



European
University
Institute

Robert Schuman Centre for Advanced Studies

TRAFFICKING IN PERSONS IN JORDAN

Mohamed Olwan

CARIM Analytic and Synthetic Notes 2011/42

**Series on the Fight against Trafficking in Persons and the
Smuggling of Migrants in Legislation**

Legal Module

Co-financed by the European University Institute
and the European Union



CARIM
Euro-Mediterranean Consortium
for Applied Research on International Migration

Analytic and Synthetic Notes – Legal Module
Series on the Fight against Trafficking in Persons
and the Smuggling of Migrants in Legislation

CARIM-AS 2011/42

Mohamed Olwan
Professor, Law department, Middle-East University

Trafficking in Persons in Jordan

© 2011, European University Institute
Robert Schuman Centre for Advanced Studies

This text may be downloaded only for personal research purposes. Any additional reproduction for other purposes, whether in hard copies or electronically, requires the consent of the Robert Schuman Centre for Advanced Studies.

Requests should be addressed to carim@eui.eu

If cited or quoted, reference should be made as follows:

[Full name of the author(s)], [title], CARIM AS [series number], Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute, [year of publication].

THE VIEWS EXPRESSED IN THIS PUBLICATION CANNOT IN ANY CIRCUMSTANCES BE REGARDED AS THE OFFICIAL POSITION OF THE EUROPEAN UNION

European University Institute
Badia Fiesolana
I – 50014 San Domenico di Fiesole (FI)
Italy

<http://www.eui.eu/RSCAS/Publications/>
<http://www.carim.org/Publications/>
<http://cadmus.eui.eu>

CARIM

The Euro-Mediterranean Consortium for Applied Research on International Migration (CARIM) was created at the European University Institute (EUI, Florence), in February 2004 and co-financed by the European Commission, DG AidCo, currently under the Thematic programme for the cooperation with third countries in the areas of migration and asylum.

Within this framework, CARIM aims, in an academic perspective, to observe, analyse, and forecast migration in Southern & Eastern Mediterranean and Sub-Saharan Countries (hereafter Region).

CARIM is composed of a coordinating unit established at the Robert Schuman Centre for Advanced Studies (RSCAS) of the European University Institute (EUI, Florence), and a network of scientific correspondents based in the 17 countries observed by CARIM: Algeria, Chad, Egypt, Israel, Jordan, Lebanon, Libya, Mali, Mauritania, Morocco, Niger, Palestine, Senegal, Sudan, Syria, Tunisia, and Turkey.

All are studied as origin, transit and immigration countries. External experts from the European Union and countries of the Region also contribute to CARIM activities.

CARIM carries out the following activities:

- Mediterranean and Sub-Saharan migration database;
- Research and publications;
- Meetings of academics and between experts and policy makers;
- Migration Summer School;
- Outreach.

The activities of CARIM cover three aspects of international migration in the Region: economic and demographic, legal, and socio-political.

Results of the above activities are made available for public consultation through the website of the project: www.carim.org

For more information:

Euro-Mediterranean Consortium for Applied Research on International Migration
Robert Schuman Centre for Advanced Studies (EUI)

Convento

Via delle Fontanelle 19

50014 San Domenico di Fiesole

Italy

Tel: +39 055 46 85 878

Fax: + 39 055 46 85 755

Email: carim@eui.eu

Robert Schuman Centre for Advanced Studies

<http://www.eui.eu/RSCAS/>

Abstract

The study is designed to offer the reader an outline of Jordan's legal responses to human trafficking. It is divided into five sections: legal framework of human trafficking; child labor and human trafficking; migrant domestic workers and human trafficking; migrant laborers in the qualified industrial zones (Qizs); and finally Jordanian case law. The conclusion then follows these five sections.

Résumé

Cette étude vise à présenter au lecteur les réponses juridiques apportées par la Jordanie à la traite des personnes. Elle est en cinq sections : le cadre juridique de la traite des personnes, le travail des enfants et la traite, les migrants travailleurs domestiques et la traite, les travailleurs migrants dans les zones qualifiées industrielles et enfin la jurisprudence jordanienne. Une conclusion suivra ces cinq sections.

Introduction

Human trafficking, or the modern-day slave trade, has recently become a major topic in Jordan. This study is designed to provide the reader with Jordan's legal responses to this international phenomenon, responses guided by Jordan's international commitments, and most notably, those contained in the UN protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organized crime.

Measures taken by Jordan to eliminate trafficking in persons included ratifying in 2009 the Convention Against Transnational Organized Crime and also the protocol to prevent, suppress and punish trafficking in persons, especially women and children (2001); endorsing the anti-trafficking in persons law no. nine in 2009; extending the labor law to include domestic workers with law forty-eight in 2008, amending the labor law; issuing bylaw ninety, in 2009, governing domestic workers, gardeners, home cooks and persons of similar status; issuing bylaw eighty-nine governing the recruitment agencies of migrant domestic workers; establishing, in May 2006, a new human-trafficking unit within the Public Security Department, which includes inspectors from the directorate of domestic workers in the Ministry of Labor; establishing, in 2009, a department for human trafficking within the Ministry of Justice; investigating, prosecuting, and sentencing trafficking offenses; training up cadres involved in trafficking cases; strengthening inspection programs; and, finally, in 2010, adopting a strategy for the prevention of human trafficking for the years 2010-2012.

