

**International Standards and State Practice
in the Protection of the Human Rights
of Female Migrant Domestic Workers**

The Case of Asian Maids in Jordan



MA Thesis

European Master's Degree in Human Rights and Democratisation

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Contents

Contents	i
Abbreviations	iii
I. INTRODUCTION AND GENERAL OVERVIEW	1
I.1. A Jordanian Case	1
I.2. General Overview	3
I.2.1. <i>The Phenomenon of Labour Migration of Women</i>	3
I.2.2. <i>Living and Working Conditions of Female Migrant Domestic Workers in Jordan</i>	7
I.3. Scope and Methodology of the Paper	11
II. INCLUSIVENESS VERSUS EXCLUSIVENESS: THE JORDANIAN NATIONAL LEGISLATION	15
II.1. The Legal Status and Immigration	15
II.2. Scope of Protection of the Jordanian Labour Law	18
II.2.1. <i>Provisions Including Migrant Domestic Workers: A Case of Indirect Discrimination</i>	18
II.2.2. <i>Regulations for Workers not Excluded from the Application of the Labour Law</i>	22
II.3. The Social Security Act	25
III. SCOPE OF PROTECTION OF INTERNATIONAL HUMAN RIGHTS LAW	27
III.1. International Normative Instruments	27
III.2. Applicability and Implementation Mechanisms of International Instruments in Jordan	28
III.3. Scope of Protection of Human Rights Addressing the Needs of Female Migrant Domestic Workers in Jordan	31
III.3.1. <i>The Principle of Non-discrimination</i>	31
III.3.2. <i>Working Conditions</i>	34
III.3.3. <i>Adequate Housing and Food</i>	36
III.3.4. <i>The Liberty of Movement and Legal Documents</i>	37
III.3.5. <i>The Prohibition of Violence and Sexual Harassment</i>	37
III.3.6. <i>Access to Health Care and Social Insurance</i>	38
IV. POSITIVE STATE OBLIGATIONS TO ENSURE LEGAL PROTECTION FOR FEMALE DOMESTIC MIGRANT WORKERS	40

IV.1. State Responsibility of Jordan for Violations Committed by Non-State Actors	40
IV.2. The Right to a Contract: Positive Obligations of Jordan	45
IV.3. State Response and Reactions by International Organisations	51
V. OBSTACLES ON THE WAY: DIFFICULTIES AND CONSTRAINTS IN THE IMPLEMENTATION OF HUMAN RIGHTS	55
V.1. Weak Enforcement and Complaints Mechanisms	55
V.2. Cultural and Social Constraints	58
V.3. Economic and Other Constraints	61
VI. CONCLUDING REMARKS AND RECOMMENDATIONS	63
VI.1. General Conclusions	63
VI.2. Recommendations	65
V.2.1. <i>Necessary Amendments to the Labour and Social Security Law: Efficient Protection for Migrant Domestic Workers</i>	65
V.2.2. <i>General Normative Recommendations</i>	66
BIBLIOGRAPHY	68
ANNEX	
Table I: Accession to International Human Rights Treaties by Jordan	
Table II: Methodology of Approaching Human Rights Violations Involving Domestic Migrant Workers	

Abbreviations

Art.	Article
CEDAW	Convention on the Elimination of Discrimination Against Women
ECHR	European Convention on Human Rights
ECOSOC	Economic and Social Council
ETS	European Treaty Selection
CCPR	International Covenant on Civil and Political Rights
CERD	International Convention for the Elimination of All Forms of Racial Discrimination
CESCR	International Covenant on Economic, Social and Cultural Rights
HJK	Hashemite Kingdom of Jordan
HRC	Committee on Human Rights
ILC	International Law Commission
ILO	International Labour Organisation
MWC	Convention on the Rights of All Migrant Workers
Par.	Paragraph
Rec.	Recommendation
UDHR	Universal Declaration of Human Rights
UN Doc.	United Nations Documents
UNTS	United Nations Treaty Selection

I. INTRODUCTION AND GENARAL OVERVIEW

*"The migrant worker is not a product of the twentieth century. Women and men have been leaving their homelands in search of work elsewhere ever since payment in return for labour was introduced. The difference today is that there are far more migrant workers than in any period of human history. Millions of people now earning their living – or looking for paid employment – came as strangers to the states where they reside. There is no continent, no region of the world, which does not have its contingent of migrant workers."*¹

I.1. A Jordanian Case

"I came to Jordan in 1980 as one of the first Filipinos. I arrived by plane. One of my friends had been working there and had promised to find me a well-paid job. I needed the money. My husband had been killed in the civil unrest that same year. Many people died then. I was left alone with my two little children who were only three and five years old. I gave them into the care of my mother-in-law and decided to go abroad to earn enough money to support them. There were no jobs in the Philippines that would have enabled me to support my family. I went to an agency in Manila and asked to go to Italy. But instead I was given a visa to Jordan. The agency only paid for a tourist visa but not the flight. They promised me a salary of USD 200 per month but then it turned out to be only USD 100.

The following five years I spent working for different Jordanian families in their big houses in Amman. They did not treat me well. They often scolded me and called me names. They were very rude with me and had no respect. The first family I worked for did not pay the agency the required price for me so I had to leave them after two months and return to my friend. The second family was the worst. They were often inviting friends at night. I had to stay awake and serve them tea, empty full ashtrays and cook until late and everybody had gone home. During the days I had to cook for the whole family, clean the house, wash the clothes, iron, serve the meals and do the dishes. The house was very big and I was the only maid. I was busy from the waking of the first family member in the early morning until their going to bed at night. Every Friday I had half a day off.² After preparing the breakfast I was allowed to leave the house but had to be back for dinner. I

¹ UNHCHR Fact Sheet No. 24, 2001, p. 2.

lived in the same house with them in a tiny room. I was not allowed to eat at the table. My employer told me that I would dirty the furniture so I had to take my meals standing at the kitchen sink. However, the family did not pay my salary. Every time I was asking them for it they told me to be patient. I needed the money for my babies at home so I left without being paid and looked for another family.

I then worked for several other families for periods ranging from a few months to years. None of them was willing to 'make my papers', which would have meant to extend my visa and get me a work and residence permit from the ministry to make my stay in Jordan legal. They even kept my passport so I would not run away. When I came I did not know anything about the regulations for migrant workers and the procedures for extending my visa. I did not know it was possible at all and where to turn to for help. I was kept in the house all the time. I knew that when one of us was caught without a valid residence permit or a visa she would have to pay one Jordanian Dinar³ per day she exceeded it. Nowadays, women who are caught without a residence and work permit need a guarantor. Otherwise they are put into prison and sent home later. Fortunately I was never caught and taken to prison though I was very much afraid of it.

Another problem was the contract. None of the families I worked for in those five years gave me a contract because that would have meant to make me an official worker with a valid permit and I could have asked for my salary. I never had any insurance either. Most of us still do not have one. Sometimes when one of us dies we collect money to send her body home to let her family bury her because she cannot be buried here. It is too expensive for us to pay for the insurance privately if our employer does not take care of it. I was never beaten by any of my employers but I know some girls⁴ and women who were beaten, sexually harassed by their employers and even raped.⁵ I think I was very lucky.

One of my friends is in jail for stealing from her employer. And sometimes the Jordanian police catch the illegal and legal immigrants and put them into jail. One of my friends was

² Mira is a Catholic Christian. She would like to be able to go to church on Sundays instead of having half Friday off.

³ This translates into USD 1.50 which is a substantial amount of money for someone who earns only 100\$ per month and sends most of it home.

⁴ She said she knew some girls who were raped personally.

⁵ That this is not just a rumour show recent cases before the High Court of Jordan. See Women Working in Jordan, Paper of the Ministry of Interior, Jordan, Presented at the International Workshop on Best Practices Related to Migrant Workers, Amman 20.-22.2.2001.

among such a group in 1998. She had no possibility to contact her employer to tell her what had happened. She had a valid residence permit but the police did not care. This is very humiliating.

In 1986 I got a job as a cleaner with a foreign institute in Amman⁶. I now earn 250 Jordanian Dinar⁷ every month, which is a lot more than most others and the foreigners treat me well. I got a real contract and a health, accident and social insurance. I can even go on holidays. I share flat with Filipino friends. I can send USD 150 home to my children every month. They are now 27 and 28 years old. I did not see them grow up because I only go home every 5 years or so. My mother-in-law has died meanwhile.

I have learned how to extend my residence and work permit every year on my own. It is difficult and gets more expensive every year. We Filipinos have to pay more than others: 309 Jordanian Dinar for the annual working permit. We also need a paper from the ministry of health to get the permit, which costs 10 Dinar. After having a work permit we get a residence permit for 15 Dinar. It is not easy to understand the procedures because all the papers are in Arabic and I only speak English. They also make us wait for long. First they take care of the Jordanian customers and then of us. But this year something exceptional happened. I was waiting at the ministry of labour for a long time when an officer came in. He saw me and then shouted at the clerk in charge: 'Why don't you take this woman's papers. She has been waiting for one hour.' This was a good man. It had never happened before.

What I wish for is that the Jordanian families treat their maids better, like human beings and that the salaries should be higher. I also wish that we do not have to pay so much for our residence permit every year and that the police and the authorities are nicer to us. I definitely want to go home in a few years and live in the Philippines."⁸

I.2. General Overview

I.2.1. The Phenomenon of Labour Migration of Women

⁶ Mira requested that the name of the institute remains anonymous.

⁷ 250 Dinars translates into USD 400.

⁸ The real name of Mira is known to the author.

Global exchange of labour is one the main characteristics of the twentieth century. Female migrant workers from Asia constitute the fastest growing group of migrant workers in the world.⁹ Migration to seek employment is generally seen as an opportunity to improve the living standard and contribute to the well-being of the family. However, there are often "hardships and obstacles along the way".¹⁰ Discrimination, exploitation and the violation of the migrant workers' rights are widespread. Migrant workers are often negatively perceived by the governments and the population of the host countries. The increase of migration and migrant women in particular has also led to a higher number of destinations where abuse and exploitation occur. This and the denial of their rights has made the issue a growing concern for governments, both in sending and receiving countries, and for the United Nations.¹¹

Are human rights only citizen's rights? Unfortunately, this seems to be a common perception by states on the legal dimension of human rights and sad reality when it comes to female migrant workers. Because of their double marginalisation as women and as migrants, female migrant workers may easily find themselves in situations where they are vulnerable to violence and abuse on gender segregated labour markets.¹² Domestic labour is one of the primary forms of employment for migrant women. Approximately 1.5 million Asian women are working abroad either legally or illegally.¹³ Women account for more than 60% of all legal migrants from the Philippines and for 85% of migrants leaving Sri Lanka. The overwhelming majority of them are migrating to work as domestic workers.¹⁴ Women working in households constitute one of the weakest groups among migrant workers.

⁹ Raghavan, Ch.: Asian Migrant Workers Require Protection, at TWN Third World Network, Third World Resurgence, No.67, March 1996, <http://www.twinside.org.sg/title/ilo1-cn.htm>, 28.2.2002, p. 1.

¹⁰ Perruchoud, R.: Human Rights of Migrant Workers-Draft Paper for the International Workshop on Best Practices Related to Migrant Workers; Santiago de Chile, 6/2000, www.iom.int, 5.4.2002, p.2

¹¹ See OHCHR, Fact Sheet No. 24, The Rights of Migrant Workers, 2001 and CHR, E/CN.4/2002/94, 15.2.2002, Report of the Special Rapporteur on Migrant Workers, 2002. CHR, E/CN.4/1998/74, 26.12.1997, Measures to Improve the Situation and Ensure the Human Rights and Dignity of All Migrant Workers: Jordan, Fifty-fourth Session, 1997. CHR, Resolution 2002/58, 25.4.2002, Violence against Women Migrant Workers, Fifty-fifth Meeting, 2002. CHR, Resolution 2002/62, 25.4.2002, Human Rights of Migrants, Fifty-fifth Meeting 2002. CHR, E/CN.4/2000/76, 9.12.1999, Report of the Secretary-General on Violence against Women Migrant Workers, Fifty-sixth Session, 1999. CHR, E/CN.4/2000/82, 6.1.2000, Report of the Special Rapporteur on Migrants on the Human Rights of Migrants, Fifty-sixth Session, 2000.

¹² Raghavan, Ch., *supra* note 9, p. 2. See also Coomaraswamy, R., Kois, L.: Violence Against Migrant Women, In Askin, K., Koenig, D. (eds.), Women and International Human Rights Law, Transnational Publishers Inc., New York, 1999, Vol. I, p. 177.

¹³ Coomaraswamy, R., Kois, L., *supra* note 13, p. 178.

The story of Mira illustrates the nature of the problems experienced by women migrant workers in Jordanian households. However, the lack of protection for them is abundant throughout the whole world and one could hardly find any country without its share of migrants. Legal protection is a privilege not frequently extended to those women. It is never an easy choice to leave one's home country and look for employment abroad. Many of the girls and women are left with no choice as the catastrophic economic and social situation in their country forces them to look for employment abroad. According to the International Labour Organisation countries of the Middle East are the foremost receiving countries of Asian migrant workers, among them Jordan.¹⁵ Miserable working and living conditions are especially blatant. Cases of maltreatment and abuse that have been reported world-wide include confiscation of passports, withholding of wages, deprivation of food and malnourishment, lack of access to medical and health services, the interception of letters from home, physical and sexual violence.¹⁶ These forms of abuse occur throughout the countries of the European Union, Africa, North-America and the Middle East.

The regional preference of the domestic workers from the Philippines and Sri Lanka, which constitute the vast majority of the maids in Jordan¹⁷, is clearly Europe and America. However, their placement does not always depend on their wishes but on their socio-economic condition, education and status. The poorer they are the more likely they are to migrate to an Asian country. The personal experience of people the emigrants know plays a role in the selection process, too.¹⁸ Over 97% of all domestic migrant workers in Jordan are from Sri Lanka and the Philippines.¹⁹

¹⁴ Idem. p. 179 and Raghavan, Ch., *supra* note 9, p. 3.

¹⁵ Kavar, M.: The Role of ILO in the Protection of Immigrant Female Workers, International Labour Organisation, Geneva, 2001, http://www.arabwomenconnect.org/english/western_asia/migrant.html, 4.3.2002, p. 1.

¹⁶ Coomaraswamy, R., Kois, L., *supra* note 12, p. 178. She reports these incidents for European and Asian countries. See also Migrant Workers in Jordan "A Concept Paper on the Situation of Female Domestic Migrant Workers in Jordan", UNIFEM Western Asia Regional Office, Amman, 8/2000, pp. 3-5, Ministry of Interior of Jordan, *supra* note 5, pp. 5-6. Khan, A.S.: Status of Female Migrant Workers in Jordan, Role and Activities of the Sri Lanka Embassy, Paper for the International Workshop on Best Practices Related to Migrant Workers, Amman 20.-22.2.2001, <http://www.freedomhouse.org/research/freeworld/2000/countryratings/jordan2.htm>, 5.4.2002. These publications focus on Jordan only.

¹⁷ Tarawneh, M.: The Role of the Department of Family Protection towards Foreign Female Workers in Jordan, Paper by the Family Protection Unit of the Jordanian Government Presented at Workshop on Women Migrant Workers in Jordan: Status Issues and Actions, Amman 20.-22.2.2001, p. 5.

¹⁸ Gurung, G.: Patterns in Foreign Employment and Vulnerability of Migrant Workers, Nepal Institute of Development Studies, Katmandu, 2000, pp. 9-10.

¹⁹ Owen, R.: Migrant Workers in the Gulf, Cambridge University Press, 1986, p.3. He finds a similar number for the Gulf States. The figures for Jordan are taken from the Jordanian Ministry of Interior, *supra* note 3.

The process of migration to Jordan starts with the recruitment of the potential maids and house workers in the Philippines and Sri Lanka. There are various reasons for the decision to migrate. Despite the harsh working conditions Jordan²⁰ and the Gulf States are attractive for their high salaries which could be up to 10 times more than at home.²¹ It is generally acknowledged that there is a complex set of socio-economic factors that lead up to migration. In the case of the migrant domestic workers from the Philippines and Sri Lanka their governments put a high emphasis on policies furthering the export of labour. In the Philippines this is intended to reduce problems due to payment deficits, structural adjustment programmes and unemployment²² and to provide an essential "cash revenue for their countries"²³. Considering the bad economic situation in the Philippines and Sri Lanka it is understandable that the women stay on even though they are treated badly. The strong wish to migrate on one side is opposed by the complaints of returning migrants on the other.²⁴ Most of the domestic workers find Jordan a relatively good place to work.²⁵ Still the women suffer from a lack of protection.

Jordan is a unique example as it serves both as a receiving and sending country for migrants.²⁶ Whereas most countries in the world constitute either a country that sends migrant workers abroad and pursues an active migration policy of its citizens²⁷ or simply receives migrants workers²⁸, Jordan does not only receive great numbers of migrant workers but also sends them. Most of the Jordanian migrant workers are employed in the neighbouring Gulf States. The Jordanian delegation to the Committee on the Convention of All Forms of Racial Discrimination (hereafter called the CEDAW Committee) explained that "the Jordanian authorities allowed into the country whatever labour was required, from foreign household staff – whose ethnic and religious characteristics were fully respected – to qualified professionals from ... Germany and Canada". At the same time "Jordan exported highly qualified labour, particularly doctors, to many countries around the world."²⁹

²⁰ Owen, R., *supra* note 19, p. 10.

²¹ *Idem.* p. 10.

²² Raghavan, Ch.: *supra* note 9, p. 3.

²³ Kavar, M., *supra* note 15, p. 1. She also points towards globalisation and economic restructuring as reasons for positive migration policies.

²⁴ Owen, R., *supra* note 19, p. 10.

²⁵ Khan, A.S., *supra* note 16, p. 3.

²⁶ UNIFEM Concept Paper, *supra* note 16, p. 1.

²⁷ This would be Sri Lanka, the Philippines, Nepal and Indonesia.

²⁸ This is the case for most Western countries, like Germany, Italy, Canada and the US.

1.2.2. Living and Working Conditions of Female Migrant Domestic Workers in Jordan

Among all Arab states Jordan can pride itself with being cited as having the best human rights record but there is still a great need for improvement. Article 16 of the Jordanian National Charter³⁰ emphasises the Jordanian commitment to the protection of human rights and adherence to the principles and rights of the Universal Declaration of Human Rights (hereafter called UDHR). Additionally, the Charter seeks to ensure transparency and accountability within the state by allowing national and international human rights groups to investigate allegations of human rights violations. They may publish their findings even if they are critical of the government. In March 2000 the National Committee for Human Rights was established by the Jordanian government and earlier in the 1990s a Jordanian section of the Arab Organisation for Human Rights and Amnesty International was opened.³¹

There are around 3500 officially registered Filipino and 1200 Sri Lankan maids in Jordan.³² They constitute the majority of non-Arab migrant workers in the country. Surveys and interviews with female Asian maids in Jordan carried out recently³³ revealed a number of problems with regard to the working conditions and the legal status of domestic workers in Jordan. That the situation in Jordan is not free of problems is shown by the number of runaway maids from Sri Lanka and the Philippines who are received by their embassies. Between four and six girls and women daily run away from the homes of their employers and ask for protection and help from their respective embassies.³⁴ Some just want to go home. Others would like to change their employer.

There are several actors involved in the migration process and the stay of the Asian maids in Jordan. Firstly, there are the agents who play a main role in the recruitment and placement of the women into families in Jordan. They are active in Jordan as well as in the

²⁹ CERD/C/SR.1288, Summary Records: Jordan, CERD Committee, 14/12/98, Art. 39, 40.

