THE LABOUR MARKET IN THE SEM COUNTRIES: A LEGAL PERSPECTIVE

Guido Boni

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The Labour Market in the SEM Countries: a Legal Perspective

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CARIM

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Abstract
Understanding the legal framework in force in the SEM countries is of paramount importance in order to grasp the functioning of the labour market and the influence that it can have on migration. The analysis presented here focuses on 11 countries (Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Mauritania, Morocco, Syrian Arab Republic, Tunisia, Turkey) and deals with those aspects of the legal regulation in force which can be considered responsible for shaping the employment relationship in term of rigidity or flexibility. The Report is divided in a series of country-studies where the various legal components of the labour market are presented and critically analysed following the same structure for each one in order to enhance comparability: rules concerning hiring, flexible contracts, working time, dismissals, and work inspections.

The results, which draw mainly upon international organisations’ sources and upon the analysis of legal texts and laws in these countries, are preliminary. In the concluding remarks, it is explained that if the most valuable research output of this report is to provide cross-comparative analysis to a vast legal material critically organised, the main limitation resides in the fact that it is mainly centered on the black-letters of the rules and therefore further research must be done on the multifaceted aspects that contribute to shaping a labour market, namely the social dialogue, the case-law and the actual functioning of labour market institutions such as labour inspections, employment agencies, social security, in order to manage to paint the full picture of the SEM countries’ labour market. A preliminary critical assessment of the labour markets is however provided, combining the data on the legal framework in force with the analysis of the independent international reports prepared by various international institutions and NGOs on labour rights’ violations.

Résumé
Il est de toute première importance de bien comprendre le cadre légal en vigueur dans les pays du Sud et de l’Est de la Méditerranée (SEM) afin d’y saisir le fonctionnement du marché du travail et son influence potentielle sur les flux migratoires. L’étude porte sur 11 de ces pays soit l’Algérie, l’Egypte, Israël, la Jordanie, le Liban, la Libye, la Mauritanie, le Maroc, la Syrie, la Tunisie et enfin la Turquie. C’est principalement, les éléments juridiques qui affectent les relations de travail en termes de rigidité et de flexibilité qui sont analysés. Ce rapport s’appuie sur une série de cas d’étude nationaux. Les aspects juridiques du marché du travail y sont décrits et analysés dans une perspective critique. Chacun des systèmes légaux nationaux a été soumis à la même grille d’analyse afin d’assurer la comparabilité des données. Sont donc envisagées de manière systématiques: les dispositions relatives à l’engagement, à la flexibilité des contrats, au temps de travail, aux préavis et aux inspections du travail. Les conclusions formulées, sont à ce stade tout à fait préliminaires. L’un des intérêts manifestes de cette recherche est de rendre accessible en Anglais, de manière systématique et critique, un large éventail de dispositions juridiques. La principale limite de cette étude est certainement son aspect formel puisque les modalités de mise en œuvre de ces dispositions et la pratique des relations de travail échappent, en grande partie à la perception son auteur. De plus amples recherches devraient être menées sur les divers facteurs qui contribuent à déterminer les dynamiques du marché du travail dans les SEM, soit le dialogue social, la jurisprudence et le fonctionnement réel des institutions de régulation du marché du travail telles que l’Inspection du Travail, les Agences pour l’Emploi et la Sécurité Sociale.

Ce rapport suggère néanmoins une première évaluation critique résultant de la combinaison des données juridiques recueillies et de l’analyse des rapports internationaux élaborés par diverses institutions internationales et des ONG actives dans le domaine de la violation des droits du travail.
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Introduction

1. The SEM countries: in search for taxonomy.

The Southern and Eastern Mediterranean Countries (SEM) countries are confronted nowadays with the pressing need to revise and rethink the structure and functioning of their labour markets in order to deal with the increasing need for employment they will be facing in the next years. Indeed, recent studies have shown that the whole area is challenged with an unprecedented and increasing need for employment, estimated to be 100 million additional jobs by 2020. The countries of the region are then obliged at least to double their volume of employment in order to absorb the increasingly growing number of job seekers. The average annual labour force growth rate in the region between 1995 and 2005 was around 3.5 per cent. The unemployment rate in the region in 2005 was around 13 per cent. Despite this actual need, as far as migrant workers are concerned, it seems that they are not perceived as useful workers and the regulation in place in most of the countries concerned either limit the possibility for foreign workers to work applying more restrictive rules to their employment contracts, or does not provide for specific legislation covering them so that they tend to be left unprotected when confronted with the market forces, as it is highlighted in each country account. Indeed, as emerges from the reports prepared by the International Labour Organisation (ILO), the EU Commission, the International Office for Migration (IOM), the International Trade Unions Confederation (ITUC), various NGOs, such as Oxfam and Amnesty International, and the yearly Country Reports on Human Rights Practices released by the U.S. Foreign Affairs Department – reports which all constitute very important sources of reference for the present research – and dealing with the violations of fundamental workers’ rights, migrants seems to be the more exposed to exploitation and under protection, as it will be shown in detail for each country for which data are available.

The present introduction is aimed at providing some general information concerning the research carried out and its methodology. It is composed of four paragraphs. At first, some general remarks explain the reasons why the countries of the present research are grouped together; at the same time those differences and similarities between them of which the legal analysis must be aware are highlighted. Secondly, the objective of the work is indicated and a preliminary terminological clarification on the term flexibility is pointed out. Thirdly, two general caveats that must be bear in mind by the reader throughout the paper are pointed out as they contribute to explain the methodology followed and the way in which the available sources of references have been selected and used. Finally, the structure of the work is spelled out.

An important aspect to be taken into account is that the countries tackled by the present research have rather homogeneous legal traditions since most of them have followed the same model inspired by Western systems, according to general comparative law theory.

With the sole exception of Israel, all the SEM countries belong to the civil law family and their legal systems are mainly derived by the French one, although combining elements of Islamic law. The heavy influence of the French model is due to historical reasons: Algeria, Tunisia, Morocco and Mauritania were French colonies, while Syria and Lebanon were strongly influenced during the French mandate in their modern development by the French model after WWI. Jordan’s legal system

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is also based on French law, and the Egyptian legal system is built on the Napoleonic Code, which was first introduced during Napoleon Bonaparte’s occupation of Egypt and the subsequent education and training of Egyptian jurists in France. Libya is also mainly based on the French legal tradition and to a minor extent to the Italian one since it was an Italian colony, but the closeness of the Italian legal system to the French one allows for our purposes to state that Libya belongs to the civil law family and to the French one in particular.

The only exceptions are the Israeli legal system and the Turkish one. The Israeli legal system belongs neither to the Common Law nor to the Civil Law families of legal systems. Rather it is characterized as belonging to the family of mixed jurisdictions as the history of Israel explains the reasons for the hybrid nature of the system. As for Turkey, although not directly inspired by the French tradition, the country has always looked at continental Europe as a model of reference and in 1926 Ataturk, the first president of the Republic of Turkey, enacted a Civil Code and a Code of Obligations which was basically the transposition of the Swiss Civil Code (ZGB).

One of the main reasons why it is important to classify one legal system in one of the two categories resides in the fact that, in broad terms, common law and civil law traditions utilize different strategies for dealing with market failure: the former relying on contract and private litigation, the latter on direct supervision of markets by the government. Under this theory, the historical origins of a country’s laws shape the regulation of labour and of the markets. As we will see, all the countries which will be analysed have a legal system in place which is clearly based on civil law, almost everywhere there is a Code containing a detailed regulation of the labour market, of collective action, and of employment contracts. All in all then it can be concluded that all the SEM countries share the same legal traditions as the continental European countries, and the vast majority have taken inspiration form the French legal tradition, and still today the SEM jurists are educated also to French law, and it is a normal phase in the formation of most lawyers to complete their legal education with a period of study in a French University. Such homogeneity contributes to simplifying the analysis of the legislation of the SEM countries.

In areas of law less related to the core and more intimate traditional creeds of a society, as for example property law and contract law, the modifications were more relevant and Sharia was mainly set aside in favour of the French Code, the Code Napoléon, which was mainly taken as a source of reference.

The employment relationship, following the traditional scheme based on freedom of contract and autonomy of the parties remained basically non regulated until the 60s and the 70s, except for just some minor provisions somehow reflecting the pattern followed in Europe some decades before: from a minimum platform of rights regarding the right to wage, that of health and safety at work, a maximum working time set by law, the prohibition of child labour, together with some basic protection against unjustified dismissal, to some more refined pieces of legislation comparable to those of the most developed Western European countries. However, in comparison with Europe, workers’ rights – when

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4 For approximately four centuries, until the end of WWI, the area now constituting Israel was part of the Ottoman Empire ruled by Turkey. During this period the law of the land was a mixture of traditional Islamic law and modern European laws (German, French and Swiss) adopted by Turkey mainly from the beginning of the last century. Following the defeat of Turkey, a British Mandate was established according to a resolution of the League of Nations. The Mandatory government gradually replaced the pre-existing law with legislation supplemented by English principles of common law and equity. While most areas of law have been Anglicized, the British kept intact the Ottoman system of family law, which authorized religious courts of the different religious communities to administer their specific laws on members of these communities.

In 1948, the State of Israel was established as a Jewish and democratic state. Although pre-existing law was retained at first by the independent State of Israel, new legislation enacted by the Knesset, as well as decisions of the Supreme Court, have completely transformed the legal system into a modern and sophisticated system. Although common law applies as a basis, the law has been significantly influenced by the people involved in its development, many of whom received their legal education in continental Europe.

provided for at law – are a much more recent development and in general, even where Labour Codes are updated and well structured (like in Morocco for example) their efficacy in the actual shaping of the employment relationship is overall low due to a number of factors such as high unemployment, great poverty, lax implementation of other more fundamental rights, etc., all issues that confine most of the workers in a mainly informal labour market, while rights remain actually justiceable only by those in privileged positions. In recent times, however, Labour Codes have been issued in all the countries, and in some even renewed to meet the challenges of globalisation and the internalisation of the workforce. The model taken as a source of reference has mostly been the French Code du Travail which has been adapted and adjusted to the needs of developing countries. As a result of these adjustments, the scope and effectiveness of some of the more protective rules are diluted as it will be shown.

2. The Scope and Objective of the Inquiry

The current report presents a general overview of the legal framework regulating the existing provisions concerning flexibility of the labour market in the countries studied in the CARIM framework. The discussion on what exactly flexibility means has been made the object of thousands of publications of both labour lawyers and labour economists. Despite this, labour law and social protection remain particularly important aspects in the present discussion, and their analysis can in any case bring additional value to the overall analysis. The purpose of this contribution is not to contribute to the vast debate on the subject matter, but is intended to fit within the CARIM research project providing for basic data and information concerning various aspects of the legal regulation of the employment relationship which are particularly indicative of the level of protection afforded to workers. However, it is essential to highlight that in developing countries existing national labour laws are certainly to be taken into account when examining the flexibility and security of a given country, but it should always be borne in mind that their application is usually very weak and that they cover only a small minority of formal workers. This aspect represents the main limitation of the present research since for the SEM countries – with the exception of Israel and Turkey – the legal framework reflects the actual situation of a minority of workers.

Despite this, labour law and social protection remain particularly important aspects in the present discussion, and their analysis can in any case bring additional value to the overall analysis.

The main elements dealing with the regulation of work which will be examined in this study are:

1. the kind of atypical contracts of employment available (fixed-term, part-time, on-call, agency work, training and apprenticeship);
2. the regulation of working time, including annual leave and holidays;
3. the incidence of mandatory contributions to welfare systems on the global salary paid by the employer;
4. the rules concerning termination of employment and the existence of instruments of social support such as unemployment and severance benefits provided by the State;
5. where available, provisions regarding work inspections and data on their effectiveness and comprehensiveness (we will see that lack of implementation and control on it represent the main problem in the SEM countries despite an overall adequate legal framework in force).

Next to these core elements, to the evaluation of the legal flexibility of a given labour market concur other aspects which will be examined for most of the countries depending on the availability of data. They are the following: the existence or not of a minimum wage, either legally mandatory or established through collective bargaining; the effectiveness of work inspections and the level of

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dissuasiveness of the sanctions; the level of the social security (i.e. the existence of mechanisms granting protection against socially recognized conditions, including poverty, old age, disability, unemployment and others). Again, what must be remembered is that this report relies mainly on the black letters of the law and therefore the evaluation provided – although influenced by the available reports provided by independent international agencies and NGOs concerning the respect of basic human and workers rights – does not take into account the actual scope and respect of them.

Last but not least, a side issue which will also receive attention, although not so strictly connected with the analysis flexibility/rigidity of a given labour market regulatory framework is that of child labour. As it will emerge from the reading of the various country reports which follow, in all the countries concerned child labour – although to a different extent – is always reported as a major problem. Indeed, the first factor that link children to labour is the poverty of the family and since most of the countries analysed here are developing ones this is easy to explain. However, other reasons can be put forward, although always connected with the wealth of a given country. First, a very protective labour market tends to create more informal work, and informal work is typically an area where low skilled workers, such as women and children, tend to be employed. Secondly, there is also another aspect, very relevant in the framework of the CARIM objectives: countries with high migration flows, such as the Southern Mediterranean countries (commonly called the Maghreb countries) produce high remittances, and these remittances have become a rising source of external funding. An understanding of how migration and remittance flows affect migrants’ origin households, therefore, is a core element in the assessment of the consequences of labour migration. Therefore, within the much more limited scope of the present report, it has been considered useful to provide some basic information concerning the regulation of child labour. Indeed, when high levels of earnings from migrant workers are remitted to the families they leave behind, the assumption is that out-migration benefits individuals, families, and communities economically. Researches show that the benefits tend to bring at first just to higher levels of consumption, but then families receiving constant remittances tend to turn to productive investments which in some cases – mainly in city areas - consist in improved socioeconomic outcomes, such as human capital (higher education and scholarisation for children) and health status; but in rural areas remittances induce the families to invest in land and then children – in the lack of those family members who are abroad working – are required by families to work in the fields. As a consequence, remittances can turn children in workers, both despite and because of the increased affluence. Overall, the abundance of this workforce and the lack of actual enforcement of the legal prohibition of child labour (in spite of the fact that all the countries concerned have ratified the International Labour organisation conventions regarding the prohibition of child labour, as it will be shown) also contribute to shape the labour market towards a de facto flexibility.

In such a context, an inquiry of the legal provision in force concerning child labour can therefore constitute a useful database for developing further research. The evidence gathered here could then help to provide a basis for a further analysis of the links between child labour, migratory flows and, what is at stake here, the labour market regulation in force.

As previously mentioned, however, child labour regulation aside, what is extremely difficult is to assess which kind of legal provisions and to which extent they affect a given labour market. A useful tool to measure a labour market flexibility, although not always accepted by researchers (and sometimes imprecise and not updated), has been developed by the World Bank’s Doing Business Project (see the conclusions of the present paper for some other critical evaluations)7. Despite its limits, the idea around which it has been developed, i.e. measuring the flexibility of a labour market pointing out those aspects which can either contribute or hinder the attraction and development of businesses in a country, is undoubtedly intriguing. Basically, the report provides for an evaluation of the rigidity of employment which is expressed in numbers instead that in long and complex evaluation made by labour lawyers or economists. The index is the average of three sub-indices: difficulty of hiring, rigidity of hours and

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7 For more information see http://www.doingbusiness.org/documents/RegionalReports/DB2008_RP_SEM.pdf.
difficulty of firing. Each index takes values between 0 and 100, with higher values indicating more rigid regulation. As simple as that! Indeed, clarity pays a debt to reliability.

Moreover, it is extremely difficult to actually value if a mandatory working week of 35 hours or of 50 has a direct impact on the rigidity/flexibility discourse, since such a data are not eloquent in themselves unless combined with others, such as productivity of the work force, easiness to fire, typologies of contractual arrangements available (e.g. is it more rigid a system which provides for a normal working time of 35 hours, but makes it rather easy to fire, or one which sets at 45 hours the length of the working week, but makes it hardly impossible firing workers?). Without entering in the detail of such a debate, it is however noteworthy to mention the indications coming from the Doing business index. For this reason, a selection of them, restricted to only those data dealing exclusively with the SEM countries, are presented in the Appendix 1 at the end of this paper. However, as it will be highlighted, not always the findings of the present research, based on an attentive survey conducted by the author on the very provisions in their most updated version are consistent with those advanced in the Doing Business. But it must be acknowledged that despite some data show a marked discrepancy, the final overall judgements concerning the rigidity/flexibility of a given country mostly match.

At this stage a terminological clarification is however mandatory: flexibility and rigidity of the labour market are two expressions which are typical of the economic analysis of a labour market. Lawyers traditionally do not use these expressions but evaluate a labour legislation in term of its capacity or incapacity to protect a worker from abuses, since labour law was indeed born in order to redress the imbalance of power between employers and employees. No doubt that labour lawyers have, though very recently, begun to address the blatant problems of unemployment taking into account the impact that a rule could have in term of job creation, but it must be remembered here that for a labour lawyer the main objective is to find a balance between the right of the two parties which adequately reflect the constitutional principles and the fundamental rights enshrined in international charters and conventions, leaving the final evaluation concerning the efficiency of a certain norm to economists. There is indeed a developing and most promising area of law which is called economic analysis of the law, but its application to labour law is still moving the very first steps among wide criticism. However, as for now, what must be bear in mind while reading this report is that there hasn’t been any demonstration accepted by the wide community of labour lawyers across the world proving the existence of a direct correlation between the adoption of a legal rule, either flexible or rigid, and the economical output of such a rule. And, on the contrary, it hasn’t been yet demonstrated that in order to react to a certain problem of the labour market (e.g. low rate of women employment, high figures of irregular work, etc), a legal norm in itself can have a direct effect, since the factors that influence the a labour market are multifarious. Since the present analysis is a legal one and it is not aimed to devise the complex connections that link together the numerous issues that affect a labour market, for the limited scope of this report, the terms “protective”, “flexible”, “rigid”, are used without any ideological implication. And for this very reason - any attempt whatsoever will be made to provide for an evaluation of the economical efficiency of a certain set of legal rules in the countries concerned, or on their impact on the migration flow, since this – beside being extremely difficult, if not arbitrary, unless, possibly, if based on reliable and comprehensive series of statistical evidence, not available in our case - goes far beyond the knowledge of a labour lawyer, which is that of the author.

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8 P. ICHINO, Does labour law actually produce equality among workers?: A tentative law and economics approach to the question of coherence between the protective rule's egalitarian ratio and its effective consequences, in Managerial Law, 2006, 258 – 274; P. ICHINO, "Lezioni di diritto del lavoro. Un approccio di labour law and economics”, Edizioni Giuffrè, Milano, 2004; G. DE GEEST (ed.), Law And Economics And The Labour Market, Edward Elgar, 1999. If Europe is totally lacking serious studies in the field, in the U.S., where the “Law And” movement was initiate, studies are more developed but they are mainly run by economist, as to prove that it lacks a real willingness, even overseas, from the part of labour lawyers to conceive their subject in economical terms. See for example a recent collection of previously published papers dealing with labour law and economics which have been grouped in a book edited by JOHN J. DONOHUE III, Economics of labor and employment law, Edward Elgar Publishing, 2007.
3. The Limitations of the Research

Due to the scarce availability of reliable scientific information, the present research has been mainly conducted on the basis of a careful analysis of the existing legal framework as presented in either English or French on the websites of the local Labour Ministries, on the NATLEX database of the ILO, and on the valuable information provided by the CARIM network of experts and available on the CARIM website. Sources of critical information taken into consideration have been the 2008 issue of the Country Report of Human Rights Practices (CRHRP) released on a yearly basis by the Bureau of Democracy, Human Rights and Labour of the U.S. Department of State; the independent reports prepared by international NGOs; the country profiles available on the website of the ILO Labour Law and Social Dialogue Department, under the coordination of ILO officer Angelika Muller; and, where available, special country reports developed by the International Labour Organisation in conjunction with local governments in the framework of the ILO Decent Work program.

Despite scrupulous research it was not possible to find information for all the countries covered by the CARIM project, and not always the same level of detailed information could be found for each country. Palestine is not covered for lack of access to the relevant provisions. Similarly, Libya is covered but only to a minor extent.

It is worth noting that this paper represents only a first step towards the actual comprehension of the functioning, rigidities, and flexibilities of the SEM labour markets: the legal framework represents the mandatory starting point, but further inquiries must be done on various specific legal formats.

To understand more the connection between labour legislation and migration, it is recommended for further research to probe into an in-depth assessment so as to study to which extent and under which conditions, the legal framework regulating the labour market of a country can have an impact on the migration trends of its citizens; whether or not a more flexible or rigid protection of workers’ rights can prevent or force migrant workers either to leave or to return to their countries of origin.

4. The Structure of the Report

Basically the present paper presents a selection of the labour legislation in force in each country with an emphasis of those rules that shape the employment relationship in terms of flexibility or rigidity. Therefore 11 country reports are presented (data on Palestine are missing, thus they are 11 and not 12 as those covered by CARIM), and each one is analysed following the same scheme in order to enhance comparability of data.

The countries tackled by this research and divided into two groups according to geographical criteria are the following: Algeria, Egypt, Libya, Mauritania Morocco, Tunisia (the Southern Mediterranean), and Israel, Jordan, Lebanon, Syria, Turkey (The Eastern Mediterranean). The chosen division is mainly intended to improve accessibility and readability of the report.

Each country report - except for some minor discrepancies depending on information available and on the very structure of each legal system – will mainly follow this scheme: at first, a brief presentation of the country form of government, population density and economic situation is provided, together with some information concerning the labour force, unemployment trends, recent data.

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9 See the legal module on www.carim.org.
11 The present research has benefited from a period of research at the ILO in Geneva where a number of labour law officers have provided valuable insights and information on some of the country concerned. My special thanks go here to Mr. Giuseppe Casale, Chief of the Social Dialogue and Labour Law Department, to her collaborator Ms. Angelika Muller, and to Ms. Anna Biondi, Director of the ITUC Geneva Office who have contributed to this research in various ways: giving hospitality at the ILO, introducing me to local officers specialist of the SEM countries, and providing me with specific publications and books from which valuable information has been taken. The usual disclaimer applies.
and intended legal reforms, etc. Then the legal sources are presented: the Constitution is examined from the point of view of labour law in search for provisions specifically dealing with the subject matter. Thirdly, the Labour Code is analysed but only in respect of those provisions which shape the system in term of flexibility and rigidity. In particular, the rules concerning the formation of the contract of employment are examined; then the atypical contracts (mainly fixed-term, part-time, and agency work when admitted and regulated); the employer’s contribution to a social security fund, entitlements to paid sick leave or to paid annual leave; the provisions concerning minimum wages and working time; finally, particular attention is dedicated to the rules concerning dismissal, as a major indicator of the rigidity/protectiveness of a labour market. One aspect that is dealt with when data are available is the legislation in force and its effectiveness as far as labour inspections are concerned.

Finally, when available, the findings concerning the various aspects mentioned above are then confronted with reports provided by NGOs and other international observers active in the region to try to depict a picture which goes beyond the mere declaration of intent of the Constitutions and the Labour codes. A short evaluation in term of the level of flexibility of the country concerned is then offered. The paper ends with some general conclusions and the outline of the envisaged future phases of the present research.

Part I: The Southern Mediterranean Countries

General Remarks

The Southern Mediterranean Countries (commonly depicted as the Maghreb region) share a number of common features which are reflected in their legal approach to labour market regulation and Employment Law. In addition, the region traditionally shares a number of socio-economic features, and its countries are quickly developing year after year, achieving noticeable levels of macro-economic stability and economic growth. Also the governments are all trying to meet the challenges of globalisation through liberalisation, privatisation, and improvement. Despite some similarities, every country undoubtedly presents a number of specific singularities which require a separate analysis.

It is important to note that this abovementioned economic development is in sharp contrast with the employment and welfare situation of the countries concerned. Unemployment is widespread and a cause for major concern in most of the countries. At the same time, poverty levels are high and social discontent elevated, thus, because of its correlation with them, a solution is dramatically urgent. The unemployment problem is made harsher due to a rapid population increase; a constantly raising participation of women in the formal labour market – although still very low on average; declining public service hiring; social impact of more and more frequent corporate restructuring and privatisation as a consequence to globalisation’s demands. At the same time, as in most Western countries, youth are the most affected by such a situation. This is worsened by the fact that services normally provided for assisting workers in finding employment are largely inadequate. Also education and training opportunity are scanty, and therefore there is an increasing mismatch between the new competencies requested by growing firms taking advantage of the globalisation process and the kind of skills which are offered by the labour force.

Intimately connected with this problem is that of poverty. Although in all countries – at least according to the black letters of the law – social security is granted to all citizens, its actual coverage – according to the most recent information divulged by ILO, is limited to an average estimation of some

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12 It is worth noting that Libya ranks much higher in the Human Development Index (measuring the average achievements of a country in the areas of life expectancy, educational attainment and per capita GDP) thanks to its oil revenue: in the 2007/2008 Index the latter ranked 56 among the countries with a High Human Development, while the others were all among those with Medium Human Development, with e.g. Tunisia at 91; Algeria at 104; Morocco at 126; and Mauritania at 137.
25%, and is often affected by inefficiencies, ineffectiveness and lack of adequate structures to support its intervention, not to mention the lack of financial resources for the State.

In such a context, one must however note that social dialogue and collective action do take place and that there is a commitment to International Labour Standards. With the sole exception of Morocco\textsuperscript{13}, all the countries concerned have indeed ratified the ILO fundamental Human Rights Conventions\textsuperscript{14}.

Algeria

Algeria is the second-largest country in Africa, with a population of some 32 millions. After almost 15 years of civil strife, Algeria is now in a process of internal pacification and is looking for a period of future prosperity. The country is undertaking legislative, social and economic reforms to move from a centralized, planned economy to a more open-market economy, including privatization and opening up to foreign investment. These are usually accompanied by measures to limit possible negative social repercussions, such as reinforcing social protection schemes to balance declines in real wages, and substituting subsidies on basic goods with compensations to low-income persons.

It is estimated that 35% of the workforce is either unemployed or underemployed. Unemployment mainly affects youths (73% of the unemployed are under 30), women and urban areas. Although the expansion of public employment and high growth rates managed to compress unemployment rates from 23.7% in 2003 to 17.7% in 2004, this improvement remains fragile, and job creation remains a high priority.

Poverty, affecting in 2000 a mere 12% of the population, although more in rural areas, is on the decline. This positive level and trend is mainly linked to high oil prices and increased public expenditures, including social transfers.

Recent and ongoing key areas of reform include consolidation of the tripartite dialogue; tripartite discussions of a new labour Code; development of Medium-Small Enterprises (MSEs), particularly in handicrafts; revision of the family Code aimed at promoting women and fighting poverty; acceleration of privatization; fighting corruption; and a special focus on the employment-intensive sectors of tourism, agriculture and construction.

Legal Sources

The Constitution

According to the Preamble of the 1976 Constitution of the People’s Republic of Algeria, as revised by the Referendum of November 28th, 1996:

“The Algerian people, by this Constitution, decided to build constitutional institutions based on the participation of any Algerian, man and woman, in the management of public affairs; and on the ability to achieve social Justice, equality and freedom for all”.

\textsuperscript{13} It has ratified 4 of the 5 ILO fundamental Human Rights Conventions, namely with the exception of C87 on Freedom of Association and Protection of the Right to Organise, but its Constitution is however in line with such an old Convention, so this does not create a real issue.

\textsuperscript{14} Eight ILO Conventions have been identified by the ILO’s Governing Body as being fundamental to the rights of human beings at work, irrespective of levels of development of individual member States. These rights are a precondition for all the others in that they provide for the necessary implements to strive freely for the improvement of individual and collective conditions of work: Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87); Right to Organize and Collective Bargaining Convention, 1949 (No. 98); Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Equal Remuneration Convention, 1951 (No. 100); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182). For the full table of ratification of these fundamental conventions, see: http://www.ilo.org/ilolex/english/docs/declworld.htm.
The Constitution contains a number of fundamental provisions containing basic rights for all citizens, and some others relating specifically to the workers and the unions.

Art. 29 provides for the equality of all citizens before the law and a general prohibition of discrimination. At the same time, art. 31 imposes on the State a duty to promote equality of rights and duties on all citizens, men and women, removing – a formula resembling that used by many western democracies – “the obstacles which hinder the progress of human beings and impede the effective participation of all in the political, economic, social and cultural life”. Individual and associative defence of human rights as well as individual and collective liberties is also guaranteed by art. 33. Relevant for collective labour law are art. 43 and 46, according to which, respectively, the right to create association is guaranteed and the right to join a trade union is recognised to all citizens. Art 57 recognises the right to strike, which can only be limited “in the field of national defence and security or in any public service or activity of vital interest for the community”.

The right of all citizens for work is guaranteed by art 55, where it is also specified, and this is the most relevant norm for Algeria within the frame of this paper, that “The law guarantees the right for protection, security and hygiene at work. The right to rest is guaranteed; the law defines the relevant clauses”.

Finally, the social emphasis of the Algerian Constitution is confirmed by its articles 58 and 59 respectively, which provide for special protection for the family, for minors and for disables, stating that “the family gains protection from the State and the society”, and that “the living conditions of the citizens under the age of working or those unable or can never be able to work are guaranteed”.

The Labour Code

The fundamental piece of legislation regulating the contracts of Algerian workers is to be found in the Law n 90-11 of 21 April 1990 concerning the employment relationships, modified and completed in 1997. It is worth noting that the Government is presently working on a new Labour Code, which is expected to be published during 2009.

The Law n 90-11 of 21 April 1990 consists of a rather concise and handy set of norms dealing with the basic rights and obligations of the workers, wages, collective bargaining and workers’ participation.

