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**Final Thesis**

**From Informal Economy to Decent Work:  
analysis and observations**

**The case of female migrant domestic workers in Jordan  
and United Arab Emirates**

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## Table of content

<b>Introduction.....</b>	<b>5</b>
<b>Abstract.....</b>	<b>9</b>
<b>Table Acronyms.....</b>	<b>14</b>
<b>Chapter 1: Informal Economy.....</b>	<b>16</b>
<b>1.1 Introduction.....</b>	<b>16</b>
<b>1.2 What is the informal economy.....</b>	<b>19</b>
1.2.1 Informal employment, informal sector and informal economy.....	20
<b>1.3 The informal workforce.....</b>	<b>23</b>
1.3.1 Inside or outside.....	24
1.3.2 Working conditions.....	25
1.3.3 Gender in informal employment.....	29
<b>1.4 Informality and level of socio-economic development.....</b>	<b>32</b>
1.4.1 Informality and education.....	33
1.4.2 Informality and poverty.....	36
<b>1.5 Transition to Decent Work: The Convention No.204.....</b>	<b>37</b>
<b>1.6 The informal economy in Arab Countries.....</b>	<b>42</b>
1.6.1 A global overview.....	42
1.6.2 Informal employment.....	46
<b>1.7 An example of informal employment: The case of Female Migrant Domestic Workers in the MENA region.....</b>	<b>49</b>
1.7.1 unemployment and immigrant workforce in MENA region.....	53
1.7.2 the phenomenon of Asian and African female migrant Domestic Workers in the Middle East.....	55
1.7.3 The Arab sponsorship: The Kafala System.....	57
<b>1.8 Conclusion.....</b>	<b>60</b>
<b>Chapter 2: The Case of Jordan.....</b>	<b>63</b>
<b>2.1 Introduction.....</b>	<b>63</b>
<b>2.2 The Jordan Case, an overview.....</b>	<b>65</b>
<b>2.3 International Convention.....</b>	<b>69</b>
<b>2.4 National Legislation.....</b>	<b>72</b>
2.4.1 Process of recruitment.....	73
2.4.2 Trafficking in person.....	76
2.4.3 Contract.....	83
2.4.4 Medical insurance.....	84
2.4.5 Harassment.....	88
2.4.6 Wages.....	90
2.4.7 Deprivation of freedom.....	94
2.4.8 Trade Unions.....	95
<b>2.5 What is still missing.....</b>	<b>101</b>
2.5.1 Agencies.....	103
2.5.2 Trafficking in person.....	104
2.5.3 Contracts.....	106
2.5.4 Harassment.....	107
2.5.5 Withholding wages.....	112
2.5.6 Freedom of movement.....	114
2.5.7 Accommodation.....	117
2.5.8 Medical insurance.....	118
2.5.9 The case of Run-aways.....	119
2.5.10 Justice.....	122

2.5.11 Trade Unions.....	124
<b>2.6 Conclusions.....</b>	<b>126</b>
<b><i>Chapter 3: The Case of the United Arab Emirates.....</i></b>	<b>129</b>
<b>3.1 Introduction.....</b>	<b>129</b>
<b>3.2 Kadama Syndrome.....</b>	<b>130</b>
<b>3.3 International Conventions.....</b>	<b>132</b>
<b>3.4 National Legislation.....</b>	<b>134</b>
3.4.1 Labour Legislation.....	134
3.4.2 Trafficking in Person.....	135
3.4.3 Agencies.....	141
3.4.4 Contracts.....	146
3.4.5 Wages.....	151
3.4.6 Working Conditions.....	154
3.4.7 Homes inspections.....	156
3.4.8 Abu Dhabi Dialogue.....	158
<b>3.5 What is still missing.....</b>	<b>161</b>
3.5.1 Labour Legislation.....	161
3.5.2 Trafficking in person.....	162
3.5.3 Kafala system.....	163
3.5.4 Contracts.....	164
3.5.5 Withholding Wages.....	166
3.5.6 Working Conditions.....	168
3.5.7 Home Inspections.....	169
<b>3.6 Conclusions.....</b>	<b>170</b>
<b><i>Conclusions.....</i></b>	<b>173</b>
<b><i>References.....</i></b>	<b>182</b>
<b><i>Sitography.....</i></b>	<b>190</b>
<b><i>International Conventions and National Laws.....</i></b>	<b>192</b>

## *Introduction*

The transition from the informal economy to the formal economy, namely decent work, is a complicated process that requires a significant commitment to change by governments that intend to deliver such change. In the last few decades, the informal economy has become an increasingly prominent issue. The informal economy is widespread especially among those workers who decide to leave their countries of origin toward countries considered more developed, seeking better opportunities and improved standards of living.

The migration wave for work, especially since the last decade of the twentieth century, has increased considerably, especially throughout Asia and the Arab States.

As it will be possible to notice in the course of this dissertation, even though migration can be considered a spontaneous phenomenon and that can provide benefits to individuals and society - both the host as well as to the one of origin - often it also creates the conditions to make it easier for such workers to fall into situations of abuse, especially low-skilled temporary migrant workers. This situation has posed significant governance issues in terms of providing decent labor conditions and lowering migration costs over the years.

Once at their destination, migrant workers who have reached the workforce-importing countries through both regular and irregular channels, are more vulnerable - due to their particular circumstances - to human trafficking and exploitation. This is especially true in situations where there are language barriers, social integration challenges and working relationships with unscrupulous employers (Kafala system) who may try to take advantage of the migrant employee's lack of knowledge of local legislation and bargaining power.

Migrant workers who find themselves in such a situation often experience misleading promises about their wages or the nature of the work itself, confiscation of personal documents, indecent working conditions and indebtedness due to the augmentation of the hiring fees by recruitment agencies.

While there are countries where the transition to decent work, especially for migrant workers, is improving through bilateral agreements, the implementation of new legislation or the introduction of specific programs - such as Jordan and United Arab Emirates- there is still a lot of work to do, such as a need to change the

recruitment and contracting processes that are two of the main gaps that particularly expose migrant workers to forced labor. In fact, in recent years, those kinds of working conditions and relationships are considered by the international literature as *modern slavery*.

One of the categories on which this dissertation will particularly focus its attention is migrant domestic workers, who are not only one of the most vulnerable but are often completely unrecognized by the law.

In fact, domestic employees - the majority of whom are women from Asian countries- are often excluded from the protection of the national labour laws, making their condition even more complicated. As the years go by, many forms of abuse have been reported by migrant domestic workers, thanks also to the particular commitment of international organizations such as the International Labour Organization (ILO), non-governmental organizations namely Human Rights Watch and -in the case of Jordan- local organizations namely Tamkeen. The most common complaints reported are the non-payment of wages or the lack of overtime pay, long working hours, absence of days-off, health care and annual leave, inadequate accommodation and issues linked to the stipulation and termination of contracts, not to mention the restrictions on freedom of movement and isolation, which make it even more difficult to react to or report instances of ill-treatment. All this is made possible also because of the type of sponsorship existing in many Arab countries especially: the *Kafala System*, which is characterized by an unbalance of power within the hands of only one of the two actors, namely the employer (*Kafeel*).

In this regard, within this dissertation the differences and difficulties that countries have to face during the transition to decent work will be analyzed and observed, in particular the condition of female migrant domestic workers in Jordan and the United Arab Emirates. This choice has been dictated mainly by the fact that both countries despite coming from two different regions of the Arab area and having a different socio-economic profile, show at the same time many similarities, especially considering the legislative changes implemented to promote the transition to decent work for migrant domestic workers. Moreover, these two cases are interesting to compare because it is precisely their differences that help more to highlight that the obstacle to achieving decent work is not only due to socio-economic or legal limitations, but often also to the lack of political will.

This thesis aims to identify the factors that make up the transition to decent work, analyzing and observing the main characteristics and what those countries have already done in this respect and what could additionally change to support this process. This dissertation will begin by introducing the general concept of the informal economy and its scope globally, focusing on the main characteristics and conditions that encourage it, ending in a second moment with particular attention on the informality within the Arab States, and more specifically the case of migrant domestic workers (Chapter 1). Since the transition, as abovementioned, is a complicated issue, a number of case studies will be considered. The first country to be analyzed in this way is the Hashemite Kingdom of Jordan (Chapter 2) which has been one of the first Arab countries to implement modifications in this context. During the analysis not only the positive changes will be considered but also the possible existing shortcomings that Jordan has still to address. The same type of work and analysis will then be applied to the case of the United Arab Emirates (Chapter 3). This dissertation will conclude with a comparison of the two countries especially considering the main push factors that could have influenced both governments to actuate this transition and identifying which still are their main obstacles.

Many difficulties have been encountered during the research phase of this project, among the most limiting has been the identification of material, above all because the task of research has been conducted entirely on the internet. In fact, most of the main sources used for the development of this work are reports and analyses of UN agencies such as the International Labour Organization (ILO), international organizations such as Human Rights Watch, WIEGO (an organization that takes care of informal women) and national organizations such as Tamkeen, but this is only in the case of Jordan since there are none in the UAE. The United States Department of State website has also played an important role as a source for this dissertation. In addition, from a more legislative point of view, the ILO's NATLEX platform for law enforcement has been of considerable importance, although I have often had to translate these laws directly from Arabic, especially when they were more recent, this especially occurred in the case of Jordanian laws. Another useful tool has been the website of the Ministry of Human Resources and the Emiratization concerning some UAE legislation. During the analysis of the materials consulted, it was possible to observe how, often and willingly, they presented the same

information, although with updated data at the time of their drafting, giving the idea that one of the biggest obstacles that these organizations have also found is the lack of total transparency by governments. In fact, it has often not been possible to find up-to-date data or data relating to the specific category of domestic workers, the subject of this analysis. This lack of transparency has made it extremely difficult to quantify the problem in more detail. Even when information about a project, for example, was found, it was not always possible to find further information about its subsequent development; this was the case, for example, of the union in Jordan for domestic workers. Moreover, it has often been necessary to compose this dissertation to collect information from several texts in order to construct the discourse, since there are not so many texts linked to the conditions of these specific workers in the two countries in question. The reports often dealt with this topic referring to wider geographical areas and reported only a few details about the chosen country. Furthermore, since this category of female worker is particularly disadvantaged, since it is not adequately regulated, the nature of the place of work which does not allow direct access to such workers and the percentage of irregular domestic workers, has made it even more difficult to access actual data.



## *Abstract*

Con il termine “Economia Informale” s’intende definire quell’insieme di attività lavorative che non godono di alcuna tutela da parte dello stato, essendo prive di riconoscimenti legislativi e regolamentazioni. Tale fenomeno è studiato con particolare attenzione, soprattutto dagli anni 90’, a causa delle sue implicazioni e portata.

Secondo stime recenti, pubblicate nel 2018 dall’Agenzia delle Nazioni Unite, che si occupa del monitoraggio e promozione del rispetto dei diritti dei lavoratori, l’Organizzazione Internazionale per il Lavoro (OIL), il 60% della popolazione lavoratrice mondiale, circa 2 miliardi di persone, è attiva nel settore informale, e il fenomeno è presente in tutti i paesi indipendentemente dai vari livelli di sviluppo. Ovviamente il fenomeno è maggiormente presente in quei paesi che la Banca Mondiale definisce in via di sviluppo o emergenti, infatti il fenomeno dell’“informalità” è direttamente proporzionale all’elevate disparità socio-economiche e alla povertà diffusa.

Da sondare sono le numerose Raccomandazioni e Convenzioni adottate dall’ OIL, le due più rilevanti sono la Convenzione N. 189 con l’intento di fornire una protezione specifica ai collaboratori domestici, stabilendo le giuste direttive e principi di base richiesti ai governi con l’intento di promuovere la tutela e i diritti di tale categoria, e la Raccomandazione N. 204 del 2015, di particolare rilevanza poiché è la prima che si propone come guida ufficiale per affrontare efficacemente la transizione dall’economia informale all’economia formale. Quest’ultima in particolare è stata creata con l’obbiettivo di raggiungere il lavoro dignitoso per tutti e si riserva il compito di offrire indicazioni ai diretti interessati, su come poter accelerare la transizione promuovendo la creazione e il mantenimento del lavoro dignitoso all’interno del settore formale. Essa inoltre analizza quelle che siano le principali ragioni e condizioni che influenzano un individuo alla partecipazione nel settore informale.

Un altro dato rilevante, è il fatto che per quanto il settore informale sia maggiormente rappresentato da uomini piuttosto che da donne, quest’ultime quando informali, tendono ad essere più esposte ad abusi e sfruttamento.

Secondo quanto riportato dalla Raccomandazione No.204 e anche uno studio condotto nel 2019 dall'organizzazione che si occupa delle Donne nel Lavoro Informale: Globalizzazione e Organizzazione (WIEGO), nella maggior parte dei casi un individuo che accede al settore informale non lo fa tanto per scelta, quanto perché costretto dalla mancanza d'opportunità nel settore formale o per necessità influenzate dal desiderio di una condizione migliore di vita. Inoltre, la maggior parte di questi lavoratori, sono soggetti a situazioni di abusi, violazione dei loro diritti fondamentali, sfruttamento, cadendo spesso vittime anche del traffico umano, questo soprattutto nel caso dei lavoratori emigranti.

La grande diffusione dell'economia informale, è risultato negli anni essere uno dei maggiori ostacoli al raggiungimento del lavoro decente, soprattutto in quei paesi, come si vedrà durante l'analisi dei due casi studio, che presentano anche una situazione giuridica con non pochi limiti e mancanze da un punto di vista di protezione e tutela dei diritti dei lavoratori; basti pensare che, come nel caso delle collaboratrici domestiche, in alcuni paesi alcune categorie di lavoratori non sono tutelate neanche dalla legge nazionale sul lavoro. Inoltre, l'informalità è divenuta, sempre più negli anni, una sorta di *rete di sicurezza* per tutte quelle persone che riscontrano particolari difficoltà nell'accesso al settore formale.

Il lavoro informale è particolarmente diffuso in Africa, Sud-Est Asiatico e l'area dei paesi arabi (MENA). Più precarie sono le condizioni di vita e il tasso di povertà in una società più è prevalente la presenza di lavoro informale e della sottoccupazione. Il caso dei paesi arabi è di particolare interesse.

A partire dalla crisi petrolifera degli inizi anni settanta (1972-1973), iniziò una massiccia ondata migratoria per lo più alla volta dei paesi del Golfo in cerca di opportunità di lavoro, specialmente dai paesi arabi limitrofi prima e dai paesi asiatici, come Indonesia, Sri Lanka e Filippine, soprattutto a partire dalla fine degli anni 80', poi, ondata che non si è mai interrotta. In base a dati recenti, sono stimate essere circa 50.000 le collaboratrici domestiche donne migranti nei paesi della regione MENA.

Nell'elaborato presente si è voluto approfondire in particolare il caso delle collaboratrici domestiche donne migranti, essendo una delle categorie definite più soggette all'informalità, abusi e sfruttamento. Queste lavoratrici infatti, partendo già da una situazione più svantaggiosa in quanto donne e migranti, finiscono troppo spesso vittime di violazioni di diversa natura, condizione resa ancora più difficile a

causa del contesto chiuso in cui lavorano, complicando qualsiasi interazione con l'esterno, soprattutto in caso di problemi. Quest'ultime, attratte dalla prospettiva di una vita migliore, spesso e volentieri, una volta raggiunto il paese di destinazione, si ritrovano a lavorare in condizioni molto precarie, senza nessuna tutela, a ricoprire mansioni diverse da quelle precedentemente pattuite alla partenza, con paghe che rasentano il minimo stabilito dai governi ospitanti e con orari di lavoro a dir poco estenuanti. Tutto questo aggravato dalla presenza scostante di un contratto di lavoro, soprattutto visto che spesso viene sostituito o eliminato al loro arrivo, e da un legame con il datore di lavoro reso ancora più disequilibrato e oppressivo a causa della persistente esistenza, specialmente nei paesi del Golfo e in Giordania e Libano, del sistema di sponsorizzazione Kafala, rendendole ancora più prive di tutela. Questi sono solo alcune delle violazioni più comuni registrate all'interno di questi paesi.

La transizione da economia informale a economia formale, e quindi da lavoro informale a lavoro dignitoso, è un processo lungo e molto complesso, che deve tenere conto, non solo delle condizioni politico socio-economiche dei paesi in cui tale processo avviene, ma anche della volontà dei governi a compiere un tale passo. Ecco perché, per comprendere al meglio cosa implica questo processo e capire quali possano essere le maggiori difficoltà e limitazioni ad un suo effettivo compimento, si è analizzato in maniera più approfondita il fenomeno della transizione al lavoro dignitoso all'interno di due paesi campione, la Giordania e gli Emirati Arabi Uniti, e più nello specifico le transizioni compiute nei confronti della categoria delle collaboratrici domestiche donne migranti.

La scelta di questi due paesi, è stata principalmente dettata dal fatto che, per quanto presentino delle situazioni socio-economiche differenti, basti pensare che la Giordania è considerata dalla Banca Mondiale come in via di sviluppo mentre gli Emirati Arabi Uniti come sviluppati, hanno apportato in linea generale gli stessi cambiamenti da un punto di vista legislativo. Ciò che però a primo impatto può risultare rilevante, come verrà affrontato nell'atto conclusivo di questo elaborato, sono le condizioni e le motivazioni che hanno condotto a tale cambiamento.

Molto vasta è la letteratura prodotta da alcune organizzazioni internazionali, come la già citata OIL, Human Rights Watch, la Confederazione Internazionale dei Sindacati (ITUC), per quanto attiene gli Emirati Arabi Uniti il Ministero delle Risorse Umane e dell'Emiratizzazione, e Tamkeen nel caso della Giordania.

Da questa ponderosa mole di documenti analizzati si può evincere in sintesi che, in questi due paesi, alcuni importanti passi avanti sono stati compiuti in questo senso. È stato inoltre possibile constatare che, per quanto Emirati Arabi Uniti (UAE) e il Regno Hashemita abbiano portato a compimento alcune modifiche molto significative nel raggiungimento di tale obiettivo come ad esempio, nel caso degli EAU la legge Federale N. 10 del 2017 specifica alla regolamentazione delle collaboratrici domestiche e la Giordania che ha introdotto una legge simile con lo stesso obiettivo, la Regolamentazione No. 10 del 2009, questa categoria presenta ancora notevoli difficoltà nel raggiungimento del lavoro decente.

Entrambi i paesi hanno quindi intrapreso la strada della transizione legislativa per affrontare la problematica del passaggio da lavoro informale ad un progetto di lavoro dignitoso, ma da quanto è stato possibile osservare questi inizi di cambiamenti possono essere considerati più originati da decise spinte sia intrinseche, ma soprattutto estrinseche. In entrambi i casi, le pressioni della comunità internazionale e delle sue organizzazioni, hanno rappresentato un ruolo fondamentale all'intraprendimento di tale processo, questo soprattutto il caso degli Emirati Arabi Uniti. Per quanto tali cambiamenti possano comunque essere letti in chiave positiva, la strada per raggiungere una condizione effettiva ed efficace di lavoro decente per le collaboratrici domestiche è ancora lunga, soprattutto tenendo conto che ancora oggi vengono registrati casi di abusi e violenze di diversa natura nei confronti delle collaboratrici domestiche donne migranti.



## *List of Acronyms*

<b>FMDW</b>	<b>Female Migrant Domestic Workers</b>
<b>ILO</b>	<b>International Labour Organization</b>
<b>UAE</b>	<b>United Arab Emirates</b>
<b>UAELL</b>	<b>Labour Law No. 8 of 1980, United Arab Emirates.</b>
<b>GCC</b>	<b>The Gulf Cooperation Council</b>
<b>MOL</b>	<b>Ministry of Labour</b>
<b>BLA</b>	<b>Bilateral Agreements</b>
<b>MOUs.</b>	<b>Memorandum of understanding</b>
<b>MOHRE</b>	<b>Ministry of Human Resources and Emiratisation</b>
<b>JWU</b>	<b>Jordan Women Union</b>
<b>ADD</b>	<b>Abu Dhabi Dialogue</b>



# Chapter 1

## *The Informal Economy*

### *1.1. Introduction*

Informal economy, especially in recent decades, has been studied closely for its impact and scope. Informality is occurring all over the world, regardless of the level of development of a nation. According to research carried out by several different international organizations over the years, there is a greater presence in the least developed countries, which are those countries defined by the World Bank (WB) as developing and emerging countries. The reason why those countries are more “vulnerable” to the informality, is due to a lack of adequate employment regulation in their labour law, high rates of unemployment and poverty, and socio-economic inequalities<sup>1</sup>.

More than 60 per cent of the world’s employed population is engaged in the informal sector, some two billion workers.<sup>2</sup>

According to Recommendation No.204 of 2015 on the Transition to Informal to Formal Economy and a survey made by WIEGO in 2019, the main reason a person ‘decides’ to join the informal economy is not through choice, but instead out of an obligation caused by the lack of opportunities in the formal sector or out of economic necessity, moreover such persons work in very severe conditions, suffer inequalities and abuses by their employers and, often, by authorities too<sup>3</sup>.

Some categories, as result of their socio-economic fragility, are more exposed to inequalities generated by informal conditions than others, such as domestic workers or street vendors.

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<sup>1</sup> *Women and men in the informal Economy: A statistical Picture (third edition)*/ International Labour Office-Geneva: ILO,2018, p.67.

<sup>2</sup> *Ibidem*, p.13.

<sup>3</sup> Bonnet, Florence, Joann Vanek and Martha Chen. 2019. *Women and Men in the Informal Economy-A Statistical Brief*. Manchester, UK: WIEGO. p.1.



Another relevant data to take into consideration is that even if men are more exposed to informality than women, the later are more affected by all the vulnerabilities, exploitation and abuses associated with this kind of economy<sup>4</sup>.

The general diffusion of the informal economy as source of employment has become a hurdle to achieving the creation of decent employment opportunities, especially since it has become a safety net for all those people who have difficulty accessing the formal sector.

The informal economy can be found all over the world, but it is particularly predominant in the Middle East and North Africa (MENA) region, where the proportion of informal workers is one of the highest on the planet. Even if the Arab States at the beginning of the 21<sup>st</sup> century had reached a good level of socio-economic development, and it was believed that it could be growing, the crisis of 2008 has slowed down this process as unemployment and socio-inequalities rates rose<sup>5</sup>.

As previously stated, the informality is not only an Arab phenomenon, but is relevant in other parts of the world, such as South-east Asia and Africa, where living conditions and employment are precarious and poverty rates are high. Many workers from those regions take the decision to emigrate toward nations where, compared to their country of origin, there are more opportunities of work or where the wages, even if low, are higher than those in their native country. Especially after the oil boom (1973-1974), many foreign workers from Asian countries, such as Philippines, Bangladesh, Sri Lanka and Indonesia, arrived in the MENA region looking for work with high expectations, only to find themselves working under less favorable conditions. This was the case, for example, of female migrant domestic workers<sup>6</sup>.

Through the support of studies and analyses carried out by international organizations (NGOs?) that deal with issues such as economic informality in the global context, such as the International Labour Organization, Human Rights Watch and national organizations such as Tamkeen, I want to demonstrate the scale and weight that the informal economy still has today, despite all the progress made in the field of workers' rights at an international level.

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<sup>4</sup> Martha Chen, Jenna Harvey, "*The Informal Economy in Arab nations: a comparative perspective*", WIEGO Network, Manchester, January 23, 2017, p.2.

<sup>5</sup> Ibidem, p.13.

<sup>6</sup> Ibidem,

In the course of this chapter, I propose to try to analyze what are the main macro-causes that drive foreign workers to emigrate abroad in search of better opportunity, and then find themselves often and willingly (reluctantly) living in precarious and exploitative conditions, typical of the most informal side of the labour market. Above all, I will focus on an area of the world, MENA, the destination every year of thousands of workers from different parts of the globe and where, especially in some sectors such as the domestic one, there is still a high rate of informality and violations of workers' rights are common.

This chapter is divided in four main parts. First it will consider the identification of what is meant by the term 'informal economy' and examine its different schools of thought. Next, it will analyze more specifically what informal employment is, what it implies and how it develops, for example, in more rural areas rather than in urban areas, paying particular attention to the position of women compared to men in the informal world.

The chapter will continue with an analysis of what are the main push factors driving these workers to emigrate to work; and then it will conclude by dealing with the situation of the informal economy in the MENA region, focusing on the case of domestic workers and the sometimes-used system that regulates the work relationship: the Kafala. This is a category (of worker?) that is extremely exposed to the injustice and dangers of informality even nowadays.

## ***1.2. What is the Informal Economy?***

The high rate of unemployment, the socio-economic imbalances and the gaps in labour regulation, have led over the years to an increasing spread of the informal economy.

Since the early 1970s, a debate has taken place regarding what exactly the right definition of informal economy is and what causes it. There are various schools of thought that in recent years have dealt with this topic and they can be grouped into four main schools: Dualist, Legalist, Structuralist and Voluntarist<sup>7</sup>.

The first includes all the informal activities that produce a profit not related to the formal sector, and it is more common among the poorest sectors of the population. Above all, the dualist school of thought considers the informal economy to be a safety net in which it is possible to find an opportunity to work when a crisis occurs. This school in particular is supported by the International Labour Organization (ILO). The second is the *Legalist*, proposed by the economist Hernando de Soto (1989), it sees the informal economy as a mechanism for small entrepreneurs to avoid the costs, formal registration and restrictions that legislation may impose. The third, the *Structuralists* think that this kind of economy is more useful for business to exploit lower wages, workers and costs of production in order to increase their income and consequently their competitiveness. The last school of thought, the *Voluntarist*, claims that working informally is a strategic choice of some laborers, especially the self-employed, not with the aim of avoiding regulations but only because they argue that it is much more convenient for them working in this sector. This is the point of view more favoured by the neoclassical economists.<sup>8</sup>

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<sup>7</sup> Martha Chen, Jenna Harvey, “*The Informal Economy in Arab nations: a comparative perspective*”, WIEGO Network, Manchester, January 23, 2017, p.2.

<sup>8</sup> *Ibidem*, p.2-5.

### 1.2.1 Informal employment, informal sector and informal economy.

To understand better this complex topic, it is paramount to consider the difference between the informal economy, informal employment and the informal sector.

The *informal economy* refers in general to all the workers and economic activities that are neither taxed nor controlled by the government.

The definition of *informal sector* was officially adopted during the International Conference of Labour Statisticians that took place in 1993, to indicate all kinds of employment and production in small or unregistered enterprises<sup>9</sup>, operating at a low tier of organization without a real division between labour and capital as factors of production.

They are usually owned by individuals or several household members that belong to the same or different family core.<sup>10</sup>

In 2002 the International Labour Conference (ILC) set out a more detailed description of *informal employment*. It considered informal all kinds of work that are practiced inside or outside informal enterprises and all kind of relationships between employers and employees that are not regulated legally or that do not enjoy an adequate social protection.<sup>11</sup>

It is estimated that over two billion of the working-age population (those 15 years old and over) are engaged in the informal economy, this means that 61.2 per cent of the global workforce is informal (ILO, 2018).

This phenomenon is more relevant with 93 per cent of the total percentage, in those countries defined by the World Bank as *emerging* (with low-income) and *developing* (low-medium income); those countries represent 82 percent of the total world employment<sup>12</sup>.

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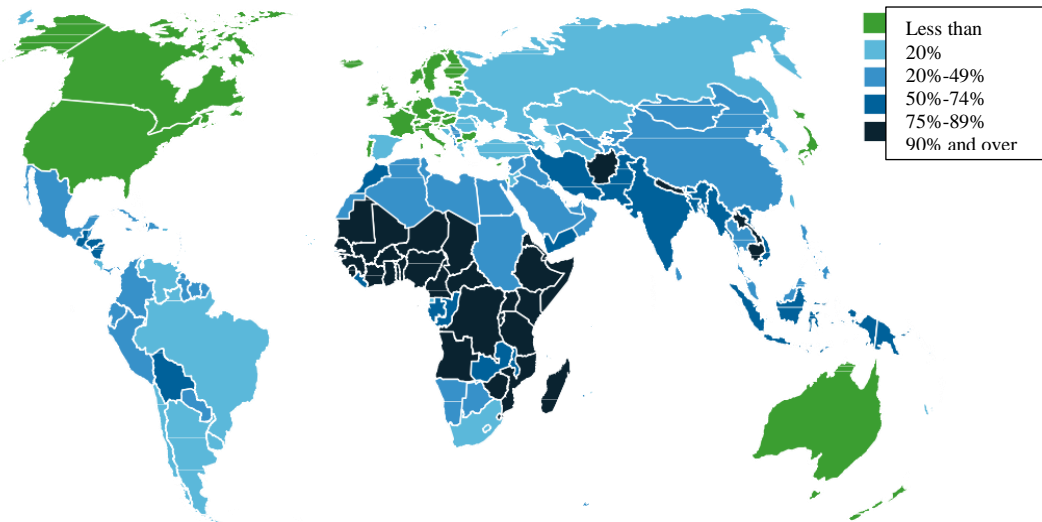
<sup>9</sup> Ibidem, p.5.

<sup>10</sup> *Women and men in the informal economy: a statistical picture (third edition)*/ International Labour Office- Geneva: ILO, 2018. p.

<sup>11</sup> Martha Chen, Jenna Harvey, "The Informal Economy in Arab nations: a comparative perspective", WIEGO Network, January 23, 2017, p.5.

<sup>12</sup> *Women and men in the informal economy: a statistical picture (third edition)*/ International Labour Office- Geneva: ILO, 2018. p.15.

Figure 1.1 Informal employment in total employment, including agriculture<sup>13</sup>  
(2016)



Source: *Women and men in the informal economy: a statistical picture (third edition)*/ International Labour Office- Geneva: ILO, 2018. P.13.

The percentage of informality changes from region to region as it is possible to notice in figure 1.1. Dividing the world in five main areas, it is possible to observe the following: countries with a lower socio-economic level are more likely to present a wider share of informality. As it is possible to notice in Figure 1.1 Africa for example, which hosts one of the highest concentrations of low-income countries, registers the majority share of informal employment with a percentage equal to 85.8% of the total of the employed population; the African continent is followed by Arab States and Asia-Pacific regions with 68.64% and 68.2% respectively. On the other hand, America, considered as a total<sup>14</sup>, and Europe-Central Asia, which host a large number of high-income countries, host respectively 40% and 25.1 per cent of informality (ILO. 2018)<sup>15</sup>.

<sup>13</sup> Agriculture is one of the sectors in which the informality is more active, the majority of the agricultural workers, especially in the developing and emerging countries are employed in the informal sector.

<sup>14</sup> The large number of labour unites working in the informal economy is concentrated in Latin America.

<sup>15</sup> *Women and men in the informal economy: a statistical picture (third edition)*/ International Labour Office- Geneva: ILO, 2018. p. 14.

When it comes to informal work, it does not just matter whether a laborer is working in an illegal enterprise or not, but also the kind of relationship that exists between the employer, if there is one, and the employee. This factor is particularly important to emphasize as, in the many cases, workers in the informal sector are victims of abuse, have no social protection, and, in some cases, even harassment. In recent years, the problem of informal employment has affected mainly the developing countries. In fact, it represents more than half of the total of non-agriculture employees. In the Middle East and North Africa, for example, according to statistics from 2014 which take into account the period from 2004 to 2010, informal employment represents 45% of the workforce, of which 57% in western countries of MENA area.<sup>16</sup>

There have been several debates around what could drive workers to choose the informal economy over the formal one. In many cases, it has been noticed that the choice has been influenced by the fact that the majority of informal workers are usually poor and for this reason have difficulties accessing particular permissions or face obstacles in fulfilling formal regulations,<sup>17</sup> or have no possibility to access the formal economy.

Many differences might be considered in the informal economy, in fact it does not only change at a regional level, but also the share of female participation compared to male participation may vary from region to region:

<b>Table 1.2</b>		
<b><i>Informal Employment as Percentage of Non-Agricultural Employment by sex 2004-2010<sup>18</sup></i></b>		
	<b>Women</b>	<b>Men</b>
South Asia	83%	82%
Sub-Saharan Africa	74%	61%
East and Southeast Asia (excluding China)	64%	65%

<sup>16</sup> Ibidem, p.6.

<sup>17</sup> Ibidem, p.19.

<sup>18</sup> Martha Chen, Jenna Harvey, “The Informal Economy in Arab nations: a comparative perspective”, Wiego Network, January 23, 2017.

Urban China	36%	30%
Latin America and Caribbean	54%	48%
Middle East and North Africa	35%	47%

Source: WIEGO, 2017, p.8.

In general, informality is a major source of employment for men rather than for women. However, as it is possible to notice in Table 1.2 above, there are regions such as Latin America, South Asia and Africa, where the average rate of female employment is higher. In this scenario informal market begun to be the major source of work for women rather than for men.<sup>19</sup> On the other hand, there are regions such as the Middle East and North Africa, where the situation is reversed. This difference is largely due to the fact that in these regions a significant proportion of women who enter the labour market tend to seek a job in the public sector or in the agricultural and rural areas from which it is more difficult to obtain updated data. It is important to say that even in the regions where the rate of male participation in the labor market is higher than the female one, the latter are more exposed to exploitation and abuse<sup>20</sup>. In addition, men usually tend to be more employed in the informal sector, working also for firms but informally. Women on the other hand, when it comes to talk about informality, tend to be more employed informally but outside the informal sector, such as paid domestic workers in private houses<sup>21</sup>.

### ***1.3 The informal workforce***

Informal jobs encompass a wide and diverse range of activities, which is why the general term *informal* encompasses several different forms of work. This comprises jobs in both informal and non-informal industries, such as traditional businesses (formal enterprises that pay taxes) or households.

<sup>19</sup> OECD/International Labour Organization (2019), “Addressing the gender dimension of informality”, in *Tackling Vulnerability in the Informal Economy*, OECD Publishing, Paris.

<sup>20</sup> Ibidem, p.131.

<sup>21</sup> Martha Chen, Jenna Harvey, “The Informal Economy in Arab nations: a comparative perspective”, WIEGO Network, January 23, 2017. p. 10.

The informal workforce also covers the self-employed and wage workers, as well as various sub-categories based on job status within these diverse categories, such as domestic workers, street sellers, day-workers in agricultural production and construction, transport workers or artisans<sup>22</sup>.

First of all, it is important to underline the difference between the informal employment outside or inside the informal sector. Other important elements to take into consideration, if the aim is to analyze this problem closely, are different types of occupation that these informal workers will carry out and, last but not least, the place of work.

### *1.3.1 Inside or outside*

When a job is said to be within the informal sector, it includes all laborers employed in *informal enterprises*, namely employees, contractors, own-account (self-employed?) professionals and members of cooperatives. On the other hand, all the jobs considered as outside the informal sector are all those kinds of employment that are employed in *formal enterprises* but not usually covered by any kind of social protection or contract. An example of workers employed outside the informal sector are workers that work in households, private firms or contributing family workers in formal enterprises.

What most differentiates the latter from the former is that usually the workers *outside* the informal sector, even if they work in a formal environment, are more subjected to abuse from their employers (e.g. domestic workers), or do not enjoy any privilege given by the social protection and the law<sup>23</sup>. This vulnerability is often due to the private nature of the workplace in which they have to work, far from the supervision of the authorities. Domestic workers, for example, in several Arab countries, such as Jordan and UAE, are not totally recognised and, in some cases, actually excluded from the Labour Law or not represented adequately. In this way, they are not protected by the same rights as other workers. A domestic worker could incur different kinds of violation perpetrated by their employers, such as not receiving social protection, paying annual leave or their salaries.

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<sup>22</sup> Ibidem, p.9.

<sup>23</sup> Bonnet, Florence, Joann Vanek and Martha Chen. 2019. *Women and Men in the informal Economy- A Statistical Brief*. Manchester, UK: WIEGO. p. 4.



On the contrary, in case of workers that operate in informal sectors, they still are victims of general injustice but are more likely to obtain a formal contract even if with a lot of limitations. In the case of an informal enterprise, or in the case of a self-employed worker, despite the numerous problems related to the lack of protection offered by the national legislation, they are freer since they self-adjust in their work and do not depend directly on anyone.<sup>24</sup>

As already mentioned, men are usually more employed in the informal sector due to social rules and norms. In fact, in several countries, women are seen as those who take care of the house and household chores, as well as having a fundamental role in raising and caring for children. For example, in the Middle East and North Africa, where the female participation in the labour market and even the presence of women involved in the informal economy is lower, the presence of male in the informal economy is higher than women. According to the data collected in 2016 by the ILO in the MENA, the total share of informal employment was equal to 68 per cent of which 69 percent covered by men and 62% by women<sup>25</sup>. In those cases, in which women are employed in the informal economy, generally they work as domestic workers or in family business rather than in informal enterprises or businesses.<sup>26</sup>

### *1.3.2 Working Conditions*

Because of the informal nature of their work (in the informal economy), employees largely lack social security benefits obtainable by their working arrangements with premiums paid on their behalf by their bosses. That may also include a lack of employment benefits such as annual paid leave or paid sick leave in the event of an emergency.

Employees in temporary and part-time jobs are more likely to engage in informal behavior because they are either beyond the control of existing laws and regulations, or they do not meet the qualifying conditions in terms of duration of

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<sup>24</sup> Martha Chen, Jenna Harvey, “The Informal Economy in Arab nations: a comparative perspective”, WIEGO Network, January 23, 2017., p. 9.

<sup>25</sup> Bonnet, Florence, Joann Vanek and Martha Chen. 2019. *Women and Men in the Informal Economy- A Statistical Brief*. Manchester, UK: WIEGO. p.10.

<sup>26</sup> Martha Chen, Jenna Harvey, “The Informal Economy in Arab nations: a comparative perspective”, WIEGO Network, January 23, 2017, p.11.

service or number of hours worked; or, whether lawfully covered, certain regulatory protections are not effectively enforced<sup>27</sup>.

Multiple circumstances, including the nonexistence of employment contracts for temporary employees, limited resources on the employer's side, complex or inappropriate mechanisms for compliance, a lack of knowledge or a deliberate choice not to conform, reflect a lack of adequate implementation of policies and regulations.

Working in the informal economy might broaden the risk of having to work beyond the normal hours of employment. Informal employees are more exposed to truncated working hours or, in some cases such as domestic work, as will be explained in the next chapter, are more vulnerable to excessive hours of work due to their more precarious employment conditions and also to the workplace in which they have to exercise their activity. In both cases, whether the working hours are reduced or the workers are forced to work for longer periods of time, these workers face various difficulties. In the case of extremely short hours of work, there is a substantially greater risk of working poverty, as well as vulnerability to elevated health safety costs. In the case of surplus of working hours, there is an increased risk of work–life organizational problems and inadequate financial benefits<sup>28</sup>.

Regardless of the area or stage of growth, the proportion of employees with very shortened working hours is particularly heightened among workers in informal jobs than among those in formal employment.

Globally, almost 10.1 per cent of the total of informal laborers work less than 20 hours per week in contrast to the 4.2 per cent of formal employees who work the same number of hours<sup>29</sup>. The situation is more critical in the developing and emerging countries where the average is higher with respect to developed countries. For example, in Africa the average percentage of informal employees who work less than 20 hours is the highest if compared to the others regions, with a share of 18.0 per cent in the case of informality and 3.2 per cent in the case of the formal sector. The Arab States is another region that registered a significant percentage of informal workers with a working time of less than 20 hours, equal to 11.6% and in the case of formal workers equal to 6.5%.

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<sup>27</sup> *Women and men in the informal economy: a statistical picture (third edition)*/ International Labour Office- Geneva: ILO, 2018. P.60.

<sup>28</sup> *Ibidem*, p.60.

<sup>29</sup> *Ibidem*, p.62.

The situation for women is even worse. Upwards of 14% of women in informal jobs work fewer than 20 hours a week, opposed to 3.1% of those in formal sector. In Africa (22.8%), Latin America (26.8%), and the Arab Countries (25.3%), this ratio exceeds 20%. The most likely explanation is traceable to the unconsidered amount of time spent performing unpaid jobs<sup>30</sup>.

As it is possible to attest, informal laborers are more likely to risk working longer hours than workers employed in formal employment, even more likely than to work for less than 20 hours. Following the previously pattern, globally 44.7% of informal employees work for more than 48 hours a week compared to 30.3% of formal ones<sup>31</sup>. This trend is most visible in the Arab States and Asia and the Pacific regions, with 35.2% and 52.2% respectively, in contrast with those working in the formal sector registering 29.2% and 45.2% respectively. Women are particularly exposed to longer working hours in the Asia and the Pacific region with a range of 45.2% when it comes to informal employment and 35.8% in formal employment<sup>32</sup>.

Another fundamental element to take into account is the place where these categories of employee work.

