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Migration Trends and Patterns in
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The Human Rights Context

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Introduction

Jordan is a country of both immigration and emigration. It is a destination country for immigrant Arab workers,¹ foreign domestic workers, and migrant workers in Jordan's Qualified Zones (QIZs).

Jordan has also witnessed considerable forced migration, primarily due to the Israeli-Palestinian conflict and other conflicts. The country received Palestinian refugees after the creation of the State of Israel in 1948 and during the 1967 war, which resulted in Israeli occupation of the remaining parts of historical Palestine: the West Bank, from Jordan, and Gaza Strip, from Egypt. Jordan received a wave of Jordanians of Palestinian origin after the Iraqi invasion of Kuwait in the beginning of the 1990s. Most expected to stay only briefly, but after liberation, Kuwait did not allow them to resume their jobs.

Jordan has also hosted hundreds of thousands of Iraqi refugees since the American invasion of Iraq in 2003. Jordanians fear that the Iraqis may remain for an extended period of time, as the Palestinians have remained for the past 60 years. Simultaneously, Jordan exports human expertise and skilled manpower to the other Arab countries, particularly the Gulf States, and to North America.

This study aims at identifying Jordanian policy in regards to international migration from a human rights perspective, and shall cover the topic in four sections: Palestinians in Jordan, Iraqi refugees in Jordan, foreign workers in Jordan, and foreign domestic workers and foreign laborers in the Qualified Industrial Zones (QIZs).

Palestinians in Jordan

The Arrival of Palestinians to Jordan and their Naturalization

Palestinians have arrived in Jordan since the creation of the state of Israel in 1948. Due to its political and geographical position, Jordan received the greatest number of Palestinian refugees during the Israeli-Arab war of 1948. The country also received Palestinians during the 1967 war.

Most of those who came from areas of Palestine that became Israel in 1948 arrived in Jordan in the immediate aftermath of the Palestinian Nakba² (Olwan 2008). This group obtained Jordanian citizenship under law 56/1949, promulgated while the West Bank was under Jordanian military administration.

The West Bank became a part of Jordan in 1950, and the Jordanian Constitution of 1952 stipulates that "Jordanian citizenship is determined by law" (Article 5). In 1954, a new citizenship law (6/1954) confirmed the status of Palestinians, who had acquired Jordanian citizenship under the previous law, 56/1949. According to Article 3 of this law, a Jordanian citizen is "[a]ny person with previous Palestinian nationality except the Jews before the date of May 14, 1948 residing in the Kingdom during the period from December 20, 1949 and February 16, 1954".

¹ Particularly Egyptians

² Al-Nakba marks the forced expulsion and destitution of 750,000 Palestinians and the destruction of 418 villages belonging to them by the Israeli forces.

Palestinians who fled the West Bank during the 1967 Arab-Israeli War, and who have lived in Jordan since, are considered internally displaced because they moved from one part of the country to another, from the West Bank to the East Bank. Some were refugees from the 1948 Arab-Israeli War, and had been living in the West Bank since that time. These displaced people are entitled to a five-year passport and full citizenship rights since they were citizens of Jordan prior to the war. Jordan is the only Arab country to give citizenship to most refugees since 1948. Other Arab countries refuse to grant Palestinians citizenship on the basis of the preservation of their right to return to Palestine. However, the acquisition of citizenship does not abrogate Palestinian refugee status, nor does it deprive the Palestinians of their internationally recognized legal right to return according to several United Nations General Assembly resolutions, beginning with resolution 194 of 11 December 1948.

Jordanians of Palestinian origin legally enjoy the same rights as all Jordanians, and consequently they receive the same civil documents as any other Jordanian. Therefore, they hold Jordanian passports, on a patrilineal basis, which are valid for five years. Each receives a 'national number', which is shown on national ID cards and in the 'Family Book', both of which are only issued to citizens. Official census data are not publically available on the number of Jordanians of Palestinian origin, but it is widely believed that they represent over half of the Jordanian population (Al-Abed 2008).

The severance of the legal and administrative ties with the West Bank

On July 13th, 1988, King Hussein severed the legal and administrative links to the West Bank. The decision, which did not amount to a law and which was followed by implementation instructions on August 20th, 1988, stripped Jordanians of Palestinian origin who had been resident in the West Bank before July 31st, 1988, of their Jordanian citizenship. These people were deemed to be Palestinian rather than Jordanian. It is estimated that over one million people lost their Jordanian citizenship as a result (Olwan 2005).

Place of residence has determined whether an individual remains a Jordanian citizen or has become Palestinian. Article 2 of the instructions stipulates that "every individual who was residing in the West Bank before 31st of July 1988 shall be considered a Palestinian citizen and not a Jordanian". This was expanded to include:

- individuals who obtained passports issued by the Palestinian authority with the approval of Israel;
- individuals working in Palestinian authority institutions;
- individuals who hold family reunion documents issued by the Israeli authorities; and,
- Individuals who had been residing in the East Bank before the issuance of the instructions (NCHR 2005).

As a consequence of the Royal Decree, Jordanians of Palestinian origin residing in the West Bank before July 31st, 1988, lost their Jordanian nationality without having recourse to Palestinian nationality because of the non-existence, from a legal point of view, of a Palestinian state that could grant Palestinian citizenship.

The legality of the Jordanian decision and the instructions issued therewith are beyond the scope of this work. It is sufficient to note that both are not more than administrative decisions, and deciding the status of citizenship on the basis of an administrative decision is a violation of the provisions of Article 5 of the Jordanian Constitution and Citizenship Law 6/1954, both of which do not include any provision whatsoever that allows for withdrawing citizenship by administrative decision. It is unfortunate that the lawsuits before the High Court of Justice against decisions taken by the Minister of Interior, or any official, in matters related to citizenship are not resolved to the satisfaction of claimants (NCHR 2006). The Jordanian High Court of Justice has regularly ruled that the severance of

legal and administrative ties with the West Bank constituted "an act of state", and as such lay beyond its jurisdiction.

Jordanians of Palestinian origin who were living in the East Bank or elsewhere before July 31st, 1988, remain Jordanian citizens. As such, they are entitled to acquire a family book, national number, and Jordanian passport. They are also issued a yellow identification card by the Department for Inspection and Follow-Up, a special directorate of the Ministry of Interior. The yellow card distinguishes Jordanians of Palestinian origin from other Jordanians, and allows them to travel to the West Bank through the Allenby Bridge crossing.

West Bank residents who were living in the occupied West Bank before July 31st, 1988, have no right to Jordanian citizenship. They are instead entitled to temporary Jordanian passports, which were originally valid for two years, until this was extended to five years in 1995. They are also issued a green identification card by the Jordanian Ministry of the Interior, allowing them to visit Jordan and return to the occupied West Bank, but not to reside in Jordan. The two documents are issued solely as travel documents, and do not constitute an attestation of citizenship. The fact is that Palestinians in the West Bank became foreigners after 1988 and, as such, have no right of entry into Jordan.

