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Policy Paper

EMPLOYMENT DISCRIMINATION AND PROTECTION OF WOMEN: LEGAL REFORM TO INCREASE JOB OPPORTUNITIES FOR WOMEN IN JORDAN*

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التمييز في العمل وحماية المرأة : تعديل القوانين لزيادة فرص العمل للنساء في الأردن

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Executive Summary

Several texts and provisions in Jordanian legislation involve discrimination against women. Among these texts are those related to women's participation in the labor market, where many provisions need to be amended, as outlined in the World Bank's annual report "Women, Business and the Law" (WBL), which was published in February 2022.

In line with popular demands and international recommendations, the amendment of Article 69 of the Jordanian Labor Law No. (8) of the year 1996 ("Labor Law") would give women more freedom by removing all restrictions imposed on their work, and eliminating discrimination against them, considering that one of the most important traits of justice and equality is non-discrimination. Discrimination based on race, skin color, or gender may lead to hatred in society, as well as a lack of opportunities for all.

Introduction

The Hashemite Kingdom of Jordan ("Jordan") is moving towards reducing discrimination against women by amending restrictive legal texts, as well as procedures that women must follow to obtain certain personal services, such as the issuing of a passport. There are also some amendments to the provisions of the Labor Law to ensure a safe working environment for women and to lift all restrictions imposed on their freedom to choose their occupations or workplace, on an equal footing with men.

Restrictions in the Labor Law

Article 69 of the Labor Law (under resolution of the Minister of Labor issued pursuant thereto) prohibits women from working in mines, quarries, and extracting minerals and in the manufacture of asphalt, rubber, and lead, as well as shipping, unloading and storing goods. Further occupations that may be dangerous to them and their lives given their delicate physical nature are also prohibited.

In several international conventions, states have pledged to put an end to gender discrimination. Although Jordan has not ratified all of these conventions, this does not necessarily mean that it has failed to keep pace with the current global trend in non-discrimination or with new developments, as there are different requirements for each time period.

The importance of lifting the ban

Lifting bans and restrictions on women's participation in the labor market does not necessarily imply that all women will work in potentially hazardous occupations, if the general safety conditions for both men and women are not taken into account. However, indiscriminately, such occupations can be more difficult and tiring for women than men, due to the differences in terms of physical endurance. Although women may undoubtedly face some difficulties while working in these jobs, taking this step gives women freedom and a sense of equality.

It also creates a sense of reassurance that opportunities are always available without restrictions, and that women would not be treated differently because of gender, thereby increasing their self-confidence. Thus, this would help build a society free from hatred and discrimination. Working in these jobs would also empower women to face both the professional and personal challenges of life. Lifting the ban would guarantee their safety and that of other workers in those workplaces and have a positive impact on other aspects of life such as family, economy, health and psychological wellbeing.

The economic dimension

Some studies¹ suggest that women's participation in the labor market achieves significant economic gains for the overall economy of the country, as it contributes to economic growth, improves the social status of individuals and leads to better living standards, ensuring a more comfortable life.

Capacity balance

Increasing women's participation in the labor market maintains a balance between the different capabilities of both genders, and combining their capabilities increases production. The suggested reform is also in line with the proposals presented by the World Bank, which provides technical advice related to the Women, Business and the Law report. The amendment aims to eradicate any discrimination against women and all restrictions imposed on their work, enabling them to work in all sectors, like men, thus achieving equality, which in turn leads to increased employment of women in society. Moreover, this would improve Jordan's performance at the international level. Other texts and procedures will need to be modified in parallel with the amendment of Article 69 of the Labor Law.

About the Women, Business and the Law Report

The Women, Business and the Law report measures the laws and regulations that constrain women's economic opportunities in society in eight areas that affect their economic opportunities including mobility, pay, parenthood, managing and owning assets, workplace, marriage, entrepreneurship, and retirement.

