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IRREGULAR MIGRATION IN JORDAN— A POLICY OF NO POLICY

Mohamed Y. Olwan

CARIM Analytic and Synthetic Notes 2008/60

Irregular Migration Series

Legal Module

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of immigrants, migration, and the movement
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CARIM
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This publication is part of a series of papers on the theme of Irregular Migration written in the framework of the CARIM project and presented at a meeting organised by CARIM in Florence: "Irregular Migration into and through Southern and Eastern Mediterranean Countries" (6 - 8 July 2008).

These papers will also be discussed in another meeting between Policy Makers and Experts on the same topic (25 - 27 January 2009). The results of these discussions will be published separately. The entire set of papers on Irregular Migration are available at the following address: <http://www.carim.org/ql/IrregularMigration>.

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CARIM

The Euro-Mediterranean Consortium for Applied Research on International Migration (CARIM) was created in February 2004 and has been financed by the European Commission. Until January 2007, it referred to part C - *“cooperation related to the social integration of immigrants issue, migration and free circulation of persons”* of the MEDA programme, i.e. the main financial instrument of the European Union to establish the Euro-Mediterranean Partnership. Since February 2007, CARIM has been funded as part of the AENEAS programme for technical and financial assistance to third countries in the areas of migration and asylum. The latter programme establishes a link between the external objectives of the European Union’s migration policy and its development policy. AENEAS aims at providing third countries with the assistance necessary to achieve, at different levels, a better management of migrant flows.

Within this framework, CARIM aims, in an academic perspective, to observe, analyse, and predict migration in the North African and the Eastern Mediterranean Region (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 12 countries observed by CARIM: Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine, Syria, Tunisia, Turkey and, since February 2007, also Libya and Mauritania. 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.

The CARIM carries out the following activities:

- Mediterranean migration database;
- Research and publications;
- Meetings of academics;
- Meetings between experts and policy makers;
- Early warning system.

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

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Abstract

The focus of this study is the legal framework on irregular migration, in Jordan, which is at once a destination country, a country of origin and a country of transit for irregular migrants. This complex and controversial issue poses real concerns for Jordan, but has not yet been addressed effectively or efficiently either by Jordanian policy or in academic literature. Consequently, this study relies principally on the few legal texts pertaining to the topic, on the Ministry of Labor and on the Ministry of the Interior's positions, and on information found in the Jordanian media. The study has four main sections: the first deals with Jordanian national law and the question of when a person is considered an irregular migrant; while the other three sections explore the way that the Jordanian public authorities deal with irregularity in practice. Finally, in the conclusion, we suggest ways in which the legal standing of irregular migrants in Jordan could be improved.

Résumé

Cette contribution analyse le régime juridique applicable aux migrants en situation irrégulière, en Jordanie, pays à la fois de destination, d'origine et de transit. La migration irrégulière est un phénomène complexe et controversé qui affecte la Jordanie mais à l'égard duquel l'auteur constate un manque de réflexion académique approfondie et de développement de politiques publiques efficaces. Les sources de nos réflexions sont donc essentiellement l'étude des textes légaux, les positions des Ministère de l'Intérieur et du Travail ainsi que les informations fournies par les médias. Elle ont été articulées en quatre sections, la première est relative aux textes jordaniens et à la notion de migrant irrégulier alors que les trois autres sections sont relatives à la pratique des autorités jordaniennes qui gèrent les situations d'irrégularité. Enfin, diverses suggestions en vue d'améliorer le sort des migrants en situation irrégulière sont formulées.

1. Jordanian Legal Framework pertaining to borders' control

The right of the state to regulate, admit or deny the entry of aliens in its territory or any subsequent stay is an attribute of the sovereignty of the state. But, like other rights, it is limited by International Law. Non-citizen migrants, including irregular ones, are entitled to the protection provided by several United Nations legal instruments dealing directly or indirectly with migration: the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the International Convention on the Elimination of All forms of Discrimination against Women (1979) and the Convention on the Rights of the Child (1989). There are also other international treaties that deal more squarely with international migration: the Refugees Convention (1951), Refugees Protocol (1967), Migrant Workers and Members of their Families (1989), Migrant Smuggling (2000) and Human Trafficking (2000). Jordan is a party to all these international human-rights instruments and international instruments with respect to the fight against international crimes, with the exception of the specific international conventions regarding the rights of aliens, whether they be refugees or economic migrants, i.e. the 1951 Refugee Convention and its 1967 Protocol, the 1990 Convention of Migrant Workers and Members of their Families, and the 2000 Migrant Smuggling Protocol.¹

Jordanian policy towards the movement of persons across its borders is formulated in the law on Residence and Foreign Nationals' Affairs (Law 24-1973) and its amendments, which stipulate the conditions under which a foreign national enters, resides in, and departs from the Kingdom.²

1.1. Entry

As in all states, a foreign national can only be granted entry if he is in possession of a valid passport or travel document and an entry visa endorsed by a Jordanian diplomatic or consular representative. In some cases, the requirement for a visa is substituted by an entry permit. Indeed, the Ministry of Interior may exempt any foreign national from the requirement of obtaining a visa or bearing a passport on entering the Kingdom (Article 4). Entry to the country should be via Jordanian borders and crossing points, but may occur elsewhere due to *force majeure* (Article 5 and 6 of the law). The visas by-law no.3 of 1997 specifies the types of visas, their duration, conditions and procedures for granting them, exemptions from visa requirements, visas fees and exemption from such fees. A foreign national staying or wishing to stay in the country must obtain a residence permit and shall leave the territory of the Kingdom upon expiry of this permit unless it is renewed (Article 18 of the law). In Article 19, the law gives the Minister an absolute power to grant or refuse an application for a residence permit or to cancel a residence permit already granted to a foreign national and order him or her to leave the Kingdom without specifying the reasons behind the minister's decision.

