

# **The Weakest Link**

**Migrant Labor in  
Domestic and  
QIZ Sectors  
in Jordan 2010**



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QIZ Sectors in Jordan 2010**

Prepared by

**Tamkeen Center for Legal aid and Human Rights**

Sponsored by

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## Introduction

Migrant workers' main objective is seeking financial resources in order to support their family and reach a higher standard of living than they experience in their home countries. Most of the migrant workers in Jordan have a low level of education and therefore lack full awareness of their rights. Normally they emigrate from poor countries or countries with political and/or economic instability, which might cause them to become victims of many forms of forced labor.

Migrant workers in Jordan usually work in certain jobs that Jordanians avoid, such as domestic work, construction, the apparel and textile industry and other services industries. Jordan has made notable progress toward protecting the rights of migrant workers through legislative reforms aimed to increase equity. Nevertheless, our and other parties' observations of the status of the migrant workers indicate that some of the legislation still needs to be reviewed; observations also reveal that many practices of the official parties, employers or recruitment agencies violate migrant workers' rights and hinder the implementation of legislative reforms.

Such practices, no doubt, are not the norm, and throughout the year 2010 Tamkeen Center recorded both negative and positive aspects concerning the status of migrant labor in Jordan. Also, some international organizations' reports revealed many forms of violating the rights of migrant labor in Jordan, few of these reports considered the overall situation of migrant workers in Jordan satisfying.

This is the second annual report of the Tamkeen Center for Legal Aid and Human Rights; it will address the status of migrant labor. The first annual report, "Double Alienation" was issued last year and focused on categories of domestic workers. Tamkeen intended to focus future annual reports on a different category of migrant workers each year. However, we decided it would be suitable to address both migrant domestic workers and migrant workers in Qualified Industrial Zones because these two categories are subject to recurrent abuses and are the most vulnerable group due to legislative reasons, administrative practices and the actions of their employers.

**Tamkeen Center for Legal Aid and Human Rights**  
**Amman-Jordan**  
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## Executive Summary

Jordan has ratified many international human rights covenants as well as the International Labor Organization Conventions. The Jordanian Judiciary considers these ratified covenants pursuant to principles more forceful than national law.

A migrant worker with illegal residence is detained, sometimes for long periods, because he is unable to pay fines that may exceed the residence permit fees. Tamkeen observed many cases in which migrant workers were unable to leave Jordan due to fines accumulating. This is a violation of article 12/2 of the International Convention on the Civil and Political Rights stating, "each person has the right to leave a country including his own country." The current report reveals that in the Law of Residency and Foreigner's Affairs, the worker is penalized when his employer does not apply for a residence permit for him, although at the same time, the law does not allow the worker to apply for a residence permit himself.

On July 15, 2010, article 12 of the Jordanian Labor Law no. 8 /1996 was amended pursuant to temporary law no 26/2010, which canceled the sentence "priority in employment is to be given to Arab workers." However, the regulations and systems that distinguish between Arab and migrant workers concerning work permits fees were not changed. Substantial changes were implemented in labor associations to allow migrant workers to join them.

### **Migrant Domestic Workers**

The regulation of domestic workers, cooks, gardeners and workers who fall within category no. 90/2009 explicitly restricts the individuals' right of movements as recognized by article no. 21/1 of the International Covenant on the Civil and Political Rights, "Everyone lawfully within a territory of a state shall, within that territory, have the liberty of movement and freedom to choose his residence." Additionally, according to that covenant, the state should undertake to protect the rights recognized in article 12 from any internal or external interference. Moreover, the regulation contradicts the labor law regarding work hours; it did not explain the health care that domestic workers should enjoy; and it did not ensure the workers' right to keep their passports or the right to change employer. In addition, until now, the regulation has not been implemented.

Violations of the rights of domestic workers take several forms. Passport confiscation by the employer or the recruitment agencies is quite notable, as it applies pressure to the worker to force her to stay at work. This violates both article 12/4 of the International Covenant on Civil and Political Rights and article 18 of the Law of Passports no. 3/2002. Sometimes the worker's employment contract is confiscated as well, so that the worker cannot keep a copy, which violates article 15 of the Labor Law and the Labor Regulations no. 90/2009.

Many women migrant domestic worker become subject to physical abuse. Their employers or recruitment agencies sometimes beat them because, in the employer's opinion, the worker is not doing her job properly or refuses to do the work. Some cut the worker's hair, which is a dignity offense. Most of the workers are subject to verbal abuse. In some cases, workers are sexually abused and even raped.

Employers who do not carry out their obligations to apply for work and residence permits force their workers into an illegal position and makes it difficult for them to return to their home countries because of the accumulation of residency fines. These practices form an explicit violation of article 4/a of regulation no. 90/2009, which forced employers to pay the annual cost of a residence and work permit for the worker; it also violates article 12 of the Labor Law.

Domestic workers suffer from long working hours that may exceed 14 hours a day and lack of a weekly day off. They are sometimes forced to work in more than one house when employers force the worker to work for relatives and/or friends without the worker's consent. Some workers suffer from salary payment delays or even from completely withholding compensation. Some employers deliberately delays payment especially during the first months of employment, to make sure the worker suits them. Otherwise the salaries are considered as their compensation for what they have paid

Most of the time the worker is not allowed to leave the house; detention makes it extremely difficult to report any abuses and compounds the psychological and social problems she faces if she is physically or sexually abused. This forced confinement restrains the worker from demanding her rights or proving physical or sexual abuse, especially if the employer is concerned that she might escape days after being abused.

Some workers told Tamkeen that the cost of health care is deducted from their monthly salary, while in other cases the employer would not provide proper medical treatment for the worker. If the employer discovers she needs continuous treatment, he returns her back to the agency. This can result in exploitation when the recruitment agency forces her to work in order to pay the cost of bringing her and any other expenses, despite that regulation no. 90/2009 states that the obligations of the employer include providing health care to the worker.

When the employment contract ends, the worker is sometimes forced by her employer or the agency to stay and work to benefit from "reselling" her or by making her work for their own interest on a daily work system, which causes her to stay for years without her consent.

### **Qualified Industrial Zones QIZs**

Despite all the privileges gained by investors of QIZs– such as exempting their production from 100 percent of taxes and custom fees – they did not achieve their main objective: creating job opportunities for Jordanians in an attempt to eradicate poverty and unemployment. The percentage of Jordanian workers in the QIZs was 23 percent due to the dismal work environment including low wages and long working hours. Thus, we conclude that QIZs not only did not achieve the initial objectives establishing them, but they also become a fertile ground for violations of human rights and a place for human trafficking, which has made Jordan a subject of criticism.

Violations of the rights of the QIZs' workers are similar to those of the domestic workers: passport and employment contract confiscation and long working hours. Tamkeen reviewed several groups of workers in the factories. Observations revealed that many factories' managements force them into daily extra work which may amount 14 hours in one day, which is contrary to what was stipulated in the international labor agreements, Jordanian labor law and the Golden List criteria. In addition to forced extra work, some factories do not pay for the extra work, delay paying salaries for months and deprive the workers of annual increases in salary, as reported by some interviewed workers who have been working for the same factory for 3-8 years without any annual increment.

Tamkeen witnessed cases where the workers were not able to receive salaries when the factory closed, while its owner escapes by declaring bankruptcy or by a Ministry of Labor order. This occurs especially when the market value of the factory and the bank's guarantees are not enough to pay workers' wages, leaving them with no employer, which violates article 12/f of the regulations and terms of bringing and recruiting non Jordanians in QIZs. Normally, procedures of changing employers are long and complicated.

QIZs workers are vulnerable to forced change of employment contracts. Contracts are confiscated the minute they enter the country, and they are forced to sign different contracts

Most often, workers of QIZs are subject to physical or verbal abuse in order to control them, prevent them from demanding their rights and force them to work. There were many claims by women workers of sexual abuse or even rape by factories management.

Most of the workers in QIZs do not have health insurance and some factories neglect periodic medical examination for the workers. When a case of infectious disease is discovered, the worker is deported instead of given medical treatment, while the rest of the workers are not informed or examined, a neglect that can spread the infection among thousands of workers in some factories. The social security law covers work injuries, but the worker loses this right if he is not enrolled by the employer.

Tamkeen observed many cases of factories managements who do not carry out their obligations to apply for work and residence permit for their workers, violating previously mentioned legislation such as Labor Law and the Law of Residence and Foreigners' Affairs. This leaves the workers in a fragile position of being in the country illegally and being subject to deportation.

Work accommodation are poor: rooms are humid, overcrowded and lack ventilation, with 6-10 beds in small areas not exceeding 4x3 m<sup>2</sup> that are dirty and full of insects. There are no wardrobes, so most of workers' clothes are kept in bags, and accommodations lack heaters and a sufficient number of blanket.

### **Avenues of Redress**

The Directorate of Domestic Workers Affairs was established as an important step toward improving the status of domestic workers, but unfortunately until now, the Directorate is only maintaining the rights of employers with little consideration of the rights of domestic workers. They lack a clear mechanism to receive and check complaints, especially those of women workers in the houses. Despite the fact that the hotline service has been provided in order to receive workers' complaints, Tamkeen trials to call the hotline were in vain; there were no responses.

In Jordan, everyone has the right to resort to the law on any grounds without discrimination, but for a migrant worker it is quite risky and challenging for many reasons. They are not informed about the provisions of the law and of the possibility of demanding their rights; they are scared of being illegal in regards to the Labor and Residency Law, although the judge actually does not ask the worker whether he holds work or residence permits; they are worried about not having the employment contract or any documents to prove demanded rights, including passport or other identification; they know the difficulty of providing evidence of abuse, especially for women domestic workers; and they are scared of retention or deportation. Additionally, the lengthy time of the legal process – although the Labor Law stipulates the necessity of solving workers' conflicts within no more than three months – can restrains workers from resorting to legal redress.

Despite of the improvements in dealing with migrant workers in police stations in a more respectful way and working to ensure justice, there are still major problems in the "absconding report." "Absconding report" results in confinement of the worker, even if he is the plaintiff, until the employer come to the station. If the employer does not arrive, the worker is kept in detention. Additionally inappropriate is that the worker is always considered a defendant and not a plaintiff.

### **Hindrances to Redress**

Until now, there is no state shelter for abused worker, which is a violation of article 1/11 of the International Covenant on Economic, Social and Cultural Rights and the International Declaration of Human Rights, article 25/1.

within and no more than three months, causes restrains workers from resorting to legal redress. Despite of the improvement in dealing with migrant workers in police stations that dealt with them in a distinguished way and did their best to ensure justice, still there are a major restrain in doing so which is the “absconding report”. “Absconding report” results in confinement of the worker , even if he was the plaintiff, until the employer come to the station, if not, the worker is kept confined; and the odd thing is that the worker is always looked at as a defendant not as a plaintiff.

### **Hindrances to Redress**

Till now, there is no state shelter for abused worker which is a violation of article 1/11 of the International Covenant on Economic, Social and Cultural Rights and the International Declaration of Human Rights, article 25/1. Embassies of domestic labor sending countries provide shelters but are always crowded, and those who take refuge there are deprived from freedom of movement.

The greatest hindrance for the worker to obtain justice is the absconding report, when the employer reports the worker’s absconding from work place, and he may report a theft by the worker as well incase of any abuse complaints by the worker. The worker then might be arrested any minute, and could not be released unless he is bailed out by a Jordanian citizen. This created a bail market where the cost of a “bailman” starts from JD 50 and upwards, giving the bailman ability to blackmail the worker.

The actual practices of the employer enable him to demand deportation of the worker even without violating labor and residency law. Tamkeen dealt with a case where the female employer reported to the police a robbery by her Philippine female workers. She asked not to file a claim but would like them to be deported, despite the fact that they have work and residency permits. Based on her statements, the Security Directorate recommended to the Governor of Greater Amman Municipality that both of the workers should be deported without being able to given the right to counterclaim and seek fair legal action.

### **Human Trafficking**

In Jordan national law, the concept of Human Trafficking is not well defined making it difficult to be applied; and some of the items within the definition are separate crimes according to criminal law, such as kidnapping, fraud and forced prostitution. The of proper definition has lead the judicial system to include the complains of human trafficking among other legal descriptions that are more or less clear such as harassment, rape, freedom deprive or any other forms of crimes.

Observations revealed that in many cases the migrant labor in Jordan is deceived with unreal employment contracts and wages. Once they are in Jordan, they are forced to sign different contracts with much less monthly salaries than that agreed upon. Thus, the worker’s movement from his home country into Jordan is implemented with fraud and cheating. Likewise, when the female worker is returned to the agency, they force her to work in many houses to repay the cost of recruitment paid by the employer, or to pay for her return home ticket. Mostly, migrant workers are subject to forced labor or slavery like situations represented in the several forms of exploitations such as all kinds of harassment, total or partial nonpayment, confinement and lack of freedom of movement, passport confiscation, long daily working hours, lack of vacations and a weekly day off and many other forms of violations that deprive the worker from enjoying his fundamental rights recognized in several legislations. Hence the worker falls under a form of human trafficking called debt bondage.



## General Legal Framework of Migrant Labor in Jordan

The right to work is one of the main rights recognized by international covenants and national legislation, with no discrimination made between local workers and migrant workers. In the last few years, Jordan has amended its labor law and issued a number of regulations and instructions regarding migrant labor – issues that were previously neglected. The following describes the legal framework of migrant labor contained within the major international conventions ratified by Jordan, followed by an analysis and explanation of the Jordanian national legislation on migrant workers.

### International Conventions

#### A- Legal Force of International Conventions Ratified by Jordan:

The Jordanian Judiciary concluded that ratified international conventions have a greater force over national laws, which means these conventions should be enforced even when they contradict with national laws; Jordanian Court of Cassation decided that “international conventions take precedence over national judicial decisions”<sup>1</sup>. This was also supported by the Jordanian Jurisprudence<sup>2</sup> that stressed that it is necessary for the covenants to be more forceful than the National Law to ensure their stability, comply with international commitments and to protect individuals’ rights recognized in international conventions which are signed by countries with complete free will<sup>3</sup>. In the past, both the Court of First Instance and the Court of Conciliation based many of their judgment on these conventions<sup>4</sup>.

#### B-International Conventions Ratified by Jordan

#### International Conventions ratified by Jordan include the following:

##### First: Human Rights Conventions

Jordan has joined the International Convention on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on the Elimination of All Forms of Racial Discrimination, the United Nations Convention on the Rights of the Child and the International Covenant on the Elimination of All Forms of Discrimination against Women. All of these agreements were published in the formal Gazette.

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<sup>1</sup> Decision of Court of Cassation No. 599/1999, chapter in October 16, 1999, JBA magazine/2000, p 3258; in the same contest Decision of Court of Cassation No. 3965/2003, chapter in Feb. 29/2004, Adala Center publishing, electronic copy/2007; Decision of Court of Cassation No.12/1970; Decision of Court of Cassation No.38/1991 and Decision of Court of Cassation No. 768/1991.

<sup>2</sup> Rashad El Sayed, “General International Law”, 2010, pp 147-148, Dar Wael Publishing; Muhammad Yusuf Elwan “General International Law, introduction and resources”, p325-326, Dar Wael Publishing, Amman/2003; Ghassan E Jundi “ Al JamalyatElBorkanya principles of General International Law”(resources)p 136, Dar Wael Publishing, Amman/2005; SalahElDeenAmer “Introduction to General International Law”, p 176, Dar El nahda El Arabia/2002; article 151 of Egypt constitution and article2/33 of Jordan constitution.

<sup>3</sup> Salem Elkeswani “Principles of Constitutional Law, a study of Jordan constitution system” p 247, AlKeswani Press, 1983.

<sup>4</sup> For instance, Tafeela court referred to the “Convention on the Elimination of all Forms of Discrimination against Women” and the “International Convention on Civil and Political Rights” to decide in changing a name of a girl from ElHasa, [www.sarayanews.com/object-article/view/id/39586](http://www.sarayanews.com/object-article/view/id/39586).