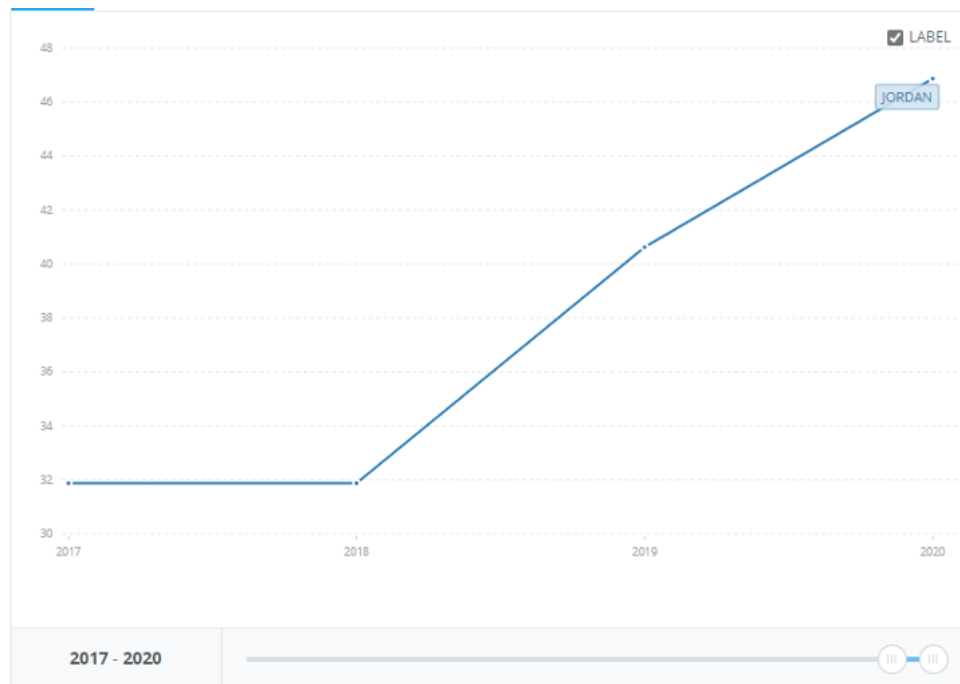
Jordan's performance in the Women, Business and the Law Report

There have been changes in Jordan's performance in the WBL report during 2020 following amendments made by the government in order to reduce the legal gender gap, including enabling women to obtain passports without any restrictions, and prohibiting gender-based discrimination in access to credit by adding paragraph (e) to Article 30 of the Instructions for treating customers with fairness and transparency - No. 51/2012-, which states: "It is unlawful for a bank to discriminate its customers based on their gender when making a decision regarding the provision of its credit services and products,

¹ International Monetary Fund, 2018, "Economic Gains from Gender Inclusion: New Mechanisms, New Evidence."

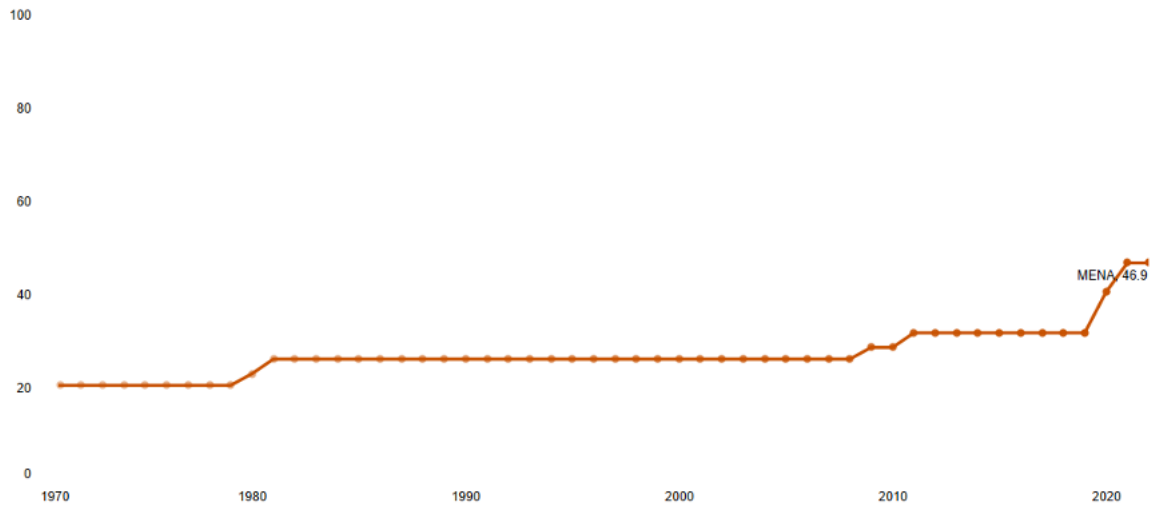
including loans.” These two amendments have had a positive impact on Jordan during the past two years, as indicated in figure (1) below.