Art. 2 provides for a general definition of worker, which is very important as it defines the scope of application of all the legal protections limiting it only to those workers who fall within it, while the others will be excluded from protection. It is therefore rather general and apt to encompass all those workers who receive a wage. They are defined as those “performing an intellectual or a manual work in exchange for wage within an organisation and for another person defined as employer”. There are some express exclusions, namely those performing managerial work, journalists, domestic workers, athletes, and all who perform a very special work which require a separate set of legislation, as it happens everywhere. Exceptions aside, the workers defined in art. 2 have a number of rights and duties which are clearly spelled out in the law. Some are classified by art. 5 as fundamental, namely collective labour rights; collective bargaining; social security and pension; health and safety at work; rest; participation to prevention and settlement of labour disputes; right to strike. Next to these listed fundamental rights, there are then other rights which are listed in art.6, and that do not share the same importance of the previous. They are, the right to an actual work; the respect for moral and physical integrity and for dignity; protection against any form of discrimination in accessing a work, except for those based on merit and personal aptitude; professional training; a wage paid regularly; and to all those rights emerging for the contract. At the same time, following art. 7, they are also bound to a number of duties, namely to accomplish with the obligation arising from the contract with diligence and continuity; to contribute to the firm in order to ameliorate the organisation and the production; to obey the instructions received within the normal limit of the power to instruct; to respect the provisions in force as far as health and safety are concerned; to participate in the training activities; not to divulge confidential information; and some others of minor relevance.
Within such a very didascalic picture of the employment contract, there are of course also a number of specific provisions which contribute to shaping the relationship in term of both flexibility and rigidity.

**Working-time Regulation**

Among the latter, first and foremost the regulation of the working time, rest time and holiday which are provided for in articles from 31 to 56 must be mentioned. On the very issue of working time the regulation appears to be very protective, and basically in line with the provisions of most EU countries, for which the regulation is harmonised by EU Directive n. 93/104 as modified by Directive 2000/34, it is provided that the legal working time is 40 hours per week over at least five days, and the maximum length of the working day cannot exceed 12 hours. Supplementary working hours can be required if they respond to an “absolute need of the service” and are “absolutely exceptional”. An extra-payment is due in these cases. As for rest, one full day per week must not be worked, which is normally on Friday. The right to two and a half days of paid holiday per month worked is also provided for and it is non-renounceable.

**The Implementation of Flexible Work Provisions**

Next to the rather flexible provisions concerning dismissals, Algeria does not present employers with a rich basket of atypical contracts among which to choose. Basically, at law specific regulations are provided for only for fixed term, part-time, and traineeship contracts.

As to the legislation concerning agency work, the law n. 04-19 of 25 December 2004 aims at harmonizing Algeria’s labour legislation with the ILO Convention 181 on Private Employment Agencies.

**Fixed-term and part-time contracts**

The rule, according to art. 11 of the Code, is that unless otherwise specified in writing an employment contract is to be regarded as indefinite. To reinforce such a statement, the law authorises the parties to stipulate a fixed-term contract only in the cases explicitly listed by the following art. 12 which allows the parties to put a term if the contract is concluded for the execution of a non-renewable work; to substitute an absent worker who is entitled to come back to work; to perform periodical works but of non continuous nature; in any other case in which it is the very nature of the work to be limited in time. In all this cases, the reason will have to be spelled out clearly and in writing together with the exact duration of the contract. This will allow the work inspectors to verify that the term put to the contract is consistent with the reality of the facts and therefore lawful (art. 12-bis). Of course, there is the problem to verify how effective the control of the inspectorate is and how often the workers denounced violations of this, otherwise, rather restrictive rule concerning fixed-term contracts. In case of a violation is found the contract becomes one of indefinite duration.

It was with Law n° 97-473 that part-time work received specific consideration and its regulation, introduced in the Labour Code at art. 13. The law allows for part-time contracts to be stipulated, but they cannot be for less then half of the normal legal working week, i.e. at least 20 hours. Here the legislation shows much more tolerance, allowing similar contracts when the amount of work available is not as high as to allow recruiting through a full time contract. Moreover, the law does not say anything as far as the modification of a full-time contract into a part-time ones is concerned, the decision thus relying only on the allegedly free will of the two parties, something which of course left the door open for abuses from the employer’s side who can easily obtain the consent of the worker under threat of dismissal. As for the management and the articulation of part-time across the day, the week and/or the year, the law leaves the floor open to the collective bargaining to which is conferred every decision within the minimalist framework set by the law.

There are no other legal provisions concerning flexible labour agreements, apart form traineeship and apprenticeship contracts which allow firms to recruit workers younger than the minimum working age of 16 and to employ them only for a shorter duration providing for some privileges connected to
their age. Again, in this field too, the law is useless unless an effective system of control is activated from the State.

In this respect it is very important to understand and verify how effective the control over the actual respect of the law is; and this can be done by examining the regulation concerning work inspectors.

**The rules concerning dismissal**

As far as dismissal is concerned, the Labour Code at articles 66 ff. provides for the causes for which a working contract can legitimately end. Next to the normal causes such as end of a fixed-term contract; death of the worker; resignation; etc., there is also the provision of dismissal either for economical reasons or for disciplinary reasons.

As far as economic dismissal is concerned, the labour code was reformed in 1994 with a substantial piece of legislation, law n°94/09 of 26 may 1994, aimed at providing employers and workers with alternative measures to dismissals and/or less drastic solutions. At the very centre of the law there are some four points: 1) special support for placement of workers dismissed for economic reasons; 2) state aid and funding to employment promotion and creation through fiscal incentives to newly open firms; 3) anticipated retirement; 4) unemployment insurance. This law has provided some special steps that must be made by the firm instead of immediately recur to redundancy in case of economic problems. Most importantly, the employer has to set up a specific social plan in order to organise and manage in the best possible way and with the lowest negative social impact a restructuring process. Articles form 6 to 8 describes the kinds of measures that the employer must take instead of dismissing workers, such as early retirements; conversion of contracts form full-time to part-time; thorough consultations with the social partners. This, of course, does not mean that collective dismissals are not possible any more, but they have been indeed made a bit more difficult since these legal requirements basically bring about a very important consequence: it entails judges with some power of control over the action of the employer which would be otherwise unlimited. Indeed, the fact that the dismissal is regarded by the law as the *ultima ratio* means that the employer can dismiss but such a power must be exercised in a more transparent way, as he will be asked to demonstrate in Court that he has done everything that was possible to him to reduce the number of the redundant workers. It is precisely for this reason that articles 69-71 expressly state that the employer must experiment all the possible solutions – listed in the article – in order to prevent collective dismissals from happening, such as reducing the working time; transferring the worker to another firm; pre-pensioning according to the law; etc. In any case the decision to collectively dismiss the workers must be bargained with the unions in the view of finding an agreement and to minimise its social impact on the employees. As far as the State is concerned, special fiscal incentives are provide for those firms who decide to retain the workers.

Of course, to have this law is much better than nothing, but indeed once the employer manages to be in a position to show to the judge that he has actually tried – although not managed – to find an agreement with the unions and that it was not possible but to dismiss those workers, this will be deemed sufficient for the dismissals to be legitimate. The problems are basically two then, that for the judge will be very difficult to evaluate whether or not the market situation was so critical as to justify the dismissal of those workers in that very precise firm operating in that specific sector; and secondly that being the involvement of the unions only a formal step of the procedure, since the law does not gives them any specific veto power, they cannot have a substantial impact, unless recurring to industrial action, something which is of course much more difficult in a poor country.

It follows therefore that, although the law does provide for some important obligations for the employers and for some specific measures to sustain dismissed workers, it seems that to dismiss a worker in the event of a need to restructure the firm is rather easy as far as the procedure is concerned, since only a not specified economic need must be met and a formalistic involvement of the workers’ representative accomplished. Of course, it would be interesting to access the case-law to see how this duty is shaped by the judges, and whether or not more detailed and restrictive boundaries are provided.
for by it, as it happens in most EU judge-made law. It is difficult to evaluate the impact of similar measures, but all conjures to show an activism from the side of the government in an attempt to balance flexibility and protection in order to stress a balance between the two sides.

As far as the disciplinary dismissal is concerned, this is allowed, following to art. 73, in case of serious wrongdoings exemplified by the law through a technique of redaction of legal norms which is quite unusual in civil law countries as Algeria and the SEM more in general, but typical at Common law. According to the list, alongside crimes, other actions which can justify a dismissal without notice are insubordination; violation of the confidentiality obligation; participation in industrial action outside the hypothesis provided for in the law; voluntarily damage of the firm’s premises, buildings, tools, etc; consumption of drogue or alcohol inside the firm. An obligation of adequate, i.e. proportionate, commensuration of the sanction to the wrongdoing is imposed on the employer anyway. A specific procedure is provided for in article 73 as far as the communication of the dismissal and the right of defence is concerned. Should the dismissal be deemed unlawful by a Court, the judge will either order the reinstatement of the worker in the firm, or, should one of the party disagree, condemn the employer to pay 6 months of wage plus damages and interests. This means that it is basically up to the employer to decide whether to reinstate or to pay the fine that, being rather soft, allows classifying the Algerian system as a flexible one in this respect. It is indeed true that the employer will have in any case to pay also all the wages from the date of the dismissal since the judgement, but the fact that the choice to decide on reinstatement is left open to both parties, and not only to the worker, as it happens in the most protective Western countries, e.g. in Italy according to art. 18 law n. 300 of 1970, this means that it is basically up to the employer to decide whether to reinstate or to pay the fine. Such a solution pushes towards a classification of the Algerian system as a rather flexible one as far as protection against dismissals is concerned. We have seen indeed that in case of economic dismissal although the wording of the causes allowing dismissal is very strict, namely “an absolute necessity”, it is not difficult for the employer to prove that the actual economic situation of the firm and of the market does make it anti-economical to keep the worker. At the same time, although a procedure is provided for involving the trade unions, there isn’t much that indicates that they do have an actual possibility to influence the decision, at least as far as the legal instruments at their disposal are concerned, so that they can rely but on industrial action. Similarly, although unlawful dismissals can be sanctioned with a fine, it is difficult to acknowledge that its entity can be sufficient to deter an employer from dismissing a worker without cause.

It must be noted that such flexibility is somehow balanced by the fact that the workers dismissed involuntarily or for economic reasons, enjoy both the right of notice of one month, in which a percentage of time shall be devoted to searching a new job, but also, and more substantially, they enjoy social security rights. Indeed, according to legislative decree n. 94.-11 of 26 May 1994, a special unemployment insurance has been created. It has been modified in the subsequent years and most recently, with Decree n° 06-339 of 25 September 2006 it has been decided that a total contribution of 34% must be paid by the workers and the employer, who contribute respectively with a 9% and a 25%.

The conditions to be met for such a right are a minimum of three years of affiliation with the social security and at least 6 years of contribution to the unemployment insurance. Moreover, the law also provides for anticipated retirement for those workers who have lost their job due to economical dismissals and have at least 50 years for men and 45 for women who have been in active employment and have paid social contributions for at least 20 years. Such a generous regime of extreme favour is of course exceedingly expensive and it would be interesting to know how is it actually implemented in a country where unemployment rate is close to 15% according to the official statistics of the Algerian Institute for Statistics and informal work is widespread. Anticipated retirement is the most common measure that has been taken also by Western countries as a social measure to soften the social impact of a restructuring, but as research show there is an increasing trend at EU level aimed at reducing these passive expenditure and to substitute them with more proactive policies aimed at anticipating the
negative effects of business restructurings. The doubt advanced here is then whether Algeria can actually afford such a generous system and if it is really used or if it remains mainly a dead provision.

The Law concerning Work Inspection

With law n° 90-03 of 6 February 1990 Algeria has introduced a specific law regulating the power and objectives of the work inspectors. They are charged to control the application and the respect of the legal provisions relating to individual and collective labour law. The law entrusts them with comprehensive powers, having the possibility to access workplaces and enjoying a special administrative protection for the action they carry. Indeed any pressure, insult or violence addressed to an inspector is prohibited and punished with specific provisions at criminal law.

However, despite its pivotal importance for an effective application of labour laws and an actual protection of the workers, it is reported by high ranking Algerian legal officials that although the law in itself would be adequate, the problem relies mainly on the inspectors themselves who are not adequately trained and therefore they are most of the times unable to effectively take all the actions which are assigned to them by the law. As a consequence, it is reported that the scope of the control on the effective working conditions in Algeria is very weak15. Again, due to their alleged incompetence it is questioned their capacity of providing adequate information and administrative support to the action of trade unions which would, otherwise, serve as a crucial contact point with the firm if only they could find a reliable counterpart for denouncing violations and abuses of the law. Other critical aspects include the fact that the gap in the functioning of the various Employment Tribunals of the country is extremely high, with inexplicably long time between the denounce and the decision, something which renders ineffective the role of control which would rely on the inspectors in first instance and then on the judges. Moreover, it is reported a lack of harmonisation in the case-law concerning dismissals, something which create a situation of legal uncertainty that prevent workers to go to court. As a consequence the Algerian National Economic and Social Council has therefore stressed the urgency to ameliorate the professional competency of the inspectors and to reinforce their role of assistance, advice-givers and conciliators as the effectiveness of their action is deemed to be utterly important in producing a much higher dissuasive effect against firms which has otherwise very few disincentives to break the law.

Critical Overview and Labour Rights Violations

Notwithstanding the promising theoretical legal framework in place in the country, external sources such as NGOs, trade unions and foreign reports describe a fairly different situation concerning Algeria, as it is the case for most the countries in this study. As it has been difficult to access first-hand analysis concerning the actual legal situation of workers in Algeria, we resorted to external sources. One of the most authoritative available in the field is the already mentioned CRHRP released on a yearly base by the Bureau of Democracy, Human Rights and Labour of the U.S. Department of State.

According to the findings of the Report, Algeria would be characterised by some serious violations of human rights. If the attention focuses on human rights violation specifically affecting the workers’ condition, the first and most serious issue reported concerns trafficking in person, which is not made the subject of a specific criminal norm prohibiting it, therefore making it more difficult for local authorities to combat it. According to the very last issue of the CRHRP released on 11th March 2008, Algeria is reported to be “a transit and a destination country for men, women, and children from sub-Saharan Africa and Asia trafficked for forced labour and sexual exploitation”.

As far as child labour is concerned, it is the very national Labour Ministry which reports that such practices occur. As for minimum age for employment, although the law does prohibit participation by minors in dangerous, unhealthy, or harmful work, or in work that is considered inappropriate because of social and religious considerations, stating that in any case the minimum legal age for employment

is 16, except for apprentice positions, serious violations are also reported by the CRHRP which relies on information gathered from both the Government and NGO. As one can have expected, evaluations differ deeply. According to the Labour Ministry as of February 2006 it is reported that only 95 "young workers" were identified during site visits performed by labour inspectors at 5,847 companies, reporting a rate of child participation in the labour force of 0.56. Similar figures were strongly challenged, however, by the local NGO FOREM, a children’s rights watchdog group financed by the European Union. According to FOREM, taking 2006 as the year of reference, in the eight most populous provinces six percent of children age 10 and younger participated in the labour force, while 63 percent of children age 13 to 16 participated. The survey found children working a variety of hours in small workshops, on family farms, and especially in informal trades, where children from impoverished families are employed for economic reasons. In a November 2007 press conference, FOREM representatives said there were one million children working in the country, at least half of whom were under the age of 16.

As far as acceptable Conditions of Work are concerned, the national minimum wage for 2007 was set at $148 (10,000 dinars) per month. According to the evaluations and assessments provided by the CRHRP, such a sum did not provide a decent standard of living for a worker and family. Next to minimum wage, another crucial aspect for evaluating the quality of the actual implementation of labour rights is respect of working time regulation. The standard legal work week is 37.5 hours, with one 10-minute break and one hour for lunch. Employees who worked beyond the standard work week are entitled to receive a premium pay on a sliding scale from time-and-a-half to double-time, depending on whether the overtime was worked on a normal work day, a weekend, or a holiday. Similar provisions, which are even more favourable than those provided for EU Member States by the Working Time Directive which set the normal working week at 40 hours, are most probably not respected, outside the civil service, but there aren’t available data of inspections carried out by the work inspectors who are responsible for performing such an activity. According to NGOs and the CRHRP these inspections are regarded as utterly inconsistent in term of both effectiveness and coverage.

The same “relaxed” approach is also reproached to labour inspectors as far as occupational, health, and safety standards: despite the law contains a well developed regulatory framework in this respect, CRHRP reports that the inspectors do not enforce these regulations effectively. Although there were no reports of workers being dismissed for removing themselves from hazardous working conditions, neither are there cases of employers being fined for violation of health and safety regulations in the workplace. Such a finding however is not necessarily a positive one, since although at law workers can resort to the courts in case of violations, however the high demand for employment in the country gives an advantage to employers seeking to exploit employees.

It follows from such a conclusion that an actual evaluation of the Algerian situation cannot be conducted at the level of the legislation in force: although it appears formally well developed and sufficiently protective, it emerges that its implementation is left to the employers since labour inspections are ineffective and lack of work prevent employees to resort to labour tribunals.

As for our research this means that although the law in theory seems to provide a reasonable balance between flexibility and protection in the labour market, the actual situation is different, and most probably, what needs to be assessed is the actual situation of workers’ rights, but data in this respect are extremely difficult to be gathered, and further research with possibly the assistance of local trade unions and scholars is envisaged.
Egypt:

General Overview

Egypt plays a leading geo-strategic, political and economic role in Africa, the Middle East and beyond. It is one of the continent’s most populous countries (76.1 million persons), and ranks 112th on the 2007 Human Development Index (HDI) out of 177 evaluated countries.

It has been in the spotlight lately for its significant political and economic reforms. In the economic sphere, Egypt’s Partnership Agreement with the EU in 2001 and its free access to the American market by virtue of the Qualified Industrial Zones Agreement (QIZ) in 2004 have accelerated its integration into the global market. A reform-minded cabinet elected in 2005 is introducing major reforms for boosting economic performance and competitiveness, in order to meet the challenges of this opening. These reforms include: a simplifying taxation law, accelerating privatization and fighting bureaucracy and corruption. In parallel, it is developing instruments to protect the poor from negative repercussions of those reforms; examples include a unified labour law in 2003, the first Small and Medium Enterprises (SMEs) law in 2004, and the first strategy on Micro-finance in 2005.

Economic growth, was at around 4% in 2006 and it is expected to accelerate to 5-6% in coming years. The main challenge will be to ensure that growth generates more and better jobs, and is pro-poor. Unemployment reached 11.2% in 2005\(^{17}\), with the highest rate among the age bracket between 15-25 years (women particularly), who constitute some 90% of the unemployed. Poverty affects almost one fifth of the population, and over one third is concentrated in rural Upper Egypt, while the “ultra poor” (those unable to cover their basic food needs) ranges between some 3% and 7%. It is noteworthy, though, that rural Upper Egypt suffers both from a higher poverty incidence that is on the rise, and greater poverty depth; that is, low sensitivity to changes in growth and consumption levels. Social security is reported to reach no more than a meagre one fourth of the population.

In a nutshell, youth employment, poverty reduction coupled with a decrease in regional disparities, employment creation through SMEs, human resource development, and the upgrading of a number of large, employment-intensive sectors such as tourism, textiles and construction are key priorities for the country.

Sources of regulation

Comparing to other countries of the present research, Egypt is one of those with the most complex and rich regulation. This, of course, does not signify that labour law is more respected or that its scope is wider than in other places, but it certainly suggests that there is a strong will on the government’s side to provide for a adequately regulated labour market. This is also explicable as a consequence to the rather significant and constantly increasing countries’ economic growth which carries an increase of foreign investment in the country on the assumption that a clear legal framework can make the country more attractive to foreign firms.

The Constitution

The Constitution of the Arab Republic of Egypt is the supreme law of Egypt. It was adopted on September 11, 1971 through a public referendum. It was later amended in 1980, 2005 and 2007. It was proclaimed to update the democratic representative system in assertion of the rule of law, independence of Judiciary, and party plurality.

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\(^{16}\) Most of this information relies on the data provided by the ILO Natlex website: http://www.ilo.org/dyn/natlex/.

It is a socially oriented Charter with a stron emphasis on the collaboration of the citizens through work to the development of the country well-being, as it emerges clearly form its opening article:

“The Arab Republic of Egypt is a democratic, socialist State based on the alliance of the working forces of the people” (art. 1). Moreover, article 7 puts solidarity at the core of society: “Social solidarity is the basis of the society. Art. 11 and art. 40 provide for the principles of equality and non discrimination: according to art. 11 “The State shall guarantee the proper coordination between the duties of woman towards the family and her work in the society, considering her equal with man in the fields of political, social, cultural and economic life without violation of the rules of Islamic jurisprudence. Article 40 affirms the principle of equality of all citizens: “All citizens are equal before the law. They have equal public rights and duties without discrimination between them due to race, ethnic origin, language, religion or creed”.

But it is in the economic provisions that the social orientation of the country better emerge through the principles of solidarity, social justice, equality and planned economy (not only minimum but also maximum wages should be fixed!). Here it emerges clearly how innovative and progressive Egyptian society should have been in the mind of the Constituents. According to art. 23, “The national economy shall be organised in accordance with a comprehensive development plan which ensures raising the national income, fair distribution, raising the standard of living, eliminating unemployment, increasing work opportunities, connecting wages with production, fixing a minimum and a maximum limit for wages in a manner which guarantees lessening the disparities between incomes”. Art. 24 give to the people the control of the means of production, as far as this does not interfere with “The Plan”, very much in line with the creeds of socialism: “The people shall control all the means of production and direct their surplus in accordance with the development plan laid down by the State”. Art. 25 then logically clarifies that “Every citizen shall have a share in the national revenue to be defined by the law in accordance with his work or his unexploiting ownership.”.

Even more advanced is art. 26 as it resounds the mitbestimmung approach typical of Germany but more in general the participative approach to industrial relations: “The workers shall have a share in the management and profits of the projects. They are committed to the development of production and the implementation of the plan in their production units, in accordance with the law. protecting the means of production is a national duty. Workers shall be represented on the boards of directors of the public sector units by at least 50% of the number of members of these boards. The law shall guarantee for the small farmers and small craftsmen 80% of the membership on the boards of directors of the agricultural CO-operatives and industrial cooperatives”.

As we will see not all these principles are actually reflected in the legislation in force, but it is unquestionable that Egypt Labour Code is very sensitive to workers’ needs providing for an elaborate and comprehensive legal framework.

The Labour Code

Employment relations in Egypt have been most recently regulated by Labour Act No. 12/2003 (hereafter “LA”), which was promulgated on 7 April 2003. The new Law comprises 257 articles that address all the legal aspects regulating the Egyptian labour market. The new law aims at increasing the private sector involvement and at the same time achieving a balance between employees’ and employers’ rights. Amongst the most important issues that the new law addresses is the right of an employer to fire an employee and the conditions pertaining to this as well as granting employees the right to carry out a peaceful strike according to controls and procedures prescribed in the new law.

Provisions stipulated in individual employment contracts, collective agreements, enterprise internal regulations, or those established by custom and practice, are valid if they are more favourable to the worker than the provisions of the LA (Article 5, LA).

Act No. 47/1978 deals with the status of public servants.

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Contracts of employment

Employment contracts are required to be in writing, in triplicate, and in Arabic language. The employer, employee and social insurance office each keep one copy of the employment contract, which must include certain information as specified in the Law (Article 32, LA). It is necessary that both employer and employee agree on essential matters in the law concerning wages, job description, and contract period. It is also important to state the kind of work, which the employee is obliged to do, and the entity to which he/she is questionable if work is not performed.

The probation period shall be specified in the labour contract and no employee shall be appointed under probation for a period exceeding three months, neither shall an employee be appointed under probation more than once with the same employer (Article 33, LA).

The LA provides the definitions of various types of employment. Temporary work is work which by nature is part of the employer’s activities and of limited duration, or which involves executing a specific task. Casual work is defined as work lasting less than six months and which is not a usual part of the employer’s activities. Seasonal work is defined as that carried out during the traditionally recognized periodical seasons (Article 1, LA).

If an employee is hired on probation, the employment contract should indicate the probationary period, which cannot exceed three months (Article 33, LA). An employment contract may be drawn up for a fixed-term or indefinite period of time.

The legislator regulates a maximum of five years for a fixed contract. If the employer and employee agree on a longer employment duration, then the latter has the right to terminate the contract after the initial five years, without receiving compensation; however, the employer must be notified within an agreed time period, which is a three-month prior notice. In case the employee and the employer continue in implementing a fixed-term contract after its term, such shall be considered as a renewal of the contract for an indefinite term. More specifically, since this contract represents the one allowing for more flexibility in the Egyptian system, it must be understood that a fixed-term contract is deemed renewed for an indefinite period if both parties continue to abide by it after its date of expiry, although a specific exception is made for foreign workers (Article 105, LA). However, despite all these provisions, by an express agreement of the two parties, the fixed-term employment contract may be renewed several times (Article 106, LA). This of course is a provision that typically has the effect of hampering the protection offered to the worker since it paves the way to abuse in a country where the labour market is far from fluid and employees will easily find themselves in a take-it-or-leave-it position. The introduction of such a clause in the labour Code then clearly represents a renounce of the Government to actually redress the imbalance of power which is characteristic of every employment contract and which should instead represent the very aim of every piece of labour legislation. However, it must be understood that in a developing country it is extremely hard to implement similar protective provisions since an excessively protective legislation would have the effect, if actually implemented, to greatly reduce the possibility for the citizens to find a job.

Another provision, typical of fixed-term contract, but aimed at protecting the interest of the employer is the one according to which an employment contract, concluded for a specific task, and whose duration exceeds five years, cannot be terminated before the work has not been accomplished in its entirety as specified in the contract. (Article 107, LA). In cases where the employment relationship continues after the expiration of the contract concluded for a specific task— and art. 106 LA doesn’t find application – the contract is deemed renewed for an indefinite period (Article 108, LA). As regards retirement, the employer has the right to terminate the employment of a worker who reaches sixty years of age, unless the contract is for a definite period of time and extends beyond this age. In this case, the contract will be terminated on the date mentioned in the contract at the moment of its conclusion (Article 125, LA).
Working Hours and Annual Leave

According to the 2003 LA, employees should not work more than eight hours a day or 48 hours over a six days working week. Most private sector employees work 5 days a week, usually Sunday to Thursday. The number of working hours may be increased to 9 hours a day in certain circumstances. Employees are entitled to one whole working day off each week. Certain exceptions apply when work is intended to prevent a serious accident or to cope with a heavy workload. In such situations, the employee must be paid overtime.

An employee is entitled to a minimum annual paid leave of 21 days every one full year of service and proportionally if his period of service is less than one year. This annual leave is increased to one month after the employee has worked for 10 consecutive years or is over 50 years old. In addition, every employee is entitled to full pay for official holidays designated by the Ministry of Manpower and Immigration, not to exceed 13 days a year.

If employees are required to work during official holidays, the employees are entitled to overtime (paid at twice their normal rate). Overtime for hours worked beyond 36 per week is payable at the rate of 35 percent extra for daylight hours and 70 percent extra for work performed at night. The premium for work on rest days is 100 percent while workers should receive 200 percent for work on national holidays.

The weekly days off and the official holidays are not be counted as part of the annual leaves.

Dismissal and Termination of Employment\(^{19}\)

Overview

Article 69 LA lists the grounds under which an employee may be dismissed. As a general rule though, an employee may not be dismissed until the matter is brought before a committee with judicial powers at the Ministry of Manpower and Migration. The committee shall decide the request for dismissal brought to it within 15 days from the date of the first session and its decision shall be final. However, the employer may thereafter dismiss an employee and the employee retains the right to challenge the dismissal in court.

Egyptian Labour Courts retain discretion in reviewing a dismissal. Compensation awards may be granted to employees for wrongful dismissal on the basis of a review of the facts and circumstances of each case.

An employee is entitled to 60 days notice for dismissal if his period of service does not exceed 10 years and 90 days if that period exceeds 10 years. Should the employer desire to dismiss the employee without giving him the relative notice period, the employee shall receive two or three month’s salary payment instead of such notice.

Article 122 LA states that the compensation shall not be less than the wage of two months' salary for each year of employment for wrongful dismissal. Throughout the notification period the labour contract shall remain ruling.

Grounds for legal termination without notice include the expiry of a fixed-term employment contract, retirement, resignation, death or a court ruling.

The termination of employment provisions of the LA (Article 4, LA) do not apply to public servants employed by State agencies, public establishments and local authorities; domestic workers and the like; employer’s family members whom the employer is in charge of.

\(^{19}\) The overview on Egypt law provisions concerning termination of employment contained in this section rely on both a critical analysis of the legislation in force done by the author and on an overview updated at December 2006 and prepared by Professor A. EL BORAI, Law Faculty, Cairo University, Egypt, and Ms A. MULLER, Official of the ILO, see: www.ilo.org.
Termination of the employment contract not at the initiative of the employer

A contract of employment can terminate, not at the initiative of the employer, in certain circumstances, including at the expiry of a fixed-term contract; and at the completion of the task for which the contract was concluded.

A very protective provision, very much in line with the legislation of EU Member States, is that of art 127 LA according to which the termination of employment is not possible for reasons of the worker’s illness, unless he/she has exhausted sick leave entitlement as determined by the Social Insurance Law, in addition to his/her annual leave (Article 127, LA).

Moreover, the employer is entitled to dismiss a worker in case of some custodial sentences, which are listed under Article 129 of the LA, such as “breach of honour, honesty or public morals”.

Termination of employment at the initiative of the employer

Under Article 110 of the LA, both parties may terminate an open-ended contract, provided that notice period is given and it is done in writing. However, the employer cannot dismiss a worker, except in the cases listed in Article 69 (see below), or for reason of worker’s incompetence, which must be established in respect of “endorsed regulations”.

A worker cannot be dismissed unless he/she has committed a serious offence (Article 69, LA). The decision to dismiss a worker as a sanction for serious misconduct is taken by a special committee established by the LA for this purposes (Article 68, LA). This kind of committee acts under the civil and commercial procedure law. The composition of each committee is provided for by article 71, LA.