Some of these Jordanian responses to counter human trafficking¹ are dealt with in this paper. The paper also tries to shed light on some forms of possible trafficking in the country: abuses and dismal working conditions to which migrant workers, most notably domestic workers, are subjected; child labor practices; and finally the case law on human trafficking. The study is therefore divided into five sections:

- Legal framework of human trafficking
- Child labor and human trafficking
- Migrant domestic workers and human trafficking
- Migrant laborers in the qualified industrial zones (QIZs)
- Jordan Case Law and human trafficking

I. Legal framework

1. Local Legal Framework

Jordan only started to deal with human trafficking very recently. The country is also a party to several international conventions relating to this phenomenon. Trafficking was not prohibited in all its forms before the promulgation of Jordan's anti-human trafficking law 9 in 2009.²

¹ Jordan is not yet party to the protocol against the smuggling of migrants by land, sea, and air supplementing the United Nations Convention against transnational organized crime (2000). Jordan law 24 of 1973 on residence and foreigners' affairs punishes the illegal entry of a person and provides for criminal penalties for acts or attempts to bring unauthorized foreign nationals into Jordan. Corruption of border officials is also criminalized. In 2006, Jordan among other countries neighboring Iraq, signed a protocol of security cooperation in combating terrorism, infiltration, and organized crime including smuggling, human trafficking, and trafficking in body parts.

² Jordan Official Gazette no 4932, p. 920

A. Trafficking related offenses

Slavery is prohibited and was grounds for punishment as far back as 1929. The law combating slavery punished whoever sold or bought a person, whoever convinced any person to come or to leave Trans-Jordan in order to treat him or her as a slave. Jordan penal law sixteen of 1960 does not deal with human trafficking and forced labor crimes as such, but the law punished trafficking-related offenses such as kidnapping, assault, rape, and physical restraint. Trafficking in women and the exploitation of women in prostitution are also crimes punishable under this law.

In May 2010 a temporary criminal law was passed by the cabinet to improve the criminal justice system, and particularly those crimes committed against women and children. Ten articles of the law as amended by provisional law twelve of 2010 are devoted to offenses of incitement to immorality committed against anyone including migrant workers. Article 310 of the law punishes by imprisonment and a fine whoever procures or attempts to procure a woman as a prostitute either within the Kingdom or abroad and any woman leaving the Kingdom with intent to live in or frequent a brothel; the punishment is more severe when these crimes are committed through threats or intimidation (Article 311). The law further establishes penalties for anyone who allows his or her home to be used for the purposes of prostitution and any male person who lives wholly or in part on a woman's earnings from prostitution (Article 315)³

B. Jordan anti human-trafficking Law

The law adopts the most commonly accepted definition of trafficking in persons which is contained in the Palermo Protocol of the UN Convention on Transnational Organized Crime of 2000. According to Article 3 of this law, the crime of human trafficking is defined as follows: 'attracting, transporting, harboring or receipt of persons by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of the lower of or position of vulnerability or of the giving or receiving payments or benefits to achieve the consent of a person having control over other persons.'

There are, therefore, three constituent elements to the offense of human trafficking: the act, means, or method, and the purpose or motivation⁴ as in the Protocol. Human trafficking involves the exploitation of people through an element of force, fraud, and/or coercion. But none of the means set out above needs to be used for the offense of human trafficking to occur if the victim is under eighteen years of age. The law provides that 'attracting, transporting, harboring, or receipt of persons who are under 18 years old with the purpose of exploitation is not associated with a threat of use of force or means enshrined in this Article' (Article 1).

The aim of any exploitation is identical in the two texts: according to the law 'exploiting persons in forced labor or in slavery or servitude, or by the way of removing their body parts, using them in prostitution or any other form of sexual exploitation' in both the protocol and the law. Trafficking requires exploitation, but exploitation itself is not defined. In both the Protocol and the law trafficking is a transnational offence in nature, i.e. it is committed in more than one state, but it can take place within one state too.

As required in article five of the Protocol, Jordanian law criminalizes all forms of trafficking and prescribes penalties of up to ten years and a fine of not less than 3,000 dinars and not more than 20,000 dinars for any of the following:

- Any person who committed any of the crimes of human trafficking of persons who are under eighteen years of age.

³ Committee on the Elimination of Discrimination Against Women, Jordan second periodic report, 26 October 1999, p.17 and Jordan combined third and fourth report. CEDAW/JOR/3-4, 10.3.2006

⁴ Ryszard Protrowicz, "Legal and Judicial services to victims of Human Trafficking," The Arab Initiative for Building National Capacities to Combat Trafficking. Doha, March 2010, p.2

- Any person who committed any of the crimes of human trafficking in the following cases:
 1. If the person who committed the crime has established, organized, or managed an organized criminal group for human trafficking, or joined it, or participated in it.
 2. If the victim includes women or people with disabilities.
 3. If the crime involves exploitation in prostitution, any other form of sexual exploitation, or organ removal.
 4. If the person commits the act by using a weapon or threatening to do so.
 5. If any of the crimes stipulated in the law causes the victim to suffer a chronic, incurable disease.
 6. If the person who commits the crime is the spouse of the victim, or any immediate or distant relatives, or the guardian.
 7. If the person who commits the crime is a public official or assigned a public service and committed the act by abusing his office or public service.
 8. If the crime is transnational in nature (Article nine of the law).

