished the abduction of minors under fifteen years old.¹⁶⁸ Therefore the *Anti-Human Trafficking Law* fills this gap in **ensuring protection of children from trafficking up to the age of 18**. It also better protects women and disabled persons in foreseeing an aggravated penalty in this case.¹⁶⁹ Finally, according to article 4, a **National Committee of Anti-Trafficking** shall be created. One of its responsibilities is to cooperate with all official and private entities to provide physical, psychological and social recovery programs necessary for supporting victims of trafficking crimes and providing shelter service.¹⁷⁰ In line with this provision, in March 2012 the Jordanian Government issued a bylaw to regulate shelters welcoming victims of trafficking in persons and those affected by this crime. It sets the different criteria and services that should be provided to victims in order to improve their protection.¹⁷¹

Although the law represents an improvement of the Jordanian legislation regarding trafficking in persons, a number of **gaps remain. Penalties under the legislation are not a sufficient deterrent, taking into account the gravity of the acts and the impact on victims**. Moreover, the ILO Committee of Experts has noted that while the *Anti-Human Trafficking Law* prohibits the trafficking of persons under 18 years for the purpose of sexual exploitation, these provisions do not appear to specifically address the use of children for the production of pornography.¹⁷² Regarding the non-criminalization of victims of trafficking in persons, it must be noted that the authority is discretionary and the law does not provide any guidance on when it should be exercised.¹⁷³ The law does not contain protection measures such as witnesses and victim protection, repatriation rights, or temporary residence permits to provide recovery periods for migrant workers or facilitate their access justice and/or compensation which are recommended in the United Nations Recommended Principles Guidelines on Human Rights and Human Trafficking.¹⁷⁴ Finally, enforcement capacity remains an on-going challenge, with

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¹⁶⁴ Anti-Human Trafficking Law of 2009, article 9.

¹⁶⁵ Anti-Human Trafficking Law of 2009, article 12B.

¹⁶⁶ Anti-Human Trafficking Law of 2009, article 14.

¹⁶⁷ Anti-Human Trafficking Law No. 9 of 2009, article 12A.

¹⁶⁸ Penal Code of 1960, article 287.

¹⁶⁹ Anti-Human Trafficking Law of 2009, article 9(b)(2).

¹⁷⁰ Anti-Human Trafficking Law of 2009, article 5(g).

¹⁷¹ Regulation No. 30 on shelter homes for injured persons and victims of human trafficking of 2012, published in the official gazette No. 5153 of 16 April 2012, p. 1623, issued pursuant to article 7 of the Anti-Human Trafficking Law No. 9 of 2009.

¹⁷² ILO CEACR: Observation, Convention No, 182, 2013.

¹⁷³ Mattar, M.: *Human Rights Legislation in the Arab World: The Case of Human Trafficking* http://www.protectionproject.org/wp-content/uploads/2012/02/Human-Rights-Legislation-in-Arab-World_Mattar.pdf, p. 19.

¹⁷⁴ UN Office of the High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights and Human Trafficking, 20 May 2002, E/2002/68/Add.1.





the specialized trafficking unit in the Criminal Investigation Division pursuing between 12 and 29 cases per year from 2010 to 2013.¹⁷⁵

Additional improvements to the legislative framework on combatting trafficking in persons are available through consideration and ratification of the recently adopted *Protocol of 2014 to the Forced Labour Convention of 1930* and the accompanying Forced Labour (Supplementary Measures) Recommendation, No. 203¹⁷⁶, especially that the government (Minister of Justice) has formed a committee lately to review the 2009 Law. The Protocol and Recommendation seek to address gaps in the implementation of *Convention No. 29* by reaffirming that measures of prevention, protection and remedies are necessary to achieve the effective and sustained suppression of forced or compulsory labour. In combination with Jordan's efforts under *Convention No. 29*, the Palermo Protocol on trafficking in persons and the national *Penal Code* and *Anti-Human Trafficking Law*, the ratification of the Protocol and effective use of the Recommendation could help to eliminate outstanding protection gaps and help prevent and remedy cases of trafficking in persons.

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¹⁷⁵ Anti-Human Trafficking National Committee: *First Report 2009-2013*, (Jordan), p. 8.

¹⁷⁶ International Labour Organization 2014 Protocol to the Forced Labour Convention of 1930 (No. 29); Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203).





Institutional framework and policies

6.1 National coordination mechanisms and action plan

Institutional reform to more effectively fight trafficking in persons in Jordan began in 2007 with the establishment of an Inter-Ministerial Committee for the coordination of labour issues.¹⁷⁷ Its goal was to ensure coordinated action and policy development concerning labour issues, and in particular trafficking in persons.¹⁷⁸ The Committee had to investigate and recommend appropriate actions to be taken by relevant ministries and government bodies concerning alleged cases of trafficking in persons, as well as identify legal and administrative gaps that impeded an adequate response. One of the major accomplishments of the Committee was to speed up the process of drafting and passing national legislation to combat trafficking in persons. Indeed as noted previously, Jordan ratified the *UN Convention against Transnational Organised Crime*, the adjoining *Palermo Protocol on trafficking in persons* in May 2009 and consequently adopted Jordan's *Anti-Human Trafficking Law* in 2009.¹⁷⁹

As required by the new *Anti-Human Trafficking Law*, the **Anti-Trafficking National Committee (AHNC) replaced the Inter-Ministerial Committee in June 2009**.¹⁸⁰ It is chaired by the Minister of Justice, and its members also include representatives of the Ministry of Interior, the Ministry of Labour, the Ministry of Social Development, the Ministry of Industry and Trade, the Ministry of Health, the Public Security Directorate, the National Council for Family Affairs and the National Centre for Human Rights. It should be noted that social partners and civil society groups are not included in the member list, which is a key concern for future actions.

The AHNC launched its **first National Strategy and Action Plan to Combat Human Trafficking for 2010-2012**, based on four pillars: prevention, prosecution, protection and partnerships.¹⁸¹ This action plan included a number of important provisions, such as the need to issue residency and work permits for victims until their voluntary return home or to a third country, and the

¹⁷⁷ The Hashemite Kingdom of Jordan, Ministry of Labour: *Labour Administration and Compliance in Jordan: A multi Stakeholder Collaboration, First Progress Report*, October 2009, p. 22.

¹⁷⁸ This Committee included two representatives from the Ministries of Interior, Labour, Foreign Affairs and Justice, as well as the Jordan Institute of Diplomacy and the Public Security Directorate.