1.2. Employment

Jordan applies strict rules to the admission of aliens for purposes of employment because of the socio-economic conditions prevailing in the country. The country reserves for its own local labor force

¹ Jordan deposited its application to the Palermo Protocol on the Prevention, Suppression, and Punishment of Human Trafficking on 14th March 2007. The prospect of Jordan adhering to the 1990 international convention on the protection of the rights of all migrant workers and members of their families is being thoroughly considered by government officials at present. The National Centre for Human Rights (NCHR), Fourth Annual Report: The Situation of Human Rights in the Hashemite Kingdom of Jordan (2007), p. 74.

² The law is available under the Jordan national page on the CARIM webpage, www.carim.org.

certain categories of employment, which involve the exercise of public functions or occupations connected with security and defense.³ This situation is permissible under international human-rights law, which reserves political rights, including access to public service, for citizens.⁴ The same is true for the “free professions”, for example lawyers, doctors, dentists, engineers etc....

According to the above-mentioned law, a foreigner may not be employed unless he or she has a permit to reside in the Kingdom, but here too the requirement may be waived in certain cases (Article 16). A company or employer employing foreign nationals not holding a residence permit is liable to a fine, but exemptions are also possible.

The employment of non-Jordanians is also governed by Article (12) of the labor law, according to which any recruitment of non-Jordanians requires the approval of the Ministry of Labor (MOL). This approval depends on the lack of relevant experience and ability among Jordanian workers. The employer of non-Jordanian workers must obtain a one-year renewable work permit from the MOL prior to recruitment. The Article also states that the employer will be penalized with a minimum fine of JD50 and not more than JD100 (JD100 to JD150 according to the 2006 amendment) for every month or part thereof that a non-Jordanian worker has been working in a manner violating the provisions of the law. Furthermore, the employer will be barred from hiring foreign workers in the future. The worker who is in violation of the law shall be deported at the expense of the employer and the worker is not permitted to return to Jordan for three years after deportation.

1.3. Sanctions: Expulsions of Foreign Nationals

Foreign nationals may be detained and expelled if they enter the country illegally or if they are convicted of serious crimes while in the country. The decision to expel can also be taken for security reasons. Furthermore, a foreign national entering the country lawfully, who fails to obtain a temporary-residence permit, is liable to a fine; though exemptions are possible. The Minister of the Interior may order the expulsion of a foreign national, or the minister may also order the temporary suspension of expulsion procedures in respect of a foreign national whose expulsion has been decided. A foreign national who has been expelled will be authorized to return to the Kingdom only by special permission of the Minister and after a period, which can be as long as five years (Article 37).

The absolute power of the Jordanian Ministry of Interior to deport foreigners without explanation has negative effects on a large number of Jordanian families. For instance, the deportation of foreign nationals who are married to Jordanian women has touched the lives of their Jordanian spouses and children. The foreign wives of Jordanian citizens are also sometimes denied the annual residence permit in the country.⁵

In 2005, about 24,000 migrant workers and foreign nationals of various nationalities who had overstayed their visas were deported, but in 2006 and in 2007 this figure decreased to respectively 10,625 and 5,545 foreigners.⁶ One of the reasons, which explains this dramatic decrease, is the fact that many more Iraqis were expelled, in 2005, immediately after the terrorist bombings of three hotels in Amman by Iraqi militias. It should be noted that administrative deportation procedures are slow and a fine must be levied on any foreign national that exceeds the term of his/her residence permit and the deportation order will be executed only after this fee has been paid or if the Ministry of the Interior

³ Article 43 of the By – law on civil services no (3) of 2007.

⁴ See Article 25 of the International Covenant on Civil and Political Rights (1966).

⁵ UNCHR, The status of Human Rights, 2005, p.22.

⁶ These figures were provided by officials of the Ministry of the Interior to the NCHR Director of the Unit for Correction and Rehabilitation in the Center on August 2nd, 2008. (Personal communication with the Director).

issues an order exempting the violators from payment. Otherwise, the violators are detained by the administrative governors until a decision is issued regarding the canceling or the paying of the fines. This process sometimes takes several months, which constitutes a flagrant infringement upon personal liberties.⁷ A decision of the Administrative Governor to deport foreign nationals is sometimes taken without giving deportee the chance to defend themselves or a grace period to allow them to settle their financial and social affairs. This, in turn, constitutes a violation of the right to a fair trial.

Expulsion or deportation decisions are administrative decisions and as such they are subject to judicial review before the High Court of Justice in accordance with Law 19 of 1992. But it is unfortunate that few deportees demand this right and that law-suits against decisions of the Ministry of the Interior in matters relating to residency before the High Court of Justice have proved, as with citizenship, to be of no use, because of the absolute power vested in the Ministry of the Interior to deport any foreigner without explaining the reasons behind the decision.⁸

The following sections explore the various categories of irregular migrant groups in Jordan and ask how the Jordanian authorities deal with this phenomenon. In most of these cases, foreign nationals enter legally, but become irregular migrants because they stay in the country beyond the period permitted by their visa or take up employment without authorization.

2. Categories of Irregular Migrants in Jordan

Irregular migrants are of several distinct categories: migrant workers, asylum seekers and refugees, victims of human trafficking, and children.

