

THE LEGAL FRAMEWORK OF MIGRANT WORKERS RIGHTS IN THE ARAB COUNTRIES



An Analytical Study from



ANMR

Arab Network for Migrants Rights
الشبكة العربية لحقوق المهاجرين

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*Jordan- Emirates- Bahrain- Saudi Arabia- Oman-
Qatar- Kuwait- Lebanon- Egypt- Yemen*

*An Analytical Study
The Arab Network for Migrants Rights*



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PREFACE

Migration is the process of movement from one place to another and may include transition across administrative and/or political boundaries and can occur for different purposes and lengths of time. The transitional process might be with a view to long-term stability, which is called ‘permanent migration’, or for a specific length of time making it ‘temporary migration’. Human beings have always migrated, a decision made by those usually in search of better livelihood.. Labour migration has been carried out for centuries and has participated in the economic flourishing of several nation states.

Most migrant workers in the Arab countries, if not all, look to work in the region for a specified duration. This time might be prolonged or shortened depending on the conditions and the nature of work but it is rarely permanent. This is a result of the migration policies adopted by Arab countries in the region that tends to prohibit resettlement.

International law guarantees the rights of migrant workers through the Human Rights conventions passed by the General Assembly of the United Nations which began with the Universal Declaration of Human Rights. The Declaration is considered the corner stone in the protection of the individual’s fundamental human rights, in addition to the two covenants and the ensuing conventions. Furthermore, it will be important in this study to refer to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as the United Nations Convention against Transnational Organized Crime and the Protocols, both of which will be discussed in upcoming chapters.

The conventions of the International Labour Organization help in providing a protective legal framework for labour rights in general and for migrant workers in particular. It states these rights directly and elaborately, starting with C029 concerning Forced Labour and ending with C189 concerning Decent Work for Domestic Workers. These conventions instruct the state party to follow international commitments obliging them to support and protect the rights stated in these conventions and ensure its citizens are subject to these rights.

An outcome of the Convention on the Elimination of All Forms of Racial Discrimination, is that international law does not consider discrimination between citizens and non-citizens racial discrimination. However, this ‘exception’, which carries with it multiple explanations and interpretations, does not include the fundamental rights guaranteed by international laws. Additionally, this ‘exception’ entitles the member state the authority to regulate these rights. However, it is not allowed to deprive non-citizens from these rights, particularly the fundamental rights.

As a result there have been discrepancies between national legislation and practice, as it is dependent on the national legislator’s interpretation of their international obligations as well as their chosen means to ensure non-citizens’ benefit from these rights. Controversy has surrounded this issue at both a national and international level as a direct consequence of this ambiguity.

This study of the legal framework applicable to migrant workers in Arab countries includes a legal analysis of the labour legislations in ten Arab countries. These countries include Jordan, Emirates, Bahrain, Saudi Arabia, Oman, Qatar, Kuwait, Lebanon, Egypt, and Yemen. The analysis sheds light on the most prominent migrant workers' rights ensured by the labour legislations in these countries, in addition to the legal loopholes that these legislations include. These loopholes open doors for the violation of migrant workers' rights in the region. The paper presents, as well, the roles of CSOs in some of these countries, since they are the first line of defiance for migrant workers' rights thanks to the prevention and protection services they provide.

The amount of migrant workers' rights violations in these countries is no real secret and for anyone interested in human rights it has been an obvious problem for many years. It is an issue that has been monitored by reports from the CSOs in these countries and that has also been confirmed by international study. We can affirm that there is no country without a history of migrant workers' violations, nevertheless the scale does not correspond to the size of the violations but instead is correlated to the size of the available mechanisms which can protect migrant workers' rights as well as the legal framework's efficiency in guaranteeing each person's enjoyment of these rights.

This study aims to elucidate the relationship between set international standards and the common features and challenges for migrant workers in the selected Arab countries. This study is not an attempt to draw attention to the human rights violations in the area, or instead to improve the image of these countries in the field. It is simply an analytical and realistic overview of the legislative measures adopted by these countries. If these measures are applied properly they could play a large and positive role in protecting rights of migrant workers and decrease the violations committed against this cohort.

In this context it is important to note, as many others have done before, that the sponsorship system and its related practices cause several violations against migrant workers and as such reflects modern slavery practices whereby all the power is granted to the employer, thus creating an easily exploitative dynamic.

This study is based on legal analytical techniques and includes a critical overview of the international laws in order to shed light on the most prominent migrant workers rights and protection mechanisms, as well as the countries of the region's response to these mechanisms, and the most notable practices which contradict them.

In addition, the study contains legal analysis of national labour legislations including Labour Law, Social Security Law, and trade union laws (if available), in addition to the regulations and instructions related to the regulation of the rights of migrant workers. It addresses the most important legal provisions that guarantee the protection of migrant workers' rights including -labour contracts; labour conflicts; joining unions and the right to strike, as well as the mechanisms of protecting victims of human trafficking, the latter being. The latter being an issue closely associated with migrant workers. It is noteworthy that this legal analysis does not address the implementation mechanisms of the national legislations, since it was extremely difficult to verify them in all the related

countries.

This study carries a message to all the countries that have not ratified the human rights conventions and the ILO conventions. The conventions aim to protect the rights of migrant workers and these countries ought to reconsider their current position. Indeed, the countries in question must, they must create national mechanisms to comply with international law in order to fully ensure the protection and upholding of the rights of migrant workers.

With many thanks and much gratitude to Mr. Shaiban Taqa who conducted the study, as well as the members of the network for their support and help in conducting this research in order to complete this study. We also express our sincere appreciation to Ms. Nour Qawasmi for translating and editing this study.

The Arab Network for Migrants Rights 2013

THE INTERNATIONAL LAW

The Universal Declaration of Human Rights

The Universal Declaration of Human Rights may also be called the “Human Rights Constitution in the Modern Era” since Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms¹. The declaration starts in a way that can be considered similar to a well-known Arab aphorism. The Declaration states that, “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood².” This is consistent with what Omar Ibn Al-Khattab advocated for when he said, “When did you enslave people who were born free”.

The Universal Declaration of Human Rights mentions all the fundamental human rights that every person is entitled to without distinction based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. No distinction is made between men and women. Subsequently, the fundamental rights stated in the Universal Declaration are for all human beings, whether nationals or migrants.

- Listed below are some of these fundamental rights that should not be compromised under any condition;
- The right to life, liberty and security of person
- The inadmissibility of slavery or servitude; slavery and the slave trade shall be prohibited in all their forms
- Not subjecting human beings to torture or to cruel, inhuman or degrading treatment or punishment. It is noteworthy here that most labour legislations in the area give the migrant worker the right to terminate the contract if the employer violates him.
- Everyone has the right to recognition everywhere as a person before the law
- All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination
- The right to an effective remedy by competent national tribunals. It is important to indicate here the right of migrant workers to effective remedy if their rights are violated. However, not all the legislations of the region ensure this right. Some national labour legislations form their own committees that are headed by a representative for the Minister of Labour to study these disputes. As such the worker is deprived of the right to access judicial courts and must instead seek justice through the committee instead. The decision of this committee is final

1 The Universal Declaration of Human Rights- Preamble

2 The Universal Declaration of Human Rights- Article 1

and not subject to appeal.

- The inadmissibility for any human being to be subjected to arbitrary arrest, detention or exile.
- Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.
- Everyone charged with a penal offence has the right to be presumed innocent until proved guilty, according to the law, at a public trial at which he is guaranteed all the necessary requirements to defend himself.
- Everyone has the right to freedom of movement and residence within the borders of each state.
- Everyone has the right to freedom of peaceful assembly and association.
- Everyone, as a member of society, has the right to social security.
- Everyone has the right to work, to free choice of employment, to just and favourable conditions and remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. Most of labour legislations in the area do not ensure this right, since only the Jordanian and Yemeni legislations ensure means of social protection for migrant labour.
- Everyone has the right to form and to join trade unions for the protection of his interests. Saudi Arabia, Qatar, and Emirates deprive the workers from the right of joining trade unions, while the legislations of Kuwait, Bahrain, Egypt, Lebanon, Yemen, Oman, and Jordan ensure such right.

The Universal Declaration of Human Rights permits the exercise of these rights and freedoms to be subject to limitations of law. By this, the Declaration gives the national legislations a high space to regulate exercising these rights for the purpose of meeting the just requirements of morality, public order and the general welfare. It forbids depriving individuals of these rights, by any means, whether they are nationals or migrants.

The International Covenant on Civil and Political rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)

The two covenants are considered complementary to the Universal Declaration of Human Rights. The international community recognizes that human beings should be liberated and free of fear and privation in order to create the required conditions to empower all human beings to enjoy the rights stated in the two covenants.

The International Covenant on Civil and Political rights affirmed the states' pledge to respect the rights stated in the covenant and to ensure/uphold these rights, for all human

beings, existed within their territories and were subjected to its jurisdiction without any discrimination. Thus this covenant states clearly - beyond any doubt - that all the rights contained therein are there for the entitlement of all citizens and non-citizens.

In this context, and as an extension of what the Universal Declaration of Human Rights states, the International Covenant on Civil and Political rights ensured for each individual the freedom of association with others, including the rights of joining and establishing unions for the protection of their interests. The covenant puts no restrictions on exercising these rights except those provided in national legislation which are considered necessary for the maintenance of national security, public safety, and public order, or the protection of public health, public morals, as well others rights and freedoms.

In contrast, the International Covenant on Economic, Social and Cultural Rights confirmed the obligation of each state party to take steps, individually and through international assistance and cooperation, to the maximize its available resources with a view to achieving the total realization of the rights recognized in the present Covenant. Additionally, the state parties pledge themselves to guarantee practicing these rights without distinction of any kind.

The International Covenant on Economic, Social and Cultural Rights affirmed the right to work, whether citizen or non- citizen, and the right to a living through work freely chosen or accepted – both rights which state parties will actively strive to safeguard. It is noted that this provision has no condition or limitation. On the contrary, it obliges state parties to ensure the individual's enjoyment of this right. Consequently, we deny that it is permissible for national legislature in the area to allow terms in the work contracts that deprive the worker temporarily from practicing a job that enables him to compete with the employer after the termination of the contract. This is especially true if the nature of the work allows the worker to learn the secrets of the profession and be in contact with customers. This term is entirely incompatible with the provisions provided by The International Covenant on Economic, Social and Cultural Rights. Moreover, allowing such a term in a work contract is also irreconcilable with state parties' obligation concerning the adoption of appropriate measures to safeguard this right.

The covenant also ensures the right of everyone to the enjoyment of just and favourable conditions of work, which guarantees in particular but not exclusively; remuneration which provides all workers (as a minimum requirement) with fair wages and equal remuneration for work of equal value without distinction of any kind, as well as providing a decent living for themselves and their families.

The covenant ensures the enjoyment of safe and healthy working conditions and equal opportunity for everyone to be promoted in his employment. Moreover, it addresses rest, leisure and the reasonable limitation of working hours and periodic holidays with pay. Therefore, the allowance of some legislation in the area for citizen workers exclusively, excluding non- citizen workers, to take a certain number of off-hours to find another

job opportunity during the notice and after the expiration of the work contract, is totally incompatible with the International Covenant on Economic, Social and Cultural Rights.

The covenant also ensures the rights of everyone to form trade unions and join the trade union of his choice for the promotion of his economic and social interests. It repeatedly confirms that there are no restrictions that may be placed on the worker to exercise this right other than those prescribed by the law and which are necessary in the interests of national security or public order or for the protection of the rights and freedoms of others.

Considering the repetition of such provisions in more than one international documents, we recognize its value in protecting the rights of individuals, whether citizens or non-citizens. In spite of the fact that most countries in the region ratified these two conventions, not all of them recognize this right for migrant workers. Yet, not ratifying these two conventions does not exempt these states from recognizing these rights since the Universal Declaration of Human Rights, as aforementioned, ensures this right as well.

It is also worth mentioning that the International Covenant on Economic, Social and Cultural Rights ensures the right to strike, provided that it is exercised in conformity with the laws of particular country. In this regard, it should be noted that the Yemeni Labour Law ensures this right and regulates its enjoyment thoroughly. The Bahraini Labour Law, the Lebanese Labour Law, and the Jordanian Labour Law ensure the right to strike for citizen and non-citizen workers in defence of their interests.

The covenant also assures that the states' parties recognize the right of all to social security, including social insurance. The labour laws in Jordan and in Yemen include migrant workers in social security, while other states in the region deprive the migrant workers from such a right.

International Convention on the Elimination of All Forms of Racial Discrimination (CERD)

CERD is also considered complementary to the Universal Declaration of Human Rights due to the rights it includes.

CERD defines racial discrimination as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.

However, CERD permits the distinctions, exclusions, restrictions or preferences made by a State Party between citizens and non-citizens. This exception does not include in any way the fundamental rights and freedoms provided by the Universal Declaration of Human Rights.

CERD ensures that the states' parties are committed to prohibit and to eliminate racial discrimination in all its forms and to guarantee the rights of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of economic, social and cultural rights. In particular the rights to work, to free choice of employment, to just and favourable conditions of work, to form and join trade unions, to public health, medical care, social security and social services.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

CEDAW defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality between men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.

It affirms that the states' parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on the basis of equality between men and women, the same rights, in particular the freedom to work as an inalienable right of all human beings, the right to the same employment opportunities, the right to free choice of profession, the right to equal remuneration, the right to social security, the right to protection of health and to safety in working conditions.

It is worth adding here that all national labour legislation in the area allocates a full chapter to women's recruitment and states the fundamental rights of women provided in this convention. Nevertheless, most states of the region exclude domestic labour from its provisions. In addition, most of them have not passed any acts, regulations or instructions for this category. Thus the right to protection of health and to safety in working conditions, which CEDAW provided, are not respected.

Convention on the Rights of the Child (CRC)

CRC provides a very important principle which has been overlooked by most legislations in the region, since CRC affirms that states' parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment which are based on the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

We would like to declare here that the Kingdom of Bahrain is the only country that passed a special Act for children and provides them with the fundamental rights stated in the Convention. The rights provided by the CRC are for all the children who exist within its territory, without any distinction. Therefore it is applicable to all citizens'

children as well as migrant workers' children.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

This convention exists to reaffirm the importance of the principles and international standards related to the international protection of human rights contained in the Universal Declaration of Human Rights, the two covenants, CERD, CEDAW, and CRC, as well as the standards listed in the legal framework of the ILO. These provisions serve the interest of workers, since they are the weakest link in the labour contracts, considering that workers who are non-documented or in an irregular situation are frequently employed under less favourable conditions of work than other workers³.

In spite of the significant role that this convention plays in protecting the rights of migrant workers, the number of states that ratified it does not exceed 47 states from all over the world. Among the Arab countries that ratified the convention are; Algeria, Morocco, Libya, Egypt and Syria. It is useful to note that Egypt ratified the convention in 1993.

We will shed light on the most prominent rights contained in this convention, as well as the obligations imposed on states parties. The convention defines the migrant worker as “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national”. Accordingly, it is applicable for the entire migration process of migrant workers and members of their families. It comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the state of employment as well as return to the state of origin or the state of habitual residence.

It is notable that this convention distinguishes between documented or regular migrant workers and other undocumented irregular workers. This distinction does not carry any form of racial discrimination stated in the CERD. This distinction exists only to encourage regular migration and to grant extra rights to migrant workers in regular situations without any prejudice to the fundamental rights recognized by the previous international conventions.

Before tackling the rights provided by this convention it is essential to point out that this convention states that nothing shall have the effect of relieving migrant workers and the members of their families from either the obligation to comply with the laws and regulations of any state of transit and the state of employment or the obligation to respect the cultural identity of the inhabitants of such states. Furthermore, the convention affirms that nothing in the convention is interpreted as implying the regularization of the situation of migrant workers or members of their families who are non-documented

3 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families- Preamble

or in an irregular situation or any right to such regularization of their situation, nor shall it prejudice the measures intended to ensure sound and equitable-conditions for international migration as provided in the convention.

Consequently, this convention is the first international document that clearly highlights the necessity of obliging migrant workers to comply with the laws and regulations of the state of employment and to respect the traditions and customs of the hosting state.

Similar to the previously mentioned conventions, this convention ensures migrant workers the rights to life, to not be subjected to torture, and to not be held in slavery or servitude. Moreover, it guarantees the rights to freedom of thought and conscience, to hold opinions, to liberty and security of person, and to equality before the courts and tribunals, in addition to other fundamental rights included in the Universal Declaration of Human Rights and affirmed by other conventions.

It also states that migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually. It also ensures that no migrant worker or member of his or her family shall be imprisoned merely on the ground of failure to fulfil a contractual obligation. Additionally, no migrant worker or member of his or her family shall be deprived of his or her authorization of residence or work permit or expelled merely on the ground of failure to fulfil an obligation arising out of a work contract unless fulfilment of that obligation constitutes a condition for such authorization or permit. This is a guarantee for states, particularly states of the region, which always link work permit, residency permit and employment. Therefore, the states are not committed to grant or renew residency permits for workers after the expiration of the contractual relation, in case the workers do not get a new job.

On the other hand, the convention ensures the migrant workers' right to take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, and cultural rights. Furthermore, migrant workers have the right to freely join any trade union or similar association. It forbids placing restrictions on the exercising of these rights other than those that are prescribed by law and which are necessary in a democratic society for the interests of national security, public order or the protection of the rights and freedoms of others.

Regarding social security, migrant workers and members of their families shall enjoy in the state of employment the same treatment granted to nationals in so far as they fulfil the requirements provided by the applicable legislation of that state and the applicable bilateral and multilateral treaties. The competent authorities of the state of origin and the state of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.

The convention provides that migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality

of treatment with nationals of the state concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment. In other words, this convention ensures the right of workers, regardless of his legal status, with emergency medical care, which is a fundamental right that must be not restricted or limited to a certain category.

The convention confirms as well the rights included in CRC, particularly protecting children from discrimination or punishment based on the legal status of parents. It grants the child basic rights of access to education on the basis of equality of treatment with nationals of the state concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the state of employment.

The majority of states in the region do not ensure this right for the children of migrant workers. This is not only a violation of this convention, but also a violation of the obligations of states in the region concerning the CRC, which guarantees the right to education for all children without exception.

This convention guarantees as well that migrant workers and members of their families shall have the right to be informed by the state of origin, the state of employment or the state of transit as about their rights arising out of this convention in addition to the conditions of their admission, their rights and obligations under the law and practice of the state concerned and such other matters as will enable them to comply with administrative or other formalities of that state in a language they understand. This right guarantees the migrant workers are fully aware of all the required administrative and legal procedures. This procedure stops those who try to exploit the migrant workers who can be ignorant to legal and administrative procedures.

As aforementioned, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families differentiates between workers in regular situation and workers in irregular situation. It provides extra rights for workers in regular situation, such as the right to be temporarily absent without effect upon their authorization to stay or to work, the right to liberty of movement in the territory of the state of employment, and the right to freely join trade unions and associations in accordance with the restrictions imposed by law. Additionally, it affirms the right of access to education institutions and services on the basis of equality of treatment with nationals of the state concerned, access to vocational guidance and placement services, access to vocational training and retraining facilities and institutions, and social and health services. The convention authorizes states parties to ensure that the employer implements such social and cultural services.

Moreover, the convention provides additional rights for particular categories of migrant workers, such as frontier workers and seasonal workers.

In conclusion, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ensures a wide range of migrant

workers' rights. It is based on the Universal Declaration of Human Rights, and the subsequent covenants and conventions. It additionally provides clear details about the practice of these rights. Simultaneously, it provides the states parties with many guarantees. In short, it ensures migrant workers' rights and ensures the compliance of the states in sustaining these rights.

United Nations Convention against Transnational Organized Crime-The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

We will not address the offences included in this convention and by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, and the protocols thereto. What we are concerned with are the rights provided by the protocol that ensure the protection of victims from these crimes. This convention obliges states' parties to take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat where there is threat of retaliation or intimidation. Furthermore, it obliges state parties to establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.

The protocol ensures that in appropriate cases and to the extent possible under its domestic law, each state party shall protect the privacy and identity of victims of trafficking in persons, including making legal proceedings relating to such trafficking confidential. Furthermore, the protocol obliges each state party to ensure that its domestic legal or administrative system contains measures that provide victims of human trafficking with information on relevant court and administrative proceedings and assists them to enable their views and concerns to be presented and considered at the appropriate stages of criminal proceedings against offenders. It also provides that state party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, in appropriate cases (in cooperation with CSOs), particularly when it is related to the provision of appropriate housing, counselling and information, as regards their legal rights in a language that the victims of trafficking can understand, medical, psychological and material assistance, as well as employment, educational and training opportunities.

The protocol states that states shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases. It also states that the status of the victim must be taken into account when carrying out repatriation.

We would like to point out that the Anti-Trafficking laws of Bahrain, Egypt, Qatar, and Oman have clearly stated the rights that victims of trafficking in persons enjoy. In addition, it allows the victims to stay temporarily in the territory of the state.

ILO conventions

C029 –CONVENTION CONCERNING FORCED OR COMPULSORY LABOUR

For this convention we will only highlight the definition of forced labour. According to C029 forced or compulsory labour shall mean “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. Therefore any form of menace practiced by the employer against the worker, such as the menace of not renewing the work permit, deportation, or forcing the worker to carry out a certain type of work not mentioned in the contract is considered forced labour according to the definition of the convention.

C097 - MIGRATION FOR EMPLOYMENT CONVENTION

This convention deals with regulating migrant workers in the state of employment. It states that each member for which this Convention is in force undertakes to maintain, or satisfy itself that there is maintained, an adequate and free service to assist migrants for employment and in particular to provide them with accurate information. It obliges the members to undertake all appropriate steps against misleading propaganda relating to emigration and immigration. It also requires that each member has to undertake to maintain, within its jurisdiction, appropriate medical services responsible for ascertaining, where necessary, both at the time of departure and on arrival, that migrants for employment and the members of their families authorised to accompany or join them are in reasonable health. In addition, it requires that migrants for employment and members of their families enjoy adequate medical attention and good hygienic conditions at the time of departure, during the journey and upon arrival in the territory of destination.

From another angle, C097 comply each member to apply, without discrimination to immigrants in regular situations, treatment no less favourable than that which it applies to its own nationals in respect of remuneration, membership of trade unions, social security, and employment taxes, dues or contributions payable in respect of the person employed.

C097 encourages members to enter into bilateral or multilateral agreements for the purpose of regulating labour migration where the number of migrants going from the territory of one member to that of another is sufficiently large. As such, nothing mentioned in the convention is incompatible with the national legislations or with the public order and moralities. On the contrary, most of the labour legislations in the area ensure the majority of rights listed in C097.

C098 - RIGHT TO ORGANISE AND COLLECTIVE BARGAINING CONVENTION

C098 is concerned with the right to organise and join unions, since it ensures for them the right to enjoy adequate protection against acts of anti-union discrimination in respect of their employment. Moreover, it assures that Workers’ and employers’ organisations

shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

C098 also reaffirms that measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements. In this regard it should be noted that the Qatari Labour Law regulates collective agreements as well as the agreements within the joint committees, whilst the Omani Labour Law, the Jordanian Labour Law, and the Kuwaiti Labour Law elaborate in details the issues of establishing and joining trade unions and labourers' unions. These laws allow migrant workers to establish and join trade unions.

C111 - DISCRIMINATION (EMPLOYMENT AND OCCUPATION) CONVENTION

C111 defines discrimination as "any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation". It added another definition elaborating other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies. Consequently, any distinction possibly stated in the national labour legislation, not based on qualifications required to fulfil specific positions, is considered prohibited discrimination according to the definition of the C111. In other words, any provision that gives preference to a particular category at the expense of another category of workers and creates imbalance in the workers' enjoyment of fair working conditions is considered violation to this convention.

