

Legal Protection of Migrant Workers in the Agricultural Sector in Light of Jordanian Legislation and International Labor Standards

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doi: <https://doi.org/10.37745/gjplr.2013/vol12n14262>

Published January 27 2024

Citation: Adaileh A.T., Alaraisyh O.A., and Alfaouri M.A. (2024) Legal Protection of Migrant Workers in the Agricultural Sector in Light of Jordanian Legislation and International Labor Standards, *Global Journal of Politics and Law Research*, Vol.12, No.1, pp.42-62

ABSTRACT: *This study aims to examine the adequate application of rights and protections granted to migrant workers under Jordanian labor law and social security law in agricultural Sector. The author analyzed the applicable laws, regulations, and relevant literature related to migrant workers in Jordan, including various relevant legislations, court decisions, and legal precedents. Through critical analysis and comparison of various data from these secondary data sources, this work will identify the problems associated with this legislation and consequently provide different recommendations and conclusions. Contradictions between labor law and social security law, as well as the feasibility of implementation and enforcement, lead to a significant gap in the protection of migrant workers in the agricultural sector. The author calls for a more cautious approach and argues for the necessity of respecting the principles that necessitate workers' rights. This study focused on the rights of migrant workers in the agricultural sector, deriving its authenticity and value from being the first and most recent work exploring this issue in light of recent amendments to labor law, social security law, and related legislations.*

KEYWORDS: Migrant Workers, Jordanian Labor Law, Agricultural workers, Decent Work.

INTRODUCTION

The Jordanian labor market relies densely on immigrant (foreign/non-Jordanian) workers, a large proportion of which contributes to rising unemployment, which will reach 24% in 2022. There are many factors contributing to this phenomenon, including a mismatch between educational output and labor market needs. Additionally, immigrant workers often have physical characteristics that are well suited to

industries suchlike as construction, agriculture, and domestic work. As a result, immigrant workers have become an essential component of the Jordanian labor market.

In 2021, the number of migrant workers with work permits in Jordan was 333,283. Egyptian workers constituted the highest percentage of nationalities attracted to the Jordanian labor market, making up 54.1% of the total migrant labor force in Jordan. Syrian workers accounted for 8.5% of the total migrant workforce. As for non-Arab migrant workers in the Jordanian labor market, Bangladeshi workers held the top position with 12.9%, followed by Indian workers at 4.8%, Filipino workers at 3.7%, and Sri Lankan workers at 2.3% of the total migrant workforce (Ministry of Labor, 2021).

Migrant labor is concentrated in various economic activities, including the agricultural sector, which constitutes 23.9% of the total migrant labor force. Domestic workers, on the other hand, number 35,559 workers, making up 2% of the total migrant labor force (Ministry of Labor, 2021).

The agricultural sector in Jordan is considered a fundamental source of income for many segments of society, with approximately 25% of impoverished households relying on this sector for their livelihoods (International Labor Organization, 2018). The agricultural sector holds significant importance in Jordan, playing a vital role in the economic and social fabric of rural communities while closely tied to efforts to preserve and sustain the natural environment. Its contribution to the Gross Domestic Product (GDP) amounts to 4.7%, with a production value of 1,688 million Jordanian dinars and exports totaling 720 million Jordanian dinars, constituting 15.4% of the total exports. It employs over 210,000 workers, comprising approximately 4% of the total labor force in Jordan (Ministry of Agriculture, 2020).

This study gains its importance from both practical and scholarly perspectives. From a practical standpoint, it is of significant importance due to the recent increase in the number of foreign workers migrating to Jordan for temporary employment purposes (Brook, 2021). The importance lies in contributing to improving the lives of migrant workers, enabling them to work in a more humane and equitable environment. Additionally, it encourages increased investment and economic growth by enhancing conditions for migrant workers, which, in turn, can boost their productivity. This contributes to economic growth, attracts more investments to the country, and enhances Jordan's image as a nation committed to human rights and decent work. This, in turn, promotes opportunities for international trade and international cooperation.

The significance of this study from a scientific perspective lies in its contribution to expanding knowledge regarding the legal framework of labor migration and international labor standards. It also aims to advance the methodologies and techniques used in legal research. This study seeks to identify the legal framework concerning labor in Jordan, particularly for migrant workers in the targeted sector (agriculture), and shed light on national legislative obstacles related to their rights. Specifically, it focuses on four key areas: the right to unionize, social security, employment contracts, and residency in Jordan. It highlights these areas,

either due to the lack of adoption of international standards or the presence of discriminatory standards against migrant workers, and provides recommendations for addressing these obstacles.

The problem addressed by this study is that, in light of the increasing influx of labor migration to Jordan, the country faces legal and social challenges concerning the rights of these workers and the alignment of local legislation and government policies with international labor standards, especially in the agricultural sector. This raises several questions, including:

1. What is the stance of Jordanian legislation regarding international agreements related to migrant workers?
2. What are the primary violations of the rights of migrant workers in the agricultural sector?
3. How do legislation and government policies impact the status of migrant workers in agriculture?
4. What are the residency procedures for migrant workers?

The author conducted an analysis of the laws, regulations, recent amendments, and relevant literature related to migrant workers in Jordan. This analysis encompasses various legal provisions, court decisions, judicial interpretations, research articles, book chapters, working papers, conference papers, and field project reports from various disciplines. Through critical analysis and comparison of the data derived from these sources, this work aims to identify issues associated with this legislation and subsequently provide various recommendations and conclusions.