Jordan occasionally restricts Palestinians - who were granted free entry to Jordan for decades - access from the West Bank. On several occasions Jordanian authorities have turned away Palestinians without a permit from the Interior Ministry at the Allenby Bridge near Jericho, the last remaining option for West Bankers to leave Israeli controlled territory. Blocking Palestinian entry is a reflection of Jordan's anxiety about a new wave of Palestinian immigration from the West Bank. Nevertheless, due to the special ties between Jordan and the West Bank, access through Allenby Bridge is increasing.

Increasing numbers of Jordanians of Palestinian origin are deprived of their national number and, consequently, of Jordanian citizenship on the basis of the administrative disengagement decision without consideration of its legality. It is worth noting that thousands of Jordanians of Palestinian origin have lost their Jordanian nationality on the basis of Jordanian measures during recent years (HRW 2010). The National Center for Human Rights (NCHR) has repeatedly condemned the withdrawal of Jordanian citizenship without judicial ruling. Moreover, it considers the practice arbitrary and in violation of the right to citizenship, which is the basis for enjoying other rights in the country (NCHR 2008). Furthermore, the Jordanian High Court continues to consider the withdrawal of Jordanian citizenship through the Royal Decree a sovereign act, which does not encourage citizens to file lawsuits related to the denial of citizenship before it (NCHR 2008).³

NCHR believes that the withdrawal of official documents is a flagrant violation of the Constitution and in contravention of international standards. It also believes the withdrawal causes several negative effects, including:

- the violation of human rights;
- the restriction of the right to movement for people whose identification documents have been withdrawn;
- the deprivation of regular work and the right to life;
- continued suffering through the renewal of identification documents over short periods; and
- difficulties faced by children with regard to the right to education and the right to health, which the government is supposed to provide in accordance with international Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights provisions, already ratified by Jordan⁴.

³ Nine cases were filed before the High Court in 2007.

⁴ Jordan ratified both Covenants in 1976 and the Covenants are published in the Official Gazette number 4764, dated 15th of June 2006.

Unlike Palestinians who came from the West Bank, around 150,000 ex-residents of the Gaza strip living in Jordan do not qualify for citizenship, and most are given renewable two-year passports valid for the purpose of identification before the Jordanian authorities and travel to the few countries that accept the document. These Gazans were forced to move to Gaza as a result of the mass expulsion that accompanied the creation of the state of Israel. As such, they were initially internally displaced within of Palestine. They then fled again after the Israeli occupation of the Gaza strip in 1967. The Jordanian passports they hold are, in fact, no more than residence permit cards which do not connote citizenship or any of its inalienable rights. They do not include a national number, which is obtained by the Civil Status and Passport Department (CSPD). They do not entitle their holders to the rights recognized for Jordanian citizens, such as the right to health care, education in public schools and universities, employment in the public sector, and to the professions and other rights exclusively reserved for Jordanian citizens. It is also noteworthy to mention that Jordanian women married to Gazans do not have the legal right to transmit citizenship to their children.

While some Gazans live in different areas of Jordan, a considerable number live in camps run by the United Nations Relief and Works Agency (UNRWA), particularly Jarash (also called Gaza Camp) and Hittin.

Iraqi Refugees in Jordan

The American invasion of Iraq in 2003 led to the internal displacement of two million Iraqis, and the migration of over two million to neighboring countries, particularly Jordan and Syria. Lebanon, Egypt, Turkey, Iran and the Gulf States have also hosted hundreds of thousands of Iraqi refugees. The migration of Iraqis is the largest in the Middle East since the Palestinian Nakba in 1948 when hundreds of thousands of Palestinians were forced to leave their homeland.

There are no accurate statistics regarding the number of Iraqis in neighboring countries. Estimates of the number of Iraqis in Jordan range between one million (18% of the population) initially, and 750,000 (16% of the population) at a later date (Hudson 2007). In a study in May 2007, the Norwegian Institute for Applied Social Sciences (FAFO) estimated the number of Iraqis living in Jordan at 450,000-500,000 (FAFO 2007).

The number of Iraqis in Jordan fluctuates with the conditions in Iraq and in the host country. Nevertheless, the number found by FAFO is enormous for a country whose population does not exceed six million. If we add the number of Palestinian refugees, Jordan would rank first among the countries of the world in the ratio of refugees to national population (HRW 2006).

The legal framework of Iraqi entry, residence, and departure

The state's right to control the entry and departure of foreigners is central to the idea of sovereignty, but is subject to general principles of international law regarding foreigners. Refugees are entitled to protection through several international conventions, most importantly, the 1951 Convention relating to the Status of Refugees ("1951 Convention").

Jordan is not party to the 1951 Convention and therefore Iraqis are treated as foreigners subject to entry and residence in accordance with national laws. The Jordanian Law of Residency and Foreigner's Affairs 24/1973 and its amendments regulate foreign entry and residence in the Kingdom. Even though neither this nor any other law directly addresses refugee affairs, it includes references to the treatment of asylum seekers (Articles 4, 6, 10, and 29), but without defining the refugee or specifying which entities are responsible for determining refugee status.

Entry of Foreigners and Refugees to the Kingdom

The Law on Residence and Foreign Affairs of 1973 stipulates the condition under which a foreign national may enter the Kingdom. According to Article 4(b), "travel documents include laissez-passer issued by the United Nations to its officials and international laissez-passers issued by States to Stateless Persons or refugees residing in their territory. However, the validity of the latter documents shall be recognized only if they bear a visa entitling the holder to return to the issuing country. The same applies to identity cards provided for under agreements concluded with other countries", which means that asylum seekers can enter Jordan only if they bear travel documents entitling them to return to the issuing country. These documents are required by the 1951 Convention to enable refugees to travel and reside. According to Article 4(c) of the law, international laissez-passer are issued to various categories of persons, foremost amongst whom are refugees, recognized as such, even though it does not name the competent Jordanian authority that recognizes refugee status or the basis for doing so.

Types of visas, their duration, conditions, procedures for granting, exemptions from requirements, and fees are specified in regulations to be made for these purposes, according to Article 9. Per visa regulation 3/1997, there are two types of visas that allow the bearer to enter Jordan: entry visas and transit visas. Further regulations are as follows:

Any foreigner staying or wishing to stay in the country must obtain a residence permit in accordance with the provisions of this law and shall leave the territory of the Kingdom on expiry of his residence permit unless it is renewed (Article 18).

The Minister may, after consulting the Director, either grant or refuse a foreigner's application for a residence permit or yet cancel a residence permit already granted to him and order him to leave the Kingdom without explanation (Article 19).

A residence permit shall be granted to a foreigner if the competent authorities are satisfied as to the reasons justifying his residence, provided that the applicant: hold an employment contract; has a secure and lawful source of income; has come to the Kingdom to invest capital or commercial or industrial ventures; possesses scientific or vocational skills to which there is no equivalent in the Kingdom; is official or employee of a diplomatic or consular mission in the Kingdom; is disabled or a minor child whose only provider reside in the kingdom; or a student admitted to a Jordanian educational establishment (Article 26).

