

# Access to Justice

For Refugees and Migrant Workers



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# Preface

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The status of both Refugees and Migrant Workers remain precarious in both their original and residence countries. Even though countries of residence depend on these categories economically as workers in their labour markets, they are not always treated as such and are not provided with adequate protection.

No country could be excluded from the classification of either sending or receiving countries for Migrants. Consequently, International Conventions were agreed upon among states that provide for equality and non-discrimination and the protection of all inhabitants of the State. Yet, most countries have not fully implemented these conventions.

While migrants and refugees are distinct categories, as the latter has forcibly migrated from their original countries due to political conflicts, wars, or sometimes their political or sociological affiliations, they share some characteristics when it comes to their working and living conditions.

Tamkeen Fields for Aid has conducted this study as part of its portfolio of specialised studies on issues related to Migration, Labour and Anti-Human Trafficking. This particular study will focus on Migrant Workers and Refugees' Access to Justice in Jordan.

The study will address this important issue through an in-depth analysis of the issues the centre has dealt with in 2017. It will look at the methods that were used to help beneficiaries to access justice and the obstacles that hindered these efforts. Finally, it will flesh out a number of issues that need to be further highlighted.

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# Introduction

## I Justice

Justice is defined as “a scheme or system of law in which every person receives their due from the system, including all rights, both natural and legal”<sup>(1)</sup>. Justice is a broad concept that all peoples advocate and aspire to achieve. It is believed that achieving justice is an important pillar to establish equality among different peoples. It thus focuses on achieving a balance between all members of society in terms of their attainment of their rights.

A holistic perception of Justice would ensure that the governing of laws and system is done freely, without any external control or interference, so that justice is guaranteed to be equal among all persons within the society. The importance of justice lies in the achievement of equality among members of society, regardless of status, gender, religion, origin, political or social affiliations.

There are many types of justice:

- Equal justice regardless of sex, race, religion;
- Political justice such as the right to run for office and political action,
- Economic justice and the equitable distribution of wealth, where the economic system is based on justice on the rights to work and protection of all sides involved without discrimination or segregation,
- Social justice such as the availability of medical, therapeutic, humanitarian needs and access to employment,
- Judicial justice, which is the right to a fair and balanced trial.



## I Access to Justice

Access to Justice is a basic principle of the rule of law. In the simplest of terms, it is defined as access to lawyers and courts and as complexly as “an equal right to participate in every institution where law is debated, created, found, organized, administered, interpreted and applied”<sup>(2)</sup>. Broadly, it has also been described as an integral part of the rule of law in constitutional democracies.

Due to the importance of this concept, it was referred to in a number of international conventions. One of which is the Sustainable Development Goals Agenda (SDGs) in its 16th goal. The goal, entitled: Peace, justice and strong institutions, stipulates as one of its targets: Promote the rule of law at the national and international levels and ensure equal access to justice for all.<sup>(2)</sup>

Yet, even though the concept has gathered wide support across the years, with various entities organisations asking for an increase in it, there seem to be less consensus, or at least less clarity, over what this term actually means.

The conception of Access to Justice finds its origins in the 18th and 19th centuries. Then, the concept was narrowly defined as an individual’s formal right to litigate or defend. In the most basic terms, it meant “having your day in court”. Even though the right was vigorously defended by some, it was resisted by others, as governments resisted any obligations connected to this “natural right” and did not want to protect it through affirmative action programs<sup>(3)</sup>.

Over time, two primary streams of thought about the meaning of access to justice emerged. The first emphasises the “access” aspect of the right. The focus of that stream was on the availability of resources to help individuals resolve disputes. Meanwhile, the second emphasised “justice” and saw it as consisting of more than having mechanism to dispute resolution but it also involved other aspects as well.

In terms of the first opinion, it has evolved over time starting in the 1960s when it constituted of simply having access to litigation. Thus, the focus at the time was to expand such access, particularly to the marginalised groups in society like the poor and minorities to the legal system. The basic goal was to provide such groups with legal representation as they could not otherwise afford it by simplifying procedures, lessening costs and addressing other complexities related to the legal system.<sup>(4)</sup>

In the following years, these efforts expanded as the emphasis shifted from lodging cases before the courts to making the court system work better. The reforms of the time thus focused on further simplifying procedures. These efforts would help create pathways that would lead to courts being able to handle a higher volume of cases more efficiently. Furthermore, such reforms expanded the target population to include the middle class and to cover a broad range of civil issues.

As these efforts began building momentum, other aspects were also added as other concepts were introduced. These concepts included: case management systems, specialisation in the judiciary, and “alternative” methods of dispute resolution started to also play a role in the judicial system.

These new additions have expanded the scope of access to justice and led to many changes. Perhaps the most significant one of these changes is the decentralisation of the position of the court in the judicial system. It also led for access to justice to now encompass justice beyond the formal legal system and include equal access to any legal or non-legal information, resource, service or process or other mediums of dispute resolution.

The second stream of thought is considered broader as it encompasses what the first stream entails but adds to it as it also focuses on the inadequacies and limitations of the legal aid system. Consequently, the goal of this stream goes beyond equality of opportunity for underprivileged or underrepresented litigants. Instead, it aims to achieve equality of outcomes by addressing the barriers faced by those trying to access the judicial system.<sup>(5)</sup>

The board approach also argues that in order to achieve full access to justice social variables must be considered and addressed. Such variables, which have historically had a negative impact on the ability of certain individuals or groups' ability to access justice, include legal status in the country, issues related to race and gender, disability, class among others. <sup>(6)</sup>

As this approach aims at interacting with several issues related to access to justice, it encompasses elements from the first approach as well. These include the use of simplified court procedures, alternative dispute resolution and other preventative measures in an effort to solve legal problems before they reach courts.

Additionally, the expanded approach insists on the need to take into account and analyse the structural inequities that exist in legal and judicial systems as well as to extend the role played by various dispute resolution processes. Thus, this approach calls for the judicial system and law as a whole to be looked at from the perspective of a larger social context. The new perspective aims at addressing all the strong barriers confronted by the poor and marginalized in seeking justice. Such a view would eventually lead to a deeper and more ambitious meaning of access to justice as "the alleviation (if not the elimination) of injustice.

## I Normative framework for Access to Justice

A number of international instruments establish principles and minimum rules for the administration of justice. They also offer a fairly detailed guidance to states on human rights and justice. They comprise the Universal Declaration of Human Rights and the covenants, conventions, rules, guidelines and standards that were issued by the international community under the auspices of the United Nations.

For example, the International Covenant on Civil and Political Rights (ICCPR) enshrines the principles of equality before the law and the presumption of innocence, and includes guarantees of freedom from arbitrary arrest and detention and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law.<sup>(7)</sup>

From a human rights-based approach, Access to Justice is looked upon as more than improving an individual's access to courts, or guaranteeing legal representation. It must be defined in terms of ensuring that legal and judicial outcomes are just and equitable.

Therefore, it is important to identify the grievance that calls for a remedy or redress. A grievance is defined as a gross injury or loss that constitutes a violation of a country's civil or criminal law, or international human rights standards.<sup>(8)</sup>

The capacity and actions needed to achieve access to justice, following a human rights-based approach, are outlined below .<sup>(9)</sup>

Type	Description	Key actors
<b>Legal protection</b>	<p>Provision of legal standing involves the development of capacities to ensure that the rights of disadvantaged people are recognized within the scope of justice systems, thus giving entitlement to remedies through either various mechanisms. Legal protection determines the legal basis for all other support areas on access to justice. Legal protection of disadvantaged groups can be enhanced through:</p> <p>(a) Ratification of treaties and their implementation in the domestic law;            (b) implementation of laws;            (c) national legislation;            (d) implementation of rules and regulations and administrative orders; and</p>	<ul style="list-style-type: none"> <li>- Parliament</li> <li>- Ministries of Foreign Affairs</li> <li>- International/regional forums</li> <li>- Ministries of Law and Justice, police force</li> <li>- National Human Rights Commissions</li> <li>- Law Reform/Legislative Commissions</li> <li>- Judges</li> <li>- Community leaders</li> <li>- CSOs, especially those involved in legal research, legal advocacy and monitoring</li> </ul>
<b>Legal awareness</b>	<p>Development of capacities and effective dissemination of information that would help disadvantaged people understand the following:</p> <p>(a) their right to seek redress through the justice system; (b) the various officials and institutions entrusted to protect their access to justice; (c) the steps involved in starting legal procedures.</p>	<ul style="list-style-type: none"> <li>- Ministry of Justice</li> <li>- Ministry of Education/ higher education, schools and universities</li> <li>- National Human Rights Centre</li> <li>- Legal aid providers</li> <li>- Quasi-judicial bodies (human rights, anti-corruption, and electoral commissions).</li> <li>- Local government bodies</li> <li>- Non-governmental organisations</li> <li>- Labour unions</li> </ul>

Type	Description	Key actors
<b>Legal aid and counsel</b>	<p>Development of the capacities that people need to enable them to initiate and pursue justice .procedures</p> <p>Legal aid and counsel can involve professional lawyers, paralegals .or Human Rights Defenders</p>	<ul style="list-style-type: none"> <li>- Ministries of Justice</li> <li>- Lawyers</li> <li>- Courts</li> <li>- Police and the prison system</li> <li>- Non-governmental organizations (NGOs)</li> <li>- Bar associations</li> </ul>
<b>Adjudication</b>	<p>Development of capacities to determine the most adequate .type of redress or compensation</p> <p>Means of adjudication can be regulated by formal law, as in the case of courts and other quasi-judicial and administrative bodies</p>	<ul style="list-style-type: none"> <li>- Courts</li> <li>- National human rights institutions</li> <li>- Alternative dispute resolution mechanisms</li> </ul>
<b>Enforcement</b>	<p>Development of capacities for enforcing orders, decisions and settlements emerging from .formal or traditional adjudication</p>	<ul style="list-style-type: none"> <li>- Prosecution</li> <li>- Police and Prisons</li> <li>- Administrative enforcement</li> </ul>
<b>Civil society and parliamentary oversight</b>	<p>Development of civil society's monitoring capacities, so that it can strengthen overall accountability within the justice .system</p>	<ul style="list-style-type: none"> <li>- NGOs</li> <li>- Media</li> <li>- Parliamentary select and permanent committees</li> </ul>

## I Access to Justice and Legal Empowerment in Jordan

Legal empowerment requires that individuals can access professional, rights-respecting, affordable and timely legal counselling and representation in courts to resolve their issues. These issues could be later resolved either through alternative dispute resolution mechanisms if that was possible or through legal representation before a court of law otherwise.

In Jordan, Legal Empowerment is constrained by various factors including: structural, sociocultural and institutional aspects. However, one of the most important factors is in fact the lack of awareness among people about their legal rights and the tools to ask for them. This lack of awareness particularly affects the most marginalised groups in the community like migrants, refugees, and the poor. Others, while having the necessary knowledge, simply do not have the resources required to access the judicial system; due to high legal cost related to obtaining advice or representation, or to file a case in court.

In the case of marginalised groups especially, social and cultural barriers restrict the referral of a legal issue to the Judicial System. Other, on the other hand, lack the confidence or are suspicious of the system itself or fear that they will be discriminated against in case they actually file the case.

## **I Access to Justice in relation to Migrants**

Migration is one of humanity's most complicated phenomenon. Throughout the migration process, migrants, particularly undocumented, face injustices of a legal nature that would require legal help. From the recruitment up to the repatriation stages, Migrant Workers are faced with continued dilemmas that include but not limited to issues regarding their employment status, Forced Labour or Deportation. Their ability to access justice and the obstacles that are connected to it are particularly affected by a number of social and legal factors that could either make the process easier or almost impossible. These factors include the worker's social and economic status, employment, gender, the conditions in both countries of origin and destination, and the way in which they migrated, whether it was legal or not.

## **I The Challenges to Access Justice for Migrants**

The challenges to the access to justice occur across the spectrum of processes of seeking justice. Migrants, especially those that are low-skilled and/or undocumented, have a general lack of awareness of legal procedures and services, including those offered in their own countries or at the country of destination. They also have limited information on where to seek remedy and live in fear of the police/system due to their lack of the sense of social cohesion and integration in that country as well.

These feelings tend to be amplified in cases where their first contact with Government officials, usually the first point of contact for them when they reach the country, is disrespectful. As for Recruitment Offices, feelings among migrants vary according to the recruitment process that was followed and their treatment by them after they arrived.



Challenges to the access of justice can be classified to these following areas:

- Administrative
- Financial
- Provision of services
- General Awareness
- Legal Awareness
- Societal.

In reality, these areas tend to be cross-cutting and consequential to each other. In Jordan, these challenges manifest in various ways that have profound effects on Migrants' Access to Justice. Some of these challenges are of a legal nature, while others are common practices that have become deeply rooted in the way this category is treated.

The study will stand at each of these challenges in the later chapters and analyse the extent of their effect on Migrants' access to justice.



## Chapter 1

# The Right to Litigation and Status of Migrants

## 1.1 The Right to Litigation

### The Right to Litigation in International Conventions

United Nations Development Program (UNDP) has placed a special emphasis on the right to litigation. The right was focused on as a result of the poor and marginalized groups often lacking the capacity to seek fair trial guarantees. Thus, the program undertook the mission to stimulate an effective, responsive and accessible judicial system as one of the pillars of good governance.

In the absence of that right, people are unable to make their voices heard, to exercise their rights, to challenge discrimination, or to make decision-makers take up their responsibilities. Thus, the UNDP believed that reinforcing the role of law would strengthen both people's security and access to justice. These goals were placed as part of the agenda to create an environment for achieving the Millennium Goals that the UN was working toward; which were then renamed Sustainable Development Goals (SDGs).

The United Nations Development Program (UNDP) has defined the right to litigation as “the fairness of laws and legal guarantees so that they are fair and responsive to the needs of the poor and the marginalized.”<sup>(10)</sup> The definition has been widely accepted in the international human rights law community.

Due to the increased understanding of the importance of the right by judicial and administrative bodies, it was later included among the rights guaranteed under the International Covenant on Civil and Political Rights in article 14, which states:

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as would take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country. <sup>(11)</sup>

The right to litigation is also enshrined in the International Labour Organization Convention No. 1 of 1968, as article 99 entitled Labour Courts stipulates that “labour courts shall be established to deal with labour disputes.”

Meanwhile, Article 12 of the Arab Charter on Human Rights of 2004 stipulates that all persons are equal before the judiciary. States Parties shall ensure the independence of the judiciary and protect judges from any interference, pressure or threats. It shall also guarantee the right to litigate to every person under its jurisdiction. The African Charter on Human and Peoples' Rights has given this right a prominent place as well. Article 7 provides that the right to litigate is guaranteed to all, including:

1. The right to resort to competent national courts to consider an act constitutes a violation of the recognized fundamental rights guaranteed by the conventions, laws, regulations and customary practice.
2. A person is innocent until proven guilty before a competent court.
3. The right to defence, including the right to choose a defender.
4. The right to be tried within a reasonable time and by an impartial tribunal.
5. A person may not be convicted for any act or omission that does not constitute an offense punishable by law at the time of commission, no penalty except by a sentence.

**The 1954 Convention on the Status of Stateless Persons addressed this right as well. Article 16 states:**

1. A stateless person shall have free access to the Courts of Law on the territory of all Contracting States.
2. A stateless person shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from *cautio judicatum solvi*.
3. A stateless person shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.<sup>(12)</sup>

The 1951 Refugee Convention also included the right, emphasizing that it is one of the basic rights that cannot be derogated. Article 16, entitled Access to Court, thus stipulates:

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.
2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from *cautio judicatum solvi*.
3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence .

In the framework of the European Convention on Human Rights or the so-called Convention on the Protection of Human Rights within the Council of Europe of 1950, the right to litigation was not provided a special provision, but it was included within the provisions of Articles 5, 6 and 7, as they included elements of the right.

**As for the American Convention on Human Rights of 1969, article 8 on Fair Trial states:**

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labour, fiscal, or any other nature.
2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:
  - a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;

- b. prior notification in detail to the accused of the charges against him;
  - c. adequate time and means for the preparation of his defence;
  - d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
  - e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
  - f. the right of the defence to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
  - g. the right not to be compelled to be a witness against himself or to plead guilty; and
  - h. The right to appeal the judgment to a higher court.
3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.
4. An accused person acquitted by a non-appealable judgment shall not be subjected to a new trial for the same cause.
5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice. <sup>(13)</sup>

## The Right to Litigation in Bilateral International Agreements

The prominent feature of the modern state is that it seeks to impose the rule of law on all individuals on all matters related to their behaviours and actions. These laws are also imposed on all the bodies that work within it, whether governmental or non-governmental. Hence, the relationship between the concept of the legal state and the principle of legality are fleshed out to emphasise the importance of the rule of law.