These International Human Rights Covenants are of importance to this report because their provisions apply all individuals within the territory of a state who are subject to its law, without any form of discrimination whether ethnic, racial, gender, linguistic, religious, political, nationality, social, ownership, birth or any other form of discrimination as addressed in the International Convention on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights<sup>1</sup>

A state is required to bear the responsibility to issue proper measures to protect human rights<sup>2</sup>, which is confirmed by the High Commissioner of Human Rights in his report in this regard in 2007.<sup>3</sup>

Jordan is not a signatory to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990, which came into effect on the 1st of July, 2003. This deprives migrant labor of major protection provided within this legal framework.

It should be noted that states that are not signatures of the convention are still open to criticism by the UN. In 1999, the UNHR Committee established the mandate of the Special Rapporteur on Human Rights of the Migrants, which includes all countries; regardless on if they are a state party to this or other human rights conventions.

As for human trafficking, Jordan has joined the UN Convention against Transnational Organized Crime and its Protocols for 2000. One of these was the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children<sup>4</sup>. In order to enact this Protocol, Jordan issued a law to prevent human trafficking, which will be discussed later in this report.<sup>5</sup>

## Second: International Labor Conventions

The International Labor Organization (ILO) Declaration on Fundamental Principles and Rights at Work adopted in its 86th session in June 18, 1998 is of great importance. It obliged all state members, even if have not ratified the Conventions in question, to respect and realize four fundamental principles and rights: freedom of association and effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labor; the effective abolition of child labor; elimination of discrimination in employment and occupations. Jordan, as a member of the ILO, was obliged to declare those principles. Moreover, Jordan has signed 24 international work agreements, although only 14 of them were published in the formal Gazette.<sup>6</sup> As of the date of submitting this report, Jordan has not signed number of important conventions, including the following: Convention No.87/1948 on the Freedom of Association and Protection of the Right to Organize, Convention No. 98 on the Right to Organize and Collective Bargaining, Convention No.154/1981 on Collective Bargaining and the Convention on Equal Remuneration for Men and Women workers ("equal payment for equal work"). The Government of Jordan has not presented any justification for not signing these conventions.

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<sup>1</sup> Article 1/2 "International Convention on Civil and Political Rights" and article 2/1 of the "International Covenant on Economic, Social and Cultural Rights".

<sup>2</sup> John H. Knox, Horizontal Human Rights Law, the American Journal of International Law, Vol. 102, No. 1, Jan. 2008, p 29.

<sup>3</sup> The office of the UN High Commissioner for Human Rights, State Responsibilities to Regulate and Adjudicate Corporate Activities under the UN core human Rights Treaties, May 2007.

<sup>4</sup> Sixth Annual Report of the National Center for human Rights, Human rights Status in HKJ, 2009, p 92.

<sup>5</sup> See section 5 of the present report.

<sup>6</sup> agreement No.29/1930 on Forced Labor, agreement No.81/1947 on Labor Inspection in trade and industry, agreement No.98/1949 on applying principles of the rights to organize and collective bargain, agreement No. 100/1952 on equal payment for equal work, agreement No. 111/1958 on vocational discrimination, agreement No. 116/1961 on magisterial review of agreements prepared by the general conference in order to unify texts regarding boards reports about agreements process, agreement No. 118/1962 on equalizing between local and foreign workers in social security, agreement No. 119/1963 on equipment safety measures, agreement No. 120/1963 on health conditions in trade factories and offices, agreement 122/1964 on recruitment policy, agreement No.123/1965 on lowest age for working in mines, agreement No.124/1965 on medical examination of young people who work in mines and agreement No.138/1973 on the lowest age for recruitment.

## National Legislations

### a-Law of Residency and Foreigners' Affairs no.24/1973

This law is the main reference concerning foreigners' affairs dealing with residency and deportation. Following are its main terms relevant to migrant workers:

Article 16 of this law states that Jordanian citizens, companies or entities should not employ a foreigner unless he/she has a residency permit, except for experts who are hired for technical or practical purpose, provided that their work duration does not exceed three months. Article 18 obligates any foreigner who would like to reside or stay in Jordan to have a residency permit in accordance with this law, and to leave the state at the end of the permit time unless it is being renewed. Article 19 gives the Minister of Interior the authority, upon the recommendation of the Public Security Director, to approve or reject a residency permit application, or even cancel it without giving a reason. The rationale for an administrative decision does not need to be defined.<sup>1</sup>

Articles 31 and 32 gave the administrative governor the right to deport a foreigner based on a court decision that he/she illegally entered the country. Article 37 states that the Minister of Interior, based on a recommendation of Public Security Director, has the right to deport a foreigner and to temporarily detain the person to be deported until the implementation of deportation procedures; once deported, a foreigner is not allowed to return to the country except with a special permit from the Minister. The Minister is not to display reasons for deportation, and he enjoys an indefinite implied power so long as he does not abuse it.<sup>2</sup>

The terms of the Law of Residency and Foreigners' Affairs might not agree with article 13 of the International Convention on the Civil and Political Rights: "an alien (a foreigner) lawfully in the territory of a State Party to the present Covenant may be expelled there from only in pursuance of a decision reached in accordance with law."

A foreigner is committed to pay JD 1,5 for each day he stays in Jordan without a residency permit. The Minister of Interior, based on the recommendation of Public Security Director, has the legal power to exempt the foreigner from these fines if they do not exceed JD 250. If so, the exemption is to be granted by the Council of Ministers according to Minister of Interior's recommendation.<sup>3</sup>

It is worth emphasizing that an illegal foreigner in Jordan may not leave the country except when all fines are paid, or an exemption from the Minister is obtained.

A Jordanian employer has to apply for residency and work permit for the worker. However, when he does not carry out or refuses to complete these obligations, it is the migrant worker who has to pay the fines and is penalized and detained for violating the law.

Tamkeen observed several cases where it was difficult for migrant workers to return to their home countries because of accumulated fines, which is against article 12/2 of the International Convention on Civil and Political Rights "every one shall be free to leave any country including his own."

In most of the cases, an illegal migrant worker is detained because he is unable to pay the residency fines. According to officials in the Public Security, the one night in a detention center costs the Government of Jordan JD 22, which means that the Government loses JD 20,5 for each night of worker's detention.<sup>4</sup>

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<sup>1</sup> Decision of Supreme Court of Justice No. 22/1988 in March 12/1988, and No. 25/1988 in June 29/1988.

<sup>2</sup> see for example decisions of Supreme Court of Justice No. 192/2005 in June 14/2005, No.434/2002 in Jan. 28, 2002, No.348/1999 in Dec. 19, 1999, No. 543/1998 in March 6, 1999, No. 523/1998 in Feb. 23, 1999 and No. 233/1997 in Jan.3, 1998.

<sup>3</sup> Article 34 of the residency and foreigners' affairs law.

<sup>4</sup> Clare Escoffier. Pierre Tainturier. Ayman Halasa. Naima Baba and Chadi Sidhom. Economic and Social Rights of Migrants and Refugees in the Euro-Med Region. Case Studies: France, Jordan and Morocco. Euro-Mediterranean Human Rights Network (EMHRN). Copenhagen. December 2008. p 66.

## b- Jordanian Labor Law No. 8/ 1996

The Labor Law contains several legal rules that control work relationship where some people get paid for doing work for other people under their directions and observation. The law basically aims at balancing that relationship through strict rules not to be agreed upon violating them.

### First: Discrimination between Foreign Workers

In general, the Labor Law does not discriminate between citizens and foreigners in regard to labor rights, but there are a few instances where it does not agree with international criteria.

According to the Labor Law, a non-Jordanian worker should not be employed, except with approval of the Minister of Labor or his delegate, provided that the work requires experience and efficiency not available in the Jordanian workforce, or if the available number is insufficient. Priority should be given to Arab experts, technicians and workers. The worker should obtain a work permit from the Minister of Labor or his delegate before employment, and the assignment duration should not exceed a one year and can be renewed for other similar period. When the employer violates the rules of that law, he should be issued not less JD 100 but not exceeding JD 150 penalty fines for each month or part of the month a worker is been hired against the law. The Minister orders deportation of the worker, who should then not be recruited for at least three years from the date of implementing the deportation decision.<sup>1</sup>

In July 15, 2010, article 12 was amended according to the temporary law no. 26/ 2010 to cancel "priority is to be given to Arabs,"<sup>2</sup> which was against the international covenant on the Elimination of All Forms of Discrimination, as well as the two other international conventions.

Nevertheless, regulations of the old law are still valid, which are a form of discrimination between Arab and foreign workers in regards to work permit fees. The fees of work permits for migrant workers were defined by regulation no. 36/ 1997 as follows: JD 300 for employing a foreign worker, JD 180 for an Arab worker who works in all fields except agriculture where the fees are JD 120 for a foreigner and JD 60 for an Arab; in QIZs and for the purpose of issuing or renewing a work permit for a year or any part of it, the employer pays JD 150 for each foreign worker during the first three years of the project, JD 75 the fourth year and the years after. It is worth mentioning here that the difference in fees according to the field of work is not forbidden by international conventions because the differentiation is based on objective reasons, while nationality-based discrimination is forbidden.

The amended law emphasized the penalty upon whom ever employs a foreigner without obtaining a work permit according to the rules. The fine should not be less than JD 200 and not exceeding JD 500, but should be doubled if the penalty is repeated.<sup>3</sup>

### Second: Joining Labor Associations

Substantial changes have been made to legislation concerning labor associations through the amended law No. 26/ 2010, which allows fifty members of a certain occupation, and similar or related occupations, to establish an association. Although the law required that the initiator of the association be Jordanian, it allows any worker who is not less than 18 years old to join the association. Therefore, the law, under this amendment, allows migrant workers to join associations.<sup>4</sup>

### Third: The Effect of the Work Permit upon the Validity of the Employment Contract

The Court of Cassation decided that "the employment contract between the foreigner worker and Jordanian employer, when containing all its elements according to the general rules, is valid even if the worker has not obtained the prescribed permit in article 12, because what was included in it is merely regulating procedure to control migrant labor and limit their effect."<sup>5</sup>

<sup>1</sup> Article 12 of Jordan Labor Law <sup>2</sup> Article 5 of the amended law canceled the phrase (priority is to be given to Arab experts and technicians) at the end of paragraph (a) in article 12 of the original law, and it was replaced by (the Minister has the legal authority to issue the regulations needed to regulate recruitment of non Jordanian workers). <sup>3</sup> Article 5 of the amended law canceled (not less than JD100 and not exceed JD 150 for any non Jordanian worker illegally employed) from article (e) of article 12, and replaced it with (not less than JD200 and not exceed JD500 for any non Jordanian worker employed against the provision of the present law, the fine to be doubled when recurrent). <sup>4</sup> According to article 25 of the amended law that canceled article 98 of the previous law. <sup>5</sup> Decisions of Court of Cassation No. 3705/2005 in Feb.20,2005; No.3444/2004 in May 20,2005; No. 655/2004 in July 21,2004 and No.3860/2003 in Feb. 16,2004.

#### Fourth: Health Care

Regarding migrant workers health care, regulations of Ministry of labor do not discriminate between Jordanian and foreign workers. The regulation No.43/1998 of Prevention and Safety and Industrial Equipments and Machines obligates the employer to take preventive measures and procedures against work risks. Regulation No.42/1998 for medical and preventive care obligates the employer to provide periodical medical tests, hire the needed number of doctors and nurses and to undertake the expenses of medical procedures.<sup>1</sup> Similarly, Social Security covers medical treatment for work injuries and disease without discrimination on the ground of nationality,<sup>2</sup> but such provisions insure only registered members.

Chronic diseases and other forms of injuries rather than work injuries do not fall under any form of health care system. Therefore, the worker has to pay those medical expenses from his own pocket, a problem revealed from the complaints received by Tamkeen.

#### Fifth: Wages and Extra Work

The Decision of the Committee Defining the Minimum Wage was made according to article 52<sup>3</sup> of the labor law on October 14, 2008 and determined that the minimum wage would be JD 150 per month. It covers all workers except those in the clothes industry, domestic workers and gardeners, whose minimum wage is defined by the previous decision of JD 110 per month. Although the former decision did not differentiate between Jordanians and foreigners in its application, it did not explain the rationale for this exception, so it is difficult to determine whether the discrimination is legal according to international criteria.

The labor law in article 59/a states that "it is permitted to make the worker do more than his daily or weekly working hours with his consent provided that he should be paid for each extra hour not less than 125% of his original wage," and 59/b states, "if the worker does work on his weekly day-off or during religious or official vacations he should be paid additional wage not less than 150% of his original wage."

Moreover, according to article (57) of Jordanian Labor Law, The employer may put the employee to work more than the ordinary working hours in few cases; provided that the employee receives, in any of these cases, the overtime pay provided for in the law; where the worker may carry out the Establishments annual inventory, preparing the balance sheet, and closing accounts, getting ready to sell at discounted prices provided that the numbers of days on which the provisions of this exception are applied do not exceed thirty days per year and that the actual working hours do not exceed ten hours every day thereof. Also , the employer may put the employee to work to avoid the occurrence of loss to the goods or any other item which is exposed to damage, to avoid the risks of a technical work or to receive certain materials, delivery or transporting of same.

Article 57 paragraph b was amended according to law No.26/ 2010 by adding, "provided that the number of the days that fall under this paragraph would not exceed twenty days in one year."<sup>4</sup> by doing so, the legislator limited employers' ability to miss-use article 57/b to force workers into working against their well.

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<sup>1</sup> Article 7 of the regulation obligates companies and factories to assign a doctor and a nurse for the workers according their number as follows: (50-100) workers a nurse and a part-time doctor; (102-500) workers, a full-time doctor and two nurses within a health unit; (501-1000) workers, two full-time doctors and three nurses within a health unit; (1001 workers upwards), three full-time doctors and four nurses within a health unit.

<sup>2</sup> In article a/4 of the social security law No. 19/2001 " the provisions of the present law are enforced on all workers who are not below sixteen years old without any grounds of racial discrimination, whatever the contract duration or form was, and whatever the nature or value of wages, whether performing the work was mainly inside the country or outside, providing that there wouldn't be any violation of the provisions of the international conventions that regulate principles of insurance duplication"

<sup>3</sup> In article 52 of the labor law: a) the Council of Ministers, on a recommendation by the Minister, will form a committee of equal numbers of representatives from the Ministry, workers and employers, the Council will assign one of its members as the head of committee; its task would be to determine the minimum wages in JD in general or for a specific region or vocation; its membership would be two renewable years. b) the head of committee will call them to meet whenever there is a need to, and their decisions would be submitted to the Minister when not made by majority so he would submit them to the Council to make the decision; the committee should take into consideration cost of living defined by authorized entities; their final decisions in accordance to the present article should be published in the official gazette including the date of enforcement.

<sup>4</sup> Article 19 of the amended law.