A residence permit shall be valid for one year and be renewable for five years to a foreigner who has lived lawfully on the Kingdom for 10 years (Article 22).

According to Article 29, certain individuals are exempt for international or human courtesy considerations, asylum, reciprocity or any other reason seen fit by the Minister, whose decisions are final.

Jordan used to allow Iraqis to enter the Kingdom without requiring a visa, provided they hold valid passports. They were issued visas that allowed them to stay in the country for three to four months, subject to renewal at the Jordanian-Iraqi border (Fagen 2007).

However, Jordan has become prone to restricting Iraqi entry and residence after terrorist attacks on three hotels, which claimed 60 lives in Amman on November 9th, 2005. Since then, Jordanian authorities have started turning Iraqis away at the border or issuing them maximum two or three day visas. The renewal of residency permits has also become more difficult, increasing the number of Iraqis who reside illegally in the country.

As of May 1st, 2008, Iraqis planning to enter the Kingdom need visas issued in advance. Eligible applicants have to apply at international courier TNT post offices in Iraq or through Jordanian diplomatic missions abroad. The Jordanian government and TNT post signed a deal that established a system to regulate the entry process by accrediting the company as a specialized party to receive and submit visa applications under certain conditions.

Penalties for unlawful entry and residency

The Jordanian Constitution prohibits the deportation of any Jordanian from the territory of the Kingdom. It further stipulates that no Jordanian may be prevented from residing at any place, or be compelled to reside in any specified place, except in the circumstances prescribed by law (Article 9). By contrast, no foreigner enjoys such privilege or is exempt from deportation.

The Law of Residency and Foreigners' Affairs stipulates that:

Any person entering the Kingdom in violation of Article 4 and 5 of this Law shall be arrested without further notice and shall be brought before administrative authority which may either order his expulsion or recommended the Minister to grant him a residence permit or yet refer him to the court of first instance. On conviction by a court, he shall be liable to a term of imprisonment of between one and six months or to a fine of between 10 and 50 Dinars, or to both penalties (Article 31);

and that:

The administrative governor may, after the Court has passed judgment on a foreigner, order his expulsion from the Kingdom or recommend the Minister to grant him a residence permit (Article 32).

These are the penalties imposed on illegal entry:

Any foreigner who enters the Kingdom lawfully but who fails to obtain a temporary residence permit or who overstays his permitted period of residence shall be liable to a fine of 45 Dinars for each month overstayed or any part thereof. The Minister may, on the proposal of a committee composed of the Secretary of the Ministry and the Director of the Department of Foreigners, exempt a foreigner from the said fines, provided that they do not exceed 250 Dinars. When the amount exceeds 250 Dinars such exemptions shall be subject to an order of the Prime Minister based on a proposal by the Minister and a recommendation by the committee (Article 34).

The Minister may, on a proposal of the Director, expel a foreigner; he may also order the temporary suspension of expulsion procedures in respect of a foreigner whose expulsion has been decided. A foreigner who has been expelled shall be authorized to return to the territory of the Kingdom only by special permission of the Minister (Article 37).

These apply to foreigners in general, but what about refugees? Here, one needs to distinguish between unlawful entry and residence in the country in violation of the law of Residency and Foreigners Affairs. As for unlawful entry, Article 32 applies only to those who enter the country in violation of Article 4 and 5 of the law. Since refugee entry is regulated by Article 6, concerning entry through means other than those specified in the Article for reasons such as political asylum, the competent authority do not hold jurisdiction over refugees and he or she cannot be deported per Articles 31 and 32. However, Article 37, which allows the Minister to expel a foreigner or order the temporary suspension of expulsion procedures in respect of a foreigner whose expulsion has been decided, is comprehensive and includes all foreigners, including refugees.

Deportation is an administrative decision subject to judiciary administrative control by the Supreme Court (Law No. 19 for the year 1992). However, the Law of Residency and Foreigner's Affairs does not require disclosure of the reasons for such decision. This is why the lawsuits against the decisions of deportation before the High Court end always by refusal.

Generally speaking, a refugee is someone who is no longer under the protection of his or her country of nationality or permanent residence and is seeking asylum in another country. The concept of 'lack of protection' by a particular country was adopted in the definition of a 'refugee' for the first time in the Nansen agreements of the 1920s (Gill 1996). The concept now dominates the current definitions in international law: the 1951 Convention definition and the 1967 Protocol relating to the Status of Refugees (1967 Protocol) definition.

Elaboration is needed on whether or not refugee status applies to Iraqis in Jordan (Olwan M 2005). Even though the international definition is binding to state signatories to the 1951 Convention and 1967 Protocol, it has been accepted by some non-signatory states, including Jordan.

The Jordanian Constitution expressly states, "political refugees shall not be extradited on account of their political beliefs or for their defense of liberty" (Article 21). This means that Jordan, in accordance to international tradition relating to asylum seekers, will provide asylum seekers with a safe haven if conditions permit.

Jordan is signatory to many human rights agreements, but it is not party to the 1951 Convention or the 1967 Protocol, which broadens the 1951 Convention definition. Jordanian law does not provide a legal definition for 'asylum' or 'refugee', and does not have any clear policy to define the status of refugees.

The Constitution only protects political refugees, not refugees in the wider sense as defined by Article 1 of the 1951 Convention, which encompasses any individual who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or a political opinion, is outside the country of nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it".

The reasons for persecution in the 1951 Convention definition are not limited to political opinions or defense of liberty, as they are in the Jordanian Constitution, which does not grant refugee status to asylum seekers, but simply refrains from extraditing them. However, legislative limitations have not stopped Jordan from voluntarily granting refugee status to people who have escaped injustice and oppression in their own countries.

In October 1991, the Jordanian government agreed, in the wake of the second Gulf War, to allow the United Nations High Commissioner for Refugees (UNHCR) to assist in providing international protection and assistance to Iraqi and other refugees.

UNHCR and the Jordanian Government entered an agreement on July 30th, 1997, to create the basic conditions under which UNHCR shall, within its mandate, cooperate with the Government, open an office in the country, and carry out its international protection and humanitarian assistance functions. The Memorandum of Understanding (MoU), signed on April 8th, 1998, concerns refugee legal status. According to the MoU, asylum seekers can remain in Jordan pending status determination, and UNHCR-recognized refugees can remain for six months after recognition, during which time UNHCR has to find resettlement countries for them. This is not always possible, but the government generally does not deport them (Olwan M 2009).

Undoubtedly, any comprehensive study of the legal status of Iraqi refugees in Jordan cannot be done without discussion of the two agreements engaging Jordan and the UNHCR, but for the purpose of this study, a brief discussion of the MoU is offered.

The definition of 'refugee' in the MoU does not differ from that of the 1951 Convention as amended by the 1967 protocol. UNHCR shoulders responsibility for status determination, as Jordan does not have a status determination mechanism in place. According to the MoU, both parties agree to enforce the *non-refoulement* principle, which will be discussed later. The MoU allows

UNHCR to interview asylum seekers who entered Jordan clandestinely and are being held by competent authorities. UNHCR would make its determination within seven days except in exceptional cases requiring other procedure and the period should not exceed a month (Article 3).