Protection against discrimination is also provided for by the Labour Code. The LA indeed lists some invalid reasons for dismissal, such as, among others, colour, sex, social status, family obligations, religion political views, participation in trade union activities, and filing a complaint against the employer (Article 120, LA).

In addition, the Trade Unions Act No. 35/1976 protects members of boards of trade unions from suspension or dismissal, except pursuant to a Court decision (Articles 26, 27 and 46).

In Egyptian law, collective dismissals can only be for economic reasons.

The employer cannot dismiss a woman during maternity leave (Article 92, LA).

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20 A worker is deemed to have committed a serious offence if he/she has:
1. assumed a false identity or submitted false documents;
2. acted negligently, causing the employer considerable loss, provided the employer informs the competent authorities of the incident within 24 hours of becoming aware of it;
3. despite having received a previous written warning, failed to observe written instructions displayed in a prominent place, compliance with which is necessary to ensure the safety of the workers and of the establishment;
4. been absent without a valid reason for more than 20 days a year, or for more than ten consecutive days, provided that the worker is first warned in writing by the employer after ten days’ absence in the former case and after five days in the latter;
5. divulged professional secrets concerning the enterprise employing him/her, which caused serious damages to the enterprise;
6. been competing with the employer in the same field of activity;
7. been found in a state of obvious drunkenness or under the influence of drugs within working hours;
8. assaulted the employer or the employer’s representative, or has committed a serious act of violence against any of his/her superiors during or in connection with his/her work; not respected the rules on strikes prescribed by the LA.

21 It is composed by “two judges, of whom the senior judge is the chair of the committee according to the rules stipulated by the Judicial Authority Act; the head of the concerned Directorate of Manpower or his/her representative; a representative of the Federation of Egyptian Trade Unions; and a member of a concerned employers’ organisation.”
The employer is entitled to terminate the apprenticeship agreement for reasons of ineptitude of the apprentice (Article 143, LA).

**Notice period for termination**

As regards the termination of an open-ended employment contract, the notice period is two months if the worker’s uninterrupted period of service with the employer is less than ten years, and three months if that period exceeds ten years (Article 11, LA). This notification cannot be addressed during the worker’s leave (Article 113, LA). During the notice period, the worker is entitled to a full day or eight hours a week, taken at time convenient for both parties and without loss of pay, for seeking other employment (Article 116, LA).

**Procedure for dismissal on disciplinary grounds**

Where a worker is accused of an offence for which the appropriate disciplinary penalty is dismissal, the employer must, before deciding to dismiss him/her, submit a request to do so to a committee (Article 71, LA).

The committee has to decide on a worker’s dismissal within 15 days. The decision is final and must be executed even if an appeal is lodged.

If the committee refuses the dismissal, the employer has to reinstate the worker and pay him/her any unpaid back wages. In case of the employer’s failure to do so, the dismissal is deemed as “arbitrary dismissal” and the worker is allowed financial compensation.

**Procedure for collective dismissal for economic reasons**

If contemplating collective redundancies, the employer must submit a request for closing the enterprise or reducing its size or activity to a committee established for this purpose. However, the employer is not allowed to ask for partial or total closure of the enterprise during mediation or arbitration (Article 200, LA).

The Prime Minister defined, by Decree No. 984 of 2003, the composition of these committees, their powers and procedures. Each committee must consist of a representative nominated by the General Federation of Egyptian Trade Unions, a representative of an employers’ organisation nominated by the concerned organisation, a technical and economic representative from the General Authority for Investment, and a representative from the National Social Insurance Authority. The chair is the concerned director of the Manpower and Emigration Directorate. The committee must prepare an argued decision, adopted by majority vote, within thirty days from the date of the submission of the request.

In the request to the committee, the employer must provide information including the reasons for the contemplated terminations, and the number and categories of workers likely to be affected (Article 197, LA). In case of authorisation of dismissals, the committee must fix the effective dates.

Each party may bring an appeal against the committee’s decision before the Central Committee for complaints established in the Ministry of Manpower and Emigration. The appeal has a suspensive effect on the decision.

The employer must inform the workers and trade unions concerned about the request to the committee and the decision received from the committee (Article 198, LA).

If the collective agreement in force in the enterprise does not provide any objective criteria for selecting the workers to dismiss, the employer must consult with trade union representatives. The criteria for selection must take into account the interests of both the enterprise and workers (Article 199, LA).

As an alternative to dismissing workers for economic reasons, the employer is entitled to propose modifications to the employment contract. If the worker refuses it, he/she has the right to leave the enterprise without giving any notice. In this case, the dismissal is deemed lawful and the worker keeps his/her rights to compensation prescribed for dismissals for economic reasons (Article 201, LA).
Severance pay

As regards terminations for economic reasons, the severance allowance must be equal to one month’s wage for each of the first five years of service, and one-and-a-half months for each subsequent year (Article 201, LA).

Employees retiring at the age of 60 are entitled to severance pay (Article 126, LA). At the age of 60, a worker is entitled to indemnity calculated on the basis of half of his/her monthly wage for each of the first five years of employment, and one month’s wage for each subsequent year, unless he/she is entitled to benefits under the old-age, disability and death insurance scheme provided for by the Social Insurance Law.

Critical Overview and Labour Rights Violations

Overall Egypt has a rather developed labour legislation, but concern is high regarding its actual enforcement, especially in very sensitive areas such as child labour. This form of work, representing the most unacceptable form of violation, is prohibited by the 1996 Child Law. It limits the type and conditions of work that children under the age of 18 may perform legally. Basically, the regulation is as follows: in nonagricultural work, the minimum age for employment is 14 if the child has completed basic education, which is offered until 15 years of age. However, Provincial governors, with the approval of the minister of education, may authorize seasonal work for children between the ages of 12 and 14, provided that duties are not hazardous and do not interfere with schooling. Children are prohibited from working for more than six hours per day, and one or more breaks totaling at least one hour must be included. Several other restrictions apply to children: they may not work overtime, during their weekly day(s) off, between 7 p.m. and 7 a.m., or on official holidays. Children are also prohibited from working for more than four hours continuously.

In spite of such a detailed regulation, inspections carried out by the Ministry of Labour show that although generally this legislation is generally enforced in state-owned enterprises, in the private sector, especially in the informal one, application is lax. In particular, employers tend to abuse, overwork, and generally endanger many working children. This is confirmed also by the 2007 CRHRP, which however underlines the fact that forced or compulsory work involving children happens rarely, and mainly in the rug/carpet factories.

Statistical information regarding the number of working children is difficult to obtain and often outdated. If one relies on data provided by NGOs, up to 2.7 million children would be in active employment. Government studies indicated that the concentration of working children is much higher in rural than in urban areas. However, children are also reported to work in light industry, on construction sites, and in service businesses such as auto repair shops. Press reports focus attention on the estimated 2,000-3,000 children working in the stone quarries in Minya.22

Child Labour Law is then unable to protect children exploitation due to spotty and lax enforcement. Egypt is in violation of its international commitments in this respect pursuant to the UN Convention on the Rights of the Child (CRC). The Government, supported by numerous institutions, such as ETUF, ILO, World Food Program, UNICEF, is actively working to formulate a national strategy to combat child labor and eliminate the worst forms of child labor. Most interesting, the Government also worked to provide working children with social security safeguards and to reduce school dropout rates by providing their families with alternative sources of income. Increase in control is alleged to have brought considerable success: according to the Labour Ministry in the 2006/2007 period the Ministry's 2,000 labour inspectors across the country have cited 72,000 violations related to the application of the child labour law.

Outside the area of child labour, lack of accessible studies on the implementation of the new labour provisions is missing, and therefore assessment is difficult.

Some abuses are only reported concerning employer abuse of undocumented workers, especially domestic workers. However, only a few employers were reported by CRHRP to be prosecuted for abuse of domestic workers, but many claims of abuse were unsubstantiated because undocumented workers were reluctant to make their identities public.

Libya

The Great Socialist People's Libyan Arab Jamahiriya is an authoritarian regime with a population of approximately six million, ruled by Colonel Mu'ammar al-Qadhafi since 1969. The country's governing principles are derived predominantly from Colonel al-Qadhafi's Green Book ideology. In theory citizens rule the country through a pyramid of popular congresses, communes, and committees, as laid out in the 1969 Constitutional Proclamation and the 1977 Declaration on the Establishment of the Authority of the People.

The Libyan Labour Market

The exam of available data, updated to 2007, and provided by the U.S. Embassy in Tripoli, shows that while official figures put the unemployment rate at 13%, unofficial estimates place the real rate between 35 and 40%. Libya's labour force numbers roughly 1.3 million persons, roughly 31% of whom work in industry, 27% in services, 24% in government and 18% in agriculture. Despite laws prohibiting moonlighting by civil service employees, many government functionaries hold multiple jobs. The majority of Libyan women hold some form of employment outside the home. Libyan labour law stipulates basic rules concerning minimum wage, working hours, night shift regulations, dismissal and training. Laws governing dismissal are rather strict, and formally favour the employee, although their application is scattered and left much room open to judges for assessing each case. Unjust dismissal is only made the object of monetary compensation; reinstatement is not provided.

In early 2007, officials announced a series of measures to reduce the presence of illegal workers in Libya. In late 2007, the Egyptian border was closed to migratory workers. The Ministry for Manpower, Employment and Training has called on all Libyan and foreign employers to ensure the legality of their employees, including the warning that failure to do so will result in punishment ranging from fines, to withdrawal of work permits, to imprisonment.

Law No. 15, passed in 1981, capped government salaries at between 150 and 500 Libyan Dinars (LD) per month, depending on grade. There had been no cost of living adjustment from that date until 2006, when several changes were instituted to raise minimum salaries in the public and private sectors. GPC Decision No. 277 of 2006 set basic government salaries at: 130 dinars for persons without dependents, 180 dinars for families of two members, and 220 dinars for a family of three or more members. During 2007 raised minimum salaries for other categories of employees, including corporations not financed by the central government, and removed a pay cap in place for many types of work outside of the public sector.

As far as collective labour law is concerned – although not cover by the present research, it must be mentioned that independent trade unions and professional associations are illegal in Libya. While workers do not have the right to form unions, they are allowed to participate in an organization called the National Trade Unions' Federation, created in 1972. Collective bargaining does not exist in any meaningful sense, as labour law requires government approval for all related actions.

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23 See: http://www.carim.org/legaltexts/LE2LIB006_FR.pdf
Legal sources

The Constitution

Libya adopted its Constitution on 11 December 1969. It is a rather short piece of legislation encompassing only 37 articles. Very few basic rights are listed in it, and almost nothing is expressly provided as far as labour rights are concerned. Despite this the Preamble is rather interesting since it lists some basic rights which can have an impact on employment relationships, although the legal nature of it and the interpretation provided by the tribunals of it is not known. Indeed, it states that the objective of the Revolution which gave rise to the Libyan Arab Republic and that should be mirrored by the Constitution is to “restore the freedom” of the Libyan people, so that they can “enjoy the wealth of their land, live in a society in which every loyal citizen has the right to prosperity and well-being”. It is then declared “in the name of the Libyan people” that “peace cannot be achieved without justice”, that “imperialism is responsible for their [i.e. the Libyan people] underdevelopment despite the abundance of their natural resources” and that there is the need to fight “the corruption which spread through the governmental apparatus”. In order to achieve all this, the Preamble of the Constitution declares that the aim to be pursued in the years to follow is the “establishment of a national, democratic, progressive, and unitary government” and to “strengthen the Revolution until it attains its objectives of freedom, socialism, and unity”. The Constitutional Proclamation to which reference is made here was supposed at the time to be only provisional and was expressly intended “to provide a basis for the organization of the state during the phase of completion of the national and democratic revolution, until a permanent constitution is prepared, defining the objectives of the Revolution and outlining the future course”. Such a new Constitution has not been yet enacted, therefore one could derive from the Preamble that the objectives mentioned in it have not been yet achieved.

If one then analyses the various articles of the Constitution of 1969 with this caveat in mind, it is possible to find only very few articles entrusting citizens with fundamental rights. As for the present research those which are more relevant are art. 4, the only one expressly dedicated to work, and art. 5 to equality. According to art. 4 “Work in the Libyan Arab Republic is a right, a duty, and an honour for every able-bodied citizen. Public functions are the duty of those who are put in charge of them. The goal of the state employees in discharging their duties is to serve the people”. It is clear from its wording that the actual consequences in term of rights are rather evanescent since work is only qualified as a right (and duty and... an honour), therefore this clause can be regarded just as a general proclamation. Much more useful and clearly defined is art.5 according to which “All citizens are equal before the law”. Of course, such a provision can be easily used as a point of reference in employment relationship in order to fight discriminations, especially if read in combination with art. 6 where realising socialism is defined as the aim of the State. More precisely this article mentions the very principle of “social justice” which forbids any form of exploitation: as it reads “the state endeavours, through the edification of a socialist community, to achieve self-sufficiency in production and equity in distribution. Its aim is to eliminate peacefully the disparities between social classes and to attain a society of prosperity”.

It is therefore in the light of this “programmatic approach” that the Libyan Constitution must be read and the provisions of the Labour Code and of the connected pieces of legislation interpreted.

The Labour Code and other related legislative provisions

The Libyan legal system is based on French law, but also on Italian law and, for some aspects, mainly connected to personal status and family law, on Shari’a. Labour relationships have been long governed by a so called master and servant, i.e. with a very strong accent on freedom of contract, until 2000 when new provisions were enacted shaping the employment contract in more equal terms with a much more significant incidence of statutory law intervention in the contractual agreement. The Labour

25 An English version of it can be downloaded from: http://www.servat.unibe.ch/law/icl/ly00000_.html
Code dates back to 1970 but there are plans to reform it to allow a labour relationship that conforms to international labour standards. Underdevelopment of Labour Law and the scarcity of skilled technicians both represent present a very serious problem. As for the issue of scarcity of skilled labour force is concerned, the Government during the last ten years passed a number of so called Foreign Investment Laws. The most recent one, so called Foreign Investment Law n. 5, currently provides that foreign companies investing in Libya must train local workers to replace their own technically qualified staff, although it allows them to hire foreign labour if there are no qualified local alternatives. As discussed below, it is hard to think that similar provisions will really be effective, not to mention the fact that they could even discourage foreign investment.

The legal minimum wage as of 2006 was 68$, while the average wage in the manufactory industry was the double. As for working time it is reported that the legal working week is 48 hours. The retirement age is set at 65 for men and 60 for women.

Social Security is made the object of a law dating back to 1980, law n° 13. It provides cover for all residents. The contribution is mandatory and is divided between the employee (2.125% of earnings), the employer (2.975% of the salary) and the Government (2.975% of covered earnings). It provides cover for sickness, lump-sum grants for pregnancy and child birth and work-injury benefits. As far as pension is concerned, the qualifying age is 65 and 20 years of contribution. Disability pension is also provided at the rate of 80% loss of earning capacity in last job. Unemployment is also provided with cover by the 1980 law which requires the employer to pay a dismissal indemnity of 100% earnings for up to 6 months.

As said, labour law is scarcely developed in Libya and the system is then mainly based on informal agreements. The 1970 Labour Code does provide for some basic rules but they are far from comprehensive and in any case reflect a voluntarist approach to the contractual regulation, where large room for action in shaping the agreement is left to the parties, thus emphasising the natural imbalance of power between employers and employees. Parliamentary discussion concerning a project of reforming Libyan Labour Code is reported to be ongoing though.

Some examples will be described to clarify such an approach. Contracts for unlimited duration can be stipulated for whatever reason for a maximum period of five years which can be renewed only once for another five years period (art. 25). It is clear that allowing a fixed-term contract to run consequently for 10 years is equal to no limitations at all.

The regulation of working time is also rather lax and leaves ample spaces for abuses, or in any case do not entitle workers with sufficient protection. Indeed, the Code provides for a compulsory full day of rest per week, and disposes that the daily working time amounts to 8 hours. However, overtime may be required for a maximum of three additional hours per day thus reaching a legal maximum peak of 66 hours per week. Moreover, provided that the worker is paid at a double salary rate (normal overtime is paid at 1.5 the normal rate), he can also be required to work during his rest day without any limitation provided at law. It emerges therefore that, even without knowing at the present state of the research how the provisions are actually implemented, indeed the regulation of working time in itself shows to be in favour of the employer. Similarly, it is provided that only 10 days of paid leave is provided for worker with less than 5 years of seniority, and that the maximum duration of annual leave amounts to 24 days for those who have been employed for much longer period.

A similar approach is followed as far as the rules concerning termination are concerned. According to art. 49 “if a contract is terminated without just cause, the aggrieved party shall have a right to compensation to be assessed by the court, taking into consideration the nature of work, the damage incurred, the duration of service and local custom, after investigation of the circumstances of the termination”. Then, as a general rule concerning dismissal, art. 51 provides that “no employer shall terminate a contract without compensation or notice” except where the worker has committed an act

among those listed in the law such as a gross breach of contract, a sickness period going beyond the 6 months provided for the law, has committed an act which has damaged the firm, has revealed an industrial secret, etc. The mandatory notice period is thirty days (art. 46), and this can be regarded as extremely short, in comparison to, for example, neighbouring Egypt where it varies from 60 to 90 days according to seniority, being therefore more than double.

The other rules concerning termination do not add anything of particular relevance apart for providing for the possibility for the worker to ask for the dismissal to be suspended until the case has been decided by the judge. All in all then, beyond the minimum set of rules provided in the Code, the main player is the judge who is entitled to assess freely the damage incurred by the party who unlawfully terminated the contract. In any case, since the code only refers to an indemnity payable to the worker in case of unjust dismissal, reinstatement is to be excluded from the available remedies. Unless judges manage to uniform their decision thus creating a corpus of case-law reliable and constant in its application, the result of a case concerning dismissal will be rather unpredictable.

As far as the law is concerned, the overall evaluation is that of a rather flexible/non-protective approach to labour rights. Since normally for developing countries reality tends to be much different from formal legislation which, on the contrary, is often rather rigid and in line with international labour standards, on the contrary for Libya the impression is that even the legislation is flexible and that most probably, as the following steps of the present research will probably confirm, the final result is that of a deregulated labour market. With indeed many foreign workers on their market.

Critical Overview and Labour Rights Violations

According to the 2007 Country Reports on Human Rights Practices (CRHRP), the government's human rights record remains poor. Citizens do not have the right to change their government. Torture, arbitrary arrest, and arbitrary detention are reported. The government restricts civil liberties and freedoms of speech, press, assembly, and association. The government does not fully protect the rights of migrants, asylum seekers, and refugees.

However, due to the fact that access to Libya is restricted and information concerning the country is kept confidential, it is extremely difficult to acquire actual knowledge of the actual situation. Again according to the CRHRP the law forbids forced, compulsory and child labour, but there is no information available on the prevalence of similar practices. Similarly, no information is available concerning whether the law limits working hours or sets occupational health and safety restrictions for children.

As far as general working conditions are concerned, the 1980 Labour Code defines the rights and duties of workers, including matters of compensation, pension rights, minimum rest periods, and working hours. In 2006, the government is reported to have shortened the legal work week from 48 to 40 hours.

Wages are forbidden by the Green Book and paid in the form of "entitlements," which frequently are in arrears. While some public sector wages, including professors, have seen wage increases in recent years, a wage freeze imposed more than a decade ago have depressed earnings until 2007 when new laws have risen the wages, as mentioned above. The raise was considerable since as of July 2006 the World Bank reported that the minimum wage was $68 (85 dinars) per month, while in 2007 was brought to 120 dinar for a person without dependants.

Although there was no information available regarding whether the average wage was sufficient to provide a worker and family with a decent standard of living, the government heavily subsidized rent, utilities, and food staples.

As far as labour inspections are concerned, inspectors are assigned to inspect places of work for compliance with government-defined health and safety standards, and the law grants workers the right to court hearings regarding these standards. Certain industries, such as the petroleum sector, attempted to maintain standards set by foreign companies. There was no information regarding whether workers
could remove themselves from an unhealthy or unsafe work situation without jeopardizing their employment.

As for foreign workers, they reportedly constituted 1.6 million of the 3.2 million workforce in 2007; however, law does not accord foreign workers equal treatment. Foreign workers are permitted to reside in the country only for the duration of their work contracts, and they cannot send more than half of their earnings to their home countries. They are subjected to arbitrary pressures, such as changes in work rules and contracts, and have little option other than to accept such changes or depart the country. Many foreign workers in 2007 were deported arbitrarily for not having newly required work permits for unskilled jobs they already held.

Mauritania

Mauritania, with an estimated population of three million, is a highly centralized Islamic republic governed by President Sidi Mohamed Ould Cheikh Abdallahi, whose April 19 inauguration highlighted the country's first successful transition to democracy in its 50 years of independence. President Abdallahi replaced Colonel Ely Ould Mohammed Vall, who had taken power in the August 2005 coup that ended the 23-year presidency of Maaouya Ould Sid'Ahmed Taya. The presidential elections were judged free and fair by international and national observers.

According to information released by the U.S. Mauritanian Embassy,27 there is a shortage of skilled workers and well-trained technical/managerial personnel in most sectors of the economy. Mauritania's population is quite young, with 64 percent of its citizens under 25 years. Government sources estimate that unemployment for males over 18 runs as high as 33 percent.

Legal Sources

The Constitution

The Mauritanian Constitution was adopted on 12 July 1991. It is rather short and it deals primarily with the division of powers. The basic freedoms guaranteed by the State to all citizens are listed by art. 10 dedicated to “Individual Freedom and Rule of Law.”28 Among the basic freedoms enumerated therein there are some which directly refer to workers’ rights such as the freedom to belong to any labour organisation of one’s choice (art. 10.1). Then art. 14 entitles the citizens to strike, stating that limitations are legitimate only if provided by a law. As for the rest, no specific rights referring to the employment relationship or to work are present in the Constitution and it is therefore necessary to descend to the second level of the legal sources, namely the law, to read through the newly enacted Labour Code for specific information concerning the employment contract and its flexibility.

28 Article 10 [Individual Freedom, Rule of Law]

The State shall guarantee to all its citizens public and individual freedoms:
- the freedom to travel and to settle in all parts of the territory of the Republic;
- the freedom of entry to and of exit from the national territory;
- the freedom of opinion and of thought;
- the freedom of expression;
- the freedom of assembly;
- the freedom of association and the freedom to belong to any political or labour organisation of one's choice;
- the freedom of commerce and of industry; and
- the freedom of intellectual, artistic, and scientific creative effort.
- Freedom may be limited only by the law.
The Labour Market in the SEM Countries: a Legal Perspective

The Labour Code

The Code was enacted in 2004 with law n° 17, repealing the old Labour Code dating back to 1963. It is rather simple in its structure and easy to read. The definition of the employment contract is presented in art. 4 where it is stated that “the contract of employment is an agreement through which the worker accepts to put its professional activity, in exchange for a salary, to the service of an employer and under his direction and authority”. Every worker who is under a link of juridical subordination to the employer is therefore to be regarded as an employee, following a definition which is perfectly consistent with that suggested by ILO and in line with most of the Western countries.

The Contract of Employment and its Duration

As for its length, the contract of employment can be stipulated for a fixed duration, according to the rules provided for in art. 15, which states that a term can be freely agreed between the parties and that once it is expired it can only be renewed another time, otherwise it is automatically transformed in an open end contract. As for the duration of a fixed term contract the law is very strict allowing a maximum length of two years including the renewal. Exceptions to the general rule of the 2 years are provided for specific kinds of work to be performed in particular situations (agriculture, maritime, etc.); in the case of a fixed-term contract issued to substitute an absent worker. Moreover, a quite unusual exception regards foreign workers who cannot sign a contract for more than 30 months for the first period spent in the country and 20 months for the subsequent period of staying in the country (art. 17), a provision which is to be linked with the country’s rules concerning migration visas.

Art. 22 defines the contract for indefinite duration as that contract which does not respond to the definition of a fixed-term contract, meaning that if a contract is not for a definite duration it is an open-end one.

Termination of Contract

According to art.44, contracts for a fixed duration cannot be terminated until the term agreed upon in the contract, except for impossibility to perform the contract due to force majeure, mutual consent, death of the worker, just cause to be evaluated by the judge.

Articles from 46 onwards dictate the rule for the termination of an open-end contract. As a general rule, both parties can resign. A special procedure is provided if the employer wants to resign though. He/she must inform in writing the worker of the reason and give him/her 48 hours to respond. A notice period must be given and its duration must be provided by the collective agreement applicable. In case of just cause the notice period doesn't have to be respected. If the notice period is not respected the party must pay to the other the equivalent of the sum which should have been corresponded as salary for the duration of the notice period.

Resignation of the worker is always free and he only has to respect the notice period.

Economic Dismissals

According to article 55, an economic dismissal is defined as the individual or collective dismissal due to a reduction of the activity or an internal reorganisation of the firm or of the branch to which the worker is assigned.

In order to decide the workers to be dismissed, in case of collective redundancies, preference should be given to those with a higher seniority, those with more dependants, taking into due account the qualification of the worker in relation to the nature of the restructuring envisaged. A formal procedure, resembling very much that in place in EU countries must be followed and it is explained in art. 57 which obliges the employer to inform in writing the workers' representatives and to discuss with them the plan of the intended dismissals. The workers' representative must reply within 15 days explaining advancing their proposal and advices on the crisis. In any case such an advice is not binding on the employer that is
then free to notify the labour inspectorate of his intention to make the employees redundant. The Inspectorate must try to mediate between the employer and the workers' representatives but in the end the final decision remains on the employer, who will be free to decide provided he has followed the procedure, which is then a mere consultative one. Otherwise the dismissals are null and void.

**Dismissal for unjust cause**

If the dismissal is unjustified the employer must pay damages to the worker. According to art. 60 such evaluation is left to the court based on an inquiry on the nature and causes of the dismissal. Should it emerge that the dismissal is based on political opinions or religious beliefs, his membership or not to a trade union, sex, age, religion national origin, skin colour, the dismissal is abusive and in case of contestation the burden of proof is put on the employer. The amount of the damages to be paid is based on all the elements of the case: 1) if it is the worker that is deemed responsible for the dismissal, the actual damage bore by the employer must be taken into account; 2) if it is the employer to be responsible for unjust termination, the amount of the damages must take into account the actual harm bore by the worker, the kind of services provided by the worker, the length of service, the age of the worker, and his/her acquired rights. The damages to be paid are supplementary to the indemnity of dismissal and to all the other sums that the collective agreements or the law confer upon the worker.

As said, the Mauritanian Labour Code is rather brief and there aren’t other provisions relating to dismissals or covering other aspects that can be of interest for the present research. As stated in the introduction and clarified in the conclusions, there is therefore a strong need, for Mauritania, as well as for the other countries concerned, to examine the collective agreements in force in order to have a full and reliable picture of the actual situation.

**Critical Overview and Labour Rights Violations**

Overall, according to the 2008 CRHRP, as of 2007 the majority of the labour force is in the informal sector, with most workers engaged in subsistence agriculture and animal husbandry; and only 25 percent were employed in regularly paid positions.

Laws provide workers with protection against antiunion discrimination; however, national human rights groups reported that authorities did not actively investigate alleged antiunion practices in private firms owned by wealthy citizens.

As far as forced or compulsory labour, including by children, is concerned, the law formally prohibits it, but the law only applies to relations between employers and workers, and there are credible reports that such practices occur. In August 2007, the National Assembly passed legislation criminalizing slavery, but the law had not come into force by year's end, and there were areas where slavery-related practices continued and the attitudes of master and slave prevailed. On December 10, the President launched a national antislavery campaign and allocated approximately $7.5 million (2 billion ouguiya) for the eradication of all forms of slavery. The labour Code includes criminal penalties for human trafficking and includes increased penalties for contracting to benefit from forced labour and for exploiting forced labour as part of an organized criminal network.

At year's end, the government had not taken action on the May 2005 recommendations of the International Labour Organization to allow an independent investigation into forced labour, reinforce the Ministry of Public records and Labour, and give labour inspectors greater resources and autonomy. Slavery-related practices, typically flowing from ancestral master-slave relationships, therefore continue, although mainly in isolated areas where a barter economy exist, education levels are generally low, and there is a high demand for persons to herd livestock, tend fields, and perform other manual labour. Some individuals considered themselves either slaves or masters and were reported to be unaware that slavery had been abolished. Human rights activists reported that many persons in these slavery-like relationships refused to report their "masters" to the authorities. Similar practices
affect not only Mauritania nationals living in remote areas, but also illegal foreign workers who perform their activities in the large informal sector that predominates in the country.

In September 2007, the government secured parliamentary passage of a law imposing tougher penalties on slave holders as well as penalties on officials who fail to apply the law; however, no cases were prosecuted during the year. Human rights groups welcomed the law but continued to call for increased government efforts to publicize the law, train prosecutors and judges, and ensure enforcement of the law. Human rights groups reported that persons in slave-like relationships were persuaded by their masters to deny the relationship to activists.

Voluntary servitude also persisted, with some former slaves and descendents of slaves continuing to work for former masters in exchange for some combination of money, lodging, food, or medical care. The reasons for the persistence of such practices varied widely among different ethnic groups; however, poverty, a barter economy, and persistent drought limited economic alternatives for many leave some former slaves and descendents of slaves vulnerable to exploitation by former masters. Adult females with children face greater difficulties and could be compelled to remain in a condition of servitude.

According to the CRHRP, there were reports that some former slaves continued to work for their former masters or others without remuneration to retain access to land they traditionally farmed. Although the law provides for distribution of land to the landless, including to former slaves, this law has been enforced in only a few cases. Deeply embedded psychological and tribal bonds also made it difficult for many individuals who had generations of forebears who were slaves to break bonds with former masters or tribes. Some persons continued to link themselves to former masters because they believed their slave status had been religiously ordained and they feared religious sanction if that bond were broken.

