Convention No.190 and Its Compatibility with The Jordanian legislation

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Executive Summary

This paper comes in the context of shedding light on the International Labor Organization (ILO) Convention 190 on Violence and Harassment in the World of Work, in addition to assessing the extent of its compatibility with the Jordanian legislation and presenting these legislations for addressing violence and harassment, highlighting the most important observations on them. Furthermore, it discusses the complaints received by Tamkeen Fields for Aid regarding violence in the world of work, and addresses the role of labor unions in promoting the implementation of the convention on ground.

The paper relied on both qualitative and quantitative research methods to gather data and information. To this end, it referred to the (ILO) Convention 190 on Violence and Harassment in the World of Work, the Jordanian legislation, released data and information from international and civil society organizations, for the purpose of closing gaps in the lack of data and information.

Our work team faced several challenges while preparing this paper, including the limited availability of data on violence and harassment in the workplaces. Likewise, the available data does not accurately reflect the reality of harassment and violence due to the fact that many workers do not file complaints to the relevant authorities.

During our work on the paper, it became evident that the (ILO) Convention No. 190 and its Recommendation No. 206 are primarily significant for amending local legislation to reduce violence and harassment in the world of work. Violence and harassment pose a threat to the job security and stability of male and female workers in the labor market. Accordingly, this paper recommended the ratification of the ILO Convention No. 190 on Eliminating Violence and Harassment in the world of work and its Recommendation No. 206, and amending Article 6 of the Jordanian constitution by adding the word "sex" to its first paragraph, and establishing a clear definition of harassment, violence, and discrimination in the Jordanian Labor Law, in addition to preparing a national strategy to combat violence and harassment in the world of work, and activating the inspection within institutions to detect any unreported cases of violence by victims, as a result of fear from losing their jobs.

Furthermore, there is a need for raising awareness among workers about the importance of eliminating violence and harassment in the world of work, finding mechanisms for submitting complaints, monitoring and documenting violations related to violence and harassment in the work environment with the aim for finding solutions to these issues. Moreover, these efforts should be made to enhance social dialogue with production stakeholders in order to develop policies for combating violence and harassment in the workplace.

Introduction

Violence and harassment represent a matter of utmost importance in the world of work, as they are considered a threat to the work environment, and the physical and psychological well-being of male and female workers. Therefore, this may be a fundamental reason for quitting, especially among females, leading them to losing job opportunities due to inappropriate and unsafe working conditions.

Human rights principles emphasize the right of all workers, both men and women, to a workplace free from violence and harassment. The focus is often shed on the right of women specifically to enjoy decent working conditions, including the right to an environment free from violence and harassment. As the majority of international and local studies and reports confirm that women are the most vulnerable to violence and harassment in the world of work.

While the negative impact of violence and harassment in the world of work extends to all sectors of the labor market, some sectors suffer more than others. For example, female agricultural workers and migrant workers, especially domestic and factory workers, face numerous violations and exploitation, including violence and harassment. This occurs in the absence of clear and explicit legislative provisions that protect against violence and harassment in workplaces that hold perpetrators accountable.

The state is directly responsible for making effort at all levels in order to protect workers, both male and female, from any violence or harassment that may occur in the world of work. It is obligated and required to do everything that is necessary to establish a legislative framework that adheres to the principle of zero tolerance for violence and harassment in the world of work, and most importantly to monitor and inspect the implementation of these legislations.

From this standpoint, in 2019, **the ILO adopted Convention No. 190 on the Elimination of Violence and Harassment in the World of Work**, along with **Recommendation No. 206** complementing it. This Convention came into effect on June 25, 2021, and it is the first specialized treaty to create a detailed action plan to combat violence and harassment in the world of work. The adoption and approval of this Convention followed years of global labor union efforts, of which the Jordanian labor unions were also involved in.

Convention No. 190 recognizes that violence and harassment are incompatible with decent work and constitute a threat to equal opportunities for all. It also highlights the connection between violence and harassment and the systematic exclusion of women

from decent work opportunities. The preamble of Convention No. 190 stipulates that: "Recognizing that violence and harassment also affects the quality of public and private services, and may prevent persons, particularly women, from accessing, and remaining and advancing in the labor market,"[1]

The Convention and along with its recommendation have clarified that violence and harassment in the world of work can take physical, psychological, sexual, or economic forms and can affect individuals regardless of their age, sex, or position at work, and urges ILO member states to take action to prevent violence and harassment, through means of adopting a comprehensive national legal framework that addresses the issue of violence and harassment and ensures the protection of all individuals in the world of work. Furthermore, it emphasizes the importance of providing intensive and effective measures for detecting and addressing of violence and harassment.