Figure (1): Jordan’s performance in 2020



Source: The World Bank

As shown in Figure (2), Jordan’s overall performance has progressed over the past two years, achieving 46.9 (out of 100 points) in the 2021 report, and is still at the same level in 2022. However, despite this progress, Jordan’s level is still low compared to other countries, especially in the following indicators: mobility, workplace, marriage, parenthood, and assets.

Figure (2): Jordan's performance on the WBL index during 1970-2022

Source: The World Bank

The performance of some Arab countries

From Table (1) below, it is apparent that the performance of Saudi Arabia (80 points) and the UAE (82.5) has improved during the past few years. Recently, the levels of both countries were raised by amending the legal texts related to mobility, workplace, pension and pay, leading to raising their respective scores on these indicators to 100, while Jordan's performance in these indicators is still low, as shown.

Among the most important areas that need improvement is the work environment (as reflected by the workplace indicator), where Jordan scored zero. Accordingly, the legal texts that stipulate restrictions on female employment and the suggested legal amendments to Article 69 of the Labor Law will be explained in the following section.

Table (1): Performance of Jordan, Saudi Arabia and the UAE in 2020²

									
Jordan	46.9	25.0	0.0	75.0	20.0	40.0	100.0	40.0	75.0
Saudi Arabia	80.0	100.0	100.0	100.0	60.0	40.0	100.0	40.0	100.0
United Arab Emirates	82.5	100.0	100.0	100.0	60.0	60.0	100.0	40.0	100.0

Source: The World Bank

The legislative position with regard to discrimination in women's participation in the labor market in Jordan

The Jordanian Constitution

As noted previously, the Jordanian Constitution enshrines equality and non-discrimination; Article 6 stipulates equality before the law, and states:

« 1- Jordanians shall be equal before the law. There shall be no discrimination between them as regards to their rights and duties on grounds of race, language or religion... 3- The Government shall ensure work and education within the limits of its possibilities, and it shall ensure a state of tranquility and equal opportunities to all Jordanians... 6- The Government shall ensure the empowerment and support of women to play an active role in building society. It shall ensure equal opportunities based on justice and equity and protects Jordanians from all forms of violence and discrimination³. »

Article 23 also provides for the right to employment, as it states:

1 - Work is the right of every citizen, and the State shall provide opportunities for work to all citizens by directing and promoting the national economy.

2- The State shall protect labor and enact legislation therefore based the following principles:

² Note that no change has been observed in 2022

³ This paragraph was added pursuant to the amendment of the Constitution for the year 2022, published in the Official Gazette on March 31, 2022.

- a. Every worker shall receive wages commensurate with the quantity and quality of his/her work.
- b. The number of hours of work per week shall be defined. Workers shall be given weekly and annual days of paid rest.
- c. Special compensation shall be given to workers supporting families and on dismissal, illness, old age and emergencies arising out of the nature of their work.
- d. Special conditions shall be made for the employment of women and juveniles.
- e. Factories and workshops shall be subject to health safeguards.
- f. Free trade unions may be formed within the limits of the law.

These constitutional texts show that Jordan does not discriminate on the basis of gender, and this includes non-discrimination in the work environment. Rather, it enshrines the principle of the right to employment for all citizens equally. However, paragraph (d) of Article 23 mandates that certain conditions for women and juveniles must be observed.

Labor Law

Since the paragraph is not limited to women only, but also juveniles, it is evident that the aim is not to discriminate women, but to show appreciation and consideration for the special circumstances that these persons may have in some cases. However, the development of societies requires the removal of any texts that may imply gender discrimination, which is reasonable.

Based on the above Article of the Constitution, Article 69 of the Labor Law related to restrictions imposed on women, states:

In accordance with a resolution of the Minister after consulting the competent official authorities, the following shall be specified: A. Industries and occupations in which employing women is prohibited. B. Times in which it is prohibited to make women work and the excluded cases.