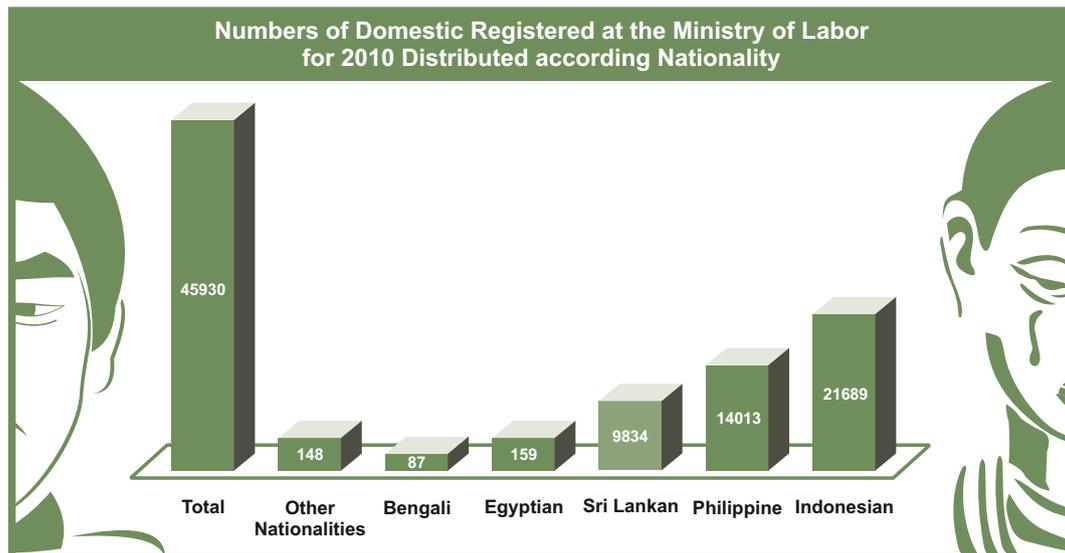
## Migrant Domestic Workers

Recruitment of foreign female domestic workers in Jordan began in the beginning of the 1980s. This phenomenon was caused by the increased number of working women, improved quality of life, and migration from the village of the city, all of which resulted in a separation of the family from the larger family that used to assist in raising the children. According to Ministry of Labor statistics, there were 45935 work permits for both male and female domestic workers in 2009.

Despite the fact that housekeeping is an essential part of house management, it is generally ignored and regarded as part of the informal economy. Those who work in this sector are usually marginalized individuals: women from different origins and ethnicities with poorer social and economical backgrounds.

Housekeeping, the work of domestic workers, includes: general cleaning of the house, doing the laundry, ironing clothes, cooking, washing cars, taking care of children and playing with them, preparing them to go to school and taking them to the school bus or even to school, taking care of family members with special needs, sick or old people, accompanying the family during shopping to carry purchased things or going to nearby stores to buy things. A domestic worker is supposed to be perfectly ready around the clock 24 hours.

Domestic work falls within the private life framework, which makes domestic workers vulnerable to exploitation because they have no proper ways of redress when offended. The last few years witnessed an increase in the number of domestic workers, while many local and international reports as well as public media pointed out the violations of their rights such as mistreatment and isolation. This caused labor-sending countries like Indonesia and Philippine to bane their citizens from immigrating to Jordan; Sri Lank blocked its people from immigrating to Jordan and then they permitted it.



## Legal Framework for Women Migrant Workers

The legal framework for domestic workers has developed greatly during the past few years; in 2006 the unified work contract was adopted and in August, 2008 article 3 of the labor law was amended in accordance with law No. 48 of 2008. According to this amendment, workers in the agriculture sector, domestic workers, cooks, gardeners and other migrant workers are included under the work law, provided that measurements to rule this category should be determined by a certain regulation to be issued for this purpose. This should include regulating their employment contracts, working time schedule and rest times, inspection and issues concerning their recruitment.

In October 2009, the regulation No. 90/2009 of domestic workers, cooks, gardeners, and workers who fall within that category was issued, after nearly a year after amending article 3 of the labor law. It included most of the terms of the unified work contract, but they still are not enforced. In a press interview with Al Arab Elyawm newspaper on September 26, 2010, the Minister of Work pointed out that the regulation has not been enforced despite being issued more than a year ago. He justified the government's delay by explaining its efforts to seek legislative stability; while applying the regulation without a thorough study would worsen the crises.<sup>1</sup> This was confusing because article 1 in the regulation stated that it should be enacted from the date of publishing in the official Gazette.<sup>2</sup>

If there was not legislative stability, how was the regulation issued? Why was it published in the official Gazette? Are the regulations being issued without proper study? What is even more confusing is the fact that the Ministry of Labor regards the regulation as a step they have taken towards improving the status of domestic workers and as an instrument to ensure their rights; yet there is no value of a regulation that is issued only on paper.

Article 9 of this regulation calls for the formation of a committee for non-Jordanian domestic workers' affairs. The committee membership includes: Ministry of Labor, Association of Foreign Domestic Labor Recruitment Agencies, Directorate of Public Security- Administrative of Residency, Borders and Foreigners' Affairs. The responsibilities of that committee will be determined within its forming decision. Article 8 of the regulation states that "both the employer and the worker are committed, at the end of the employment contract, to make a clearance of employment obligations signed under the Ministry supervision, and each of them should keep a copy; if the worker is non-Jordanian, the clearance should take place before he leaves the country." In article 11 the Ministry of Labor has the legal right to implement the necessary procedures when they receive a complaint or information concerning a violation of the worker's rights or the commitments of either the employer or the worker. According to article 3 of the regulation, the employment contract should be regulated according to a form adopted by the Ministry for that purpose, which should be written on four copies in two languages: Arabic and a language understood by the worker. The employer, the employee, the Ministry and the recruitment agency should keep a copy of the employment contract. Until now, none of the articles of that regulation have been enforced.

### Commentary notes on the Regulation:

1-The regulation explicitly restricts individual's freedom of movement, which is recognized in the International Covenant on Civil and Political Rights article 12/1, "everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence." According to the Covenant, the State should observe and ensure that the rights recognized in this Covenant are not interfered by any public or private entities.

2-The regulation disagrees with the Jordanian labor law, which defines working hours as eight hours. They are defined as ten hours within the regulation.

3-Absconding: When fleeing the working place without his employer (householder) being

<sup>1</sup> [www.alarabalyawm.net/print.php?news\\_id=254672](http://www.alarabalyawm.net/print.php?news_id=254672)

<sup>2</sup> The regulation was published in Oct.1, 2009 in the official gazette No. 2989, p 5348.

responsible for it, the worker bears all the due financial obligations set by the employment contract. In such cases, it is difficult for the worker to prove abuse by the employer due to the special nature of working in houses where the exploitation takes place in closed, private places.

4-The regulation penalizes the worker who violates its terms. In certain cases, that penalty could be a complete loss of all of the worker's labor rights. At the same time, such a severe penalty is not imposed on the employer; it only stated that, "if a violation was proven, the householder should be warned to solve it within a week from the date of notification; otherwise, he should receive a record of evidence and be a subject to the procedures stated in the existing Labor Law."<sup>1</sup> In the regulation, when the complaint is about the worker's residence, it should be checked by both a male and female labor inspectors to ensure proper enforcement of the law. However, checking the worker's residence depends on the householder permission. If he refuses the inspection, the Minister then has the power to take action to apply the needed procedures.

5-It lacks a clear definition of the worker's right of health care. Does health care include fundamental care or it hospital admission? Is the employer expected to enroll the worker in a health insurance?

6-The employer is obliged to pay for a ticket home only when the worker works for him two years.<sup>2</sup> What happens when the worker spends only one year? If the worker spends two years, each year with a different employer, who is responsible to pay for the return ticket?

7-The regulation does not guarantee the worker's right to keep her passport, which is contrary to the unified employment contract, where the worker keeps her passport.

8-Worker's freedom to change the employer was not included, which was the same as in the terms and procedures of recruiting migrants and their amendments /2009 where domestic and QIZs workers were excluded.

9-The regulation included many terms in the unified employment contract, such as requiring the employer to pay for the work permit and the worker's annual residency permit, but it did not enforce penalties when he violates such obligation. In contrast, the unified contract obligated the employer – if he does not obtain a residency permit for the worker –to pay the penalty fines in article 34 of the Residency law.

We concluded that the employer has the supreme power in the work relationship, which, as a result, encourages the principle of complete subjugation of the worker to the employer.

## **Main Violations of the Rights of Women Migrant Domestic Workers.**

Following are the main exploitations of women migrant domestic workers observed through the complaints received by Tamkeen Center in 2010:

### **a-Confiscation of Identification Documents**

Confiscation of identity documents is a common violation of the rights of all migrant workers in general and women domestic workers in particular. All women domestic workers who contacted Tamkeen said they did not have any identification documents: no passport, residency permit or work permit. These documents could be held with the employer or recruitment agencies who do not deny that they confiscate the worker's documents because these are their only guarantee to prevent the worker from absconding and/or return back home; in other words, the worker is kept as a hostage, although holding the documents does not prevent the workers from fleeing the work place. In most of the cases, the worker has no idea where her passport is, whether with her employer or the recruitment agency, because it is taken from her the minute she enters the country.

Passport confiscating is an explicit violation of article 12/4 of the International Covenant on Civil and Political Rights; and a breach of article 18 of the Law of Passports No.3/ 2002.<sup>3</sup> Passport confiscating is the greatest restriction to the worker to return home, and it makes it difficult for her to resort to legal redress because she lacks the identification documents.

<sup>1</sup> Article 11/d of regulation No. 90/2009. <sup>2</sup> Article 4/g of regulation No. 90/2009. <sup>3</sup> Review what was mentioned above regarding confiscating passport of the QIZs workers.



**Desayanki, Sri Lanli domestic worker**

I worked for a family. The agency delivered (my) passport to Papa (employer). I asked to keep my passport, Papa refused, he said give me JD700 to give it to you.

**Shandrani, Sri anlki domestic worker**

When I arrived to Jordan, a member of the agency took my passport; made me work in several houses. Every time I asked for it he refused.



**b-The Worker are not Given a Copy of the Employment Contract**

Less than 1% of the workers who came to Tamkeen had a copy of the employment contract that was signed in their home countries. The rest of them did not have a copy and complained that it was confiscated by the recruitment agency once they entered the country, and consequently the worker cannot claim any of her rights according to the contract, which is against article 15 of the Labor Law<sup>1</sup> and regulation No. 90/2009.<sup>2</sup>

**C-Physical, Psychological and Sexual Abuse:**

Many women domestic workers are subject to physical abuse such as beating by their employers or by some members of the recruitment agencies. This happens, from the employers and recruiters' points of view, because the worker does not do her job perfectly or even refuses to do work; sometimes they cut the worker's hair, which is a dignity offence. Most of the workers are subject to verbal abuse, and in most of the cases the workers get used to such insults because they develop a feeling of inferiority about themselves. Sexual abuse includes sexual harassment and sometimes rape, which is difficult to prove due to the special nature of their work; keeping the worker at home prohibited from going out lessens the chances of reporting the incident immediately after it happens. Moreover, some of the workers yield to the employer desires because they cannot refuse or they do not know where to go to complain. Currently, there is no effective system to monitor and report domestic workers abuse and mistreatment.



**Ranti, Indonesian Domestic Worker**

My real age is 17 years, while it is 24 in the passport. I come from a poor family and they need money. My age was falsified by the recruitment agency back in my country. When I came to Jordan I was only 16. Papa "the employer" forced me to accept \$100 as a monthly salary although it was \$175 in the employment contract in my country; nevertheless, I have received only \$500 during my working duration which exceeded 14 months. I had no idea how to do my job, Mamma was not tolerant to my mistakes, so she beat and rebuked me, and she kept doing so for 14 months. They did not allow me to leave the house, it was closed and the key was with Mamma. The last time she beat me it was harder than before, I could not take the torture anymore. I jumped from the second floor and ran away.

"Ranti suffered from several injuries all over her body including whip scars" Tamkeen



**Emilda, a Philippine Domestic Worker**

I came to work as a domestic worker, not to entertain the householder and his son! Papa "the employer" has been harassing me and touching my body since I arrived at their house, and I was always leaving the place wherever he was. At night, his son used to come to my bed and he raped me despite my resistance; he did it more than once. I had no one to help me and I could not tolerate so I escaped from the house.

<sup>1</sup> Article 15/a "1) employment contract should be issued in Arabic in two copies at least, each party should keep a copy, the worker is entitled to prove his demanded rights through every legal method if the contract wasn't issued in writing. 2) if the worker was a non Arab a further copy of the contract would be issued in a foreign language in accordance to directions by the minister for this purpose".

<sup>2</sup> Article 3 of regulation "employment contract I to be issued according to a form adopted by the Ministry for this purpose, in four copies, in Arabic and a further language understood by the worker, provided that the employer, the worker, the Ministry and the agency each would keep a copy of it".



**Neranjali, Sri Lankan Worker**

Am I human? Do I have rights like everybody else? Am I supposed to tolerate the beating to earn my salary which is supposed to be for doing my job? I was beaten by the “Madame” several times. I did not know whom to turn to; I resorted to the agency, they beat me and took me back to the “Madame”. I was confused, where to go?

**Farmshiri, Sri Lankan Worker**

I came from my country to work and support my family. I worked for 3 months without receiving any salary. I asked the “Madame” (the employer) to give me my salary but she refused; I fled to the agency and there one of the employees tried to rape me; I threatened him that I would throw myself out of the window.



**Wasanta, Sri Lankan worker**

I cannot take insult. My dignity is above everything. I am a servant but “Madame” has no right to insult me. She always rebuked me and insulted me; she used to call me donkey and stupid and she even beat me. It is true that I was paid my salary regularly, but I could not take the insults. She is a worker and I am a worker; would she accept her employer to rebuke and beat her? So do I but she could leave her job anytime while I could not.

**Jimsada, Sri Lanka domestic worker**

I worked for a family for three months without being paid. I ran to the agency where they beat me, cut my hair and locked me in the toilet for three nights.



**d-The Right to Terminate Employment Contract**

The Ministry of Labor requires the original employer’s agreement as a condition to terminate the employment contract. In most cases, the employer misuses that right and demands the money he paid the worker or additional sums of money. When the original employer dies, the Ministry of Labor also requires the approval of his heirs as a prerequisite to the worker change the employer. Tamkeen Center considers these practices of the Ministry to foster the principle of complete subjugation of the worker to the employer, which continues even after he dies. This leads us to ask: is the worker part of the estate that is transferred to the heirs? Doesn’t the legal capacity of a person end when he dies and so does the contract between him and his employee? Doesn’t this cancel the worker’s personality and makes her a private property of the employer that is transferred to his heirs? We were surprised when a female householder once told us she received the worker as part of the inheritance after the original employer died, but were even more surprised when we found out that the practices of the Ministry encourages it. Article 6 of the International Covenant on the Economic, Social and Cultural Rights recognizes the worker’s right to gain his living by work that he freely chooses or accepts.



**Samnelta, Sri Lankan**

I came here to work to support my family. Month after month I haven’t been paid and “Papa” (the employer) kept saying: “later.” A year later I asked him to let me work for another family, he refused. I escaped from the house; till now he wouldn’t give me the approval to work for another employer.



#### Nela, Philippine worker

I worked in a good house and was paid regularly. "Papa" (the employer) died so I wanted to work in another house but my new employer could not get me a new work permit. The approval of the previous employer is a must. I told them that "Papa" is dead, they required one of his heirs approval. All the heirs are outside Jordan.

#### e- Accumulation of Fines

Some employers do not meet their obligations in obtaining residency and work permits for the worker. This forces the worker into an illegal position in addition to making it difficult for them to return home due to fines accumulation. A worker cannot apply for a residency and work permit for herself; it should be done by the employer himself or a delegate. Not doing so is against of article 4/a of regulation No. 90/2009, which requires the employer to obtain a yearly residency and work permit for the worker. It is as well against article 12 of labor law. Despite being the employer's fault, the worker is penalized, so she becomes illegal for breaking residency law and is charged with JD 1,5 fines for each day. Although in the unified contract it is the employer who should obtain the annual permits at his own expense, and pay the fines if he neglects to do so; in the actual practice, it is the worker who is punished and forbidden from leaving the country unless she pays the fines. This is a violation of article 12/b of the Civil and Political Rights "everyone has the freedom to leave a country including his own."

#### Shandrani, Sri Lankan domestic worker

I came here 11 years ago through an agency. I worked for a family for 7 months but was paid for only 4 months. I ran to the agency who made me work for another family for 3 years. Neither of the two employers obtained residency and work permit for me. I want to return to my country, but who would pay the fines?



#### Sena, Sri Lankan domestic worker

Would I ever be able to return home? Would I be able to see my children? Fines have accumulated. At first I worked for an employer who did not obtain a residency permit for me. After two years I wanted to return home, he asked me to stay another year, then I asked to leave, he told me there are residency fines and he cannot pay them, and kicked me out of the house.