The role of the competent authorities and UNHCR staff is to verify the identity of asylum seekers who have entered clandestinely, to evaluate the justifications upon which asylum is sought, and to prevent the willful destruction or disposal of documents, or use of forged documents in order to mislead the authorities in the country of arrival.

Article 2 of the MoU is concerned with asylum seekers who unlawfully enter the country, and does not reference those who enter legally. Practice demonstrates that this group also has their status determined by the UNHCR without substantive involvement by the Jordanian authorities.

The two parties agreed to deal with the problems pertaining to asylum and refugees through the liaison office at the Ministry of Interior.

UNHCR Branch Office undertakes to provide the liaison office with required personnel and the technical facilities required for this work. UNHCR Branch Office undertakes to inform the liaison office at the Ministry of Interior. Finally, in order to safeguard the asylum institution the Government of the Hashemite Kingdom of Jordan would consider the establishment of a national mechanism for status determination (Article 14).

The MoU is similar, in many aspects, to the 1951 Convention, which enjoys wide international acceptance. The fact that Jordan has not yet endorsed the 1951 Convention may be attributed to the fact that UNHCR jurisdiction may be expanded to encompass Palestinian refugees upon the dissolution of UNRWA. Currently, the 1951 Convention expressly excludes Palestinian refugees from its scope (Article 1). The NCHR, a government agency, has repeatedly recommended that Jordan endorse the 1951 Convention, confirming the absence of any legal hindrance to its endorsement.

Iraqi refugees in Jordan: between temporary residency, existence outside Jordan, or return to Iraq

The Convention does not stipulate that refugees be settled in Jordan, as Jordan offers temporary residency. To this effect, the MoU stipulates that:

UNHCR would endeavor to find recognized refugees a durable solution be it voluntary repatriation to the country of origin or resettlement in a third country. The sojourn of recognized refugees should not exceed six months (Article 5).

The Article mandates that UNHCR ‘endeavor’ to find refugees a permanent solution, either voluntary repatriation or resettlement in a third country. However, in the event that neither of these is possible, it does not address permanent settlement in the country.

Theoretically, settlement is possible, and the Jordanian authorities take the matter with flexibility, as refugee residency exceeds the allowed periods, and Iraqis, whether recognized as refugees or not, often remain in the country for several years.

Article 10 exempts refugees "from overstay fines and departure fees", including refugees granted status after the six-month period. The Minister has the authority to exempt refugees from the stipulations of the Law of Residency and Foreigner's Affairs "on account of special considerations connected with international or humanitarian courtesy or of the right to political asylum or yet in application of the principles" as mentioned earlier (Article 29).

Jordan does not consider Iraqi residents as refugees, but rather as ‘guests’, ‘temporary residents’, or ‘illegal aliens’. In fact, most Iraqis in Jordan share this view, which is further confirmed by the fact that most neither register with the UNHCR nor ask for refugee status. Besides, Iraqi officials are content that Jordan does not recognize its Iraqi residents as refugees, as this prevents the migration of sorely needed Iraqi expertise.

Iraqi refugees in Jordan and human rights

The Jordanian Constitution guarantees a number of rights for foreigners in general and refugees in particular. The MoU of Understanding between the Government of Jordan and the UNHCR also accords refugees rights. We begin with the *non-refoulement* principle, which is the cornerstone of refugee law.

The Non-Refoulement Principle

The prohibition of expulsion or return (*refoulement*) is addressed in Article 33 of the 1951 Convention, which stipulates that, "no contracting state shall expel or return a refugee in any manner whatsoever to the frontiers of the territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion".

The 1951 Convention does not allow *refoulement*, "save on grounds of national security or public order" (Article 32). States do not view illegal entry as a threat to national security or public order, and therefore do not rely on Article 32(1) to *refouler* them.

Article 32(2) of the 1951 Convention declares that refugees shall not be expelled except under particular circumstances. The article states,

the expulsion of [...] a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority. The contracting states shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they deem necessary" (Article 32).

The *non-refoulement* principle is also in Article 2 of the MoU. It stipulates that,

in order to safeguard the asylum institution in Jordan and to enable UNHCR to act within its mandate to provide international protection to persons falling within its mandate, it was agreed [...] that the principle of *non-refoulement* should be respected that no refugee seeking asylum in Jordan will be returned to a country where his life or freedom could be threatened because of his race, religion, nationality, membership of a particular social group or political opinion.

The *non-refoulement* obligation applies whether or not a refugee has formally been granted a refugee status, and Article 2 of the MoU is ambiguous on the term 'refugee', causing some concern. In an increasing number of countries, people are being prevented from accessing asylum procedures and are subjected to forcible return, which, in the absence of an asylum procedure or other mechanism to determine protection needs, could lead to *refoulement*. This does not include people whose applications for asylum were rejected by UNHCR.

Here, it is imperative to remind states that the customary international principle of *non-refoulement* places an absolute prohibition on returning, in any manner whatsoever, any individual to a situation of torture or other serious human rights violations. However,

asylum should be humanitarian and peaceful and therefore the two parties have agreed that asylum seekers and refugees should receive a treatment as per the internationally accepted standards. A refugee should receive legal status and UNHCR would endeavor to find recognized refugees a durable solution be it voluntary repatriation to the country of origin or the sojourn of recognized refugees should not exceed six months (Article 5 of MoU).

The MoU implicitly permits *refoulement* in certain circumstances, however: "the benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country on which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the country" (Article 33).

The obligations of the refugee towards the host state stem from two sets of considerations: one relates to national security and the other relates to geopolitics among neighboring states, and insuring that refugees are not used as political bargaining tools.

Jordan has pledged to uphold the *non-refoulement* principle, but it has been accused by Human Rights Watch (HRW 2006) of deporting Iraqis with illegal residency whether or not they are registered with UNHCR, and of turning Iraqis away at the border without giving them any opportunity to make

refugee claims. If true, Jordan would be breaching not only this international obligation, but also the MoU it signed with UNHCR.

Jordanian policy is to notify UNHCR when law-enforcement officials detain asylum-seeking cardholders on immigration violations, and to allow UNHCR staff to visit the detention centers in Amman to conduct refugee status determination (RSD). The authorities release any individual who enjoys refugee status per the Law of Residency and Foreigners' Affairs, unless wanted on other matter.

In practice, Jordanian law-enforcement agencies allow Iraqis who do not enjoy legal status a renewable period of time to put their affairs in order, and waive fines for those who manage to do so. Jordanian authorities do not conduct regular raids to ascertain whether Iraqis residing or working in the country do so legally, as they do for other foreigners.

Freedom of religion

The 1951 Convention stipulates that, "contracting states shall accord to refugees within their territories treatment at least as favorable as that accorded to their nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children" (Article 4). Religious freedom in Jordan is guaranteed by Article 14 of the Constitution, which stipulates that "the state shall safeguard the free exercise of all forms of worship and religious rights in accordance with the customs observed in the kingdom, unless such is inconsistent with public order or morality". The constitution does not distinguish between Jordanian citizens and foreigners.