¹⁷⁹ United Nations Treaty Collection: *Status of Ratification, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (New York, 15 November 2000).

¹⁸⁰ Article 4 of the Jordan Anti-Human Trafficking Law No. 9, 2009.

¹⁸¹ National Committee for Combating Trafficking in Human Beings: *National Strategy to Combat Trafficking in Persons For the Years 2010 – 2012*.





necessity of opening a safe and temporary shelter for trafficking victims, which was officially launched on 12 September 2015.¹⁸² In addition, the action plan required the Government to build the capacity of the judiciary and public prosecutors to ensure the enforcement of the new *Anti-Human Trafficking Law*.¹⁸³ The Government has yet to release its plan since the first one ended in 2012.

6.2 Innovative enforcement structures

Recent qualitative research conducted by the ILO in the region has found the existence of a theoretical and practical disconnect between the discourse on trafficking in persons advanced by the national authorities and the ways in which cases of trafficking in persons are identified and handled. The reluctance to use the prism of trafficking for labour exploitation to address the most extreme violations of human and labour rights of migrant workers underscores the fact that trafficking in persons remains a sensitive political issue.¹⁸⁴ As a result, despite the large number of migrant worker in Jordan, there have been a limited number of cases of trafficking in persons which have been identified and prosecuted under the *Anti-Human Trafficking Law*.

However, it should be noted that this situation is slowly changing since the **operationalization in 2013 of a** Joint police and labour inspection anti-trafficking unit.¹⁸⁵ Between January and December 2013, this new unit composed of 55 police officers, 2 labour inspectors and 1 nurse, has identified and dealt with 26 cases of trafficking for domestic servitude involving 44 victims, 2 cases of trafficking for labour exploitation in the construction, agriculture and apparel sectors involving 10 victims. No cases of trafficking for sexual exploitation were identified. Most of the cases dealt by the unit since 2013 are cases of forced labour of domestic workers.¹⁸⁶

Although this joint inspection unit is a positive step towards better identification and protection of victims of trafficking in persons, there are no national referral mechanisms clarifying the role and responsibilities of the different governmental institutions as well as civil society actors providing support services to victims, impeding an efficient national response to the phenomenon.

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¹⁸² National Committee for Combating Trafficking in Human Beings: *National Strategy to Combat Trafficking in Persons For the Years 2010 - 2012*, p. 6.

¹⁸³ National Committee for Combating Trafficking in Human Beings: *National Strategy to Combat Trafficking in Persons For the Years 2010 - 2012*, p. 7.

¹⁸⁴ H. Harroff-Tavel, A. Nasri: *Tricked and Trapped, Human Trafficking in the Middle East* (ILO, Geneva, 2013).

¹⁸⁵ A Memorandum of Understanding was signed on 6 April 2012 between the Ministry of Labour and the Public Security Directorate to create a unit to combat trafficking in persons which reports to the Criminal Investigations Department. The unit started working on 19 January 2013. Anti-Human Trafficking National Committee: *First Report 2009-2013*, (Jordan), p. 8.

¹⁸⁶ Anti-Human Trafficking Statistics 2013-2015.





6.3 Prosecution and response of the judiciary

According to a judicial source, the Government investigated and prosecuted 35 cases in 2011, including several cases of trafficking of domestic workers for forced labour and one case of forced prostitution.¹⁸⁷ The Chief Prosecutor of Amman also reported that the Prosecutor's Office had dealt with 14 cases of trafficking in persons in 2009 (before the passing of the law) and eight cases in 2010.¹⁸⁸ Between 2008 and 2010, prosecutors investigated one case of trafficking for sexual exploitation, and two cases of selling of children which were not considered trafficking cases under the law as it stood in 2008. Prosecutors also reported a case of sexual exploitation in 2010 involving two girls from Morocco and Tunisia who were working in a nightclub and were sold to another nightclub.¹⁸⁹

According to the judicial sources interviewed, the number of judges dealing with labour cases is insufficient. Moreover, Jordanian lawyers and judges have limited knowledge of the anti-trafficking legislation in the country. As a result, many legal practitioners do not use the *Anti-Human Trafficking Law* and criminalize instead each offense of the crime of trafficking in persons separately.¹⁹⁰ This has resulted in few trafficking related convictions in court. The fact that several articles in the *Labour Code* and *Penal Code* can be used to punish trafficking-related offences has created confusion as to which legal provisions should apply. Hence, the provisions and penalties of *Law No. 9* and their link with other laws of the Jordanian legal system should be clarified.

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187 Telephone interview with a judge at the Ministry of Justice, Court of Justice of Amman, Jordan, 31 May 2012.

188 Interview with an official of the Ministry of Justice, Jordan, 15 November 2011.

189 Interview with an official of the Court of Justice of Amman, Jordan, 16 November 2011.

190 The Jordanian criminal law includes several provisions that criminalize offences related to the crime of human trafficking, such as threats of murder or of assault, beating and rape; driving someone to suicide; torture, forced confinement and murder. There are also specific provisions in the penal code that can be used to prosecute perpetrators of sex trafficking.





Analysis of the jurisprudence¹⁹¹

From 2014 until 2015, the Jordanian NGO Tamkeen received 876 individual and collective complaints against employers and PrEAs. Around 78% of these complaints were filed by MDWs¹⁹² whereas only 3% were filed by apparel workers¹⁹³ in the QIZs.¹⁹⁴ In 2015, Tamkeen filed approximately 39 court cases related to labour and penal issues. Complaints against PrEAs were usually dropped by the workers and resolved at the level of informal negotiations. This section analyses 35 judicial decisions that were rendered by judges in Jordan. In all of these cases, a lawyer from Tamkeen represented the concerned migrant domestic workers and garment workers.

7.1 Cases involving migrant domestic workers

The majority of claims filed in courts by migrant domestic workers concern labour rights issues, such as unpaid wages, overtime, compensation for un-received annual leave, end of service benefits, weekly day-off, official holidays, and non-payment of a return plane ticket. A review of the following judicial decisions regarding domestic workers highlights flagrant inconsistencies in the application of the law and underscores the confusion that persists within the judiciary about the scope of laws applicable to domestic workers.