2.1. Migrant Workers

Jordan was among the 20 countries with the largest number of migrants in the world (2.2million) in 2005, and a recent labor study has revealed that over half the new jobs created annually in Jordan are being filled by foreign workers. The same study adds that Jordan is producing around 55,000 jobs per year and 53 per cent of these jobs are going to non-Jordanians, the majority of whom are Egyptians. The number of foreign workers in Jordan is more than 300,000 and the labor market⁹ is an open one where employers can easily meet their employment needs by hiring foreign workers. Labor Ministry figures estimate that around 450,000 foreign nationals are currently working in the country, of which around 300,000 are Arabs, mainly Egyptians.¹⁰

2.1.1. Egyptians Working in Jordan

According to the Ministry of Labor's latest figures, the legal Egyptian work force in Jordan is estimated at 223,690 out of a total of 317,231 foreign workers. This means that around 71% of the non-Jordanian working population is Egyptian.¹¹ The Department of Statistics confirms that the number of Egyptian workers holding work permits is around 226,000. It further estimates, however,

⁷ UNCHR, The status of Human Rights, 2006, p.31.

⁸ N. ELKATIB, The General principles of the High Court of Justice – between 1972-1997, Amman, Daralthaqafa, p.12, 17, 330.

⁹ The Jordan Times, January 6, 2008.

¹⁰ The Jordan Times, June 11, 2008.

¹¹ Alarabalyoum daily newspaper, November 3rd, 2007; Al Rai, daily newspaper, June 17th, 2008.

that the number of expatriate workers who do not hold work permits may be between 100,000 and 150,000 male and female workers, presumably most of whom are Egyptians. In view of the increase in the number of Egyptian workers in Jordan, particularly those arriving illegitimately, and the negative effects, problems and contraventions arising there from, the Ministry of Labor signed a memorandum of understanding with its Egyptian counterpart, the Ministry of Labor Force and Immigration. Starting from March 2007, the entry of Egyptian laborers to Jordan has been regulated by this memorandum.¹² And since that time, hundreds of thousands of Egyptian workers have electronically submitted job applications at their Labor Force Ministry.¹³

The MOL used to give irregular Egyptian migrants who were already in the country a grace period to regularize their stay (i.e. to become legal in accordance with the labor and residency law.). During these periods of status correction the MOL, in coordination with the Ministry of the Interior, stopped tracking and prosecuting irregular migrant workers. Instead, its role was limited to guiding and urging them to correct their status either by obtaining new permits or by switching to vocations in which they were authorized to work.

During these grace periods thousands of work permits were issued to those who were able to regularize their residency in the country. For those who were unable to rectify their status during the grace period, another legal road to the Jordanian labor market was through sponsorship by the Egyptian Embassy.¹⁴

The last grace period ended in mid-July 2007 and following on from this labor inspectors, in cooperation with the Ministry of Interior and the Public Security Department, launched an inspection campaign to ensure that workers and employers were abiding by labor and residency laws. The inspection teams are not entitled to question foreign workers outside the work place and the focus of their inspection was working areas with large numbers of foreign workers.¹⁵ Workers who do not have valid residency and/or work permits are placed in custody, pending deportation. The decision to deport or not is left up to the MOL if the worker is violating labor law. If, instead, the violation is related to residency law, the decision is taken by the administrative governor. Around 80 per cent of apprehended workers were found to be in violation of the labor law, and 20 per cent were not respecting the Residency Law.¹⁶

During the said campaign around 6,500 illegal foreign laborers (i.e. workers found in violation of labor and residency laws) were held in the detention centers of the public security departments, awaiting deportation to their home countries. Around 2,000 illegal foreign workers were deported, 80 percent were Egyptians, 15 per cent were Syrians while the remaining five per cent were of other nationalities.¹⁷

The Jordanian policy of undertaking spot checks to detect irregular foreign workers resulted in a decline in their numbers; but it is unfortunate that the conditions of detention for the apprehended often violated basic human rights. Nevertheless, it should also be said that detention does not necessarily lead to deportation. A follow-up committee set up by the MOL deals with complaints filed by workers against the inspection teams, pays regular visit to detention centers, and interviews workers in custody to check on their conditions and any claims of mistreatment. Decisions relating to

¹² The Memorandum is available on the Jordan national page of the CARIM web page www.carim.org.

¹³ The MOL's Website www.mol.gov.jo.

¹⁴ This grace period was to have ended July 31st, 2008. See Al-Arab al-Yawm, 15th July 2008.

¹⁵ The Jordan Times, December, 4th, 2007.

¹⁶ The Jordan Times, December 4th, 2008.

¹⁷ Al Rai Daily, Arabic Newspaper, September 3rd, 2007, The Jordan Times, November 16th, 2007 and December 4th 2007.

the detention and deportation of irregular foreign workers can be reversed for humanitarian reasons by this administrative commission. These cases include those of foreign workers married to Jordanians, patients undergoing hospital treatment, and illegal workers who have children enrolled in Jordanian schools¹⁸. There is no possibility of challenging the detention order before a Court, and compensation in the event of unlawful detention is not available.

In exercising her sovereign right to regulate the movement of persons across her borders, Jordan, as all states, should bear in mind that the country's national law is not exclusive. The Covenant on Civil and Political Rights to which Jordan is a party determines the conditions under which a state may order the expulsion or deportation of an alien and the minimum safeguards to be observed. The power of expulsion or deportation must be regarded as an extraordinary power to be exercised only in exceptional circumstances. In particular, in exercising the right to expel or deport, a State must observe the requirements of due process, the power of expulsion or deportation has to be exercised reasonably, not arbitrarily, and discretion should not be abused. Article 13 of the Covenant provides: "An Alien lawfully in a territory of a state party to the present covenant may be expelled, therefore, only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before the competent authority or a person or persons especially designated by the competent authority".