Another area where great violations are the norm concern child labour and minimum age for employment. According to UNICEF reports and the 2008 CRHRP, despite the fact that the law provides that children cannot be employed before the age of 14 in the non-agricultural sector or under age 13 in the agricultural sector unless the minister of labour grants an exception due to local circumstances, child labour in the informal sector remains a significant problem, particularly within poorer inner-city areas.

The Ministry of Justice, working with UNICEF, is working to repatriate Mauritanian children who had been sent to work as camel jockeys in the United Arab Emirates. The ministry formally arranged the repatriation of only 12 youths under the program.

Young rural children are reported to be commonly employed in herding, cultivation, fishing, and other labour to support their families. Young children in urban areas often drove donkey carts and delivered water and building materials. Children are often reported to be forced to beg for over 12 hours a day. In keeping with longstanding tradition, many children served apprenticeships in small industries and the informal sector. Reporting by some NGOs, including SOS-Esclaves, strongly state that domestic employment, often unpaid, of girls as young as seven in wealthier homes is a growing problem.

Several government offices have responsibility for enforcing child labour laws, including the ministries of labour; justice; women's, children's, and family affairs; and the Commission for Food Security and Social Protection. There is a labour inspectorate with the authority to refer violations to judicial authorities, but the eight regional inspectors and 30 inspector/controllers lack the basic resources, such as transport and office equipment, needed to enforce existing child labour and other labour laws.

Forced labour and child labour seems therefore to represent still a rather big issue in Mauritania, while on average the other countries examined present more reassuring practices. For the present analysis however it is more important to evaluate which are the actual conditions of work and understand to what extent legal rules are actually respected. The inquiry on the acceptability of the working conditions is never easy in developing countries since the information is either scarcely available, partial,
Mauritania has a provision concerning a nationally mandated minimum monthly wage for adults of $77 (21,000 ouguiya), but it is reported not to be actually implemented. As for working time, the standard, legal, non-agricultural workweek could not exceed either 40 hours or six days without overtime compensation, which is paid at rates that are graduated according to the number of overtime hours worked. Domestic and certain other workers are however reported to work 56 hours per week. Employees are required to be given at least one 24-hour period of rest per week. The Labour Directorate of the Ministry of Labour is responsible for enforcement of labour laws, but in practice inadequate funding limited the effectiveness of enforcement.

One last word concerns health and safety standards: although the government set health and safety standards, and the Ministry of Labour is responsible for enforcing these standards, it does so inconsistently, and in the lack of official controls workers, who could, in principle remove themselves from hazardous conditions without risking loss of employment, in practice they do not, since no such cases are reported.

Overall, it seems therefore confirmed for Mauritania one of the caveat which was mentioned in the introduction: poor countries have high level of informal work – and in the case of Mauritania the informal economy is the predominant form of production – and lax respect of labour law, due to lack of resources to implement effectively the provisions and to control over their respect, coupled with difficult access to courts for a majority of workers who lack basic education and awareness of their rights. Alas, this proves to be the case in Mauritania: despite a newly enacted Labour Code providing for basic, though substantial, rights for workers, it is alleged that only 25% of the population is actually covered by its provisions, while the rest of it work in the irregular sector if not in a master and servant relationship which closely resemble slavery.

An evaluation in term of flexibility and rigidity based only on the enacted provisions concerning labour law is then useless, since reality proves to be much different and Mauritania can then be easily classified as a de facto deregulated system since flexible agreements and lack of protection for workers is the rule in a predominantly informal economic system.

Morocco

General Overview

Morocco is a monarchy with an an elected parliament. According to the Constitution, ultimate authority over all branches of government rests with the President of the Council of Ministers. Morocco’s population amounts to approximately 34 million.

A mid-level developing country, Morocco has been undergoing significant political and economic changes since the second half of the 1990s, when it embarked on an integrated program of human development and political liberalization. Reforms accelerated with the inception of King Mohamed VI, in 2000; among others promoting women, particularly through a new family code, and issuing labour Code in 2003. The country now concentrates on improving living standards and the employment outlook. In 2005, it organized the “Assises Nationales de l’Emploi”, a broad, high-level symposium on employment; and a National Initiative for Human Development that stresses valuing and developing human resources, work ethics, work relations and social cohesion.

Agriculture, employing 44% of the labour force, remains a crucial sector. The country’s growth rates vary sharply according to rainfall, but are on average below the 5-6% needed to match labour force growth. To achieve faster growth and reduce dependence on the unpredictable agriculture, Morocco has been exerting considerable efforts to improve productivity, boost exports and attract
domestic and overseas investment, namely through reforming investment laws, lowering import barriers, freeing up prices, reforming the judiciary system, the financial sector and the labour market, reducing bureaucracy and corruption, and privatizing state firms. This has allowed the economy to become more diversified, relying increasingly on manufacturing and services.

The “social deficit” is large, however: widespread illiteracy, affecting half of the population and rising to 80% in the countryside; poverty levels in 1999 of 12% in cities and nearly 30% in the countryside; unemployment for 20% of the workforce in 2003, and more for women; and social security coverage only reaching one out of seven Moroccans.

This combines with the challenges posed by Morocco’s integration into the global market (through the its Partnership Agreement with the EU of 2000 and Free Trade Agreement with the US in 2005 in particular). Facing them requires upgrading export-oriented sectors to boost their competitiveness, particularly textiles and agriculture that are, in addition, two of the most employment-intensive sectors.

Legal sources

The Constitution

The Constitution was adopted on 13 September 1996. In its Preamble, it is stated that Morocco “reaffirms its determination to abide by the universally recognised human rights”, but understanding the actual scope and respect of such a provision requires further research into the ratification of international conventions and their actual implementation, something which goes beyond the limits of this study.

As far as provisions concerning work and labour rights, art. 5 is very important, although applying to every relationship, since it affirms the principle of equality, according to which: “All Moroccan citizens shall be equal before the law”. Intimately connected to the latter are articles 12 and 13 which implement the equality principle in the field of work. As for art. 12, “opportunities for employment in public offices and positions shall be uniformly open to all citizens”; while according to art. 13 “all citizens shall have equal rights in seeking education and employment”. The following articles deal mainly with the separation of powers and the right and prerogatives of the various bodies of the State, and nothing else is provided as far as working conditions are concerned. Just art.14 can be mentioned, although not directly referring to the scope of the present contribution, as it recognises the right of strike.

More interesting is therefore the analysis of the rather rich and recent legislative provisions, and mainly of the 2004 Labour Code.

The Labour Code

Following the new wave of liberalization and respect of human rights promoted by King Mohamed VI since his inception in 2000, a new Labour Code was enacted on 11 September 2003, Dahir n. 1-03-194, and entered into force on 8 June 2004. It was designed to modernise labour relations and make the Moroccan industry more attractive to outside investors, regarding "flexibility" as its recurring theme. It includes provisions to bring the law into line with ILO Conventions, such as those on maternity and the minimum working age. At the same time, however, the unions complain that it makes it easy for employers to hire temporary staff. Indeed, Morocco's new labour law gives men and women equal rights in the workplace. While the new law legalises temporary contracts and longer periods of overtime, it also reinforces the principle of non-discrimination against women, improves maternity rights and recognises women's right to unionise.

The Code is the result of more than 20 years of discussions and tentative drafts aimed at updating the old law regulating the employment contract dating back to 1913. Morocco incorporated in this new text 7 of the 8 ILO fundamental conventions it has ratified. Consequently, the new Code, first of all, provides for freedom of trade union activity and collective bargaining and bans every form of discrimination, mirroring the content of the ILO Conventions mentioned.

Moving closer to the centre of our inquiry, as far as the contract of employment is concerned, two kinds of contracts coexist one next to the other at law: the fixed-term contract and the open-end contract (art. 16). As far as the fix-term contract is concerned the law heavily limits the possibility to recur to it. The golden rule is that it cannot be signed, in any case, in which an open-end contract could be stipulated instead of it. More precisely the law limits its use to the following hypothesis: to replace a worker who is temporarily absent from work; to face a temporary increase in the production or a seasonal need; if the firm has just been established or a new product has to be launched. It cannot be renewed more than once. A part for these exceptions then all labour contracts must be signed for an indefinite duration, thus limiting the flexibility in the interest of the firm but allowing workers to find stable employment more easily, provided that such a rigid legislation is not actually bypassed via informal labour agreements between the parties, as it could be easily the case, since it does not seem that a developing country’s economy can afford such a generous protective framework, moreover in the light of the fact that also dismissals are restricted by law.

Indeed, following to articles 33 ff., a fixed-term contract ends only when the deadline is reached or when the reason that gave origin to the contract ceases. Should one of the parties resign from the contract before the end of it without just cause or force majeure, damages must be paid to the other party, and the employee is entitled to have its wage paid in full for the total duration of the contract.

As far as the open end contract is concerned, it can only be terminated if there is a reason apt to justify the rupture connected to the worker’s conduct or to the “nécessités de fonctionnement de l’entreprise” (art. 35 of the official French version). The Code is careful in defining what can legitimate a dismissal, stating that in case of a serious wrongdoing (such as the breach of the confidentiality rule, a crime, insubordination, etc. (see art. 39 for a detailed list)) of the worker the employer can dismiss the worker without notice, but should the dismissal be deemed unlawful, he/she will be then obliged to pay damages and interests to the workers. They amount payable to the worker is at a rate of one and a half month for each year of service up to a maximum of 36 months. In all other cases, the employer must give due notice to the worker and the dismissal is always legitimate but the employer in exchange for this freedom must not only give notice but also pay a lump sum, according to a complex calculation set forth in art. 56.

Economic dismissal is also allowed provided a special procedure aimed at involving the workers’ representative is respected, as set out in article 66 and ff. The dismissal must then be authorised by a special representative of the Government at local level and full information and explanation of the reason leading to the dismissal including minutes of the meeting with the unions must be provided. Once the

31 For a list of the 8 ILO fundamental conventions, see: http://www-old.ictilo.org/actrav/english/about/about_fundamentals.html.

32 Article 52
Le salarié lié par un contrat de travail à durée indéterminée a droit à une indemnité, en cas de licenciement après six mois de travail dans la même entreprise quels que soient le mode de rémunération et la périodicité du paiement du salaire.

Article 53
Le montant de l'indemnité de licenciement pour chaque année ou fraction d'année de travail effectif est égal à :
- 96 heures de salaire pour les cinq premières années d'ancienneté ;
- 144 heures de salaire pour la période d'ancienneté allant de 6 à 10 ans ;
- 192 heures de salaire pour la période d'ancienneté allant de 11 à 15 ans ;
- 240 heures de salaire pour la période d'ancienneté dépassant 15 ans.
dismissals are approved, the workers will be entitled to the same amount of money paid in normal dismissals according to the rule of art. 54. It is difficult to evaluate how effective the protection in similar cases is, since as far as the first part of the procedure is concerned, it relies on the actual strength of the trade unions and on the sort of collective action they will be able to organise; while in the second phase, i.e. the one dealt with by the public administration, it depends on the level of accuracy of the job performed by the official in charge and, of course, on his integrity against bribing.

**Working time and leave**

As far as working time and annual leave is concerned, the Code stipulates that the normal duration is 2,288 hours per year or 44 hours per week (art. 184), whatever limit is reached first. In any case the actual duration of the working on a yearly basis can be decided freely by the employer according to business needs provided that a worker is not requested to work longer than 10 hours per day. In the agricultural work the ceiling is slightly higher and more flexibility is allowed to meet the special need of that kind of work. Every hour of work starting from the 2289th entitles the worker to overtime payment according to art. 199.

Every worker is also entitled to 24 hours of rest every week (art. 206). Moreover, workers, after completion of 6 months of work, are entitled to a minimum of 1,5 days of paid leave per month accruing with the length of the service up to a maximum of 30 days per year (art. 232).

As for the minimum wage it has been defined by the law as of 1st July 2004 at 9,66 Dh per hour and 50 Dh per day.

**Social security**

As far as social security is concerned the regulation is provided for in the Labour Code. Coverage is provided for all employees working in both the private and the public sector. It encompasses comprehensive protection against the risk of illness, invalidity, occupational diseases and accidents, death. Two special public entities, one for the private and one for the public sector, are in charge of providing these services. All employers are obliged to subscribe to these organisms and must declare the monthly salary of each worker and the number of hours worked. The system is co-financed by the employer and the worker.

Every worker who reaches the age of 60 must be retired (art. 526), except in special cases for which the limit is lifted to 65.

**Critical Overview and Labour Rights Violations**

Despite the implementation of the new labour Code in 2004 and a considerable wave of political debate concerning the respect of human rights at the working place, a number of organisations and institutions report lax respect of labour provisions, absence of effective control and therefore of deterrent sanctions. According to Oxfam, probably the most authoritative British NGO, despite the formal improvement of rights guaranteed by the new Code, particularly for women, Moroccan government is highly criticised for not having a strategy to enforce the new law. And, to make matters worse, employers, as a reaction to the new law are campaigning for a limited applicability of it since it is alleged that, in the current economic climate, labour legislation is too protective of workers rights and should be then be revised.

Still according to Oxfam, a number of actual violations of workers’ rights, although not reported by Government, would take place across the country. First of all, it is reported that often overtime legislation is not respected and both are workers requested very long hours and are not paid any compensation. Also data provided by the U.S. Bureau for Democracy in the 2008 Country Reports on

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33 See: http://www.cleiss.fr/docs/registres/registre_maroc.html.

Human Rights Practices (CRHRP) would confirm that although the labour law details restrictions on the number of overtime hours worked per week and the rate of pay for holidays, nightshift work, and routine overtime, also according to national and international NGOs, workers work more than the standard 44 hours per week, and overtime hours were often required without pay.

Connected to this issue, but to a certain extent even more problematic is the lax approach towards actual respect of health and safety regulation, especially in garment factories, which represent one of the most important activities after agriculture. Workers are reported to commonly suffer headaches, coughing, vomiting, fever, and physical exhaustion due to poor ventilation in lint-filled rooms that lead to debilitating respiratory diseases. Other cases regards women, mostly hired in jobs that demand highly dexterous and repetitive movements, who suffer joint injuries and back, leg, and shoulder pain. Moreover, workers are often obliged to foot the bill for their workplace illnesses, in order to avoid dismissal. Workers at El Corte Inglés and other Spanish retailers in Morocco report to Oxfam that ‘When we get sick, we’re the ones who have to pay the doctor. We don’t have the right to get sick – they punish us if we do.’

As far as sexual harassment is concerned, many women interviewed by Oxfam said sexual harassment was a commonplace abuse of power in the workplace. Yet it often goes officially unreported, due to fear or a sense of futility. Women workers reported cases of male supervisors demanding sexual favours in return for keeping or getting jobs.

As far as hourly paid is concerned, workers in export processing zones, such as Morocco, are typically paid at least the minimum wage, but it is usually not nearly enough for a family to live on. Employers know it, and could raise productivity by raising wages but can face peer pressure not to do so. In Morocco, according to 2004 data, women workers are typically paid 8.5 dirhams (US 93 cents) per hour: the exact minimum wage. ‘One of the bosses, who was a foreigner, wanted to pay 10 dirhams [US$1.10] per hour and the [government] inspector told him no,’ explained an official at the Spanish Chambers of Commerce in Tangier. ‘He told him to pay 8.5 dirhams and that to do anything else would be dangerous because it wouldn’t go down well with the other companies.’

Caught in the contradiction between buyers’ demands for speed and low costs, and their Codes requiring no excessive overtime, some managers simply increase hourly production targets. The impact on workers is therefore higher workloads for lower wages.

**Health and safety and control from labour inspectors**

Despite the legal provisions, actual occupational health and safety standards are reported by 2008 CRHRP to be rudimentary. While workers, in principle, had the right to remove themselves from work situations that endangered health and safety without jeopardizing their continued employment, there were no reports of workers attempting to exercise this right. Although labour inspectors are in charge of monitoring working conditions and investigating accidents, they lack sufficient resources. Moreover, in Morocco inspectors are paid US$238 per month – just above the minimum wage – leaving them open to corruption. According to interviews conducted in some of the biggest manufacturing companies by Oxfam workers report that ‘the labour inspection means nothing: when the inspector visits the company, he meets with management. He has a coffee with the personnel boss, goes into the control room, chooses a suit, tries it on and off he goes.’

Caught between intense production pressure and inspections of labour standards, some factories rely on fooling inspectors – and when visits are quick, announced in advance, and conducted by foreigners, it is relatively easy. Double book keeping hides the long hours.

Forced and compulsory labour is prohibited, as well as clandestine work, however, there were reports that such practices occurred. In practice the government lacks the resources to inspect the small workshops and private homes where the vast majority of such employment occurred. Forced labour then persists, especially in the practice of adoptive servitude in households.
As for Child Labour and Minimum Age for Employment, the law protects children from exploitation in the workplace and prohibits forced or compulsory labour; however, the government is accused not to effectively implement these laws, except in organized labour markets. No prosecutions under the child labour law are reported by the Governments, although NGOs and foreign observers do have reported blatant violations. Non compliance with child labour laws seems to be common, particularly in the agricultural sector. In 2006 domestic and international NGOs reported that up to 87 percent of the country's underage workers worked on family farms.

In recent years the government has recognized an ongoing problem with child labour in the country and has strengthened several legal Codes aimed at ending the exploitation of children. In 2004, the government passed reforms to the family Code, the labour Code, and the penal Code, all of which strengthened children's rights. However, the country continues to suffer from a high rate of child labour due to lack of enforcement of these laws according to the 2008 CRHRP.

In 2005, however the government did take the issue in serious consideration and reported that there were 600,000 child workers and that 1.5 to two million children were not registered in school. Of those children between the ages of 12 and 14, 18 percent worked. In rural areas 19 percent of children between the ages of seven and 14 worked; in urban areas children composed 2 percent of the labour force.

The labour law sets the minimum age for employment in all sectors at 15 years. According to the law, children under the age of 16 are prohibited from working more than 10 hours per day, which includes at least a one-hour break. Children under the age of 16 are not permitted to work between the hours of 9 p.m. and 6 a.m. in non-agricultural work or between 8 p.m. and 5 a.m. in agricultural activities. Employment of children under the age of 18 is prohibited in stone quarries, mines, or in any other positions deemed hazardous by the government.

Morocco is also considered a destination for children trafficked from sub-Saharan Africa, North Africa, and Asia and serves as a transit and origin point for children trafficked to Europe. Children are also trafficked internally for exploitation as child domestic workers, beggars, and for prostitution.

The number of children working illegally as domestic servants was estimated to be between 66,000 and 88,000, and all were under the age of 15, according to Human Right Watch. Of this number an estimated 90 percent were recruited from rural areas, and 84 percent were illiterate. The labour Code does not cover domestic labour and therefore does not prohibit the employment of child maids.

Application of the legal minimum employment age continues to be flouted in both the formal and informal sectors. According to MOJ officials, no employer has ever been convicted of employing a child under the age of 15 despite acknowledgement of the child labour problem. The informal sector, where the majority of children work, is not monitored by the Ministry of Labour's small cadre of labour inspectors. There were no labour inspectors dedicated solely to child labour issues.

**Acceptable Conditions of Work**

The minimum wage, as said above, was set by the law in 2004 at approximately $1.25 (9.66 dirhams) per hour in the industrialized sector and approximately $6.50 (50 dirhams) per day for agricultural workers, and it has not been changed yet. However, such a salary is only a dream for most of the workers. Indeed, independent reports, such as the CHRHP, acknowledge that most of the actual businesses are conducted in the informal sector, which hire approximately 60 percent of the labour force, and as one could expect, normally ignores the minimum wage requirements.

In any case, neither the minimum wage for the industrialized sector nor the minimum wage for agricultural workers is deemed to provide a decent standard of living for a worker and family, and therefore the government largely subsidises salaries. However, despite this, in many cases several family members have to combine their incomes to support the family. In any case it is also reported that those workers who manage to work in the industrial sector earn more than the minimum wage.
As a conclusion, it must be then acknowledged that Morocco is seriously working to implement social and labour rights and the complex 2004 Labour Code is there to testify it. Still, protective measures are far from being generally respected and implemented. Further research in order to properly ascertain such a conclusion must however be performed. At first sight, the labour Code, allowing employers to easily dismiss workers provides for a balance against the rigidity of the hiring rule which basically favour the employee only allowing fixed-term employment. However, the actual situation, as we have begun to see is probably much different from that depicted in the Code.

Tunisia

General Overview

Tunisia is a constitutional republic with a population of approximately 10 million, dominated by a single political party, the Democratic Constitutional Rally (RCD). The country has a relatively small territory and a population of some 10 millions. It is a middle-income country, ranking 91st out of 177 on the Human Development Index, being particularly advanced in the Sub-region in terms of health and living standards, levels of education, and women’s rights and position in the labour force. The remarkable decline in population growth from a 3 percent rate 10 years ago to around 1 percent, is a noteworthy contributing factor.

The country’s economy has been growing at a solid pace and is becoming more diversified, moving from heavy dependence on agriculture, oil and phosphates, to a greater focus on tourism and textiles. Unemployment remains the government’s most serious challenge. The unemployed, half of whom are under 25 years of age, still represent over 14% of the workforce. The incidence of poverty is low, however, mainly due to government’s commitment to fight the phenomenon, among others through developing socio-economic infrastructures in rural areas and poor urban areas and programmes for needy families.

Over the past 10 years the government’s economic priority has been to boost growth and job creation, through investment, productivity gains and export growth. Its main instrument has been an upgrading of the entire economy and infrastructure to meet the challenge of integration into the global economy. Economic modernization to increase competitiveness began in industry, and was gradually extended to the services and agriculture. A key element of this approach is its emphasis on the upgrading of the country’s workforce and labour market in general.

As this wave of reforms advances, the country displays a growing need for social dialogue and open relationships and real partnership among the socio-economic actors in order to proceed along this path of reform in concerted way through the sustain and the agreement of the social partners.

The Labour Code


In Tunisia household employees (domestic workers) do not benefit from the protective provisions of the LC. Their relationship with their employer continues to be subject to the general provisions of civil contract law.

**Flexibility of Employment Contracts and Working Time**

The LC indicates in secs. 6 to 6(4) that there are two types of contracts of employment: contracts of employment for an indefinite period and contracts of employment for a specified period.

The contract of employment for an indefinite term is standard practice. The fixed-term contracts of employment can be renewed. However, their total duration must not exceed four years (sec. 6(4), para. 2, LC). It is then transformed into a contract of employment for an indefinite term if the worker continues working after the expiration of the fixed-term and the employer does not express opposition (sec. 17, LC). The labour Code sets a standard 48-hour workweek for most sectors and requires one 24-hour rest period per week. Of course it is possible to work part-time, but, for some reason difficult to justify, the law does not allow part-time work if the working time reduction is not of at least 30% of the working time applicable to the firm concerned.

Basic flexibility as for working contracts is therefore provided and widely used by employers. Indeed, according to recent studies: “Les droits des travailleurs tunisiens tels qu’ils sont prévus par le Code du travail portent sur le droit au travail par voie de contrat à durée indéterminée ou déterminée mais souvent les entreprises choisissent le contrat de travail à durée déterminée puisque la nouvelle politique économique basée sur le programme d’ajustement structurel s’est accompagnée, au niveau social, par la contractualisation du travail et la flexibilité de l’emploi” 36. The issue of raising flexibilisation of employment regulation in response to the need of a growing economy is being increasingly addressed by scholars and labour experts in the Southern Mediterranean countries, but it still needs to be fully understood and adapted to the peculiarity of similar countries. In a recent congress on “Quelle protection sociale face à l’émergence de nouvelles formes d’emploi ?”, organised by Arforghè, the Tunisian Association of HR Management and Training Development, which took place in Tunisia in occasion of the 2008 Labour Day and funded by the Konrad Adenauer Foundation 37 has addressed these very issues concluding that in the present Tunisian society there is a strong need to «garantir un seuil minimum de flexibilité de l’emploi avec la garantie de la protection sociale». The main conclusion reached was that «En effet, dans le cadre du nouveau contexte économique marqué aujourd’hui par l’apparition de nouvelles formes d’emploi atypiques et de nouvelles exigences de protection des travailleurs, la réalité sociale dans nos pays maghrébins se distingue par le lancement de réformes, la recherche de nouvelles voies de couverture des risques avec les difficultés inhérentes à tout changement et la rupture avec les modèles conventionnels». 

This shows that there is awareness in the Tunisian system about the actual needs that the labour market is facing, but that a debate is ongoing and it is difficult to forecast whether or not the whole of it will end up just in a mere deregulation or if the government will find the necessary support and financial cover to parallel implementation of a decent system of social protection, with ears open to the EU ongoing debate concerning flexicurity, which, although proper of a more advanced and rich society, could provide developing countries with some basic stepping stones on the way to a socially sustainable modernisation of their economies.

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Wages

Workers enjoy the right to a salary in exchange for the work performed since Tunisia has ratified the ILO international conventions concerning wage, in particular C100/1951 concerning the principle of equal wage between men and women for a work of equal value. The Labour Code and the collective agreements in force provide – according to the French official version - that « la rémunération des travailleurs de toutes catégories est déterminée, soit par accord direct entre les parties, soit par voie de convention collective, dans le respect du salaire minimum garanti fixé par décret » (article 134 new LC).

Moreover, art 132-2 defines wage as « ce qui est dû au travailleur en contrepartie du travail réalisé au profit de son employeur ».

Termination of employment

Sec. 14 of the LC provides that all contracts of employment may be terminated, other than at the initiative of the employer, by: agreement between the parties; serious breach by the employer; rescission pronounced by a court; or impossibility of performance resulting either from the death of the employee or the occurrence, before or during the performance of the contract, of force majeure.

A contract of employment for a specified period terminates by the expiration of the agreed term or by the completion of the task to which the contract relates. In these situations, neither the employer nor the worker has to justify the termination or comply with any formalities (sec. 14, LC).

A contract of employment for an indefinite period may be terminated with notice by the employee (sec. 14, LC).

Dismissal

Dismissal is unlawful unless there is a “real and serious” reason and legal procedures or procedures prescribed under collective agreements are observed (sec. 14(C), LC). One of the real and serious reasons for dismissal is serious misconduct. A list of serious misconduct able to justify dismissal is set out in sec. 14(D) of the LC38.

Termination of a contract of employment by one of the parties will be deemed wrongful when it is unlawful, i.e. during pregnancy, illness, for trade unions representatives, etc. (see sec. 20 LC).

Termination is also unlawful when a workers’ representative is dismissed without the applicable special procedure being followed (i.e. submitting the dismissal to the decision of the competent labour inspector and complying with his or her decision), except when the existence of a real and serious reason justifying dismissal is proved by a court which entertains jurisdiction (sec. 166, LC). Certain sector-based collective agreements (banks, insurance, perfumeries, etc.) have also extended this protection to trade union representatives. Termination may be wrongful not because it is unlawful, but because the circumstances of the termination disclose misconduct on the part of the employer. Such

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38 Serious misconduct includes, inter alia:
1. wilful damage to the property of the undertaking;
2. wilful reduction of the product volume or product quality;
3. non-observance of rules related to safety and health;
4. neglect of the duty to take necessary measures to assure personal security or to safeguard confidentiality;
5. disobedience of legitimate orders;
6. bribe-taking;
7. theft;
8. turning up for work in a state of intoxication;
9. consumption of alcohol at the workplace;
10. absence or desertion of the workplace without good cause or the employer’s permission;
11. violence or threats against colleagues or other persons during working hours;
12. divulging trade secrets;
13. refusal to lend assistance in case of imminent danger to the firm or persons at the workplace.
misconduct may consist of an intention to harm, of disloyalty or even of harmful imprudence. Dismissal, of course, may also be effected for economic and technological reasons, provided the applicable procedure is followed.

**Notice period and dismissal procedural safeguards**

Before dismissal, the worker has a right to appear before the Discipline Council to defend his or her case. The Council is composed of an equal number of employers’ and workers’ representatives.

The worker also has a right to present to the Council a written statement of his or her case and to receive the assistance of a worker of his or her own choosing, a trade union’s representative or a lawyer (sec. 37, FCA).

Employers and employees are required to give one month’s notice in writing. As for the employer, in the notice letter he must indicate the reasons for termination of employment (sec. 14(3), LC).

If compensation is paid in lieu of notice, the amount paid must at least be equal to wages payable for the length of notice period or for the remaining period of notice (sec. 16, FCA).

The employee has a right to time off to seek other employment during the second half of the notice period, without any loss of salary (sec. 14(2), LC).

Every employer who contemplates to dismiss all or part of his or her permanent personnel for economic or technological reasons has first to notify the matter to the labour inspectorate, which will attempt conciliation (sec. 21, LC).

If conciliation is unsuccessful, the labour inspectorate transmits the file to the Commission for the Control of Dismissals, chaired by the chief of the territorial labour inspectorate. This Commission is also composed of a trade union and an employer’ association representatives (secs. 21-3, 4 and 5, LC).

The Commission can accept the dismissals as justified, refuse to accept the dismissals, or make proposals for alternative solutions, such as redeployment programmes for employees, re-orientation of the firm’s activity towards new products, temporary suspension of all or part of the activity, revisions of conditions of work (e.g. reduction of working time) or early retirement (sec. 21-9, LC). When the Commission is not consulted on the dismissals the dismissals are unlawful (sec. 21-12, LC). In practice, in most cases, the Commission comes to a solution other than dismissal (e.g. lay-off for a short period, reduction of hours of labour, early granting of annual holidays and so on). If the request for collective dismissals is accepted, the Commission puts forward an opinion about redundancy pay which may be awarded in compliance with legislation in order to allow the workers to be paid immediately (sec. 21-10, LC).

The official record of conciliation is enforceable against the parties. In the absence of agreement, every party involved retains a right of appeal to the court of relevant jurisdiction. On appeal, the court may definitively fix the redundancy compensation which is payable, with regard to the laws in force (sec. 21-11, LC).