Several cases, such as *Aquarita v. Ilham Al Sayeh*, have been dismissed by judges largely due to **confusion regarding the applicable law to domestic workers**. There is still no clarity among the judiciary regarding the law applicable to domestic workers, with some judges interpreting article 3(b) of the *Labour Code* as providing for the enactment of a specific regulation for domestic workers and thus excluding domestic workers from the rest of the scope of the protections.¹⁹⁵ According to Tamkeen, this misinterpretation is based on a lack of clarity in *Regulation No. 90* which does not explicitly mention that the *Labour Code* will remain applicable in matters not covered by the regulation.

¹⁹¹ The analysis of the jurisprudence results from information collected and provided by the NGO Tamkeen.

¹⁹² Individual complaints.

¹⁹³ Collective complaints.

¹⁹⁴ Tamkeen's annual statistics on the number of complaints.

¹⁹⁵ *Aquarita v. Ilham Al Sayeh*, Sahab Magistrate Court, Filing date: February 16, 2013, Ruling date: May 4, 2014.





Moreover, in many cases, judges **have not awarded the full amount of compensation merited by domestic worker's claims** based on the same confusion regarding the applicable law. For example, in the *Lamseia v. Fouad Muhammad* case, the judge did not award the employee an **end of service allowance**, arguing that there is no specific clause on end of service allowance in the *Regulation No. 90*.¹⁹⁶ However, such interpretations fail to recognise that, as mentioned above, the Jordanian *Labour Code* should be complementary to *Regulation No. 90*. According to Tamkeen's lawyers, where confusions exist the court should be applying the **"best interest of the worker" principle stated in article 4 of the Labour Code**. Article 4 indicates that the *Labour Code* will not infringe upon any rights under other laws or regulations which are "better than those laid down" in the *Labour Code*.¹⁹⁷ As *Regulation No. 90* is supplementary legislation intended to enhance the rights and protections of domestic workers, to the extent that it does not specifically conflict with or supplant protections in the *Labour Code* to the benefit of domestic workers, the protections of the *Labour Code* remain in effect.

In addition to confusion regarding applicable laws, there also exist significant inconsistencies in decisions regarding well-established laws and regulations. In the *Kasini v. Mohammad al Muheisen* case, the judge dismissed a claim for the **payment of a migrant domestic worker's return plane ticket** as "it is not included in the concept of wages and not considered part of wages".¹⁹⁸ This ruling contradicts several provisions under the *Labour Code*, such as article 2 which defines a worker's wage as "[a]ll cash or in-kind entitlements of the employee against his work in addition to all other entitlements of whatever type, provided for by the law, work contract or bylaw," and it also contradicts section 4(g) of *Regulation No. 90* which creates the obligation of the householder to "[b]uy the non-Jordanian worker a ticket from his home country to Jordan and a return ticket after two years of employment".¹⁹⁹

Additional inconsistencies exist in cases where **employers have recruited domestic workers as freelancers in the irregular market and are able to obtain dismissals on the basis that the defendant was not the official sponsor of the worker and was thus not liable to provide decent working or living conditions**. For example, in the *Saiedah v. Manal Saadeh* case, the employee's residency permit was under the name of the father of the employer and the court therefore dismissed the complaint against the employer on the basis that the claim was not brought against an appropriate opposing party.²⁰⁰ It is common practice in Jordan for employers to recruit MDWs illegally in order to avoid paying the fees associated with official annual residency cards and work permits. But this circumvention of the law, which renders the domestic worker more vulnerable, is forbidden under section 4(c) of *Regulation No. 90* and article 12(f) of the *Labour Code* and should therefore be punished by judges rather than interpreted as a basis for dismissal.

196 *Lamseia v. Fouad Muhammad*, North Amman Magistrate Court, Filing date: April, 17, 2013, Ruling date: February 28th, 2011.

197 See Labour Law No. 8 of 1996 and its amendments, article 4, stating that: "[t]he provisions of this law do not affect any right given to the employee by any other law, work contract, agreement or decision if any of them gives better rights than the decided rights for the employee by virtue of the provisions of this law."

198 *Kasini v. Mohammad al Muheisen*, Amman Magistrate Court, Filing date: November 12th, 2012, Ruling date: June 30th, 2013.

199 See Labour Law No. 8 of 1996 and its amendments, article 2; see also Jordan, Regulation No. 90 of 2009 for home workers, cooks, gardeners and similar categories, section 4(g).

200 *Saiedah v. Manal Saadeh*, North Amman Magistrate Court, Filing date: March 20, 2012, Ruling date: August 4, 2013.





Although some complaints have been identified by Tamkeen as cases of trafficking in persons, **in the majority of the cases the prosecution does not conduct an investigation into the elements of the crime of trafficking in persons and instead refers the case to the judiciary on other accusations.** For instance, in the *Samawiya v. Salah Al Essa and Ashraf Al Essa* case,²⁰¹ the PrEA of Samawiya recruited an Indonesian worker and then subjected her to extreme verbal and physical abuse, confiscating her passport and forcing her to work while withholding her salary for nearly four years. The victim sought remedy under the *Anti-Human Trafficking Law* but the prosecution referred the lawsuit to the judiciary on the accusations of **sexual harassment, theft, attempted theft and physical abuse.** In court, the judge ignored forced labour and sexual harassment crimes without providing any explanation. According to Tamkeen's lawyer, this practice can be explained by several factors, including insufficient training of judges on the elements of the crime of trafficking in persons under the anti-trafficking law.

Unsurprisingly, the lack of investigation often results in judges dismissing forced labour or trafficking in persons claims due to insufficient evidence. This reality in Jordan also highlights conflicting interpretations and applications of the appropriate **burden of proof in forced labour and trafficking in persons cases.** For example, in the *Suji v. Tariq Habahibh and Muhammad Habahibh* case²⁰² a recruitment agency subjected a Sri Lankan domestic worker to degrading treatment, severe physical abuse and forced overtime. The complaint was divided into two distinct cases. While the first one was reported up to the High Criminal Court, accusing the defendant of disgracing the plaintiff, the crimes of passport confiscation and trafficking in persons were separately referred to the Amman lower Court. Ultimately, the passport withholding accusation was dismissed due to a general amnesty clause and the remaining claims were dismissed because of insufficient evidence. The ruling in the *Suji* case exemplifies a number of the various anomalies in the judicial process which occur in forced labour and trafficking in persons claims.