This study primarily focuses on the rights of migrant workers in the agricultural sector, deriving its authenticity and value from being the first and most recent work to explore and address this issue in light of recent amendments to the Labor Law, Social Security Law, and related legislation. This study is divided into several sections, with each section addressing a specific aspect. The first section examines Jordan's stance on international treaties and agreements related to migrant labor. The second section discusses the working conditions for migrant labor in the agricultural sector. The third section covers the residency of migrant labor within the Kingdom. The fourth section delves into the labor union rights of migrant workers. Finally, in the fifth section, the social security provisions for migrant labor are explored.

Jordan's Position on International Agreements and Treaties Related to Migrant Labor

International labor standards are indeed in place, but their implementation can be challenging. Nevertheless, it is crucial to recognize the significant efforts made to address the vulnerabilities of migrant workers worldwide. In 2014, the International Labor Organization (ILO) initiated its Fair Recruitment Initiative, aiming to improve legal frameworks, promote fair business practices, and empower workers (ILO, 2021b). The International Organization for Migration (IOM) has also introduced a related ethical recruitment system called the "International Recruitment Integrity System" (IRIS), which seeks to enhance coordination, transparency, and the enforcement of fair recruitment among workers, employers, recruiters, and governments in sending and receiving countries (IOM, 2022).

More importantly, the United Nations developed the Global Compact for Safe, Orderly, and Regular Migration, a global, multi-stakeholder framework adopted by 152 countries in 2018 (United Nations,

2018). It integrates aspects of initiatives by the ILO, IOM, and the United Nations' 2030 Agenda for Sustainable Development, providing a comprehensive approach to international human rights while respecting national sovereignty over migration policies. These well-designed initiatives are expected to have tangible benefits for migrants worldwide (Ewers etl., 2021).

However, there is limited discussion regarding migrants' understanding of their rights, their perceptions of these rights, and their satisfaction with them, as well as whether contractual obligations are being met. Most Gulf countries have signed the Global Compact, but questions persist about its implementation and enforcement, with criticisms of a lack of enforcement mechanisms. Migrants continue to face mistreatment and exploitation, even after the activation of reforms (HRW, 2020b; Lovett, 2019).

The International Labor Organization has developed and adopted over 200 conventions addressing labor-related issues, including the right to work, fair working conditions, wage equality, the prohibition of forced labor, and the freedom of association (Alwan & Al-Mousa, 2014). Jordan has become a party to several international treaties, conventions, accords, and protocols that contain provisions directly or indirectly related to the topic of migrant labor. These provisions have had implications for the formulation of national laws. Among these are the principles outlined in the "Universal Declaration of Human Rights," which was adopted in 1948, and the subsequent treaties and conventions that Jordan ratified. These agreements constitute a comprehensive and legally binding framework for enhancing and protecting human rights and combating human trafficking. Notable among these agreements are the "International Covenant on Civil and Political Rights of 1966" and the "International Covenant on Economic, Social, and Cultural Rights of 1966," both of which Jordan ratified in 1975 after previously ratifying the "International Convention on the Elimination of All Forms of Racial Discrimination of 1965" in 1974. However, Jordan has not yet ratified the optional protocols accompanying the International Covenant on Civil and Political Rights (Workers' House Center, 2023).

Jordan has not ratified several agreements related to migrant labor and refugees, notably the "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990." This convention stipulates guarantees and rights that members must adhere to for all migrant workers and their families, whether they migrated together, separately, were born in the host country, resided in the host country, transit country, or entered without permission or official documents. The convention recognizes rights and guarantees for irregular workers and expands all rights and guarantees applicable to migrant workers in the host country. Furthermore, Jordan has not ratified the "Convention Relating to the Status of Refugees and its 1967 Protocol" or the "Convention Relating to the Status of Stateless Persons of 1954" or the "Convention on the Reduction of Statelessness of 1961." However, Jordan has signed memoranda of understanding with the United Nations High Commissioner for Refugees (UNHCR) outlining the terms of cooperation on refugee and asylum-seeker matters in 2008 and 2014.

Since Jordan's accession to the International Labor Organization in 1956 and up to the present, Jordan has ratified 26 agreements out of the 190 agreements adopted by the International Labor Conferences, which

cover various aspects of labor. Among these are seven of the eight core ILO conventions that represent the organization's four fundamental principles, as defined by the "Declaration on Fundamental Principles and Rights at Work of 1998." These core conventions are:

1. Freedom of Association and Protection of the Right to Organize (C87).
2. Right to Organize and Collective Bargaining Convention (C98).
3. Forced Labor Convention (C29).
4. Worst Forms of Child Labor Convention (C182).
5. Discrimination (Employment and Occupation) Convention (C111) (Ministry of Labor, 2022).

Among the agreements that Jordan has not ratified are several conventions that address issues related to migrant workers, their rights, and labor organization, including: (Workers' House Center, 2023)

1. Domestic Workers Convention, 2011 (No. 189).
2. Migration for Employment Convention, 1949 (No. 97).
3. Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).
4. Private Employment Agencies Convention, 1997 (No. 181).
5. Labor Inspection (Agriculture) Convention, 1969 (No. 129).