Article 6 of the MoU recognizes the right to freedom of religion "without discrimination as to race, religion or nationality and without contravening the constitution of Jordan provided that religious rights are not contrary to the law, regulations and public decency". The MoU prohibits discrimination only on the basis of race, religion or nationality but not on other bases, as does the 1948 International Declaration of Human Rights and the 1966 International Covenant on Civil and Political rights.

Access to the courts

Article 7 of the MoU stipulates that "a refugee shall have free access to courts of law and in order to enjoy this treatment he has the right of litigation and legal assistance as accorded to the nationals wherever that is possible". This is nearly identical to Article 16 of the 1951 Convention.

Personal freedom

The Jordanian constitution guarantees a number of rights that are inherent to the individual, including personal safety. These rights are not exclusive to Jordanians. Foremost amongst them is the right to personal freedom, guaranteed by Article 7 of the Constitution, followed by the right not to be "detained or imprisoned except in accordance with the provisions of the law" (Article 8).

Right to earn a livelihood

The right to earn a livelihood tops the list of economic and social rights. It is confirmed in Article 6 of the Constitution, which stipulates that "the government shall ensure work and education within the limits of its possibilities and it shall ensure a state of tranquility and equal opportunities to all Jordanians". The government's commitment is contingent upon its limited resources, and it is exclusive to Jordanian citizens.

Jordanian laws do not address refugees labor, but since a refugee is a foreigner, his/her work is regulated by the legal system for foreign labor in general.

Jordan's signatory status to the 1966 International Covenant on Economic, Social and Cultural Rights, and the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, prohibits it from discriminating against foreign labor.⁵

Both the law of Residency and Foreigners' Affairs and the Labor Law address foreign labor in general, as do the laws of labor unions, which addressed foreigners' practice of liberal professions while addressing conditional for professional practice. Article 120 of the Constitution and Civil Service Statutes 23/1966, 10/1988, and 3/2007, all limit civil service to Jordanian citizens. The MoU addresses refugee labor. Below is an overview of these Jordanian laws together with MoU.

Jordanian law of residency and foreigner's affairs no. 24 for the year 1973 and its amendments on non-Jordanian Labor.

The Law of Residency and Foreigners' Affairs states that:

[N]o Jordanian national or Jordanian company or body shall employ a foreigner unless he has a permit to reside in the kingdom, this requirement shall not apply to experts called for a practical or technical purpose, provided that their period of engagement does not exceed three months (Article 16).

[A] residence permit shall be granted to a person holding an employment contract with a company or registered business or with an employer established in the kingdom, provided that his activities are not in competition with those of Jordanian and that of a certificate to that effect is issued by the Ministry of Labor and Social Affairs or by another competent authority (Article 26).

Any company or employer employing a foreigner not holding a residence permit shall be liable to a fine of not less than 50 Dinars and not more than 75 Dinars for each illegal worker thus employed. This provision does not apply to experts engaged by companies operating in the Kingdom for the purposes of technical consultancy, provided that their stay does not exceed three weeks and that they obtain prior authorization from the Directorate before their arrival (Article 35).

Jordanian labor law no. 8 for the year 1996 and its amendments on non-Jordanian Labor

Jordanian Labor Law 8/1996 on Foreigners' Employment and its Amendments addresses non-Jordanian Labor in Article 12, although it does not mention refugees and asylum seekers. It stipulates, in Item A, that:

It is not permissible to hire any non Jordanian laborer unless the consent of the Minister or whom he shall delegate to that effect shall be obtained provided the work shall require an experience and efficiency that are not available for the Jordanian labors or that the available number of the same shall not meet the demand. However, the priority shall be given to the Arab experts, technicians and labors.

Additionally, "non Jordanian laborer shall procure labor permission from the Minister or whom he shall delegate to that effect before calling upon or hiring the same [whose] term shall not be more than one year renewable" (Item B), and "[t]he validity of the permit upon [renewal] goes into effect as of the expiration date of the last permit obtained" (Amended labor law 30/2006).

The Ministry taxes the employer a fee against the issuance or renewal of labor permission for each non-Jordanian laborer (Items C and D), which is considered revenue for the treasury (Item C, as amended by law 12/1997).

Items E and F address punishing non-compliance. The employer will be fined no less than 100, and no more than 150, Jordanian dinars for each month or part thereof, for every non-Jordanian laborer hired against the provisions of this law (amended law 30/2006). The amount of the fine may not be decreased below its minimum for any reason. Article 3 allows the Minister to expel the migrant worker in breach, at the expense of the employer or the director of the establishment.

⁵ Jordan seconded the Covenant on 28/5/1975, published in the official Newspaper, no.4764, 15/6/2006

Jordanian laws on labor unions and on non-Jordanian labor in liberal professions

Jordanian laws on labor unions impose restrictions on membership, banning foreign migrant workers, among others. Some of these laws require the reciprocity principle to allow a foreigner to practice a profession in Jordan.⁶ Another set of laws distinguishes between Arab and non-Arab expatriates.⁷ Some union laws ban Arab and non-Arab expatriates from joining unions or practicing particular professions, while others only ban non-Arabs. Union laws impose penalties on those who practice a profession without a permit, and subject them to the danger of expulsion in accordance with the labor law or deportation according to the law of Residency and Foreigners' Affairs.

The Memorandum of Understanding and employment of refugees

Article 8 of the MoU stipulates that, "[i]n order to enable a refugee to provide a living for his family it was agreed to accord a refugee who is legally residing in Jordan to work for his own account whenever the laws and regulations permit". The MoU added, in Article 9, that, "refugees holding degrees recognized by the competent Jordanian authorities [can] practice liberal professions if the laws and regulations permit".

The MoU only mentions self-employment and liberal professions, but stipulates that refugees reside in Jordan legally, and that the laws and regulations permit. For liberal professions, it stipulates that the refugee hold a degree recognized by the Jordanian authorities, not to mention that the work be in accordance with the laws and regulations in force. The MoU does not regulate paid employment, but leaves this to the Jordanian Law on Residence and Foreign Affairs and the Labor Law.

It is quite difficult for an Iraqi who resides legally to find employment, self-employment or practice a liberal profession. Those who reside illegally have no choice but to work illegally, whenever possible, to support themselves and their families. This leaves them open to sanction per the various Jordanian laws. Many Iraqis enjoy legal employment, while a good number work without permits.

The Social Security Law 30/1978 applies equally to all national and foreign employees whether they are refugees or not.

Rulings from the Jordanian Court of Appeals have improved concerning work contracts issued to foreign workers who do not have work permits. Initially, the court ruled that such a contract is void, and does not have any legal consequences per the provision of Article 12 of the Labor Code of 1996.⁸ However, the court repealed this ruling, which culminated in the loss of rights for foreign laborers. In its most recent ruling, the court validated the contract between foreign laborer and Jordanian employers even in the absence of a work permit which is, according to the court, is no more than a regulatory procedure to control incoming labor and ensuing consequences.⁹ The court's latest ruling provides greater protection to foreign labor. However, the foreign laborers who do not have a work permit usually hesitate to approach the courts for fear of disciplinary procedures (Halasah 2006).

