

Report

Freedom of Association in Jordan

“The new trade unions, controversy of legitimacy”

Labor Watch Reports

Prepared by:

Jordan Labor Watch

Phenix Center for Economic and informatics Studies

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Is a joint program between Phenix Center for Economics & Informatics and Friedrich - Ebert - Stiftung (FES). Labor Watch Works to Monitor the status of labour and trade union movements in Jordan, lobbying for the development of labour legislations in cooperation with the concerned parties and in accordance to the international labour standards, contributing to the development of work conditions in Jordan, publishing reports on the status of laborers in Jordan, to raise awareness among workers themselves, facilitating the exchange of expertise in trade unions among other Arab and foreign countries to benefit from their experiences.





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Executive Summary

A series of social, political and legal debates have intensified recently regarding the freedom of association in Jordan owing to the establishment of a number of new trade unions. The controversy extended beyond the subject of the concept of the right of association to the need to exercise it, as well as its impact on the unity of the Jordanian trade unions movement, in addition to the extent of its legitimacy, revealing a distinct shortage in the relation of the Jordanian legislative system with the international humanitarian law and the international treaties and conventions.

The objective of this paper is to analyze the reality of the labors' right of association in Jordan through a social, economic, political and legal reading of this reality; in addition to an analytical reading of the positions of the parties involved in realizing this right. The paper has been prepared through conducting an analytical reading of the social and economic contexts of the transformations that are currently taking place Jordan, as well as conducting an analytical comparative reading of the labor legislative provisions related to the right of association in the light of these transformations and the relevant international covenants and conventions included in the International Bill of Human

Rights, which includes: the Universal Declaration of Human Rights, and both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and the International

Labor Organization (ILO) conventions and declarations related to the right of association.

The paper concluded that the transformations experienced by the Jordanian society over the past decades; and in particular the labor movements resulted from economic policies implemented in Jordan, and the lack of upgrading the labor legislations in line with the requirements and needs of broad labor sectors and in line with the obligations of Jordan toward the international humanitarian law, as well as the international treaties and conventions related to the freedom of association. Moreover, the blockage of any prospects to reform and correct the discrepancies of the existing trade unions, led to a significant change in the momentum of labor and union motion in Jordan expressed through intensive labor protests and the creation of new trade unions.

At the same time, the various legal restrictions were not able to prevent the emerging social and labor motions to act in defense of their interests and to organize themselves; these movements, however, drafted their own law in order to achieve their interests. The recent Constitutional amendments as well as the principal of supremacy of the ratified international treaties and conventions over the domestic legislations, in case of conflict, provided these labor movements and motions with a strong impetus to organize themselves democratically and to set up effective trade unions on democratic basis.

The paper calls for a speedy reconsidera-

tion of the Jordanian labor legislations regulating the trade unions to become compatible with the requirements of the Jordanian society, the transformations of the active powers therein, and with the provisions of the international treaties and conventions ratified by Jordan in order to facilitate the litigation proceedings in the Jordanian legislative system. The paper demands Jordan to ratify the

ILO convention No. 87 on the Freedom of Association and Protection of the Right to Organize, in addition to the recommendation that the Government enables the new trade unions to fully exercise their right to establish headquarters, hold their meetings and allow them to exercise collective bargaining in order to create a state of balance in labor relations and ease the present tensions.

Introduction:

Jordan has witnessed intensive labor motions over the past months which were the culmination of struggles expressed through various labor protests. This qualitative transformation started by the successive protests of the day laborers¹, especially in the agriculture sector in 2006, whereby dozens of protests were carried out. For the sake of effective performance of their efforts aiming to bring about job stability, improvement of working conditions and wage increases, they formed a simple union organization under the name "Day Laborers Committee"; their motion continued until most of their objectives were realized.

That was followed by the major and qualitative strike carried out by workers of Aqaba Ports Corporation in the summer of 2009 which lasted for several days, and aimed at improving working conditions, in particular wage increases; the strike was led by a simple structured trade union committee under the name "Aqaba Ports Corporation Workers' Committee"; the said committee operated outside the framework of the General Trade Union of Workers in the Ports and Clearance, and

was against it, further, it regarded the said Trade Union an ally of the port management and acts against the interests of the workers.

As these motions continued, the gap deepened between most of the workers in Jordan and the officially recognized trade unions due to the restrictions imposed by the Labor Law on the right to organize, allowing that right to seventeen trade unions only, as well as the absence of mechanisms of internal democratic action on these trade unions. Moreover, general assemblies of the trade unions were deprived the right to set their own by-laws which authority was given to the General Conference of Trade Unions composed of members of the administrative boards of trade unions which are dominated by a very limited number of persons.