A similar and even more detailed provision is contained in an international instrument of particular relevance for irregular migration, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1989) to which Jordan is still not a party¹⁹.

Finally, it is worth noting that a new instruction, to have been implemented August 1st, 2008, has been issued requiring that Egyptian workers who want to leave the country obtain a statement from their employer certifying that the worker has no outstanding contractual obligations.²⁰ Furthermore, according to this new instruction, if they intend to return to Jordan they must stay outside the country no more than three months.²¹

2.1.2. *Irregular domestic workers*

Domestic laborers constitute a large part of the foreign labor force in Jordan and the overwhelming majority of women who migrate to Jordan are engaged in domestic work. The estimated number of domestic workers that Jordan hosts stands at 70,000, predominantly from Indonesia (30,000), Sri Lanka (25,000) and the Philippines (15,000)²². These numbers are increasing dramatically because more and more Jordanian families are willing to employ a foreign helper and this notwithstanding the difficult economic situation that the country is presently facing. An increasing demand for domestic workers explains the Ministry of Labor's decision to explore new markets for these workers. The ministerial decision also came after the Philippines' decision not to approve additional work contracts for its citizens in Jordan.²³

¹⁸ The Jordan Times September 17th, 2007, December 4th, 2007.

¹⁹ Article 22 of the Convention.

²⁰ Al-Arab al-Yawm, 19 June 2008.

²¹ Al-Arab al-Yawm, 15th July 2008. [the computer will not me access note 21 to write 19th June]

²² The Jordan Times, January 24th, 2008.

²³ The Jordan Times, January, 31st 2008.

The Philippine decision came at the end of 2007, when 260 Filipino domestic helpers have sought refuge at their embassy

Public reporting on the domestic-work sector has alleged that Jordan is not experiencing high levels of irregular migration: in fact, it has been estimated that only 615 domestic workers are working illegally in the country²⁴. However, figures at the Association of Recruitment Agencies on non-Jordanian domestic workers, established in 2003 in accordance with a resolution issued by the Minister of Labor, suggest, more reliably, that there are around 75,000 domestic workers, including about 25,000 who do not hold work or residence permits.²⁵

Jordanian labor law has typically failed to cover domestic workers. However, the labor law was amended in July 2008 in order to take in this category. Domestic laborers' rights are, therefore, now violated in the same way as foreign workers. They are sometimes deported by order of the administrative governor on the basis of a claim by their employers that they are engaged in immoral practices or that they have committed such crimes as theft²⁶. The irregular domestic workers may be detained in the correction and rehabilitation centers until a decision of deportation is issued. At that point, they may be further detained for up to several months, pending the completion of deportation procedures. The number of irregular domestic workers in administrative detention on July 30th, 2008 was 27; some had been detained since 2007.²⁷

To avoid deportation orders, it is reported that an Indonesian domestic helper killed her newborn baby in December 2007. The defendant was married before she came to Jordan, in March 2007, and she was pregnant. The woman did not declare her pregnancy or that she was married because Jordanian authorities would have refused to give her a residency and work permit. The criminal Court sentenced her to seven and a half years prison after convicting her of the killing²⁸.

Domestic work is generally not regulated and the terms and conditions of work are governed by a two-year contract between the domestic workers and their employers. The employers pay the residency and work permit fees to the government in addition to the fees required by the private employment agencies through which foreign domestic workers are recruited. The MOL endorses these contracts in order for them to become legal and effective. Furthermore, the approval of the embassies of sending countries in Jordan is sometimes needed for the endorsement of the contract. Currently, only workers from the Philippines can come to work in the kingdom without the permission of the national embassy in Jordan. For Sri Lankan and Indonesian helpers, permission from the national embassy remains mandatory and the two countries still retain the right to prevent their citizens from leaving the country of origin without embassy endorsement²⁹.

The government is still studying new instructions governing the recruitment of domestic workers. Under the new regulations, it is expected that the Minister would be empowered to revoke the license of the recruitment agencies that commit human-rights violations. Employers who keep clean records

(Contd.) _____

over allegations of abuse by some employers, refusing to go back to work and asking to be sent home. 185 of them went back home at the expense of the Philippine embassy in Jordan. See The Jordan Times, February 22nd, 2008. Meanwhile the Philippine government has decided to resume sending Philippino domestic helpers to the kingdom. See Jordan Times April 16th, 2008; May 1st 2008.

²⁴ Al Rai, Newspaper, February 2nd, 2008.

²⁵ UNCHR, Fourth Annual Report (2007), p. 65.

²⁶ M. Y. OLWAN, "Circular and Permanent Migration: A Jordanian Perspective", CARIM 34, Robert Schuman Centre for Advanced studies, San Domenico di Fiesole (FI): European University Institute, 2008.

²⁷ These figures were provided by officials of the Ministry of Interior to the UNCHR Director of the Unit for Correction and Rehabilitation in the Center on August 2nd, 2008. (Personal communication with the Director).

²⁸ The Jordan Times, May 25th, 2008.

²⁹ The Jordan Times, January 6th, 2008, January 24th, 2008.

would qualify for several incentives, such as exemption from the notary guarantee³⁰.

2.1.3. *Irregular Foreign Laborers in Qualified Industrial Zones (QIZs)*

Qualified Industrial Zones (QIZs) were founded following an agreement between Jordan and the U.S.A., signed in 1997. Currently there are ten QIZs in the country and altogether they provide jobs for around 36,160 foreign laborers and 18,510 Jordanians.³¹ The employment of foreign workers at the QIZs is governed by a regulation issued on June 1st, 2006³².