The United Nations defines the rule of law as: “the principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency”.

On its part, the State of Jordan has too emphasized the right to litigation in a number of bilateral international agreements, due to their strong belief that it should be affirmed as a fundamental right that is unalienable and should not be restricted.

This principle is enshrined in the Riyadh Arab Convention on Judicial Cooperation and its amendments of 1983, and more precisely in article 3, “Citizens of State Parties within their respective borders shall have the right to sue the judicial bodies to claim and defend their rights. The right shall not be restricted for non-nationals, not should be imposed on them any guarantees, whether personal or material, in order to exercise the right. The provisions of the preceding paragraph shall apply to legal persons established or authorized in accordance with the laws of each State Party.



The right was also provided for in numerous bilateral agreements, as in the case of the Judicial Cooperation Agreement between Jordan and Egypt of 1986, where the first section provides for judicial cooperation in civil matters. The first chapter of the agreement, in Article 3, states that: “Citizens of both parties within their respective borders, in addition to entities, that are established or authorized in accordance with the laws shall have the right of litigation, and no party may place any restrictions limiting the use of this right.”

The same right was also guaranteed in the bilateral agreement on Legal and Judicial Cooperation between Jordan and Qatar of 1997, as well as the one signed with and the United Arab Emirates in 1999, and with Yemen and Algeria in 2001. Additionally, the memorandum of understanding signed with the United Nations Higher Council on Refugees.

## **The Right to Litigation in National Legislations**

The Jordanian Constitution provides for the right to litigation to denote its importance and status. Consequently, the right was later confirmed and highlighted in various legal rules and provisions.

The right was further enshrined within the laws by constituting as the constitutional approach placed the independence of the judiciary as a main pillar to entrench the principle further within the national legislations; especially within the provisions of the Independence of the Judiciary Act No. 15 of 2001, as well as Criminal Procedures Code No. 9 of 1961 and Penal Code No. 9 of 1960. The first chapter of the Penal Code, entitled the Operative Period of a Criminal Law, stipulates in Article 3: “No penalty shall be imposed unless provided for by the law at the time the crime is committed. A crime is considered to be a complete one when all the acts composing it are completed without any regard to the time when the result happens.”

The Jordanian Court System is divided into two degrees: Courts of First Instance, which include Magistrate Courts and Courts of Appeal; and High Administrative Courts (Appeal) and the Court of Cassation (Supreme Court), though the latter is not considered a court of litigation as it is a court of laws.

Court cases are also divided into types:

1. Legal Cases which are lodged regarding a personal right that is claimed by a person or an entity from another.
2. Criminal cases where a crime was committed as stipulated by law. These crimes are classified as either a misdemeanour or a felony.

**With regard to labour issues, the Jordanian legislator was keen within the articles of the Labour Law No. 8 of 1996 to settle collective labour disputes in a gradual manner, as Chapter Twelve on the Settlement of Collective Labour Disputes states as follows :<sup>(14)</sup>**

## **| First: Conciliation Representative**

The Minister may appoint a Conciliation Representative or more from the Ministries staff to assume the task of mediation in the settlement of collective labour disputes for the area he defines and the period he deems appropriate.

Article (121):

- a. If a collective labour dispute occurs, the Conciliation Representative should initiate the mediation proceedings between the two parties for the settlement of that dispute.
- b. If agreement in this respect is made by a collective contract or otherwise, the Conciliation Representative shall retain a copy thereof which is approved by both parties.
- c. If negotiations between the two parties, for any reason, were impossible or if it was discovered that the continuation therewith will not lead to the settlement of the dispute, the Conciliation Representative should submit a report to the Minister comprising the reasons of dispute, the negotiations conducted between the two parties and the result he reached within a maximum period of twenty one days from the date of referral of the dispute to him.
- d. If the Minister in turn was unable to settle the dispute, he should refer it to a Conciliation Board he forms in the following manner:
  1. A Chairman appointed by the Minister provided he is not connected with the dispute, labour Unions or Employer Societies.
  2. Two members or more represents each of the Employers and Employees in equal number where each of the two parties shall name his representatives on the board.

## | Second: Conciliation Board

**Article (122):** a) If a labour dispute is referred to a Conciliation Board, it should exert its efforts to reach a settlement in the manner it deems suitable, if it reaches a total or partial settlement, it should submit a report hereof to the Minister attaching therewith the settlement signed by the two parties.

b) If the Conciliation Board does not reach a settlement to the dispute, it should submit a report to the Minister comprising the reasons of the dispute, the measures it took for its settlement, the reasons which led to its non-finalization and the recommendations it deems appropriate in this respect.

c) The Board in all cases, should finalize the Conciliation proceedings, and submit its report of the results it had reached within a maximum period of 21 days from the date of referral of the dispute to it.

**Article (123):** Neither of the two parties in the labour dispute may appoint Attorneys- At-law before the Conciliation Representative or Conciliation Board.

## | Third: Labour Court

**Article (124):** a) If the Conciliation Board is unable to finalize the collective labour dispute, the Minister should refer it to a labour Court to be constituted from three regular judges delegated by the Judicial Council for these purposes upon the Ministers request and presided by the most senior of them in grade. It may convene in the presence of two of its members. If their opinions differ, the third judge shall be invited to participate in the review of the lawsuit and pass decision thereon.

b) The labour dispute referred to the labour Court shall be given an urgent status whereby it should commence with its review within a period not exceeding seven days from the date of referral provided that the Court passes its decision on the dispute and notifies the Minister thereof within thirty days of that date. This decision shall be final and may not be appealed before any judicial or administrative party.

c) The labour Court shall review the labour dispute submitted to it and pass its decision thereon according to the proceedings it deems suitable for the realization of justice between the two parties provided that consideration is given to any special proceedings stipulated in this law. Each party may appoint an Attorney-at-law or more before the Court.

**Article (130):** The settlement reached as a result of the conciliation proceedings pursuant to the provisions of this law or decision of the Labour Court shall binding upon the following categories:

a) To the parties of Labour dispute. b. To the successors of Employer including his heirs to whom the Establishment, to which the dispute relate, has been transferred.

b) To all persons who were working in the Establishment to whom the dispute relates on the date of its occurrence or in a part thereof as the case may be and to all persons who are employed thereafter in that Establishment or in any part thereof if the same is mentioned in the settlement report or decision of the Labour Court providing thereof and nothing in this law or regulations issued pursuant thereto would prevent same.

**Article (133):** a) If any Employee violates any of the settlement conditions or the decision of the labour Court which is binding upon him pursuant to this law, he shall be penalized by a minimum fine of fifty Dinars and not exceeding two hundred Dinars for the first time. it shall be doubled in the event of repetition. The fine may not be reduced below its minimum for the extenuating discretionary reasons.

b) If the Employer violated any of the settlement conditions or the decision of the labour Court which is binding upon him pursuant to this law, he shall be penalized by a minimum fine of two hundred Dinar and not exceeding four hundred Dinars for the first time. It shall be doubled in the event of repetition. The fine may not be reduced below its minimum for the extenuating discretionary reasons.

## **| National Centre for Human Rights**

The National Centre for Human Rights was formed by Royal Decree and a decision of the Houses of Representatives and the Senate. Law No. 51 of 2006 defines the objectives of the Centre according to Article 4 as:

- A. Enhance and safeguard the principles of human rights in the Kingdom and shall be inspired in doing so by the tolerant message of Islam, and the values inherent in the Arab-Islamic heritage.
- B. Promote and safeguard human rights in the Kingdom based on the rights and obligations stipulated in the Constitution and the commitments enshrined in international covenants and conventions 1.
- C. Participate in efforts aimed at promoting human rights principles in Jordan at the intellectual and practical levels, as well as non-discrimination between citizens because of race, language, religion or gender.
- D. Enhance the democratic process in the Kingdom with a view to creating an integrated, balanced model based on spreading freedoms, guaranteeing political pluralism, respecting the rule of law and guaranteeing the right to economic, social and cultural development.
- E. Endeavour for the Kingdom's accession to Arab and international human rights charters and conventions.

### **Article (5) of the law stipulates:**

“The Centre shall employ the following means and methods in its quest to achieve its objectives:

- a) Verifying that human rights are being observed in the Kingdom when addressing any transgressions or violations thereof and following up on the adoption of the necessary measures for that purpose, including settlement of said transgressions or violations or referral to the Executive or Legislative Power or the competent legal authority in order to put an end thereto and eliminate the effects thereof 2.

- b) Endeavouring to include human rights principles, especially as stipulated in Islam, in the curricula of the different educational levels.
- c) Declaring positions and issuing statements related to human rights issues in the Kingdom.
- d) Conducting legal, political, social, educational, and intellectual studies and researches related to the Centre's objectives.
- e) Organizing lectures, seminars, and conferences pertaining to the Centre's objectives and participating in similar activities, provided that the provisions of the relevant valid laws are being observed.
- f) Organizing training courses, seminars educational sessions.
- g) Issuing human rights-related statements, bulletins and periodical and non-periodical publications.
- h) Participating in television and radio programs, panel discussions and interviews, as well as in the preparation of press materials.
- i) Exchanging information and experiences with similar national, Arab, and Islamic associations and organizations, as well as regional and international institutions.
- j) Making recommendations and submitting proposals necessary for safeguarding human rights in the Kingdom.
- k) Establishing a database of information related to human rights.
- l) Proposing legislation related to the Centre's objective

In accordance with article 6, the members of the Centre “shall enjoy complete independence in undertaking its human rights-related intellectual, political and humanitarian activities and functions. Furthermore, the Board or any of its members or the Commissioner General shall not be held accountable for the measures taken within the Centre’s competences specified herein”.

Article 8 of the law gave the NCHR the authority to request any information, data, or statistics it sees necessary for the realization of its objectives from the concerned parties, which shall respond without delay to such requests. Meanwhile, article 10 states that the Centre has the right to:

(A) Visit reform and rehabilitation centres, detention centres and juvenile care homes and shall do so according to proper rules.

(B) Visit any public place or any legal personality, which has been reported to be the venue of past or present transgressions of human rights, or to ascertain such and recommend following the necessary procedures.<sup>(15)</sup>

In 2017, the NCHR published its annual report on the status of Human Rights in Jordan. In the 2nd Chapter on Economic Rights, the report tackled the right to work as the year witnessed the adoption of a number of laws and regulation related to it. These include The Instructions to Regulate the Work Affairs of Migrant Workers in the Aqaba Economic Zone, number 169; and the Amended System for Work Permit fees for Non- Jordanian Workers (14). These laws were faced with criticism to these laws as some viewed them as being an instrument to increase the volume of violations committed against Migrant Workers, which in turn would negatively affect the various sectors and the working and living conditions of the workers as well.



As for inspection visits conducted by the Ministry of Labour, the report noted that despite the increase in the number of inspectors, the number of these visits decreased in 2017 to (79589) visits compared to (99459) visits made in the previous year. The NCHR also remarked that the procedures implemented by the Ministry are insufficient to protect workers from being subjected to violations in different sectors. The centre thus recommends that the Ministry should undergo a comprehensive review of national legislations and procedures related to work in order to better protect the rights of workers.

Furthermore, the report noticed that 9448 workers were deported by the Ministry of Labour in 2017, compared to 8139 in the year before. The data also showed that 800,000 workers did not have a work permit in the country. Also, 2297 complaints were handled by the Ministry of Labour and directorates through the Complaint Department and the hotline, with 798 of these complaints resolved.

Despite the important position that the centre has been able to achieve since its inception, there have been some criticisms directed at it, especially regarding the issue of financial independence, since the government is the main source of funding for the NCHR.

## | The Right to Litigation and Access to justice

The right to litigation is one of the means of accessing justice, though it is not the only component towards it. Fair legislation is equally important, as well as an effective complaint mechanism that both receives and handles these complaints. Other means include the promotion of equality and social justice that concern the protection of all, including vulnerable categories like Migrants, refugees and others.

The principal of the right to litigation is based on three aspects:

- The first: to enable every person to have access to justice; by allowing them to appeal all actions and decisions and not to immunize any action or decision issued by the judiciary before any court that wishes to look at the case. Defendants also should not bear any financial burdens that would hinder the right to litigation.
- Second: the independence and impartiality of the judiciary: the judge applies objective and substantive ground rules to the adversaries, without interference from the executive or legislative branches of the government
- The third is access to final judicial satisfaction as the State provides a fair solution to judicial disputes when the sentence is given. These solutions could include settlements sought by the applicants which in their opinion would constitute their judicial compensation for the violations that they claim befell them. The sense of satisfaction, assuming its legitimacy and consistency with the provisions of the Constitution, is integrated into the right to litigation.

In Jordan, the legislations do not differentiate between migrants and citizens in terms of the mechanisms of litigation and redress. Both have the right to lodge complaints with the official authorities. However, there are some obstacles that migrant workers may face in accessing justice, such as language differences, fear of filing a complaint, and the inability of some to leave the workplace.

In turn, the Ministry of Labour established a hotline to receive complaints of workers, whether Jordanians or Migrants. However, a number of reports indicated that this method is ineffective, despite the hotline being operated in 7 different languages, because workers still find it difficult to use.

Complaints are also received by Police Stations, though there are issues related to that mechanism as well due to the malicious or “escape” reports that employers file against workers once they leave the workplace, which would usually lead to their arrest. <sup>(16)</sup>

## 1.2 Status of Migrant Workers in Jordan

Historically, Jordan has opened its borders to a growing number of migrant workers since the 1970s. Unlike the Gulf Cooperation Council (GCC) where large numbers of workers migrated in the wake of the discovery of oil and the subsequent large infrastructure projects, Jordan has no oil sector and its resources are limited to phosphate and agricultural products. However, the Kingdom has been able to attract migrant workers to meet the demand to fill low-waged jobs in the fields of domestic work, agriculture, construction and services.

Currently, more than 10 million people live in Jordan, according to data released by the Department of Statistics<sup>(17)</sup>. These numbers include about 2.1 million Palestinians, 655,990 Syrian, and about 315,000 migrant workers. Egyptians represent the largest majority of the total migrant labour force (61.63%); followed by Bangladesh (15.66%), and the Philippines (5.37%); then Sri Lanka (4.72%), and India (3.65%). Estimates indicate that the total number of irregular migrant workers is between 150,000 and 250,000. These numbers are significantly higher than the officially announced figures, and bring the total of workers between 440,000 to 540,000.

## Number of migrant workers in Jordan in 2017

According to figures from the Ministry of Labour, there are 396,091 workers registered with the Ministry who have work permits in 2017, distributed according to nationality as shown in the table below:

Distribution of permits of migrant workers registered with the Ministry of Labour during the period from 1-1-2017 to 31-12-2017

Nationality	Male	female	Total
Egypt	210326	1306	211632
Syria	44339	2377	46716
Rest of States	7054	1009	8063
Iraq	882	151	1033
Yemen	4195	30	4225
Sudan	4195	25	4225
Pakistan	3268	235	3503
India	15540	632	16172
Philippines	1144	18884	20028
Sri Lanka	5005	6186	11191
Indonesia	71	689	760
Bangladesh	10256	40955	51211
Turkey	162	7	169
The rest of the non-Arab Asian countries	3826	5970	9796
European countries	991	414	1405
Morocco	45	99	144
United States of America	350	120	470
African non-Arab countries	193	8580	8773
Other Foreign countries	151	70	221
<b>Total</b>	<b>308352</b>	<b>87739</b>	<b>396091</b>

The table above shows a rise in the number of migrant workers compared to 2016. A quick comparison between the figures shows that the largest increase was registered among Syrian workers, with the number of permits registered increased from 36789 in 2016 to 46716 in 2017. The increase is the result of the policies and procedures issued by the Jordanian government to facilitate the entry of Syrians into the Jordanian labour market after signing the Jordan Compact with the European Union in February 2016.

As for other nationalities, the number of Sudanese workers registered a remarkable increase from 380 work permits issued to Sudanese workers in 2016 to 4225 issued in 2017. Other nationalities maintained close figures over the two years.