This was accompanied by direct interventions of some government and security institutions in the activities of the trade unions and their General Federation. In addition, the trade unions operated in accordance with unified and

non-democratic by-laws which allowed a limited number of persons to dominate the trade unions for extended periods of time; therefore, internal elections were absent to the extent that only three trade unions of seventeen have held elections for their administrative boards, and only two held elections for their presidents during the election term of 2010. This situation led to isolating the Jordanian trade unions from their bases; the General Federation of Jordanian Trade Unions (GFJTU) became a semi-government institution fully financed by the Ministry of Finance and the funds of the Social Security Corporation. Apart of this, however, a limited number of trade unions were active to improve the working conditions of their members; these are trade unions representing workers of Government and semi-Government companies before privatization thereof, whereby membership fees were directly deducted from the monthly salaries of workers and transferred to the trade unions accounts. These trade unions, however, are operated under an unified and non-democratic by-laws, their impact is lost in the midst of the control of the leadership of the GFJTU over the ultimate activities of the Federation and its member trade unions; this dominance was due to the broad authorities enjoyed by the leadership of the Federation by virtue of its by-laws, as well as present and former connections with influential figures in some security institutions.

These facts ultimately prompted the workers affected by the absence of an independent and effective union organization to search for ways out of this difficult situation, and hence took the initiative of organizing themselves and imposing there

union organizations as a *fait accompli*. Accordingly, the emerging social labor powers started to form its organizations outside the framework of the Jordanian laws which restrict the exercise of this right and eventually outside the framework of the GFJTU and its trade unions.

The objective of this paper is to analyze the reality of the labors' right of association in Jordan through a social, economic, political and legal reading of this reality; as well as an analytical reading of the positions of the parties involved in realizing this right. The significance of preparing this paper is owing to the steady acceleration of the labor and unionist motion presently seen in Jordan, as well as the social, political and legal debates circulating around the new and independent union organizations which started to emerge in Jordan, and the controversy on its legitimacy in view of its leadership to many labor protests; in addition to reviewing some views and attitudes which followed the emergence and establishment of these new trade unions suggesting that this will lead to disintegrating the unity of the trade unions in Jordan.

This paper has been prepared through conducting an analytical reading of the social and economic contexts of the transformations that are presently taking place in Jordan, as well as conducting an analytical comparative reading of the labor legislative provisions related to the right of association in the light of these transformations and the relevant international covenants and conventions included in the International Bill of Human Rights, such as the Universal Declaration of Human Rights, as well as both the International Covenant on Civil and Political



Rights and the International Covenant on Economic, Social and Cultural Rights, and the International Labor Organization (ILO)

conventions and declarations related to the right of association.

The Social and Economic Context

Jordan has witnessed a wave of transformations in the labor relations over the past decades which led to the emergence of new powers and labor movements outside the framework of the traditional union organizations operating

under the valid Labor Law which permitted workers in any trade to establish their own trade union²; the very same law, however, emptied this provision from its content as it granted, in the next article, the authority to classify the trades that are permitted to establish trade unions to the Ministry of Labor alone³. Since the mid-seventies, the Labor Law and the decisions issued pursuant thereto did not allow the establishment of any new trade union, all attempts to establish new trade unions were turned down.

This, however, did not prevent the wage earners in Jordan to move in defense of their interests and demand the improvement of their working conditions; the Labor Law and the decisions issued pursuant thereto were not able to prevent the transformations of the social powers and motions to express itself and defend its interests, especially in view of the continuous implementation by the successive Jordanian Governments of developmental models and economic policies which did not take into account the interests of those broad categories of wage earners in

Jordan, whether working in the private or the public sector; in addition to the accompanying random privatization of different

Jordan is one of the least countries in the world in terms of key indicators of the labor market, including the rate of economic participation

state institutions reaching out to institutions of public utilities such as the electricity, water and communica-

tions ...etc. As a result of the absence of transparency, the poor control of the Parliament and other supervisory institutions, as well as the low level of democratic freedoms, the mentioned privatization processes were not free from corruption suspensions, the details of which spread in many official, parliamentary and press reports; this has reflected negatively on thousands of workers in terms of their demobilization or turning them to provisional or early retirement; in all cases, workers of various categories paid the highest price due to these policies.

The continuous implementation of the same economic and social policies led to engaging Jordan in the great economic crises in the late eighties, as well as other less severe crises thereafter, whereby the public expenditures expanded and the spending on social services such as education, employment and health remained stable "and sometimes retreated"; at the same time, the military and security spending expanded; access to external and internal debt was repeatedly viewed as easy by the successive governments;



Spending on education declined significantly; as, for instance, in the year 2000 the percentage of spending on education reached 13% of the public expenditures, it declined to reach 9% in 2010⁴, and was accompanied by a sharp decline in the spending by the Jordanian Government on the right to work which reached an average of 2% during the years 2000-2010⁵. The growth rates of public spending were higher than the growth rate of the local revenues; the increase in public expenditures during the years from 2006-2010 reached 10%, while the domestic revenues increased during the same period by a percentage of 8%⁶; these policies led to an increase in the public budget deficit before grants and aid year after year, the deficit, as a percentage of the GDP, rose from 6.8% in 2008 to 12.7% in 2011⁷, pushing the public debt to soar high reaching an unprecedented levels from JD 7.3 billion in 2007 to JD 13.4 billion in 2011⁸; the most recent figures, however, indicate that it has reached JD 15 billion by the end of the first quarter of this year.