Firstly, dividing the case into two complaints contradicts legislative intent and the spirit of the law as sexual harassment is an element of the crime of trafficking in persons. The complainant should therefore have been able to present evidence on both of the claims simultaneously at the High Criminal Court. As the act of passport confiscation is quite often a means to coerce a person into a situation trafficking in persons and/or forced labour, the third claim should also have remained joined and all three should have been tried in unison. Moreover, there was virtually no investigation and the two cases were dismissed primarily based on the argument that the plaintiff's testimony was unreliable, noting in particular a four-year lapse of time between the abuses and the complaint. The court focused on specific contradictions in the testimony, and did not consider broader issues or factors, including the inherent vulnerability of the worker. This case highlights the need to raise awareness among members of the Jordanian judiciary about the crime of trafficking in persons, and train the competent prosecutors and law enforcement bodies to ensure that the crime is correctly identified, investigated and punished.

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201 *Samawiya v. Salah Al Essa and Ashraf Al Essa*, The High Criminal Court, Filing date: August 12, 2009, Ruling date: December 21, 2009. *Radica v. Sahar Al Wa'ili and Faisal Zaki*, Amman Magistrate Court, Filing date: March 20, 2011, Ruling date: January 17, 2012. *Nina v. Sabah Abu Gowsh*, Al Zarqa Magistrate Court, Filing date: March 29, 2010, Ruling date: March 13, 2013.

202 *Suji v. Tariq Habahibh and Muhammad Habahibh*, Amman High Court and Lower Court, Filing date: May 7, 2010, Ruling date: February 28, 2011.





Another type of case which commonly arises in the context of migrant domestic workers concerns false accusations of theft, claims which are typically filed by the employer as soon as a worker absconds from the household. The employer usually files a complaint the same day at the police station. The police station subsequently issues a notification against the migrant domestic worker, who is then located, detained and referred to the judiciary. In most cases the employer withdraws the complaint upon the worker returning to their employ or dropping claims of labour exploitation by the employer. If not, as in the *Brainjeka v. Hend Dawond* case,²⁰³ according to article 406 of the Jordanian *Penal Code* the worker can be sentenced to one-year imprisonment for theft, with a possible reduction by the court to 6 months, in addition to financial penalties. According to Tamkeen, in most cases the workers are not set free until the final ruling and, if they try to file a complaint against their employer following allegations of theft against them, they are often perceived as liars by the judges. This dual criminal-victim status, where a migrant domestic worker is considered both a criminal and a victim, can prejudice proceedings and thus often discourages the worker from seeking justice in court. The migrant's only remaining option is to engage in settlement negotiations, in the hopes of obtaining some financial compensation and be able to leave the country without spending excessive time in pre-trial detention.

7.2 Cases involving apparel workers

Most cases concerning apparel workers have been filed after workers have organised a strike to obtain decent living and working conditions. When the strike is unsuccessful and the employer reaches no compromise with the workers, the workers attempt to seek justice through the judicial system. For example, in March 2013, 1,300 Burmese female workers filed a complaint against the Age Miracle Factory for Clothing after striking for better working conditions and higher wages and receiving no concessions from their employer.²⁰⁴ As the police did not investigate the matter further after the strike, and in order to draw the judicial authorities' attention to the violations of workers' rights, Tamkeen's legal unit requested an inspection of the dormitories. The court then appointed experts who determined that the living quarters were overcrowded (up to eight persons per room), lacked safe drinking water and were without a suitable sanitation system. Despite all of evidence uncovered in this inspection, many of the workers had been offered means of repatriation and the court closed the case on the basis that it lacked a complainant. This occurred despite Tamkeen's efforts to continue pursuing the action and the law's clear indication that cases of trafficking in persons can proceed without a complainant.²⁰⁵

In other cases, **factory administrations have used accusations of illegal striking and delay tactics to avoid liability and/or avoid conceding to the demands of striking workers.** In the *Bangladeshi Workers v. International Business Company* case, filed in December 2011 at the Al Ramtha Penal Magistrate Court, a number of workers decided to strike due to bad treatment, poor conditions in the dormitory and difficult working conditions

²⁰³ *Brainjeka v. Hend Dawond*, Al Salt First Instant Criminal Court, Filing date: November 28, 2012, Ruling date: October 31, 2013. See also *Thousani v. Fadi Barqawi*, Amman Magistrate Court, Filing date: September 11, 2011, Ruling date: September 12, 2011.

²⁰⁴ *1,300 Burmese workers v. Age Miracle Factory for Clothing*, Al Ramtha Magistrate Court, Filing date: March 5, 2013, Judgment date: March 11, 2013.

²⁰⁵ See e.g. Anti-Human Trafficking Law of 2009, article 13.





in the factory.²⁰⁶ The workers expressed their demands, including the removal of the time monitors that had been placed next to the bathrooms to measure the time spent at the toilet. The workers objected to the employer's decision to reduce their salary at the end of the month if the worker spent more than 8 minutes at the toilet per session. Initially, an amicable settlement was reached between the workers and their employer. However, after the workers returned to work they started to receive notices from the police accusing them of illegal strikes. The court ultimately separated the case into three parts, providing inconsistent rulings which included: fining workers involved in the strike, fining and denying the wages of workers involved in the strike, and dismissing the employer's claims as moot.²⁰⁷

In other instances, the court has broken up collective cases brought by large numbers of migrant worker plaintiffs. The court often elects to sever the larger collective claims into smaller group cases, arguably weakening the position of the workers vis-à-vis their employer and limiting the scope and weight of evidence that can be admitted. One case demonstrating this practice was an action brought by 200 plaintiffs against the Straight Line Company. In that case, the court chose to subdivide the single collective action into 20 cases involving not more than 10 persons each.²⁰⁸ Such legislative actions are inherently problematic because they significantly increase court costs, adding a financial burden which disproportionately affects workers. Moreover, different subdivisions of the same original case often receive diverse and inconsistent rulings based on different legal arguments or principles.²⁰⁹

In the majority of cases, apparel migrant workers have not filed **cases for the confiscation of their passports**, as these disputes are usually solved through an amicable settlement with the factory owner. However, a few cases have reached the judicial system. In 2013, four Bangladeshi workers filed a complaint at the Al Ramtha Penal Magistrate Court after the manager of the factory refused to renew their contract and asked them to pay to have their passports returned to them. The judge heard the testimonies of the workers, except for one detained by the police. The manager was charged with passport confiscation, according to article 77(b) of the *Labour Code* (amended in 2008) and sentenced with the minimal fine of 500 JOD (706 US\$). However the judge did not order the handover of the passports and, as a result, the migrant workers had to pay in order to retrieve them from their employer.