The Convention defines violence and harassment as "the term "violence and harassment" in the world of work refers to a range of unacceptable behaviors and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment."[2]

Analyzing the term "gender-based violence and harassment" which the Convention also defined, means "violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment."[3]

On the other hand, the Convention provided a definition of "the World of Work" to point out that it extends beyond the workplace. This Convention applies to violence and harassment in the world of work occurring in the course of, linked with or arising out of work, which means that the Convention is wide-ranging and covers any work-related place, such as transportation, dining areas in break times, places where training workshops are conducted, business trips, and conferences. The convention also acknowledges and covers violence and harassment involving third parties, including clients, service recipients, intermediaries, and others.[4]

The Convention covers all workers, including workers in the informal economy and the private sector. Therefore, it covers a large category of workers who are usually overlooked (workers in the informal economy). These workers typically suffer from precarious working arrangements and avoidance of accountability for their safety, and such conditions expose female workers to violence and harassment.

1 ILO (2023), Convention on Eliminating Violence and Harassment in the World of Work (No. 190), Ensuring the right to a safe world of work from violence and harassment. https://cutt.us/1lavU

2 Convention on Eliminating Violence and Harassment in the world of work. https://2h.ae/UciB

3 International Labor Conference (2019), Eliminating Violence and Harassment in the World of Work https://cutt.us/ZxGQR

4 Ibid

It is important to note that Jordan, on both the official and civil fronts, was part of the world movement to demand that the ILO adopt a convention combating violence and harassment in the world of work. Its adoption by the ILO was preceded by a movement that was led specifically by international trade unions, which Jordan is part of. At the governmental level, Jordan voted in favor of adopting the agreement in 2019, but it has not been ratified yet.

On the national level, even though the Jordanian labor law and Penal Code criminalize and punish certain forms of harassment in some of its articles. However, they are still devoid of clear and explicit definitions of violence and harassment in the work environment, their forms and the response to them, and the penalties imposed on those who engage in these behaviors.

Given the low rate of women's economic participation in the Jordanian labor market, which has not reached more than 15%[5] at best. We find that among the most important factors for their non-enrollment in the labor market or their withdrawal from it is due to a certain form of violence and harassment which they are exposed to, in addition to the absence of protective and effective confidential complaints mechanisms. Similarly, a woman may be in a weak position because she is the sole breadwinner for her family and there is no source of income. Her weak position may be due to her nationality or the expiration of her residency, for example female migrant workers.

As per the details of the Convention No. 190 for Eliminating Violence and Harassment in the World of Work and its reinforced recommendation No. 206, and its importance in protecting male and female workers, and reducing violence and harassment in the world of work. This paper will provide an analysis of the most prominent legal articles in local legislations and it will link them to Convention 190, and also suggest some recommendations directed to the government and towards civil society, with the aim of enabling a work environment free from violence in Jordan.

5 Higher Population Council, Reports issued by DOS related to employment and unemployment.

About the ILO Convention No. 190 on Eliminating Violence and Harassment:[6]

The ILO Convention No. 190 on Eliminating Violence and Harassment is an unprecedented international treaty that grants workers the right to be protected from violence and harassment, including gender-based violence and harassment.

Violence and harassment are defined from the perspective of the International Labor Organization Convention No. 190 as:

a. the term "violence and harassment" in the world of work refers to a range of unacceptable behaviors and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment;

b. the term "gender-based violence and harassment" means violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment.

The ILO Convention No. 190 and Recommendation No. 206 provide clear steps that governments and social partners can take to mitigate the impacts of domestic violence, even when the home is a workplace, As stated in Paragraph18 of Recommendation No. 206, these measures include the following[7]:

"(a) leave for victims of domestic violence;

(b) flexible work arrangements and protection for victims of domestic violence;

(c) temporary protection against dismissal for victims of domestic violence, as appropriate, except on grounds unrelated to domestic violence and its consequences;

(d) the inclusion of domestic violence in workplace risk assessments;

(e) a referral system to public mitigation measures for domestic violence, where they exist; and

(f) awareness-raising about the effects of domestic violence."

6 chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meeting-document/wcms_712157.pdf

7 chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meeting-document/wcms_712172.pdf

The convention is applicable to violence and harassment that occur anywhere, at any time, and in various locations and circumstances related to work, including offices, homes, public places, and accommodations provided by the employer. It covers both the formal and informal economies, in the public and private sectors, and all workers regardless of their contractual status. This includes job seekers, volunteers, interns, individuals exercising authorities, duties, and responsibilities of the employer.