	Public Administration Defence, Social Security	Administrative and support services activities	Professional, Scientific Technical Activities	Real Estate	Finance/ Insurance	Information/ Communication	Accommodation/ Food Services	Transport Storage	Retail/Mechanic Repairs Engines Motorcycles	
Capital	19691	449	58673	1763	225	956	1287	10013	3540	
Madaba	7959		848	211	2	8	19	28	577	
Irbid	5027		2573	126	28	13	86	727	943	
Jerash	1864		168	27	4	3	17	145	127	
Ajloun	36303		109	38		1	1	110	1	
Balqa	14683		2000	189	41	21	200	1253	215	
Karak	5230	1	483	247	16	4	43	263	83	
Maan	40857		109	139	1	4	4	361	194	
Zarqa	12734		703	300	17	67	82	1430	248	
Mafrq	2860		179	108		2	3	723	374	
Tafleeh	3119		47	78			4	55	196	
Aqaba	396091			14	1			328	17	
Total:		450	65892	3240	335	1079	1746	15436	6515	

## **| Legal Framework for Migrant Workers**

To begin with, it is noteworthy to indicate that migrant workers, regular or irregular, enjoy the same human rights recognized in the international mechanisms. An irregular migrant worker in Jordan needs to enjoy all legal rights included in the international conventions and treaties as well as he or she must enjoy all other human rights stipulated in Jordanian legislation. The following is a presentation of the most prominent components of the reference legal framework of this study including the international and national components.

## **| The International and National Conventions and Treaties related to Migrant Rights**

Based on international conventions and treaties joined by Jordan, the Kingdom is bound to protect the rights of migrant workers residing within its territory since the provisions of these conventions and treaties include all individuals within the territory of the concerned state and who are subject to its jurisdiction without any kind of discrimination based on sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status as stated in the two international covenants. These obligations must be implemented in good faith based on the provision of Article 26 of the Vienna Convention on the Law of Treaties. It is not permissible to invoke by utilizing the provisions of an internal law as justification for the non- implementation of these provisions, international human rights conventions and treaties.

Human rights, international conventions and treaties Jordan joined many international conventions and treaties starting from the Universal Declaration of Human Rights which stipulates the fundamental rights which “must be enjoyed by all people” starting with the right of every person to life, liberty and personal safety, the right to not be subjected to torture, penalties or cruel and inhuman treatment, or that which offends human dignity, the right to recognition before the law in addition to the fact that all are equal before the law and entitled to

enjoy equal protection without discrimination. The Universal Declaration of Human Rights also stipulates that each individual has freedom of movement, to choose a place of residence inside the territory of each state, the right to leave any country including his or her country of origin and to return to it.

Furthermore, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights support what has been stipulated in the Universal Declaration of Human Rights. Jordan has also joined the following United Nations conventions; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, all of which were published in the official gazette.

In the scope of combatting human trafficking, Jordan joined the International Convention against Transnational Organized Crime of 2000 and its protocol, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

The prevention stipulated in the different fore mentioned human rights conventions constitutes the minimum level of protection. The state parties including Jordan are not allowed to go lower than this or subtract from it whether in their national legislation or their judicial, executive or administrative practices. The state must take the appropriate steps to protect human rights within private relations. Otherwise the state carries international responsibility in such regard. This matter is confirmed by the High Commissioner for Human Rights in his report regarding such issues in 2007. Jordan has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990 which entered into force on 1 July 2003. Jordan's non-ratification of this convention makes the protection of migrant workers lose one of the most vital foundations in its legal framework.



This convention is one of the fundamental human rights conventions as it emphasizes in its preamble on the link between it and the fundamental United Nations mechanisms regarding human rights. In addition, it highlights the principles and standards mentioned in the relevant mechanisms endorsed by the International Labour Organization (ILO).

The convention includes a number of fundamental and important legal provisions in the field of protection of migrant workers' rights and members of their families. Although the number of the state parties who ratified this convention does not exceed 43 states to date, it can be said that some of the guaranteed rights became part of customary international law, particularly the rights and provisions which are similar to the ones stated in the human rights and ILO conventions.

The judgment of the reality of irregular migrant workers' status in any country must be based on the principles and standards established by these conventions particularly due to the fact a huge part of these principles and standards are part of the customary international law which binds the state and non-state parties to these conventions.

## I International Labour Conventions

Jordan is committed to a number of international labour conventions, including; Freedom of association and the effective recognition of the right to collective bargaining, elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation. Jordan is bound by the declaration of principles as a member of the ILO, having ratified 24 international labour conventions, only 14 of which though were published in the official gazette.

These conventions include:

- a. Convention No. 29 of 1930 on Forced or Compulsory Labour
- b. Convention No. 81 of 1947 on Industry and Commercial Inspection
- c. Convention No. 100 of 1951 on Equal Remuneration
- d. Convention No. 111 of 1958 on Discrimination (Employment and Occupation)
- e. Convention No. 118 of 1962 on equal treatment of citizens and non-citizens in social security

It is noteworthy in this context that Jordan has not ratified a number of important international labour conventions in the field of migrant workers protection which are

1. C087 on Freedom of Association and Protection of the Right to Organize Convention of 1948,
2. C129 Labour Inspection (Agriculture) Convention of 1969,
3. C181 Private Employment Agencies Convention of 1997
4. C097 Migration for Employment Convention.
5. C189 Convention concerning decent work for domestic workers which was adopted in 2011.

## I Jordanian legislation

The Jordanian legislative system includes a number of laws and by-laws starting from the constitution which stipulate a number of rights and freedoms from which migrant workers can benefit whether he or she is regular or irregular, such as equality and non-discrimination, personal freedoms, right to litigation, access to courts and remaining legislation.

It is possible to summarize the most important legislation of: Civil Law, Labour Law, Social Security Act, Penal Code, Anti-Human Trafficking Law, the Law of Residence and Foreigners' Affairs and the Abolition of Slavery in addition to other legislation that provides partial or sectorial protection to the migrant workers in some areas.

These mentioned laws include a number of applicable statutory provisions which are applicable to regular and irregular migrants equally, though some ought to be separately highlighted:

### a. The Labour Law

Labour Law 8 of 1996 defines the worker as “every person, male or female who performs a job against wages and is subordinate to the employer and at his service”. The provisions of Article 3 of the law should apply to all employees regardless of whether the nationality is Jordanian or non-Jordanian, and of the legal status of the worker. The provisions of Jordanian Labour Law and the labour rights that it includes are applicable to all workers both Jordanian and migrants, including irregular workers. Moreover Article 12 of Jordanian Labour Law oversees all matters related to migrant workers.

Jordanian legislation does not allow the recruitment of any non-Jordanian worker without the approval of the Ministry of Labour or his authorized representatives under the condition that the work requires experience and competence not available from Jordanian workers or the available number of competent workers does not meet the demand. The Minister of Labour has the right to issue the necessary instructions to regulate and recruit non-Jordanian workers.

The law requires the non-Jordanian worker to obtain a work permit issued by the Ministry of Labour for one year renewable. The fee shall be set by a regulation issued by the cabinet and it must be collected from the employer and is considered an income for the treasury.

The employer or the manager of the establishment shall be penalized by a fine no less than 200 JOD and not exceeding 500 JOD for every non-Jordanian worker employed in a manner which is in violation of the provisions of this law. The fine may be doubled in case of repetition and it may not be reduced below its minimum in any case or for any reason.

Employment of a non-Jordanian is considered a violation of the provision of this law in any of the following:

- Employment of him or her without a work permit
- Employment by an employer not permitted to work with him/her unless in possession of a permit from the concerned ministry
- Employment of the worker in a career which he or she is not permitted to occupy

In the case of violation of these relevant labour law provisions, the Ministry of Labour shall issue a decision to deport the non-Jordanian worker outside of the Kingdom at the expense of the employer. This deported non-Jordanian worker is not permitted to return to the Kingdom until three years have passed since the date of the decision of his or her expulsion.

#### b. Law of Residence and Foreigners' Affairs of 1973

Other important laws related to the status of irregular migrant workers are the Law of Residence and Foreigners' Affairs of 1973 which stipulates that the foreign worker enter the Kingdom legitimately by land, sea or air and possess a visa. Article 16 of the same law prevents the recruitment of any foreigner unless he/she holds a residency permit in the Kingdom.

The law defines the length of stay as one year renewable. It allows the Minister of Interior to grant a five year residency to each foreigner having legitimately resided in the Kingdom for 10 years. Article 35 imposes that each employer recruiting a foreigner who does not obtain a residence permit or who is not allowed to work a fine of 50 to 70 JOD for each offending employee. Nevertheless Article 34 of the same law imposes a fine on each foreigner who enters the country illegally “such as entering as an infiltrator or through smuggling” without obtaining a residence permit, if his or her stay exceeds the permitted time, or if he or she did not apply for a renewal of his/her residency within the month of expiry, of 45 JOD for each month or part of the month at 1.5 JOD for each day.

In addition to the above, the Residence and Foreigners’ Affairs Law is devoid of basic principles which are considered pillars upon which the residence law should be founded, namely:

First, respect the principle of non-refoulement which stipulates the inadmissibility of returning any person who believes he/she will be subject to torture or any other form of human rights violation.

Second, ensure compatibility of the law with the general principles of international humanitarian law including ensuring that it does not include any provision that may impede in any way, any of the foreigner’s rights, particularly migrant workers’ rights, regardless of their status or means of arrival to the country. In particular the law is not allowed to subject migrants or foreigners to more risk of abuse from the moment of their arrival till the moment of their departure.

Third, ensure that the procedures of forced deportation are enshrined in procedural and subjective guarantees that safeguard a minimum limit of appeal for a judicial decision for deportation. The decision should be reasonable, and specialized translation and legal assistance must be provided until the implementation of the deportation.

### c. Regulations and Instructions and link to Irregular Workers

In addition to the fore mentioned laws, there are regulations and instructions which are closely linked to the situation of irregular migrant workers, most importantly: domestic workers by-law, by-law regulating recruitment agencies recruiting non-Jordanian domestic workers, the by-law of the work permit fees of non-Jordanian workers, labour inspectors by-law, instructions of conditions and procedures for the use of non- Jordanian workers, instructions of conditions and procedures for recruitment of non-Jordanian in the QIZ and the decisions related to the minimum wage, in addition to the decisions related to the closed professions reserved for Jordanians.

The mentioned by-laws and instructions are related clearly to the status of irregular migrant workers. For instance, decisions related to 'closed' professions leads to workers finding themselves in an irregular status since they prohibit the use of non-Jordanians in professions listed as such. In practice this means the migrant workers who are engaged in closed professions work irregularly due to the impossibility of obtaining permission to do so in principle. In addition, being recruited into such professions and businesses would be at a lower cost in comparison to being recruited into closed professions. Regarding the decision of minimum wage, the minimum wage was set at 150 JOD with the exception of workers in the garment sector, domestic workers, cooks, gardeners and the like. The minimum wage of the exempted categories was set at 110 JOD.

It is noteworthy that the minimum wage for Jordanian workers is 190 JOD. The difference in wages between Jordanians and migrant workers constitutes a form of discrimination and violation of one of the most important humanitarian principles highlighted by the Universal Declaration of Human Rights that people are born free and equal in dignity and freedom and that everyone without discrimination has the right to equal pay for equal work.

Some of the instructions which influence the status of irregular migrant workers are the Instructions for the Conditions and Procedures of Bringing and Employing Non-Jordanian Workers of 2009 which excludes domestic workers and garment workers. Regardless of the conditions included in the instructions, it is noteworthy that Article 10 requires the recruitment or renewal of non-Jordanian workers based on the needs of the labour market, taking into account the list of closed professions. This means that workers are recruited into a two-year employment contract but his/her work permit may not be renewed one year after from the contract's starting date.

Article 11B of the mentioned instructions obligates the employer to inform the concerned directorate of labour (the directorate which issues the permit) immediately of the non- Jordanian worker's departure or escape within the period of validity of the work permit. It is notable that paragraph C of the same article requires a foreign worker to inform the directorate which issued his/her work permit as soon as he/she leaves the work during the validity period of the work permit. If the worker fails to do so, he/she will not be granted a work permit with any other employer. Additionally, in the cases reported the migrant worker is not able to obtain a work permit with another employer unless his first employer agrees to it. Moreover Article 12 of the instructions included a number of provisions that restrict the movement of the migrant worker from one employer to another. All the mentioned provisions have an important impact, sometimes negative, on the status of migrant workers and their legal position in Jordan. It particularly impedes the worker's right to choose his/her place of work, compelling the worker to flee in order to change his/her work or employer. As a result the migrant worker then becomes irregular.

Another notable by-law is the Regulation No. 90/2009 of domestic workers, cooks, gardeners, and other workers who fall within that sector. This by-law places the responsibility of covering the cost of the residency, work permit, flight ticket of the worker after two years of employment, on the employer. It can be noted from this provision that in the case of reluctance of the employer to renew the residence permit of the migrant worker recruited by him, the person liable is the foreign migrant worker and not the employer. Since the Residence and Foreigners' Affairs Law fines the worker in this case and does not take into consideration that the violation was not caused by the worker himself/herself but by his/her employer. The by-law stipulates one day off per week for domestic workers, 14 days of sick leave and an annual leave of 14 days per year. This allows labour inspectors to conduct inspections of the worker's accommodation upon receiving a complaint against him/her after the approval of the house owner. It is worth noting that the protection stipulated in this by-law for domestic workers is insufficient, particularly because it does not include a real or safe guarantee that the employer will renew the work permit of the worker. In this context, it is important to indicate that the law of protection from domestic violence enforced in Jordan also does not include domestic workers. It is a large defect that contributes to the worsening conditions of migrant workers.



## Obstacles to Access to Justice for Migrant Workers

There are several obstacles that prevent Migrants or at least make it difficult for them to access justice:

- a. Difficulties in lodging a complaint: these difficulties affect workers generally, though it especially impacts those whose movement is restricted and / or not proficient in the Arabic Language. Other obstacles could include them working in rural areas as it may not be possible for them to resort to the Labour Directorates. Also, strong social connections and nepotism enjoyed by the employer could also deter workers from filing a complaint regarding the violations that they are facing.
- b. Even though complaints can be made through the Ministry of Labour hotline, workers find it difficult to make use of it for several reasons, notably that the line is only operational during working hours.
- c. As for filing a complaint in Police Departments, obstacles include that most police officers speak only Arabic. Furthermore, the capacity of police officers tends to be low in terms of cases involving migrant workers. Moreover, approaching Police Department constitute another form of risk as migrant workers could be detained by them. It has been noted in fact that several workers were detained and then handed back to the employer, despite the lack of any legal ground to do so.
- d. Obstacles related to cost, language and access to the right place to file the complaint deter some workers from even thinking of that option.
- e. As of yet, Jordan does not have a national legal aid system.

## | Legal Services available to Migrant Workers

### a. The right to legal advice

The Jordanian Constitution guarantees the right of individuals to access the courts through Article 101 (1): “Courts shall be open to all and shall be free from interference in their affairs.” However, there is no express right of defence.

With regard to representation, the relevant provisions in the constitution include article 102, which grant the accused the right to counsel of his choice during the stages of investigation and trial. Other articles include 22 of the Code of Criminal Procedure, which states that counsel has the right to attend interrogation unless the investigation is confidential or urgent; article 63, which supports the right of the accused not to respond to an indictment without a lawyer and obliges the Public Prosecutor to inform the accused of this right.

### b. Legal Assistance and Services

- Legal assistance

Under national legislations, defendants who are accused of serious crimes that could result in death sentences, life imprisonment or hard labour, are entitled to a state-appointed lawyer.

While the State follows these provisions (even though they are not fixed), the restrictive eligibility criteria mean that very few defendants benefit per year.

Other concerns include that such assistance is limited to the duration of the trial and the absence of an effective system for monitoring the quality of the legal assistance provided.

- Jordan Bar Association

The Bar Association Act defines the objectives of the Association as providing for legal assistance. Article 7/100 provides the Association President the power to assign any lawyer for a one-time pro bono service per year, including defending a person in need, but this article is rarely implemented in practice.

Moreover, lawyers generally lack the skills and understanding regarding to the main issues affecting poor and marginalized groups and their vulnerability. Also, the absence of a quality control system means that this system may not be the best approach to enhancing access to justice for these groups. Finally, the centralized nature of the Bar Association means that it is without formal structures at the governorate level, creating restrictions on access to justice for those living in these areas.