**Severance pay**

Except for serious misconduct, every employee dismissed after the expiration of the probationary period is entitled to receive a severance allowance, calculated on the basis of one day’s salary (which is paid at the moment of the dismissal) for each month of effective service in the same enterprise (sec. 22, LC).

The compensation cannot exceed three months’ salary, whatever the duration of effective service has been. However, collective agreements can raise the amount of compensation.
Avenues for redress

The intervention of the Discipline Council does not preclude the worker’s right of appeal against a dismissal to the courts of relevant jurisdiction (sec. 38, FCA). The court with jurisdiction over individual labour disputes is a specialized labour court (Conseil de prud’hommes) of tripartite composition. Appeals from its decisions are to courts of general jurisdiction (secs. 183 and 221, LC).

A worker dismissed without justification cannot claim to be reinstated into the enterprise. Besides severance pay, which applies to whichever dismissal – unless provoked by the employee serious misconduct - an unjustified dismissed worker is entitled to damages which ranges from a minimum of one or two months’ salary for each year of service, up to a maximum of three years’ salary (sec. 23(1), LC).

The existence and the extent of the employee’s losses are however judged by the court, which will take into account the worker’s qualifications, his or her length of service in the firm, age, remuneration, family situation, the impact of dismissal on his or her retirement, compliance with the specified procedures and any other applicable circumstance.

Critical evaluation of Tunisian Dismissal Rules

It emerges therefore that Tunisian workers although not protected against dismissal through reinstatement, which is never possible, are however entitled to receive damages up to three years of salary. Since the evaluation of the actual amount is left open for the evaluation of a specialised court, composed by a judge and a representative each for the employers and the workers, one can argue that the Tunisian system provide for a reasonable balance between the opposite needs of firms and workers, although, of course, it would be interesting to know how many workers actually go to court or prefer to simply accept the dismissal without complaining for fear of loosing other job opportunities, for ignorance about the procedures and the rights, for the costs of justice, etc. The 2008 Doing Business Report ranks Tunisia firing cost as one of the lowest in the SEM countries, thus probably the higher edge of three years salary is only applied in exceptional circumstances, the average being, according to Doing Business 17 weeks, i.e. 4 months. On the other side, for those workers who actually go to Court it would be interesting to conduct an in-depth survey of the result of the cases brought to the attention of the courts to establish the amount of cases per year, the average result, and the average compensation for unjustified dismissal. Without these data, the evaluation proposed here is only based on the evaluation of the black letters of the law, and therefore can be far too optimistic.

Critical Overview and Labour Rights Violations

According to the 2007 Country Report on Human Rights Practices released by the U.S. Bureau of Democracy, Human Rights, and Labour, on March 11, 2008, Tunisia is reported as ranking rather high as far as respect for basic rights of the workforce, and is classified by ILO among those respecting minimum rights as to guarantee a decent work. As far as Prohibition of Forced or Compulsory Labour, a problem which is unfortunately rather common in other SEM countries, as we have seen, the law prohibits forced and compulsory labour, including by children, and there are basically no reports that such practices occurred. The very delicate issue of prohibition of Child Labour is tackled by the law rather seriously, as it prohibits the employment of children under the age of 16 in general, and under that of 18 in jobs that present serious threats to their health, security, and morality. Moreover, both trade unions and the National Social Security Institute conduct inspection tours of factories and industrial sites to ensure compliance. Child labour is reported to exist mainly in the informal sector disguised as apprenticeship, particularly in the handicraft industry.

Overall, as stated, the conditions of work in Tunisia can be regarded as acceptable and in line with ILO “decent work” standard. The LC provides for a range of administratively determined minimum wages. In August 2006, the Government raised the industrial minimum wage to $200 (240 dinars) per

month for a 48-hour workweek and to $173 (208 dinars) per month for a 40-hour workweek. The agricultural daily minimum wage was $6.53 (7.84 dinars) per day for specialized agricultural workers and $6.89 (8.27 dinars) per day for qualified agricultural workers. With the addition of transportation and family allowances, the minimum wage provided a decent standard of living for a worker and family, although that income was only enough to cover essential costs. However, it is reported that more than 500,000 workers were employed in the informal sector, which was not covered by labour laws.

Regional labour inspectors try to enforce standards related to hourly wage regulations. It is reported that they inspect most firms approximately once every two years. Special government regulations governed employment in hazardous occupations like mining, petroleum engineering, and construction, and the Ministry of Social Affairs, Solidarity, and Tunisians Abroad had responsibility for enforcing health and safety standards in the workplace. Working conditions and standards generally were better in export-oriented firms than in those firms producing exclusively for the domestic market. Workers were free to remove themselves from dangerous situations without jeopardizing their employment, and they could take legal action against employers who retaliated against them for exercising this right.

PART II – The Eastern Mediterranean Countries

General Remarks

Since the Eastern Mediterranean region, which encompasses in this report Israel, Jordan, Lebanon, Syria and Turkey, presents a wide spectrum of socio-economic and political characteristics as well as divergences, we will content ourselves with analysing the political, constitutional, legal, and labour-related features of each country.

Still, it is noteworthy that this region presents several peculiarities and typical features:

1. Longstanding and new conflicts in this region contribute to its instability and impact in different intensity levels the general sociopolitical characteristics of each country;
2. This region has been, especially since the cold war and the breakout of the Israeli-Palestinian conflict, the theater of ideological struggle and of various episodes of international intervention. The latter have made it more vulnerable to national and regional dissension as regional and national actors have developed over time diverging and shifting allegiances to external parties;
3. This region is characterized by the presence of different ethnic and confessional communities.
4. These tensions and conflicts have had a negative bearing on cross-regional initiatives addressing reform or common action.
5. Different economic structures characterize these countries. Thus, while Lebanon follows more laissez-faire economic policies, economic structures in Syria remain centralized, and state economic policies in Jordan are influenced by the rentier model. In addition to that, national

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40 For example, the ongoing Israeli-Palestinian and Israeli-Arab conflict; tensions in Lebanon since 1975; tensions between Israel and Lebanon; tensions between the Kurds and the Turks; the general destabilising impact of the US-led war in Iraq on the region…
41 We cite for instance the presence of ethnic and communal friction in Lebanon (patchwork of confessions), Israel (difficult coexistence between Israelis and Palestinians), Syria (tensions between Sunnis, the Alawite minority or between Syrians and Kurds), Turkey (hostilities between Kurds and Turks).
42 The Arab League has been on numerous instances unable to adopt a common regional initiative because of divergent national stances on various issues, especially in crisis circumstances.
socioeconomic disparities have increased throughout the years, hence exacerbating internal tensions and procrastinating reform schemes that the governments have pledged to embark on;

6. Regarding migration, with the exception of Turkey and Israel and to a lesser extent Jordan, immigration and labour immigration policies and strategies at the governmental level are neglected as more crucial imperatives in policy-making - either in the political or economic realm - have taken precedence.

The specific geopolitical constellation of the region has had undoubtedly an important impact on the implementation of legislation-related tools and instruments. Thus, sociopolitical contingencies overrule at times the strict application of law, whether in labour market considerations or labour migration-related aspects. In various instances, the application of the law is influenced by national policies and ‘security politics’.

**ISRAEL**

*General overview*

The State of Israel was funded on 14 May 1948. With a population of about 7.28 million, the majority of whom are Jews, Israel is the world's only Jewish state. The civilian labour force is approximately 2,500,000, which is 55% of the population 15 years or older. About 200,000 migrant people work in its territory, mainly from the Far East and Eastern Europe. The average monthly wage per worker is approximately US $1,500. Israel is a rich country with a Human Development Index for 2007/08 of 22. This means that it ranks just one step below Germany and one above Greece.

*Legal Sources*

*General*

Employment relations in Israel are regulated by a number of sources: constitutional rights, as determined by the Basic Laws; Statutory rights, as set out in statutes and regulations; rights set by collective agreements and extension orders of collective agreements; and individual labour contracts. These legal sources are interpreted by the National Labour Court, which is the main judicial body developing labour and social security law. International standards, especially ILO conventions adopted by Israel, but also EU standards, are used by the government and courts as guidelines, even though they are not binding.

*The Constitution*[^44]

On its foundation on May 14, 1948 the State of Israel inherited the British-model unwritten Constitution, which it has been slowly replacing with a written Constitution. For a variety of political and ideological reasons the first Knesset – Israeli Parliament – decided that the written constitution would be passed chapter by chapter.

The Israeli Declaration of Independence, issued on May 14, 1948, following the termination of the British mandate over Palestine, envisioned the existence of a future formal Constitution for Israel. The


[^44]: For the text of the constitutional provisions see: http://www.tamas.gov.il/NR/exeres/9034396F-AC64-4C44-9466-25104B45FBB1.htm
declaration, however, has never been viewed as a constitutional document by itself. It was interpreted by the Supreme Court to be a document incorporating the wishes and the intent of the founding fathers of the reborn state. As such, it did not grant the judiciary the power of striking down legislation which clearly negates its content. However, if legislation may be interpreted in several ways, the Court holds that laws should be interpreted in a way consistent with the principles expressed in the Declaration. Utilizing the latter method, the Israeli Supreme Court, sitting as a high court of justice, has managed to develop fundamental constitutional principles that in other Western democracies are protected by constitutions.

Until now the Knesset has enacted eleven Basic Laws, which comprise the existing partial written constitution. The early Basic Laws established the branches of government (executive branch, parliament and courts), basic state institutions, such as the president and army and basic elements of democracy, such as elections. In 1992, the Knesset passed two important Basic Laws which are of great relevance for the present inquiry: the Basic Law Human Dignity and Freedom and the Basic Law Freedom of Occupation.

The Basic Law: Human Dignity and Freedom specifically guarantees the rights to human dignity, life, property, freedom of movement and privacy. The right to human dignity has been broadly interpreted to provide an additional array of rights and liberties, including equality, freedom of association, the right to equal opportunity at the work place and other social rights. The Basic Law: Human Dignity and Freedom do not have the power to nullify or alter laws enacted prior to its’ enactment but such statutes are to be interpreted in light of the Basic Law.

The Basic Law: Freedom of Occupation makes freedom of occupation a constitutional right. This has been held by the Supreme Court to restrict unreasonable or not proportionate legislation to limit people from doing certain types of work, such as a real estate agent or importer of non-kosher food. A recent landmark judgment of the National Labour Court held that covenants not to compete were not enforceable unless the worker revealed trade secrets to his new employer. This judgment emphasized the constitutional right of freedom of occupation, freedom of movement for workers and their right to choose their workplace. However a fundamental distinction in this respect must be drawn between nationals and foreign workers, since the latter are not granted these rights. Traditionally the entry of migrant workers relies on the so called “binding system” which links the entry-visa with the work permit: loosing the job implies loosing the working visa. Such a system infringes the right to access to the labour market and in a seminal decision of 2006 the Constitutional Court has declared it as unconstitutional. However, actual changes in the legislation and in its implementation are reported to be inadequate and further efforts must be done to overcome the binding system

Statutory labour legislation

Recent labour legislation, from 1995 onward, have contributed to expand the basic rights steaming from the very first pieces of legislation enacted by Israel during the 50ies and mainly the 60ies after its foundation in 1948. In particular, the new wave of labour legislation covers equality at the workplace and attempts to protect labour-only contractual workers, workers in irregular work relationships and migrant workers. In order to do so, Israel has enacted the following Statutes: Employment of Employees by Manpower Contractors Law, 1996; Amendment to the Foreign Workers (Prohibition of Unlawful Employment and Assurance of Fair Conditions) Law, 1991; Protection of Employees (Exposure of Offences of Unethical Conduct and Improper Administration) Law, 1997; The Prevention of Sexual Harassment Law, 5758-1998; Equal Rights for Persons With Disabilities Law, 1998; Absence Because of a Spouses Sickness Law, 1998. Recently laws were passed concerning

45 For a full discussion of such an issue and for detailed references to the law and the mentioned cases, see Guy Mundlak, Circular Migration in Israel: Law's role in circularity and the ambiguities of the CM strategy, at http://www.eui.eu/RSCAS/e-texts/CARIM_AS&N_2008_32.pdf.
basic protections and labour rights, such as: The Advanced Notice of Discharge and Resignation Law, 2001 and The Notice of Basic Employment Terms Law, 2002.

As mentioned above, Israeli State looks with great interest to EU developments in the field of social law and it looks at it as a reference model for enacting its own labour legislation. A major example in this respect is the fact that Israel progressively adopted the European social security model. The National Insurance Institute was founded in the 1950’s with basic branches of social welfare, such as worker’s compensation. Today this social security legislation encompasses the following benefits: maternity, disability, free burial, medical insurance, unemployment and minimum annual income.

Recent statutes have mainly related to current problems in the Israeli labour market, but a few laws have been passed expanding general protective labour legislation.

The Contract of Employment

General

There is no labour law governing individual labour contracts and, therefore, the Contracts (General Part) Law, 1973 and the Contracts Law (Remedies for Breach of Contract), 1970 apply to labour contracts, as they apply to general contracts. Thus, such issues as how a contract is formed, that a contract need not be in writing, remedies for violation of contract and the good faith performance requirement are determined by general contract law.

However, the National Labour Court has developed a body of case law suitable to the particular characteristics of the labour contract and mainly taking into account the imbalance of power between the worker and the employer. Such case law has developed the special obligations and rights concerning the good faith requirement for the negotiation and performance of labour contracts. As far as its form is concerned, the employment contract may be either written or oral.

Israel has not codified its labour legislation in a code; therefore the regulation in force is given by a number of provisions enacted in different moments providing for rules for the various aspects relating to the employment relationship. A selection of them will be analysed with the aim of highlighting those mainly affecting the labour market in term of flexibility or rigidity.

Working time

The hours of work and rest law, n. 5711 of 1951, provides that “a working day shall not exceed eight working hours. A working day shall not exceed seven working hours in night work on the day preceding the weekly rest and on the day preceding a festival on which an employee is not employed, whether by law or by agreement or custom. A working week shall normally not exceed forty-five hours”. Recent amendments have reduced the maximum length of the working week at regular pay at 43.

In some specific cases mentioned by the law itself though, either the Ministry or Labour or a collective agreement, authorised by the Ministry of Labour can increase the maximum working day or working week (see art. 5 and 6). As for weekly hours of rest, according to art.7, an employee’s weekly rest shall be not less than thirty-six consecutive hours in the week, similarly to what is provided by the EU Working Time Directive. Very strict provisions are then set forth in respect of prohibited working hours according to Jewish law. Limited derogations are possible though.

The law is very detailed in all respects, providing for specific break periods during the day, night work, female work, etc. A special part is then dedicated to labour inspections to be carried out in order to verify whether or not the firm complies with the regulation. Special registers of time worked must be kept updated by management, otherwise severe penalties apply. Finally, specific provisions, though allowing young people to work, provide for shorten working periods and longer breaks. This specific aspect is dealt by another specific law, n. 5713 of 1953. Children at least 15 years old who have
completed their education through grade nine may be employed only as apprentices. Those who are 14 may be employed during official school holidays in light work that will not harm their health. Working hours for those between 16 and 18 are restricted.

At least at law, it seems therefore that legislation concerning working time is very strict and overtime is only allowed within the strict limit provided. The balance therefore seems to be more in favour of protecting the worker rights to rest than in leaving space to the employers to freely arrange working time according solely, or mainly, to business’ needs. However, a more attentive evaluation of its actual respect will be made in the conclusive paragraph of this chapter.

**Minimum wage**

Wage protection law n. 5718 was enacted in 1958. What is important in light of the present analysis are the provisions concerning minimum wage. Indeed, the fact that a firm can set freely the wage is an index of certain flexibility, while the higher the minimum wage, the higher the rigidity imposed on firms willing to recruit. In this respect Israeli law is quite exceptional, and its legislation in this area deserves some attention.

Minimum wage is set each year by the law. As for 2006 Israel set the country's minimum wage at 47.5 percent of the average wage. In accordance with this law, the minimum wage was about NIS 3,500 (USD 752) per month, or NIS 18.60 (roughly 4 dollars) an hour. Although Israel, as mentioned above, is a very developed country, by any standard of comparison, the minimum wage in Israel is very high. There are only a few, rich countries in Western Europe in which minimum wage approaches 50 percent of the country's average wage. Even Israel's definition of "minimum wage" differs significantly from that of other countries. For example, there are few places where employers are required to provide such fringe benefits as travel expenses. The Knesset's generous linkage of minimum wage to average wage is also almost unheard of in the western world. Israel's achievements in the realm of minimum wage are routinely held up as an example to emulate in some of the most developed countries in the world, including Holland, France, Ireland, and even Sweden, which has no minimum wage legislation at all. However, it can be argued that similar high level of minimum wages can favour the growth of the informal economy and the employment of migrant workers less aware or less willing to complaint.

**Flexibility of Employment Contracts**

A variety of contracts are possible in Israel. These include contracts of indeterminate duration, fixed-term contracts and temporary contracts. However, there are no statutory provisions preventing or regulating the use of fixed-term contracts. Only some basic rules coming form the normal contract law can be mentioned.

Employment contracts may be for fixed or unlimited periods of time. If an employment contract specifies a fixed period of employment, the contractual relationship is automatically terminated at the end of this period, without being considered a resignation or a dismissal.

An employment contract, which does not specify a fixed period of duration, is considered to be for an unlimited period of time, but can be terminated by notice of either party. However, in the organized sector of the work force collective agreements which give workers tenure limit the employers’ ability to discharge and end the employment contract. Other limitations on terminating an individual labour contract are the duty that it must be done in good faith and not for a discriminatory reason. In the public sector civil servant laws limit the government’s ability to civil servants.

**Agency work**

In 1996 was enacted the Employment of employees by manpower contractors law, n. 5756.
No person shall act as a manpower contractor, unless he holds a license therefore from the Minister, and on the conditions of such license. License is granted subject to fulfilment of a list of experience and honourability requirements of the management and to provision to a bank of a certain sum of money as guarantee of liquidity. Contracts must be in writing and no charge can be asked to the employee. Most importantly for the present analysis, there is a time limit for workers to be employed with the same actual employer (not the manpower agency), which is set at six months, unless a minimum period of nine month has passed between the two contracts. Otherwise, the contract is transformed in permanent open-end contract with the actual employer.

Agency work is then allowed in Israel, but it emerges that the regulation is very strict and all built around the need of protecting the workers against exploitation. Also in this case, it can then be concluded that in Israel the open-end contract is regarded as the rule and, although some space for more flexible agreements is provided, however the ideological assumption that the more rigid the legislation the more the worker is protected seems to prevail. Of course, one could wonder if it is in the actual interest of the worker to be prohibited to work longer than six months through an agency contract, or instead if he/she should be given the option to decide for himself. But this brings us to the very essence of labour law regulation and goes beyond the present analysis.

What is central for the present analysis is to mention that it is reported that in Israel irregular and labour-only work relationships currently comprise 10% of the workforce. Quite unusual is the fact that also the Public Administration widely recur to agency work. Estimates dating to 2005 shows that about a third of government workers are manpower agency employees, and that similar triangular working relationships are expanding both in the private and in the public sector. There is also a trend towards outsourcing. These models do create problems concerning employment conditions and job security for workers.

As a result of wide legislative debate and public pressure the 1996 Law has thereafter been amended. Regulations were issued to make the law more effective, with the aim of furthering rights of workers in triangular work relationships. The law now requires that these workers are entitled to most of the terms granted to workers at their workplace by the collective agreements applying at the workplace. It did not, however, include protection from dismissal. Despite this considerable achievement which is line with what basically happened in most European countries during the 1990ies, the law was criticized by the unions and social interest groups for not granting workers adequate protections. In 2000, the Knesset revised the law, significantly improving protections granted to employees in these irregular work relationships, as of 28.7.200, date of entry into force. As mentioned already the triangular relationship is now limited to a nine-month period after which the worker becomes an employee of the employer at whose workplace he is working. Also, the contracted employee is entitled to the protection of either the collective agreement applying at his workplace or a collective agreement with the labour-only contractor.

Such a tight limitation of the time period was in contrast highly criticised by employers' unions and as a result the nine month period was recently extended a few months and as this period ends there is employer pressure for another extension.

Expanding the definition of worker

Another issue of utter importance, while reflecting on the flexibility and the rigidities of a labour market relates to the scope of labour law, i.e. to how wide the gap, the so called grey-area, between employee and self-employed workers is. In many countries, as it is testified by the recent work carried out at ILO level, in order to escape the tights of too protective legislation, employers increasingly recur to self-employment contracts. However, they are only formally so, as in reality they often only provide the cover for a relationship which is actually of subordinate employment.

Such an issue is widely discussed in Israel, where a number of judgments stated that work performers, defined as “independents” in their contracts for services, were nevertheless workers, because they were an integral part of the work receiver’s business and did not conduct private
businesses of their own. These judgments also dealt with the question of what benefits the person who was considered an independent but became an employee by court judgment was entitled to. The general rule is that he is entitled to all rights granted by protective labour law, which are to be calculated at the salary which would have been received if he or she had been defined as a worker.

The trend of current case law is to expand the definition of who is entitled to benefits granted workers so as to cope with current social problems and protect weak groups. Also academic discourse is very much focused on this debate in Israel, as it represents a main challenge to the protective legislation in force.

Foreign workers

In the late 1990’s migrant workers increased from an insignificant part of the workforce, less than 1%, to about 10% of the workforce. Approximately half of these workers entered Israel illegally and have no work permit. The government reported that in 2007 it issued 88,500 permits for non-Palestinian foreign workers and overall during that year there were approximately 102,000 legal foreign workers and approximately 84,000 illegal foreign workers in Israel.

According to statutes and case law, migrant workers are entitled to all the protective labour law rights, such as minimum wages, hours of work, severance pay and vacations. However, they have difficulty achieving these rights in the courts because of a language problem, unfamiliarity with Israel law and courts and lack of union or legal representation. Indeed, as it will be highlighted below, despite an overall reported respect of legal provisions in force, migrant workers are the most discriminated in Israel, especially if coming from the occupied territory.

In 1991 the Knesset passed the Foreign Workers’ Law (Unlawful Employment and the Guarantee of Decent Conditions), which was amended in 2000. The purpose of this law is to guarantee that migrant workers obtain their rights under protective labour legislation and to compel employers to provide migrant employees with decent employment conditions. As a consequence, employers are obligated to provide the employee with a written contract specifying the precise employment terms and conditions, similarly to what happens in the EU according to Directive on workers’ information and consultation right. In addition, mention must be made to the fact that employers are required to contribute a percentage of the migrant worker’s wages to a government fund which will grant them certain social benefits, including social welfare benefits.

Termination of Contract

As we will see, as a sort of a counterbalance to a rather protective legislation concerning atypical labour contracts, protection against termination of employment is rather weak at law, in comparison with most of the countries examined in the present report, not to mention EU countries. Indeed, instead of the law, in Israel a major source of regulation as for termination is provided for by the collective agreement which is legally binding and enforceable. Until the early 1990s, a vast majority of workers in Israel were covered by such collective agreements. However, due to various global and local reasons, there has been a drastic decline in union membership and substantial erosion in trade unions’ power.

The contracts of employment of the many workers who are no longer covered by collective agreements are then today governed by contracts law and employment standards legislation, but there is no general or comprehensive statute requiring that dismissals be fair or mandating specific procedures to

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ensure fairness where dismissal is contemplated. There are, however, statutory provisions regulating severance pay at the time of dismissal (the Severance Pay Law, 1963) and advance notice of dismissal (the Advance Notice of Discharge and Resignation Law, 2001). Employment security is thus inextricably linked to the strength of unionization and the collective agreement.

In the absence of such collective agreements, the underlying rule is employment at will, except where the employee can establish a claim of breach of contract or a lack of good faith. However, a growing number of statutes provides for some basic provisions on certain aspects of employment security. These include: the Apprenticeship Law, 1953; the Employment of Women Law, 1954; the Labour Inspection (Organisation) Law, 1954; the Employment Service Law, 1959; the Equal Opportunities in Employment Law, 1988; and Prevention of Sexual Harassment Law, 1998, mainly concerned at eradicating the most hideous discriminatory practice at the expenses of the weakest part of the working population. As well, the decisions of the Labour Court provide an increasingly important source of regulation in the context of termination of employment especially through judicial interpretation of the duty to act in good faith to include procedural and substantial duties of employers.

Consequently, the rule of employment at will is rather limited. That is, the employer is free to terminate the contract for any cause, except where a certain statute, collective agreement, the contract of employment or the case law indicates otherwise.

Critical Overview and Labour Rights Violations

Prohibition of Forced or Compulsory Labour

The law prohibits forced or compulsory labour, including by children, but various NGOs consider many workers to be in conditions that are tantamount to involuntary servitude. Civil rights groups have charged that unscrupulous employers exploited adult non-Palestinian foreign workers, both legal and illegal, and held them in conditions that amounted to involuntary servitude.

Prohibition of Child Labour and Minimum Age for Employment

Laws protect children from exploitation in the workplace and prohibit forced or compulsory labour; the government effectively implemented these laws.

The government received 90 reports of child labour, mostly in marketing, summer camps, restaurants, and event halls during the year. It reported no complaints of Palestinian child labour.

Acceptable Conditions of Work

Overall, only minor problems are reported, mainly affecting the employment conditions of non-citizens and Palestinians in Israel. In 2007, the minimum wage was rather high, as it was set at the legal percentage of 47.5 of the average wage, approximately $940 (3,760 NIS) per month for a 40-hour week, but it was contested by union officials, NGOs, and social commentators that non-citizen workers were also paid the minimum wage, despite the Law on foreign workers do provide for equal treatment.

Indeed, due to the peculiar political situation in Israel, the major violations concern discriminations in respect of Palestinian workers and those living in the occupied territories. For example, despite the law generally provides for equality of treatment, the government does restrict the possibility to employ foreign workers, particularly those living in the occupied territories: in such a case employers must obtain a government permit to hire non-Israeli workers who live there. In order to avoid this administrative burden most Palestinians from the occupied territories are employed on a daily basis and, unless employed on shift work, while not authorized to spend the night in the country.

Since 2000 the government's closure policy prevented Palestinians from travelling from the occupied territories to employment in Israel. During periods of non-closure, Palestinians required Israeli permits to enter the country for a single day or for periods of several months. Frequently authorities invalidated existing permits, requiring even long-established travellers to secure new permits; accordingly, statistics on permit issuance did not reflect actual numbers of individuals allowed into the country.\textsuperscript{49}

\textbf{Labour Inspections}

The Labour Inspection Service, along with union representatives, enforced labour, health, and safety standards in the workplace, although resource constraints affected overall enforcement. There are only 25 inspectors, assisted by 32 students, to enforce labour laws that affected approximately 2.5 million workers. The government reported that it will add 34 labour inspectors and 69 student assistants. There are also 53 labour inspectors for foreign workers, and 68 work safety inspectors.

Except for construction workers, foreign workers could not legally remove themselves from dangerous work situations without jeopardy to continued employment. In response to a 2006 Supreme Court ruling that said the policy of employer-dependent status for foreign workers led to abuse, the government introduced a new mechanism in the nursing and agriculture sectors that allows foreign workers to remove themselves from hazardous work situations without jeopardy to continued employment.

The government reported that through August, it opened 1,745 investigation files on employers of foreign workers for violations of labour laws, and issued 1,686 fines.

Another issue of major concern for foreign workers is the fact that despite the law on triangular working relationships prohibits charging any fee to employees, brokers and employers are permitted to collect hiring fees from migrant workers. The government limited such fees to approximately $650 (NIS 2,600) per worker, but NGOs charge that many foreign workers continue to pay up to $10,000 (40,000 NIS) to the broker who provided them with a job. Moreover, after collecting the fee, in a significant number of cases, according to NGOs, employers dismiss workers shortly after arriving. In response to similar practices the Ministry of Labour reported that it revoked 50 licenses during 2007 of agencies licensed to recruit foreign workers.

\textbf{Jordan}\textsuperscript{50}

The Hashemite Kingdom of Jordan is a hereditary monarchy with a parliamentary system ruled by King Abdullah II bin Hussein with a population of approximately 5.9 million, and Islam as the State religion. The Constitution concentrates executive and legislative authority in the king. The parliament consists of the 55-member House of Notables (Majlis al-Ayan), appointed by the King, and a 110-member elected lower house, the Chamber of Deputies (Majlis al-Nuwwab). Serious development efforts in the past thirty years have led to positive improvements in human development indicators, good achievements in education and life expectancy, and good living conditions including access to basic services. Jordan in the recent years accomplished at accelerated pace economic change through global economic integration, liberalisation, and reform policies. In a short time, Jordan had entered into an Association Agreement with the European Union (as the other countries studied, except Libya and Mauritania), signed a Free Trade Agreement with the United States and successfully joined the


World Trade Organisation. Despite the above however, poverty continues to be a major challenge for Jordan, as it affects approximately one-third of the total population. The current challenges for Jordan are therefore to ensure that economic growth is employment friendly in terms of the quantity and quality of jobs created while simultaneously significantly improving the productivity of its labour force to enable it to integrate in the competitive global economy. Paradoxical to the high unemployment rates among Jordanians\footnote{The rate for unemployment ranges from (officially) 14\% to (unofficially) 30\% of the workforce": see F. DE BEL-AIR, Circular Migration to and from Jordan: An Issue of High Politics, CARIM Analytic and Synthetic Notes, 2008/20: http://www.eui.eu/RSCAS/e-texts/CARIM_AS\&N_2008_20.pdf, p. 3, footnote n. 8. For an in-depth study of the unemployment situation in Jordan, see Fathi Arouri, Unemployment in Jordan, CARIM Analytic and Synthetic Notes, 2007: http://www.eui.eu/RSCAS/e-texts/CARIM-AS2007_03.pdf.}, and perhaps one of the underlying reasons for pushing down wages, are migrant workers who amount to as much as 20\% of the Jordanian labour force.