Of particular concern are cases involving detained migrant workers. In the *Bangladeshi workers v. Sana'a Factory for Clothing Industry* case, although the worker filed a case against his employer, he was deported and no consideration was given to his lawsuit or the regularisation of his legal status.²¹⁰ Another recent case involved 21 Bangladeshi workers in the Al Hassan Industrial Zone who were accused of working illegally for an

²⁰⁶ *Bangladeshi Workers v. International Business Company*, Al Ramtha Penal Magistrate Court, Filing date: December 7, 2011, Ruling date: May 14, 2012.

²⁰⁷ *Bangladeshi Workers v. International Business Company*, Al Ramtha Penal Magistrate Court, Filing date: December 7, 2011, Ruling date: May 14, 2012.

²⁰⁸ *More than 200 Indian workers v. Straight Line Company*, Al Ramtha Penal Magistrate Court, Filing date: September 10, 2012, Ruling date: April 14, 2013.

²⁰⁹ *More than 200 Indian workers v. Straight Line Company*, Al Ramtha Penal Magistrate Court, Filing date: September 10, 2012, Ruling date: April 14, 2013.

²¹⁰ *4 Bangladeshi workers v. Sana'a Factory for Clothing Industry*, Al Ramtha Penal Magistrate Court, Filing date: January 29, 2013, Ruling date: December 22, 2013.





employer, in spite of the fact that their attorneys had provided all the necessary evidence of a legal transfer of employer.²¹¹ However, the deportation went ahead as planned as article 12(g) of the *Labour Code* grants the Ministry of Labour the authority to deport workers who violate the *Labour Code*,²¹² depriving them of the right to present their case to the judiciary or to appeal deportation decisions.

7.3 Legal protection gaps identified through the case law analysis

A review of these cases brought by Tamkeen highlights several legal protection gaps. First, the legal framework does not provide for sufficiently serious punishments which could deter unlawful employment practices, particularly with respect to fines. The law only provides for minor financial penalties to be levied against employers, even in cases of proven forced labour. Indeed, according to article 77(b) of the *Labour Code* (amended in 2008): “[i]n addition to the penalty provided by law, an employer shall be punished if he/she requests an employee to work by force, fraud or threat, including confiscating his/her passport, by a fine of not less than 500 dinars, but less than 1,000 dinars”.²¹³ Additionally, the previously mentioned ‘false theft’ or ‘illegal strike claims’ and various delay tactics allow for unscrupulous employers to avoid almost all of the financial or criminal sanctions that are intended to deter illegal practices.

Second, migrant workers themselves face many obstacles, risks and economic disincentives to accessing their right to justice. The judicial process is slow and can last years,²¹⁴ exacerbated by defendants not showing up to court or otherwise delaying the proceedings. Financial inequities between workers and employers seeking judicial remedies are clear, and these imbalances are widened by court practises such as splitting claims between different courts or subdividing collective action cases. In some cases, the principle of ‘impartiality of the judge’ was not observed in the court’s rulings.²¹⁵ There are also no legal provisions allowing victims to regularise their legal status during the course of proceedings. This helps to explain why many workers, concerned about possible deportation, feel compelled to accept inequitable settlements with their employer instead of exercising their right to judicial remedies. This risk of deportation is a very real concern, with administrative authorities often deporting migrant workers before they have had the opportunity to appear in court or obtain remedies. When such claims are able to be brought, judges interviewed stated that it was extremely difficult for a victim to be compensated in the current legislative framework and that very few potential victims had had been able to obtain residency permits which would be valid for the entire duration of their court proceedings.

²¹¹ *21 Bangladeshi Workers v. Classic Factory*, Supreme Court of Justice, Filing date: March 8, 2012, ruling date: September 13, 2012.

²¹² Article 12(g) of the Law No. 8 of 1996 states that “The Minister shall issue a decision of expelling the worker contravening the provisions of this article abroad the Kingdom at the expense of the employer or the manager of the establishment. This decision shall be implemented by the competent authorities, the expelled non-Jordanian worker might not be re-employed in Jordan and may not re-enter Jordan before three years at least from the date of implementing the decision of expel.”

²¹³ See Labour Law No. 8 of 1996 and its amendments, article 77(b).

²¹⁴ *Nina v. Sabah Abu Gowsh*, Al Zarqa Magistrate Court, Filing date: March 29, 2010, Ruling date: March 13, 2013.

²¹⁵ *Swarna v. Salma al Bast, Halah al Bast, and Muhammad Abu Hassan*, North Amman First Instant Criminal Court, Filing date: December 22, 2010, Ruling date: Under hearing.





Third, the analysis to-date shows that numerous judges do not base their rulings on the appropriate international conventions or treaties which apply in Jordan and, additionally, many judges misinterpret or are simply unfamiliar with national labour and trafficking laws/regulations. Judges have demonstrated a preference for applying and deciding cases based on national laws, disregarding international conventions and treaties which have been ratified and whose supremacy has been recognised in Jordan's jurisprudence.²¹⁶ Regarding judicial and prosecutorial capacity, it is clear that many prosecutors lack sufficient knowledge to properly refer trafficking claims and that many judges are not capable of effectively recognizing and investigating elements of that crime. Furthermore, there continues to be inconsistency and misinterpretation in the appropriate application of labour laws to migrant workers, particularly to domestic migrant workers in the context of the interaction between the Jordanian *Labour Code* and *Regulation No. 90*.

Lastly, Jordanian legislation does not state clear procedural rules or provide concrete implementation mechanisms, including with respect to investigating labour cases and enforcing judgments. The current legislation does not provide effective procedural safeguards or legal services for migrant workers. Also, although most of the jurisprudence correctly places the burden of proof on the employer, the court sometimes shifts this burden to the worker. Migrant workers then experience the inherent disadvantages of being unable to speak Arabic fluently and have limited, if any, access to translation and interpretation services. National legal aid services are also generally unavailable to migrants, who are then financially limited to seeking the assistance of NGOs such as Tamkeen. Finally, where migrant workers overcome all obstacles and manage to successfully obtain a judgment against their employer, the judicial system lacks an effective and efficient implementation mechanism, leaving the migrant worker with limited judicial recourse to secure their judgements.²¹⁷

²¹⁶ Jordan has a dominant dualist trend with monist tendency. The Constitution provides for the conclusion and ratification of treaties but does not expressly determine their status. However the jurisprudence leaned towards enshrining the supremacy of treaties over domestic law in several cases: Decision of the Jordanian Court of Cassation No. 2353/2007 in the case of the company "A.D.L.M.G" against the owners of the ship "H" and the lessee of the ship; Decision of the Amman Court of Appeal No. 36823/2010 in the case of "S." Against "A.". For more information see S. Bourouba: *Jurisprudence In the Application of Human Rights Standards In Arab Courts* (Algeria, 2012), p. 32.