#### c. Non-Governmental Legal Aid Service Providers

Millions of people face difficulties accessing justice. Migrants are particularly vulnerable to legal issues related to life, health, work and other situations affecting their living and working conditions. Often, such groups are unable to obtain the assistance needed to solve their problems due to several obstacles as was highlighted above.

Due to these conditions, the emergence of non-governmental organizations to provide legal services to these groups has substantially increased in recent years.

These institutions offer a range of services including mediation, negotiation, awareness raising, legal advice as well as advocacy. The methods utilised depend by an analysis conducted by the institution on each case. The analysis then determines whether beneficiaries are provided with the most suitable legal service.

These procedures vary from helping them obtain documentation or official papers from the Government or provide information on relevant government laws and procedures; provide them with advice regarding their rights and the options available to them to reach what they need.

These organisations include:



## Tamkeen Fields for Aid

Tamkeen Fields for Aid is a non-governmental, independent and neutral organization established 10th October 2007. The organization aims to promote the exercise of fundamental human rights and freedoms for all segments of society, particularly those who are marginalized such as children, women, refugees, workers, people with disabilities and others in accordance with national and international conventions and treaties.

Tamkeen is specialized in promoting the protection of migrants and workers, combatting human trafficking, enhancing social protection and the rule of law.

Tamkeen aims to achieve its objectives through capacity-building for governmental and non-governmental entities and by providing services and consultation to those in need in order to empower them and raise their awareness regarding their rights and duties. It also provides specialized programs in the field of human rights to various segments of society. This is achieved by raising awareness of human rights for all related parties. The centre also works to produce studies regarding topics related to its field of expertise.

In addition, Tamkeen works to strengthen cooperation and coordination between different concerned stakeholders such as national institutions and bodies, civil society organizations and associations in addition to the activists and individuals working in the field of human rights protection. Additionally, the centre works to establish partnerships with organizations in other countries to protect the rights of migrant workers.

Tamkeen Fields for Aid works to provide assistance to combat human trafficking and human rights violations by adopting a three-pronged approach which consists in; protection, prevention and prosecution. It is possible to ensure protection by educating migrant workers, government officials and the general public on the possible human rights violations in the labour sector. Moreover Tamkeen works to eliminate human rights violations through legal advocacy and policy reform, educating migrants on their rights and duties, conducting educational programs and by producing brochures appealing to the general public.

### Justice Centre for Legal Aid (JCLA)

Established in 2008, JCLA is a Jordanian not-for-profit and non-governmental organisation registered with the Jordanian Societies Registry. Since 2008, JCLA has grown from one legal aid clinic in Amman to become the largest legal aid provider in Jordan, providing legal aid services at 21 clinics located across all

12 governorates. Each month, JCLA assists approximately 375 beneficiaries through legal consultations, provides legal representation to approximately 150 beneficiaries across 200 cases, and reaches approximately 3600 vulnerable people through its awareness sessions.

JCLA is committed to empowering all poor and vulnerable people in Jordan, with a view to realising a society where everyone has equal access to justice.

JCLA provides poor and vulnerable people in Jordan with access to legal aid services, including legal consultations and legal representations. Through awareness sessions, JCLA informs the community about legal aid and the law. Through advocating for the enhancement of the Kingdom's legal aid system, JCLA strives to uphold the right of all to access justice in Jordan.



## **Arab Renaissance for Democracy and Development (ARDD)**



Started in 2008 as a critical source of legal aid for refugees and other marginalized groups, ARDD has a core mission of helping disenfranchised and marginalized people find their voice and respond to the challenges they face. ARDD's fight against inequity began with legal empowerment and awareness-raising to address the inadequate access to legal protection among society's most vulnerable. Reflecting the interconnected structural issues facing the Arab world, our approaches have since grown to democracy and development mandates, initiatives that confront social and economic inequality, capacity-building exercises, and other strategies centred on human rights and civic engagement in the spirit of the historical Arab Renaissance of the nineteenth and twentieth centuries.

ARDD's work today builds on the insights and vision of that historical movement: that all human beings have the potential to contribute to and take part in the development and betterment of their societies. ARDD's mission is to mobilize the untapped potential of citizens, non-citizens, and communities alike to achieve justice and human rights for all. Key aspects of our vision for a new Arab renaissance involve achieving access to justice for all, accountability for all leaders and stakeholders, responsible governance, and universal social protection, in addition the long-term visions of attaining regional peace and integrating our Arabic cultural legacy. Our vision is to empower the people of the Arab world to create a democratic society where all enjoy social, economic, and political justice regardless of status. ARDD operates nine offices throughout Jordan, including two in the Za'atari and Al Zarqa refugee camps, and is in the process of opening an office in Beirut, Lebanon. Within this framework, and with the support of dedicated partners and stakeholders, ARDD aims to inspire social and political reforms throughout Jordan and the Arab world. ARDD encourage the development of strong, fair, democratic societies, characterized by inclusion, diversity, transparency, equal access to justice, and robust popular engagement

## **Adaleh Centre for Human Rights Studies**

The Adaleh Centre for Human Rights Studies is a non-governmental, non-profit organization founded on September 2003 and based in Amman, Jordan.

Its mission is to enforce human rights values in Jordan and the Arab world, through building the capacity of non-governmental organizations and practitioners working in the field of human rights, democracy and justice.

The centre operates in accordance with all universal human rights declarations, principles, and charters issued by the United Nations. Its vision is to create mindful society that enjoys basic human rights and freedoms, free from discrimination and violations against human rights, and where values of dignity, freedom, equality, tolerance, and respect are widely spread.

Its objectives are:

- To elevate the respect towards freedom and human rights.
- To enhance democracy principles and the rule of law.
- To activate the role of the judiciary and to ensure its independence.
- To enhance the knowledge of the law and to ensure its independence.
- To spread awareness on human rights.
- To invigorate the human rights situation and to document human rights violations.



## Jordanian Women Union

The Jordanian Women's Union (JWU), headquartered in Amman, is a non-governmental, democratically elected organization that is committed to improving the status of women. It is one of the most prominent and influential women's organizations in the Arab world and has established strong networks with women's movements, both nationally and internationally.



The JWU was established in 1945. In 1957, martial law was declared in Jordan and all non-governmental organizations were dissolved. Thus, the JWU was forced to disband. In 1974, the organization re-emerged as the Women's Union of Jordan and continued its activities until 1981 when, once again, it was compelled to discontinue its operations. With the democratization of Jordan's parliament in 1990, the Women's Union of Jordan again resumed operation. In 1994, it adopted its present name, the Jordanian Women's Union.

Since that time, the JWU has gained momentum in realizing its own objectives and in implementing its own agenda. It has increased its number of branches, expanded its scope of activities, and partnered with other women's movements within the Arab world. It has done so with a view to responding to the needs of Arab women at risk of gender-based violence, gender-based inequality, and other human rights violations.

The JWU's vision is to achieve equal rights, within all sectors of society, for women and all marginalized groups. However, for this vision to be fully realized there must first be a real civil society.





A man wearing a dark blue beanie and a dark blue polo shirt with a pocket that says "LAKIOW" is holding a large, folded grey garment. He is looking upwards and to the right. The background shows a parking lot with several cars and a multi-story building under an overcast sky.

## Chapter II

# Cases of

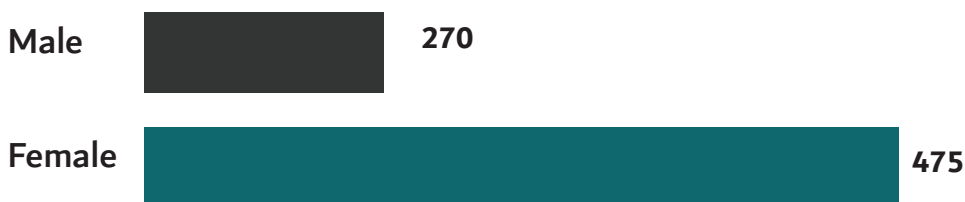
# Tamkeen Center 2017

**In this chapter, the cases received by Tamkeen Fields for Aid in 2017 will be statistically analyzed. The review will first look at the number of complaints received; in addition to several indicators prior to shedding further light on the violations that were most common in these cases.**

## Complaints in Numbers

In 2017, Tamkeen received 621 complaints from migrant workers. These complaints were distributed in relation to their characteristics as shown in the following graphs

- **Gender**

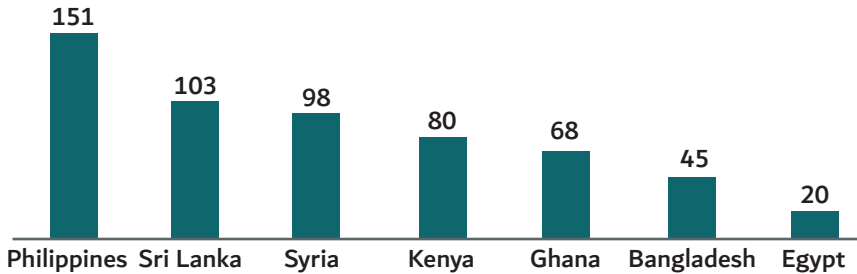


The above graph shows that the majority of cases received by Tamkeen were lodged by female migrant workers, with 467 cases. Meanwhile, the number of cases received by males was 147.

It is important to note that most of the female complainants worked as domestic workers; which in turn raises several questions about the situation of that particular sector.

As for males, their reasons for not filing complaints vary, as some fear that such a step would lead them to lose their jobs. Others on the other hand simply do not know who to turn to in the event of problems or the occurrence of violations during work.

- **Nationalities**



With regard to nationalities, 151 of the received complaints were from Filipino nationals, while 103 complaints were filed by Sri Lankans, followed by complaints from Syrians, Kenyans and Ghanaians.

It should be noted that some of these nationalities have special status such as the Ethiopian, Kenyan and Ghanaian nationalities. The status stems from the status of these countries' workers in the Kingdom. Although the Jordanian government allows domestic workers' offices to bring workers from these countries to work in Jordan, none of them have a diplomatic presence in the country such as an embassy or consulate. Due to this, another hurdle is added to these nationals' quest to access to justice, especially in the matter of finding suitable shelter after they leave the workplace.

The recruitment of female workers from Ghana began in early 2016 before it was temporarily suspended by the end of the same year due to some health concerns. However, it was resumed again in February 2017. Then later that year in June, the Ghanaian authorities made the decision to temporarily stop sending domestic workers to Jordan and the Gulf States for regulatory reasons; though there are still offices that recruit Ghanaian workers to this moment.

As for the Ugandan workers, their recruitment began in January 2017. Following the announcement of that decision, Tamkeen sent a memorandum to the Ministry of Labour critiquing its process of continuously signing recruitment agreements with other countries without sufficient examination of the situation of these countries. These issues became apparent after the Ghana agreement was signed, where it was clear there was a lack of satisfactory medical tests were done in regard to Infectious diseases. Yet, the MoL signed a similar agreement with Uganda to recruit more domestic workers.

The statement thus raised several questions at the Ministry: “Do you know that in 2015 there were 1.5 million people in Uganda who were carriers of the AIDS virus? That there were 83000 new AIDS diagnosis and 28000 cases of death because of the virus? Do you know that in the Ugandan statistics of 2012 that 17% of deaths were from AIDS, 12% from malaria and 5% from TB? <sup>(18)</sup>

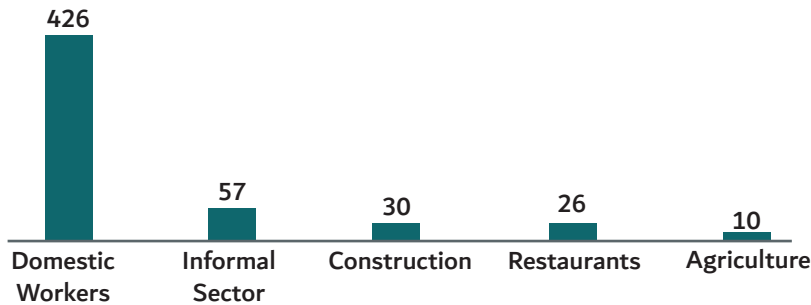
It is noted that the memo came after figures from the Ministry of Health revealed the diagnosis of 31 Ghanaian workers with AIDS, which led to the decision to stop the recruitment referred to above. However, the government allowed their re-recruitment after a joint coordination between the Ministries of Labour and Health and the Association of Domestic Workers, which sent a joint delegation to Ghana. There, a new regulation was adopted that certifies a number of medical centres qualified to conduct examinations for anyone wishing to work in Jordan under regulated medical standards.

Another important thing to note is that the Regulations for Recruitment Offices of Domestic Workers reinstated the compulsory insurance for female workers. The regulation stipulated that “the owner of the recruitment office must provide an insurance policy to protect the home owner in case the worker left the workplace. Additionally, domestic workers must be provided with medical insurance that covers situations when she needs to be admitted into a hospital, with the homeowner bearing the expenses of it. Workers also should be provided with an insurance covering accidental death, and work-related accidents.”

As for other nationalities of domestic workers, it ought to be highlighted that both the embassies of Sri Lanka and Indonesia have opened a special shelter for workers inside their building. Meanwhile, the Philippines have a special office for workers: Philippines Overseas Labour Office (POLO) that runs a shelter for Filipino workers. However, all of these shelters are only available in Amman, which hampers the arrival of many workers working in other governorates.

Finally, there was a sharp increase in the number of complaints lodged by Syrian workers in 2017. Even though there were Syrian workers in the Jordanian labour market even before the onset of the crisis, the increase in their numbers post it and especially after the Jordan Compact has led to an increase in their numbers in the market on one hand and on the number of complaints lodged by them on the other.

- **Sector**



As noted in the chart above, the complaints are distributed across different sectors. These numbers confirm that violations do not occur in a particular sector but are in fact a widespread problem across the market as a whole.

However, there are sectors that need special attention. In 2017, domestic Workers filed the highest number of complaints. The reason for this relates to the special nature of their work, where they work and live in the employer’s home. Due to this, domestic workers tend to be more vulnerable to exploitation. Forms of exploitation vary in terms of the many violations that these workers face as will be seen below and could include: long working hours, confiscation of documents, lack of private space and restrictions to either contact their families or leave the workplace.

Other sectors that need highlighting are: agriculture, construction, as well as workers in the Qualified Industrial Zones and those in the Informal sectors.

- **Case Type and Dispute Resolution Mechanisms**

As for the types of case, they can generally be divided into administrative or judicial cases depending on the manner in which they were dealt with. Since the beginning, Tamkeen always looked to the court as a final solution to solve cases after using other alternative dispute resolution mechanisms such as mediation, reconciliation and others.

Alternative Dispute Resolution (ADR), which is defined as any procedure or combination of procedures, conducted in a controlled structured manner, which is entered into voluntarily by the parties to a dispute, as opposed to one suing the other publicly in a court of law. Such methods are preferred by Tamkeen compared to resorting to court due to several factors, the most important of which is the length of litigation as will be detailed in the next chapter.

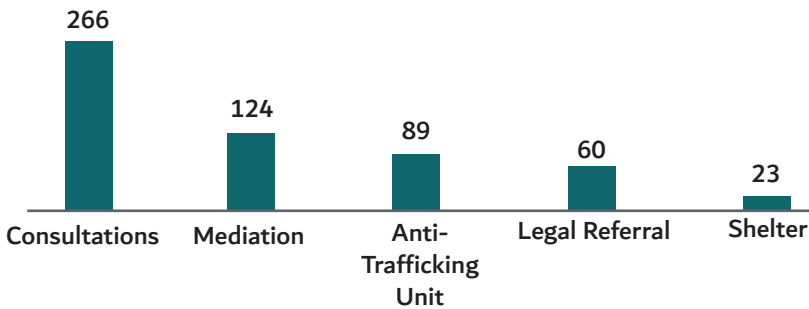
Tamkeen's long experience of working with Migrant Workers has shown that prolonged litigation leads to migrants finding themselves in more trouble than when they first started the legal process. These issues begin with the accumulation of fines on them due to the expiration of their work and residency permits. This issue continues to occur as the current laws and regulations still do not have provisions that provide workers in such cases with temporary residence permits that allow them to stay in Jordan until the end of the case. The accumulation of these fines leaves workers in limbo as they can neither remain in Jordan but cannot return to their home countries due to their inability to pay the fines, and thus they are administratively detained instead or become informal workers in the market.