Foreign workers in the QIZs are recruited through the Jordan Investment Board, established by the Investment Law of 2003 and the Investment Promotion Law of 1995. The employer has to submit an application to this government body, a body that enjoys both financial and administrative independence, and a delegate of the MOL decides whether to grant approval or not. This approval entitles non-Jordanians to a work permit³³, which certifies that the worker is employed by an authorized recruitment agency of his/her country³³.

In July 2007, the MOL started issuing cards to around 6,000 Asian workers employed in the QIZs whose work and residency permits had expired as the first step to regularization³⁴. The ID cards give workers a three-month period to renew their documents. This grace period has been renewed several times since then and the last one was to end on July 2nd, 2008³⁵. During these periods card holders would not be pursued by labor inspection teams or the police force. Furthermore, the QIZs workers, who are able to rectify their work status, are exempted from accumulated residency and work permit fees. The waiver, which has potentially cost Jordan 7.5 million Dinars, was decided on by the Cabinet on March 3rd, 2008.³⁶

The Ministry announced that it would launch, on the July 3rd of this year (2008), an inspection campaign on the QIZs to ensure employers and workers are abiding by the Ministry's regulations. Any company found employing foreign workers without valid work and residence permits would face penalties that include temporary closure, while illegal workers may be expatriated³⁷.

The reason behind the expiry of work and residency permits is attributable not always to the workers, but also to plant owners, who brought the workers into the Kingdom and who have gone bankrupt and have left the country without paying their workers' wages³⁸. As a result, workers who are recruited by these companies failed to renew their residence and work permits. In some other cases the plants did not complete the legal procedures for workers to obtain work and residence permits, thus putting them at risk of deportation. The Courts examined about eight lawsuits filed by the workers against their employers and a recent ruling by a Court banned some company owners from leaving the country and, in one case, ordered the selling of a factory's machinery to compensate its

³⁰ The Jordan Times, February 22nd, 2008.

³¹ The Jordanian Times, July 16, 2008.

³² Official Gazette, no 4761, June 1st, 2007, p.2039.

³³ The Jordan Times, April 10th, 2008.

³⁴ The Jordan Times, September 7th, 2007; October 11th, 2007.

³⁵ The Jordan Times – April 10th, 2008.

³⁶ The Jordan Times, 1 June 2008; July 16, 2008.

³⁷ The Jordan Times June 1st 2008; July 16, 2008.

³⁸ The Jordan Times, March 2nd, 2008.

workers³⁹. There are also some foreign workers whose status had not been rectified due to the accumulation of residence fines.

³⁹ The Jordan Times, July 26th, 2007.

Strikes have become commonplace in QIZs and the years 2006, 2007 and 2008 saw a number carried out by hundreds of foreign nationals, especially Bangladeshi, Sri Lankan and Vietnamese employees, against their work conditions. According to labor law, workers who plan to initiate a strike have to inform their employers of their intention to carry out the strike 14 days before the strike begins (Article 103).

Under the same law, workers who carry out illegal strikes are to be fined JD50 for the first day of the strike and thereafter JD5 per day (Article 106). In the case of workers who are absent from the workplace for fifteen days during the year or more than seven successive days without the employer's permission, the employer reserves the right to end their contracts (Article 17).

The Jordanian branch of the General Trade Union of Workers in Textile Garment and Clothing Industries settled thousands of disputes between QIZ workers and employers in 2007.⁴⁰ Furthermore, as the requirement to give notice is often not fulfilled, the strikers are usually asked by the representatives of the MOL to resume work and are given a deadline to end their strike or face deportation⁴¹. The MOL practice of not applying the law immediately is an attempt to encourage workers to end their strike⁴². Workers participating in the strikes are sometimes deported, but only after signing a paper in which they recognize that they leave the country without constraint⁴³.

2.1.4. *Victims of Trafficking*

Some foreign domestic workers and foreign QIZ workers are subject to forced labor conditions; consequently these conditions can be described as tantamount to human trafficking. These conditions include the non-payment of wages, unlawful withholding or impounding of passports – an act illegal under Article 18 of the provisional passports law (Law No. 5, 2003),⁴⁴ and physical or sexual abuse.

Due to the highly secretive nature of trafficking and smuggling, it is difficult to quantify the size and nature of this international and organized phenomenon in Jordan. Nevertheless, it seems that the country is witnessing a growing traffic in young women from Eastern Europe and Morocco.⁴⁵ Jordan is also a destination and transit country for individuals from South and South East Asia, trafficked for the purpose of forced labor. Foreign female workers often enter Jordan with tourism visas, but ultimately find themselves working in sweatshops, nightclubs and bars, and sometimes are forced into prostitution.

Jordan is not a party to the 2000 UN Convention on Transnational Organized Crime, but it applied to join the Palermo Protocol on the Prevention and Punishment of Human Trafficking (TIP) on the 14th of March, 2007.⁴⁶ In order to comply with the minimum standards for the elimination of trafficking in persons provided in the TIP, Jordanian authorities are considering the adoption of a law incorporating Palermo's anti-trafficking provisions into Jordanian law. This new law would criminalize and punish all forms of trafficking set forth in Article 3 of the TIP in its Article 6. It would further provides, in its Article 5, appropriate shelter for trafficking victims; this is in accordance with Article 6 of the TIP.

⁴⁰ The Jordan Times, June 6, 2008.

⁴¹ The Jordan Times, January 7th 2008.

⁴² The Jordan Times, January 1st, 2008.

⁴³ Al Rai Daily, Arabic News Paper, June 12th, 2007.

⁴⁴ UNCHR, Fourth Annual Report (2007), p. 66.