#### f- Long Working Hours and lack of Vacations

Domestic workers sometimes work more than 16 hours a day. Tamkeen noticed that workers arrive here through an agency without having any information about the job they are supposed to do or the family for whom she will work. In general, the tasks a domestic worker is expected to do may include cleaning, taking care of children and sick people, preparing food and taking care of pets. On the other hand, a family examines many files of the worker like her picture, age, marital status, number of children and previous expertise. Some workers find out they are not able to do their tasks. For example, one may be hired for cleaning and then discover that she is supposed to take care of sick and old people, or she has to work in more than one house. They end up suffering from long working hours in addition to not having a weekly day off. Article 6/a of regulation No. 90/ 2009, with reserve to the number of working hours which disagree with the Jordanian labor law, limited working hours to ten flexible hours. Article 7 of the same regulation granted the worker a weekly day off, which is to be agreed upon with the employer, and if she works during that day for a specific reason, the employer should compensate her by another day they agree upon. The same ensures the worker's right in an annual vacation and sick leaves. Added to that, some employers force workers to work for relatives and friends against their consent.



**Seriani, Sri Lankan domestic worker**

I came to work for two years to collect money to buy a house in my country. I worked for a lady. She had a kindergarten. I had to work in the kindergarten from 6 am until 6 pm, after that I had to clean the house. The lady forced me to work in some other houses.

**Irene, Philippine domestic worker**

I was hired to work as a nanny but found out that I had to do all the house work, in addition to working in a store the “Madame” (employer) owned. I used to wake up at 6am, go to the store and clean it, return at 9 am to do all house work. After I finish, I had to go back to the store to bring back clothes to clean and iron them. “Madame” used to beat me. I could not tolerate the situation.



**Lelanti, Sri Lankan domestic worker**

They told me my job was to clean, when I came here they asked me to take full care of an old lady: help her eat, drink, bathe and I had to change diapers for her in addition to the rest of the house work, above all that, that lady used to insult me.

**g- Non-Payment of Wages and Extra Work**

A domestic worker takes all the pain and homesickness in order to support their families, but they usually suffer from payment delays by their employees or even not being paid at all. Some employers deliberately delays payment especially during the first months until they make sure she is suitable for working for them, so if not, delayed salaries are counted as their compensation.

It was observed that in some cases there is an agreement between the agency and the employer to reduce the salary set in the employment contract against the worker’s consent. Non payment and/or delays of wages is a violation of article 7 of the International Convention on Economical, Social and Cultural Rights,<sup>1</sup> labor law and articles 4/b, 6/a of regulation No. 90/2009 which confirmed that the employer should pay the worker’s monthly salary in the Jordanian Dinar or any equivalent foreign currency, through ways defined by the Minister. In addition to that, none of the workers received by Tamkeen were paid for extra work.

**Christina, Philippine domestic worker**

I came to Jordan to work and get paid. I worked for two years without payment. “Madame” (the employer) said she would pay everything after two years. Two years later she forced me to work two more years in order to pay me my salaries. A year later I escaped from the house. I am not paid until now.



**Mercy, Philippine domestic worker**

I worked in a house. Before I came here they told me the salary would be \$200, but when I came they forced me to work for \$ 150, but I was not paid, the “Madame” (employer) used to tell me she would pay when I leave.

<sup>1</sup> Article 7 of the International Covenant on Economic, Social and Cultural Rights: “the States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular: (a) Remuneration which provides all workers, as a minimum, with: (1) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (2) A decent living for themselves and their families in accordance with the provisions of the present Covenant; (b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays”.

#### h- Forced Confinement at Employer's House

A worker is not allowed to leave the house, deprived from freedom and liberty of movement. She is kept at the employer's house, which makes it extremely difficult to report abuse, and compounds the psychological and social problems she faces if she is physically or sexually abused. This forced confinement restrains the worker from demanding her rights or proving physical or sexual abuse, especially if the employer is concerned that she might escape days after being abused. It is noteworthy that article 5/a/5 of regulation No. 90/2009 stated that a worker should not leave the house or be absent without the employer's approval, moreover, when the employer is not responsible for the worker's absconding, she is then committed to pay all financial obligations according to the contract, including the cost of her return back to her country, as set in article 5/c of the regulation. This means that the terms of the regulation disagrees with article 12/1 of the International Convention on Civil and Political Right: "everyone lawfully within the territory of a state shall have the right to liberty of movement and freedom to choose his residence"; according to this covenant, the state should protect the rights recognized in that article from any interference be it public or private.

#### i-Lack of Health Care

Some workers complain that health care expenses are deducted from the monthly salary. Whenever the employer finds out that the worker needs continuous medical treatment he takes her back to the agency, where a journey of exploitation begins; the agency forces her to work on daily basis in order to pay the cost of bringing her or any other expenses. Though in regulation 90/2009 health care expenses are part of employer's obligations, according to article 4/h, there is no clear definition of the concept: is only fundamental care covered or does it could include hospital admission? Despite the fact that each worker has insurance against accidents and life insurance, Tamkeen observed some hospital cases where workers fell from the balconies of the houses where they work and the employer admitted them to hospital then disappeared. The workers remain in hospital until the treatment bill is paid. Moreover, if the work permit is not renewed, the worker is deprived of her insurance against accidents and life insurance.

##### Boshba, , Sri Lankan domestic worker

During work I had a swelling in my hand; I was examined by a doctor who decided I needed a surgery. "Papa" (the employer) told me to ask my family back in Sri Lanka to send me money for the operation; he kicked me out of the house when I told him they don't have money. I went to the agency that paid the expenses provided that I pay them back after I get well. Then they sent me to work for a family so that my salary would pay the repayment.



##### Mesden, Indonesian worker

The agency took me to work for a family; they were not satisfied from my work so they sent me back to the agency. I was sent to another house. In my first day there and while I was cleaning a window there, I fell out from the second floor and broke my foot. They took me to a hospital and left me. I stayed there for 5 month despite that my foot was healed, because no one would pay the treatment expenses.

#### j- Enforced Labor after the Employment Contract Ends

Many workers are forced to work after the contract reaches an end if their employers deny their freedom to return back to their country. Alternatively, when the employers delegate returning the worker to her country to the agency, the agency may forces her to stay in order to gain more profit and benefit from "reselling" her by making her work on daily basis payment for their own interest. This may keep her in Jordan for years against her consent.

agency forces her to stay in order to gain more profit and benefit from “reselling” her by making her work on daily basis payment for their own interest. This may keep her in Jordan for years against her consent.

Ega, Indonesian domestic worker

I came to Jordan to work for two years. After the two years ended, the “Madame” (the employer) did not allow me to leave, she forced me to stay and work.



Noral, Indonesian domestic worker

My contract is for two years. My employer wouldn't allow me to leave at the end of the two years; I kept working for him for four years against my consent.

## Conclusions Regarding Violations of the Rights of Women Migrant

Tamkeen concluded that legislative factors, administrative practices and cultural and social beliefs, together, eventually turn the worker into a victim of forced labor and human trafficking that were recognized in international conventions ratified by the Hashemite Kingdom of Jordan.

Administrative legislations and practices empower the employer over worker, and grant him additional rights supporting him in front of her, such as the right to terminate contract, ability to report absconding as a police notification “APB”, riddance of contract obligations once she escapes from his house, ability not to allow her to change employer. Such practices deprive the worker from freedom of movement and restrain her from reporting mistreatment and exploitation, in addition to lack of efficient mechanisms to know for certain whether the employer meets his obligations in accordance with legislatives and employment contract or not; they, as well, give him the power to demand her deportation due to lack of efficiency in residency and foreigner's affairs law, with several other factors that have been mentioned before. Added to that, the right of the worker to terminate contract in the cases set in the labor law are almost nullified if front of all the mentioned above.

Regarding common social and cultural practices, Tamkeen has drawn the attention to this issue in their 2009 report. I was pointed out then that many employers regards the worker as a slave which created a social trend spread through within all levels of society to make it normal to her words like: my or her Sri Lankan, my or her Philippine Indonesian to refer to the domestic worker because everyone understands it means the “servant”, which means that socially it became a common practice to use the nationality and/ or possessive pronouns when talking about the worker, dropping her into property and possession. Some employers went even farther than that and considered the worker as part of property that could be inherited.<sup>1</sup>

No doubt that these violations are, according to international measures, a form of forced labor, because in such cases the work or service is not offered voluntarily but rather done under threat of penalty.

Some practices could be seen as slavery, as when recruitment agencies or employers force the worker to work on daily payment in order to repay what they consider debt which is actually the employment expenses.

<sup>1</sup> Tamkeen for Legal Aid and Human Rights, Double Alienation, the report on the status of migrant workers in Jordan/2009, p.24.

Supplementary Convention on the Abolition of Slavery, the Slave trade, and Institutions and Practices Similar to Slavery. The United Nation Conference recognizes this kind of forced labor as “slavery,” wherein a loan is used as an excuse to force a person into an exploitive situation with long working hours, no vacations, low wages and many other form of exploitation!<sup>1</sup>

## Employers' Rights

It is often the case that the employer’s extreme violations of a worker’s rights eventually lead the worker to escape. However, Tamkeen observed some cases where absconding or work refusal was not due any violations; on the contrary, the employer was performing all of his duties according to contract and legislation. Mostly a worker refuses to work or demands to return home because of emergency family reasons, the unexpected work nature, a better job opportunity or any other reason.

A domestic worker came to Tamkeen claiming that the employer did not pay her all her salaries, as she worked for 11 months, paid only for 5 months, and that she escaped from the house because of that.

Tamkeen learned for sure that she had received all her salaries in addition to 3 months in advance because she told her employer that she needed the money to send it to her family. Moreover, she used to enjoy all her rights in regard to a weekly day off and religious practices.

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A Sri Lankan domestic worker claimed sexual abuse by the employer, thus escaped only a day after she has been there.

It was revealed that she lied in her claim, and that she escaped because she intended to do so even before she was here so she can do a part time job which more feasible to her.

Tamkeen  
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Normally, the employer is faced with difficulty returning the worker home, due to the relatively large sum of money he has to pay to the recruitment agency in advance of the worker’s arrival in Jordan in the form of commissions, plane ticket, work permit fees, residency permit fees, medical tests and other kinds of expenses that can exceed JD 2000.

In general, there is no mechanism that enables the employer to regain what he paid when the worker refuses to work or leaves without justification.

According to actual practice, the possibilities are as follows:

- \* The employer takes the worker to the agency, where they offender threaten her to force her to work.
- \* The worker is forced to work for another employer.
- \* The recruitment agency forces the worker to work for daily payment to repay what has been paid by the original employer.

All these possibilities are against the relative legislation and could result in a form of forced labor because the original employer was unable to be repaid despite having met his obligations.

<sup>1</sup> HUMAN RIGHTS COUNCIL, PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS.CIVIL.POLITICAL.ECONOMIC.SOCIAL AND CULTURAL RIGHTS,INCLUDING THE RIGHT TO DEVELOPMENT. Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences.A/HRC/12/21.10 July 2009.Para. 41.

## Recruitment Agencies

In general, recruitment agencies and their staff are accused of mistreating domestic workers. No doubt some agencies have, and still are, violating the rights of domestic workers and treating them as if they were traded commodities. Such agencies deal with the employer with fraud and deceit. Nevertheless, there are many agencies that treat workers well and even help them gain their rights. In this context, a suitable mechanism should be established to close the agencies with repeated violations. The Ministry of Labor should implement serious investigations on the complaints about certain agencies, and act against them with full capacity.

A member of the administrative entity in the association of recruitment agencies noted the lack of fair investigations conducted by the Ministry of Labor in the pleas the recruitment agencies issue on behalf of the workers against employers' abuse. In addition, the Ministry always supports employers against agencies.

To explain the high cost of domestic worker employment, the chief of the recruitment agencies association explained that the cost is a result of the Ministry refusing to approve opening new markets for migrant labor, which is currently monopolized by three countries only. The employer pays a total of \$3000 detailed as follows: \$2000- \$ 2100 for the agent in the sending country, a cost which rises if the country blocks sending workers, requiring the worker to be sent to a neighboring country on a tourism visa before being transferred to Jordan, in a step to deceive state blockage; about \$ 700 for residency and work permits and fees of the employment contract paid at the embassy of the sending country; and costs for medical tests, life insurance policy and total or partial disability insurance.

The owners of recruitment agencies interviewed by Tamkeen explained that sometimes the worker refuses to work the minute she arrives and so brought back to the agency by the employer who claims his money back.

The owners of recruitment agencies say the reasons behind workers' refusal to work include the following:

1. She is being forced to come by her parents,
2. Home sickness and missing the family,
3. Unexpected work nature and lack of toleration,
4. The difference in social and weather circumstances.

According to signed agreements between the Government of Jordan and Governments of the sending countries, recruiters say that when a worker refuses to work, an official letter is sent to the embassy of her country so they would call the sending agency in order to repay the employer. This procedure is not enacted, and present regulation obligates the employer to pay for the residency and work permits, which may amount JD 500, in advance, with no available mechanism to regain these fees in case the worker refuses work without a reason.



## Migrant Workers in Qualified Industrial Zones (QIZs)

Qualified Industrial Zones (QIZs) are the direct effect of the Free Trade Agreement (FTA) signed by the Government of Jordan and the Government of the United States in 2000, and ratified issuance to law No. 24/2001 in accordance with article 2/33 of the Jordanian Constitution.

In article 6/1 of the FTA, Jordan and the United States reaffirmed their obligations, as members of the of International Labor Organization (ILO), to ensure and protect internationally recognized labor rights and include those protections in their national laws; these rights are defined in article 6/6 as follows:

- a. The right of association
- b. the right to organize and bargain collectively
- c. a prohibition on the use of any form of forced or compulsory labor
- d. a minimum age for the employment of children
- e. acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health.

### Are (QIZs) Economically Feasible?

Jordan QIZs offer great investment opportunities with special benefits and incentives. Products of these zones have the advantage of open access to the US market custom free and quota free, in addition to 100 percent tax exemption. Moreover, all the equipment, machinery and raw material used by the factories there are exempted from taxes.<sup>1</sup> these zones are excluded from property tax collected by municipalities, or else minimal taxes compared to other areas. Companies there may establish industrial building “prefab or barracks” over up to 70 percent of the industrial land, and they are allowed to construct up to four floors high quality buildings.

As all the profits are transferred overseas, and with all kinds of facilitations and exemptions presented for investors there by the Government, financial return to Jordan is relatively small. Still, the main objective of QIZs is to create job opportunities for the Jordanians, in an attempt to eliminate poverty and unemployment.<sup>2</sup> Reviewing statistics of the Ministry of Labor reveal that the number of Jordanians in QIZs is relatively small: in 2010 the total number of workers in QIZs was 35941, of which female workers constituted 19079 (64 percent); Jordanian workers amounted 8125 (23 percent of the total). These figures contradict the fundamental objective of these industrial zones: creating job opportunities for Jordanians. Work environment in QIZs, low wages and long working hours discourage Jordanians from working there. Additionally, QIZ employers prefer Asian labor because they are vulnerable to being exploited by employer by working long hours under harsh living conditions. They accept the mistreatment because otherwise they would lose their job or be deported, and lose the opportunity to work.