The ultimate outcome of all above led to a decline in the overall levels of decent life for most of the citizens. Besides, Jordan is one of the least countries in the world in terms of key indicators of the labor market, including the rate of economic participation; the overall proportion of employment reached 38.2 % according to the latest available data for 2011, whereas in the same year it reached an average of 46% in the Arab states and 50% in the EU countries.⁹

Within the very same governmental labor

policies amendments to the Jordanian Labor Law were introduced in the summer of 2010 which affected negatively the workers who are not affiliated in a trade union organization and those who have weak union representation, as it deprived them the right of collective bargaining with employers; the amended law limited such bargaining on the officially recognized trade unions¹⁰. However, in spite of all these restrictions,

There is an noticeable decrease of the wage rates of most of the wage earners in Jordan

Jordan witnessed during the year 2011 an unprecedented labor motion through

more than (829) labor protests most of which were carried out by independent labor groups who are not recognized officially¹¹. Labor protests escalated during the first four months of 2012 and reached 400 labor protests compared with 320 in the first quarter of 2011 marking an increase of approx. 25%.¹²

In the field of social protection, the coverage of workers in the social security system is still low, as the insured make up nearly (65%) of the total labor force in Jordan (employed and non-employed). The number of the actually insured (the employed) was (960) thousand by the end of 2011¹³; even if the numbers of workers covered by pension and other insurance schemes (civil and military) are added, the figures remain below expectations. In addition, the social insurance system provided by the Social Security Corporation is still not comprehensive enough, as the health insurance is still outside this system, and the unemployment insurance suffers shortage as it was replaced by the insurance against “temporary unemployment”. The social security system, as is known, is assumed to cover these two

insurances according to the minimum social security international standards.

The economic policies adopted by the successive Governments led to a situation whereby no new job opportunities were created to absorb the new comers to the Jordanian labor market; therefore, the unemployment rate remained high and at a standstill for years. The overall unemployment rate reached a percentage of (12.1%) concentrated mostly in the youth categories, especially among the age groups 16-19 years and 20-24 years, reaching 36.5% and 28.1% each respectively.¹⁴

The Jordanian economy was unable to secure job opportunities for most of the new comers to the labor market even during the period of good growth rates of GDP at constant prices by an average of (7.12%)¹⁵ whereby (61) thousand new job opportunities were created annually during the years (2006-2009)¹⁶, but was unable to reduce the above mentioned unemployment rates, despite the fact that estimates of the outputs of the educational and vocational training systems were less than the created job opportunities during the years in question, as it amounted to about (40-50) thousand new work seekers.

This discrepancy uncovers a situation of structural unemployment suffered by the Jordanian labor market, as most of the newly created job opportunities go to migrant workers, which reached high levels during the past years recording approx. (300) thousand workers by the end of 2011¹⁷; in addition to approximately (250) thousand foreign workers who are not registered in the Ministry of Labor according to official and unofficial

estimates; they work without work permits and most of them work in the informal sectors or temporarily unemployed and looking for job opportunities. The migrant workers' sector suffers from absence of effective regulation; apart from the presence of most of them without work permit, broad segments of them work in sectors other than those they have been granted permits to work in, including professions labeled to Jordanians; this is significantly highlighted in the case of workers who are issued permits to work in the agriculture.

Moreover, an noticeable decrease of the wage rates of most of the wage earners in Jordan was noted, especially when taking into account the very high price levels of commodities and services, which led to widening the segments of poor labor. The overall average monthly wage amounted to JD 393 in 2010; while workers in the public sector were paid an average monthly wage of JD 337, the workers in the private sector received an average monthly wage of JD 415¹⁸. Upon looking deeper in the segments of wages earned by wage earners in Jordan, a catastrophic situation is noted, as we find that (25%) of them earn a monthly wage of JD 200 or less, (53%) of them earn a monthly wage of JD 300 or less, and (77%) of them earn a monthly wage of JD 400 or less.¹⁹

The issue becomes even worse upon looking at the minimum wage rate adopted in Jordan which amounted to JD 150 a month by the end of January 2012, and is now standing at JD 190, which is by far less than the absolute poverty line as issued by the concerned official authorities. Furthermore, many studies and reports point that many Jordanians

obtain monthly wages which are lower than the already low minimum wage rate²⁰, which indicates clearly that most of the wage earners in Jordan are classified within the poor labor. Upon comparing these figures with the levels of poverty in Jordan, we realize how low these wage

rates are; the preliminary figures of the poverty study in Jordan for the year 2010 revealed that the

The social and economic transformations pushed for even more crises in the structure of the labor relations stemming mainly from the imbalance in labor

absolute poverty line for a standard family of six persons (5.7) is close to a monthly amount of JD (350).²¹