³⁰ HKJ National Charter, King Abdullah Library Online, <http://www.kingabdullah.jo/about%5Fjordan/human%5Frights.html>.

³¹ E/C.12/1/Add.46. Concluding Observations, CESCR Committee, on the Second Periodic Report of Jordan, 1.9.2000 and CCPR/C/79/Add.35; A/49/40, Concluding Observations of the CCPR Committee, 10/08/94, The Committees mention these as positive developments.

³² Tarawneh, M., *supra* note 17, p. 5. The number is quite significant given the size of the Jordanian population, which is only around 4 million.

³³ UNIFEM Concept Paper, *supra* note 16. Interviews done by the author.

³⁴ Khan, A. S., *supra* note 16, p. 3.

home countries of the women. Most of the agencies in Jordan are not legal.³⁵ Secondly, there are the employers of Asian maids who are responsible for the well-being of the women since the domestic workers spend most of their time with the employers and are often in a dependent position. The employer is in charge of the registration of the migrant worker, the obtaining of the work and residence permit and the general working and living conditions. They have to make sure that the contract is signed and that its provisions are fulfilled. Thirdly, the Jordanian authorities have to guarantee that the rights of employers and employees are protected and that both sides abide by the existing laws. No discrimination should occur from their side. Finally, the diplomatic representatives of the Philippines and Sri Lanka in Jordan bear responsibility for their citizens, too. They are there to give protection to the women if they are in need of it. Both embassies have established support and counselling programs for maids working in Jordan.

The miserable general working conditions that many domestic migrant workers have to endure are also certainly owed to the apparent lack of good will and intentions by their employers. They withhold salaries or reduce them.³⁶ The women do not sleep enough and do not get enough food. The situation is worse in cases where the domestic helper has no work or residence permit. It is easy then to withhold wages and thus financially exploit her. Sometimes the domestic helper is kept in slave like conditions. The number of women who have no contract is not specified by the surveys that have been conducted so far, but based on known data it is believed to be considerable.³⁷ Furthermore, the domestic worker is not informed about her rights.³⁸ Unfortunately, statistics show that despite the fact that women have contracts employers do not stick to the conditions. Wages are not paid or commission fees for the agency for placing the domestic helper into the family are deducted from the salary.³⁹ The salary is low compared to Jordanian workers. Regulations about minimum wages do not exist in Jordan. There is only a recommendation by the Jordanian Labour Ministry, which sets the monthly minimum wage at 80 Jordanian Dinar.⁴⁰ Most of the

³⁵ See Ch. II.1 this paper.

³⁶ UNIFEM Concept Paper, *supra* note 16, pp. 4-6 and 10-11.

³⁷ Kavar, M., *supra* note , p. 2.

³⁸ CHR, E/CN.4/2002/94, 15.2.2002, Report of the Special Rapporteur on Migrant Workers. This is described as a common phenomenon of the situation of migrant workers all over the world. See also Department of State of the Government of the United States of America: Country Reports on Human Rights Practices for 2000, Vol. II, Jordan, Submitted to the Committee on Foreign Relations, U.S. Senate and the Committee on International Relations, U.S. House of Representatives, September 2001, pp. 1950-68.

³⁹ This plight is also shared with female domestic migrant workers all over the world as the reports of the Special Rapporteur show. For Jordan see UNIFEM Concept Paper, *supra* note 16 , p. 10-11.

⁴⁰ *Idem.* p. 5.

female domestic migrant workers are below this limit. More than 93% of them earn less than 60 Dinar.⁴¹

Most Jordanians have their weekly holiday on Fridays. This does not mean that their domestic helpers enjoy this rest, too. A lot of them work seven days a week for up to 16 hours or more with only a few hours off. The workload of the women is immense. They have to cook, clean and take care of children and do gardening for households comprising up to ten members or more. Tiredness and insufficient safety at their workplace constitutes a danger for their health. Reports of accidents of maids falling off ladders and out of windows are frequent. Annual holidays are a luxury for most of them.⁴² In cases of illness or accidents they very rarely have insurance. They are not part of the social security scheme.⁴³ Most have no insurance at all, as Mira's example distinctly shows.

The term living conditions covers mainly the issues of housing, food and clothing. Most of the women stay in the houses or apartments of their employers. Many of those lack proper accommodation with their own sanitary facilities. Rooms tend to be small. Some are forced to sleep in the kitchen on sofas or mattresses. Employers also tend to ignore the need of their maids to have food they are used to eat at home and can prepare for themselves. Like Mira, they are often not allowed to eat at the table or with the family but are made to stand up in the kitchen. In some cases they are forced to throw away leftovers of food without being allowed to eat any of it but receive meagre rations from the families.⁴⁴ Very often maids are prevented from seeing a doctor. As they are not free to leave the house they have restricted possibilities to use medical health care services in Jordan.⁴⁵

Another problem concerns the privacy of the women. Even if they have a room to themselves or ideally a flat, employers do not necessarily respect their privacy. They ignore incoming phone calls from the workers' home or throw away letters, thus depriving the women of their means of communication with their families.

⁴¹ *Idem.* p. 5.

⁴² Abu Harthiyeh, M., Qawwas, F.: A Comparative Study of Women Rights in Arab Labour Legislation, Centre for Democracy and Workers' Rights in Palestine, Ramallah, March 1997, <http://www.cdwr.org>, 28.2.2002, shows that even 56% of the regular Palestinian women workers do not enjoy their annual holidays.

⁴³ HKJ Social Security Law No. 30, 1976. It excludes every worker who is not covered by the Labour Law, which would be the case with domestic workers. See Ch. II.3 this paper.

⁴⁴ UNIFEM Concept Paper, *supra* note 16, p. 8.

Some workers are detained at home and have no possibility of leaving the house of the employer even if they have a few hours off. This gravely restricts their mobility and freedom of movement within Jordan. In cases where the employer withholds the passport of the women or does not register them it is impossible for them to leave the house out of fear of being caught, imprisoned, fined and repatriated. As indicated above women without residence status do not enjoy very much legal protection. Employers can easily get rid of them by putting them out on the street and denouncing⁴⁶ them to the authorities. As a result, if there are any problems the women do not know where to go. They cannot turn to the authorities for help and usually end up at their embassies or in worse cases at the agency, which punishes them and sends them back to the employer. In cases where legally employed domestic workers have sued their employer for misconduct of any kind the principle of equality before the law as laid down in the Jordanian Constitution is rarely seen.⁴⁷ Most employers walk away free, as the maids cannot prove what has happened to them in the private domain of the houses.⁴⁸ Only one case exists where an employer was found guilty of raping the family maid and was duly convicted. An extra judicial arrangement led to the marriage of the two and the suspension of the prison sentence.⁴⁹ This can be viewed as a positive outcome compared to the cases where the domestic workers could not produce sufficient evidence to prove the rape or where they remained silent about it. Vice versa, domestic workers have less than good chances once a case is filed against them by their employers.⁵⁰

Finally, the treatment by their employers, if not violent, might have degrading dimensions. It is surely unbearable if their wages are not paid but abusive remarks and harsh treatment add to the difficulties of the situation. All this indicates that the domestic helpers are at the "bottom of the occupational hierarchy"⁵¹. There are some cases where domestic workers suffer not only from verbal abuses, but also from physical and psychological attacks by

⁴⁵ Tarawneh, M., *supra* note 17, p. 5.

⁴⁶ There are cases where employers denounced their domestic helper to the police claiming she had stolen money or jewellery. Given the disadvantaged status before court the women were invariably convicted and sent home. See UNIFEM Concept Paper, *supra* note 16, pp. 12-14.

⁴⁷ HKJ Constitution, Ch. II, Art. 6. It affirms equality before the law for all Jordanian citizens without discrimination on the grounds of religion, race or language. It does not mention sex or nationality.

⁴⁸ Interview with Mrs. Shatha M. Amin, Project Co-ordinator, Women Migrant Workers Project, UNIFEM, Amman, 22.4.2002.

⁴⁹ Tarawneh, M., *supra* note 17, p. 7. The extra-judicial arrangement may seem strange to Europeans but for an Islamic society it is not uncommon to make a 'relationship' official by marriage, even it has started with a rape.

⁵⁰ UNIFEM Concept Paper, *supra* note 16, p. 14. See also Tarawneh, M., *supra* note 17, pp. 7-8.

⁵¹ Kwar, M., *supra* note 15, p. 2.

their employers or members of their families. The case mentioned above is only one example. Cases that were brought before the Jordanian High Court show more evidence of physical abuse.⁵² Surprisingly, the Jordanian authorities blame the presence of the maids in the house for the abuse. According to them, maids should be supervised 24 hours a day. By appearing on windows and in gardens they are said to provoke aggressive behaviour of men that can lead to sexual assaults.⁵³ While it seems sad to hear this it is on the other hand 'understandable' in a traditionally male-dominated society. The girls do not have their family with them or any law enforcement to protect them. For the sake of sending their savings home every month they even endure situations where rape and violence becomes daily routine. Pregnancies are hidden and cases where Filipino or Sri Lankan women were convicted for killing their newly born babies were brought before Jordanian courts. As mentioned above it is hard for the maids to prove that they have been abused and often they cannot afford a lawyer.

1.3. Scope and Methodology of the Paper

There has not yet been any study on female migrant domestic workers and their legal protection under human rights law. Nor are there any special international instruments aimed at the protection of this particular group. This thesis intends to compare international human rights standards as laid down in the normative international documents and state practice of Jordan in protecting the human rights of female migrant domestic workers. The paper departs from the fact that female migrant domestic workers as a group suffer from a lack of protection of their human rights. Are their needs for protection sufficiently covered by international human rights law? What kind of protection does it provide in terms of fair and decent working conditions? Is there a need for new international protection mechanisms of their human rights? What legal measures have to be taken by the Jordanian government to bring their legislation into conformity with

⁵² There are no court files available. Some cases are documented by the Jordanian Family Protection Unit, which takes care of foreign maids who have been abused by the employers. Besides the above mentioned case of the girl who was raped and then married to her perpetrator there are three other cases. One case concerns a Filipino maid who was raped by the owner of the placement agency and the two other cases concern Sri Lankan maids who got pregnant from her non-Jordanian boy friends and killed her new born children in the bathroom of the employers out of fear to be discovered and being sent home. These incidents happened in 2001. See Tarawneh, M., *supra* note 17, pp. 9-10.

⁵³ Tarawneh, M., *supra* note 17, p. 8. He assumes that one of the main reasons for sexual abuse of Asian maids is that they are left at home alone for long periods. His study includes a statistic of "crimes" committed against Sri Lankan maids in Jordan. Under the categories of "devirginising, robbery and devirginising, dishonoring, adultery, indecent actions" there are 41 cases, which were reported to the police. The number can be expected to be above that considering that most violations are not reported to the police.

international treaty provisions? Those questions will be answered in the course of this thesis.

There are a number of relevant international human rights documents that address the needs of migrant workers and contain certain clauses relevant especially for domestic workers. As the thesis follows the path of the human rights approach these documents have to be analysed in terms of their protection of the human rights of the migrant workers in Jordan.⁵⁴ They consist of legally binding instruments of the United Nations that have been ratified by Jordan and of international customary law. Formally binding instruments consist foremost of the treaties of the United Nations and the therein enshrined rights. These are the Convention on the Elimination of All Forms of Discrimination Against Women (hereafter called CEDAW), the Covenant on Economic, Social and Cultural Rights (hereafter called CESCR) and the Covenant on Civil and Political Rights (hereafter called CCPR) and the Convention on the Elimination of All Forms of Racial Discrimination (hereafter called CERD). These treaties indicate, when states are accountable for human rights violations of their citizens and what the content and scope of the rights extended to the persons under the jurisdiction of a state are.⁵⁵

General Comments on the rights and Concluding Opinions of treaty bodies constitute authoritative interpretations of treaty provisions and are therefore binding to states, too. International case law of the European Court of Human Rights (hereafter called ECHR), the International Court of Justice (hereafter called ICJ), the European Court of Justice (hereafter called ECJ) and decisions of the treaty bodies on complaints are substance binding. Although Jordan is not a member of the European Union or a party to the ECHR, decisions by these courts can be used to draw parallels to define certain acts of discrimination or identify sources for state responsibility.⁵⁶ Soft law will be used only

⁵⁴ There are also a number of conventions and recommendations of the International Labour Organisation, which will not play a role here. Although Jordan has become party to the ILO 1956 and has ratified some conventions that would be of significance for the rights of migrant workers on the labour market in general. However, Jordan has not yet ratified any of the relevant instruments that target migrant workers, i.e. the Equal Remuneration Convention, 1951 (No. 100), The Labour Inspection Convention, 1947 (No. 81). Both conventions could be of significance for migrant workers if seen in connection to the periodic reports of Jordan. Unfortunately there are neither periodic reports from Jordan nor reports from the ILO Committee of Experts mentioning the situation of migrant workers in relation to the two conventions.

⁵⁵ See Table I, Annex for ratification dates.

⁵⁶ In the case of indirect discrimination the ECJ has taken a firm stand in defining it. There are decisions on indirect discrimination on the labour market. These cases are used in Chapter II.2.1 to prove that there is indirect discrimination against female migrant domestic workers from Asia in Jordan per definition. The ECJ decisions cannot, however, be directly invoked to establish a breach of human rights by Jordan, since Jordan is not a member of the European Community and the ECJ has therefore no jurisdiction over it. Similarly,

marginally as it has no formally binding character. Customary law will only play a marginal role since Jordan has ratified all relevant treaties to this case.⁵⁷ However, customary law will be mentioned in some chapters alongside the international treaties.

The domestic labour law of Jordan will find consideration, too, as it belongs to the category of hard law and has to be analysed to establish whether it gives protection to migrant workers and if not how that could be changed. A thorough analysis of the Jordanian legal documents will reveal whether and where migrant domestic workers are not given full protection according to their human rights under international law. It is therefore important to study the Labour Law, the Constitution, the National Charter and the Social Security Act. These will serve as indications of violations of the women's human rights and their need for protection.

Another source for proving violations of rights and discrimination against migrant domestic workers are national court decisions. Unfortunately, these were only available as second hand sources and are therefore not reliable. In addition, there are no complaints before a court alleging the direct violation of a human right of one of the migrant workers.⁵⁸ This paper has had to rely on secondary data when it comes to the situation of the women migrants working in Jordan although a few interviews have been carried out by the author personally but cannot be regarded as representative. All the data presented in this paper should therefore be viewed with caution. There is generally a great need for thorough documentation of the migration flow of Asian maids into Jordan and their situation.

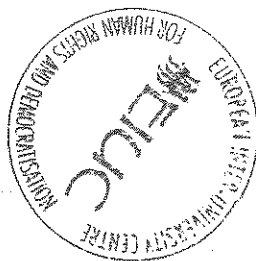
The scope of this study ranges from the arrival of the domestic workers in the receiving country Jordan to the placement into families and their working and living conditions in that country. It aims specifically at the problems faced by this group of migrant workers and their working conditions. Therefore rights related to the working and living conditions

decisions of the ECHR on state responsibility can be used to prove that the treaty bodies used them as a basis for interpretations of treaties such as CEDAW, CCPR and CESC to establish obligations for states to prevent private interference with the rights. In so far also EC case law and ECHR case law are relevant here.

⁵⁷ Brownlie, I.: *Principles of Public International Law*, Clarendon Press, Oxford, 1998, p. 6. Brownlie discusses the sources of international law. He asserts that the establishment of customary law is a difficult one and not easy to define. He also states that it is mainly to be used if there are no treaties that have been ratified by the respective country. This is not the case for Jordan.

⁵⁸ This allows for statements on how the Jordanian authorities implement human rights provisions, raise awareness for them and make them available to persons, which are affected by violations of rights. This problem will be discussed in Chapter IV and V.

are the focus of attention. Although female migrant domestic workers are considered here as a group of their own they largely face the same problems as other migrant workers. There are a lot of reports and publications on the general situation of migrant workers but none has yet covered the particular case of domestic workers at work. Therefore this paper will avoid analysing general human rights violations faced by all migrant workers but rather address the particular violations of the human rights of female migrant domestic workers as women and foreigners. The findings of this thesis will be reflected in the final conclusions and recommendations on possible and necessary amendments of the Jordanian Labour Law. These recommendations can to a certain extent be generalised and applied to other countries in the region and in Europe where the same problems occur.



II. INCLUSIVENESS VERSUS EXCLUSIVENESS: THE JORDANIAN NATIONAL LEGISLATION

*"The Committee is concerned that the 1996 Labour Code does not provide any protection for persons working in family owned and agricultural enterprises, and domestic labour. It is precisely with respect to work in these areas that protection is most needed because it often involves hazardous working conditions and largely female and child workers."*⁵⁹

II.1. Legal Status and Immigration

Upon leaving their home country female domestic migrant workers give up the legal protection of their government and are subject to the jurisdiction of the foreign country. As a result their legal status is directly related to the treatment of foreigners under the Jordanian jurisdiction. According to the Jordanian Penal Code all persons lawfully in the territory of the Hashemite Kingdom of Jordan are subject to its jurisdiction.⁶⁰ This applies to female migrant domestic workers, who entered Jordan legally and obtained a residence and work permit only. Jordan faces problems related to illegal and irregular immigration. Although this paper is not primarily concerned with the analysis of the process of recruitment and immigration it is necessary to shed light on it in order to provide a better understanding for the evolving problems related to the legal personality of female migrant domestic workers.

The process of immigration starts in the sending countries. In this regard trafficking and irregular immigration for purposes of domestic work has become an issue of concern to the governments of the Philippines, Sri Lanka and Jordan. It is not a new phenomenon and is connected to the same social and economic factors that encourage women to leave their country. Illegal recruitment agencies and overseas employment promoters contribute significantly to the influx of labour migration, which started in the 1970s.⁶¹ The line between trafficking and smuggling is often blurred.⁶² One third of the annual global

⁵⁹ E/C.12/1/Add.46. Concluding Observations of the Committee on Economic, Social and Cultural Rights on the second periodic report of Jordan, 1.9.2000, Art.20.

⁶⁰ HKJ Penal Code, Art. 1.

⁶¹ Raghavan, Ch., *supra* note 9, p. 1.

⁶² Derks, A.: Combating Trafficking in South-East Asia: A Review of Policy and

trafficking trade takes place from Asia.⁶³ Trafficking from the Philippines that is related to the export of labour is predominantly directed towards Middle Eastern countries, Singapore and Malaysia.⁶⁴ In the case of Jordan trafficking is not so much an issue as is irregular immigration, which means that the potential maids are entering the country on tourist visas without declaring their real intention of staying to work. In order to prevent illegal or irregular immigrants from staying in the country not a lot can be done in terms of restricting their entry into the country as long as they possess valid travel documents and a visa. Therefore, Jordanian authorities react with very strict measures and regulations concerning the registration of domestic workers. They impose heavy fines on persons illegally employing domestic workers in order to prevent illegal labour migration.⁶⁵ This places the sole responsibility for the status of the migrant worker with the employer. Article 11 of the Labour Law prohibits the work of any employment agency in Jordan unless it is licensed by the Ministry of Interior and the Ministry of Labour, which has the right to close the illegal agency and fine the responsible persons.⁶⁶

On the side of the Filipino and Sri Lankan authorities a lot more can be done to ensure legal and regular migration. Whereas this seems to be the case in the Philippines where the government has set up mechanisms and structures to regulate migration⁶⁷ Sri Lanka still lacks initiatives. It is important to begin the regulation of the recruitment process in the sending country already and to control the licensing of agencies, as is done in the Philippines.⁶⁸ Despite efforts to the contrary irregular migration and abuse continue to exist. In terms of the legal status of the domestic worker it is necessary to ensure a legal entrance and stay in Jordan. The placement agency in Jordan must therefore be legal, too. Most placement agencies are not and Jordanian officials do not recognise them. They are

Programme Responses prepared for the IOM, 2000, <http://www.iom.int>, 27.2.2002, p. 16.