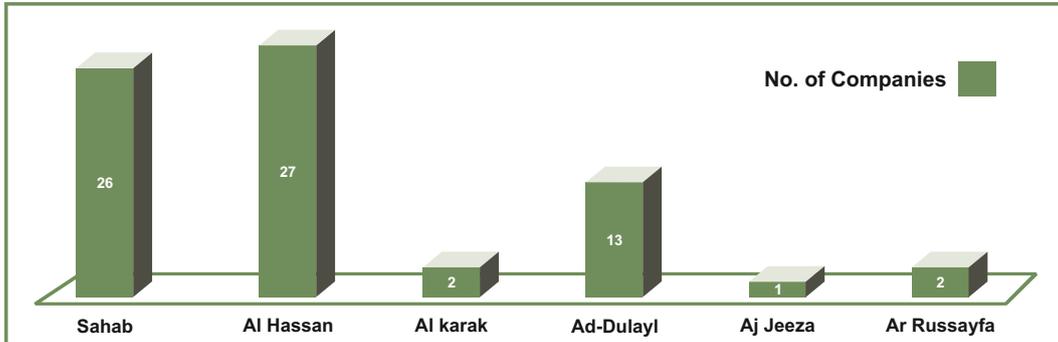
To conclude, QIZs have not achieved their goals; on the contrary, they have become a fertile ground for many forms of violations and a center of human trafficking, which has exposed Jordan to criticism.

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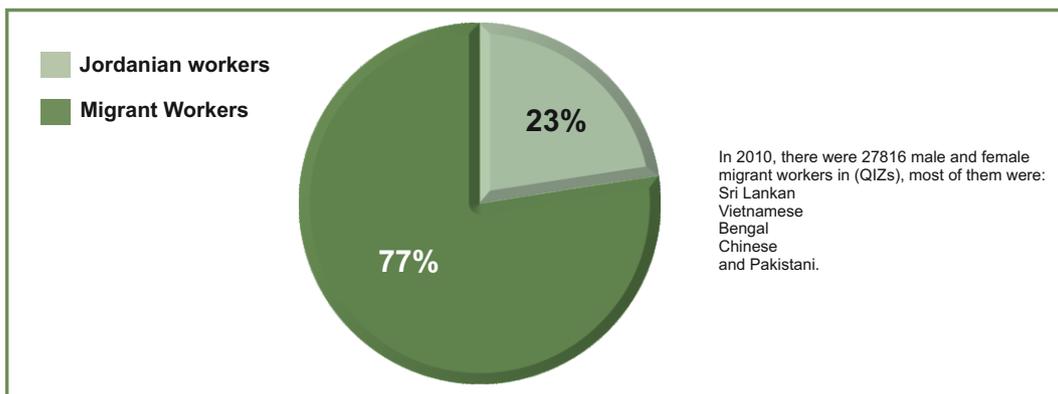
<sup>1</sup> Article 2 of the Free Trade Agreement with the US.

<sup>2</sup> Ibrahim Saif. The Socio-Economic Implications of the Qualified Industrial Zones in Jordan, Center for Strategic Studies University of Jordan/2006.p 33.

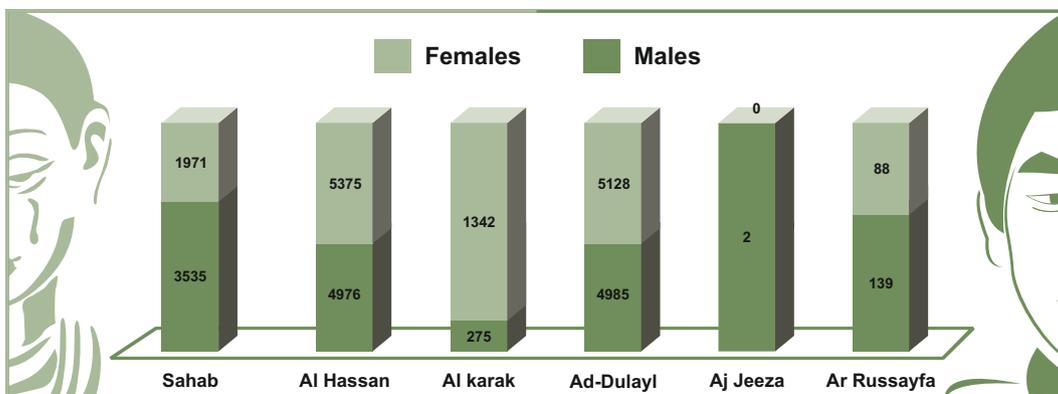
**Distribution of (QIZs) in Amman, Irbid and Zarqa.<sup>1</sup>**



**Percentage of Jordanian Workers (males and females) to Migrant Workers (males and females) in (QIZs):**



**Distribution of Migrant Workers in (QIZs) according to Area and Gender<sup>2</sup>**



<sup>1</sup> According to Ministry of Labor statistics for 2010.

<sup>2</sup> According to Ministry of Labor statistics for 2010.

## Recruitment Regulations of Migrant Labor in QIZs

In 2007, the Minister of Labor issued terms, regulations and procedures for recruiting non-Jordanians to QIZs in accordance to article 4 of non-Jordanians working permits fees regulation No. 36/ 1997 and its amendments. According to article 5, these regulations linked issuance of migrant labor work permits to reports prepared by the Jordan Investment Board, the Directorate of Workers Affairs and the Directorate of Employment and Training in the Ministry, which depict the status of the organization, what procedures have been implemented to gradually replace migrant labor with Jordanian worker and describe the productive capacity of the organization.<sup>1</sup> Nevertheless, it is apparent that the Ministry is not adhering to these regulations because the number of Jordanian workers in QIZs is continually declining.

The workers of QIZs are not allowed to transfer to any other productive field,<sup>2</sup> and the employer is responsible for workers' home return at the end or at legal termination of the employment contract. He also has to provide proof of legal departure for these workers.<sup>3</sup> Employers are required to provide an annual banking bond based on the number of workers (from 1-100, JD 30 000; from 101-200, JD 50 000; and JD 75 000 for 201 workers upwards). The bond is automatically renewed and will be redeemed by a Minister whenever the employer does not meet his legal duties. This protection is in place in order to protect the rights of migrant labor in QIZs.

These regulations did not state the possibility of workers changing employer, as was mentioned in the 2009 procedures in the regulations and terms of recruiting migrant labor and their amendments, which detailed the issue in article 12. Thus, the 2007 regulations violate the principle of freedom to contract recognized in the International Covenant on the Economic, Social and Political Rights.

### Golden List Criteria

The criteria of the "Golden List" were attached to the regulations, terms and procedures of recruiting non-Jordanians in QIZs issued in 2007. Through the Golden List Project, the Ministry of Labor aimed to apply mechanisms of evaluating QIZ companies' commitment to the international requirements, terms and criteria of labor. This is to be realized through monitoring companies' performance and their adherence to the applied criteria, in order to improve work environment in QIZs factories. The companies that are listed under the golden list because they meet all the mentioned criteria are exempted from the banking bond they had to provide when the employer recruits migrant labor.<sup>4</sup>

The main criteria of that list are as follows: adhere to the working hours and extra work in week days and holidays, enroll migrant workers in social security, providing suitable work environment and vocational safety conditions, implementing training and recruiting Jordanians, percentage of Jordanian labor recruitment and company's adherence to migrant recruitment terms and conditions.

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<sup>1</sup> Article 5 of regulations, terms and procedures of recruitment of non Jordanian workers in (QIZs)/2007.

<sup>2</sup> Article 9/a of regulations, terms and procedures of recruitment of non Jordanian workers in (QIZs)/2007.

<sup>3</sup> Article 9/b of regulations, terms and procedures of recruitment of non Jordanian workers in (QIZs)/2007.

<sup>4</sup> According to article 10 of regulations, terms and procedures of recruitment of non Jordanian workers in (QIZs)/2007, the company should fulfill 80% or more of the Golden List Criteria. the proposing company should submit a request to the Minister of Labor attached with a list of the workers' salaries in it, copies of workers employment contract, a copy of the latest report of external auditors of the company, an audited budget of the company, an addition to a certificate proving that all its workers are enrolled in the social security, vocational license, a list of the names of foreign workers with numbers of work permits and expiry dates; the company should be a signatory to the agreement of employment and training of Jordanians with the national project for training and employment. According to the official site of the Ministry of Labor. For more details see: [www.mol.gov.jo](http://www.mol.gov.jo)

## Commentary Notes on the Golden List

Tamkeen had a close look at the objectives of issuing the Golden List and the companies within this list. We present the following comments:

1- Adopting the Golden List Project aimed to, according to Ministry of Labor, enhancing national economy growth by facilitating migrant labor recruitment and providing a proper work environment.<sup>1</sup> In reality, the Project was meant basically to ensure companies' adherence to the law and regulations and was not aimed at recognizing additional rights for the workers such as reducing working hours, implementing annual raise of salary.

b- Labor inspectors, in order to ensure the criteria are applied, should communicate with the workers, review their contract and observe the way they are treated by employers. For instance, one of the criteria is that extra work hour should not be against workers' consent, and to ensure these are upheld, inspectors should interview workers apart from the factor management. However, most workers complained that inspectors only meet with management and never with workers. Added to that, most violations take place at night out of the official work hours of labor inspectors.

c- Despite that the Golden List's aims of eliminating workers' rights violations, the last report of the national labor organization affirmed that the most horrifying violations in QIZs were done by a factory within the Golden List. The violations included weekly workloads of 110 work hours, half of the wages being illegally deducted, physical and verbal abuse, deportation threats, passport confiscating, sexual abuse by management staff, death of two female workers due to extreme fatigue, and many other exploitations.<sup>2</sup>

## Better Work Jordan Project

The Better Work Jordan project established based on the demand of the Ministry of Labor and has been implemented with joint partnership with the International Labor Organization (ILO), the World Bank and the International Finance Corporation (IFC). The project aims to improve labor measures and the performance and compliance of large industrial organizations that employ numerous migrant labors, especially textile and apparel exporting factories.<sup>3</sup>

The Minister of Labor issued a special regulation to force a certain category of clothing and apparel companies to join the Better Work Jordan project, which is part of the Better Work program with the partnership of the (ILO) and the (IFC) for 2010; the regulations were in accordance with article 11 of the labor inspectors regulation No. 56/ 1996.

According to the regulations, it is obligatory for clothing companies that directly export their products to certain countries or companies that are working under sub-contracts to join the Better Work Jordan. Companies that fail to meet their duties or do not join the project are penalized.

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<sup>1</sup> Official site of Jordan Ministry of Labor: [www.mol.gov.jo](http://www.mol.gov.jo)

<sup>2</sup> Dirty Clothes, Nygard, Dillard's, J.C.Penney, Wal-Mart Linked to Human Trafficking and Abuse of young Women in 44 Jordan Sweatshop, 14 April 2010 [www.nlcnet.org/reports](http://www.nlcnet.org/reports)

<sup>3</sup> Al Ghad newspaper April 1,2010, [www.alghad.com](http://www.alghad.com), as well as ministry of Labor report/2007, p 32.

However, the regulations do not reveal the objective and purpose of the project, and obligating companies to join the project and penalizing them if they don't pay participation fees raise constitutional questions, as the requirements is against constitution article No. 111: "no taxation or a fee without stipulating law," which is affirmed by the Jordanian law!<sup>1</sup>

## Main Violations of QIZs Migrant Labor in 2010

Several international and national reports observed the status of migrant labor in QIZs during the past few years, including the reports of the National Labor Committee, the Euro-med rights, the Association of Apparel and Textile Labors, and the Arab Organization of Human Rights; all these reports have great credibility.

Tamkeen also observed much exploitation of migrant rights, through complaints our organization received as well as field visits to some of the industrial zones, where several workers have been interviewed by Tamkeen team. Main violations can be illustrated as follows:

### a- Nonpayment of wages and extra work

In accordance with the labor law, employment contract and the Golden List criteria ,QIZ companies should adhere to the minimum wage payment – which should be properly counted and paid – and should inform their workers how their wages are counted. In addition, they should adhere to the general principle that a worker should not be forced to do extra work. Article 7 of the International Covenant on the Economic, Social and Cultural Rights affirms that state parties to the covenant should protect, "the right of everyone to the enjoyment of just and favorable conditions of work" such as fair wages, rest and leisure, reasonable limitation of working hours, periodic holidays with pay vacations and remunerated public holidays. Article 8 of the International Covenant on Civil and Political Rights prohibits slavery or forced labor,<sup>2</sup> defined forcing the worker into more than the agreed upon working hours, or forcing the worker to accept less than the agreed upon or should be paid wages.

Although the committee on defining wages limited the minimum wages to JD 150 per month, they excluded workers of textile and clothing industry whose minimum wage is JD 110 per month. There is no reasonable justification for the exclusion. Many factories force their workers into extra working hours without pay, contrary to what was stipulated in the relevant conventions and agreements, such as ILO, Jordan labor law, and the Golden List criteria, which stresses that extra work should be voluntary and not against worker's consent, and of course compensation should be provided for extra work.

Regarding the monthly salary, the maximum received by a worker, according to interviewed workers, was JD 135 including extra work and many unexplained deductions. Workers complained they are beaten and verbally offended whenever they ask about salary deductions.

<sup>1</sup> See for instance Jordan Court of Cassation, decision No. 83/1958: "article 111 of the constitution stated that there should not be any taxation or fee except by a law, every tax or fee should have a definite destination or field, so when a fee is imposed on vocational license it should be clearly specified under which field to be assigned, and as there is no such vocation under the name of renting furnished apartments in chart No. 1 in vocational law No. 20/1985, thus there is no legal reason for collecting a fee when the owner or others rent such apartments; and when the court decides that this activity is not exempted from fees because it was not mentioned in the chart of exemptions attached to the vocational law, such decision is against the stable legal principles which proved that all matters are originally permitted and that no penalty without a legal provision; thus when the vocational law presents exemption for certain vocations, this does not imply that any activity not included within exemptions would be forbidden. The fact that the chart granted the General Secretary of GAM the legal force to classify the vocations not mentioned in chart No. 1 by considering it in regards to the closest in the chart, is a waste of the legal status of crime and penalty supported by criminal laws; added to that, this legal force was included in a chart attached to a law, not within a law. Based on all that, convicting the defendant of the crime of renting furnished apartment without obtaining a vocational license is a breach of the law and could be objected upon. Decision No. 26/1999 has the same meaning.

<sup>2</sup> According to article 2 of the ILO agreement on slavery an forced labor, forced labor is defined as "any labor or service exacted from a person under threat of penalty, and which the person did not volunteer to do with full consent".

Additionally, workers are sometimes burdened with payment delays for months, as well as a lack of annual salary increase. Some workers complained that they have worked there for 3-8 years without any raise in their salaries.

Tamkeen has encountered many cases where workers were not paid. In a few cases, a factory has been closed due to the owner declaring bankruptcy or absconding. When the market value and bank guarantees are not enough to pay workers' wages they find themselves lost, because they cannot move to another factory due to article 12/ f of regulations, terms and procedure of recruiting migrant labors in (QIZs).

In December, 2010 Tamkeen received 37 men and women workers of a factory in Sahaab Qualifying Zone complaining they haven't had salaries since September 2009, so in January 2010 they stopped working. But because the employer hasn't obtained residency and work permits, fees accumulated which made it difficult for them to return home.

The workers accompanied Tamkeen's team to show them their accommodation and the food they eat; the team saw that the residence is humid, lacks water tabs, and contains no heating or hot water resources despite the very cold weather. The food presented was not suitable for human beings. The workers refused to sue the employer because courts take a long time to decide in a case. Tamkeen tried to contact their employer who postponed payment and requested workers back to work. Four months later, the workers' embassy reached an agreement with the employer to pay them over three months starting in July 2010. The workers returned home after the employer was exempted from the residency fines. While resolving the problems, the employer provided them with the sub-standard residence and food mentioned above. However, aren't there other needs of people beyond food and residence? Weren't there certain hygiene needs of the female workers? Shouldn't they be able to call their families? How could they support themselves when legislation does not allow them to move to another employer except with the approval of the previous employer?

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#### b- Long Working Hours and Lack of Holidays

Tamkeen, during a field visit, reviewed a large number of workers in several factories who said that they work for long hours. They used to work 14- 16 hours daily from 7:30 am to 9:30 pm, and sometimes until 11:00 pm. Some said that they had a friend in a factory who worked from 7:30 am to midnight.

A group of workers said they are give a holiday every two weeks, which they gained after a strike. A second group said they are not given any holiday at all. All workers said their employer does not recognize public and religious holidays. All workers said they do not have annual vacations.