An informal employee working in an informal or unregistered firm has more opportunities to work within a more protected and conventional workplace, such as offices, shops, farms or factories, compared to those working in public places or private homes, who are exposed to a higher risk of abuse of different kinds or unproductiveness.

Those who often find themselves working in more disadvantaged conditions are women, who are more likely to work outside the informal sector due to their economic and social circumstances.

In certain countries, there is a clear gender disparity in the workplace. This is due to the fact that women are mostly responsible for domestic tasks, including childcare, which often prohibits them from seeking employment outside their households or communities. This is perhaps because conservative societal customs in certain cultures forbid women to leave their homes to work. Some women believe that working from home is a physically healthy environment. This particular attitude is more common among the less well-off strata of society and in cultures where the female figure is tied to particular strict social codes, such as certain Arab

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<sup>30</sup> Ibidem, p.63.

<sup>31</sup> Ibidem, p.64.

<sup>32</sup> Ibidem, p.65.

states<sup>33</sup>. At home women experience advantages from a household management and child care point of view, they also work in a safer place away from possible harassment but, at the same time, they could encounter the multi-tasking risk, what at first may be considered a benefit, but can soon place a limit on their own productivity. Moreover, especially in the poorest areas or neighborhoods, women may lack basic needs, such as electricity or running water.<sup>34</sup>

Streets, municipal markets, parks and sidewalks are other public places that are scenes of injustice for some categories of informal workers (e.g. street vendors), who are often subject to confiscations by local authorities, fines and physical aggression<sup>35</sup>.

Many informal employees end up living or working in private households, whether their own in the case of home-based employees or, more notably, the household of their employer in the case of domestic workers. Own-account managers, unpaid contributing family members, and industrial outworkers are examples of home-based workers. Moreover, especially in the poorest areas or neighborhoods, they may experience a lack of basic needs, such as electricity or running water.

Home-based jobs, on the other hand, can increase a woman's insecurity, since she is less identifiable and less likely to be legally recognized as a worker. She will have limited ability to demand any social security programs for which she may be entitled as a worker, and few opportunities to further her skills. She is more difficult to reach through trade unions or other labor-organizing groups and, as a result, is less likely to profit from the unity and bargaining power that comes with such involvement. Furthermore, people who live (and work?) at home are less likely to establish a professional identity and social relations outside of the family unit than those who work outside the home<sup>36</sup>.

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<sup>33</sup> Ibidem, p.21.

<sup>34</sup> Martha Chen, Jenna Harvey, "The Informal Economy in Arab nations: a comparative perspective", WIEGO Network, January 23, 2017, p.20.

<sup>35</sup> Ibidem, p.20.

<sup>36</sup> Martha Chen, Jenna Harvey, "The Informal Economy in Arab nations: a comparative perspective", WIEGO Network, January 23, 2017, p.20.

### 1.3.3 Gender in informal employment

For a variety of reasons, men and women's informality may vary significantly. The prevalence of informal jobs varies by gender across countries, indicating current gender disparities in employment rates. This difference is especially high and widening in developing countries, where it stands at 30.0% in 2018<sup>37</sup>. Northern Africa, the Arab States and southern Asia have the lowest rates of female workers with respect to men (ILO, 2019).

In most developed countries, the gender disparity in the employment-to-population ratio remains substantial and consistent (?). 740 million of the 2 billion employees in informal jobs are women, accounting for 37.5 percent of all workers in the informal economy, varying from 15.8 percent in the Arab States to 44.2 percent in Africa<sup>38</sup>. The African continent is an exception, considering, for example, that in sub-Saharan Africa (except for South? Africa) more than 90% of women are in informal employment as opposed to 86.4% of men.

In the Arab region the situation is reversed, in fact the informal employment is a greater source of employment for men than women, but that doesn't make the situation less relevant.

According to ILO reports, the global figure (in informal employment?) in 2018 was 45.3 percent for women and nearly 71.4 percent for men<sup>39</sup>. Northern Africa, the Arab States, and southern Asia have the greatest gender disparities, but major variations can also be seen in Latin America<sup>40</sup>.

One of the main explanations why the situation is different with respect to other areas, is the culture of origin as well as social background of these women, and more generally of their families.

A 2012 publication shows that the Arab region is the worst in terms of gender inequalities.<sup>41</sup> Women keep suffering from social differences, limitations in

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<sup>37</sup> ILO (2018), *World Employment and Social Outlook: Trends for Women in 2018- Global snapshot*, International Labour Organization, Geneva. [https://www.ilo.org/global/research/global-reports/weso/trends-for-women2018/WCMS\\_619577/lang-en/index.htm](https://www.ilo.org/global/research/global-reports/weso/trends-for-women2018/WCMS_619577/lang-en/index.htm)

<sup>38</sup> OECD/International Labour Organization (2019), "Addressing the gender dimension of informality", in *Tackling Vulnerability in the Informal Economy*, OECD Publishing, Paris, p. 133.

<sup>39</sup> ILO 2018, *ILOSTAT*, International Labour Organization, Geneva, <https://www.ilo.org/ilostat>

<sup>40</sup> OECD/International Labour Organization (2019), "Addressing the gender dimension of informality", in *Tackling Vulnerability in the Informal Economy*, OECD Publishing, Paris., p.133

<sup>41</sup> World Economic Forum, 2012.

employment and political participation, difficulties accessing decent employment<sup>42</sup> and wage discrimination.

In most countries, women are more likely to be employed in the most marginalized sectors of the informal economy, such as domestic workers, home-based workers participating on a piece rate basis in the lower tiers of global supply chains (Berg, 2016)<sup>43</sup>, or contributing family workers. Approximately 75% of domestic workers, mainly females, are employed informally. They face unique challenges when they operate in private residences, many of which are not deemed workplaces but rather private environments beyond the control of state laws and off-limits to labor (this is the American spelling which is ok but probably best to be consistent throughout the text) inspectors<sup>44</sup>.

Female wage disparity is another aspect of gender inequality in the informal employment context. Women in informal wage jobs usually pay a dual penalty: they earn less than traditional workers on average, and women are paid less than men generally<sup>45</sup>.

A variety of reasons contribute to women's over-representation in low-wage, less-secure informal employment. Gender inequality and sexism can either cause or intensify vulnerabilities and barriers.

Sexual identity disparities are different among household members. Those disparities are more generally based on caste, class, race, or religion that can influence resource distribution and access to knowledge, education, or economic opportunities, thus exacerbating gender inequalities. Both formal and informal institutions often give women restricted access to property and credit, limiting their economic empowerment and influencing decisions to engage in the formal or informal economy. Reduced access to resources, credit and connections often makes informal employment the only choice<sup>46</sup>.

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<sup>42</sup> Working women usually face more difficulties in accessing to a decent employment, overall in the formal sector due to their social and economical limitations and in some cases their level of education. In the formal sector, in the past decades, women were more likely to find a job in the public sector than in the private one, in case they don't find a job in these field, they are more likely to work in the informal sector.

<sup>43</sup> ILO (2016), *World Employment Social Outlook*, International Labour Organization, Geneva,

[http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_443480.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_443480.pdf)

<sup>44</sup> OECD/International Labour Organization (2019), "Addressing the gender dimension of informality", in *Tackling Vulnerability in the Informal Economy*, OECD Publishing, Paris, p. 134.

<sup>45</sup> Ibidem, p. 141

<sup>46</sup> Jütting, J. and J. de Laiglesia (2009), *Is Informal Normal?: Towards More and Better Jobs in Developing Countries*, Development Centre Studies, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264059245-en>.

In Arab countries, for example, women first of all face significant difficulties in accessing the labor market because of social norms. In some regions, where religious observance follows a stricter interpretation, women have less control of financial and economic resources and the idea that their primary role is caring for offspring and taking care of housework is widespread.<sup>47</sup> The latest point explains why single females usually have a higher rate of employment and are more likely to find a job, although many women often quit their job after getting married.

Women belonging to lower-income families could be especially impacted if they have to choose between a wage career, which pays more but is difficult to reconcile with domestic responsibilities and movement limits, and self-employment, which pays less but provides more independence (Jütting and de Laiglesia, 2009)<sup>48</sup>.

Another significant limitation of the informal economy that women are especially vulnerable to is a lack of maternity benefits. Maternity benefits are designed to shield mothers from financial losses, gender inequality and health complications associated with pregnancy. Because of the high income-insecurity for women in the informal sector, reducing working hours in paid and unpaid work before and after childbirth is difficult. As a result, many women work late into their pregnancy or return to work shortly after childbirth, exposing them to serious health risks<sup>49</sup>.

As per the ILO Maternity Protection Convention (No. 183), participating countries shall provide at least 14 weeks of maternity leave with public funds or social protection services covering a portion of the costs. However, only 28% of women in the workforce worldwide are successfully covered by maternity leave benefits<sup>50</sup>. Furthermore, without maternity leave, women in formal jobs can be compelled to seek lower-paying and less stable informal work. Despite the fact that such a transition is often regarded as brief, women with children are more likely to stay in informal jobs for longer periods of time<sup>51</sup>

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<sup>47</sup> Sidani, Yusuf M., “*Working Women in Arab Countries: A case for Cautious Optimism*”, In Handbook on Well-Being of Working Women, 2016.

<sup>48</sup> Jütting, J. and J. de Laiglesia (2009), *Is Informal Normal?: Towards More and Better Jobs in Developing Countries*, Development Centre Studies, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264059245-en>.

<sup>49</sup> ILO (2016), “Maternity cash benefits for workers in the informal economy Low coverage of maternity protection”.

<sup>50</sup> ILO (2017), *World Social Protection Report 2017-19: Universal social protection to achieve the Sustainable Development Goals*, ILO, Geneva, [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_604882.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_604882.pdf).

<sup>51</sup> OECD/International Labour Organization (2019), “Addressing the gender dimension of informality”, in *Tackling Vulnerability in the Informal Economy*, OECD Publishing, Paris, p.147.

## ***1.4 Informality and level of socio-economic development***

There are several factors that can lead people toward the informal economy. It is possible to affirm according to the latest available data<sup>52</sup>, that informality is mostly related to socio-economic and educational level. It has been noticed that the countries that have a lower Human Development Index (HDI)<sup>53</sup> result are the ones with a higher level of informality. For example, in the most developed countries, where the HDI is usually higher, the average rate of informality is less than 40%, namely 18,3%, while on the contrary, the average in the emerging and developing countries is 69.6%.<sup>54</sup>

Three important aspects that are taken into consideration to measure the informality are education, poverty and the economy.

In addition, countries with low GDP per capita are usually the ones where in the informal economy the gender gap is more pronounced, due to the different needs of the household, the limitation of access to education, and inadequate or insufficient welfare laws to meet the needs of the population.

In addition, informality occurs in many sectors of the economy in both urban and rural areas.

In the urban area informal employment is prominent in the construction field, trades, street vending, transport and domestic work, while in the rural areas it is more common in the artisan and agricultural sectors.

Worldwide, in rural areas, where the agricultural sector is one of the sectors most affected by informality (88.3%), the share is higher with respect of urban areas (76.3%), although the difference is not very marked. This trend is common in all regions of the world: for example, in North Africa the percentages are 75.6% in rural areas and 58.1% in urban areas<sup>55</sup>, in the Middle East the trend is similar with a greater decrease in urban areas equal to 40.2%, while maintaining a higher proportion of 73.9% in rural areas<sup>56</sup>. In Southern Asia and Sub-Saharan Africa the percentage is a little higher equal to 93% and 92% and equal to 75% and 85% in

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<sup>52</sup> ILO 2018, *ILOSTAT*, international Labour Organization, Geneva, <https://www.ilo.org/ilostat>

<sup>53</sup> Human Development Index measure the social development of a country considering not only the economic growth. Is a combination of indicators: knowledge and decent standard of living, long and healthy lives.

<sup>54</sup> *Women and men in the informal economy: a statistical picture (third edition)*/ International Labour Office- Geneva: ILO, 2018. P. 46.

<sup>55</sup> *Ibidem*, p.29.

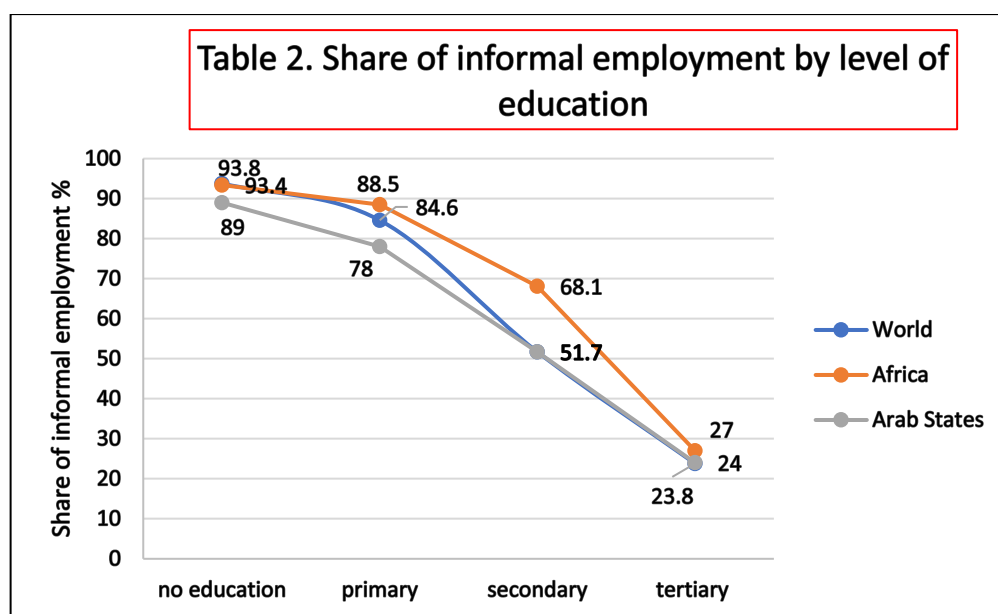
<sup>56</sup> *Ibidem*, p.41.



urban areas<sup>57</sup> (ILO,2019). In rural areas, the most common forms of employment are the day or casual laborers and temporary workers<sup>58</sup>.

#### 1.4.1 Informality and Education

Education is one of the factors that helps to provide access to the formal labour market. There is a positive link between the educational level and entrance to the formal sector. In simple terms, the more educated a worker is, the more likely he/she is to access the formal sector<sup>59</sup>. The last statement is especially true for the employers and employees, on the other hand the own-account workers, regardless of the level of education, are always more likely to operate within the informal economy due to the advantages that they can derive from not falling under the control of state regulation.



Source: ILO, 2018, p.52.

Globally, the majority of employees without education is equal to 93.8% of the total of informal employment in the informal sector. Again, at a global level, the

<sup>57</sup> Bonnet, Florence, Joann Vanek and Martha Chen. 2019. *Women and Men in the informal Economy- A Statistical Brief*. Manchester, UK: WIEGO. p.13.

<sup>58</sup> Martha Chen, Jenna Harvey, “The Informal Economy in Arab nations: a comparative perspective”, WIEGO Network, January 23, 2017, P.16

<sup>59</sup> Ibidem, p.18.

percentage of workers in the informal sector diminishes with the augmentation of education: it registers a decrease of -9.81% (84.6%) of employees with primary education, a further diminution of -38.89% (51.7%) among those with secondary education, and by -53.97% (23.8%) among those with tertiary education. This trend is particularly relevant (?) in developing and emerging countries, which have the highest concentration of jobs in the informal economy. In developing and emerging economies, the share of informal jobs amongst the employed population falls from 93.9% among workers with no schooling to 32.0% among those with higher education<sup>60</sup> (ILO, 2018).

In Africa and in the emerging Arab States, for example, where the low level of education among workers in informal jobs is severe and there is a general lower average of education, it is possible to notice the same trend.

In Africa, the standard of schooling is closely related to informality. The incidence of informality falls to 88.5 % for those with early schools, 68.1 % for those with secondary schooling, and 27.0 % for those with university education<sup>61</sup>.

In the Arab States the situation is similar to that of Africa. In the MENA region, the share of informal employment by level of education goes from 89% among the less schooled to almost 25% of those with higher education<sup>62</sup> (ILO,2018). More specifically, dividing the MENA region in two main areas, workers with no schooling comprise the majority of informal workers with 86.7% in North Africa and 83.7% in the Middle East. The percentage decreases with the increase in the level of schooling. In fact for those with a first grade education, the percentage of informal workers falls to 78.3% in North Africa and 49.5% in the Middle East. A further decrease occurs when talking about tertiary level of education, where there is a percentage of 27.4% in the Arab countries of North Africa and a 20.8% in the Mashreq<sup>63</sup> (ILO,2018).

It's worth noticing that, as Table 3 shows, even if generally the informal economy is a greater source of work for women than for men, this statement changes when the level of schooling is considered. However, access to education is not equal for men and women. Table 3 shows that globally it is more common that highly

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<sup>60</sup> *Women and men in the informal economy: a statistical picture (third edition)*/ International Labour Office- Geneva: ILO, 2018., p.52.

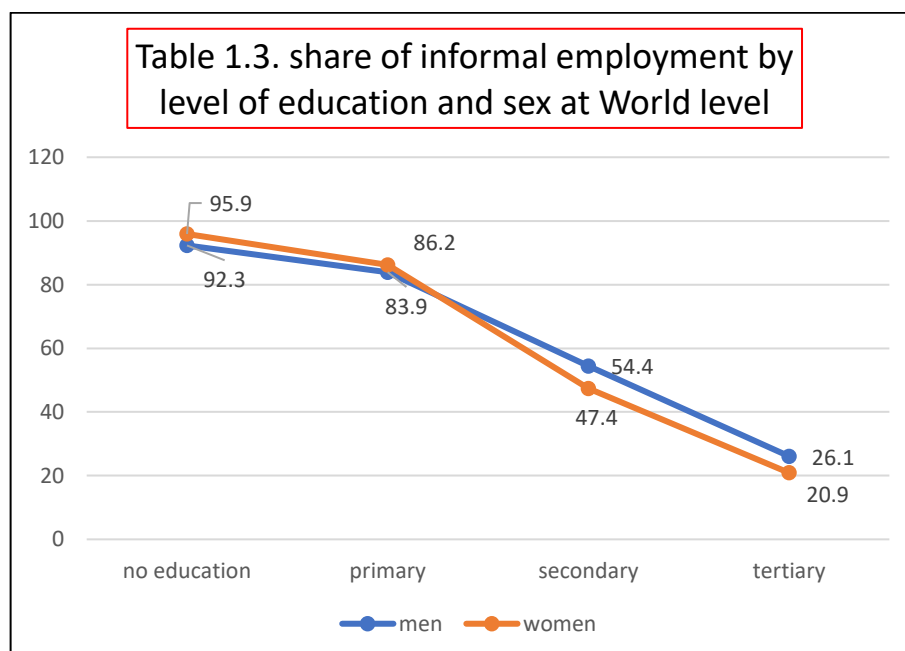
<sup>61</sup> *Ibidem*, p. 29.

<sup>62</sup> *Ibidem*, p.52.

<sup>63</sup> *Ibidem*, pp. 41-29.

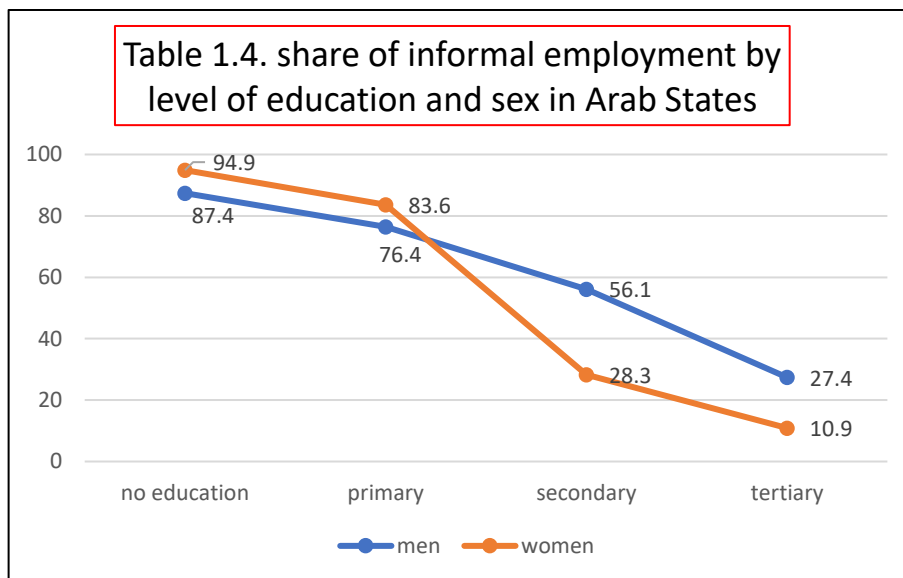
educated women are less likely to operate in the informal sector (20,9%) compared to men (26,1%). At the same time women with a lower level of education (95,9%) are more likely to work in the informal economy with respect to men (92,3%). Table 4 presents an example of this gender trend in Arab States. In the MENA region the share of informal employment by level of education and sex follows the same trend: women with no education are more likely to be enrolled informally than men, with a percentage equal to 94.9% for women and of 87.4% for men. On the contrary, in the case of tertiary level of education, the proportion of men who find more employment in the formal sector is higher (27.4%) with respect to women (10.9%), (ILO, 2018).<sup>64</sup>

An exception is represented by many women working as domestic servants who emigrate to the MENA region and, according to several interviews and surveys conducted by different organizations such as ILO, have obtained a secondary or tertiary level of education, but because of the less favorable socio-economic situation in their home countries, they feel it is more advantageous to seek employment elsewhere.



Source: ILO,2018, P.134.

<sup>64</sup> Ibidem, p.134.



Source: ILO, 2018, p.134.

#### 1.4.2 Informality and poverty

According to a report published in 2018 by the ILO, there is a connection between the poverty rate and the extent of informality<sup>65</sup>. Members of less well-off households tend to be more likely to work in the informal sector, often because of the impossibility to afford the payment of taxes, lack of opportunities in formal employment due to the lack of technical skills required or the inability to apply for the necessary licenses to carry out certain activities.

At the same time, this study reports that the informal employees that work in the informal sector are not necessarily poor, sometimes they may earn a decent income and have decent working conditions, but because of the high number of economic dependents within the household, they face difficulties meeting all expenses at the end of the month<sup>66</sup>, and consequently find themselves living below the moderate poverty threshold (3.10\$ PPP per day).

In developing nations, the percentage of informal jobs in overall employment varies from 50% to 98% in one of the poorest countries, namely Rwanda<sup>67</sup>. The situation varies from region to region. In Africa, where there is one of the highest shares of informal employment with some of the lowest income countries, the total share of informal employment is 85%, including the agricultural sector. As each region

<sup>65</sup> *Women and men in the formal economy: a statistical picture (third edition)*/ International Labour Organization- Geneva: ILO, 2018.

<sup>66</sup> *Ibidem*, p. 48.

<sup>67</sup> *Ibidem*, 48.

experiences a different socio-economic growth rate, so the rate of informal employment varies from region to region. In the two major subregions of Africa, rates of informal employment are 67.3 percent in Northern Africa and 89.2 percent in Sub-Saharan Africa. If agriculture is excluded, informal employment accounts for 56.3% of total jobs and 76.8% of total employment respectively<sup>68</sup>. In Western Asia, the average share is around 43.4 %<sup>69</sup>.

The availability of access to constant and secure sources of income and the opportunity to take advantage of savings to invest in your own business, are both fundamental elements to be able to expand, but also to start a job or to access services that could permit the development of the abilities necessary to access the formal economy.

When comparing poverty rates in informal jobs between men and women, the most developed countries and, more broadly, those countries with the highest prevalence of poverty, reveal that women have a higher poverty rate than men, implying that more women than men in informal employment live in poverty-stricken households with a range of between 65% and 95%. The situation changes when the comparison is made in the case of formal employment, where the share of poverty of men is higher with respect to women, with a range of between 30% and 60%<sup>70</sup>.

### ***1.5 Transition to Decent Work: The Convention No.204.***

The International Labour Conference's Transition from the Informal to the Formal Economy Recommendation No. 204, accepted in June 2015, is the first international document concerned directly with the informal economy. As set out in paragraph 1 of its recommendations, it was created with the aim of achieving decent jobs for all and offers advice to ILO tripartite representatives (workers' and employers' organizations and governments) on how to accelerate the transition from the informal to the formal economy promoting the creation and preservation of decent work within the formal economy:<sup>71</sup>

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<sup>68</sup> Ibidem, 29.

<sup>69</sup> Ibidem, 41.

<sup>70</sup> *Women and men in the informal economy: a statistical picture (third edition)*/ International Labour Office- Geneva: ILO, 2018. P. 51.

<sup>71</sup> Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) : Workers' guide / International Labour Office, Bureau for Workers' Activities (ACTRAV). - Geneva: ILO, 2017, p. 1

**“Paragraph 1 of the Recommendation**

*This Recommendation provides guidance to Members to:*

- (a) Facilitate the transition of workers and economic units from the informal to the formal economy, while respecting workers’ fundamental rights and ensuring opportunities for income security, livelihoods and entrepreneurship;*
- (b) Promote the creation, preservation and sustainability of enterprises and decent jobs in the formal economy and the coherence of macroeconomic, employment, social protection and other social policies; and*
- (c) Prevent the informalization of formal economy jobs.”<sup>72</sup>*

*Source: Recommendation 204, 2015.*

This recommendation aims above all to make states understand the negative impact that informality can have. In fact, it stresses the acknowledgement that the prevalence of the informal economy in many of its forms poses a significant threat to workers' rights, including fundamental values and rights at work, as well as social security, fair working conditions, inclusive growth, and the legal system. Furthermore, it states that the informal economy can also have a negative effect on the growth of productive businesses, public revenues, and the reach of government policy, especially in terms of fiscal, social, and environmental policies, the truthfulness of institutions, and effective competition in national and international markets.

Recommendation 204 also states that the majority of people enter the informal economy not by choice, but as a result of a shortage of resources in the formal economy and the scarcity of any means of subsistence, especially if living or working in a less-developed country. Furthermore, as previously stated, workers within the informal economy are more likely to experience breaches of employment and human rights law.

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<sup>72</sup> Paragraph (1) of the Recommendation 204 concerning the Transition from Informal Economy to the Formal Economy adopted by the conference at its 104<sup>th</sup> session, Geneva, 12 June 2015.

The ILC report recognizes that informality has many causes, including governance and systemic challenges, and that government policies should hasten the transition to the formal economy in a social dialogue context.<sup>73</sup>

The requirements for transitioning from informal to formal procedures, or for officially recruiting jobs, should be open and appealing to both employers and employees. Initiatives to formalization should also ensure that specific interests and issues are acknowledged, that the transaction and real expenditure of formality are lower than that of informality, but above all that the institutions should guarantee transparency, efficiency and trustworthiness during the whole path to formalization. The importance of allowing shadow economy units to exist while supporting them to strengthen their organizational and working conditions has also been stressed, as change cannot happen overnight. In this regard, the Recommendation as set out in paragraph 13<sup>74</sup>, recognizes the importance of current property recognition, and also the availability of means to formalize property rights and access to resources; in doing so caution should be exercised to ensure that the transformation does not create new socioeconomic challenges as a result of the closure of businesses, or that it does not exacerbate poverty, resulting in a lack of jobs for people whose main source of income is working in the informal economy<sup>75</sup>.

The Recommendation set out in paragraph 15<sup>76</sup> encourages Members to support the adoption of a holistic workforce policy system and recommends a selection of elements that should be included. Pro-employment macroeconomic policies, trade, manufacturing, financial, sectoral, and technology policies, industrial policies, labor market policies, labor mobility policies, schooling and skills training policies and stimulus steps to ease the transition from school to employment and from unemployment to employment are among the factors to be considered. Furthermore, based on national priorities, Members should promote collaboration across various levels of government as well as between relevant bodies and institutions dealing with these important issues (Paragraph 12)<sup>77</sup>.

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<sup>73</sup> Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) : Workers' guide / International Labour Office, Bureau for Workers' Activities (ACTRAV). - Geneva: ILO, 2017, p. 7.

<sup>74</sup> Paragraph (13) of Recommendation No. 204 on Transition from Informal to the Formal Economy, 2015.

<sup>75</sup> <sup>75</sup> International Labour Organization, 2020, *Promoting employment and decent work in a changing landscape*, ILO, Geneva, p.160.

<sup>76</sup> Paragraph (15) of Recommendation No. 204 on Transition from Informal to the Formal Economy, 2015.

<sup>77</sup> <sup>77</sup> International Labour Organization, 2020, *Promoting employment and decent work in a changing landscape*, ILO, Geneva, p.171.

Many countries often take steps to tackle illegal labor by penalizing employers who refuse to report new employment. In some situations, informal positions, as well as unrecognized employment relationships, are motivated by a desire to circumvent complicated and expensive administrative steps, whereas in others, it is a cultural matter, such as in case of the Kafala system, that will be explained in more detail later in the chapter. In particular, certain initiatives are aimed at re-establishing the legal status of employees who are in a precarious position, such as migrant domestic workers<sup>78</sup>.

For example, in the UAE in 2014 the standard contract for domestic workers was revised where it is specified that the contract is valid for two consecutive years, after which to continue the employment relationship there is a need for the employer to renew the contract. The same provision exists in Jordan. Unfortunately, however, many employers, although it is mandatory, prefer not to face the cost of renewal despite the possible fine in the event of non-renewal.

In both countries in recent years their governments have tried to address the problem of incorrect regulation of recruitment agencies through a series of specific amendments.

When it comes to gender inequalities and the issue of worker exploitation, the Recommendation's paragraph 11 encourages Members to take steps to support equality and the abolition of all types of harassment and abuse in the workplace<sup>79</sup>. In this respect, Jordan and UAE, for example, have implemented several amendments to their legislation. In general, migrant domestic workers are often victims of various violations of their fundamental rights.

The problem is that, as it will be seen in more detail in the second and third chapter, despite the changes to national legislation, cases of abuse, harassment and exploitation persist.

As it is possible to see, when making a comparison between countries, it is often mistaken to think that one of the ways to reduce the informality is through the achievement of economic prosperity. As a matter of fact, comparative figures indicate that countries with comparable levels of economic growth have vastly different levels of informality. Development trends cannot generate enough formal positions to replace those who choose to work in cases of mass informality<sup>80</sup>.

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<sup>78</sup> *Ibidem*, p.161.

<sup>79</sup> Paragraph (11) of Recommendation No. 204 on Transition from the Informal to Formal Economy, 2015.

<sup>80</sup> International Labour Organization, 2020, *Promoting employment and decent work in a changing landscape*, ILO, Geneva, p. 170.



Moreover, the 2030 Agenda reflects informality and the promotion of formalization, especially aim 8.3: Promote innovation policies that facilitate constructive practices, decent job formation, development, innovation, and promote the formalization and expansion of small to medium-sized enterprises (SME), such as through access to funds<sup>81</sup>.

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<sup>81</sup> Ibidem, p. 150-151

## ***1.6 The informal economy in MENA Countries***

### *1.6.1 A global overview*

The problem of informality is also due to the inability of the governments of the MENA area to make changes within the society, legislation and institution, which would really allow a substantial growth. Thinking about the increase in oil prices in the 1970s, it was a particularly crucial period for most of the Arab countries, as both the oil exporting and the labor-exporting states benefitted from this spike in the oil output.

The informal economy was assumed to come to an end with socio-economic development in MENA countries (Lewis, 1954), but recent trends have changed this assumption, claiming that economic growth cannot be the solution to this problem, but only an important factor. There are also other factors influencing developments in the informal sector, such as the use of new technologies in production, trade, demographic change and political forces<sup>82</sup>.

Governments transitioned from controlling private sectors to direct ownership of output through the nationalization of private enterprise during the 1950s and 1960s.

As a result, the public sector has grown to become the dominant employer in many MENA countries. Import-substitution policies have imposed limits and provided investment opportunities and productivity, with consequences for labor supply and job growth.

Regulation of agrarian industries, land redistribution, and a social policy bias toward cities have had a major impact on rural labour markets, accelerating urbanization<sup>83</sup>.

Public contributions to human resource growth took the form of populist education initiatives that offered cheap, compulsory access to higher education and promised secondary and university graduates public sector jobs.

These strategies provided net gains in the short run, but over time, the availability of job applicants surpassed economic growth rates.

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<sup>82</sup> Martha Chen, Jenna Harvey, "The Informal Economy in Arab nations: a comparative perspective", WIEGO Network, January 23, 2017, p.13.

<sup>83</sup> The World Bank, 2004. *Unlocking the employment potential in the Middle East and North Africa: toward a new social contract*, Washington D.C., p. 33.

Rent regulation, tax codes, and subsidy systems all had an effect on the wider economic climate in which MENA workforce found jobs. These proposals did not explicitly address labour and were open to all people regardless of employment status.

MENA's economic performance were one of the best in the world between 1965 and 1985.

The emigration of a considerable number of the new growing Arab labour force following even the youth bulge of those years, meant that Arab non-oil-producing countries could benefit from this lower pressure of labour demand. Thanks to the new remittances from the Gulf countries, and a more general welfare growing in countries benefiting from new revenue and investment from the Arabian Peninsula, new administrative systems were created which were consequently generating new jobs in the public sector. During this period, the majority of the region's countries pursued expansionist policies and significantly increased the supply of public jobs, especially to politically strategic classes.

Almost 3.5 million Arab migrant workers were working in Saudi Arabia and the Gulf states at the height of the second oil boom between 1979-1980<sup>84</sup>.

For example, in the decade from 1973 to 1984, official remittances of migrant labour generated nearly 22 billion dollars for Egypt and 6.5 billion dollars for Jordan<sup>85</sup>, two of the countries that have seen a considerable part of their skilled labour force emigrate to the peninsula.

Many factors have contributed to these improvements, including fast growth in early industrialization, high levels of government investment, early profits from trade security for domestic producers, increased public-sector jobs, and increasing oil prices.

The difference between a profoundly rooted system of structural frameworks, rules, standards, and policies on the one hand and governments' diminishing capacity to uphold redistributive commitments on the other has grown over time.

By the early 1980s, it was apparent that the MENA's social contract was unable to maintain the economic gains of previous decades. The causes of this crisis were falling oil prices, decreased demand for foreign labour, decreased remittance flows,

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<sup>84</sup>Ibidem, p.38.

<sup>85</sup> Ibidem, p.38.

and decreasing productivity. The stresses in the social contract had developed into a global economic depression by the end of the decade.

Falling oil prices, dwindling demand for foreign labour, decreased remittance flows, weakening production, and a more dynamic international climate were the root causes of this crisis. Regulatory environments discouraged private investment, and reduced opportunities for trade.

Labor production in the Middle East and North Africa fell steadily in the 1980s and 1990s. Unemployment rose, and policymakers came under increasing domestic and foreign pressure to implement economic reform<sup>86</sup>.

The joblessness' issue recurred, especially in the non-oil exporting countries, once the spike of the oil prices started falling in the 1980s and the outbreak of the first Gulf war in the early 1990s pushed the greater part of the immigrant workers, especially Arabs from Egypt and Northern Africa, to return to their countries of origin. The return of large numbers of individuals to their native countries underlined the inability of the governments to absorb an ever-growing number of now unemployed citizens that remained without a job.

Furthermore, the sharp decline in oil prices in the 1980s and 1990s placed a strain on policymakers' ability to supply public jobs and support vast numbers of foreign workers.

By the 1990s, most MENA governments, such as Jordan, Egypt, Morocco and Algeria, had implemented some kind of economic stabilization policy. Most countries in the region started to adopt structural reform policies, such as eliminating subsidies, reducing capital spending, reforming currency exchange systems and implementing privatization plans for manufacturing, trade and agriculture. In addition, many countries joined international trade agreements such as the General Agreement on Tariffs and Trade (GATT, known later as the World Trade Organization) to try to address this crisis<sup>87</sup>.

However, the execution of these policies has been inconsistent, tentative and unfinished, and the MENA region's economic development has slowed. Productivity growth has remained poor, and unemployment rates have risen, pushing especially the new generation towards the informal economy.

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<sup>86</sup> Ibidem, p.39.

<sup>87</sup> Ibidem, p.40.

Between the 1950s and the 1990s, high demographic growth rates resulted in a substantial increase of the working-age population. The working-age population in MENA has gradually increased from 2% per year in the 1950s to even more than 3% per year in the 1970s, where it stood until around the 1990s<sup>88</sup>. By the early 1990s, the country had seen significant decreases in child mortality and gains in life expectancy.

According to the most recent data of the World Bank, there has been a further increase in the first decade of the 2000s with an average in the MENA region almost equal to 2.15%, that has decreased again in recent years (1.7%,) (World Bank Data, 2019)<sup>89</sup>.

The combination of population growth and at the same time rising unemployment, caused especially the younger generations to fall back on the informal sector. As a result, in the early 2000s, the youth bulge generation started to mature, and demand for jobs greatly outstripped what governments in the country could do (Aita 2011, 2015).

The global food crisis in 2003 and the global recession in 2008-2009 have aggravated the situation, leading to a deepening in the socio-economic inequalities. A huge number of unemployed, trained youth grew disillusioned as their job chances deteriorated and their opportunities to demand reforms were restricted. This category, along with workers in the informal economy, faced extraordinarily restricted mobility and felt excluded from all of the advantages, such as a decent and regular pay or social protections enjoyed by those working in the formal, mostly public sector.

A dramatic example is the episode that occurred in Tunisia in 2010 when a young street vendor named Mohammed Boazizi set himself on fire following the umpteenth seizure of his goods. He received no kind of compensation that might have restored his human dignity. The sacrifice of this young man highlighted the issue of informal workers and more generally brought the widening socio-economic disparities in the region into the public eye; the result was the outbreak of the so-called Arab Spring (in Arabic الربيع العربي) which spread very quickly in many Arab countries.

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<sup>88</sup> Ibidem, p.56.

<sup>89</sup> World Bank Data, 2021. <https://data.worldbank.org/indicator/SP.POP.GROW?locations=ZO>

### *1.6.2 Informal employment*

Informal employment has become one of the largest labor resources in the MENA region. In the Arab countries situated in the Levant region, it accounts for 73.4%, while in North Africa the informality accounts for 53.5% (World Bank, 2014)<sup>90</sup>. The countries of these two areas that show the highest average level of informal employment are: Morocco (76.2%), Algeria (63.3%) and Tunisia (51.4%) in North Africa and the West Bank and Gaza (86.0%), Syria (73.2%) and Lebanon (65.5%) for the Levant region (World Bank, 2014). Especially in Northern Africa, one of the categories of workers that is most common in the informal sector is the own-account workers (96.6%). In fact, it is noteworthy that in this region employers (95.1%) are more likely to operate in the informal sector than employees (46.7%) (ILO,2016)<sup>91</sup>.

Mashreq nations, for their part, are in dire straits as a result of the invasion of Iraq, the continuing conflicts in Syria and Yemen, and large domestic and foreign migratory waves. This is at a time when the majority of these countries are witnessing a youth rate growth and increased rural-urban migration. As a result, the number of entrants to the labour force in these countries is an average of about 800,000 people every year.

Age, gender, and education are also powerful determinants of informality.

A very important fact to note is that those who work in the informal sector are mostly young people aged between 15-25 (87.5%) and those over 60 (94.0 %) (ILO,2018)<sup>92</sup>. Nonetheless, the extent of the relationship between age and informality varies across countries and strata, particularly affecting the poorest.

Taking one of the age groups where informality is most prevalent, such as 15-25, the unfavorable correlation between age and informality seems to be greater in Egypt (87.1%), Syria (89.0%), and Iraq (84.7%), Morocco (90.9%), the Republic of Yemen (97.3%), Lebanon (69.1%), and Jordan (49.9%), and generally is worse in urban areas than in rural ones.

It is worth saying that the widespread informality among young people, was a consequence of both demographic growth in the years before 2000 and the lack of supply of decent jobs compared to demand, which was gradually increasing. For

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<sup>90</sup> Martha Chen, Jenna Harvey, "The Informal Economy in Arab nations: a comparative perspective", WIEGO Network, January 23, 2017, P.15

<sup>91</sup> *Women and men in the informal economy: a statistical picture (third edition)*/ International Labour Office-Geneva: ILO,2018, p.30.

<sup>92</sup> *Ibidem*, p.29.

young people, entering into informal employment allows them to access the labour market, gain experience, and ultimately transition into formal employment, as informality declines rapidly with age<sup>93</sup>.

In most nations, rates of informality decline steadily after the age of 25 and continue to fall until the age of 54. Informality rates rise again for employees over the age of 60, as some retirees pursue work in the informal sector after leaving their traditional jobs. The countries where this trend seems to be larger are: Yemen (95.2%), Morocco (79.2%) Syria (73.2%) and Jordan (63.9%) (Angel-Urdinola and Tanabe, 2011)<sup>94</sup>.