C143 - CONVENTION CONCERNING MIGRATIONS IN ABUSIVE CONDITIONS AND THE PROMOTION OF EQUALITY OF OPPORTUNITY AND TREATMENT OF MIGRANT WORKERS

C143 addresses matters related to illegal employment of migrant workers and illegal migration, in addition to the issues of reunification for the families and others as related to the equality of opportunities and treatment.

Reaffirming rights provided by the Universal Declaration of Human Rights and the subsequent international conventions, C143 ensures the respect of all migrant workers' basic rights. It obliges the members to adopt all necessary and appropriate measures to suppress clandestine movements of migrants for employment and illegal employment of migrants, as well as against the organisers of illicit or clandestine movements of migrants, in order to stop any violations to the rights of migrant workers.

C143 stipulates that the migrant worker shall, in cases in which these laws and regulations have not been respected and in which his position cannot be regularised,

enjoy equality of treatment for himself and his family in respect of rights arising out of past employment as regards remuneration, social security and other benefits. Additionally he has the right, in case of dispute about the rights, to have the possibility of presenting his case to a competent body, either by himself or through a representative, and not to bear the cost in case of expulsion for him or his family.

Moreover, C143 obliges each member state to declare and pursue a national policy designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights for persons who are lawfully within its territory. Pursuing this, member states shall, by methods appropriate to national conditions and practice, seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of the policy as well as enacting such legislation and promoting such educational programmes as may be calculated to secure such acceptance and observance. Additionally it demands to repeal any statutory provisions and modify any administrative instructions or practices that are inconsistent with these policies.

It is noteworthy that C143 allows the right to free choice of employment to be subject to the conditions that the migrant worker has resided lawfully in its territory for the purpose of employment for a prescribed period not exceeding two years, or that the worker has completed his first work contract. In short, C143 encourages the states to combat illegal employment, migration, and immigration on the one hand whilst also supporting legal migration for workers. It is consistent with the policies of most states in the region.

C189 - CONVENTION CONCERNING DECENT WORK FOR DOMESTIC WORKERS

C189 is the first convention that deals with this category of labour. It was passed due to the nature of the work they carry out, since it is within the family and includes taking care of elderly, children and people with disability. Migrant workers make a significant contribution to the global economy, which includes increasing paid job opportunities for male and female workers with familial responsibilities, greater scope for caring for ageing populations, children and persons with a disability, and substantial income transfers within and between countries⁴.

C198 obliges member state to take measures to ensure the effective promotion and protection of the human rights of all domestic workers. Additionally it enforces state members to respect, promote and realize the fundamental principles and rights of work, namely; freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation. Moreover, C189 list that each member state shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence. Additionally, member state should ensure that

4 C189 - Domestic Workers Convention, 2011 (No. 189)- Preamble

domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions.

Regarding the work contract, C189 necessitates that each member state shall take measures to ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably through written contracts in accordance with national laws, regulations or collective agreements. The convention sets the information which is to be provided in the contract of domestic workers, such as the data of worker and employer; the starting date; the type of work to be performed; the remuneration; the normal hours of work; paid annual leave; the period of probation or trial period; the terms of repatriation; and terms and conditions relating to the termination of employment.

It is important to mention here that the Bahraini Labour Law, in spite of the fact that it excludes domestic workers from its provisions, subjects this category to the conditions of work contracts similar to other labour. Additionally, the Omani Labour legislation states in details the terms of the domestic workers' work contract, which corresponds with the Convention Concerning Decent Work for Domestic Workers. However, the Jordanian Labour Law is the only law in the region that does not exclude domestic workers and subjects them to all its provisions.

C189 requires that each member state shall take measures to ensure that domestic workers are free to reach agreement with their employer or potential employer on whether to reside in the household. Workers who reside in the household are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave.

C189 also mentions that each state shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work and overtime compensation. Member states are also obliged by the convention to take measures to ensure that domestic workers enjoy minimum wage coverage, have the right to a safe and healthy working environment, as well as taking measures to ensure occupational safety and health of domestic workers.

C189 confirms that member states must adopt all necessary and appropriate measures to regulate the work of the employment agencies regarding recruiting domestic workers, to provide adequate protection and prevent domestic workers from abusive practices.

According to C189, member states shall take measures to ensure that all domestic workers have effective access to courts, tribunals or other dispute resolution mechanisms.

To sum up, C189 provides a comprehensive legal framework for any legislation to regulate the work of domestic labour, due to the rights and protection it guarantees for the protection of this category, which are in line with the international conventions and mechanisms.

List of the Fundamental Conventions Protecting Human Rights, specifically Migrant Workers Rights, and the Arab Countries Ratifying them.

The Convention	Ratifying Countries	Remarks
The International Covenant on Civil and Political Rights (ICCPR)	The Hashemite Kingdom of - Jordan The Kingdom of Bahrain - The State of Kuwait - The Lebanese Republic - The Arab Republic of Egypt - The Republic of Yemen -	The covenant was not ratified by the Emirates, Saudi Arabia, Oman, Qatar, and Kuwait
International Covenant on Economic, Social and Cultural Rights (ICESCR)	The Hashemite Kingdom of - Jordan The Kingdom of Bahrain - The State of Kuwait - The Lebanese Republic - The Arab Republic of Egypt - The Republic of Yemen -	The covenant was not ratified by the Emirates, Saudi Arabia, Oman, Qatar, and Kuwait
International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	The Hashemite Kingdom of - Jordan The United Arab Emirates - The Kingdom of Bahrain - The Saudi Arabia - The Sultanate of Oman - The State of Qatar - The State of Kuwait - The Lebanese Republic - The Arab Republic of Egypt - The Republic of Yemen -	

<p>Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)</p>	<p>The Hashemite Kingdom of - Jordan The United Arab Emirates - The Kingdom of Bahrain - The Saudi Arabia - The Sultanate of Oman - The State of Qatar - The State of Kuwait - The Lebanese Republic - The Arab Republic of Egypt - The Republic of Yemen -</p>	
<p>Convention on the Rights of the Child (CRC)</p>	<p>The Hashemite Kingdom of - Jordan The United Arab Emirates - The Kingdom of Bahrain - The Saudi Arabia - The Sultanate of Oman - The State of Qatar - The State of Kuwait - The Lebanese Republic - The Arab Republic of Egypt - The Republic of Yemen -</p>	
<p>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families</p>	<p>The Arab Republic of Egypt -</p>	
<p>United Nations Convention against Transnational Organized Crime-The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime</p>	<p>The Hashemite Kingdom of - Jordan The United Arab Emirates - The Kingdom of Bahrain - The Saudi Arabia - The Sultanate of Oman - The State of Qatar - The State of Kuwait - The Lebanese Republic - The Arab Republic of Egypt - The Republic of Yemen -</p>	

ILO Convention No. 29	<p>The Hashemite Kingdom of - Jordan</p> <p>The United Arab Emirates -</p> <p>The Kingdom of Bahrain -</p> <p>The Saudi Arabia -</p> <p>The Sultanate of Oman -</p> <p>The State of Qatar -</p> <p>The State of Kuwait -</p> <p>The Lebanese Republic -</p> <p>The Arab Republic of Egypt -</p> <p>The Republic of Yemen -</p>	
ILO Convention No. 97		It has not been ratified by any Arab country in the region.
ILO Convention No. 98	<p>The Hashemite Kingdom of Jordan</p> <p>The State of Kuwait</p> <p>The Lebanese Republic</p> <p>The Arab Republic of Egypt</p> <p>The Republic of Yemen</p>	This convention was not ratified by the countries of the Gulf Cooperation Council.
ILO Convention No. 111	<p>The Hashemite Kingdom of - Jordan</p> <p>The United Arab Emirates -</p> <p>The Kingdom of Bahrain -</p> <p>The Kingdom Saudi Arabia -</p> <p>The State of Qatar -</p> <p>The State of Kuwait -</p> <p>The Lebanese Republic-</p> <p>The Arab Republic of Egypt -</p> <p>The Republic of Yemen -</p>	It was not ratified by the Sultanate of Oman.
ILO Convention No. 143		It has not been ratified by any Arab country in the region.
ILO Convention No. 189		It has not been ratified by any Arab country in the region.

THE NATIONAL LAW

Throughout this chapter, we will highlight the most prominent provisions provided by labour legislations in the countries covered by the manual that ensure the protection of migrant workers. Moreover this chapter will shed light on the legal loopholes that infringe on the rights of migrant workers and which of these countries violate their international commitments.

1. The Hashemite Kingdom of Jordan

BACKGROUND

The Hashemite Kingdom of Jordan is considered a receiving country for migrant labour while simultaneously acting as a sending country of labour. The official data from the Department of Statistics indicates that the number of non-Jordanian workers who have received work permits in 2012 is around 279,798 migrant workers. The majority of these workers carry Arab nationalities, which make up 68% of the population compared to 32% of non-Arab labour. The Egyptian labour has the highest percentage, which is estimated at 184,000 followed by Sri Lankan labour, which are 14,822 and finally Indonesians that are 14,500⁵. However, informal statistics indicate that the collective numbers of migrant workers, both those who have obtained or have not obtained work permits, formal and informal, range from 400,000 to 500,000⁶.

The Jordanian Labour Law No. 8 of the Year 1996 regulates labour relations, collective and individual labour disputes, in addition to trade union organizations. It is notable that the Jordanian labour law allows migrant workers to join trade unions but it does not allow them to establish trade unions. Conversely, the Jordanian labour law covers migrant workers with social security based on the Social Security Law No.7 of the Year 2010. Additionally, there is a set of regulations addressing specific categories of workers, such as the Migrant Domestic Worker's Regulation, and other regulations concerning occupational safety and health systems, such as preventive medical care and instructions on the protection of workers and institutions from the risk of the work environment. Moreover, there is a regulation about the conditions of strikes and closure procedures.

LABOUR LAW

Unlike other labour laws in the region, the Jordanian Labour Law No. 8 for the Year 1996, and according to Article number 3, subjects all the workers and employers to its provisions. It only excludes from its provisions public servants and the employees of

5 The Jordanian Statistic Yearbook for the Year 2012, Department of Statistics.

6 http://www.alrai.com/article_m/505840.html

the municipalities. Therefore, domestic labour and agricultural workers are subjected to the provisions of the labour law.

The law points out that special regulation for this category of workers was passed, which regulates the work contract, working hours, rest periods, inspection and other matters related to the recruitment. Accordingly, a regulation for domestic labour has been passed. Article 10 of the Jordanian Labour Law authorizes the establishment of agencies. These special agencies regulate the employment and recruitment of domestic workers or any other sector approved by the Council of Ministers if consistent with the objectives and policies of the Ministry of Labour.

Article 4 ensures the worker any right provided by another law, work contract, agreement or decision, if it is better than the rights provided according to this law. Furthermore, the same article also deems any condition in the contract or agreement, whether concluded before or after this law, by virtue of which any employee waives any of the rights given to him/her by the Labour Law No. 8 of the Year 1996.

From another angle, the Jordanian Labour Law in Article 12 does not permit the recruitment of any non-Jordanian worker without the approval of the Minister or any representative he authorizes. The worker has to also obtain a work permit from the Minister or any representative he authorises before being recruited or employed. The employer is required to cover the fee of the employment permit. The same article imposes sanctions on the employer in three cases: a) if the employer recruits non-Jordanian workers without obtaining a work permit; b) if the non-Jordanian worker is recruited for another employer rather than the one he is authorized to work for; and c) if the worker is employed in an occupation other than the one for which he/she has obtained the permit. Article 12 gives the Minister the right to expel any offending worker and prevents his recruitment and employment for three years from the date of expulsion. Thus, the Labour Law punishes the workers instead of the employers by expelling and prohibiting them from returning to Jordan for a period of time. The law does not exclude the cases in which the workers are exploited or trafficked.

WORK CONTRACT

The work contract shall be formed in Arabic and duplicated. It is worth mentioning that the law considers forming the contract in a foreign language if the worker is non-Arab. The employee or worker may prove his rights through all the legal substantiation means if the contract was not written⁷.

On the other hand, the law does not permit the employer to dismiss the worker or to take any disciplinary action against him for reasons related to the complaints or claims submitted by the employee to the competent authorities in relation to the execution of the provisions of the law⁸.

The law attributes the worker the right of leaving the workplace without notice to

7 Labour Law, Article 15

8 Labour Law, Article 24

the employer, while retaining his legal rights and compensation of damages, in the following cases: a) if the worker is recruited in a profession strikingly different from the type of work they agreed on; b) if the worker is recruited in a profession that requires changing his place of residency unless stipulated in the work contract; c) if he/she has been moved to another job with a lower occupational rank; d) if the employer decreases the salary; and e) if the employer or the one who represents him practiced verbal or physical abuse, insulted the worker, or performed any form of sexual assault against the worker. In this case, the Minister has the right to close the institution for an appropriate period⁹. Nevertheless, the worker's possibility of holding such provisions are relatively weak since the law in other provisions grant the Minister the right to "expel" the migrant worker if he/she has been recruited for another employer or in another profession rather than the one agreed on.

When it is related to the collective work contract, the law states that it should be in three original copies. The third copy should be kept in the Ministry for the purpose of being registered in a special record¹⁰. The labour law states that the collective work contract should define: a) the employers; b) the group of workers benefitting from the contract; c) the terms and conditions of employment and the regulation of labour relations; d) the date of commencement and termination; and e) amendment procedures, in addition to ensuring the sustainability of its application through forming a committee of representatives of the contract parties. This committee is authorized to settle disputes emerging from the implementation of the contract¹¹.

The law also specifies forming a "Tripartite Committee for Labour Affairs." The Minister and two representatives from the Ministry of Labour, in addition to employers and workers, head the committee. The committee functions to: a) express an opinion related to the terms and conditions of employment; b) study and evaluate issues related to both Arab and international standards regarding labour; c) carry out studies about the compatibility between labour polices and legislations with social, political, and economic development and international labour standards; and d) discuss labour disputes.¹²

THE PROTECTION OF WAGES

The law obliges the employer to pay the wage during a period not exceeding seven days from the due date otherwise the employer will be forced to pay a fine¹³. Furthermore, the law does not allow the employer to take any disciplinary measures or impose fines on the worker for any contravention not articulated in the list of penalties approved by the Minister. The fine should not exceed the wage of three days of a month or the employer

9 Labour Law, Article 29

10 Labour Law, Article 29

11 Labour Law, Article 42

12 Labour Law, Article 43

13 Labour Law, Article 46

may dismiss the employee or worker for a period not exceeding three days of a month¹⁴. The law does not allow any disciplinary action or impose a fine against the worker for any of the violations set forth in the list of penalties after the expiration of 15 days after the violation.

The due wages and amounts according to the provisions of this law, for the employee, his/her inheritors, or any of those entitled to them after his/her death, shall be considered as privileged debts of the first degree, in the full legal sense of the word¹⁵.

OCCUPATIONAL SAFETY & HEALTH

The law states that the employer should provide the required precautions to protect the employees from danger and diseases that may result from the workplace and used equipment. The employer is also required to provide personal protection equipment for the employees to protect themselves against the dangers of work and occupational diseases. Moreover, the law compels the employer to acquaint the employee with the dangers of occupation and protective means before starting his work. He also should make the medical aid means and equipment available for his employees¹⁶. The law gives the Minister the right to close down the establishment or the place of work totally or temporarily, or to stop the operation of any equipment in case the employer violates the conditions of occupational safety and health provided in the Labour law¹⁷.

It is noted that the Preventive and Curative Medical Care Regulation for Workers and Institutions No.42 of the Year 1998 obliges the employer or the manager in charge to ensure the wellbeing of the worker before starting his work at the institution. The law also obliges the employer to adopt necessary arrangements to conduct periodic medical examinations to maintain the continuous health of the workers and to detect potential ailments.

Regulation No.24 requires the employer to guide the workers at the beginning of his recruitment about the risks of his occupation and the necessary preventative measures. Additionally, it requires each institution to appoint a doctor and a nurse, or establish a medical unit that corresponds with the number of workers. The institution should carry the financial costs of providing preventative and curative medical care for the workers.

The instruction concerning the Protection of Workers and Institutions from the Risks of the Work Environment of the Year 1996 specifies in detail the procedure that should be adopted, such as the requirements that must be fulfilled in order to guarantee a safe working environment for the employees. It also obliges that the workers' personal protective equipment should be capable of removing or reducing the risks or damages that might occur.

In addition, the instructions state what is required to be available for the workers

14 Labour Law, Article 48

15 Labour Law, Article 51

16 Labour Law, Article 78

17 Labour Law, Article 84

as protective tools that are compatible with the type of work they carry out, whether the work subjects him to constant noise, radiation, high heat or heights. It obliges each institution to provide restrooms for dining and changing clothes, including the maintenance of these rooms.

SOCIAL SECURITY

All workers, whether nationals or not, are subjected to the provisions of the Social Security Act No. 7 of the year 2010, with the exception of domestic workers as the law binds their subjection to a decision taken by the Council of Ministers.¹⁸

According to Article 25, the services of insurance for work-related injuries include:

- Medical care that is required in the case of injury
- Daily allowances for the workers' temporary inability to work
- Monthly salaries and lump-sum compensation owed to the injured
- Monthly salaries for the beneficiaries
- Funeral expenses that are due in case of the death of the insured person as a result of work injury

According to Article 26, medical care should include:

- The costs of medication and hospitalization
- The expenses of the injured worker's transfer from his work or residence place to the place of medical treatment, or vice versa
- The provision of rehabilitation services and equipment

In addition to what has been mentioned above, the law guarantees the right of the heir's entitlement to a monthly death pension equivalent to 75% of the wage, as a basis of calculation for his contribution, since the date of the injury's occurrence¹⁹. The act also necessitates that the institution should provide occupational health and safety measures and its required tools in the workplace if it is proved to the Social Security Department that the work related injury occurred due to the fact that the institution had violated the terms and conditions of occupational health and safety standards. The association should then carry out all the costs of medication provided in this law.²⁰

The Social Security Act ensures maternity insurance, which applies to all the categories that are subjected to the provision of this act. The insured female has the right of maternity insurance for the maximum of four deliveries.²¹ The insured female shall be

18 Social Security Act, Article 4

19 Social Security Act, Article 30

20 Social Security Act, Article 33

21 Social Security Act, Article 44

entitled to an allowance during her maternity leave equivalent to her last wage, subject to deduction at the beginning of her maternity leave²². Furthermore, this act ensures unemployment insurance, in addition to old-age, disability and death insurance²³.

TRADE UNIONS AND THE RIGHT TO STRIKE

Non-Jordanian workers are unauthorized to establish a trade union but instead only have the right to join trade unions. According to the Law, the only requirement that the trade union member has to fulfil is to be no less than 18 years old²⁴.

The labour law defines the goals of the union as safeguarding the interests of those working in the occupation and defending their labour rights; enhancing the working conditions and relations, including conducting collective bargaining and negotiation; participating in avoiding collective conflicts and seeking the resolution of these conflicts when it occurs; representing workers in institutions related to labour, economic, and social affairs; raising the economic, social, professional, and cultural awareness of the workers; and providing medical and social services to the subscribed members and any required facilitation to fulfil their consumption needs²⁵.

It is noteworthy that the Labour Law does not consent the employer to undertake any procedures, including termination, against any trade union representative for exercising a union activity. In this case, the worker has the right to claim the damages arising from taking such procedures. Whilst in the case of termination the court is entitled to return him to his work and receive all his wages for the period of time he stopped working - from the time he was stopped until the date of passing the judgment. If the worker is prevented from returning to his job for reasons related to the employer, he is entitled to claim extra compensation that is not less than the amount equivalent to six months' wages and equal to twelve months' wages. Additionally, the worker is entitled to arbitrary termination compensation and other financial rights provided by the provisions of the Labour Law²⁶.

The Jordanian Labour Law also ensures workers, nationals and migrants, the right to strike. The only condition is to give a minimum fourteen days notice to the employer before the specified date of the strike. This period is to be doubled if the matter is related to one of public services²⁷.

Moreover, the Regulation Concerning Conditions and Procedures of Strike and Closure of the Year 1998 necessitates that the strike notice is to be written to the employer, or the person acting on his behalf, and it should include the subject of conflict as well as the date of the tentative strike. The workers or the trade unions representing

22 Social Security Act, Article 45

23 Social Security Act, Article 48

24 The Jordanian Labour Law, Article 98

25 The Jordanian Labour Law, Article 99

26 The Jordanian Labour Law, Article 108

27 The Jordanian Labour Law, Article 135

them must sign the notice. The regulation requires sending a copy of the notice to the competent labour directorate.

LABOUR DISPUTES

Collective Labour Disputes

The procedures of prosecution in the Jordanian Labour Law are relatively long. The law compels the parties of the dispute to be referred first to the reconciliation representative who has to carry out an attempt at mediation for 21 days. If he has failed in resolving the dispute amicably, he refers it back to the Minister of Labour. The Minister refers it to the reconciliation council, which consists of representatives of employers and employees, in addition to a representative for the Minister. Again, the reconciliation council ought to start mediation attempts for 21 days. In case the council fails in its attempts it is referred to the Minister. Finally, the Minister refers it to the competent Labour Court. The court gives its final decision within seven days from the referral date. Furthermore, it gives its decision and informs the Minister about it in thirty days. The court decision is unable to be appealed²⁸. It is noticeable that the law does not permit any employer to change valid employment terms or terminate any worker while the reconciliation representative, the reconciliation council, or the court are considering the labour dispute. It is only possible under the condition of receiving written permission from the reconciliation representative, the reconciliation council, or the court²⁹.

Individual Disputes

It is a different matter when it is related to individual labour disputes since the Jordanian Labour Law entitles the reconciliation courts to examine the individual labour disputes through studying the labour conflicts' complaints. Wages related to complaints are excluded, since it is under the specialization of the Wages Authority. The law obliges the conciliation court to adjudicate the complaint throughout three months after being received by the court.

It is noteworthy that the decision of the conciliation court is appealable. The law exempts all the complaints lodged in front of the conciliation courts from all the fees, including those of implementing the decision³⁰.

A Regulation of Domestic Workers, Cooks, Gardeners, and So Forth No. 90 Year 2009

This domestic worker's regulation organizes the contractual relations between employers and domestic workers. It states that the Ministry of Labour has to adopt a standardized contract platform in four copies, both in Arabic and a language that the worker can understand.

28 The Jordanian Labour Law, Article 120, 121 & 124

29 The Jordanian Labour Law, Article 132

30 Article 137- The Jordanian Labour Law

The regulation also obliges the employer to cover the costs of obtaining work and residency permits for the non-Jordanian workers. He also has to pay the monthly wages of the worker using the means defined by the Ministry. Additionally the employer is obliged to recruit the worker in his usual place that he permanently or temporarily lives with his family. The worker should be treated respectfully and all requirements and conditions of decent work should be provided. Additionally, all the needs of the worker should be fulfilled in which she holds the right to privacy regarding sleeping hours in a well-lighted and ventilated room. The regulation also obliges the employer to enable the worker to contact her family abroad by phone, in which the employer should cover the expenses at least once a month. It is not permitted to transfer the worker when her employer and the family move from one country to another for residency purposes, unless the worker approves it and after informing the embassy of her country. The regulation also obliges the employer to provide the worker with medical care and to allow her to practice her religious rituals unless inconsistent with public order and morality.

From a new perspective, the regulation defines the calculation of working hours that the domestic worker carries out in the house to be 8 hours. It also guarantees the worker the right of obtaining one day-off per week based on an agreement between the employer and the domestic worker. Moreover, it ensures that the worker has the right to a paid annual leave of 14 days, in addition to a paid annual sick leave of 14 days. The regulation also states that the Ministry forms a “committee for non-Jordanian domestic workers’ affairs.” The members should be representatives of the Ministry, an association of owners heading non-Jordanian domestic recruitment agencies, and a representative from the borders, residency, and foreign affairs’ department. The regulation reaffirms that the Ministry of Labour will provide consultation, guidance, and awareness campaigns for the purpose of guaranteeing a proper work relation between the employer and the domestic worker through the meeting it conducts with employers and employees from the Ministry. These meetings take place in the employers’ houses.