Right to Education

The Jordanian Constitution ensures education within the limits of the government's possibilities (Article 6/ii), and elementary education is compulsory for Jordanians and free of charge in government schools (Article 20). The education law mandates that elementary and preparatory education is compulsory and free of charge, and that secondary education is free of charge.

This does not preclude non-Jordanian children from attending these schools. Jordan is a signatory to the 1989 Convention on the Rights of the Child which guarantee the child's right to education,

⁶ Examples include the 1998 Laws of the Journalist Union, no. 15; the 1985 CPA laws, no.32; the 1972

⁷ Example of these are the 1997 laws of the Artists Union, no.9; the 1972 Dentistry Laws

⁸ Case Number, 766/1999, Chapter 27/2/2000

⁹ 3860/2003, Chapter 16/2/2004 and Appealing Rights 655/2004, 21/7/2004

including making “primary education compulsory and available free to all” (Article 28). The 1951 Convention requires contracting states to "accord refugees the same treatment as is accorded to nationals with respect to elementary education, and to accord to refugees treatment as favorable as possible, and, in any event, not less favorable, than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education" (Article 22). However, Jordan is not party to the 1951 Convention, and the MoU does not provide a right to education among school-age refugees.

Foreign children were not allowed access to education in public schools prior to the academic year 2007-2008, and access to private schools was limited to foreigners with legal residence who could afford tuition fees.

Before the start of the academic year 2006-2007, the Jordanian Ministry of Education decided to allow Iraqi children access to public and private schools, regardless of the legality of their residence in Jordan. Today, the number of Iraqi children attending public and private schools is estimated at 26,000.

Right to Healthcare

The Jordanian constitution does not address the right to healthcare, but Jordan is a signatory to the 1965 Convention on the Elimination of All Forms of Radical Discrimination, the 1966 International Covenant on Economic, Social and Cultural Rights, and the 1989 Convention on the Rights of the Child, all of which ensure a right to psychological and physical health for all, including foreigners.

The MoU implies a right to health care in Article 11, which reads as follows: "in order to provide international protection and assistance for needy refugees it was agreed that UNHCR would provide assistance in accordance with the rules of the UNHCR."

Article 12 suggests medical assistance in the case of large influx: "in order to respond to emergencies in the event of large influx it was agreed that the two parties will cooperate to provide quick response for emergencies including establishment of a joint emergence mechanism to make available food, water, sanitation, shelter and medical treatment and also to provide physical safety for refugees and asylum seekers."

In practice, Iraqis in Jordan have the right to healthcare in government hospitals regardless of the legality of their residency in the country. Private hospitals are only accessible to those who can afford their services. Iraqis who are staying illegally in Jordan hesitate to go to government hospitals for fear of deportation by the authorities, and many cannot afford the healthcare services provided by private hospitals.

Freedom of Expression

The Jordanian Constitution categorically guarantees freedom of opinion for both Jordanians and foreigners. However, it specifies that the freedom to express opinion by speech, in writing, or by means of photographic representations and other forms of expression is guaranteed specifically to Jordanians, provided that such does not violate the law (Article 15). Iraqis residing in Jordan participate in the Iraqi parliamentary elections.

Egyptian migrant workers

Egyptian migrant workers constitute the majority of foreign workers in the country. In 2007 the Egyptian labor force in Jordan was estimated at more than 216,000 out of a total of 313,962 foreign workers registered at the Ministry of Labor (Ministry of Labor, 2007). A Memorandum of Understanding (MoU) was signed between the Jordanian Ministry of Labor and the Egyptian Ministry

of Manpower and Immigration on March 29th, 2007, and was entered into force within two months of the date of signature. The MoU regulates the entry of Egyptian laborers into Jordan based on the needs of the local labor market, and, in particular, the need to provide increased employment opportunities to Jordanians. The MoU specifies sectors in which Egyptians are allowed to work, and requires compulsory medical tests. It also requires police clearance reports (Article 1).

Under the MoU, Egypt is required to maintain a computerized database containing the names of workers who wish to work in Jordan, according to the needs of the Jordanian authorities, and to provide the Jordanian authorities electronic access to the data (Article 2).

The MoU also states that the Jordanian authorities shall provide the Egyptian authorities with the names of Egyptian workers who are selected by employers, after paying work permit charges, and copies of their contracts for signature, provided that the permit will enter into effect by the time of entry into Jordan (Article 3).

Moreover, and under the MoU, the Egyptian authorities are responsible for calling selected workers and stamp their passports with the name of the employer and the sector in which he/she will work. Entry to Jordan must be through the Nuweiba crossing point, and the Egyptian authorities must take the necessary action to ensure that entry into Jordan will be during a period not exceeding one month from the date of dispatch of the labor contract (Article 4). Both sides must provide their own border controls with the names of the workers who will cross into Jordan (Article 5).

According to the MoU, the Jordanian authorities shall collect 250 US dollars or the equivalent in Jordanian dinars from each worker as insurance of procedure, to will be refunded after the completion of the procedures of the issuance of work permit to the importing employer, and both must commit to complete the procedures within one month from the date of entry (Article 6).

The Egyptian authorities also commit to issuing bulletins to workers going to Jordan to familiarize them with required procedures upon entry into Jordan, such as restriction to the importing employer and consequences of deviance (Article 7).

No Egyptian worker traveling to Jordan for visiting reasons, pilgrimage, or transit purposes will be granted a work permit, and the Egyptian authorities are to prevent the exit of any person for purposes of work in Jordan, except in accordance with the agreed procedures between the two countries (Article 8).

The two sides also commit to activate the role of the common commission set up in the eighth article of the agreement signed between the two sides in 1985, to take the necessary measures to implement the MoU, (Article 9).

The Jordanian Ministry of Labor formed an advisory commission to follow up on the implementation of the agreement. The commission is headed by the secretary general of the ministry, and includes representatives from the private sector. It has decided to print and distribute brochures for incoming Egyptian laborers explaining the new procedures. It is also concerned with focusing local market demand in terms of the number of foreign workers needed, and in what professions.

In line with the MoU, the Jordanian Ministry of Labor temporarily suspended the entry of Egyptian workers upon the implementation of the memorandum. The decision came after years of an open immigration policy regarding Egyptians, who had been permitted to enter Jordan with nothing more than their passports and without first having to obtain a visa.

Inspection campaigns are regularly launched by labor inspectors, in cooperation with the Public Security Department, to ensure that workers and employers are abiding by labor and residence laws. However, employers found recruiting illegal labor are liable to fines and are not allowed to hire foreign workers in the future. Workers without valid work permits are placed in custody pending deportation. The decision to deportation is taken by the Ministry of Labor in the case that a foreign worker is violating labor laws. In the case that the violation is related to residency, the decision to deportation is

taken by the administrative governor. Deportation takes place once the illegal worker has cleared all outstanding debts and has received all salaries owed from employers. A total of 9,199 foreign workers (most Egyptian and Syrian) have been found in violation of the law since the Ministry of Labor launched a campaign targeting illegal laborers in August 2008.

