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للمساعدة القانونية وحقوق الانسان
For legal aid and human rights

The right to work for non-Syrian refugees in Jordan

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Introduction

In Jordan, there are more than 3.788 million refugees holding 53 nationalities, most of whom are Palestinians and Syrians. The records of the United Nations High Commissioner for Refugees indicate that there are 702,506 refugees and 4,870 asylum seekers, including 127,373 registered Syrian refugees, 66,558 Iraqis, 12,768 Yemenis, and 5,973 Sudanese, in addition to 690 Somalis and 1,454 refugees among other nationalities registered with the United Nations High Commissioner for Refugees. Jordan hosts the second largest percentage of refugees in the world compared to the number of citizens, and the fifth largest number of refugees in absolute terms.

Jordan has not ratified any international convention or protocol that governs the treatment of refugees within its territory, including the 1951 United Nations Convention on the Status of Refugees and its Protocol of 1967. However, the kingdom has been hosting refugees since the beginning of its establishment. While some refugees were eventually permitted to work in the formal labor market, others continue to work informally.

Workers lacking legal recognition are employed in the informal economy, which is defined by the International Labour Conference (ILC) in 2002 as "all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements".[1] While these workers are subject to numerous violations, non-working refugees face other struggles as they attempt to secure their livelihoods.

As a result of this societal issue, this paper will highlight the status of non-Syrian refugees in Jordan in terms of their access to the labour market. It will initially examine the legal framework that governs refugees right to work, both within international conventions and national legislations. Then, it will shed light on the realities of how such legal frameworks manifest in the labour market. Finally, the paper proposes main recommendations that would facilitate refugee access to more decent work opportunities.

1 International Labour Organisation, Effect to be given to resolutions adopted by the International Labour Conference at its 90th Session (2002), (b) Resolution concerning decent work and the informal economy; Governing Body, 285th Session, Seventh item on the agenda; Geneva, November 2002 (doc. GB.285/7/2)

Refugees in Jordan

Jordan hosts one of the largest refugee communities in the world. Despite Jordan's important role in hosting refugees, the kingdom is a non-signatory of the 1951 Refugee Convention or its protocol of 1967, and it does not have a domestic law that regulates refugee rights. Instead, Jordan abides by certain grounds of international conventions on refugees based on the Memorandum of Understanding signed with the UNHCR in 1998. The MoU outlines the policy framework for all refugees residing in Jordan, except for Palestinians. It guarantees refugees basic principles and standards of international protection, as defined in the 1951 Convention on Refugees and Asylum Seekers. 2

Based on this memorandum, Jordan treats refugees as "guests", since their stay in the kingdom is temporary until they either return to their country or obtain settlement in another country. Refugees, while they are recognised by the UNHCR, have no special legal status under Jordanian law. Thus, they neither have the right to full-residency or work, as detailed below.[3]

It is also noted that the MoU does not include all the rights stipulated upon in the refugee convention. These rights include the following: the right to housing, employment, public education, freedom of movement, or access to public assistance. Therefore, many refugees continue to face various challenges as they attempt to secure their livelihoods.

In January of 2019, the Jordanian government issued a resolution restricting UNHCR fromregistering any non-Syrian refugees, even those who entered the country to study, work, or obtain medical treatment. This restriction left many refugees vulnerable as they were deprived of humanitarian services and at risk of deportation.[4]

2 Memorandum of Understanding between the Government of the Hashemite Kingdom of Jordan and United Nations High Commissioner for Refugees 1998

3 https://www.hrw.org/world-report/2021/country-chapters/jordan

4 Human Rights Watch, Jordan: Yemeni Asylum Seekers Deported, published on March, 30th, 2021 / https://bit.ly/3KiKNYy

Legal framework for the right of refugees to work

Article 1 of the 1951 convention defined a refugee as any person who: owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it." [5]

The 1951 Convention divides the rights and privileges that refugees are granted into three levels:

1. Rights and privileges that are accorded to refugees as other foreigners who reside in the country.
2. Rights and privileges that are accorded to refugees at a more favorable level compared to other foreigners residing in the country.
3. Rights and privileges in which refugees are treated equally as citizens of the country where they sought refuge.

As for refugees' right to work, it was stipulated upon in articles 17, 18 and 19 of the as follows:

"Article 17: Wage-earning employment

The Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.