Informality is typically higher in the primary sector and has significant consequences for countries with substantial agricultural sectors, such as Yemen (95.6%), Morocco (94.1%), and Jordan (92.6%).

Informality rates in the tertiary sectors differ by country, varying from 46% in Lebanon to 93% in the Republic of Yemen. The share of informality is usually lower among employees in public administration<sup>95</sup>.

Educational level is another element that greatly influences the decision whether to work or not in the informal sector. People who have not received school education are more likely to fall into the informal economy, especially due to their low level of training and technical knowledge. Higher levels of schooling are correlated with lower levels of informality, as human capital expenditures raise competitiveness, making market regulations less onerous and structured returns theoretically greater. Informal workers who have only a primary school education, represent 78.3 per cent of the total of informal employees, with a decrease for people who have obtained a secondary education at 57.4 % and a further lowering of the percentage for people who have received third-level education of 30 %.<sup>96</sup>

Thanks to the data collected by Angel-Urdinola and Tanabe in 2011, proposed in the figure 1.5 below, it is possible to observe this negative relation between level of education and informality.

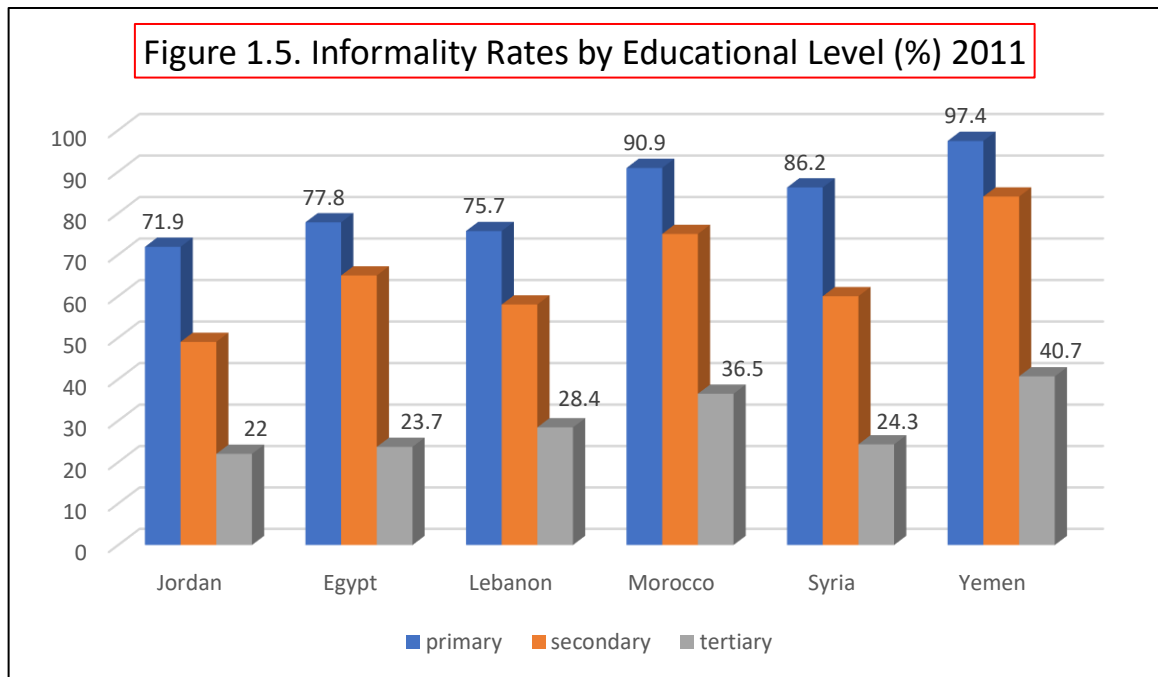
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<sup>93</sup> Gatti, Roberta, Diego F. Angel-Urdinola, Joana Silva and András Bodor. 2014. *Striving for Better Jobs: The Challenge of Informality in the Middle East and North Africa*. Directions in Development. Washington, DC: World Bank. doi: 10.1596/978-0-8213-9535-6. License: Creative Commons Attribution CC BY 3.0 IGO. P.106.

<sup>94</sup> Ibidem, p.100.

<sup>95</sup> Ibidem, p.102.

<sup>96</sup> *Women and men in the informal economy: a statistical picture (third edition)*/ International Labour Office-Geneva: ILO,2018, p.40-41.



Source: Angel-Urdinola and Tanabe 2011.

Taking as an example the three countries with the larger percentage of informal workers with a basic education, namely Yemen (97.4%), Morocco (90.9%) and Lebanon (75.7%), it is possible to analyze this particular decrease noticing that when it comes to workers with a tertiary level of education the presence of the informal economy decreases respectively to 40.7%, 36.5% and 28.4%<sup>97</sup>.

Even in the MENA region, informal employment is a greater source for men than for women, with the only exception in the agricultural sector, where women are more employed in the informal sector with a percentage of 47.3%<sup>98</sup>. Since women are often engaged in unregulated agriculture in regions where agricultural work accounts for a significant portion of total employment, being a woman is correlated with higher levels of informality. On the contrary, women are correlated with lower levels of informality in those countries where public jobs account for a large portion of total employment, such as Iraq and Syria<sup>99</sup>.

<sup>97</sup> Gatti, Roberta, Diego F. Angel-Urdinola, Joana Silva and András Bodor. 2014. *Striving for Better Jobs: The Challenge of Informality in the Middle East and North Africa*. Directions in Development. Washington, DC: World Bank. doi: 10.1596/978-0-8213-9535-6. License: Creative Commons Attribution CC BY 3.0 IGO. p. 101.

<sup>98</sup> Ibidem, p.39.

<sup>99</sup> Gatti, Roberta, Diego F. Angel-Urdinola, Joana Silva and András Bodor. 2014. *Striving for Better Jobs: The Challenge of Informality in the Middle East and North Africa*. Directions in Development. Washington, DC: World Bank. doi: 10.1596/978-0-8213-9535-6. License: Creative Commons Attribution CC BY 3.0 IGO. p.96.



The situation for women continues to deteriorate. In 2017, the data collected by the Arab NGO Network for Development (ANND) show an increment in the share of female informality especially in Algeria, with 49% of irregular women employees, Morocco had 83 percent, and Mauritania had 87%. Only in Tunisia the number of female informal workers (equal to 20%) is lower compared to male informal workers and this is because of the country's social security scheme, which includes agricultural workers (ANND,2017)<sup>100</sup>.

In the Arab Peninsula, except for Yemen, most of the countries are considered as developed countries and the informal sector is less diffused. With reference to the informal sector in the agricultural field, in the majority of the Arab countries the situation is similar, it is mostly informal, independently by gender or country. Informality in the Arab area is prevalent in the rural areas rather than in the urban ones, for example in the Levant region the informality in agricultural sector represents 86.0 % of informal employment<sup>101</sup> (ILO, 2018).

### ***1.7 Unemployment and migrant workforce in the Mena region.***

According to data collected by the United Nations' Department of Economic and Social Affairs (DESA), in 2020 there was a significant wave of emigration for work: 280,598,105 people from all around the world, of which 79,002,070 were from South-eastern Asia (23,580,736), Southern Asia (43,394,045) and Eastern Africa (12,027,289)<sup>102</sup>.

The phenomenon of labour migration in the Arab region, both foreign and internal, has been an important issue for decades. In Gulf countries, for example, this phenomenon increased dramatically in the 1970s, during the first oil boom, between 1973 and 1974. During the 1980s, following the fall of oil prices and following the outbreak of the First Gulf War in 1991, Arab workers were in many cases dismissed due to the tensions that had arisen during the conflict. In many cases they were even repatriated on the charge of being opponents of the host country's regime. As a

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<sup>100</sup> Aita, Samir. 2017, *Informal labour in the Arab Countries Facts and Rights*, Arab Watch Report on Economic Social Rights, Arab NGO Network for Development, ANND. P. 7.

<sup>101</sup> *Women and men in the informal economy: a statistical picture (third edition)*/ International Labour Office-Geneva: ILO,2018, p.41.

<sup>102</sup> United Nations Department of Economic and Social Affairs, Population Division (2020), *International Migration 2020 Highlights* (ST/ESA/SER.A/452), p. 49.

result of a large number of jobs now vacant, and since the Asian labour force was cheaper than the Arab workforce, the demand for employment from this side of the world began to increase. In 2000 the influx of overseas employees in the labour market in the United Arab Emirates was equal to 80%, 64% in Bahrain, and 82% in Kuwait. It is projected that South Asians make up almost half of the UAE's population.

In general, the oil boom made the Gulf countries increasingly dependent on a migrant workforce, and this did not decrease even after 1991. To make a comparison, in 1975 only 39% of the workers were from geographical areas that were not part of the Arab world and by 1995 this percentage had grown to 74%<sup>103</sup>. With the arrival of 2003, came new oil expansion, a new economic liberalization and the increase in foreign investment, which attracted even more foreign laborer to the Arab peninsula. A striking example is the United Arab Emirates, where the percentage of foreign labour force which is 90% is almost equal to the local one<sup>104</sup>. During the early 2000s the Arab economies recorded a high growth that increased during the first six years until the dawn of the great financial crisis of 2008. The remarkable growth that this region has been witnessing is translatable with an annual job creation average rate of 4.5 per cent, especially crucial in a region that was also experiencing a considerable population growth of 2.8 per cent that would inevitably lead to an increase in the demand for labour over the years. The situation changed with the worldwide crisis of 2008<sup>105</sup>.

The crisis in the developed countries in general and in the Gulf states in particular, obliged many migrant workers to return to their homelands.

The return of such a large number of workers caused certain imbalances because the markets in which they returned did not have sufficient economic structures to allow a complete absorption of the imminent growth of demand.

In addition, this crisis coincided with the so-called “youth bulge”<sup>106</sup> in many Arab States, that further aggravated the internal labour markets and consequently

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<sup>103</sup> AA.VV., Op., Cit., International Organization for Migration Report, p.65.

<sup>104</sup> E. Balduzzi, Diritto di Critica, “*Golfo Persico: paradiso costruito dagli schiavi*”, 23 Gennaio 2011 <https://www.dirittodicritica.com/2011/01/23/golfo-persico-schiavi/>

<sup>105</sup> Directorate-General for Economic and Financial Affairs, “*Labour Markets Performance and migration Flows in Arab Mediterranean Countries: Determinants and Effects*”, European Economy, Brussels, April 2010, p.50

<sup>106</sup> *Youth bulge* is a phenomenon that is due to the success of a country (usually developing country or least developed country) in achieving a level of development that lead to a reduction of infant mortality. This phenomenon is translatable in a large share of young population. The big issue is that if the labour market is not ready to incorporate this new wave of young people, it will result in a high number of unemployed.

increased the unemployment rate and intensified social destabilization and the ability to face the financial crisis.

According to the data reported by the International Organization for Migration: *"The issue of unemployment in the Arab countries is a burning issue, so much so that one of the main objectives of Inter - Arab cooperation is precisely the reduction of the percentage of active workforce potentially unemployed. The average unemployment rate in the region is about 15.3%, and in the region, there are more than 16 million unemployed"*<sup>107</sup>.

The relationship between unemployment and foreign emigration in the Arab area is ambiguous and presents multiple differences from state to state.

Despite the high unemployment rate in the societies of migrants' origin, which is considered one of the main reasons why migrant workers consider emigrating (push factor), the decision to emigrate also depends on particular attractions offered by the destination countries (pull factor). It would seem obvious that migrant workers compete with the local labour force and consequently lead to a further increase in unemployment, but in reality the issue is much more complex than it may appear at first glance.

In recent years, the six countries of the Gulf have witnessed an increase in immigration, the majority of migrants coming from countries in South-East Asia and sub-Saharan Africa, to the extent, for example, that 88% of the population of the United Arab Emirates is of foreign origin. This is the gulf state with the highest rate of foreigners in the country, while the minimum is found in Saudi Arabia with 37%<sup>108</sup> (Pew Research Center, 2017).

The Arab peninsula is not the only one to experience this phenomenon of mass mobilization. Through the years, it has been seen that many non-oil-producing countries have also experienced an increasing presence of an exogenous workforce. Witnesses of this, even in recent years, following the war that broke out in Syria in 2011, are Jordan, Lebanon, as well as, for a long time, Libya, with workers coming from North African states such as Morocco and Algeria.<sup>109</sup>

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<sup>107</sup> AA.VV., Op., Cit., International Organization for Migration Report, p. 72.

<sup>108</sup> McCarthy, Niall, Immigrant Account For 88% Of The UAE's Population, *Statista*, January 31, 2019, <https://www.statista.com/chart/16865/estimated-percentage-of-the-population-that-was-foreign-born/>

<sup>109</sup> F. Arouri, "International Migration in the Arab World", Marrakech, XXVI IUSSP International Population Conference, 27 Settembre – 2 Ottobre 2009, p. 1-2.

The migratory mobilization to the Arab countries is of fundamental importance, especially for those countries where the unemployment rate was, and remains, very high;

This continuous exchange of labour between the different countries of the area, is acting as a relief valve for unemployment.

Initially, the immigrant labour force was both of Arab and foreign provenance, and it met a surge following the increase in revenue caused by the rise in the price of oil in the countries belonging to OPEC. In the early years following the oil boom, migrant workers were largely of Arab origin, mainly from countries with high unemployment rates such as Jordan, Palestine, Lebanon and Egypt.

In subsequent years, the presence of Southeast Asian workers began to increase, mainly from India, Pakistan, Bangladesh and the Philippines, but they did not reach the majority until the 1990s.

Recently immigrant workers from many African countries, especially from Ethiopia and Tanzania, are also seeking better opportunities in the MENA region.

But why choose Asian or African labour over Arab labour?

Very often the Arab workforce was composed of qualified individuals who decided to leave their country in search of better employment opportunities elsewhere. Over the years some employers especially in the private sector, have begun to prefer non-Arab labour since it is cheaper to employ, more efficient and easier to dismiss, but above all it is more willing to do those jobs that are now considered less prestigious by native workers.

In addition, they used to migrate alone for purely economic reasons, making them even more appreciable as the countries in the area tended to favor a type of temporary rather than long term migration<sup>110</sup>.

One of the categories that is most subjected to those inequities are domestic workers who suffer from unfavorable conditions of work and abuses of various types by their *Kafeel*<sup>111</sup>.

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<sup>110</sup> Razzaz, Susan "A challenging market becomes more challenging: Jordanian workers, migrant workers and refugees in the Jordanian labour market", International Labour Organization, Beirut: ILO,2017, pp.6-79.

<sup>111</sup> Ibidem, p. 26.

### *1.7.1 An example of informal employment: The case of Domestic Workers in the MENA region*

The Mena region hosts the highest percentage of migrant domestic workers. Recent studies state that 19% of the total number of migrant domestic workers live in Arab States, namely 1.6 million (ILO, 2015a)<sup>112</sup>. In particular, the case of domestic workers in the Mena region is worthy of notice because of their particular social, professional and legal circumstances.

The increasing demand for domestic workers, especially in the Gulf, Lebanon and Jordan, is a consequence of the rising standards of living following the oil boom. The increase in life expectancy (with the consequent changes in demographics) and a general change in social and family dynamics led to a greater need for external assistance<sup>113</sup>.

Although there is a presence of men, especially in the past, the female workforce in this field is preferred, since women are considered more suitable to perform some of the tasks required by employers.

The main reasons why households favor the female workforce to the male one, is because women usually seem to be more inclined to the work of household tasks, to the management and care of children, especially during the most critical period of development, and the care of the elder components of the house. In addition, women are considered to be more easily manageable in the event of disputes and more easily controllable than men.

Domestic workers are not generally protected by Labour Law in the majority of these countries and almost all of them have a separate legislation for this category of workers, especially in those countries where the house workers are considered less valued than other workers.<sup>114</sup>

This precarious condition not only implies that these women cannot obtain a binding contract, but nor do they have access to benefits of social and legal protection either.

Several studies and surveys conducted by NGOs such as Tamkeen in recent years, have found that a huge number of women claim to have suffered from harassment

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<sup>112</sup> Other estimates think that the real number is even higher, but due to the difficulty in some cases to find updated data and due to their precarious situation, there are no definitive estimates.

<sup>113</sup> *Domestic Workers and employers in the Arab States: Promising practices and innovative models for a productive working relationship-ILO white paper*/International Labour Organization, Regional Office for Arab States. -Beirut: ILO, 2017, p.3.

<sup>114</sup> Kagan, Sophia, “*Domestic workers and employers in Arab States: Promising practices and innovative models for a productive working relationship-ILO white paper*”, International Labour Organization, Regional Office for Arab States-Beirut. ILO,2017.

of different kinds by their employers and, in some cases, friends of the family where they used to work.

One of the more popular channels by which migrant domestic workers obtain employment, is through specialized agencies that serve as intermediaries between employers and employees. The main problem is that in most cases, these agencies do not act in the interests of the migrant workers by not upholding their rights or explaining the real conditions in which they will work, nor requiring them to sign a proper contract of employment.

Domestic workers, like almost all the migrant workers in Arab States, are regulated by a sponsorship system, named *Kafala*, that creates a direct relationship between the employer and the employee. In this particular working relationship, the employer, who becomes the *Kafeel*, has the control on his/her worker. Several domestic workers were found to have been subjected to passport seizure, were deprived of their fundamental rights, such as a weekly day-off, an adequate salary or the possibility of being able to return to their country of origin without their employer's permission.<sup>115</sup>

Fortunately, the unfavorable condition of domestic workers in several Arab States is changing, thanks to the intervention of the international community and NGOs who have continued to exert pressure over the years on governments.

The debate on the violations of the rights of female migrant domestic workers, henceforth FMDWs, has received particular attention in recent years.

Even if for many of them, migration can be a positive experience with significant emancipating and empowering effects, for a large number of these women it turns out to be a major ordeal. In various parts of the world, migrant domestic workers experience severe challenges, namely low pay, long working hours, and very little rest, human rights breaches, including labor rights, at every phase of the migration procedure: during recruitment, crossing borders, working in the host country, and sometimes even when they have returned to their home countries<sup>116</sup>.

Once employed, FMDWs find themselves in an unequal working relationship with their employers, and can face higher levels of alienation and discrimination. They

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<sup>115</sup> Kandalaft, Hiba, "*Domestic Drama, Exploring domestic workers' lives in Amman-Jordan*", Lap Lambert Academic Publishing AG & Co. KG, Germany, 2010, pp.30-31. And ITUC, International Trade Union Confederation, *Facilitating Exploitation: a review of Labour Laws for Migrant Domestic Workers in Gulf Cooperation Council Countries*, Sharan Burrow, 2017. P.7.

<sup>116</sup> Gallotti, Maria "*Making decent work a reality for migrant domestic workers*", International Labour Organization, 17 December 2015. p.1 Site: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_436974.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_436974.pdf)

often do not speak the local language, do not have support networks within the country of destination and are unfamiliar with the law and local practices<sup>117</sup>.

### *1.7.2 The phenomenon of Asian and African female migrant Domestic Workers in the Middle East.*

It is well known that, since the early nineties, the majority of migrant domestic workforce in the Middle East is composed of Asian and South-East Asian workers. As oil prices rose sharply in the early 1970s, oil-rich countries in the Middle East tried to construct infrastructure such as highways, bridges and houses in a brief span of time. This created a massive demand for labor in the oil and manufacturing industries, and rising living conditions in Middle Eastern countries created a demand for domestic workers at home. International labor was central to their growth policy, and by the turn of the twenty-first century, many of these countries had more foreign laborers than indigenous workers.

By 1999, the number of migrant workforces in the Gulf countries had reached 7.1 million, accounting for about 70% of the overall population in the region (The Middle East Institute, 2010).

It is estimated that approximately 1.7 million Sri Lankan citizens were working overseas in 2009, with 86 percent going to Saudi Arabia, Qatar, Kuwait, Lebanon, the United Arab Emirates and Jordan.

Domestic workers constitute the largest group of Sri Lankans in the Middle East, accounting for more than one-third of all migrant workers from Sri Lanka. MDWs in the Gulf countries are mostly women from Asia and Africa, including the Philippines, Sri Lanka, Nepal, and a growing number from Ethiopia and other East African countries. These workers' remittances are a critical source of income for their families and a significant source of revenue for their country<sup>118</sup>. Unfortunately, it has not been possible to find recent data on the exact number of migrant domestic workers based on their nationality working within the MENA region.

As previously mentioned, in the last couple of decades Eastern African countries are the greater domestic help exporters in the MENA region, especially Ethiopia, Kenya, Tanzania and Uganda. Most African labour-exporting countries are located

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<sup>117</sup> Ibidem, p.1

<sup>118</sup> Post 1947 Migration to the Middles East, *Striking Women*, <https://www.striking-women.org/module/map-major-south-asian-migration-flows/post-1947-migration-middle-east>

in East Africa which is home to some of the poorest countries of the continent. The high rate of poverty and also the turmoil and the political imbalances that many of them have witnessed in recent years, not to mention the continuing growth of the population's rate (birth rate or population?) which is estimated to double by 2050, are the major push factors that lead a significant portion of the population to emigrate seeking better opportunities of livelihood.

In recent years, the continued rapid population growth corresponds with an ever increasing demand for jobs and the needs of a constantly expanding population of young people of working age who are entering the world of work. The main issue is that this is leading to an even higher share of young men and women unemployed and a lack of opportunities due to the labour markets that don't have the capabilities to absorb all these new demands.

The Eastern African countries, as stated above, are the most affected by poverty, with 77 per cent of the population living below the poverty threshold of 2 USD per day.<sup>119</sup>

The international Trade Union Confederation (IUTC) states that since the 1990s, the Sub-Saharan countries have seen an increment in the volume of workforce emigration to the GCC states. According to some available data collected in 2017 by the IUTC, the GCC region registered the entrance of 28.1 million migrant workers, 12% of whom came from the African continent.<sup>120</sup> According to several surveys carried out by organizations such as ILO and the International Domestic Workers Federation (IDWF), the countries in which these workers are mainly employed are Jordan, Lebanon, Oman, Qatar, Bahrain, Kuwait, Saudi Arabia and UAE, the last three in particular host the 90% of the migrant workers in the area, maybe due to the fact that they represent the largest economies in the peninsula.<sup>121</sup>

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<sup>119</sup> Laiboni, Nkirote "'A job at Any Cost' Experiences of African Women Migrant Domestic Workers in the Middle East", Global Alliance Against Traffic in Women (GAATW), March and June 2019.

<sup>120</sup> Ibidem, p.3

<sup>121</sup> Ibidem, p.3.



### 1.7.3 The Arab sponsorship: The Kafala System.

As previously mentioned, in recent decades Arab countries have become the destination for work for many migrant workers who come into the MENA region seeking a better livelihood.

The Kafala (Sponsorship) System was developed to regulate the relationship between employers and migrant workers. Specifically, its economic goal is to provide temporary revolving labor that could be quickly brought into the country during periods of economic boom and quickly removed during periods of economic downturn<sup>122</sup>. In the Gulf Cooperation Council (GCC) countries of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (UAE), as well as Jordan and Lebanon, it is still a common practice. According to the Jordanian law, to be able to work in the country, a laborer has to find a sponsor -*Kafeel* - that guarantees for him/her a work permit and, especially in case of live-in workers, a residency permit.

Under the Kafala system a worker is permitted to work only for an employer, who exercises enormous control over his employee and, when the contract ends, the migrant worker is required to leave the country, unless the *Kafeel* agrees to renew it (usually the permit is renewed from year to year). If a migrant worker wants to change employer, she/he needs the written consent of her/his sponsor (even if the desire to change employment is a result of physical or verbal abuse).

The strong imbalance between the two stakeholders is one of the drivers that, in many cases, creates an unfair situation for the migrant.

One of the categories most exposed to such inequalities and strictly tied to this system of sponsorship is the domestic worker, especially migrants. In fact, if such a domestic worker wants to leave work without the written consent of the *Kafeel*, he/she might be charged with 'absconding,' which is a crime punishable even with imprisonment. On the other hand, the employer who decides for some reason to rescind the sponsorship before the agreed date, can do so without giving any further explanation and, as a result, this implies an immediate expulsion of the worker from the Hashemite Kingdom<sup>123</sup>.

Nowadays, the Kafala system contradicts the principles of labour law and the worker's fundamental rights, but it is very difficult to eradicate because it originates

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<sup>122</sup> Migrant Forum in Asia, "Policy Brief No.2: Reform of the Kafala (Sponsorship) System", *Migrant Forum in Asia, Quezon City, Philippines, 2012*, p.1 site: [http://mfasia.org/migrantforumasia/wp-content/uploads/2012/07/reformingkafala\\_final.pdf](http://mfasia.org/migrantforumasia/wp-content/uploads/2012/07/reformingkafala_final.pdf)

<sup>123</sup> *Ibidem* p.1.

from the Arab tradition of hospitality and it has operated in the MENA region since the 1930s<sup>124</sup>.

The Kafala system, characterized by abuses of power and violations of worker's rights, creates the conditions that lead to what is defined as modern slavery, in which the employee finds himself unable to move and exploited in several ways. In particular, employers often and willingly stress their position of greater power, resort to violations, such as requisition of personal documents, the non-payment of wages or the imposition of very long working hours<sup>125</sup>.

According to the labour laws of several Arab countries and especially the Domestic Workers Conventions 2011 No.189<sup>126</sup>, seizure of personal documents such as passports or denial of the right to a day-off is outlawed. The central issue is that even if some rights are regulated by the law, this doesn't secure their effective implementation on a practical level. In general, female migrant domestic workers (FMDWs) are particularly affected by this lack in implementation, especially due to the kind of workplace in which they have to work, that is far away from inspection controls and in many cases, since FMDWs are isolated from the external world, they also are unaware of their rights.

Often, even if a female migrant domestic worker (FMDW) is aware of her rights, she prefers not to report the incident to the competent authorities for fear of retaliation by the employer who may resort to threats or blackmail.

Another problem that considerably afflicts FMDWs is the financial burden that in many cases they have to face. According to the law, the *Kafeel* should take care of all the payments related to the fee for employment, medical insurance, residence permit and so on. However, the *Kafeels* and recruitment agencies often charge employees for those expenses, or retain part of their first salaries, in some cases a whole month's, to recover part of the expenditure incurred<sup>127</sup>.

According to several international organizations that try to cope with laborers inequalities, such as in this specific case domestic workers, every year a considerable number of FMDWs suffer abuse of various kinds, living in precarious conditions and working in hostile workplaces, not to mention the violations of their

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<sup>124</sup> Khan, A. "Why it's time to end Kafala", *The Guardian*, 26 February 2014.

<sup>125</sup> Migrant Forum in Asia, July 24, 2012, Reform of the Kafala (sponsorship) System, *Migrant Forum in Asia official website*, Philippine, <http://mfasia.org/mfa-policy-briefs/>

<sup>126</sup> C189-Domestic Workers Convention, 2011 (No. 189).

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C189](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189)

<sup>127</sup> Migrant Forum in Asia, July 24, 2012, Reform of the Kafala (sponsorship) System, *Migrant Forum in Asia official website*, Philippine, <http://mfasia.org/mfa-policy-briefs/>

fundamental rights both as human beings and as workers, in contravention of the Domestic Workers Convention No.189, article n.3 (promotion and protection of human rights), n.5 (protection against all forms of abuse) and n.6 (fair terms of employment as well as decent working conditions)<sup>128</sup>.

The Kafala system doesn't enhance the DMW's situation, but it doesn't operate in isolation. There are other variables that interfere with achieving decent work status for FMDWs<sup>129</sup>.

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<sup>128</sup> C-189- Domestic Workers Convention, 2011 (No.189).

<sup>129</sup> Maria Gallotti, "*Making decent work a reality for migrant domestic workers*", Inclusive Labour Markets, Labour Relations and Working Conditions Branch (INWORK), ILO, 2015.

## ***1.8 Conclusion***

As previously mentioned, the informal economy is one of the greatest sources of employment in most of the low-income countries and, furthermore, it is also a feature of many developed countries, such as the Gulf Peninsula, where male and female migrant workers go in search of work.

There are multiple reasons that lead a worker to operate in the informal economy, such as poverty, lack of employment opportunities in their country of origin, as well as several personal conditions that may favour one worker over another to perform a certain job or even emigrate to another country. The level of education is one of the key factors.

Categories such as domestic workers, street vendors or house-based workers are more vulnerable to the harsh conditions that workers often have to face in the informal economy. The proportion of women in the informal economy is lower than that of men, but that doesn't prevent them from being more directly affected by abuses, often exacerbating the socio-economic inequalities already happening in the environment in which they work.

As has been possible to notice, the MENA region is one of the areas that hosts a substantial number of immigrant workers. Rising oil prices in the early 1970s and later in the early 1980s, was one of the starting points of this massive emigration, especially the oil exporting countries that were considered as a land of opportunity. The situation started to reverse when the peak of the oil prices started falling in the 1980s and the outbreak of the first Gulf war in the early 1990s, pushing many migrant workers, especially Arabs, back to their countries of origin, creating more space for the non-Arab workers. The return of most Arab workers to their home countries in the early 1990s aggravated the socio-economic crisis within these countries. The growing population on the one hand and increasing unemployment on the other, pushed a large part of the population of the Arab countries towards the informal economy. This was true especially for those workers with a lower level of education or coming from conditions of poverty.

On the other hand, since the 1990s a bulge of female migrant workers, especially coming from South-East Asian and African countries (later) started to move to Arab countries, seeking employment as domestic workers, filling the space left by the Arab workers.

The category of domestic workers, especially if migrant, are particularly vulnerable, especially to exploitation and violations of their fundamental rights as workers and human beings.

The example of the category of domestic worker underlines even more the need to promote decent work for all workers. In fact, as will be specifically analyzed further, the international community, especially ILO, encourages the transition from informal to formal employment, considering this to be of primary importance, and in doing so requests governments to make changes to their legislation.



## Chapter 2

### *The case of Jordan*

#### **2.1 Introduction**

Every year thousands of migrant women arrive in Jordan from different countries around the world to be employed in the domestic sector, especially as live-in domestic workers. Most of them, from South East Asian countries and the African continent, decide to come in Jordan attracted by the opportunity to flee from poverty in their home countries. One of the latest reliable estimates states that there are almost 50,000 registered domestic workers in Jordan, and it also estimates that there are other thousands working in an undocumented condition<sup>130</sup>. Thanks to the support of literature from international organizations such as the United Nations Agency for ILO, Human Rights Watch, national organizations such as Tamkeen, Jordanian organization that work to ensure respect for workers' rights, and the consultation of several articles of newspapers such as *The Jordanian Times*, I have come to the conclusion that even in Jordan the category of domestic workers still presents considerable obstacles to achieving decent work.

The category of domestic workers in Jordan, as well as in other areas of the world, are particularly exposed to inequalities and abuses, which is why the transition to decent work for this category of workers is, also in this country, becoming increasingly imperative. Unfortunately, as is often the case, especially in developing countries, this type of process is very long and with no direct solution. In the course of this chapter, it will be noted that, although Jordan is one of the countries further ahead in implementing new laws in the MENA region in favour of this transition especially in the last decade, the road to decent work for domestic workers is not yet over.

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<sup>130</sup> Business and Human Rights Resource Center, 25 January 2019, Jordan: Facebook provides platform for domestic workers recruitment agencies allegedly linked to modern slavery, *Business and Human Rights Resource Center*, Jordan, <https://www.business-humanrights.org/en/latest-news/jordan-facebook-provides-platform-for-domestic-workers-recruitment-agencies-allegedly-linked-to-modern-slavery/> [last access: 10 Aprile 2021].

With this premise, in the second chapter of my paper, the particular case of female migrant domestic workers (FMDW OR MDW) in the Hashemite kingdom will be analyzed. More specifically, through this analysis it will be established whether there is indeed an effective transition to decent work for this category.

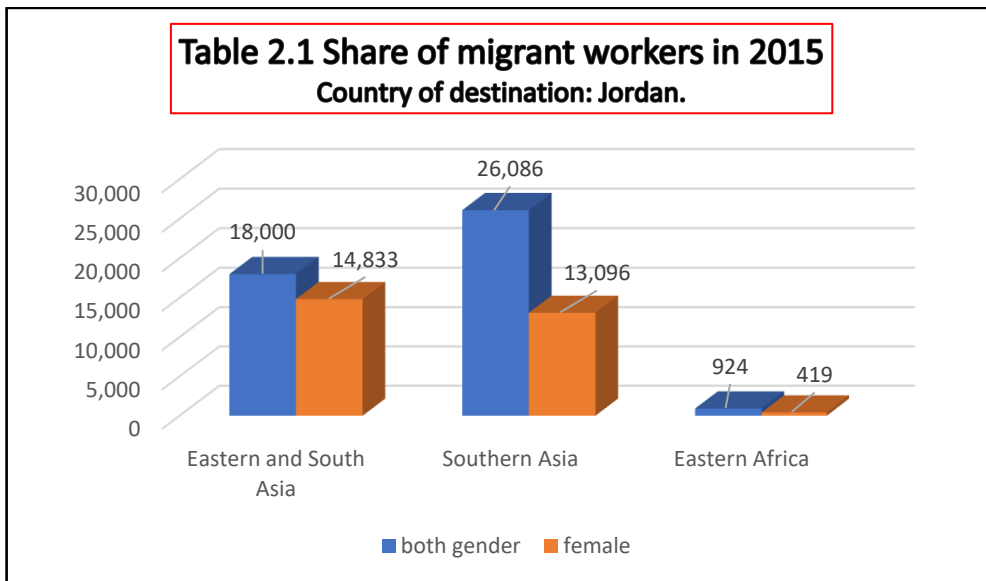
After a more general introduction to the case of Jordan, my work will be divided into three main sections: in the first the most international aspect will be dealt with, namely whether or not Jordan has ratified the international conventions concerning this category, such as the 8 ILO's Fundamental Conventions. Then, in the second part, I will move to the more national sphere, especially from a legislative point of view. An analysis will be made of what the possible changes and introduction of new laws are to improve the status of migrant domestic workers and facilitate the transition to decent work. Finally, the third and final part will report any shortcomings and violations that still persist today and what must be provided to achieve effectively the status of decent work.



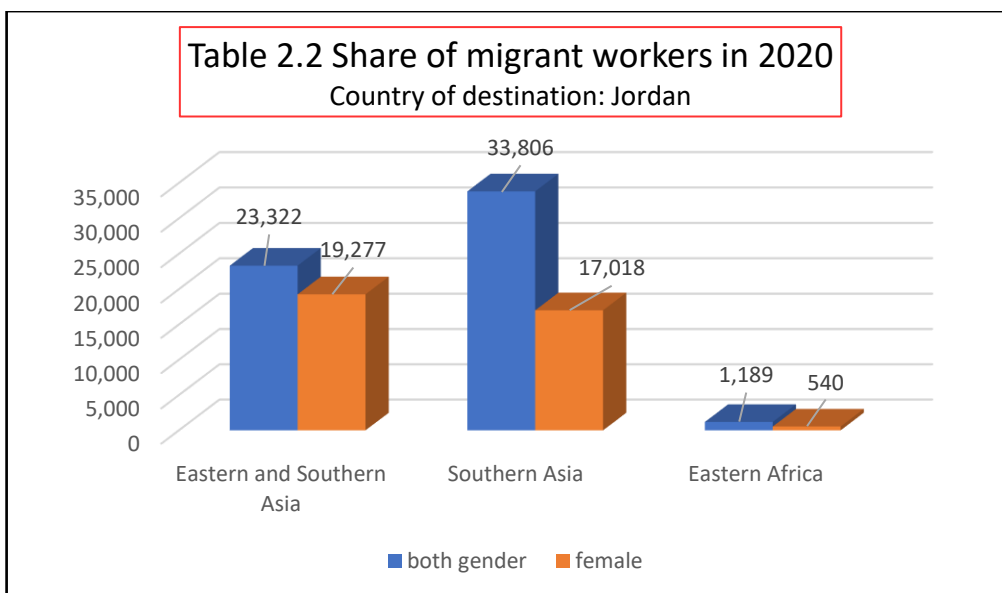
## 2.2 The Jordan Case, an overview.

Every year a large number of migrant workers from Asia, Africa and neighboring Arab countries are settling in Jordan in the hope of a better future.

The labor market in Jordan represents a very complex situation due to the high presence of immigrant workers and Syrian refugees fleeing their country, especially because of the war that has plagued Syria since 2011.



Source: United Nations (DESA), 2015.



Source: United Nations (DESA), 2020

Analyzing the two figures above, it is possible to notice that in the last five years the number of migrant workers coming mainly from Southern and East Asia and Eastern Africa has increased. Above all, it is important to stress that the percentage of female migrant workers is higher than that of male, this is likely due to the increasing share of female's workforce in the labour market both in the importing and exporting countries. The major example is that of female migrant workers from Southern Asia who in 2015 were equal to 13,096 and in 2020 increased by 29,95%, or 17,018<sup>131</sup>.

The situation of Jordanian workers is linked to that of refugees and migrants. Over the years the most educated Jordanian workers emigrated to GCC countries. This fact, combined with the massive immigration of less educated migrant workers, led to a reduction in the investment by local entrepreneurs in modern methods of production. Moreover, incoming migrant workers are more likely to accept those jobs that local workers are no longer willing to occupy because they tend to accept less paid jobs and even under more severe conditions<sup>132</sup>.

The greater propensity to accept low-wage jobs and the ability to adapt to more difficult conditions, does not encourage local entrepreneurs and employers to increase average wages and improve the status of their employees.<sup>133</sup>

Another difference between migrant workers and refugee workers, is that the former tend to come to Jordan temporarily, while the latter tend to move with their families due to the longer nature of their situation. The reduced permanence of immigrant workers and the fact that they don't emigrate with their families also favors them in the jobs market. Family responsibilities play a key role in the ability of many Syrians and Jordanian, especially women, to work. A clear example is the category of domestic workers, Asian and African migrants, who are more likely to be employed since it is, in most cases, a live-in job and because they usually come to the country alone, they have no limits living directly in their employer's home<sup>134</sup>. The largest share of migrant domestic workers come from Bangladesh, Philippines and China, even if, as stated above, in recent years the number of Africans workers is also increasing.<sup>135</sup>

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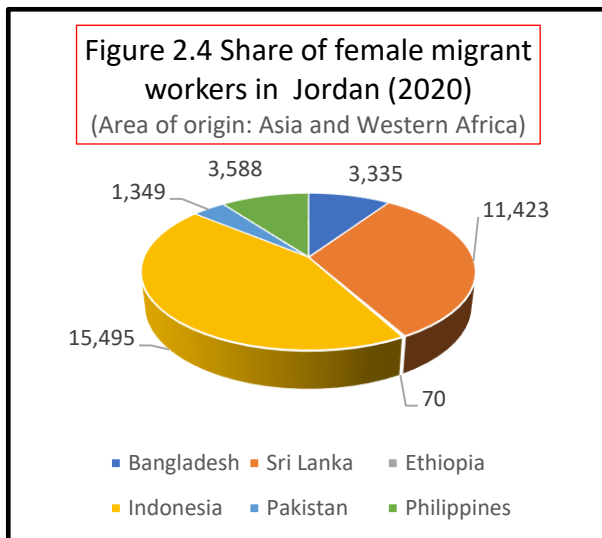
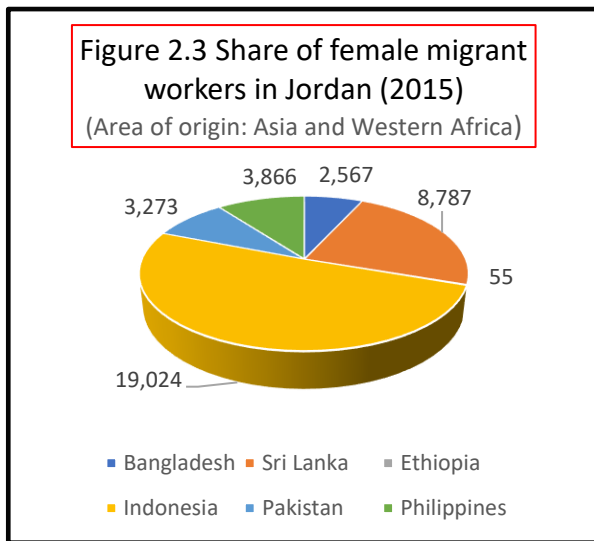
<sup>131</sup> United Nations Department of Economic and Social Affairs, Population Division (2020), *International Migrant Stock 2020*.

<sup>132</sup> Razzaz, Susan "A challenging market becomes more challenging: Jordanian workers, migrant workers and refugees in the Jordanian labour market", International Labour Organization, Beirut: ILO,2017

<sup>133</sup> Ibidem p.24.