²¹⁷ For example see *1,300 Burmese workers v. Age Miracle Factory for Clothing*, Al Ramtha Magistrate Court, Filing date: March 5, 2013, Judgment date: March 11, 2013 and *Item v. Zaheer al Ateebi*, Amman Magistrate Court, Filing date: February 1, 2011, Ruling date: September 20, 2011.





Prevention and protection measures

8.1 Prevention and protection activities conducted by or involving government officials

Besides the five labour inspectors working for the Domestic Work Department of the MOL, there is a Special Inspection Office in each QIZ as well as three labour inspectors specialized in child labour issues at the headquarter in Amman who collaborates with 20 focal points in the regional offices. However, given the significant implementation challenges identified throughout this study, the capacity of the labour inspection administration seems too weak to act as an effective intermediary in the prevention and settlement of labour disputes in sectors dominated by low-skilled migrant workers. Much more also remains to be done to ensure monitoring of working and living conditions of domestic workers, who, in practice, remain outside of the scope of the labour administration.

Since its establishment, the Joint Anti-trafficking Unit has been one of the most active governmental bodies to implement prevention activities. Several awareness campaigns were organized through Jordanian TV, radio channels, including the Jordanian Police Department radio station and newspaper articles. Awareness messages were disseminated in Arabic and languages from the main countries of origin of migrant workers and included the hotline number of the MOL. This hotline, which is supposed to function 24/24 hours, is managed by six staff members speaking seven languages (70% of complaints come from migrant workers). In addition, three brochures entitled “Am I a victim of trafficking?”, “Because you are fair”, and “Fight human trafficking” were produced and distributed to workers and employers upon their arrival at the airport and through embassies of countries of origin. The impact of such campaigns has not yet been evaluated and civil actors expressed their hope that it could lead to higher rate of victim identification in the coming years.

In 2013, the anti-trafficking unit, in collaboration with the International Organization for Migration (IOM), launched a new anti-trafficking campaign targeting the Syrian refugee community in the Mafraq governorate. This campaign is composed of sensitization workshops for 200 students and capacity building trainings for 200 government officials and members of civil society organizations, in order to create a trafficking taskforce to identify victims of trafficking in persons in Mafraq and to provide Jordanian and Syrian





vulnerable women and girls with protection. In 2013, two sensitization workshops were conducted on existing regulations, each involving 20 PrEAs.

Capacity building activities were conducted through trainings provided by the anti-trafficking unit and international partners (including the ILO) to police officers, labour inspectors and judicial staff.²¹⁸ Making these critical capacity building efforts sustainable has been an on-going challenge. The ILO has been discussing with the labour inspector academy to what extent curriculums on the prevention and identification of trafficking in persons and forced labour developed in the past few years could be integrated permanently into the labour inspection academy's curriculum. The high turnover of police and labour inspectors has made it difficult for these institutions to retain the knowledge provided by these initiatives; an issue which must be addressed in order to improve the competency of enforcement officials in the future.

As mentioned previously, the Government has passed regulations for special shelters for victims of trafficking.²¹⁹ On 12 September 2015, "Al-Karamah" Shelter was established and operational and is capable of welcoming 35 persons. The shelter can receive women, men and children. Currently, the shelter has 10 women and children mostly victims of forced labour of domestic workers.²²⁰

The shelter has partnered with a number of government institutions and civil society organizations within Amman, and provides different services to victims during recovery such as legal services in cooperation with Sisterhood is Global Institute Jordan (SIGI Jordan) and Tamkeen; and medical services in cooperation with Caritas Jordan, Italian Hospital and Ministry of Health.²²¹

In addition, trafficked person are also referred to the Jordanian Women's Union (JWU) shelter or the Ministry of Social Development's shelter for abused women "Dar Al Wifak" (House of Reconciliation). However, both shelters lack the capacity to respond to the needs of victims of trafficking in persons and they only receive women and children victims. The Government has coordinated with local civil society organizations, including the Jordanian Women's Union, to refer victims to their shelter²²² and has issued several temporary residence permits or exemptions from fines for workers pending their repatriation.²²³ However, the JWU is rather small and cannot welcome more than 30 women, who are not allowed to leave the premises, posing the question of the conformity with a rights-based approach to service provision. Given the lack of sufficient governmental capacity, domestic workers must often turn to their national embassy for help.

Additionally, the previously referenced Forced Labour Protocol and its accompanying Recommendation No. 203 provide for broad protection and prevention measures which

²¹⁸ These trainings include among other in 2013: three training courses for police officers and judges on the concept of human trafficking and forced labour, given by the special unit; trainings targeting the special unit staff, police and labour inspectors in direct contact were trained by the two local NGOs Adaleh and Tamkeen; 2 workshops on interviewing and identifying the victim for labour inspectors and police men. ILO also provided training both in 2012 and 2013 on how to identify cases of trafficking and forced labour for labour inspectors, police officer and judges and prosecutors.

²¹⁹ Anti-Human Trafficking National Committee: *First Report 2009-2013*, (Jordan), p. 19.

²²⁰ Phone call with the Shelter Director on 27 September 2016.

²²¹ Phone call with the Shelter Director on 27 September 2016.

²²² 16 women in 2012, 36 women in 2013, as well as 6 men (housed in a hotel) in 2013.

²²³ Anti-Human Trafficking National Committee: *First Report 2009-2013*, (Jordan), p. 19.





supplement *Convention No. 29* and would help to eliminate gaps in Jordan's efforts to prevent forced labour and trafficking in persons and protect victims.²²⁴

8.2 Prevention and protection activities conducted by trade unions, civil society groups and embassies in Jordan

Trade unions in Jordan have spent the last few years focusing primarily on the popular demands awakened by the Arab Spring. New independent trade unions have emerged and challenged the positions taken by the Jordanian General Federation of Trade Unions. Against this backdrop, trade unions have increasingly opted for a sectoral strategy to tackle the issues related to the violation of rights of migrant workers. However, they are limited by the confines of the law which does not allow migrant workers the freedom to vote or to be elected in unions.