⁶³ *Idem.* p. 16.

⁶⁴ Raghavan, Ch. *supra* note 9, p. 2. She states that the illegal Indonesian overseas contract workers outnumber the legal ones at a ratio of seven to one. Only 40% of the migrants from Sri Lanka leave the country through legal channels.

⁶⁵ See Ch. III.1 this paper.

⁶⁶ HKJ Labour Law, Art. 11.

⁶⁷ Derks, A., *supra* note 62, p. 50 and following. The Filipino government has been very concerned about the irregular migration of its citizens. Although the country depends on and furthers migration for employment it has set up legislation and regulations in the labour law. Its Migrant workers and Overseas Filipino Act of 1995 includes provisions to license recruiters and to criminalize illegal recruitment. The Filipino Labour Code restricts the age of labour migrants to 21.

⁶⁸ *Idem.* P. 50.

often profit oriented and less than concerned about the well-being of the worker.⁶⁹ In an attempt to legalise the agencies in Jordan and to have more control over their activities the authorities recently issued a new law.⁷⁰ It is not yet in force yet but would put agencies under obligations in terms of ensuring that the domestic worker gets a contract and enters the country legally. It requires registration of every agency and worker with the authorities.

The legal status of the domestic workers is directly dependent on their registration with the Jordanian authorities. This has to be done by their employer before their tourist visa expires. If the employer issues a contract and registers his or her domestic helper the woman is lawfully residing within the country and her legal status as an immigrant worker is made official. Thereby she is covered not only by normative international human rights treaties that have been ratified by Jordan but also by the provisions of the domestic legislation concerning her working and living conditions. When a woman has no contract, her papers are kept by the employer or she has no means of registering herself with the authorities she is highly vulnerable to abuse and in danger of being expelled. As an illegal alien she would not have any protection under Jordanian law and would be expelled from the country if caught. The Jordanian Labour Law⁷¹ tries to regulate illegal employment by imposing heavy fines on employers illegally employing foreign domestic workers⁷² and stipulating the expulsion of the worker. The Jordanian Constitution only guarantees equality before the law to Jordanian citizens and excludes foreigners.⁷³ As regards the economic, social and cultural human rights under international normative instruments the Jordanian government "guarantees all the rights in the Covenant"⁷⁴ to citizens and non-citizens, who accordingly enjoy all facilities and rights. There is no distinction between citizens and non-citizens."⁷⁵ If the Jordanian government stays committed to that, domestic migrant workers would enjoy full protection under the international Covenants and

⁶⁹ UNIFEM Working Paper, *supra* note 15 and Shawabkeh, A., Halaseh, I.: Working Paper Presented to the Workshop on the Status of the Immigrant Female Workers in Jordan, Ministry of Labour of Jordan, Amman 20-22.2.2001.

⁷⁰ Tarawneh, A., *supra* note 17, p. 2-5.

⁷¹ HKJ Labour Law, No. 8, 1996 and amendments.

⁷² *Idem*, Art. 12 (e, f, g).

⁷³ HKJ Constitution, January 1, 1952, Ch. II, Art. 6, reads: "Jordanians shall be equal before the law. There shall be no discrimination between them as regards to their rights and duties on the grounds of race, language and religion."

⁷⁴ CESCR.

⁷⁵ E/1990/6/Add.17. Second Periodic Report: Jordan 23/07/98, CESCR Committee.

CERD⁷⁶. No discrimination on the basis of their nationality on the labour market and no violations of their human rights would go unpunished.⁷⁷

II.2. Scope of Protection of the Jordanian Labour Law

III.2.1. Provisions Including Migrant Domestic Workers: A Case of Indirect Discrimination

The adoption of labour laws and regulations is an efficient way to implement international standards and promote decent standards of work. The new Jordanian Labour Law of 1996 governs all labour affairs in Jordan. It was promulgated to give rights to employees such as terms and conditions of work, "individual contracts of employment, minimum wages, wage protection, health, safety and welfare, working hours, annual holidays, the employment of women and children".⁷⁸

Although the Jordanian Labour Law applies to all employers and employees in Jordan⁷⁹ and grants special rights to female workers it explicitly excludes domestic workers.⁸⁰ They fall under one of the unorganised categories of work.⁸¹ Article 3 (c) specifies that "the provisions of this law shall apply to all employees and employers with the exception of ... domestic servants, gardeners, cooks and persons employed in similar occupations". Domestic foreign workers are not mentioned as a special category but as far as they work as domestic helpers they do not benefit from any of the regulations especially from the very important regulations for contracts contained in the labour law. In fact they are not excluded because they are immigrants but because they belong to a certain occupational group. As an effect this encourages and aids their exploitation as foreign workers by employers and deprives them of a legal point of reference in terms of their rights. The CESCR Committee is concerned about the fact that "non-Jordanian workers are exempted

⁷⁶ Idem. The Jordanian government refers to the reports to CERD 1997 and the commitment it expresses towards non-discrimination between nationals and non-nationals.

⁷⁷ It is worth mentioning that the Jordanian government frequently states that they "adhere most strictly to the international conventions concerning the respect for human rights. ... International instruments are secured and endorsed by its Constitution and the National Charter and its laws and regulations in a manner consistent with the Charter of the United Nations". CERD/C/318/Add.1, States Party Report: Jordan, CERD Committee, 14/04/98

⁷⁸ Reply to List of Issues: Jordan 02/06/2000, Par.5(b)

⁷⁹ HKJ Labour Law, Art. 3.

⁸⁰ Abu Harthiyeh M., Qawwas, F., *supra* note 42, p. 12. The study mentions also Syria, Oman and Egypt as countries, which deny domestic workers rights under their Labour Laws.

⁸¹ Kavar, M., *supra* note , p. 15.

from minimum wage provisions ... and excluded from the social security system. Furthermore it is concerned that the 1996 Labour Code does not provide any protection for persons working in family owned and agricultural enterprises and domestic labour".⁸² This means that a contract of employment, if given, is the only reference to their rights.

However, the 'fateful' article 3 (c) has to be applied in accordance with Article 12⁸³, which regulates the employment of non-Jordanian citizens. Here the legislator stipulates that the employment of foreign workers in Jordan is not allowed unless the employer can prove that he or she is in need of the expertise and qualifications that are not available among Jordanian workers.⁸⁴ Permission must be obtained from the ministry of labour prior to the workers engagement or employment.⁸⁵ Work permits are valid for one year and are renewable. The ministry will charge the employer a fee for the work permit for every non-Jordanian employee "including employees who are excluded from the application of this law in accordance with paragraph (c) of article 3". This could be seen as a clear intention of the Jordanian legislator to give a legal status even to migrant domestic workers, who could otherwise completely disappear from the surface of the labour market. Article 12 (f) then states that "employment of a non-Jordanian employee is ... a violation of ... this law ... in the following cases: employing him without a work permit, employing him by an employer who is not permitted to work with him unless he has a permit from the ... ministry."

At first this reads like a contradiction. On the one hand, female domestic migrant workers, in their position as domestic workers, are excluded from the protection of the Labour Law by virtue of Article 3 (c). On the other hand, Article 12 (f) can be interpreted in their favour in so far as it intends to prevent illegal trafficking of migrants and makes sure that their employers obtain a work and residence permit for them. Especially female migrants would benefit from this provision since they are vulnerable to abuse by traffickers. Article 12 (e) sets financial sanctions against employers who do not comply with these provisions. Illegal employment would also have serious consequences for the migrant workers as Article 12 (e) provides for deportation of illegally employed migrant workers at the

⁸² E/C.12/1/Add.46. Concluding Observations CESCR Committee on the Second Periodic Report of Jordan, 19.2000, Art.19, 20.

⁸³ HKJ Labour Law, Art. 12. It was amended 1997. Article 3 states that "with due observance to the provisions of paragraph (c) of Article 12 of this law, the provisions of this law shall apply ...".

⁸⁴ Idem. Art. 12 (a).

⁸⁵ Idem. Article 12 (b)

expense of their employers. The migrant worker would then not be allowed to return to Jordan within a period of three years following the expulsion.⁸⁶ This provision may seem very unfavourable especially to female migrant domestic workers given their situation. If one of the women is prevented from leaving the house and from extending her residence permit because her employer hinders her or refuses to do this himself, she would also be punished. This provision, however favourable it may seem for female domestic migrant workers at the outset, contributes to keeping illegal migrant workers in the dark as it is unlikely that they would dare to go public to sue their employers for misconduct of any kind or simply for not registering her.

In accordance with article 12, an amended regulation⁸⁷ sets the fees for non-Arab foreign employees at 300 Jordanian Dinars excluding employees working in the field of agriculture, where the fee is lower.⁸⁸ If a woman such as the one in the Jordanian case at the beginning of this thesis has to register herself she will hardly be able to do so given the low wages paid by most employers.

Finally, in 1997 the Ministry of Labour issued an amendment to the aforementioned regulation, which gives precise "instructions for the conditions and procedures of bringing in and employing non-Jordanian employees".⁸⁹ Besides procedures on how to submit an application for a work permit by the employer, Article 3 (c) of the amendment requires that a photocopy of a work contract be submitted to the authorities together with a medical certificate that declares the migrant worker fit for work. In addition to that, a one-year residence permit for the worker granted by the Ministry of Interior has to be submitted. Only then will the Ministry of Labour issue a work permit. While these regulations can be seen as a hard, long and confusing process they do also give the very important guarantee of a work contract to the employee. In the light of a total absence of any other protection under the Labour Law this is of significant importance. Despite this, it could be argued that the legislator should stipulate which conditions the contract has to contain as not all employers will be bound by the regulations of the respective Articles in the Labour Law.

⁸⁶ *Idem*. Article 12 (g).

⁸⁷ *Idem*. Regulation Number 36, 1997, Regulation of Work Permits Fees for Non-Jordanian Employees, Issued in accordance with Article 12 of the Labour Law Number 8, 1996.

⁸⁸ 300 Jordanian Dinars translate into USD 450.

This analysis of the provisions of the Labour Law, which apply to female migrant domestic workers, as part of the occupational group of domestic workers and as part of the group of migrant workers, reveals the existence of two different kinds of discrimination against them. Firstly, there is a form of direct discrimination against non-Arab migrant workers. Article 12 (a) of the Labour Law states that priority in employment should be given to "Arab experts, technicians and employees". The CERD Committee in its consideration of state reports is concerned about this provision, which "appeared to be in conflict" with CERD and thus amounts to discrimination on the grounds of nationality and race.⁹⁰ This kind of discrimination affects female domestic migrant workers as non-Arab foreigners. Since only few Jordanians and other Arabs are willing to work as domestic helpers Article 12 (a) has not yet led to consequences for female maids from Asia.

More important and influential is the exclusion clause of domestic workers in Article 3 (c) of the Labour Law. It discriminates against domestic workers in the sense that it does not grant them any protection under the Labour Law. Since the overwhelming majority of domestic workers in Jordan consists of women and at the same time almost all migrant workers from Asia work as domestic helpers, Article 3 (c) strongly indicates an indirect discrimination against female migrant domestic workers from Asia. The notion of indirect discrimination was established by case law of the European Court of Justice. In *Jenkins v. Kingsgate*⁹¹ the Court held that the notion of indirect discrimination is designed to target those measures which are discriminatory in effect. In the *Bilka-Kaufhaus*⁹² case the Court added that this notion covers both, "indirect discrimination, where the employer deliberately uses indirectly discriminatory conduct to disguise a discriminatory intent and unintentional indirect discrimination, where the effects of any policy are discriminatory."⁹³ In other cases the Court applied the notion of disadvantage of certain groups on the European labour market in connection with indirect discrimination. It can be used to address less favourable treatment of workers.⁹⁴ However, in *Birds Eye Walls*⁹⁵ the

⁸⁹ HKJ Labour Law, Instructions for the Conditions and Procedures of Bringing in and Employing Non-Jordanian Employees, issued in accordance with the text of Art. No. 3 of the Regulation of Work Permits Fees for Non-Jordanian Employees Number 36, 1997.

⁹⁰ CERD/C/SR.1288, Summary Record, Consideration of State Parties' Reports: Jordan, 1998, para. 14.

⁹¹ ECJ *Jenkins v. Kingsgate*, ECJ, Case 96/80, 1981, ECR 911.

⁹² *Bilka-Kaufhaus Case*, ECJ, Case 96/80, 1986, ECR 1607

⁹³ Barnard, C.: Gender Equality in the EU: A Balance Sheet, In Alston, Ph. (ed.) *The EU and Human Rights*, Oxford University Press, 1999, pp. 217-18.

⁹⁴ See the following ECJ decisions: *Kording v. Senator fuer Finanzen*, ECJ, Case C-100/95, 1997, ECR I-5289; *Gerster Case*, ECJ, Case C-1/95, 1997, ECR I-5253; *Enderby Case*, ECJ, Case C-127/92, 1993, ECR I-5535

⁹⁵ *Birds Eye Walls Case*, ECJ, Case C-132/92, 1993, ECR I-5579.

Advocate General said that direct and indirect discrimination could not always be distinguished.

Applied to Jordan these cases indicate that the exclusion of domestic workers from the Labour Law would amount to an act of indirect discrimination, whether intentionally or unintentionally, of women and especially Asian maids on the Jordanian labour market. Unless the Jordanian legislator can bring forward a justification of the unequal treatment of different groups it is not permitted.

II.2.2. Regulations for Workers not Excluded from the Application of the Labour Law

When reading the Jordanian Labour of 1996, it appears that it is based on the Articles of the Jordanian Constitution.⁹⁶ Chapter 2 of the Constitution mentions the rights and duties of Jordanian citizens. Among them are not only equality before the law⁹⁷, but also the prohibition of deportation from the territory of the Kingdom and free choice of residence within Jordan, thereby granting Jordanians the right to liberty of movement. Besides this and other basic human rights that the female domestic workers from Asia are lacking, Article 13 of the Constitution prohibits compulsory work. Article 23 declares that "work is the right of every citizen" and obliges the state to provide work. The states shall enact labour legislation based on the principles of wages, that "commensurate with the quantity and quality of his work"⁹⁸. The number of working hours shall be defined and a paid weekly and annual holiday set. Workers who have to support families or are disabled, ill or old shall receive compensation. The employment of women and juveniles shall require special conditions and "factories and workshops shall be subject to special health safeguards".⁹⁹ The Labour Law is based on these principles.¹⁰⁰ Without any doubt female domestic migrant workers or domestic workers in general, for that matter, would benefit if only these principles were applied to them. There are, however, some more provisions in the Labour Law that would be of significant importance were they to be applied to domestic workers and especially female migrant domestic workers.

⁹⁶ HKJ Constitution, Ch. II, Rights and Duties of Jordanians includes only Jordanian citizens and has no mention of other persons on the territory of Jordan. It grants many basic human rights to Jordanian citizens, like freedom of assembly (art.16), freedom of opinion, speech and press (Art.15). It regulates only the extradition of foreign criminals from the territory of Jordan according to international agreements. In the Reply to List of Issues to the CESCR Committee, 02/06/2000, the Jordanian government states that the "Jordanian Labour Code Act No. 21 of 1960 as amended by Act No. 8 1996 was promulgated to safeguard the rights recognised in the Constitution article 23".

⁹⁷ Idem. Art. 6 (i).

⁹⁸ HKJ Constitution, Art. 23.

⁹⁹ Idem. Art. 23 (a)-(f).

Some provisions are especially important when seen in conjunction with the problems faced by domestic migrant workers. Given the commitment of the Jordanian government towards the well-being of the workers it is not quite understandable why domestic workers are perceived to be having the same status as family members of employers working without wages in households or private companies.¹⁰¹ Chapter 2 of the Labour Law regulates work inspection. As households are private domains they are naturally not included into that procedure. The work inspector is equipped with substantial powers to require removal of violations of the Labour Law and to impose a fine on the employer. In connection with Regulation Number 56, 1996, he can check on the fulfilment of safety and health conditions at a work place.¹⁰²

Besides work inspection the Jordanian Labour Law includes a lot of useful and protective provisions for women, which would be particularly beneficial to female migrant housekeepers. Among them is the right to a contract,¹⁰³ which determines the language of the contract, termination conditions¹⁰⁴ and the prohibition of any work that is different from that initially agreed upon¹⁰⁵. Finally, it gives the employee the right to file a lawsuit against the employer for violations of the contract or unlawful dismissal.¹⁰⁶ Article 29 (f) gives the employee the right to quit the job if he or she is beaten or otherwise physically humiliated.¹⁰⁷

There are no minimum wages according to the Labour Law, but instead there is a chapter called "Protection of Wages"¹⁰⁸. It stipulates that the amount of the wages should be fixed in the contract and if this is not done a court should estimate the amount in comparison to similar work.¹⁰⁹ More important is article 46 (a), which prohibits the delay of payment of the wages and deduction of any sum. The chapter also provides the formation of a

¹⁰⁰ This is very apparent when reading the different chapters and amendments of the 1996 Labour Law.

¹⁰¹ HKJ Labour Law, Art. 3(c).

¹⁰² HKJ Labour Law, Regulation Number 56, 1996, Regulation of Labour Inspectors, issued in accordance with Article 7 of the Labour Law.

¹⁰³ *Idem*, Art. 15.

¹⁰⁴ *Idem*, Art. 15.

¹⁰⁵ *Idem*, Art. 17.

¹⁰⁶ *Idem*, Art. 25-28.

¹⁰⁷ This article as such is no protection against violence and does not provide for judicial remedies but would give a woman the right to leave her employer and look for another job without having to go back as the act of violence is recognised as unlawful.

¹⁰⁸ *Idem*, Art. 45-54.

¹⁰⁹ *Idem*, Art. 45.

committee with members from the employers, employees and the Ministry of Labour "to undertake the fixing of the minimum wages ... in general or with respect to a certain area or to a certain profession".¹¹⁰ It is merely an establishment of mechanisms "fixing minimum wages" where needed, instead of setting up a committee that would permanently fix minimum wages for different categories of work.¹¹¹ While the government is not clear about the reasons for not establishing fixed minimum wages it is very explicit about why minimum wages are so important for workers and their families. They need to ensure the worker and their family a sufficient amount of money to meet their essential needs.¹¹² This makes it even more unclear why some categories of workers, such as domestic workers are excluded from the provisions.

Chapter 8 sets maximum working hours at forty-eight during a six day week. The seventh day is a paid day off. Every worker will be compensated for working overtime by 25 percent of his regular hourly wage. Employees are also entitled to 14 days fully paid annual leave. Paid sick leave up to 14 days annually is also guaranteed.¹¹³

Chapter 9 contains safety and occupational health provisions for the work place.¹¹⁴ Employers are required to provide necessary precautions to protect their employees against "hazards and diseases that may result from the work".¹¹⁵ Given the number of accidents of domestic workers in their working environment this would be of great importance and oblige the employer to be more careful. In case of work injuries the employer is obliged to take the worker to a doctor. If the injury or a disease resulted from unsafe working conditions the employer must pay a fixed compensation to the worker.¹¹⁶ Regulation

¹¹⁰ Idem. Art. 52-54. Employers not complying with the decisions of the Committee can be fined. Employees who are paid less than the minimum wage or have parts of their wages unlawfully deducted can file a complaint with the Committee. The decision of the committee has the same authority as one issued by a court. See Art. 54 (f).