Illegal workers are detained in conditions that often violate basic human rights. Those detained are not automatically deported, however, and a good percentage are not deported at all. A follow-up committee established by the Ministry of Labor deals with complaints, pays regular visits to detention centers, and interviews workers in custody to check on their condition and claims of mistreatment.

Decisions to detain and deport illegal foreign workers are not implemented in specific cases for humanitarian reasons. These cases include those of foreign workers married to Jordanians, patients undergoing hospital treatment, and illegal workers who have children enrolled in schools.

Foreign worker recruitment regulation

Foreign worker recruitment is governed by a regulation that entered into force in September 2009.¹⁰ The new regulation replaced the previous, of 2006.¹¹ A recruitment committee has been established by the Ministry of Labor in order to examine the applications for recruitment of foreign workers, inside or outside Jordan (Article 3). Employers willing to recruit a foreign worker must submit an application to the Ministry of Labor. The employer must also provide the Ministry of Labor with a work contract (Article 4).

Prospective employers are required to provide a notary or a banking guarantee the amount of which is depending on the number of workers at the enterprise and whether the recruited workers are required to obtain entry visas or not (Article 5). The purpose of the guarantee is to protect the rights of workers as a result of violations committed by some sponsors and agents with regard to foreign workers' wages.

The recruitment of foreign workers is based on the needs of the market, and takes into consideration a list of closed professions. The Ministry of Labor decides the percentage of the foreign work force in each of the economic sectors of the country, taking into consideration the policy of the gradual replacement by the Jordanian work force of foreign workers (Article 10).

A work permit is not accorded to a foreigner who enters the country for purposes other than the purpose of work. The same is applicable to the foreigner who received his dues of social security with the intention of leaving the country defiantly (Article 10).

The new regulations has ban agricultural workers working in other sectors (Article 12), and the permit work is not accorded nor reversed in case a deportation decision is issued to the foreign worker unless the deportation is cancelled (Article 10).

Under the regulations, the recruitment of Egyptians is carried out in accordance with the pertinent rules applicable to nationalities to which the residency law is not applicable, in addition to the provisions of the 2007 MoU. Article 14 of the Regulations details the stipulations of the MoU. According to the regulations, the employer is responsible for obtaining the work permit for the foreign worker. Moreover, an employer who cancels the work permit of an Egyptian worker before the expiration date will not receive approval for future recruitment.

The rights and working conditions of foreign domestic workers

¹⁰ Official Gazette No. 4976, 16.8.2009

¹¹ Official Gazette No.4785, 1.10.2006, p.3823

Domestic laborers of different nationalities, particularly Indonesians, Sri Lankans, and Filipinos, constitute a large share of the expatriate workforce in Jordan. The overwhelming majority of women who migrate to Jordan are engaged in domestic work, certainly most of the migrant workers in 2009 were women (500,043) (Ministry of Labor 2009). This number is growing because a large number of Jordanian families, due to the improvement in living conditions and the increasing number of working women, are willing to employ foreign live-in helpers. Additionally, the jobs performed by migrant domestic workers are not attractive to the national work force.

Until the issuance of law 48/2008, amending the labor law, the labor law did not cover female domestic workers, whether Jordanian or foreign, because they were not considered employees, and households were not considered workplaces, but rather private domains beyond the reach of regulation and supervision by inspectors of the Ministry of Labor. As such, domestic workers were denied the status of "real workers entitled to labor protection."

This situation was partially changed in August 2008, when Jordan revised its Labor Law. According to the new law, No. 84, amending Article 3 of the Labor Law, migrant domestic workers became covered under the Jordanian Labor Law. With this new law, Jordan became the first Arab country to extend protection in its labor law to domestic workers. The new law states that a bylaw will be issued to regulate the contracts, working hours, day off, and holidays, inter alia for migrant domestic workers.

Bylaw No. 90 of 2009, governing domestic workers, gardeners, home cooks and persons of similar status, entitles domestic workers to religious freedom, health care, ten hour work days, a day off per week, and an annual vacation of 14 days. The bylaw also stipulates that employers are required to pay for their domestic helper's work and residency permits. These helpers are also entitled to be in contact with their families in their homeland at least once a month at the employer's expense, and have the right to decent living conditions. According to the new bylaw, the employer is prohibited to employ a domestic worker abroad without his or her consent, and without informing the worker's embassy. But it also requires the worker to obtain the employer's permission to leave the employer's house. If implemented, this will be an important step towards the protection of migrant domestic workers from the dangers of trafficking.

These new rules are designed to protect the rights of migrant domestic workers in accordance with International Human Rights standards and they correspond to the above mentioned Labor Law No.48/2008. However, it is as yet , unclear to what extent these measures have been enforced in practice. The reality is that migrant workers are still vulnerable to easily hidden exploitative and abusive practices on the part of the employers, recruitment agencies, and officials alike.

Domestic laborers are frequently unable to pay fines for exceeding residence permission, and they cannot be deported until they have paid the fines unless they are granted an exemption by the Ministry of Interior, which takes a long period of time. Domestic workers are also sometimes deported by order of the administrative governors, upon accusation by their employers that they are engaged in immoral practices or have committed crimes such as theft. Other forms of maltreatment and exploitation include sexual harassment, rape, beating, withholding of wages, prolongation of working hours, seizure of passports, and restriction of movement.

Foreign domestic workers are employed through private recruitment agencies that specialize in bringing in and employing non-Jordanian domestic women. Regulations governing recruitment agencies from 2006 were amended recently by bylaw 89/2009. The new bylaw regulates and streamlines the work of the recruitment agencies for migrant domestic workers, takes into account human rights standards, and aims to improve the working and living conditions of the thousands of regular migrant domestic workers in the country. Article 3 of the bylaw stipulates that recruitment agencies must be Jordanian limited liability companies with a registered capital of no less than 50,000 Jordanian dinars, and with roles limited to acting as middlemen in the recruitment of domestic helpers. A tripartite committee has been formed comprising workers, employers, and the Ministry to oversee developments in the sector. Furthermore, the new bylaw imposes a bank guarantee on recruitment

agencies. The purpose of this bank guarantee is to protect the right of migrants and so the Ministry of Labor can terminate the permit of an employer who fails to fulfill his financial obligations towards his employees, a measure that previously required court approval.

The new bylaw imposes stiff penalties on employers and increases the effectiveness of the Ministry of Labor's monitoring and supervision of recruitment agencies. Violations include: the recruitment of domestic workers younger than 18 years old; the exploitation of workers; inhumane treatment of the same; and their transfer in an illegal manner to other countries.

The violations to which domestic workers are sometimes subjected to violate the United Nations Convention Against Transnational and Organized Crime, and the additional Palermo Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Specifically Women and Children, which came into force in December 2003.