Tamkeen observed some cases where migrants' weekly working hours in one of the factories were 97 to 99 hours,<sup>1</sup> and amounted to 110 working hours in another factory.<sup>2</sup>

It worth mentioning here that factory owners take advantage of workers' need for money; some of them count wage on the basis of the number of produced items, leading workers to produce as much as they can; others rewards the workers who do not take a sick leave by giving them an extra JD 10.

<sup>1</sup> Systematic Gross Violations of Human Workers Rights continue under the US-Jordan FTA: Classic Fashion Apparel. 10 Nov 2010, [www.nlcnet.org/reports](http://www.nlcnet.org/reports)

<sup>2</sup> Dirty Clothes. Nygard, Dillard's.J.C.Penny. Wal-Mart Linked to Human Trafficking and Abuse of Young Women in Jordan Sweatshop. 14 April 2010, [www.nlcnet.org/reports](http://www.nlcnet.org/reports)

### c- Forced Changes in Employment Contract

According to the labor law, the employment contract should be consensual. Article 15 of the law obligates the employer to provide a second copy in a language understood by the foreign worker, according to regulations issued by the Minister;<sup>1</sup> article 6 of the International Covenant on Economic, Social and Cultural Rights affirms that the worker has the right to freely choose and accept his work. Many workers said that back in their country they sign employment contracts that include some rights like food, accommodation and health care; when they arrive in Jordan factories' management confiscate these contracts and then force them to sign different contracts with smaller wages than in the original. They are not allowed to review the new contract and are even required to sign on folded pages where they can only see the signing space. Most of the workers are not given copy of the contract. Tamkeen realizes that such enforced changes on the contract turn it into a form of forced labor.

### d- Offense, Sexual Abuse and Rape

Article 29 of the labor law granted workers the right to leave work without notification, with full legal rights and the due damage remunerations if the employer or a representative offends him or her by beating, verbal offence or any form of sexual abuse that entails legal punishment according to the valid legislation. The minister has the legal capacity to close the organization for a duration he finds suitable. Article 7 of International Covenant on Civil and Political Rights prohibits torture and cruel, inhuman or degrading punishment.

Factories' administrations perform physical or verbal abuse in order to control workers, forbid them from demanding their rights and force them to work. Tamkeen received many claims of sexual abuse of women workers; a worker in Al Hasan Industrial Zone said that her colleague was raped by the production manager in the factory and was returned back to her country by the manager.

### e- Lack of Health Care

According to regulations issued on the labor law, factories should provide free health care for their workers and ensure access to the needed medical centers, equipment, and a sufficient number of specialized medical staff. Article 12 of the Economic, Social and Cultural Rights obligates the state parties to "recognize the right of everyone to the enjoyment of the highest attainable standards of physical and mental health."

Nevertheless, the complaints received by Tamkeen reveal that these criteria are not met: sick leave is prohibited in some factories and a sick worker who is absent is penalized with three days salary deduction. Sick workers are often forced to work, and workers are not enrolled in medical insurance. Some factories hire private doctors, but workers are responsible for the cost of medicine and surgical treatment.

Some factories neglect periodical medical examinations for workers. A member of the Associations of the Textile and Apparel Workers said that whenever they discover a worker has hepatitis or tuberculosis, he is returned to his country instead of being treated. Even worse, the rest of the workers are not informed so they are not aware of the problem, and no medical tests are performed to ensure they were not infected. The Association reported this negligence to Ministry of Health.

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<sup>1</sup> These regulations have not been issued yet up to the date of preparing the present report.

Workers work for long hours in the hot weather without proper ventilation and illumination in the work place. Some factories provide masks to protect against the dust and debris, although some people find them annoying and so do not use them. Many factories do not give workers such protective masks.

#### f- Passport Confiscation

Most interviewed workers complained to Tamkeen that their factories' administrations confiscated their passports when they arrived, despite this being against article 18 of passport law<sup>1</sup> and the Golden List criteria. Practically, the worker loses his right to practice a normal life without a passport because he cannot prove identity, which deprives him of his legal personality and makes it difficult to resort to legal redress when demanding his rights, which is contrary to article 16 of the International Covenant on Civil and Political Rights.

A report of the National Labor Organization revealed illegal confiscation of more than 2000 passports by a factory management;<sup>2</sup> another report of the same organization revealed that workers are beaten and threatened with deportation whenever he demands keeping his passport<sup>3</sup>.

Some workers said that when a factory is criticized by authorities or NGOs, the administration returns the passports for only a short time before they collect them again. Other factories went even farther by resorting to a legal trick in order to hold the passports: they force workers to deliver their passport to the factory administration and to sign approval for them to keep the passport with their full (coerced) "consent."

#### g- Not Obtaining Residency and Work permits

Tamkeen noticed that some factories do not meet their duty to obtain residency and work permits for workers, against the mentioned regulations. This forces workers into illegal status and makes them subject to deportation. Lacking a permit deprives the worker of being enrolled in social security, which deprives him from benefiting from medical insurance if he had an accident or is injured during work. Some workers were kept without permits for durations between eight months up to four years.

#### h- Improper Accommodation and Meals

Workers reside in factories residences (barracks). Field visits to Sahab and Al Hasan Industrial Zones by Tamkeen, and reviews of some workers revealed that these are crowded with 6-10 beds in humid rooms no more than 3 x 4 m<sup>2</sup>. Accommodations are full of insects, lack proper ventilation, and are unclean. They lack heaters and sufficient blankets. They are no wardrobes, so workers' clothes and belongings are kept in bags.

Bathroom cleanliness is sub-standing. They are shared by many and lack cleaning materials and hygienic material. There are no separate kitchens, so small gas cookers are placed in some rooms, under the stairs between floors. Water is available only for one or two hours a day for only three or four days of the week.

Some factories provide suitable healthy meals while others provide unhealthy meals that do not suit the efforts and needs of the workers. According to some workers, most of the food is expired. Breakfast consists of only noodles and a piece of bread, dinner is a plate of vegetables, and fish is available once a week.

<sup>1</sup> Article 18 of the passports law No. 5/2003 "a penalty of no less than six months and not exceeding three years; or a fine not less than JD 500 and no more than JD 1000, or both would be imposed on anyone who: a) illegally obtains a fraud passport or transferring document; b) gives his own passport or transferring document to someone else to illegally use any of them, or mortgages any of these for any benefit; c) untruly claim he lost his passport or transferring document or deliberately destroy any of them in order to conceal it"

<sup>2</sup> Systematic Gross Violations of Human Rights Continue under the US-Jordan FTA: Classic Fashion Apparel. 10 Nov 2010. [www.nlcnet.org/reports](http://www.nlcnet.org/reports)

<sup>3</sup> Dirty Clothes. Nygard, Dillard's, J.C.Penny. Wal-Mart Linked to Human Trafficking and Abuse of Young Women in Jordan Sweatshop. 14 April 2010, [www.nlcnet.org/reports](http://www.nlcnet.org/reports)

Regarding food meals, some factories provide suitable healthy meals while others provide unhealthy meals and do not suit the efforts and needs of the workers. According to some workers, most of it is expired; the breakfast is only (Noodles) and a piece of bread, dinner is a plate of vegetables and fish is available once a week.

Some companies deduct JD 10-30 of salaries for food and accommodation, although in the origin contract the factory owner should provide it. Food and accommodation deduction in the Golden List Criteria is dealt with according to the terms of the valid contracts signed by workers with their full consent. The Trade Union of Workers in Textile Industry addressed Ministry of Labor in order to cancel salary deductions and managed to reduce it in several cases.

It is strange to know that there is a legislative decision approving the deduction of a salaries which are originally excluded from the regulation of the lowest wages; and it is even weird to notice that the Golden List gives 10 points to factories that deduct from 0% to 11%, and 5 points to those who deduct from 11% to 23%, when deductions exceed 23% of salary the factory's proposal to join the List would be refused. According to this, factories who deduct 23% might join the List side by side with factories who make no deduction at all.

Tamkeen received a complaint from 5 Sri Lankan workers on behalf of other 500 Sri Lankan, Indian and Bangladeshi workers complaining that the factory administration deducts JD 27 of their JD 110- monthly salary for food which is, according to workers, bad and unsuitable. The association of Textile and apparel interfered negotiations, deduction was reduced to JD 15.

#### I- Deportation Threat

Deportation is the worst nightmare to the worker; the need of the salary is in the hands of the factory that might deprive him from it any time they wish by threatening him with deportation. This deportation threat is a form of exploitation to enforce the worker into inhuman extra work and to suppress any complaint, demand, protest or demonstration by workers. Tamkeen has the opportunity to interview some of those workers who said that mostly when they protest against work conditions or demand their rights they are they are threatened with deportation. Even when they fail to produce the required number of items "called target" they are threatened as well, and when they manage to reach the "target" it is raised for the next months. The same happens to them if they complain to the Ministry labor office. Workers choose to take all that in order to keep their jobs.

Tamkeen regards this form of exploitation as an "abuse of a position of vulnerability" as illustrated in the definition of human trafficking. The threat is even empowered by then law of residency.

#### **Positive Models: the General Trade Union of Workers in Textile Garment and Clothing Industries**

Despite all negative aspects of (QIzs) illustrated above, still, the General Trade Union of Workers in Textile Garment and Clothing Industries stands there making a positive model that maintain hope of improvement. The Union has an effective role in dealing and solving with migrant workers especially those of the (QIZs). They managed to solve many disputes including returning passports back to workers, the return ticket cost, obtaining workers rights before they return to their countries like wages and social security, illegal dismissals, warnings, unfair deductions and regular payments. As for collective cases the Union solved 33 to benefiting 1412 migrant and Jordanian men and women workers.

Demonstrations have realized many goals as well. During 2010, there were 34 strikes by 8795 workers of all nationalities which interrupted work for 121, 5 days. The achievements of the workers were as follows:

- \* Deductions were cancelled or reduced in some cases,
- \* Improvement of food and accommodation,
- \* Payment of medicine cost,
- \* Mitigation of the harsh control of the middle management over workers,
- \* Passports were given back to workers,
- \* Respect workers' human rights,
- \* Remunerated extra work,
- \* Daily working hours were reduced,
- \* Residency and work permits were obtained, and
- \* Migrants were allowed to return to their countries without fines.

Tamkeen conducted a field visit to the Needle Crafts and Al Mafhoom factories and reviewed several workers there. They all confirmed obtaining their labor rights, identification documents and full wages including extra work remuneration. Tamkeen also visited Al Asser factory in the Al Hasan industrial zone, which was distinguished in good-treatment and good health care for workers. When asked, workers confirmed obtaining all their labor rights. The factory even provided an independent residence for a Sri Lankan married couple.

Tamkeen Center for Legal aid and Human Rights



# Tamkeen

**Tamkeen Center for Legal  
aid and Human Rights**



## Avenues of Redress

### Directorate of Domestic Workers

The Directorate of Domestic Workers was established in May 2006 to provide fast and efficient aid for domestic workers and to monitor licensed recruitment agencies. In 2007 the Ministry of Labor report revealed that the directorate received 755 complaints, 720 of which were solved – an impressive %96<sup>1</sup>. Numbers were not provided for 2008 and 2009.

In 2010 Tamkeen submitted a number of complaints to the Directorate of Domestic Workers on behalf of domestic workers, but none of these was taken into consideration. The following are commentary notes on the work of the Directorate by Tamkeen:

\* When renewing work permits, the worker should always be present and the directorate should ask her about her work status. Questions about her work status are an improvement, although when Tamkeen had the opportunity to observe one of these interviews, we noticed the following:

- The worker is asked a few questions such as, “Have you been paid your salaries?” and, “Does the employer treat you well?” However, she is not asked how much the salary is, how her living conditions are, whether she is allowed to contact her family, enjoy rest times and annual vacation, or other rights recognized by national and international legislation.
- She is questioned in front of her employer or agency representative without a translator, which makes it unreasonable for her to respond candidly. Moreover, the employer or agency rep. is offered to sit down while she is kept standing while answering the questions.
- The lack of translators makes it difficult for Filipino, Sri Lankan and Indonesian workers to communicate with the officer.
- There is no clear mechanism to record complaints, so they are lost.
- Complaints are not taken seriously, and some officers belittle the complaining worker.

Tamkeen’s experience submitting complaints to the Directorate reveals a lack of seriousness in handling the complaint (or even not considering the issues at all), which raises the question of how important the complaining system to that Directorate.

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<sup>1</sup> Ministry of Labor annual report/2007, p43.

In April, 8, 2010, tamkeen submitted two notifications to the Directorate of domestic Workers; the first took number ع ٤/4473/1/10 about a phone call to tamkeen from a Sri Lankan worker saying that she broke her hand during while working and that her employer forces her to work despite that; the reaction of the officer, who is a labor inspector, was choking: he asked the lawyer who submitted the complaint if she had seen the worker working despite her broken hand???!!!

The second was registered as ع ٤/4473/1/10 about a phone call received by Tamkeen from Sri Lankan who works in Saudi Arabia complaining that his sister, who works in Jordan, is not forbidden to contact her family and that she's been here for 13 years because the employer wouldn't let her return, and that she not been paid for years. The Directorate did nothing to solve the problem though Tamkeen asked them about it several times and provided them with the needed information.

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In December 19, 2010 a lawyer from Tamkeen accompanied an Indonesian worker to complain to the Directorate that she's been exploited and forced to work by the agency and employer, and deprived from return to her country. The inspector first reaction and before hearing the complaint :“they are all liers”; this happened to the worker accompanied by a lawyer, what would have happened if she was alone? Then they were asked to come back the next day with a written complaint. So they did and the complaint was registered as ع ٤/4620/10. Later the lawyer went to the Directorate to ask about it but was chocked when the inspector asked her where he kept the written complaint which he himself received???!!!

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## Hotline Service

The hotline service was established to receive migrant workers' complaints at free land and mobile numbers, and in Indian, Bangladeshi, Sri Lankan, Philippine, Chinese and Indonesian languages. In 2007 the hotline received 755 complaints, 56 of them were collective complaints regarding more than 7000 men and women workers, most of them in (QIZs). Complaints focused on accommodation, extra work remuneration, lowest wages average, mistreatment, payment delays and passport confiscation. The Ministry managed to solve nearly 90% of these.<sup>1</sup> In 2008, the Ministry received 535 collective and individual complaints regarding more than 6500 workers most of them are (QIZs) and domestic workers, but the Ministry did not reveal what procedures they have taken to solve them.<sup>2</sup> In 2009 there were almost 1000 complains, the Ministry managed to solve 855 of them.<sup>3</sup>

Nevertheless, Tamkeen tried the hot line more than once in vain. Asking the Ministry, they replied that it works only during official daily working hours, after that the caller is requested to leave a message. Eventough Tamkeen tried to reach the line within and out of the working hours, once in April 26, 2010 at 1:30 am; the second was in December 29, 2010 at 1:45 am, but there was no answer in both case.

The fact that it only works during working hours is not reasonable because domestic workers might not know when they are able to call; and when the call is recorded no one knows what the consequences would be for her when the employer discovers it. Moreover, most workers do not know about the hotline.

<sup>1</sup> Ministry of Labor annual report/2007, p47.

<sup>2</sup> Ministry of Labor annual report/2008, p46.

<sup>3</sup> Ministry of Labor annual report/2009, p46.

## Resort to Legal Redress

Legal redress is available to everyone in Jordan without discrimination on any grounds. Nevertheless, this path is full for challenges for a migrant worker who demands his rights: he lacks the knowledge of law provisions, may be unaware that he has the right to resort to law, may avoid legal redress because he himself is illegal for violating the residency and work law (although the judge does not ask the worker whether he has obtained permits or not)<sup>1</sup>, fears being detained or deported, may not have a passport or any identification documents, and may lack the employment contract or other documents that prove his rights. Furthermore, women domestic workers find it even more difficult to complain because the mistreatment and abuse takes place in isolation and are hard to prove, the worker may not know the name or address of the employer or agency, and often have no identification documents. The Ministry keeps insufficient data (they do not include the address or phone number), and sometimes the employer at the Ministry does not actually work at that Ministry due to illegal worker transfers by agencies.