¹¹¹ Idem. Art. 52 a, b and Art. 53. It is also mentioned by the Jordanian government in E/1990/6/Add.17, Second Periodic Report: Jordan 23/07/98 to the CESCR Committee, Art. 20, but not explained why there are no minimum wages.

¹¹² E/1990/6/Add.17. Second Periodic Report: Jordan 23/07/98 to the CESCR Committee, Art. 21: The government explains merely that "needs of workers and their families, together with prevailing economic factors are the most important points to be considered when establishing minimum wages ... to establish that the minimum is sufficient to meet the essential needs of workers and their families."

¹¹³ HKJ Labour Law, Art. 55-77.

¹¹⁴ Idem. Art. 78-85.

¹¹⁵ Idem. Art. 78 (a) 1.

¹¹⁶ Idem. Art. 90.

Number 42 provides for an annual medical check up of employees "to protect or to keep physical fitness" and for an initial medical test.¹¹⁷

These are not all but only the most relevant provisions of the Jordanian Labour Law. They show that female domestic workers would greatly benefit from them as they provide for extensive protection against abuse and give guarantees for decent working conditions.¹¹⁸ At the same time they give rights to the employee in relation to his or her employer in case the employer violates regulations of the contract or the Labour Law. Applied to female maids from Asia this would meet their most urgent needs for protection.

II.3. The Social Security Act

The Social Security Act of Jordan¹¹⁹ stipulates that all its provisions "shall apply to all workers over 16 years of age without any discrimination on grounds of nationality, term or form of contract or nature or amount of remuneration".¹²⁰ It includes provisions for six types of insurance. There is insurance for temporary incapacity due to sickness or maternity, pension due to old age, a health insurance for the worker and his¹²¹ family, family allowances, unemployment insurance, insurance against industrial accidents and occupational diseases.¹²² Whereas these conditions could include domestic workers it is then explicitly mentioned that the Social Security Act covers only persons that are also subject to the Labour Law. It also covers Jordanians living abroad, but not foreigners working as domestic helpers as they are not covered by the Labour Law. Any place employing more than five workers has to provide its workers with a social security scheme. Other workers who are not covered by this compulsory insurance will benefit "from an end-of-service gratitude, industrial accident insurance".¹²³ Moreover, women

¹¹⁷ Idem. Regulation Number 42, 1998, Regulation of Preventive Medical Care and Treatment of employees in Establishments and Instructions Regarding the Initial Medical Test for Employees Working at Establishments.

¹¹⁸ This refers to the analysis of the situation and problems of female domestic migrant workers in Jordan as given in Chapter I of this paper.

¹¹⁹ Social Security Act No. 30 of 1978, publ. by the Embassy of the Hashemite Kingdom of Jordan, Washington D.C. online.

¹²⁰ Idem.

¹²¹ Note that in this case "his" refers to a male worker. Women have problems getting a health insurance that covers their husband and children.

¹²² All information about the Social Security Act are taken from secondary sources such as Jordan's Periodic Reports to the CESCR Committee, the Labour Legislation and Concluding Opinions of the Committee. The original document of the Social Security Act was only available in part.

¹²³ E/1990/6/Add.17 Second Periodic Report: Jordan 23/07/98, ESCR Committee, Art. 43.

who fall under the social security scheme will not have coverage for their family. This is unlike the provisions for men where this is the case.¹²⁴

It follows that migrant domestic workers through their exclusion from the Labour Law suffer from a lack of protection under the Social Security Act as well. This becomes especially important in the area of health insurance. However, the Jordanian government in its reply to the List of Issues to the CESCR Committee states that it is studying the possibility of introducing a "comprehensive health insurance for every person".¹²⁵ Unfortunately it is not immediately clear what that would mean. In its second periodic report to the CESCR Committee the government states that "groups which are not yet covered by social security are ... domestic workers".¹²⁶ This formulation leaves it open to the interpretation that soon they might be included or that there are at least serious thoughts about it. The government then states that those groups would be included should the Committee of Ministers issue decisions "based on recommendations made by the Social Security Administrative Board"¹²⁷. It seems there is hope. At the same time the Social Security Act indirectly discriminates against Asian maids in Jordan in the same way as the Labour Law does. It excludes domestic workers and therewith also the majority of the female migrant workers from the Philippines and Sri Lanka. This problem could easily be solved by disconnecting the application of the health insurance for domestic workers and other groups from the condition of being covered by the Labour Law.

¹²⁴ CEDAW/C/JOR/1, Initial Report of State Parties: Jordan, 10/11/97, pp. 5-6.

¹²⁵ CESCR Reply to List of Issues: Jordan, 02/06/2000.

¹²⁶ E/1990/6/Add.17 Second Periodic Report: Jordan 23/07/98, ESCR Committee, Art. 44.

¹²⁷ *Idem*, Art. 44.

III. SCOPE OF PROTECTION OF INTERNATIONAL HUMAN RIGHTS LAW



*'In astonishingly large numbers, women are migrating great distances across international boundaries to engage in poorly remunerated labour that isolates them in subordinate position in a private realm. As a result they are exposed to acute risks of physical or psychological violence and often of expropriation of their economic gains.'*¹²⁸

III.1. International Normative Instruments

All female domestic migrant workers are human beings and therefore possess the fundamental human rights granted to them by various international treaties. The Jordanian government has declared that all rights set forth in international documents, in particular economic, social rights, which are especially relevant for this paper are equally shared by nationals and non-nationals of Jordan under its jurisdiction.¹²⁹ The Universal Declaration of Human Rights states that "all the rights set forth in this declaration serve as a common standard of achievement for all countries"¹³⁰. Generally a human rights based approach "starts from the perspective of those who most need their human rights protected and promoted"¹³¹. It identifies the lack of protection and bad working conditions for domestic migrant workers as violations of the human rights to which all persons should be entitled. By doing so the rights-based approach places the accountability with the State and places it under a legal obligation to combat the problems.¹³² With his kind of approach States should be held responsible for the actions of their citizens, too.

Over time a substantive and vast body of international documents under international law has evolved that is relevant for female domestic migrant workers. Migrant workers and their families are protected by general human rights treaties and by treaties designed to

¹²⁸ Special Rapporteur for Migrant Workers, Gabriela Rodriguez Pizarro, to the UNHCHR, January 2000.

¹²⁹ E/1990/6/Add.17. Second periodic report: Jordan 23/07/98 to the ESCR Committee, Art. 2. This refers to the implementation of human rights for all persons under the jurisdiction of Jordan.

¹³⁰ UDHR, Preamble.

¹³¹ Derks, A., *supra* note 62, pp. 13-15.

¹³² For a detailed description of the human rights-based approach see, i.e. Frankovits, Andre: *The Rights Way to Development: Manual for a Human Rights Approach for Development Assistance*; Marickville, Australia, Human Rights Council of Australia, 1998. Frankovits, Andre; Earle, Patrick: *The Rights Way to Development*, Marickville, Australia, Human Rights Council of Australia, 1998.

meet their special needs.¹³³ These instruments lay out the minimum standards for the treatment of migrant workers. There is no single set of standards yet.

Both Covenants from 1966 give a legally binding status to the rights set forth in the UDHR. All human beings in the territory of a state that has ratified the Covenants are entitled to those rights. The Covenants use a rather inclusive language granting the rights to every person as a member of society, as human beings, everyone lawfully within the territory of a state or all individuals subject to their jurisdiction.¹³⁴ This language also embraces migrant workers. Among the special instruments are the CERD from 1965 and CEDAW from 1986, which offer protection from discrimination in all areas.¹³⁵

There are no legally binding regional documents between the Arab countries that would be significant for migrant workers. The Cairo Declaration of Human Rights from 1990 and the Agreement of the Council of Arab Economic Unity from 1965 provide for freedom from discrimination and freedom of movement, employment and residence for migrant workers. They were both signed by Jordan. At the same time other agreements give priority to Arab migrant workers and nationals over migrants from other countries.¹³⁶

III.2. Applicability and Implementation Mechanisms of International Instruments in Jordan

As Table I¹³⁷ indicates Jordan has signed and ratified only some of the international standard-setting instruments relevant to migrant workers.¹³⁸ In the classical distinction of

¹³³ Niessen, J.: Migrant Workers, In Eide, A.; Krause, K.; Rosas, A. (eds.), *Economic, Social and Cultural Rights: A Textbook*, Second Revised Edition, Kluwer Law International, The Netherlands, 2001, p. 389.

¹³⁴ *Idem.* p. 389.

¹³⁵ The most comprehensive and significant convention is the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (see Annex Table I), which was adopted by the UN General Assembly in 1990, but has not yet come into force. It establishes human rights specifically for migrant workers and their families whether they are in a regular or irregular situation. The Convention enumerates a set of civil, political, economic and social rights applicable to all migrant workers. Some of them are relevant to domestic workers, too, although they are not mentioned as one of the categories in need for special protection. Although Jordan has not ratified it, the Philippines and Sri Lanka are among the first states, which ratified it. The problem is that the Convention has a vast number of articles and detailed regulations that might distract states from ratifying it, as it seems almost impossible to fulfil them. See OHCHR, Fact Sheet No. 24, 2002, *The Rights of Migrant Workers*.

¹³⁶ Perruchoud, R., *supra* note 10, p. 12. See also the Strategy for Joint Arab Economic Action and the Charter of National Economic Action, signed by many Arab States. They states that 'Arab manpower must be resorted increasingly to reduce dependence on foreign labour.'

¹³⁷ This paper is not unaware of the ILO Conventions. Unfortunately Jordan has only signed the Discrimination (Employment and Occupation) Convention No. 111 which could be relevant here. It promotes equality of opportunity or treatment in employment or occupation regardless of race, colour, sex, religion,

methods of implementation Jordan would fall under the "dualistic" category of countries. Domestic law and international law exist as two separate systems.¹³⁹ The treaties do not automatically gain validity as domestic legislation by force of their ratification but have to be incorporated into domestic legislation per decision of the legislator.

The Human Rights Committee criticises in its Concluding Observations that the Constitution of Jordan does not contain "specific provisions as to the relationship between international conventions and domestic law".¹⁴⁰ This means that despite the accession of Jordan to the international treaties under consideration here there is no fixed mechanism as to how and when to incorporate them into domestic law. The core document of Jordan only makes reference to the Constitution, which includes human rights in Articles 5 to 23. Then comes the rather vague formulation that "the National Charter further confirms these rights and various national legislative enactments clearly specify these rights as well the procedures to ensure their protection".¹⁴¹ However, it does not mention which enactments and which rights and more importantly which status the rights have. It further explains that the provisions of the mentioned enactments are in conformity with and in some cases have preceded, incorporated or transcended the texts of international conventions. Therefore the government of Jordan did not "feel the need to promulgate these conventions" in separate instruments since they are already provided for in various enactments. This language clearly leaves the reader without the faintest idea of how human rights treaties are implemented. Neither the Constitution nor the National Charter contain any provisions on implementation mechanisms. The Core Document brings about more confusion because Article 40 (c) declares that the Conventions ratified by Jordan "have the force of law and

political opinion, national extraction or social origin. Like CERD it does not mention citizens and non-citizens. It also does not mention a certain occupational group like domestic workers as a prohibited ground for discrimination. It can therefore be asserted that this Convention would be only of marginal importance to this paper as its provisions are covered by the instruments under scrutiny here already, i.e. CERD, CEDAW, CESC.

¹³⁸ E/C.12/1/Add.46. Concluding Observations of the CESCR Committee on the Second Periodic Report of Jordan, 1.9.2000: It marks as a "demonstration of Jordan's commitment to furthering human rights of its people ... the ratification of major international human rights treaties."

¹³⁹ Scheinin, M.: Implementation of Human Rights, In Hanski, R., Suksi, M. (eds.), *An Introduction to the International Protection of Human Rights: A Textbook*, Second Revised Edition, Institute for Human Rights, Åbo Akademi University, Finland, 2000, p. 311. According to Scheinin the distinction between monistic and dualistic countries is outdated. There is a wide range of in-between implementation methods that have evolved in most countries of the world. These can reach from direct incorporation over constitutional regulations of legal effect of the international law to application of open sources of law doctrines by the judiciary that allow for "a wide use of international norms". Most countries use more than one method. Scheinin distinguishes between four methods: adoption, incorporation, transformation and reference. The implementation methods of Jordan are here described according to this model.

¹⁴⁰ CCPR/C/79/Add.35; A/49/40, Concluding Observations of the CCPR Commission on Human Rights, 10/08/94, Chapter 4 on principle subjects of concern.

take precedent over all local legislation with the exception of the Constitution". The Jordanian Court of Cassation ruled in its judgement that "international covenants and treaties take precedence over national legislation".¹⁴² Still it is unclear where and how human rights are incorporated into the national legislation.

However, Jordan has repeatedly announced its commitment to human rights and that human rights are guaranteed for all persons residing lawfully in the country.¹⁴³ From the reports that Jordan has submitted to the different treaty bodies under the Covenants, CEDAW and CERD it appears that it uses several mechanisms to implement human rights. One is to implement a treaty by separate domestic enactment of the provisions. This means that the treaty would be passed by the legislator and then published in the Official Gazette. Upon publication there it is fully valid¹⁴⁴ under domestic legislation. Another way that is used is the amendment of laws in accordance with provisions. This has been done in case of the Labour Law and the Constitution, which were amended in order to bring them into line with the CEDAW provisions.¹⁴⁵ A third method is to enact domestic laws that give certain provisions of a treaty "applicability or priority" for a certain law.¹⁴⁶ All these methods would allow for a selection of the provisions that would come into force.

Jordan has not placed any reservations on the aforementioned normative international instruments with the exception of CEDAW. The Jordanian government submitted a reservation on Articles 9 (2), 15 (4), 16 (1) c, d, g¹⁴⁷ upon ratification of the convention.¹⁴⁸ Jordan does not consider itself bound by these provisions. The reservations do, however, not concern the rights of female migrant workers directly as they are related to the wife's residence with her husband and rights after dissolving a marriage.¹⁴⁹

III.3. Scope of Protection of Human Rights Addressing the Needs of Female Migrant Domestic Workers in Jordan

¹⁴¹ HRI/CORE/1/Add.18/Rev.1, para. 40 (a) and (b), Core Document: Jordan, 03/01/1993.

¹⁴² Jordanian Court of Cassation (National Court of Appeal), Judgement 32/82, 6.2.1982.

¹⁴³ See Ch. II this paper.

¹⁴⁴ A/55/38, 27.1.2000, CEDAW, Concluding Observations: Jordan.

¹⁴⁵ See Chapter II.2.1.

¹⁴⁶ Scheinin, M., *supra* note 139, p. 311.

¹⁴⁷ See i.e. HKJ Labour Law Art. 67. This article was amended to give women the possibility of taking a year of to devote their time to their families and work at night for women was prohibited. For more provisions see Ch. II.2.2 this paper.

¹⁴⁸ Ratification of CEDAW by Jordan: 31.7.1992.

III.3.1. The Principle of Non-discrimination

Jordan grants equality before the law and equal opportunities and enjoyment of rights to men and women.¹⁵⁰ The Jordanian government in its initial report to the CEDAW Committee admits to certain kinds of discrimination between men and women in the labour sector. However, this only concerns maternity leave otherwise they are entitled to the same wages, leave, social security and other benefits.¹⁵¹ The Jordanian government stresses the fact that “there are no inconsistencies, exceptions between individuals and groups in Jordan” meaning that the Constitution provides for equal opportunities between men and women including the labour market and the governing Labour Law.¹⁵²

Non-discrimination together with equality before the law¹⁵³ and equal protection of the law without any discrimination constitute a basic and general principle relating to the protection of human rights. This principle is so basic that Article 3 of the CCPR obliges every State to ensure the equal right of men and women in the enjoyment of the rights set forth in the Covenant.¹⁵⁴ It becomes especially relevant when considering that female migrant domestic workers suffer direct and indirect discrimination at their work place both, as women and as migrants. They belong to two very vulnerable groups in a society. Sex is a prohibited ground for discrimination under the international covenants, be it direct or indirect discrimination.

Article 2 of the UDHR guarantees “all rights set forth in the declaration without distinction as to colour, race, sex, language, religion, national or social origin”. Article 2(1) of the CCPR making this Article legally binding ensures all its rights to “all individuals within its territory and subject to its jurisdiction”. The General Comment of the Human Rights Committee on the non-discrimination provision of the CCPR states that “article 3 implies that all human beings should enjoy the rights provided for in the Covenant, on an equal

¹⁴⁹ See UNHCHR, Treaty Bodies Database, <http://www.unhchr.ch/tbdb.htm>.

¹⁵⁰ HKJ Constitution, Ch. I, Art. 2.

¹⁵¹ A/55/38, CEDAW, Concluding Observations/Comments: Jordan 27/01/2000.

¹⁵² E/1990/6/Add.17. Second Periodic Report: Jordan 23/07/98 to the CESCR Committee, Art. 13. It refers to the constitutional article 1 and Labour Law Article 3.

¹⁵³ Article 26 of the CCPR stipulates that all persons are equal before the law and entitled, without discrimination, to the equal protection of the law. Generally, female domestic migrant workers from Asia in Jordan are not equally protected by the law in comparison to other occupational groups. Exclusion from the Labour Code because of their status would amount to discrimination. Their status as women makes them subject to sexual violence, which is not always being prosecuted by the state always and thus is another violation of the right to equality before the law.

¹⁵⁴ A/45/40, General Comment 18, CCPR Committee, 1989, para. 1, 2.

basis and in their totality. The full effect of this provision is impaired whenever any person is denied the full and equal enjoyment of any right.”¹⁵⁵ It also refers to the fact that “not every differentiation will constitute discrimination if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.”¹⁵⁶ Jordan is not in a state of emergency nor does the exclusion of domestic workers from the Labour Code pursue any legitimate aim under the Covenant.

CEDAW focuses more on the domestic workers as women. It aims at protecting the rights of women prohibiting non-discrimination between men and women in important areas such as access to work, working conditions and wages.¹⁵⁷ This is a key provision for female migrant domestic workers in Jordan. Discrimination against women should be understood to be a “distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” Article 5 of CEDAW provides that “States shall take appropriate measures to modify social and cultural patterns of conduct of men and women, with a view to achieving elimination of prejudice and customary and all other practices based on the idea of inferiority or superiority of either of the sexes.”¹⁵⁸

CERD provides protection against “any distinction, exclusion, restriction or preference based on race, colour, descent or national, ethnic origin which has the effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms”.¹⁵⁹ This does not include any distinction in the treatment between citizens and non-citizens. Discrimination of non-citizens would not be a breach of CERD, but it is still discriminatory, because of a distinction made on the grounds of nationality, which is included. The CERD Committee notes that the Penal Code of Jordan is limited to groups which are nationals. This might not fully correspond to Article 5 of

¹⁵⁵ CCPR/C/21/Rev.1/Add.10, para. 2, General Comment 28, 2000, Art. 3.

¹⁵⁶ *Idem*, para. 13.

¹⁵⁷ HKJ Constitution and National Charter. The latter would not be binding, it enshrines the equality between men and women before the law and in the enjoyment of their rights and duties. Jordan does not recognise any problem related to discrimination on these grounds. Ref. Reply to List of Issues: Jordan 02/06/2000, CESCR Committee.

¹⁵⁸ CEDAW, Art. 5. Jordan rejects any notion of inferiority of women in Jordan in CEDAW/C/JOR/1, Initial Report of State Parties: Jordan, 10/11/97

¹⁵⁹ CERD, Art. 2.