<sup>134</sup> Turnbull, Elizabeth "*Domestic workers face poor working conditions in Jordan*", The Jordan Times, Amman, 4 August, 2019. Site: <http://www.jordantimes.com/news/local/'domestic-workers-face-poor-working-conditions-jordan'>

<sup>135</sup> Razzaz, Susan "A challenging market becomes more challenging: Jordanian workers, migrant workers and refugees in the Jordanian labour market", International Labour Organization, Beirut: ILO,2017. p. 26.



Source: United Nations (DESA), 2015-2020.

As shown in the figures above, the nationalities that registered an increase are Bangladeshi (+29,92%), Sri Lankan (+37,50%) and Ethiopian (+27,27%)<sup>136</sup>.

Jordanian legislation is regarded as one of the most progressive in the Middle East in terms of including Domestic Workers under the umbrella of Labour Law through the System for Domestic Workers, Cooks, Gardeners, and Similar Categories NO 90/2009, as well as the Instructions for the Conditions and Procedures of Recruiting and Employing Non-Jordanian Workers NO 12/2005.

Moreover, Jordan is among the few countries that signs bilateral memorandums of understanding with foreign worker origin countries before starting to employ them.

<sup>136</sup> United Nations Department of Economic and Social Affairs, Population Division (2020), *International Migrant Stock 2020*.

All of these interventions, however, did not stop some employers and recruitment offices from abusing domestic employees, whether they were located in the nation of birth or in Jordan.

As demonstrated below, the persistence of these breaches could be linked to the lack of severity with which these steps are implemented on the one hand, and the Kafala System on the other, which is enforced on the ground, despite not being stated in any of the Kingdom's legislation,<sup>137</sup>.

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<sup>137</sup> Tamkeen, 2020, Domestic workers: between unemployment and work pressure, *Tamkeen For Legal Aid and Human Rights*, Amman. Available at: <https://tamkeen-jo.org/newsDetails/585/en> [last access: 23/03/21, 22.30].

## 2.3 International Convention

Jordan joined the International Labour Organization (ILO) in 1956, ten years after achieving independence. The Hashemite Kingdom has ratified 26 International Labor Organization (ILO) conventions, including seven of the eight Fundamental Conventions, which led to a corresponding focus of the attention in the country on workers' rights<sup>138</sup>.

Table 2.5 below reports the list of the seven fundamental international conventions ratified along with the date of their implementation:

Convention	Date	Status
C029-Forced Labour Convention, 1930 (No.29)	06 June 1966	In force
C098- Right to Organize and Collective Bargaining Convention, 1949 (No.98)	12 December 1968	In force
C100- Equal Remuneration Convention, 1951 (No.100).	22 September 1966	In force
C105-Abolition of Forced Labour Convention, 1957 (No.105).	31 March 1958	In force
C111-Discrimination (Employment and Occupation) Convention, 1958 (No.111).	04 July 1963	In force
C138- Minimum Age Convention, 1973 (No.138)	23 March 1998	In force
C182-Worst Forms of Child Labour Convention, 1999 (No.182).	20 April 2000	In force

<sup>138</sup> Normlex, *International Labour Organization*, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200\\_COUNTRY\\_ID:103201](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103201)

The principal goal of the ILO in stipulating these 8 universal Conventions is covering subjects that are considered to be fundamental values and rights at work: freedom of association and full protection of the right to unionization; the removal of all types of forced or involuntary labor; the effective abolition of child labor; and the elimination of employment discrimination.

Despite all the engagement to ratify seven out of eight of the fundamental conventions, The Hashemite Kingdom has never ratified the Fundamental Convention N°.87 on Freedom of Association and Protection of the Right to Organize of 1948, which includes the right to to organise into unions<sup>139</sup>.

That is considered by many and specifically by the international community as a great obstacle to the consolidation and to the complete acknowledgement and respect of the workers' rights. One of the possible reasons why Jordan has not ratified Convention No. 87 is proposed by the INSAN Coalition Coordinator Ahmad Awad. During an interview to *The Jordan Times* in 2018, he stressed that some of the paramount steps for the working Jordanian population to achieve a more broaden freedom and recognition is allowing workers to actively and sincerely engage in the defense of their rights, the implementation of fair labor policies and the social dialogue process.

According to Awad, the real issue stems from many policymakers' erroneous perceptions that allowing labor unions to play a more active role would harm investments and jeopardize national security. Instead, according to the Awad, the lack of successful trade union organizations is the root of societal and labor market imbalances, resulting in widespread labor abuses among Jordanians and immigrants alike.<sup>140</sup>

The episode abovementioned is not the only event in which Jordan decided not to sign a convention in favor of the fundamental rights of workers. With regard to domestic workers, Jordan has made significant changes at national level, but we

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<sup>139</sup> International Labour Organization (1996-2017), NORMLEX website:

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200\\_COUNTRY\\_ID:103201](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103201)

<sup>140</sup> Prieto Ibáñez V. Ana, July 20 2018, "ILO urges Jordan to address labour rights violations, ratify convention", *The Jordan Times*, Amman. <https://jordantimes.com/news/local/ilo-urges-jordan-address-labour-rights-violations-ratify-convention>

cannot assume the same in relation to the international level. Jordan has not yet ratified Convention N° 189 of 2011, along with the complementary Recommendation No. 201 of the same year, defining the fundamental rights, principles and requirements States have to take to ensure fair conditions for domestic workers.

The ILO's Convention No. 189 recognizes the human rights of domestic workers and defines minimum labor standards. According to these standards, domestic workers are supposed to be free to: organize and mobilize in favor of their governments ratifying and implementing the Convention; use the provisions of the Convention and the Recommendation to promote the amendment of legislation and to improve the working and living conditions of domestic workers, whether or not, theoretically, the country in which they work has ratified Convention No. 189<sup>141</sup>.

Unfortunately, the current situation in Jordan, as will be seen in the following paragraphs, is not yet entirely optimal to ensure that. In fact, domestic workers cannot freely comply with this convention and claim their rights. That is why in Jordan, as in other countries, the concrete and practical ratification of this Convention should be imperative to ensure greater coverage and guarantee the possibility for domestic workers to claim those rights.

In addition to that, another case in which Jordan has demonstrated lack of attention towards enhancing working conditions is by not assisting the transition from the informal to formal economy. In 2015, the International Labour Organization stipulated Recommendation No. 204, with the aim of helping Member States to make the necessary changes within their national legislation to facilitate the transition to optimal and decent working conditions for all workers.

Again, Jordan has not yet ratified this provision.

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<sup>141</sup> Ufficio OIL per l'Italia e San Marino, 2019, "*Cos'è la Convenzione OIL sul lavoro domestico?*", Organizzazione Internazionale per il Lavoro, Roma, pp. 3-5. [https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-rome/documents/publication/wcms\\_714780.pdf](https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-rome/documents/publication/wcms_714780.pdf)

## 2.4 National Legislation

During the researches, conducted to develop this study, acknowledging and accepting that Jordan has begun including domestic workers in the scope of national labour law of 1996 only after 2008, it is noteworthy to say that the kingdom is one of the only (?) countries of the MENA region that in recent years has been trying more to improve the condition of its workers, not only Jordanians but also migrants. The first important step that has been taken by Jordanian government was in 2003, when it first introduced a two-year special working contract for migrant domestic workers. This standard contract, until that moment, was the main document regulating the interaction between the *kafeel* (sponsor), the recruitment agent, and the worker, establishing the obligations and the rights of all parties involved, even though it was not adequately specific about the stakeholder's rights and duties. Jordan was the first Arab nation to introduce it.

Despite the progress described above, as matter of fact the exclusion from national law contributed to aggravate those situations that were already vulnerable. Consequently, legally speaking, they could not enjoy the same rights and protection of their counterparts.

The situation finally began to change concretely when in 2008, the Hashemite government recognized MDWs under the Labour Law, but through a separate Regulation, the Reg. No.90 of 2009<sup>142</sup>, along with gardeners, cooks, drivers and similar occupational categories.

This regulation become a positive turning point for this category that until that moment was barely represented and considered by the law and their employers.

A number of issues have been reviewed and discussed in recent years, some more broadly, others more superficially. Some of the most sensitive issues that have been at the heart of the changes and attention of Jordanian political and civil society in the last decade will be discussed below, such as: recruitment process, employment agencies, contracts, human trafficking, harassment in the workplace, freedom of movement, the right to unionize and access to justice.

The major actors that are in charge of dealing with and taking the necessary decisions in this particular situation are the Jordanian Ministry of Labour in the first

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<sup>142</sup> Regulation No 90/2009 of Domestic Workers, cooks, Gardeners and Similar Occupational Categories, adopted 2009-08-25. Published on Official Gazette, 2009-10-01, No.4989, p.5348. Full legislation text here: [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=85397](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=85397)



place, especially for what concerns the legal part, the agencies of recruitment and the employers.

#### *2.4.1 Process of recruitment*

Firstly, it is important to point out that a migrant worker, in this specific case a woman, who desires to move to Jordan to work as domestic worker cannot enter the country independently but must first rely on a recruitment agency and find a sponsor to act as guarantor throughout her stay in the country. The establishment and the operation of these agencies is governed and overseen by the Ministry of Labour (MOL).

According to Jordanian Law the system that allows a foreign person to come to Jordan to work is the Kafala, which includes the process of obtaining the visa, a special permit and establishes a relationship of work through the intervention of a guarantor. Because of its intrinsically unfair nature, the Kafala system will be dealt with in more detail in the next paragraph.

The main role of the recruitment agencies is to manage the recruitment process, often working in tandem with agencies present in the exporting countries<sup>143</sup>. They take care of all the steps, from the search, to the identification of the possible worker that fits the necessary requirements, the requested documents to enter and work in Jordan, the identification of an employer and the contract. Even after the recruitment, the agency remains the reference point in case of complaints or problems of any kind, from either the employer or the employee<sup>144</sup>.

The ambiguous role that over time some recruitment agencies have played during the recruitment process of such workers and, in some cases, also during the performance of their contract, is one of the most troublesome and thoroughly examined in recent years.

To try to stem and combat possible cases of alleged activities of fraud and harassment, the Jordanian government over the years has implemented several new laws, with their respective amendments, focused on the regulation of the latter, especially in the domestic field.

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<sup>143</sup> Bilateral Agreement No. (183) of 2016 concerning the Hashemite Kingdom of Jordan and the Republic of Uganda Agreement on Employing Ugandans Workers in Jordan.

<sup>144</sup> Regulation No. (63) of 2020 regulating Recruitment Agencies in the recruitment of non-Jordanian domestic workers.

The first Regulation in this field promulgated by the MOL in 2015 regulating private recruitment offices for non-Jordanian domestic workers, is the No. 12, which underlines the obligations and rights of the agencies with respect to their activity and clients/employees.

More specifically, the main points that this regulation stressed are, for example, that employers are required to hire a MDW only through an agency that is legally registered with the Ministry of Industry, Trade and Supply, whose objectives should not go beyond acting as an intermediary in the recruitment work of a domestic worker (Article 3 (1;3) and Article 5 (B))<sup>145</sup>. In order to regulate more clearly and concretely the agencies in Article 3 of the same Regulation, certain requirements that are required to establish a recruitment agency are specified:

- To be of Jordanian nationality.
- To be at least 30 years old.
- To have no charge against him/her for a misdemeanor or that is held against public morals.
- To have not previously been the owner or partner of an agency that has been closed or is still closed or has been deprived of its license.

The last point is particularly relevant, since, through it, the MOL tries to seek to prevent agencies that have previously been punished for some violation, and above all they are revealed to be recurrent in the crime, to no longer be able to practice the same activity.

In recent years, several violations have been reported by the agencies, the most common are:

- Illegal recruitment of non-Jordanian domestic workers.
- The employment of a MDW in a sector other than the domestic one.
- Physical, sexual abuses.
- Import employees that are not of legal age.
- Financial exploitation of the worker such as withholding part of his/her salary.

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<sup>145</sup> Article (3) paragraphs 1-3 and Article 5 (b) of Regulation No.12 of 2015 on Regulating Recruitment Agencies that hires Non-Jordanian Domestic Workers.

Within the same regulation, with the purpose of limiting and making the work of these offices more transparent, Article 8 was introduced. With this article the MOL requires that all agencies register all the personal data of migrant workers and that the register is maintained by the agency for at least 5 years. During this period, the inspector responsible for conducting the controls shall have the right to consult it and, if he deems it necessary, to request a copy of it.

In addition, the agency is requested to periodically furnish the Ministry of Labour with information concerning its activities<sup>146</sup>.

When a breach is found, the Ministry of Labour may issue a series of sanctions against the agency to try to limit or remedy the breach.

In this regard, Article 11 of Regulation No. 12 of 2015, provides that in the case of a breach the MOL has the authority to cancel or suspend the license until the agency remedies.

Usually before proceeding with the requests of final closure of the business, the Ministry warns the agency not to repeat the same violation again. If this is not followed, further sanctions are put in place, including suspending the agency from operating for a period not exceeding 6 months.

If during the suspension period, the agency has failed to remedy the breach, the Minister may either extend the period of suspension for up to one year, or request the definitive closure of the business with the consequent withdrawal of the license<sup>147</sup>.

In light of the numerous violations perpetrated by the agencies, in June 2020 the MOL issued a new Regulation No. (63) regulating Recruitment Agencies in the recruitment of non-Jordanian domestic workers, which should substitute the Reg. No. 12 of 2015<sup>148</sup>.

In Regulation No.63, some additions have been made to No.12, including: requiring that lists must (?) be drawn up periodically updated of all the agencies operating in the Jordanian territory<sup>149</sup>; it also refers to some highlights that should reinforce, in a positive way, the most vulnerable tendency of domestic workers, such as: assurances regarding the treatment of the worker, such as the prohibition of

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<sup>146</sup> Ibidem, Article (8) paragraph (C).

<sup>147</sup> Ibidem, Article (11).

<sup>148</sup> Regulation No. (63) of 2020 regulating Recruitment Agencies in the recruitment of non-Jordanian domestic workers.

<sup>149</sup> Ibidem, Article (5) paragraph (E).

overnight stays<sup>150</sup> or the prohibition of the agency from withholding or requesting money from the employee or employer in addition to those officially required by the recruitment process<sup>151</sup>. These elements will be treated more specifically in the following paragraphs.

The abovementioned regulation has also introduced additional directives related to the stipulation and management of contracts which should facilitate the extension of the coverage of the MDW.

For example, according to the Article (9) paragraph (1) the agency can no longer import a worker from a country which has not previously concluded an agreement with the Jordanian Government.

One time the agency has found a worker who responds to the requests made by the employer and comes from a country which has entered into a bilateral agreement with the Hashemite Kingdom of Jordan, the Agency shall ensure that the following points are presented in Article (8) of Reg. No. (63) are respected:

- sign the employment contract in accordance with the model dictated by the Ministry of Labour.
- publish in a clear way all the necessary fees required for the recruitment process, including information and obligations on the employer and the worker.
- provide databases containing personal data on workers.
- maintain for at least 5 years the signed contract and documents collected during the recruitment process. Both in paper and electronic format.
- provide adequate accommodation in the houses where the workers will work and carry out checks.

#### *2.4.2 Trafficking in person*

One of the reasons that have increased the need on the part of the government, and therefore of the MOL, to revise and expand the laws announced here and those that will be mentioned later, is the unfortunately still widespread problem related to human trafficking.

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<sup>150</sup> Ibidem, Article (8) paragraphs (1;2).

<sup>151</sup> Ibidem, Article (9) paragraph (C).

Trafficking in person has changed during the decades. Generally, it refers to the traditional meaning related to the trafficking of slaves that occurred before the stipulation in 1930 of the International Convention concerning the prohibition of forced labor No.29.

Forced labour refers to all forms of work where exploitation or a taking advantage of a person's vulnerable condition happens, namely: forcing a person to work over the usual working hours (in case of DM from 8 h to a maximum 10 h per day)<sup>152</sup>, obliging someone to perform a task that was not previously been agreed, denying the right to a weekly day-off or annual leave<sup>153</sup>.

As already mentioned, migrants, especially if irregular and coming from less developed countries, are more subjected to kidnapping, physical assault, sexual exploitation, and human trafficking. They can begin their journeys by willingly entrusting themselves to smugglers, only to be trafficked along the way. Due to language barriers, social integration problems, and unscrupulous employers and employers who take advantage of their limited knowledge of local standards and bargaining power, people who migrate through regular and irregular channels remain vulnerable to human trafficking and other forms of abuse once they arrive at their destination<sup>154</sup>.

Since the three Palermo Protocols were adopted by the United Nations in December 2000, much has been done to combat trafficking in human beings and, consequently, forced labour - not least the International Convention prohibiting slavery.

It is often the case that people only understand/ consider certain conditions of exploitation as human trafficking, such as prostitution, leaving aside a whole range of nuances that can be seen as only individual violations. Through the Additional Protocol to the United Nations Convention against Transnational Organized Crime to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2004, it is possible to have an even wider picture of what is understood as a crime of this type: the recruitment or the hospitality of people, over which is exercised an abuse of power, fraud and deception, or more generally, if someone

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<sup>152</sup> Regulation No.90 of 2009 on Domestic Workers, Cooks, Gardeners and Similar Categories.

<sup>153</sup> *Global estimates of modern slavery: Forced labour and forced marriage*, International Labour Office (ILO), Geneva, 2017. p.33

<sup>154</sup> *Global estimates of modern slavery: Forced labour and forced marriage*, International Labour Office (ILO), Geneva, 2017. P.30-31.

takes advantage of their position of vulnerability with the purpose of obtaining or forcing someone to do something.

It is also essential to underline that this Protocol also states that even if there is the victim's consent to exploitation, this shall not be taken into account if it has been accompanied by one of the forms of coercion that are presented in point (a) of Article (3) of the same Protocol, previously mentioned, of 2004. The Article reads as follows:

*For the purposes of this Protocol:*

- a) «trafficking in persons» means recruitment, transport, transfer, harboring or reception of persons, by means of the threat of use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability or of giving and receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or forced services, slavery or similar practices, the enslavement or removal of organs;*
- b) the consent of a victim of trafficking in persons to the exploitation referred to in point a) of this Article is irrelevant in cases where any of the means used referred to in point a) have been used;*
- c) recruitment, transport, transfer, accommodation or reception of a child for the purpose of exploitation shall be considered «trafficking in persons» even if they do not involve the use of any of the means referred to in point a) of this Article;*
- d) «child» means any person under the age of 18.<sup>155</sup>*

Although, as just mentioned, over the years the international community has collectively sought to respond to this threat, one of the problems that most hampers its full implementation is the frequent lack of capacity to implement these rules restrictively and effectively at national level; in some cases, it is also the lack of efficacy in the integration within the national law of these rules.

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<sup>155</sup> 2004, Additional Protocol the United Nations Convention against Crime Transnational Organization to prevent, repress, and punish the trafficking in persons, in particular women and children, 6067. Full text: [https://www.osservatoriointerventitratta.it/wp-content/uploads/2013/03/Protocollo\\_addizionale\\_sulla\\_Tratta.pdf](https://www.osservatoriointerventitratta.it/wp-content/uploads/2013/03/Protocollo_addizionale_sulla_Tratta.pdf)

In this scenario, in Jordan for example, the migrant workers are the greatest victims of such traffic due to their vulnerable condition, that puts them in a more difficult and psychologically heavy exposure, and therefore more frequently subjected to exploitation.

The “work” relationship that it goes to create when such an exploitation occurs, has also been defined as *modern slavery*<sup>156</sup>.

Unfortunately, it was not easy to get reliable data about the number of workers involved in human trafficking both worldwide and more specifically in Jordan; for this reason, I decided to quote the data of 2016 being among those in the last years the most reliable since they had been more certified.

In 2016, an estimated 40.3 million people were enslaved worldwide, with 24.9 million in forced labor and 15.4 million in forced marriage at any given time; 16 million people are exploited in the private sector, such as domestic work, manufacturing, or agriculture, out of the 24.9 million stuck in forced labor<sup>157</sup>.

In relation to Jordan, where the presence of this kind of crime is quite widespread, in order to combat human trafficking, the Kingdom started to begin serious institutional reforms in 2007. This was actuated with the creation of an Inter-Ministerial Committee for the Coordination of Labor Issues, which aimed to ensure concerted action and policy implementation in the areas of labor and especially in human trafficking<sup>158</sup>.

The Committee was tasked with investigating suspected cases of human trafficking and recommending corrective measures to relevant ministries and government agencies, as well as identifying legislative and institutional deficiencies that hampered an effective response<sup>159</sup>.

Moreover, additional changes were implemented in 2009 after the promulgation of the Anti-trafficking Human Law, the Anti-Trafficking National Committee (AHNC) substituted the Inter-Ministerial Committee.<sup>160</sup>

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<sup>156</sup> 2021, What is modern slavery?, *Antislavery International*, England. <https://www.antislavery.org/slavery-today/modern-slavery/>

<sup>157</sup> *Global estimates of modern slavery: Forced labour and forced marriage*, International Labour Office (ILO), Geneva, 2017, p. 30.

<sup>158</sup> *Migrant domestic and garment workers in Jordan: A baseline analysis of Trafficking in persons and related laws and policies/* International Labour Office, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS)- Geneva:ILO,2017.p. 35.

<sup>159</sup> Anti-Trafficking Human Law No. (9) of 2009, Article

<sup>160</sup> Anti-Trafficking Human Law No.9 of 2009, Article 4.

Other than the substitution of the Official Committee, Jordan in 2009 introduced several measures to prevent and to punish exploitation and human trafficking, which have expressed themselves in the promulgation of the Anti-Trafficking Human Law n. (9). The main points that this law deals with include:

- Criminalization of all form of trafficking in persons and it has established a national committee to do so, led by the Minister of Justice.
- Training of police officers and inspectors to detect and to monitor over the possible episode of human trafficking.
- A strategy created to prevent the trafficking in persons and departments specialized in the prevention of this crime in the Ministry of Labour.
- Punishments and sanctions (?) for violators.

To understand in more detail the main tasks that the Ministerial Committee has to deal with, I translated from Arabic the mentioned law No. (9). In particular I would like to repropose Article (5) which refers to the establishment of the inter-Ministerial Committee and its main objectives:

المادة ٥ تتولى اللجنة المهام والصلاحيات التالية :-

- أ\_ رسم السياسة العامة لمنع الاتجار بالبشر ووضع الخطط اللازمة لتنفيذها والاشراف على تطبيقها.
- ب\_ مراجعة التشريعات ذات العلاقة بمنع الاتجار بالبشر وتقديم المقترحات والتوصيات اللازمة بشأنها.
- ...
- د\_ اصدر دليل وطني يتضمن الارشادات والمواد التثقيفية ذات الصلة بعملها ونشرة.
- هـ \_ نشر الوعي لدى ارباب العمل والمتعاملين باستقدام العمال والمستخدمين حول الأمور المتعلقة بمنع الاتجار بالبشر من خلال عقد المؤتمرات والندوات والبرامج التدريبية والتثقيفية وغير ذلك من الوسائل.
- و\_ دراسة التقارير الدولية والإقليمية والمحلية المتعلقة بمنع الاتجار بالبشر، واتخاذ الإجراءات والتدابير اللازمة بشأنها<sup>161</sup>.

#### **Article 5:**

##### ***Powers and responsibilities of the Commission:***

- a) to plan the general policy for the prohibition of human trafficking and to supervise how it is carried out.***

<sup>161</sup> Anti-Trafficking Human Law No.9 of 2009, Article 5.



*b) Review the regulations that have a bearing on the ban on human trafficking.*

...

*d) to publish a national handbook containing indications or elements to raise the level of educational culture in relation to their work and to publish it.*

*h) spreading awareness among employers and also among those working in the recruitment of labour and those who through the convening of congresses, educational programs and other means.*

*u) to study and take action on international and local reports on human trafficking.*

Source: protectionproject.org, translated from Arabic to English by me.

The establishment of this Committee has been enacted. Since one of the major issues was the limited knowledge of the magnitude and spread of this crime, the Ministry in collaboration with the Committee, are responsible for making available information and providing educational materials on this subject, containing indicators and elements that could help to identify a case of human trafficking. In particular they undertake to alert the stakeholders directly concerned with the recruitment processes, especially the ones directly concerned with the recruitment of foreign workers, through means such as congresses and educational programs<sup>162</sup>. In addition, according to Article (5) paragraph (G) another of its core duties is to collaborate with both government and private organizations to provide physical, psychological, and social rehabilitation services for victims of human trafficking and to provide shelter<sup>163</sup>.

المادة ٨. يعاقب بالحبس مدة لا تقل عن ستة أشهر او بغرامة لا تقل عن ألف دينار ولا تزيد على خمسة الاف دينار او بكلاهما العقوبتين كل من ارتكب احدى جرائم الاتجار بالبشر المنصوص عليها في البند (ا) من الفقرة (أ) من المادة (٣) من هذا القانون<sup>164</sup>.

<sup>162</sup> Anti-Trafficking Human Law No.9 of 2009, Article 5 (D;H).

<sup>163</sup> Ibidem, Article 5 (G).

<sup>164</sup> Anti-trafficking Human Law No. (9) of 2009, Article 8.

**Article 8:**

***Is punished with imprisonment for a period of not less than six months or with a delay of not less than 1000 dinars and not more than 5000 or both, each one having committed one of the crimes on human trafficking in paragraph 1 of paragraph A of article 3 of this law.***

Source: protectionproject.org , translated from Arabic to English by me.

Once the offender is identified and detained by law enforcement, the law provides two main possible scenarios regarding the punishment: The Anti-Human Trafficking Law persecutes human trafficking with a prison sentence of not less than six months or a fine of not less than 1,000 Jordanian Dinars and not more than 5,000 Jordanian Dinars (Article (8)). The second possible scenario, in case that the offender has not only perpetrated the breach but if this criminal, who committed the crimes, has also established, controlled, managed an organized gang, joined or participated in the same, the perpetrator will be condemned with a jail term with hard labor of not less than ten years and a fine of not less than 5,000 JOD and not more than 20,000 JOD or both penalties (Article (9)). The State Attorney may also consider closing a company for a period of not more than six months if the owner, its managers, or any of its employees commit any of the violations of trafficking<sup>165</sup>.

Moreover, the Anti-Human Trafficking Law has a number of innovative reforms that have greatly increased victims' ability to seek justice and receive compensation. First, a non-criminalization provision was added, enabling the Public Prosecutor to drop all charges against victims of human trafficking and crime victims who were wounded<sup>166</sup>.

A further instrument devised by the Anti-Trafficking National Committee (AHNC) to try to make the fight against trafficking even more effective, is its first National Strategy and Action Plan to Combat Human Trafficking, which is focused on four pillars: prevention, prosecution, security, and collaboration, and will run from 2010 to 2012.

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<sup>165</sup> Anti-Trafficking Human Law of 2009, Article 9.

<sup>166</sup> Anti-Trafficking Human Law of 2009, Article 12 (A).

This strategic plan included a number of key provisions, including the requirement to issue victims with residence and work permits before they return home or to a third country on their own volition, as well as the establishment of a secure and temporary shelter for trafficking victims, which was officially launched on September 12, 2015<sup>167</sup>.

Unfortunately, to how much this plan has been a functional action, the lack of reliable data on its success on the long term are not available.

#### *2.4.3 Contract*

As said before the line between illegal and legal recruitment in some cases might be really thin. Securing a standard contract to migrant domestic workers is one of the first way to try to ensure them a legal status as workers and humans. Although Jordan was the first Arab country to stipulate a standard contract for domestic workers in 2003, this was not regulated by any law. In this way there was no legal certainty about the fact that a contract was either drawn up by a hypothetical employer or recruitment agency or not. In 2011, with the already mentioned Regulation No. 90 of 2011 on Domestic Workers, Cooks, Gardeners and Similar Categories, this aspect started to change too.

For example, as attested in Article (3) of this regulation, a contract is requested to hire a MDWs and it should be written in four different copies to deliver to the stakeholders, such as employer, the agency, the employee and one to the MOL. This practice is requested specially to prevent possible breaches and ensure that an effective contract is stipulated. In addition, to be sure that all the parties are able to understand the contract and all the duties and rights, it is necessary that the document is written both in Arabic and a language that the employee can understand<sup>168</sup>. The contract should contain all the duties and rights of both parties, the employee and employer, additionally those terms and conditions prescribed in the contract should be previously issued by the MOL<sup>169</sup>.

Each contract has the duration of not more than one year form the stipulation date, this is due to the fact that, in general, a migrant worker to be able to work in Jordan

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<sup>167</sup> *National Committee for Combating Trafficking in Human Beings: National Strategy to Combat Trafficking in Persons For the Years 2010-2012*, p.6.

<sup>168</sup> Regulation No. 90 of 2009, Article (3).

<sup>169</sup> *Ibidem*, Article (12).

needs a residence permit that also lasts for only one year. Upon expiration, if the employer and employee decide to continue with the employment relationship, the employer is required to renew the contract for another year and pay the due fees for the renewal of the working relationship.

On the other hand, if it is the employee who expresses the desire, once the contract expires, to remain within the Jordanian borders to work or to change employer, she must find another sponsor willing to act as guarantor, otherwise she will have to return to her country of origin<sup>170</sup>.

Another obstacle that was often encountered in the relationship between MDW and the employer was the resolution in the event of differences between parties, especially when the injured party is the MDW. Again, Regulation No. 90 with Article (11) paragraphs (a) and (b) sought to find a solution to this problem.

Article 11 paragraphs (A) and (B) states that the Ministry summon the householder and the worker to resolve the divergence amicably. If the violation is not corrected by the employer, the latter will be notified and fined.<sup>171</sup>

#### *2.4.4 Medical insurance*

Another important subject that had been at the center of the discussion about the major MDWs' rights violation, and that is finally addressed in Regulation No.90 in Article 4 paragraph (h) is the issue of health coverage, according to which the *Kafeel* (sponsor) should take care of all the fees related to the employment process and assure also a medical coverage<sup>172</sup>.

There have been a number of cases over the years in which this right of domestic workers was ignored, and in many cases, they have also been victims of psychological abuse, leading to more extreme acts due to lack of adequate care; many cases of suicide have been recorded.

To address this issue, in addition to the already existing Reg. 90, the Hashemite Kingdom, in 2015 issued Regulation No. 12 and its implementing text No.13 of the same year, specifically concerning the medical insurance for Migrant Domestic Workers. This insurance seeks to provide comprehensive healthcare for domestic employees while protecting employers from cases of possible refusal to work by

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<sup>170</sup> Ibidem, Article.

<sup>171</sup> Regulation No.90 of 2009, Article 13.

<sup>172</sup> Article 4 paragraph (h) of Regulation No.90 of 2009 on Domestic Workers, Cooks, Gardeners and Similar Categories.

the employees or in the case of a physical accident which may preclude the employees from performing their task.

In translating Regulation No 12 of 2015, but above all the amending on this law No. 13 from Arabic, I noticed that the main points dealt with in each case are: medical services in hospital, as well as life and personal accident insurance.

In addition, to make the right to health cover even more essential, according to the law to obtain the working permit to hire a migrant domestic worker or in case the employer wants to transfer to another employer, the worker, the agencies and the *kafeels* are obliged to stipulate an insurance policy that has to be issued by a valid insurance institution (Art. 3 (A, B, C))<sup>173</sup>, before the beginning of the job. This assurance has the validity of one solar year from the beginning of the contract and the employer is not allowed to delete the insurance policy unless he/she replaces it with a new one (Art. 4 (A; B))<sup>174</sup>.

The insurance policy must contain:

- Compensation in case of financial losses.
- Insurance against death caused by an accident to the employee.
- Health cover for the domestic worker inside the hospital.

This new medical insurance is fairly wide and covers various medical care and compensation in case of disability, total or partial, caused by accidents: diseases requiring hospitalization for at least one day, curative surgery that does not provide hospitalization, dangerous diseases resulting from a serious physical defect such as cancer or heart disease and injuries in case of attempted suicide<sup>175</sup>.

Regarding the expense, the Reg. fixed minimum costs, in order to avoid possible inequality also from this point of view. The minimum limit for insurance cover, as provided for in article 6 is 20,000 dinars for one year, with a maximum of 5,000 dinars in the case of an illness. In the event of an unintentional death, the compensation is equal to 4.200 dinar<sup>176</sup>.

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<sup>173</sup> Implementing text No. 13 of 2015 of Regulation No. 12 of 2015 concerning Instructions on Domestic Workers Policies, Article 3.

<sup>174</sup> Ibidem, Article (4).

<sup>175</sup> Ibidem, Article 6 paragraph A.

<sup>176</sup> Ibidem, Article (6).

The Reg. also provides compensation in the case of accidents that may cause physical disabilities to a domestic employee; these disabilities shall be differentiated in the case of total, partial, temporary or permanent disability. In the case of disability, the value of the compensation changes depending on the disability percentage: 4.200 for a permanent total disability, in cases that are not total, starting from 4,200 dinars will be given the fee based on the percentage of disability.

The reimbursement in the event of disabilities or death is handed over respectively to the employer herself or her direct heirs (Article (5) paragraphs (a) e (b))<sup>177</sup>.

At the same time, the insurance does not cover cases where the injury was deliberately caused by the worker or was put in situations of possible danger voluntarily: involvement in a fight, accidents or diseases caused by the practice of sporting activities deemed dangerous or car racing<sup>178</sup>.

One of the first insurance companies that launched an insurance policy for Non-Jordanian domestic workers was the Jordan Insurance Company (JIC) in 2016<sup>179</sup>.

In addition to the No.90 Regulation, especially in recent years, the Jordanian government has collaborated with some countries who are exporting workers employed in the domestic sector, to try to reach bilateral agreements between the parties.

In fact, to enhance and broaden the range of protection of their citizens, many embassies of origin agreed to the stipulation of MOUs with the Hashemite Kingdom of Jordan with the purpose of adding safeguards to regulate and protect their citizens during the recruitment process. One of the latest examples is the agreement between Jordan and Uganda of 2016.

In particular Article (5) of the abovementioned Agreement that is divided in 6 main paragraphs, deals with all the conditions required to hire a Ugandan worker<sup>180</sup>:

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<sup>177</sup> Ibidem, Article (5) paragraphs (a) e (b).

<sup>178</sup> Ibidem, article (5) paragraph (C).

<sup>179</sup> Jordan Insurance Company (JIC), 2016, Jordan Insurance Company Launches Domestic Workers' Insurance Policies, *JIC News*, Amman, available on: <http://www.jicjo.com/SubDefault.aspx?PageId=95&NewsId=92>

<sup>180</sup> International Agreement No. (183) of 2016 concerning The Hashemite Kingdom of Jordan and Republic of Uganda Agreement on Employing Ugandan workers in Jordan, Article (5). Available at: [http://ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=105544&p\\_country=JOR&p\\_count=183&p\\_classification=17&p\\_classcount=9](http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=105544&p_country=JOR&p_count=183&p_classification=17&p_classcount=9)

- 1) *“states that the Jordanian Ministry of Labour is invited to give to the Ministry of Labour of Uganda a list of all the employers and the details of the workforce requests for the job.*
- 2) *Is required that all the work’s contact information is given to the employees before their departure.*
- 3) *The contract should be signed by the employer, the recruitment agency, employee and by the Ugandan recruitment agency.*  
*the employment agency in Jordan, the Jordanian employer and the Ugandan recruitment agency are responsible for cooperating with regard to the conditions governing the recruitment and distribution of Ugandan workers in Jordan.*

*The following information shall be explicitly state in the contract:*

- a) *Specify the employer and the employee*
  - b) *Period of the contract*
  - c) *Probationary period*
  - d) *Termination of the contract*
  - e) *Wage*
  - f) *The employer is responsible for the purchase of the round-trip ticket of the employee.*
  - g) *Ensure adequate accommodation*
  - h) *Health assurance*
  - i) *Reconciliation process in the event of conflict*
  - j) *The agreement has to be written in Arabic and English*
- 4) *Should be made 4 copies of the contract to be delivered respectively to the employer, the employee, the Jordanian Ministry of Labour and one to the Ugandan Ministry of Labour, Affairs, Citizenship and Social Development.*
  - 5) *The recruitment agency has to be legitimate or according to the Jordanian law or according to the Ugandan law and must hold a certificate of competency.*
  - 6) *Both parties have to contrast the job not in order.”*

In order to ensure more protection for its citizens, Uganda has ensured that some fundamental points are added to the contract so as to compensate for some fundamental points missing in the No.90 Regulation, such as: the specification of the termination date of the contract, a list of all the information and contacts before the departure of the worker. Above all, this kind of agreements play a central role in the facilitation of the cooperation between the stakeholders, both Jordanian and Ugandan. This partnership is very important to help monitor the condition and possible violations of the MDW.

Although this type of bilateral agreement is a major step forward for relations between the various countries involved, such as Jordan and Uganda, but above all as regards the rights of migrant workers. Unfortunately, however limited, there are still reports of infringements in this area. Research conducted between by the Uganda Hotels, Food, Tourism, Supermarkets and Allied Workers' Union (HTS-Union) in partnership with international organizations such as the Global Alliance Against Traffic in Women (GAATW), reported that between 2016, the year of the stipulation of this agreement, and 2019, a group of young domestic workers from Uganda who were interviewed, testified that at the time of recruitment they had to provide for the payment of some fees out of their pockets. This is the result of agencies trying to take advantage of migrant workers' weakness and extorting money from MDWs, even though these fees are still covered by the receiving country's employer<sup>181</sup>.

#### *2.4.5 Harassment*

Non-payment of salaries, like other violations of this type, are considered internationally as forms of abuse of power against this category. Unfortunately, in fact, this category of work has been, and still is, subject to forms of abuse of a different nature: both psychological and in some cases also physical.

To prevent and combat possible situations of abuses and irregular working conditions, the legislative machinery provides that in the event of complaints by an employee or employer, inquiries are made by law-enforcement investigators at the workplace from which the complaint originates.

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<sup>181</sup> Assumpta, Namaganda and Laiboni, Nkirote, 2019, “*Women’s labour migration on the Africa-Middle East corridor: experiences of migrant domestic workers from Uganda*”, GAATW, p.15.  
[https://gaatw.org/publications/Uganda\\_Country\\_Report.pdf](https://gaatw.org/publications/Uganda_Country_Report.pdf)



This provision is also presented in the Regulation No.90 on Domestic Workers of 2009, specifically in Section 11 of this Regulation<sup>182</sup>:

### المادة ١١ :

تتولى الوزارة في حال ورود أي شكوى او معلومة اليها تتعلق بانتهاك حقوق العامل او بالتزامات أي من صاحب

المنزل والعامل اتخاذ الإجراءات التالية:

- ا- استدعاء كل من صاحب المنزل والعامل الى الوزارة لحل الشكوى بشكل ودي
- ب - في حال تعلقت الشكوى بمكان سكن العامل فيتم التفتيش على مكان السكن من خلال مفتش عمل ومفتشة عمل مجتمعين للتأكد من تطبيق احكام هذا النظام ، وذلك بعد اخذ موافقة صاحب المنزل على ذلك
- ج - للوزير اتخاذ الاجراءات التي يراها مناسبة في حال عدم موافقة صاحب المنزل على التفتيش المشار اليه في الفقرة (ب) من هذه المادة
- د - إذا تبين وجود أي مخالفة فيتم انذار صاحب المنزل لتسويتها خلال مدة أسبوع من تاريخ اعلامه بها، وبخلاف ذلك يتم تحرير ضبط بحفه واتخاذ الإجراءات اللازمة المنصوص عليها في قانون العمل النافذ

Source: ILO, NATLEX. [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=85397](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=85397)

### Section 11:

**In case the Ministry receives any compliant of information regarding the violation of worker's rights or the obligations of either party, the Ministry shall take the following action:**

- a) **Summon the householder and the worker to the Ministry to reach an amicable settlement of the compliant.**
- b) **Whenever the compliant is about the accommodation of the worker, the accommodation shall be inspected for compliance with the present Regulation by two labour inspectors, male and female, with the consent of the householder.**

<sup>182</sup> Regulation No. 90 of 2009 on Domestic Workers, Cooks, Gardeners and Similar Categories, Article 11.

- c) **The Minister may take any measures he deems appropriate in case the householder does not consent to the inspection visit referred to in section 11 (b).**
- d) **The householder shall be admonished to correct the violation, if any, within one week from being notified thereof. Otherwise, the householder shall be fined and the measures set forth under the Labour Code in force shall apply<sup>183</sup>.**

Source: ILO, NATLEX.

As the section above states, specifically paragraph (b), in the case of a violation of any worker's right, the Regulation No.90 provided an inspection of the household in which such breach occurs by the authorities in charge of the Ministry of Labour. Since first the consent of the landlord is needed to conduct the check inside a private dwelling, the paragraph (C) of the aforementioned article 4, in the event that the owner of the house does not immediately allow the inspection of the workplace, preserves the right to the MOL to take the measures it deems necessary to deal with the nonvoluntary participation of the employer.