Jordan has been party to both the Convention and the Protocol since 2009, and the two instruments were published in the Official Gazette No. 4960 dated April 30, 2009. As such, they became part of the Jordanian legal system. Jordanian Law 9/2009 on the prevention of trafficking of persons was issued in January 2009, and published in the Official Gazette. This comprehensive anti-trafficking law prohibits all forms of trafficking. It prescribes penalties of up to 10 years in prison for forced prostitution and the trafficking of a child. Companies involved in illegal trafficking are exposed to permanent closure. The law also envisioned the establishment of shelters for victims of trafficking while awaiting repatriation.

Foreign Laborers in the Qualified Industrial Zones (QIZs)

Jordan's Qualified Industrial Zones (QIZs) were established in 1997 in order to promote normalized relations between Israel and Jordan through joint economic gain. The QIZs agreement with the US, signed in 1997, allows for duty-free and quota-free access to the American market for goods produced in these industrial parks, as long as they have specific Jordanian-Israeli input. In 2009 there were 6 QIZs in the country for various products such as garments, rubber, and leather goods, and all together they employ around 24,944 foreign migrant laborers and 8,838 Jordanians (MOL 2009).

Foreign workers from China, Bangladesh, India, Sri Lanka, and Vietnam in the QIZs are recruited through the Jordanian investment laws of 2003, and the investment promotion law of 1995. The body established to oversee employment is the Board. The Board enjoys both financial and administrative independence from the Ministry of Labor. To employ a foreigner, the employer must submit an application to the Board, and a delegate of the Ministry of Labor decides whether to provide approval. The delegate takes into consideration different criteria, including the policy aimed at the gradual replacement of the work force by Jordanians. A permit is issued following approval. A worker in the QIZ is not allowed to be employed in other sectors of the economy.

To ensure compliance with the law, bylaws, and regulations, the regulations governing the employment of foreign workers in the QIZs¹² require the prospective employer to provide a banking guarantee ranging between 3,000 to 75,000 Jordanian dinars. Work permits are not approved unless the embassy of the prospective worker certifies that the worker is employed through an authorized recruitment agency. The regulations exempt employers on the 'golden list' of QIZs, factories in compliance with Jordanian law and international labor standards, from the bank guarantee.

In May 2006, a report by the US National Labor Committee (NLC) severely criticized working condition in the QIZ, calling attention to violations of foreign workers rights. The report claimed, among other infringements, that tens of thousands of foreign laborers in the zones had been trapped

¹² Official Gazette No 4761, June 2006, p.2039

into servitude and human trafficking.¹³ In the latest report, at the end of 2006, the NLC noticed that there had been a "substantial improvement" since the publication of its first report but that problems still remained in some of the QIZs.¹⁴ In its Trafficking in Persons Report 2009, the U.S. Department of State reports that some foreign workers in the QIZs have experienced conditions indicative of forced labor.¹⁵

In order to regularize the situation of irregular migrant workers the Ministry of Labor issues ID cards to those whose work and residency permits have expired. The ID cards provide workers a three-month period to renew their documents. During this period the card holders are protected from labor inspection team or police force action. The expiration of the work and residency permits is attributed to employers who brought the workers into Jordan and who have subsequently gone out of business due to bankruptcy or an order from the Ministry of Labor, and left the country without paying wages. As a result, workers recruited by these companies fail to renew their residence and work permits. In other cases, employers do not complete the legal procedures for work and residence permits, subjecting workers to potential deportation. The courts examine lawsuits filed by the workers against their employers, and they may ban company owners from leaving the country and order the selling of a factory's machinery to compensate its workers. If the value of the factory is not enough to pay off debts, the workers do not receive their payments (Euro-Mediterranean Human Rights Network 2008).

Since 2007 a number of strikes have been carried out by hundreds of foreign workers in the QIZs. Complaints include ill-treatment, low and unfair wages, delays in payment, lack of medical insurance, shortage of labor inspectors, poor food, bad quality of life, and a bad work environment. According to Article 31 of the Labor Law, workers who plan to initiate a strike must inform their employers of their intention 15 days prior to action. Under the same law, workers who carry out illegal strikes must each be fined 50 Jordanian dinars for the first day of the strike, and 5 Jordanian dinars per day thereafter. Workers are frequently fined for lack of notice, and resume work after mediation with the Ministry of Labor. Workers participating in the strikes are sometimes deported after signing a paper on which they recognize that their deportation is voluntarily and without constraint.

Working conditions at the QIZs are generally below acceptable standards and the NCHR is used to document the violations of human rights in the QIZ in its annual reports on human rights in the kingdom.

Conclusion

In exercising the sovereign right to regulate the movement of people across its borders, Jordan should bear in mind that national law is not the exclusive regulatory commitment to which it is beholden. Non-citizen migrants, including irregular migrants, are entitled to protection outlined by several human rights instruments: the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1996), the International Covenant on Economic, Social and Cultural Rights (1966), the International Convention on the Elimination of All Forms of Discrimination Against Women (1979), and the Convention on the Rights of the Child (1989). There are also international agreements with specific relevance to international migration: the ILO Conventions 97/1949 and 143/1975 for expatriate workers, the Convention relating to the Status of Refugees (1951) and its Protocol (1967), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990). Jordan is a party to most of these international instruments.

The right to nationality in Jordan faces many impediments. While the constitution stipulates that "Jordanian nationality shall be defined by law", nationality and identification documents are withdrawn on the basis of the 1988 administrative and legal disengagement resolution, in contravention of the

¹³ See <http://www.nlcnet.org/article.php?id=10>

¹⁴ <http://www.nlcnet.org>

¹⁵ See www.state.gov/g/ti/rls/tiprp/2009

Constitution and Article 15 of the Universal Declaration of Human Rights (1948). This issue is increasingly dealt with in the international media, and in reports by international NGOs, and needs to be tackled accordingly. Expulsion orders of foreigners are, at times, in contravention of Article 13 of the International Covenant on Civil and Political Rights (1966), to which Jordan is a signatory.

In most cases, deportation orders are taken by the executive power - the Ministry of Interior or the Ministry of Labor - and not a court of law. The right of appeal to an independent and impartial tribunal should be provided for in the relevant Jordanian law and regulation. Furthermore, in executing an expulsion or deportation order, Jordanian authorities should act in accordance with standards upholding human rights and in particular the right to personal freedom.

The treatment of irregular migrants in the event of detention should be improved, and mechanisms for judicial or administrative review of the lawfulness of detention should be established. Jordan is bound by the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), which prohibits the expulsion of an individual under circumstances in which there are substantial grounds for believing that the person shall be in danger of being subjected to torture (Article 3). As regards the right of asylum, it is time to adhere to the 1951 Convention.

In 2008, Jordanian labor law was amended to cover agricultural and domestic workers, and in 2009 a comprehensive anti-trafficking law came into force, prohibiting all forms of trafficking. These new laws are important, however, they are not fully implemented.

Finally, since most Iraqis residing in Jordan choose not to return to Iraq, and since most are not afforded resettlement in other countries, the Jordanian authorities have no option but to comply with international obligations, recognize protection needs, and provide refugees the special status they are entitled under international law.

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