CERD and non-citizens may not receive the protection envisaged by Article 5 a and b.¹⁶⁰ Although Section two and three allow for a certain distinction between citizens and non-citizens, Article 5 contains a list of rights that should be enjoyed without any distinction. The Convention provides for the obligation of states to non-discrimination in the enjoyment rather than guaranteeing the rights. However, it is significant, because it guarantees protection and enjoyment of all rights to domestic migrant workers, despite the fact that they are excluded from the national labour law. It does not require inclusion into the labour law. However, where a right is granted to one person under the jurisdiction of a country and not to another it would require equal enjoyment of the rights for both.

Multiple discrimination of women, where they do not only suffer discrimination on the grounds of their sex or gender but also on other grounds such as national or ethnic origin has largely been ignored by the Conventions. The Human Rights Committee in its General Comment Number 28 on equality between men and women has acknowledged that "discrimination against women is often intertwined with discrimination on other grounds such as race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status".¹⁶¹ Women migrant domestic workers do not only suffer from differential treatment because of their being female but also due to their occupational status as maids and their national origin.¹⁶² The CERD Committee is recognising that racial discrimination does not affect women and men in the same way.¹⁶³

As described in Chapter II.2.1 of this thesis indirect discrimination against female domestic migrant workers exists in Jordan. As the Labour Code excludes them from protection because of their belonging to the occupational group of domestic workers there is a differentiation in treatment and the enjoyment of rights. Most of the domestic helpers in Jordan are migrants and women and as such are deprived of the full enjoyment of all rights in the Covenants. While the Jordanian legislation does not make any difference between women and men in the enjoyment of all rights, there is practical discrimination against women, who work as domestic helpers. The principle of non-discrimination covers

¹⁶⁰ CERD/C/304/Add.59, Concluding Observations: Jordan, CERD Committee, 10/02/99, Art. 7. The Committee states that the preference given to Arab and Jordanian workers over non-Arab workers might constitute an act of discrimination. This is however not related to domestic migrant workers. The Jordanian delegation recognised that there could be acts of discrimination in the private domain.

¹⁶¹ Frostell, K.; Scheinin, M.: Women, In Eide, A.; Krause, K.; Rosas, A. (eds.), *Economic, Social, Cultural and Rights: A Textbook*, Second Revised Edition, Kluwer Law International, The Netherlands, 2001, pp. 331-353, pp. 335-336. And A/55/40, General Comment of the CCPR Committee, No. 28, 68th Session, 2000.

¹⁶² This is an assertion made by the author drawn from personal observation and experience.

all acts of discrimination and the domestic workers can therefore claim their right to equal treatment on the labour market based on this principle as laid down in the international instruments.

Finally, the principle of non-discrimination has become part of international customary law. There are "recent developments of customary international law."¹⁶⁴ One such development, which is now firmly established is the principle of non-discrimination, applies in matters of race and sex."¹⁶⁵ This principle represents a contribution to the law arising from the concepts of human rights.¹⁶⁶ As early as in 1970 the ICJ ruled in the Barcelona Traction case¹⁶⁷ that the prohibition of discrimination was prohibited and formed part of international customary law.¹⁶⁸

For the following consideration of the individual rights of the domestic workers the principle of equality is crucial. It would be a great breakthrough for migrant workers in Jordan if this principle could be established in all its consequences as it provides the underlying principle of all rights.¹⁶⁹

III.3.2. Working Conditions

Normally the working conditions should be fixed and guaranteed in the provisions of a contract. The Jordanian Labour Code defines the contents of the contracts taking care of good and just standards of labour. As not all women have contracts and do not have the right to a contract under the Labour Law¹⁷⁰ the rights related to the working conditions will

¹⁶³ Frostell, K., Scheinin, M., *supra* note 161, p. 336 and A/55/18, General Comment No. 25 of the CERD Committee.

¹⁶⁴ See also Plender, R.: Immigration Law and Nationality Law, In International Migration Law, Nijhoff Publ., London, 1888, pp. 9-47. Plender explains the concept of nationality in connection to the principles of international customary law rules about migration and the discrimination of non-nationals.

¹⁶⁵ Brownlie, I., *supra* note 57, p. 435.

¹⁶⁶ Cook, R.: State Responsibility for Violations of Women's Human Rights, in 7 Harvard Human Rights Journal, 1994, p. 155.

¹⁶⁷ Barcelona Traction Case, Belgium v. Spain, ICJ Reports 1970, 3.

¹⁶⁸ See also Brownlie, I., *supra* note 57, pp. 6-9. As states earlier in this paper customary law is only of limited importance to the Jordanian case as all relevant treaties have been ratified by Jordan.

¹⁶⁹ The principle of equality of treatment between national and non-national in the labour market covers recruitment, wages, social security and working conditions as well as equality before the courts. It is laid down in Art. 18 and 25 of the MWC. Equality of treatment in medical assistance is laid down in Article 28.

¹⁷⁰ There is no firmly established right to a contract. It only exists indirectly since HKJ Labour Law, Instructions for the Conditions and Procedures of Bringing in and Employing Non-Jordanian Employees, issued in accordance with the text of Art. No. 3 of the Regulation of Work Permits Fees for Non-Jordanian Employees Number 36, 1997, requires the employer to submit a work contract when applying for a work permit for the migrant worker. This does not mean that each worker receives a contract.

be analysed separately here. Even without a contract the women have rights that have to be respected by the employer.

Most important are the absolute rights like the right to freedom from slavery.¹⁷¹ It is prohibited under Article 8.3 (a) of the CCPR. "No one shall be required to perform forced or compulsory labour."¹⁷² No maid may be forced to perform any task against her will. Broadly interpreted, the locking up of maids in houses without letting them out and forcing them to work all day is also in violation of this right.

Article 6 of the CESCRC recognises the right to work, which includes the right of everyone to gain his or her living by work he or she has freely chosen or accepted.¹⁷³ Read in conjunction with the prohibition of forced labour this is a strong statement against forcing migrant domestic workers to perform any kind of work they do not consent to and label it as a breach of human rights.

The right to just and favourable conditions of work as enshrined in CESCRC Article 7 ensures, in particular, remuneration, which "provides all workers as a minimum with fair wages" and equal remuneration between men and women and "a decent living for themselves and their families", safe and healthy working conditions. The Committee in its List of Issues to Jordan is especially concerned about the absence of the minimum wages, which are provided for under Article 7(a).¹⁷⁴ The provision that includes the families is of special importance to migrant domestic workers. Although they normally leave their families behind they are the sole bread-winner in their family at home. Their children, husbands, mothers or other family members are dependent on the monthly amount of money being sent to them by the migrant worker. In this sense, it would be a breach of Article 7(a) if the State cannot guarantee that domestic migrant workers do not suffer from low wages or no wages at all, which would prevent the women from supporting their families at home. By excluding domestic workers from the Labour Law their work place is also excluded from regular work inspections, which help establish safe working conditions. Thereby the State does not ensure the full enjoyment of this right by domestic workers.

¹⁷¹ See Ch. II.2.2 this paper on prohibition of forced labour for Jordanian citizens under the constitutional provisions 23.

¹⁷² CCPR, Art. 8.3 (a)

¹⁷³ CESCRC, Art. 6.1.

¹⁷⁴ E/C.12/Q/JOR/1. List of Issues: Jordan 21705/99 to the CESCRC Committee, Ch. III on specific provisions of the CESCRC Articles 6, 7, 8.

Article 7.1 (d) provides for “rest and leisure and reasonable limitations of working hours and periodic holidays with pay”.¹⁷⁵ Although it neither mentions the number of reasonable working hours nor the number of holidays it can be understood that domestic workers like other workers should enjoy the regulations regarding holidays and maximum work hours as laid down in the Labour Law of Jordan.¹⁷⁶ Exclusion from those provisions are a breach of Article 7.1(d).

Article 17 of the CCPR guarantees that no one shall be subject to “arbitrary or unlawful interference with his privacy, family or home correspondence”¹⁷⁷ Correspondence should be delivered without interception and without being opened.¹⁷⁸ Persons have a right to protection of law from such interference. Employers, who do not pass on telephone calls for their domestic workers or withhold letters they receive, prevent them from leaving the house to make phone calls or send letters are infringing the right to privacy. The State needs to take measures to ensure enjoyment of this right for all domestic workers, too.

III.3.3. Adequate Housing and Food

Chapter I of this thesis mentions that there is often not enough food and the housing of domestic workers within the family home lacks sanitary equipment. Article 11 of the CESCR recognises the right to an adequate standard of living including “adequate food, clothing and housing”. Although it does not specify what adequate means it is understood that the maids should not live in miserable conditions. Jordan is not a developing country and the families the maids work for are not poor. They can afford to provide more food and better housing for their maids. The right to health also contains the right to a healthy and natural workplace environment, which comprises *inter alia* an adequate supply of food and proper nutrition.

III.3.4. The Liberty of Movement and Access to Legal Documents

The right to leave ones country and to move freely within one’s country of residence has been accepted as a basic human right. Domestic migrants would most be concerned with

¹⁷⁵ CESCR, Art. 7.1 (d).

¹⁷⁶ See Ch. II.2.2 about working hours and annual and weekly holidays under the HKJ Labour Code.

¹⁷⁷ CCPR, Art. 17.1.

their freedom of movement inside Jordan. The liberty of movement within a country is part of this right, which has been enshrined in the UDHR Article 13 and made legally binding in the CCPR Article 12. Article 12(1) stipulates that "everyone lawfully within the territory of a state, shall within the territory have the right to liberty of movement and freedom to choose his residence". In cases where domestic workers who are registered by their employer and therefore lawfully residing within the territory of Jordan are locked up by their employers and not permitted to leave the house or where their papers are withheld so they cannot leave the house, their freedom of movement is restricted. In this case, undocumented workers would be excluded from this right. The Human Rights Committee has asked to interpret this right in a very expansive manner, as there is no right to enter any country.¹⁷⁹ A right to travel and access to travel documents may then be considered an integral part of this right. Applied to female Asian maids in Jordan the keeping of documents from them as some employers do could broadly be seen as a violation of the right to freedom of movement.

Of special importance might also be the request of the Committee to State parties to protect the right of freedom of movement against interference of private persons.¹⁸⁰ No employer would have the right to prevent a domestic worker in his or her household from leaving and moving around freely in the country.

III.3.5. The Prohibition of Violence and Sexual Harassment

"States Parties shall take all appropriate measures including legislation to suppress all forms of traffic in women and exploitation of prostitution."¹⁸¹ Violence against women including sexual harassment is a general issue of concern in Jordan not just for migrant domestic workers.¹⁸² The form of abuse against female migrant domestic workers in Jordan that occurs is directly linked to their being women and an expression of discrimination on the grounds of sex. Rape and other forms of violence and sexual abuse

¹⁷⁸ CCPR General Comment 16, Article 17: The Right to Private Life, 8.4.1988, para. 8.

¹⁷⁹ E/CN.4/Sub.2/1987/10, CCPR General Comment on the Right to Freedom of Movement. The Committee had included this request to stress the dimension of the right to protect especially women from being restricted in their freedom of movement by male relatives. The situation of female domestic workers is very similar to that. They are deprived of their papers, doors are closed and they are not allowed to leave the house without permission of the employer. This is very similar to detention.

¹⁸⁰ CCPR/C/21/Rev.1/Add.9, General Comment 21, 2/11/99, par. 6.

¹⁸¹ CEDAW, Art. 6. Jordan has appropriate legislation in place that would forbid sexual exploitation of women even in private households, in Jordanian Penal Code, Act No. 16, 1960, Art. 310-312.

¹⁸² A/55/38, Concluding Observations/Comments: Jordan 27/01/2000, Art. 176.

as well as using abusive language and shouting at them is gender specific. CESC Article 12, the right to health, contains the obligation of states to protect women from gender-based violence¹⁸³ as this would endanger their health.¹⁸⁴ CEDAW prohibits any form of discrimination against women especially in the sectors of employment.¹⁸⁵ Just and fair working conditions, a safe and healthy workplace environment does explicitly exclude any form of abuse of women.

Article 7 of the CCPR protects every person from torture, inhumane or degrading treatment or punishment. Unlike the Convention against All Forms of Torture and Inhuman and Degrading Treatment or Punishment, Article 7 of the CCPR applies also to the conduct of private individuals. In the case of acts of violence committed by employers against female maids the State could be held responsible if it failed to prevent them by enacting respective laws. The Human Rights Committee requests "information on laws and state practices with regards to domestic and other kinds of violence against women, including rape".¹⁸⁶ This clearly places the responsibility for domestic violence with the State in case it failed to prevent it.

II.3.6. Access to Health Care Services and Social Insurance

The problem in Jordan is not a lack of availability of facilities and health care but the access to it.¹⁸⁷ So it is necessary to establish a right to be included in the social security scheme and health insurance and have free access to adequate health care without discrimination on grounds of nationality, sex, race or colour.¹⁸⁸ Article 9 of the CCPR recognises the right of everyone to social security including social insurance. As described above¹⁸⁹ the Social Security Act excludes domestic workers preventing them from the enjoyment of health and social insurance. However, it has to be mentioned that female

¹⁸³ E/C/12/2000/4, CESC General Comment No. 14, The Right to the Highest Attainable Standard of Health, 11/8/2000, par. 34.

¹⁸⁴ Art. 7 of CCPR.

¹⁸⁵ CEDAW, Art. 11. CEDAW does not mention sexual abuse or physical violence against women but it is understood that these are expressions of gender and sex specific discrimination and therefore prohibited.

¹⁸⁶ A/55/40, General Comment 28: Equality between Men and Women, CCPR Committee, par. 11.

¹⁸⁷ E/1990/6/Add.17 Second Periodic Report: Jordan 23/07/98, CESC Committee, Art. 78. There is an impressive number of health care institutions but they are not of great use to migrant domestic workers they have no access to them because they are not able to leave the house or they are not available to them because they cannot pay for the services.

¹⁸⁸ The Jordanian government has set a plan to include every citizen into a comprehensive health insurance and guarantee access to health care, which seems to be still far from reality given the work conditions of the domestic helpers and the legislation.

¹⁸⁹ See Chapter II.3 on the Social Security Act.

migrant domestic workers theoretically have access to private health and accident insurance, provided they can move around freely and are not forced to stay inside the house of their employer. Even then private insurance would be too costly for domestic workers as their wages are mostly too low. Read together with Article 6 (ii), the right to work, which has been discussed above, it follows that the State must guarantee minimum wages that allow the women to pay for a private insurance or they can alternatively be included into the governmental social security scheme. The government of Jordan admits to certain loopholes in the Social Security Act without mentioning what they are.¹⁹⁰

Article 12 of the CESCRR enshrines the right of every person to the highest attainable standard of health. This includes the "creation of conditions, which would assure to all medical service and medical attention in the event of sickness".¹⁹¹ As the right to health is a fundamental right, which is "indispensable to the enjoyment of other rights"¹⁹² and dependent on the realisation of other rights the Committee states that it contains access to adequate sanitation and safe work conditions. Part of the right to health is the element of accessibility to health facilities, goods and services without discrimination. This includes economic affordability and forms the core content of the right to health.¹⁹³ Together with the right to social security this is a strong statement for including migrant domestic workers into the health insurance scheme. It also prohibits employers from keeping their employees at home so they cannot access medical facilities.

¹⁹⁰ E/C.12/Q/JOR/1. List of Issues: Jordan 21705/99 to the CESCRR Committee, Chapter III, on Article 9 of the CESCRR.

¹⁹¹ CESCRR, Art. 12 (d).

¹⁹² E/C.12/2000/4, CESCRR General Comment No. 14, The Right to the Highest Attainable Standard of Health, 11/8/2000, par. 12.

¹⁹³ *Idem.* par. 43 a.

IV. POSITIVE STATE OBLIGATIONS TO ENSURE LEGAL PROTECTION FOR FEMALE DOMESTIC MIGRANT WORKERS IN JORDAN

*"The question of access to employment is of crucial economic and social importance to migrants and their families. The connection between restrictions on access of foreign workers to employment and their continuing low occupational status in society has been identified as one aspect of the systematic institutionalised discrimination ingrained into the temporary migration system."*¹⁹⁴

IV.1. State Responsibility of Jordan for Violations Committed by Non-State Actors

Governments faced with a growing number of migrants entering their countries should take all measures possible to stop institutionalised discrimination against migrant workers. Once migrants leave their country there is very little protection their own governments can offer them.¹⁹⁵ The government of the host country needs to undertake efforts to implement provisions of international law that guarantee decent working and living conditions for its migrant workers. Although Jordan has not ratified all the relevant international treaties its government is left with substantial obligations towards the migrant workers within its territory under the conventions it has ratified.

Most of the problems faced by migrant domestic workers in Jordan take place in the private sphere of the household. The women spend most of their time at the home of their employer and often also live there. The Jordanian government has excluded domestic workers from the protection of the labour legislation precisely because domestic helpers work in a private environment where the State does not want to interfere. At the same time the amendment to Article 12 of the Labour Code¹⁹⁶ stipulates that all migrant workers need the permission of the Ministry of Labour to work in Jordan. Their employers have to register them with the Ministry and heavy fines are imposed on illegal employment, both on the employer and the employee. However, this is not an attempt to extend more protection to the maids but rather attempts to regulate migration into the country and deal

¹⁹⁴ Perruchoud, R., *supra* note , p. 10.

¹⁹⁵ The role of protection would be taken over by diplomatic representatives such as embassies.

¹⁹⁶ HKJ Labour Law, Art. 12 as amended 1997.

with the problem of high unemployment.¹⁹⁷ Despite the fact that the domestic helpers should be given a contract, which secures basic protection at the work place, abuse continues to happen and the State does very little to prevent this. This situation raises the question as to whether the Jordanian State is responsible for violations of human rights committed by non-state actors within its territory, in this case the employer.

The concept of responsibility in international law rests upon the distinction between acts and omissions that can be attributed to the State from those that cannot¹⁹⁸ for the determination that private conduct is not in principle attributable to States.¹⁹⁹ The purpose of human rights law has traditionally been interpreted as protecting the individual against abuse perpetrated by the State and its officials. Individuals have achieved status under international law primarily as beneficiaries of rights and litigants against state actors.²⁰⁰ The identification of such state organs is established by the domestic law of the State.²⁰¹ Violations of human rights committed by private actors have therefore been excluded from the scope of protection of international human rights law. Especially many forms of abuse against women have not been viewed as violations imputable to the State.²⁰² There is a "reserved domain from international intrusion" in the law of state responsibility already enshrined in the UN Charter.²⁰³

¹⁹⁷ Jordan pursues a strict employment policy on foreign workers. Only when proven that the particular skills are not available on the Jordanian labour market are foreign workers allowed in. This is especially the case for unskilled workers like maids and cooks.

¹⁹⁸ Chinkin, Ch.: 'A Critique on the Public/Private Dimension', In 10 EJIL 2, 1999, p. 387. She refers to the term "attributable" as being preferable to the term "imputable" as it applies a legal operation and the latter a mere causal link. This opinion was expressed by the Chairman of the Drafting Committee of the International Law Commission (ILC), Mr. Bruno Simma, 13.8.1998. See also Crawford, J.: 'Revising the Draft Articles on State Responsibility', In 10 EJIL 2, 1999, p. 436.

¹⁹⁹ Higgins, R.: *International Law and How We Use It*, Clarendon Press, 1994, p. 153.

²⁰⁰ Cook, R., *supra* note 166, p. 151.

²⁰¹ ILC, Draft Articles provisionally adopted by the Draft Committee, Art. 5 (2). The ILC Draft Articles on State Responsibility adopted 1996, are currently being revised. Although they are not yet finalised parts of them have been relied upon by international courts like the International Court of Justice (ICJ), as customary international law, i.e. in the *Gabcikovo-Naymaros Project case (Hungary v Slovakia)*, ICJ Reports 1997, judgement 25.9.1997.