Labor Conditions for Migrant Workers in the Agricultural Sector

National legislations have established numerous legal provisions pertaining to the regulation of labor in the job market, thereby ensuring various rights for both employers and workers, regardless of whether they are Jordanians or migrants. Additionally, there are legal provisions governing non-Jordanians' entry into the kingdom and their residence therein.

The International Organization for Migration (2008) has described temporary labor migration as a potential gain for all parties involved, including receiving countries, sending countries, and migrants. It is likely that the benefits are distributed unequally (Barry & Ferracioli, 2018).

The Jordanian Constitution of 1952, along with its amendments, has incorporated many legal provisions concerning labor rights. Article 23 of the Constitution emphasizes the necessity of enacting legislation based on several principles, including ensuring that workers' wages are commensurate with the quantity and quality of their work, determining weekly working hours, granting workers paid weekly and annual rest days, and establishing independent labor unions (Ramadan, 2014).

As a result of Jordan's accession to the International Labor Organization in 1956, a comprehensive labor law, Law No. 21 of 1960, was enacted, addressing individual and collective employment contracts, labor unions, employers' associations, collective dispute settlement, and the right to strike and lockout (Ramadan, 2014).

In 1996, the current Labor Law, Law No. 8 of 1996, was enacted, which includes developments in the general rules of labor legislation, such as regulating employment contracts, labor union organization, collective dispute resolution, and the right to strike and lockout. Despite achieving a balance in individual and collective labor relations that aligns with the economic and social developments in Jordan and the country's international commitments, these amendments have remained non-substantial and minor, not fully adhering to all international labor standards, including those related to labor unions and collective bargaining (Ramadan, 2014).

The definition of "labor" in Article 2 of the Labor Law does not distinguish between Jordanian and non-Jordanian workers concerning the applicability of labor law and their entitlement to the rights provided by labor law. However, the law does contain some specific provisions regarding non-Jordanians, particularly in aspects related to their employment and recruitment, such as the requirement in Article 12 that non-Jordanian workers must obtain a work permit from the Minister or his delegate before their recruitment or employment¹.

Although legislation related to migrant workers has established various rights for those working in agriculture, mistreatment by employers, high recruitment fees, restrictions, and violations of host country rights, as well as social costs in the home country resulting from family separation and brain drain, continue to be evident (Brock, 2020; Costa & Martin, 2018).

Practical applications often reveal the exploitation of migrant workers by employers, labor recruitment companies, and both sending and receiving countries (Barry & Ferracioli, 2018). Leonard and Straehle (2010) describe contracts that may include exploitative provisions limiting social rights, violating human rights, requiring migrants to work long hours in poor conditions, tying workers to a single employer, or prohibiting collective bargaining.

Even when contracts are fair, violations are widespread, and employers may fail to enforce them, including legally mandated worker protection measures. States may also fail to hold employers accountable or address complaints from migrant workers. Migrants may fear lodging complaints due to concerns about job loss, deportation, or lack of awareness of their rights or contract terms.

The voluntary migration decisions of migrant workers should not be considered as consent to unequal treatment (Bertram, 2019), as these decisions involve complex choices that serve their best interests (Ruhs, 2013). Therefore, there is a need to better understand how migrants interpret contracts, their experiences, awareness, and perspectives in practice (Brock, 2020). However, migrant workers often come primarily to work and earn money, and they may be willing to accept less favorable working conditions than Jordanians who strive for long-term prospects and a work-life balance (Adli, 2019). By doing so, we address the rights enjoyed by migrant workers in the agricultural sector and the challenges they face through labor conditions, categorized as follows: -

Employment Contracts:

Referring to Agricultural Workers Law No. (19) of 2021, we find that it is not required for employment contracts to be in writing. However, if an agricultural employment contract is written, it must be in Arabic and a language understood by the agricultural worker, with both parties retaining a copy.

However, migrant workers, when entering into contracts, do so for the purpose of obtaining work permits and gaining entry into the kingdom's territories. These contracts cannot include the rights of migrant workers, as they usually only include basic standards such as the contract's parties, wages, obligations under labor law provisions, and often, these contracts are templates that are filled out without additional conditions (Costa & Martin, 2018).

Wages

The worker's wage is considered one of the essential elements of the employment contract, as it represents a social function that provides a livelihood for the worker and enables them to meet their own and their family's needs. It also serves an economic function by supporting the national economy. The labor law defines the method for determining the worker's wage, either by specifying it in the employment contract or, if not specified, by taking the estimated wage for similar work of the same type (if available). Otherwise, it is determined according to custom, and in the absence of custom, the court decides based on the provisions of labor law (Almograbi, 2023).

Migrant workers coming to Jordan aim to improve their economic situation and support their families. Migrant workers often receive low wages, which usually fall within the minimum wage set by the Tripartite Committee for Labor Affairs under Article 52 of the Labor Law.

The Tripartite Committee for Labor Affairs issued a decision on 2/2/2023 to set the minimum wage for migrant workers at 260 Jordanian Dinars per month for the years 2023 and 2024, including agricultural workers under Article 8/A of the Agricultural Workers Law. Consequently, migrant workers receive these low wages.

Migrant workers divide their wages into three parts: the first part covers personal and daily expenses such as food and rent; the second part is allocated to cover the cost of renewing work permits and medical examinations; and the third part is sent to their families in their home countries to cover their daily expenses (Duaa, Rawan, Dalia and Maysara, 2023).