These penalties are prescribed for crimes of human trafficking involving aggravating circumstances. They are sufficiently stringent, but not commensurate with those for other serious crimes, such as rape.⁵ Moreover, in case of crimes of trafficking not involving aggravating circumstances, the penalty is a maximum of three years, but not less than six months or a fine of not less than 1,000 dinars and not more than 5,000 dinars or both penalties (Article eight of the law). The fact is that these penalties do not match the seriousness of the crime.

According to the law, a 'national committee for the prevention of human trafficking is established to prevent trafficking in persons headed by the Minister of Justice' (Article 4).

The tasks of the committee include: the drawing up of a general policy for preventing human trafficking; reviewing legislation related to preventing human trafficking; facilitating the return of victims and those who are harmed by these crimes to their countries or any other country they choose; issuing a national guide and holding conferences and seminars on the prevention of human trafficking; and cooperating with other concerned parties to implement the necessary program of recovery of the victims of human trafficking and supervising and sheltering them in places that are designed for this purpose (Article five).

The law entitles the Council of Ministers to establish or designate one or more homes for sheltering victims and those who are harmed by the crime of human trafficking provided that a regulation, issued for this purpose, specifies principles for entering and leaving the house and that a program of physical, psychological, and social recovery is offered to its residents, its methods of management, and conditions related to its staff (Article one). The shelter is not yet established and the regulations have not yet been adopted.

Moreover, Article ten of the law punishes any person who knows (by virtue of the job that s/he holds) about the existence of a plan to commit a human-trafficking crime involving aggravated circumstances or knew that one of these crimes occurred and did not notify the competent authorities about this, with imprisonment for a period of from six months to three years of prison. Any person who possessed, hid, or disposed of any items, while knowing that it was obtained through one of the crimes stipulated in the law shall be penalized by imprisonment for a period of no more than a year or a fine of not less than 200 dinars and not more than 1,000 dinars or both penalties (Article ten of the law).

The law also punishes a corporate person if it commits a human-trafficking crime with a fine and this does not preclude personal liability for the corporation's representatives. The court may also

⁵ <http://www.state.gov/documents/organization> p.195

decide to stop a corporate person from conducting business completely or partially for a certain period of time if one of the responsible parties or the staff of the relevant corporation commits a crime of human trafficking. Other penalties are also provided for if the corporate person repeats the commission of the said crime (Article eleven).

The trafficking cycle cannot be broken without giving attention to the rights of victims of trafficking, who are generally women and children. The Protocol contains a number of victim-protection measures, but most of these are optional. State parties should protect the privacy of trafficking victims and should ensure that the domestic, legal or administrative system contains measures that provide for victims of trafficking information on relevant courts and administrative proceedings against offenders. Each state party shall also consider implementing measures to provide for the physical, psychological, and social recovery of trafficked victims. The Protocol also provides for appropriate housing and for the compensation of victims of trafficking for damage suffered and measures that permit them to remain in its territory, temporarily or permanently, and measures related to their repatriation (Article six-eight).

The human rights of trafficking victims are sidelined in the law. The law envisioned the establishment of shelters for trafficking victims awaiting repatriation (Article five-seven). However, the authorities have not worked effectively to identify or protect victims, and enforcement policies have reportedly encouraged victims to return home rather than remain in Jordan to pursue legal cases against their traffickers. The law does not ensure protection against the deportation of trafficked victims nor their right to stay lawfully in the country, nor, indeed, their specific rights in a civil action against the perpetrators of the trafficking. Nevertheless, according to the injurious acts of the Jordan Civil Code provisions ‘every injurious act shall render the person who commits it liable for damages even if he is non discerning person’ (Article 256).

Furthermore, foreign nationals do not have a specific right to remain in Jordan because of the risk of being trafficked should they return home. This contradicts the general principle that a state may not oblige a person to return to his or her home state when there are substantial grounds for believing that he or she would be in danger of being subjected to torture. (Article three of the convention against torture or other cruel, inhumane, or degrading treatment or punishment of 1984 to which Jordan is party.) When one considers what might befall a person when being trafficked, including physical, sexual, and psychological harm, it is apparent that human trafficking could easily amount to inhumane, degrading treatment, and even, in some cases, to torture.⁶

The Palermo protocol requires state parties to prevent victims from being subjected to trial, detention, or punishment for entering or staying illegally, or for carrying out activities derived directly from their status as trafficked persons. Jordanian law is less protective of victims of trafficking in this regard. Article twelve of the law stipulates that ‘A. notwithstanding the provisions of any other legislation, the public prosecutor may decide to stop legal procedures against any of the victims or people harmed by crimes of human trafficking stipulated in this law if it is proven that they have committed any of these crimes, participated in them, or incited them provided that this decision is approved by a committee made up of the public prosecution as chairman and two judges of the court of cassation to be selected by its chairman.’