²⁰² Luopajarvi, K.: *A Positive Obligation to Protect the Right to Life Against Abuses by Private Actors: The Case of Honour Killings, Essex, 2002*, Paper presented at the Conference on State Responsibility for Human Rights Violations Committed by Non-State Actors Under International Law, Åbo Akademi University, 20.-22.5.2002, p. 5.

²⁰³ Chinkin, Ch., *supra* note 198, p. 389. She refers to the exclusion from international intervention, which is asserted in the UN Charter, Art. 2(7). The apparent dualism between public and private sphere is a feature of classical, liberal Western thought. It has been much criticised, as there is no reliable distinction between the two. Concepts of the public and the private are "complex, shifting and reflect political preferences with respect to the level and quality of governmental intrusion".

This has particular implications for the responsibility and accountability of Jordan for human rights violations committed by employers against their female domestic workers from Asia. Feminist analysts have been critical of the legal distinction between public and private sectors of life since the distinction has "resulted in the abandonment of women where their interests and rights are most at stake".²⁰⁴ Since the State does not incur responsibility for violations committed within the private sector, it could ignore the continued subordination of the women or foreigners in that area.²⁰⁵ Domestic violence and other forms of abuse against domestic migrant workers can thus be perceived as a private matter outside international concern. Failure to investigate and punish such acts by a state would be a continuation of the exclusion of the private sphere from international law. The treatment of foreign maids could be "factored out from international law".²⁰⁶

Diplomatic protection of aliens was the historic starting point for the formulation of the principles of State responsibility.²⁰⁷ This served as the basis for the differentiation "between *ultra vires* acts of officials for which there is responsibility because of their apparent authority"²⁰⁸ and private individuals for whom there is none. The employment of female migrant domestic workers would fall within both areas. Their household work is private even if the employer is a state official and they are excluded from the protection of the law. At the same time their employment is not private, as employment of foreigners is regulated in the Labour Law.²⁰⁹ The widespread abuse of the female domestic helpers in Jordan cannot therefore be said to fall completely within the private sphere. It is systemic and as such it should engage State responsibility by Jordan.

²⁰⁴ Cook, R.: *supra* note 166, p. 135.

²⁰⁵ This refers to feminist critique about subordination of women. The same would apply to the case of domestic workers in Jordan and their status as women and foreigners or non-nationals.

²⁰⁶ Chinkin, Ch., *supra* note , p. 393. She describes the example of Asian maids in Kuwait.

²⁰⁷ *Idem.* p. 393. Customary understanding of state responsibility holds states responsible for acts or omissions committed by private actors not acting on behalf of the state in certain circumstances, i.e. where the State does not exercise due diligence in control of private persons. This doctrine has its origins in state responsibility for aliens. Customary law doctrines around the issue of state responsibility would be of particular importance for states, which have not ratified the relevant international treaties. Generally, the recognition of state liability for acts and omissions of private actors eliminates the private/public distinction in a way that has been "endorsed by feminists". See also Brownlie, I., *supra* note 57 and Cook, R., *supra* note, pp. 142-47.

²⁰⁸ Chinkin, Ch., *supra* note 198, p. 395.

²⁰⁹ See Ch. II.1/2. this paper. Chinkin, Ch., *supra* note 198, p. 395. She shares the same observation for Asian maids in Kuwait. They work in the private sphere of a household but are employed officially. Cook, R., *supra* note 166, p. 146, derives state responsibility for violations of human rights of Asian maids in Kuwait mainly from customary law. The interpretation of the Draft Articles of the ILC on State Responsibility and Case Law of the human rights courts serve as sufficient evidence for the existence of *opinio iuris* and state practice to hold the Kuwaiti government and the home governments of the maids responsible for investigating violations and prosecuting and punishing the perpetrators. This is of particular importance to Kuwait as by the time Cook wrote her article Kuwait had not yet been party to CEDAW.

The principles of state responsibility and developments within human rights law allow for the construction of such a choice. The constant refinement of what constitutes an internationally wrongful act within human rights law is a way of proving Jordan's responsibility for abuse of Asian maids by employers. The understanding of the principle of state responsibility has significantly widened over the past years. States are by now obliged to accept the "privatisation" of human rights as a "juridical fact"²¹⁰ and cannot claim that the international treaties they have ratified have no relevance for wrongs committed by private persons.²¹¹

Human rights courts have extended the circumstances under which a state can be found in violation of international human rights obligations. In *X. and Y. v. The Netherlands*²¹², *Airey v. Ireland*²¹³ and *Costello-Roberts v. the United Kingdom*²¹⁴ the Court found the State in violation with the Convention for acts perpetrated in a private sphere and for not providing remedies to the victims of the acts. A true landmark case was the *Valesquez Rodriguez v. Honduras* case.²¹⁵ The Inter-American Court of Human Rights held in this case that "an illegal act, which violates human rights and is not ... imputable to a state can lead to the international responsibility of the state, not because of the act itself but because of the lack of due diligence to prevent the violation or to respond to it."²¹⁶ Due diligence requires states to organise governmental structures through which public power is exercised so that they are capable of "juridically ensuring the full enjoyment of their human rights"²¹⁷ to all persons within the territory of the state. The state must exercise due diligence to prevent violations and to respond to human rights abuses committed by non-State actors, which are not immediately imputed to the State. The Special Rapporteur on violence against women views the case as "one of the most significant assertions of State responsibility for acts by private individuals". It "represents an authoritative interpretation of an international standard on State duty."²¹⁸ In the *Osman v. United Kingdom* case the Court held that the State was responsible for failure by police forces to adequately respond

²¹⁰ Clapham, A.: *Human Rights in the Private Sphere*, Clarendon Press, 1993, p. 111.

²¹¹ Luopajarvi, K., *supra* note 202, p. 6.

²¹² *X and Y v. The Netherlands*, European Court of Human Rights, 91 ECHR (Series A), 1985.

²¹³ *Airey v. Ireland*, European Court of Human Rights, 32 ECHR (Series A), 1979.

²¹⁴ *Costello-Roberts v. United Kingdom*, European Court of Human Rights, 19 EHRR 112 (1993).

²¹⁵ *Valesquez-Rodriguez Case*, Inter-American Court of Human Rights, 27.7.1988, Ser. C, No. 4.

²¹⁶ *Idem.* para. 172.

²¹⁷ *Idem.* para. 175.

²¹⁸ UN Doc. E/CN.4/1996/53, 5.2.1996, para. 36.

to harassment, which lead to the death of the person.²¹⁹ With this decision the Court built on the Valesquez case reasoning.

Responsibility for failure to exercise due diligence to prevent human rights abuses is based upon cases where the state was held responsible for a breach of its obligation to protect aliens sufficiently.²²⁰ The obligation of due diligence has thus been linked to the omission of the State to interfere in the private sphere of non-State responsibility under international law.²²¹ This reasoning has been taken up by feminist critics and included into the articulation of normative standards with respect to state responsibility for violence against women.²²² The Committee on the Elimination of Discrimination against Women held that "states may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation."²²³ States must now protect individuals' exercise and enjoyment of human rights, investigate alleged violations, punish proven violators and provide effective remedies, including the compensation of victims.²²⁴ A state is not responsible for a private act of sexual abuse against domestic workers per se, but is bound to exercise due diligence to eliminate, reduce or mitigate these incidents.²²⁵ The Committee stated in its General Comments on the Rights to Health²²⁶ that the state has the duty of protecting women from violence perpetrated by private persons and in the General Comment on the Right to Liberty of Movement the Committee takes a similar approach requesting governments to protect the right from any interference of public and private actors.²²⁷

Although most forms of abuse against domestic migrant workers in Jordan are crimes under the Jordanian legislation the State fails to prevent and properly investigate them. The

²¹⁹ ECHR (87/1997/871/1083), 28.10.1998.

²²⁰ Chinkin, Ch., *supra* note 198, p. 394. See also US v. Mexico, Youmans Claim, 4 RIAA110, 1926, par. 11.

²²¹ Higgins, R., *supra* note 199, p. 157.

²²² Cook, R., *supra* note 166, p. 125 and Romany, C.: State Responsibility Goes Private: A Feminist Critique of the Public/ Private Dimension in International Human Rights Law, In Cook, R. (ed.) Human Rights of Women, University of Pennsylvania Press, 1994, p. 85.

²²³ CEDAW, General Recommendation No. 19, GAOR, 47th Session, Suppl. No. 38 (A/47/38), 1992. The General Assembly in its Declaration on the Elimination of Violence against Women asserted responsibility, whether the act of violence was committed by state or private actors. Un Doc./GA Res. 48/103, adopted 28.12.1993.

²²⁴ Cook, R., *supra* note 166, p. 127.

²²⁵ *Idem.* p. 151.

²²⁶ E/C/12/2000/4, CESCR General Comment No. 14, The Right to the Highest Attainable Standard of Health, 11/8/2000, par. 34.

²²⁷ CCPR/C/21/Rev.1/Add.9, CCPR General Comment on Freedom of Movement, Art. 12, par. 6. The Committee requests states to ensure that the right is protected not only from public but also private interference.

legal protection of women from rape and domestic violence exists in theory, but evidence of practice shows neglect of enforcement.²²⁸ Jordan and its policy towards domestic workers is an example for how national laws, policies and practices not only tolerate the subordination of a certain category of persons, but also compel it. The behaviour of many employers towards their domestic helpers by violating their rights to private life, to liberty of movement, freedom from forced labour, the right to just and favourable work conditions, the rights to health and others indirectly indicates a lack of due diligence of the State. The government does not ensure these rights to domestic workers in general and foreign maids in particular thus neglecting its responsibility under international law.

Furthermore, violence against women remains a serious problem in Jordan and the Jordanian legislator seems to have difficulties tackling the problem of domestic violence and inter-marital rape.²²⁹ The government is often reluctant to interfere in the privacy of the household and punish crimes committed within it primarily due to social and cultural factors. Domestic workers would fall under this category. Thereby the government is not taking responsibility for acts committed by non-state actors on its territory. It is not, however, a matter of resources that would constrain the Jordanian government from properly protecting its domestic workers. It is merely a matter of good will and commitment to its obligations under international law, which would require at least the immediate inclusion of domestic workers into the labour law.²³⁰

IV.2. The Right to a Contract: Positive Obligations of Jordan

The Jordanian government states that it guarantees all rights in the Covenants to citizens and non-citizens alike without any distinction.²³¹ Accordingly, they can enjoy all rights and facilities.²³² All human rights treaties under scrutiny here include articles that place

²²⁸ Cook, R., *supra* note 166, p. 127. Female migrant domestic workers suffer from the same neglect as women generally in Jordan, in addition to the low regard for them as domestic workers and foreigners. Cook notes that "women's grievances often go unheard because women are denied self-expression before an audience capable of advancing international human rights law". Even if domestic migrant workers flee their work place and seek shelter at their embassy in Amman they are not always referred to the family protection section of the Ministry of Interior or given legal aid. As discussed in Chapter I of this paper they are mostly returned to their employer or simply sent home without any consequences for the employer.

²²⁹ E/C.12/1/Add.46. Concluding Observations of the Committee on Economic, Social and Cultural Rights on the Second Periodic Report of Jordan, 1.9.2000, Art.15, 16, 17. The Committee points out that marital rape still goes unpunished and domestic violence is not fully punishable under domestic law yet.

²³⁰ See Ch. V.1 this paper.

²³¹ E/1990/6/Add.17. Second Periodic Report: Jordan 23/07/98, ESCR Committee, para.1.2.

²³² *Idem.* par. 1.2.

positive obligations on governments to ensure the rights laid down in them.²³³ The previous chapter established responsibility under the treaties for violations committed by non-state actors and that there are obligations Jordan has to fulfil to protect its migrant workers. The treaty bodies use slightly different language and interpretation of these obligations in their comments. Despite these differences states are under the obligation to prevent, investigate and provide remedies for human rights abuses. The Vienna Convention on the Law of Treaties provides that a treaty "shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."²³⁴

The CCPR provides that states have the obligation "to respect and to ensure the rights protected in the Covenant".²³⁵ The obligation "to respect" puts a negative obligation on the state not to infringe on the rights of a person, whereas the expression to ensure obliges States to take affirmative measures to secure the enjoyment of the right. The latter obligation is a positive one. This includes the duty of states to include adequate provisions into domestic legislation to protect the rights in the Covenant also against interference by private actors.²³⁶ States have the duty to effective law enforcement, taking reasonable steps of prevention by providing a judicial system, police and security forces and by conducting proper investigation and providing for adequate remedies.²³⁷

The CESCR divides the nature of state parties obligations as obligations of conduct and obligations of result following the Draft Articles of the International Law Commission.²³⁸ The character of the general obligations of states under the Covenant is both immediate

²³³ These are CEDAW, CCPR, CESCR, CERD.

²³⁴ Vienna Convention on the Law of Treaties, Art. 31 (1).

²³⁵ CCPR, Art. 2(1).

²³⁶ ECHR, Art. 2 (1).

²³⁷ Luopajarvi, K. *supra* note 202, p. 8. See also Finell, P.: Accountability under Human Rights Law and International Criminal Law for Atrocities Against Minority Groups Committed by Non-State Actors, Unpublished Paper presented at the Conference on Accountability of States for Acts Committed by Non-State Actors under International Human Rights Law, Åbo Akademi University, Institute for Human Rights, 21.-22.5.2002, p. 15.

²³⁸ CESCR General Comment 3, The Nature of States Parties Obligations, Art. 2.1, 14/12/90. See also Crawford, J., *supra* note 198, p. 440. Art. 20, 21 and 23 of the Draft Articles of the ILC add the category of obligations of prevention to the above mentioned. Only obligations of conduct and result have become an "accepted part of the language of international law". Crawford criticises that distinction because of the obvious difficulty to define its exact meaning and contents. Cook distinguishes between obligations of ends and obligations of means under CEDAW, which can be translated into obligations of conduct and result. This will not play a role here.

and progressive²³⁹. Each state party to the CESCER “undertakes to take steps, individually and through international assistance and co-operation ... to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including especially the adoption of legislative measures.”²⁴⁰ The obligation to “guarantee” that the relevant rights will be “exercised without discrimination” and the undertaking to “take steps” are of immediate character and described by the Committee as being of particular importance.²⁴¹ The General Comment continues that the adoption of legislative measures might not “be exhaustive of the obligations of state parties”.²⁴² States are also under the obligation to provide judicial remedies and to monitor the extent of the realisation of the rights.²⁴³

Article 2 of CEDAW provides that “state parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means without delay a policy of eliminating discrimination against women by any person, organisation or enterprise and modify or abolish existing laws, regulations, customs and practices, which constitute discrimination against women”²⁴⁴ Similarly to the CCPR and CESCER, CEDAW does not hold states liable to achieve certain results, but only requires that state parties exercise due diligence in implementing treaty provisions. Jordan could never absolutely guarantee that acts of discrimination against female domestic migrant workers due to their being women would not occur again. It is, however, obliged to implement means to prevent and abolish discrimination. As under the CESCER obligations are described in the terms “to take all appropriate measures”.

There is no discrimination against men or women on the grounds of their race in Jordan but the question arises as to why unskilled work is almost exclusively done by Asian migrant workers and other immigrants and refugees. According to the definition and notion of acts of indirect discrimination against workers there can be said to be cases of indirect discrimination against workers from Asia in Jordan, too. The labour legislation is not in

²³⁹ CESCER General Comment 3, 14.12.1990, Art. 2.1, The Nature of States Parties Obligations. The Committee points out the difference between the CCPR and CESCER in terms of the progressive realisation and the acknowledgement of constraints due to limits of available resources. This will not be of any importance for the Jordanian state obligation in reference to ensuring rights of domestic migrant workers. The matter of progressive rights will be discussed briefly in Chapter V.1.

²⁴⁰ CESCER, Art. 2(1).

²⁴¹ CESCER General Comment 3, The Nature of States Parties Obligations (Art. 2, par. 1): 14/12/90, par. 1.

²⁴² *Idem.* par. 4.

²⁴³ *Idem* par. 11.

²⁴⁴ CEDAW, Art. 2(2).

favour of domestic workers, who are mostly of a different nationality than Jordanians and of a different ethnic and sometimes religious background, too. They are seen as foreigners executing tasks that Jordanian women despite high unemployment will not do. Many employers and the population look down upon them. Jordan in accordance with obligations under CERD needs to educate its people by preventing prejudices against foreign citizens.

Furthermore, the case law of the European Court of Human Rights in the case of *X and Y v. The Netherlands* made a very important statement with regards to the responsibility of states to ensure respect for the right to private life²⁴⁵ even in relations between individuals. This entails legal measures to prevent interference with the right to private life from other individuals. Employers who withhold letters and do not put through telephone calls would be in clear violation of the privacy of their maids. The state has to provide for legal measures to prevent such acts of interference by making it punishable under the criminal law. Effective deterrence of violations of the rights of Asian maids, be it the right to private life, the right to liberty of movement or the right to freedom from slavery can only be achieved by the introduction of respective criminal law.

Equally CEDAW obliges Jordan to prevent and deter private acts of discrimination against migrant workers on the grounds of their being women. Jordan has the duty to investigate and negate harmful consequences of private acts and provide compensation. Moreover, under article 2(f) Jordan needs to take measures to modify social and cultural patterns in the conduct of men and women to achieve the elimination of prejudices and customary, which are based on the idea of inferiority or superiority of either sex.²⁴⁶ This requires the Jordanian authorities to take measures with a view to abolishing the traditional low esteem for household personnel and their abusive treatment. It is not sufficient to make abuse punishable under domestic law but to actively promote the status of maids as equal with other professions.

When states ratify an international human rights treaty they "agree to give effect to treaty obligations in their municipal legal system".²⁴⁷ 'To guarantee' is only one obligation,

²⁴⁵ *X and Y v. The Netherlands*, 91 ECHR (Series A), 1985. The Court held that "there may be positive obligations inherent for an effective respect for private life or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves".

²⁴⁶ CEDAW, Art. 5 a.

²⁴⁷ Cook, R., *supra* note 166, p. 147.

which can be fulfilled by incorporating the articles into its domestic law provisions. There is no such mechanism defined in the Jordanian Constitution. The Committee on Civil and Political Rights notes with concern that "there is a need to define the place of the Covenant within the Jordanian legal system to ensure that domestic laws are construed in conformity with the provisions of the Covenant".²⁴⁸ Furthermore the general constitutional framework is not yet in conformity with the provisions of the Covenant.²⁴⁹ The CEDAW Committee notes that despite the constitutional principle equality was not yet "fully reflected in all national laws."²⁵⁰ A positive aspect is proposed legislation to punish violence against women. Jordan as a state party to CEDAW would be under the obligation to implement the provisions of CEDAW, which include prohibition of violence against women.

In order to implement the provisions of the Covenants and other international normative instruments it is necessary that the country remains committed to the principle of non-discrimination.²⁵¹ This commitment needs to be shown in a very proactive policy to implement the Covenants. The Covenants have the force of law and take precedence over all legislation except the Constitution. Their provisions have neither been published in the Official Gazette nor have they been implemented into domestic legislation.²⁵² This is a principle subject of concern for the Committee on Economic, Social and Cultural Rights.²⁵³ The CEDAW Committee notes the same. Although the Convention should "acquire the force of law with its ratification it has not yet been published in the Official Gazette which is a prerequisite to it becoming legally binding".²⁵⁴ Both Committees stress the fact that Jordan needs to publish the Convention and the Covenants in the Gazette to fulfil its obligations under international law.