Article 18: Self-employment

The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Article 19: Liberal professions

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible."[6]

3.

5 UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Available at: https://bit.ly/415PbjH
6 Ibid

Although Jordan is not a signatory to the 1951 Convention, these rights are enshrined in other international human rights conventions. These instruments include the Universal Declaration of Human Rights[7], in which article 23 states that "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment." The right is also enshrined in the International Covenant on Economic, Social and Cultural Rights[8], which is ratified by Jordan and wherein articles 6 and 7 state:

"Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

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

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays."[9]

The United Nations Committee on Economic, Social and Cultural Rights, which monitors the implementation of the convention stated in its comment No. 20 that "the ground of nationality should not bar access to Covenant rights.The Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation." [10]

7 The Universal Declaration of Human Rights 1948 is available at: https://bit.ly/3IaWIVW
8 International Covenant on Economic, Social and Cultural rights for 1966, available at : https://bit.ly/2MOWMwA
9 Ibid
10 Committee on Economic, Social and Cultural Rights, General Comment No. 20 Non-discrimination in economic, social and cultural rights : https://bit.ly/41jsmt4

However, the covenant allowed developing countries to determine the extent to which the economic rights stipulated therein were guaranteed to non-citizens. It also enabled them to restrict access to these rights in certain circumstances based on available resources, though it set a "basic minimum" for these rights that cannot be derogated to ensure that these people have the minimum requirement needed for a decent life. The committee also reiterated that states should undertake steps to guarantee that relevant rights "will be exercised without discrimination".[11]

Challenges related to the right to work for non-Syrian refugees

Jordanian laws do not refer to refugees or asylum-seekers. Instead, their status is governed by the same legislations that apply to other foreigners in the kingdom. As a result, refugees do not have the right to work, as the constitution only guarantees it for Jordanians. Rather, their situation is referred to article 23 of the Residency and Foreigners Affairs Law, which states that foreigners without a valid residency permit do not have the right to work legally in the country. The same article states that some exceptions could be provided for political refugees or asylum seekers, and Palestinian refugees.

Accordingly, the 1998 Memorandum of Understanding signed between Jordan and the UNHCR and later renewed in 2003, is considered the legal document that specifically addresses legal protection and rights provided to refugees in Jordan. The MoU delegates all procedures relevant to the determination of the status of asylum to the UNHCR, and exempts the Jordanian government from any role in that process. Moreover, the MoU adopts the same definition for refugees as stipulated upon in the 1951 convention. In the MoU, the government affirms its adherence to international standards for the protection of refugees, including the right of refugees to remain in the country on a temporary basis, according to article 5. Meanwhile, article 2 recognises and affirms the principle of non-refoulement. As for the right to work, the memorandum of understanding states in articles 8 and 9 that:

"Article (8)

In order for refugees to provide a decent life for their families, the parties agree to grant those who are legally residing in the Hashemite Kingdom of Jordan the right to work, if the applicable laws and regulations allow it.

Article (9)

Refugees with certificates recognised by the competent Jordanian authorities who wish to work in open sectors can be employed, if laws and regulations allow it"[12]

In terms of national legislations, issues related to work are governed by the Jordanian

11 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), 14 December 1990, E/1991/23, available at: https://www.refworld.org/docid/4538838e10.html

12 Memorandum of Understanding between the Government of the Hashemite Kingdom of Jordan and United Nations High Commissioner for Refugees in 1998

labour law, in addition to the regulations, instructions and decisions issued by the Jordanian Ministry of Labor. According to the law, refugees are treated in the same way as migrant workers, and thus their work is also regulated by article (12) of the amended Labor Law No. 26 of 2010. In accordance with the article, the Ministry of Labour must approve any work permit that is issued for foreign workers. The approval is conditional on several criteria, including whether there are Jordanian workers who could fill the position instead of the foreigner. It should also be noted that the UNHCR-issued card for refugees states that it does not grant its holder the right to work or the right to legal residency in Jordan, as the jurisdiction for the issuance of these permits falls under the authority of the Jordanian government.

Jordan also implements a sector-based quota system, which allows a pre-set number of foreign workers to be employed in specific sectors while limiting or closing off sectors where competition with Jordanians may be high. Open sectors include manufacturing, construction, agriculture, while closed sectors include 19 sectors that include engineering, medicine, education, some jobs in the service sector, in addition to clerical jobs, and driving.