Within the above context, Jordan is facing a series of challenges related mainly to a lack of a clear and coherent employment policy framework which has produced a situation where economic growth did not create quality jobs for Jordanians neither did it reduce unemployment and poverty levels. To sum up it can be said that Jordan currently faces three challenges: (i) generating sufficient new quality jobs for the burgeoning number of new entrants to the labour market, (ii) improving the skills and productivity levels of the labour force to support greater competitiveness of Jordanian enterprises as required by global economic integration and (iii) while responding to the needs for increased labour market flexibility, ensuring that parallel measures for social protection are in place especially for those workers who cannot adapt to the changing circumstances and skill requirements.

\textit{Labour force and employment}

The Jordanian labour force is characterized by a young age structure due to the high population growth rates. Each year the labour market needs to absorb 50,000 new people, which represents a major challenge. The workforce is projected to grow even faster in the future -- about 4 percent per year within 10 years\footnote{European Training Foundation (ETF): Technical and vocational Education in Jordan: Areas for Development Cooperation. Report prepared for the European Commission in Amman, February 2006.}. These demographic factors also affect participation rates as only 40\% of the population aged 15-64 is economically active. This means that one economically active Jordanian supports 4 other non-active family members. There is a marked gender imbalance as 67\% of men participate in the labour force, while the figure for women is around 12\%\footnote{See: http://www.ilo/public/english/employment/strat/download/trendsw.pdf}.

Accordingly, Human Development Index for 2007 provided by the United Nations was 86 out of 177.

\textit{Legal Sources}

\textit{The Constitution}\footnote{See http://www.kinghussein.gov.jo/constitution_jo.html}

The Constitution of The Hashemite Kingdom of Jordan was enacted on January 1, 1952. It provides for a system of government for the State; executive power including that of the King; legislative power of the national assembly; a judicial system; rights and duties of Jordanians. As for labour rights, most relevant are those provisions that prohibit discrimination on the basis of race, language and religion (art. 4); those that state that "all Jordanians are equal before the law" and that the Government is to ensure work and education \textit{within the limits of its possibilities}, as well as equal opportunities (art. 6). Moreover, art. 13 permits forced labour only in specified circumstances.
Besides these more general provisions, one is peculiar of labour law, namely art. 23, that lists the main areas of labour regulation that must be provided by the State through ordinary legislation:

“(i) Work is the right of every citizen, and the State shall provide opportunities for work to all citizens by directing the national economy and raising its standards.

(ii) The State shall protect labour and enact legislation therefore based on the following principles:

(a) Every worker shall receive wages commensurate with the quantity and quality of his work.

(b) The number of hours of work per week shall be defined. Workers shall be given weekly and annual days of paid rest.

(c) Special compensation shall be given to workers supporting families and on dismissal, illness, old age and emergencies arising out of the nature of their work.

(d) Special conditions shall be made for the employment of women and juveniles.

(e) Factories and workshops shall be subject to health safeguards.

(f) Free trade unions may be formed within the limits of the law”.

The Labour Code

The Code entered into force on 16 April 1996 repealing the Labour Code, Act No. 21 of 1960, and all amendments made thereto, particularly those based on ratified ILO Conventions, which were adopted on 28 August 2002. These amendments concern some important matters, mainly the extension of the coverage of the labour law to some categories of workers in the agriculture sector; the establishment of private employment offices organizing the recruitment of foreign domestic workers and control of these offices by labour inspectors. This will extend the control by the Ministry of Labour of the recruitment and working conditions of these workers; the protection of workers from dismissal due to economic and technical factors by adoption of detailed regulation; a new regulation of working hours; the inter-relation between employers’ and workers’ organizations.

Chapter I defines the words and expressions to be used in the Code, including casual work, temporary work, seasonal work, collective agreement, young persons, occupational disease, and industrial injury. Article 3 specifies persons who are excluded from the scope of the Code. Chapter II covers labour inspection. Chapter III covers recruitment and career guidance, providing for, inter alia, the organization of the labour market and for career guidance by the Ministry of Labour, for the establishment of private employment offices, and for the employment of non-Jordanians. Chapter IV relates to contracts of employment, including subcontracting work; validity of contracts in case of change in employer, and termination or suspension of contracts of employment in certain economic or technical conditions. Chapter V covers vocational training contracts. Chapter VI provides for collective agreements. Chapter VII provides for protection of remuneration; remuneration shall be specified in the contract of employment. Chapter VIII covers organization of work and leave time: periods of work, rest, work offences, and penalties and measures taken to that effect, including dismissal. This chapter also concerns industries and trades where women's work is prohibited; hours during which women may not be employed; maternity leave with full pay; the provision of child care under certain conditions; the prohibition of employing young persons under the age of 16; hours of work for young persons; documents to be submitted by young persons prior to their employment; and fines to be paid for the violation of this chapter. Chapter IX provides for occupational safety and health. Chapter X covers work injuries and occupational diseases. Chapter XI relates to trade unions’ establishment and rights. Chapter XII covers the settlement of collective labour disputes; strikes and lock-outs.

The Contract of Employment

Chapter IV of the Labour Code deals with contract of employment, which shall be done in Arabic and provided to the worker in two copies.
An employer may employ any worker on a trial basis to verify his competence and capacities for the work that is required of him, provided that the trial period shall not, in any case, exceed three months. This worker shall not be paid less than the fixed minimum remuneration.

The employer has the right to terminate the employment of a worker under probation without notice or indemnity during the trial period.

If a worker continues work after the end of his trial period, his contract of employment shall be considered of indefinite duration and the trial period shall be considered as part of the service period of the worker with the employer.

**Fixed-term Contracts**

The duration of the employment contract is set by agreement of the parties. If the worker is employed for an indefinite duration, he shall be considered in service until his employment is terminated in accordance with the provisions of the Code. If he is employed for a specified period, he shall be considered in service throughout that period. In this case, the contract is automatically terminated at the end of that period. If both parties to the contract continue implementing it after that period has expired, the contract shall be considered to have been renewed as a contract for an indefinite duration, and shall be deemed as such from its commencement.

Subcontracting is deemed legal, but the Code provides for a set of rights for workers employed by a contractor: they may take direct legal action against the project owner, to claim the entitlements due to them from the contractor.

**Hours of Work and Leave**

According to the Labour Code, the legal working time is forty-eight during a six day week (excluding meal breaks and rest periods) with the exception being hotel, restaurant and cinema workers whom are limited to 54 hours per week. The seventh day is a paid weekly holiday. A worker may be employed, with his consent, in excess of normal working hours, provided that he is paid overtime at a minimum rate of 125% of his regular remuneration. If a worker works on his weekly rest day or on religious or official holidays, he shall be paid overtime at a minimum rate of 150% of his regular remuneration. Friday is the normal rest day. In some cases, the law requires overtime pay for hours worked in excess of the 48-hour standard work week, provided that overtime does not account for more than 30 days per year. Employees were entitled to one day off per week. However, workers reported to local trade unions that they were forced to work seven days a week and in excess of 48 hours per week without overtime pay, though NCHR and MOL inspectors reported that these practices is ceasing.

As for annual leave, every worker is entitled to it with full pay for a period of fourteen days for every year of employment. This leave is extended to twenty one days where the worker has been in the employment of the same employer for five consecutive years. Official and religious holidays and weekly rest days shall not be counted as part of a worker's annual leave unless they fall in its course.

Termination of the contract of employment

According to Section 21 of the Labour Code, a contract of employment shall be considered terminated if: both parties agree to terminate it; the duration of the contract has expired or the work itself has been completed; the worker dies or is no longer capable of working due to a disease or disability certified by the medical authority.

Termination of employment contract under Jordan Labour Code can be with or without notice. In the first case it is referred to as ordinary termination, in the latter as extraordinary, as it will be explained in the following paragraphs.
Ordinary termination

One of the two parties to the contract of employment of indefinite duration shall give the other party written notice at least one month in advance. If notice is given by the employer, he may release the worker from work for the duration of the notice period, or he may not do so except for the last seven days of that period. In any case, the worker shall be entitled to his remuneration for the notice period. If it is the worker who gives notice, and he leaves work before the end of the notice period, he shall not be entitled to any remuneration for the period of absence and shall compensate the employer by paying him the equivalent of his own remuneration for that period.

If the contract of employment is for a specified period, it can be terminated before its expiry date by either the employer or the worker only if one of the reasons set forth in section 29 of the Labour Code (the work is different in nature from that agreed in the contract; conditions necessitating a change of residence; medical reasons, etc.) is met. In such a case, the worker shall have the right to receive all his entitlements and benefits as stipulated by the contract. If the contract for a specified period is terminated by the worker for none of the reasons set forth above, the employer may claim damages from the worker.

However, the employer may not terminate the employment of a worker or give him/her notice if the worker is pregnant and has reached at least her sixth month of pregnancy, or is on maternity leave; is performing military or reserve service; is on annual or sick leave, on leave granted for worker education or pilgrimage or on leave agreed by both parties to take up trade union office or studies in a recognized institute, college or university.

Extraordinary termination

An employer may dismiss the worker without notice only if one of the conditions set out in the Labour Code is met. According to section 29 of the Labour Code, a worker may leave his or her employment without given notice while preserving his legal rights to end of service indemnities and entitlements to damages if, ex converso, the employer has been responsible of a serious breach of his contractual duties, as listed in the code.

Remedies in Case of Unjustified Dismissal

A worker who intends to challenge the validity of his/her termination must file a submission before the competent court within sixty days of his dismissal. If the court finds the dismissal arbitrary and in

55 These are listed as follow: “ the worker assumes false identity or submits false certificates or documents with the purpose of acquiring a benefit or causing prejudice to others; the worker fails to fulfil the obligations stipulated in the contract of employment; the worker commits a fault causing the employer considerable material damage, provided that the employer notifies the appropriate bodies of the accident within five days from the date on which he learns of its occurrence; the worker, in spite of receiving two written warnings, fails to observe the internal regulations of the establishment, including safety regulations; the worker is absent from work without good cause for more than twenty days intermittently, during any one year, or for more than ten consecutive days, provided that, prior to the dismissal, written notice is sent to his address by registered mail and published, at least once, in a daily local newspaper; the worker discloses work secrets; a court, in a final judgment, finds the worker guilty of a criminal offence or a misdemeanour involving dishonourable or immoral conduct; the worker is found at work in a manifest state of intoxication or under the influence of any drugs or psycho-tropic substances, or if he has committed, at the workplace, an act violating principles of moral conduct; the worker strikes or insults the employer, the manager in charge, a superior, a fellow worker or any other person in the course or on account of work”.

56 Art. 29 reads as follows: “ he or she is employed in work markedly different in nature from that agreed in the contract of employment, unless it is for reasons stipulated in section 17 of this Code; he or she is employed in conditions necessitating a change of residence, unless such a change is stipulated in the contract; he or she is downgraded from the agreed level of employment; his or her remuneration is lowered, unless it is for reasons stipulated in section 14 of this Code; a medical report issued by a medical authority, proves that his or her work, if continued, could be hazardous to his health; the employer, or the person acting on his behalf, strikes or insults the worker in the course or on account of his or her work”.

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violation of the provisions of this Code, the employer may be ordered to reinstate the worker or pay him damages, in addition to compensation in lieu of notice and all other entitlements stipulated by the Labour Code (sections 32 and 33), provided that the total amount awarded shall not be less than the worker's remuneration for three months and not more than his remuneration for six months, and shall be calculated on the basis of the last remuneration he received. In case of worker's death, all his end of service entitlements stipulated by the Labour Code shall revert to his legal heirs, as if his employment has been terminated by the employer.

**Main Conclusions concerning Termination Rules**

The new Jordan Labour Code seems to be rather light in the amount of protection afforded to the worker. Indeed, the choice to set forth a precise list of cases which legitimate dismissal, either ordinary or extraordinary, if it surely contributes to provide the parties of the contract with some legal certainty, it can create some problems when the act falls out of the detailed list of the Code. In such a case, of course, it will be up to the Court to argue using the basic principles of interpretation such as that of analogy. Similarly, also for the more relevant issue at stake, i.e. the avenues for redressing an unjustified dismissal, it seems that all the power to evaluate the case and determine the sanction is conferred upon the Labour Court seized with the matter. The Labour Code indeed allows for the worker to order for his/her reinstatement, which will probably be the case for the most unfair dismissals, such as discriminatory ones. Most often, though, the worker will be only entitled to a sum ranging between 3 and 6 months of wage, plus other damages the party may be able to prove has suffered due to the unfair termination. It follows therefore that in the Jordan legal system, although we do not have access to the relevant case-law, and we cannot therefore assess how often reinstatement is ordered, and which is the average compensation paid to the workers in the other cases, since the basic ceiling is set at 6 months of wage it can be argued that for an employer there aren’t so many legal constraints to terminate a contract arbitrarily. This is confirmed also by the 2008 Doing Business Report which ranks Jordan as the SEM country with the lowest firing costs.

As a more general remark, one should also notice that it is debatable that in a country where unemployment official rate is 15.4%, and unofficial rate is approximately 30%, workers will ever dare complaining too much about a dismissal for fear of not being hired any more in the future.

**Minimum Wage**

Minimum wage is fixed by a tripartite Committee in Jordanian currency either generally or for a particular area or trade. Members of the committee hold a two-year renewable mandate.

The committee shall hold session as necessary upon invitation by its chairman, and shall submit decisions not adopted by unanimity to the Minister, to be referred to the Council of Ministers which shall adopt its decision taking into consideration the cost of living estimated by the appropriate bodies. Final decisions adopted under this Code and their date of entry into force shall be published in the Official Gazette.

An employer who has paid a worker less than the minimum rate of remuneration shall be punishable by a fine of no less than twenty five and no more than one hundred Dinars in respect of each offense, and shall also be ordered to pay the worker the difference. The penalty shall be doubled every time the offense is repeated.

On January 1 2007, the government's 5.7 percent national minimum wage increase raised wages from $127 to $154 (95 to 110 dinars) per month. The minimum wage applies to all workers except domestic servants, those working in small family businesses, and those in the agricultural sector. According to the 2008 CRHRP, MOL inspectors largely manage to enforce the minimum wage, but due to limited resources were unable to ensure full compliance. The national minimum wage did not provide a decent standard of living for a worker and family. The government estimated that the poverty level was at a monthly wage of approximately $47 (33 dinars) per month, per capita.
Prohibition of Forced or Compulsory Labour

The Constitution prohibits forced or compulsory labour; however, according to the 2008 CRHRP, there are reports throughout the year that such practices occurred. This problem mainly relates to foreign domestic servants, almost exclusively women, who are subject to coercion and abuse.

Prohibition of Child Labour and Minimum Age for Employment

Labour law forbids employment for children under the age of 16, except as apprentices; however, there were reports of child labour throughout the country, mostly in urban areas. Children under the age of 18 may not work for more than six hours continuously between the hours of 8 p.m. and 6 a.m., or during weekends, religious celebrations, or national holidays. Children under 18 may not work in hazardous occupations. Provisions in the labour laws do not extend to children in the informal sector, which consists of agriculture, domestic labour, and small family businesses.

The law provides that employers who hire a child under the age of 16 must pay a fine ranging from $140 to $710 (100 to 500 dinars), which is doubled if the offense is repeated. The government, however, provides little training on child labour to the 85 MOL inspectors responsible for enforcing the relevant laws. Enforcement of these provisions is utterly lax: as the MOL reported in 2007 no fines were issued, while the government claimed that it is working to put in place a database to monitor violations.

The real picture is different though: according to a December 2006 International Labour Organization-funded Center for Strategic and International Studies, 387 working children aged nine to 17 were found and surveyed. 55 percent of those surveyed were employed in the fields of carpentry, blacksmiths, or painting and 13.4 percent were employed as street vendors. Survey respondents indicated that 60 percent worked longer than 10-hour days and 63 percent replied that they were paid below the minimum wage. Of the sample, 12.7 percent claimed their guardian compelled them to work.

Acceptable Conditions of Work

The greatest violations to workers' rights are reported by the 2008 CRHRP to occur in small family businesses, domestic servants, and nonprofessional and nontechnical workers in the agriculture sector, since these sectors expressly fall outside the scope of labour law. However, labour law, for the other sectors to which it applies, it cover every worker irrespectively of their status of citizens or non-citizens. According to the MOL, in 2007 there were 313,495 registered non-citizen workers in the country, the majority of whom were engaged in low-wage, low-skill activities in the textile, agriculture, construction, and industrial sectors.

Critical Overview and Labour rights violations

Jordan is surely a developing country in the very sense that it is undergoing a considerable wave of development due to an increasingly well performing economic growth in recent years; however poverty and unemployment together with fair redistribution of wealth remain core issues affecting the labour market. It must be acknowledge though, that over the years Jordan has devised a number of strategies and national initiatives to deal with employment and poverty reduction challenges. Most recently, the National Agenda has been launched and endorsed by H.M. King Abdullah in late November 2005, which provides a holistic framework for social and economic development for the next decade. Against the actual labour framework described above, one of the priority components of the National Agenda is job creation and skill development. The Agenda identifies challenges related to vocational training, namely, the sub-standard quality of training provision. The targets for this priority area are:

- Raising employability of the work force and provision of training based on market needs.
- Increasing flexibility and productivity of the labour market through flexibility in labour laws and establishing safety nets.
• Expanding the labour force and the size of the economically active population through replacing migrant labour with local labour, increasing employment of the disabled and women and formalizing the informal economy.

In parallel with these initiatives, Jordan is also cooperating with the International Labour Organisation to implement the Institution Decent Work policies. In particular, Labour administration must be strengthened as it is quite weak at the moment. This hinders the ability of the Ministry of labour to develop policies, monitor working conditions, mediate labour conflict and enforce labour legislation. Reported violations of workers’ rights, and in particular migrant workers’ rights, are in effect due to an inadequate and under-resourced labour inspection mechanism. Moreover, Qualifying Industrial Zones in Jordan where Labour Code is not applied are reported, as well as the fact that some foreign workers (mainly agricultural workers as well as domestic workers) are on a derogatory regime according to Labour Code.\(^{57}\)

As a general comment, it seems that Jordan Labour Law, although relatively recently reformed, in 1996, does not adequately include provisions that address the rapidly changing labour environment. Labour Law reform is envisaged by the Government. The proposed reforms will introduce labour market flexibility as a means to improve productivity in the form of (even) less rigid hiring and firing laws. Indeed, according to the National Agenda mentioned above, labour market rigidity is one of the factors cited for the low productivity levels of Jordanian labour. The Agenda suggests that it restricts employers in hiring and firing and hinders their motivation to invest in training, despite the fact that according to our analysis, and the 2008 Doing Business Report, which ranks Jordan as an average rigid country, labour legislation and firing costs are already rather loose.

It follows from the above that an update of the present analysis will be needed as soon as the new legal framework will enter into force.

**Lebanon**

*General Overview: Economic and Employment Outlook*

Lebanon, with a population of approximately 4 millions, is a parliamentary republic in which the president is a Maronite Christian, the prime minister a Sunni Muslim, and the speaker of the chamber of deputies a Shi’a Muslim.

A 15-year civil war erupted in April 1975, which saw Syrian troops deploying in the country the following year, and the invasion and occupation of the South. A Charter of National Reconciliation, was brokered in 1989, bringing the civil war to an end in October 1990, however,

Israeli occupation of South Lebanon continued until May 2000. Following the Israeli retreat, the political environment remained highly volatile, and the assassination of former Prime Minister Rafic Hariri in a massive explosion in downtown Beirut on 14th February 2005 led to mass rallies and protests in the streets of Beirut. Consequently, Syrian troops withdrew in April 2005, after a 29-year military presence in Lebanon. Reconciliation and national unity have remained the overarching concern for Lebanon, and formed part of the political, economic and social processes, having a direct effect on matters of governance, employment, civil society, the economy, the fight against poverty and the environment. Despite the effort made since 2005 to change the situation, the country was struck in July 2006 by a devastating war with Israel whose effects have brought immense damages to the country. Such an event strongly influence the present inquiry since the legislation in force does not reflect any more the situation of a country severely damaged by such a disruptive war.

According to the Lebanon Council for Reconstruction the scale and the scope of the damage to the infrastructure have been great. Direct bombardments have targeted all infrastructure sectors from transport, to electricity, telecommunications, water, nutrition, health and education, directly affecting the livelihoods of hundreds of thousands of Lebanese citizens. In addition to several airport runways, 137 roads have been damaged and 107 bridges and overpasses have been damaged or destroyed. The immense scale of destruction has resulted in massive losses to the country’s monetary, fiscal, and economic situation.

Indeed, according to a recent EU Commission Staff Working Document, Lebanon is the world’s most indebted middle-income country with a debt-to-GDP ratio of 173%. In 2007, the government continued to strike a careful balance between reconstruction and social needs, and the challenges resulting from the large public debt overhang. The authorities undertook efforts to make progress on economic reforms and successfully ensured macroeconomic stability. The government adopted in January 2007 a medium-term programme of socio-economic reforms which aims to increase Lebanon's growth potential and reduce the debt stock to a sustainable level.

In January 2007, Lebanon adopted a social action plan with the aim of improving the efficiency of social spending and reducing poverty. It is noteworthy in this regard that five per cent of the Lebanese population falls within the category of extreme poverty, and that strong economic inequities characterise the country. A social strategy has also been developed by the Ministry of Social Affairs in 2007, but consultations have yet to be launched.

The employment situation in Lebanon is marked by high unemployment, particularly among youth, low participation of women in economic life, a large informal sector and a noticeable presence of foreign workers, especially in low paid sectors. Lebanon aims to promote the role of labour inspectors and reinforce training courses at the national institute of administration and at the Ministry of Justice. However, the labour inspection human and administrative resources are very limited.

The resident Lebanese population, estimated at 3.75 million, has a young age structure with approximately 37.4% under 20 years of age. The labour force, at roughly 1.2 million, is estimated to be approximately 50% of the working age population (15-64 years). This essentially means that whilst two thirds of the resident Lebanese population is of working age, only one third is actually working. Although the labour force participation rate has increased since 1997, it remains low when compared to OECD countries. This continuing trend is primarily due to the weak participation of women in the labour force (although there may be a certain degree of undeclared participation of women in agriculture and other informal sector activities).

Moreover, Lebanon intends to promote a comprehensive reform of the pension and social security systems. At present in Lebanon, social security is administered through the “Caisse Nationale de Sécurité Sociale”, or National Social Security Fund (NSSF). The NSSF provides three main benefits: a cash lump sum “severance” benefit on termination of employment (targeted mainly towards those retiring from active, paid employment), health care benefit, and a so-called “family benefit”. However it is reported that the intervention of the NSSF does not manage to meet the needs of all those in need. Currently two projects have been sent to the Parliament, one drafted with the support of the World Bank and approved by the Council of Ministers, the other by independent experts.

There is no holistic approach to women’s participation in social and economic life, which is subsequently very weak. Women are the first victims of poverty and negative developments on the labour market.

Among the ILO fundamental conventions and core labour standards, Lebanon has not yet ratified the ILO Convention on Freedom of Association and the Right to Organise. This Convention is

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part of the 1998 Declaration of Fundamental Principles and Rights at Work which is one of the priorities of the ENP Action Plan. There is no trade union representing the public service and other trade unions must seek authorisation prior to registration. The 1948 labour Code is being revised with the assistance of ILO.

According to the already mentioned ILO Decent Work Country Program for Lebanon, in the post-war situation the level of unemployment and poverty is “a threat to human dignity and consequently stability in the country”. While urgent job creation is a priority in the current post war situation, improved labour market governance is of parallel importance for the medium and long term. There is a recognition that Lebanon has to reform public administration and update its regulatory framework in order for its economy to move forward and to be able to provide more and better jobs for the Lebanese people. Alas, the government and the social partners agree that there is no coherent policy framework for employment. The Ministry of Labour’s initiatives tend to be ad hoc, fragmented and temporary in nature. Additionally, the Ministry of Labour has been traditionally marginalized from all national social and economic policy making and is lacking in financial and human resources in order to be able to lead any crucial employment related policy making.

Traditionally Lebanon has adopted laissez-faire policies in the field of employment which have largely led to restrictive wage policies (wages have been frozen since 1996, totally disregarding inflation in the cost of living indexes), a drive for flexibilization in labour legislation, reductions in contributions to the social security fund, and individualization of working conditions.

The strategy set up by ILO in agreement with the Government at the end of 2006 can be summarised as follow:

i. generating sufficient quality jobs especially for young people;

ii. improving the skills and productivity levels of the labour force to support greater competitiveness of Lebanese enterprises as required by global economic integration;

iii. while responding to the needs for increased labour market flexibility, ensuring that parallel measures for social protection are in place especially for those unemployed workers who cannot adapt to the changing circumstances and skill requirements;

iv. improving compliance with international labour standards and upgrading labour administration with particular focus on monitoring and enforcing the labour law.

It is with such a picture in mind that one can approach the actual legislation in place which is mainly lacking in compliance due to numerous problems faced by the country in such a difficult transitional period.

Legal Sources

The Constitution

Lebanon adopted its Constitution on 23 May 1926. Equality of all citizens is provided for by art. 7 according to which “All Lebanese are equal before the law”. They equally enjoy civil and political rights and equally are bound by public obligations and duties without any distinction”. Art. 12 establish a minimum framework of reference for working in the civil service: « every citizen is equally admitted to be a civil servant, their appointment depending only on their preference and merit and competencies as provided by the law. A special law will be established to regulate the status of the civil servants”. Except for these very general provisions nothing else is provided in the Constitution which can be of relevance form the point of view of labour law. It is then necessary to focus on the Labour Code.
The Labour Market in the SEM Countries: a Legal Perspective

The Labour Code

The Lebanese Labour Code dates back to 23 September 1943, date of its enactment. The Labour Code regulates employment in the private sector. A new version of the labour law with added sections was issued on 24 of July 1996. Amendments were introduced after this date by Law no. 207 made on 26 May 2000. A new code has been long envisaged but it is still not been enacted. The Government is working with the aid of the International Labour Organisation to prepare a new one, under the ILO Post Conflict Decent Work Country Program. Indeed, the current labour law which was developed during the French mandate in the 40ies does not adequately include provisions that address the changing labour market environment or the socio-economic variations. Despite the ratification by Lebanon of 49 ILO conventions to date and the limited changes introduced on the law later in the sixties, labour legislations are still to be in conformity with International Labour Standards. Mechanisms of implementation and enforcement are largely needed. Due to these various reasons the following description of the main provisions concerning the functioning of the employment contract and the rigidity of the Lebanese labour market must be taken as mere legal norms: much more for Lebanon than for other SEM countries the usual caveat that there is the need to address the actual functioning and respect of the laws in the books, rather than basing the analysis on the mere reading of them, must be therefore remembered.

Accordingly, since the country labour legislation is undergoing a profound transformation the description which followed will be more synthetic and limited to the main aspects.

According to art. 7 the Code does not apply to the following categories of workers:

- domestic servants employed in private houses;
- agricultural corporations that have no connection with trade or industry;
- family businesses employing solely members of the family under the management either of the father, the mother, or the guardian;
- casual or journeymen in municipal or government services, and;
- electrical staff and wage-earners who are not governed by the Civil Servant regulations.

According to art. 12 of the Code, contracts can be either in writing or oral and are subject to the general law of contracts. As far as the length of the contract nothing is specified in the labour code, therefore, since the general law of contract applies, it remains in the power of the parties to determine whether to agree on a fixed-term contract or on an open-end one, something which is in line with the above reported laisser-faire policy traditionally followed by the Government in the field of labour law. As for the length of the working day instead, art. 31 provides for a maximum of 48 hours per week, and a reduced one for children and adolescents. In case of urgency these threshold can be passed and overtime work performed at a 150% rate per hour. A minimum rest period of one day per week and 9 consecutive hours per day must be in any case guaranteed according to art. 34 and 36. In addition the law guarantees 15 days of paid leave per year and the right to paid sick leave and maternity leave with the prohibition of dismissing the worker during the latter periods. Moreover, equality between men and women is clearly spelled out in art. 26, under which it is forbidden to differentiate between male and female workers in relation to the nature of work, salary paid, employment opportunities, promotion and technical training.

The right to a minimum wage is also provided for by the Code at art. 44 and it “must be sufficient to face the essential needs of the worker and his family having regard to the kind of work”. Since such a parameter is rather vague, the following article states that the salary cannot be “below the minimum wage set by Commission of representatives of the Ministry of National Economy, of employers and employees”.

Termination of employment is regulated by art. 50 ff. As a general rule, confirming the flexible approach followed by Lebanon “the open-end contract of employment can be terminated at any time by both parties”. However, a general limitation is posed that of an abusive exercise of such a right. If the party managed to prove that the other has resigned in an abusive way, he or she is entitled to a monetary compensation that, in case of an abuse committed by the employer cannot be lower than 2 months of wage and higher than 12 and it is up to the judge to determine the amount taking into account the behaviour of the employer, the economic and family situation of the worker, etc. In the opposite case, the employee will have to pay a sum between 1 and 4 months of salary.

In any case for a resignation to be valid, the party must give a mandatory notice of 1 to 4 months depending on the length of service (art. 50.3). Should the notice not be given, the party will have to pay that in addition to the sum decided by the judge as described above. Moreover – quite surprisingly – should the worker have resigned form the contract unfairly to move to work for another employer who is knowledgeable of such a situation, not only will be the worker oblige to pay the damages as described above, but the new employer will be responsible in solidarity with the worker towards the first employer. The cases which make a resignation abusive are listed by art. 50.4 of the labour Code. The reasons basically require that the behaviour of the worker must be as such as to justify the dismissal, for example because he was not apt to perform the work, or because he did it lacking dedication or violating the rules. Besides, of course, dismissal for joining a legally recognised trade union, discriminatory or imposed on a pregnant or ill worker are all regarded as abusive. In similar cases a special Council of arbitration is in charge of the issue (art. 50.5) and if it finds the dismissal unlawful it can condemn the employer to pay the sum specified above, but, in case of serious wrongdoings, according to the characteristics of the case, the Council can also order the reinstatement of the worker which can only be avoided by the employer paying a sum double or triple to that specified above (i.e. form a minimum of 6 to a maximum of 36 months of salary).