Regarding the timing of wage payment for agricultural workers, Article 8/B of the Agricultural Workers Law stipulates that the employer must pay the wage within a period not exceeding seven days from the due date. Deductions can only be made by the employer in cases allowed by law. However, employers often prefer hiring migrant workers, especially Egyptians, due to their ability to pay their salaries late (Tamekin, 2014).

Often, after migrant workers sign contracts in their home countries, they arrive to find that their working conditions have changed including fees (Gardner, 2011), and employer control over them. Employers may withhold wages or threaten to reduce them (Amnesty International, 2013).

In addition to being explicitly stated in paragraph 2(b)(ii) from Recommendation (No. 111) in concerning Discrimination (Employment and Occupation), and paragraph 2(h) from Recommendation (No. 151) concerning Migrant Workers, the principle of equal Pay equal work has been part of the International Labor Organization's constitution since 1919. Temporary job and nationality are ineligible ground for exemption. The notion of equality extends to other aspects of employment, such as customary wage supplement, bonuses, overtime privileges, maximum daily and weekly working hours, for migrant workers who perform equivalent labor to national workers.

According to the Minimum Wage-Fixing Machinery Convention of 1949 (No. 26), employers are required to keep records of wage payments and deductions for each worker. This ensures transparency and can be helpful in wage-related disputes. The Minimum Wage Fixing Convention (No. 26) and Recommendation (No. 30) for 1949 provide elements to ensure wage payment to all workers, including temporary migrant workers. The application of Convention No. 26, especially effective wage payment enforcement, requires effective monitoring, appropriate penalties, and mechanisms for recovering underpaid amounts (International Labor Organization, 2003).

One of the fundamental principles outlined in Convention No. 95 is workers' freedom to dispose of their wages as they wish. However, this is sometimes practically constrained by systems of "deferred wages" or "mandatory remittances," where a portion of the worker's monthly wage (often more than half the agreed-upon wage) is withheld and sent to the worker's home country. This is done on the premise that it is in the worker's interest to recover a significant sum upon returning home.

Work Hours:

Farmers in Jordan prefer to hire migrant workers, especially Egyptians, due to their willingness to perform physically demanding tasks and work very long hours, which can extend up to 13 hours a day. Egyptians appear to be among the most fatigued groups in Jordan (Tamekin, 2014). The average workload amounts to 6.26 days per week and 9.49 hours per day (Abdelfattah, 2019).

Despite the Agricultural Workers Act of 2021, which regulates working hours for laborers in agriculture under Article 4/A/1, specifying that agricultural working hours should not exceed eight hours per day and forty-eight hours per week distributed over six days at most.

Leave:

Regarding agricultural workers, the Agricultural Workers Act in Article 7 obligates employers to grant agricultural workers, without discrimination between them and Jordanian workers, the right to annual leave with full pay for a duration of 14 days per year. It also provides for sick leave with pay for 14 days

per year, renewable for an additional 14 days if the worker is hospitalized. Female agricultural workers are entitled to maternity leave with full pay before and after childbirth, totaling ten weeks, with no less than six weeks post-delivery. It is prohibited to employ them before the expiration of this period.

However, despite the absence of legal prohibitions on migrant workers taking leave, especially to return to their home countries, they often encounter difficulties due to the requirement of valid work permits, travel expenses, and the employer's consent. Most of them do not work directly for the employer or may not even know their employer, requiring them to seek assistance from intermediaries who are familiar with the employer. This means they have to pay more money to both the employer and intermediaries in order to visit their home countries. Some workers have reported that this amount can reach \$700 USD, which they may not be able to afford (Duaa, Rawan, Dalia and Maysara, 2023).

Weekly Rest:

All workers are entitled to a weekly rest day, with Friday being the weekly rest day, except when the nature of the work requires otherwise and is agreed upon by both parties. The worker is entitled to full pay for their weekly rest day. However, the law considers workers who receive daily wages (day laborers) differently, specifying that they must work six days a week to receive full pay for their weekly rest day. If they work fewer days, they receive pay proportionate to the number of days worked. The law sets their entitlement at 150% of their regular wages for working on their weekly rest day.

It appears that migrant workers often do not enjoy these weekly rests since they are utilized continuously due to their perceived lack of need for rest, as they come to these countries primarily to earn money, often without regard for the rights they are entitled to, such as overtime pay.

Forced Labor and Passport Confiscation:

One of the reasons for the vulnerability of migrant workers is the system that ties them to their employers (Al-Shahabi, 2019), resulting in numerous violations, including passport confiscation, visa manipulation, and forced labor (Gardner, 2013). Employer control over migrant workers means that they may confiscate their passports or subject them to forced labor (Amnesty International, 2013; Abdelfattah, 2019).

In this context, Article 13 of the Agricultural Workers Act prohibits the use of agricultural workers in a coercive, threatening, fraudulent, or coercive manner, including the confiscation of travel documents or sexual or physical assault on agricultural workers or violations of any of their fundamental rights. Otherwise, they may face legal violations in accordance with labor laws.

The number of cases related to forced labor and human trafficking reached 214 cases, including cases of passport confiscation, forced labor for long hours, and non-payment of wages as stipulated by labor laws and related regulations (Ministry of Labor, 2021).