The Jordanian government by ratifying international law documents acknowledges its responsibility to extend the rights set forth in the conventions to every citizens and person in its territory, including Asian female migrant workers. It is the role of the government of a country to protect these rights. The total lack of domestic law provisions ensuring the

²⁴⁸ CCPR/C/79/Add.35; A/49/40, Concluding Observations of the CCPR Committee, 10/08/94, Chapter 4.

²⁴⁹ It is not clear whether Jordan has changed these points of concern as there are no other reports or Concluding Observations available for Jordan apart from the ones dating back to 1995.

²⁵⁰ A/55/38, CEDAW, Concluding Observations/Comments: Jordan 27/01/2000, Art. 141.

²⁵¹ See Ch. III.2.1.

²⁵² E/C.12/1/Add.46. Concluding Observations, CESCR Committee on the Second Periodic Report of Jordan, 1.9.2000, Art. 11 and 12. The Committee observes that 25 years after ratification Jordan has not yet published in the Official Gazette and gives little attention to incorporating those provisions into domestic law.

²⁵³ *Idem*.

rights to domestic workers amounts to a failure of fulfilling its obligation under international law. By "systematically" failing to provide legal remedies to Asian maids and not preventing abuses by exclusion from the law Jordan is in breach of international law. This leads to the obligation of Jordan to enact national legislation that would effectively enable domestic workers to seek remedies for their abuse and allow for prosecution of the employers. Such provisions are in fact included in the Labour Code, which guarantees the worker a contract including substantial rights of complaint against abusive employers. It follows that Jordan in fulfilment of its obligation has to guarantee a right to a contract by including domestic workers into the Labour Code. Furthermore, the obligation to prevent might entail measures of public information and education programmes.²⁵⁵

Furthermore, the complete absence of information on complaints concerning violations of the rights set forth in the Covenants and CERD and CEDAW and the lack of lawsuits is interpreted by the Committees as an indicator of the low awareness of the content of the human rights treaties among the public, judges and lawyers.²⁵⁶ The CERD Committee states accordingly that "the absence of court proceedings alleging racial discrimination would be genuinely convincing only if it was certain that the potential victims were aware of the remedies available to them and had the financial means to make use of them."²⁵⁷ This would ultimately deprive every person in Jordan and especially domestic migrant workers to gain effective knowledge about their rights and make use of them by suing their employer for a violation of their rights. One of the questions of the CERD Committee to the Jordanian delegation was whether citizens were aware of their rights and remedies in the face of admitted acts of discrimination in the private domain but the absence of court complaint.²⁵⁸

The application of international human rights law by Jordanian courts would be the main feature of human rights law implementation.²⁵⁹ It is therefore important that the judges know and apply human rights law in their decisions. Applied to female migrant domestic workers that would mean that Jordanian courts invoke the provisions of the human rights

²⁵⁴ A/55/38, Concluding Observations/Comments: Jordan 27/01/2000, Art. 171.

²⁵⁵ Luopajarvi, K., *supra* note 202, p. 16.

²⁵⁶ A/55/38, Concluding Observations/Comments: Jordan 27/01/2000, Art.13.

²⁵⁷ CERD/C/SR.1288, Summary Record: Jordan, CERD Committee, 14/12/98.

²⁵⁸ CERD/C/SR.1288, Summary Records: Jordan, CERD Committee, 14/12/98. The answer of the Jordanian delegation to that was that the text of the Convention "had been distributed to all State bodies including those responsible for security and to the media and it had been published nation wide."

²⁵⁹ Scheinin, M., *supra* note 139, pp. 421.

treaties ratified by Jordan when dealing with cases of abuse by the employer.²⁶⁰ Unfortunately statistics show that despite the fact that women do have contracts employers do not stick to the conditions. Wages are not paid or commission fees for the agency for placing the domestic helper into the family are deducted from the salary.

IV.3. State Response and Reactions by International Organisations

In order to implement human rights for female domestic migrant workers into national Jordanian law and thereby giving protection to this vulnerable group of workers the state authorities must acknowledge that there is a problem and a need for decisive action from their side. The state then has the choice between ridding itself of the problem by simply erasing it from its territory, expulsion, that is, or giving them the same rights as their own citizens. That is, if they do not chose to ignore it all together. The decision for one of the two depends on several factors regarding a country's economic, social, cultural and financial situation. The regulations of article 12 (f) of the 1996 Labour Law show that Jordan is pursuing a strict migration policy attempting to reduce the number of illegal and irregular foreign workers including explicitly those who are not covered by the labour law. Jordan is trying to combat the rising number of unemployed by making it harder for foreign workers to enter the country. A 'Jordanisation' of the labour market is seen as part of the solution to the problem. The Ministry of Labour was reported to consider barring guest workers from certain jobs in order to help Jordanian job seekers to find work.²⁶¹ "As a matter of principle Jordanian workers are accorded precedence over immigrant workers in regard to appointment."²⁶² However, domestic workers seem to belong to the category of workers with needed skills not available in Jordan. The Jordanian government in a reply to the Committee on Economic, Social and Cultural Rights admits that although the Country suffers from a high unemployment rate "particularly among educated people"²⁶³ this rate is low among unskilled workers. Any "deficit in this sector" is substituted by a migrant labour force from other Arab countries or southern Asia.²⁶⁴ The low esteem for this kind of work makes them a highly sought after group on the Jordanian labour market. The qualification that makes those women so desired on the Jordanian seems to lie within their availability and willingness to work at the lowest level of the occupational hierarchy.

²⁶⁰ See Chapter III.2 this paper for relevant laws.

²⁶¹ Jordan Times Online, 2.9.1998, <http://www.jordantimes.jo>

²⁶² CERD/C/318/Add.1, States Party Report: Jordan, CERD Committee, 14/04/98, Art. 59.

²⁶³ CESCR, 02/06/2000, Reply to List of Issues, par. 6.

²⁶⁴ Idem. par.6.

This seems even more ironic as the Filipino authorities try to further migration on their part. The two conflicting initiatives do not improve the situation of the domestic helpers.

Considering Article 23 of the Jordanian Constitution that makes "work a right" of every Jordanian citizen and places the responsibility for ensuring this "right" with the government to take measures and "direct the national economy" accordingly one could understand the national policy of the Jordanian authorities which seems to exclude rather than to include foreign workers as a strategy to fulfil its obligation under this Constitutional Article. The concentrated efforts to ensure the right to work for Jordanian citizens entails an active policy against migration of labour and apparently a less effective protection of migrant workers' rights. This is also reflected in Article 10 of the Labour Law.²⁶⁵ Even if they acknowledge the problem the preference would lie within solving the problem of unemployment of their own citizens, although that is rather a wrong perception of the problem. Ignorance does not solve but rather aggravates the suffering of the migrant workers.

The Jordanian authorities have failed to create special regulations governing migrant workers. Inspectors are prevented from entering households, as they are private areas.²⁶⁶ Apart from Egypt Jordan has no bilateral employment agreement with any other country. Jordan seems to put all its efforts into restrictive measures rather than into the development of proactive protection mechanisms. During the last two years the concerned ministries seem to have taken a more "constructive" interest in the situation of domestic workers. Instead of threatening workers with expulsion only and placing high fines on employers and employee the ministry of labour drafted a new contract. Apart from this there are plans, mentioned above, to amend the labour law and pass a bill with a new law to legalise the process of registration of placement agencies.²⁶⁷



²⁶⁵ HKJ Labour Law, Art. 10 reads "the ministry shall assume the functions of organising the labour market, occupational guidance and formulations of the instructions necessary for providing work and employment opportunities to Jordanian citizens within and outside the kingdom in collaboration with the concerned parties."

²⁶⁶ This might explain why domestic workers are exempted from the Labour Law of Jordan. Private households are obviously not seen as "proper" work places and laws covering houses as work places would be seen as an intrusion into the privacy of the employers.

²⁶⁷ Paper of the Ministry of Interior, *supra* note 5, pp. 1-3.

One problem seems to be that until recently Jordan did not recognise that it had a problem with its foreign population, including migrant workers.²⁶⁸ In its reports to the Committee it acknowledges problems in assuring medical services and medical care for all persons but fails to acknowledge that domestic workers have a problem of access to those facilities.²⁶⁹ At the same time Jordan is pursuing an active policy towards granting equal rights to men and women. The government has created a directorate for women in the Ministry of Labour, which also takes care of foreign, that is, migrant workers.²⁷⁰ There is also the Women's Union which was originally established to help Jordanian women and is now becoming increasingly involved in assisting migrant domestic workers from Asia as those women call in for help.²⁷¹

There are also attempts to empower female migrant workers by the UN Development Fund for Women (UNIFEM) and the embassies of the migrant workers. UNIFEM promotes joint advocacy in support of international conventions and to initiate a dialogue between sending and receiving countries. Together with the Ministry of Labour they assisted in the drafting process of a new contract for domestic workers women and encouraged the establishment of contacts between the embassies and the Jordanian authorities by organising work-shops. Thereby, they raised awareness of the problem and advocated the cause of domestic migrant workers and their need for more effective protection. The Filipino government on their side have initiated awareness-raising campaigns, training and research. They give training to potential domestic workers before they leave the country and give pre-departure and pre-employment seminars.²⁷² This has proved to be valuable in preventing exploitation. Apart from this there is a "strong and vocal"²⁷³ NGO community in the country, which assists the domestic workers with legal advice or just moral support. However, contacts between the Jordanian authorities and the embassies and the embassies among each other are still scarce and still in the early stages.

²⁶⁸ Reply to List of Issues: Jordan, 02/06/2000, to CESCR Committee, par. 3. Jordan states on the subject of legislation concerning minorities and foreigners that "ethnic and religious minorities and foreigners enjoy full freedom".

²⁶⁹ E/1990/6/Add.17 Second Periodic Report: Jordan 23/07/98, to the ESCR Committee, Art. 103.

²⁷⁰ CEDAW/C/JOR/1, Initial Report of State Parties: Jordan, 10/11/97.

²⁷¹ Interview with Mrs. Shatha M. Amin, Project Co-ordinator, Empowering of Migrant Domestic Workers in Jordan, UNIFEM Amman, Jordan, 22. April, 2002.

²⁷² E/CN.4/1998/74, 26.12.1997, Report of the Special Secretary-General on Violence against Women Migrant Workers: Philippines.

²⁷³ Derks, A., *supra* note 62, p. 3.

The Filipino government set up a database on their migrants and a shared government information system on migration database, which helps to keep track of the workers and improves monitoring Filipinos overseas. Embassies have developed activities such as counselling and the creation of a safe area in the embassy like in Amman.²⁷⁴ The embassy in Amman also provides conciliation services between the employer and the domestic helper. The year 2000 was called the year of the Overseas Migrant Worker in the Philippines. This might not solve the immediate problems of the women but it is a positive step in the right direction.

²⁷⁴ Khan, A.S., *supra* note 10, pp. 2-4.

V. OBSTACLES ON THE WAY: DIFFICULTIES AND CONSTRAINTS IN THE IMPLEMENTATION OF HUMAN RIGHTS

*"Violence against women throughout their lifecycle derives essentially from cultural patterns, in particular the harmful effects of certain traditional or customary practices and all acts of extremism linked to race, sex, language or religion that perpetuate the lower status accorded to women in the family, the workplace, the community and society."*²⁷⁵

V.1. Weak Enforcement and Complaint Mechanisms

All treaties and convention have established bodies and mechanisms to observe their implementation and obedience with the obligations.²⁷⁶ Despite the fact that Jordan and other countries have accepted their obligations towards their domestic migrant workers under the ratified treaties discrimination and abuse of this particular groups remains and continues. This seems to indicate certain difficulties in the enforcement and implementation of the instruments as well as a lack of awareness on all sides of society.

The major weakness of the instruments of human rights and international law has been identified as their implementation and enforcement mechanisms. As opposed to domestic laws it is difficult to hold states responsible for non-compliance with the provisions of the conventions although their legal status is binding. The more powerful a state the more likely it is to get away with violations of human rights and international law. Sanctions similar to those under the domestic law of countries are not possible. The enforcement system is based on the threat of public shaming rather than hard sanctions.²⁷⁷ Only extreme cases with large-scale violations of human rights, which pose a threat to peace and endanger many lives would entail measures such as embargoes or the use of force. Still the instrument of public shaming and its effects should not be underestimated.

²⁷⁵ Merry, S.: Women, Violence and the Human Rights System, In Agosin, M. (ed.) Women, Gender and Human Rights: A Global Perspective, Rutgers University Press, London, 2001, p. 91.

²⁷⁶ This paragraph will not deal with the general weaknesses of the reporting and implementation system of the Covenants, CEDAW and ICERD but will apply limitations of the system to the situation in Jordan and analyse the activities of the Jordanian government accordingly.

²⁷⁷ A UN Road Map, Promoting and Protecting the Rights of Migrant Workers: A Guide for Asian NGOs to the International Human Rights System and Other Mechanisms, Canadian Human Rights Foundation, 2000, http://www.chrf.ca/english/publications_eng/files/un-roadmap-intro.htm, 13.5.2002, p. 17.

Each treaty has developed its own mechanism of complaint. There are the established treaty bodies to oversee the implementation of the UN conventions. If a right under a convention is violated individuals or groups on behalf of the domestic migrant worker could make use of the complaint mechanism and seek compensation. Table II shows the methods to complain and hold governments responsible for alleged violations of international law provisions. It is a rather complex and difficult procedure to understand for domestic migrant workers who are strangers in Jordan and not familiar with the language and the administrative culture. Firstly, the woman has to be aware of her right and the violation of a particular right. That is difficult enough as she needs to know the international instruments protecting her rights and she needs to be literate enough to make sense of the provisions therein. Even if she knows her rights have been violated she has to go through the process of exhausting all domestic legal remedies, which could end in her being expelled from Jordan or being put into prison. This is why it is so important to have NGOs specialising in human rights of women and extending their assistance to foreign maids in their country. It is otherwise hardly possible for a maid from Sri Lanka or the Philippines to stand alone against a whole system of fixed procedures. In addition, ICCPR and CEDAW have complaints procedures for individuals and organisations on behalf of the individual. Unfortunately, Jordan has not signed the Optional Protocol to the CCPR or CEDAW, which establish these procedures. If it did, it would be possible for individuals to submit complaints to the Committees in the case of their rights being violated. In the case of migrant domestic this would be an important instrument to claim their rights.

Interestingly there have not been any court cases or complaints in Jordan by migrant workers invoking their human rights according to international instruments.²⁷⁸ This has to be attributed to the fact that the provisions of the treaties are not made publicly available and therefore Jordanian citizens and foreigners living in Jordan would not have knowledge of the complaint procedure under the treaties. The complaint system under the treaties can only be fully efficient if the affected population has due knowledge about it and can make use of it. The Committee in a response to Jordan's State Report recommended that "adequate procedures and mechanisms need to be established to receive complaints and monitor, investigate and prosecute instances of human rights abuses".²⁷⁹ Without creating

²⁷⁸ See Ch. IV.3. this paper.

²⁷⁹ E/C.12/1/Add.46. Concluding Observations of the CESCR Committee on the Second Periodic Report of Jordan, 1.9.2000, Art. 31.

complaint mechanisms within Jordan it will be hard for foreign domestic workers and other groups of the population to get remedies, provided they know their human rights. Nor have there been any complaints to any of the treaty bodies. This is not surprising then.

The Covenants and the CEDAW have a periodic report system to which NGOs and other civil society groups can contribute. According to the CEDAW Committee Jordan has fulfilled its obligations to submit the reports.²⁸⁰ That was in 1996 and since then Jordan has failed to submit its reports on time.²⁸¹ If a state party like Jordan does not provide sufficient data on the implementation of the articles of the treaties the Committees are not able to monitor the compliance of the country. The Committees asked the Jordanian government several times to provide more detailed information on the implementation of crucial articles.²⁸² Moreover, the reply of the CCPR and CESCRC Committees to the country report, show that Jordan missed giving precise information on required subjects.²⁸³ If neither the population knows its rights under the treaties nor does the government provide details about implementation it is difficult to establish whether Jordan is complying with its obligations. The CESCRC Committee in its List of Issues asks the government of Jordan to indicate legislative, judicial and administrative measures "being implemented in the country in order to protect the economic, social and cultural rights of ethnic minorities and foreigners" on provisions on non-discrimination in Article 2(2) of CESCRC.²⁸⁴ It also asked about the exact meaning of certain intentions to implement the most important articles on the right to social insurance, the right to an adequate standard of living and the right to health, asking for results of the mentioned efforts to include all citizens in the health insurance.²⁸⁵ The information given in the periodic reports were insufficient.

A major difficulty lies within the justiciability of economic, social and cultural rights as laid down in the International Covenants. Economic, social and cultural rights are

²⁸⁰ A/55/38, CEDAW, Concluding Observations/Comments: Jordan, 27/01/2000 and CERD/C/304/Add.59, Concluding Observations of the CERD Committee, 10/02/99.

²⁸¹ See UNHCHR, United Nations Human Rights Website, Treaty Bodies Database, <http://www.unhchr.ch/dbtb>. It gives an overview over due reports of countries. Jordan is late in submitting Periodic Reports to CEDAW and CCPR.

²⁸² *Idem.* Art. 36, The Committee asks for detailed information on the Right to Food, which requires Jordan to collect data on malnutrition.

²⁸³ See for instance A/55/38, CEDAW, 27.1.2000, Concluding Observations: Jordan and CESCRC, E/C.12/1/Add.46, 1.9.2000, Concluding Observations of the CESCRC Committee: Jordan; E/C.12/Q/JOR/1, 21.5.1999, List of Issues: Jordan.

²⁸⁴ E/C.12/Q/JOR/1, List of Issues: Jordan 21/05/99 to the CESCRC Committee.

²⁸⁵ *Idem.* Ch. III, Art. 14, 21, 26.

progressive rights and states are under the obligation to "implement them progressively according to their resources"²⁸⁶. This is further specified and elaborated in the Maastricht Guidelines on the Violation of Economic, Social and Cultural Rights.²⁸⁷ Together with the Limburg Principles²⁸⁸ they establish the core content of every CESCR right, which includes the minimum obligation to ensure the right to all persons independently of the country's resources. However, this cannot be said to a problem in the case of Jordan as its obligations to protect Jordanian workers are rather negative and lie within the protection from interference with the rights from private actors. As described above it is about enacting laws to protect the women, prosecute violators of their rights and give effective remedies to the victims. This does not presuppose any great financial or economic effort from the Jordanian government, but prompt action and an efficient legal enforcement. In the case of Jordan it is apparent that resources to implement the relevant rights are available. Although the established treaty bodies have recognised certain difficulties in implementation of the treaties due to economic problems and poverty. As regards the relatively small number of migrant domestic workers this cannot be said to be a reason for not complying with the obligations. Additionally, it does not enhance the implementation of human rights if there is no fixed implementation mechanism.

V.2. Cultural and Social Constraints

Socio-cultural attitudes and perceptions concerning the role and status of women in family and society and at the work place constitute a constraining factor to the implementation of human rights for female migrant workers and women working in Jordan in general.²⁸⁹ The traditional view of women as cheap labourers who are not so productive furthers the view that they do not deserve the same standards as men. The principle of equal pay for equal work is often ignored by employers. This certainly plays an important role in society as surveys of neighbouring countries show.²⁹⁰ Still it cannot be said to be a generally

²⁸⁶ CESCR General Comment 3, 14.12.1990, Art. 2.1, The Nature of States Parties Obligation.

²⁸⁷ The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, In Human Rights Quarterly, Vol. 20, 1998, pp. 691-705.

²⁸⁸ The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, UN Doc., E/CN.4/1987/17, Annex.

²⁸⁹ Raghavan, Ch., *supra* note 9, p. 2.