These factors affect the mechanism utilized in each case based on the need of the worker. Tamkeen's Legal Unit thus analyses each case differently and chooses the most appropriate method accordingly. These techniques resulted in giving incoming workers 266 legal consultations, while 124 cases were solved through mediation in 2017.

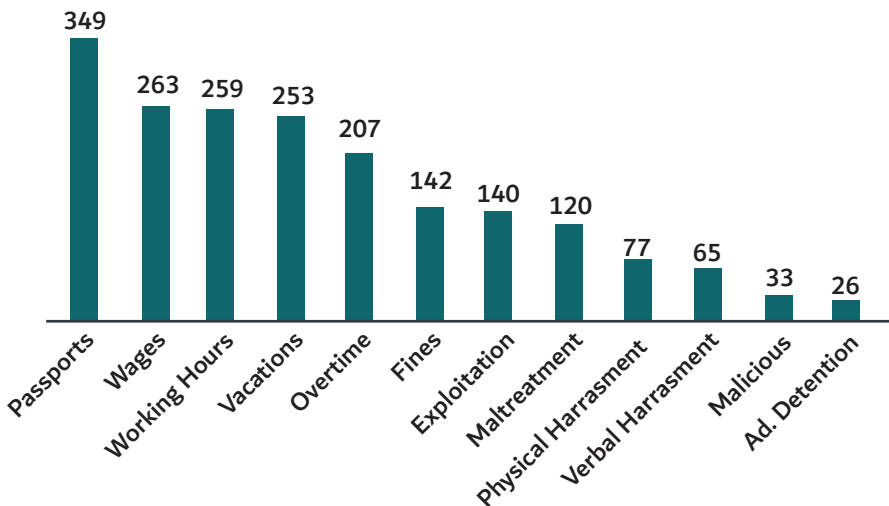
During the same year, Tamkeen transferred 23 workers to either of the 2 shelters available in Jordan. The choice of which shelter depends on the case adjustment as workers whose cases are identified as Human Trafficking are transferred to Dar Al Karama, persons in accordance with the Anti-Trafficking Law and in coordination with the Anti- Human Trafficking Unit. Other cases meanwhile are transferred to the shelter than was established and is managed by the Jordanian Women's Union.

Despite Tamkeen aim to always select the most appropriate solution for all its cases, in certain circumstances it has to select another despite its potential impact on the possibility of the worker receiving all of their due rights. These circumstances are often caused by the laws and regulations referred to in the previous chapter including the accumulation of fines on the worker and the inability of others to wait for a decision by a court case. Others might prefer to simply receive legal advice and not lodge a case as they are afraid to lose their jobs or their lack of confidence in the results.

## ADR



- **Violations**





## **1. Confiscation of Passports**

In 2017, 394 of the complaints lodged contained workers reporting the confiscation of their passports. The confiscation of personal identification documents is a common violation that occurs against migrant workers despite it being considered a crime in Jordanian National Laws.

Passport confiscation is a clear violation of Article 12/4 of International Covenant on Civil and Political Rights. The practice is also a violation of Article 18 of Passport Law 3 of 2002 and Article 222 of the Jordanian Penal Code. Such confiscation of identification documents hinders the return of the worker to their countries of origin or resorting to the authorities as they do not possess these documents.

As for penalty for this practice, article 77 of the Labour Code stipulates that a fine of between 500 and 1000 JOD shall be imposed on an employer who employs any worker under duress, threats, fraud or coercion, including the confiscation of their travel document and that the penalty will be doubled in case of repetition.

Despite the existence of such punitive provisions, the practice is still common as these penalties have not deterred employers from doing it. While the reasons for this might vary between individual cases, but the most important factor is that the punishment for it is not commensurate with the crime as a financial penalty is simply not deterrent enough to the majority of employers.

## **2. Delays or Non-payment of Wages**

Even though Jordanian legislations protected the workers right to receive their wages, violations of that right still occur as Tamkeen received 263 complaints where workers mentioned that their wages were either delayed or not paid.

Article 45 of the Labour Law defines the procedures that should be followed to estimate the amount of the wage if it was not defined in the contract. Meanwhile, Article 46 states that “the wage should be paid within a maximum period of seven days from the date of its entitlement”. The System for Domestic Workers, Cooks, Gardeners and Similar Categories also contains similar provision as Article 4 stipulates that employers should “pay the monthly salary to the worker in Jordanian dinar or the equivalent thereof in foreign currency, as prescribed by the Minister. The householder and the worker shall keep evidence of monthly salary payment.

Despite these provisions, the law did not define any penalty for employers who delay the payment of wages. The only such penalty is mentioned in Article 53 of the Labour Law which states that employer shall be penalized by a minimum fine of 25 JOD and not exceeding 100 JOD for every such incident.

### **3. Long Working Hours**

Article 56 of the Labour Law stipulates that the ordinary working hours shall be eight hours per day provided that the total working hours do not exceed 48 hours per week over a maximum of six days whereby the time allocated for meals and rest shall not be calculated. The working hours should not exceed such (total) except in the cases provided for in this law. These cases are mentioned in Article 57 and include:

- a) Carrying 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 these paragraphs are applied do not exceed thirty days per year and that the actual working hours do not exceed ten hours every day thereof.
- b) 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 6 of the System for Domestic Workers, Cooks, Gardeners and Similar Categories also defined the number of working hours in Article 6 whereas it states that the total working hours of domestic work shall be ten hours per day, excluding idle time and rest or meal breaks. It also gave the authority to the employer to schedule the work assigned to the worker during the day as necessitated by the nature of work and the needs of the household.

Despite the above, Tamkeen has received 259 complaints for workers who said that they were forced to work for longer hours than mentioned in the law.

#### **4. Deprivation of holidays and vacations**

Articles 60-63 in the Labour Law set the right of workers to have various types of vacations as follows:

Article (60):

- a) Friday of every week shall be the Employees weekly holiday unless the nature of work requires otherwise.
- b) The Employee may, with the Employers approval, combine the days of his weekly holiday and obtain same within a maximum period of one month.
- c) The Employees weekly holiday shall be with full pay unless he is working on a daily or weekly basis whereby he shall be entitled, in both cases, to the weekly holiday pay if he works six successive days prior to the day fixed for the holiday. He shall be entitled, out of this wage, to a proportion of the days he worked during the week if they were three days or more.

**Article (61):**

- a. Every Employee shall be entitled to a fourteen day annual leave with full pay for every year of service unless it has been agreed on greater number thereof provided that the period of the annual leave shall become twenty one days if he remains in the service of the same Employer for more than five successive years. The official holidays, religious feasts and weekly holidays shall not be calculated of the annual leave unless it falls within same.
- b. If the Employees period of service did not reach one year, he shall have the right to obtain a leave with pay in proportion to the period of his service during the year.
- c. It is permissible to postpone the Employees leave for any year by agreement between the Employee and the Employer to the immediate coming year. The Employees right to the leave postponed in this manner shall drop if the year to which it is postponed lapses and he did request the utilization of same during such year. The Employer may not reject the Employees request for the utilization of his leave.
- d. The Employer may fix, during the first month of the year, the date of each
- e. Employees annual leave, method of its utilization by the Employee in his establishment according to the work requirements provided that due consideration is given to the Employees interest.

**Article (62):**

If the annual leave is not taken at one time, the part thereof may not be less, at any time than six days.

**Article (63):**

If the Employees service is terminated for any reason prior to utilizing his annual leave, he shall be entitled to the wage for the unutilized days of such leave.

The System for Domestic Workers, Cooks, Gardeners and Similar Categories also did the same in article 7 which states that:

- a) Workers shall be entitled to one day-off per week as may be agreed upon between the worker and the householder. If the householder needs the worker to work on his weekly day off, he shall give him another day off that shall be agreed upon between the worker and the householder.
- b) Workers shall be entitled to annual leave with pay for a period of fourteen days, as may be agreed upon with the householder. They may agree to defer the annual leave until the end of the employment contract.
- c) Workers shall be entitled to sick leave with pay for a period of fourteen days per one single year.

Despite the above, 253 complaints were received in 2017 for workers who states that they were denied their leaves.

## 5. Working in more than one house

85 complaints of the lodged complaints, especially those by domestic workers, stated that they were employed in more than one house at the same time. This contravenes Article 18 of the Labour Code, which stipulates that workers shall not be obligated to work in a place other than the one assigned for his work if such action results in changing his place of residence unless an express provision has been provided in the work contract b which permits same.

The practice also violates Article 4 of the System for Domestic Workers, Cooks, Gardeners and Similar Categories. The article states that workers shall be “employed in the employer’s permanent or temporary place of residence with his family. Only the employer and his household members shall be authorized to give work instructions to the worker.” Provision 6 of the same article also states that employers should abstain from taking along the worker whenever the employer and his family move to another country for temporary stay, unless with the approval of the worker. It also stresses that the worker’s embassy must be informed thereof in case of the worker being a migrant.

## 6. Working more than one job

Article (17) of the Labour Law stipulates that a worker shall not be obligated to perform a job which is clearly different from the nature of work agreed upon in the work contract unless necessity calls for such an action in order to prevent the occurrence of an accident or rectify the results therefore, or in the event of a Force Majeure as well as in the other cases provided for in the law provided that such is within the extent of his capability and within the extent of the conditions which necessitated such an action.

However, in 18 of the complaints received migrant workers reported that they were forced to work in jobs that differed from the agreed upon in addition to doing the one which they were recruited and employed for.

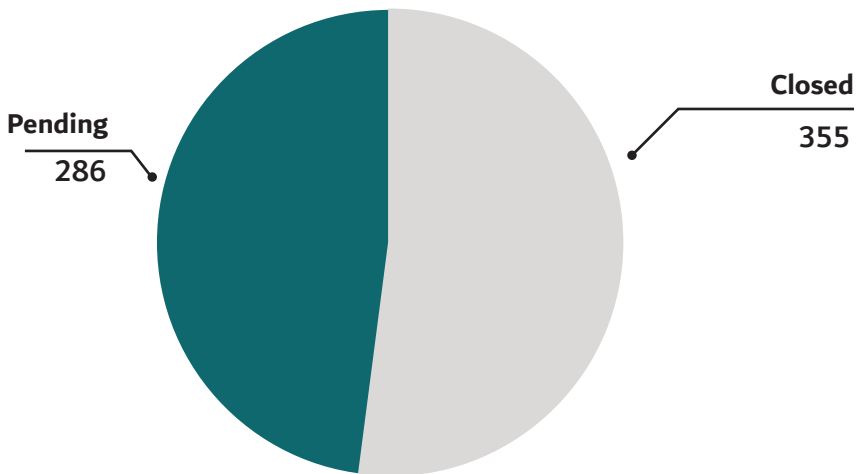
## 7. Accumulation of Fines

Article 12 of Labour Law states that non-Jordanian Employee must obtain a work permit from the Minister or from whomever he delegates prior to his recruitment or engagement. The period of permit if may not exceed one-year renewable. It also states that The Ministry shall charge the Employer a fee for the issue or renewal of the work permit for every non-Jordanian Employee including Domestic Workers gardeners, and cooks.

Employers who violate the above shall be penalized by a minimum fine of 200 JOD and not more than 500 JOD for every non-Jordanian Employee who is employed. The fine may not be reduced below its minimum in any case or for any reason.

Article 4 of the System for Domestic Workers, Cooks, Gardeners and Similar Categories, on the other hand, states that employers should cover the yearly costs for issuing the residence permit and work permit for the non-Jordanian workers.

However, the failure of many employers to fulfil these obligations leads to workers finding themselves in an illegal status due to accumulation of residency fines. Even though the fault is committed by the employer as clearly shown in the laws above, the punishment is imposed on the worker who becomes liable for arrest for the violation of the Residency Act which imposes a fine of 1.5 JD per each day they remain in Jordan without a valid residency permits. In 2017, Tamkeen dealt with 241 such cases.





### Chapter III

## Obstacles to Access to Justice

There are several obstacles that prevent migrant workers from accessing justice:

### Administrative Obstacles

These obstacles appear in the early stages of dealing with cases from when the worker arrives to submit the complaint to following up on the information included in the cases. The main obstacles can be identified as follows:



- **Workers' lack of available information**

Most migrant workers come from extremely poor backgrounds in countries which face difficult social or economic difficulties. As a result, these migrants tend to be unknowledgeable about the rights that they are guaranteed and the stakeholders to which they can resort if they were subjected to violations. It is also possible that the worker has faced similar violations back in their original countries and thought that such things are acceptable as long as they receive their salaries.

Workers' lack of awareness of their rights could also lead to their agreeing to working and living conditions that are in fact a violation of their rights. These conditions include working for long hours, or in more than one place; the confiscation of their documents by the employer, among other violations that could later result in them filing a complaint about.

However, the conditions mentioned above constitute an obstacle to the complaint due to the insufficiency in the information that is available to the worker. Thus, by the time the worker decides to file a complaint, many of them come without having their passport, or even sometimes a copy of it as it is held by the employer. The unavailability of this vital document makes it difficult to check the personal information of the worker, such as the name of the employer, whether they have valid permits, or if there is a case filed against them as authorities require data related to the passport in order to allow such information to be released.

Another problem that arises in such cases is that the worker does not remember or know the main circumstances related to their recruitment and work in Jordan such as the name of the recruitment office; the employer's name or place of residence. As this data is considered one of the main pillars to build a case and to understand all aspects of it; the process to look for them usually leads to further delays in the case.

In the case of domestic workers or workers in the agricultural sector, another problem arises as a result of the workers' working and living conditions, which are characterized as by being isolated from society. Due to this, workers tend to remain in the workplace (home or farm) almost at all times. Unfortunately, these conditions could result in various obstacles including lack of other witnesses to testify in the case and delays in lodging the case itself.

- **The Difference of Languages among Workers and Lack of Adequate or Competent Interpreters**

Communications issue first arise when they arrive to lodge their complaint. The issue then continues to constitute an obstacle both when giving the testimony at the District Attorney's office and later on at court. The issue could appear in different forms including:

- a) Workers' complete lack of proficiency in Arabic or only knowing simple words and phrases
- b) Workers have a good proficiency in Arabic but is unable to fully express themselves due to not knowing the correct terminology or how to use it
- c) Worker is proficient in her native tongue with an available interpreter for that language but the resulting interpretation is not accurate or does not cover all aspects of the testimony
- d) The need to conduct a three-way interpretation first from the worker's native language then to another and finally to Arabic which would affect the final testimony heard by the other party.

Furthermore, misunderstandings sometimes arise when the detective assumes that the worker understands Arabic due to her knowledge of some phrases. Similar issues occur when the interpreter mistakenly uses another meaning than that meant by the worker. Both cases affect the way the case is identified and later in assigning the correct violation to the crime that happened.

It was also noted that the possibilities of workers' facing violations decrease when they know either English or Arabic, as these workers tend to be more knowledgeable about their rights or the stakeholders they could resort to in case of a problem.

Through its own experience, Tamkeen began relying on the services of a number of translators of the same nationalities of the beneficiaries after ascertaining the accuracy of their performance and behaviour. Such practice has led to obtaining more accurate information from the beneficiaries when they want to lodge a case, as well as later on during the investigation.

Issues related to interpretation need to be addressed through a detailed system. Otherwise, the constant change of interpreters that currently happen throughout the phases of the case will continue to affect it. Such changes could lead to the existence of differing versions of the workers' testimony, which is later utilised by the offender who claims that these contradictions are evidence of workers' lying. The effects of this issue are particularly felt when the main witness in the case is the worker herself as she could later be charged of providing a false testimony to the court.

- **Workers' Fears**

Due to the above-mentioned, the legal status of migrant workers is usually weaker than that of the employer or the complainant at the beginning of an investigation, except in a rare number of cases. Therefore, many workers find themselves becoming suspects in a case or even detained despite being the victims. These situations result due to numerous reasons including the existence of a runaway complaint filed against them; the expiration of either their work or residency permits or both; not having a copy of their passports or permits; or employers filing a complaint against them (often theft). Often, cases have not just one of the above reasons but a number of them combined; and they are usually the fault of complainant himself.