In addition, in the event that an actual infringement is detected, the employer is requested to correct that infringement within a period not exceeding one week, if this is not the case, the person who committed the infringement will be penalized by payment of a fine; or in more serious cases, they can also be applied to the measures provided for by the Labour Code in place.

The subject of psychological and physical abuse will be discussed in more details in the next section of the chapter.

#### *2.4.6 Wages*

As previously announced, with the introduction of Regulation No.90 a number of sensitive points have been addressed in more or less depth.

In addition to the problem of health coverage, other important topics will be covered from now on. First, I will address their introduction into the 2009 Regulation and

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<sup>183</sup> Regulation No.90/2009 of Domestic Workers, Cooks, Gardeners and Similar Categories, International Labour Organization, Unofficial English Translation, 2010. [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=85397](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=85397)

then further developments that may have taken place in recent years to improve or further address those issues.

One of the most controversial issues over the years, both before 2009 and in the following years, is the cost that employers face for the recruitment of a domestic employee and the payment of their salary.

As regards recruitment, in 2009 was introduced within the Regulation 90, the Article 4 paragraphs (a,g,h) which provides that an employer at the time of hiring a MDW must bear all the expenditure associated with this process that includes: the journey to arrive to the destination country, all the airport fees, working permit, residency, insurance and medical examination:

**Article 4:**

Obligations of the householder:

*a) Cover the yearly costs for issuing the residence permit and work permit for the non-Jordanian worker.*

*g) buy the non-Jordanian worker a ticket from his home to Jordan and a return ticket after two years of employment.*

*h) provide medical care to the worker<sup>184</sup>.*

The average cost varies from country to country and includes all costs related to employment<sup>185</sup>:

Philippine: 2.900 JD

Nepal: 2.500 JD

Bangladesh: 2.050 JD

Ethiopia: 2.000 JD

Uganda: 1.900 JD

Ghana: 1.800 JD

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<sup>184</sup> Regulation No.90 of 2009 on Domestic Worker, Cooks, Gardeners and Similar Categories, Article 4 paragraphs (a,g,h).

<sup>185</sup> Roya News, 2018, "Cost of hiring a migrant domestic worker in Jordan", *Roya News*, last updated: 2021-03-15. Available on: <https://en.royanews.tv/news/16095/Cost-of-hiring-a-migrant-domestic-worker-in-Jordan> [last access: 26/03/2021].

As it is possible to see above, the average cost of recruiting an MDW is considerable. Unfortunately, there have been instances where both employers and recruitment agencies have increased these figures for their own benefit. In fact, while the recruitment agencies usually earn a bulk of money in recruiting and bringing MDW from abroad into the country, these workers, from which employers expect them to work up to 12 hours a day, are often subject to very low average monthly salaries from 200 \$ to 500 \$<sup>186</sup>.

On a practical level, it happens that agencies in order to get more profit increase the value of the recruiting fee.

As far as wages are concerned, over the years, domestic workers have witnessed numerous violations and injustices about the payment of wages, by their employers in particular.

According to the Regulation n.90 for the year 2009 that regulates the Domestic Workers, gardeners and cooks, always the aforementioned section 4 point (b)<sup>187</sup> provides:

المادة ٤

يلتزم صاحب المنزل بما يلي:

أ- دفع تكاليف استصدار اذن إقامة وتصريح عمل للعامل غير الأردني سنويا  
ب - دفع الاجر الشهري للعامل بالدينار الأردني او ما يعادله بالعملات الأجنبية بالوسائل والطرق التي يحددها الوزير لهذه الغاية على ان يحتفظ صاحب المنزل والعامل بمستند يثبت دفع الاجر الشهري له

...

*“pay the monthly salary to the worker in Jordanian Dinars, or the equivalent thereof in foreign currency, using methods determined by the minister for this purpose, in condition that the householder and the worker retain a document that prove the payment of the monthly salary”.*

Source: ILO, NATLEX. [last accessed on 05/04/2021]

According to the law, an employer is obliged to pay his/her domestic workers periodically, at least once a month. The MOL, in an effort to encourage and monitor

<sup>186</sup> Ibidem.

<sup>187</sup> Regulation No.90 of 2009 on Domestic Worker, Cooks, Gardeners and similar categories, International Labour Organization.

domestic workers' salaries, introduced into the 2009 Regulation the fact that once the payment took place, the employer must keep the receipt of the payment and must also give a copy to the worker. In this way the employer is first urged to respect this duty and right of the employee, and at a later time a trace of the payment remains.

It is also interesting to note that, another significant problem related to wages was that they were not often and willingly paid in due time, in this respect the MOL, in 2011, issued the decision No. 99/3893 with the aim of regulating that such times were respected. The law mandates that every employer must open a bank account in the name of the domestic worker, provide him or her with an ATM bank account card, and retain bank receipts for each wage payment in case of examination.

In order to make the practice of wage tracking easier and thus ensure that current accounts were actually opened on behalf of domestic co-workers, the government had signed an agreement with the Bank of Cairo (one of the largest banks in the Arab world). Despite this, the agreement was not put in place concretely in the end.<sup>188</sup>

In addition, for what concerns the increase of the recruitment fees, to prevent it and counter it, the MOL requests that in the event of a similar fact, it shall be reported and denounced to the Domestic Workers Directorate that would consider the problem.

According to the director of the Domestic Workers Directorate, Hayel al-Zaben, the Ministry tries continually to update information related to agencies in Jordan with a list in which is possible to find all the details related to the latter; in doing so they want to avoid the risk of employers that could rely on agencies that are not valid or outlawed.

The director also said that according to the last update in 2018, 3 recruitment offices have been closed, 17 have been stopped from working temporarily and 24 have seen their license seized by the Minister<sup>189</sup>.

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<sup>188</sup> *Migrant domestic and garment workers in Jordan: A baseline analysis of trafficking in persons and related laws and policies/* International Labour Organization, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS)- Geneva: ILO, 2017. p. 26.

<sup>189</sup> Roya News, 2018, "Cost of hiring a migrant domestic worker in Jordan", *Roya News*, last updated: 2021-03-15. Available on: <https://en.royanews.tv/news/16095/Cost-of-hiring-a-migrant-domestic-worker-in-Jordan> [last access: 26/03/2021].

#### 2.4.7 Deprivation of freedom

Another much discussed issue which is also considered one of the more widespread breaches among the live-in MDWs, is the deprivation of freedom of movement imposed by employers, that mainly consists of the inability of MDWs to leave the household freely.

At first, the No. 90 Regulation in this regard provided that a domestic worker could not leave the house before obtaining that permission from the employer (Article 5 (a5))<sup>190</sup>, even if on her day-off.

In 2011 this situation changed with the introduction of the No.49 Regulation amending Reg. No. 90, in which it is no longer expected that the MDW is allowed to go out only with the permission of the employer, but simply has to notify him before leaving the house, (ie. the workplace).<sup>191</sup>

Unfortunately, over the years, however, it has become clear that employers have often used the seizure of personal documents, such as passports, to blackmail the workers in order to exercise greater control over their movements.

The seizure of documents is considered a serious violation of workers' rights by the Jordanian Penal Code, and it provides penal consequences for the employer. For any person found in unlawful possession of a passport or travel document, Article 23.2 of the Passport Act No. 2 of 1969, and its amendments of 2013, provides for an imprisonment for no less than six months and no more than three years, or a fine of no less than five hundred dinars and no more than one thousand dinars, or both penalties<sup>192</sup>.

To try to address this problem, the Ministry of Labour (MOL) has worked in recent years to try to make changes within the same National Labour Law No.8 of 1996. In 2015, as previously mentioned, the MOL has also issued Regulation No. 12 relating to the organization of Private Recruitment Agencies for the Recruitment of Non-Jordanian Domestic Workers<sup>193</sup>. The aim of this law was not only to regulate

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<sup>190</sup> Regulation No.90 of 2009 of Domestic Workers, Cooks, Gardeners and Similar Categories, International Labour Organization, Article 5 (a5).

<sup>191</sup> *Migrant domestic and garment workers in Jordan: A baseline analysis of trafficking in persons and related laws and policies/* International Labour Organization, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS)- Geneva: ILO, 2017. p. 26.

<sup>192</sup> Tamkeen Fields for Legal Aid staff, 2015, *An Analytic review of Jordanian Legislation related to Anti-Trafficking*, Tamkeen, Amman. P.71.

<sup>193</sup> Regulation No. 12 of 2015 regulating the organization of Private Recruiting Agencies for the Recruitment of Non-Jordanian Domestic Workers. International Labour Organization.

the actions of the recruitment agencies, but also to guarantee more protection for the employer, for example in the case of financial losses due to the flight of a MDW.

Regulation No.12 states that employers are required through a recruitment agency, to acquire insurance from any lawfully approved firm that will compensate the householder for financial damages incurred as a result of a DW quitting or refusing to work during the first months after the beginning of the new job<sup>194</sup>.

More specifically, Article 13 paragraph 1(a) states that in case that a worker decides to leave the workplace or does not accept the job, through the certificate of assurance, the employer is covered by a compensation.

In case of refusal by a MDW, the recruiters are also obliged to substitute domestic employees with one of the same nationality in the case that the worker refuses to work after 30 days that she has entered the Kingdom. In addition, the agency undertakes to replace her with another worker without the employer paying the sum again for the recruitment process (Article 14(b) and Article 15(b))<sup>195</sup>.

On 6 June 2020, the MOL issued Regulation No. 63 regulating Recruitment Agencies in the recruitment of Non-Jordanian Domestic Workers. The most relevant Article in this case is Article 16(b), in which, for the first time, it is clearly mentioned that an employer is covered by the insurance even in case of flight by the employee<sup>196</sup>. The absconding phenomenon is quite common among female migrant domestic workers, especially when abuse occurs, but it will be dealt with in the third part of the chapter.

#### *2.4.8 Trade Unions*

It is also important to mention another aspect about which Jordan has been trying to make important changes over the years: the unions.

Unionisation has always been a means for workers to make their voices heard.

Through the unions, workers are able to gather and organize themselves to enforce

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<sup>194</sup> International Labour Organization, *NATLEX*. Available on: [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=102856](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=102856)

<sup>195</sup> Regulation No. 12 of 2015 regulating the organization of Private Recruiting Agencies for the Recruitment of Non-Jordanian Domestic Workers. International Labour Organization, Articles 14 (b) and 15 (b).

<sup>196</sup> Regulation No. (63) of 2020 regulating Recruitment Agencies in the recruitment of Non-Jordanian domestic workers, Article 16(b).

their bargaining power. The freedom for workers to fund a union and organize is so relevant that it has also become part of the ILO's fundamental conventions list.

On this point, Jordan has ratified 7 out of 8 of the Fundamental Conventions of the International Labour Organization,<sup>197</sup> as already mentioned in the first part of this chapter.

In Jordan in general, it is possible to fund and/or participate in trade unions, but such activity must be established in accordance with certain terms imposed by law, in particular Article 23(f) of Jordan's Constitution<sup>198</sup>:

**Article 23:**

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

Source: Refword.org

More generally, in accordance with the provisions of the Jordanian Labour Code, workers have the possibility to form a trade union; but as abovementioned, any worker in such a trade that has the right to join or fund a trade union can do so only if he/she meets the requirements for membership (Labour Code section 97):

**Article 97:**

***a. The employees in any occupation may establish a trade union for them in accordance with the provisions of this law, the employee in that occupation shall have the right to join it if she/he has met the membership conditions.***

Source: ILO, 2004.

The principal requirements requested are: being a Jordanian citizen, being more than 21 years old and not having a criminal record<sup>199</sup>.

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<sup>197</sup> International Labour Organization, ILO, Ratifications for Jordan.

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200\\_COUNTRY\\_ID:103201](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103201)

<sup>198</sup> Constitution of The Hashemite Kingdom of Jordan of 1952, Article (23) paragraph (F) Refword.org..

<https://www.refworld.org/pdfid/3ae6b53310.pdf>

<sup>199</sup> "Better work Jordan: Guide to Jordanian labour law for the garment industry", International Labour Office, International Finance Cooperation-Geneva: ILO, 2013. p. 12.



Another limit imposed by the Labour code of 1996 (article 98 (A)) and then emended by the law No.11 of 2004, is that only at least fifty founding members working in the same trade or in similar or interdependent occupations within one field of production may create a trade union. The abovementioned Article 98(A) reads as follows:

**Article 98:**

- a. Taking into consideration the provisions of paragraph (b) of this article, the association shall be established by founders whose number shall not be less than fifty of those working in the same occupation or similar occupations or those related to each other in the same production.*

Source: ILO, 2004.

Within the country the Jordanian Labour Movement is organized around the General Federation of Labour Trade Unions in Jordan, which is the only officially recognized federation which also serves as a single cluster at the national level of all the other categories of workers. All seventeen Labour trade unions are currently represented.

Notwithstanding the above, the situation changes when it comes to migrant workers, and not every category is represented at the same level or even represented at all.

Additionally, another limitation relating to migrant workers in general was that the law stipulated that only Jordanian workers had the right to join a union, which meant that migrant workers were not allowed to participate in a trade union prior to 2010.

In 2005, the number of migrants in the MENA area was 23,165,804, of which 8,867,261 were women. Compared with 2005, there was a considerable increase of 71,98 % (32,638,434, both sexes) and 77,25 % for women alone (11,478,799 million)<sup>200</sup>.

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<sup>200</sup> United Nation Department of Economic and Social Affairs, Population Division (2020), *International Migrant Stock 2020*. Available at: <https://www.un.org/development/desa/pd/content/international-migrant-stock>

As the number of migrant workers grew over time, in Jordan in 2010 the international migrants as a share of total population, was equal to 37.5 % of which 49.2 % were female.<sup>201</sup> Labor unions started to pursue a legal pathway to enable migrant workers to join trade unions, with the help of the ILO and other bodies, resulting in a tripartite dialogue between the government, unions and employers' associations.

In July 2010 the amendment repealing the provision banning migrant workers from entering unions was approved by the Jordanian Cabinet. Eventually migrant workers were able to join labor unions, vote in union elections, and serve in the staff committees at the enterprise level.

They are still not allowed to fund one on their own like Jordanians can.<sup>202</sup>

For some categories, especially those not considered within the Labour Code, such as domestic workers, workers in the garment sectors and gardeners, joining a trade union was more complicated, not only due to their status of migrant but also due to the fact that they were, and still are, categories unrecognized by the law.

The 2010 amendment represents the silver lining for one of these unrecognized categories.

The legislative change of 2010 has had a major impact in the Qualifying Industrial Zones (QIZ), especially in the garment industry, which employs around 30,000, from Bangladesh, India, Sri Lanka and other countries.<sup>203</sup>

On 27 May 2013, the Jordan Garments, Accessories & Textiles Exporters' Association (JGATE), the Association of Owners of Factories, Workshops, and Garments (AOFWG), and the General Trade Union of Workers in Textile, Garment, and Clothing Industries signed a historic Collective Bargaining Agreement (CBA) to reinforce their relationship and foster social dialogue.

On the other hand, for what concerns DWs, it was necessary to wait until 2019 before seeing a change in this regard. With the endorsement of the Arab Trade Union Confederation and the Arab Center for the Support of Migrant Workers of

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<sup>201</sup> United Nations, Department of Economic and Social Affairs, Population Division (UN DESA) (2019a, 2019b). international Migrant Stock 2019 (United Nations database, POP/DB/MIG/Stock/Rev.2019). see: [www.unmigration.org](http://www.unmigration.org)

<sup>202</sup> Kalan, Jonathan "Migrant workers in Jordan are making their voices heard", *International Labour Organization*, 12 December 2012. Available at: [https://www.ilo.org/global/about-the-ilo/mission-and-objectives/features/WCMS\\_195584/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/mission-and-objectives/features/WCMS_195584/lang--en/index.htm)

<sup>203</sup> Ibidem.

the Arab Trade Union Confederation, domestic workers in Jordan finally formed their own union on 1 March 2019 to protect their moral and financial rights.

This important step was possible thanks also to the collaboration and the presence within the internal system of the new union of Mustapha Al-Tlili, the Executive Secretary of the Arab Trade Union Confederation and the officials of the international union organizations, including Mustafa Said of the International Labour Organization, Nadia Shabana of the Norwegian Workers' Union and Maryam Abbas of the Friedrich Foundation.

Most importantly to underline is that the executive office of the new Jordan Domestic Workers' Syndicate is chaired by a unionist Filipino woman<sup>204</sup>.

Unfortunately, it was not possible to deliver further literature about the effective creation of this new union or information about its implementation or progresses. That doesn't bode well.

The basic issue, before the foundations were laid for the creation of a union of domestic workers in 2019, was that these workers did not have at their disposal the means to learn about their rights.

Moreover, they are often isolated in the houses where they work, and have limited contact with the outside, often just running errands on behalf of their employers. This situation has also made it more difficult to build relations with other colleagues and to exchange information with them.

During the last decade, to address this lack of representativeness, many MDWs have had to recast the creation of a network that works in tandem with the International Domestic Workers Federation (IDWF), which was founded in 2009 with the goal of motivating domestic workers to fight for better working conditions all around the world<sup>205</sup>.

The establishment of IDWF has shown in the consciousness of some migrant workers the will to fight for better conditions. As a result, in the past few years some Filipino DWs tried to find an alternative way to create a connection with their counterparts with the aim to share each others experiences, confronting and providing support.

These migrant workers have found in the Jordanian informal network the opportunity to realize this objective. They started to raise awareness about domestic

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<sup>204</sup> 2019, "The establishment of the first union for the female domestic workers in Jordan", *Majalat news*, March 03. <https://www.majalat.org/news/establishment-first-union-female-domestic-workers-jordan>

<sup>205</sup> Refworld.org, <https://www.refworld.org/pdfid/3ae6b53310.pdf>

workers' rights, help in translating documents and important information and keep in touch with many other Filipino DWs in Jordan through social media, including Facebook and WhatsApp<sup>206</sup>.

Another important example of solidarity occurred in 2014, when a group of MDWs established a worker's rights network that includes migrant workers coming from different Asian countries such as Bangladesh, Indonesia, the Philippines, and Sri Lanka.

This project started in early 2014, when the Solidarity Center approached leaders in migrant worker communities to plan possible strategies for combating trafficking and assisting those who were victims of workers' rights violations. A consistent part of this plan is the creation of training meetings that cover several core themes namely: inform MDWs about their rights, anti-human trafficking, assisting domestic employees in seeking legal aid, and developing and promoting worker networks.

It is the first in Jordan and a paramount step in the Arab world, in which MDWs frequently work from 12 to 20 hours per days, six or seven days a week, cleaning houses, cooking meals, and caring for children and the elderly<sup>207</sup>.

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<sup>206</sup> Vidal, Marta "How Filipina domestic workers protect and support each other in Jordan", *Equal Times*, 16 June 2020. <https://www.equaltimes.org/how-filipina-domestic-workers?lang=en#.YFvB9C2h3GL>

<sup>207</sup> Connel, Tula, 2015, Migrant Domestic Workers in Network a first in Jordan, *Solidarity Cente*, <https://www.solidaritycenter.org/migrant-domestic-workers-network-a-first-in-jordan/>

## *2.5 What is still missing*

In the previous section, the main positive changes in the legislative framework were reported, with a particular focus on the status of domestic workers. Unfortunately, although there have been many positive changes, during my research, I have still found the presence of many problems; in this section of the chapter, the main difficulties and shortcomings still present will be explored, both from a legislative and cultural point of view.

Although with the introduction of the aforementioned No.90 Regulation of 2009, many things have changed, domestic workers still cannot be said to be fully represented in the Jordanian legislation. Nor does Jordan yet provide sufficient protection to MDWs. Moreover, for migrants the situation is sometimes made even more complicated by their frequent and willing status as irregulars in the country. Jordan has 50,000 registered migrant domestic workers, but the number is probably much higher because thousands work irregularly. They are mostly from the Philippines, Bangladesh, Sri Lanka and Uganda, with the great majority of them being women<sup>208</sup>.

Migrant domestic workers, as the majority of migrant workers, are victims of various violations of their fundamental rights, in some cases even if what they experience is considered a breach of the law.

For example, Article (11) of the Reg. No. 90 does not provide serious measures in case of violation. Above all it does not provide the access to the courts for the DWs if deemed necessary. In addition, Regulation No.90 makes no provision for a settlement in the event of a contract violation. When serious irregularities are discovered, the contract should give migrant domestic workers the right to file a complaint with a competent court before proceeding to an amicable resolution of the conflict.

This particularly unclear condition of domestic workers due on the one hand to a law (Reg. No. 90) that, although innovative, is still in some respects too general, and on the other hand aggravated by the fact that they have not yet been officially

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<sup>208</sup> Vidal, Marta “How Filipina Domestic Workers protect and support each other in Jordan”, Equal Times, 16 June 2020. <https://www.equaltimes.org/how-filipina-domestic-workers?lang=en#.YFvB9C2h3GL>

recognized under the 1998 National Labour Law, has over time caused many obstacles even from a judicial point of view.

Often, however, even if a complaint manages to reach a court of law, for example, within the time, it has been found that often another problem is created. In fact, many judges, found themselves in difficulty as to what type of law to apply: the general Labour Law in the case of Domestic Workers or only the regulation that regulates this category of worker (Reg. No.90 of 2009).

This confusion and limited application of the Labour Law leads to an isolation of the MDWs and consequently they are more subjected to situations where they see their rights as workers and human beings denied such as: the right to change profession, freedom of movement, the right to end a contract (when one has been stipulated), the right to an annual leave or a weekly day off and other rights that are not defined clearly in law<sup>209</sup>.

The abovementioned Regulation No.90 of 2009, nowadays has become the baseline for the regulation of this category of employee. Although it represented a turning point, it still shows several important labor rights' deficiencies. In order to make it easier to understand what kind of violations we are still talking about today, the most common examples will be presented below, which are also the most widely discussed in today's literature, such as reports from international organizations such as the International Labour Organization (ILO) or Tamkeen.

Migrant domestic workers encounter several obstacles to reaching a decent work, from abuses of different kind, violations of their rights, not receiving the wage promised or in some cases even not being paid. There are even situations in which the main obstacle is not the employer per se, but the lack of awareness of their rights due to the isolation to which they are subjected.

The next section will address the major shortcomings that have been identified following the implementation of laws related to these issues and the main adversities and inequalities that have been most recorded by domestic workers in the workplace: such as the violations still perpetrated by recruitment agencies, the persistent existence of cases of human trafficking, the major problems related to contracts such as withholding of wages, the lack of freedom or the persistent

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<sup>209</sup> Tamkeen, "*Addressing migrant domestic workers in Jordan*", *Tamkeen fields for aid*. Available at: <https://www.solidar.org/system/downloads/attachments/000/000/457/original/PDF3.pdf?1469200423> [last accessed on 30/03/2021]

problems with health insurance, as well as the limitations on domestic workers in participating and funding a trade union.

### *2.5.1 Agencies*

The main issue regarding the agencies is that not all of them operate in Jordan and in the exporting countries always care about the well-being of the worker.

Exploitation is really common among some agencies which try to make profit at the expense of migrant workers who are characterized by a vulnerable condition, often of poverty, from which they come, and the weak legal protection within the Hashemite Kingdom<sup>210</sup>.

Even in view of all the changes in the legislation mentioned in the previous section of this chapter, governing the activity of the agencies, there are still many that practice in illegality, often also referring to the black market or more generally exploiting these workers. In the case of MDWs the situation is often even more critical.

There are also cases where some MDWs resort to fake sponsors to help them with the recruitment process, who on paper are their guarantors and employers, but in reality, they work for other households. In these circumstances they often find themselves working without the guarantee of a paper contract and therefore more exposed to situations of exploitation<sup>211</sup>.

However, it is also noteworthy to say that just because some agencies mistreat domestic workers does not mean that there aren't job agencies that look out for them during their contract period and educate both employers and domestic workers about their rights and obligations.

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<sup>210</sup> Razzaz, Susan A challenging market becomes more challenging: Jordanian workers and refugees In the Jordanian labour market / International Labour Organization- Beirut: ILO, 2017

<sup>211</sup> Razzaz, Susan A challenging market becomes more challenging: Jordanian workers and refugees In the Jordanian labour market / International Labour Organization- Beirut: ILO, 2017

### 2.5.2 Human Trafficking

As previously announced in the first section of this chapter, the trafficking of human beings is a sadly established fact in Jordan and beyond. The major issue is that even if the Jordanian Government has implemented several rules to fight against the trafficking in persons, there are a lot of gaps and shortcomings, for example:

- Often and deliberately the punishments and sanctions are not commensurate with the gravity of the crimes.
- The definition of which crimes are considered as a case of human trafficking is still too general. A clear example is the Article 3 paragraph (B) of Law No.9 on Human Trafficking of 2009 which is set out below

المادة ٣ - ب - لغايات الفقرة (أ) من هذه المادة, تعني كلمة (الاستغلال) استغلال الايخاص في العمل بالسخرة او العمل قسرا او الاسترقاق او الاستعباد او نزع الأعضاء او في الدعارة او أي شكل من اشكال الاستغلال الجنسي.<sup>212</sup>

#### Article 3:

***B- End of clause (A) of this article the word exploitation means exploitation of persons who perform work other than the agreed labor or forced labor or slavery or make become slaves or remove organs or prostitution or any other sexual exploitation.***

Source: project.org, translate from Arab to English by me.

In this article we can find the definition that the Hashemite Government gave to what is meant by Human Trafficking. In comparison with Article (3) of the Palermo Protocol, the definition present in Law No.9 is still too superficial and incomplete, thus risking to be circumvented or create little awareness, and to limit the comprehensive view at the time of issuing the judgment of a penalty.

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<sup>212</sup> Anti-Trafficking Human Law No.9 of 2009, Article 3 paragraph (B).



In fact, it often happens that when faced with a situation of *modern slavery*, judges see crimes as individual, without suspecting and considering the chance that it might part of a whole chain of crime related to human trafficking.

In addition to the frequent failure to link such violations to human trafficking, an important obstacle in prosecuting these crimes properly is that they are often committed under the privacy of the households, rendering prevention more difficult. Apparently, a large number of situations or claims that arrive with the authorities, at first sight seem to be related to a different kind of crime, such as violation of the residency provision, the non-renewal of the contract or the escaping of an employee, withholding personal documents and freedom, just to mention a few.

Despite the fact that the law No.9 improves Jordanian legislation on human trafficking, it still has a range of flaws. When considering the gravity of the crimes and the effect on victims, the legal penalties are insufficient deterrents.

Moreover, the legislation lacks protections such as witnesses and plaintiff protection, repatriation rights, or residence permit that gives migrant workers time to heal or make it easier for them to seek justice and/or reimbursement, as it also has been proposed by the United Nations Recommended Principles Guidelines on Human Rights and Human Trafficking<sup>213</sup>.

In recent decades the world has been dealing with a modern form of slavery and trafficking, the scope of which we are not often fully aware of and able to manage. The ILO recently conducted qualitative research in the area and discovered a conceptual and realistic mismatch between the national authorities' discourse on human trafficking and the forms in which cases of human trafficking are reported and treated<sup>214</sup>.

The unwillingness to use the lens of human trafficking for labor abuse to resolve the most egregious abuses of migrant workers' human and labor rights highlights the reality that human trafficking remains a delicate political problem<sup>215</sup>.

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<sup>213</sup> *Migrant domestic and garment workers in Jordan: A baseline analysis of Trafficking in persons and related laws and policies/* International Labour Office, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS)- Geneva: ILO, 2017. P.33.

<sup>214</sup> *Ibidem*, p.41.

<sup>215</sup> *Migrant Domestic Workers and garment workers in Jordan: A baseline analysis of trafficking in persons and related laws and policies/* International Labour Office, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS)- Geneva: ILO, 2017.

### 2.5.3 Contracts

One of the difficulties that has been most encountered in the workplace is linked to the contractual sphere.

Even if in Jordan a model of standard contract exists for DWs, some migrant domestic workers are found serving without a contract and that, in practice, leaves them without any kind of protection<sup>216</sup>.

The problem is that even when a contract exists, one of the first obstacles that such women workers often encounter is precisely in its interpretation.

Until 2006, contracts were mainly concluded in the Arabic alongside English used as a common language. Since not everyone had sufficient knowledge of English, in 2006 the MOL expanded the range of languages available through the development of a guideline for MDWs in the languages of origin (i.e. Sinhalese, Tagalog, and Indonesian), which all the recruitment agencies are required to deliver to newly arrived migrant workers. While guides may offer useful details and their use should be recommended in addition to complete contract translations, on a practical level they are not an adequate replacement for a completely translated contract<sup>217</sup>.

Even if they have a contract, which in most cases is agreed even before the departure of the worker, once they arrive in Jordan, workers find themselves having to fill tasks or to work in contexts other than those previously stipulated. In some cases, at the moment of the stipulation of the contract they agree to sign for a job only to discover once arrived in Jordan, that in reality they have been engaged as Domestic Workers. This is a problem encountered by a large number of migrant domestic workers, underlying the lack of awareness of details or lies related to their engagement<sup>218</sup>.

Another issue is the lack of knowledge of what tasks that they will carry out inside the household or in some cases even the lack of training of the MDWs themselves in the management of the chores of the household or care for the elderly or children<sup>219</sup>.

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<sup>216</sup> *Migrant domestic and garment workers in Jordan: A baseline analysis of trafficking in persons and related laws and policies/* International Labour Organization, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS)- Geneva: ILO, 2017.

<sup>217</sup> *Migrant domestic and garment workers in Jordan: A baseline analysis of trafficking in persons and related laws and policies/* International Labour Organization, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS)- Geneva: ILO, 2017.

<sup>218</sup> Tamkeen, *Addressing migrant workers in Jordan*,

<https://www.solidar.org/system/downloads/attachments/000/000/457/original/PDF3.pdf?1469200423>

<sup>219</sup> A challenging Market becomes more challenging: Jordanian workers, migrant workers and refugees in the Jordanian Labour market/International Labour Organization- Bairut: ILO, 2017

#### 2.5.4 Harassment

According to the McGraw-Hill Concise Dictionary of Modern Medicine, the term psychological abuse means:

*“A form of mistreatment in which there is intent to cause mental or emotional pain or injury; PA includes verbal aggression, statements intended to humiliate or infantilize, insults, threats of abandonment or institutionalization; PA results in stress, social withdrawal, long-term or recalcitrant depression, anxiety.”*

More generally, as defined in Article 3(a) of the Council of Europe Convention on Preventing and Combating Violence Against Women, known also as the Istanbul Convention, that Jordan has not yet signed, violence against women shall mean:

*“ ‘Violence against women’ is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private<sup>220</sup>”*

Violence against women, regardless of whether it is carried out in a public or private place, in a family context or at the workplace, means all those attitudes which may restrict the freedom of the person and is a form of abuse which basically undermines a woman’s fundamental rights.

The most common form of abuse experienced by domestic workers is psychological harassment. Domestic workers are subjected to a variety of forms of abuse, including bullying, harassment, humiliation, insults, being screamed at and living in unsuitable conditions. For the worker, this maltreatment equates to slavery-like conditions. Furthermore, a number of domestic workers face physical violence, assault, and, in some cases, rape. Domestic employees are confined in closed spaces, making it impossible to prove infringement of their rights<sup>221</sup>.

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<sup>220</sup> “Council of Europe Convention on preventing and combating violence against women and domestic violence” Council of Europe Treaty Series-No.210, Istanbul, 11.V.2011. <https://rm.coe.int/168008482e>

<sup>221</sup> Tamkeen, Addressing migrant workers in Jordan, <https://www.solidar.org/system/downloads/attachments/000/000/457/original/PDF3.pdf?1469200423>

Even if also according to the Article 354 of the Jordanian Penal Code,<sup>222</sup> threat and any kind of offense is considered illegal, every year there are FMDWs that file complaints.

**Article (354):**

***Any other threat which includes the infliction of unlawful harm, whether done verbally or by one of the means stipulated in article (73), and it severely affected the victim's mental status, such threat shall be punished upon a complaint by imprisonment up to one week or by a fine which does not exceed five dinars (JD5).***

Source: Jordanian Penal Code, 1960.

Article (354) in few words, states that any kind of threats or any abuse, whether verbal or physical, which may give rise to harm, may be punishable by a fine or up to a week's imprisonment. Again, it can be noted that the penalties provided for by the law are inconsistent with the gravity of the offence.

As already anticipated, many female migrant domestic workers have testified to having been victims of abuses of different natures, such as verbal, psychological and, in some cases, even physical, which have seen FMDW forced to live in harsh and, in some cases, inhumane working conditions<sup>223</sup>.

This perception of psychological discomfort has pushed the DWs in some situations to make extreme gestures, including suicide.

A clear example of what these women are often forced to suffer is represented by the story of Sima, a migrant domestic worker, who in December 2017 jumped from the balcony on the third floor after stabbing her employer.

The story of Sima (not her real name) had widespread media coverage due to its sad and traumatic twist. Sima was a 33 years-old woman who came to Jordan seeking a job and to make money to send home. She was working for a family in Amman when, one day at the end of November, she started to show symptoms of

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<sup>222</sup> Jordanian Penal Code for the year 1960, Article 354. Available on: [http://www.ahtnc.org.jo/sites/default/files/penal\\_code.pdf](http://www.ahtnc.org.jo/sites/default/files/penal_code.pdf)

<sup>223</sup> Tamkeen, Addressing migrant workers in Jordan, <https://www.solidar.org/system/downloads/attachments/000/000/457/original/PDF3.pdf?1469200423>

physical malaise and turned to her employers for medical treatment. At first, they gave her some medicine, but after two days the situation deteriorated, so she asked to go to the hospital. The situation did not change and she started to suffer from insomnia, hearing strange noises such as footsteps around her room.

She also claimed that her employers threatened to send her back to the recruitment agency where she would be beaten up until the recruiter found her a new house. Furthermore, according to the threat of her employer in the new house, she would have been treated worse, would not be paid and would have found herself without food.

The trigger that drove the woman to that desperate act was when, on the day of the incident, she was convinced to have overheard a conversation between her employers who were planning to kill her, a conversation that was probably a hallucination. Luckily, everyone was fine<sup>224</sup>.

According to the Jordanian psychotherapist Rahaf Muhyiddin, who works at the Jordanian Women's Union (JWU), claims that such an extreme reaction were within the precedent that this worker had suffered from her employer. Threats are one of the main means of force that are used by employers to exercise psychological control over their employees that inevitably affect their social and professional life. Exploitation, seizure of personal belongings and personal documents such as the passport or the visa, controlling when or what she eats are some of the threats that are commonly used by employers to exercise control over their MDWs. The main issue is that such drastic circumstances could create a work environment that, with time, drives MDWs to cultivate feelings such as anxiety and depression, exacerbated by the impossibility of movement or decision-making over their personal life, or more generally malaise that inevitably could lead a person to think about extreme gestures such as suicide.

In the case of Sima, the expert also stated that depression, anxiety and insomnia could have been the major cause of her psychological breakdown that caused the domestic worker unconsciously to take the decision of stabbing her employer first and in then taking her own life<sup>225</sup>.

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<sup>224</sup> Tabazah, Sawsan “*the dark side of domestic ‘servitude’: dozens of domestic workers end up committing suicide or crimes in absence of adequate support system*”, The Jordan Times, December 31 2017, last updated on January 2 2018. <http://www.jordantimes.com/news/local/dark-side-domestic-servitude>

<sup>225</sup> Ibidem

A study conducted between the 2006 and 2016 by the University of Jordan Hospital's Forensic Medicine Department involving the deaths of full time DWs, stated that 76 per cent of the cases filed were unnatural. According to the study, 75 per cent of the unnatural deaths were classified as suicide, while it was possible to notice that in a large percent of these cases, equal to 19 per cent, there were present on the bodies signs of sexual harassment or old injuries, in some cases not even treated properly<sup>226</sup>.

Majd Seliti one of the young researchers at the JUH and who took part in this case study, stated:

*“I think one of the most dangerous things that we have found that almost all the cases except for one were involving women in childbearing age. Some of them died due to neglect and lack of medical care in early stages of their disease or injury. Even in cases of natural death, many of them could have been prevented. We found cases were domestic workers died due to dehydration and appendicitis, which do not cause death usually<sup>227</sup>.”*

According to the JWU Shelter of Abused Women, a large number of DW that are fostered in their shelter have experienced a form of psychological abuse.

Between 2015 and 2017, the shelter gave hospitality to a great number of domestic workers victims of abuse of various kinds, specifically 121 in 2015, 71 in 2016 and 45 in 2017<sup>228</sup>.

As mentioned, domestic workers are also victims of verbal and physical abuse. A clear example of physical abuse is the story of Mary Jo (not her real name), a young migrant domestic worker who came to Jordan from the Philippines as a nanny.

Her story, reported by the organization Tamkeen for legal aid and human rights, is another example of, despite the changes and the improvements introduced by the government such as the Regulation No.90 on Domestic Workers, abuses against domestic workers are still perpetuated.

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<sup>226</sup> ibidem

<sup>227</sup> Tabazah, Sawsan “*the dark side of domestic ‘servitude’: dozens of domestic workers end up committing suicide or crimes in absence of adequate support system*”, The Jordan Times, December 31 2017, last updated at January 2 2018. <http://www.jordantimes.com/news/local/dark-side-domestic-servitude>

<sup>228</sup> Ibidem

Mary Jo signed a contract before her arrival in Jordan to work as a nanny in which she was promised a monthly salary of 400 dinars, a weekly day-off and the promise of an adequate place to sleep.

After three months from the start of her new job she fled from a window in the kitchen and ran to the Philippines' Embassy seeking help.

She stated that she had never received her salary since she had arrived, but, above all, she had visible marks on her face as result of physical violence perpetrated by her employer. Moreover, she also claimed that in three months she never left the house or had the possibility to call her family in her country of origin<sup>229</sup>.

Another significant obstacle is that often workers are not aware of their rights to complain, so when a dispute occurs, they do not refer to the official channels at their disposal such as inspectors, hotlines or organizations dealing with issues related to this category of worker. Many even prefer not to expose themselves for fear of retaliation or they do not have faith in the judicial process<sup>230</sup>.

Hussein Omari, director of the Domestic Workers' Complaints Division at Adel Centre for Legal Aid, argues that the main issue in the case of reports of abuses by MDWs is that the investigations that follow are superficial and that most of the incidents that happened are classified by the officers in charge of investigating them as mere accidents<sup>231</sup>.

The director Ahmad Awad of the Phenix Centre for Economic and Information Studies defined the dysfunctional relationship between the *Kafeel* and the employer as a relationship between an owner and his slave in which the latter is not treated as any regular employee. *Kafeels* tend to control several aspects of the employee's daily life from what they eat, their freedom of movement, when they can sleep or more generally what they can or cannot do during their free time<sup>232</sup>.

In an article published in August 2020 by Tamkeen, the organization affirms that in 2019 alone they collected 328 cases from domestic workers in various governorates throughout the Kingdom. Filipina workers filed 109 of the complaints, followed by Sri Lankans with 62, Ugandan workers with 60, and Bangladeshi

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<sup>229</sup> Tamkeen, 2019, "Domestic workers ensure abuses as organizations cite 'collective failure' of stakeholders", Tamkeen legal aid and human rights, Amman. <https://tamkeen-jo.org/newsDetails/504/en>

<sup>230</sup> Razzaz, Susan A challenging market becomes more challenging: Jordanian workers and refugees In the Jordanian labour market / International Labour Organization- Beirut: ILO, 2017.

<sup>231</sup> Tabazah, Sawsan "the dark side of domestic 'servitude': dozens of domestic workers end up committing suicide or crimes in absence of adequate support system", The Jordan Times, December 31 2017, last updated at January 2 2018. [http://www.jordantimes.com/news/local/dark-side-domestic-servitude'](http://www.jordantimes.com/news/local/dark-side-domestic-servitude)

<sup>232</sup> Ibidem

workers with 36. The confiscation of passports (236), followed by partial or complete non-payment of salaries (158), and the denial of sick days and annual leave (139) were the most egregious violations suffered by these MDWs<sup>233</sup>.

Even if domestic workers' working conditions have undoubtedly improved, as evidenced by an increased knowledge among the stakeholders, and the increased consciousness of MDWs about their rights, and their growing attempts to assert them, there is still a huge necessity to enact more effective regulations to protect MDWs, particularly their salaries or more efficient complaints mechanism; not to mention a more severe and accurate program of inspections.

As a result of what has just been said about the violations and abuses that domestic workers often suffer, some of the most common abuses will now be more closely analysed, such as the deprivation of freedom of movement, an adequate place to sleep, health coverage and access to the justice system.

#### *2.5.5 Withholding wages*

The circle of injustices that, unfortunately, still continues to be faced by domestic workers, begins at the beginning of the recruitment process.