The Jordanian law on trafficking is a first step in the fight against trafficking, but the law does not address the various characteristics of trafficking. Instead, most of its provisions focus on the use of criminal law to fight this offense. Moreover, the law is not consistent with relevant international instruments and standards.

In March 2010 a strategy for the prevention of human trafficking for the years 2010-2012 was launched by the national committee for the prevention of human trafficking. The strategy is based on

⁶ Ryszard Piotrowicz, op.cit, p.9

the three pillars of human trafficking i.e., prevention, protection, and prosecution, in addition to enhancing a culture of transparency and building partnerships locally, regionally, and internationally. The plan includes provisions related to the identification of trafficking victims and support for the same through the setting up of shelters to accommodate them, by issuing work permits or temporary residency until they voluntarily return to their homes or until any other country of their choice agrees to receive them while they pursue a legal case. Other provisions are concerned with the establishment of specialized courts for human-trafficking cases and courtrooms specialized in such cases. The strategy is lacking a timing, monitoring, and evaluation mechanism; so far it is hard to evaluate whether it has been implemented as planned.

Human trafficking is often committed in secret and it is hard to prove; therefore, it requires special training to deal with and to identify the actual victims and/or the perpetrators. Cadres involved in the prevention of this crime i.e., the judiciary, police, labor inspectors, immigration, border officials, workers and employers unions, social workers and non-governmental organizations (NGOs) are not always adequately trained to identify human trafficking cases.

While some NGOs and foreign embassies offer limited protection services for abused domestic workers, employers, recruitment agencies, and the general public are less aware about trafficking. Judges, prosecutors, and police are increasingly trained to detect and reveal the characteristics of trafficking. Additionally, more NGOs have become involved in this issue. Nevertheless, the country is in need of a public awareness campaign on anti-trafficking and on the rights of migrant workers and particularly domestic workers according to national and international legal standards. This campaign should target employers, recruitment agencies, migrant workers, and the general public as well.

2. International Legal Framework

Trafficking in human beings falls within the general prohibition on slavery and forced migration. Jordan is party to international human-rights instruments prohibiting slavery, servitude, and forced labor. The first international treaty to which Jordan became a party was the slavery convention signed in Geneva on 25 September 1926. This convention agreed upon by Jordan in 1959 focuses on the notion of ownership, that a person cannot be brought or sold. This idea of owning a slave is no longer valid; international law admits today that a person may be treated as slave without being owned by somebody else. The convention requires the state parties to undertake, if they have not already, the necessary steps a) to prevent and suppress the slave trade; and b) to bring about, progressively and as rapidly as possible the complete abolition of slavery in all its forms.

Jordan also ratified in 1959 the supplementary Convention on the abolition of slavery, the slave trade, and institutions and practices similar to slavery of 7 September 1956, which goes into considerable detail on institutions that are similar to slavery and that should be abolished.

The Kingdom is also party to the International Covenant on Civil and Political Rights of 1966 having signed up on 28 May 1975. This Covenant prohibits slavery, the slave trade in all forms, and forced or compulsory labor (Article eight). The Covenant outlaws torture, which is one of the detestable practices of enslavement (Article seven). The same treaty recognizes the right of liberty of movement and the right to choose one's residence (Article twelve), both of which are incompatible with slavery. Other provisions of the Covenant recognize the right of everyone to recognition everywhere as a person before the law (Article eleven) and to everyone's entitlement, without any discrimination, to equal protection in the eyes of the law (Article 26).

The country is also party to the Convention on the Elimination of All Forms of Discrimination Against Women 1979 (CEDAW) which requires state parties 'to take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women' (Article six).

It is also party to the Convention on the Rights of the Child (1989) which binds states ‘to take all appropriate national, bilateral, and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or any form’ (Article 35). Jordan is also party to the optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000).

Jordan is also party to the International Convention for the International Labor Organization Convention 29 of 1930, the Forced Labor Convention of 1966, and has been party to Convention 105 of 1957 abolishing forced labor since 1958. The country is also party to the Convention for the Suppression of the Traffic of Persons and of the Exploitation of the Prostitution of Others. This convention requires state parties ‘to punish any person who, to gratify the passion of another: 1) procures, entices or leads away, for purposes of prostitution, another person even with the consent of that person. 2) Exploit the prostitution of another person, even with the consent of that person.’

In the area of International Criminal Law, Jordan has been party to the Rome Statute of the International Criminal Court of 1998 since 2008. The statute characterizes ‘enslavement’ as a crime against humanity falling within the jurisdiction of the court. It also categorizes ‘rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other forms of sexual violence of comparable gravity’ as crimes against humanity [Article seven (1) (2) and (9)].

Jordan’s ratification of the previous international treaties and of most international human-rights treaties reflects the political will of the government to work towards the full implementation of international human–rights standards. Becoming a party to the various human-rights conventions gives respectability, but it does not always create serious obligations in terms of compliance. It is also worth noting that certain rules of international human-rights law are non ‘self-executing’ rules. They might not be applicable internally without local enabling legislation. They, therefore, need incorporation within the Jordanian domestic legal system in order to take effect domestically. The Jordanian constitution is silent on what law takes precedence in the case of discrepancies between the ratified treaties and Jordanian law pertaining to the same subject matter. However, Jordanian courts have consistently ruled in favor of the application of international treaties over Jordanian law. Finally, it should be noted that the Jordanian courts have not yet had the occasion to apply any of the international conventions on human rights to which Jordan is a party.