The importance of ratifying Convention No. 190 and its reinforcing Recommendation No. 206 comes in light of the gaps that are present in the Jordanian labor law and Penal Code, and as a result of the vague and broad terminology used to describe harassment. Ratifying these international agreements would close these gaps and necessitate a review of the legislative framework to ensure that penalties for workplace violence are strengthened, particularly for women.

Shortcomings in the Jordanian legislation regarding violence and harassment in the world of work

Despite the continuous development of the Jordanian legislation, the analysis of provisions on eliminating violence and harassment in the world of work continue to be marred by deficiencies. Thus, there is a need for further amendment and development to achieve a world of work free from violence and harassment in Jordan.

Regarding the Jordanian constitution, which serves as the primary legislative framework in any country, does not address, in any form, the issue of countering violence and harassment in the world of work. As stipulated in Article 6: "Jordanians shall be equal before the law. There shall be no discrimination between them as regards to their rights and duties on grounds of race, language or religion."[8] It does not include gender-based non-discrimination, which is directly connected to violence and harassment, typically based on gender, often involving females, persons with disabilities, and child laborers.

With acknowledgment of the text in the fifth paragraph of Article 6 in the Constitution, which stipulated that "the law protects the rights of persons with disabilities and promotes their participation and integration into various aspects of life. It safeguards motherhood, childhood, the elderly, cares for youth, and prevents abuse and exploitation."[9] However, in its current form, it is insufficient to protect the most prone to violence and harassment in the world of work.

8 https://constitutionnet.org/sites/default/files/constitution_of_jordan_1952_with_all_amendments-arabic.pdf

9 https://cutt.us/Rl8JY

Article 23 of the Constitution[10] spoke about the right to work for all citizens. It may be the most significant legal basis that can be relied upon to amend the local legislation, and clearly oppose violence and harassment in the world of work. Paragraph (d) provides for the protection of the right to work within several principles, including: "Special conditions shall be made for the employment of women and juveniles." This means that the constitution urges the development of policies and laws to protect women and juveniles in the labor market, including protection from violence and harassment.

On the other hand, violence and harassment in the world of work are not explicitly addressed by the Jordanian legislation. As for the Penal Code, there is no definition of harassment, nor any mentioning of the term harassment or sexual harassment, meaning that it is non-punitive, noting that the Penal Code criminalizes acts that would constitute an act of sexual harassment under different names.

Article 305 stipulated thereof on indecent fondles, and in Articles (296), (297), (298) and (300) for indecent assault, Article 306 on indecent act, Article 320 on indecent acts in a public place, Article 420 on extortion, Articles 190 and 360 on contempt.

For instance, the Penal Code punishes acts of sexual harassment under the category of indecent acts, and Article 306 as stipulated:

Whoever commits an indecent act or directs any words, utterances, or unethical gestures that outrage decency by speech, action, movement, or indication, explicitly or implicitly, by any means, shall be punished with an imprisonment for a term not less than six months, when the assault is committed against the following:

1. A person less than 18 years of age.

2. A person, male or female, who has completed 18 years of age without consent.

It is evident that the forms of harassment covered by the provisions of this article include physical, sexual, or psychological harm. The term "harassment" is not explicitly mentioned in the law but falls under the category of indecent acts, and it is punishable as a crime.

Also, it is important to note that the process of proving harassment is challenging. Perpetrators of harassment often take the necessary measures and precautions to avoid detection, and harassment can occur quickly without prior warning. The person who experienced harassment may not be immediately aware of what happened, due to the trauma they are experiencing as a result of the incident, regardless of its form.

10 https://cutt.us/miURy

In order to prove the occurrence of the crime of harassment, it is required that there must a male or female witnesses who saw the incident. The witness must be honest and righteous to tell the truth. Additionally, there should be an availability of evidence proving the occurrence of harassment, such as pictures, video clips, and recordings.

As for the Labor Law, it is considered the basic law in the field of protecting the rights of workers, and it has undergone several amendments regarding violence and harassment in world of work, with the latest ones being approved on March 6, 2023 which, for the first time in the history of the Jordanian labor law, provided a definition of sexual harassment in paragraph (c) of Article 29.[11] This article includes cases in which the worker may leave work without notice while retaining his legal rights, and among these cases (if the employer or any of his/her representatives assaults at work or because of work by beating, insulting or in any form of sexual assault or sexual harassment punishable under the provisions of the legislation in force).