Moreover, the process to issue work permits is complex and lengthy, as it includes the issuance of several documents and obtaining several approvals. Initially, the process starts with the issuance of the annual residency permits for non-Syrian refugees. These permits are necessary since the Iraqi, Yemeni, Sudanese, Libyan and Somali nationalities are registered in the list of restricted nationalities that is issued by the Ministry of Interior. Thus, nationals of these countries must be issued residency permits or otherwise be subjected to a fine of 1.5 JODs per day in accordance with the Residency and Foreign Affairs Law. [13]

However, many refugees expressed concern that the issuance of this permit would lead to the loss of their inclusion in resettlement programs to other countries. Others stated that they fear that permit issuance procedures have become more complicated following the 2019 decision by the Jordanian government, which restricted UNHCR to register any non-Syrian refugee entering the country.

The second phase of work permit issuance involves a visit to the Ministry of Labour, where the refugee is then asked to submit an application for a work permit. The application is then referred to the Directorate of Nationality, Foreign Affairs and Investment at the Ministry of Interior to obtain security approval. According to refugees, this process takes about two weeks, before they are asked to visit the MoI. There, they are given the option of either maintaining their status as registered asylum seekers with the UNCHR, which would lead to the rejection of their application; or to give up their status, which would lead to the acceptance of their application, albeit as a migrant worker. It should be noted that Tamkeen attempted to confirm these procedures with the MoI but received no response. [14]

13 The Ministry of Interior- List of Restricted Nationalities

14 These steps were mentioned to the Tamkeen field team by non-Syrian refugees in several awareness sessions.

Instead, Tamkeen received several cases from non-Syrian refugees, who stated difficulties in obtaining work permits. One case involved a group of Yemeni workers in Mafraq who worked with the same employer for five years until September 2019. Until that date, these workers had valid work permits. When their permits expired in September, they applied for renewals. The Ministry of Interior then asked them fora renunciation document (clearance) signed by the UNHCR statingthat they are not registered refugees. The refugees noted that this was the first time they were asked to sign such a document. Per the refugees, the UNHCR advised them not to sign the paper, and that the UNHCR is discussing these matters with the MoI. Later, some workers were able to obtain apermit but only after they renounced their UNHCR status.he rest of the refugees refused to renew their work permits because they wanted to keep their UNHCR registration.

The status of Non-Syrian refugees in the Jordanian Informal Economy

Due to the challenges highlighted above, many refugees work in the informal economy in basic or low-skilled jobs, in the sectors of construction, agriculture, sales, restaurants, textile, services, or beauty salons.

The informal economy is defined as: "all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements",[15] as defined by the International Labour Conference (ILC) in 2002.

It is estimated that there are 933,000 informal workers in Jordan. The numbers are based on data from the Social Security Corporation, which stated that the number of insured workers under its umbrella was 1.317 million people by the end of 2019. Since the total number of those working is 2.249 million, this means that there are 933,000 who are working informally. This number constitutes 41.4% of total workers.[16]

There are several factors that contribute to the expansion of the informal economy, including demographic factors. According to the latest figures by the Department of Statistics, Jordan's population reached 11.042 million by the end of November 2021.

The same figures show that most of the population are youth or young people, as people under the age of 14 constitute 34.4% of the population, while youth between the ages 15-24-years constitute 19.8%. [17]

Because of these high population rates, the Jordanian economy continues to face new challenges, including increase in the number of people entering the job market. The high population growth rates exposed the Jordanian economy to a new challenge resulting in an increase in the number of jobseekers, coupled with a slowing rate of economic growth and an inability to provide sufficient job opportunities to absorb large numbers of workers in the formal sector. This led to an increase in the unemployment rate, as numbers from the Department of Statistics show that during the third quarter of 2022, the percentage of workers increased by 23.1%. Additionally, with the expansion of the informal economy in Jordan, the percentage of violations against workers increased due to their work in difficult conditions, lack of protection compared to workers in the formal economy, and lack of inclusion in the social security umbrella. They work in harsh conditions as a result of the lack of decent work environment and commitment to occupational safety and health standards and conditions, which puts their lives at risk.