Work Permits for Migrant Workers:

Jordanian labor law prohibits an employer from employing a non-Jordanian worker without obtaining a work permit or employing them in a profession for which work is not authorized.

Jordanian labor law distinguishes between the "imported" worker and the "employed" worker. The "imported" worker refers to a non-Jordanian worker who has entered the kingdom under an employment contract for the purpose of working. On the other hand, the "employed" worker is a non-Jordanian worker who is already present in the kingdom, as defined in Article 2 of the Instructions for the Conditions and Procedures for Employing and Importing Non-Jordanian Labor for the year 2012 and its amendments.

It is worth noting that Jordanian jurisprudence has established that the failure of a worker to obtain a work permit does not invalidate the employment contract or deprive the worker of their wages. If the essential elements of the employment contract, namely work, wages, and the relationship of subordination, are present, the lack of a permit does not affect the labor rights granted to the worker by law, as the responsibility for obtaining the permit lies with the employer (see Court of Cassation decision No. 3705/2004)².

The legal regulation of migrant labor's entry into the Hashemite Kingdom of Jordan involves several stages, particularly concerning the request for their importation through the Ministry of Labor for sectors and economic activities in which the Ministry allows the employment of migrant labor. This is done based on the labor market sector's needs, taking into account the list of closed professions within the percentage of migrant labor in any of the economic sectors. Various ministerial decisions have been issued specifying the professions open to migrant workers and the closed professions. These decisions are not limited to specific nationalities³.

Emphasis is placed on the condition that non-Jordanian workers must obtain the approval of their current employer to work for a different employer. Additionally, domestic, agricultural, and industrial workers are not allowed to change sectors (Duaa, Rawan, Dalia and Maysara, 2023).

Pressures on the labor market and changes in the Jordanian work permit system have led to an increase in the vulnerability of Egyptian laborers (Hartnett, 2019). This, in turn, resulted in restrictions on importing labor in 2023 in the agricultural, industrial, domestic, and skilled labor sectors.

Foreign workers generally prefer employment in sectors that do not require academic qualifications or extensive experience. However, preferences are restricted to sectors allowed by the Ministry of Labor for foreign workers to work in, as determined by regulations. For example, Jordan ceased issuing work permits for certain sectors like construction but continued to issue permits for agriculture. Additionally, while some migrant workers prefer working in companies or restaurants for stability and a fixed income, others prefer sectors where they can earn higher income, even if it involves more risk. (Information and Research Center, 2023).

These policies result in some migrant workers who entered Jordan with agricultural work permits migrating to other sectors, such as services or construction, where working conditions are perceived to be better. Most migrant construction workers enter the sector without prior experience or vocational training compared to Jordanians (International Labor Organization, 2017).

The following legal regulations govern migrant labor upon entry into the Kingdom:

Entry of Foreign Labor into the Kingdom:

The entry of non-Jordanian labor into the Kingdom is originally governed by obtaining a visa allowing entry within the types and conditions specified by Visa Regulation No. (3) of 1997 and its amendments. However, the Regulation in Article (3/A) exempted what is stipulated in agreements concluded between the Hashemite Kingdom of Jordan and other countries in this regard, allowing foreign nationals of those nationalities to enter the Kingdom without a visa.

Among these nationalities are Egyptian nationals who are allowed to enter the Kingdom without a visa. Nevertheless, for the purpose of regulating the entry of Egyptian nationals wishing to work in the Kingdom, an approval (recruitment) must be obtained from the Ministry of Labor before their entry into the Kingdom - which will be discussed later to avoid repetition. This does not prevent Egyptian nationals from entering the Kingdom without obtaining a visa from the Ministry of Interior, such as investors or transit through the Kingdom to enter neighboring countries or those who have a work residence in one of the Gulf Cooperation Council countries (Lenner, and Turner, 2019).

Obtaining Residence Permit by Migrant Labor:

The Ministry of Interior distinguishes between two types of nationalities regarding residence: those subject to residence (all Arab and non-Arab nationalities) and those not subject to residence (Egyptian, Syrian, Palestinian nationality holders of the green card, white card holders from Gaza, and holders of temporary Jordanian passports). The latter are not required to obtain a residence permit from the Ministry of Interior. However, those nationalities must register their place of residence with one of the security centers, as per Article (3) of Residence Place Determination Regulation No. (95) of 1998 and its amendments, which mandates anyone who employs a foreigner and provides housing in any form or rents a property to a foreigner to register the foreigner's place of residence according to the procedures specified in Article (3) of the Residence Place Determination Instructions for Non-Jordanians for the year 2019 and its amendments, by submitting a residence place determination request on the form prepared for this purpose to the competent security center by the lessor or employer or anyone who accommodates a foreigner in any form.

Migrant Worker Joining the Employer upon Entry into the Kingdom:

Initially, a distinction must be made between agricultural workers and domestic workers in this regard. Article (14/4) of the Instructions for the Conditions and Procedures for the Employment and Recruitment of Non-Jordanian Workers for the year 2012 and its amendments, which apply to workers in agriculture

and other economic sectors and activities but do not apply to domestic migrant workers, requires the worker to join the employer who brought him upon entering the Kingdom within (45) days of signing the employment contract. The worker must also undergo a medical examination at the Directorate of the Health of Foreigners, affiliated with the Ministry of Health, and then obtain a work permit from the Directorate of Labor to which the application for his recruitment was submitted.