The Jordanian workers have been the most sensitive, and suffered most due to these economic conditions, this applied to both working in the public sector and in the private sector. According to analytical reports which addressed labor protests in the last three years, two thirds of these protests were carried out by workers in the public sector²² which refers to the decline in the conditions of workers in the public sector as well as the decline in the balance of the labor relations therein; in addition to the growing imbalance in the relationship between the relevant parties represented by the Ministry of Labor, the officially recognized trade unions, and the employers in the private sector; as the representatives of the trade unions had less influence due to the Government intervention in their business, as well as the absence of internal democratic practices leading to the absence of its effectiveness; hence, this great intimidation against the rights of the wage earners, as the phenomenon of violations and attacks on the fundamental labor rights in the labor market in Jordan has become

immanent; the Ministry of Labor with its inspection team was, and is still unable to secure the fundamental rights of all workers as stipulated in the Labor Law, especially those working in the private sector.²³

Eventually, these social and economic transformations pushed for even more crises in the structure of the labor

relations stemming mainly from the imbalance in labor relations which was reached largely due to the absence of independent and effective trade union organization. Whereas the Jordanian laws and Government decisions permitted establishing employers' organizations freely, it deprived workers of this right. Therefore, there are only 17 trade unions in Jordan which has not been changed in four decades, while there are approximately 80 employers' organizations,²⁴ including chambers of commerce and industry, unions and employers' associations, such organizations are increasing each year. The situation would have required a response by the successive Governments, whether to review the economic and social policies as to give it a social dimension, or toward the alleviation of imbalances suffered by the labor market relations, as well as action to restore balance thereto; the policy makers and implementers, however, did not take notice to all that and to the disastrous results of their economic and social policies.

Reform in the trade unions and their general federation

All these transformations were accompanied by the vanishing of various prospects of reforming the trade unions and their general federation, whether these attempts from within or from outside; On the internal level, three trade unions presented a package of proposals to

reform the trade unions by-laws and the by-laws of the General Federation of Jordanian Trade Unions

Chances to reform the GFJTU and its member trade unions have vanished, and they continued to operate under unified, non-democratic and centralized by-laws

(GFJTU)²⁵; none of these proposals have materialized so far; the administration of the general federation insisted not to make any modifications to these two by-laws, while the three trade unions did not take serious actions to pressure the administration of the general federation to endorse the proposed alterations, which could be due to lack of desire or due to inability on the part of the three trade unions.

An intended conference was scheduled for Saturday, April 28, 2012 to introduce some amendments to the by-laws of the trade unions and the general federation, however, was postponed until further notice without a clear verification; Nonetheless, according to leaked information, the subject amendments were not more than to return to the unified by-laws of the trade unions which were valid before 2006, which, however, are not substantial amendments that may affect the structural organization of the trade unions and their general federation, and do not represent a step toward the adoption of

democratic by-laws, and were limited to the re-opening of branches and other minor and cosmetic amendments.

Several other attempts were made by some trade unions activists from outside the official trade unions to pressure the leadership of the General Federation of Jordanian Trade Unions in order to straighten its conditions and the conditions of its member trade unions. These attempts comprised implementation of

protests, rallies, and issuing statements calling for the need to reform the general federation and its

member trade unions, but in vain. These unionists felt some relief when the subject of the General Federation of Jordanian Trade Unions was transferred to the Anti-Corruption Commission during the summer of 2011 for investigation of suspicions of administrative and financial corruption, but the outcome of the a for-mentioned investigations is still pending.

At the parliamentary level, a large number of MP's called upon the then Prime Minister, Dr. Ma'rouf Albakhiet in the first half of 2011, during the confidence debates of his Government, to present a draft law regulating the trade unions activities on democratic basis, Albakhiet promised to work on it, but his Government resigned after a few months. Thereof, on a later stage, specifically, in February 2012 an initiative signed by a parliamentary majority was launched demanding the Government to take action to reform the trade unions and their general federation to take the lead to its natural role in defending and protecting the interests of the

Jordanian workers, the impact of this initiative was not better than the previous efforts; even the response of the Executive Office of the General Federation of Jordanian Trade Unions was as harsh as issuing a statement criticizing the parliamentary majority and accusing them of interfering in the internal affairs of the trade unions and their general federation.

Accordingly, chances to reform the GFJTU and its member trade unions have vanished, and they continued to operate under unified, non-democratic and centralized by-laws that are imposed on all trade unions and their general federation, as most powers are concentrated in the hands of the heads of the trade unions, while the powers of the executive office of the general federation are concentrated in the hand of the federation president. Hence, the affairs of the Jordanian labor movement were dominated in the hands of a small group of heads of trade unions, most of whom were retirees who draw on by-laws designed by themselves to ensure continuation for unlimited and successive electoral sessions; Therefore, some representatives of trade unions were able to stay in their positions for decades, some never worked in labor sectors represented by trade unions they head. This also led to a situation whereby most of the trade unions have not seen democratic internal elections for many years; as there are 15 non-elected heads of trade union as well as 14 non-elected administrative committees out of the 17 trade unions.