⁴⁵ Private communications with government officials suggest that the number of Ukrainian women entering the country since the beginning of the year is about 12,000.

⁴⁶ UNCHR, Fourth Annual Report (2007), p. 70.

The proposed definition of trafficking in persons in Article 2 of the planned law is identical to that given in Article 3 of the TIP

It is unfortunate that this law does not include measures that permit victims of trafficking in persons to remain on Jordanian territory, temporarily or permanently, as is required in Article 7 of the TIP. The fact is that the victims of trafficking are considered illegal immigrants because of their illegal entry and sojourn, and as such they can be detained and deported. Consequently, some victims of trafficking can be held responsible and punished for acts committed as a result of their being illegally trafficked.⁴⁷ Finally, there is a need to expand the jurisdiction of labor inspectors in order to enable them to oversee recruitment agencies' violations and to reduce the perils of exposing these migrant workers to human trafficking.⁴⁸

2.1.5. *Children*

Evidence of the high rate of child labor in Jordan is striking. The number of children is estimated at 50,000.⁴⁹ Furthermore, a large number of domestic workers, especially Indonesian nationals, are brought into Jordan by virtue of falsified passports. In some cases, the passport states that its holder is over twenty years old, while in fact its holder is often younger than eighteen years old. This constitutes a violation of the Convention on the Rights of the Child (1989), the Minimum Age Convention Number 138 (1973) and of the Worst Forms of Child Labor Convention Number 182 (1999), to which Jordan is a party.

2.2. "Irregularity" within the Iraqis population in Jordan

Jordan has traditionally been one of the regional countries most welcoming toward Iraqis. Hundreds of thousands of Iraqi who are currently living in the country fled Iraq after the U.S. led invasion of Iraq in March 2003⁵⁰. The security situation prevailing in Iraq in the last years, and particularly since the invasion, as well as the desire for a better life are the main reasons for leaving Iraq. Jordan became though restrictive about entry into Jordan and a subsequent stay in the country after the terrorist bombing at three luxury hotels in Amman on November 9, 2005, bombings which killed sixty people and that were organized and carried out by Iraqi nationals. After this the Jordanian authorities began turning away more Iraqis at the border, including asylum seekers, and issuing visas that are only valid for short durations of as little as two or three days, depending on the stated purpose of entry.

As of May 1st, 2008 Iraqis wishing to enter the Kingdom need a visa issued in advance. Due to the absence of an active Jordanian embassy in Iraq, Iraqis must apply at the international courier TNT's offices in Iraq or through the Jordanian diplomatic missions in the third countries from which they are applying. According to an agreement concluded between the Jordanian government and the courier company, TNT will receive visa applications from Iraqis through its thirteen offices in Iraq, process them, and forward them to the Jordanian Ministry of Interior. Applicants will be informed of the Jordanian government's decision within ten to fourteen days. In return for its services, the company

⁴⁷ U.S. state Department 2008 Trafficking in Persons Report: <http://www.state.gov/g/tip/rls/tiprpt/2008>, accessed on the 13th of June 2008

⁴⁸ UNCHR, Fourth Annual Report (2007), p. 75.

⁴⁹ UNCHR, Fourth Annual Report (2007), p. 69.

⁵⁰ For estimates of the number of Iraqis residing in Jordan see the Report of the Norway-based Institute for Applied International studies (FAFO), Iraqis in Jordan 2007, their number and characteristics.

charges the applicant 15,000 Iraqi Dinars (\$12.50).⁵¹

The maximum period of the visa does not exceed three months. The Jordanian authorities, however, afford one-year renewable permits to Iraqi students, the sick, employees, and investors; but the renewal of residency permits for Iraqis has generally become far more difficult. These new measures have increased the number of Iraqis who reside illegally or work illegally in Jordan; these can be arrested by the Jordanian authorities for illegal work or residence and then be forcibly returned to Iraq.

According to law no.24 of 1973 on Residence and Foreigners' Affairs, which governs the entry and stay of all foreign nationals including Iraqis, any visitor who overstays his permitted period of residence is liable to a fine of JD1.5 per day. Nevertheless, the Jordanian government usually gives illegal Iraqi residents a grace period to enable them to rectify their status and to become legal residents in accordance with the law; those who do so are exempted from a half of the accumulated fines due, and they are permitted to stay in the country for three months. Those who wish to leave the country are exempted from the totality of the fines.⁵² However, it seems that the vast majority of Iraqis living in the Kingdom have not rectified their status because they do not wish to present themselves to the Jordanian authorities owing to the financial constraints associated with the legalization of their status; their stay in the country remains, therefore, illegal.⁵³ Nevertheless, it must be noted that Jordan has not used its periodic and intensive inspection campaigns to insure illegal Iraqis are abiding by residency and labor laws, as has become customary regarding other non-citizen groups, in particular the Egyptians.

A UNHCR office opened in Amman in October 1991, largely to provide international aid and protection for Iraqi asylum seekers; and a memorandum of understanding (MOU)⁵⁴ between the two parties was signed in April 1998 in order to institutionalize procedures already in place regarding asylum seekers and refugees in Jordan and to uphold the definition of a refugee and the principles of the Refugee Convention of 1951 and the Refugee Protocol of 1967, which Jordan has never endorsed. According to the Memorandum, Jordan cannot ask a refugee seeking asylum in Jordan to return to a country where his/her life or freedom could be threatened on the basis of race, religion, nationality, membership of a particular social group or political opinion (Article 2). The MOU provides that the sojourn of recognized refugees by the UNHCR should not exceed six months, but Jordan has shown a great flexibility in applying this provision, because recognized refugees sometimes remain in the country for years without being resettled.