For the purposes of this article, "sexual harassment" is defined as:

"Any physical or verbal practice or behavior of a sexual nature, or related threats that violate the dignity of the worker, are degrading to them, and result in physical, psychological, or sexual harm."[12]

Paragraph (b) of the same article has been amended to include a penalty for the perpetrator. The revised text stipulated that "if it is proven to the minister that an employer or their representative has committed sexual assault or any form of sexual harassment against their employed workers; the employer, the institution's manager, or their representative shall be punished with a fine of no less than two thousand dinars and no more than five thousand dinars. The fine shall be doubled in case of repetition, taking into account the provisions of any other applicable legislation."[13]

The previous version of this paragraph did not include sexual harassment, and the sole penalty was the closure of the institution for the duration deemed appropriate[14] by the Minister of Labor, upon discovering an assault committed by the employer or their representative against an employee.

While this amendment is considered a step forward in terms of adding sexual harassment and providing a definition for it, the definition itself remained limited and vague, not aligning fully with Convention 190 and its referenced standards. Additionally, the law still focuses on penalizing the employer or their representative and doesn't refer to harassment that might occur between colleagues. This means that the law has not addressed this issue yet.

11 https://cutt.us/paoaP

12 https://cutt.us/paoaP

13 https://cutt.us/jl0fq

14 https://cutt.us/nY4pl

The fundamental point that the law has not addressed is that it provides only one solution for the victim of harassment, which is to leave their job without notice while retaining their rights. This effectively imposes an additional penalty on the victim, rather than ensuring fairness. Moreover, the law lacks provisions regarding providing protection within work environments and does not specify any compensation that a victim of violence may receive. It's important to note that the financial fine mentioned in paragraph (b) of Article 29 goes to the state's treasury and not to the victim. Furthermore, it seems unusual that there is an establishment of a discretionary authority given to the Minister of Labor within his functional status, for the occurrence of any form of assault, rather than the judiciary.

This amendment is also considered insufficient as it places the responsibility on the worker for prosecuting the employer at a time when they may have lost their job, their source of income, and suffered the effects of violence and harassment that occurred to them.

Moreover, Article 11/h of the **Regulation of Domestic Workers, Cooks, Gardeners, and any other Workers who fall within the sector No. 90 of 2009 and its amendments**, stipulated that the worker may immediately leave their job and retain their rights if the violation committed by the employer constitutes sexual or physical assault on the worker or a serious violation of any of their fundamental rights.[15]

Also, **the Regulation for Agricultural workers, as outlined in Article 13/b**, stipulated that sexual or physical assault on agricultural workers, or any violation of their fundamental rights is considered a violation of the provisions of the regulation. This suggests that violence or harassment is not fundamentally addressed as a crime committed against agricultural workers, for both male and female workers.

In the 2021 **Inspection Procedures for Agricultural Work**, Article 7/j stipulated that a labor inspector is designated by the Minister or their delegate to prohibit the agricultural employer from bringing or relocating non-Jordanian agricultural workers for a specified period, in accordance with the procedures followed by the Ministry of Labor. This action is taken in the event of an assault by the agricultural employer or their representative, such as physical assault or any other form of sexual harassment, against the agricultural worker. In this context, we can notice that the inclusion **of all forms of assault or sexual harassment** in the Inspection Procedures for Agricultural Work of 2021, which is considered a crucial step. However, it did not impose a deterrent penalty on those who commit such acts, thus suspending the recruitment of migrant workers for a specified period is not considered deterrent.

15 Article 11/h, the Regulation of Domestic Workers, Cooks, Gardeners, and any other Workers who fall within the sector No. 90 of 2009 and its amendments.

Regarding the **Anti-Human Trafficking Law No. 9 of 2009 and its amendments**, it defined exploitation in Article 3/(b) as the exploitation of individuals through forced labor, servitude, slavery, organ removal, prostitution, organized begging, or any other form of sexual exploitation. The law imposed a penalty of no less than ten thousand dinars and no more than fifty thousand dinars on those who commit the crime of human trafficking, including sexual exploitation.

On reality: Violence and Harassment in the world of work

Tamkeen received (248) complaints regarding violence and harassment in the workplace from 2021 to October 31, 2023. Of these, (216) complaints were filed by females and (32) by males. It's worth noting that the number may seem low, although it doesn't mean that workers, both male and female, are not subjected to harassment. The issue often goes unreported due to various factors, including societal cultural norms that may blame females for harassment. Additionally, there is a lack of awareness about the procedures to follow in case of workplace violence or harassment incident, along with the fear of the victim losing their job. Furthermore, reporting workplace violence or harassment can be challenging.

The table below shows the nationality of those who filed a complaint related to violence and harassment in the workplace.