This has, eventually, led to the isolation of most of the trade unions from their bases, as the total membership of all trade

unions did not exceed 80 thousand member out of the million and a half Jordanian worker, most of this membership is mandatory as is the case in the General Trade Union of Land Transport Employees and Mechanics and other trade unions which represent workers in the public companies before privatization. The GFJTU, as mentioned earlier, has become a semi-Government institution fully financed by the government and funds of the Social Security.

Facing this reality, and with the aggravation of the size of the witnessed labor protests in Jordan during the past two years, as well as the growing need of the Jordanian workers for more care, attention and protection against the difficult economic and living conditions; and in view of the lack of prospects of reforming the existing trade unions and their general federation, the emerging labor powers and motions took serious steps towards utilizing their right to establish new and independent trade unions in accordance with democratic by-laws.

Jordanian legislations and the International Humanitarian Law

Besides what has been reviewed above, many international legal rules related to the right to free association ensure that all humans have the right to freely establish trade unions; negligence thereof by the successive Jordanian Governments as well as the Jordanian legislators have had the largest impact on deepening the crisis faced by the Jordanian trade unions movement. The Jordanian labor legislations

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regulating the activities of trade unions are not consistent with the international standards related to the trade unions and in particular the Universal Declaration of Human Rights, as well as both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, in addition to the International Labor Organization (ILO) conventions and its declarations.

While the Labor Law permit workers in any trade to establish their own trade union²⁶, as mentioned earlier, the very same law emptied

The Jordanian legislators did not take into account the contents of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights which were ratified by Jordan

this provision from its content as it granted, in the next article, the authority to classify the trades that are permitted to establish trade unions to a tripartite committee of the Ministry of Labor, trade unions and employers' associations²⁷; the previous law, however, granted this authority to the Minister of Labor, whereby decisions were repeatedly issued identifying the trades permitted to establish a trade union in accordance with a specific professional classification whereby hundreds of trades were concentrated in 17 trade unions only, the said classification was renewed last time in 1996²⁸; since the mid-seventies, however, the Ministry of Labor, pursuant to the law and the decisions issued by virtue thereof, did not permit the establishment of any new trade union turning down all attempts to establish new trade unions.

Neither the Jordanian successive Governments, nor did the Jordanian legislator take into account the contents of both the International Covenant on Civil and

Political Rights and the International Covenant on Economic, Social and Cultural Rights which were ratified by Jordan in 1976, and were published in the Official Gazette in 2006²⁹, and thus constituted a part of the Jordanian legislative system since then. The said two covenants guarantee the unconditional right of workers to establish their trade unions. The International Covenant on

Civil and Political Rights stated "Everyone shall have the right to freedom of association with others, including the right to form and join

trade unions for the protection of his interests"³⁰. The International Covenant on Economic, Social and Cultural Rights was even more clear in detailing the right to organize, as it stated "The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others"³¹.

In connection with Jordan's commitment to the ratified international treaties and conventions, there is a consensus among scholars of international humanitarian law that these treaties are superior in the application over the domestic laws if both conflict; the "Vienna Convention on the Law of Treaties" affirmed that and stated "a party to any treaty may not invoke the



provisions of his internal law to justification for its failure to perform a treaty”³².

In Jordan, there are more than one official statement which confirms the supremacy of the ratified international treaties over the domestic law in the case of conflict. The second Jordanian periodical report

presented to the Committee Against Torture³³ in 2010 stated that “The Convention Against Torture, once approved and published in the Official Gazette, has become part of the Jordanian legislative system and acquired the force of law; accordingly, if such an issue is presented to the national judiciary, the Jordanian courts are bound to refer to the definition contained in Article (1) of the Convention Against Torture”³⁴.

In addition, many decisions were issued in Jordan by the Court of Cassation in many cases affirming the supremacy of the ratified international conventions over the Jordanian law in cases of conflict, one of these decisions suggested “the state implements the treaties concluded with other countries on the grounds that treaties are more powerful than the internal ordinary law”³⁵; another decision stated “the bilateral or international agreements are obligatory and must be implemented, they are ranked higher than the internal law in cases of conflict”³⁶; another decision of the Court of Cassation clearly points to the supremacy of the interna-

tional treaties and conventions over the domestic laws and stated “international treaties and agreements transcends over the domestic laws, it has a priority of

implementation in cases of conflict and may not be invoked by any local law against the convention”³⁷.

The Jordanian jurisprudence settled that “in case Jordan ratifies any international agree-

ments, these agreements gain the force of the domestic law, and if any conflict is found between the provisions of the international conventions and the provisions of the national legislations, the priority in application is given to the international conventions”³⁸.

Accordingly, the right and freedom to organize are both guaranteed according to the Jordanian judicial system even if they contradict with the provisions of the Jordanian Labor Law; Moreover, the free and democratic exercising of the right to organize may not be considered an act of disintegration of the Jordanian trade unions movement which exist by the force of law, and not according to the selective choice of the unions themselves.