According to the MOU, Jordan agrees to admit asylum seekers, including undocumented entrants and to respect the UNHCR's refugee determination (RSD). In fact, the overwhelming majority of Iraqis residing in Jordan would not be recognized as refugees by the UNHCR, and the United Nations Refugees Agency offers Iraqis in Jordan the possibility to register with the Agency. The Iraqis who register with the UNHCR are given asylum-seeker cards, but the Jordanian authorities give no weight to these documents for residency purposes. Instead, these authorities notify the UN Refugees Agency in case of the arrest or the deportation of an asylum seeker card holder, and give the Agency access to conduct a refugee status determination (RSD) (i.e. to examine refugee claims).

The concept of "refugee" is closely linked to the application of the principle of *non-refoulement*,

⁵¹ The Jordan Times, 15 April 2008.

⁵² Al-Arab al-Yawm, 25 July 2008.

⁵³ Al-Arab al-Yawm, daily newspaper, 18th March 2008.

⁵⁴ Jordanian Official Gazette, No. 4277, May 3rd, 1998, p. 1463. See also http://www.r5dwatch.org/index_files/page917.htm.

under which no state shall refuse to admit temporarily any person claiming to be a refugee⁵⁵. The general opinion is that the principle of *non-refoulement* applies not only to a person who has already been recognized as a refugee, but also to any person applying for refugee status pending the determination of that status. The principle should be observed "both at the border and within the territory of the state with respect to persons who may be subjected to persecution if returned to their country of origin irrespective of whether or not they have been formally recognized as refugees".

Jordan is not a party to the 1951 Refugee convention or its protocol, but the Kingdom is nevertheless bound by customary international law not to return refugees and asylum seekers to a place where their lives or liberties would be threatened.

Jordan has always pledged to uphold its *non-refoulement* obligations and therefore Iraqis whose residency permit or visa has expired and who are considered to be at risk of serious human rights violations in Iraq are not forcibly returned from Jordan⁵⁶. Nevertheless, Jordan occasionally deports Iraqis who have overstayed their visas whether registered with the UNHCR or not. It also rejects entry to an increasing number of Iraqis at the border without giving them any opportunity to make refugee claims. Additionally the UNHCR, in contradiction of the MOU, is not always notified in the case of the detention of an individual who has been granted refugee status or has applied for asylum.⁵⁷

Iraq still has deplorable living conditions and a highly dangerous security situation and to force Iraqis to return to their country could amount to a serious violation of Jordan's International human rights obligations and, particularly, the principle of *non-refoulement*.⁵⁸

Jordan is also bound by the convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (1984) to which Jordan is a party; the convention urges states not to "expel, return ("refouler") or extradite" foreign nationals, in case there "*are substantial grounds for believing*" that returnees shall "*be in danger of being subjected to torture*". For the purpose of determining whether there are such grounds, the competent Jordanian authorities should take into account all relevant considerations including, where applicable, the existence in the State concerned (i.e. Iraq), "of a consistent pattern of gross, flagrant or mass violations of human rights"(Article 4 of the international convention).

Deportation of Iraqis to Iraq could endanger the life or liberty of the deportees. Such action would be no different from sending a person on a boat to a shark-infested area and pushing him or her into the sea. Either action would clearly violate international standards of human rights.

2.3. Gazans living in Jordan and Occupied West Bank Residents

Around 150,000 ex-residents of the Gaza Strip living in Jordan do not qualify for citizenship, and most of them are only given renewable two-year Jordanian passports, valid for the purpose of identification and for travel to the few countries which accept this document. These Gazans were forced to move to Gaza as a result of the mass expulsion, which accompanied the creation of the State of Israel in 1948. As such, they were considered internally displaced refugees in their own country. They then fled once again after Israel occupied the Gaza Strip in 1967.

⁵⁵ L. B. SOHN and T. BUERGENTHAL (ed.), op.cit, p.89.

⁵⁶ <http://www.amnesty.org/ar/library/asset/MDE/14/021/207/en/dom-MDE/40212007e> available at April 26th 2008.

⁵⁷ UNCHR, Fourth Annual Report (2007), p. 39.

⁵⁸ For more details see M. OLWAN, "Iraqi Refugees in Jordan: Legal Perspective", article to be published by CARIM, forthcoming.

The Jordanian passports Gazans hold are in fact no more than residence permit cards, and, therefore, they do not include a national number, which is ordinarily given to Jordanians by the Civil Status and Passport Department (CPSD).⁵⁹ They do not entitle their holders to the rights normally given to Jordanian citizens, such as the right to health care, education in public schools and universities, access to employment in the public sector, access to the “free professions” (such as doctors, lawyers, dentists etc...) and other rights reserved exclusively for Jordanian citizens.

It is also noteworthy to mention that Jordanian women married to Gazans, as is the case of any Jordanian woman married to a non-citizen, do not have the right to transmit their citizenship to their children.

The Gazans live in various parts of the Kingdom, but a considerable number of them live in camps run by UNRWA, and particularly in Jarash (also called Gaza Camp) and the Hittin Refugee camp.

The Occupied West Bank residents are foreign nationals and, as such, have no right of entry into Jordan. From time to time, Jordan makes it harder for Palestinians, who were for decades granted free access to Jordan, to enter from the West Bank or to stay in the country.

3. Irregular Migrants and Access to Rights

Until very recently migrant workers were excluded from the personal scope of the Jordanian Labor Law. But in the last amendments to the law introduced at the end of July 2008, domestic and agricultural workers are no longer exempted from its provisions. Following these amendments it is expected that migrant workers, whether regular or irregular, will no longer encounter obstacles in lodging claims against their employers before the labor Courts.