15 International Labour Organisation, Effect to be given to resolutions adopted by the International Labour Conference at its 90th Session (2002), (b) Resolution concerning decent work and the informal economy; Governing Body, 285th Session, Seventh item on the agenda; Geneva, November 2002 (doc. GB.285/7/2)

16 Jordanian Strategy Forum, Informal Workers in Jordan: Learnt Lessons from the Coronavirus Pandemic, 2020. Found at: shorturl.at/yBK27

17 Department of Statistics http://dosweb.dos.gov.jo/ar/

The expansion of the informal economy has resulted in a higher rate of rights violations, as workers continue to work in dangerous sectors, without being provided with the protections that they need. Indeed, workers noted that they work in harsh conditions that do not comply with either decent work or occupational safety and health standards.

During the awareness sessions that Tamkeen held with refugees, many of them also revealed that they receive wages lower than the minimum wage. Moreover, many of them affirmed that they do not receive either annual, weekly, or sick days off, and some added that they are forced to work on holidays. Workers in the agriculture and construction sectors highlighted their difficult situations, since they work in extreme weather conditions as well. Some workers admitted that they became injured or sick because of their work conditions, but could not afford the expensive medical treatments they needed, since they must bear the exorbitant costs that are not covered under the SSC.

In a session that was attended by Somali refugees, they confirmed that their employers exploited their informal worker status by forcing them to work for long hours for low wages. They attributed their decision to continue to work for their employers to the fact that very few people are willing to employ them without work permits.

The effects of the COVID-19 Pandemic

Although the effects of the COVID-19 pandemic were felt by everyone around the world, they especially affected the lives of vulnerable groups in society, including informal workers and refugees. These effects began to emerge after the government implemented its preventive measures to curtail the spread of the virus. It enacted the Defense Law No. (13) of 1992 on March 21, 2020, and then enforced a kingdom-wide curfew that only excluded essential sectors like health, and basic services related to water, food, and medicine.

The enactment of the Defense law had serious implications on workers employed in non-vital sectors, particularly informal and daily workers who depend on their daily wages to secure their livelihoods. Throughout the curfew, Tamkeen monitored the status of workers employed in various sectors, including in restaurants, bakeries, education, agriculture, construction, factories, home-based businesses, and the service sector.

Tamkeen noted that the situations of Yemeni and Iraqi refugees working in the labour market was extremely difficult, since most of them either work in the service or construction sectors. Since both sectors were under curfew and these workers were informal, they affirmed that they had no income or new working opportunities. They added that even if they found a new work opportunity, the employer would refuse to hire them once he discovered that they were Yemeni or Iraqi. Others revealed that they were unable to pay their rent or secure their basic needs because of the pandemic, which left them apprehensive about their future.[18]

18 Tamkeen for Legal Aid and Human Rights, Under the Curfew Series https://bit.ly/3IlbLi5

Conclusion and recommendations

This paper highlighted the status of non-Syrian refugees and the difficulties they face in the labour market. Due to their precarious status, these refugees are forced to either work in the informal economy, where they are subjected to various rights violations varying in their severity, or decide to not work and thereby face difficulties in securing their livelihoods.

The challenges faced by these refugees were compounded with an impossible decision presented to them: they were forced to choose between either their asylum status, which might eventually lead to their resettlement to another country, or a work permit that would enable them to work formally in Jordan.

Therefore, the situation of these refugees must be given legal consideration, and addressed through policies that accommodate their status as asylum seekers. These policies must thus affirm that refugees, regardless of their nationality, have the right to work, without ffecting their refugee status.

Such policies would accommodate the status of refugees and enable them to positively contribute to the national economy with their knowledge and unique skill sets.

Therefore, Tamkeen recommends the following:

1. Ratification of the 1951 United Nations Convention on the Status of Refugees and the Additional Protocol of 1967.
2. The necessity for the United Nations High Commission for Refugees (UNHCR) and the international community to fulfill their duty towards refugees of all nationalities, and to provide them with their basic needs.
3. Amend the Social Security law to include informal workers, and lower subscription rates to accommodate the capabilities of these workers and ensure they are covered under social protection programs.
4. Amend national legislations to ensure that refugees' ability to issue work permits is not linked with their asylum status and considers working non-Syrian refugees in the same category as Syrian refugee workers.
5. Facilitate the issuance of work permits to non-Syrian refugees, as that will enable them to work formally, access their labour rights and reduce their risk of being subjected to violation.
6. Expand the coverage of social protection programs to ensure that they are inclusive of all workers in the Jordanian labor market.

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