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Jordanian legislations and the ILO Conventions

On considering the compatibility of the Jordanian labor legislations represented by the Labor Law and the resolutions issued there under with the international labor standard as mentioned in the ILO conventions, it is found that the provisions of the Jordanian legislations are also not

compatible with the provisions of these conventions. There are two basic conventions regulating the right and freedom of association which are convention No. (87),

Despite the fact that Jordan has not ratified the ILO Convention No. (87), the Jordanian Government is obliged to take its contents into account when drafting national legislations, according to the provisions of "ILO Declaration on Fundamental Principles and Rights at Work"

regarding the freedom of association and protection of the right to organize, and convention No. (98), regarding the right to organize and collective bargaining.

Upon reviewing the core contents of the above two conventions, we find Convention No. (87) stating that "Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization", the convention provides "Workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes", and further provides "The public authorities shall refrain from any interference which would restrict this right or impede the lawful

exercise thereof"; the said convention emphasizes also "Workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority", and affirms "Workers' and employers' organizations shall have the right to establish and join federations and confederations and any such organization, federation or confederation shall have the right to affiliate with international organizations of workers and employers", furthermore, "In exercising

the rights provided for in this Convention workers and employers and their respective organizations, like other persons or organized collectivities, shall respect the

law of the land." on condition that such laws "The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention".³⁹

Despite the fact that Jordan has not ratified the above ILO Convention No. (87), the Jordanian Government is obliged to take its contents into account when drafting national legislations, according to the provisions of "ILO Declaration on Fundamental Principles and Rights at Work"⁴⁰, the first of these rights is the freedom of association and the effective recognition of the right to collective bargaining. To ensure this right, the declaration pointed to the two conventions: Convention No. (87) Regarding the freedom of association and protection of the right to organize, and Convention No. (98) Regarding the effective recognition of the right to collective bargaining. The

introduction of the said declaration stated the Organization (ILO) “Declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution”⁴¹ (Constitution of the ILO). Accordingly, because Jordan is a member of the International Labor Organization, it is obliged to respect the right to organize as stipulated in the provisions of the ILO Convention No. 87.

Moreover, Jordan has ratified in 1966 the ILO Convention No. (98) Concerning the right to organize and collective bargaining, that is the second convention to guarantee the right and the first principle of the mentioned declaration of principles. The contents of this convention are summarized “Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment”. The convention banned “make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership”, and banned as well “cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours”, in addition to stating “employers’ organizations as well as workers are to be provided with sufficient protection from any actions that may represent an interference in the affairs of each other, either directly or through its agents or its members, whether this intervention targets its formation, operation or management”⁴². This convention guarantees, in a way, the

right to organize by confirming the banning of exposing the workers to any form of punishment whatsoever due to their union association and activities.

In the light of the above facts, provisions of the applicable Jordanian Labor Law, restrict significantly the exercise of the freedom of association in trade union in violation of the provisions of the International Covenants on Civil and Political Rights and, the other, on Economic, Social and Cultural Rights, despite the fact that the mentioned covenants are part of the Jordanian legislative system since 2006, in addition to its violation of the ILO related conventions, as well as the ILO Declaration on Fundamental Principles and Rights at Work. Therefore, thousands of Jordanian workers found themselves motivated towards the establishment of new trade unions resorting to the principle of supremacy of the ratified international treaties and conventions over the domestic legislations regardless of the degree of failure of these legislations to accommodate the obligations of the Jordanian state toward the international humanitarian law and the pressing needs of the Jordanian society.

In this context, the amendments of the Jordanian Constitution in 2011 were to support the freedom of association. The said amendments provide “Jordanians have the right to form associations and trade unions as well as political parties provided its objectives are legitimate and its means are peaceful with by-laws that does not violate the provisions of the Constitution”⁴³. This was affirmed in another article which provided for the right to form “a free union organization within the limits of the law”⁴⁴. The phrase

"within the limits of the law" was understood by the right owners who are anxious to form a free trade union organization in accordance with the standards contained in the ratified international treaties and conventions which supersede the local laws; and that encouraged them to establish new trade unions. Until the moment of preparing this paper, six independent

trade unions were established in sectors of Phosphate, the Jordanian Electricity Company, Printing Press, Municipalities, Pharmaceutical Industries and Day Workers in Agriculture; these trade unions have announced the formation of their own Independent Trade Union Federation according to democratic by-laws.

Positions of the involved parties:

Despite the degree of precision of the provisions of the international humanitarian law and the ILO conventions related to freedom of association as well as the clarity of the required degrees of compli-

ance and its supremacy over the domestic Jordanian law, the reactions of a number of the trade unions related authorities to the behavior of

"the provisions of the Labor Law suffer shortage...and is inconsistent with the international standards, as it grants the Ministry of Labor the absolute authority to approve the establishment of trade unions"

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workers as to establish new and independent trade unions were surprising, unjustified and reflected great ignorance of these aspects, as known to all, these official and non-official Jordanian institutions have efficient legal advisors who are well aware of all the local and international legal aspects.