All of these conditions lead to a series of actions taken by Police Departments, which in turn increase the vulnerability of the worker. These actions have led to an augmented sense of fear to spread among workers that later leads in a lack of confidence in the authorities and an unwillingness to file a complaint. This series of actions first begins with the arrest and detention of the worker at the Department followed by the department calling the employee, whose complaint resulted in the arrest of the worker, to come for the continuation of the investigation. This procedure is usually followed by workers getting referred to the Administrative Governor who in turn usually takes the decision to administratively detain the worker or release the workers, but the latter decision is extremely occurs and only happens if the worker has a Jordanian willing to sponsor him/her.

Arresting workers result in both seen and unforeseen consequences. For starters, such a decision increases the fear level amongst workers, especially those that were threatened with arrest or deportation by employers as a consequence of them filing a complaint against them. Thus, when these results actually come true it increases feelings of disempowerment among workers, and later could lead to workers issuing conflicting statements or even in their desire to drop the case altogether.

It was also noted through Tamkeen's experience that the pattern of questions typically raised by investigators to workers tend to further confuse them and increase their uncertainty. Questions like:

“Are you sure you want to file a complaint?”

“Do you want to go to court?”

“What took you so long to lodge your complaint?”

Even though such questions are justified in any investigation, the manner in which they are posed, which sometimes carry a tone of doubt or accusation of the victim, could lead to workers fearing the process and push them to abandon the case.

- **Judicial Procedures in cases of Human Trafficking** <sup>(19)</sup>

There are several things to note about the investigation stage, especially with regard to cases of trafficking. It has been noted that some investigations are limited to hearing the victim's statement and the complainant's testimony, prior to transferring both parties to the Police Department which in turn refers them to the competent prosecutor.

It was also noted that the Prosecutor's investigations were often based on those carried out by the Anti-Human Trafficking Unit and were not expanded further than the statements previously given. In addition, there were cases where the prosecutor did not listen to the statements of the parties again, but merely read them and then judicially adjusted the charge accordingly.

All of these circumstances lead to the adjustment of many cases of trafficking as labour cases based on one violation, such as non-payment of wages. As these are criminal cases, they are usually punishable by a fine of JD 50 paid by the employer, which is an insufficient and non-deterrent punishment compared to the seriousness of the crime of human trafficking.

## Judicial Obstacles

- **Prolonged Length of Litigation**

Prolonged litigation is one of the factors that drives many to not seek legal redress to the issues that they face. In Jordan, litigation might last for years. In numerous cases related to Migrant Workers, such periods made it impossible for them to reach justice. Most Migrants have left Jordan before a decision was made in their case; thus, preventing them from receiving their due adequate and fair compensation. Therefore, migrants often prefer to make out-of-court settlements to their cases. Others unfortunately do not even get to make that choice as they are detained and then deported by the authorities.

These conditions continue to take place despite labour cases being supposedly considered as urgent cases with expedited procedures, due to vulnerable situation of the worker, specifically migrant worker, whose sole reason to be outside their country is to look for better job opportunities that enable them to alleviate their financial and social status.

Article 137 of the Jordanian Labour Code declares the Magistrates Court as competent to hear cases of individual labour disputes in the case of individual disputes. Meanwhile, Article 60 of the Magistrate's Court Act of 1952 states that in urgent cases the judge shall review the case quickly. However, the practical application of the above shows that these provisions are not implemented due to reasons related to the judicial system and its procedures. As a result, the reasons for the length of litigation in the Jordanian courts can be summarized as follows:

First: the procedures of declaration and notification to the adversaries could lead to delays in the case. These delays occur when the judiciary find difficulties to reach one of the parties as they changed their address without notifying the competent authority or others resorting to circumvention to avoid receiving the notification of the case.

Second: the large number of cases in some courts lead judges to appoint a large period of time between the sessions of the case, which may reach up to 14 days according to the law but in reality, could be more than that. For Migrants, such length could lead to issues, especially for those whose status is irregular in Jordan due to the expiration of their permits, and the fines that result from that. Additionally, some employers deliberately procrastinate in providing evidence, taking advantage of the vulnerability of the migrant worker and their desire to quickly finish the case. In such cases, activating the role of oversight by Judicial Inspectors would have a positive role to control and accelerate the progress of these cases in the courts.

Third: the procrastination of the employers as well as some lawyers who resort to prolonging the period of litigation by asking the session to be postponed or adjourned more than once; either due to the absence of one party or delays in the submission of evidence.

Fourth, delays in implementation of decisions particularly those related to financial rights of the workers to be given by the employer.

- **Malicious Suits / Complaints**

It can also be called “Misuse of the Right to Litigation”. These cases are usually lodged to achieve illegal interests, or with the intention of causing harm to the opponent. Despite the existence of texts that criminalize false claims or slander as stipulated in Article 29 of the Code of Criminal Procedure:

“If the public prosecutor moved to the place where it is believed that the crime was committed and he/she does not find what imply that such a crime was committed or what warrant his/her move, he/she through the Enforcement Department can collect from the person who informed about the crime the full expenses that are associated with his/her move to the crime scene and he/she also can charge him/her with the crime of providing false information.”

Meanwhile, Article 210 of the Penal Code states that:

“The person who filed a complaint to the judiciary or any authority must inform them. If the complaint contained news of a person committing a misdemeanour or a violation of which he knows that person’s innocence or fabricated material evidence indicating the occurrence of such an offense then he shall be punished to jail for period ranging between of no less than one week and not exceeding 3 years.”

Currently, these types of cases are filed by employers against migrant workers. Employers do so as a result of these workers leaving their workplace, as these cases then cause authorities to capture these workers and then deport them.

Normally, employers lodge a complaint in the Police Department, accusing the worker of a crime, the most common of which is theft especially in relation to Domestic Workers. These cases are filed on the exact same day where the worker has left the workplace. These complaints result in the issuance of warrant on the worker and the procedures of their perusal by the authorities. Once the worker is found and arrested, they are then detained and charged with theft.

Often, employers would later drop the case after the worker was already prosecuted and punished for the crime of leaving the workplace. These procedures occur despite the fact that some of these workers were in fact victims of violations by the employers. As a result of the case though, judges tend to think that workers are lying.

- **Insufficient knowledge of International Conventions and Rights of Migrant Workers**

According to the Jordanian legal system, international conventions ratified by Jordan are part of the national legal system after being published in the official gazette. This has a binding legal force and may be invoked before the courts.



However, in our experience it is noted that many judges do not base their decisions on international conventions and instead focus on national legislations. Even when these conventions are used by prosecutors or lawyers, judges override national laws on international conventions, despite international conventions being higher on the legal hierarchy compared to national laws. Furthermore, it is noted that judges have do not take into consideration special vulnerabilities that are connected to the status of migrant workers; as well as their usually low knowledge about Jordan's laws and their rights.

These issues continue to happen even though the conventions ratified by Jordan, particularly the International Labour Organisation Conventions, clearly and explicitly guarantee the rights of workers, whether they are citizens or migrants and would be sufficient if they were properly applied to ensure that violations are prevented.

As for cases of Human Trafficking, there is insufficient knowledge among judges of this crime, where it is often difficult to identify and understand the elements of the crime of trafficking. These difficulties are compiled to those related to challenges in collecting evidence and prosecuting these cases.

- **Non-implementation of International Conventions**

International human rights conventions provide for a set of basic human rights that apply to all individuals, whether citizens or migrants, regardless of their legal status. Throughout the analysis of cases included in this study though, it was noted that they contain a series of violations of the fundamental rights of migrant workers, which are an integral part of human rights.

According to the International Covenant on Civil and Political Rights, an alien who is lawfully resident in the territory of a State party to the present Covenant may be deported only in based on a decision taken in accordance with the law. The convention also states that unless otherwise required by national security, the reasons for the deportation and the presentation of the case should be conducted by competent authority. On the other hand, Article 12 of the Labour Law authorizes the Minister of Labour to deport workers who are in violation of the provisions of the same law. Furthermore, the law does not guarantee the right of the worker to present his case to the judiciary or appeal the deportation decision.

The ICCPR also states that every person accused of a crime has the right to be presumed innocent until proven guilty by law. However, if that was applied on the malicious suits that are filed Migrant Workers, it is clear that Police Departments tend to directly issue a warrant on these workers after the filing of the case by the employer. These workers are then arrested and detained, sometimes throughout the litigation process, which may extend for months.

The same convention also provide for a range of rights related to litigation. Article 14 (D) stipulates, for example:

“To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it”.

Often though, translators are only brought weeks or months later, with the worker remaining in custody until they do.

Other rights guaranteed by the ICCPR include the right to strike to all individuals. Although the Jordanian legislation guaranteed the same rights as well, laws also mentioned so-called illegal strikes where workers could be deprived of wages, as well as fined. However, the law did not clearly define these strikes.

The International Covenant on Civil, Economic and Social Rights also provided for important rights that states that countries should create conditions in which medical services and care are provided for all in the event of illness. Through its work though, Tamkeen noted that lack of supervision on employers on matters related the vocational safety and health conditions of workers, whether those working as domestic workers or in factories.

- **Specialization in cases of human trafficking** <sup>(20)</sup>

Specialisation in cases of human trafficking remains a heatedly debated issue. Despite the clarity of the law regarding cases which were classified as trafficking with aggravated circumstances, like those where the victim is female, these cases must be referred to the Criminal Court. However, some of these cases are still being reviewed by the Court of Magistrates. Interestingly, similar cases were referred to the Criminal Court by the same Prosecution.

Surprisingly, when issues of competence regarding these cases were raised, some of the decisions by the Courts of Appeal said that such cases should be reviewed by the Criminal Court in accordance to the Anti-Human Trafficking law, while other decisions stated that the Court of Magistrates should continue with the procedures related to the case.

## Chapter IV

# Special Cases:

# Children of Migrant Workers

After working for two years, the Bangladeshi Domestic Worker wanted to return to her home country, but the employer refused. Thus, the worker left the workplace. Later, a relationship developed between her and an Indian Man but due to the lack of documents with the them, they could not officiate it.

The Indian worked at a Jewellery Factory. After a robbery happened, all workers were not allowed to leave. During that time, the woman found out that she was pregnant. She told the Father who in response said he is willing to take care of the child.

Due to the continuation of the Father's confinement in the factory, the woman decided that she wants to go back to her country. She thus went to the Police Station but was arrested and detained there without any legal justification for 4 months. Even though the detention was risky for health, she remained in it until she was deported while 9 months pregnant.

Issues related to Migrant Workers' Children are extremely complicated. These matters need to be thoroughly highlighted and analysed in order to arrive at the appropriate solutions that guarantee the rights of this group.

The issue first attracted Tamkeen's attention in 2014 when the centre received 3 cases related to the children of migrant workers. The cases focused on the parents' inability to register their kids due to the confiscation of their documents, which in turn led to the accumulation of fines on these children. It also prevented them from travelling back to their countries with their children, even though they wanted to.

Over time, these cases increased to 13 cases in 2017 and 15 in 2018. The remarkable increase in this type of cases deserve for attention to be directed at this particular issue. An in-depth analysis also needs to happen on the causes leading to its occurrence on one hand and the status of these children on the other.

Since there are no official figures or statistics on the number and status of Children of Migrant Workers, this section will be based on the cases received by Tamkeen in 2017 and 2018. Tamkeen hopes that by highlighting this issue, further data could become available which would help in conducting more studies about it in the future.

When these cases began arriving at Tamkeen, it was observed that one of the main commonalities between them relates to one of the violation that was previously highlighted in this study: the confiscation of personal documents.

The confiscation of documents by employers and the later expiration of migrants' residency permits leads to multiples problems. One of which is them having illegitimate or undocumented children. The status of these children is the result of a number of possible circumstances as parents are unable to document their marriage due to the lack of their own documents, or their inability to issue the children documents despite being married due to the expiry of their permits.

However, prior going further into this topic, first a differentiation needs to be made between legitimate undocumented children in the eyes of Jordanian law:

## Illegitimate and Undocumented Children

A child is defined in accordance with the Convention on the Rights of the Child (1989) as anybody who is under the age of 18 years.

The Hashemite Kingdom of Jordan has signed the Convention on the Rights of the Child on 29 August 1990, with the treaty entering into force on 23 June 1991. Upon signature of the CRC, Jordan expressed its reservations on articles 14, 20 and 21 in relation to freedom of thought with respect to religion, foster care for children and adoption procedures for children. The government considers that the articles 'are at variance with the precepts of the tolerant Islamic Shariah', and that the reservations to articles 20 and 21 are necessary for the protection of the rights of the child in preserving his or her name and identity.<sup>(21)</sup>

Based on these reservation, the country within its laws distinguishes between children and places them into categories that affect how the law are applied on them. One such distinction is made between illegal children and undocumented children.

Illegitimate children are those who are born out of wedlock, which is considered a violation of the provisions of the Islamic Sharia law; while undocumented children are those who are the result of a legitimate relationship between the parents but are recorded within the official Jordanian civil authority.

Jordanian legislators distinguished between these categories as undocumented children enjoy wider array of rights compared to illegitimate children. Thus, while undocumented children could travel with one of their parents and could be registered later on under the name of their parents after paying a fine; illegitimate children are not granted such a right as Article 20 of the Jordanian Civil Status Law states that "illegitimate" children cannot have the name of either of their parents on the birth certificate except at the written request of both of them or one. The request should be supported by a final court judgment. Furthermore, illegitimate children cannot travel with one of their parents to their countries

## The Position of International Conventions on Illegitimate and Undocumented Children

Jordan has ratified a number of conventions that are focuses on protecting the rights of the child. These covenants tackle all important aspects of a child's life, particularly the rights to life, education, registration, health and nationality. These conventions include the Convention on the Rights of the Child (CRC) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which in Article 24 states:

1. - Each was born, without any distinction as to race, color, sex, language or religion, national or social origin, property or birth, the right of the family, society and the State to take measures of protection as are required by his status as a minor.
- 2.- Every child shall be registered immediately after birth and shall have a name.
3. - Every child has the right to acquire a nationality.”

Meanwhile, article (2) of the CRC stipulates that “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status” and that they should “take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members”.

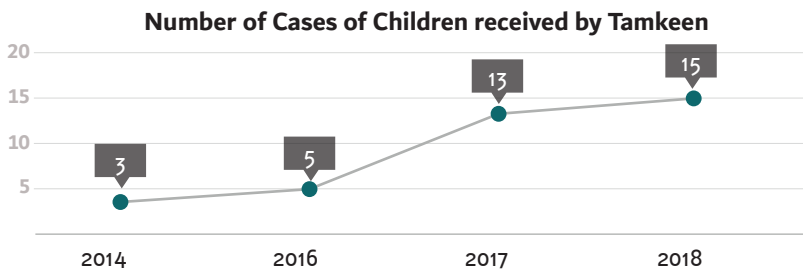
While Article 3 states that:

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

These articles and the covenant as a whole confirm that these above mentioned rights as well as the other ones protected by the covenant shall be guaranteed to all children living under the jurisdiction of the states; whether documents or not and without any discrimination or limitations on the enjoyment of these rights.

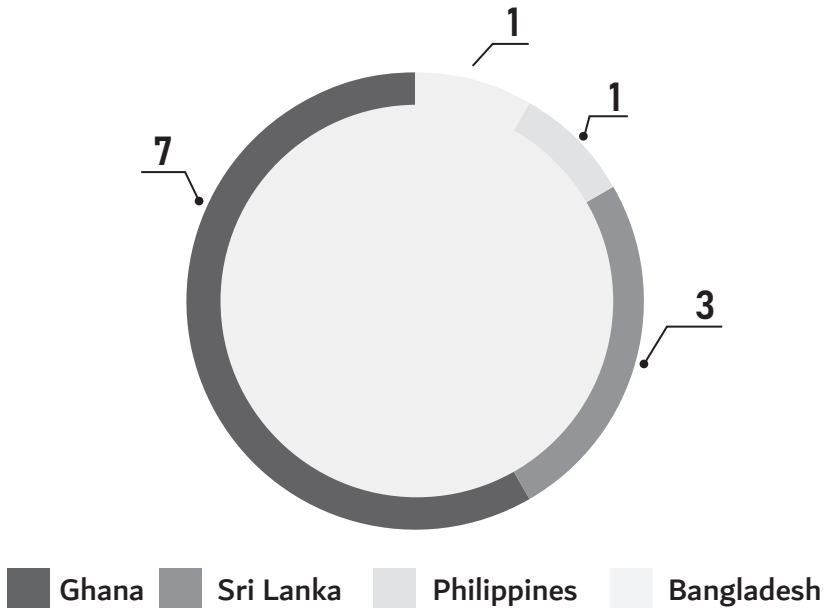
The abovementioned articles highlight States' obligation, including Jordan, to protect the rights of the children, whether they carry documents or not. The mere existence of the child on the territory of a state means that they are under its jurisdiction and thus, it is its duty to provide them with the necessary protection and have full access to their rights and freedoms without any discrimination.