In the domestic work sector, there has been some inter-regional trade union collaboration. For example, in 2009 the National Workers Congress in Sri Lanka (NWC) signed a cooperation agreement with the Jordanian General Federation of Trade Unions (GFJTU) in which the NWC seeks to inform migrant domestic workers prior to departure of their rights in Jordan, while GFJTU in Jordan has pledged to provide them with support.²²⁵

The General Trade Union of Workers in Textile, Garment & Clothing also plays a role in the organization and protection of workers. It works closely with the Better Work Jordan programme, regularly organizes workshops for local and migrant workers on different labour issues, organizing strikes, providing counselling services, and reaching out to migrants in the recently opened migrant workers centre. There is also on-going dialogue with the Jordanian government to amend the relevant article in the *Labour Code* to include migrant workers in the right to freedom of association.²²⁶

In order to encourage workers to disclose information about cases of abduction and violent sexual assault, particularly against female migrant garment workers in the QIZ, Better Work Jordan proposed the development of Workers' Centers, with the first one to be piloted in the Al Hassan Industrial Zone. From the outset, emphasis was placed on promoting worker "ownership" of these centers and on building sustainability so that the centers would become independent from outside support. The Workers' Center concept received support from the Jordanian government, employers, and workers representatives, reflecting a political commitment to the success of this initiative.

In September 2012, a Jordanian Non-Profit Organization called the Workers' Center Association was legally established with a Board of Directors that includes representatives from the Ministry of Labour, JGATE, the Garment Union, Better Work Jordan and the provision of services for workers began in February 2014. The center provides a place for all workers in the Industrial Zone to seek counselling and legal aid, to meet with their Union representatives, to attend classes to improve their skills such as in computer literacy, manage their health through exercise, and engage in social opportunities. Average attendance of men and

²²⁴ See, International Labour Organization 2014 Protocol to the Forced Labour Convention of 1930 (No. 29); See also, Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203).

²²⁵ ILO: *Report IV(1): Decent work for domestic workers*, International Labour Conference, 99th Session (Geneva, 2010), p. 81.

²²⁶ For more information see the General trade Union of Workers in Textile, Garment & Clothing Industries website, available at: <http://itgcu.org/wp/our-2013-report/>.





women workers is approximately 200 on weekdays and 750 on Fridays. Better Work Jordan seeks to improve the capacity of the staff team, developing structures and mechanisms to strengthen and institutionalize service provision with a mind towards sustainability and utilizing cooperative and mutual self-help values and principles.²²⁷

In addition, several civil society groups have been active in prevention and protection, stepping in as a last resort to cover emergency support services. Their active involvement highlights the current limitations of the Government to provide adequate protection services to migrant workers who are victims of labour exploitation. The main groups involved in awareness raising and provision of legal assistance are Tamkeen and Adaleh Center for Human Rights. As noted, the JWU runs a shelter for women, accepting MDWs, and also provides legal aid, psychosocial counselling and limited repatriation services. Caritas Jordan runs a community centre, providing medical assistance and social events for MDWs. Adaleh and Tamkeen are the main NGOs undertaking advocacy and action research work related to MDWs and apparel workers. However, no clear referral mechanism exists between these NGOs and a better, permanent coordination body should be established to ensure no duplication in services and more strategic advocacy work.

Regrettably, as noted in Section 7, Tamkeen reports that a large number of migrant domestic and garment workers who have been identified as potential victims of trafficking in persons or forced labour are routinely held in administrative detention in Jordan.²²⁸ This frequently occurs when workers either voluntarily or as a result of exploitation or abuse, leave their employer's home or workplace. This significantly limits the ability of Tamkeen lawyers to visit and interview migrant domestic and garment workers who are potential victims but are being held in administrative detention in Amman; accessing or contacting workers detained in centres outside Amman is even more problematic.

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²²⁷ ILO: *Jordan workers' centre proves an essential lifeline for migrants*, 04 August 2014.

²²⁸ Tamkeen: *Between a Rock and a Hard Place – Migrant Workers Caught Between Employers' Abuse and Poor Implementation of the Law*, (Amman, 2012), p. 69-71.





International cooperation efforts

At the insistence of major countries of origin concerned about the lack of adequate protection provided to their nationals working mainly in the domestic work sector, the Jordanian government concluded Memorandum of Understandings (MOUs) on labour migration with Egypt (2007) and several Asian countries. This includes the signature of MOUs with the Government of India in 1988,²²⁹ the Government of Indonesia in 2001 and 2009, the Government of Sri Lanka in 2006, the Government of the Philippines in 2010 and the Government of Bangladesh in 2012.²³⁰ However, these MOUs have had little impact on the governance of migration flows and the protection of workers.

The ILO Multilateral Framework on Labour Migration promotes, when appropriate, bilateral agreements between destination and origin countries addressing different aspects of labour migration.²³¹ However, if in theory these instruments should facilitate the movement of workers and provide for better protection and benefits, in reality they sometimes undermine some of those rights.

Indeed, these agreements are often concerned with facilitating labour market access rather than providing protection to workers. Thus, instead of increasing their protection, these agreements often include provisions which actually contribute to the vulnerability of migrant domestic workers.²³² The agreements contain different regulations depending on the partner state and its agendas, thus varying standards depending on the migrant's nationality.²³³ This difference of treatment between workers violates the principles of non-discrimination and equality. Moreover these agreements often lack strong enforcement and consistent implementation. The texts of those MOUs should be reviewed and key provisions should be addressed by Jordanian regulations and laws. It is important to note that all these MOUs have focused on regulating the bilateral relationships on domestic workers but no MOU has yet been signed to regulate the working relations of workers in the garment industry.

229 Memorandum of Understanding on manpower between the Government of India and the Hashemite Kingdom of Jordan, 1988. For more information see: <http://moia.gov.in/writereaddata/pdf/JORDAN.pdf>.

230 Memorandum of Understanding on Labour Cooperation between the Government of the Republic of the Philippines represented by the Department of Labour and Employment and the Government of the Hashemite Kingdom of Jordan represented by the Ministry of Labour. For more information see: <https://www.dfa.gov.ph/treaty/scanneddocs/192.pdf>.

231 ILO: *ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration* (Geneva, 2006), p. 7.

232 For example article 2 of MOU between Jordan and Indonesia requires all domestic workers to be recruited through PrEAs, thus gives a great control over the recruitment process to agents, who do not always have the best interests of the worker at heart without balancing it with an effective monitoring system. Similarly article 4 of the MOU with Sri Lanka places a financial burden upon the worker for his/her repatriation if he/she is deemed physically unfit.