In case of dismissals for economical reasons (art. 50.6), the employer must inform the Labour Ministry one month in advance and is also obliged to consult the Ministry to establish a plan for the collective dismissals taking into account the profiles (i.e. family, age, specialisation, etc.) affecting each affected worker in the hope to arrange their re-employment in another department of the firm or somewhere else. According to art. 57, the employer must pay to each dismissed worker one month of salary for each month of work performed in the firm – up to a maximum of 10 months – but it does not have to actually demonstrate that the economic situation does oblige him to recur to redundancies.

All in all, it seems that according to the legislation in force it is rather easy to dismiss a worker – especially when the reason can be claimed to be of economic nature – and in any case the reinstatement of the worker can always be avoided agreeing to pay a set amount of money.

The Labour Code however, comparing to that of Western countries, but also to those of other SEM countries, is short (only 114 articles) and it looks to be in strong need of updating. As mentioned above, however, the country has been recently shocked by a devastating war and at present is one of the most indebted countries of the world; therefore one can assume that despite valuable ILO assistance the time when a new Labour code will be implemented won’t come soon.

60 The list of the reasons which make a dismissal abusive are as follow
1) un motif non valable ou n'ayant pas trait à l'aptitude du salarié, à son comportement à l'intérieur de l'établissement, ou à la bonne gestion et au bon fonctionnement de l'établissement;
2) si le salarié a adhéré ou non à un syndicat professionnel déterminé, s'il a exercé une activité syndicale légitime dans les limites des lois et règlements en vigueur ou d'une convention de travail collective ou particulière;
3) si le salarié s'est présenté aux élections, a été élu membre du bureau d'un syndicat ou a été chargé de représenter les salariés de l'établissement, et ce pendant la période d'exercice de son mandat;
4) si le salarié a déposé, de bonne foi, une plainte, auprès des services compétents, relative à l'application des dispositions de la présente loi et de ses textes d'application; ou s'il a intenté un procès à l'employeur sur cette base;
5) si le salarié a exercé ses libertés individuelles ou publiques dans le cadre des lois en vigueur.
Critical Overview and Labour Rights Violations

The law does not specifically prohibit forced or compulsory labour: children, foreign domestic workers, and other foreign workers are reported to remain in situations amounting to coerced or bonded labour.

As for migrant workers NGOs report that often contracts signed with the workers respected the minimum wage set in Lebanon, but in reality the parties accepted to be bound by a second contract stipulated in the country of origin of the migrant at a much lower rate. Anecdotal evidence moreover suggested that some employers did not pay their workers on a regular basis, and some withheld the salary until the end of the contract, which was usually two years. Government regulations prohibited employment agencies from withholding foreign workers’ passports for any reason. However, in practice employment agencies and household employers often withheld maids’ passports, according to the 2008 report on human rights respect of the U.S Department of State.

As far as prohibition of child labour and minimum age for employment are concerned, although there are laws to protect children from exploitation in the workplace (namely section 2 of the labour code), their implementation is reported to be lax. Indeed, according to the Code, the minimum age for child employment is 14 years. Under the law juveniles are defined as children between 14 and 18 years of age. The law prohibits the employment of juveniles before they undergo a medical exam to ensure their fitness for the job for which they are hired. The labour Code prohibits employment of juveniles under the age of 18 for more than six hours per day, and requires one hour of rest if work is more than four hours. The law entitles them to 21 days of paid annual leave.

Juveniles under the age of 17 are prohibited from working in jobs that jeopardize their health, safety, or morals, as well as working between the hours of 7 p.m. and 7 a.m. The law also prohibits the employment of juveniles under 16 in industrial jobs or jobs that are physically demanding or harmful to their health. The MOL is currently working on drafting an amendment to the labour Code on what is considered hazardous child labour.

The MOL was responsible for enforcing these requirements. According to 2005 UNICEF statistics, 7 percent of children aged 5 to 14 were involved in child labour. The International Labour Organization estimated around 100,000 child workers during 2006.

As far as working conditions are concerned, despite the legal framework of the Code provided above, a number of problems can be underlined: the legal minimum wage although frozen at $200 per month since 1997, is reported to be respected, but the minimum wage hardly provides a decent standard of living for a worker and family.

As far as migrant workers are concerned, it must be mentioned that the law does not protect foreign domestic workers. Foreign domestic workers, mostly of Asian and African origin according to the U.S. Department of State are “mistreated, abused, raped, or placed in situations of coerced labour or slavery-like conditions. Domestic workers often work 18 hours per day and, in many cases, do not receive vacations or holidays. There is no minimum wage for domestic workers. Although official contracts stipulate a wage ranging from $100 to $300 per month, depending on the nationality of the worker, the actual salary was often much less. Victims of trafficking or abusive labour may file civil suits or seek legal action, but most victims, often counselled by their embassies or consulates, settled for an administrative solution, which usually included monetary compensation and repatriation”. Despite the government lack of release of information on legal actions filed, NGOs indicated that fewer than 10 legal actions were undertaken during 2007.

In the same year the MOL, which regulates the activities of employment agencies, closed 15 agencies for violations of workers’ rights, including physical abuse. Perpetrators of the abuses, however, were not further prosecuted for a number of reasons, including the victims’ refusal to press charges or a lack of evidence. The MOL, which also has jurisdiction in cases where the labour contract has been violated, reported adjudicating only 57 such cases during the year. An unknown number of
other cases of non-payment of wages were settled through negotiation. According to source country embassies and consulates, many workers did not report violations of their labour contracts until after returning to their home countries.

The picture that emerges is that of a country where the regulation of labour law is largely bypassed and abuses and violations of workers’ rights constitute a common event. Despite a sound bulk of legislation, except for a dated Labour Code, Lebanon is ranked by the Doing Business report as a country with a very flexible labour regulation (see Annex 1). Alas, the regulation is not just flexible, but in most cases either non-existing or not enforced. Indeed, the present turmoil due to the economic crisis and the devastation brought by 34 days of bombing in July 2006 can be both regarded as the main reason for similar problems, although the country has always been a tradition of liberalism when the issue of the regulation of the employment relation came into question, as it is demonstrated by the Ministry of Labour regarded as the less important constantly left without funding. It follows therefore that a future assessment of the Lebanon labour market situation is to be performed as soon as the country will ameliorate recovering from the past war and, hopefully, adopting a new labour Code.

**Syria**

**General Overview**

Syria is a lower middle-income country with an estimated GDP per capita of US $1,380, a population of 19,172 million growing at about 2.58 percent per annum.

It is mainly constituted by a Sunny Muslim majority, with Kurds representing the largest ethnic minority ranking 10% of the population. Syria is a republic under the authoritarian presidential regime of Bashar al-Asad. The president makes key decisions with a small circle of security advisors, ministers, and senior members of the ruling Ba'ath Party (Arab Socialist Resurrection). The Constitution mandates the primacy of the Ba'ath party leaders in state institutions and the parliament. President al-Asad and party leaders, supported by various security services, dominated all three branches of government. President Bashar al-Assad was endorsed for a second term in May 2007 with an astonishing 97 percent of the vote in parliamentary elections held in April 2007 that were considered by international and local human rights advocates as neither free nor fair.

In 2007-8, the United Nations Human Development Index (HDI) placed Syria 108 out of 177 countries, in its list of countries with medium human development, and 12 out of 20 Arab countries in the Arab Human Development Report ranking.

Syria is a lower middle income country with a per capita GDP of about $1,170 and a population of about 17.8 million people that has grown, on average, 2.4 per cent per year since 1999. Following a decade of economic growth in the 1990s, economic performance has weakened significantly in the recent years. The real GDP growth declined to 2 per cent in 2004, compared with 5.1 per cent in 2001\(^\text{61}\).

Over the past three years, Syria has recovered from a half decade of weak growth, notwithstanding an unsettled regional environment and a sharp drop in oil production. The economic recovery has gained momentum; private investment has strengthened owing to an improved business climate\(^\text{62}\). Growth has already fed into a drop in the rate of unemployment from 11.7% in 2002 to 8.5% as of September 2006 according the Syrian Central Bureau of Statistics\(^\text{63}\).


Labour force and employment

The labour force represents less than one-third of the Syrian population and less than half of the working age population. In 2003, the participation rate in the labour force was only 46.8 per cent of the working age population, a decline from 55.8 per cent in 1999. The low overall participation rate is due to the very low participation among females (18.4 per cent), compared with 74.2 per cent among males. About 55% of the employed populations are wage earners, followed by self-employed (about 25% of the employed population). The percentage of unpaid workers (mainly engaged in family work) is significant, whilst employers constitute the smallest proportion of the working population.

There is an important gender dimension to the unemployment in Syria, with unemployment rates among young women almost twice as high as those among young men. In addition, 50 percent of young women in Syria (age fifteen to twenty-nine) are neither in the labour force nor in school, suggesting potential barriers to labour market entry.

Main Reasons for Concern and Government Response to the Labour Market Situation

The Syrian government presented the 10th Five-Year Plan for 2006-2010 as the blueprint for comprehensive economic and social reform and transition from a centrally planned to a ‘social market economy’. According to the Plan, the Government is introducing a comprehensive set of measures to transform the country into one with an efficient and open market economy. The Government recognizes that, to be successful, reforms need to cover all areas of the economy, but it also admits that due to the intensity of the change Syria is undergoing more than a mere 5 years time will be needed, and therefore in the short term not all segments of society will benefit equally of the planned reforms.

Among the most crucial issue there is first of all that of workers’ vulnerability: the structure of the Syrian labour market and the large number of jobs in the informal economy leaves the majority of workers without basic forms of social protection, and the majority of these are women, who are often exposed to financial, economic, and social risks and vulnerability resulting from their need to find employment and generate income. In addition, the number of migrant workers increased following the adoption of the law for the employment of migrant domestic workers in 2006, which allowed Syrians to employ foreign domestic workers. They have very little protection under Syrian law because even though their employment is legal, it is not regulated.

While several decrees have contributed to easing regulation for enterprises in Syria over the past few years, developing the business environment, including business services and support to start-ups with particular emphasis on opportunities for youth and young women, is still a terrain full of possibilities.

Many laws and regulations have already been revised to address the economic and social challenges that will result from moving to a social market model, in place of centralized state control, but the measures are not yet comprehensive enough to boost economic activity to the desired extent.

To ensure an efficient transition to social market economy, the government has developed several measures to increase employment opportunities and improve the functioning of the labour market including loosening labour market regulations to promote the development and growth of SMEs and encouraging firms in the informal sector to join the formal economy.

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Despite these efforts, which will be better addressed in the following paragraphs, social protection and social safety nets to protect the vulnerable are ineffective and do not manage to target the needed population. The existing social safety net is costly and inefficient. It cannot manage the poverty risks deriving from the country’s economic transition process. In parallel, also control over implementation of labour legislation is lacking since Syria’s labour inspection system is severely challenged as a result of the new economic reform process. The increases of private enterprises, self employed, as well as the expansion of the informal sector, have created a much larger playing field to monitor the application and compliance to national law. The current capacity of labour inspection needs to be strengthened to respond to emerging needs.

Due to the political situation, access of foreign observers is strictly limited and it is extremely difficult to access both official and unofficial data concerning the legal framework of the Syrian labour market. Therefore the sketchy picture that follows must be regarded as a basic source of reference in need of further development. The most updated source of reference is probably the ILO, Decent Work Country Program 2008-2010 issued on February 2008, which was prepared by local ILO officer, chamber of industry, trade unions and government representatives and agreed upon by all of them, therefore providing a rather reliable and rich picture of the country situation in respect of workers’ rights.

Constitutional Background

Syria's Constitution dates back to 1973. According to its preamble, the enactment of the Constitution would have serve the Arab masses as a means to “consolidate their struggle, and as an advanced phase in their continuing battle against the forces of imperialism, Zionism, and exploitation under the leadership of their patriotic and progressive forces in order to achieve the Arab nation's goals of unity, freedom, and socialism”.

The economic system envisaged in the preamble is clearly that of a planned socialist economy, as it spelled out by art. 13, according to which “(1) The state economy is a planned socialist economy which seeks to end all forms of exploitation. (2) The region's economic planning serves in achieving economic integration in the Arab homeland.”

As far as the right to freedom is concerned, the Constitution clarifies at art. 25 that (“1) Freedom is a sacred right. The state protects the personal freedom of the citizens and safeguards their dignity and security. (2) The supremacy of law is a fundamental principle in the society and the state. (3) The citizens are equal before the law in their rights and duties. (4) The state insures the principle of equal opportunities for citizens.”

Similar principles have a potential impact on various aspects of the working relationship. However, next to them there are also more specific articles such as art. 36 dedicated to “work”: “(1) Work is a right and duty of every citizen. The state undertakes to provide work for all citizens. (2) Every citizen has the right to earn his wage according to the nature and yield of the work. The state must guarantee this. (3) The state fixes working hours, guarantees social security, and regulates rest and leave rights and various compensations and rewards for workers”.

Sources and scope of Labour Legislation

The sources of labour legislation in the Syrian Arab Republic are Act No. 91 of 5 April 1959 and its amendments promulgating the Labour Code (LC), and the Public Service Law no 1 of January 1985, and Legislative Decree No. 49, related to termination of employment, of 3 July 1962. The LC applies to relations between employers and workers. The terms “employer”, “worker” and “wage” are defined in sections 1, 2 and 3.
The general provisions of the LC specify the persons to whom the Code does not apply; that is, workers employed by the Government or by public establishments and administrative units having independent legal personality, as well as domestic servants and similar workers.

In the already mentioned *Syria ILO Decent Work Country Program*, however, limited coverage and enforcement of national labour legislation, particularly in the growing informal economy is reported.

Considering the necessity to create a more favourable legislative environment that will facilitate the social and economic reforms’ programme, since 2007, ILO is assisting the Ministry of Labour and Social Affairs to revise the law of the Commission for Employment and Enterprise Development, and the legislation for the recruiting and employment of foreign domestic workers. The main development goal ILO and the Syrian government have agreed upon for the 2008-2010 period is to “Contribute to poverty alleviation through decent work with a focus on young men and women”.

*The Contract of Employment and its flexibility*

Through a contract of employment, a worker undertakes to work under the direction or supervision of an employer in return for a wage (sec. 42, LC).

The contract shall be made in writing, in Arabic and in duplicate, with a copy for each party (sec. 43, LC). The period of probation shall be fixed in the contract, but it may not exceed three months, nor can it be renewed by the same employer (sec. 44, LC).

No specific provisions are in force either allowing or prohibiting flexible labour contracts. The basic rule is that a contract of employment may be made for a definite or indefinite period. If it has been concluded for a definite period and both parties continue to abide by it after the date of its expiry, it shall be deemed to be renewed for an indefinite period (sec. 71, LC).

*Working time and minimum wage*

The Labour and Social Affairs Minister is responsible for enforcing minimum wage levels in the public and private sectors. The public sector minimum wage for 2006 was $118 per month. The private sector minimum wage was $118 (5,900 pounds) per month; however, private sector companies usually paid much higher wages than the minimum. The public sector work week was 35 hours; the private sector's was 42.5 hours. Premium pay exists for overtime worked, and a prohibition on excessive compulsory overtime exists in several sectors.

*Termination of Employment and Rules concerning Dismissal*

The contract of employment can terminate, not at the initiative of the employer, in certain circumstances, such as by expiry of a fixed-term contract.

No employer may terminate a contract without notice or compensation for damages, unless the worker has committed a serious breach to the obligations arising from it. These reasons are enumerated in sec. 76, LC. The notice period is 30 days in the case of workers paid by the month and 15 days in the case of all other workers (sec. 72, of the LC).

All applications for authorization to dismiss staff shall be submitted to the Directorate of Social Affairs and Labour for the region one month before the proposed date of dismissal. The application must indicate the name of the worker(s) the employer wishes to dismiss, the actual wages of the worker(s), the work being performed and the grounds for dismissal. The Directorate of Social Affairs and Labour shall intervene on the administrative level between the employer and the worker in order to reach an amicable settlement. If no settlement can be reached, the Directorate shall forward the application within a week to the Dismissals Board of the region (sec. 5(1) and (2), Legislative Decree No. 49 of 3 July 1962).
Some protection is afforded to the worker through a provision contained in sec. 73 of the LC according to which where a contract made for a definite period expires or where a contract made for an indefinite period is terminated by the employer, the worker must receive a severance allowance which is to be calculated on the basis of a half month’s pay in respect of each of the first five years of service, and one month’s pay in respect of every additional year. Compensation shall be calculated on the basis of the worker’s most recent wage rate (sec. 73 of the LC).

A worker who believes that his or her dismissal is unjustified may apply for an injunction or stay of execution of the dismissal by submitting his or her application to the Directorate of Social Affairs and Labour, not later than ten days following the date of his or her dismissal by the employer. The Directorate shall follow the procedure described in section 6 above (sec. 6, Legislative Decree No. 49 of 3 July 1962).

An appeal may be brought against decisions of the Dismissals Board to the Court of Civil Appeal. The judgement given by the Court is final (sec. 16, Legislative Decree No. 49 of 3 July 1962).

It follows from the above that the protection of the worker is not particularly strong both because reinstatement is not provided for and because the amount of the severance payment is rather low, thus making the decision whether or not to dismiss the employee not too difficult for the employer. Moreover, the procedure for redressing abuses is mainly administrative, as the worker is allowed to go to Court only as a last resort and the decision of the court is to be deemed final, since appeal is not allowed. This of course would pose problems should Syria wish to be regarded as a State respectful of the rule of law, since the principle of the double level of jurisdiction ranks as high as a universally recognised fundamental right. However, as it will be pointed out in the following paragraph, Syria is unfortunately renowned for the opposite reason, i.e. for the large number of human rights violations, the latter amounting only to a minor violation in comparison with the others.

Critical Overview and Labour Rights Violations

Despite some remarkable progress and the intention of the Syrian Government to proceed on the way of a serious reform of the labour market regulation and a revision of the social security system, accepting the technical expertise and support provided by ILO, the existing social security system needs to be adapted to the new economic reforms in order to guarantee future financial sustainability. A further challenge is the extension of social security to the ‘excluded majority’ in the rural sector and the informal economy. A combination of policy instruments is needed: unemployment benefits for formal sector workers, public works and a minimum benefit package for all workers, including those in the informal economy. Next to this commitment, however, Syria is still ranking rather low according to Human Rights Watch and the yearly report on human rights respect of the U.S Department of State. Indeed, the government's respect for human rights worsens year after year, and it has been responsible for continuous and serious abuses. According to Human Rights Watch report for 2007, there were significant limitations on citizens’ right to change their government. In a climate of impunity, there were instances of arbitrary or unlawful deprivation of life, and members of the security forces tortured and physically abused prisoners and detainees. Security forces arbitrarily arrested and detained individuals, while lengthy pre-trial and incommunicado detention remained serious problems. Beginning in 2005, the government increasingly violated citizens' privacy rights and increased already significant restrictions on freedoms of speech, press, assembly, and association, amidst an atmosphere of government corruption and lack of transparency.

Syria’s poor human rights situation deteriorated further in 2007, as the government imposed harsh sentences on a number of political and human rights activists. The Supreme State Security Court, an exceptional court with almost no procedural guarantees, sentenced over 100 people, mostly “Islamists”, to long prison terms. Syrian Kurds, the country’s largest ethnic minority, continue to protest their treatment as second-class citizens.
More in general, as far as Libya is concerned, arbitrary detention, torture, “disappearances”, violence and societal discrimination against Kurds and women are reported as current practices.

Security services disrupted meetings of human rights organizations and detained an increasing number of activists, organizers, and other regime critics.

In such a dramatic context workers’ rights violations appear as something much more tolerable. The harshest conditions are reported to be suffered by domestic workers who are often in conditions that constitute involuntary servitude, including physical and sexual abuse, threats of deportation or other legal consequences, denial or delayed payment of wages, withholding of passports, and restriction of movement.

Moreover, the IOM study documents cases in which manpower agencies in the country that hired foreign domestic workers lured some victims through fraudulent or deceptive offers of employment, despite the fact that such manpower agencies are banned by Syrian law. According to the IOM report, despite formal ratification of ILO conventions on forced labour, there isn’t much room for action in this respect since the law does not actually prohibit all forms of forced or compulsory labour and the problem then does exist.

Indeed, Syria is traditionally and principally an emigration country. Foreign workers are not welcome and many and heavy legal requirements are in force in order to make it difficult the issuance of a work permit. However, recent researches show that the Government is making some efforts to review this policy and one of the most remarkable result is the fact that now foreign workers are entitled to social rights, but only on condition that there is a reciprocity with their country of origin.

Turkey

Turkey, with a population of approximately 70.5 million, is a constitutional republic with a multiparty parliamentary system and a president with limited powers elected by the single-chamber parliament, the Turkish Grand National Assembly. In an October 21 referendum that was deemed free and fair, voters approved a constitutional amendment that allows the president to be elected by popular vote for a maximum of two five-year terms. In the July 22 parliamentary elections, also considered free and fair, the Justice and Development Party (AKP) won the majority of seats and formed an one-party government.

Turkey is an EU candidate country. Deep concern for the country’s human right situation is creating since some year a wave of debate across the EU Parliament thus delaying its accession. Every year the Commission draft a Report on candidate countries progresses on meeting the parameters to be admitted in the EU. These reports also provide some useful and updated information concerning the regulation of the labour market and have been used as source of reference for the present analysis.

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67 Forced Labour Convention, 1930 (No. 29) and Abolition of Forced Labour Convention, 1957 (No. 105).
Legal Sources

The Constitution

The first article having a general scope but specific implication for the employment relationship is art. 10: equality before the Law. It was amended in 2004 as a measure to conform Turkish legislation to the requirements set by the EU law in order to join it. It is far-reaching and in line with the aquis communautaire in the field of anti-discrimination law, although its enforcement is strongly questioned (for example prohibition of discrimination against sexual orientation is not mentioned, although it is a rule enacted by EU law since 2000; but see below for more elaboration on these issues).

Article 18 expressly prohibits forced labour, but again much concern is expressed by the EU and the U.S. Human Right Report on the actual respect of this provision as shown below.

Next to these articles other provisions concern the basic freedoms enjoyed by the citizens. Of particular interest for the present research, is a set of articles from 48 onwards, “Section V. Provisions Relating to Labour”. Article 48 provides for the freedom to work and to conclude contracts, provided that social objectives are respected:

“Everyone has the freedom to work and conclude contracts in the field of his/her choice. Establishment of private enterprises is free. The state shall take measures to ensure that private enterprises operate in accordance with national economic requirements and social objectives and in conditions of security and stability”. However, it must be noticed that this right does not apply to foreign workers as they need to obtain a work permit, working visa and a residence permit in order to be eligible to work and reside in Turkey, unless exempted from such requirements by special provisions in the legislation. The main source of reference in this respect is Turkey law 4817, concerning the Work Permits Issued to Foreigners (Official Gazette 6 March 2003/25040). It is the national law regarding employment of foreign workers and it came into effect in September 2003. This new law has eliminated the scattered and the multi-faceted structure of previous foreign workers laws in Turkey, and it has unified the national law in this matter.

Article 49 establish the right and duty of everyone to work and specifically provides at its second paragraph that: “The State shall take the necessary measures to raise the standard of living of workers, and to protect workers and the unemployed in order to improve the general conditions of labour, to promote labour, to create suitable economic conditions for prevention of unemployment and to secure labour peace”.

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70 Article 10: Equality before the Law
- c1. (As amended on May 22, 2004) All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sex, or any such considerations.
- c2. Men and women have equal rights and the State is responsible to implement these rights. No privilege shall be granted to any individual, family, group or class.
- c3. State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings.

71 Law 4817 establishes the principles for the granting, restriction, and cancellation of work authorization documents in Turkey. It also establish a category of foreigners who may not be eligible for authorization documents in this country and the responsibilities assumed when a work authorization document is granted to a foreign national. The first step to obtain work authorization in Turkey is to secure a work permit. The work permit application must contain the justification for employing foreign personnel. In order to obtain a work permit, a foreign individual must possess a specific skill or qualification not available in the Turkish local labour market. Work permits will be granted by the Ministry of Labor after consultation with the relevant bodies, if necessary.

After the work permit is issued, the employee should obtain a working visa from the Turkish Embassy in the home country. On receipt of the working visa, the residence permit application is submitted to the Ministry of Internal Affairs, together with the work permit and working visa.
The following article 50 provides for special working conditions to be established taking into account sexual, physical and age conditions. In its second part it acknowledges the right to rest and paid leave:

“No one shall be required to perform work unsuited to his age, sex, and capacity. Minors, women and persons with physical or mental disabilities, shall enjoy special protection with regard to working conditions. All workers have the right to rest and leisure. Rights and conditions relating to paid weekends and holidays, together with paid annual leave, shall be regulated by law”.

After some detailed articles concerning the right to establish trade unions and to the right of collective action – which do not form part of the present inquiry on the flexibility of the labour market of the countries concerned – article 60 provides for the right to social security, stating that “Everyone has the right to social security. The state shall take the necessary measures and establish the organization for the provision of social security”.

Indeed, all employees must belong to a social security scheme which includes insurance for work-related accidents and illness, sickness, pregnancy, disability, old age and death. Contributions as a percentage of gross salary are payable by individual employees and employers. As far as foreign nationals are concerned, a foreign national who is covered under the compulsory social security system of his/her home country is not required to pay Turkish social security premiums, provided proof of foreign coverage is filed with the local social security office. If the employee is not subject to foreign social security, full contributions would generally be imposed.

**The Labour Code**

Turkey has introduced, in 2003, the so called Labour Act of Turkey which was enacted despite strong resistance, especially from trade union, as it was aimed to allow for more flexibility.

According to its first article, the purpose of the Act is “to regulate the working conditions and work-related rights and obligations of employers and employees working under an employment contract”.

Temporary work and Agency work

After the list of the basic definition of the terms used, the Act opens up with art. 7 which reflects a very tough discussion with trade unions. The article deals with “Temporary employment relationship”, which could make one think to agency work. However, due to workers’ unions’ fierce opposition, a previous bill containing regulation of private employment agencies has been withdrawn and amended. Article 7 reflects this debate and is therefore limited to the regulation of what is normally called in Europe “staff lending” or “secondment” of personnel, whereby an employee is hired out to a third party without the involvement of a private employment agency. On the contrary, form the wording of art. 7, it follows that temporary agencies assigning their employees to third parties on a professional nature are illegal.

Article 90 deals instead with private employment agencies which were first allowed to operate in Turkey in the by-law of 19 February 2004 on Private Employment Agencies. The said article permits the operation of private employment agencies but only as intermediaries to provide employment services for job seekers and employers only. Similar agencies must be licensed and supervised by the Employment Organisation of Turkey and they must provide their services for free to employees, except for high level managerial positions.

Despite such a legal framework, the triangular temporary work relationship is practised on a professional basis by certain agencies, taking advantage the definition of temporary work (art.7), pretending that they do it not on a professional basis. “This is done informally and basically relying

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on the principal employer-subcontractor relationship which, by way of its quite different nature, leads to controversy." Consequently there is the need to legalise temporary work supporting the de facto existence of similar contractual relationships via protective measures.

Contracts of employment

Contracts of employment in Turkey include indefinite period, fixed-term, temporary, part-time and full-time contracts, contracts in continual and transitory work, work on call, contracts based on a gang contract.

The Turkish EA provides provisions regulating and preventing the use of temporary and fixed-term contracts (Art. 11 EA): “an employment contract for a definite period must not be concluded more than once, except when there is an essential reason which may necessitate repeated (chain) contracts”. Otherwise, the employment contract is deemed to have been made for an indefinite period from the beginning. An employment contract for a definite period must be concluded in writing for of a specified term, or which is based on the emergence of objective conditions such as the completion of a certain project or the occurrence of a certain event. The wording of art. 11 suggests that an objective reason must exist for the contract for a definite period to be legitimate. This applies not only to renewals but also to the first fixed-term contract which must be based on an objective reason. This is a rather restrictive provision, since, e.g. EU law directive on fixed-term work does not require any specific reason for the first contract but only if it is to be renewed. All in all, since Turkey is a candidate country it can be said that it has enacted the Framework Agreement on Fixed-term work in a way that is in line with the requirement of the latter.

As for Part-Time work until the new Labour Act there was no provisions concerning this contract, and the void was filled by the case-law. Nowadays, art. 13 defines part-time as a contract in which “the normal weekly working time of the employee is considerably shorter than a comparable full time employee”. The basic criterion is thus a comparison with the normal weekly working time. Part-time legislation has been enacted in Turkey with the EU Framework Agreement on Part-time as the main source of reference and it therefore establishes that part-time can be horizontal, vertical or a mix of the two. Discrimination is prohibited but part-time encouraged as a form of flexibility serving both the employer and the employee. What does considerably shorter mean is not clear, therefore, every contract whose length is shorter than that of a comparable worker working full time is deemed to be part-time, unless reductions are insignificant. Part-timers are afforded with all the rights of the comparable colleagues but they are of course pro-rated to the actual number of working hours performed, unless for inderogable rights, such as maternity leave and sick leave which are to be given to everybody.

On call work is also defined by the new LA at art. 14 as a special form of part-time work. It is defined as an employment relationship which foresees the performance of work by the employee upon the emergence of a need for his services, as agreed upon by the parties in writing in the employment contract. Art. 14 par. 2 bolsters this contract with some protective measures: if the parties have not defined working time in terms of time units such weeks, months, year, the weekly working time is considered to be fixed at twenty hours. The worker is entitled to wages irrespective of whether or not he is engaged in work during the time announced for work on call. The parties therefore may agree upon a longer working time but they cannot agree on a contract for less than 20 hours. This means that on call contracts in Turkey are at least part time contracts for 20 hours, and then a worker with such a contract is sure that at least he will earn that amount of money. If an employee is on call, he must be called to work at least four days in advance and if the notice is respected he is obliged to perform the said activity. In any case the minimum daily working time, if called, must be 4 hours. Despite a rather remarkable set of minimum rights for the on call workers, often higher than those of Italian, English, Dutch on-call workers, trade unions strongly opposed this contract as undermining job stability.