Article (14/6) of the Instructions for the Conditions and Procedures for the Employment and Recruitment of Non-Jordanian Workers for the year 2012 and its amendments, which is dedicated to Egyptian nationals, requires them to pay an amount of (250) US dollars or its equivalent in Jordanian dinars upon entering the Kingdom as insurance for complying with joining the employer who recruited them. This amount will be refunded upon the worker's compliance with joining the employer and obtaining the work permit within (45) days from the date of entering the Kingdom.

Freedom of Work Choi One of the main tenets of both domestic and international law is the freedom of choice in employment. For human rights-related reasons, a migrant's bidding to an employer, profession, or industry should, under certain conditions, be a brief and transitory arrangement. The court found that it was unconstitutional to bind foreign employees to their employers. They decided that granting work licenses that were linked to employers violated employees implied right to resign in an unreasonable manner. The justices went so far as declare that the "conventional arrangement created a modern form of slavery", and that "the foreign workers became a slave to his employer".

Economically since they disadvantage other employer domestically or overseas by limiting the access of certain employers, professions, or sector to foreign labor. Put another way, limiting migrant worker's freedom of movement is equivalent to supporting particular industries, companies, or professions. Furthermore, by restricting worker's ability to seek more suitable employment based on their skills, interests, and working conditions, restrictions on migrant worker's ability to terminate their employment contracts and/or move between employers without the consent of the original employer contribute to the inefficiency of the labor market (ILO-AUC 2021).

The right of migrant workers to unionize

The Universal Declaration of Human Rights, in Article 20(1), explicitly states that "everyone has the right to freedom of peaceful assembly and association," and it goes on to say that "no one may be compelled to belong to an association." Furthermore, Article 23(4) of the Universal Declaration affirms the right of every person to form and join trade unions for the protection of their interests. The International Covenant on Civil and Political Rights also recognizes this right in Article 22(1).

International Labor Organization (ILO) conventions further emphasize and protect workers' rights to unionize. Convention No. 87, concerning Freedom of Association and Protection of the Right to Organize, sets standards for the right to form and join trade unions. It prohibits employers from engaging in any

unlawful activities to deter workers from joining unions and encourages negotiations between employers and workers to regulate working conditions through collective agreements.

Convention No. 97 on Migration for Employment recognizes the equality of treatment between migrant workers and nationals of the host country, including the right to join labor organizations. Convention No. 141 on Rural Workers' Organizations affirms the freedom of all workers, whether citizens or migrants, to establish and join labor unions.

Convention No. 189 on Decent Work for Domestic Workers includes provisions specifically related to unionization of domestic workers, whether they are migrants or citizens of the country. It guarantees the freedom of association for domestic workers and their right to establish independent unions.

Additionally, Article 28 of the ILO Convention No. 158 concerning Termination of Employment safeguards the rights of migrant workers, including their participation in trade union activities, joining any labor union of their choice, and the prohibition of any restrictions on these rights.

In summary, migrant workers should have the right to create and join labor unions without discrimination, subject only to the rules and regulations of the respective labor organization. While many countries generally recognize the right of migrant workers to form and join labor unions, some may still impose certain conditions or restrictions based on nationality or residence status. It is essential to promote and protect the rights of all workers, including migrant workers, to unionize and collectively bargain for fair labor conditions.

Given the aforementioned, migrant workers ought to have sufficient protection from discrimination about their membership in labor unions in relation to their employment. This protection should be especially extended to: (A) making temporary migrant workers' employment conditional on their non-union membership; (B) inflicting harm or termination upon a temporary migrant worker because they are a member of a union or because they participate in union activities outside of working hours or, with permission from the employer, within working hours (International Labor Organization, 2022).

The labor unions sector in Jordan is considered one of the largest local civil society institutions, including 17 labor unions and 55 employer associations registered with the Ministry of Labor (Ministry of Labor, 2023). The membership size is estimated at around 427,000 out of a total of 1,136,868 members affiliated with civil society organizations, accounting for 37.5% (General Statistics Department, 2007).

The Jordanian Constitution guarantees the right to freedom of association only for Jordanians, without extending this right to migrant workers residing in the kingdom. This interpretation is derived from the use of the term "Jordanians" in the text of the Constitution. Consequently, the Jordanian Constitution deviates from the principles outlined in the Universal Declaration of Human Rights and the International

Covenant on Civil and Political Rights, which guarantee the exercise of this right to all individuals, whether citizens or foreigners, without any discrimination.

The Labor Law imposes several restrictions on the operation, establishment, and activities of labor unions that contradict international standards. It employs a registration and classification method to grant labor unions the status of legal personality, giving the Registrar of Trade Unions at the Ministry of Labor the authority to reject union registration without specifying reasons. Additionally, it places constraints on the freedom to form and proliferate unions.

The Labor Law stipulates that the establishment of labor unions in Jordan is limited to Jordanians, while non-Jordanians (migrant workers) are not permitted to establish unions. However, the Labor Law allows migrant workers to join labor unions but does not grant them membership in the administrative body of labor unions or the position of union president. The Unified Regulations of Labor Unions, established by the General Federation of Jordanian Trade Unions in Article 45, stipulate that candidates for the administrative body of labor unions must be of Jordanian nationality, thus acting as a barrier to migrant workers' candidacy for administrative positions or union presidency.