II. Child Labor and Human Trafficking

Forced labor is not dealt with in Jordanian labor law and it is not defined in the prohibition of human-trafficking law. Nevertheless, Article thirteen of the Jordanian Constitution (1952) prohibits forced or bonded labor, except in a state of emergency such as war or natural disaster.

Another area of concern is child labor in Jordan. Forced or compulsory labor by children is specifically prohibited, but the prohibition of such work falls under the general prohibition of forced labor in Article thirteen of the Jordanian Constitution. Jordan ratified many international conventions related to the child labor: the ILO Convention for the elimination of the worst forms of child labor convention 182 of 1999 and the Convention of the Rights of the Child of 1989 (Article 31).

While Jordanian labor law eight of 1996 does not deal specifically with forced child labor; the law is in harmony with international standards. The minimum age for children to be employed in Jordan is sixteen years old (Article 73); the minimum age for hazardous work is seventeen years of age (Article 74). Children are not allowed to work more than six hours *per* day and they are not allowed to work on weekends, on holidays, or at night (Article 75). The trainee who has reached eighteen years of age concludes the training contract him or herself while the custodian of the trustee of the juvenile (who has reached the age of seventeen) shall act on his behalf.

Article 389 of the Penal Code as amended by provisional penal code twelve in 2010 punishes beggars and whomsoever the beggars work for. There is a lack of data on the extent and magnitude of child prostitution and the trafficking of children for prostitution,⁷ but it seems that the number of child workers in Jordan is high and growing constantly. According to the National Center for Human Rights (NCHR) there were 32,000 children between fifteen and seventeen years old in 2009.⁸ Children between five and seventeen years old work as car mechanics, agricultural laborers, carpenters, sailors, and tailors. There is also a large number of street children working as vendors as well as in garbage collection. All these jobs are dangerous for children and should be classed under the worst forms of child labor.

Many working children are victims of physical, verbal, and sexual abuse in the workplace. Beggary among children in most cases is carried out on behalf of others and in some cases children are forced to beg.⁹

The US State Department's trafficking in persons report of 2010 also referred to reports of Jordanian laborers experiencing conditions of forced labor, and some Jordanian children may be exploited in this manner.¹⁰

The country has children working below the legal age and street children, which may constitute an indicator of the possible forced labor of children. However, there is no indication that Jordan is a destination, origin, or transit country for the commercial sexual exploitation of children.

III. Migrant Domestic Workers Exploitation

There are several reports dealing with the widespread abuse and dismal working conditions among female migrant domestic workers.¹¹ These working conditions which may amount to forced labor include:

1. Illegal withholding by the employer or by the recruitment agencies of domestic workers' passports and identification cards, on the pretext of keeping these documents secure or for fear that the domestic worker will run away. This practice restricts the domestic worker's freedom of movement, because if they leave their employer's house they are considered 'irregular' and this puts them at risk of being arrested and even deported. It is worth noting that law five of 2003 (Article 18) prohibits the withholding of these documents and punishes whoever commits this crime with from six months to three years imprisonment or a fine of from 500 JD to 1,000 JD or both of these penalties; but the Jordanian authorities do nothing to enforce this common practice.
2. Migrant domestic workers are subjected to particular kinds of infringements such as being forced to: perform a job which was not the form of work agreed upon; to work in more than one house or for another employer; to work at irregular times of the day or night. The

⁷ The committee on the right of the Child (CRC), 2006 report.

⁸ NCHR, Sixth Annual Report on the status of human rights in Jordan, 2009, p.83

⁹ NCHR, 2008 Report, p. 69

¹⁰ <http://www.state.gov/documents/organization/1>, p.195

¹¹ See for example, Jordan National Center for Human Rights (NCHR) annual reports; Amnesty International, "isolated and abused women migrant domestic in Jordan denied their rights," 2008. <http://www.amnesty.org/en/library/asset/mde16> accessed on 25.7.2010; Tamkeen Center for Legal and Human Rights, "Doubled Alienation," migrant workers situation in Jordan, 2009. <http://www.tamkeenjo.org>; International Trade Union Confederation (ITUC), internationally recognized core labor standards in Jordan, report for the WTO General Council Review of the trade policies of Jordan (Geneva, 10-12 November 2008), <http://www.ituc.csi.org/IMG/pdf> ; Euro-Mediterranean Human Rights network, Economic and social Rights of Migrants and Refugees in the Euro-Med region, Copenhagen, 2008.

domestic work performed takes on various forms. It includes cleaning, washing clothes, ironing, taking care of elderly or sick family members, babysitting, etc. They often sleep in the kitchen, on the balcony, and sometimes in the bathroom and they are not given a day off. These practices violate the work contract and laws and regulations governing the work of foreign domestic workers.