In case the employer violates the right of the domestic worker or breaches any of his commitments towards the worker, the regulation requires the Ministry of Labour to call the employer and the domestic worker to the Ministry to resolve the problem in a cordial matter. When the complaint is related to the domestic worker’s place of residency, two inspectors, one male and one female, visit the employer’s house to ensure that it fulfils the terms and requirements mentioned in the regulation. In case they ascertain any violation, they warn the employer in order to settle the dispute in a week, starting from the first day of informing the employer, otherwise necessary measures will be taken in accordance with the Labour Law.

Combating Trafficking in Persons

The Jordanian Anti-Trafficking Law No. 9 of the Year 2009 is one of the first anti-trafficking laws in the region. Unfortunately, it did not provide the fundamental rights that are required to protect the victims of human trafficking. The law addresses forming a trafficking committee to prevent trafficking in persons. It defines its duties, in

addition to the punishment of human trafficking crimes and conditions of aggravating punishment.

The Anti-trafficking in Persons Unit was established and formed based on a memorandum of understanding signed between the Ministry of Labour and the Public Security. The unit is administratively attached to the Public Security Department under a condition of including the labour inspection department, Department of Study and Statistics, Department of Investigation, and the Department of Administration and Workforce. It is significant that this unit does not include any department concerned about providing assistance or ensuring the rights of human trafficking victims.

Legal Loopholes

Despite the fact that the Jordanian Labour Law ensures a considerable amount of migrant workers' rights, legal loopholes still exist and need to be highlighted. These loopholes may make the migrant worker vulnerable or subject him to exploitation by the employer.

Article 12 of the Jordanian Labour Law gives the Minister the right to “expel” the worker who has been recruited without a working permit, has been recruited for another employer rather than the one he is authorized to work for, or has been recruited in a profession different from the one he is authorized to work in. We should refer here that the law fails to consider the status of the worker who is exploited or trafficked by the employer.

Furthermore, the Jordanian Labour law states a “Wages Authority.” This authority is formed of “one or two experts that specialize in workers’ affairs”. According to Article No. 54 this authority has judicial powers. The authority is compelled to apply the same procedures and assets used in the courts and have the same powers granted to the regular courts. Its decision can be pleaded if the amount awarded to the worker is more than 100JD. The law does not require a judge to be a member of the authority. Thus designating judicial powers to people who are not from the judicial system should be reconsidered.

Regarding the labour collective disputes, the law requires the workers and the employers to pass through three different stages before getting to the labour court: the reconciliation representative, reconciliation council, and the minister. Therefore, the total period that the reconciliation representative and the reconciliation council require is 42 days. The law does not specify the limit of time allocated to the minister to refer the dispute to any of these entities for the purpose of resolving the conflict similarly to the way it did with the reconciliation representative, reconciliation council, and the labour court, all of which should determine how to solve the dispute.

Jordanian Law does not give the right to appeal decisions made by the labour court, as the decisions are final. In contrary to what is stated regarding individual disputes, the decisions of the conciliation court can be appealed in front of the Court of Appeals. The fact that it is impermissible to appeal decisions of the labour courts is unexplainable.

There is no explanation for not defining the exact period of time allocated to the Minister to refer the dispute to the entities defined by law.

Additionally, the labour legislations distinguish between workers in the qualified industrial zones and other workers since it deprives them the right to “resign” or change their employer. It obliges the employer to repatriate the worker.

Also, Labour Law does not permit the migrant worker to leave the workplace without giving notice to the employer if he has been recruited in an occupation markedly different than the occupation they agreed on before signing the contract. The law grants the Minister the right to expel and punish the worker by disallowing him to return to Jordan for three years from the date of expulsion.

This is confirmed by the instructions of conditions and procedures of non-Jordanian recruitment, which states in Article No. 10G that not granting or renewing a work permit for any non-Jordanian worker is subject to a decision of expulsion, unless this decision is cancelled. The decision has been mostly issued or passed according to the provisions of the Labour Law. Therefore, the right to leave work, stated in that law, cannot be enjoyed by non-Jordanian workers since the Jordanian has the right to leave work if he is recruited in a profession other than the one mentioned in the contract with the employer and has all the rights provided by the contract. However, this contradicts the United Nations Convention on the Elimination of All Forms of Racial Discrimination, as workers are unable to enjoy satisfying working conditions.

One of the legal loopholes in the Jordanian legislation that must be highlighted is the one relating to defining minimum wages. The decisions, passed by the Wages Authority, distinguish between Jordanian and non-Jordanian workers. It excludes as well the workers in the garment sector and domestic realm. Consequently, these decisions clearly breach the International Covenant on Economic, Social and Cultural Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination. The instructions concerning terms and conditions of recruiting non-Jordanian workers discriminate between different categories of workers when it is related to the right to change employers or working sectors. It does not allow domestic workers and QIZs’ workers to move to any other sector, although it allows workers in the agricultural sector to change employers within the same sector. The only provided conditions are to make an agreement between the previous and new employers, and the worker, in addition to obtaining approval from the Ministry.

The instructions permit other categories of workers to change their employer, whether in the same sector or to another. This requires fulfilling the conditions of working six months for the same employer after obtaining the work permit, getting the approval of Ministry of Labour, and receiving clearance from the previous employer. The last condition gives the power to the employer, instead of the worker, by refusing to give him a clearance. This makes the worker vulnerable and subject to exploitation.

Additionally, the regulative procedures of Egyptian workers state that the Egyptian worker has to receive clearance from his employer before leaving the country. In this

clearance, the worker never demands any rights from the employer, whether in current or future time. The employers use it as a tool to practice authority over the worker. Typically, the worker never receives the clearance without paying an amount of money to his employer. The employer may also exploit and force the worker to work for him in exchange of issuing the clearance. Consequently, this increases the control of the employer. It leads to forced or compulsory labour, which is internationally prohibited, and which is also one of Jordan's international obligations according to Jordan's ratification of the ILO Convention No. 29.

CIVIL SOCIETY ORGANIZATIONS

The Jordanian Women's Union (JWU)

JWU is one of the oldest civil society organizations in Jordan. It is well known as an Arab leading feminist organization. JWU was established by an initiative of pioneer women since the forties of the last century to be a cultural and social feminist organization concerning women issues.

One of JWU's most comprehensive programs is the shelter for battered women which was established in 1990 to respond to the needs of battered women who would benefit from the guidance services in finding a safe place to stay. It is currently the only type of shelter in Jordan that welcomes violated female migrant workers. The shelter receives battered women and refers them to many institutions involved with violence against women such as the Family Protection Unit, Arab and foreign embassies, human rights organizations, various security agencies, civil society organizations, and other bodies and individuals. The shelter provides women with social, legal, and psychological counselling, in addition to health services, and empowerment and rehabilitation programs.

Tamkeen Fields for Aid

The Tamkeen centre seeks to enhance the concept of social protection for vulnerable categories and victims of human rights violation regardless of origin, social background, race, colour, sex, language, religion or any other status. Tamkeen aims at combating different types of discrimination and countering crimes of trafficking in persons, torture, and ill treatment, as well as enhancing and protecting the rights of the victims of these crimes. For the purpose of moving towards this aim, Tamkeen carries out a number of activities including: providing free legal aid; organizing professional training courses and workshops; conducting discussion panels; carrying out studies and researches; revision and analyses for the current legislation; and developing strategic alliances on local, regional, and international levels.

The most prominent program implemented by Tamkeen in Jordan is the Migrant Workers Protection Programme, which has the following goals:

- Promote and protect the rights of migrant workers in Jordan and to empower leaders

- Support migrant workers and increase their participation in advocating for their causes
- Enlist the issues of migrant workers on official agendas
- Monitor the status of migrant workers in Jordan
- Provide legal assistance, counselling services, and legal representation
- Build the capacity and skills of legal practitioners
- Raise the awareness of employers, recruitment agencies, and the different categories of the society

Through its legal unit, Tamkeen recognizes victims of forced labour and sex exploitation, as well as guarantees the protection of the victims and solves their cases, whether through mediation or prosecution.

2. The United Arab Emirates

BACKGROUND

According to statistics carried out by the World Bank in 2010, the estimated number of migrants in the United Arab Emirates (UAE) is 3,293, 264 migrants³¹. This roughly equals 70% of the United Arab Emirates' population.

A study published by Migration and Refugee Studies Centre at the American University in Cairo, based on analysis of the 2010 UN report about global migration, indicates that this ratio of migrants to UAE nationals remained balanced through the last two decades, despite of an increase in the number of migrant workers. The table below presents the percentage of migrants in comparison to percentage of citizens throughout the last twenty years³².

Year	Number of Migrants (Million)	% of Total Population
1990	1.330	71.3
1995	1.716	70.6
2000	2.286	70.6
2005	2.863	70.0

31 World Bank, Bilateral estimates of Migrant Stock in 2012 - http://siteresources.worldbank.org/INTPROSPECTS/Resources/3349341110315015165/T1.Estimates_of_Migrant_Stocks_2010.xls

32 The American University in Cairo – School of Global Affairs and Public Policy Centre for Migration and Refugee Studies - 2010

2010	3.293	70.0
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Another statistical study by the Arab Labour Organization about the percentage of migrant labourers in the Gulf Countries indicates that the percentage of migrant workers in comparison with citizen workers in the UAE in 2007 put this figure at 91.62%. It was estimated that the percentage of migrant workers was around 3.113.022 out of a total workforce of 3.397.000 people.

According to the estimations of the World Bank, Indian Labour represents the highest percentage in the migrant labour force in the UAE. The percentage of Indian Labour is 66.4%, followed by Pakistani Labour at 13.8%, and the Sri Lankan labour at 4.9%. Egyptian labour equals around 4.3% of the overall migrant labour.

Another study carried out by the General Secretariat of the Federation of Chambers of the GCC countries in 2008 indicated that the percentage of the migrant workers in the UAE in 2006 was equivalent to 90% of the total workforce in the state. While another statistical study conducted by Al Jazeera.net in 2008 puts the percentage of migrant workers in the UAE at 80% and Asian labour as the majority of this migrant workforce totalling 90%. All of this data indicates that the percentage of Asian labour in the UAE is higher than all the other Gulf Countries³³.

It should be noted that the Emirati Labour Law of 1980, and the administrative notification issued accordingly concerning work contract and protecting wages, provide migrant workers with some protection. Additionally, the techniques adopted by the UAE, such as wage protection and the electronic certification of work contracts, are developed mechanisms in the field of migrant workers rights' protection.

The amendments inserted by the Emirati Legislator on the Anti-Trafficking in Persons Act, including protection to victims of human trafficking, show strong signs of progress and a keen awareness of the UAE's obligation to international laws in their national legislation.

FEDERAL LABOUR LAW NO. 8 OF 1980

The UAE labour law excludes from its provisions employees in the public sector, domestic “servants” and the like, and workers employed in agriculture or pastures³⁴.

The law provides that the financial dues of the employee take precedence over all the employer's movable and immovable properties. Payment thereof shall be made immediately after payment of any legal expenses and sums due to the public treasury. Additionally, the law exempts lawsuits lodged by the worker or the beneficiaries from the court fees at all stages of litigation³⁵.

The Law does not permit the recruitment of employees, who are not UAE nationals,

33 http://www.aljazeera.net/mritems/images/2008/2/21/1_768515_1_34.jpg

34 Article 3- Emirati Labour Law

35 Articles 4 & 5- Emirati Labour Law

without the approval of the Labour Department and the obtainment of a work permit in accordance with the procedures provided by the Ministry of Labour and Social Affairs. The law specifies the required conditions to obtain work permits, that employees have the professional competence or educational qualifications that are needed by the State and that he/she has lawfully entered the Country³⁶.

The law also provides that a working-woman shall be entitled to the same wages as that of a working-man who is employed in the same line of work³⁷.

The UAE has made remarkable progress in dealing with the Sponsorship System. Recently the Ministry of Labour passed a decision to abolish the regulation of sponsorship transference and its declared procedures, a regulation that had been in force for more than 30 years and which prohibited the movement of workers from one company to another within the same sector without the consent of the original employer. According to the new regulation, the authority that the employer has over the worker's movements, between employers or sectors, expires by the end of the contractual relations either before or after the expiration of the contract. Moreover, the regulation reduces the period of time in which the worker is committed to work under the sponsorship of the employer from three to two years. It also permits all the workers to move to any other establishment after the expiration of the two years in the case of not renewing the contractual relations.

LABOUR DISPUTES

The Law articulates the procedures that should be followed if a labour dispute takes place between the worker and the employer. It entitles the plaintiff the right to submit a written formal request to the competent labour department. The department plays the role of arbitrator with the disputers in the first two weeks of the complaint being lodged. In the case of failure, the department has to refer all the dispute's documents to the labour court³⁸. The labour court specializes in complaints lodged by labourers against their corporate or natural employers in the private sector regarding the rights they are entitled to according to individual labour relations that are patronized by the competent ministry. It is of significant importance to mention that once the lawsuit is registered in the labour court, the court issues a work certificate to the worker authorizing him/her to work for any entity during the proceedings.

WORK CONTRACT AND THE ELECTRONIC CERTIFICATION

UAE labour law identifies the terms and conditions of the individual employment contract. It identifies as well the information that should be provided in the employment contract; such as the date of contract, the starting working date, and the type and place of work. It also states that the maximum duration of these contracts cannot exceed four years before the chance of renewal (or termination) can occur, in addition to other

36 Article 13- Emirati Labour Law

37 Article 32- Emirati Labour Law

38 Article 6

regulatory matters³⁹.

The UAE has recently developed a new method for contracts - the “electronic certification” of labour contracts. This regulation enables the workers to recognize their rights, to make sure that he provides all the required information, and to sign a valid contract with the employer. It reserves all the rights of the worker, from his arrival to UAE until his departure. The worker is allowed to access the regulations through the website of Ministry of Labour.

The Ministry of the Interior is capable of double-checking that the contract has been signed by the employer and the worker electronically. Later, the ministry checks the commitment of the two parties to the contract and its requirements before issuing the work visa as a way of ensuring the rights of the workers. The regulation also obliges the employer to pay a bank guarantee for the worker.

WAGES PROTECTION SYSTEM (WPS)

The UAE adopted in 2009 the WPS. It is an electronic mechanism, according to which the entity pays the wages of its workers through banks, exchange companies, and financial institutions providing such a service. This system is mandatory for all establishments registered under the umbrella of the Ministry of Labour. Unsubscribing from this system results in penalties and the referral of employees and those in charge to the judicial authorities.

According to this electronic system, the establishment should open an account in one of the active banks and will be contracted to one of the WPS’ agents, exchange companies and service providing financial institutions accredited by the central bank. The employer gives an order to the bank to transfer wages and attaches with it a detailed wages statement. The employer also sends a copy of the detailed wages statement to the WPS’ agent that he is contracted to.

Electronically, the system sends the data of the workers, their wages, and the financial instructions to the central bank. The central bank sends the information to the Ministry of Labour database to ensure the compliance with the data registered with the Ministry of Labour. After this the system sends the information to an appointed accredit agent to provide the workers with their wages.

MEDICAL AND SOCIAL RIGHTS

The Health Insurance Law in the Emirate of Abu Dhabi is a successful model that has been adopted by the rest of the United Arab Emirates. It compels the delegated authorities to offer medical care in emergency cases to any injured or infected person, whether covered by insurance or not.

This law obliges the employer to provide the worker and his family with health insurance. The employer is also compelled to cover the medical services for the individuals under his sponsorship if they do not have any medical insurance bill. It is

39 Articles 35-41

not permitted to obtain or renew sponsorship without presenting evidence proving that the worker has a health insurance bill from the relevant governmental entity.

In accordance with the Ministry of Labour's decision No. 37/2 of 1982, the employer is obliged to medicate the workers according to the medical care standards prescribed in this decision. It also requires employers who recruit between 50-200 workers to hire a nurse accredited by the Ministry of Health to carry out first aid treatment. Additionally, the employer has to make an official agreement with a doctor to medicate the workers in a place prepared by the employer for such purpose and to provide them with the necessary medicine.

The decision requires the employer to prepare a medical file for each worker presents of the results of the medical examination of the worker when he joined the entity. It should also include the date, results and medication of each medical examination the worker makes during his work for the entity.

This decision takes into account the confidentiality and privacy of this information. It articulates that it should not to be read by any person except the physician and the employer/representative.

Recently the Cabinet passed a decision to adopt a guide manual about the general standards for labour collective housing and services thereto. The decision highlighted the responsibility of employers regarding providing workers with labour housing commensurate with the internationally adopted labour standards.

Model labour cities should correspond with the pre-mentioned standards stated. The number of such cities in Abu Dhabi alone is 23. The cities have a number of features and provide some facilities, namely sport and social activities, public parks and other leisure facilities.

UNIFIED EMPLOYMENT CONTRACT

The unified employment contract states that the "sponsor" is not permitted to recruit the worker in risky tasks or tasks counter to the public order. It is also not permitted to force the labourer to work for a third party, except under the conditions stated by the law. The contract requires the employer help the worker to transfer his salary and to enable the worker to call his family, as well as sending and receiving messages from them, taking into account confidentiality. In case of the death of the worker during the term of contract the employer has to bear all the expenses related to the transfer of the corpse and personal belongings to the worker's home country.

According to the unified contract the dispute shall be referred to the Office of Dispute Settlement, administrated by Department of Naturalization and Residency, if a dispute between the two parties occurs. In the case where settlement cannot be achieved during the two week time frame the dispute shall be referred to the relevant courts for consideration. Furthermore, the contract ensures granting "domestic servants" enough periods of rest, as well as medical service provisions that correspond with the health regulations adopted by the state.

AMENDING ANTI-TRAFFICKING IN PERSONS LAW

The new amendment of the Anti-Trafficking Law includes new guarantees related to the provision of victims of trafficking in persons with support and protection. It grants trafficking victims and witnesses the right to stay in the country until the completion of the legal procedures, as well as psychological assistance. In addition, it includes a new amendment to tighten the punishment of trafficker and criminalize the pursuit of publishing the names and pictures of trafficking victims in public through various media channels thereby providing the victims with a greater level of protection and respect for their privacy.

It is worth mentioning that the UAE Anti-Trafficking in Persons Law is the first law concerning combating trafficking in persons in the region. It addresses the issue of criminalizing trafficking in persons, the sanctions, and the formation of the National Anti-Trafficking in Persons Committee. Nevertheless, the law does not include the rights of trafficking in persons victims or the mechanisms which have to be adopted to protect victims.

ANTI-TRAFFICKING IN PERSONS DEPARTMENT

This department follows the Labour Inspection Department in the Ministry of Labour. It respects the following tasks;

- Monitoring the indicators that refer to the presence or the possible presence of acts involving trafficking in persons against those who meet the provisions of The Federal Labour Law and decisions issued in implementation thereof.
- Providing actual or possible victims of trafficking in Persons with legal consultation.
- Preparing reports about the deficiencies of legislation or procedures related to monitoring and pursuing trafficking in persons cases not clearly and specifically covered by the law provisions, and referring these report to the professional actors in the ministry.
- Coordinating with the concerned entities, judicial authorities, and police to find the appropriate mechanisms for monitoring, detecting, and proceeding with inspection in cases that might be classified as trafficking in persons.

Any other functions assigned to it by the Director of the Labour Inspection Department.

LEGAL LOOPHOLES

Article 2 of the labour law requires the Arabic language to be the language used in all records, contracts, contracts, files, and data. Thus, the law does not consider the language of the migrant worker, or his possible lack of knowledge of the Arabic language. In other words, the law does not respect the rights of non-Arabic speaking workers to understand the terms of the contract nor his rights that are ensured by law.

Furthermore, the Emirati labour law does not protect domestic workers, since it

excludes them from being subject to its provisions. There is no legal mechanism in UAE that guarantees the protection for this category of workers.

Article 37 of the Labour Law allows the employer to appoint a trial period up to six months. The law also gives them the right to end the services of the worker during this period without the need for warning. Six months is a relatively long period for trial work particularly given the fact that the powers granted by law to the employer makes the worker weak and vulnerable to exploitation.

The Law, in Article 127, grants the employer the right to subject the worker to the condition of obliging him not compete with the employer or take part in any business interest competitive to the employer's after termination of the contract if work assigned to the employee allows them to become acquainted with the employer's clients or have access to the secrets of his work. Such an agreement shall be valid only if it is limited with respect to the place, time and nature of work to the extent as is necessary to safeguard the lawful interest of business. This article contradicts with the right of the worker in choosing work stipulated in the International Covenant on Social, Economic and Cultural Rights.

Additionally, the UAE labour law does not have a clear legal provision prohibiting forced or compulsory labour.

3. Kingdom of Bahrain

BACKGROUND

Based on the World Bank statistical study of 2010, the percentage of migrant workers in the Kingdom of Bahrain is one third of the total population, making it the smallest percentage amongst the Gulf States. According to the same study the number of migrants (both workers and others) in Bahrain is estimated to be 315.403, the majority of which come from Asia. The highest percentage of Asian migrants comes from India, totalling at 137.000, followed by Pakistan with 57.000, Iran at 34.000 and the Philippines with 28.000. The estimated number of Egyptian nationals in Bahrain is 34.000 workers⁴⁰.

Another statistical study published by the Labour Market Regulatory Authority presents a significant increase in the number of migrant workers that took place during the years 2011 and 2012. 2012 statistics indicate that number of workforce members in Bahrain is around 635.717 (nationals and migrants). The number of migrant workers is around 488.978, equivalent to around 75% of the total workforce. No significant

40 World Bank, Bilateral estimates of Migrant Stock in 2012 - http://siteresources.worldbank.org/INTPROSPECTS/Resources/3349341110315015165/T1.Estimates_of_Migrant_Stocks_2010.xls

changes in numbers occurred in 2013 since the total number of workforce members in the Kingdom of Bahrain reached around 661.867 workers. The number of migrant workers is around 509.622 and according to the same source most of them work in the private sector (estimated at 400.000 workers) with an additional 100.000 domestic workers⁴¹.

The Labour Market Regulatory Authority plays the main role in the recruitment of migrant workers and in regulating the Bahraini labour market, excluding the domestic workers who are recruited through recruitment agencies.

The Kingdom of Bahrain is one of the first countries in the region that legislates the anti-trafficking law (as well as the United Arab Emirates). The Bahraini anti-trafficking law is an advanced law, which provides victims of trafficking with a protection mechanism. Moreover, the Bahraini legislation includes other laws benefiting migrant workers such as the Trade Union Act and the Child Law. The Federation of Bahrain Trade Unions and The Association for the Protection of Migrant Workers play a significant role in protecting the rights of migrant workers.

LABOUR LAW

In spite of the fact that the new Bahraini Labour Law No. 36 of 2012 generally excludes domestic workers from its provision it still subjects this category of workers to a number of its provisions in order to provide them with protection. These provisions include the exemption of court fees and the liberalization of the contract in two versions –including the most important data that must be included in the contract and the limitation of the trial period to three months⁴². Furthermore, domestic labour is subject to the provision that gives either party to a contract of employment the right to terminate it upon giving the other party thirty days prior notice. The provision entitles the worker as well to absent from work for a whole day in every week to look for another job if the employer gives a notice of termination⁴³. The law requires that the notice should be given in writing and the party that wishes to terminate the contract of employment shall deliver such notice to the other party and if the notice is refused the notice can be proved through any means necessary⁴⁴. As such the law ensures the right of the domestic worker to leave the house and provides her with the opportunity to find another job. However, the requirement of having the notice in writing is not an easy matter with regards to the worker, particularly when she suffers from hard working conditions and there is the reasonable possibility of language barriers. In this context, the law grants the domestic worker the right to terminate the contract without the need for notification if the employer subjects her to any abuse or immoral act. Legislation takes into account

41 http://blmi.lmra.bh/2013/06/mi_dashboard.xml

42 Article 2 of the Labour Law. Article 21 of the law states “a worker may be employed under a probationary period if expressly provided for in the contract of employment, provided that the probationary period shall not be more than 3 months”.