Article 98 of the Labor Law includes restrictions on the right of workers to form unions by granting the Minister the authority to classify sectors and economic activities in which workers are permitted to establish unions, limiting their number without allowing for multiple labor unions or leaving the issue of union establishment to workers based on their needs.

Despite the absence of an explicit provision in the Agricultural Labor Law granting agricultural workers the right to establish or join labor unions, Article 16 states that "except as otherwise provided for in this Law, the provisions of the Labor Law shall apply." Thus, it can be inferred that the provisions of the Labor Law relating to union organization apply to agricultural workers.

This means that only Jordanians have the right to establish labor unions within sectors and activities classified by the Minister of Labor, without the right to establish multiple unions within those sectors. Migrant workers are not permitted to establish labor unions in the agricultural sector, and even if they are allowed to join a labor union, the Unified Regulations of Labor Unions remain a barrier to their candidacy for the administrative body or the presidency of the union.

By issuing Minister of Labor Decision No. 45 of 2022, classifying industries and economic activities in which workers are allowed to establish unions, agricultural activity was included under the "General Union of Workers in Water, Agriculture, and Food Industries." This classification encompasses workers in various activities that do not truly represent the interests of agricultural workers⁴.

Recommendations of the Committee on Freedom of Association of the International Labor Organization regarding Complaint No. 3337 concerning violations of the freedom of association in Jordan:

In light of the complaint filed by the Independent Federation of Labor Unions with the International Labor Organization in 2018, registered under No. 3337, which asserts that the Jordanian government violated the freedom of association of labor unions in Jordan, the Committee presents the following recommendations in its report No. 403 dated June 17, 2023, which was adopted by the Governing Body of the International Labor Organization at its 348th session:

1. Amend Article 98, paragraph (h), of the Labor Law to eliminate restrictions on the organizational rights of migrant workers and to ensure the possibility of electing foreign workers to union positions.
2. Modify Article 98, paragraph (w), of the Labor Law to guarantee full protection for minors who have reached the legal working age, whether as workers or trainees, in the exercise of their trade union rights.
3. Amend the Labor Law to ensure the possibility of establishing more than one trade union organization for each sector or industry if workers so desire.
4. Revise the Labor Law to ensure that workers in all sectors of the economy can freely exercise their right to organize and engage in collective bargaining through the organization they choose.

Social Security

Because of their brief absence from their place of origin or the transient nature of their employment in the host nation, migrants employed in temporary jobs or their families shall not be denied protection. However, because of procedural or legal obstacles, or both, this is frequently the case (see International Labor Organization, 2022).

Countries should consider ratifying relevant International Labor Organization agreements and entering into bilateral and multilateral social security agreements to implement the provisions of these agreements, including Convention No. 97 concerning Migration for Employment (1949), Article 6(c) of which emphasizes the need to provide social security for migrant workers without discrimination and without restricting their rights to social security benefits provided by social security law.

Convention No. 118 on the Equality of Treatment of Nationals and Non-Nationals in Social Security (1962) has established principles to enhance social protection for workers, including migrants, and to ensure access to all social security benefits provided by social security law.

The ILO Recommendation concerning National Floors of Social Protection (No. 202), discusses numerous strategies for offering social protection to migrant workers, one of which is the creation of national social protection floors. "Expanding Social Protection to Cover Migrants, Workers, Refugees, and their Families," a practical guide published by the ILO in 2021, offers advice on all of the aforementioned policy measures as well as additional ones for policymakers and practitioners (International Labor Organization, 2021).

Goal 22 of the Global Compact for Safe⁵, Orderly, and Regular Migration proposes measures to establish mechanisms for the transfer of social security entitlements and acquired rights. These measures include the establishment of non-discriminatory national social protection systems, including minimum social protection thresholds for both citizens and migrants, in line with International Labor Organization Recommendation No. 202 on National Floors of Social Protection (2012)⁶.

In addition to preventing them from receiving benefits (such as future retirement payments), excluding migrant workers from social security coverage also makes them "cheaper" than other employees. This may create an element of unfair competition between national and migrant workers as well as between businesses who can hire migrant workers and those who cannot (Martin, 2016).

Social Security Law No. 1 of 2014 and its amendments provide legal coverage for workers without discrimination based on nationality, regardless of the duration or form of the contract, and regardless of the number of employees in the establishment. The law provides several social security benefits, including:

1. Old age, disability, and death insurance (including regular old-age pension, early old-age pension, total benefits, disability pension, and survivor's entitlements).
2. Occupational injury insurance (medical expenses, injury compensation, disability pension, and death allowances).
3. Maternity insurance.
4. Unemployment insurance.

However, the law exempts certain categories from its provisions, including civilian and military employees appointed before the integration of the social security program. Workers who work for less than sixteen days in a month are also exempt from the law's provisions. Domestic workers are excluded from social security insurance, subject to a decision by the Cabinet. Nevertheless, this category is entitled to benefits under the legislation governing domestic work, providing medical care and compensation for permanent disability resulting from accidents and more.

As for agricultural workers, the Agricultural Workers Regulation No. 19 of 2021 requires employers to include agricultural workers in social security insurance. However, employers who employ three or fewer workers are exempt from this obligation, leading to discrimination against this category and depriving them of social protection.