Recruitment agencies and employers sometimes collude together to withhold part of the FMDW salary for example retaining the first three months earned or reducing the salary once the worker is in the country.<sup>234</sup> Another problem that often arises is the total non-payment of monthly salary of MDWs, which even if considered illegal, many agencies and employers tend to take advantage of their vulnerable conditions by not respecting the terms of the contracts related to payment.

*“I worked for two years in a house, and my employer did not pay me, and whenever I asked him for it, he answers me that he will pay me the whole amount when I finish the two years. And when the two years were over, he sent me back to the recruitment agency and didn't pay me anything.”*

*Arababa, a Sri Lankan domestic worker*

*Source: Tamkeen for legal aid and human rights, 2010.*

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<sup>233</sup> Tamkeen for Legal Aid and Human Rights, 2020, Domestic workers: between unemployment and work pressure, Amman, available on: <https://tamkeen-jo.org/newsDetails/585/en>

<sup>234</sup> Kagan, Sophia, “Domestic workers and employers in the Arab States: promising practices and innovative models for a productive working relationship- ILO white paper/ International Labour Organization, Regional Office for Arab States. Beirut: ILO, 2017. p.9.



As Arababa, a Sri Lankan domestic worker interviewed by Tamkeen for a study published in 2009, frequently and deliberately employers continue to delay the payment of wages, even to the point of, once the contract is concluded, never paying the amount due<sup>235</sup>.

One of the main reasons that have been given by employers to justify a possible reduction in the wage previously promised or even direct deprivation of DM's salary, is that it is considered as a way to refund the employers' pocket the numerous expenditures faced during the recruitment process.

Another important aspect that contributes to the decision on the amount of money with which a DW is paid, depends on the agreement reached between the government of Jordan and the embassies. This is reflected even is the cost of hiring a DW to another. The different costs were dealt with more in detail in the previous section.

It has been demonstrated, and according also to the bilateral agreement made between states, that for example a Philippian DW earned more than a Sri Lankan because the first one is considered more capable, trained, educated and easier to compel, not to mention that usually they better master the English language<sup>236</sup>.

The salary agreed with the Philippines embassy is the most generous, it consists in a 400 dollars per month, even if many MDWs state that they didn't receive this salary but they were provided with food and lodging, as well as clothing and medical care if necessary, by the employers. According to a study carried out by the ILO and published in 2018 that considered 21 Filipina participants, seven of them stated that all these benefits were guaranteed but with a monthly deduction from their wages from 40 to 50 dollars.

For example, a Sri Lankan MDW interviewed states as follow:

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<sup>235</sup> Tamkeen for legal aid and human rights, 20<sup>th</sup> February 2010, Report on migrant domestic workers situation in Jordan, haqqi.info, Amman, p.20. available at:

[http://d3417003f1n5sg.cloudfront.net/research\\_paper/HRIDJR0144\\_MigrantWorkersSituation\\_En\\_2010.pdf?Policy=eyJTdGF0ZW11bnQiOlt7IiJlc291cmNlIjoiaHR0cDovL2QzNGw3MDAzZjFuNXNnLmNsb3VkZnJvbnQubmVOL3Jlc2VhcmNoX3BhcGVyL0hSSURKUjAxNDRfTWlncmFudFdvcmVtIjE2MjUyMzgzNjB9fX1dfQ\\_&Signature=oBnwexxUKRL4ceEtUsJmM11Jy2DqGGhzw9u36PdW-893pFieHaysemEz4cw4MV~icqdMdlxXn7ONSSVT-otnVaNhGQGsdWnE9gcBi~FmJ2x5XvHanIxuASZUUTfMPsOHdMVeY4Jh01leKqiRBwKpFpHj7-VkZo2smjHQ8FWZLQc\\_&Key-Pair-Id=APKAI6Y7SKF5XQ4NEPQQ](http://d3417003f1n5sg.cloudfront.net/research_paper/HRIDJR0144_MigrantWorkersSituation_En_2010.pdf?Policy=eyJTdGF0ZW11bnQiOlt7IiJlc291cmNlIjoiaHR0cDovL2QzNGw3MDAzZjFuNXNnLmNsb3VkZnJvbnQubmVOL3Jlc2VhcmNoX3BhcGVyL0hSSURKUjAxNDRfTWlncmFudFdvcmVtIjE2MjUyMzgzNjB9fX1dfQ_&Signature=oBnwexxUKRL4ceEtUsJmM11Jy2DqGGhzw9u36PdW-893pFieHaysemEz4cw4MV~icqdMdlxXn7ONSSVT-otnVaNhGQGsdWnE9gcBi~FmJ2x5XvHanIxuASZUUTfMPsOHdMVeY4Jh01leKqiRBwKpFpHj7-VkZo2smjHQ8FWZLQc_&Key-Pair-Id=APKAI6Y7SKF5XQ4NEPQQ)

<sup>236</sup> A challenging Market becomes more challenging: Jordanian workers, migrant workers and refugees in the Jordanian Labour market/International Labour Organization- Bairut: ILO, 2017

*“I worked for a family, and the monthly salary agreed on was 125 USD, but they gave me 50 JDs as a monthly salary, and I had to pay for my clothing and medication.”*

*A Sri Lankan domestic workers*

Source: Tamkeen for legal aid and human rights, 2010.

She states that although the promised pay at the beginning of the employment relationship amounted to \$ 125 in reality she was paid less namely 50 Jordanian dinars, and with this salary she had also to provide for essentials that according to the Regulation No.90 of 2009 should be the responsibility of the employer (Article 4 paragraphs (d) and (h)). She represents a clear example of iniquitous salary reduction.

On the other hand, the Bangladeshis workers, if only Asian workers are taken into account, are the least paid, which is also due to a lack of an agreement with their embassy. Usually, the average of the wages given to them ranges from 175 dollars to 250 dollars per month<sup>237</sup>.

The ability of the country of origin’s Authorities to bargain a better wage, is central to the possibility of a MDW to gain a lower or higher salary.

Although obliged to keep track of their payments, as mentioned in the previous section (Reg. No.12 of 2015 paragraph), as shown above many employers still do not get wages regularly. For example, in Regulation No.90 there is no reference to the obligation of payment tracking.

In addition, the total lack of clear possible penal consequences in case of non payment, makes it easier to violate this worker’s right.

In order to make the process of paying domestic workers easier and more transparent, Jordan must ratify the ILO Convention No.189 of 2011 on Domestic Workers, since through it domestic workers would be covered more legally. Under the Convention No.189 Members are expected to take steps to ensure that domestic workers receive minimum wage security in countries with minimum wage-setting machinery, by expanding the minimum wage coverage to include them as well.

In addition, Regulation No.90 determines or makes any references to a minimum wage for migrant domestic workers.

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<sup>237</sup> A challenging Market becomes more challenging: Jordanian workers, migrant workers and refugees in the Jordanian Labour market/International Labour Organization- Beirut: ILO, 2017.

### *2.5.6 Freedom of movement*

As already mentioned, due to the large number of vulnerabilities and not national recognition of this category, in 2011 the ILO issued a new Convention (No. 189) to prevent possible inequalities towards domestic workers. The convention ensures that domestic workers have the same fundamental rights as other workers, especially when it comes to the abolition of all types of forced labor, child labor, and employment and occupation discrimination<sup>238</sup>.

Concerning the Freedom of Movement, according to Article 9(b) (C-189), a MDW is allowed to leave her workplace (excluding the necessity to carry out errands for the household) during her day-off<sup>239</sup>:

#### **Article 9:**

***Each Member shall take measures to ensure that domestic workers:***

- (a) Are free to reach agreement with their employer or potential employer on whether to reside in the household;***
- (b) Who reside in the household are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave; and***
- (c) Are intitled to keep in their possession their travel and identity documents.***

In accordance with the above-mentioned Article 9, a worker who resides in the house where he or she works is not obliged to remain within the household during the days or periods of rest and those workers are also entitled to keep their personal documents.

In Jordan, even if those breaches are also against the law, unfortunately that does not stop a large proportion of employers from putting into action several practices to prevent their MDW from leaving the workplace environment such as denying her a day off, refusing to let her leave the house alone and confiscating their passports.

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<sup>238</sup> Tamkeen, 2020, Domestic workers: between unemployment and work pressure, *Tamkeen for legal aid and human rights*, Amman. Available on: <https://tamkeen-jo.org/newsDetails/585/en> [Last access: 04/04/2020, 23.23]

<sup>239</sup> Convention C189- Domestic Workers Convention, 2011 (No. 189), International Labour Organization.

The most common reason given is a need to protect themselves from a possible financial loss, especially because they have already paid the recruitment fees. It is worth noting that these behaviors are considered signs of forced labor (ILO, 2016a)<sup>240</sup>.

From the employer's point of view there are five main situations of concern that lead them to impose restrictions of movement:

- First of all, they use the limitation of movement as an assurance of their investment because they are afraid that MDW could escape<sup>241</sup>.
- Secondly, the fear that the MDW will commit or be convicted of a crime for which the *Kafeel* will be held liable<sup>242</sup>. To avoid this, employers prefer to root out the problem by not granting the freedom to go out.
- Concerns that the MDW could steal from the house and use the opportunity to leave to conceal the stolen items<sup>243</sup>.
- Concerns that the domestic worker could start an intimate relationship and one day get pregnant.
- Last but not least, many employers try to exercise a sort of power on the MDW to keep her controlled. This especially caused by their vulnerable condition that makes them easier to be compelled.

The confiscation of personal documents, once the MDW arrives within the country, is the most common means through which employers exercise their power. Even if this practice is considered illegal (see also Art. 9(c) of Conv. No. 189), *Kafeels* (sponsor/employer) mostly prefer to hold their passports so that they can threaten their employees to prevent them from returning to their country, or even threaten that if they escape, they would automatically be considered illegal.

There were also situations in which the employer continues to hold the passport illegally even after the expiration of the contract in order to blackmail the worker, promising to divest it to its owner only if she renounces the payment of the remaining sum of her salary. The *Kafeel* knows that he can leverage this fact

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<sup>240</sup> Ibidem, p.6.

<sup>241</sup> Kagan, Sophia, “*Domestic workers and employers in the Arab States: promising practices and innovative models for a productive working relationship- ILO white paper*”/ International Labour Organization, Regional Office for Arab States. Beirut: ILO, 2017. p. 6.

<sup>242</sup> Ibidem, p.10.

<sup>243</sup> Ibidem, p.10

because he is aware of low propensity of DMWs to seek help from the authorities due to their precarious situation and the vulnerable condition in which they often live.

Despite the changes introduced regarding the recruitment agencies and the expansion of the employer's cover to limit his loss, there are many gaps related to the protection of the workers. The deprivation of freedom and confiscation of passport is still too widespread underlying the need to more severe sanctions.

#### 2.5.7 Accommodation

According to the Article 4 paragraph (D) of Reg. No.90, one of the duties of the employer is to provide adequate accommodation to his/her MDW. Every worker has the right to reside and sleep in a dignified environment. This place should be provided with everything needed to maintain a dignified livelihood, with a normal bed where FMDW can sleep rather than a place in general or a room that is intended only for the DW and in which she can retire outside working hours in privacy<sup>244</sup>. The issue is that, despite being provided by law, it is not always guaranteed by their employers.

In fact, DWs often have to sleep in other parts of the house such as the living room, the kitchen, balcony or sometimes even in the bathroom when the family for whom she works live in a small apartment<sup>245</sup>. Moreover, especially if MDW is forced to sleep in a common space, and often after having worked for long hours, they are obliged to wake up early to fold their own bed as it is considered inappropriate to see the DW sleep in such places.

In addition, often even when accommodation is provided, it is not certain that it reflects the optimal standards to be made livable in an adequate and respectful way to the worker; in fact, sometimes those places are too small, without adequate lighting or ventilation or lacking basic equipment, such as drawers to put personal belongings<sup>246</sup>.

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<sup>244</sup> Regulation No.90/2009 of Domestic Workers, Cooks, Gardeners and Similar Categories, Article 4 (D).

<sup>245</sup> Tamkeen Fields for Aid, 2015, *Invisible Women: the working and Living Conditions of Irregular Migrant Domestic Workers in Jordan*, Tamkeen Fields for Aid, p.77.

<sup>246</sup> Tamkeen, "Addressing migrant domestic workers in Jordan", *Tamkeen fields for aid*. Available at:

<https://www.solidar.org/system/downloads/attachments/000/000/457/original/PDF3.pdf?1469200423> [last accessed on 07/04/2021]

### 2.5.8 Medical insurance

The lack of a health coverage is one of the major violations that migrant domestic workers (MDWs) have to deal with. Health treatment is unavailable to many domestic employees. The lack of health coverage does not only concern access to the most basic medicines or treatments, but also accidents at the workplace. Unfortunately, such accidents are not as rare as one would expect. Many domestic workers work in dangerous conditions and thus risk falling from high balconies while cleaning, with the ruthless consequence of broken bones, that often have also led to potential lifelong disabilities that will impact them for the rest of their lives. Sometimes the consequences are even worse, including death due to impact.

According to a report of Tamkeen, the total number of deaths of Sri Lankan employees in 2011 was 19, with six of them being suicides. There were 22 cases of death and 68 cases of work-related injuries just for Indonesian employees<sup>247</sup>.

In many cases, it has been talked about MDW that in the case of sickness or any kind of health impediment does not assure them health support. After reporting the symptoms to her employer, the lucky ones will call a doctor if the employer deems it necessary; otherwise, if it is not deemed a serious problem, no external advice is sought, and a medicine that the employer believes may be helpful is simply administered to the MDW.

According to various MDW testimonies, because MDWs are unable to go out freely or are not provided with the opportunity to go on a visit to obtain a prescription, they end up still receiving medication from their employers<sup>248</sup>.

As already mentioned in the previous section of this chapter, the Hashemite government has implemented in 2015 the Regulation No.12 and its amending text No. 13 with the main aim of broadening the health rights of MDWs. The fact is that this law, although it can be considered a welcome development, still has some shortcomings, for example not covering certain health conditions, such as: mental

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<sup>247</sup> Tamkeen, Addressing migrant workers in Jordan,

<https://www.solidar.org/system/downloads/attachments/000/000/457/original/PDF3.pdf?1469200423>

<sup>248</sup> Tabazah, Sawzan “*the dark side of domestic ‘servitude’: dozens of domestic workers end up committing suicide or crimes in absence of adequate support system*”, The Jordan Times, December 31 2017, last updated at January 2, 2018.

<http://www.jordantimes.com/news/local/dark-side-domestic-servitude>

illness, surgery or dental care, birth complications or sexually transmitted diseases<sup>249</sup>.

Although the obligation to provide health insurance may be regarded as a significant step forward, there are still a number of shortcomings.

Another example that can be considered considerable to better understand the inequalities present within that law, is Article 7. In this article it is especially relevant to note how certain domestic workers are considered especially on the basis of their nationality. For example, where the employer suffers a financial loss as a result of a refusal, repatriation or accident which has caused the worker's complete or partial disability, the insurance premium varies according to nationality. The minimum amount for the premium is 3.000 dinar which will be paid as follows<sup>250</sup>:

- 4 dinar and 10 cents as maximum per each remaining day of the contract in case the financial loss is caused by a Filipino or Indonesian.
- 4 dinar and 65 cents in case the loss is caused by a Sri Lankan.
- 2 dinar and 70 cents in case the loss is caused by a Kenyan or Bangladeshi.

The difference between nationalities stems from the belief in the common idea that the domestic employee is more a good than a human being offering a service.

#### 2.5.9 *The case of Run-aways*

When a domestic employee is faced with a situation of exploitation or abuse, since legal assistance is often inconsistent, she has mainly two options: the first is to stay in the workplace and hope to be able to resolve the dispute directly with the householder, or, this is an option that has become very common in recent years, escape. FMDWs who flee from their workplace are defined as *run-away workers*<sup>251</sup>. There are many reasons that could lead a MDW to flee, the most common are having experienced situations of inequality or exploitation. Escaping from their

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<sup>249</sup> Ibidem, Article 6 paragraph C.

<sup>250</sup> Ibidem, Article 7 paragraph A (1).

<sup>251</sup> Anti-slavery, 2021, Domestic Slavery, *Anti-slavery*, <https://www.antislavery.org/slavery-today/domestic-work-and-slavery/> [last accessed on 15/04/2021]

work, even if in some case they were pushed by valid motives, is considered by the law as illegal because it goes against the regulations that govern the presence on the Jordanian soil of migrant workers and it is considered a violation of the contract stipulated with the *kafeel*<sup>252</sup>.

Even if they are escaping from a situation of abuse, verbal insults, sexual harassment, being hit, confiscation of documents or personal objects, not paying their wages, they are considered illegal by the official administration because, officially the system provides channels through which to raise a complaint in the case of issues, such as police, reference agencies or courts. The issue reported by more than one MDW is that even when they seek help from the authorities or their reference recruitment agency, they could face two main scenarios: either they risk being sent back to their employer without having solved the dispute that has provoked the escape (this more the case of the agencies), or when the claim arrives with the official authorities, they have to wait for the inspector appointed by the MOL to carry out an inspection, that, in the majority of cases, is conducted superficially.

Meanwhile, during the investigative process, the DMW are not provided with a place to stay till the reconciliation and risk being sent back to their workplace, thus favoring acts of retaliation by the employer<sup>253</sup>.

There is another category of run-away DM who always escaped from an exploitative situation, never to come back. These women, once having fled from their workplace, face difficulties in finding a place to shelter.

Most MDWs arrive in Jordan alone, without knowing anyone on arrival and their isolation often does not help in establishing a network of ties with other domestic workers.

When a MDW decides to flee it is generally because there aren't many options left. The Ministry of Labour in 2015 stipulated that shelters should be established for non-Jordanian workers who rejected the work or who have moved away from it due to increased abuses (Article (16) of Reg. No.12, 2015)<sup>254</sup>. This does not reflect the reality. The fortunate ones may have friends or relatives to count on, but due to the

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<sup>252</sup> Su, Alice, March 27, 2017, Migrant Domestic Workers in Jordan run the gauntlet between abuse and jail, *The Guardian*, <https://www.theguardian.com/global-development/2017/mar/27/migrant-domestic-workers-jordan-abuse-jail>

<sup>253</sup> Freedomunited, November 26, 2017, "Runaway" Domestic Workers in Jordan in Legal Limbo, *Freedomunited*, Jordan. <https://www.freedomunited.org/news/domestic-workers-jordan/>

<sup>254</sup> Regulation No.12 of 2015, Article 16.



shortage of shelters, the majority must resort to the relevant authorities or their embassies. The main problem related to the embassies is that not all of them have the capacity to support their citizens with a place to stay, food and health care in cases of physical abuse. This also depends on the power of bargaining that an embassy is able to exercise.

Once they have managed to escape exploitation, many domestic workers would like to be able to return to their country of origin, but due to the confiscation of their passport or the inability to bear the cost of the airfare, they find themselves trapped within the confines of the host country. The only choice left is to look for another job in order to collect the amount of money required or, simply, to make money to live<sup>255</sup>.

Seeking another job inevitably means a major risk of exploitation due to the fact that they will be more likely to work off the books because of the lack of documents that are still in the hands of their abusive employer. As a result, many risk being absorbed in more illicit circles, like prostitution or human trafficking. There are also recorded cases in which MDWs have found more favorable working conditions, becoming live-out domestic workers.

The creation of shelters is an important step for the protection of non-Jordanian domestic workers, but it is still not enough to meet demand. Above all these shelters are not targeted at run-away workers. There are several NGOs within Jordan, such as Tamkeen, that operate to assist and give support to migrant domestic workers who flee from their *kafeel*, however official government shelter has yet to open<sup>256</sup>. According to the testimony of a Sri Lankan domestic worker, after a complaint presented to her embassy and with no help to resolve it, she found herself in difficulty due to the lack of shelter and financial resources<sup>257</sup>:

*“I was brought from Sri Lanka on 2001 to work as a domestic worker, I had a work and a residence permit issued in the first year of work and it was never renewed. My employer passed away, and I asked his sons to return me back to my country*

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<sup>255</sup> Su, Alice, March 27, 2017, Migrant Domestic Workers in Jordan run the gauntlet between abuse and jail, *The Guardian*, <https://www.theguardian.com/global-development/2017/mar/27/migrant-domestic-workers-jordan-abuse-jail>

<sup>255</sup> Ibidem.

<sup>256</sup> International Organization for Migration, 2015, “*The Other Migrant Crisis: protecting migrant workers against exploitation in the Middle East and North Africa*”, International Organization for migration, Geneva, P.47

<sup>257</sup> A challenging Market becomes more challenging: Jordanian workers, migrant workers and refugees in the Jordanian Labour market/International Labour Organization- Beirut: ILO, 2017. P.

*but they refuse unless I brought them a substitute. I submitted a compliant in my country's embassy, but they didn't do anything, I can't resort to litigation because I have no shelter or any financial resource to help me live until the case is over"*

*Samuel, Sri Lankan domestic worker*

Source: Tamkeen for legal aid and human rights, 2010.

It is also fair to say that there are also MDWs who decide to flee without particular justification in order to be able to find a part-time live-out employment or have the possibility to work for more employers daily, thus being able to get paid even more<sup>258</sup>.

In addition, the difficulties related to access to the judicial system, deters female run-aways from requesting help through official channels.

#### *2.5.10 Justice*

As already indicated at the beginning of this section, the unclear legal situation of domestic workers (DWs) has created many doubts and obstacles over the years. In relation to the relationship between the Jordanian Labour Code and Regulation No. 90, there continues to be ambiguity and misunderstandings in the proper application of labor laws to migrant workers, especially domestic migrant workers.

Many judges may not base their decisions on the relevant international agreements or treaties that exist in Jordan, and many judges misunderstand or are completely unaware of national labor and trafficking laws and regulations. Judges have shown a preference for adopting and resolving cases based on national legislation, ignoring ratified international conventions and treaties whose authority has been recognized in Jordanian jurisprudence<sup>259</sup>. At the same time when grappling with protections not contained in Regulation No.90 but embedded in other sections of Labour Law, some judges pointed out this inconsistency in the jurisprudence. Several judges also believe that all articles of the Labour Code that are not specifically included in

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<sup>258</sup> Ibidem.

<sup>259</sup> *Migrant domestic and garment workers In Jordan: A baseline analysis of trafficking in persons and related laws and policies* /International Labour Organization, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS)- Geneva:: ILO, 2017. P.45.

Regulation No.90 apply to DWs, unless they are in conflict with any of the code's provisions<sup>260</sup>.

This irregularity and lack of clarity at a judicial level are yet another example of the inadequacy of the regulation of domestic workers.

Despite the fact that migrant domestic workers (MDWs) can file complaints in a variety of locations and ways, the system still lacks the elements necessary to perform its function effectively. For example, the Ministry of Labour (MOL) provides an aid channel directly connected to the Ministry itself through a hotline service. However, the hotline is available only during the standard business hours, leaving the rest of the day uncovered. After normal working hours, if the complainant is in an emergency situation, they should leave a voice message. This is particularly difficult for MDWs because the hotline's voice mail answers in a language that they often do not understand, adding more stress to the process. In addition, MDWs find it extremely difficult to make a grievance with the labor directorates due to the fact that they are dispersed throughout the country. Furthermore, police stations lack sufficient interpreters to interact with migrant domestic workers<sup>261</sup>.

In general, access to the legal system is open to all migrant workers, regardless of ethnicity<sup>262</sup>. Nonetheless, migrant workers often suffer harm as a result of the prolonged judicial process and are not treated fairly. Migrant workers in general face numerous challenges, threats and financial limitations in exercising their rights to justice, not to mention the limitations of not being able to communicate fluently in Arabic and having minimal, if any, access to translators.

In addition, if more practical difficulties such as the language barrier are added to the economic inequities which exist between employee and employer, and the common court practice of separating lawsuits among different courts, the result is a major exacerbation of the inequalities between the different parties involved. In fact, during a trial, the presence of a lawyer is required by Jordanian law, but the cost of bringing a case is another aspect that restricts victims from obtaining justice, since several lawyers charge over 1000 Jordan dinars to resolve a dispute. Owing

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<sup>260</sup> *Migrant domestic and garment workers In Jordan: A baseline analysis of trafficking in persons and related laws and policies* /International Labour Organization, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS)- Geneva:: ILO, 2017. P.28

<sup>261</sup> Tamkeen, "Addressing migrant domestic workers in Jordan", *Tamkeen fields for aid*. Available at: <https://www.solidar.org/system/downloads/attachments/000/000/457/original/PDF3.pdf?1469200423>

<sup>262</sup> Labour Law No.8 of 1996

to the high financial barrier, migrant workers are unable to exercise their rights through litigation. In addition, the basic principle of judicial impartiality is not followed in certain cases by the courts<sup>263</sup>.

Migrant domestic workers once their contract is expired are not allowed to stay within the country. If they do stay, they become illegal. In order to avoid deportation, many workers feel compelled to accept inequitable deals with their superiors rather than exercising their legal rights. Repatriation is a very real possibility, with state officials often deporting migrant workers before they have a chance to go to court or pursue justice<sup>264</sup>.

Another important aspect that negatively affects the freedom of a domestic employee to submit a complaint is the presence of the Kafala sponsorship system. Despite Regulation No.90 of 2009, which institutionalized certain discriminations against MDWs and provided them with more favorable working conditions and privileges, (still less than other workers protected by Labour Law), it has only marginally reduced the power of the *Kafala*.

#### 2.5.11 Trade Unions

As mentioned in the second section of this chapter, despite the creation, with the endorsement of the Arab Trade Union Confederation and the Arab Center for the Support of Migrant Workers of the Arab Trade Union Confederation, of the first domestic workers' union on 1 March 2019, international organizations that operate on the ground and the Ministry of Labour, are still receiving complaints of abuses from MDWs. In addition, the fact that it has not been possible to find further information about its development and further progress does not bode well. What it is possible to affirm is that, what it achieved in 2019 could be the beginning of a more substantial and lasting change.

In general, maintaining competition at international level while preserving equal employment terms, good working conditions and collective bargaining rights is a good and necessary balance to look for.

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<sup>263</sup> *Migrant domestic and garment workers In Jordan: A baseline analysis of trafficking in persons and related laws and policies* /International Labour Organization, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS)- Geneva:: ILO, 2017. p. 44.

<sup>264</sup> *Ibidem*, p.44.

Jordan has made great strides in achieving the balance in the recent years, but there is still work to be done<sup>265</sup>; especially since that, even if the proportion of migrant workers as a share of total population has slightly decreased somewhat in recent years, it still remains considerable at 33.1%, of which 49.6 % are female (2019)<sup>266</sup>.

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<sup>265</sup> Kalan, Jonathan “Migrant workers in Jordan are making their voices heard”, *International Labour Organization*, 12 December 2012. [https://www.ilo.org/global/about-the-ilo/mission-and-objectives/features/WCMS\\_195584/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/mission-and-objectives/features/WCMS_195584/lang--en/index.htm)

<sup>266</sup> United Nations, Department of Economic and Social Affairs, Population Division (UN DESA) (2019a, 2019b). international Migrant Stock 2019 (United Nations database, POP/DB/MIG/Stock/Rev.2019. see: [www.unmigration.org](http://www.unmigration.org))

## ***2.6 Conclusion***

Every year a large number of female migrant workers mostly from different Asian and African countries, such as Sri Lanka, Philippines and Uganda, are settling in Jordan in the hope of a better future. A considerable number of them, almost 50,000, come to Jordan to be employed as live-in domestic workers; in addition, there is a significant number of undocumented migrant workers.

Although Jordanian legislation is one of the most progressive in the region, the legal situation of migrant domestic workers, as has been demonstrated in the course of this chapter, still presents several shortcomings. Undoubtedly, since 2009, Jordan has introduced several regulations to tackle the problems associated with domestic workers through the introduction of several important regulations, namely the Domestic Workers under the umbrella of Labour Law through the System for Domestic Workers, Cooks, Gardeners, and Similar Categories No. 90/2009, as well as the Instructions for the Conditions and Procedures of Recruiting and Employing Non-Jordanian Workers No. 12/2015. It is also noteworthy to mention that in 2009 the Hashemite Kingdom also introduced a law concerning the Trafficking of Human No.9, which should regulate and give more protection to all the migrant workers that every year arrive in the country seeking a job, including female domestic workers.

Unfortunately, as I said at the beginning, the way forward is not yet over. The transition to a more equitable working and legal status for domestic workers has not yet been sufficiently and firmly achieved.

The main problem is that these laws are not yet sufficiently detailed and effective, since, as has been seen, in some cases the penalties are not commensurate with the crime to which they refer, nor do they apply the right pressure on possible offenders. Furthermore, these interventions have not yet prevented some employers and recruitment offices from abusing domestic employees, whether they located in the nation of origin or in Jordan. The persistence of these breaches could be linked to the lack of severity with which these steps are implemented and the persistent presence of the Kafala System that particularly exposes this category of worker to exploitation and vulnerability.

Even if the government of Jordan has made several enhancements towards a more widespread respect of worker's rights, the path is still long. The domestic workers

legal condition is not yet clear enough, creating problems and confusion even for many judges. The MOL should extend the Labour Law No. (8) of 1996 and in doing so broaden its provisions also to MDWs.

Moreover, to complete the transition to decent conditions for DWs, Jordan should ratify the ILO Convention No. 189, and in doing so fill the gaps in its Labour Law. In addition, in the last two years some steps have been taken to open up access to trade unions to migrant workers. Although 2019 marked an important year from the trade union point of view, the unavailability of more recent information does not bode well, especially considering the limited scope of any such achievement. More generally, there are still too many limits to guarantee complete freedom of expression and organization; Jordan has not ratified yet the ILO Convention No. (87) on Freedom of Association and Protection of the Rights to Organize.





## Chapter 3

### The Case of the United Arab Emirates

#### *3.1. Introduction*

The majority of women from South-East Asia and Africa tend to migrate to GCC (Gulf Cooperation Council) countries because they are considered to be rich and the standard of living is high, and MDWs believe they are more likely to find better job opportunities.

Through the analysis of the United Arab Emirates case, as for Jordan, I want to investigate if these changes in UAE legislation actually led to the creation of an optimal situation for the transition to decent work for domestic workers. With the support of the literature produced by various international organizations, such as the United Nation's Agency for the International Labour Organization (ILO), Human Rights Watch and the International Trade Union Confederation (ITUC), and Emirates National Institutions such as the Ministry of Human Resources and Emiratization, it had been possible to conclude that, despite several improvements that the UAE Government has implemented in recent years, such as the Federal Law No. 10 of 2017 that regulates the category of Domestic Workers, this category still faces several inequalities and abuses within the country.

After an introduction of the main conditions that allowed a huge section of the Emirates' population to employ domestic workers in their homes, my chapter will be divided- as the previous one was - into three main sections: First, I will deal with the aspect of international conventions, specifically the ILO conventions which the UAE has not yet ratified; secondly, I will analyze the changes that had taken place in recent years to the legislation that can be considered as the first steps towards decent work; finally, I will report the remaining shortcomings, which have been identified during my research, that can be considered to be an obstacle to the achievement of more favorable working conditions for migrant domestic workers.

### 3.2 *The Khadama addiction syndrome*<sup>267</sup>.

The United Arab Emirates (UAE) has a total population of 9.1 million people, of whom 12 percent are assumed to be UAE citizens and 8 million migrants, the majority of whom are temporary contract employees. Despite a deliberate strategy of "Emiratization", expatriates continue to make up more than 90% of the private sector labor force, while UAE nationals continue to work in secure and comparatively well-paying jobs in the country's large public sector<sup>268</sup>.

Taking a step back, the United Arab Emirates has a long tradition of importing the country's domestic workforce. In particular, this trend started to increase after the discovery of oil resources within the Gulf countries and consequently the Oil Boom in the early seventies that brought into these countries a huge flow of money, enhancing and increasing the standard of living. United Arab Emirates - abbreviated as UAE - was no exception<sup>269</sup>.

The higher standard of living led to a wider desire for modernization, not only in terms of infrastructure, but also culturally. As decades passed by, an increasing number of women desired to study and create their own career. Women typically manage the household and all aspects related to this role in Arab culture, and this point may have been an impediment for those women who wanted to work as well. Handling an onerous burden such as household management, while also pursuing a working career is extremely difficult. In this scenario, the demand for external assistance increased, especially since there were still a large number of families that also included those in need of care, such as grandparents<sup>270</sup>.

Possession of MDW has also become over time a status symbol within Gulf societies, as well as a matter of conscience within Emirate society. Having a domestic employee is considered as an "element" that brings prestige to the family<sup>271</sup>. According to the findings of the research conducted on this subject, while

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<sup>267</sup> Froilan T. Malit, Jr., Mouawiya Al Awad, Kristian Alexander "The "Khadama Dependency Syndrome": Determinants and prospects for the future of domestic work demand in the United Arab Emirates", OpenEdition Journal, 2018.

<https://journals.openedition.org/cy/3695?lang=en>

<sup>268</sup> International Labour Organization (ILO), 2021, United Arab Emirates, *International Labour Organization official website* [https://www.ilo.org/beirut/countries/united-arab-emirates/WCMS\\_533531/lang--en/index.htm](https://www.ilo.org/beirut/countries/united-arab-emirates/WCMS_533531/lang--en/index.htm)

<sup>269</sup> *Domestic Workers and employers in the Arab States: Promising practices and innovative models for a productive working relationship-ILO white paper*/International Labour Organization, Regional Office for Arab States. -Beirut: ILO, 2017, p.3.

<sup>270</sup> Although the GCC region is still young in contrast to Europe, North America, and East Asia, all GCC countries are expected that the new generations will be less populous than the older by 2050. In nearly all GCC countries, the average lifespan will be 75 years in 2025 and 80 years in 2050. (Abu Dhabi Dialogue, 2018, Future of Domestic Work in the Gulf).

<sup>271</sup> *Domestic Workers and employers in the Arab States: Promising practices and innovative models for a productive working relationship-ILO white paper*/International Labour Organization, Regional Office for Arab States. -Beirut: ILO, 2017, p.3.

having a domestic employee is seen as a benefit to the family or prestigious, the working relationship between domestic employee and employer is not always positive. In fact, there have been several testimonies and evidence of violation of worker's rights over the years.

The violation of these principles, as it also has been possible to notice in the case of Jordan, does not depend solely on the behavior of the individual employer, but also on the fact that recruitment agencies are not always clear-cut and that there are shortcomings in national laws concerning regulation and respect for workers' rights -in this case - migrant domestic workers.

With the intention of overcoming all these problems, the UAE in cooperation with all six GCC countries and 12 of the major Asian exporting domestic workforce (and members of the Colombo Process), have been working in tandem since 2008 to implement new agreements and national legislation, with the common aim of enhancing the working conditions of migrant workers, including domestic workers.

### 3.3 International Conventions

The United Arab Emirates joined the ILO in 1972. With regards to the most important international conventions, the United Arab Emirates, henceforth UAE, has ratified nine International Labor Organization (ILO) Conventions, including six of the eight Fundamental Conventions<sup>272</sup>.

The principal goal of the International Labour Organization (ILO) in introducing these six universal Conventions is to address subjects that are considered to be fundamental values and rights at work: freedom of association and full protection of the right to unionize; the removal of all types of forced or involuntary labor; the effective abolition of child labor; and the elimination of employment discrimination.

Table 3.1 below reports the list of the six ILO's Fundamentals International Conventions ratified along with the date of their implementation<sup>273</sup>:

Convention	Date	Status
C029-Forced Labour Convention, 1930 (No.29)	27 May 1982	In force
C100- Equal Remuneration Convention, 1951 (No.100).	24 February 1997	In force
C105-Abolition of Forced Labour Convention, 1957 (No.105).	24 February 1997	In force
C111-Discrimination (Employment and Occupation) Convention, 1958 (No.111).	28 June 2001	In force

<sup>272</sup> International Labour Organization (ILO), The ILO in the United Arab Emirates, *International Labour Organization official website* <https://www.ilo.org/beirut/countries/united-arab-emirates/lang--en/index.htm>

<sup>273</sup> International Labour Organization (ILO), 2017, Ratifications for United Arab Emirates, *International Labour Organization official website* [https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:103495](https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103495)

C138- Minimum Age Convention, 1973 (No.138)	02 October 1998	In force
C182-Worst Forms of Child Labour Convention, 1999 (No.182).	28 June 2001	In force

Source: ILO, [last accessed on 01/05/2021]

Unlike Jordan, the UAE has not ratified yet both the Conventions related to the right of unionize, namely the Convention No. (87) on Freedom of Association and Protecting of the Right to Organize Convention, (1948) and the Convention No. (98) concerning the Right to Organize and Collective Bargaining Convention (1949). It is important to say that in United Arab Emirates establishing any kind of union is not permitted by law. In fact, there is no presence of any type of union. This is a really crucial and important point for the transition towards decent work. The UAE has to ratify these conventions as soon as possible<sup>274</sup>.

In addition, regarding the International Labour Organization Convention No. (189) on Decent Work for Domestic Workers (entered into force on September 5, 2013), despite the fact that the United Arab Emirates in 2011 voted in favor of its establishment, the UAE has not yet ratified it, but has indicated its intention to ratify this paramount treaty shortly. As a main destination country for MDWs, the UAE should ratify this treaty as soon as possible and adhere to the treaty's requirements<sup>275</sup>.

Furthermore, the United Arab Emirates have shown a lack of concern for improving working practices by failing to support the transformation from informal to formal economies. In 2015, the International Labour Organization issued Recommendation No. 204, with the aim of assisting Member States to make the required improvements in their national laws to enable the transition to optimal and fair working conditions for all workers.

Again, like Jordan, the United Arab Emirates has not yet ratified it.

<sup>274</sup> UAE Labour Law, 2021, UAE Labour Law website, available at: <https://www.uaelaborlaw.com/>

<sup>275</sup> International Labour Organization (ILO), 2021, United Arab Emirates, *International Labour Organization official website* [https://www.ilo.org/beirut/countries/united-arab-emirates/WCMS\\_533531/lang--en/index.htm](https://www.ilo.org/beirut/countries/united-arab-emirates/WCMS_533531/lang--en/index.htm)

### *3.4 National legislation*

The UAE has taken steps to combat human trafficking and reform labor migration governance in recent years. In recent years, the ILO and the UAE Ministry of Human Rights have been discussing an integrated cooperation framework that will result in decent working conditions. Guaranteeing workplace safety, expanding labor regulation, developing labor conflict prevention and mediation processes, and generating national and non-national jobs are among the anticipated outcomes<sup>276</sup>. In the following paragraphs it will be analyzed if those changes within the national context are also valid for the category of migrant domestic workers, and if so what the benefits are.

#### *3.4.1 Labour legislation*

As already mentioned, domestic workers do not have special rights and legal recognition within many countries and the UAE is no exception. In fact, this specific category of female workers, as in the case of Jordan, is not recognized in the Federal Labour Act 1986 No. (10). Despite this, following a process that began in 2012, and thanks to two main drivers, namely the pressure of the international community and the volume of complaints, finally in 2017 the United Arab Emirates recognized this category through the introduction of a separate Federal Law, specifically the Federal Law No. (10), amended in the same year by the Federal Law No. (15). The main aim of this Regulation is to regulate and provide more protection and rights to Migrant Domestic Workers.

With the creation of the Law No. (10), the Emirate government had the objective of recognizing and guaranteeing some basic rights to domestic co-workers within its country. The key areas that Law No.10 covers are: contract, rights and privileges, prohibitions and regulations related to employment agencies. More specifically, it deals with all the basic issues related to the work of domestic workers such as payment of wages, weekly day-off, daily rest, sick leave and relative compensation, occupational safety, resolution in case of dispute, termination of the contract and both employer and employee rights and obligations<sup>277</sup>.

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<sup>276</sup> Ibidem.

<sup>277</sup> Federal Law No. (10) of 2017 on Domestic Workers.

Despite these important steps taken by the UAE, there is still a long way to go to achieve a situation of complete equality. As will be seen in more detail in the following paragraphs, although the No. 10 Act was an important step forward, it still has several shortcomings. In addition, the practice of many employers of considering the domestic worker as their own property does not facilitate the complete transition to a level playing field.

### *3.4.2 Trafficking in person*

Trafficking in person is one of the most hideous crimes in existence. The Government of the United Arab Emirates, according to the report of 2020 written by the US Government, still has a long way to go to reach all the minimum standards to combat and prevent human trafficking.

It is possible, however, to conclude that the government has in recent years reached a series of goals to try to improve the situation and tackle this crime and all the others associated with it, including forced labour. The UAE Government also signed four different agreements with exporting-labour countries to enhance the procedures of the recruitment process<sup>278</sup>.