43 Article 99

44 Article 100

the unique conditions that prevent the worker providing notice, particularly in relation to domestic labour⁴⁵.

The law states that the employer's termination of the contract of employment shall be deemed as unfair dismissal if the reason for this termination is sex, colour, religion, belief, social status, family responsibilities, or social status. It also entitles the worker to compensation if the contract is terminated due to worker's membership of a trade union or his lawful participation in any of its activities⁴⁶.

The Bahraini Labour Law provides that domestic labour is subject to the labour deutes provisions. The domestic labour has the right to litigation and to lodging labour complaints to the Labour Case Administration Office in the Ministry of Labour.

The Bahraini Labour Law states a number of the fundamental rights of the migrant workers, including:

- The invalidity of any condition that detracts from the rights and privileges of the worker. It must take into consideration the extra rights and privileges stipulated in the individual employment contract.
- The exemption of labour lawsuits filed by workers or beneficiaries from court fees.
- The right of workers to strike in defence of their rights.
- Obliging the employer who employs workers in areas that are remote from cities to provide workers with adequate accommodation and proper foodstuff.
- Requiring the employer to provide the worker at the end of his service and at the latter's request with an end of service experience certificate. Said certificate should include the total period of service, the nature of work performed by him, the reason of termination and his last pay.
- Highlighting the principle of female equality with other workers in being subject to the provisions of the law in the case where the same type of work is carried out.
- Committing the employer to keeping the worker informed about the dangers related to their profession and preventive measures they have to take as well as training the worker on using such preventive measures.
- Compelling the employer to conduct a medical examination for the worker before starting work in addition to a periodic medical check-up.

WORK CONTRACT

Subject to article 19 of the law, the employment contract shall be made in duplicate. It does not state that both copies shall be in Arabic. It is possible for one of them to be in a language other than Arabic. The law also provides attaching the internal regulation

45 Article 105

46 Articles 104 & 111

with the contract if the contract refers to it⁴⁷.

The law requires that the employment contract shall specify, in addition to the information about the employer and the worker, the nature and place of work, the amount of the remuneration and other financial privileges agreed upon⁴⁸.

The law permits that the contract includes a probation period that does not exceed three months. Either party has the right to terminate the contract during this period upon the condition of notifying the other party one day before ending the contractual relation⁴⁹.

It is worth mentioning that the new Bahraini Labour Law gives the worker the right to gain vocational training in order to keep pace with developments in technology in the case where the employer would like to recruit the worker in a profession different than the one agreed on. When fulfilling this condition the employer should inform the competent ministry and the union organization concerned.

CHILD LAW

Bahrain Child Law No. 37 of 2012 commits the state to ensuring that the child is privileged with all the rights provided by law with no discrimination based on sex, origin, colour, disability, language, religion, or belief⁵⁰. The law defines the term ‘child’ as “every human being below the age of eighteen years”. The provision does not specify beyond this and accordingly each human being under eighteen year old is entitled to the right stipulated in the law whether Bahraini or non-Bahraini.

Among the rights stated by this law is the right of the child to have priority in relief when natural or man-made disasters occur. This means that the child has the right and priority in relief if he is subject to any harm caused by exploitation. The law also ensures the right of the child in the prevention of mistreatment or neglect - it defines mistreatment as physical, psychological or sexual abuse.

INDIVIDUAL LABOUR DISPUTE

The new Bahraini Labour Law provides that an authority shall be set up at the Ministry to be called the “Individual Labour Disputes Settlement Authority” to undertake the amicable settlement of any disputes between worker and employer with the mutual consent of both parties and before having recourse to the law courts. It also legislates for the establishment of a “Labour Case Administration Office” at the Ministry of Justice for the preparation of labour cases and for filing pleadings. The office shall be formed by a chief with the rank of High Civil Court judge to supervise the office’s activities and consisting of a sufficient number of members from the Lower Civil Court judges.

The law specifies the period of hearing the labour lawsuit of no more than two months

47 Article 19

48 Article 20

49 Article 21

50 Article 2 of Child Law

from the date of filing the lawsuit and is subject to a resolution by the Labour Case Administration Office Chief that such period may be extended for an additional period of two more months.

If the time limit for hearing the case before the Labour Case Administration judge expires without amicably resolving the dispute. The case shall be referred to the High Civil Court. The High Civil Court shall hand down its judgment on the case within 30 days from the date of the first hearing held, noting that its judgments might be subject to appeal before the Court of Appeal⁵¹.

In spite of elaborating in detail the proceedings, these proceedings are relatively long and can take upwards of five months.

LEGAL LOOPHOLES

Although the Bahraini Labour Law No. 36 of 2012 is one of the most unique laws in the region, it is not free of legal loopholes that are important to note.

The law subjects domestic labour to some of its provisions and excludes it from others. It also excludes it from the right of the Labour Market Regulatory Authority. Considering the special nature of the work carried out by this category of workers its subjection to labour laws and to the Labour Market Regulatory Authority serves the interest of the domestic labourer since it helps in guaranteeing further protection of their rights. Moreover, this non-subjection contradicts with ILO convention, particularly Convention No. 111 and Convention No. 189.

The law allows the employer to force the worker to work for extra hours if the work is considered necessary. It is a broad authority granted to the employer since the law does not require the approval of the worker. Additionally, the law does not specify the conditions that allow the employer to make them work these extra hours.

Article 73 of the law provides that the employment contract might include a condition that the worker will not compete with the employer or participate in any project that is competitive thereto if a worker's job allows him to become acquainted with the employer's customers or to have access to confidential business information. Restriction shall be limited as to terms of place and to time for a period not exceeding one year.

However, this article gives the worker the right not to be subjected to this condition in the instance where the reason for the termination of the contract is unjustifiable, or terminated due to the employer. Such conditions limit the workers rights to choose employment thus it contradicts with the International Covenant on Economic, Social and Cultural Rights that guarantees the right to choose employment. It also weakens the worker's position in this employee-employer dynamic and might be used to pressurise the worker.

LABOUR MARKET REGULATORY AUTHORITY

51 Articles, 119,120,121,123,131 and 133

The Labour Market Regulatory Authority was established in 2006 according to article 19 of the labour law, which defines the mission and the powers of the authority as regulating the labour market and organizing work permits, licenses for recruitment agencies and permits to practice professions.

It also works to provide all workers and employers with guidance and information regarding their rights, duties, values, and ethics of work, as well as occupational and environmental safety measures in the workplace.

The law prohibits recruiting any foreign worker without obtaining a work permit and also prohibits collecting money from workers by obtaining work permits by any person⁵².

The law grants the migrant worker the right to move from one employer to another without the need of the employer's approval, under the condition that the employment contract is taken into account. In other words, the employment contract determines the form of relation between the worker and the employer. The employer is not permitted to control the movement of the worker to another employer if it complies with the terms of agreement between the employer and the worker⁵³.

The Authority have passed many decisions which have had a significant role in migrant workers protection, such as decision No. 4 of 2006 which requires the employer to pay the workers' salaries on a regular basis through the agreed banks.

In addition to decision No. 1 of 2013 which obliges the employer to open records for migrant workers embraces the worker's information, the duration of the contract, the agreed on type of work, the due wages and the due date, in addition the required bank information for transferring these wages. The decision empowers the inspectors and the competent employees of the Authority to consider these records and facilitate their access to the required information.

JOINING TRADE UNIONS

Workers Trade Union Law No.33 of 2002 organizes the tasks of the trade unions and the procedures for registration of trade unions. The law identifies the category that should be subject to its provisions, including "workers who are subject to the Labour Law for the Private Sector". The law also guarantees the right to membership of trade union organisations and withdrawal therefrom. It states that the trade union activities cannot be used as a means and justification for discrimination in employment or influencing workers⁵⁴. Furthermore, the law defines that the trade union organizations shall aim at protecting the lawful rights of their members, defending their interests and improving their working conditions. In particular, they shall endeavour to attain the following objectives⁵⁵:

52 Article 23 of Labour Market Regulatory Authority Law
53 Article 25 of Labour Market Regulatory Authority Law
54 Article 2 and 3 of the Law No.33 of 2002
55 Article 7 of the Law No.33 of 2002

1. Dissemination of trade union awareness among workers;
2. Improvement of the cultural standard of workers;
3. Promotion of professional and occupational standards of workers;
4. Improvement of the health, economic and social standards of workers and their families

It is worth pointing out that law No.33 of 2002 ensures the right to strike as a peaceful means to defend the economic and social interests of the workers. Therefore, the Kingdom of Bahrain is unique in the field of trade union organization and freedoms of workers to join unions and plays a significant role in the protection of migrant workers.

Combating Trafficking in Persons

Law No.1 on Combating Human Trafficking was passed in 2008. It is the second anti-trafficking law passed in the region after UAE. It is one of the special anti-trafficking acts, due to the rights it grants to the victims of human trafficking, including;

Explaining to the victims their legal rights in a language they can understand

Enabling the victim to state his condition as a victim of human trafficking, in addition to his physical, psychological and social condition

Providing the victim with a medical check-up by a specialized physician if he requires, or if it is found that he is in need of medical or psychological care

Referring the victim to one of the medical or rehabilitation centres or to welfare homes if his medical, psychological or age related condition requires it.

Referring the victim to a specialized centre for sheltering or rehabilitation, or to an accredited entity providing him with housing in case of need.

Making the required arrangements for his security protection and eliminating barriers in case the victim needs to be employed⁵⁶.

The law also provides the possibility of the victim staying in the Kingdom – a decision taken by the Department of Public Prosecution or the court considering the criminal case and which will be based on the recommendation of “Committee for the Assessment of the Status of Foreigners Who are Victims of Trafficking in Persons”⁵⁷.

THE MIGRANT WORKERS PROTECTION SOCIETY (MWPS)

MWPS was established in 2005 with the purpose of seeking to help migrant workers achieve their basic human rights in accordance with internationally recognized standards.

The society has more than 40 members from Bahrain and other countries like Britain, Canada, Ethiopia, Germany, India, Kenya, New Zealand, Pakistan, Sri Lanka and

56 Article 5 of Law on Combating Human Trafficking

57 Articles 6&7 of Law on Combating Human Trafficking

America working as volunteers with MWPS.

The main objectives of MWPS are:

- To assist in educating and guiding migrant workers so that they may understand their rights and responsibilities
- To create public awareness about the abuse and exploitation of migrant workers and to explain the community's role in countering such abuse and exploitation.
- To advocate the rights of migrant worker's community.

Additionally, MWPS provide temporary accommodation its women shelter. It offers medical treatment and legal services. And covers the financial cost of visas and air tickets for the purpose of repatriation. Since the establishment of the MWPS' shelter in 2005 it has sheltered more than 1,200 women.

4. Kingdom of Saudi Arabia

BACKGROUND

The Kingdom of Saudi Arabia (KSA) is one of the countries recruiting the most migrant workers in the Middle East. A new study carried out by the Study Centre of Al Jazeera International Academy estimated the percentage of migrant workers in the KSA to be around 9.5 million, equivalent to 43% of workers in the labour market in both the public and private sectors. The percentage of Asian labour is around 59% of the total number of migrant workers in the Kingdom⁵⁸. The number of migrant workers in the KSA has increased since 2009. At that time the number of workers was around 8 million⁵⁹.

In spite of the large number of migrant workers, the KSA is not at the forefront of countries employing migrant workers in relation to rest of the population - migrant labourers make up only 31% of total population, a percentage which looks much smaller in to other Gulf states e.g. the UAE where the percentage hovers around the 80 mark⁶⁰.

Migrant labour occupies around 80% of the jobs in the private sector, most of who are from Asia. It is highly focused in the services, construction, agriculture, cleaning, wholesale trade, retail trade, restaurants and hotels, transportation, fishing and hunting, and security and guarding sectors. It may be because of the low rate of wages for this

58 A published study for the Institute for Immigration Studies ,2012- REGULATING PRIVATE RECRUITMENT IN THE ASIA-MIDDLE EAST LABOUR MIGRATION CORRIDOR

59 Saudi Ministry of Labour Report of 2009

60 Al Jazeera Net- Asian Labour Statistics and Numbers

labour, which increases demand from the private sector. In addition, the citizen workers of the Gulf do not desire the jobs carried out by this section of migrant workers. That explains why 86% of migrant workers in the KSA receive a salary of less than 2000 Saudi Riyals per month, which equals \$500.

The Saudi Government have adopted a number of policies and legislation that regulate the labour market; the Labour Law, Residence Law, Social Insurance Law, Recruitment Law, and Anti-Trafficking in Persons Law.

The Kingdom has established specialized entities for migrant workers. These entities play a key role in the process of recruitment, conflict resolution, and migrant workers' protection. Some of these entities are the Preliminary Commission for the Settlement of Labour Disputes and the High Commission for Settlement of Disputes, in addition to the labour courts that judge in labour cases instead of labour committees.

Recently, the Wages Protection System (WPS) has been developed. Work on its first stage began in June 2013 as well as a list of recruitment agencies and regulating them for others and migrant workers' housing conditions and standards have been issued.

LABOUR LAW (LABOUR REGULATION)

The Saudi Labour Law of 2005 specified the categories that would be subject to its provision, including⁶¹:

- Workers in the private sector with a binding contract
- Workers in the public sector
- Workers in agricultural and pastoral firms that employ ten or more workers.

It is notable that the most prominent categories excluded by the provisions of the law⁶² are:

- Domestic “helpers”
- Agricultural workers other than those provided for by Article (5) of this Law
- Non-Saudi workers entering the Kingdom to perform a specific task for a period less than two months

The law forbids the recruitment of workers from abroad unless approved by the Ministry. It also refers to the inadmissibility of employing non-Saudis unless licensed by the Ministry and subject to a number of conditions defined by law.

It is noteworthy that the law defines the word work as “any industrial, commercial, agricultural or other work, and any service including domestic service”.

The law also states that the employment contract shall be written and stipulate a specified period. If the contract does not specify the duration, the duration of the work

61 Article 5 of the Labour Law

62 Article 7

permit shall be deemed as the duration of the contract⁶³.

Furthermore, the law prohibits the employer from employing the worker in a profession other than the one specified in his work permit. It prohibits the worker as well from being engaged in a profession other than this before following the legal procedures for changing it. The law also obliges the employer to incur the fees pertaining to recruitment of non-Saudi workers, the fees of the residence permit and work permit, together with their renewal, and return tickets to the worker's home country at the end of the contract⁶⁴.

Additionally the law states the duties of the employer, which include⁶⁵:

- The non-exploitation of workers by compulsory labour⁶⁶ and that the employer shall not, unless upon judicial agreement, withhold the worker's wages.
- Treating his workers with due respect and refraining from any actions or utterances that may infringe upon their dignity and religion.
- Giving the workers the time required to exercise their rights as provided for in this Law without any deductions from their wages against such time.
- Facilitating for the employees the enforcement of the provisions of this law.

The Saudi labour law also states the duties of the worker, which include⁶⁷:

- Performing the work in accordance with professional practice and upon the employer's instructions - provided that such instructions do not conflict with the contract, the law or public ethics and morality
- Taking due care of the employer's machinery, tools, supplies and raw materials
- Abiding to proper conduct codes and ethical norms during work

It is important to note here that the Saudi Labour Law mentions that the worker shall be offered all assistance and help without making it contingent to additional pay in cases of disaster or hazards that threaten the workplace or the people working therein. Thus, the law allows the worker to not follow the instructions of the employer when they were inconsistent with the employment contract or if it runs contrary to public ethics or morals.

SOCIAL AND MEDICAL SERVICES

The law provides that the employer shall assign one or more physicians to provide,

63 Articles 32, 33, and 37

64 Articles 38 & 40

65 Article 61

66 According to ILO C29 Concerning Forced and Compulsory Labour forced labour means "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".

67 Article 65

at least once a year, a comprehensive medical examination for his workers who are exposed to any occupational diseases. The findings of the examination shall be kept in the employer's records. The employer has also to provide his workers with preventive and therapeutic healthcare in accordance with the standards set forth by the Minister⁶⁸.

The law also states that the employer shall provide for those who work in remote locations; suitable recreational, educational services and sports facilities attached to the workplace; necessary medical arrangements to protect the workers' health and provide comprehensive treatment for their families; schools for the workers' children in the absence of sufficient schools in the area⁶⁹. The Saudi Labour Law is one of the most unique laws in the region in that it states the employer's requirements to provide the family of the worker with medical care. It also insures that the children of the worker shall be enrolled in schools, an aim consistent with the International Convention on Child Rights.

The law requires the employer to provide means for transporting his workers from their place of residence or from a certain assembly point to the places of work and bring them back daily if these areas are not served by regular means of transportation at times compatible with the working hours⁷⁰.

Considering the need of employed women with babies, the Law obliges any employer who employs fifty female workers or more to provide them with a suitable place with an adequate number of babysitters to look after all their children under the age of six. In addition, the Minister requires that any employer who employs a hundred women or more in any one city shall set up a nursery, either by himself or with the cooperation of other employers in the same city, or alternatively to contract out the day-care to an existing nursery, to provide for the children of the female workers who are under six years of age⁷¹.

COMMISSION FOR SETTLEMENT OF DISPUTES

The Saudi Labour Law of 2005 addresses the organisation of such committees intended for the settlement of disputes, of which these are divided into the Preliminary Commission for the Settlement of Disputes and the High Commission for the Settlement of Disputes. The Preliminary Commission shall have jurisdiction to⁷²;

- Render final decisions in any cases related to; labour disputes, irrespective of their type, the value of which does not exceed ten thousand riyals; objections to penalties imposed by the employer upon the worker; and the imposition of the punishments provided by the Law for violations where the punishment does not exceed five thousand riyals.

68 Articles 143 and 144

69 Article 146

70 Article 148

71 Article 159

72 Articles 120 and 114

- Render preliminary decisions in cases of; labour disputes, the value of which exceeds ten thousand riyals; disputes over compensation for work injuries, irrespective of the amount of the compensation; disputes over the termination of services rendered; and the imposition of the punishments provided for in this law for violations, the punishment of which exceeds five thousand riyals.

The High Commission for the Settlement of Disputes specialises in deciding finally and definitively on all decisions brought to it by the Preliminary Commissions. Its decisions are not subject to appeal.

EMPLOYMENT CONTRACT

Nothing in the Saudi Labour Law refers to the existence of a standard employment contract to be signed and adhered to by both employers and workers. However, the law states in one of its provision that the employment contract shall be written in duplicate. It provides that the employment contract shall include the name of the employer, venue, name of the worker, nationality, identification, wage agreed upon, type and location of work, date of employment, and duration of the contract if fixed. It should also include the trial period if it has been previously agreed on between the employer and the worker, and which must not exceed 90 days.

LEGAL LOOPHOLES

In our consideration of the Saudi Labour Law, several legal loopholes were highlighted.

It is noted that the law provides that Arabic shall be the language used for data, records, files, and employment contracts. If the employer uses a foreign language besides Arabic in any of the mentioned cases, the Arabic text shall prevail. The article does not refer to the possibility of having the contract in a language understood by the foreign worker to ensure the worker’s awareness of the terms of the contract⁷³.

The law states that both the employer and the worker shall be familiar with the provisions of the Labour Law in all its contents so that each of them shall be aware of his position and of his rights and duties⁷⁴. The law does not refer to the mechanisms that should be used to make the migrant worker aware of the provisions of law, which is particularly important given that the law is in Arabic and we doubt that translation in other languages is available. There is also a possibility that the worker is unable to read. In this case it is important to find other means to help to convey this information to the migrant worker.

The Labour Law provides that each migrant worker be contracted to the employer and be “under his responsibility”. This legal term gives the employer very broad powers. It is stated in a general form and the meaning is not specified. These broad powers which are granted to the employer make the worker very weak and totally under the control of the employer.

73 Article 9

74 Article 12

In Chapters 3 part 5 concerning termination of employment contract, the law allows the employer to terminate the employment contract without an advance notice or paying compensation to the worker in certain specified cases including during the probationary period⁷⁵. This article need to be better regulated in order to prevent the employer taking advantage of it. It is should articulate a notice period and clearly state the employer's obligation to covering all the dues and costs of airfare and repatriation.

The law permits that any worker assigned to work by the employer which enables him to become acquainted with the employer's customers, or to have access to his business secrets, cannot compete with him or reveal his secrets upon the expiration of the contract for a period of two years⁷⁶. This condition limits the freedom of worker to choose employment. Thus, it contradicts with the International Covenant on Economic, Social and Cultural Rights.

COOPERATIVE HEALTH INSURANCE LAW No, 71 OF 1999

This is an obligatory health insurance mechanism for migrant workers in the KSA. It is also considered as legal guarantee to protect the medical rights of the workers, since its aim is to provide and organize health care to all non-Saudi residents in the Kingdom⁷⁷. The family members of the workers are also subject to this law.

This law requires the employer to participate in this law for the benefit of the worker. It also restricts issuing and renewing residence permit without obtaining the cooperative health insurance bill⁷⁸.

THE SOCIAL INSURANCE SYSTEM

The social Insurance System is one of the legislations that protect migrant workers in the KSA. Although the migrant workers are subject only to the provisions of Occupational Risks⁷⁹, it is a decent guarantee to protect the rights of the migrant workers. The employer is required to pay 2% of the worker's wage as subscription in social insurance. The law imposes a financial fine on any employer who refuses to pay the subscription⁸⁰.

According to the provisions of the Social Insurance System, remedies shall be paid to the worker who is exposed to an accident during or because of work, or while he is travelling to work and back from it. It also covers the worker if he suffers from a sickness caused by the work, if this is proved to be the cause⁸¹.

The law identifies the due remedies of a worker suffers from work injury, or his

75	Article 80
76	Article 83
77	Article 1 of Cooperative Health Insurance Law
78	Article 3
79	Article 4 of the Social Insurance System
80	Article 18 of the Social Insurance System
81	Article 27 of the Social Insurance System

claimant family members, as the medical care that the medical status of the worker requires, the daily allowance due to the work disability, monthly earnings and a fixed pension for permanent disability, monthly earnings to the family members, in addition of a grant to the family as a result of the casualty, and a death grant for the worker's family in case of death⁸².

WAGES PROTECTION SYSTEM (WPS)

The Wages Protection System has been discussed earlier; it monitors the process of wage disbursement for all workers in the private sector, whether migrant or nationals, for the purpose of establishing a database including up-to-date information about their wages disbursement. It particularly targets information related to meeting the due date and paying the agreed amount. The system includes all private sector establishments, regardless of the size of the establishment. Since 1st of September 2013, it became obligatory for extremely large establishments to be committed to this system. When the implementation stage is completed in 2015 it will be mandatory for all private sector establishments to subscribe to this program.

The program guarantees for the worker the disbursement of his wage according to the agreed upon time and amount, without delay or manipulation. It will help to avoid duplication in the data recorded by the employer regarding the agreed upon conditions, in addition to proving the rights of the worker by using the wage information transparency and an accredited wages database reference system for use in the case of wage related disputes.

Based on this program, the establishments that do not comply are subject to penalties that may include stopping the establishment from partaking in any of its services, and allowing workers to move to another employer without requiring the approval of the employer (even if the work permit is valid), in addition to referring the establishment to the judicial authorities.

LABOUR COURTS

The KSA started establishing labour courts to replace the quasi-judicial labour committees that were in charge of adjudicating labour disputes. In two years these courts will be fully active. Among the disputes that these courts will adjudicate are:

- Disputes concerning employment contracts, wages, rights, duties, work injuries, and remedies for work related injuries.
- Disputes concerning disciplinary sanctions imposed by the employer on the worker.
- Claims lodged to put into effect the punishments provided in the Labour Law.
- Disputes arising from employment termination

The claims of employers and workers whose objections were not accepted against

a decision passed from any competent department in General Organization for Social Insurance.