The table above shows the number of cases received by Tamkeen which contained issues related to children who are either illegitimate or undocumented. Further analysis of these cases and with a focus on those received in 2017, it is noted that the nationalities of these children were as follows.



## Nationalities of Children



It should be noted that the above cases involve both undocumented and illegitimate children.

## Examples of Cases of Migrant Children

An analysis of the data related to the cases registered at Tamkeen shows that there are some common factors among them. In most cases, the worker left the employer's home as a result of the poor conditions she had to endure there. Then, she starts working part-time in different houses where she gets acquainted with a young man and a relationship is established between them. However, the two cannot document the relationship due to the reasons highlighted above.

Children born as a result of this type of relationship are considered illegal because there is no legitimate relationship between the parents. The situation becomes even more complicated if there

was a warrant issued against either of the parents, or both. Such conditions could lead them to not just register their child but the birth itself as it is done at home instead of a hospital.

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*The Sri Lankan Worker came to Jordan in 2011. After she left the workplace due to the bad working conditions, she met another Migrant Worker and a relationship developed between them. They could not document the marriage due to the confiscation of their documents.*

*The relationship lasted for 4 years and resulted in 2-year old child whose mother gave birth to him at home. When the baby was 2 months old, his father was arrested and later deported because of his irregular status.*

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In cases where either parents, or usually the mother is arrest and administratively detained due to the reasons highlighted in this study, the child is usually taken and placed in Al Hussein Social Foundation. Other cases were for children whose mothers gave birth to them while administratively detained.

Al Hussein Social Foundation is considered one of the oldest institutions run by the Ministry for Social Development. It provides full sheltering services that include health, social, educational and care. Children who remain at the foundation come from all over Jordan.

Children who come to the Foundation are either orphans or victims of family abuse, abuse or those whose parents are unknown and were abandoned. The Foundation has the following criteria to accept children:

1. The age of the child should be between one day and 10 for boys and between a day and 12 years for girls
2. A special letter from a relevant stakeholder: MoSD, Family Protection or PSD
3. Personal Documents

As for children of Migrant Workers, the Foundation has provided shelter for a number of them, though it does not have accurate data about the exact number. Some of these children came directly following their birth at one of the Rehabilitation Centres, while others came after the arrest and detainment of their parent.

These children could be categorised into 2 groups:

First: Children whose mothers want them back. These children are kept in the foundation until the mother finishes serving her sentence if she was arrested based on a case or until she is released if she is indefinitely detained administratively.

Second: Left children whose parents do not want them either because of their economic conditions or lack of documents. Others leave their children if they were the result of rape or trafficking.

One of the most common facing Migrant Children in the Foundation is the accumulation of overstay fines as well as the lack of personal documents which later affect them receiving their rights including their right of education as they cannot be registered in schools.

It should be highlighted that some of these cases were solved through cooperation with the relevant government agencies as children were issued an International Travel Document that allowed the child to travel back with their parent back to their country without having any documents with them. Such documents could be issued for only one time per person and it takes up to 3 weeks till it is approved and issued.

Returning to the Jordanian Law, the articles discussing the family and marriage are found in the Penal Code. Article 279 states:

“Whoever commits one of the following acts, he / she shall be punished by imprisonment from one to six months:

1. Knowingly celebrates or is a party to celebration of a marriage otherwise than in accordance with the law of family rights or any other law or religion applicable to the parties to such marriage, or;
2. Marries, celebrates or in any capacity assists at or in holding the celebration of a marriage of a female who is under the age of fifteen years old, or;
3. Marries, celebrates or in any capacity assists at or in connection with the marriage of a female who is under the age of eighteen years that completed without having first ascertained that the parents or guardians of such female have consented thereto.”

The above article refers to both articles 31 and 36 of the Personal Status Code. Article 31 provides for cases in which the marriage contract is corrupt. Such cases include: “marriages without witnesses or witnesses who do not have the required legal requirements;” both of which are applicable to many marriage contracts for migrant workers.

Meanwhile, Article (36 \ c) stipulates a penalty for not documenting the marriage contract:

“ If the marriage contract has been made and is not officially documented, the perpetrator, the couple and the witnesses shall be punished by the penalty provided for in the Penal Code. Each of them shall be fined a fine of 200 JOD.”

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*The Ghanaian Worker was administratively detained and later gave birth while in detention. She was able to keep the child with her for 2 days but then the baby was taken from her and she was not allowed to see him.*

*She remained in detention for 5 months. When Tamkeen investigated the case, it turned out that the worker came to Jordan while unknowingly pregnant. When the Employer found out, he took her to the Police who arrested her and then she was detained based on a decision by the Governor.*

*Through Tamkeen, the baby was issued an International Travel Document and both mother and child travelled back to Ghana*

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## **Undocumented Children**

There are several reasons why workers do not register their children. Some of these reasons include: the confiscation of their documents by employers, while others fear to approach any governmental entity following the expiry of their permits.

Some employers believe that the confiscation of the workers' passport is a deterrent for them to not leave the work premises. However, analysis of the approximately 1300 complaints that were filed at Tamkeen in the period between 2013 and 2017 show that workers do leave the workplace, even without their passports. Later, these workers, even those who have their passports, cannot leave the country due to the warrant issued against them. These cases show that the practice of passport confiscation does not prevent the worker from leaving. It does though lead to workers facing other issues including having undocumented children who could be later exploited in various ways.

It should be noted in this regard that the documents required in the Jordanian Civil Status Law to register a child are

- Notification of birth that is stamped and signed from the entity where the birth occurred and filled with the requested data.
- Valid Copy of the family Book head of household is Jordanian.
- Proof of marriage (marriage contract) if the head of the family is not Jordanian.
- Proof of Identity (ID) for Guardian
- Passport for non-Jordanians Guardians

As the above reiterate, non-Jordanians need a passport to register their children in Jordan. This means that in cases where the passport is seized by the employer, they cannot register their children, depriving them of their rights.

Another common denominator between the cases received by the Tamkeen in this regard was related to another important issue connected to immigrant children: the accumulation of fines on the children. These fines are a result of children being treated like their parents in terms of accumulating a fine of 1.5 dinars per day in the case of not obtaining a residence permit. Unfortunately, the issuance of such permits requires documents, which as seen above cannot be obtained for these children.

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*The Bangladeshi Worker and her husband have been living in Jordan for the last 2 years. They have two legitimate but undocumented girls. The girls, aged 8 and 6 respectively do not have residency permits, which led to the accumulation of fines on them. Due to this, the girls cannot go to school.*

*Even though the mother has requested that these fines be waived off of her daughters, her requests have all been rejected.*

*The girls were not issued a residency permit because their father was not issued a work permit despite working in a factory.*

## Violations faced by Illegitimate and Undocumented Children

Due to the conditions seen above, illegitimate and undocumented children of Migrant Workers are deprived of their basic rights like their right to education and health among others. Some of these children are even stateless and are deprived of the nationality of either of their parents as they do not have any documents to prove their birth or connection to their parents

As such, both parents and children are faced with serious issues. Parents are accused of having illicit relations, while children are stigmatised as being illegitimate. In a conservative society like Jordan, these labels are harmful and lead these individuals to be shunned and rejected. Consequently, some single mothers might resort to risky ways to get rid of their pregnancies or their children, which in turn could put on a child on a road that ends with the child being exploited or trafficked.

In fact, these children are extremely vulnerable to be subjected to numerous violations. The violations begin with first taking away their right to education. Both illegitimate and Undocumented children cannot go to school due to their parents' inability to register them because they do not have any documents. Although international conventions protect children's right to education, the system requires parents to have documents in order to enrol children in schools. The deprivation of this fundamental right of children is a clear violation of the child's right to education guaranteed by the 1990 Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights.

In addition, the lack of registration deprives these kids of health care. Although the Jordanian government provides the national immunization program free of charge to all residents in the Kingdom, regardless of nationality; it requires documents for the child, such as a birth or family book.

Other risks include being exploited as a result of not having any legal documents that protect them. Forms of exploitation could differ from physical, mental or sexual. Furthermore, the psyche of these children is affected as they are born in a fear filled atmosphere. The surrounding background could affect their perspective of society and the government after growing up in the shadows, fearful of the possibility that either one of their parents could be arrested or deported.

They could also be exposed to practices that may be harmful to him, such as being the victims of different forms of discrimination whether racial or religious or others.

Children could also become victims of human trafficking as they are exploited in various ways. These trafficking forms include Forced Labour, where the child's vulnerable status is exploited and forced to work in inhumane or difficult situations. Others could sexually exploit these children and force them into prostitution, or the production of pornography, while others could become beggars in the street.

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*The Philippine Worker came to Jordan in 2013. After she left the workplace, she was introduced through her friend to a Yemeni man who worked at a Plastic Factory. Following a year-long relationship, the Yemeni went back to his country.*

*When the woman discovered she was pregnant two months later, he came back and stayed by her side until she gave birth. After two months, the man took the baby back to Yemen with him and she has not heard anything from them since.*

*The woman was later arrested and sent to prison. The Authorities then called the Recruitment office which asked for 1000 JOD in exchange for her release but she does not have that much money*

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## Detention of Migrants

Detention means robbing a person of their freedom and placing them in detention either at a police station or in prison.

Detention in Jordan is carried out in three mechanisms:

1. Arrest is mentioned in Article 100 of the Jordanian Code of Criminal Procedure, which authorised officers of the judicial police, including Public Security Department Officers to detain any person who is suspected of committing a crime and then presenting him/her to the District Attorney within a period not exceeding 24 hours
2. Judicial Detention: this detention is done based on an order issued by a competent judicial authority as a result of the suspicion that a person has committed a crime that contravenes the provisions of the laws. The period of the detention is calculated as part of the sentence period if that person was later convicted of the charge against him/her
3. Administrative detention: The deprivation of liberty of a person without judicial order or legal charge. The decision is usually issued by the Administrative Governor. The procedure is justified as a measure resorted to by the administrative authority to maintain security and public peace in the country. These detention decisions are issued for an indefinite period, based on the Crime Prevention Law, which is still in effect in Jordan.

## Interrogative Detention

Although the Jordanian legislation (amended article 100 of the Code of Criminal Procedure) stipulates that the period of detention of the complainant at police stations is 24 hours prior to being transferred to the District Attorney as the judicial authority competent to conduct the investigation, police stations tend to detain migrants for longer periods. Through 345 interviews that Tamkeen conducted with Migrants who were detained, they all said that they were detained in Police Stations for periods ranging from 1 day to 11 months.

A common practice in relation to migrants have been noted, where they are detained without any legal justification for it. Police Stations continue to detain any migrant worker, whose employer has notified them has left his or her job. The practice is considered arbitrary and constitutes an unlawful deprivation of liberty. It also usually leads to the deportation of the worker.

In other cases, Police Departments were noted to serve as judicial authorities, despite it not being in their jurisdiction to do so. The primary concern of stations is to assist the Jordanian employer, regardless of the rights of the other party. The practice is particularly evident in cases of Domestic Workers who are sometimes forced to return to the employer or remain in detention. Such practices are considered one of the most common barriers that prevent migrants from accessing justice. Other common practices include workers being detained despite them lodging the complaint; indicating the ineffective mechanism of inspecting in Police Stations.

Despite the issuance of instructions by the Director of Public Security numbered: Q / 2/36/3557 on the 23/11/2011, Police Department personnel still refrain from implementing it and insist on their arbitrary practices without any legitimate or legal justification.

## Administrative detention

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*After arriving to Jordan to work as a domestic work, she found that the working conditions were not good. These included long working hours, being forced to work in several houses and restrictions on her movement as well as not having a private space for her to sleep in.*

*The worker lodged a complaint at the Police Station because her passport was confiscated by the Recruitment Office. The Station detained the worker for the period of 2 weeks despite being the complainant.*

*Then, she as administratively detained due to the accumulation of fines as a result of the non-renewal of her residency permit by the employer and not his refusal to pay the money necessary to cover these fines*

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The Crime Prevention Law No (7) of 1954 granted wide and broad powers to the administrative governor to impose house arrest or administratively detain anybody who belongs to the following categories:

- Everyone caught in a public or private place in circumstances that may lead the governor to consider that this person was about to commit a crime or assist in committing it.
- Everyone used to robbery, theft, possessing stolen properties, protecting or lodging robbers, assisting in hiding the stolen properties or disposing them.
- Everyone who being free without a warranty might constitute a danger to the others.

It is no secret that the language used in the previous text is vague and broad and can be given multiple interpretations. These vague texts include the phrase “circumstances that may lead the governor to consider that this person was about to commit a crime” or “being free without a warranty might constitute a danger to the others”.

Migrant Workers are considered one of the categories that the Crime Prevention Law is applied on in an arbitrary manner. These workers are usually detained following the lodging of a complaint by the employer or as a result of them not having any personal documents with them or due to the expiry of their permits.

The law has resulted in the detention of many migrants by public authorities, who continue to implement the law, even though it contradicts the numerous human rights conventions that Jordan is committed to and which have been published in the Official Gazette for years.

Through its work, Tamkeen noted that there is a pattern followed by public authorities, particularly Administrative Governors when it comes to Migrants and Administrative Detention. The pattern involves the coordination between the Governor and the Public Security Directorate to administratively detain migrants in manner that is in violation of Jordanian law and human rights conventions. In particular, the practice violates Article 16 of the United Nations Convention against Torture (CAT), as this type of detention causes serious physical and mental damages to these workers.

Among the 345 workers Tamkeen has reported, some reported not knowing why they were detained while others said that they were not permitted to have a lawyer present even though its their right; and others said that there were no translators present during interviews.

On the other hand, there have not been reports of cases of mistreatment or torture during their detention; though some of the female detainees said that they were forced to clean the police stations where they were detained.

It should be noted that the cost of keeping the detainees in the centres is around 92,700,000 JOD annually and 750 JOD monthly per guest. In case of alternative penalties, the cost would drop by 25% to 69 million and 600 thousand dinars annually.

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*The Domestic Worker arrived to Jordan in 2013. She worked with the employer for two years. After her contract was finished, she asked to return home but the employer refused and forced her to work for an extra year.*

*During these 3 years, working hours were long and she was not given any days off. She was also verbally abused and was not issued either a work permit or a residency permit except in the first year.*

*Due to these conditions, the worker left the workplace and came to Tamkeen in 2017. Even though the employer initially agreed to give her the remainder of her wages, he later refused. Consequently, the case was transferred to the Police Station where the worker was forced to sign a quittance without the presence of her lawyer that would entail her return to her country. The employer though refused to pay for the ticket despite it being one of the worker's rights.*

*When the Police Department was later called to be informed of the employer's response, the answer was that the worker is to blame for these issues as she left her workplace. They also said that the confiscation of passports is not illegal and that many Jordanians do not issue permits for the workers.*

*The worker remained detained till July when an air ticket was secured and she was able to return to her country*

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Another issue that Tamkeen found during its work on Administrative Detention cases relates to the fact that regardless of the period of this detention, it is not later calculated as part of the detention based on a criminal case like the case of judicial detentions.

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*The Kenyan Worker was detained in Juweida after she was arrested by the police. The arrest was made due to a theft case lodged against her by her previous employer.*

*The worker was thus administratively detained for a 1 year and 11 months from October 2016 till 9 2018 while the case was reviewed at court.*

*After being convicted of theft by the court and sentenced for one year imprisonment, it was revealed that since she was administratively detained and not judicially, she would to have to serve the year in prison.*

*After the decision was appealed and an innocence verdict was given the worker was released in 2018.*

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## **Irregular Migrant Workers**

In Jordan, there are some common factors that could result in workers becoming irregular in the market. These include the non-renewal of work and residency permits by the employers. In 2017, 99 workers submitted a complaint about this particular violation.

These violations are closely connected to the Residency and Foreigners

Affairs. Both the aforementioned law and the Labour Law state that workers could remain in the country while their permits are valid. However, while these permits are issued on a yearly basis for migrant workers, most of the employment contracts for two years whereas the contracts for workers in the QIZ are for three years. In practice, this means that the recruitment of workers is for two years while the validity of their residency and work permits is for one year. The conflict between these periods has led to many workers shifting from having a regular status into irregular, especially in cases where the employers neglect or refuse to renew the permits.