The Labour Market in the SEM Countries: a Legal Perspective

The Turkish Labour Act seems to be in conformity with EU legislation\(^74\) in the area of atypical, flexible, work. Despite this, it must be noticed that EU law constantly evolve through case-law of the ECJ so one should verify whether or not these aspects are taken into account by the Turkish government.

**Working Time and Rest**

As we have seen, the Turkish Constitution establishes the right to rest, but do not say anything concerning working time. As for the Labour Act (LA), it also does not contain any express definition of working time, and not even of rest periods. It only stipulates in article 68 that breaks are not reckoned as working time. However, art. 68 clarifies that daily working time must not exceed 11 hours. Under Turkish law workers are entitled to a minimum weekly rest period of twenty-four hours (art. 46). As for the maximum weekly working time, according to art. 63 of the LA, it cannot exceed forty-five hours. Overtime is the time exceeding 45 hours.

**Annual leave with pay and leave periods**

Annual leave is a right after one year of service and cannot be waived. A complex system of qualifying periods is provided by art. 53: “The length of the employee’s annual leave with pay shall not be less than fourteen days if his length of service is between one and five years, (five included); twenty days if it is more than five and less than fifteen years; twenty-six days if it is fifteen years and more (fifteen included). […] The length of annual leave with pay may be increased by employment contracts and collective agreements”.

**Termination of Employment**

**Sources**

The Employment Act (EA) No. 4857 of 2003, together with the Trade Unions Act of 1983 and the Obligations Act of 1926 for some aspects, is the main source of employment legislation in relation to termination of employment for employees falling within its scope\(^75\). In addition, collective agreements in unionized workplaces and international conventions which are ratified by Turkey may afford protection in relation to dismissal to some extent.

**Scope of legislation**

The scope of the EA does not include all employees and all undertakings. Those excluded from its coverage are (Art. 4 EA):

1. Sea and air transport activities;
2. Establishments and enterprises employing a minimum of 50 employees (50 included) where agricultural and forestry work is carried out;
3. Any construction work related to agriculture which falls within the scope of family economy;
4. Works and handicrafts performed in the home without any outside help by members of the family or close relatives up to 3rd degree (3rd degree included);
5. Domestic services; Apprentices; Sportsmen; Those undergoing rehabilitation;

Moreover, the EA excludes (Art. 18) from the job security provisions in general those employees who are in the scope of the EA but employed for less than six months, employees holding managerial positions, and employees whose positions are defined in collective agreements.

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\(^{74}\) BLANPAIN, *Flexibilisation*, 118.

positions and, very interestingly, also employees in small undertakings (up to 30 workers), something which in EU countries would be most probably regarded as discriminatory.

**Termination without employer’s initiative**

The contract of employment can be terminated, without initiative of the employer or employee in certain circumstances, including by the expiry of a fixed-term contract; mutual consent of the parties; the death of the employee; and the death of the employer if it has been concluded *intuitu personae* of the employer.

**Dismissal**

There are two kinds of termination of employment contract at the initiative of the employer in Turkish Employment Law. The first kind concerns the serving and respecting of a term of notice. The second kind is known as ‘termination without term of notice’ or ‘terminating (or breaking) the contract for just cause’. Termination that respects a term of notice is only applicable to employment contracts for an indefinite period, but termination without a term of notice (generally, for just cause) is applicable to contracts for a fixed-term, as well as to contracts for an indefinite period.

**Termination by Means of Respecting a Term of Notice**

Art.17 of the EA provides that an employment contract made for an indefinite period may be terminated by the employer or employee if one party gives notice to the other. The length of notice increases with the duration of employment. The notice periods can be increased if both parties agree to it. The employer may terminate the employment contract by paying in advance the wages corresponding to the term of notice. Termination of this kind is possible either without having to present any valid/reasonable cause or with a valid/reasonable cause, as it is explained below.

**Termination without having to present any valid/reasonable cause**

According to Art.17 of the EA the employer, after respecting a term of notice, can terminate the employment contract of an employee who is outside of the scope of the job security provisions without having to present any valid/reasonable cause. Termination of this sort is lawful provided the terms of notice are respected.

**Irregular termination**

In cases where there is a failure to comply with the requirements for giving notice or payment in lieu of such notice, the defaulting party must pay compensation equal to the wages relating to the terms of notice.

**Abusive Termination**

In cases where employment contracts of employees who fall outside the scope of job security provisions of the EA have been ended by the abusive exercise of the right to terminate (for example where dismissal is due to filing a grievance, or sex or maternity), the employee shall be paid compensation amounting to three times the wages for the term of notice. The Trade Unions Act (Art. 31) imposes a heavier compensation for the abusive dismissal of an employee who engages in union activities.

**Discriminatory Dismissal**

According to Art.5 of the EA, except for biological reasons or reasons related to the nature of the job, the employer must not make any discrimination, either directly or indirectly, against an employee in the termination of his/her employment contract due to the employee’s sex or maternity. If the employer violates the above provision, the employee may demand compensation up his/her four months’ wages plus other claims of which he/she has been deprived. Art. 31 of the Trade Unions Act
The burden of proof in regard to the violation of the above-stated provisions by the employer rests on the employee. However, if the employee shows a strong likelihood of such a violation, the burden of proof that the alleged violation has not materialised shall rest on the employer. The arrangements in the EA (Art. 5) cover all the employees in the scope of the EA.

**Termination with a valid/reasonable cause**

Art. 18 of the EA states that an employer employing at least thirty employees will have to present a valid cause when laying off an employee who has worked at least six months at a particular workplace and who has an indefinite-term contract with the employer. Under this provision, the employment of an employee can only be ended for a valid reason concerning the capacity or conduct of the employee or based on the operational requirements of the undertaking, establishment or service. Art. 19 makes clear that an employee shall not be dismissed, for reasons related to the employee's conduct or performance, before being provided with an opportunity to defend him/herself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity.

**Invalid Termination**

In cases where employment contracts of employees who are in the scope of job security provisions of the EA have been ended without a valid reason or no reason, the employees shall be reinstated or paid compensation. The EA provides greater safeguards against discrimination in respect of employment. Termination based on discrimination and temporary absence from work because of illness or injury, which is referred to in the EA Art. 18 are not valid. The burden of proving that a valid reason exists for the termination rests on the employer. If the court finds the termination of employment not valid, it will order the reinstatement of the employee. According to the EA, the employer must reinstate the employee within a month and with back pay corresponding to up to four months’ wages which the employee may have received. If the employer fails to reinstate the employee, he/she will have to pay compensation which is determined by the court.

**Collective Dismissal**

According to the EA (Art. 29), the employer has a right of collective terminations for reasons of an economic, technological, structural or similar nature necessitated by the requirements of the enterprise, the establishment or activity.

A collective dismissal occurs when:

1. in establishments employing between 20 and 100 employees, a minimum of 10 employees;
2. in establishments employing between 101 and 300 employees, a minimum of 10 per cent of employees;
3. in establishments employing between 301 and more employees, a minimum of 30 employees, are to be terminated on the same date or at different dates within one month.

In case the employer intends to employ employees for a work with the same qualifications within six months from the finalization of mass dismissal, he/she has to call back the laid-off workers whose qualifications are suitable, giving them priority over other applicants.

**Termination of the Employment Contract without Just Cause**

This is the case when the employer or the employee unilaterally and immediately terminates the individual employment contract for just cause. The reasons for breaking the contract for just cause classified in three groups for the employee and four groups for the employer (EA Arts 24, 25), namely, reasons of health; immoral or dishonourable conduct or other similar behaviour and force majeure. There is also a fourth group for the employer which is the employee being under arrest or under custody. The employer is entitled to break the employment contract, whether for a definite or indefinite period, before its expiry or without the prescribed notice periods in the above cases.
Illegal breaking of the contract

Although a labour court may rule that the reasons given to claim a just cause do not justify the breaking of a particular contract, the employment contract is considered as terminated on the day of its breaking. According to the EA, employees outside of the scope of the job security provisions are not entitled to reinstatement and their only remedy is compensation. It is the injured party who must prove that the contract was unjustly broken. Compensation is the same as that for irregular termination, namely payment relating to the term of notice which should have been respected in order to terminate the contract for an indefinite period. Concerning a contract for a definite period or for work that is precisely identified, unjustified termination before the end of the period or before the work is finished entitles the injured party to receive compensation equal to the payment for the remainder of the period, or for the time to finish the work. And as previously remarked, the EA makes reinstatement possible for the employees within the scope of the job security provisions if a contract is ended without a just cause.

Notice and prior procedural safeguards

The requirement for prior notice or payment in lieu of such notice has been established by the EA. Art. 19 provides that the notice of termination (from two to eight weeks depending on the length of service) for employees, who are covered by job security provisions, shall be given by the employer in written form involving the reason for termination which must be specified in clear and precise terms.

Severance pay

Under the EA transitional Art. 14, in the event of termination of the contract of employment of an employee with at least one year of service by the employer he must pay seniority severance pay equal to 30 days’ wages for each complete year of service or in proportion for any fraction thereof, effective from the date of employment and for the entire duration of the contract.

Avenues for redress

The EA allows an employee to appeal against dismissal to a labour court. The primary remedy in the employment law is compensation and rarely reinstatement.

Critical Overview and Labour Rights Violations


According to the EU Report, as for 2007 there is no progress to report in the area of labour law. Shortcomings in the transposition of a number of directives remain; these include the limited scope of application of the Labour Law. On administrative capacity, recruitment of additional qualified personnel by the Ministry of Labour and Social Security and its affiliated institutions continued. Efforts to reduce child labour continued. The National Child Labour Survey has revealed a decrease in the rate of children involved in an economic activity (from 10.3% in 1999 to 5.9% in 2006). However, there are shortcomings in the current legislation. The labour law prohibits night work for children under 18 only for the industry sector; it does not provide protection for children working in agricultural enterprises employing less than 50 employees; and it does not regulate the work of children in artistic and cultural activities and in the media. Lastly, the current legislative framework does not tackle the issue of children working on the streets. Turkey needs to continue its efforts to reduce child labour. (See also the section on Economic and Social Rights).

As regards **health and safety at work**, Turkey has attained a good degree of alignment with the *acquis*. However, shortcomings remain. In particular, new legislation to transpose the Framework Directive has not been adopted. Furthermore, existing legislation does not cover all workers in the private sector and excludes workers in the public sector. In addition, further efforts to implement the legislation are needed, including through awareness-raising, training and strengthening the capacity of the inspection bodies.

As regards social dialogue, there is limited progress. The requirement to have worked for at least ten years in order to be elected to the management bodies of trade unions has been lifted. However, the draft legislation aimed at bringing the currently applicable Trade Union and Collective Bargaining, Strike and Lockout Laws into line with ILO and EU standards is still pending. Full trade union rights have to be established in Turkey. There is some progress regarding bipartite social dialogue in certain sectors; however, overall, social dialogue is weak, and tripartite social dialogue mechanisms, in particular the Economic and Social Council, remain ineffective. The number of workers covered by collective agreements is still low and further decreasing. (See also the section on Economic and Social Rights).

Little progress is reported with regard to **employment policy**. In 2006, the unemployment rate fell to 9.9%, while the overall employment rate – at 43.2% – was slightly down compared to 2005. The labour market is characterised by low labour force participation and low employment rates, in particular for women, and high levels of youth unemployment. The large size of the informal economy and the marked rural/urban divide in the labour market are the main challenges. More than half of those in employment are not registered with any social security institution. The Prime Minister’s circular on combating undeclared work identifies various targets and activities. However, more concrete policies and measures, including greater inspection capacities, are needed in order to tackle the problem together with the social partners. No further progress was made in finalising the Joint Assessment Paper on Employment Policy Priorities (JAP). The Turkish Employment Agency (ISKUR) continued its efforts to improve its institutional capacity.

Turkey will prepare for the implementation of the European Social Fund (ESF) programmes by implementing the component on Human Resources Development of the Instrument for Pre-accession Assistance (IPA). Progress has been made on the programming of the assistance with a view to supporting activities in the areas of employment, education and training, and social inclusion. The Turkish authorities have initiated the setting up of the structures needed for the implementation of the Human Resources Development component of IPA. Administrative structures and legislation need to be further adapted in order to build up an adequate institutional capacity for the future management, implementation, monitoring, audit and control of ESF-type measures.

Concerning **social inclusion**, little progress is reported. The percentage of the population at risk of poverty is among the highest when compared to those of Member States and candidate countries. The lack of efficient social transfers, together with the high percentage of 'working poor', leads to an important child poverty rate. Resources allocated to increase the employability of people with disabilities have increased. Sound mechanisms for monitoring the implementation of social inclusion policies are required to measure progress.

In the field of **social protection**, little progress has been achieved. The enforcement of the social security reform was postponed to 2008. A Prime Minister’s circular has been issued to initiate a “one-stop service” aimed at simplifying procedures for obtaining several forms of social assistance. The Social Security Institution recruited additional staff and reinforced its technical infrastructure.

As regards **anti-discrimination and equal opportunities**, limited progress was achieved and further alignment with EU standards is required. A circular was issued by the Turkish Employment Agency banning gender-based discrimination in job matching services. Male nurses are now allowed. The administrative capacity of the Directorate-General for the Status of Women was strengthened. Low participation of women in the labour market and access to education remain points of concern. Transposition of the EC Directives concerning discrimination on grounds of racial or ethnic origin,
religion or belief, disability, age and sexual orientation is incomplete. An effective and independent “Equality Body” needs to be established to promote non-discrimination and equal treatment.

The EU Report therefore concludes that overall, Turkey has made limited progress on alignment with the acquis. Ensuring full trade union rights and combating undeclared work require particular attention. Further efforts are also needed to fight against child labour. Gender equality is also an area in need of improvement in all economic and social life. In general, there is a need to increase administrative capacity for the effective implementation of the acquis.

As far as the U.S. Country Reports on Human Rights Practices it concerned, it insists on some aspects that require specific attention by the Government as they represent a breach of the internationally recognised fundamental workers’ rights.

In the field of Forcible or Compulsory Labour, despite the law prohibits forced or compulsory labour, including by children, there were reports that women and children were trafficked for commercial sexual exploitation and labour. Some parents would have forced their children to work on the streets and to beg.

As for Prohibition of Child Labour and Minimum Age for Employment, there are laws to protect children from exploitation in the workplace; however, the government did not effectively implement these laws. The use of child labour was particularly notable in agriculture, carpentry, the shoemaking and leather goods industry, the auto repair industry, small-scale manufacturing, and street sales. The law prohibits the employment of children younger than 15 and prohibits children under 16 from working more than eight hours a day. At age 15 children may engage in light work provided they remain in school. The law provides that no person shall be required to perform work unsuitable for their age, gender, or capabilities, and the government prohibits children from working at night or in areas such as underground mining. The law prohibits school-aged children from working more than two hours per day or 10 hours per week. The Ministry of Labour and Social Security effectively enforced these restrictions in workplaces that were covered by the labour law, which included medium and large-scale industrial and service sector enterprises. A number of sectors are not covered by the law, including small-scale agricultural enterprises employing 50 or fewer workers, maritime and air transportation, family handicraft businesses, and small shops employing up to three persons. Nonetheless, child labour was widespread. In a child labour survey conducted in the last quarter of 2006 and released in April, the State Statistical Institute reported that the number of child labourers between the ages of six and 17 was 960,000, or 5.9 percent of a total of 16,264,000 in that age group. These figures represented a decrease over previous years. The study found that 84.7 percent of children aged six to 17 attended school, and 31.5 percent of the children in that age group who were employed were also attending school at least part of the time. An informal system provided work for young boys at low wages, for example, in auto repair shops. Girls rarely were seen working in public, but many were kept out of school to work in handicrafts, particularly in rural areas. According to the 2006 child labour survey, 40.9 percent of child labour occurred in the agricultural sector, with a total of 52.4 percent of employed children working in rural areas, compared to 47.6 percent working in urban areas. Many children worked in areas not covered by labour laws, such as agricultural workplaces with fewer than 50 workers or the informal economy. To combat this ongoing problem, the Ministry of National Education conducted a program in cooperation with the UN Children's Fund called "Let Us Send Girls to School," which was designed to provide primary education for at-risk girls. By year's end the program benefited nearly 250,000 school-age girls. Small enterprises preferred child labour because it was cheaper and provided practical training for the children, who subsequently had preference for future employment in the enterprise. If children employed in these businesses were registered with a Ministry of National Education training centre, they were required to go to the centre once a week for training, and the centres were obliged by law to inspect their workplaces. According to data provided by the ministry, there were 300 centres located in 81 cities; these centres provided apprenticeship training in 133 occupations. The government identified the worst forms of child labour as children working in the streets, in industrial sectors where their health and safety were at risk, and
as agricultural migrant workers. Children were trafficked for sexual exploitation. There were no reliable statistics for the number of children working on the streets nationwide. The government's Social Services and Child Protection Institution operated 44 centers to assist such children.

When the very issue of the respect of acceptable Conditions of Work is approached, the first issue which is highlighted is that the national minimum wage of approximately $495 (585 lira) per month did not provide a decent standard of living for a worker and family. All workers covered by the labour law are also covered by the law establishing a national minimum wage. This law was effectively enforced by the Ministry of Labour Inspection Board. The law establishes a 45-hour workweek with a weekly rest day, and limits overtime to three hours per day for up to 270 hours a year. Premium pay for overtime is mandated but the law allows for employers and employees to agree to a flexi-time schedule. The Labour Inspectorate of the Ministry of Labour effectively enforced wage and hour provisions in the unionized industrial, service, and government sectors, which covered approximately 12 percent of workers. Workers in other sectors had difficulty receiving overtime pay, although by law they were entitled to it. The law mandates occupational health and safety regulations; however, in practice the Ministry of Labour Inspection Board did not carry out effective inspection and enforcement programs. Workers have the right to remove themselves from situations that endangered health or safety without jeopardy to their employment, although reports of them doing so were rare. Authorities effectively enforced this right.

Conclusions

It is not easy to draw some conclusions, albeit very preliminary, concerning the labour market legislation of the SEM countries, since the countries tackled in this research are numerous and are characterised by various multi-faceted singularities.

Although they share common features in the sense that they belong to the family of Civil law, they differ from each other with regard to development and economic indicators. Also, whereas the majority of the countries, namely Egypt, Mauritania, Morocco, Jordan, Israel, Turkey, Tunisia, have recently enacted a new labour code or amended an old one offering an easy access to the study of the legislation in force, 77 other countries are still based on old codes which do show the heavy signs of time, but, either on their own, or with the assistance of ILO, are trying to update their legislation and/or to adopt brand new labour codes. Algeria is the most advanced on such a path, with a new Code announced to be issued in the second half of 200978; Libya and Lebanon are also in a process of revision of their old legislation. Syria on the contrary is the only one with a very old legislation in force and no real intention of modifying or revising it, despite public declarations coming from the Government and the fact that both ILO and other international observers who have managed to enter the country - whose borders are not easily accessible by foreign observers – report poor coverage and limited enactment of the legislation.

Another connected aspect that emerges is that all the countries concerned have formally enacted the 8 ILO core conventions on labour rights, however actual monitoring of effective respect beyond the black letters of a law is not available. Indeed, what often happens is that in a developing country, an appropriate legal framework in line with international labour standards is in place, but that because of unfavourable economic conditions prevailing in the country, fundamental principals and rights cannot be exercised in their substance, remain empty boxes and are hence violated.

77 In some cases, such as Turkey, Morocco and Egypt, particular attention is drawn on the most recently debated issue at EU level, that of flexicurity.

78 As reported by the main economical newspaper of the Maghreb, Le Maghreb, issue of 9 October 2008, see full article at: http://www.lemaghrebdz.com/lire.php?id=13548.
As far as the evaluation in term of flexibility and rigidity is concerned, it is an extremely difficult one. Indeed, all the countries analysed present rather few norms concerning atypical labour contracts, mainly limiting the choice to either a fixed-term or an open-end contract, while the rules concerning dismissal are rather elaborate and differ considerably from one country to the other as carefully pointed out in each country report.

If we now try to summarise the main findings, we observe the following features:

1. All the countries concerned have an elaborated legislation in force containing either few, several or many provisions aimed at regulating the employment relationship and then the labour market.

2. All the countries concerned have a fundamental law which is normally referred to as a Constitution and they all contain provisions somehow relating to the employment contract and to labour market regulation, although some are much more comprehensive. In general, they are written in broad terms in order to provide some guidance to the legislator but to leave him ample margin of manoeuvre. In some countries, however, the social emphasis is higher than in others.79

3. As far as secondary legislation is concerned, all the countries analysed have enacted a Labour Code (with a sole exception of Israel where the general contract law has been adapted to the specificities of the employment relationship through judge-made law), comprising a collection of provisions aimed at regulating various aspects of the employment relationship, clearly defining right and duties of the parties concerned. This makes the legislation rather accessible and has contributed strongly to the successfully construction of each country report.

   Most of the countries concerned have Labour Codes which have been recently enacted and therefore their reading gives the impression of countries where labour legislation is advanced and in line with international standards.80

4. The joint examination of the above mentioned legal sources conducted on the Constitution and on all the available secondary legislation enshrined in the Labour Codes has provided a complex picture of the SEM countries. Every country has established a complex system of laws and institutions intended to protect workers and guarantee a minimum standard of living

79 Algeria, Egypt and Turkey seem to have the most socially oriented Constitutions as they contain numerous provisions specifically dealing with workers’ rights and duties and then providing for a rather comprehensive point of reference for constitutional judges when checking consistency of enacted national legislation with the constitutional principles. Next to them, both Jordan and Israel have a considerable amount of constitutional provisions dealing with labour law. As for the other countries, Lebanon, Morocco, Lybia, and Mauritania limit themselves to only one or very few general provisions dealing with equality (i.e. non discrimination as for access to employment, wage, sex, etc.). Syria is quite peculiar as the norms of the Constitution were laid down there not for providing guidance to the legislator, but mainly to delimit and reserve the power to regulate employment relationships to the Parliament, then basically excluding collective bargaining as an actor of regulation, in line with the country’s planned economy.

80 In Algeria the Government is working on a new Labour Code which should be enacted in 2009. In Tunisia the Labour Code is constantly modified and the most recent updating process took place in 2006. In Morocco and Mauritania a new Code entered into force in 2004, and in Egypt in 2003. The Jordan Labour Code was enacted in 1996 and repealed in 2002 in order to meet the prescriptions of ILO Conventions signed by Jordan. Turkey, being a candidate country to EU, possesses the most advanced legislation, and although yet not fully in line with the EU acquis in the field of labour law is working towards this achievement, as recognised also by the previously mentioned EU Commission Staff Working Document 2007 Turkey Progress Report. On the other hand, the situation is worse in Syria and Libya and Lebanon.

Syrian Labour Code dates back to 1959 and, despite the intention to review it, also thanks to the support that ILO is providing to the Government to reform all its labour legislation, at present it still reflects an approach to the employment relationship mainly in term of master and servant, and it is therefore the most outdated piece of legislation of all those examined

Libyan Labour Code dates back to 1970, but there are plans to reform it in conformity with international labour standards to which the country has adhered, as indeed underdevelopment of labour law and the scarcity of skilled technicians both represent a very serious problem for Libya according to ILO. Lebanon has enacted its Labour Code in 1946 and its structure reflects that period: the code is quite short and provide only for basic rules (Lebanon, too, is part of the ILO Decent Work Country Program and is enjoying ILO support in rewriting its legislation).
for its population. The provisions have been presented and analysed with the aim of providing for a tentative evaluation of the rigidity of each regulation in force in each country. The main elements taken into account for this evaluation are the difficulty of hiring workers; the rigidity of working time; the rules concerning dismissals. These three elements are reflected by the selection of provisions that have been presented for each country: the difficulty of hiring workers depends on the kind of flexible contracts available and on both the existence and the level of a mandatory minimum wage set forth by the law; the rigidity of working time regards restrictions on weekend and night-work, legal requirements relating to working time and the workweek, and compulsory days of annual leave with pay; finally, difficulty of firing covers workers’ legal protections against dismissal, including the grounds permitted for dismissal and procedures for dismissal (individual and collective).

5. All these elements have been carefully scrutinised and – despite discrepancies – overall it emerges that – at least in the law realm – all examined countries present rather elaborated and complex legal regulations covering almost all these aspects in quite a comprehensive way. This is a first and very important output of the result carried out, that of the existence of a labour market legislation far protective and affording for substantial protection to workers.

If we now transpose these assumptions to the research findings concerning the labour legislation in force in the various countries as it emerges from the present report, we find out that on average (main exceptions being Israel and Turkey as far more advanced in comparison with the others), they appear to have adopted too rigid legislative provisions in an economical situation which should on the contrary encourage flexibility to foster economic growth. Indeed, most of the countries have consented only to few flexible contracts, mainly fixed-term ones and in most cases put significant limitations to the possibility of renewing them; maximum working time is always provided, as well as mandatory annual holidays, extra payment for additional work, and, first and foremost, a protective legislation concerning dismissals. Although countries differ one from the other sometimes considerably, none of them have adopted a legislation inspired by the doctrine of employment at will. On the contrary, a dismissal must always be grounded to be legitimate: disciplinary dismissal is only admitted in the cases enumerated by the law with the risk for the employer who falsely dismiss a worker to pay considerable damages.

These findings which confirm a certain legal rigidity characterising the SEM countries are also confirmed by those of the World Bank’s Doing Business Report for 2008. The latter can be summarised through these graphics concerning most of the SEM countries analysed in this report:
**Guido Boni**

**Benchmarking—labor regulation**

**MENA—compared with global best practice**

### Rigidity of employment index (0–100)

*Other economies with the least rigid labor regulation are Singapore and the United States. Source: Doing Business database.*

### Nonwage labor cost (% of salary)

*Other economies with the least cost include Botswana, Ethiopia, and Maldives. Source: Doing Business database.*
These conclusions would seem sufficient at first glance if we confine our analysis to a mere reading of the provisions in force. However, a more attentive exam of the provisions, taking into account possible interpretations to be given to the norms and the information contained in international reports, change considerably the final picture that emerges. Indeed, despite the provisions examined being overall quite rigid at first sight, it is possible to allege that in most countries it is in reality reasonably easy to dismiss workers, especially for economical reasons, as it has been explained in the conclusive remarks concerning dismissal rules in each country report. Moreover, reinstatement is normally not regarded as a sanction, therefore workers can always be fired against payment of a sum that varies from one country to the other, and although being sometimes very high, what really makes one country more rigid than another is the combination of both the amount the law provides as maximum severance payment and how much judges actually order to be paid. A real evaluation is therefore difficult as data concerning the average damages paid are missing. This system is in place in most countries, but with differences degrees of flexibility.

In the final analysis, it is important to draw attention to the fact that what really makes the difference is not the tenure of the provisions enshrined in the Codes but their actual enforcement (the above mentioned case of the case of Mauritania, where only 25% of the working population is alleged to be covered by labour law is a blatant example of this, and it would be extremely useful to manage to gather similar information concerning all the countries concerned, although quite difficult in practice).

For example, Algeria, Tunisia, Morocco rank as rather protective. Libya and Lebanon present both a peculiar situation as far as dismissal regulation is concerned. In Libya few provisions apply to dismissal and therefore all rest in the Courts’ power, and therefore to properly assess the flexibility of the country it would be necessary to have access to the case-law. On the other hand Lebanon is facing other problems: it is recovering from a long war, the legislation in force is dated, and the Government is working with ILO on a thorough revision of the Labour Code. As a result at present Lebanon is to be classified as a flexible country and with the old legislation in force it is rather easy to dismiss a worker.
Further research is therefore necessary in this respect in order to know how many workers are actually covered by labour law and how often workers resort to go to Court to have their right recognised. However, it would be safe to claim that the gap between the legal framework enshrined in the codes and the real situation in the countries concerned is wide, again with the most probable exception of Turkey and Israel. Despite the present reconstruction of the legal systems in place, it emerges between the lines, thanks also to the data contained in independent international reports, that respect of labour law is mostly lacking, implementation being left to the employers since labour inspections are ineffective and lack of work prevent employees to resort to labour tribunals. As for our research this means that although the law seems to provide a reasonable balance between flexibility and protection in the labour market with the accent on workers’ protection, the actual situation is fairly different and most probably, notwithstanding good legislation in force, what needs to be assessed is the actual situation of workers rights.

Also, the difficulties people encounter in obtaining a formal job are not necessarily linked to legislation on hiring, firing and labour contracts, but rather in a host of factors that include a weak private sector, the effectiveness of the social dialogue, actual access to justice, existence of thorough labour inspections, the lack of skills of the labour supply matching the needs of the labour demand, weak and inefficient employment services, and the existence of social norms and informal institutions creating rigidities and labour immobility. All these elements must be carefully analysed in future research and combined with the data provided here in order to have a complete and reliable understanding of the labour market functioning of the SEM countries.
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Web links to Labour Codes:

Algeria
http://lexalgeria.free.fr/travail.htm

Egypt

Israel (Basic Laws Freedom of Occupation and Human Dignity and Freedom)

Jordan
http://www.ilo.org/dyn/natlex/docs/WEBTEXT/45676/65048/E96JOR01.htm

Lebanon
http://www.ilo.org/dyn/natlex/docs/WEBTEXT/39255/64942/F93LBN01.htm

Libya

Mauritanie

Morocco

Syrian Arab Republic

Tunisia
http://www.chlayfa.com/f96tun01.htm

Turkey
http://www.ilo.org/dyn/natlex/docs/SERIAL/64083/63017/F1027431766/TUR64083.PDF