“DOMESTIC SERVANTS” REGULATION

In spite of reservations about using the term “Domestic Servants”, since the commonly used term is Domestic Labour or Domestic Workers, the KSA has passed a regulation concerned with regulating the work of this category of workers, who are excluded from subjection to the Labour Law. It is an important precedent in the KSA and has taken more than seven years to be set. It regulates the relations between the employer and the domestic servant and clarifies the rights and duties of both parties based on their contractual relation. The special nature of the work carried out by the worker, and the special relation between the worker and the employer and the employer’s family were considered in the drafting of the regulation. Furthermore, the regulation permits the employers to put the domestic worker on a trial period not exceeding three months to examine his or her professional competency and personal habits.

The employer is also obliged not to assign the domestic worker work different to the duties stated in the contract; work that threatens worker’s health; work affecting their dignity; or employing the domestic worker to work for others. The employer is also committed to pay the agreed upon wages at the end of each month without delay, and to document the worker’s receipt of the wages in writing.

The regulation stresses the obligation of the employer to provide the domestic worker with appropriate accommodation. The employer is compelled to allow the worker to enjoy a daily rest no less than 9 hours a day, one weekly day off based on mutual agreement, paid sick leaves and a paid monthly leave after the completion of two years. The regulation entitles the worker to an end of service bonus after the expiration of the contract at the end of four years of service.

Labour offices are identified as the competent authority to receive the complaints and monitor violations until the labour courts can begin to practice their jurisdiction.

There is a draft proposal for a project being considered by the Council of Ministers to insure that domestic workers will not run away or stop working. The idea focuses on having an intermediary company between the recruitment agencies and the insurance companies. The employer pays SR750, equal to \$200, to get an insurance policy against the worker’s escape or abstinence from work. The worker must bring the insurance policy with her when she comes from her original country. This document ensures that the worker will receive her dues in cases of no payment by the employer.

This project will be a precedent if it is ratified, since it guarantees the rights of the employer and the rights of the worker equally.

RECRUITMENT AGENCIES REGULATION

This regulation approves the establishment of private agencies to recruit migrant workers. It regulates the mechanisms of work and the relations between agencies and

employers. It also allows the creation of specialised private recruitment agencies to recruit labourers as subject to certain fees, and according to specific conditions, such as the Conditions and Standards of Migrant Workers' Housing.

The regulation refers to prohibiting the recruitment agencies from practicing forms of trafficking in persons, or to help other traffickers. They are also prohibited from any practices that might be an encroachment on the labourers or helping others to encroach on such labourers. Moreover they are not allowed to recruit children for labour purposes, including cases in which the agency knows that the age of the child stated in his personal documentation is false⁸³.

THE CONDITIONS AND STANDARDS OF MIGRANT WORKERS' HOUSING THAT SHOULD BE FULFILLED BY RECRUITMENT AGENCIES

This document specifies the requirements of migrant workers' housing in the KSA, which are part of the set of requirements necessary to receive a license to recruit migrant labourers. The document states a number of required conditions need to be fulfilled in the labour compounds, such as the availability of supervisors, basic conditions of civil defence, and a separate male and female complex, in addition to a separate complex for families.

It is notable that this document also includes the interior design of the migrant workers' bedrooms, to ensure the appropriate housing for migrant workers. Additionally, it includes the provision for safe means of transportation to and from the housing units to the work site.

COMBATING TRAFFICKING IN PERSONS

The Anti-Trafficking in Persons Law No. 40 was passed in 2009. In spite of the fact that the Saudi Law adopted the definition of trafficking stated in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, The Anti-Trafficking in Persons Law it is not literally committed to the definition. Instead, it comes up with a brief comprehensive definition to trafficking. It defines trafficking as "use, recruitment, transportation, harbouring or receipt of a person for the purpose of exploitation."

In addition to the criminalization and penalties stipulated by the law for trafficking in persons, and the aggravating circumstances, the Saudi Law ensured a number of rights to the victims of trafficking during investigation or prosecution⁸⁴:

- To inform the victim of his legal rights, using a language he can understand.
- Availing the victim of the opportunity to set forth his status as a victim of trafficking in persons, as well as his legal, physical, psychological and social status.
- Referring the victim to a specialist physician if he appears to be in need of

83 Article 39 Recruitment Agencies Regulation

84 Article 15 of Anti-Trafficking in Persons Law

medical or psychological care or if he requests such care.

- To admit the victim to a specialized centre if he needs shelter.
- Provide police protection for the victim if necessary.

If the victim is a non-Saudi and there is a need for him to stay or work in the Kingdom during investigation or prosecution, the Public Prosecution or competent court shall have the discretion to decide upon such matters.

5. Sultanate of Oman

BACKGROUND

The latest statistics for 2012 indicate that the number of migrant workers in the Sultanate of Oman is 1.254.000, an increase from 1.114.000 in 2011. It is noteworthy that the number of migrant workers in Oman in the services sector, which includes domestic labour, is around quarter million workers. In addition, the number of labourers in the construction sector is around 643.000.

On the other hand, the same statistics point out that the number of people in the workforce that cannot “read and write” is estimated to be around 4000 migrant workers, in comparison to the 409.000 migrant workers that know how to read and write, the 86.000 workers with primary school certificate, the 438.000 workers with secondary school certificate, the 175.000 workers with a high school certificate, and an additional 4415 migrant workers that have a university degree (bachelor, masters, and doctorate)⁸⁵.

The statistics state that the percentage of workers of Asian nationality is higher than the combined number of workers from other nationalities in the Sultanate of Oman, making up 60% of the total percentage of migrant workers⁸⁶.

Labour Law No. 35 of 2003 regulates the relations and the workers’ rights. However, it excludes domestic workers from its provisions who were regulated according to Rates and Working Conditions of Domestic workers. This regulation was passed under the order of the Minister of Manpower No. 189 of 2004.

In addition to the regulation that was passed, the Ministerial Order No 286 of 2008 that regulates Occupational Health and Safety Measures in establishments subject to labour laws was legislated. This regulation aims at ensuring the provision of occupational health and safety measures in the work place, utilities, and housing as well as some occupational health and safety measures related to women’s employment in occupations

85 http://www.manpower.gov.om/ar/news_detail.asp?id=1372

86 <http://www.aljazeera.net/specialfiles/pages/a03eaca6-d2e5-4e4d-bdef-32a7d2b5fe7b>

specified by the regulation.

It is important to refer to the significant role of the trade unions in protecting the rights of migrant workers in Sultanate Oman, since the law enables workers of different nationalities to join trade unions.

In Sultanate Oman the Anti-Trafficking Law No. 126 of 2008 was passed. It allows victims of trafficking stay in the Sultanate during investigation or prosecution, subject to the Public Prosecution or court's decision.

LABOUR LAW

Omani Labour Law No.35 of 2003 excludes from its provisions those domestic workers who are employed inside or outside the home such as drivers, maids, cooks and the like⁸⁷. The Minister issued a decision specifying the rates and conditions of domestic workers, which will be analysed later in this study.

The law states that any conditions that violate its provisions shall be null and void, unless it is more favourable to the workers. Moreover, any discharge or reconciliation or renunciation of the rights emanating from this Law shall be null and void, if it is contrary to its provisions. Additionally, any conditions that are considered more favourable to the workers according to the laws, regulations and decisions on the date this law comes into force shall be applicable⁸⁸.

It is worthy to add here that the Omani Labour Law is one of the rare laws in the region that clearly prohibits the imposition of any form of forced or compulsory labour⁸⁹.

Due to the importance of such prohibition, we have to refer here to the Omani Penal Code which sentences people to imprisonment for three to five years for those who bring human beings into the country in a state of slavery, disposes of him, by any means whatsoever, receives him, purchases him or keeps him in a state of slavery⁹⁰.

One of the rights ensured by the Omani Labour Law is exempting workers from court fees in all stages of litigation⁹¹.

The Omani law commits the employer to ensuring all employees are on the same footing when the nature and conditions of their work are alike. Although this article is in the chapter for the employment of citizens, the law does not neglect highlighting equality in rights between all the workers (nationals and non-nationals) and as such is consistent the ILO C11C111 Discrimination (Employment and Occupation) Convention⁹².

EMPLOYMENT CONTRACT

87	Article 2 Of the Omani Labour Law
88	Article 3
89	Article 3
90	Article 261of the Omani Penal Code
91	Article 10 of the Omani Labour Law
92	Article 11 of the Omani Labour Law

Chapter 3 of the law addresses regulating the employment contract. The law compels employers to make the employment contract fixed and in Arabic with two copies. If the contract is written in a language other than Arabic it must be accompanied with an Arabic version. It also states that if there is no written contract the worker may prove his rights by all means of evidence. Moreover, it states that if a party to the contract is unable to read or write or if he does not know the language in which the contract is written, the contract must be authenticated by the legally concerned authority⁹³. So, the Omani Labour Law guarantees the workers knowledge of all of his rights stipulated in the contract and based on the Omani Labour Law.

The labour law identifies the information that should be stated in the employment contract, including⁹⁴:

- The name and the information of the employer and the worker
- The nature of work
- The basic salary and any allowances or advantages to which the worker would be entitled to
- The suitable period of notice that must be given by either party that wishes to terminate the contract. Provided that the period of notice, which the employer gives to the employee must not be less than the period provided for in the law
- Any other conditions determined by the law

The law also provides that a worker may not be appointed under probation for a period that exceeds three months for those who receive their salaries monthly, and one month for those who receive their salaries otherwise. The probation period should be set in the contract. Furthermore, the law ensures the workers right of receiving a notice through the probationary period by stating that any party may terminate the contract during the probationary period by giving the other party at least a seven day notice.

One of the rights ensured by law is to commit the employer to provide his workers with access to medical facilities through the establishment and he shall, if the number of his workers exceeds one hundred, employ a qualified nurse for providing medical aid and shall assign a doctor to visit and treat them in the place prepared for such purpose. The employer must provide the workers with the medicines required for treatment, the assistance of specialist doctors and hospital stays - all of which must be free of charge whether the treatment is in a governmental or private hospital⁹⁵.

It also provides that any employer, who practices work in areas specified by the Minister, shall undertake to provide his workers with suitable means of transport, appropriate accommodation, proper meals and drinking water in places to be prepared

93 Article 21
94 Article 23
95 Article 33

for such purpose within easy reach for the workers⁹⁶.

Article 41 of the law permits the worker, after giving valid notice to the employer, to abandon the work before the expiry of the contractual period in any of the following instances:

- If the employer or the employer's representative uses fraud at the time of contracting.
- If the employer does not perform his substantial obligations towards the worker in accordance with the labour law and the contract of employment.
- If the employer or the employer's representative commits an act contrary to morals against the worker or any member of the worker's family.
- If the worker is assaulted by the employer or the employer's representative.
- If there is a severe danger, which threatens the safety of the worker or his health provided that the employer is aware of the existence of such danger and fails to take the prescribed measures imposed by the concerned authorities at the material time.

PROTECTION OF WAGES

There is no regulation in the Sultanate of Oman to protect wages, as is the case in the KSA, UAE, and Kuwait. However, the law states that the employer will not be discharged from payment of the worker's salary unless the salary is transferred into the account of the worker in one of the locally approved banks⁹⁷.

The law also gives priority to salaries, rights, other benefits and all other amounts due to the worker or his successors according to the rules of this law over all of the employer's other debts. The law imposes as well a fine on the employer in the case of breaching the provision of wages. The fine shall be according the number of workers whose rights are violated. Penalty is doubled if the violation is repeated⁹⁸.

OCCUPATIONAL HEALTH AND SAFETY

The law compels the employer, before hiring the worker, to acquaint him with the hazards of his occupation and the preventative measures that must be adopted. The employer must take the necessary precautions to protect the workers during work from injury to their health and the dangers from work and the use of machinery.

The law commits the employer to providing the worker with precautions guaranteeing occupational health and safety, including⁹⁹:

- Providing adequately safe and hygienic conditions in the places of work

96 Article 34

97 Article 53

98 Article 54

99 Article 99 of the Omani Labour Law

- Making sure that the places of work are always clean and comply with the conditions of health, safety and occupational health.

The employer is not allowed to charge the employees or deduct from their salaries any amounts for the provision of such protection.

It should be noted that the Regulation of Occupational Health and Safety Measures, in the establishments which are subject to the labour regulations, requires all these aims to be met both in the work place and provided housing, in addition to the right to inspection in order to guarantee the correct implementation of the occupational health and safety measures. The regulation also stipulates the powers and commitments of the inspectors. It requires the employer or his representative to provide the inspections with all the demanded data and information regarding the application of the regulations of this law in order to perform their duties.

LABOUR DISPUTES

The law addresses in detail the mechanism of settling labour disputes. The law provides that any worker who has been dismissed from work may apply to the concerned Directorate within 15 days from the date he has been notified of the dismissal in order to nullify the dismissal. The concerned authority shall take the necessary measures to settle the dispute amicably. If the dispute is not settled within two weeks, or if settled and any of the parties refuse to execute it, the concerned authority shall refer the matter to the labour court within a period not exceeding two weeks. The labour court shall make a decision in respect of the application for staying the execution of such dismissal, if any, within a period not exceeding two weeks from the date of the first hearing session and the court judgment shall be final.

So that the protection for the worker from arbitrary dismissal may be enhanced, the labour law provides that if it is proved to the court that the dismissal of the worker or the termination of his services was arbitrary or contrary to the Law, it may decide to either reinstate the worker or oblige the employer to pay him compensation not less than three months salary. Moreover, the employer has to pay the end of service gratuity that the worker is lawfully entitled, and the basic salary together with any other allowances for the notice period¹⁰⁰.

TRADE UNION ORGANIZATION

As aforementioned the Omani Labour Law allows national and migrant workers to establish Trade Unions; “the workers may establish, among themselves, a Representative Committee for the purpose of protecting their interests and defending their legally established rights as well as representing them in all matters pertaining to their affairs”¹⁰¹.

The Ministerial Order, regulating the formation, work and registration of labour trade unions, federations and the General Federation of sultanate Oman Labourers, reaffirms

100 Article 106 of the Omani Labour Law

101 Article 108

the provision. The Order provides that the workers may form from among them labour trade unions to safeguard their interests, defend their rights and improve their financial and social status and to represent them in all matters relating to their affairs. It also ensures that the worker is entitled to join or withdraw from a trade union and he may not be prevented from exercising his trade union activity or coerced to join or withdraw from a labour union¹⁰².

REGULATING THE EMPLOYMENT OF NON OMANIS - REGULATION OF FOREIGN EMPLOYMENT

An employer is not allowed to bring non-Omani workers into the Sultanate of Oman unless he obtains permits from the Ministry, and the law specifies the conditions for granting such license.

The employer is prohibited from allowing foreign workers who have received a permit to work for him to than work for other employers. He can also not employ a foreign worker who received a permit to work for someone else to then work for him. The law imposes the punishment of imprisonment for a period not exceeding one month or a fine, or both, for any person who incites or conspires to commit any action that violates the conditions of a foreign worker's recruitment¹⁰³. Therefore, the Omani Labour Law punishes the employer for breaching its provisions. It does not impose any punishment on the worker who is recruited in contravention with the labour law, unlike the Jordanian Labour Law.

This regulation mentions the "Foreigner Workforce Recruitment Contract", which must be used by the recruitment agency and the employer, in addition to the 'Domestic Workers and the Like Recruitment Contract' that also has to be used by the recruitment agency and the employer.

This regulation mentions a unified contract for domestic workers and similar categories, to be signed by the workers and the employer. The contract includes data about the worker and the employer, as well as the duration of the contract. The contract ensures the domestic worker's right of repatriation at the expense of the establishment, which has the license to practice the profession, if it is approved during 180 days after the worker's arrival that;

- The profession is not similar to the one defined in the recruitment license
- The worker refuses to work for no legal reason
- It is proved that he suffers from a disability which prevents him from completing the work agreed upon
- The worker is infected with one of the infectious diseases, or with chronic or mental illness

The contract also defines the commitments of the employer as; paying the wages agreed

102 Ministerial Order No. 570 of 2012

103 Article 18b and 113

upon during a period not exceeding 7 days from the due date; providing appropriate food and housing when the nature of the work requires; offering free medical services during the validity of the contract; providing a paid weekly day off or being compensated for not having such day; and giving the worker 30 days paid vacation every two years.

The contract entitles the worker to terminate the contract if it is proved that the employer has violated him or if the employer breaches his fundamental commitments that are legally stipulated or based on the contract.

The regulation also refers to the individual labour unified contract.

RULES AND CONDITIONS OF DOMESTIC WORKER NO. 189 OF 2004

This regulation was passed before the other regulations concerning the recruitment of Non- Omanis. We will refer here to the most prominent provisions stipulated in the regulation without addressing the topic of the employment contract since the Regulation concerning the recruitment of Non- Omani workers already address the topic of the unified employment contract for domestic labour.

Regarding the disputes resulting from applying the recruitment contract, the rules state that the “Department of Labour or Labour Office” is the competent authority that is in charge of settling disputes. This authority has two weeks to settle the dispute amicably. If no settlement takes place within the two weeks, or it takes place but one of the parties refuses to implement it, the competent authority shall refer the matter to the competent court within a period not exceeding two weeks from the expiry of the mentioned period.

COMBATING TRAFFICKING IN PERSONS

The Anti-trafficking Law by Royal Decree No 126 was passed in 2008. It addresses in its provisions the criminalization of trafficking, the penalties of traffickers, and aggravating conditions. It also includes the measures that should be taken during the investigation or prosecution of the crime trafficking in persons, such as:

- Informing the victim about his legal rights in a language he can understand, and availing him with the opportunity to set forth his legal, physical, and social conditions.
- Admitting the victim, if he needs a specific type of care or habitation, to the competent authority. The victim is to be placed in one of the medical or psychological rehabilitation centres, welfare homes, or in one of the specialized shelters.
- Providing police protection for the victim or a testifying witness if necessary.
- Permitting the victim or the witness to stay in the Sultanate if the investigation or prosecution necessitates it. The Public Prosecution or competent court shall have the discretion to decide such matters.

One of the positive points of the anti-trafficking in persons’ law is that it exempts the victims of trafficking from the civil lawsuit’ fees that he files to demand compensation

for damages resulting from being exploited in a trafficking crime.

LEGAL LOOPHOLES

In spite of the fact that the Omani Labour Law prohibits the employer from breaching the terms of contract, or assigning for the worker different work from that which was agreed upon (unless out of just need or for a temporary time) the law also grants the employer the right to assign work to the employee different than the one agreed upon as long this work is not fundamentally different than the one which was originally agreed upon.

The law does not identify urgent cases that permit assigning the worker work different to the one agreed upon. It also does not specify when the work assigned to the worker is “fundamentally different” than the one agreed upon. Thus, the text of the article is very general which allows the employer to exploit the worker. This text ought to be very specific, clearly elaborated, and unequivocal.

Additionally, the sponsorship system that gives the employer a wide range of power and absolute authority over the migrant worker is one of the biggest loopholes in the Omani legislations.

6. The State of Qatar

BACKGROUND

According to the latest official statistics from the Central Bureau of Statistics in the State of Qatar, the number of migrant workforce is estimated at 1.253.942, in comparison to the 80.008 Qatari workers. The statistics also indicate that the majority of these workers are male, since the number of female workers totals at 140.404.

The table below presents the numbers and the professions of migrant workers in Qatar. It indicates that the majority of labour is in craftsmanship, while the percentage of workers with higher degrees or higher qualifications makes up the lowest percentage of workers. The number of migrant workers who hold a bachelor degree and higher degrees is almost 212.726¹⁰⁴.

104 <http://www.qsa.gov.qa/Ar/index.htm>

Profession	Number of Non-Qatari labour
Legislators, Senior Management employees, and Managers	27.054
Specialists	104.298
Technicians and Specialists Assistants	64.682
Clericals	47.958
Services employees and Salesmen in shops and market	87.873
Skilled Workers in Agriculture and Fishery	9.857
Craftsmen and Crafts related Professions	467.146
Machines Operators and Assemblers	147.376
Ordinary Professions	302.136

The Qatari Labour Law No.14 of 2004 regulates labour relations as well as the rights and the duties of the worker and the employer. Moreover, the Qatari Anti Trafficking Law, which was passed in 2011, is considered a distinctive law in combating trafficking in persons in the region. It provides the victims of trafficking with a high level of protection, in addition to what is stated regarding International Cooperation in the interest of the victims of Trafficking.

LABOUR LAW No.14 OF 2004

This Law applies to the employers and workers and prescribes their rights and obligations and regulates the relationship between them. It excludes from its provisions domestic workers in addition to workers employed in agriculture and grazing – apart from those persons employed in the agricultural establishment that process and market their own products¹⁰⁵.

The law permits the Council of Ministers, upon the recommendation of the Minister, to subject the excluded categories to the provisions of this law. Upon this the Qatari Emiri Decision No (17) of 2008 regarding the subjection of workers employed in agriculture and grazing to some provisions of the Labour Law was passed. Domestic labour is still not subject to the provision of this law, and unfortunately there is no other mechanism that regulates the relationship between the domestic worker and employer.

The law ensures a number of workers rights. It deems any release, compromise or waiver of the entitlements prescribed for the worker by this law as void. It also states that the sums due to the worker or his heirs under this law shall have priority over all movable and immovable properties of the employer. Moreover, it exempts all lawsuits filed by the workers or their heirs claiming the entitlements accruing under the provisions of this law or the service contract from judicial fees and also states that they

shall be dealt with urgently¹⁰⁶.

EMPLOYMENT CONTRACT

The law proscribes that the employer accompany contracts, documents or written instruments with translations into other languages. It obliges them to have the contracts in writing and attested to by the Department. It shall comprise of three copies, one copy to be delivered to each of the parties and the third copy to be deposited with the Department. Furthermore, the law provides that the data included in the contract incorporate;

- The information of the employer and the worker
- The date of the contract's conclusion, the nature of the work and place of contracting and the period of the contract if the contract has a definite duration
- The agreed wage and method and date of payment

The law provides that if the service contract is not made in writing the worker may prove the labour relation and their rights using any means of proof¹⁰⁷.

TERMINATION OF SERVICE CONTRACT

The law gives the worker the right to terminate the service contract of an indefinite duration without giving reasons for the termination whilst simultaneously retaining his full right to obtain the required end of service gratuity in the following cases:

1. If the employer commits a breach of his obligations under the service contract or the provisions of this law.
2. If the employer or his responsible manager commits a physical assault or immoral act upon the worker or any of his family members.
3. If the employer or his representatives have misled the worker at the time of entering into the service contract.
4. If continuance with the work endangers the safety and health of the worker provided that the employer is aware of the danger and does not take the necessary steps to remove it.

It is noteworthy that the law permits an employer who maintains a contractual system or a similar system that secures for the worker a greater benefit than the end of service gratuity to which the worker is entitled to under the provisions of law, to pay the worker the benefit available to them under this system. In the same article, the law obliges the employer to pay to the worker an end of service gratuity and return to him any sum where the worker may have contributed to the said system if the net benefit accruing to the worker under the said system is less than the end of service gratuity¹⁰⁸.

106 Articles 4&5

107 Articles 9&38

108 Article 56

The law commits the employer to return the worker to the place from where he has recruited him at the commencement of the engagement or to any place agreed upon between the parties during a period not exceeding two weeks from the expiry date of the contract. If the worker joins another employer before his departure from the State the obligation to return him to his country or other place shifts to the new employer¹⁰⁹.

WAGES PROTECTION

Qatar has no system or clear mechanism to protect wages but the Qatari Labour Law states that the employer shall not be relieved from his obligation to pay the wage due to the worker unless he has actually transferred it to the bank or the worker or his attorney has signed in acknowledgement of receipt in the register or receipt a prepared for this purpose provided that the said documents shall include the details of the wage¹¹⁰.