Firstly, it is important to mention that the crime of people trafficking has been persecuted by government since 1980s, in accordance with the UAE Penal Code. More specifically, the crime of people trafficking is addressed by articles 346 and 347 of the Federal Law No.3 of (1987) last amended by Federal Decree-Law No.15/2020 dated 27 September 2020<sup>279</sup>:

#### **Article 346**<sup>280</sup>:

***“Shall be sentenced to temporary imprisonment, whoever brings in or out of the country a human being for the purpose of possessing, or disposing of, him as well as whoever purchases, sells, offers for sale or otherwise disposes of human being as a slave”***

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<sup>278</sup> Ibidem.

<sup>279</sup> Federal Law No. 15 of 2020.

<sup>280</sup> Art. 346 of Federal Law No.3 of 1987 issued on 8/12/1987 and amended for the last time by Federal Decree-Law No.15/2020 dated 27/09/2020. [https://elaws.moj.gov.ae/UAE-MOJ\\_LC-En/00\\_PENALTIES%20AND%20CRIMINAL%20MEASURES/UAE-LC-En\\_1987-12-08\\_00003\\_Kait.html?val=EL1](https://elaws.moj.gov.ae/UAE-MOJ_LC-En/00_PENALTIES%20AND%20CRIMINAL%20MEASURES/UAE-LC-En_1987-12-08_00003_Kait.html?val=EL1)

**Article (347)**<sup>281</sup>:

***“Shall be subject to a jail sentence for a term not exceeding one year and/or to a fine not in excess of ten thousand Dirhams, whoever forces a person to work with or without pay to serve a personal interest in cases other those admitted by law.”***

Source: EAU Gov.

In the articles reported above, the law provides that whoever exploits, purchases or sells or disposes of a person as a slave is considered as a perpetrator of Human Trafficking’ crime, and this person is subjected to a prison sentence that have not exceeding one year or a fine that have not to exceed 10.000 dirhams.

The real change came with the introduction in 2006 of the Federal Law No. 51 on Combatting Human Trafficking Crimes and then amended under the Federal Law No.1 of 2015 in which it was specified in more detail who is considered a perpetrator of the crime of trafficking of persons and its penalties, as provided in articles (1) bis (1) and article (2):

**Article (1) bis (1)**<sup>282</sup> :

- 1. “Whoever commits any of the following shall be deemed a perpetrator of a human trafficking crime:***
  - a. Selling persons, offering persons for selling or buying, or promising the same.***
  - b. Soliciting persons, employing, recruiting, transferring, deporting, harboring, receiving, receiving or sending the same whether within the country or across the national borders thereof, by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability the person for the purpose of exploitation.***

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<sup>281</sup> Art. 347 of Federal Law No.3 of 1987 issued on 8/12/1987 and amended for the last time by Federal Decree-Law No.15/2020 dated 27/09/2020. [https://elaws.moj.gov.ae/UAE-MOJ\\_LC-En/00\\_PENALTIES%20AND%20CRIMINAL%20MEASURES/UAE-LC-En\\_1987-12-08\\_00003\\_Kait.html?val=EL1](https://elaws.moj.gov.ae/UAE-MOJ_LC-En/00_PENALTIES%20AND%20CRIMINAL%20MEASURES/UAE-LC-En_1987-12-08_00003_Kait.html?val=EL1)

<sup>282</sup> Articles 1 of Federal Law No.51 of 2006



- c. *Giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation of the latter.*
2. *The following shall be deemed human trafficking, even if the same does not incorporate the use of any of the means provided in the previous Paragraph:*
  - a. *Recruiting a child, transferring, deporting, harboring or receiving the same for the purpose of exploitation.*
  - b. *Selling a child, offering the same for selling or buying.*
3. *Under this Article, exploitation includes all forms of sexual exploitation, engaging others in prostitution, servitude, forced labor, organ-trafficking, coerced service, enslavement, mendicancy, and quasi-slavery practices.*

*Source: NATLEX, ILO, 2014.*

Article (2)<sup>283</sup>:

*“Whoever commits any of the human trafficking crimes provided for in Article (1) of this law shall be punished by temporary imprisonment for a term of not less than five years, and a fine of no less than one hundred thousand AED.*

*The penalty of life imprisonment shall apply in any one of the following cases:*

1. *if the victim is a child or a person with disabilities.*
2. *If the act is committed by threat of murder or grave harm or involved physical or psychological torture, or if the perpetrator was armed.*
3. *the perpetrator of the crime has created, or assumed a leading role in an organized criminal gang, has been a member therein or participated in the actions thereof while being aware of the purpose of such gang.*
4. *The perpetrator is the spouse, a relative, descendent, or guardian of the victim.*
5. *If the perpetrator is a public servant or assigned to a public service, where he exploited the occupation or assignments thereof to commit the crime.*
6. *If the committed crime is transnational.*

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<sup>283</sup> Ibidem, Article (2).

**7. *If the victim has been inflicted, as a result of the crime, with an incurable disease or permanent disability.*”**

*Source: NATLEX, ILO, 2014.*

One of the most considerable differences that it is possible to observe between the Penal Code's articles and the Federal Law No. (51) regards the punishments. As already mentioned, UAE has acknowledged the crime of human trafficking and forced labour, even before the introduction of the Law No. (51) of 2006, but it was still too general and the penalties were not commensurate with the type of crime. The art. 347 of Federal Law No. 3 concerning the Penal Code, prohibits the purchase-sale and use of a person as a slave by punishing the guilty party with a temporary imprisonment, but there is lack of clarity about the length of the sentence. At the same time, under article 347 work through compulsion is considered illegal, but the punishment is still relatively mild (just one year of detention and/or a fine of maximum 10.000 Dirhams).

As abovementioned a real step towards the minimum standards necessary to combat this crime happened with the introduction of Federal Law No.51 of 2006 on Combatting Human Trafficking Crimes as amended under Federal Law No.1 of 2015. Under these provisions, it is possible to notice a hardening of the prison sentence from a period which had not to exceed 1 year, to a minimum of 5 years and a fine of no less than 100.000 Dirhams, or even the life imprisonment if the crime meets certain conditions.

Another problem related to human trafficking, or rather to its victims, was that they were not offered any kind of real support following the crime suffered. In this regard, several changes of considerable importance have been made within the Federal Law No.51, and its amendment of 2015. For example, according to the Art. (1) bis (2) added under the Federal Law No. (1) of 2015, the stages of evidence collection and investigation must follow a series of steps in support not only of investigations per se, but also of the person identified as a victim by ensuring linguistic support during investigations, psychological and medical support if necessary. Above all, the reception centers where the victims can find refuge before and during the legal process are mentioned. Another important step is the right to

legal advice. What is noteworthy is that the costs of hiring a lawyer, once established the amount of the fee, are incurred by the court (article (1) bis (2) paragraph (6)).

**Article (1) bis (2)**<sup>284</sup> :

*All phases of collecting evidence, investigation, and trials of relevance to Human Trafficking Crimes shall be subject to the following procedures:*

- 1. Identify the victim and the witness with their legal rights, in a language understood thereby, and allow them to express their legal and social needs.*
- 2. Submit the victim, should the need arise for such measure, to examination before any medical entity to receive psychological or physical treatment, where such person shall be admitted into one of the medical or psychological rehabilitation centers, if deemed necessary.*
- 3. Admit the victim into one of the sheltering centers or any other approved entity, should a need for such measure arises.*
- 4. Provide the necessary security for the victim and the witness, whenever they need the same.*
- 5. Allow the victim and the witness to stay in the State, should the investigation or trial entail their stay, and based on an order issued by the public prosecution or the court, as the case may be.*
- 6. The permissibility of the court to delegate an attorney for the victim upon request thereof, where the court shall estimate the attorney's fees. The decision of the court in this regard shall be conclusive, where fees shall be paid under a certificate issued by the court which pays the said fees.*

Source: NATLEX, ILO [last accessed on 27/03/202]

The point No.3, also has to be considered as an important achievement, not only on the basis of legal rights, but also because previously a worker was obliged to go

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<sup>284</sup> Article (1) bis (2) of Federal Law No. (51) of 2006 amended under Federal Law No. (1) of 2015.

back to her country of origin after which the permit was cancelled, rendering it even more difficult for a victim to follow the trial, not to mention the common lack of funds to file or sustain a lawsuit<sup>285</sup>.

Provisions regarding human trafficking, especially in relation to possible violations by recruitment agencies, are also available in the aforementioned Federal Act No. (10) of 2017. An example could be the article (3), paragraphs (3) and (4), related to the regulation of recruitment agencies, that clearly specify the prohibition of recruiting a person with the purpose of exploitation, and that any kind of abuses are not tolerated by the law<sup>286</sup>:

**Article (3) paragraphs (3-4)<sup>287</sup>:**

***3. if the workers are recruited or assigned to temporary employment by a third-party basis, the law prohibits the following:***

***a. discrimination among workers on the basis of race, color, gender, religion, political opinion, national or social origin.***

***b. The worker's verbal or physical sexual harassment.***

***c. Forced labour or human trafficking as defined in national laws and ratified international conventions.***

***4. It is prohibited to hire workers to perform tasks that are not covered by the provisions of this law without obtaining the concerned authorities' approval.***

Source: NATLEX, ILO [last accessed on 27/03/2021]

In addition, according to the art. (29) paragraph (3), of the same Regulation, related to penalties in case of violations of the provisions of the same law, any person that compels a domestic worker to abandon her workplace or give her shelter with the purpose of exploitation is incarcerated for a period of maximum of 6 months and has to pay a fee of no less than 10,000 Dirhams and not more than 100,000 Dirhams:

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<sup>285</sup> Vlioger Antoinette “*Domestic Workers in Saudi Arabia and the Emirates: a socio-legal study on conflicts*”, Quid Pro Books, New Orleans, Louisiana, USA, 2012.

<sup>286</sup> Federal Law No. (10) of 2017 on Domestic Workers, Official website of International Labour Organization. [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=107727&p\\_count=5&p\\_classification=22](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=107727&p_count=5&p_classification=22)

<sup>287</sup> Article (3) paragraphs (3) and (4) of Federal Law No. (10) of 2017 on Domestic Workers.

**Article (29) paragraph (3)<sup>288</sup>:**

***Without prejudice to a harsher penalty mandated by another applicable law, shall be incarcerated for a period not exceeding 6 months and charged a fine of no less than 10.000 Dirhams and no more than 100.000 Dirhams, or subjected to one of these two penalties:***

***3. Any person who facilitates the abandonment by the worker of his/her work or provides him/her with shelter for the purpose of exploiting the worker or provide him/her with unauthorized employment. The court may order the expulsion of this person upon conviction.***

Source: NATLEX, ILO [last accessed on 27/03/2021]

Unfortunately, although many positive changes have been incorporated into the country's legislation, the problem is not fully resolved yet. This point will be better dealt with in the following section.

### *3.4.3 Agencies*

In UAE the federal institution that regulates the entrance and the departure of MDWs is the Ministry of Human Resources and Emiratization (MOHRE). It is also the primary point of contact for the agencies and the employers.

The procedure for the families looking for a domestic worker in the UAE, starts with the selection of a labor supply company among the hundreds present in the country, which then takes charge of supporting the family in the management of the entire recruitment process. The sponsor may study resumes of employees at the chosen organization, which provides photographs and specifics about their background, qualifications, ethnicity, skin color, size, faith, and other characteristics. Once the employer has selected a person, the organization assists the sponsor in filing an application for the worker's entry visa<sup>289</sup>.

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<sup>288</sup> Ibidem, Article (29) paragraph (3).

<sup>289</sup> Begum, Rothna, 2014, "I Already Bought You: Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates" Human Rights Watch, United States of America, p.20.

With regards to the recruitment expenses, usually the employers expend an average of between Dh10,000 and 15,000 Dh, which includes the entrance permit fees, the airfare, the medical examinations, and also the recruitment agent fees. In the case of sponsors who are not Emirate citizens, they are requested to pay an extra Dh5,080 (\$1,384) for their worker's residency visa<sup>290</sup>.

Unfortunately, as already mention previously in the case study of Jordan, also in the UAE cases of violations by those agencies have been registered, which not all of them acting with due regard to the well-being and rights of the worker for whom they act as intermediaries.

Among the most common infringements involving recruiters are: the charging of fees to be paid by the worker for their recruitment or entry into the country, physical or psychological abuses, exploitation and failure to respect the contractual rights of the worker.

To protect and prevent such violations, the United Arab Emirates has sought to introduce several laws in recent years, which will be considered below.

One of the major violations registered, as identified by several domestic workers contacted by Human Rights Watch in a 2013 study, is the payment of extra money to recruiters in order to come to the UAE<sup>291</sup>. As a result, many migrant workers become trapped in debt loops that reduce the benefits of working abroad, such as the sending remittances at home, while increasing their reliance on their employer<sup>292</sup>.

To tackle this problem and to control and govern the licensing of recruitment agents into the country, in 2010 the Emirate Government issued the Ministerial Resolution No. (1283) which, amongst other things, prohibits the recruitment broker from charging the MDW any kind of fee:

*“any sums, monies, rights or gains under the name of commission, fees, or anything else for any reason and through any means whatsoever”*<sup>293</sup>

As has been demonstrated in the previous section of this chapter, there are several breaches that even if they are not always directly related to Human Trafficking, that

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<sup>290</sup> Ibidem, p.20.

<sup>291</sup> Ibidem, p.21.

<sup>292</sup> Ministry of Human Resources and Emiratization, 2018, “2017-2018 Worker Welfare Report”, MOHRE, p.16.

<sup>293</sup> ITUC, International Trade Union Confederation, *Facilitating Exploitation: a review of Labour Laws for Migrant Domestic Workers in Gulf Cooperation Council Countries*, Sharan Burrow, 2017. p.35.

does not mean that they are not considered as such. The often unclear and dishonest attitude of the recruitment agencies, is a problem that has existed for several years, and some of the rights that they have violated could also be connected to Human Trafficking.

To further support the conviction of these serious crimes, in the previously mentioned Federal Law No. (51) of 2006 on Combating Human Trafficking Crimes and amended under Federal Law No. (1) of 2015, there is an article that refers directly to agencies, Article (7):

**Article (7):**

***A corporate entity shall be punished by a fine of no less than one hundred thousand dirhams, and on more than one million dirhams, if its representatives, directors or agents commit, in its name or for its account, one of the human trafficking crimes enumerated herein; without prejudice to the responsibility and punishment of its dependent natural person. In addition to that penalty, a court may order temporary dissolution, or total closure of the corporate entity or closure of one of its branches<sup>294</sup>.***

*Source: National Committee to Combat Human Trafficking, United Arab Emirates, 2016.*

Substantially, article (7), as well as referring to penalties, provides that if an agent is charged with a crime concerning human trafficking or forced labour, the government has the right to revoke the license or suspend it. By restricting a person who has ties to human trafficking from being able to open an agency or work in it, it is hoped that the chances of such agencies being run by criminals prone to exploitation of various kinds can be reduced.

To make these provisions even more clear, in 2019 the MOHRE issued an additional Federal Law, No. (22) governing the activities of recruitment agencies. These changes were also adopted also in response to the Abu Dhabi Dialogue's Conference of 2018.

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<sup>294</sup> Article (7) of the Federal Law No. (7) of 2006 on Combating Human Trafficking Crimes as amended under the Federal Law No. (1) of 2015.

Firstly, the Federal Law No. (22) of 2019 provides that in order to be allowed to open an agency, the applicant must meet the following requirements<sup>295</sup>:

- The applicant for the license must be an UAE national.
- Must be at least 21 years old.
- Both he and his relatives must not have convictions against them.
- The applicant has to make a declaration that he is aware of the workers' rights.
- Employment contracts must comply with those drawn up by the MOHRE.

Regarding the revocation of a license, the abovementioned law broadens the confiscation of the license also in the case that the closest relatives of the broker have been charged with human trafficking crimes (Article (2) paragraph (C)). This also applies if he has been acquitted of this charge<sup>296</sup>.

In addition, in recent years it has been stipulated that in order to practice its activity in the UAE, an agency can only do so by registering at service centers determined by the MOHRE, such as the Tadbeer Center<sup>297</sup>.

The creation of Tadbeer Centres, which require all private recruiting companies engaged in the hiring of migrant workers to enroll under the scheme or risk losing their license to function, is central to the reformation of recruitment practices. The Tadbeer Centres are public-private partnerships tasked with regulating the recruiting and preparation of domestic employees, as well as educating them about their civil rights, resolving employer-employee issues, and verifying worker accommodation in accordance with MDWs minimum legal requirements. Each center had a room dedicated exclusively to conflict mediation, as well as a video link to MOHRE for official monitoring. In reality, however, these centers were hampered by their inability to access or investigate private residences. As of the end of 2018, the UAE had 23 operating Tadbeer Centers<sup>298</sup>.

In addition, regarding the other possible violations that could occur against MDWs, Federal law No. (22) with the aim of trying to make all the processes more official

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<sup>295</sup> Article () of Federal Law No.10 of 2017 on Domestic Workers.

<sup>296</sup> Article (2) paragraph (C) of Federal Law No. (22) of 2019 on Domestic Workers.

<sup>297</sup> Article (2) paragraph (f) of Federal Law No. (22) of 2019.

<sup>298</sup> Ministry of Human Resources and Emiratization, 2018, "2017-2018 Worker Welfare Report", MOHRE, p. 13.



and less exposed to the risks of violations or contractual omissions or changes by the employers or the recruitment agency, the latter is obliged to submit evidence that the worker has seen and signed the contract before the start of the new employment<sup>299</sup>.

Moreover, to protect and keep track of all the procedures and payments conducted by the agency, the latter is required to organize and prepare registers that serve as a database of all the information and contacts between the employers and employee and must conserve them for the duration of the license<sup>300</sup>. It is requested that all the agencies use the online applications and specific electronic programs suggested by the MOHRE<sup>301</sup>.

In addition, the agency is obliged to inform the worker, before she leaves her country of origin, of all the demands and conditions of the future employer, and must ensure the physical and mental health of the MDW. The worker must have been subjected to a full medical examination carried out by a competent health institution before she is officially recruited, especially to ensure that there are no chronic, infectious diseases or other conditions that may affect working capacity<sup>302</sup>. Recruitment agencies are contractually obliged to replace a domestic worker within the first three months of employment if the employer is not satisfied.

To protect the employee from possible retaliation by the employer, but above all to guarantee the *kafeel's* investment, the recruitment agency shall be required to reimburse the latter in the following circumstances<sup>303</sup>:

- the Agency undertakes to repay the full amount if the worker leaves his job at the end of the probationary period without any reason relating to the employer
- or without acceptable justification.

The reimbursement shall take place only if the employer files the request no later than one month from the date on which the employee has returned to the agency or has been notified<sup>304</sup>.

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<sup>299</sup> Article (2) paragraph (H), of Federal Law No. (22) of 2019.

<sup>300</sup> Ibidem, Article (2) paragraphs (L) and (M).

<sup>301</sup> Ibidem; Article (2) paragraph (I).

<sup>302</sup> Ibidem, Article (7).

<sup>303</sup> Ibidem, Article (10) paragraph (1).

<sup>304</sup> Ibidem, Article (10) paragraph (4).

On the other hand, the Agency is exempted from reimbursing the sum in the event that it was the employer in the first person who requested the recruitment of a particular worker and the latter then refused the job<sup>305</sup>.

It should be noted that where it is the MDW who terminates the contract or leaves the job (see point 2.3) due to breaches of the contractual terms by the employer, there is no provision for any kind of financial reimbursement.

Moreover, under the auspices of the Abu Dhabi Dialogue, the UAE and Philippine governments launched in 2014, a project with the principal purpose of increasing a mutual government supervision over the recruiting process, implementing a zero-fee recruitment and reducing the possibility of migrant workers covering the costs of their own employment<sup>306</sup>.

Another effective means to control and monitor the behavior of recruitment agencies is conducting investigations or inspections in the field, especially after receiving a complaint of abuse or exploitation from a MDW.

#### *3.4.4 Contract*

In 2009, the United Arab Emirates introduced a standard contract for migrant workers which it also extended to migrant domestic workers. The maximum length of the contract is of two years (one year longer than in Jordan), with a probationary period of three months, following which the employer has the possibility to renew or hire another worker<sup>307</sup>.

Below (Box 3.1) is a model of a standard contract, in this case for a Bangladeshi domestic worker:

#### **Box 3. 1: Standard Contract for Domestic Workers:**

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<sup>305</sup> Ibidem, Article (10) paragraph (3).

<sup>306</sup> Ministry of Human Resources and Emiratization, 2018, “2017-2018 Worker Welfare Report”, MOHRE, p. 16.

<sup>307</sup> Anders Legal Consultancy, 2020, Fact Sheet: Employing Domestic Workers in the UAE, *Anders Legal Consultancy official website*, <https://anders.ae/en/law-firm/lisa-merod/publication/fact-sheet-employing-domestic-workers-in-the-uae> [last access: 29/04/21, 04.30 p.m.].

## Employment Contract for Domestic Workers and the Like

This Contract was entered into on this day ..... Corresponding to ...../..... /..... in  
.....between

First Party (referred to herein as 'Employer')

Name:.....  
.....Sex: ..... Nationality..... Passport  
No..... Tel ..... Add .....

Second Party (referred to herein as 'Employee'):

Name:.....  
.....Sex: ..... Nationality.....  
Passport No..... Tel .....  
Add.....

Emerg.Cont. .... Name of Bangladesh Agency  
.....Mob.....

2. The Second is entitled to thirty (30) days paid annual leave against the whole

Article One:

(Type & Nature of Job)

1. The Second Party shall accept to work for the First Party in the capacity of (.....) against a monthly wage of Dhs. (.....) to be paid in cash at the end of each month within a period of seven (7) days from its due date plus accommodation, food and drink.
2. The First Party may not engage the Second Party in risky and /or unethical duties.
3. The Second Party shall serve a probationary period of three (3) months.

Article Two:

(Salary & Method of payment)

1. The second party shall sign payroll receipts to prove their handing over and receipt of salary. The payroll receipts shall be written both Arabic and English and maintained by the First Party for further reference.
2. The First Party shall exert its best efforts to help the Second Party transferring salary in accordance with banking regulations applicable in UAE.
3. The First Party shall have the right to deduct from the Second Party's salary in lieu of damage or loss of any goods or property attributable to default or negligence of the Second Party in adhering to the First Party's instruction and the deduction of salary should be not more than five working days in the month.

Article Three:

(Obligation of the Second Party)

1. The Second Party shall fulfill its obligations and duties required by such a profession as per recruitment terms.
2. The Second Party shall carry out its work in an honest, sincere, loyal and confidential manner, respecting the Second Party's privacy and sanctity. The Second Party shall further comply with values, habits, customs and traditions prevalent in UAE.

Article Four:

(Obligations of the First Party)

1. The First Party shall provide the Second Party with a hygienic and convenient accommodation in addition to appropriate work outfit.
2. The First Party shall treat the Second Party in the humanly manner that preserves its dignity and physical safety.
3. The First Party shall enable the Second Party to contact its relatives overseas and post its letters and collect them with confidentiality; the Second Party will hence incur relevant postage costs.
4. The First Party shall provide the Second Party with medical treatment and healthcare as per the applicable regulations in UAE.
5. In the event of death of Second Party during the term of contract, the First Party shall repatriate remains and personal effects of the deceased party to its home country and incur all relevant costs. The First Party shall further pay the concerned entity all dues payable to the deceased party as soon as possible.

Article Five:

1. Arrangement of working hours will be conducted through agreement between the two parties to commensurate with the nature of the profession and duties assigned to the Second Party provided that the Second Party will be given sufficient time for rest which shall be no less than 8 continuous hours.
2. The Second is entitled to thirty (30) days paid annual leave against the whole term of Contract. If the Second Party opts against using the leave, it will be one month pay in lieu of leave plus the value of return ticket besides the its regular monthly salary.
3. The Second Party is entitled to one paid day off per week, as per agreement with First Party. However, it may be engaged on its weekly day off, where, in such case, it will be entitled to day off in lieu, or a compensation equal to that day's pay.

Article Six:

(Travel Ticket)

1. The First Party shall bear the cost of the Second Party's air ticket to its home country upon expiry of the contract of two years without renewal.
2. Upon Renewal of contract, should the Second Party opt for vacation, the First Party shall provide the Second Party with a return ticket to its home country.

Article Seven

1. This contract is valid for two (2) year effective from date of commencement of actual work and it may be extended by mutual approval of both parties.
2. Should the First Party sever this contract prior to its expiry date, it should provide the Second Party with one way ticket to home country plus one month's pay pursuant to contractual compensation
3. Should the Second Party sever this contract of own accord prior to its expiry date and after the probation period, it will incur repatriation costs to home country in full
4. The right of the second party sever this considered null and void if suddenly leave work and prove it and without informing the first party, the contract is canceled in the event that the second party to leave work without a legitimate excuse for ten consecutive days during the period of the contract.
5. The rights of the second party is canceled in the event of his absence from work and the contract is terminated if he stops working for fifteen non- consecutive days during the period of contract.
6. In the event of contract expiry and lack of desire to renew it, the two parties shall sign a final clearance letter acquitting each party from any rights due to the other. .

Article Eight

(Dispute between the two parties)

Should any dispute arise between the two parties and disputes shall be referred to the Dispute Settlement Department at the Naturalization and Residency Directorate and in case of not reaching a compromise within two weeks; the dispute will be referred to competent courts for settlement.

Article Nine:

(Attestation of Contract)

1. This contract is subject to provision of the Federal Law No. 6 of 1973 pertaining to the entry and residence of foreigners and amendments, decisions and bylaws thereof.

2. The First Party commits to carry out the attestation procedures of contract with the General Directorate of Residence & Foreigners Affairs as per applicable procedures.

This Contract was edited in triplicated in Arabic and English and to be signed by the two parties. Each Party keeps a copy. The third copy shall be deposited in Naturalization and Residency Directorate for Future reference.

First Party Name: Signature:

Second Party Name:

Signature:

Source<sup>308</sup>: [cgbddubai.org](http://cgbddubai.org)

The introduction of the standard contract in 2009, and its revision in 2014, is of particular importance especially because it was the first real official document that provided some basic fundamental rights to domestic workers such as: a minimum of 8 hours of rest every day, a day off per week (if not granted by the employer, the worker must be compensated for it) and annual leave of 30 days each year<sup>309</sup>.

With the introduction of Law No. (10) of 2017 on Domestic Workers, another fundamental objective that the Government wanted to reach was the definition of the concept of informed consent. By introducing the Federal Law No. (10) of 2017, the objective was to ensure that employees are informed about the contractual conditions before arriving in the UAE. The principal aim of this federal law is to prevent future MDWs from being lured into a spiral of debt by promises of job conditions that, upon their arrival in the UAE, turn out to be different from those promised<sup>310</sup>, as has already happened.

A breach such as the one just mentioned occurred for example in the case of the Filipino government that presented the request that its citizen would be paid around

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<sup>308</sup> Employment Standard Contract, Cgbdubai, available at: <http://cgbddubai.org/wp-content/uploads/2017/02/Form-1-Employment-Contract-1.pdf>

<sup>309</sup> Begum, Rothna, 2014, "I Already Bought You: Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates" Human Rights Watch, United States of America, p.22.

<sup>310</sup> Ministry of Human Resources and Emiratization, 2018, "2017-2018 Worker Welfare Report", MOHRE, p.12.

400 dollars per month, but at their arrival to the country of destination they received a lower salary with respect to the one previously indicated, in many cases equal to just 200 dollars per month<sup>311</sup>. This type of scam, as abovementioned, is termed *contractual substitution*, a widespread practice by agencies receiving migrant workers in UAE and elsewhere.<sup>312</sup>

The new legislation also specifies, in addition to the conditions already set out, further circumstances through which either the employer and the domestic worker can terminate the existing contract<sup>313</sup>:

- In the event of death of the worker or disability. (in the event of disability, the employer is responsible for the employee's return to her country of origin).
- In case of death of the employer.
- Agreement by both parties to terminate the contract.
- The violation of one of the two parties' obligations.

Most important to highlight is that even the employee has the right to terminate the contract, for a reason of her own, once the probation period is completed. When this situation occurs, the MDW has to pay, at their own expense, the ticket to return home and must compensate the employer the equivalent of a month's salary. If the worker has applied to stay within the country to work for another employer, it will be for MOHRE to decide whether to grant the new working permit or not<sup>314</sup>.

According to the law, the contract shall be signed by the prospective DW and the employer before the departure.

The UAE government also adopted the Cabinet Resolution No.22 of the year 2019 to supplement Federal Law No. 10 of 2017, in which the right to withdraw from a contract is extended to also include domestic workers in the cases in which they are victims of physical and/or verbal abuse, sexual harassment, or if the employer fails to fulfil his contractual obligations<sup>315</sup>. The new law allows the worker to appeal to

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<sup>311</sup> Vlioger Antoinette "*Domestic Workers in Saudi Arabia and the Emirates: a socio-legal study on conflicts*", Quid Pro Books, New Orleans, Louisiana, USA, 2012. p. 127.

<sup>312</sup> Ibidem, p.122.

<sup>313</sup> Article (22) of the Federal Law No. (10) of 2017 on Domestic Workers.

<sup>314</sup> Ibidem, Article (23).

<sup>315</sup> Article (9) paragraph (2) of Resolution No. (22) of 2019.

specialized courts in the event of a need for discontent caused by a reasonable violation of DMs' right or disputes at the workplace and it should ensure a workplace inspection service where this is necessary<sup>316</sup>.

#### 3.4.5 Wages

Before the implementation of the Federal Law of 2017 and the Cabinet Protocol of 2019<sup>317</sup>, domestic workers had very limited chances to change their employers, such as in case he/she did not fulfil his/her duties as employers or if the employers gave them their permission. When a MDW once entered the receiving country became aware of the lower wage, she could do nothing but accept the new conditions and work anyway. In addition, the government does not stipulate a minimum salary for domestic workers, making the decision of the amount of the wage even more vulnerable to the discretion of each employer or agency.

In fact, neither in the Labour Law No. (8) of 1986 nor in its amendment issued in 2016, has a minimum salary been stipulated. The legislation provides only that salaries must cover the basic daily needs of the employee, art. (63):<sup>318</sup>

#### **Article (63):**

*By virtue of a decree-law issued upon the proposal of the Minister of Labor and Social Affairs and the consent of the Cabinet, the minimum wage and cost -of-living index shall be determined either in general or for a particular area or a particular profession.*

*The Minister shall submit his proposal to determine or reconsider the minimum wages upon the consultation of the competent authorities and the professional entities of the employers and workers, if any, and based on the studies and tables of fluctuation of the cost -of-living set by the competent authorities in the State. In view of ensuring that the minimum limits are sufficient to fulfill the basic requirements of the workers and guarantee the livelihood thereof.*

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<sup>316</sup> Ibidem, Article (16) paragraph (C).

<sup>317</sup> Federal Law No. (22) of 2019 on Domestic Workers.

<sup>318</sup> Deepak Machado, 2021, UAE Labour Law- What has actually changed in 2020?, *Emirates Diary*, available at: <https://emiratesdiary.com/uae-labour-law-2/what-has-changed-in-new-uae-labour-law-2016> [last access: 31/03/21, 15:30].

Since 2017 with the introduction of Federal Law No. (10) of 2017 on Domestic Workers and then the Protocol No.22 of 2019, the situation has started to change. According to the new Federal Law No. (10) of 2017 the minimum wage is still not specified, but there are other provisions that help to safeguard domestic workers' rights, such as Article (10):

**Article (10):**

***The monthly wage shall be paid in Emirati Dirhams within a maximum period of 10 days after it is due. The Ministry may determine the system it deems best to ensure the payment of wages and its method.***

***The worker shall be intitled to the total wage as from the date of his/her entry to UAE or the date his/her status has been modified. The payment of the total wage shall be evidenced by a written receipt or any other form of evidence decided by the Ministry<sup>319</sup>.***

With this article, the law shall ensure the worker is paid at least once a month and the payment must be made within a maximum of 10 days. More relevant, the Ministry is entitled to provide and suggest the right method of payment such as the electronic, to keep a track of the payments completed. in fact, already in 2009, the Emirate government, to address the issues of delayed or unpaid salaries, introduced the Wage Protection System by Ministerial Decree No. 788<sup>320</sup>, to make the payment of salaries more transparent and secure. According to the Ministry of Labour this system would help to track payments and if a violation occurred it gave the possibility to intervene against the transgressors.

Many MDWs have been paid electronically, but since it is still at the discretion of the employer which instrument of payment to use, there are still many MDWs that are payed in cash.

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<sup>319</sup> Article (10) of Federal Law No. (10) of 2017 on Domestic Workers.

<sup>320</sup> Ministerial Resolution No. (788) of 2009 on the Wages Protection System (WPS).



In 2020 a collaboration between the First Abu Dhabi Bank and MOHRE led to the emergence of a cashless payment system that should help to further protect workers, with the hope that as many employers as possible will soon use it<sup>321</sup>.

To returns to contracts, as abovementioned (see the contract's section), to ensure that the worker is aware of her salary, the contract of employment must also include the value of the total wage and the way in which it will be paid<sup>322</sup>.

In 2018, in response to the numerous breaches related to the salary, the main countries which export domestic workers to the UAE have agreed the minimum salaries that MDWs should expect to earn, specifically<sup>323</sup>:

- Philippines \$400 (Dh1,470)
- India Dh1,100 (\$300)
- Nepal Dh900 (\$245)
- Sri Lanka Dh825 (\$225)
- Indonesia Dh800 (\$218)
- Bangladesh Dh750 (\$205)

The consistent breaches that occur even after the implementation of these new interventions, makes it even more difficult to pursue one of the six central points that UAE imposed on itself following the accession of the Global Compact for Migration. One of these commitments was providing fair and decent working conditions for all migrant workers, including MDWs, who should be entitled to the same labour benefits as other workers, as well as policies to raise awareness of gender inequalities<sup>324</sup>. In September 2016 the United Nations General Assembly voted to create the Global Compact for Secure, Orderly, and Regular Migration, for help the development towards decent work for migrant workers. The creation of the pact started in April of 2017. The UAE has been actively involved in the transition

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<sup>321</sup> Zacharias, Anna, 2020, Domestic Workers 'salaries protected by new payment system, *The National News, UAE*. available at: <https://www.thenationalnews.com/uae/domestic-workers-salaries-protected-by-new-payment-system-1.1046762> [last access: 08/04/21, 16:36].

<sup>322</sup> Article (7) of Federal Law No. (10) of 2017 on Domestic Workers.

<sup>323</sup> Begum, Rothna, 2014, "*I Already Bought You: Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates*" Human Rights Watch, United States of America, p.24.

<sup>324</sup> Ministry of Human Resources and Emiratization, 2018, "2017-2018 Worker Welfare Report", MOHRE, p.18.

and government was committed to the compact's implementation in December 2018<sup>325</sup>.

### 3.4.6 Working conditions

According to several NGOs, including Human Rights Watch, MDWs in UAE are likely to suffer from various abuses by their employers, such as: labor exploitation, passport confiscation, physical and psychological harassment, denial of freedom of movement or contact with their families and inappropriate living conditions<sup>326</sup>.

Migrant domestic workers, especially in the past, were depicted as untrustworthy. A clear example of the collective imaginary is the television advertisement that was created by the Abu Dhabi Judicial Department that showed the MDW as a potential hazard in case of disputes. This widespread feeling of mistrust towards MDWs has, with time, only worsened their condition<sup>327</sup>.

As a result of this lack of trust, many employers prefer to limit the freedom of movement of their employees and their communication outside the household. To exercise more control over their employees, sponsors often used to retain their personal documents, including the passport, even if it was considered illegal<sup>328</sup>.

Moreover, Human Rights Watch in 2013 and then published in 2014, conducted a large number of interviews of migrant domestic workers to monitor and understand their conditions. For example, of the 99 MDWs interviewed, 22 asserted that their kafeels had beat them up. The most common ways in which they were beaten were: kicking, punching, slapping, pulling of their hair, choking, spitting<sup>329</sup>.

*“They slap me in the face and kick me. They have a stick for you. If I make a small mistake, they would hit parts of my body—back legs, back and head. Sir would slap*

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<sup>325</sup> Ibidem, p.18.

<sup>326</sup> Human Rights Watch, October 22, 2014, “I already bought you: Abuse and exploitation of female migrant domestic workers in United Arab Emirates”, *Human Rights Watch*, <https://www.hrw.org/report/2014/10/22/i-already-bought-you/abuse-and-exploitation-female-migrant-domestic-workers>

<sup>327</sup> Migrant Rights, “Abu Dhabi Judicial Department Ridicules Maids,” August 6, 2013, <http://www.migrant-rights.org/2013/08/abu-dhabi-judicial-department-ridicules-maids/> (accessed August 28, 2014) and “Abu Dhabi Judicial Department Ridicules Maids,” YouTube, <https://www.youtube.com/watch?v=8msmhaQfZac> (accessed August 28, 2014).

<sup>328</sup> Retaining passports is ‘forcible labour,’” *Gulf News*, June 13, 2006, <http://gulfnews.com/news/gulf/uae/employment/retaining-passports-is-forcible-labour-1.240660>

<sup>329</sup> Begum, Rothna, 2014, “*I Already Bought You: Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates*” Human Rights Watch, United States of America, p.32.

*or punch me in the face. If they come back from the mall and I am not finished they would beat me. They would say, "If you had done work then we won't hit you."*<sup>330</sup>

*-A Filipina Worker, 30 years-old*

Source: Human Rights Watch, 2014.

The majority of MDWs who talked to Human Rights Watch said that their employer or family members had exposed them to psychological and verbal harassment, including screaming and bullying them, intimidating them, and shaming them. Many employees said that their bosses viewed them as animals or as if they were filthy, and that physical interaction with them was contaminating<sup>331</sup>

One of the major problems is that the larger number of MDWs that are victims of physical violence are scared to talk about their experiences for fear of retaliation:

*"He [the sponsor] slapped me and banged my head on the wall, then spit on me. He beat me with a cable on my back and put a knife to my face. After beating me up he left. [Later] Some of the family asked, "Why you have bruises?" I was afraid if I tell I will get beaten up again"*<sup>332</sup>.

*-An Indonesian worker (22 years old)*

Source: Human Rights Watch, 2014.

Restricting communication with the outside world is another tool employers use to exercise their power over the worker. Confiscation of personal mobile or the general prohibition on using phones and other technological devices such as computers, make it even more difficult for MDWs to keep in touch with their families and friends, and more complicated for them to complain or get assistance if they are the victims of violence<sup>333</sup>.

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<sup>330</sup> Ibidem, p. 32.

<sup>331</sup> Ibidem, p. 35.

<sup>332</sup> Ibidem, p. 32.

<sup>333</sup> Ibidem, p.40.

The situation started to change thanks to the introduction of the already mentioned Federal Law No. (10) of 2017 on Domestic Workers, which has provided several basic rights and protections for migrant domestic workers. According to this law, MDWs are entitled to a paid day-off per week, which if the employer requires the worker to be available to work, the sponsor has to guarantee an alternative day of rest (Article (12)); MDWs are entitled to 30 days of paid leave each year (Article (13)); the migrant domestic worker is entitled to 30 days of sick leave each year but of which only the first 15 are paid; in addition, Article (15) of the same law, provides a list of the employer's obligations, which include : providing decent accommodation for the DW, proper meals and attire, and medical treatment, and respecting the worker's right to keep his/her personal documents and belongings. Last but not least, paragraph (5) of the same article, requires the employer to treat the worker with respect and dignity and preserve his/her health<sup>334</sup>.

In addition, to tackle the condition of vulnerability and guarantee more support to MDWs, the MOHRE in 2018 launched the first electronic/smart system to track cases where the domestic workers legislation has been broken and reporting labor grievances that the breach may originate. Signing applications, acceding to live chat with other people, writing legal opinions in memos, digital voice response, star-based success appraisal, and the support of legal opinion of the personnel and support center are some of the main tools that will be provided to help MDWs in need, and it can all be done with an electronic signature and electronic fingerprint.<sup>335</sup>

#### *3.4.7 Home inspections*

The Ministry of Human Resources and Emiratisation's (MOHRE) principal aim is to create an extensive system conforming to the international standards and conventions to protect and enforce the laborers' rights, and at the same time safeguarding the interests, duties and rights of the employers<sup>336</sup>.

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<sup>334</sup> Federal Law No. (10) of 2017 on Domestic Workers.

<sup>335</sup> MOHRE, 2018, Protection of Domestic workers' rights, *United Arab Emirates Ministry of Human Resources and Emiratisation* available at: <https://www.mohre.gov.ae/en/projects/protection-of-domestic-workers-rights.aspx>

<sup>336</sup> United Arab Emirates Ministry of Human Resources & Emiratisation, <https://www.mohre.gov.ae/en/about-us/mohre-strategy.aspx>

One of major tasks of MOHRE is to regulate, manage and enforce the complaints from workers engaged in the private sector of the labour market and combat forced labour across all seven emirates through a comprehensive inspection program that consists of: “A periodic inspection visit to the site and establishment, which is set up to prepare a comprehensive report to ascertain the extent of compliance in implementing the provisions of the labour law and effective ministerial resolutions”<sup>337</sup> led by a team of labour inspectors trained to tackle and detect human trafficking crimes<sup>338</sup>.