Foreign nationals, whether legal or illegal, are still barred from trade-union membership. Though it is worth noting in this regard that the Jordanian Parliament recently discussed this matter. However, it still refuses, for reasons of sovereignty, to allow expatriate foreigners to become members of labor union.

Most of the migrants in Jordan are Arabs and therefore easily integrated. But Jordan, due to its social and economic situation, is not able to provide access to social rights to hundreds of thousands of migrants. And Jordan fears that Iraqis residing in the country could become, like the Palestinians before them, a permanent refugee problem. Nevertheless, school-age Iraqi children are, as of the beginning of the scholastic year 2007-8, allowed to enroll in both public and private schools regardless of their residency status.⁶⁰

Illegal aliens, even if they can go to public hospitals for free, do not benefit from this possibility for fear of detention and expulsion. Iraqis live in urban centers rather than in rural areas or refugee camps. All in all, migrant workers, whether regular or irregular, do not benefit from the right to equal working conditions. This is despite the fact that Jordan is bound, thanks to its membership of the International Labor Organization (ILO), by the 1998 ILO Declaration of Fundamental Principles and Rights at Work, namely the protection from all forms of forced labor, elimination of child labor, elimination of discrimination in recruitment or the professions, and access to trade-union rights, i.e. the right to organize and the right to collective bargaining.⁶¹

⁵⁹ The Jordan Times, 21st July 1999; Al-Sijil, Weekly Newspaper, 7th August 2008.

⁶⁰ The Jordan Times, 26th August 2007 and the 14th September 2007; UNHCR, 2007 Year in Review-Achievements and Developments.

⁶¹ UNCHR, The Fourth Annual Report (2007), p. 71.

4. Interstate Cooperation

Jordan has entered into several agreements with sending countries in order to facilitate the access of their nationals to the Jordanian labor market: and sometimes these agreements also provide an opportunity for irregular migrant workers in Jordan to regularize their status. These agreements include in particular the Memorandum of Understanding with Indonesia (2 May 2001), the Memorandum of Understanding between the Jordanian Ministry of Labor and the Egyptian Ministry of Manpower and Immigration (29 March 2007), a joint statement with Pakistan (8 January 2007), and a Memorandum of Understanding with Sri Lanka (7 January 2007).⁶² The last agreement in this category was that concluded with Syria on 29 December 2007.⁶³ Jordan is also working with the Iraqi authorities in order to facilitate the voluntary return of Iraqis residing in Jordan to their country.

Conclusion

There is no official data available on irregular migration in Jordan, but it seems that the size of the phenomenon is relatively large, if it is compared to the whole population of the country, which is roughly six million people.

Jordan's market needs irregular unskilled or semi-skilled foreign workers who will accept low wages that will not be accepted by the local workforce. Therefore this kind of manpower is desired or, at least, tolerated.

Egypt is the main country of origin for most irregular migrant workers in Jordan, followed by the South and South East Asian countries and Eastern European countries. Iraq is the main origin country of migrants in Jordan, and prospects of a better life outside Iraq encourages Iraqis to seek refuge in neighboring countries including Jordan.

Jordanian policy towards irregular immigration is relatively tolerant and flexible, being altered from day to day in response to changing circumstances. It is basically a control and punitive policy rather than a human-rights oriented one. At best it is partially successful in reducing the scale of the phenomenon. New irregular arrivals to Jordan have decreased, but the number of those remaining in the country remains high. The factors shaping migration to Jordan are largely beyond the control of the government, and this is particularly the case with Iraq.

Expulsion orders are not enforced in certain circumstances and one can say that, generally speaking, Jordan, in exercising its discretion to expel or deport irregular migrants or asylum seekers or *de facto* refugees, takes into consideration some of the interests of the individual and balances them with the competing demands of public order. Other factors should be taken into account by the follow-up Committee set up by the MOL such as the length of residence in the State, the conduct and character of the individual, private life, and any compassionate circumstances⁶⁴.

The power of expulsion or deportation is not regulated enough in Jordanian law. Reasonable grounds on which such an action is based and the procedural safeguards to be followed should be specified by legal statute. The statute should precisely state that the deportation order is a written one and that it should be communicated to the persons to be expelled or deported.

In most cases, deportation or expulsion orders are given by the executive (i.e. by the Ministry of

⁶² For these agreements, see the CARIM webpage, www.carim.org.

⁶³ Al-Rai, 30 December 2007.

⁶⁴ See L. B. SHO and T. BUERGENTHAL (ed.), *op. cit.*, p.94.

Interior or by the Ministry of Labour) and not by a Court of law. The right of Appeal to an independent and impartial tribunal against deportation orders should be provided for in the relevant Jordanian law and regulation. Furthermore, in executing an expulsion or deportation order, the Jordanian authorities should act in accordance with human rights and human dignity.

The Law on Residence and Foreign Nationals' Affairs (Law 24, 1973) needs to be amended in order to grant the deportee time to defend him or herself before the authorities concerned, to grant the deportee a grace period in order to rectify his or her status and to allow him or her to settle financial and social matters. It is also necessary to expand the authority vested in the Minister of the Interior as regards suspension of expulsion procedures and exemption from fines imposed on persons violating the law or those to be deported. Jordan also needs to create and adopt a clear and specific mechanism to address refugee issues. In the meantime, when Iraqi asylum seekers are detained pending deportation for violating the laws on residence or labor, the UNHCR should be informed. This is in accordance with the Memorandum of Understanding between Jordan and the United Nations Refugee Agency (UNHCR).