3. They are sometimes deported by order of the administrative governors on claims by their employers that they engaged in immoral practices or committed crimes such as theft. In case they are accused of theft by their employers, domestic workers are detained in reform and rehabilitation centers (prisons) waiting for their expulsion. The Jordanian law imposes a fine of 1.5 JD for every day the migrant worker fails to renew his or her residency permit. If the employer refuses to pay the fine the domestic worker is held liable and is prevented from leaving the country until all fees and fines are paid. Fortunately, the Prime Minister frequently waives the accumulated overstay fines, as a means of regularization of the situation of migrant workers thus enabling them to leave the country.
4. Migrant domestic workers, like other migrant workers, are exposed to maltreatment and exploitative conditions, including sexual harassment, rape, verbal abuse, beating and the like. The Family Protection Department (FPD), as the competent body for the investigation of such cases before referral to the relevant court, receives many complaints of sexual assault.
5. Sometimes migrant domestic workers are not paid the agreed wages or they are given a wage less than the wage agreed upon in the contract. Although labor law is applicable to domestic workers, these domestic workers are still excluded from the application of the minimum rate of wages which is now 150 JD. Furthermore, wages agreed on before domestic workers come to Jordan are more than the wages they are paid when they arrive. Jordanian labor law permits workers (foreign and Jordanian alike) to be paid both in money and in kind, and employers often overvalue in kind contributions (such as food and living expenses).
6. Social Security Law 19 of 2001 excluded some categories from the scope of its application including agricultural workers and household laborers. Article six of the law made implementation of the securities included in the law dependent on a decision issued by the Ministry Council.
7. Jordanian trade unions have limited influence and migrant workers cannot, in any case, be members. As most workers are foreign, and because Jordanian workers generally work in better conditions, pressure to improve conditions for foreign workers typically comes from international NGOs.
8. Hundreds of domestic workers flee their employer's house for different reasons. The employer tends to report this to the police who then announce the absence publicly. When found or when she goes by herself to the police, she is confined until the employer agrees to give her up for another employer; this is if she refuses to go back to the same employer. The fleeing domestic worker may look for a refuge in her recruitment agency who may return her to her employer or force her to work on a daily or hourly basis. Even when they arrive in Jordan, some of the domestic workers are kept by the recruitment agency and they are hired out to several houses on a daily or an hourly basis.

The respective embassies of domestic workers also provide modest shelters for run-away domestic workers. Some domestic workers are kept by their respective embassies for a long period without these agencies offering solutions to their problems. They may also encounter new kinds of problems from their embassy officials, including forcing them to work in different places while they are kept in the embassy.

It is worth noting that due to growing reports of domestic workers being mistreated and abused, the governments of sending countries such as the Philippines and Indonesia ban their nationals from

working in Jordan from time to time. However, the ban is typically lifted and does not last. The Labor Ministry decided to open new markets for domestic workers.

Domestic labor exploitation and abuse in Jordan, whether it comes from the employer or the recruitment agency, could lead to a form of trafficking in persons, but it does not necessarily amount to this crime. Whether or not a case of exploitation is classified or identified as human trafficking depends on the fulfillment of the three constituent elements of the crime according to its definition in the Palermo Protocol and the Jordanian anti-human trafficking law nine of 2009.

According to the 2010 US Department of State human-trafficking report ‘Jordan is a possible source and transit country for women and men subjected to conditions of forced labor and forced commercial sexual exploitation.’ The report adds that ‘women from Sri Lanka, Indonesia, and the Philippines voluntarily migrate to Jordan for employment as domestic workers; some are subjected to conditions of forced labor after arrival. Most of human trafficking in Jordan takes all form of forced labor of migrant domestic workers who are often sexually exploited as well’.¹²

In order to protect the rights of migrant domestic workers Jordan adopted a new set of rules. Migrant domestic workers are employed through private recruitment agencies that specialize in bringing and employing non-Jordanian domestic workers. Regulations governing recruitment agencies of 2006¹³ were amended by bylaw (89) in 2009. The new bylaw regulates and streamlines the work of migrant domestic workers’ recruitment agencies, takes into account human-rights standards, and aims to improve the working and living conditions of the thousands of regular migrant domestic workers in the country. Article three of the bylaw stipulates that recruitment agencies must be Jordanian limited liability companies with a registered capital of no less than 50,000 Jordanian dinars and with roles limited to acting as middlemen in the recruitment of domestic helpers. A tripartite committee has been formed comprising workers, employers, and the ministry to oversee developments in the sector. Furthermore, the new by law imposes a bank guarantee on recruitment agencies. The purpose of this bank guarantee is to protect the rights of migrants and therefore the MOL can terminate the permit of an employer who fails to fulfill his or her financial obligations towards employees, a measure that formerly required court approval.

The new bylaw imposes stiff penalties on violators and increases the effectiveness of the Labor Ministry’s monitoring and supervision of recruitment agencies. Violations include the recruitment of domestic workers who are younger than the required age, the exploitation of the workers, inhumane treatment of the same, and their illegal transfer to other countries. Following growing complaints against recruitment agencies by domestic helpers and citizens, the Ministry regularly launches inspection campaigns, targeting these agencies. Severe penalties are imposed on those who are found in violation of the law and violators are sometimes referred to the court and face permanent closure.¹⁴

Domestic workers (whether Jordanian or foreign nationals) were not covered by labor law before the issuance of law 48 of 2008 amending the labor law. They were not considered real workers entitled to labor protection and the household¹⁵ was not considered a ‘work place’ and was still largely seen as private domain beyond the reach of regulations and supervision by labor inspectors. They were particularly vulnerable, marginalized, and subjected to exploitation and abuse both by employers and officials alike. On the other hand, social security law 19 of 2001 excluded some categories from the scope of its application, including agricultural workers, and household laborers.