233 For example Jordan and the Philippines have negotiated a higher salary for Filipino workers. Interview with the Head of the Domestic Work Unit, 16 January 2014.





Recommendations

The Jordanian Government could further improve the recruitment and employment conditions of migrant workers in the domestic and apparel sectors by implementing a number of reforms. The ILO can provide further technical assistance to the Government to implement the following proposed recommendations:

Reinforce the legislation on labour recruitment, improve its monitoring control and provide more positive incentives for recruiters respecting the rules.

- Consider the ratification of *ILO Convention on Private Employment Agencies Convention No. 181 of 1997* and ensure that national regulations on recruitment in all economic sectors are in compliance with those standards.
- Promote social dialogue in labour recruitment matters, by organizing consultations with the most representative organizations of employers and workers in Jordan to discuss the legal framework, its implication on current business practices and how to improve terms of fair recruitment for workers.
- Amend the current body of law to insert provisions on monitoring and enforcement mechanisms related to labour recruitment and ensure a zero-tolerance approach to fraudulent and abusive practices by reinforcing the capacity of the MOL's labour inspectorate. The Government could consider amending *Regulation No. 12* and the *Instructions on the conditions and procedures for bringing and employing non-Jordanian workers in the QIZ* to establish and provide for clear procedures for the investigation of complaints by labour inspectors.
- Clarify the mandate and reinforce the capacity of the Committee for the Affairs of PrEAs in the domestic work sector, and improve transparency on its role and actions. This could be done with the publication of an annual report on its activities.
- Revise criteria regarding the tiered rating system for PrEAs and allow for the consideration of the input of relevant stakeholders and migrant complains in the process, and make information on the results publicly available.





Improve the regulatory framework on labour migration and address critical enforcement gaps

- Review the annual requirement to renew work and residence permits and align them with the full contract duration, in order to reduce the disproportionate power that employers have over their workers, and which often leads to irregular working conditions and administrative detention.
- Provide a specific complaints and settlements mechanisms for migrant workers.
- Establish a compensation fund for victims of trafficking in persons, and other fraudulent or abusive recruitment or employment practices.
- Enact provisions which require that migrant workers have unhindered freedom of movement to leave their place of employment, and to have access to mobile phone use.
- Reform the migration laws and policies to further enable migrant workers to transfer from one employer to another, and broaden the situations and timeframes in which a worker may elect to change his/her employer.
- Revise the immigration laws to ensure that migrant workers do not pay overstay fines if the employer fails to renew the residency or work permit.
- Amend the immigration legislation to eliminate the requirement for employer approval in order for workers to leave the country at the end of their contract period.
- Improve enforcement of regulation and investigatory capacity with respect to migrant apparel and domestic workers.
- Improve bilateral cooperation through labour agreements and MOUs. A revision of the current agreements could be considered, and any new agreements should be aligned with ILO labour standards and national legislation, and be enforced by joint labour committees that include social partners.

Ensure that the legal framework on working and living conditions is aligned on international standards

- Consider ratification of international conventions on migrant workers, including the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, and *ILO Convention No. 189 on Domestic Workers, 2011*.
- Consider ratification of *ILO Convention No. 87 on the Freedom of Association and Protection of the Right to Organise Convention, 1948* and amend the *Labour Code* to allow migrant workers to form unions and run in union elections.
- Clarify, in law, that provisions of the *Labour Code* apply to domestic workers insofar as they are not directly covered by *Regulation No. 90*.
- Ensure that migrant workers enjoy legal protection from discriminatory treatment in the *Labour Code* (e.g. ensure that the minimum wage is the same for Jordanian and migrant workers).
- Regulate the maximum overtime allowed for migrant workers to avoid abuses of legal loopholes.





- Review the standard contract for domestic workers in light of the provisions of *ILO Convention No. 189* and ensure the effective application of both this standard contract and the new unified contract for apparel workers.
- Review the *Labour Code* to give the MOL the right to inspect OSH issues in the dormitories. Improve inspection in the garment sector and introduce a system of control of working and living conditions in the domestic work sector.
- Document and improve the implementation mechanisms designed to regulate employers, including by strictly enforcing regulations on transferring wages to domestic workers' by bank transfer, by building the capacity of officers in charge of responding to violations of such regulations, and extending this system to migrant workers in other sectors.

Review legislation on preventing and punishing trafficking in persons

- Consider ratifying the new *ILO Protocol to the Forced Labour Convention of 1930, 2014*.
- Draft a new national strategy and action plan to combat trafficking in persons in coordination with social partners and key civil society actors and reinforce the coordination mechanism planned under its mandate to ensure an efficient decision process.
- Ensure conformity of *Law No. 9* with other Jordanian laws and international standards, namely increase the penalties to be more deterrent, add victim's right of confidentiality in the court and well defined procedures for protecting the victims, witnesses, as well as a right to a recovery period to seek remedy and the right to compensation.
- Enforce the Passport law rules that prohibit the retention of passport of workers and put in place systems of verification.
- Consider amending the *Labour Code* to provide an unambiguous definition of forced labour in the labour or penal law.
- Continue to train the joint-inspection unit on trafficking in persons to broaden their capacity in the identification and referral process and provide trainings to labour inspectors, law enforcement officers on *Law No. 9*.
- Improve protection measures for victims including the creation of a Fund to compensate victims under *Law No. 9*; the drafting of national referral guidelines to clarify roles and responsibilities between the joint anti-trafficking unit, other governmental actors, trade unions and civil society providing direct services to victims; fund the governmental shelter for victims of trafficking in persons and forced labour that was planned under the national strategy 2010-2012 in accordance with a rights-based approach to service provision.
- Consider the possibility to implement post-arrival trainings for domestic and garment workers and other vulnerable workers to raise their awareness on rights and obligations linked to the employment period in Jordan and possibility to file a complaint in case of abuse during the recruitment or employment phase.





Improve access to justice

- Consolidate the training of the judicial staff and law students on the body of laws applicable to migrant workers in general and sectorial legislations in the domestic work and apparel sector.
- Allow migrant workers to stay on the Jordanian territory to submit a claim without having to pay fines, being detained or deported.
- Facilitate access to justice through free legal aid programmes for migrant workers and ensure that interpreters assist the migrant worker throughout the process.
- Consider the possibility of developing special courts system for migrant workers, in order to speed up the judicial process and improve their right to access justice.





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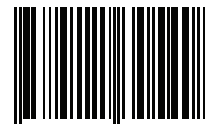
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