There were two resolutions related to the restrictions imposed on female labor by the Minister of Labor under Article 69 of the Labor Law, and they are as follows:

First: the 2010 resolution regarding the work and hours during which it is prohibited to employ women, which was published in the Official Gazette No. 5068 on 01/12/2010, and it is as follows:

Article 2: It is unlawful to employ women in the following industries and jobs:

1. Mines, quarries and all jobs related to the extraction of minerals and stones underground
2. Metal smelting.
3. Coating mirrors using mercury.
4. Manufacture of explosive substances and fireworks and jobs related thereto.
5. Welding all kinds of metals.
6. Industrial processes in which lead, lead oxides, or lead compounds are included.
7. Mixing and kneading operations in the manufacture and repair of electric batteries.
8. Cleaning the workshops where the work described in clauses 7,6 above is carried out
9. Asphalt Industry
10. Rubber industry.
11. Loading, unloading and storing goods in docks, ports, warehouses, receiving and maintaining ships.

Article 3: It is unlawful to employ pregnant and breastfeeding women in the following jobs:

1. Jobs involving exposure to atomic or nuclear radiation and X-rays.
2. Any job that requires handling or exposure to the fumes and smoke of any petroleum derivatives.
3. Jobs involving exposure to teratogenic substances.
4. Jobs involving exposure to ethylene in dyeing, carbon disulfide in rayon, silphon, hydrocarbons in petroleum refining, mercury, phosphorous, nitrobenzol, manganese, calcium and beryllium.

Article 4: It is unlawful to employ women between 10pm-6am except in the following jobs, and with their approval:

1. Hotels, restaurants, cafes, amusement parks, theaters, cinemas and malls.
2. Airports, airlines and tourist offices.
3. Hospitals, sanatoria, clinics, and pharmacies.
4. Transport of persons and goods by sea, air or land.
5. IT sector and related professions.

6. Carry out the annual inventory of an institution, prepare the budget and final accounts, and prepare to sell at reduced prices, provided that the number of days to which the provisions of this paragraph apply does not exceed thirty days per year, and the actual working hours do not exceed ten hours a day.

7. Carry out any work in order to avoid a loss or damage of goods or any other material, or to avoid any risks related to a technical work, or to receive, deliver or transport certain materials, provided that the number of days to which the provisions of this paragraph apply does not exceed 20 days per year.

8. Institutions that provide services on social occasions.

9. Family businesses.

Second: Resolution No. 2 of 2018

This resolution was issued by the Minister of Labor on December 30, 2018, and has never been published in the Official Gazette, thus it did not become official.

It states: "... it has been decided, based on the provisions of Article 69 of the 1996 Labor Law No. (8) and its amendments, to repeal the previous resolution and to allow Jordanian women to work in or during the hours and jobs in which they wish to work, and based on their prior consent, taking into account international standards and conventions."

Women are now allowed to work during the times and in the jobs they want based on this resolution which, however, can be criticized for only including Jordanian women, and thus could be considered as racially discriminating.

- These two texts are related to women's rights.

International Conventions

Internationally speaking, discrimination violates the rights stipulated in the Universal Declaration of Human Rights (UDHR), and Convention No. (111) on Discrimination in respect of Employment and Occupation defined discrimination in Article 1 as:

1- For the purpose of this Convention, the term "discrimination" includes:

- a. Any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
- b. Such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or equal treatment in employment or occupation

to be determined by the Member concerned after consultation with representative of employers' and workers' organizations, where such exist, and with other appropriate bodies.

2- Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

Article (2) states: "Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunities and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof."

Article 11 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) states the following:

1. States shall eliminate discrimination against women in employment, to guarantee to them the same rights as men, particularly:

- a. Right to employment as an inalienable right of all human beings;
- b. The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- c. The right to free choice of profession and employment, the right to promotion and job security, and all benefits and conditions of service, the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training [...]

Since Jordan has ratified CEDAW without any reservations regarding the article above, the provisions of the International Convention should remain applicable and superior to national laws, and the latter must not conflict with them. Moreover, Jordan has not ratified the Safety and Health in Mines Convention, according to which all miners must be protected, whether they are men or women, nor any related conventions, such as the now obsolete Convention No. 45 - Underground Work (Women), 1935 prohibiting women from working in certain jobs.