The law also commits the employer to pay the wages and other sums to which the worker is entitled before the end of the day following the day on which the contract and services are terminated¹¹¹.

OCCUPATIONAL HEALTH AND SAFETY MEASURES

The Qatari labour law commits the employer to - on the commencement of every worker's engagement - inform him of the hazards of the work and the hazards which may occur thereafter. The employer shall inform the worker as well of necessary safety measures. The employer shall take all precautionary measures for protecting the workers during work from any injury or disease that may result from employment. The law prohibits burdening the worker with or deducting from his wage any sum in return for his providing these precautionary means¹¹².

If the number of the workers in the establishment exceeds one hundred workers the law obliges the employer to appoint a full-time medical nurse in the establishment in addition to a first-aid box. If the number of workers exceeds five hundred the employer shall designate a clinic specifically for the services of a physician and a nurse.

Additionally, the law states that any worker who sustains a work injury shall be entitled to receive medical treatment appropriate to his condition at the cost of the employer. The worker shall receive his full wage during the treatment period or for a period of up to six months¹¹³.

The Supreme Council of Health and the Qatari Red Crescent have launched a national campaign to counter infectious diseases. Its slogan is "Protection". The campaign aims at enhancing the health of individuals and society by adopting healthier lifestyles based upon an awareness of the causes of disease, methods of prevention, treatment and the

109 Article 57

110 Article 66

111 Article 67

112 Articles 99&100

113 Article 109

reduction of risk factors among high populations of migrant labourers.

The campaign also includes distributing awareness material in different languages; building the capacity of medical staffs on how to treat and control infectious diseases; building the capacity of the related individuals and authorities such as health monitors and journalists; seminars, lectures and training workshops; awareness exhibitions about infectious diseases and means of prevention; and distributing to workers personal prevention and hygienic care kits (“Personal Hygienic Bag”).

LABOUR ORGANIZATION

The law permits any establishment where thirty or more workers are working to form a joint committee representing the employer and workers. The law identified the tasks of the committee in matters related to the training programmes of the workers; the means of protection from dangers and the improvement of the standards of compliance with the rules of safety and occupational health; the development of the general culture of the workers; the development of the social services in the establishment, and the studying of and endeavours to settle the individual and collective disputes in the establishment¹¹⁴.

QATAR FOUNDATION

Qatar Foundation is a private foundation established at the initiative of His Highness Sheikh Hamad Bin Khalifa Al Thani, and Her Highness Sheikha Mozah Bint Nasser. The foundation aims at supporting and operating programs in its three core mission areas: education, science and research, and community development.

In 2013, Qatar Foundation launched “Mandatory Standards of Migrant Workers’ Welfare” for people working in Qatar Foundation’s projects. It seeks to ensure the application of fair employment principles for all migrant workers, which will positively influence the enhancement of migrant workers status in the foundation. The central objective of this initiative is the effective execution of a comprehensive set of standards that can guarantee the rights of workers at all stages of the migration cycle from the moment they are recruited until they are repatriated to their home countries. It is based upon a holistic and principled approach that combines Qatari Labour Law and international best practice.

Through this initiative, Qatar Foundation identifies the mandatory conditions of migrant workers welfare in the foundation, which helps apply minimum requirements with respect to recruitment, living and working conditions, as well as the general treatment of workers engaged in construction and other projects. The mandatory standards are incorporated into agreements between Qatar Foundation and all its contractors, who are required to comply with the requirements and rules.

The initiative also established a Workers’ Welfare Department. The department is mandated on behalf of the Qatar Foundation to act as a regulatory body within it. It will effectively institute fair employment standards and ensure that the respective parties

follow all rules and protocols. The Department carefully screens business partners based on their compliance with the Qatar Foundation's Mandatory Standards of Migrant Workers' Welfare and retains their services based upon a regular assessment of their performance. Simultaneously, the department pursues the continuous improvement and development of these standards on a regular basis in cooperation with the leading official bodies.

Although it is an individual initiative, adopted by a private institution, it presents an integrated framework for the recruitment sector. It is extremely important to generalize this framework not only on the national level, but on a regional one as well.

NATIONAL HUMAN RIGHTS COMMITTEE (NHRC)

NHRC is a national committee established according to Law No.38 of 2002. It aims at the protection and promotion of human rights for everyone subject to the jurisdiction of the state of Qatar, citizens and residents. NHRC seeks to raise awareness and educate people about their rights, providing protection and supporting individuals by offering opportunities for people to gain knowledge and skills in an attempt to breed a culture of human rights where they can demand and defend these rights.

The committee publishes annual reports on the reality of human rights in the state of Qatar. The reports include recommendations to improve the reality of human rights in the state for both nationals and residents.

NHRC formed monitoring committees to identify the violations that migrant workers are subject to, as well as the observations mentioned in the international reports concerning the rights of migrant workers in Qatar.

One of the most prominent NHRC achievements in relation to workers' housing is the recommendation of having a model of workers housing units. The companies that demand authorisation to recruit migrant workers have to be committed to this model and may only obtain authorisation provided that health, environmental and cultural requirements are available. Moreover, NHRC in its annual report of 2012 suggests that the applicant who seeks to recruit migrant labour from a certain country submit an officially documented job offer to the Embassy of Qatar in that country. The Embassy ratifies the job offer after revising it and confirming that the contract terms agreements with the worker. Additionally, the Directorate of Labour Relations ought not to deliver the worker's ratified copy of the contract to the employer or his representative. It should only be delivered to the worker.

LEGAL LOOPHOLES

It has already been discussed how the Qatari Labour Law excludes domestic workers from its provisions. The law does not provide any protection mechanisms to this category. Thus domestic labour still lacks a regulatory framework that participates in protecting their rights.

Moreover, the law allows the "householders" to recruit domestic labour without the

need to obtain the approval of the competent department in the Ministry. This deprives the domestic worker from any kind of protection and leaves them totally under the control of the “householder”¹¹⁵.

The Qatari Labour Law provides that the service contract may contain a provision subjecting the worker to a probation period not exceeding six months. The law also entitles the employer to terminate the contract within the probation period if it has been proved to him that the worker is not capable of carrying out the work, however the law does not grant the worker the same right. Therefore this condition is a discriminatory condition provided only to the employer without identifying any particular structures proving the lawful disqualification of the worker¹¹⁶.

As with other laws in the region, the Qatari Labour law permits that any who is assigned to work that allows him to get acquainted with the employer’s customers or to have access to his business secrets, may not compete with his employer or be a partner in any competitive project upon expiration of the contract. As previously discussed, this condition contradicts International law since it limits the freedom of the worker to choose employment, which is one of the fundamental rights ensured to all human beings.

The law gives the Qatari worker the right to absent himself from work for a reasonable period of time in order to enable him to register his name with the Department so that the worker can avail himself of new employment¹¹⁷. It does not give the same right to the migrant worker, as other regional laws do. Consequently, it must be considered discriminatory given the convention stipulated in the ILO C111. It also contradicts the workers rights for fair and equal working conditions.

In spite of the fact that the Qatari Labour Law ensures a number of workers’ rights’ such as; prohibiting the deduction of the worker’s wages for more than five days per month; not allowing the employer to withhold or stop the wage to which the worker is entitled except for the execution of a judicial decision; and committing the employer to taking all precautionary measures for protecting the workers during work, it still does not state any penalties in the case where these stipulated rights are breached¹¹⁸.

COMBATING TRAFFICKING IN PERSONS AND PROTECTING TRAFFICKING VICTIMS

The Qatari Law No 15 of 2011 on Combating Trafficking in Human Beings is one of the new and distinctive laws in the region that address clearly and explicitly victims of trafficking’s fundamental rights as stipulated in the Protocol.

The Qatari Law on Combating Trafficking in Human Beings compels the competent authorities to ensure the protection and the physical and psychological safety of the victims, and to provide them with medical, educational and social care. Furthermore,

115 Article 28 of Labour Law

116 Article 39

117 Article 50

118 Articles 60,70 & 100

the competent authorities shall work to provide suitable circumstances to rehabilitate and help them in the society in a manner appropriate to their needs, human dignity, age and gender. In addition, the authorities shall, in cooperation and coordination with the victims' country or with countries in which the victims have a permanent residence, return them home safely.

The law ensures a number of trafficking victims' rights, which are;

- Maintaining their personal dignity and identity.
- Giving them the opportunity to state their position and being recognized.
- Obtaining advice with regard to their rights and enlightening them to the standard legal and administrative procedures.
- Remaining in the state's territory until the conclusion of the investigation and trial.
- Obtaining legal aid including counsel of attorney.
- Obtaining appropriate compensation for damages suffered.
- Obtaining the necessary security protection.

QATAR FOUNDATION FOR COMBATING HUMAN TRAFFICKING

Qatar Foundation for Combating Human Trafficking is a private foundation for public interests. It was established under decision number 1 of 2008, according to which The National Office for Combating Human Trafficking became Qatar Foundation for Combating Human Trafficking. Its mission is preventing and protecting society from human trafficking and providing integrated care for victims.

The foundation specialises in developing plans, programmes and activities, as well as taking necessary measures to ensure implementation, monitoring and evaluation of these plans. Furthermore, it takes the necessary measures to provide integrated care for target groups and to provide various consultation services related to its field of work. It also specialises in preparing studies and research that are relevant to the field of work.

The foundation provides a number of direct services for the victims of human trafficking, which include:

- Providing all accommodation services
- Providing health care
- Arranging guidance sessions with specialized psychiatrists
- Providing rehabilitation and reintegration services
- Following up legal issues with the relevant state departments
- Coordinating with the lawyers to adopt cases of victims of human trafficking
- Sending children to school to complete their education

- Following up procedures related to victims' entitlements with competent authorities
- Coordinating with the competent authorities to issue temporary work permits and requesting change from their employers
- Providing job opportunities
- Securing victims' return to their home countries in coordination with the competent authorities based on their wish after the receiving their due rights
- Following up with the victims after rehabilitation

Qatar Foundation is one of the model foundations in the region in the field of prevention of human trafficking and protection of victims of trafficking. This is due to the size of the activities carried out by the foundation and the services it offers which guarantee protection for the rights of victims. These rights are based on the Qatari Law on Combating Trafficking in Human Beings.

7. The State of Kuwait

BACKGROUND

According to the latest statistics from the Kuwait Central Statistical Bureau of 2012 the total number of migrant workers is around 1.159.987, which includes workers from the private sector but not domestic workers. The statistics indicate that the majority of these workers are non-Arabs (62.91%), since the Asian labour makes up the highest percentage and is estimated at 688.262 workers versus 430.269 Arab workers. Most of the Asian labourers work in the fields of sales, services, agriculture and fishery, production, and operation of means of transportation¹¹⁹.

Another study published by Al Jazeera Net affirms that the percentage of migrant workers in Kuwait is the highest as it is estimated to be 70-80% of the total workforce of the state¹²⁰. A third report by the Federation of the Gulf Cooperation Council (GCC) Chambers for the year 2008 indicates that Kuwait is in fourth place, out of all the Gulf countries, in terms of its dependence on Asian labour¹²¹.

119 http://www.csb.gov.kw/Socan_Statistic.aspx?ID=14

120 http://www.aljazeera.net/mritems/images/2008/2/21/1_768515_1_34.jpg

121 Report of Federation of the Gulf Cooperation Council (GCC) Chambers, 2008

Country	Percentage of Asian Labour
The Sultanate of Oman	92.4
The United Arab Emirates	87.1
The Kingdom of Bahrain	80.1
The State of Kuwait	65.5
The Kingdom of Saudi Arabia	59.3
The State of Qatar	45.6

According to the same resource, Indian labour is ranked first in terms of the number of migrant workers, followed by Egypt, Sri-Lanka and then Bangladesh.

Labour Sending Countries	Number in Thousand
India	393.210
Egypt	319.483
Sri-Lanka	208.893
Bangladesh	208.893

From a legal viewpoint, the Kuwaiti Labour Law No.6 of 2010 is a good labour law in comparison to the rest of the region as it provides greater guarantees for the protection of migrant workers' rights. Moreover, the General Federation of Trade Unions plays a significant role in Kuwait through its Migrant Workers Office, and contracts bilateral agreements with the trade unions of the labour sending countries in order to support the rights of migrant workers in the state of Kuwait.

LABOUR LAW NO 6 OF 2010

The provisions of the law regard private sector employees. It excludes from its implementations workers subject to other laws as well as domestic workers. The law ensures the minimum rights of the workers and guarantees their greater rights and privileges if stipulated in the labour contract or appointed by special regulations adopted by the employer, professional customs and general customs¹²².

EMPLOYMENT CONTRACT

The law states that the work contract shall be prepared in writing. It specifies the information that shall be stated in the contract such as the nature of work. It also provides that the contract shall be drawn up in three copies. The third copy shall be sent to the competent authority at the Ministry¹²³.

The law allows the translation of the contract into any foreign language. This rule is also applicable to all correspondence, regulations, bylaws and circulars issued by an

122 Articles 2&5 of Kuwait Labour Law

123 Article 28

employer¹²⁴.

The employer is prohibited by law from recruiting labourers from outside the country or appointing labourers from inside the country to any work not run by the employer. If it is evident that the employer is not actually in need of those labourers, he shall bear the expenses for returning the workers to their country¹²⁵. This provision is stated in order to insure that the worker is employed for the use of his official employer, and to stop residence traffickers.

The law states as well that the probation period shall be specified in the work contract provided and shall not exceed one hundred working days. The law ensures the rights of the worker during this period. Thus, it ensures the worker's right of receiving service indemnity for his employment period if the employer terminates the contract¹²⁶.

Regarding disciplinary sanctions, Kuwait Labour Law adopted a unique mechanism due to its enhancement of the protection of migrant workers' rights. It obliges the employer to deposit the deducted amounts from the labourer's wage into a fund allocated for social, economical and cultural activities for the benefit of the labourers¹²⁷.

The law ensures the right of the terminated worker to appeal the termination decision before the competent labour department. If it is evident by the virtue of a final court judgment that the employer has terminated the worker in an arbitrary way, the worker is entitled to a terminal service indemnity and compensation for the material and moral damage¹²⁸.

The law does not permit the termination of the worker's service for any reason based upon his trade union activity or as a result of claiming his legitimate rights according to the provisions of the law. Additionally, the worker's service shall not be terminated for reasons relating to his sex, origin or religion¹²⁹.

The law guarantees the right of worker to terminate the work contract without notice, and simultaneously receiving the terminal service indemnity in any of the following cases¹³⁰:

- If the employer does not abide by the provisions or the contract and law
- If an assault is committed against him by the employer or whoever represents him or by instigation or incitement from the employer or such a representative
- If continuation of work will threaten his safety or health as decided by the

124 Article 29

125 Article 10

126 Article 32

127 Articles 38& 40

128 Article 41

129 Article 46

130 Article 48

Medical Arbitration Committee at the Ministry of Health

- If the employer or his representative has introduced any act of cheating or fraud at the time of contracting in relation to the contract conditions
- If the employer charges him of committing a criminal act and a final judgment is issued and declares his innocence
- If the employer or his representative has committed an act that violates the moral privileges of the worker

LABOUR DISPUTES

Kuwait Labour Law exempts lawsuits brought by workers or their beneficiaries from payment of judicial fees. The law also gives the worker preference and priority over all the employers' money, movables and real estates.

The law identifies the prosecution procedures that should be adopted. The worker has to file an application to the competent labour department in the Ministry of Labour Law to consider the dispute or the complaint. If the department cannot reach an amicable settlement, the case shall be referred within one month of the submission date to the Court of First Instance to decide upon it¹³¹.

LEGAL LOOPHOLES

Like other Arab labour laws, Kuwait Labour Law excludes from its provisions domestic labour. It subjects this category of labour to rules, passed by Ministry of Labour, regulating the relations between the domestic worker and employer. Unfortunately, these rules have not been issued until now, so the domestic labour is still without any legal coverage as is required for the protection of his rights.

Regarding labour disputes, the Kuwaiti judicial system lacks labour courts that specialise in considering disputes resulting from contractual relations between employer and employee. Although the Kuwaiti Labour Law identifies the mechanism of dispute settlement clearly, there is still a need to establish a specialist courts.

In practice, the Kuwait Society for Human rights indicates that the labour disputes may take much longer than stated by the Kuwaiti Labour Law.

WAGES PROTECTION

Kuwait, unlike the Emirates and Saudi Arabia, does not have a special system to protect wages, but the Kuwaiti Labour Law binds the employer to deposit the dues of his workers in accounts opened in financial institutions with a copy of the statement dispatched to the Ministry of Labour and Ministry of Social Affairs. The Ministry of Labour recently passed an electronic monthly wages transfer system (automatic statements) and it now an obligatory system, since the employer cannot make any

governmental transactions without a salary certificate¹³².

MEDICAL INSURANCE AND SAFETY & OCCUPATIONAL HEALTH

The Kuwaiti law ensures safety provisions and occupational health, in addition to medical insurance for workers. It requires the employer to take the necessary precautionary measures for protecting workers. It obliges the employer to explain to the worker the hazards that he may be exposed to and the necessary protection measures he should take before undertaking his work. He should provide the worker with first aid means and medical services. The law also commits the employer to make the required insurance coverage for his workers with insurance companies¹³³.

The law stipulates that the employer shall bear the expenses of the injured worker's treatment for work injuries and occupational diseases. It entitles the injured worker or his beneficiaries to receive compensation for work injuries or occupational diseases¹³⁴.

Additionally, Law no.1 of 1999 on Alien Health Insurance does not allow the foreigner a residence permit without first obtaining a health insurance policy or medical insurance contract.

KUWAIT TRADE UNION FEDERATION

The Kuwaiti labour law does not give the foreign worker the right to form labour unions, but it allows him to join formed labour unions according to very specific conditions. The migrant worker has no right to vote or to stand for office.

The Kuwait Trade Union Federation is one of the institutions that play a key role in protecting workers' rights in general, and migrant workers' rights in particular. One of the federation's departments is the Institute of Labour Culture. Its concern is mainly national labour, but this does not preclude that this institute concerns itself also with building the capacity of personnel that is responsible for Labour Culture. Furthermore, the institute collects information and prepares studies and research about labour and workers affairs, as well as the foreign workforce.

The Trade Union Federation also includes the Migrant Workers Office, which was established in 1993. The office aims at defending the living and employment right of migrant workers and assisting this category of workers in overcoming any problems they might face.

The federation contracted many agreements and signed memorandums of understandings with federations and trade unions with the countries of migrant workers for the purpose of protecting their rights.

For instance, it signed a memorandum of understanding with the Indian Trade Union of Construction Workers, and signed a union agreement with Sri Lanka regarding the

132 Article 57

133 Articles 83, 84, 86 & 88

134 Articles 91 & 94

rights of Sri Lankan labour in Kuwait, as well as another agreement with the General Federation of Nepalese Trade Unions to enhance the rights of Nepalese labour.

KUWAIT SOCIETY FOR HUMAN RIGHTS

Kuwait Society for Human Rights was established in 1988 as a branch of the Arab Organization for Human Rights. It is a non-governmental organization that aims at protecting and enhancing the rights of human beings in Kuwait and in the Arab world according to the international standards ratified by the Arab countries.

The society seeks to:

- Raise awareness regarding the international conventions of human rights, particularly the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Right, and The International Covenant on Civil and Political Rights, in addition to other conventions and human rights stipulated in the Constitution of Kuwait. It pursues the defence of individuals and groups whose human rights are violated. In order to achieve its goals, the society adopts all methods and approaches that are consistent with these objectives.
- Use lawful means, via legal channels, to respect and promote human rights and the fundamental freedoms of all Kuwaitis and people staying in Kuwait, as well as stopping human rights' violation in Kuwait irrespective of its source. Additionally, it cooperates with the responsible governmental authorities for stopping these violations by;
- Publishing bulletins and brochures which raise awareness regarding the principles of human rights in compliance with laws
- Organizing meetings, conferences, and lectures related to the objectives of the Society; as well as participating in similar conferences and lectures at a local and international level in matters relating to its objectives
- Cooperating with associations and human rights organizations which share similar objectives in the country and abroad in order to fulfil the objectives of the Society
- Addressing the responsible authorities to report human rights violations or to request information about these violations

8. The Republic of Lebanon

BACKGROUND

There are no specific statistics about the number of migrant workers in Lebanon; therefore the study refers to statistics regarding those that obtained work permits, in addition to those that had them renewed, in 2012. These statistics are published on the website of the Lebanese Ministry of Labour. These statistics indicate that the number of renewed work permits in 2012 were 135.950, along with 53.423 newly obtained work permits.

The majority of migrant workers in Lebanon are Ethiopians, followed by Bangladeshis, Filipinos, Egyptians and Sri Lankans. The statistics also indicate that most of the migrant labourers in Lebanon are domestic workers¹³⁵.

The Lebanese labour law is one of the oldest labour laws in the region, having been passed in 1946. Many amendments have been inserted during the subsequent period. The most recent being Law No. 207 of 2000¹³⁶. Although the law gives the migrant worker the right to join trade unions under specific conditions, as will be addressed later, it excludes domestic workers from its provisions just like the majority of the labour laws in the region.

The labour law does not explicitly mention the need for the migrant to have a sponsor. However, Decision No.70/1 of 2003 concerning regulating the work of agencies recruiting foreign “servants” provides the term “sponsor” when referring to the employer of the domestic worker.

Lebanese law ensures the right of the worker to occupational health and safety measures. Nevertheless, it does not subject all migrant workers to social security. The law requires the principle of reciprocity when it is related to the right to social security. It excludes as well domestic labour from social security based on the Social Security Law of 1963.

Through a meeting conducted with migrant workers in Lebanon by the researching team, they clarified to us that they do not benefit from the service of social security. Most of the migrant workers leave the country without receiving any dues from the social security although the monthly subscription was regularly deducted from their monthly wages.

The Civil Society and the Trade Unions in Lebanon play a key role in protecting the rights of migrant workers.

LABOUR LAW

The Lebanese Labour Law of 1946 classifies the “workers” into employees and workmen. It defines an employee as “any salary-earner who performs a desk job or a non-manual job”, while the workers as “any wage-earner who is not within the group of employees.” The purpose of such distinction between these two categories is not clear.

The law excludes domestic “servants” and the agricultural corporations from being

135 http://www.labor.gov.lb/_layouts/MOL_Application/StatList.aspx

136 http://www.labor.gov.lb/_layouts/MOL_Application/AllLegalText.aspx?lang=ar&type=1

subject to its provisions.

In the Work Contract Chapter, the law prohibits anyone from committing himself by any work covenant for a lifetime, nor pledging himself for a lifetime not to engage in a specified profession. Any covenant that would lead to this effect would be considered void¹³⁷.

The law permits translating the contract into a foreign language if one of the parties is foreigner. It also obliges the employer to teach the trainee the trade or the profession for which he has been engaged, and delivering a certificate stating the trainee's proficiency at the end of the training period¹³⁸. However, the law forbids discrimination between men and women with regard to type of work, amount of wage and salary, employment, promotion, professional qualification and apparel¹³⁹.

The law considers the employer's termination of the work contract as contravening the worker's rights in the following cases¹⁴⁰:

- For either having or having not joined a certain trade union, or for having engaged in legal trade union activity;
- For having lodged, in good faith, a complaint regarding the implementation of the provision of this law to the competent authorities;
- For having exercised his individual or public liberties within the framework of the laws in force.

Moreover, the law guarantees the right of the worker to absent themselves for one working hour a day, during the notice period, to look for another job¹⁴¹.

It also entitles the worker to leave work before the date provided in the contract, without prior notice and receiving compensation in the following cases¹⁴²:

- If the employer or his representative has deceived the worker as to the conditions of work at the time of concluding the contract;
- If the employer does not respect his obligations towards the worker in conformity with the requirements of the present law;
- If the employer commits an offence to the worker or a member of their family;
- If the employer is guilty of assault or battery with regards to the worker.