Additionally, the lengthy time of the legal process – although the Labor Law stipulates the necessity of solving workers' conflicts within no more than three months – can restrain workers from resorting to legal redress because the long time will cause fines to accumulate while he lacks a source of income. He may then accept a settlement in which he simply does not pay the fines (and still does not receive his earned wages) only to be able to return to his country. For example, a worker may demand JD 1000, but the court takes a year to issue a primary decision. After that, the worker must wait for the procedures of decision notification and possibly the court of appeals, where the case may remain for three to four months. Then, the execution of the decision may take a few more months. Additionally, the defendant has the right not to pay all the due money in one payment, which can further delay the process. Throughout this time, fines are accumulating for the worker, who may understandably become desperate and so stop demanding her rights. During the legal redress procedure, the worker needs shelter and resources, but instead is illegal without residency or work permits.

## Police Stations

Despite of the improvements in dealing with migrant workers in police stations in a more respectful way and working to ensure justice, there are still major problems in the “absconding report,” or APB, which hinders the worker from claiming and obtaining his rights. The “absconding report” results in confinement of the worker, even if he is the plaintiff, until the employer comes to the station. If the employer does not arrive, the worker is kept in detention. Additionally inappropriate is that the worker is always considered a defendant and not a plaintiff.

Among the cases mentioned in Tamkeen's 2009 report, “Double Alienation,” was Samuel, the Sri Lankan domestic worker. His employer refused to repay the fines and Samuel refused to go to court because he did not have residence during the procedures duration. The complaint was submitted to a police station, which dealt with it reasonably and seriously, and obliged the employer to pay for the worker to stay in a hotel as well as pay the fines, which helped Samuel to return home.

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<sup>1</sup> Claire Escoffier.Op.Cit.p 67.



## Hindrances to Redress

### **Lack of Shelter**

Up to the date of submission of this report, the state has not provided a shelter for mistreated workers contrary to article 11/1 of the International Covenant on Economic, Social and Cultural Rights, and of the Universal Declaration of Human Rights, article 25/1. When a domestic worker is exploited, she does not know where to go because she lacks the shelter. She often chooses to go to the agency where she might not find adequate care or redress. While the agency might help her obtain her earned wages, they do not consider verbal or physical abuse or inhuman treatment a reason to complain and seek justice. Additionally, the agency may exploit her and force her to work in other houses.

Embassies of countries sending domestic labor do provide shelters, but they are always crowded. In 2010 the Indonesian embassy received more than 1200 domestic workers who demanded more than JD 2 ml from employers, including wages from previous years. Embassies provide workers who seek help with residence and food, in addition to providing some of them with return tickets, which creates huge financial burden. The problem with these shelters is that those who take refuge there are deprived of freedom of movement. They are not allowed to leave the shelter, and their mobile phones are confiscated so they become unable to contact anyone outside.

### **Police Notification “Reporting Absconding”**

The greatest hindrance to the worker obtaining justice is the absconding report, which occurs when the employer reports the worker has absconding from his work place. He may also report a theft by the worker to counter any abuse complaints by the worker. The worker may then be arrested and not released until the employer retrieves him or he is deported. Alternatively, the worker can seek bail, which must be provided by a Jordanian citizen. This created a bail market where the cost of a “bailman” starts at JD 50 and upwards, giving the bailman the ability to blackmail the worker by threatening to turn him back into the prison.

Tamkeen considers absconding notification a hindrance to the worker when demanding his rights or complaining from the employer. It is a weapon in the hands of the employer to deprive him from his legal rights. Tamkeen observed cases where the employer uses it in order to get rid of residency fines.

## Deportation

Article 37 of the Residency and Foreigners' Affairs Law No.24/1973 states, "The Minister of Interior, upon recommendations of director of Public Security, has the legal capacity to deport foreigners, and order to temporarily detain them until they are deported; the deported foreigner is not allowed to return to the Kingdom of Jordan except by a special permission from the Minister." The Minister does not have to justify the deportation decision, and he has full legal capacity provided that he would not miss-use it.<sup>1</sup> The state might resort to deportation with illegal workers according to residency law, or those who are reported absconding.

The actual practices of the employer enable him to demand deportation of the worker even without violating labor and residency law. Tamkeen witnessed a case where the female employer recorded a complaint at the police station against her two Filipino female workers to claim a theft. She did not want to litigate, but instead would like them to be deported (see annex No. 1, p. 37), despite the fact that they both had work and residency permits. Based on her statements, the Security Directorate recommended to the Governor of Greater Amman Municipality that they, "should be deport and not allowed to come back in the future" (see annex No.2 p. 38). The Ministry of Interior issued a deportation decision in accordance with article 37 of the Residency and Foreigners' Affairs Law, despite knowing that the workers escaped from the house because the employer did not pay their wages for more than ten months (see record of workers' statements, annexes No. 3 and 4, p.39, 40).

They escaped to the embassy of their country to seek help, but the theft reporting by the employer prevented them from proceeding in their claim, even though the claim was not submitted to the court and thus they were not able to prove innocence or guilt for the charge of stealing. This is against article 13 of the International Covenant on the Economic, Social and Cultural Rights, "An alien lawfully in the territory of a State Party to the present Covenant may expelled there from only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority."

An objection was submitted to the Supreme Court to cancel the deportation decision accompanied with an instant request to suspend the decision until the Supreme Court issues a decision. The request was rejected, so the workers were deported by the Directorate of Residency and Boards. Thus, both of the workers were deported without being given the right to seek fair legal action.

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<sup>1</sup> See for example decisions of Supreme Court of Justice No. 192/2005 in June 14, 2005; No.434/2003 in Jan 28,2003; no.348/1999 in Dec 19,1999; No.543/1999 in March 6,1999; No.523/1998 in Feb 23,1999 and No.233/1997 in Jan 3,1998

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ



مديرية شرطة وسط عمان

التحقيق والأمن

الرقم ١٥١ / ٥٢٢ / ٥٠٢  
التاريخ ٢٠١٠/٥/٦

## عطوفة محافظ العاصمة

الموضوع / ٠١- NORHATA ESMAIL SUAIB / فلبينية  
الجنسية مواليد ١٩٨٢  
٠٢- AMINA MACALLAY GUIAMLLID / فلبينية  
الجنسية مواليد ١٩٧٣

٠١ بتاريخ ٢٠١٠/٥/٥ احضر اليها رئيس مركز امن الزهران المذكوراته اعلاه على اثر الشكوى المقدمة من المندوبة بقيام المذكورات بسرقة منزلها وطلبت عدم الادعاء وترغب بتسفيرهن خارج البلاد .

٠٢ الاولى اعلاه تحظّل اقامة سارية لغاية ٢٠١٠/٧/١٢ وتصريح عمل ساري لغاية ٢٠١٠/٧/٨ م.

٠٣ الثانية اعلاه تحظّل اقامة سارية لغاية ٢٠١٠/٦/١٦ وتصريح عمل ساري لغاية ٢٠١٠/٦/١٦ م.

٠٤ يرجى التفضل بالاطلاع منسباً "إبعادهن خارج البلاد وعدم السماح لهن بالعودة مستقبلاً" عملاً باحكام المادة (٣٧) من قانون الاقامة وشؤون الاجانب رقم (٢٤) لسنة ١٩٧٣ مرفقاً بطيه اوراق المذكورات .

ماقبل الاحترام....

المعيد  
مدير شرطة وسط عمان  
محمد العتاه

البلاد

نسخة الى / -

ضابط المركز  
نظارة النساء  
الكمبيوتر

03/07 2010 23:33 FAX



محافظة العاصمة

الرقم  
التاريخ  
الموافق

قرار رقم (٦٦٤) لسنة ٢٠١٠  
صادر بموجب قانون لاقامة و شؤون الاجانب رقم (٢٤) لسنة ١٩٧٣ م وتعديلاته

الموضوع :  
NORHATA ESMAIL AUAIB /١٩٨٢/قبينية  
AMINA MCALILAY GUIAMLLID /١٩٧٣/قبينية

عملا بالصلاحيات المفوضة الي من معالي وزير الداخلية بموجب كتابه رقم ٦٨٠٦٩/١٦/١٠ تاريخ ٢٨.٠٦.١٠  
واستنادا لاحكام المادة (٣٧) من قانون الاقامة و شؤون الاجانب رقم (٢٤) لسنة ١٩٧٣ وتعديلاته  
ناه على تسيب عطوفة مدير شرطة وسط عمان بكتابه رقم ٤٦١٥١/اداره/١٥.٠٣.٠٦ تاريخ ٢٠.١٠.٠٦ اقرر :  
١ ابعاد المذكورات اعلاه من اراضي المملكة الأردنية الهاشمية وعدم السماح لهن بالعودة مستقبلا الى المملكة .

واقبلوا الاحترام

سعيد المبيضين  
محافظ العاصمة

الرقم ق/٦٦٤/٢٠١٠/٦٦٤/٣/١  
التاريخ ٢٠.١٠.٠٦

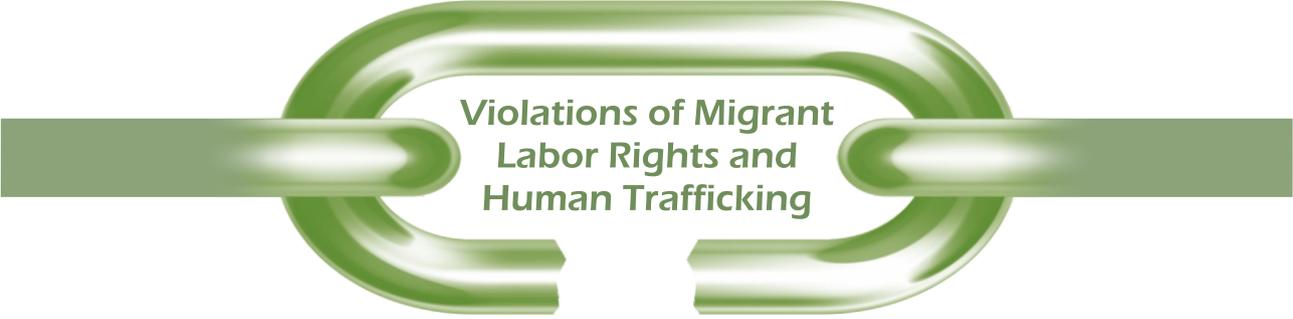
عطوفة مدير شرطة وسط عمان  
اشارة لكتابكم رقم ٤٦١٥١/اداره/١٥.٠٣.٠٦ تاريخ ٢٠.١٠.٠٦ اثبت اعلاه نص القرار الصادر عني بموجب  
قانون الإقامة و شؤون الاجانب  
رجو الإيعاز بتنفيذ مضمونه وإعلامي تاريخ تنفيذ القرار  
واقبلوا الاحترام

سعيد المبيضين  
محافظ العاصمة

تمتعة الي :  
مس العلف العام







## Violations of Migrant Labor Rights and Human Trafficking

Jordan has ratified the protocol to prevent, suppress and punish trafficking in Persons, especially Women and Children attached to the UN Convention against Transnational Organized Crime in which the state would be responsible for issuing legislative, executive, legal and any other adequate procedures to implement them.

The Protocol was a substantial step to the national and international protection system of the rights of migrant workers. After decays from launching the international Convention on the Abolition of Slavery, and the ILO Forced Labor Convention, the migrant workers are still subject of the extremist forms exploitation that is falling victims of human trafficking, which make them, legally and psychologically, more like slaves. This created what is known nowadays as modern slavery which is commercial economic and sexual exploitation, while traditional slavery was based on ownership where a worker was considered a piece of property. In fact, the more slavery –like the employer-worker relationship becomes with increased exploitation, the closer it becomes to human trafficking. Exploitations of migrant workers that fall under human trafficking should be differentiated from those that do not fall under the crime category in the national law.

### Definition of Human Trafficking

Article 3 of abolition of human trafficking law No. 9/2009 defined human trafficking as:

- 1- the recruitment, transportation, transfer, harboring or receipt of persons for the purpose of exploitation by means of threat or use of force or other forms of coercion, of abduction, of deception, of fraud, of the abuse of power or of a state of vulnerability, or of giving or receiving of payments or benefits to achieve the consent of a person having control over other persons.
- 2- the recruitment, transportation, transfer or harboring of persons under the age of eighteen for the purpose of exploitation even if it was not accompanied by the threat or use of force or any means mentioned in 1 above. The law added that exploitation includes slavery, forced labor, servitude, the removal of organs, prostitution or any other form of sexual exploitation.

### Commentary Notes on Human Trafficking in the National Law

This definition is very much like the definition in the Protocol,<sup>1</sup> with little difference. Actual practices proved the law to be inapplicable by the judiciary system,<sup>2</sup> due to many reasons such as: \* The Jordanian legislation used the same sentences of the Protocol, though they have definite meanings and implications in the general international law that do not exist at the national level.<sup>3</sup>

<sup>1</sup> Article 3 of the Trafficking Protocol defines human trafficking as: (a) the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs;(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;(c) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;(d) "Child" shall mean any person under eighteen years of age.

<sup>2</sup> In 2009, the directorate of the Public Prosecutor received four trafficking case. Two of them were preserved; the other two defendants were suspected. In 2010 thirteen trafficking cases were recorded, six of them were decided to be suspected; trial was forbidden in three cases (from a paper by Dr. Hasan ElAbdallat, Public Prosecutor of Amman in a seminar on the protection of migrant workers against human trafficking " national procedures and international criteria" ), Tamkeen for Legal Aid and Human Rights, Amman, Feb. 14, 2010.

<sup>3</sup> It worth mentioning here that the Abolition of Serfdom Law of 1029, which stipulated the abolition of serfdom in all parts of east Jordan, has dealt with it in two way: the first is to consider every contract that includes a term or a vow to buy a person, or enslave him or give him to others as a mortgage or a guarantee for a debt or any other way, to consider it vow according to article 4. The second is that everyone who buys, sells, exchanges a person or gives or takes him to be part of property or to be regarded as a slave, according to article 5 of the same law, would be penalized.

For instance, forced labor, which is mentioned in the law and the Protocol, is defined in article 2 of the ILO convention No. 29/1930 as “any labor or service exacted from a person under threat of penalty, that he did not volunteer to do”; and the term slavery is defined in article 2 of the Slavery Convention of 1926 as, “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.” Thus the definition in the national law could be described as general and inaccurate due to lack of illustration of the used terms.

\* Some expressions are ignored by the law, such as the “practices similar to slavery,” which was defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and the Institutions and Practices Similar to Slavery/ 1956 by stating, “each of the state parties shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition of the institutions and practices mentioned in this convention, where they still exist and whether or not they are covered by the definition of slavery”<sup>1</sup>

\* Some of the practices fall under different crimes according to penal law, such as abduction, fraud and forced prostitution, which encourages the Judiciary to adapt the trafficking complaint into other legal descriptions that might be clearer, such as offence, violation of honor (sexual assault), deprived freedom or any other forms of crimes. The definition of the crime should and must be definite and comprehensive. In our case, we are simply translating laws without considering whether they are appropriate to national laws. Shouldn't the legislation provide an example of human trafficking? Aren't the work permits issued under the name of the employer an extreme example of human trafficking? And what about the bail trade that is spreading all over the country? In the same context, many foreign women have been subject to honor violation and rape, and while their statements are heard at the police station, they have no legal value because they are transferred before they are heard by the Public Attorney, which gives the criminal the opportunity to flee.<sup>2</sup>

## The Relationship between Exploitation and Human Trafficking

In an attempt to simplify the human trafficking definition, the Jurisprudence<sup>3</sup>, supported by the UN and the International Organization for Migration (IOM), divides this crime into three elements:

- \* transferring persons, which is the basic element of the crime act.
- \* Persons are transferred by means of deception, use of force, and/or abuse of a state of vulnerability that allows implement of the act.
- \* the purpose is exploitation through prostitution, sexual abuse, forced or compulsory labor, servitude, slavery and any other practices similar to slavery.