²⁹⁰ There seems to be no such survey for Jordan, but in the case of Palestine this is a prevalent opinion of employers and one of the reasons why working women generally are subject to discrimination in terms of wages, holidays and others. See Abu Harthiyeh, M., Qawwas, F., *supra* note 42, pp. 4-13. E/C.12/1/Add.46. Concluding Observations of the ESCR Committee on the Second Periodic Report of Jordan, 1.9.2000, Art. 14. The Committee is concerned about "traditional and stereotypical attitudes towards roles and responsibilities of men and women in Jordanian society".

prevalent opinion held by all Jordanians. The Jordanian Constitution states equality before the law for all Jordanians without any discrimination on the ground of race, language or religion.²⁹¹ It fails to mention sex as a prohibited ground for discrimination. The General report of Jordan to the Committee of CEDAW shows that the employment of women is low and there continues to be a wage gap to the women's disadvantage.²⁹² Social pressure discourages women from pursuing professional careers. Moreover, violence against women is common. Reported incidents of women do not even reflect the full extent of the problem as many women do not seek legal or medical help making it difficult to assess the full severity of the abuse.²⁹³ Marital rape is still not illegal. The Penal Code also allows leniency for a person found guilty of committing an act of honour killing, the murder of a female relative for her perceived immodest behaviour. Twenty-one such cases were reported in Jordan last year.²⁹⁴ This makes up 25% of all murders in the country. Women in Jordan experience other forms of legal discrimination, too. A woman's testimony is worth only half that of a man. Men get a more generous social security benefit than women. Under Islamic Shari'a Law women only receive half of the heritage of men.

In his report on the situation about female domestic helpers from Asia and the problems they face, the head of the Jordanian family protection unit of the Ministry of Interior mentions several factors related to the overall status of Jordanian women that contribute to the low respect and the bad treatment of migrant workers.²⁹⁵ He refers to the fact that many Jordanian women are prevented from working by their male family members. In some cases women are not provided with health care. They do not receive enough food and clothing and are subject to domestic violence. There is clearly a connection between the treatment of women within the Jordanian family and the treatment of foreign maid who are also part of the household.

²⁹¹ HKJ Constitution, Ch. II, Art. 6.

²⁹² A/55/38, CEDAW, Concluding Observations/Comments: Jordan 27/01/2000, Art. 184. The Committee finds that women make up only 13,6% of the work force, which is not due to legal discrimination but due to social constraints.

²⁹³ Department of State Country Report, *supra* note 18, p. 1962.

²⁹⁴ *Idem.* p. 1962. Article 340 of the Penal Code can be invoked by a defendant accused of murder who "surprises his wife or a close relative in an act of adultery or fornication". In such a case the defendant is judged not guilty.

²⁹⁵ Ruane, R.A.: Murder in the Name of Honour: Violence Against Women in Jordan and Pakistan, In 14 Emory International Law Review, 2000, pp. 1523-86

Another cultural factor that contributes to the way women are viewed in the Jordanian society is Islam, the official state religion.²⁹⁶ It is difficult and certainly dangerous to make a general statement about Islam being the reason for acts of discrimination against female domestic migrant workers. Still it has been established that due to the perception of women as being in a subordinate position to men, the Jordanian penal code does discriminate between sexes with regard to the equality before the law and the persecution of acts of domestic violence.²⁹⁷ This has an indirect effect on the maids. Furthermore, Jordanian men and women might have difficulties in understanding the reasons for migration of the domestic workers, where they would not be under the protection of their families. This might make them an easy prey for exploitation in the eyes of some men. A person's family is regarded as the one group that protects the individual.

The subject of racial discrimination and the attitude of most Jordanians towards foreign workers from Asian countries and Africa is another sensitive issue when dealing with empowering domestic migrant workers. Again, if there is no discriminating legislation it does not mean that in practical terms there should not be any. It is more a question of discrimination that exists in society and the minds of people. The Jordanian government states that it employs Asian migrants for unskilled work whereas the highly qualified experts come from Germany and the United Kingdom. This does not mean that highly qualified engineers from Asia would not be willing to work in Jordan. It can be seen as an indicator as to the rank of the Asian maids within the international community that makes up the foreign work force in the country.²⁹⁸

In such a situation the improvement of the working conditions for domestic workers has to go hand in hand with the overall improvement of conditions for women working in Jordan with due respect to the traditional role of women in society. One of the concluding observations of the CEDAW Committee is precisely this.²⁹⁹ So migrants would benefit from an overall rise in pay and working conditions. Expectations should not be too high and based on "western" standards. Not all Jordanians do enjoy the right to annual holidays. Even in Western societies subordinate status is given to women because of their

²⁹⁶ HKJ Constitution, *supra* note, Ch. I, Art. 2.

²⁹⁷ Read Chapter II and III.2. for a detailed analysis.

²⁹⁸ The religious and cultural perception of foreigners by Jordanians is not a primary subject to this paper. It needs, however, to be considered here as a constraining factor to the implementation of human rights for the Asian maids. It is the opinion of the author that many legal analysis lack consideration of cultural, religious and economic factors that could hamper the enforcement of human rights or even make it impossible.

²⁹⁹ *Idem.*, Art. 192.

performance of tasks in the domestic sphere, such as cleaning, nurturing and child care.³⁰⁰ Such women are looked down upon. It makes it more difficult to implement human rights for a group that is not accepted as being equal to the rest of the citizens of a country. This requires in conformity with the state obligations to promote an equal status with other workers in Jordan.

V.3. Economic and Other Constraints

Jordan as a country situated in a politically 'hot spot' in the Middle East faces a lot of problems owing to the instability of the region. It borders to the Palestinian occupied territories and to Iraq. The Committee on Economic, Social and Cultural Rights recognises the large number of Palestinian refugees since 1948 as an impeding factor to the implementation of the Covenant.³⁰¹ More than 60% of the population consists of Palestinian refugees. Additionally, Jordan suffers from a high level of unemployment, poverty and a high population growth.³⁰² The Jordanian government claims that high population growth is a "result of forced migrations, the return of expatriates from the Gulf States, Jordan's entry into a peace phase and so forth".³⁰³

The country is currently undergoing an "economic readjustment programme"³⁰⁴ which requires the restructuring of all economic sectors. It has few natural resources and relies heavily on foreign assistance and remittance from citizens working abroad. International sanctions against Iraq, historically the country's largest trading partner, continue to inhibit export growth. Violence in the neighbouring Palestinian occupied territories since the outbreak of the second uprising adversely effected the tourist industry. As a result, many foreign investment projects were frozen. The above-described Jordanisation-efforts of the government is an expression of the unemployment problem the country faces. In addition to that, the legislation gives preference to Arab workers over workers from other countries,

³⁰⁰ Cook, R. *supra* note , p. 133.

³⁰¹ E/C.12/1/Add.46. Concluding Observations of the ESCR Committee on the Second Periodic Report of Jordan, 1.9.2000. See also CCPR/C/79/Add.35; A/49/40, Concluding Observations on State Parties Reports: Jordan, 10/08/94. The Committee acknowledges the difficult economic and social situation of Jordan. The same statement is found in CERD/C/304/Add.59 Concluding Observation: Jordan, CERD Committee, 10/02/99.

³⁰² E/1990/6/Add.17 Second Periodic Report: Jordan 23/07/98, to the ESCR Committee, Art. 64 (f): The government does not recognise the fact that there are homeless people in the country, only a small number "residing in unsuitable dwellings. CEDAW/C/JOR/1, Initial Report of State Parties: Jordan, 10/11/97, Art. 3: Jordan begins with a mentioning of the high rate of population growth "which exceeds that of most other countries in the world."

³⁰³ E/1990/6/Add.17 Second Periodic Report: Jordan 23/07/98, to the ESCR Committee, Art. 97.

³⁰⁴ *Idem.* Art. 55. The government reports on the standard of living in the country, mentioning the involvement of the World Bank and the International Monetary Fund.

which is not understandable given the fact that this would not reduce unemployment among Jordanian but could be seen as discriminatory against other foreign workers.

It is difficult to find support for the immigrant workers' concern when the worker is an illegal immigrant.³⁰⁵ She might be perceived negatively by the population and in addition to that would not be able to voice her claim out of fear to be – 'rightfully' - expelled from the country. This is ever stronger an appeal to include Asian migrants into the labour law. On the other hand the Labour Law³⁰⁶ punishes a women who is illegally employed with immediate repatriation and imposes a financial fine on her. This might not be the right approach when trying to empower the women. More sensitivity is required.

On the other hand there is the highly competitive nature of the migrant labour market especially in the field of domestic work. The Philippines and Sri Lanka actively pursue a policy of labour export and make it competitive. Therefore, there is a lot of focus of attention on the prevention of migration on the Jordanian side, while at the same time Jordan is still attracting workers. In some cases the labour exporting countries contribute to "institutionalising low wages" by reducing the acceptable minimum wage for their workers and thus being counterproductive towards the enhancement of their rights.³⁰⁷ Poverty and devastating economic condition in their home countries might not encourage the women to speak up for their cause either. If the promotion of human rights expresses itself in higher wages for the maids, giving them more and better food and holidays this could be perceived as too costly by some employers who would then rather employ someone else.

A more general problem is the co-ordination between the different actors. It is not only the government and the workers and organisations concerned but also the Asian embassies among each other that need to exchange information. This seemingly simple co-ordination has not yet taken place in Jordan.³⁰⁸ Last but not least there are several other actors in the migration process that have a financial interests in migrating women such as airlines and that makes it difficult for the Jordanian government to stop immigration all together.

³⁰⁵ Derks, A., *supra* note 62, p.13.

³⁰⁶ HKJ Labour Code, Art. 12(f)

³⁰⁷ There is no such example for Jordan but in the 1980s the Sri Lankan government attempted to do that for its workers in the Arab states. See Owen, R., *supra* note 19, p.11 and Raghavan, Ch., *supra* note 9, p. 5.

³⁰⁸ Interview with Mrs Shatha M. Amin, Project Co-ordinator, Empowering Migrant Women Workers, UNIFEM, Amman, Jordan, 22.4.2002

VI. CONCLUDING REMARKS

*'The growing phenomenon of migrant workers in an irregular situation and others who are not clearly protected by a legal regime, the sharp increase in trafficking, coupled with abuses of rights as a consequence of discrimination, indicate that the promotion of migrant workers' rights should be a priority for the international community.'*³⁰⁹

VI.1. General Conclusions

Domestic migrant workers suffer violations of their human rights for many different reasons and in many different ways. Their sex or gender can be an occasion for the form, which the violations take. It is a complex interaction between sex, gender, race, class and other factors that could explain discrimination against them.³¹⁰ However, there is no evidence of direct discrimination against female domestic migrant workers in the Jordanian laws. On the one hand Jordan has been trying to actively promote gender equality in the labour market and also made racial discrimination punishable under the Penal Code. It can be noted positively that especially in the area of discrimination between men and women Jordan has managed to undertake necessary reforms in accordance with the CEDAW regulations³¹¹ and has amended the Labour Law. On the other hand female domestic migrant workers are in a disadvantaged position because they are not enjoying the same rights as other women on the labour market due to their being domestic workers, foreigners and women. They lack proper protection by the Labour Law as they are excluded from its application. This can be seen as a form of indirect discrimination against them as they are disadvantaged by virtue of being domestic workers and women. In addition, there are strong stereotypical attitudes about the roles and responsibilities of women and men affecting all spheres of life and impeding the full implementation of CEDAW. This has negative effects on the treatment of migrant domestic workers. Prejudices and discrimination may not show in the law, but it certainly exists in the heads and minds of employers and many citizens of the host country. It is directed against women who have

³⁰⁹ Perruchoud, R., *supra* note 10, p.15.

³¹⁰ Byrnes, A.: Women, Feminism and International Human Rights Law, Methodological Myopia, Fundamental Flaws or Meaningful Marginalization?, In 12 Australian Yearbook of International Law 205, 1992, p. 214.

³¹¹ A/55/38, CEDAW, Concluding Observations/Comments: Jordan 27/01/2000.

come to Jordan leaving their families and children behind to earn a living of a job no Jordanian would like to do, because it is at the bottom of the occupational hierarchy.

There is a substantive number of international instruments of human rights law, which contain regulations towards decent standards of living and working of the domestic workers. Generally they are sufficient to meet the needs female migrant domestic workers and would give them enough protection, although none of them specifically covers the rights of female migrants or domestic workers. However, Jordan has not ratified the most significant of the international conventions, the Convention for the Protection of the Rights of All Migrant Workers and Their Families and respective ILO Conventions, which set the international standards in this field. In this light it can be concluded that the rights of domestic workers as women and migrants would be better protected if Jordan ratified these conventions. This would be the first step into the right direction.

At the same time the government needs to ensure the full implementation of international treaty provisions into domestic legislation. The main challenge seems to lie within ensuring compliance with the instruments and giving effective law enforcement to them. The Jordanian government is responsible for the well-being of the Asian maids working in Jordanian households. Continuing widespread abuse is a sign of neglect of the obligation of due diligence. Moreover, domestic servants do not have a legal forum to express their grievances and have no standing to sue in court for non-payment of wages³¹² since the Labour Law does not apply to them. Comparing Concluding Observations of treaty bodies of the different instruments between 1994 and 2000 it is apparent that Jordan is reacting very slowly to recommendations.

There are positive developments and an increasing awareness of the problem within Jordanian society and the authorities. The programme that has been started by the UNIFEM Jordan is successfully showing that it is possible to use the rights based approach to improve the situation of domestic helpers from Asia in Jordan. It involves all levels of society and the diplomatic representations of the Philippines and Sri Lanka.

Finally, globalisation and socio-economic problems in Asian countries make them dependent on labour migration as their inhabitants do not find work that would sustain

³¹² Department of State Report Jordan, *supra* note 18, p. 1967.

them and their families within their own country. As long as this situation does not improve there will not be any reduction in the number migrant workers in the world. It is definitely not a solution to bar them from entering a country or working in certain jobs. The policy of Jordan to keep the labour market closed for foreign workers should not result in discriminatory laws against women migrant domestic workers. It is not only the situation of the female migrants that needs to be improved but the overall situation of domestic workers and women in Jordan.

VI.2. Recommendations

VI.2.1. Necessary Amendments to the Labour and Social Security Law: Efficient Protection for Migrant Domestic Workers

While the rights based approach aims at implementing international standards into domestic legislation it depends on national laws to protect the group that needs protection. The Jordanian government and its ministries are under the obligation to incorporate normative international human rights instruments into domestic law. As regards the Labour Law, the primary national legislation governing work conditions of employees and guaranteeing rights to employers and employees, efficient protection of female domestic migrant workers can only be given if it was amended. Article 3 of the Labour Law which stipulates the exclusion of domestic workers from the its protection should be changed so as to make it applicable to all employees in Jordan whether they are domestic workers, gardeners or foreigners and guarantee equal enjoyment of the rights in accordance with the principle of non-discrimination. The provisions of the labour law would then provide substantial protection for domestic workers although the Articles needed to be amended with the inclusion of households as work places. Furthermore, the Labour Law should contain a list with minimum wages for different professions including domestic workers. This would be in fulfilment of the commitment of the Jordanian government to consider the well being of the workers and their families to meet their essential needs by fixing minimum wages.³¹³ Inspections of the work place could then also take place.³¹⁴ This

³¹³ See Ch. II.2.2. this paper and E/1990/6/Add.17, State Party Report: Jordan. 23/07/98, ESCR Committee, Art. 21.

³¹⁴ E/C.12/1/Add.46. Concluding Observations of the ESCR Committee on the Second Periodic Report of Jordan, 1.9.2000, Art 34.

would be important for the monitoring of general work conditions especially occupational health.

With regard to the provisions that regulate punishment of illegal migrant workers for not having obtained a work permit though this is not in any way their fault there is clearly a need for a change. The legislator would need to amend Article 12 of the Labour Law to the effect that it has to be established that the woman is to blame and that her guilt in delaying the work permit has to be proven. Otherwise this article would only further contribute to the disadvantage of migrant women as foreigners and domestic workers under Jordanian law. It would even go beyond that by not encouraging them to speak up against their employer for violating the law. Furthermore, a standard work contract should be created and included into the labour law, which then should apply to domestic workers, too. It should be mandatory for employers to submit such a contract, which grants basic rights to their workers. Contracts would need to be written in a language other than Arabic only, preferably the mother tongue of the migrant or English. By now the contract is mandatory already but often not read by employees.

As regards the Social Security Act of Jordan it is necessary to cover all categories of workers regardless of whether they are covered by the Labour Law or not. The most important insurance would concern health and work accidents. The Jordanian government should speed up its proclaimed efforts to "implement comprehensive health insurance" and to "include every citizen on Jordanian territory"³¹⁵ under health insurance"³¹⁶ and ensure access to good standards of health insurance.

VI.2.2. General Normative Recommendations

Before any problem can be addressed the government needs to acknowledge the fact that there are certain specific problems faced by domestic migrant workers. It is apparent from the situation described above that the Jordanian government needs to take decisive action to bring the work conditions and the legal status of its migrant domestic workers into conformity with international standards and give them the opportunity to fully benefit from their social and economic rights. Therefore, it needs to publish the Covenants and other human rights instruments in the Official Gazette and take necessary measures to make it

³¹⁵ Jordan does not discriminate between national and non-nationals in accordance with its constitutional articles and the National Charter mentioned earlier in this paper. See Ch. II this paper.

enforceable in the courts. Programme for the dissemination of information regarding the implementation of the Covenant and training for judges, lawyers and other officials dealing with domestic workers could be set up simultaneously.³¹⁷ Jordan needs to monitor and evaluate the implementation of relevant legislation relating to human rights.³¹⁸ Special attention needs to be paid to the inclusion of the "prohibited ground of discrimination in accordance"³¹⁹ with the articles in the Covenants, CEDAW and CERD. This could be done through the development of a national plan of action to implement its obligations through an open and consultative process.³²⁰ Generally Jordan needs to enact laws that govern the implementation of provisions from the international law instruments into domestic legislation and it needs to continue the legislative review mentioned in the National Charter.³²¹

Bilateral agreements on migration between the Jordanian government and the Philippines and Sri Lanka would help co-ordinating the flow of migrants and prevent illegal migration. The states of Sri Lanka and the Philippines should open and set up full embassies with a labour attaché and support programmes for workers of their nationalities who are in need of protection. The governments could set up a database on the flow of migration.

Before leaving their country the women willing to work as domestic helpers should be provided with information on Jordan and the conditions. They should have the opportunity to learn Arabic and learn about the culture and habits in Jordan. Vocational training before and after arrival in Jordan would help getting accustomed to the new environment and the nature of the job. Information of wages and conditions of the contract should be provided beforehand as well. It is furthermore important to inform the women and the employers of their rights. To raise awareness of the problem among the population of Jordan, which is not directly concerned with the problem and inform them about human rights treaties signed by Jordan in general is a basic requirement towards the government.³²² This also concerns the problem of stereotypical role models in society. Only when all actors involved in the migration process actively seek solutions to the problem can there be success.

³¹⁶ E/1990/6/Add.17 Second Periodic Report: Jordan 23/07/98, to the ESCR Committee, Art. 78.

³¹⁷ E/C.12/1/Add.46. Concluding Observations of the CESCR Committee on the Second Periodic Report of Jordan, 1.9.2000, Art. 38.

³¹⁸ *Idem.* Art. 22, 23.

³¹⁹ *Idem.* Art. 29.

³²⁰ *Idem.* Art. 25.

³²¹ CCPR/C/79/Add.35; A/49/40, Concluding Observations of the CCPR Committee, 10/08/94.

³²² A/55/38, Concluding Observations/Comments: Jordan, CEDAW Committee, 27/01/2000.

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