In further details, the most unusual position was the position of the Ministry of Labor who rejected the registration of the new trade unions and refused to recognize them as legal, justifying its position that the provisions of the Jordanian Labor Law do not allow it. The Ministry has exercised two different positions with the

independent trade unions; at a time, the Ministry negotiated with the Independent Trade Union of Workers in the Phosphate Sector during their strike in February 2012, and at a later time,

refused to negotiate with the Independent Trade Union of Workers in the Jordanian Electricity Company in April 2012, thus committing a clear

violation of the principles of freedom of association and collective bargaining of the ratified and obligatory international conventions and treaties, especially, the ILO Convention No. 98 on the right to organize and collective bargaining.

The position of the Ministry of Labor corresponded with the position of a number of the officially recognized trade unions in accordance with the valid Labor Law; as the General Federation of Jordanian Trade Unions (GFJTU) issued many statements and press releases declaring that the independent trade unions founded by various laborer groups are illegal and illegitimate. Furthermore,

some of the officially recognized trade unions according the prevailing law instigated the Government, employers as well as the workers themselves not to deal with these trade unions as illegitimate .⁴⁵

As regards the employers' position, it conformed to the

position of the Ministry of Labor and the recognized trade unions in accordance with the Labor Law. The management of the Phosphate Mines Company refused to negotiate with the Independent Trade Union of Workers in the Phosphate, who organized the four days long open strike in February 2012, thereafter, the company management was forced to negotiate with them in the presence of both the Minister of Labor and the General Trade Union of Workers in the Mines and Metal Industry. The management of the Jordanian Electricity Company, however, refused absolutely to negotiate with the Independent Trade Union of Workers in the Electricity Company during the 17 days long open strike in April 2012, whereby the position of the company was in full conformity with the positions of each of the Ministry of Labor and the General Trade Union of Workers in the Electricity, finally an agreement was signed without the participation of the Independent Trade Union of Workers in the Electricity Company even though it had carried out the strike.

With regard to the position of human rights and civil society organizations, two positions were taken towards the establishment of independent trade unions, the first position was represented in a letter sent by the National Center for

Human Rights to the Minister of Labor pointing out that "the provisions of the Labor Law suffer shortage...and is inconsistent with the international standards,

as it grants the Ministry of Labor the absolute authority to approve the establishment of trade unions" and the said center

"the independent trade unions are considered legal and legitimate according to the international labor standards"

Jordanian Labor Watch

demanded the Ministry of Labor, in the same letter "to reconsider the classification of professions allowed to form a trade union", and demanded the Ministry as well "until the Labor Law is amended, and the National Tripartite Commission creates a new classification to allow the independent trade unions to prove its existence,...these unions to be given a legal statues, as there is no reason according to the international standards to block the presence of two trade unions for the same trade" .⁴⁶

The second position towards the establishment of independent trade unions was expressed repeatedly by the Jordan Labor Watch Program, an affiliate of the Phenix Center for Economics and Informatics Studies that "establishing independent trade unions is a guaranteed right in accordance with the various international labor standards, and the two International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights as well as the ILO Conventions No. 87 and 98 and the ILO Declaration of Fundamental Principles and Rights at Work"; the problem, according to the position of the Jordan Labor Watch Program, "lies in the Jordanian labor legislations regulating the unions' work" and that "the Jordanian labor legislations are in contradiction of the international

treaties and conventions", emphasizing that "in accordance with the principle of supremacy of the international treaties and conventions over the local laws in cases of conflict, the independent trade unions are considered legal and legitimate".⁴⁷

Conclusions and recommendations:

It is obvious, according to the above mentioned facts that the transformations experienced by the Jordanian society, especially, the Jordanian labor movements and motions were results of the economic policies implemented in Jordan and reflected negatively on the Jordanian sociality, and due to lack of development of the Jordanian labor legislations in line with the requirements and the needs of broad labor sectors who represent a vital part of the society, in addition to the lack of development and amendment of the Jordanian labor legislations in line with the obligation of the country toward the international treaties and conventions, whether the International Bill of Human Rights, in particular the both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, or the relevant ILO conventions, as well as the eventual ILO Declaration on Fundamental Principles and Rights at Work, add to all that the blockage of any prospects to reform and correct the discrepancies of the existing trade unions.

Nonetheless, the various legal restrictions were not able to prevent the emerging

social and labor motions to act in defense of their interests and to organize themselves; these movements, however, drafted their own law in order to achieve their interests. The recent Constitutional amendments as well as the principal of supremacy of the ratified international treaties and conventions over the domestic legislations, in case of conflict, provided these labor movements and motions with a strong impetus to organize themselves democratically and to set up effective trade unions on democratic basis.

It, thus, has exercised its right to establish its own trade unions "the independent trade unions" and others, as two new unions for the pilots and the accountants are anticipated within a few weeks. In this context, the new trade unions' organizations are restoring the role that it was supposed to play for decades in order to create a state of balance in the labor relations between workers and employers which would represent a step forward towards bringing about social justice through these organizations playing their role in reviewing and formulating the economic and social policies which affected and will affect them in the future.