The ideology of life has changed, and economic conditions have helped change society's perception of women, as they now have an important role and are no longer confined to stereotypical jobs and, like men, are capable of working in all areas. Accordingly, the texts and resolutions prohibiting women's work in certain industries are not in line with the requirements of modern life, which calls for change and the necessary amendments to legislation, to keep up with development.

Amending laws and regulations to eliminate discrimination

After looking into some newspaper articles and different opinions within Jordanian society in this regard, the position of Jordanian civil society regarding Article 69 of the Labor Law is reviewed in the following section.

This article sparked controversy within Jordanian civil society. On the one hand, there are those who call for its preservation and refuse to amend or repeal it. On the other hand, there are those who suggest amending it without repealing it. However, the Jordanian government decided to repeal the entire article (a draft law is still under discussion in parliament)⁴.

Supporters of preserving the Article base their opinion on the religious view of women in accordance with the provisions of Islamic Sharia. In this regard, the Islamic Action Front party (IAF) expressed its rejection of the repeal of Article 69 of the Labor Law, building upon the fact that women should not work under conditions that are ill-suited for their nature and do not take into account their particularities, in order to preserve their dignity and security. In addition, women may not work night shifts unless they are working in the nursing or medical field., There are certain professions that, due to their working conditions, are deemed suitable for men only⁵.

On the other hand, some local community organizations and proposals of deputies call for amending the Article by replacing it with the following⁶:

- a. Any discrimination among workers, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation is prohibited.
- b. The Minister of Labor shall issue the necessary instructions to protect pregnant and breastfeeding women and people who work night shifts.

This amendment gives women the freedom to choose their occupation. There is also the proposal presented by the government to the House of Representatives, under the manual of the Ministry of Labor, to repeal Article 69 of the Labor Law, as Article 8 of the proposed law states: "the original law shall be amended by repealing Article 69."

⁴ Alghad newspaper: Experts consider the repeal of Article 69 as unnecessary procedure and a pulling of wool in the eyes. (<https://cutt.ly/6Plylsk>)

⁵ Assabeel newspaper: "Islamic Action Front" demands that Article 69 of the Labor Law be maintained. (<https://cutt.ly/LPlyeHY>)

⁶ AlRai newspaper: Parliamentary Committee on Labor stresses the need to enact a labor law that keeps pace with changes. (<https://cutt.ly/PPItzLk>)

This matter is still pending before the House of Representatives, and as it was unofficially reported to us, the potentially final text to be presented in the House of Representatives is as follows:

- a. Any gender discrimination among workers which has the effect of impairing equality of opportunity is prohibited.
- b. The Minister shall issue the necessary instructions to protect pregnant and breastfeeding women, people with disabilities and people who work night shifts, to create a safe work environment.

Conclusion and Recommendations

Women have a crucial role in society; they are the greatest influence in all aspects of life and must be empowered to engage in society and business. All restrictions that undermine this empowerment must be lifted. Accordingly, the proposed amendments to the Jordanian Labor Law are fully in line with the 2022 amendment of Article 6 of the Constitution consisting in adding Paragraph 6 to provide for equal opportunities for women and protect them against violence and discrimination. In fact, the recommended reform would help put into practice the constitutional amendments, which will inevitably lead to empowering women and improving the standard of living in Jordan.

This paper recommends amending Article 69 of the Labor Law by stipulating that discrimination on the basis of gender, color or race in regard to employment is prohibited, as it impairs equality of opportunity among workers (whether in the provisions in question or in any other provisions of the law and related regulations). It must also be emphasized that preventing any worker from employment in any occupation is intended to maintain public safety and to prevent negative or positive discrimination towards any individual.

This suggested reform aims to promote the right of women to choose their job by lifting restrictions on their employment in certain industries. As the restrictions currently in force are related to public safety, it is a priority to enact legislation that stresses the need to adhere to safety standards so as to protect all workers, regardless of their gender or age, from the potential harm of these dangerous jobs and monitor the vigorous implementation of these texts, rather than restrict the right of women to join such jobs.