According to the analysis conduct by the US Department in 2020, the authorities, when they encounter a violation of the Labour Act, tend to manage this breach administratively and therefore do not report it later in the official documents as a violation of the Human Trafficking Act.

A clear example can be found in the case of complaints related to delays or non-payments which, based on what has been found in recent years, the government tends to handle through the dispute resolution process or with the electronic payment system (WPS).

In this way if, as a result of the necessary controls, the employer is found guilty of a violation of the worker’s right to be paid on a monthly basis, he is not usually prosecuted for having committed a crime linked to art. (1)(c) of the Federal Law No. (51) on Human Trafficking, but is instead punished with penalties of an administrative or financial nature.<sup>339</sup>

For domestic workers it is not mandatory for their salaries to be paid through the telematic system, thus making their grievances even more difficult to verify and prosecute. When added to their already more vulnerable position, this makes this category of worker even more susceptible to exploitation.

Where the perpetrator is a recruitment agency, grievances are punished with temporary withdrawals of licenses, fines of no less than 100.000 dirhams and no more than 1.000.000 dirhams or a temporary ban on new recruitments<sup>340</sup>.

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<sup>337</sup> United Arab Emirates Ministry of Human & Emiratisation, Inspection of work environment and requirements pdf, <https://www.mohre.gov.ae/en/our-services/inspection-of-work-environment-and-requirements.aspx>

<sup>338</sup> United Arab Emirates Ministry of Human Resources & Emiratisation, <https://www.mohre.gov.ae/en/about-us/mohre-strategy.aspx>

<sup>339</sup> Article (1) paragraph (C) of Federal Law No. (51) of 2006.

<sup>340</sup> Ibidem, Article (7).

In 2017 the ILO launched a labour inspection program led by specialists of the same organization. The 6-month initiative is part of a larger strategic collaboration program between the ILO and the UAE, which aims to reinforce MOHRE's capacity to enhance labor working conditions, workplace safety, and health in the UAE. The labor inspector training program would produce a well-trained and skilled force of inspectors working for the safety of foreign employees and employers.

This program includes 26 different modules that will be supplied in three main sections to 400 inspectors<sup>341</sup>:

- 1) Inspectors will be trained on training-of-trainers. They will learn all the technical methodologies with the aim of creating a team of inspector trainers that then will work within the MOHRE.
- 2) After passing the first stage, inspectors will pass on what they have learned during the section 1 to the other inspectors.
- 3) Section three will prioritize and implement a work shadowing scheme, to guarantee that the material gained during the previous sections is implemented during the inspection visit phase.

Although, this is the first initiative of this kind in the MENA region, it has unfortunately not been possible to find recent updates concerning the progress of this programme.

#### *3.4.8 Abu Dhabi Dialogue*

Between the sending and receiving countries in Asia, a high degree of interdependence on temporary migrant labor has arisen over the last two and a half decades. Gulf countries have the largest share of foreign workers to total workers (35.6%), accounting for 11.7 percent of all migrant workers globally<sup>342</sup>.

As a result, workers of Asian descent play a major role in GCC economies, and their expertise, experience, and hard work have contributed to the GCC's rapid growth over the last 25 years. Gulf countries are not the only ones to take advantage of the temporary migrant movement, which also benefits the socioeconomic growth

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<sup>341</sup> ILO, 2017, Towards Better Working Condition in the UAE, *ILO News*, Dubai, available at: [http://www.oit.org/beirut/media-centre/news/WCMS\\_581067/lang--en/index.htm](http://www.oit.org/beirut/media-centre/news/WCMS_581067/lang--en/index.htm) [last access: 08/04/21, 23:34].

<sup>342</sup> Abu Dhabi Dialogue, 2018, About Abu Dhabi Dialogue, ADD- Abu Dhabi Dialogue among the Asian Labor Sending and Receiving Countries, available at: <http://abudhabidialogue.org.ae/about-abu-dhabi-dialogue> [last access: 03/04/21, 01:30]

of the countries of origin. According to World Bank data, roughly \$98 billions of remittances came from GCC countries in 2014. Furthermore, the migrant workers return home with new skills and experience, as well as new networks and business plans<sup>343</sup>.

The Abu Dhabi Dialogue (ADD) was founded in 2008 as a platform for dialogue and collaboration between Asian labor origin and destination countries. The ADD is a voluntary and nonbinding inter-government consultative organism and is made up of 12 Asian Colombo Process Member States namely Afghanistan, Bangladesh, China, India, Indonesia, Nepal, Pakistan, Philippines, Sri Lanka, Thailand and Vietnam and the six GCC countries namely Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates. Malaysia is also included. There are also observers such as the Swiss Agency for Development and Cooperation (SDC), the International Organization for Migration (IOM), the Migrant Forum in Asia, as well as stakeholders from the private sector and civil society, who can take part in the individual programs launched by the ADD. The UAE has the permanent secretariat, while Sri Lanka is the new chair-in-office<sup>344</sup>.

The ADD aims to allow stable, orderly, and routine labor migration in some of the world's largest temporary labor migration corridors as a state-led Regional Consultative Process. The ADD assists its members in developing alliances for implementing best practice and enhancing workers' conditions. Moreover, it is considered as an opportunity to learn from one another's experience by multilateral collaboration<sup>345</sup>.

The ADD mainly focuses on four tracks concerning transient labour migration<sup>346</sup>:

- Alternative Employment Recruitment Models.
- Information and Organization Programs.
- Skill Evaluation and Recognition.
- The Role of Technology in the Management of Labour Mobility.

The recruiting process in the pilot project starts with the employer submitting a letter of request to the UAE government, which evaluates the terms and conditions

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<sup>343</sup> Ibidem.

<sup>344</sup> Abu Dhabi Dialogue, 2018, Abu Dhabi Dialogue Members, Abu Dhabi Dialogue among the Asian Labor Sending and Receiving Countries, available at: <http://abudhabidialogue.org.ae/members#all> [ last access: 03/04/21, 03:12]

<sup>345</sup> Ibidem.

<sup>346</sup> Ministry of Human Resources and Emiratization, 2018, "2017-2018 Worker Welfare Report", MOHRE, p.15.

before sharing it with the exporting country's government, which conducts its own screening and posts it on a website open only to approved recruitment firms. By providing formal paths to overseas jobs, the mechanism ensures that the terms and conditions of the contract are not changed, and it reduces the chance of migrants paying fees<sup>347</sup>.

Workers' orientation and information programs serve as both a safeguard and a source of empowerment. Since 2014, the UAE and the ADD have collaborated on a Comprehensive Information and Orientation Program. The goal is to ensure that staff are mindful of their rights and obligations, as well as prepared for the changes they will face. These programs seek to provide employers with specialized and high-quality benefits, identify workers' talents in order to promote their career versatility both within and outside the industry and arrange salaries based on employees' ability and competency standards<sup>348</sup>.

The UAE has also described the recruitment pilot project as an opportunity to develop a collaborative forum that supports the project while also having the potential to scale up to enable a much broader range of functions and be extended to include the needs of other Member States, in collaboration with the Philippines<sup>349</sup>.

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<sup>347</sup> Ibidem, p.16.

<sup>348</sup> Ibidem, p.17.

<sup>349</sup> Ibidem, p.17.



### ***3.5 What is still missing***

In the previous section, we discussed the most positive developments in mostly legislative terms, with a focus on the status of domestic workers. Unfortunately, despite many promising developments, I encountered many key challenges and shortcomings that remain, both legislatively and culturally.

As in the case of Jordan, although with the introduction of the aforementioned Federal Law No. (10) of 2017, many things have changed, domestic workers still cannot be said to be fully represented in the United Arab Emirates' legislation and consequently it does not grant sufficient protection to MDWs; if they are migrants their situation is made even more difficult by their, frequent and deliberate, status of irregular within the country or their lack of status within the society.

#### ***3.5.1 Labour Legislation***

The Emirates Federal Labour Law No.8 of 1980 (UAELL) and amended Labour Law No.8 of 2007 provide what should be the general basis of the labour relations and also sets out the guidelines related to what is a decent work condition for all the laborers, including remuneration, working hours, health, leave and the resolution in case of disputes between employers and employee. This law would be considered as good step when it comes the general idea of regulation of worker's rights with the exception that MDWs are not considered in it as attested in Art. 3(c) of UAELL<sup>350</sup>:

*The provisions of this Law are not applicable to the following categories:*

- 1. a) Officials, employees and workers of the Federal Government, Governmental Departments of the Member Emirates of the State, Officials, employees and workers of municipalities as well as other officials, employees and workers, working in Federal and local public Departments and organizations, as well as the officials, employees and workers appointed for Governmental Federal and Local Projects.*
- 2. b) Members of the Armed Forces of Police and Security.*

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<sup>350</sup> ITUC, International Trade Union Confederation, "*Facilitating Exploitation: a review of Labour Laws for Migrant Domestic Workers in Gulf Cooperation Council Countries*, 2017. p.32.

3. c) *Domestic servants working in Private residences and the like.*
4. d) *Workers employed in Agriculture or pastures, other than those persons employed in the agricultural corporations engaged in processing their products or those permanently engaged in operating or repairing mechanical machines required for Agriculture.*<sup>351</sup>

Source: Federal Labour Law No. 8 of 1980 on Regulation of Labour relations.

Despite the issuing in 2017 of a special Federal Law on Domestic Workers (No. (10)), the fact that MDWs are still excluded by the National Labour Law, stresses even more the fact that DWs are not seen as all others workers and in so doing do not enjoy the same rights and protection. The exclusion from the Labour Law associated with the Kafala System, only increases discrimination and makes this category even more vulnerable to exploitation, abuses and in many cases harassment; not to mention the dysfunctional working relationship that it creates between employer and employee. Excluding domestic workers from labour law rights, the majority of whom are women, is also a direct violation of the UAE's commitments under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which has been ratified by UAE in 2004. CEDAW mandates the abolition of all forms of violence and discrimination towards women, also in the workplace<sup>352</sup>.

### *3.5.2 Forced labour*

Despite the major positive steps previously discussed, governmental policies contain several gaps in many different important sectors, such as the persistent existence of the sponsorship system called Kafala which does nothing but worsen an already vulnerable and more traffic-prone status.

The main issue according to a report of trafficking in person of 2016 published by the US State Department, is that the UAE government has rarely conducted serious

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<sup>351</sup> Federal Labour Law No. 8 of 1980 on Regulation of Labour relations.

[http://ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=11956&p\\_country=ARE&p\\_count=148](http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=11956&p_country=ARE&p_count=148)

<sup>352</sup> Begum, Rothna, 2014, "I Already Bought You: Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates" Human Rights Watch, United States of America, p.28

investigation to prosecute forced labour related crimes, so in the end the application of the articles is still inconsistent.<sup>353</sup>

Moreover, this law does not refer directly to the category of Migrant Domestic Workers as possible victims of trafficking in person or forced labour. MDWs are penalized even more due to the type of workplace in which they have to work, because of the private context of a home, further away from controls and scrutiny. In addition, the kafala system being recognized by the government is not considered a factor that can be decisive to facilitate what can be called a kind of *modern slavery*<sup>354</sup>.

### 3.5.3 The Kafala System

As already mentioned in the second section of this chapter talking about contracts, migrant domestic workers are not free to leave or change their employer without permission before the contract expires. Abuses and exploitation are not generally considered to be a valid reason to leave a job. In this scenario a MDW has two main options to choose from: the first is comprised of three different steps: firstly, she has to complete her contract remembering to submit at least one month prior notice to her employer to let him know to not renew the contract, secondly, she has to ask to the *kafeel* to cancel her visa and work permit at the General Directorate for Residency and Foreign Affairs, and thirdly, to procure a new sponsor within 30 days and provide the necessary new documentation<sup>355</sup>.

The second option is to seek her employer's approval to change the sponsor by signing a certificate of non-objection with the latter<sup>356</sup>.

Like in Jordan, in the UAE if a MDW leaves her sponsor before the expiration of her contract term without the permission of her *kafeel* and the consent of the UAE authorities', she is considered to have absconded. Since the standard contract provides that MDWs' rights are "null and void" if a laborer flees her workplace,

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<sup>353</sup> U.S. Department of State, 2016, "*Trafficking in Persons Report*", Office to monitor and combat trafficking in persons, 2016, p.382. <https://2009-2017.state.gov/documents/organization/258876.pdf>

<sup>354</sup> U.S. Department of State, "*2020 Trafficking in Persons Report: United Arab Emirates*", Office to monitor and combat trafficking in persons, 2020. <https://www.state.gov/reports/2020-trafficking-in-persons-report/united-arab-emirates/>

<sup>355</sup> Article 68(d) of the Executive Regulations of Federal Law No.6 of 1973 on the Entry and Residence of Foreigners.

<sup>356</sup> ITUC, International Trade Union Confederation, *Facilitating Exploitation: a review of Labour Laws for Migrant Domestic Workers in Gulf Cooperation Council Countries*, Sharan Burrow, 2017. p.33.

this violation of the terms of the contract is seen as a civil offence punishable through different types of sanctions, fines, deportation or even one-year entry ban. To make this situation even more harsh, article (63) of the Executive Regulations of Entry and Residence of Foreigners Law No. (6) of 1973 enacted by UAE in 2007 provides a ban of one-year entry in the country to the employee that has violated the rules<sup>357</sup>. Moreover, Article 79 (D) of the abovementioned regulation provides for the deportation of the migrant worker whose, consequently of the annulment of visa and working permit, she has not left the country<sup>358</sup>.

On the other hand, migrant workers covered by the Federal Labour Law No. (8) have more flexibility when it comes to changing their jobs. In 2010, the Ministry of Labour enacted the Ministerial Resolution No.1186 which certifies that migrant workers can present the request of changing employer directly to the Labour Ministry after that their contract is expired. The main problem is that none of these new regulations, the one just mentioned and the following, apply to MDWs<sup>359</sup>.

The resolution also provides that if they are victims of a lack of compliance with the contractual obligations by their employer or in case of a dispute, they are not the cause of the litigation, they even have the possibility to file the request of change even before the date of expiration<sup>360</sup>. When one of the above conditions is met, the Ministry may issue a new work permit without the consent of the previous employer. In addition, the Ministry of Labour in 2015 issued three new Ministerial decrees Nos. 764,765 and 766 concerning the flexibility of changing job by migrant employers and granting more coverage prohibiting the risk contract's substitution and giving the possibility to the employee of terminate his contract if he pays an indemnity to his employer of up to the total amount of three-monthly payments<sup>361</sup>.

#### 3.5.4 Contract

Despite the changes within the standard contract viewed in the second section of this chapter, the new standard contract, revisited in 2014, still contains several gaps.

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<sup>357</sup> Begum, Rothna, 2014, "*I Already Bought You: Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates*" Human Rights Watch, United States of America, p.19

<sup>358</sup> Ibidem, p.18.

<sup>359</sup> Article (3) paragraph (C) of Labour Law No. (8) of 1980.

<sup>360</sup> Ibidem, p.18

<sup>361</sup> ITUC, International Trade Union Confederation, "*Facilitating Exploitation: a review of Labour Laws for Migrant Domestic Workers in Gulf Cooperation Council Countries*, 2017. P. 34.

For example, it does not clearly refer to a maximum of hours per day that a MDW has to work, nor does it contain dispositions for overtime pay or workers allowance, nor provisions of minimum monthly salary. In this way, employers are able to pay their DM a very low wage.

It is also noteworthy to say that in many cases, MDW have testified to have signed a contract before leaving their country of origin in which there was written all the details about the tasks that they were going to carry out during their new employment, the promise of a higher salary, to discover only once arrived into the EAU that the contract was substituted with another one. The substitution of contracts is really common in this country and it becomes an even greater problem in cases of disputes between employer and employee because the court takes into consideration only the standard contract signed upon their arrival on the UAE soil<sup>362</sup>.

Favorable contractual terms that persuade them to abandon their families and country, frequently turn out to be inconsequential. In order to obtain the permit to enter and stay in UAE, the contracts they have signed in their country of origin with the agencies back home are replaced with the UAE standard contract, which has lower wages and less privileges and security. Moreover, the contract that is replaced in UAE, is the only one that then has legal value in case of problems.

For example, when disputes occur between the employer and the MDW, the authorities take into consideration only the UAEs' standard contract and not the one negotiated before the departure in their home countries<sup>363</sup>.

According to a testimony gathered by Human Rights Watch in November 2013, one Filipina DW, for example, claimed that she went to the Immigration Department after her *kafeel* failed to pay her salary for 7 months and she tried to ask him to pay her according to the wage that was specified in the original contract, equal to 1,470 dinar (\$400). The problem is that the employer when called out by the department affirmed that the monthly wage reported in the UAE contract was 400 dinars (\$110). The department ordered him to pay the amount written into the

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<sup>362</sup> Begum, Rothna, 2014, "*I Already Bought You: Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates*" Human Rights Watch, United States of America, p.23.

<sup>363</sup> Section (8) of United Arab Emirates' Standard Contract for Domestic Workers, 2014.

UAE standard contract not giving any attention to the contract signed by the MDW before her arrival<sup>364</sup>.

Since 2017, after the enactment of the Law No. (10) that regulates Domestic Workers, MOHRE has dealt with dispute resolution.

### 3.5.5 Withholding Wages

Regarding salaries and more generally their payment, shortcomings were also detected in this area. According to a questionnaire filled by a group of two dozen domestic workers conducted by Antoinette Vlieger on Philippines and Indonesia female domestic workers between 2007-2009 and published in 2012, a large number of MDWs also stated that they never sign a contract before their leaving and they did not even know what their salary would be or the only thing that they had was a verbal promise of what their wages consisted of<sup>365</sup>:

	JAKARTA	MANILA
Don't know	19%	28%
Up to \$210	80%	36%
More than \$210	1%	36%

	JAKARTA	MANILA
Don't know	23%	51%
Up to \$210	76%	20%
More than \$210	1%	29%

SOURCE: Vlieger Antoinette "Domestic Workers in Saudi Arabia and the Emirates: a socio-legal study on conflicts", 2012.

According to the results found during the above-mentioned research published in 2012, and visible in the table 3.2 above, it is possible to notice the following

<sup>364</sup> Begum, Rothna, 2014, "I Already Bought You: Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates" Human Rights Watch, United States of America, p. 23.

<sup>365</sup> Vlieger Antoinette "Domestic Workers in Saudi Arabia and the Emirates: a socio-legal study on conflicts", Quid Pro Books, New Orleans, Louisiana, USA, 2012.p.130.

situation: in case of a verbal salary promise, even if the majority of the Indonesians tend to be more informed about how much they will earn (80%), they are not promised a salary that is higher than 210 dollars. On the other hand, Filipinos domestic workers' case, where even though a larger percentage of them were not aware of their future earnings (28%), and this happened quite frequently, they were promised a salary equal to or greater than 210 dollars (36% in contrast to 1% of Indonesians).

The same trend can be seen in the case of contract (table 3.3), where the percentage of Indonesians who are told how much the salary would be, it is generally higher (76%), but in the case of Filipinos when the contract is present, a good percentage is promised a higher average salary 29% in contrast to 1% of Indonesians.

In essence, it could be said that Indonesian agencies or recruiters tend to be more likely to reveal the compensation that these workers will earn, but when this happens in the Philippines, the average wage agreed is generally higher.

Many Filipino employees, for example, said that their original agreement stated that they would be paid \$400 (Dh1,470) a month, while UAE contracts said that pay would range from Dh700-1200 (\$190-330). Camille L., a Filipina worker, said she signed a contract in the Philippines offering her a Dh1,200 (\$330) monthly wage and one regular rest day per week, but her recruiting agent told her she would only be paying Dh800 (\$218) in the UAE<sup>366</sup>.

Another important violation that often occurs related to salaries, is the deduction of all or only part of them.

It has often occurred that contractors, brokers or employers subtract from the MDW's payroll a sum to cover the costs incurred during the recruiting process, either on the basis of pure conjecture or, in certain instances, as provided for in Article (11) paragraph (2) of Federal Law No.10 of 2017<sup>367</sup> and in Article (2) paragraph (3) of the standard contract, an employer may withdraw from her salary in the event of damage, losses or thefts that according to the employer were led by the worker to his detriment<sup>368</sup>.

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<sup>366</sup> Ibidem, p.23.

<sup>367</sup> Article (11) paragraph (2) of Federal Law No. 10 of 2017.

<sup>368</sup> Employment Contract for Domestic Workers and Like, <http://cgbdubai.org/wp-content/uploads/2017/02/Form-1-Employment-Contract-1.pdf>

### 3.5.6 Working conditions

Even if there are laws that protect, at least in part, migrant domestic workers, as it been stated until now there are still many cases of violation of their rights<sup>369</sup>.

As already mentioned, the UAE's labor law excluded from its protection the category of DWs. In this way as concluded in some articles dating back to 2019 and 2020 the abuses are not stopped. As already mentioned, the UAE's labour law excludes completely the category of DWs constricting them in a condition more vulnerable to exploitation and abuse. At the same time, while the Federal Law No. (10) of 2017 guarantees to this category more rights, on the basis of the continuing violations perpetrated by employers and elsewhere, it suggests that it is still too weak in relation to the actual labour law.

The Covid-19 pandemic has highlighted and accentuated the ways in which the rights of migrant workers are infringed. Tens of thousands of migrant workers were laid off and were stuck in the country in deplorable conditions. While thousands fled the UAE following summary dismissals, many found it difficult to return to their countries of origin due to travel restrictions and expensive airfare, leaving them unable to afford the payment of rents or food.

Many migrant workers were also left with unpaid wages for work completed prior to their dismissal. Authorities enforced harsher Covid-19 lockdown constraints on domestic workers, prohibiting them from seeing anybody outside of their employers' homes and advising employers not to permit their DWs to meet anyone outside. Considering that many employers already relegate and overload domestic workers, such circumstances led to increased risk of abuse, including rising working hours, no short breaks, and physical and verbal abuse<sup>370</sup>.

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<sup>369</sup> McGill, Andrew and Modica Scala, Angela, May 31, 2019, UAE Migrant Domestic Workers Abuse, *Americans for Democracy and Human Rights in Bahrain (ADHRB)*, <https://www.adhrb.org/2019/05/uae-migrant-and-domestic-workers-abuse/>

<sup>370</sup> November 19, 2020, United Arab Emirates: events of 2020, *Human Rights Watch official website*, Dubai, <https://www.hrw.org/world-report/2021/country-chapters/united-arab-emirates>



### 3.5.6 *Home inspections*

Home inspections are a delicate point made even more complicated because of socio-cultural and legal obstacles that limit the scope of the government in being able to interfere in the private housing. In addition, according to the already above cited report in the second section of this chapter regarding the home inspections, in the report published in 2020 by the US State Department that deals with monitoring and combating trafficking in human beings, the UAE government has not yet sufficiently strengthened and deepened the issue of workplace inspections<sup>371</sup>.

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<sup>371</sup> U.S. Department of State, “2020 Trafficking in Persons Report: United Arab Emirates”, Office to monitor and combat trafficking in persons, 2020. <https://www.state.gov/reports/2020-trafficking-in-persons-report/united-arab-emirates/>

### ***3.6 Conclusion***

United Arab Emirates, with the oil-boom of the seventies has become a common destination country for workers coming from a large number of countries, especially from Asia such as: Philippines, Indonesia, Bangladesh, Sri Lanka, Nepal, India and also from Africa especially Ethiopia.

Migrant workers that arrive in UAE often face several breaches of their rights, from the deprivation of their freedom of movement that usually leads to the confiscation of their passport, violation of the contractual terms, such as the non-payment of their wages and in some cases, they are subjected also to harassment and abuses of different kinds.

In the last two decades, the UAE has taken several steps to enhance and broaden the protection of workers' rights, such as the introduction of the Federal Law No. (10) of 2017 on Domestic workers amended by the Cabinet Resolution No. (22) of 2019; the Federal Law No. (51) of 2006 on Combating Human Trafficking Crimes and its amendment No. (1) of 2015 to enforce the fight against the forced labour prosecuting with the support of this law, possible transgressors; Abu Dhabi Dialogue; the electronic payment system. Throughout these Laws, the Government has finally started to recognize the domestic category, but above all has formalized their rights consequently broadening their protection umbrella.

Unfortunately, there are still numerous cases of violation and filing of complaints coming from female migrant domestic workers that, despite all these initiatives, have to face difficult conditions in their workplace.

The main issues that UAE has to improve from an internal point of view, and that consequently would enhance their working conditions are: enforce and monitor the home inspections, dissuade employers and recruitment agencies from abusing and taking advantage of women who every year try to reach this country to work as domestic workers, make punishments linked to crimes such as trafficking in persons or violations of MDWs rights even more severe. Last but not least, the UAE should revise the existing contract, making it even more effective and strong to ensure that these workers are first and foremost protected from a contractual point of view.

To achieve these goals, one of the first steps that UAE should undertake to enhance and strengthen MDWs position, is including them in the scope of the Labour Law No, (8) and extend the same rights of all the other categories of workers to DWs;

ratifying the ILO Convention No. (189) on Domestic Workers and align all workers' provisions with internationally required standards.

In addition, from an international point of view, it is imperative that UAE ratifies the ILO Conventions No. 87 and 98 concerning the right of bargaining of the workers and the creation of trade unions.



## Conclusions

As it has been possible to consider during the analysis previously carried out of the two case studies, respectively the Hashemite Kingdom of Jordan and the United Arab Emirates, the transition from the informal economy to decent work is a very complex and pressing matter.

The difference between these two countries, although they represent similarities from the point of view of legislative choices, lies respectively in the most extrinsic and intrinsic motivation that has influenced these two countries to work for change. To better understand this point, we must first of all focus on the timing with which the two countries implemented the first laws that made this change recognizable, also from a legislative point of view. Since in both cases the category of domestic workers is not covered by national labour law, it is possible to consider as an official transition starting point, the introduction of an officially representative law in which domestic workers were considered for the first time from a legal point of view. In this regard, the introduction of the Regulation No. (10) of 2009 on Domestic Workers, Cook, Gardeners and Similar Categories for Jordan and in the case of United Arab Emirates the introduction of the Federal Law No. (10) of 2017 on Domestic Workers will be taken as a starting point.

It can immediately be noticed by observing the year in which the implementation took place that Jordan was the first country to introduce this law in 2009, while it is necessary to wait almost eight more years for the UAE. Jordan despite being less socio-economic developed with respect to the UAE, started this transition earlier. As already mentioned, during my research I developed an opinion on what could be the intrinsic and extrinsic motivation behind the difference in the timing of the two countries.

It is important firstly to say that, in recent decades, in addition to the possible internal pressures due to a growing awareness of workers' rights as such and a possible greater inclination of government policies to give more room for maneuver and expression to both native and migrant workers, a great role in this process also has to be conceded to the exogenous pressure coming from the international community.

In the case of Jordan, starting from an internal pressure's point of view, despite the continuing rights violations, there has always been more freedom of expression concessions to the workers. Moreover, the Hashemite Kingdom has, for decades, a tradition of immigration coming from different realities and contexts; just thinking about the Palestinians refugees, the Arabs coming from neighboring countries, not to mention the Syrian crisis of the last decade due to the war. As result, the continuing wave of immigration has made Jordan one of the major working destinations especially for both those people who want to work outside their countries seeking better opportunities and refugees. This condition has meant that over the years many of these migrants made Jordan their home, thus creating a situation in which there are foreign people residing in the country for several generations. To this could be added the greater openness of the government towards policies which, although still too restrictive, grant more freedom of representation and expression in the event that a class of workers encounters some problems (Jordan has ratified the Convention No.98 on Right to Organize and Collective Bargaining).

In essence, the problem occurred with the expanding foreign population, and consequently the need to create new jobs and regulate those new workers, which might have influenced the reason why Jordan has implemented more laws over the years that included migrants too. This was especially due to the fact that in Jordan migrants become part of the population, not only as foreigners as happens in UAE. For example, taking into consideration data of 2017, an estimated 340,995 migrant workers were registered with the MOL, although numerous sources indicated that the number in the informal sector was higher. The apparel industry alone, one of the biggest in the country, employed roughly 70,000 people, a large percentage of whom came from Bangladesh, India and Sri Lanka. Another 47,591 migrants, mostly from Bangladesh and the Philippines, served as domestic workers<sup>372</sup>.

An important step, for example, that Jordan made to deal with these problems and try to create a better work environment, is the implementation of the Jordan Decent Work Country Programme (2018–2022) expresses from the tripartite groups (government, employers and employee) in collaboration with the ILO's with the commitment to promote decent work, social equity and justice. The Decent Work

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<sup>372</sup> Regional Office for Arab States, 2018, "*Decent Work Country Programme: The Hashemite Kingdom of Jordan (2018-2022)*", International Labour Organization, Beirut, p.9.

Country Programme (DWCP) 2018–2022 is Jordan's third strategic programming framework endorsed by the ILO and its members. In fact, it is important to say that Jordan was the first Arab country to implement a Decent Work Country Programme (DWCP) in 2006 that should have terminated in 2009. After that, it started its second DWCP between 2012 and 2015 (extended later till 2017)<sup>373</sup>.

Furthermore, it is important to bear in mind that in Jordan there are also non-governmental organizations, such as Tamkeen, which unlike in the UAE, have the possibility to exist and to finalize their actions in order to defend and give support to the cause of the inequalities of the workers. In UAE there is not the presence of national organizations that could provide the same support.

Talking about non-governmental organizations, the pressure coming from the international community had and still has relevance. As it will be seen in the case of UAE, organizations such as Human Rights Watch or as mentioned before, the ILO, worked to push the country towards this transition through the introduction of conventions and regulations ad hoc.

On the other hand, the United Arab Emirates, started a more serious commitment to promote a more decent transformation later than Jordan. Differently to Jordan, UAE started its transition more recently, in 2017 with the implementation of the Federal Law No. (10). One of the main differences that occurred during my research is that UAE also has a tradition of inward migration, but of a different kind.

The major migration within the country started especially after the oil-boom of the 1970s with the consequent incrementation of the welfare of its citizens. This incrementation leads to an evolution within the society that also led women studying at universities and having the desire to start their own career. This widespread welfare led the Emiratis to want more and more benefits. It is in this context that a *social contract* emerged between the government and their citizens. The social contract, noted and still partially does, originated from the moment that the government realizing that it could not respond to all the requests coming from the population which was living the positive changes coming from the economic boom, understood that instead it could provide *means* through which they could facilitate their life at a very affordable cost: migrant domestic workers<sup>374</sup>.

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<sup>373</sup> Ibidem, p.5.

<sup>374</sup> V. BERGEM, Knut. *The Role of the State in the in-Migration of Domestic Workers to Jordan and the GCC Countries* In: *Migration et politique au Moyen-Orient* [online]. Beyrouth: Presses de l'Ifpo, 2006 (creato il 31 mai 2021). Disponibile su Internet: <<http://books.openedition.org/ifpo/4775>>. ISBN: 9782351594780. DOI: <https://doi.org/10.4000/books.ifpo.4775>.

The migration to EAU was, and still is, characterized by the idea that those emirates were a land of opportunities in which the migrant workers could find work opportunities and then go back to their own countries. In EAU the migrant worker does not exist, especially coming from least developed countries, that is considered as part of the local society, they are always seen as foreigners, as second-class citizens, who arrive within the country only temporarily. In doing so, there has never been the occasion in UAE to pave the road to englobe the foreign part of their population with the local one. Especially because in UAE there is a net class difference between native citizens and migrant workers from poorer countries. In this regard, the government and the mentality of the majority of the Emiratis families, look at the migrant domestic workers as a “means” through which to achieve an even more comfortable life.

In this way there has never been the real necessity to regulate the migrant workers at the same level as the local ones. In addition, within the UAE those categories of workers have less rights and freedom of expression or complaints, more or less none.

The real change came through, not from a real change within the society’s mentality, but much more thanks to the push of the international community. International organizations such as ILO, Human Rights Watch, Amnesty International, in recent years have conducted several inquiries with the aim of checking and find out if there were violations of the worker’s rights within the country. Through the study of several of their reports published in the last decade, those international NGOs have underlined the necessity of the UAE to start to implement a serious change within their legislation in favor of the migrant workers trying to align with the international standard directives.

According to an article published by Human Rights Watch and my personal opinion, the extrinsic motivation that pushed UAE towards the change is the desire to keep an idea of progressist country from outside, not from a real will born entirely internally towards a fairer transition<sup>375</sup>. This could even explain why a country that is considered as “developed” by the World Bank, and that from a socio-economic point of view is quite developed, waited until 2017 before starting to implement a

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<sup>375</sup> Human Rights Watch, 2021, United Arab Emirates: Events of 2020, *Human Rights Watch* official website: <https://www.hrw.org/world-report/2021/country-chapters/united-arab-emirates>



first law that includes the category of migrant domestic workers. This last concept will be better explained through another example in the next paragraph.

Another example that could be considered paramount to underline the fact that UAE have implemented a change of facade is the foundation of the Abu Dhabi Dialogue. The Abu Dhabi Dialogue (ADD) as already mentioned in Chapter 3, is a forum based on the dialogue and cooperation between the different members. The principal aim of this forum is to develop the basis to enable a better labour migration, especially in the GCC area that is considered one of the major corridors of temporary workers' migration. The ADD promotes the creation of a network between the exporting and importing workforce countries to enhance the migration and labour practices learning even from the experience of each state<sup>376</sup>.

Despite the fact that the ADD was established in 2008 and since the migration of migrant domestic workers in the GCC countries, with the purpose of this paper especially in UAE, this phenomenon has been common for decades, and that UAE represent the permanent secretariat<sup>377</sup>, it is of particular interest noting that for what concerns MDWs the UAE have made a real change only in 2017. Starting from this consideration, it is possible to say even in this situation that although UAE plays a very important role in this cooperation and should therefore also serve as an example to other countries, it has taken a long time to make significant changes to protect this particular category of worker, having regard also to the numerous appeals made by international organizations about several violations towards MDWs over the years.

In this regard it can be assumed that this adjustment, especially over the past 5 years, has been particularly influenced by external pressures coming from the international community rather than by a real internal push or interest in the topic, otherwise the internal changes would have begun sooner.

Starting from this consideration, it is possible to reflect on the assumption that the UAE is maybe more willing to participate in international projects, reflecting the idea that they care more about presenting the image of a progressive country, rather than concentrating on implementing real changes within the country.

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<sup>376</sup> Abu Dhabi Dialogue Among The Asian Labor Sending and Receiving Countries, 2018, About Abu Dhabi Dialogue, *Abu Dhabi Dialogue*.

Official website: <http://abudhabidialogue.org.ae/about-abu-dhabi-dialogue>

<sup>377</sup> Ibidem.

Jordan on the other hand, although it needs to work harder to enhance its situation and it has no part in the ADD, gave the impression that it has partially been influenced by the international community's pressures too, it has worked more significantly at the national level. Just thinking, as already mentioned above, that Jordan, before participating in an international program, has been trying to implement since 2007 a national program to enhance working conditions at home (Jordan Decent Work Country Program)<sup>378</sup>.

A more practical example could be the different positions that these two countries have with regards to trade unions. On the one hand, Jordan, which has ratified only one of the ILO's two fundamental conventions on trade unions and the right of workers to organize, has shown greater openness to this issue over the years. In fact, in the Hashemite kingdom in general, according to the articles (97) and (98) of the Labour Law No.8 of 1996 and its amendment No, (11) of 2004, it is possible for workers to establish a trade union, although with several limitations and as an example, the fact that they must be at least 50 members<sup>379</sup>. As far as migrant workers are concerned, the situation is even more restrictive, since they cannot, for example, form one of their own<sup>380</sup>. But in the last three years the situation would seem to be hopeful. Just think of the concessions that have been made to women workers in the textile sector. In addition, according to research, although it has unfortunately not been possible to find information on progress, it would appear that from 2019 the situation is also starting to move in this direction for domestic workers<sup>381</sup>. In general, it is important to stress that, along with the international and national pressure, the presence of trade unions in Jordan have created a more favorable environment for the implementation of policies that could enhance the situation of migrant domestic workers.

On the other hand, in the UAE trade unions have no right to exist. In fact, starting from the fact that UAE have not yet ratified either of the two fundamental conventions related to the unions and freedom of bargaining, namely the Convention No. 98 and No.87 and it does not recognize this right in its legislation

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<sup>378</sup> Regional Office for Arab States, 2018, "*Decent Work Country Programme: The Hashemite Kingdom of Jordan (2018-2022)*", International Labour Organization, Beirut.

<sup>379</sup> Labour Law No. (8) of 1996 and its amendment No. (11) of 2004, articles (98) and (97).

<sup>380</sup> Kalan, Jonathan "*Migrant workers in Jordan are making their voices heard*", International Labour Organization, 12 December 2012. Available at: [https://www.ilo.org/global/about-the-ilo/mission-and-objectives/features/WCMS\\_195584/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/mission-and-objectives/features/WCMS_195584/lang--en/index.htm)

<sup>381</sup> 2019, "*The establishment of the first union for the female domestic workers in Jordan*", *Majalat news*, March 03. <https://www.majalat.org/news/establishment-first-union-female-domestic-workers-jordan>

either. The right to form trade unions, even for the Emiratis, has not been introduced in the new Labour Law changed in 2020 either<sup>382</sup>.

This example in particular highlights what has been stated until now: as already mentioned in the previous paragraphs, although the most rapid change in the UAE may suggest the idea that this country is more organized and willing to change, compared to Jordan which, as far as I stated earlier, is taking longer, this is just a change of appearance.

As was stated in Chapter 1, the transition to decent work is not an easy and immediate process. The fact that the UAE have shown to have had the ability to make a number of significant changes in such a short time implementing more substantial internal changes in favour of MDWs, shows not only that they would have the means to do so and sooner than they have done in practice, but especially that they want to maintain as much as possible the status quo.

Despite the above-mentioned differences in the process of transition to decent work, the fact that both countries, Jordan and United Arab Emirates, even after the implementation of more favorable laws, still have numerous violations, shows another important fact that is relevant for a fairer transition, that both still have gaps. Firstly, both countries need to end as a sponsorship system the Kafala, which not only represents one of the major obstacles to achieving a better and more fair relationship between employer and employee, but by its nature it concentrates too much power in the hands of only one of the two stakeholders, namely the *kafeel* (employer). The kafala system creates the perfect condition in which violations can occur, because, as it has been possible to see in the previous paragraphs, the migrant domestic worker starts to be seen no longer as an employee but more as an investment that needs to be protected through the lack of freedom or the requisition of personal documents. In addition, the Kafala system in giving so much power to the employer only emphasizes even more certain differences and social dynamics that have come to be created with time, such as the idea that a domestic worker is a second-class worker, who is only there to respond to the demands and needs of the household<sup>383</sup>.

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<sup>382</sup> UAE Labor Law, 2021, Welcome to United Arab Emirates Labor Law, *UAE Labor Law*  
Official website: <https://www.uaelaborlaw.com/>

<sup>383</sup> Robinson, Kali, 2021, What is the Kafala System?, *Council on Foreign Relations*.  
Official website: <https://www.cfr.org/backgrounder/what-kafala-system>

Secondly, as already mentioned, in 2011 the United Nation's agency for the Labour, namely the ILO, in response to the volume of violations and exploitations that the category of domestic workers were facing (and still do) has issued the Convention No. 189 on Domestic Workers. The main aim of this Convention is to provide a guide through which to help the member states to implement better laws to regulate and broaden the protection of domestic workers<sup>384</sup>. Both, Jordan and United Arab Emirates, as well as many other countries, have not ratified it yet, but if they really want to put in practice a regulation which could guarantee and be useful in this context, it is necessary that they ratified it. A first step could be the integration of this category within the National Labour Law, respectively the Labour Law No. (8) of 1996 for Jordan and the Federal Labour Law No. (8) of 1986 in the case of UAE. In addition to the Convention No. (189), both countries should ratify all the Fundamental ILO's Conventions, more in specific the Conv. No. (87) for Jordan and Conv. No. (87) and (98) for UAE.

More generally, despite all the differences and difficulties that both countries could face during the transition from informal economy to decent work, the ratification of the Recommendation No. (204) of 2015, that as already mentioned in chapter 1 of this dissertation, is the first formal regulation referred to in this process, is strongly recommended as a guide to make this transition more effective and definitive, not only for domestic workers but also for all other categories working in the informal economy<sup>385</sup>.

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<sup>384</sup> Convention No. (189) of 2011 on Domestic Workers.

<sup>385</sup> Recommendation No. (204) of 2015 on the Transition from Informal Economy to Formal economy.



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## ***International Conventions and National Laws***

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