The situation was partially changed in August 2008 when Jordan revised its Labor Law. According to the new law 48, amending Article three of the Kingdom’s Labor Law, migrant domestic workers

¹² <http://www.state.gov/documents/organization/142983.pdf>, p.191

¹³ The Official Gazette, no. 4761, 1.6. 2006, p. 2007.

¹⁴ Jordan Times, 17. 06, 2010.

¹⁵ See <http://www.migrationinformation.org>. September 8, 2007.

would now be covered by the labor law. With this new law, Jordan became the first Arab country to extend protections in its labor law to domestic workers. The new law states that a bylaw will be issued to regulate the contracts, working hours, day off and holidays among other issues relevant to migrant domestic workers.

Bylaw 90 of 2009 governing domestic workers, gardeners, home cooks, and persons of similar status, entitles domestic workers to religious freedom, health care, ten house work days, one day off per week, and an annual vacation of fourteen days. The bylaw stipulates that employers are required to pay for their domestic helpers' work permit and residency permit. Domestic workers are entitled to be in contact with their families in their homeland at least once a month at the employer's expense, as well as decent living conditions. According to the new bylaw, the employer is prohibited from taking a domestic worker abroad without her consent and without informing the workers' embassy. But it also required the worker to obtain the employer's permission if he or she wants to leave the house. If implemented, this is an important step towards protecting migrant domestic workers from the dangers of human trafficking.

According to Article three of the bylaw, a special working contract prepared by the MOL governs the relations between migrant domestic workers and their employers. The contract is written in Arabic and in a language understood by the domestic worker and each of the employers, the domestic workers themselves, the Ministry and the recruitment agency retains a copy of the contract. The contract ensures a minimum of rights and working conditions for migrant domestic workers, but it remains silent on matters such as maximum working hours, overtime pay, right to privacy, and freedom of mobility.¹⁶

MOL inspectors may request a meeting with the employers and migrant domestic workers if it receives complaints regarding human-rights abuses. The MOL will attempt to reach an amicable settlement and it may, with the permission of the employer, visit the household. If the employer refuses to grant permission for the MOL inspector visit, the Ministry will have to take appropriate measures (Article eleven). It is unclear what will happen to the employer if s/he has committed human-rights abuses.

It is yet unclear to what extent these measures have been enforced. The reality is that migrant workers are still vulnerable to exploitation and abuse.

IV. Migrant Laborers in the Qualified Industrial Zones (QIZs) and Human Trafficking

Jordan's QIZs were established in 1997 and migrant workers at these sites are mainly from China, Bangladesh, India, Sri Lanka and Vietnam.¹⁷ Work conditions at the QIZs are generally below acceptable standards, and the National Center for Human Rights (NCHR) documents human-rights violations there in its annual reports.¹⁸ Moreover, in May 2006, a report by the US National Labor Committee (NLC) severely criticized violations of the rights of foreign workers in the QIZs. The report claimed that tens of thousands of foreign laborers working in the zones had been trapped into involuntary servitude and human trafficking and noted that several US companies were implicated.¹⁹ In its report at the end of 2006, the NLC noted that there had been 'substantial improvement' since the publication of its first report, but that problems still remained in some factories in the QIZ.²⁰ In its human-trafficking report the US Department of State indicated that some foreign workers in the QIZs (both men and women) have come across forced labor conditions. The report adds that forced labor in

¹⁶ ILO, International Migration Program at <http://www.ilo.org>, 18. 7. 2010.

¹⁷ See the author's "Gender and Migration," www.carim.org

¹⁸ See for example, NCHR Status Report of Human Rights, 2009, p. 83

¹⁹ See <http://www.nlcnet.org/article.php?id=810>

²⁰ See <http://www.nlcnet.org/article.php?id=214> 8.9.2007

the QIZs was only punished with administrative penalties in the form of fees and with factories being shut down by the government.²¹

To ensure the compliance of the law, bylaws and regulations, the regulations governing the employment of non-Jordanian workers at the QIZs²² require the prospective employer to provide a banking guarantee ranging of between 3,000 JD and 75,000 JD. The regulation exempts the employers on the 'golden list' of QIZs, i.e. factories in compliance with Jordanian law and international labor standards, from the banking guarantees. A work permit is not given unless the embassy of the prospective workers certifies that the workers are employed through an authorized recruitment agency of that country.

The MOL often launches inspection campaigns targeting the QIZs. These campaigns aim to ensure that QIZ employers are providing workers with adequate housing, food, and work environment as well as meeting national occupational and health-safety standards. Factories found in contravention of the law are exposed to penalties and even the closure of the factory.

Jordanian courts examined about eight law suits filed by the workers in the QIZs against their employers and a recent ruling by a court in Irbid banned some owners of the companies from leaving the country and ordered the selling of a factory's machinery to compensate its workers.²³

V. National Case Law and Human Trafficking

There is a general lack of information on the prosecution of cases of trafficking in the criminal legal system in Jordan, including the number of complaints, investigations, prosecutions, and convictions of perpetrators of trafficking. It is difficult to estimate the true extent of the crime of trafficking in persons since it occurs clandestinely. The reluctance of victims of trafficking to report contributes to the lack of accurate information on this crime.