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<sup>1</sup> These practices include: Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined; (b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labor on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status; (c) Any institution or practice whereby: 1) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or 2) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or 3) A woman on the death of her husband is liable to be inherited by another person; (d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labor.

<sup>2</sup> See for example: Limoncelli. S.A (2009) Human Trafficking: Globalization, Exploitation, and Transnational Sociology. Sociology Compass, vol. 3, pp72-91. Gallagher. A (2001) Human Rights and the new UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis. Human Rights Quarterly, vol. 23, pp 975-1004, Anderson, B and B. Rogaly. 2005. Forced Labor and Migration. TUC: London.

<sup>3</sup> United Nations Office on Drugs and Crime (UNDOC), and Global Initiative to Fight Human Trafficking (UN GIFT) Anti-Trafficking Manual for Criminal Justice practitioners.2010.

Tamkeen has observed many cases where migrant workers are deceived by unrealistic job descriptions and employment contracts. When they arrive to Jordan, they are forced to sign different contracts with greatly decreased wages from the amount agreed upon in their countries and with a different job nature; the worker then finds himself forced into a bad job status and offensive treatment. Similarly, there are cases when an employer returns a domestic worker to the agency, who in turn forces her to work in different houses to gain back what has been paid by the employer or pay for the return ticket. In such cases the worker falls under a form of human trafficking which that is debt bondage.

Practically, a migrant worker in Jordan has no right to object to the employment contract or the right to change employer or place of work. Mostly, he is subjected to situations similar to forced or compulsory labor represented by the many forms of exploitation he faces: all forms of offence, not being paid wages totally or partially, being deprived of freedom to movement, passport confiscation, long daily working hours, not enjoying holidays and vacations. Essentially, he is deprived of the fundamental rights recognized by different legislation.



**Komari, Sri Lankan domestic worker**

“The agency deceived me” was the first thing Komari said to Tamkeen. “I was brought to Jordan to wait for two weeks then my husband would join me. The agency forced me to work in farm house, after working for one month and a half I refused to work; was beaten at the agency, brought back to the farm, refused to work, beaten again at agency and was forced to sign a document I Arabic I didn’t know what about, then transferred me to another house. I escaped and here I am without a passport, a work permit or a residency permit.”

**Seani, Sri Lankan domestic worker**

In 2003 I was recruited to work as tailor, but was surprised that the agency took me to a house to work as a domestic worker. “Madame” (employer) returned me to the agency because I phoned my family. The agency forced me to work in different houses for four years without payment. I escaped from the agency and want to return home but my passport is with them and fines accumulated, and I’m afraid from complaining to the police because I’m a Sri Lankan.



**Shesrani,**

I was brought to work for two years. I worked for a year and eight months and was paid only JD 200, then Mama (employer) took me to the agency where my passport was, I asked them to return home but they refused and forced me to work in another house, but I ran and asked them for my passport again, they wanted JD 500 to give me back my passport.

## National Preventive Measures against Human Trafficking

Compared to last year, Tamkeen has noticed improvements in dealing with human trafficking issues, but much is still needed.

### a- Public Security Division for Fighting Human Trafficking

During the second half of 2010, we noticed a great improvement in the way the Division worked. They conducted more serious investigation to the submitted complaints, acknowledging that the crime existed, and work to fight the crime and pursue whoever commits it. Nevertheless, the division still lacks sufficient female staff to deal with victims, who are mostly women, and receive their complaints.

Despite that, the absconding notification remains an obstacle in the face of the migrant worker who could fall a victim to human trafficking, because when he complains to police, his identity is checked, he is arrested at once if there is an absconding notification in his name, then he is transferred to the security directorate, from there to the detain center to remain there until he is bailed out by a Jordanian. All this causes the worker to lose confidence in the security bodies, and to become scared and lacking self- confidence.

#### b- Legal Measures

The applied legal measures and procedures, especially the related to human trafficking in migrant workers, are still insufficient, and the Public Attorney (the Judge) is faced by several obstacles and challenges in human trafficking cases, such as:<sup>1</sup>

- \* the victim does not complain officially due to several reasons like fear of deportation, disgrace, loyalty to the person who is trafficking her, lack of trust of the investigation authorities, fear of the harm that might be caused to the family due to reporting trafficking.
- \* victims are involved in a crime such as theft thus his testimony is not taken as an evidence.
- \* victims or persons with important information are abroad
- \* lack of a translator at need, and when translated, some expressions lose their impact, an addition to translators' bias to the employer since most translators work for the recruitment agencies.
- \* victims do not cooperate with legal authorities in regards to attendance and providing accurate information.
- \* a compromise sometimes is reached after submission of complaint but before hearing the testimony of the victim, thus the victim changes the facts.
- \* evidences are not at hand in most cases, and the victim to provide or help in providing them.

#### c- Other Executive Measures

Other forms of executive measure include the media and spreading the awareness of how serious these crimes are still at their lowest levels. There is almost no official communication about human trafficking; NGOs efforts stands on top in regards to this matter but still insufficient with little impact because it is difficult to reach all of the actual and probable victims and criminals. Added to this training of the judges and officers responsible of implementing the law which is insufficient and not considered as prerequisite for those to be employed or continue in their positions or even a condition to reward or punish them; training at the same time is linked to available funding sources which are mostly international.

Protection, in this regard, is a missed measure as well. There is a lack of proper shelters for the worker during the period from discovering the assault until redress is reached or the victim returns home, including psychological and vocational rehabilitation services. Migrant workers lack effective national mechanisms (not judicial) that ensure their right of complain and redress.

To conclude, we would like to refer to the US Foreign Ministry report on human trafficking for 2010 where it was mentioned that the Government of Jordan spends much effort to comply to the abolition of human trafficking. The report as well recommended that penalties on forced labor should be more serious, and that concerned officers, judges and public attorneys should be trained in order to enhance fighting human trafficking. It was pointed out in the report that exploitations, though still existing, are less than before.<sup>2</sup>

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<sup>1</sup> These hindrances were listed in " National Measures and International Criteria", a paper presented by Judge Dr. Hasan ElAbdallat, Public Prosecutor of Amman , about human trafficking for "Protecting Migrant Workers from Human Trafficking" seminar, Dec. 14, 2010 Amman.  
<sup>2</sup> Office to Monitor and Combat Trafficking in Persons, US, State Department, Trafficking in Persons Report 2010. 14 June 2010. Available online [www.state.gov/g/tip/rls/tiprpt/2010/142760](http://www.state.gov/g/tip/rls/tiprpt/2010/142760)

## The tragedy of a domestic worker

### Malika, Sri Lankan domestic worker

Malika was brought to Jordan in 2000, worked for 3 years and was paid only \$300. She was forbidden to contact her family except one time to make sure they received the money. Malika's husband died, and she knew about it when by chance when she found a letter from her family, which her employer was hiding. So Malika wanted to return home to be with her lonely children after the death of their father, but the employer refused replying "we are all going to die." In 2003, the employer transferred her to his brother's house without asking her. She worked there until 2010. The new employer also did not allow her to go back to her children, and restricted her contact with her family. During the seven years, she received only \$1500, so in more than ten years she received only \$1800.

Fines accumulated because neither of the employers obtained a residency and work permits for her. Malika wants to go back to her children; missing them has almost killed her, and she always thinks of them: how do they look like now? Would she recognize them after all these years? Do they remember her? Malika escaped from the house, met another worker in the street, and came to Tamkeen for help. Malika doesn't speak Arabic well though she has been in Jordan for ten years, which indicates her isolated and lack of contact with people. Tamkeen tried the Ministry's Hotline so Malika could issue a complaint, but our efforts were in vain, so we accompanied her to the Ministry of Labor. The officer listened to her without recording the complaint and then directed her to the Directorate of Domestic Workers Affairs. However, there was no shelter available for her, so we found a place for her at a Sri Lankan worker's house. The next day we accompanied Malika to the Directorate, but there was no translator, so we returned with her to the Ministry again. All this happened while a lawyer accompanied her; what would have happened if she was alone? A complaint was submitted to the division of human trafficking in the Public Security Directorate. After she was heard she was transferred to the shelter of Jordanian Woman Union. The next day she was interviewed by the Public Attorney who brought an Arabic-English translator, but Malika doesn't speak Arabic well and she doesn't know English. The case was considered passport confiscation only..

Malika is still in Jordan. She can't return home because of accumulated fines, and her case is still at court. She was deprived of seeing her children grow up. There has not been any justice. Shouldn't the employers who enslaved her for ten years be punished? Doesn't she deserve instant compensation? She left little children and they become young men without seeing her.

The tragedy of Malika hasn't reached an end yet. While preparing this present report, Tamkeen was informed that Malika's elder son died in a traffic accident. He died even before she saw him.

Malika is now illegal according to the residency law so, if she has any problem and decided to go to a police station, she would be detained, deported and forbidden from coming back to Jordan. Why would she be punished while she is the one who is suffering and the employer is living happily?

Where could she find justice??



## Recommendations

“Double Alienation”, Tamkeen’s report for 2009, concluded with a number of recommendations resulted from presenting and analyzing the status of migrant workers in Jordan. As many of our recommendations were not taken into consideration, we are reiterating some of the original comments along with new recommendations.

- Establish proper shelter for workers who become victims of human trafficking and other forms of exploitations including legal conflict. Until legal issues are resolved, workers should be issued temporary work and residence permits.
- Establish a lending fund for the purpose of payment of dues set by court wages, residency fines, in cases of the bankruptcy or financial problems or even when the employer refuse to pay. Such amounts are to be considered a debt of the employer to be collected for the fund’s benefit according to the state fund collection law.
- Review the regulation of domestic workers, cooks and gardeners to define domestic work more precisely and not deny workers’ right of movement.
- Review the terms and durations of the employment contract to ensure the worker’s right of freedom to contract and to terminate the contract due to mistreatment or substantial change of the contract by the employer.
- Establish greater balance between migrant workers with other workers by granting the freedom to change employer at the end of the contract without requiring the former employer’s approval.
- Activate a labor inspection system and clarify the labor inspectors’ role at Ministry of Labor in regards to factories inspection. Establishing a suitable mechanism of periodical follow-up of the status of domestic workers that forces employers to take the worker to the labor inspectors to ensure she is well-treated and enjoys her legal and contractual rights.
- Establish special institutions to employ domestic workers in part-time jobs so that they do not have to reside in the employer’s house. Such institutions should undertake legal responsibility imposed by official entities and should be monitored by Ministry of Labor inspectors.
- Obligate employers to open an account in a bank for the worker provided that it would be linked to the Central Bank, which can notify responsible parties whenever the employer delays a worker’s salary, thus giving the worker the right to terminate the employment contract.
- Comply with the terms set in the Labor Law to immediately consider labor complaints and render a final judgment within three months from date of issuance of the complaint.
- Issue work permits in the name of the worker without linking it to the employer’s name.

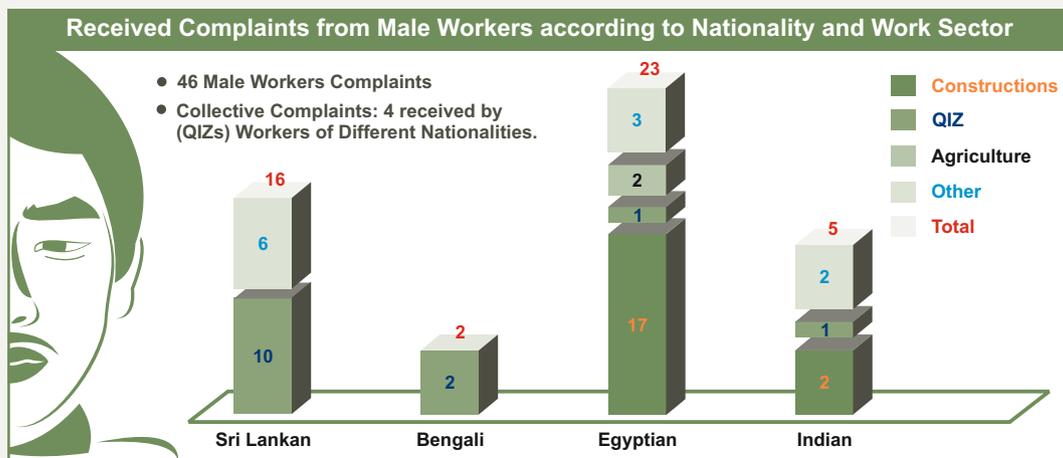
- Do not resort to denying freedom through administrative detention as recourse during status redress, residency law violation or during deportation procedures.
- Do not deport a worker except by a judicial order, and do not arrest any worker except when there is an official case or complaint against him; and do not imprison a worker only because he is reported absconded (APB).
- Jordan should instantly join international conventions concerning migrant workers, especially the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
- Review human trafficking law to ensure compliance with international criteria, clarity terms, guarantee agreement between the act and its penalty, and add a term that gives the victim the right of direct compensation from the offender after the issuing the final judgment.
- Train Judges, Public Prosecutors and all individuals responsible for implementing the law on human rights requirements. Activate protection systems of all exploited categories.
- Increase society and employers' awareness of migrant workers rights, especially domestic workers, in order to change the stereotypical status of this category.
- Increase awareness of human trafficking, the law against human trafficking, prevention measures and how to report a violation. Activate public media role in spreading awareness.
- Educate migrant workers about their rights under relevant laws, forms of exploitations and human trafficking.
- Pass legal and legislative amendments to create a balance between rights and obligations of both the worker and the employer.



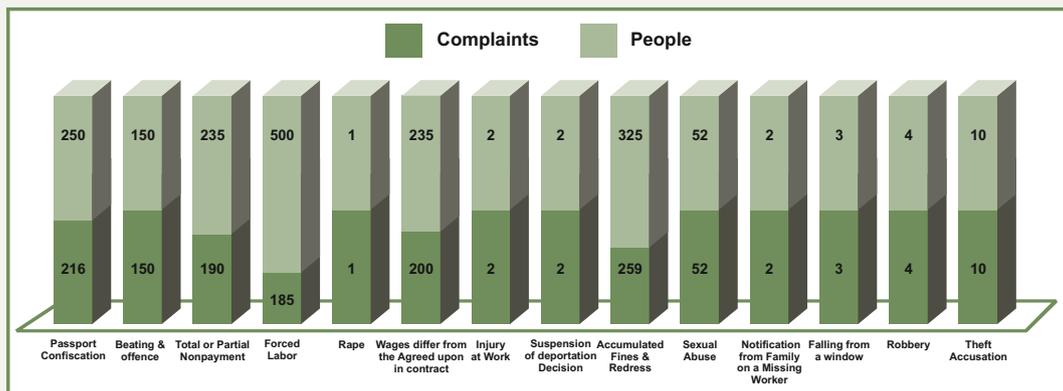
# Tamkeen

**Tamkeen Center for Legal  
aid and Human Rights**

## Complaints received by the “migrant legal aid unit” in Tamkeen From Jan. 1, 2010 to Dec. 31, 2010



## Distribution of Migrant Workers in (QIZs) according to Area and Gender:





**"The ultimate tragedy is not the oppression and cruelty by the bad people but the silence over that by the good people."**

Martin Luther King

**"While we pursue happiness, it would be fair if we remember others; And not to forget their rights when we seek ours"**

Abdul Wahhab Mtawe'  
Egyptian Press Reporter

**"People tend to forget their duties but remember their rights."**

Indira Gandhi

**" He who would tolerate my failings I consider my master even if he were my servant "**

Goethe

**"One should start with himself if he wants others to be good to him"**

Abu Baker Al-Sidik  
The First Muslim's Caliphs

**Tamkeen**

**Tamkeen Center for Legal aid and Human Rights**