Therefore, these new trade unions' organizations are setting up the stage for a normal unity of the unions' movement based on its own voluntary and democratic options, not on legal provisions which would lead to the setting up of a fragile and weak unions' unity, as is the case now, in addition to the fact that it is in violation of the principles of the unions' organization freedom.

Accordingly, this paper recommends the following:

- 1 Reconsideration of the Jordanian labor legislations regulating the trade unions to become compatible with the requirements of the Jordanian society and the transformations of the active powers therein, and in accordance with the provisions of the international treaties and conventions ratified by Jordan in order to facilitate the litigation proceedings in the Jordanian legislative system
- 2 It is necessary to ratify the ILO convention no. (87) On the Freedom of Association and Protection of the Right to Organize by Jordan.
- 3 Until the Jordanian labor related legislations are amended, the Jordanian Government has to recognize the new trade unions and enable them to fully exercise their right to establish headquarters, hold their meetings, and allow them to exercise collective bargaining, in order to create a state of balance in labor relations and ease the present tensions.

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- 23 Phenix Center for Economics and Informatics Studies, The Jordanian Civil Society Program, Guide to the Civil Society Organizations in Jordan, www.civilsociety-jo.net
- 24 Three member unions of the Public Services International (PSI), namely the General Trade Union of Workers in Petrochemicals, the General Trade Union of Workers in Electricity and the General Trade Union of Workers in Health Services have presented a set of proposals for the reform of the unified by-laws of the trade unions and the General Federation of Jordanian Trade Unions within a project carried out by these unions with the support of the Public Services International (PSI) which lasted for three years, none of these proposals, however, was accepted so far.
- 25 IBID.
- 26 Jordanian Labor Law No. (8) for 1996 and its amendments, article (97), Para (a)
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- 28 Ministry of Labor, a decision classifying the trades and professions permitted to establish trade unions www.mol.gov.jo
- 29 Published in the official gazette on 15 June, 2006, issue No. 4764
- 30 The International Covenant on Civil and Political Rights, Article 22, paragraph 1
- 31 The International Covenant on Economic, Social and Cultural Rights, Article 8
- 32 Vienna Convention on the Law of Treaties, Article 27. The convention was adopted by the UN conference on law of treaties held under the UN General Assembly resolutions No. 2166 dated 5 December, 1966; and No. 2287 dated 6 December 1967. The conference was held in two sessions

in Vienna from 26 March to 24 My 1968, and from 9 April to 22 May, 1969, whereby the Convention was adopted in the final session on 22 May, 1969 and was presented for signature on 23 May, 1969 and became valid in 27 January 1980

- 33 The Committee Against Torture is a body of independent experts that follows the Office of the United Nations High Commissioner for Human Rights, which monitors the implementation of the International Convention Against Torture and other types of cruel, inhuman or humiliating treatment by its member states. All member states are committed to submit regular reports to the Committee on how the rights are being exercised. States must report initially one year after acceding to the Convention and every four years thereafter. The Committee examines each report and addresses its concerns and recommendations to the member state in form of “conclusive observations”.
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- 35 Penal cassation, decision No. 163/1977, Bar Association Magazine for 1977, page 1315
- 36 Cassation, decision No. 2426/1999, Bar Association Magazine for 2002, page 1788
- 37 Court of Cassation: decision No. 818/2003 dated 9 June, 2003
- 38 Judge Dr. Mohammed Altarawneh “The relation between the international agreements and the domestic law – a Jordanian experience” Alresalah Magazine, the National Human Rights Center, third year, issue No. 7, September 2006.
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- 40 ILO Declaration on Fundamental Principles and Rights at Work, issued by ILO in June, 1998 containing four basic rights and principles, including: freedom of association and the effective recognition of the right to collective bargaining, elimination of all forms of forced or compulsory labor, effective abolition of child labor, and elimination of discrimination in respect of employment and occupation
- 41 ILO Declaration on fundamental principles and rights at work, <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=2&chapter=26&query=%28%23docno%3D261998%29+@ref&highlight=&querytype=bool&context=0>
- 42 ILO convention 98 on Right to Organize and Collective Bargaining Convention, 1949, Articles: 1 and 2. <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C098>
- 43 The new Jordanian Constitution, Article (16), Para (2).
- 44 The new Jordanian Constitution, Article (23), Para (w).
- 45 For examples: The actions of each of the General Trade Union of Workers in Mines and Metal Industry, the General Trade Union of Workers in Electricity and the General Trade Union of Workers in the Aviation; the late has not only issued a statement, but has sent a group of people to sabotage a dialogue seminar held at the Professional Associations Complex debating the right of association in which approximately 200 aviation workers participated, mostly non-workers in this sector, but also sent a provocative message to the government against these activities; in addition to the statement of the President of the General Trade Union of Workers in the Municipalities claiming that the perpetrators of establishing an independent trade union for workers in the municipalities receive funding from foreign countries.
- 46 Letter of the National Center for Human Rights to the Minister of Labor, March 2012.
- 47 Excerpts from various releases and statements of Jordan Labor Watch Program regarding the independent trade unions.