Moreover the Decision of Court of Appeal of 2002 permits the worker to leave the work without a prior notice if the employer unlawfully withholds his wages.

137 Article 11 of the Lebanese Labour Law

138 Articles 12 & 18

139 Article 26

140 Article 50

141 Article 51

142 Article 75

LABOUR TRADE UNIONS

The Lebanese Labour Law permits workers and employers to establish and join trade unions. According to the law, trade unions are intended solely to protect and promote the professional interests of the corporation and to raise its standard, defend its interest and influence its progress economically, industrially or commercially to its benefit¹⁴³. The law allows foreigners to join a trade union if they have a permit to work in Lebanon; are working in a profession at the time of application, are eighteen years old and have not been convicted of any crime. However, foreign members are not eligible to vote; although they are entitled to delegate the responsibility of representation to someone in the union to defend their interests before the trade union's committee¹⁴⁴.

LABOUR DISPUTES SETTLEMENT

The Lebanese Labour Law requires setting up a Labour Arbitration Board in each governorate that should be composed of a judge, an employer's representative and a representative for the worker. The Arbitration Board deals with¹⁴⁵;

- Disputes arising from the assessment of the minimum wage;
- Disputes arising from labour accidents;
- Disputes arising between employers and workers resulting from the enforcement of the present law.

Decree No.3572 of 1980 refers to the competence of Labour Arbitration Board when considering individual labour disputes. It determines the period of time that is allocated to the Court of Appeal to give its decision on the appeal concerning the decisions of the Labour Arbitration Board.

OCCUPATIONAL HEALTH AND SAFETY

The law compels establishments that are subject to the provisions of the Lebanese Labour Law to keep themselves in a constant state of cleanliness and offer the necessary conditions to ensure sanitation as required for their workers. The establishments must also ensure the workers' security¹⁴⁶.

Additionally, Emergency Decree No.136 of 1983 obliges the employer to sign a contract with an insurance company in order to insure the compensations and the medical treatment stipulated in this regulation. The Decree also provides that the debts of the injured worker, or their beneficiaries, have priority over all of the employer's movable and immovable properties. Furthermore, the Labour Emergency Decree commits the employer to carry the financial burden of all the medical, surgical and pharmaceutical expenses of the injured worker that result from an accident at work.

143 Article 84

144 Article 92

145 Articles 77 & 79

146 Article 61

SOCIAL SECURITY

The Social Security Law No. 13955 of 1963 provides that foreign workers on Lebanese territories, who are bound to one or more employer, are subject to all the rights stipulated in this law. The social security covers illness, maternity, family, educational allowance, work accidents and illness due to injury sustained on the job. Migrant workers can only be covered by this social insurance if they have work permits and if the state that they belong to provides Lebanese workers in its land with the same social insurance.

CODE OF CONDUCT IN RECRUITING MIGRANT DOMESTIC WORKERS

Based on the cooperation that took place between the Association of Domestic Workers Recruitment Agencies, Caritas Organization, and International Labour organization a code of conduct in relation to recruiting migrant domestic workers was passed. The Code presents the fundamental principles that domestic worker recruitment agencies should be committed to. It is obligatory for all agencies that are members of the association.

The first Article provides avoiding any behaviour or manner that negatively affects the human dignity of the domestic workers. Article 2 of the Code is concerned with providing the worker with the basic information related to work place and work requirements and conditions before her arrival in Lebanon, and before she is able to give her consent. The agencies should take all the required to guide and raise the awareness of the workers and the employers about their rights and to insure that the communication between the worker and the recruitment agency occurs in a language that the worker can understand.

Article 6 prohibits deducting any amount of money from the worker's salary as commission or expenses for the recruitment agency in Lebanon or in the sending country. The Code requires the recruitment agency provide the worker with a temporary place to stay in at its expense if the worker stops working during the trial period. The recruitment agency is also obliged by the Code to respect the worker's right to movement and not to deprive her from her liberty.

Despite the fact that this Code is a very good first step in the field of protecting domestic labour, it still needs a binding legal force. By the recommended binding legal force the agencies will be subject to restrictions more serious than a cancelled membership, particularly because joining the association is optional not mandatory.

NATIONAL STEERING COMMITTEE FOR FEMALE MIGRANT DOMESTIC WORKERS IN LEBANON

This committee was established in 2007. Its members are representatives from the Ministries of Labour, Justice, Foreign Affairs and Emigrants, Social Affairs, the Directorate of Internal Security Forces, the Bar Association, Recruitment Agencies Association, Caritas Lebanon, and the Pastoral Committee of African and Asian migrants, the International Labour Organization and a representative of the United Nations Office of the High Commissioner for Human Rights.

Although this committee is not newly established, and might have encountered many

challenges, such committees with this high level of diversity in members who belong to governmental institutions, civil society organizations, international institutions etc. sets a precedent. This type of partnerships contributes to the exchange of opinions, suggestions and challenges and is committed to pursuing viable solutions, even temporary ones, in order to protect domestic workers. This committee aims at providing all the recommendations that ensures regulating the work of domestic workers in Lebanon.

COMBATING TRAFFICKING IN PERSONS

Lebanon does not have a particular law to combat human trafficking, but includes amendments to the Criminal Code in order to criminalize trafficking in persons. Article 586-1 defines trafficking, and Article 586-2, 3, 4, and 5 addresses the penalties. While Article 586-8 permits, upon the decision of the judge who is considering the lawsuit, allows the victim to stay in Lebanon until the completion of the legal procedures. However, the law does not provide any rights for the victims during or after investigation.

LEGAL LOOPHOLES

By revising the Lebanese Labour Law, some legal weaknesses were identified. These points may make the right of workers subject to violation or it may contradict with international law.

Firstly, the Lebanese Labour Law excludes in Article 7 the domestic “servants” from the provisions of the law and does not refer to any legal mechanism to regulate the work of this category of workers. Secondly, in Article 3 the law differentiates between employees and workmen and the reason of such distinctions is not clear. Thirdly, unlike other labour laws in the region, the Lebanese Labour Law permits the work contract to be in writing or orally. In addition, the law does not give, like other labour laws in the region, the right of the worker to prove his rights that are stipulated in the contract by all means of evidence. This places the worker in a weak position and vulnerable to violation. Finally, the Lebanese Law allows, in Article 22, adolescents older than 13 years of age to work. This contradicts with the ILO international conventions and is at odds with the laws of the region that set the work age of adolescents at sixteen years old.

THE NATIONAL FEDERATION OF LABOUR UNIONS AND EMPLOYERS IN LEBANON

As aforementioned labour unions have a key role to play in protecting the rights of migrant workers in Lebanon. This study sheds the light on “the National Federation of Labour Unions and Employers in Lebanon” since it is one of the institutions that work towards this end.

According to Article 2 of the Rules of Procedure, the right to union membership is limited to labour union federations that are officially registered in Lebanon. According to Article 3 the federation has to carry out the following tasks:

- Defending the workers in Lebanon and seeking to raise their level professionally, socially, economically and morally;

- Strengthening cooperation between the affiliated trade unions and ensuring coordination between them in order to achieve their goals and objectives;
- Seeking the implementation of laws and regulations that govern labour relations, and looking forward to passing labour, economic and social legislations safeguarding the interests of the worker within the framework of social justice;
- Participating in social, economic and national policy-making.

The National Federation of Labour Unions and Employers in Lebanon, sets a precedent through its aims to protect the rights of domestic workers in Lebanon, establishing a union committee in cooperation with the ILO and some civil society organizations. It has opened the door for many domestic workers to join these committees for the purpose of supporting their rights, and providing them with a much higher level of protection.

ANTI RACISM MOVEMENT IN LEBANON (ARM)

ARM is a grassroots movement created by young activists in Lebanon. In collaboration with migrant community leaders, ARM works on fighting racist practices in Lebanon, through various initiatives and campaigns.

One of the noteworthy initiatives is the Migrant Community Centre, which is a place where migrant workers freely meet to organize their social activities and discuss their issues. Some of the issues that were discussed were sexual abuse, unpaid wages, and the arbitrary detention that is practiced against them by the State Agencies.

The Migrant Community Centre is a pivotal place for cooperation and the creation of social networking between the communities of migrant workers in Lebanon, in addition to other countries.

This centre also hosts various activities, such as English language classes, computer classes, self-defence lessons, and other activities that are beneficial to migrant labourers¹⁴⁷.

KAFA ENOUGH VIOLENCE AND EXPLOITATION

KAFA (enough) Violence & Exploitation is a Lebanese non-profit, non-political civil society organization committed to the achievement of gender-equality and non-discrimination, and the advancement of human rights for women and children.

KAFA's mission is to work towards eradicating all forms of gender-based violence and exploitation in women and children by advocating legal reform and changing policies and practices, influencing public opinion, and empowering women and children. Its focus areas include:

- Violence against women;
- Child sexual abuse;

147 <http://www.antiracismmovement.com/p/migrant-house.html>

- Exploitation and trafficking in women;
- Socio-Legal counselling.

Among the activities undertaken by the KAFA organization is an initiative called “Nari”, which consists of a group of Nepalese domestic workers in Lebanon who created a special organization for themselves. The workers believe that through their coalition they will be able to change and improve the situation of Nepalese migrant workers in Lebanon. They provide advice and necessary information as well as supporting those who suffer from problems, and help them to benefit from the experiences of others.

These workers publish information about the rights of the workers, and raise the awareness of the Nepalese workers about how to access to help through out-reach programs to other organizations which may be of help in Lebanon¹⁴⁸.

INSAN ASSOCIATION

Insan was established in 2000 by a group of human rights activists. Insan Association acts to protect and promote the rights of the most marginalised individuals, families and children living in Lebanon – such as refugees, migrant workers, asylum seekers and non-identities.

Insan established a private school educating children who are cut off from public education for a variety of reasons such as lack of legal papers, insufficient knowledge of the official language in Lebanese schools and a range of social and psychological needs that are not being addressed by normal schools. They aim to prepare students for integration into the Lebanese school system.

This school welcomes the children of migrant workers who are not able to enrol in Lebanese schools due to the aforementioned reasons. The educational program functions like a normal school schedule and is mainly for reception and primary levels, in addition to classes for older children and adolescents. Insan also assists in integrating children into an official Lebanese school or finding vocational training or similar such opportunities.

Additionally, Insan provides these marginalized groups in Lebanon, particularly migrant workers, with legal and psycho-social support. It helps raise awareness society about the rights of these groups, as well as urging the government to amend and update the laws through advocacy campaigns and lobbying.

CARITAS LEBANON

Caritas Lebanon was established in 1976. It is one of the oldest civil society organizations in Lebanon. It has been contributing to providing aid to Lebanese citizens. Starting from 1994, Caritas allocated a centre for foreigners and refugees. It helps refugees and migrant workers who come to Lebanon from countries such as Iraq, Sudan, Ethiopia, the Philippines, Sri Lanka and Palestine.

148 <http://www.kafa.org.lb/profile>

The varied forms of assistance available include social counselling, legal reviews and follow-ups, health services, education, repatriation, temporary shelter, and other services that benefit refugees and migrant workers in general¹⁴⁹.

Caritas Lebanon has also established a “safe house” to accommodate victims of human trafficking temporarily. It is the only shelter for trafficking victims in Lebanon and it contributes in providing the beneficiaries with the fundamental needs, in addition to providing them with durable solutions, including repatriation.

9. The Arab Republic of Egypt

BACKGROUND

The Arab Republic of Egypt is the country that sends the highest number of migrant workers to other countries in the Middle East. The official statistics of 2010 indicate that the number of Egyptians living abroad is estimated at 2.7 million; up to 70% of which live in Arab countries. The majority of these reside in the Kingdom of Saudi Arabia with an estimated 923.600 Egyptian citizens, followed by Libya with around 332.600, and Jordan with 226.850150.

Another study from the Migration Policy Centre in 2013 indicates that the number of Egyptians living in other Arab countries is around 4.783.800, compared to 1.681.163 Egyptians who have permanent residence status in the United States of America and Europe. Based on this report, Egypt is ranked fourteen out of the countries that receive remittances, since the rate of remittance that Egypt received between 2009 and 2010 reached 9.7 billion dollars¹⁵¹.

The number of migrant workers in Egypt is relatively low in comparison with other countries in the region. Reports based on the Central Agency for Public Mobilization and Statistics indicate that the number of migrant workers in Egypt is estimated at 16.713. Most of these migrants are Asian with an estimated 5438 workers - which equals 32% of the total migrant worker population in Egypt¹⁵².

Egypt is one of the few countries that ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, with

149 <http://www.syndicateofhospitals.org.lb/magazine/apr2012/arabic/50-51ar.pdf>

150 Immigration and Researches in the Arab Region- International Organisation of Migration- Cairo Office 2010 <http://www.egypt.iom.int/publications.htm>

151 http://www.migrationpolicycentre.eu/docs/migration_profiles/Egypt.pdf

152 <http://www.almasryalyoum.com/node/2079266>

reservations on article 4 and article 8¹⁵³.

This chapter sheds the light on the most prominent workers' right and the litigation procedures related to work relations and addressed by the Egyptian Labour Law No.12 of 2003, in addition to the mechanisms of protecting the rights of Egyptian labourers abroad. This chapter also presents the Egyptian Law regarding Combating Human Trafficking as one of the most distinctive laws in the region due to its inclusion of clear legal provisions to ensure the protection of victims of trafficking in persons.

LABOUR LAW No.12 OF 2003

This law is a “general law” and governs the work relations whilst also considering the collective work agreements. The Law states that all conditions or agreements contradicting the provisions of the law shall be invalid even if they existed prior to the enforcement of the present law. If it comprises the worker's rights as prescribed by law or its conditions/agreements contradict its provisions, it must be rendered void. It should be noted that the Egyptian Law, like other laws in the region, excludes domestic worker from its provisions¹⁵⁴.

Among the rights stipulated by the Law for the workers - whether they are citizens or migrants – it is provided that they are to be exempted from the judicial fees in all stages of litigation for claims arising from disputes connected with the provisions of this law as filed workers¹⁵⁵.

The Law addresses regulating “alien work”. It does not permit aliens to partake in work except after obtaining a permit from the concerned ministry and have therefore been authorized to enter and reside in the country for the purpose of working¹⁵⁶.

The Law stipulates the data that should be incorporated into the labour contract, including information about the employer and the workers, the nature of the work subject to the contract, as well as the wage agreed upon, and the method and time of its payment. If no written contract exists, the law allows the worker alone to establish his rights by all methods of evidence¹⁵⁷.

One of the principles stated by the Law is prohibiting discrimination in wages because of sex, origin, language, religion or creed¹⁵⁸.

LABOUR DISPUTES

If an individual dispute arises between the worker and the employer, the Law permits both the worker and employer to resort to a judicial committee, which is formed of a

153 http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-13&chapter=4&lang=en#EndDec

154 Article 4 & 5 of the Egyptian Labour Law

155 Article 6

156 Article 28

157 Article 32

158 Article 35

representative from the competent administrative authority, a representative from the Federation of Trade Unions and a representative for the concerned employer. If the Committee cannot settle the dispute in 21 days, either of the parties may ask for the dispute to be referred to the Labour court which is formed of; two judges, of which the most senior shall preside as chairman; the concerned director of the Manpower and Emigration Directorate, or his assigned delegate; a member from The Federation of Egyptian Trade Unions and a member from the concerned Employers Organization. This court specialises exclusively in the jurisdiction of disputes arising from the application of individual provisions of the Labour Law. The court shall decide upon the dispute within sixty days from the date it was submitted. Its decision may be subject to appeal¹⁵⁹.

The committee shall decide on the request for discharging the worker within fifteen days from the date of the first session and its decision is final. If it refuses the request it shall obligate the employer to return the worker to his work and pay him the entitlements that were not paid to him. If the request for discharging the worker is because of unionist activity, the committee shall rule returning him to his work if the worker accedes it.

The Law provides establishing an arbitration panel specialized in considering collective disputes. The arbitration panel shall be formed of one of the courts of appeal departments, an arbiter for the employer, an arbiter for the trade union organization and an arbiter for the concerned ministry. The panel determines a session for the examination of the dispute on a date not exceeding fifteen days from the date it receives the file of disputes¹⁶⁰.

TERMINATION OF CONTRACTUAL RELATIONS

The Law prohibits any agreement from exemption of the notification condition or reduction of its period, however, it does allow for an increase of the period. It also permits the employer to exempt the worker from observing the whole or part of the notification period in the case where the contract is terminated by the worker¹⁶¹.

The Law grants the worker the right to absent himself from a full day of work per week to look for another job if the employer terminated the contract. It also obliges that the submission of resignation be given in writing. The worker, according to the Law, may withdraw his resignation, in writing, within a week from the date the employer notifies the worker of accepting the resignation. In this case, the resignation shall be considered nullified¹⁶².

The Labour Law provides the reasons that are considered not legitimate and adequate justification for termination¹⁶³:

159	Articles 70&71
160	Article 182
161	Article 115
162	Articles 116 & 117
163	Articles 120

Colour, sex, social status, family obligations, pregnancy, religion, or policy view;

The worker's affiliation to a union organization, or his participation in a union activity within the context of the limits set by the laws;

Exercising the quality of worker's representative, former exercise of the quality, or seeking to represent the workers;

Submitting a complaint, filing an action against the employer, or joining in that, in protest against violating the laws, regulations, or labour contracts.

According to the law, the worker may terminate the contract if the employer defaults on any of substantial obligations ensuing from the law, the individual or collective labour contract, or the articles of association of the establishment, or if the employer or his representative commits a hostile act against the worker or a member of his family. Termination of the contract, in these cases, shall be tantamount to terminating it by the employer without lawful justification. Thus, the worker is entitled to compensation for the harm occasioned to him as a result of such a termination¹⁶⁴.

RIGHT TO STRIKE

The Law ensures the right to strike in article 192 and states that the worker has the right to stage a peaceful strike. The strike shall be announced and organized through the trade union organizations in defence of the vocational, economic and social interests, within the limits and according to the controls and procedures prescribed in the present law.

Currently, this right has been inactivated and criminalized by Decree No. 34 of 2011 which imposes a penalty of imprisonment or fine not less than twenty thousand pounds and not exceeding fifty thousand pounds on "each person that makes a stand or any activity that results in stopping, disrupting, and hindering the work of State establishments, public authorities, or private or public directories from performing its work".

This law is enforced in emergencies and so is applied given Egypt's current situation.

LABOUR UNIONS

Nothing mentioned in the Trade Union Act No.12 of 1995 prohibits migrant workers from joining trade unions. The law specifies the eligibility criteria for membership; the worker has to be over fifteen years old; cannot to be interdicted; cannot be an employer carrying out any commercial, agriculture, or industrial activity; cannot be an employed worker in one of the professions or businesses included in the union classification of the Federation of Egyptian Trade Unions; and finally not to be a member in another trade union, even if he practices more than one profession¹⁶⁵.

164 Articles 121 & 1222

165 Article 19 of the Act No.12

The Act identifies the responsibilities of the trade unions as including¹⁶⁶;

- Defending the rights of the workers and taking care of the workers' welfare;
- Enhancing terms and conditions of employment;
- Improving the social and cultural level of the workers.
- The Act specifies as well the responsibilities of the Federation of Egyptian Trade Unions¹⁶⁷, as;
- Defending the rights of Egyptian workers, taking care of their common welfare, and improving their economic, social, and cultural levels;
- Setting the code of conduct for trade union work;
- Participating in discussing projects of general economic and social development.

EGYPTIAN LABOUR ABROAD

The Egyptian Labour Law handles the rights of Egyptian workers abroad. It states protection mechanisms for the rights of Egyptian workers inside and outside Egypt. Article 11 of the Law requires establishing a higher committee for planning and employing manpower inland and abroad. The Minister is the chairman and it comprises of representatives from the concerned ministries, representatives of the General Federation of Egyptian Trade Unions and Employers Organizations. The jurisdiction of the committee allows for the construction of general policy for employing Egyptian manpower in Egypt and abroad, as well as setting the systems, rules, and procedures required for employment¹⁶⁸.

The Law provides that the recruitment processes for Egyptian workers, both abroad and at home, shall be regulated by the ministries, the General Federation of Egyptian Trade Unions, as well as the Egyptian public sector, public business sector, and private sector companies concerning the contracts agreed on with the foreign authorities within the confines of their work/nature of their activities. It also states that these operations can be carried out by professional associations but only with regard to their members¹⁶⁹.

Furthermore, the Law indicates that the concerned ministry, in cooperation with the Ministry of Foreign Affairs, shall assume the implementation of international agreements and contracts related to Egyptian labour abroad, as well as studying the settlement of litigations arising from the implementation of these agreements¹⁷⁰.

MEMORANDUM OF UNDERSTANDING REGARDING THE ORGANIZATION OF THE MIGRATION OF EGYPTIAN LABOURERS TO WORK IN THE HASHEMITE KINGDOM OF JORDAN

166 Article 17 of the Act No.12

167 Article 17 of the Act No.12

168 Article 11 of the Egyptian Labour Law

169 Article 17 of the Egyptian Labour Law

170 Article 19 of the Egyptian Labour Law

Bilateral agreements between the sending and receiving countries are highly valuable, since it aims at regulating the labour market between the two countries and decreasing the number of irregular labour. However, such bilateral agreements should be consentient with international law and standards.

Article 8 of the memorandum of understanding between Egypt and Jordan prohibits any person from going to Jordan for the purpose of work except in accordance with the agreed upon procedures between the two states. Such open provision clearly limits the freedom of movement that is stipulated in international law. Practically, the restrictions placed over the Egyptian “travellers” who plan to come to Jordan, directly affects their right to freedom of movement, as is guaranteed by the International Covenant on Social, Economic and Cultural Rights.

LAW NO. 64 OF 2010 REGARDING COMBATING HUMAN TRAFFICKING

As already mentioned, the Egyptian Law regarding Combating Human Trafficking is one of the most distinctive laws in the region due to the distinct protection given to the victims of human trafficking, in addition to the spatial jurisdiction and international judicial cooperation which serve the interest of victims.

The law states that its provisions shall apply to non-Egyptians who commit the crime of trafficking outside the Arab Republic of Egypt in the following cases¹⁷¹;

- If the crime is committed on board any air, land, or water means of transportation that is registered in the Arab Republic of Egypt or under its flag;
- If one or more of the victims is Egyptian;
- If the preparation for the crime or its planning, direction, supervision, or financing occurred in the Arab Republic of Egypt;
- If the crime was committed by an organized criminal group engaged in criminal activities in more than one state, including the Arab Republic of Egypt;
- If the crime caused harm to any citizen or resident, to the security, or to any of the interests of the Arab Republic of Egypt within the country or abroad;
- If the one who committed the crime in the Arab Republic of Egypt was found there after the crime was committed and was not extradited.

In relation to the international judicial cooperation, the law stipulates that the Egyptian judicial authorities and police shall cooperate with respective foreign authorities to combat and prosecute crimes of human trafficking, including: the exchange of information, conducting investigations, judicial assistance and letters of request, extradition of perpetrators and objects, asset recovery, transfer of sentenced persons, and other forms of judicial and police cooperation¹⁷².

171 Article 16 of Law regarding Combating Human Trafficking

172 Article 18

The Law addresses the protection of victims. It provides that the victim shall not be criminally or civilly liable for any of the crimes of human trafficking as long as the crime occurred or was directly related to being a victim¹⁷³. The Law provides creating the appropriate conditions for the victim's assistance, health, psychological, educational and social care; and rehabilitation and reintegration into the society, within the framework of liberty and human dignity, as well as their return to their homeland in a quick and safe manner, if they were a foreigner or a non-permanent resident in the state¹⁷⁴.