Nationality	Number
Jordanian	28
Egyptian	11
Sudanese	1
Ghanaian	24
Ugandan	63
Kenyan	3
Nepali	13
Filipino	33
Bangladeshi	17
Indian	4
Ethiopian	25
Ukrainian	1
Russian	1
Sri Lankan	4
Indonesian	4
Syrian	13
Thai	1
Palestine	1

"N" who works in the field of nutrition, filed a complaint to the police station as she was subjected to harassment by a co-worker. However, she withdrew her complaint out of fear of societal gossip and potential accusations.

Domestic worker (M) came to work in Jordan in 2017 through a recruitment agency, and worked for multiple employers. Finally, she worked for an employer for a year and eight months. According to her complaint, she was subjected to harassment by her employer, which led her to leave the job and return to the recruitment agency.

Worker (Y) filed a complaint with the labor directorate in one of the provinces due to being subjected to harassment at her workplace. However, she later withdrew the complaint due to pressure from her father, as the head of the family, he insisted that his daughter withdraws the complaint so that "the community does not talk about her" and claimed that she had allowed her colleague to harass her.

A mechanic worker filed a complaint due to continuous harassment by the employer, which involved constant insults, verbal abuse, and belittlement repeatedly, which ultimately led him to leave his job.

A restaurant worker complained that he was continuously subjected to insults, verbal abuse, and screaming repeatedly, and when he was asked by the employer to perform a specific task, it was often demanded with yelling and cursing, which ultimately led the worker to leave his job.

The abovementioned cases confirm that there is a clear shortcoming in the legislation aimed at protecting both male and female workers from violence and harassment in the workplace. Additionally, the absence of internal workplace bylaws established by employers to safeguard employees from various forms of violence and harassment.

The role of labor unions on eliminating violence and harassment

Labor unions play a significant role in providing safe and decent working environments, such as preventing violence and harassment in the workplace. As part of their role in advocating for workers' interests and improving their working conditions, labor unions should work on imposing provisions in collective labor agreements that protect both male and female workers from being exposed to violence and harassment in the workplace. Moreover, they should also ensure that workers are protected when they file complaints, as well as calling for the government to amend the legislation that prevents workplace violence and harassment, and criminalize the perpetrators, and actively monitor all violations and issues concerning both male and female workers, in order to resolve these violations through legal means, and encourage workers to resort to labor unions in cases of assault, violence, and harassment in the workplace.

In this aspect, it is important to point out that the General Trade Union of Workers in the Textile, Garment and Clothing sector has signed many collective agreements. The last agreement signed in 2023[16], stipulated the prevention of discrimination in all its forms, the prevention of violence and harassment, and the adoption of an internal policy for protection against violence and harassment in the workplace.

The prevention of violence and harassment in the workplace was added due to the possibility of having male and female workers being exposed to any form of violence, and psychological or physical harm. As a result, this could create a workplace that is hostile and unsafe, leading to a negative impact on productivity, and violating labor rights.

The General Trade Union of Workers in Water, Agriculture, and Food Industries also signed a collective labor agreement, one of its clauses stipulating "combating violence, harassment, and discrimination" in the workplace".

16 The Collective agreement for the Textile, Garment and Clothing industry concluded on August 17th 2023.

Conclusion and recommendations

The ILO Convention No. 190 and its Recommendation No. 206 are considered crucial foundations for amending the national legislation to reduce violence and harassment in the world of work. Violence and harassment threaten the security and job stability of workers in the labor market. Therefore, it is necessary to address the following:

- Ratifying the ILO No. 190 Convention on the Elimination of Violence and Harassment in the World of Work and its Recommendation No. 206.
- Amending Article 6 of the Jordanian Constitution by adding the word "sex" to its first paragraph.
- Defining harassment, violence, and discrimination in the workplace more clearly in the Jordanian labor law.
- Preparing a national strategy on the Elimination of violence and harassment in the world of work.
- Activating inspections of institutions to detect any unreported cases of violence by the victims, as a result of fear from losing their jobs.
- Educating workers about the importance of eliminating violence and harassment in the world of work, and the mechanisms for submitting complaints.
- Monitoring and documenting violations related to violence and harassment in the workplace, with the aim of addressing these violations and finding solutions.
- Working on enhancing social dialogue with production parties to develop policies on eliminating violence and harassment in the workplace.
- Implementing advocacy campaigns demanding a working environment free from violence.
- Creating a database that includes data for victims of violence and harassment in the workplace.
- Conducting studies on the reality of violence and harassment in the workplace and their impact on production and the economy.

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