Both the Residence and Foreigners' Affairs Law and the Labour Law, in addition to the Instructions for the Conditions and Procedures of Bringing and Employing Non-Jordanian Workers and its amendments of 2009 stated that it is the obligation of the employer to renew these permits for the migrant worker.

Additionally, these laws stipulate other responsibilities that further connect the employer with the worker. Thus, in addition to the permits, employers also have the authority to provide workers with the necessary permissions to change employers or move into a new job. However, it was noted that the refusal of several employers to provide workers with such documents has led them to leave the workplace, especially those working in Agriculture who are still subjected to the Kafala System, even though it has no mention in the Jordanian laws.

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*The Sri Lankan worker came to Jordan in 2009 and worked at a company till 2012. After the conclusion of his contract, he began working as a cleaner at another company. However, the new company did not issue him a work permit or include him in Social Security.*

*In 2017, he left his work because he wanted to return to his country after the death of his father. He was stopped in the airport and detained though due to the accumulation of fines*

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Another reason contributing to the presence of irregular migrant workers in Jordan is the System of Closed Sectors and its implementation on the ground. In such cases, Employers might need to recruit a migrant worker to work in one of the closed professions. As a result, employers recruit the worker into a profession not within the closed system but then employ him in the closed profession instead. In many cases, the worker himself is not aware of the existence of a violation as a result of this practice.

## Forced Labour

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*Two Egyptian Workers worked in the Agriculture Sector. During the 14 months which the first one worked, he never received any wages. The other one received wages for the first 3 months of the 17 months he worked.*

*Both workers began their day at 5:30 and finished at 11. They only had 40 minutes break. Neither of these workers were issued a work permits and both of their passports were confiscated by the employer. Both slept in the farm even during the hot days of summer and the cold of winter. Both were mistreated by the employer.*

*After they lodged a complaint, the case was transferred to the Anti-Human Trafficking Unit where the District Attorney decided to adjust the case as Human Trafficking*

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In 2012, the ILO estimated that 20.9 million people were victims of Forced Labour worldwide. 68% of these workers were victims of Forced Exploitation in Labour, 22% were forcibly exploited in sexual work and 10% were victims of state-sanctioned forced labour. In the Middle East, the ILO estimated that there are 600,000 victims of Forced Labour.

There is a strong connection between Human Trafficking and Migrant Workers, as they are considered one of the categories most vulnerable to be exploited. Even though the reasons might differ as to why they left their countries, Migrant Workers share the same desires of wanting to help themselves and their families secure a better life through jobs with a better salary than found in their countries of origin.



Through Tamkeen's work with migrant workers over the past decade, some factors have been noted that causes migrants to be subjected to these kinds of violations. The Kafala System is one such factor as it leads to the emergence of a non-equal relationship between the employer and the worker and lead the latter to be fully dependent on the former. The dependency constitute a fertile environment for violations to occur which would later result in workers finding themselves in further trouble, especially if they decide to leave the workplace due to their circumstances.

Another common factor relates to the isolated nature of the workplace for workers, especially those working in the Domestic and Agriculture sectors. This nature has aided in the occurrence of these violations, as workers are kept within the confinements of these areas or houses and are not allowed communication with the outside community. Consequently, workers in both sectors are subjected to similar violations that include: the confiscation of personal documents, working for long hours, in addition to not getting paid for overtime or receiving their vacations.

Legally, there are still significant gaps in National legislation with regard to Forced Labour. The Labour Law does not have any clear article that relates to the crime of human trafficking or forced labour. Additionally, the practical application of some of the law's articles has shown a clear lack of addressing for the violations that workers are subjected to in various sectors. These violations include low wages below the minimum wage, deprivation of vacations or medical care, in addition to violations regarding Social Security and working conditions.

It ought to be noted that article 77 of the Labour Law stipulates that:

“The Employer of establishments Manager shall be penalized for the confiscation of personal documents by a minimum fine of 500 JODs and not exceeding 1,000 JODs. The penalty shall be doubled in the case of repetition.”

However, the application of the article shows that the penalty set by the law for these acts is not commensurate with the seriousness of the committed against the workers, which requires criminalizing these acts with more deterrent penalties.

As for the Residency and Foreigners Affairs Law, it is clear that many of its articles jeopardise foreigners, especially Migrant Workers and makes them more vulnerable for violations while staying in Jordan. These violations could lead them to become potential victims of Human Trafficking or Forced Labour. Perhaps the most striking in regards to the law are the following:

1. No protection of workers or foreigners in the case of confiscation of their travel documents
2. The fine incurred by migrant workers as a result of the expiry of their residence permit may prevent them from returning to their home countries. Although it is the responsibility of the employer to renew the permit, it is the worker who is punished. These fines also lead to obstacles to facilitating the deportation of migrant workers due to these accumulated fines, especially in cases when the workers cannot pay the amount of the fine.
3. Article 22/A of the law specifies the duration of the residency permit for one renewable year. The period though is contrary to the period of employment contract in many sectors, which lasts for two years.
4. The law does not provide in any of its articles the right to temporary residence, whether for trafficking victims, potential victims or victims of human rights violations in general.

Finally, the Anti-Human Trafficking Law, the Jordanian legislators have used verbatim translation of some of the phrases from the international protocol, without due consideration to the existing penal code in Arabic or issues related to application. The use of such phrases has resulted in legislative inconsistencies between the anti-human trafficking law and other legislations including the Penal Code, Labour Law, the law of Residency and foreigners Affairs, the Crime Prevention Law and others.

The law also has no clear definition for the crime of Forced Labour, despite the presence of a definition for it in Article 2 of the ILO Forced Labour Convention No. 29 of 1930, which defined the term forced or compulsory labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”<sup>(22)</sup>

These combined factors have affected the ability of migrant workers generally and victims of Forced Labour especially to access justice. This was particularly apparent in the cases received by Tamkeen, which have varied between cases that are still being reviewed and others where verdicts have been issued. The analysis of these cases has shown that the limited investigation on one side and the lack of established connections between available evidence and the elements of the crime on the other has led to impunity for perpetrators as they escaped punishment.

An example of this is the subjection of workers to multiple violations that include: deprivation of wages, confiscation of passports, physical and verbal harassment and working for long hours, among others. Instead of looking at these violations as though it is a crime of Human Trafficking though, each violation was reviewed separately as individual crimes that befell the workers. However, both deprivation of wages and working for long hours are evidence of exploitation in the form of Forced Labour of the worker. Also, the confiscation of passports and harassment are means for the perpetrator to pressure the worker into exploitation. The current practice of looking at each offence separately has led to the referral of these violations as individual crimes and the impunity of perpetrators as they were sentenced with mere fines for each violation.

The published figures by the Ministry of Labour constitute further evidence to the above. These numbers show that the Anti-Human Trafficking Department in the ministry has referred 208 cases as potential Human Trafficking cases. Of these cases, only 23 were put on trial as Human Trafficking, while the remaining 185 cases were dealt with as Labour cases.

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*After she arrived to Jordan, the Domestic Worker worked for the employer for 3 years. At the end of that period, she asked to return to her country as she had an eye-disease which required an operation. As a result, the Employer took her to the recruitment office since her passport was with them since her arrival. The recruitment office then proceeded to steal the money which she has saved throughout her working period. They then told her that if she wants to travel she has to go to the police so that they will deport her or start working with a new employer.*

*Later, the worker was forced to work with a new employer by the office but she escaped and came to Tamkeen asking for help. When the Anti-Human Trafficking began their investigation, they discovered that while the office has been in fact closed for the last 6 months, the owner still forcibly employs workers and that there is a warrant for his arrest.*

*As a result of the investigation, the worker was able to retrieve the stolen money but her passport remained missing. However, her health deteriorated and she lost her sight in one eye. The authorities wanted to administratively detain the worker but Tamkeen refused the decision. A meeting was thus convened and an international pass was granted for the worker to enable her to travel without her passport back to her country.*

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## Chapter 5

# Access to Justice for Syrians

Syrians Refugees began arriving to Jordan at the early stages of the outbreak of the crisis in their country in mid-March 2011. At the time, they arrived in small waves and were limited to Syrians living in areas bordering Jordan, especially the inhabitants of the city of Daraa. By 2018, Jordan became one of the largest refugee host countries in the world, both in terms of the absolute and relative size of the refugee population. Jordan, a country with a population of 9.5 million, now hosts between 655,000-1.26 million Syrian refugees, in addition to large populations of Palestinian and Iraqi refugees, among others according to UNHCR figures. Syrian refugees in Jordan are a largely urban population, with more than 80% living outside the country's refugee camps. These refugees rent apartments and receive basic benefits and services together with the host communities, as well as look for jobs in the Jordanian Labour Market.

## The work of the Syrian Refugees

Syrian refugees are subject to Jordanian labour law in addition to the regulations, instructions and decisions issued by the Jordanian Ministry of Labour; as their work is also linked to Article (12) of the amended Labour Law No. 26 of 2010.

With regard to the international conventions governing the work of refugees in Jordan, the country is committed to a number of international covenants and conventions that have addressed this matter, in particular the International Covenant on Civil and Political Rights, in addition to the International Covenant on Economic, Social and Cultural Rights; though it has not signed the 1951 Refugees Covenant and its protocol but signed an MoU with the UNHCR.

The ICESCR for example stipulates in part III (article 7) that:

“The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
  - (i) 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;
  - (ii) 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”

In order to facilitate the work of Syrian refugees in Jordan, the United Kingdom, Germany, Kuwait, Norway and the United Nations organized the Supporting Syria and the Region conference in London. During the conference, Jordan received pledges to support the National Response Plan it has prepared to deal with the Syrian Refugee Crisis. This support included the signing of an agreement whereas Jordan would agree to create 200.000 jobs for Syrians in the coming period in sectors where Jordanians do not generally work, while in return and by a trade agreement signed with the EU, the Union would increase the kingdom's access to the market for any factory that has hired Syrians which constitute no less than 15% of its total employees.

Thus, the government, through the Ministry of Labour, decided on enacting a series of measures that contribute to the implementation of its undertakings during the conference. These measures included amending a number of regulations and instructions related to the issuance of work permits for Syrians. Those that are worth highlighting include the exemption of employers from paying the fees necessary to issue work permits in case these permits were for Syrian workers. The Ministry of Labour also started issuing flexible work permits in specific sectors that would allow them to freely move between employers; the permission to allow from one service sector to another without a clearance form in cases where the permit has expired or allow them to move to another employer without a release form.

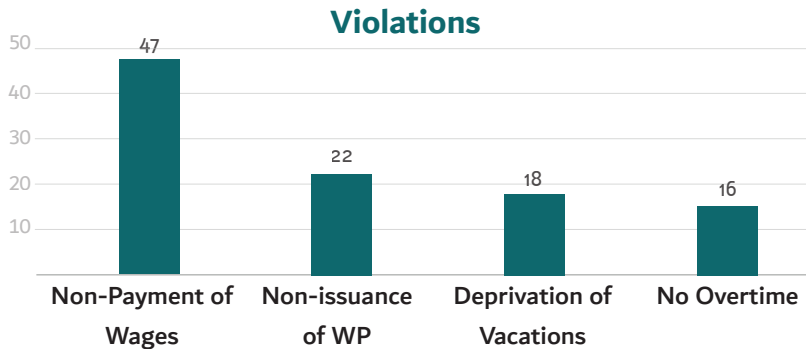
As a result of these measures, the number of permits that were issued for Syrians amounted to approximately 94527 permits in the period between the start of 2016 until March 2018 for Syrians residing inside the camps and in urban areas; as 40,821 work permits were issued during 2016, 42,633 in 2017 and 11,073 until March 2018.

Contextually, through its work with Syrian Tamkeen noted the existence of several obstacles still facing Syrians related to their working conditions on one side and their access to justice on another.



## Tamkeen cases in 2017

In 2017, Tamkeen received 97 complaints lodged by Syrian workers in the Labour Market. The violations mentioned in these complaints varied as shown in the graph below:



Although the sectors where complainants worked in varied, the majority were in construction and restaurants as 18 complaints were for workers in the former and 17 in the latter. Other sectors include agriculture, woodwork and car mechanics.

Though reasons for these violations varied, some common characteristics were noted:

- In terms of labour rights, the majority of workers do not receive their annual leave, nor their sick leaves as well. Workers have even reported that deductions are made from their salaries in cases they are absent from work due to a illness or another reason.
- Many Syrians work without obtaining permits due to their work closed sectors that only Jordanians can work in such as medicine, engineering and education; which makes them vulnerable to violations and deprives them of access to their labour rights.
- As for their working conditions, it is noted that many of them work in conditions that are not observant to the occupational safety and health rules. These risky conditions make them vulnerable to injuries. Additionally, many employers have refused to register workers in Social Security, which makes the situation even worse for these workers.

- The difference in the minimum wage between Jordanian and Syrian workers, where it set for Jordanian worker at 220 dinars, while it is 150 dinars for Syrians.
- The reluctance of Syrian workers to file labour complaints, despite being subjected to various violations. The hesitance is due to many fears that workers have either about losing their jobs or other consequences that might arise as a result of the complaint.

It is due to these conditions above that Tamkeen has resorted to using alternative dispute resolution mechanisms in addressing the complaints it has received, with a primary focus on mediation. In 2017, the organisation was thus able to resolve 61 of the received cases, while 36 are still pending.

## Examples of cases

1. The worker arrived to Jordan on the 24th of December, 2011 through the land crossing. In mid-2015, he began working at café where he was not paid his wages for 3 months. The worker thus asked his employer for these wages, as well as overtime for his extra shifts but the employer refused to pay him anything. Furthermore, the employer has resorted to threatening the worker which resulted in the worker changing his residence out of fear of what might happen.

2. After arriving in December 2013, the worker worked at a wood workshop for almost a year. During that year, the employer did not issue him a work permit nor register him in Social Security. The worker received his wages based on each finished piece. While working on the machine, the worker sustained an injury that resulted in the amputation of two of his fingers and the breaking of the rest of his left-hand fingers. As a result of the injury, he had to undergo surgery that cost 250 JOD which was paid by the employer. When he was later visited by the Ministry of Labour, he lied to them and told them that the injury was sustained in a home accident and that he is not planning to file a complaint against anybody. The statement was made due to the employer promising that he would continue with providing him with the necessary treatment, which he did. The employer also said that he would continue to care for the worker during his recovery time but he did not keep his promise.

## Recommendations:

1. Establishment of an effective complaints system to receive workers grievances and follow up on them.
2. Develop a hotline in the Ministry of Labour that is supported through competent human resources and technological means.
3. Establishment of a shelter for workers facing violations; as well as build the capacity of newly recruited workers and in terms of their labour rights and the relevant stakeholders they can resort to in case of an issue with the employer or recruitment office.
4. Grant workers who have a legal dispute temporary residence and work permits in order to peruse their cases
5. Establish a Specialised Labour Court to ensure that cases are dealt with exponentially and expertly without delays; and ensure that competent translators are staffed in the court, with a Special Prosecutor focused on Human Trafficking.
6. Review the Anti- Human trafficking Law to become compatible with international standards in terms of criminalisation of the crime and the sentences for convicted traffickers and clearly defining Forced Labour.

7. Limit the use and duration of administrative detention. Also, ensure that administrative detainees are held in conditions that are non-punitive and non-penal and that take into account their needs and their status as administrative, not criminal law, detainees
8. Ensure that workers are only detained following a judicial decision and that their rights are guaranteed in terms of the period of their detention, and access to legal aid.
9. Stop the wrong implementation of the Crime Prevention Law, especially the over-reaching jurisdictions of the Governor related to the administrative detention. Also, amend the current law to ensure that the Governor's jurisdictions are limited in regards to detention and are not overlapping with Judicial Authorities.
10. Prohibit by law the deportation of workers except by judicial decisions that demonstrate the reasons behind such decisions.
11. Increase legal literacy through a mechanism to provide legal awareness to migrant workers

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# Access to Justice

## For Refugees and Migrant Workers

The study will address this important issue through an in-depth analysis of the issues the centre has dealt with in 2017. It will look at the methods that were used to help beneficiaries to access justice and the obstacles that hindered these efforts. Finally, it will flesh out a number of issues that need to be further highlighted.



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