Until 1996 there had not been a single case where a person had been prosecuted for the crime of human trafficking or forced labor. Due to the absence of a specific trafficking crime in the penal code, traffickers were charged and prosecuted under a variety of offenses including abuses, indecent and sexual assault and prostitution-related offenses.

In 1996, the Court of Cassation, based on the slavery annulment law of 1929, approved the conviction by the criminal court of the honorary consul of Sri Lanka on the crime of transferring a newborn of a Sri Lankan domestic worker to a Dutch family for 8,000 American dollars. The consul was sentenced to three years imprisonment.²⁴

The law of the use of human body parts no. 23 of 1977 (Article 4/2) forbids the sale of human-body parts whether for medical treatment or research or for any other purpose. According to article ten of the law whoever sells his organ either in Jordan or abroad faces up to one year in prison and a fine of up to 10,000 JD or one of these two penalties.

The Amman Appeals Court has applied these provisions on several occasions, both before and after the entry into force of the new anti-trafficking in persons law.²⁵

Traffickers of human-body organs were considered accomplices to a crime of sale of human-body parts and they were sentenced according to article 80 of the penal law governing complicity and the

²¹ See www.state.gov/g/tip/rls/tiprpt/2010; p. 192

²² Official Gazette no 4761, June 2006, p. 2039

²³ The Jordan Times, 26.7.2007

²⁴ Case no 6333/98

²⁵ Case no 1902/2009; 1491/2009; 1761/2005; 2624/2005; 283/2006; 605/2006; 555/2007

law on the use of the human body. Several cases were brought before Amman's First Instance Criminal Court related to persons inducing or trying to induce another person to commit this crime.

Although the sale of human body parts is illegal, the sellers are getting around this prohibition. Hundreds of Jordanians living in absolute poverty are increasingly entering into transactions to sell their body organs, particularly kidneys. Operations to remove the kidneys used to take place in Iraq before the 2003 US-led invasion, then, afterwards, Egypt became the preferred destination for such operations.

In 2007 Jordan created a National Commission to promote organ donations in a bid to end this flourishing illegal market and to encourage people to donate their organs. The country is working on a draft law that would criminalize physicians who perform illegal transplants inside and outside Jordan, where they could be judged *in absentia* in Jordan.²⁶

Since the new law came into force in 2009, there has been a gradual increase in the use of the law to investigate, prosecute, and sentence human-trafficking offenses. Jordan's public prosecutor suspected several people of committing the crime of human trafficking, but these cases have not yet been referred to the first instance criminal court.²⁷ In one case the public prosecutor found that the accused was not an accomplice in human trafficking according to the anti-slavery law of 2009.²⁸

Amman's first instance criminal court had the occasion to apply the anti-human trafficking law on a couple of occasions.²⁹

There has not been a single case where a factory or an employer has been prosecuted for the crime of human trafficking, nor for the gross violations of migrant workers' rights. However, the police and the public prosecutor are investigating charges of trafficking in migrant workers of different nationalities brought against recruitment agencies. The type of charges reported by the police may subsequently change by the time of conviction.

The right to access justice is constitutionally recognized in Jordan and migrant workers can certainly report complaints to governmental officials or demand their rights. However, it is very difficult for a domestic worker to prove the abuses since most of them occurred in private houses or at recruitment agencies.³⁰ Migrant workers are willing to make many sacrifices to stay in Jordan. Moreover, the migrant worker who has no residence permit fears complaining to the police because s/he might be arrested and even deported. Migrant workers need to be informed about their rights and the mechanisms for access to justice in the host country.

Conclusion

With the enactment of the anti-human trafficking law in 2008, Jordan can be judged as a country determined to prevent human trafficking and to protect its victims. Jordan should ensure the implementation of this main law on trafficking together with other laws combating trafficking such as passport law fifteen, labor law, and penal law.

²⁶ <http://www.camera.org/index.asp-context=68x-article=1774> (accessed on 5.9.2010); <http://www.blastmagazine.com/the.blog/terra/2009/10/organ-trafficking-injordan> (accessed on 4.9.2010); <http://www.france.24.com/en/note/49063-25> (accessed on 5.9.2010); <http://ammannews.net> (accessed on 26.5.2010).

²⁷ Cases no 5167/2009; 5981/2009; 5070/2010

²⁸ Case no 4806/2008

²⁹ Cases no 1491/2009; 780/2009

³⁰ <http://www.n.cnet.org/article.php?id=241>; ammannews.net (accessed on 17.7.2010); the Arabic newspaper Addustour 21.6.2010; <http://www.sarayanews.com> (accessed in 12.8.2010)

However, the means of enforcing the law remains insufficient. Jordan should ensure adequate conditions for the possible victims of trafficking to exercise their right to make complaints and so that all employers and representatives of recruitment agencies who abuse migrant domestic workers are brought to justice and punished with appropriate penalties. There is also still a great need for a general social awareness campaign to address the exploitative practices against migrant domestic workers which may amount to forced labor and trafficking in persons.