In 2020, amendments were made to the General Social Security Corporation's coverage system, making coverage mandatory for workers in various sectors, including agriculture, construction, transportation, tourism, public service, maintenance, arts, and media production. These provisions apply to both Jordanians and non-Jordanians, including workers with flexible or independent work permits⁷.

Despite providing many social security benefits, the Social Security Law still violates international labor standards in several aspects:

1. Linking social security contribution to work for less than 16 days a month, allowing employers to use workers for periods shorter than this duration.
2. Failing to compel agricultural employers to include workers in social security contributions, with the government postponing the implementation until the end of 2023, despite the issuance of the Agricultural Workers Regulation in 2021.
3. The absence of provisions preventing employers from shifting the social security contribution burden to migrant workers when renewing or issuing work permits for them.

Despite the issuance of the Agricultural Workers Regulation, which explicitly obliges employers to include workers, whether citizens or migrants, in social security, this right is limited to employers who employ more than three workers, leading to the exclusion of a significant number of workers from social security coverage and helping employers evade their obligations by not employing more than three workers on their farms.

However, the mandatory inclusion of migrant workers in agriculture in social security is still ineffective, as the General Social Security Corporation has postponed their inclusion. Additionally, there is a lack of mechanisms for including workers employed by more than one employer.

CONCLUSION

Through this study, it becomes evident that the Jordanian legislator aims to establish legal regulations for migrant workers that provide them with rights and ensure their enjoyment of these rights. However, these legislations have proven ineffective in providing practical legal protection for migrant workers. On one hand, obtaining work permits for migrant workers ties them to their employers and deprives them of the freedom to terminate the employment relationship in case the employer fails to fulfill their obligations. On the other hand, the restrictions imposed on migrant workers when obtaining work permits make them subject to the will of the employer. Employers often exploit this situation by demanding financial sums from migrant workers in exchange for granting them a release when their employment contracts end or when they wish to leave the Kingdom.

Furthermore, migrant workers are subjected to significant exploitation by employers, including long working hours without proper compensation or consent, payment of wages below the agreed-upon minimum wage, and the lack of access to social protection by attempting to exclude them from social security programs. Additionally, employers frequently burden migrant workers with the fees for work permits, which is legally the responsibility of the employers according to labor law.

The door has now been opened to amend the labor law to regulate the rights of migrant workers by providing means for enforcing the rights legislated for them. This opportunity was made available to the

legislator recently in 2023 through the amended Law No. 10 of 2023, which replaces heavy fines on employers who employ migrant workers unlawfully and expands the authority of the Minister of Labor to deport migrant workers from the Kingdom. Despite missing such an opportunity, this paper suggests that a new solution to this problem can still be reached if the legislator introduces regulatory measures that help reduce violations against migrant workers.

The author proposes that the best solution to this problem involves establishing administrative regulations by the government to link migrant workers to it and provide protective measures. This can be achieved by allowing migrant workers to participate in social security programs, permitting the termination of employment contracts in cases of employer exploitation, and implementing dispute resolution mechanisms such as arbitration, without the need for lengthy legal proceedings.

- ¹ - The legislation applicable to non-Jordanian workers includes the following: A. Domestic Workers and Their Like Law No. (90) of 2009 and its amendments. Regulation of Labor Recruitment Offices for Non-Jordanian Domestic Workers Law No. (63) of 2020. C. Instructions for the Conditions and Procedures for Employing and Recruiting Non-Jordanian Workers for the year 2012 and its amendments. D. Instructions for the Conditions and Procedures for Employing Non-Jordanian Workers of Syrian nationality for the year 2020 and its amendments. E. Instructions for the Conditions and Procedures for Employing and Recruiting Non-Jordanian Workers in Qualified Industrial Zones for the year 2007 and its amendments. F. Decree on Closed Professions, Restricted Professions, and Professions of Skilled Non-Jordanian Workers No. 58 of 2020 and its amendments. G. Agriculture Workers Law No. (19) of 2021.
- 2 - Cassation Court decision no. 3705 of the year 2004, available at: www.qistas.com, last visited on September 12, 2023.
- 3 - The collective decision published on the Ministry of Labor's website: www.mol.gov.jo
- 4 - The decision no. 45 of the year 2022, published in the Official Gazette issue no. 5808 at p. 4805 on Augusts 1, 2022, available at www.qistas.com, last visited on September 8, 2023.
- 5 - In December 2018, the International Governmental Conference on the Adoption of the Global Compact for Safe, Orderly, and Regular Migration was held. It provides a cooperative framework that includes 23 objectives, an implementation process, as well as monitoring and review. Each objective includes a commitment followed by a set of actions considered policy tools and relevant best practices. We will benefit from these actions within the framework of achieving the 23 objectives to ensure safe, orderly, and regular migration throughout the migration cycle.
- 6 - This agreement, while not legally binding, morally obligates Jordan, as it actively participates in the implementation and review process of the agreement.
- 7 - The term "freelance work permit" refers to permits granted to non-Jordanians in the professions of loading and unloading, construction, and agriculture, issued under the principles for issuing freelance work permits for non-Jordanians. This is in accordance with the Minister of Labor's decision dated September 22, 2019, No. (2019/291), regarding the principles for issuing freelance work permits for casual laborers for the year 2019.
As for the "flexible work permit," it is issued to workers of Syrian nationality based on the instructions for the conditions and procedures for employing non-Jordanian workers of Syrian nationality for the year 2020 and its amendments.

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