Article 23 of the Law provides making efforts to identify the victim in all stages of evidence collection, investigation or trial of the crimes of human trafficking. It ensures guaranteeing the following rights to the victim¹⁷⁵;

- The right to physical, psychological and mental safety;
- The right to protect his inviolability and identity;
- The right to inform him of relevant administrative, legal and judicial procedures; and access to information related thereto;
- The right to be heard and to have his views and interests considered;
- The right to legal assistance;

The competent court shall take measures to ensure that protection is provided to the victims and witnesses to avoid any outside influences.

CHILD LAW

The Egyptian Child Law ensures the rights stipulated in the International Convention on the Rights of the Child and other relevant international conventions that are in force in Egypt.

The Law guarantees the child the right to be protected from all forms of discrimination among children on the basis of birthplace, parents, sex, religion, race, disability, or on any other status, and ensures equal opportunities among children to benefit from all rights.

It also prohibits the employment of children in any type of work that, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children, in particular regarding the employment of a child in 'Worst Forms of Child Labour'.

Additionally, Egyptian Child Law sentences any adult that induces a child to commit a misdemeanour, or trains him to do it, or helps him, or facilitates it in any way. It

173 Article 21

174 Article 22

175 Article 23

sentences as well anyone importing, or exporting, or producing, or preparing, or viewing, or printing, or promoting, or possessing, or broadcasting pornographic material using children, or related to the sexual exploitation of children.

10. The Republic of Yemen

BACKGROUND

The latest statistics from the Central Statistical Organisation indicate that the number of migrant workers permitted to work in Yemen in 2012 was estimated at 12.000 migrant workers versus 16.922 workers in 2010¹⁷⁶. On the other hand the statistics published by the World Bank indicate that the number of migrants, in all its various categories, in Yemen in 2010 was around 517.000 migrants. The highest percentages of migrants were Sudanese and Somalian, followed by Iraqis, Egyptians, Syrians, and Palestinians¹⁷⁷.

The Yemeni Labour Code No.5 of 1995 regulates work relations, occupational health and safety, and trade union organizing. It is among the laws that ensure the worker's right to strike and forming or joining trade unions, whether they are Yemenis or migrants.

Moreover, the Yemeni Law No. 26 of 1991 concerning Social Security, subjects under its provisions to all workers.

Unfortunately, Yemen has no law to combat human trafficking. What we will discuss, is a draft of an anti-trafficking in persons law ensuring the rights of victims of trafficking, taking into consideration that the draft was approved by the Cabinet, but has not been passed at the time of publication of this study¹⁷⁸.

THE YEMENI LABOUR CODE

Like other labour laws of the region, the Yemeni Labour Code No. 5 of 1995 excludes from its provisions domestic labourers and workers employed in agriculture and pastoral work¹⁷⁹.

The Yemeni Labour Code forbids impairing or ignoring any workers' rights under a contract of employment as a violation of its provisions. The Code also states that any amount due to a worker or his beneficiaries under the provisions of the Labour Code is

176 <http://www.cso-yemen.org/content.php?lng=arabic&id=623>

177 World Bank, Bilateral estimates of Migrant Stock in 2012 - http://siteresources.worldbank.org/INTPROSPECTS/Resources/3349341110315015165/T1.Estimates_of_Migrant_Stocks_2010.xls

178 <http://www.yocht.org/?fid=40>

179 Article 3 of the Yemeni Labour Code

a priority debt against an indebted employer's movable and immovable properties¹⁸⁰.

It is noteworthy that the Yemeni Labour Code provides for the establishment of a Labour Council, like nothing else which exists in the region. This Council is composed of representatives of the Ministry and representative workers and employers. It lays down guidelines and submits recommendations to the Government in relation to the following matters¹⁸¹:

- Drafting labour laws and regulations;
- General policies on wages, incentives and other benefits;
- Vocational training and rehabilitation of workers.

The Yemeni Code prohibits any person, natural or corporate to carry out the business of recruiting or importing workers. Thus, under the Yemeni Code there may be no recruitment agencies¹⁸².

The Yemeni Code extolls equal opportunities between women and men in relation to all conditions of employment and employment rights, duties and relationships, without any discrimination. According to the Code, women shall also be equal with men in employment, promotion, wages, training and rehabilitation and social insurance¹⁸³.

The Code imposes duties on the employer, including¹⁸⁴:

- Providing the working requirements, conditions, guarantees and precautions stipulated in labour legislation and regulations and in contracts;
- Directing and assigning workers according to their qualifications, technical and practical skills and competence;
- Setting training programs required for the work and providing the necessary facilities for workers to raise their vocational, technical and educational standards;
- Refraining from prejudice of persons/workers or offending their dignity;
- Opening and keeping personnel and general records indicating worker's service conditions and affairs in accordance with the particulars and conditions stated by the Ministry;
- Informing workers of all conditions of employment and related matters and posting them in a visible place once they are published;
- Involving workers in the discussion of ways to improve the work process, increase production and other related matters.

180 Articles 7&8

181 Article 11

182 Article 19

183 Article 42

184 Article 89

EMPLOYMENT CONTRACT

The Code stipulates that a written contract of employment shall be drawn up in three copies, one of which shall be given to the competent Ministry office. It also states that the contract of employment shall specify the amount of remuneration, the type of work, the place of work and the date of commencement and duration of employment¹⁸⁵.

Regarding the employment of collective groups, the Code requires the contract to be discussed by the union committee or representative bodies of the workers, agreed upon and signed at a general meeting of the workers on their behalf. Such agreement shall be binding for all workers. Any collective agreement not discussed as a group with the workers shall be invalid¹⁸⁶.

For the purpose of enhancing the role of the trade union, the Code allows, if it is a party to a collective agreement, to institute legal proceedings for a violation of the agreement on behalf of any of its members without the need to be mandated by him. A union member may intervene in a suit thus filed on his behalf and may institute proceedings independently from the trade union.

The Code also permits the worker to unilaterally terminate his contract of employment without prior written notice to the employer in the following cases¹⁸⁷:

- if the employer or his representative misled the worker as to his conditions of employment at the time of the contractual agreement;
- if the employer or his representative commits a morally offensive act towards the worker or a member of his family;
- if the employer or his representative assaults the worker;
- in the event of a serious threat to the safety or health of the worker provided that the employer is aware of the said threat and has not adopted the prescribed measures or failed to take such measures as the competent authority may have prescribed at the appropriate time;

In such cases the worker is entitled to special compensation for damages sustained as a result of termination, in addition to wage entitlements, for the period of notice and any other entitlements provided for in this Code and the labour legislation giving effect to it¹⁸⁸.

OCCUPATIONAL HEALTH AND SAFETY AND MEDICAL INSURANCE

The Code requires that the employer who commissions any new enterprise to ensure it meets occupational health and safety requirements, and to observe the following

185 Article 30

186 Article 32

187 Article 35

188 Article 39

conditions¹⁸⁹:

- Workplace health and safety conditions shall be maintained in conformity with occupational requirements.
- The necessary precautions shall be taken to protect workers from damage to their health.
- The necessary precautions shall be taken to protect workers against the hazards of equipment and machinery and the hazards of conveyors and handling, including any risks of collapse.
- The necessary precautions shall be taken against natural hazards and damage, including health, humidity and cold.

These are in addition to other conditions related to lavatories, drinking water and precautions to deal with fire.

The Code compels the employer to take the necessary precautions to protect workers and ensure their safety against such hazards as may arise from their work and the machinery in use. The employer shall not deduct any amount from their wages in consideration of:

- The provision of protective devices, equipment and clothing to protect workers from exposure to occupational injuries and diseases;
- Any allowances granted to workers for working in conditions harmful to their health, or any meals provided to them in compliance with occupational health and safety requirements.
- Expenses incurred on account of workers' medical examinations, regular or otherwise, as necessitated by occupational health and safety requirements;
- The provision of first aid equipment at the workplace.

Furthermore, the Code commits the employer to provide medical care to the workers, which includes¹⁹⁰:

- Conducting a medical examination of workers prior to their employment;
- Transferring a worker to a job suited to his health condition as determined by a report from the competent medical authorities;
- Bearing the cost of medical treatment and related requirements in accordance with the employers' medical regulations as approved by the Ministry.

LABOUR DISPUTES

The law obliges both parties in a dispute, or their representatives, to hold a meeting

189 Articles 113 &114

190 Article 119

to settle the dispute amicably. If no amicable settlement can be reached between the two parties the matter shall be referred to the Ministry or its competent office that shall summon the parties with a view to settling the dispute within a period not exceeding two weeks. Where mediation fails to resolve the subject of the dispute, either party may submit it to the competent Arbitration Committee, which shall be composed of a representative of the Ministry, a representative of the employers nominated by the General Federation of Chambers of Commerce and Industry, as a member, and a representative of the workers nominated by the General Federation of Trade Unions¹⁹¹.

The Arbitration Committees shall examine such disputes and conflicts as may arise between employers and workers and violations referred to them in connection with workplace inspection, in addition to other matters in respect of which the relevant laws provide that they fall within the competence of the Arbitration Committees. Consequently, the Arbitration Committees act as labour court that have jurisdiction over labour lawsuits only.

RIGHT TO STRIKE AND TO JOIN UNIONS

The Yemeni Labour Code allows workers, under conditions which are relatively strict, to strike. It requires submitting a proposal to call a strike by the workers at a general meeting attended by at least 60% of the total number of workers employed by the employer and shall be approved in secret ballot by 25% of them. The strike shall not be called or undertaken unless the proposal to do so has first been submitted to the general union concerned and signed by two-thirds of its members and after the union committee or workers' representatives have obtained written approval from the executive office of the General Federation of Unions of the Republic. The subject of dispute should concern more than one-third of the employer's workforce. The trade union committee or workers' representatives shall give the employer and the Ministry or its competent office at least three weeks' from the date of strike¹⁹².

In spite of the fact that these conditions are strict, it has a positive perspective. The law specifies these conditions clearly and unequivocally. It entitles all the workers to this right in general way, without any discrimination between them. This is consistent with international laws, which permit exercising this right in accordance with the regulatory procedures of the state.

The Code prohibits imposing sanctions including dismissal of any worker as a result of his participation in a strike or because of a call to strike, provided that such strike is conducted in accordance with the provisions of this Code¹⁹³.

Additionally, the law ensures the right of workers and employers to freely establish and join organizations with the aim of protecting their interests, defending their rights and representing them on bodies, councils and meetings and in all matters concerning

191 Articles 129,130 & 131

192 Article 145

193 Article 148

them¹⁹⁴. It does not deprive migrant workers from such right, since the text of the article is generalised. The same article also states the right of trade unions and employers' organizations to carry on their activity in total freedom, without any interference in their affairs or outside influences.

SOCIAL INSURANCE

The Yemeni Social Insurance Act No 26 of 1991 includes work injuries, old-age, disability, and death insurance. It subjects its provisions all the employers in the private sector and their employees who are above 15 years old. It excludes from its provisions a group of categories including domestic servants¹⁹⁵. Thus, it subjects to its provisions all the workers whether nationals or migrants. Based on this insurance is mandatory.

The Act regulated the mechanisms that should be adopted to guarantee the proper application of it. It obliges employers who have working-injuries contractual relations with insurance companies to terminate these relations and to comply with the provisions of this Act¹⁹⁶.

The Yemeni Social Insurance Act also states the rights of the injured worker, which are¹⁹⁷:

- Medical care provision
- Compensation of temporary disability
- Compensation or pension in case of permanent disability
- Pension in case of the death of the insured worker
- The worker has the right to receive medical care at the expense of the institution until his recovery, permanent disability is confirmed, or death occurs¹⁹⁸.

COMBATING TRAFFICKING IN PERSONS

As aforementioned, the Yemeni anti-trafficking law has not been passed yet in spite of being ratified by the Cabinet.

The anti-trafficking draft law aims at protecting the victims of trafficking in persons, helping them, providing them with the necessary care, and respecting their human rights and dignity.

The draft provides the spatial competence of the law. Its provisions are applicable if the crime of trafficking is committed in the air, on land, and water by means of transportation and if this means of transportation is registered at the Republic of Yemen. The provisions are also applicable if the crime has been prepared, planned, directed,

194 Article 151

195 Articles 1, 3 & 4

196 Article 29 of the Social Insurance Act

197 Article 30

198 Article 31

supervised, or funded in Yemen, or if it is committed by an organized criminal group engaged in criminal activities in more than one country, including Yemen, or if any foreign perpetrator is found inside Yemen.

The draft law addresses the rights of trafficking victims. It stipulates that the consent of the victim to be exploited in a crime of trafficking is of irrelevance. It ensures the rights of the victim to;

- Physical, psychological, and moral integrity;
- Safeguarding their personal sanctity and identity;
- Maintaining the confidentiality of personal information and data;
- Making the victim aware of his legal status and the related administrative, legal and judicial procedures in a language he can understand;
- Listening to the victim and their point of view and interests at all stages of the criminal procedures;
- Access legal assistance;
- Provide them with specialized female officers when conducting investigation related to female victims of trafficking

Finally, the draft law entitles the victim to temporary residence in the state until the victim is totally recovered and the investigation and trial procedures are completed. Article 36 obliges the state, through the Ministry of Foreign Affairs, to coordinate with the competent authorities in other country to facilitate the return of foreign victims to their original countries with giving the due considerations of the victim's safety and security in accordance with the legislation in force and established procedures.

CONCLUSION

Despite the commonalities that the states of the region share, they are different in how they ensure the rights of migrant workers through their labour legislations. This study analyses the legislation and highlights their most prominent provisions. Moreover, it sheds the light on the legal loopholes that violate the rights of migrant labour.

This manual addresses a number of rights and the extent to which it is guaranteed in the national labour legislation, in addition to the provisions (or lack of) that contradict international law. The rights are divided to three groups:

I. EMPLOYMENT CONTRACT, TERMINATION OF CONTRACT, AND WAGES PROTECTION

Country	Employment Contract	Termination of Contract	Wages Protection
Jordan	<p>The law considers forming the contract in the language of the other party.</p> <p>The law does not state the data that ought to be included in the contract.</p> <p>The law does not require that the contract include a probationary period, if one exists.</p>	<p>The law attributes to the worker the right to leave the workplace without giving notice to the employer, while retaining his legal rights and compensation for damages in cases stipulated by law. The law excludes migrant workers from this right.</p>	<p>Wages protection mechanism is weak in comparison with other mechanisms in the region</p>
Emirates	<p>The <i>electronic certification</i> of labour contracts enables the workers to recognize the correct terms of the contract, and the competent authorities to follow up the implementation of such terms.</p> <p>The law provides for a unified employment contract.</p> <p>It is required to include the trial period if it exists, and can be extended for up to 6 months.</p>	<p>The worker has the right to move from one employer to another without being committed for two years or for approval from the employer if the employer breaches his obligations towards the worker that are stipulated in law, or in cases where the employer is the reason for terminating the work relation.</p>	<p>Special electronic system for wages protection</p>
Bahrain	<p>The law requires that the internal regulations of the institutions shall be attached to the contract. It also provides that all the fundamental information shall be included in the contract.</p> <p>The law requires including the trial period in the contract if it exists but it should not exceed three months.</p>	<p>The worker is permitted to terminate the contract before its expiration in cases specified by law.</p>	<p>Not available</p>

Saudi Arabia	It is required to include all the fundamental information in the contract. The contract shall include the trial period in cases where it exists but the trial period cannot exceed ninety days.	The worker is permitted to leave work in the cases specified by law.	Wages Protection System monitors the process of wage disbursement for all workers in the private sector, whether migrant or nationals, for the purpose of establishing a database including up-to-date information about their wages disbursement. It particularly targets information related to meeting the due date and paying the agreed amount.
Oman	It is required to include all fundamental information in the contract. It is also required to include the trial period in the contract if it exists, but the law states the condition of giving notice if either party desires to terminate the contract during trial period.	The worker is permitted to leave the work in the cases specified by law but is required to give notice to the employer.	There is no regulation to protect wages but the law states that the employer will not be discharged from payment of the workers' salary unless the salary is transferred into the account of the worker in one of the locally approved banks.
Qatar	It is permitted to attach translation to the contract in the language of the non-native speaking party, and the contract shall include all the basic information.	The worker is permitted to leave work in cases stated by law.	Qatar has no system or clear mechanism to protect wages but the Qatari Labour Law states that the employer shall not be relieved from his obligation to pay the wage due to the worker unless he has actually transferred it to the bank or the worker or his attorney has signed in acknowledgement of receipt in the register or a receipt prepared for this purpose provided that the said documents shall include the details of the wage.

Kuwait	All the fundamental information should be provided in the Contract. The law allows the translation of the contract into any foreign language, but the rule has to be applied to all further correspondence, regulations, bylaws and circulars issued by the employer.	The law guarantees the right of worker to terminate the work contract without providing notice, and simultaneously receiving the terminal service indemnity in cases specified by law.	Kuwait does not have a special system to protect wages, but the Kuwaiti Labour Law binds the employer to deposit the dues of his workers in accounts opened in financial institutions with a copy of the statement dispatched to the Ministry of Labour and Ministry of Social Affairs. The Ministry of Labour recently passed an electronic monthly wages transfer system (automatic statements) and it now an obligatory system, since the employer cannot make any governmental transactions without a salary certificate.
Lebanon	The worker is permitted to terminate the contract before its expiration in cases specified in law.	The law does not require that the contract shall be in writing.	Not available
Egypt	The fundamental information shall be included in the contract. The law prohibits discrimination in wages because of sex, origin, language, religion or creed.	The worker may terminate the contract if the employer defaults on any of substantial obligations ensured by law, the individual or collective labour contract, or the articles of association of the establishment, or other cases specified by law.	Not available
Yemen	The fundamental information shall be included in the contract. Regarding the employment of collective groups, the Code requires the contract to be discussed by the union committee or representative bodies of the workers, agreed upon and signed at a general meeting of the workers on their behalf.	The worker is permitted to terminate the contract without notifying the employer in the cases specified by law.	Not available

2. SOCIAL SECURITY, MEDICAL INSURANCE, AND OCCUPATIONAL HEALTH AND SAFETY

Country	Social Security	Medical Insurance	Occupational Health and Safety
Jordan	Obligatory for both national and migrant workers according to a special system for social security	Not obligatory	Special system for preventive and therapeutic health and safety
Emirates	Just for nationals	Obligatory only in Abu Dhabi	The employer is obliged to medicate workers in accordance with the prescribed standards of medical care. The law also requires employers who recruit between 50-200 workers to hire a nurse accredited by the Ministry of Health to carry out first aid treatment. Additionally, the employer has to make an official agreement with a doctor to medicate the workers in a place prepared by the employer for such purpose and to provide them with the necessary medicine.
Bahrain	Only for nationals	Not obligatory	The employer shall provide Occupational Safety and Health Measures. He is also committed to providing workers with health care.
Saudi Arabia	Only for nationals	Obligatory to cover the workers and members of their families	The law provides that the employer shall assign one or more physicians to provide, at least once a year, a comprehensive medical examination for his workers who are exposed to any occupational diseases. The findings of the examination shall be kept in the employer's records. The employer also has to provide his workers with preventive and therapeutic healthcare in accordance with the standards set forth by the Minister.

Oman	Only for nationals	Not obligatory	The law compels the employer, before hiring the worker, to acquaint him with the hazards of his occupation and the preventative measures that must be adopted. The employer must take the necessary precautions to protect the workers during work from injury to their health and the dangers from work and the use of machinery.
Qatar	Only for nationals	Not obligatory	The Qatari labour law commits the employer to - on the commencement of every worker's engagement - inform him of the hazards of the work and the hazards which may occur thereafter. The employer shall inform the worker as well of necessary safety measures. The employer shall take all precautionary measures for protecting the workers during work from any injury or disease that may result from employment. The law prohibits burdening the worker with or deducting from his wage any sum in return for his providing these precautionary means.
Kuwait	Only for nationals	Obligatory and not possible to obtain residence permit for the worker without having medical insurance	The Kuwaiti law requires the employer to take the necessary precautionary measures for protecting workers. It obliges the employer to explain to the worker the hazards that he may be exposed to and the necessary protection measures he should take before undertaking his work. He should provide the worker with first aid means and medical services.

Lebanon	The law allows social security for foreign workers but under the condition of reciprocity.	The Decree of Work Emergencies requires the employer conducting insurance contracts with insurance companies to ensure the compensations and medical care provided for in Decree.	The law obliges the institutions that are subject to its provisions to be always clean and committed to the necessary conditions of health and comfort. It also states that the establishment must be equipped in a way that ensures the safety of the workers.
Egypt	Only for nationals	Not obligatory	The law requires the employer to take the necessary precautionary measures for protecting workers. It obliges the employer to explain to the worker the hazards that he may be exposed to and the necessary protection measures he should take before undertaking his work. He should provide the worker with first aid means and medical services.
Yemen	The Yemeni Insurance Law subjects its provisions to all workers, nationals and migrants. Accordingly, insurance based on this law is obligatory.	Not obligatory	The law obliges the workers to provide Occupational Health and Safety Measures.

3. LABOUR COURTS, JOINING UNIONS AND THE VICTIMS OF HUMAN TRAFFICKING RIGHTS

Jordan	Labour Courts	Joining Unions	Victims of Human Trafficking Rights
Jordan	To be formed and commissioned by the minister only for collective labour disputes.	The law allows the migrant workers to join trade unions, but it does not allow them to establish a union. The law ensures the right to strike according to conditions specified by law.	The Anti-Trafficking law does not state any rights for the victims of human trafficking, or the mechanisms that can protect these rights.
Emirates	There are labour courts to consider the disputes resulted from labour relations, whether individual or collective. During the proceedings the worker receives a permit to work in the country until finalizing the case.	Not available	The amended anti-trafficking in person law ensures the rights of the trafficking victims, and it permits the victim to stay in the country until the completion of the legal procedures.
Bahrain	The “Labour Case Administration Office” headed by a judge with the rank of High Civil Court carries out the duties of the labour court.	The law permits joining trade unions to the migrant workers and ensures their right to strike.	Law on ‘Combating Human Trafficking’ provides the rights which should be ensured to the trafficking victims.
Saudi Arabia	The Saudi Labour Law of 2005 addresses the organisation of such committees intended for the settlement of disputes, of which these are divided into the Preliminary Commission for the Settlement of Disputes and the High Commission for the Settlement of Disputes. The state has already started to establish labour courts to replace the commissions. They will be active in the next two years.	Not available	The Anti- Trafficking in Persons Law ensures the rights of trafficking victims.
Oman	The labour courts consider the dispute if it has not proven possible to settle it amicably through the competent authorities in the ministry.	The law allows the migrant worker to join and establish trade unions.	The anti trafficking law provides the fundamental rights of trafficking victims.

Qatar	Not available	<p>It is not available, but the law permits any establishment where thirty or more workers are working to form a joint committee representing the employer and workers. The law identified the tasks of the committee in matters related to the training programmes of the workers; the means of protection from dangers and the improvement of the standards of compliance with the rules of safety and occupational health; the development of the general culture of the workers; the development of the social services in the establishment, and the studying of and endeavours to settle the individual and collective disputes in the establishment.</p>	<p>The Qatari law ensures the rights of trafficking victims.</p>
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Most of the labour legislations in the region **exclude domestic labour from its provisions except the Jordanian law** which passed a special regulation for domestic workers. The **Bahraini labour law** subjects domestic workers to a number of its provisions to provide this category with the minimum protection. Additionally, there is **a special regulation for domestic labour in Oman** for organizing the work of domestic labour. Otherwise, there is **no legal framework in the other countries of the regions** to protect their rights. This makes them **vulnerable to exploitation** and makes their rights easily violated by employers, often leading to them becoming victims in **human trafficking**.

In spite of the fact that the majority of labour laws in the region ensures **the worker's right to resign**, in real-life it has not been proven that the worker really experiences the enjoyment of this right. The employer often exercises the wide powers granted to him by the labour laws and regulations to **exploit the worker and deprive him of his rights** to give notice and change employment. The employer does this by; **not providing the worker with "acquittal" or "clearance"; confiscating the passport of the worker; withholding his wages** or any other means that can be used to force the worker not to resign or change his work.

