

**Legal Texts Governing the Employment  
of Palestinian Refugees  
in Lebanon**

**A Study and Comparison**

**Beirut 2009**

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The Committee for Employment of Palestinian Refugees in Lebanon (CEP) is a body that came into being in response to a need, expressed by several national and international stakeholders concerned with the Palestinian refugee employment issue, for a body that could enable and inform decision-making about Palestinian refugee employment issues in an objective and reliable manner.

The CEP brings together representatives of the following international institutions, ministries and stakeholders:

- 1) International Labor Organization (Ms. Mary Kawar)
- 2) Lebanese Civil Society (Ambassador Samir El-Khoury, Chair)
- 3) Lebanese Ministry of Foreign Affairs (Mr. Sami Haddad)
- 4) Lebanese Ministry of Labor (Ms. Iman Khazaal)
- 5) Norwegian People's Aid, NPA (Ms. Wafa El-Yassir)
- 6) Palestine Liberation Organisation, PLO (Ms. Samira Salah)
- 7) United Nations Relief and Works Agency for Palestine Refugees in the Near East, UNRWA (Ms. Leila Kaissi, Vice-Chair)

The CEP Secretariat is located at the UNRWA's Field Office in Lebanon.

Opinions expressed in this study are the sole responsibility of the authors and do not necessarily constitute endorsement by the CEP.

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# Acknowledgement

Our office would like to express its thanks to the Committee for Employment of Palestinian Refugees in Lebanon, CEP, and to the United Nations Relief and Works Agency for Palestine Refugees in the Near East, UNRWA, for entrusting us with the task of preparing this study.

Beirut, July 17, 2009



# Introduction

## **Palestinian Refugees in Lebanon:**

### **The Circumstances of their Displacement and Early Legislation Governing their Entry, Residency and Work in Lebanon**

**The Cause:** The issue of Palestinian displacement and asylum is considered today to be the world's oldest and most widely spread case of refuge. Palestinian refugees and displaced individuals constitute about three-quarters of the Palestinian people. The great majority of Palestinian refugees were displaced during the *Nakba* (Catastrophe), when more than 750,000 Palestinians were forced to flee their homes between 1947 and 1949. Only about 150,000 Palestinians remained in the areas that came to be known as the State of Israel on May 15, 1948.

Furthermore, some 400,000 Palestinians were displaced, most of them for the second time around, during the 1967 Arab-Israeli war (the 1967 refugees), and a number of them, including Palestinians from East Jerusalem, were internally dislodged. The Palestinian refugee question is regarded as one of the most important matters that led to the failure of the Palestinian-Israeli and Arab-Israeli negotiations. The latest failure was that of the Camp David negotiations in 2000 as a result of Palestinian President Yasser Arafat's unwavering position on the refugee matter and his refusal to abandon diaspora Palestinians.

**Entry in Lebanon:** In 1948, Lebanon opened its borders to receive Palestinian refugees. The State facilitated their entry and organized their stay in a number of camps. The prevailing view among most Arab States and governments at that time was that the matter was temporary. It was believed that the stay of the Palestinian refugees in the host States would not be long; especially in light of the adoption by the UN General Assembly of Resolution 194, which stipulated the right of the Palestinians to return to the land they were displaced from<sup>1</sup>.

**The UNRWA and Palestinian Refugees:** At first, emergency assistance to Palestinian refugees was provided through international organizations such as the International Committee of the Red Cross (ICRC), other international welfare associations and non-governmental organizations (NGOs). In November 1948, the UN established the United Nations Relief for Palestine Refugees to extend relief to the refugees and coordinate the services provided to them by other UN organizations and NGOs.

This body was short-lived and was replaced by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), established on December 8, 1949 under UN General Assembly Resolution 302. Its mandate was to be renewed every three years until a just solution was

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1 - UN General Assembly Resolution 194 dated 11 December 1948, wherein paragraph 11 stipulates: "resolves that the refugees wishing to return to their homes and live in peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible; instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations".

found for the Palestinian issue<sup>2</sup>. UNRWA's activities are basically humanitarian and include a developmental part through three main programs: education, health care and relief and social services, in addition to emergency aid. In the years that followed its establishment, the Agency's activities were expanded to include activities of a more developmental nature<sup>3</sup>.

**Palestinian Refugees in International Law:** There is no unanimously accepted legal definition for Palestinian refugees. It is worthy to note that definitions were based on the description of the characteristics of this group without reference to any particular rule of international law<sup>4</sup>.

The most comprehensive framework for dealing with the subject of Palestinian refugees remains UN General Assembly Resolution 194, which stipulated the right of return and compensation for Palestinian refugees in general but without defining who is considered a Palestinian refugee. However, the Resolution did stipulate, in paragraph 2, the establishment of a Conciliation Commission entrusted with the mission of attaining a comprehensive and lasting solution for the Palestinian refugee question. Said solution would be reached through the implementation of return and compensation rights and the urging of the governments and authorities concerned to reach a final settlement.

In its early years, the Commission worked on preparing a draft of the legal definition of Palestinian refugees. This definition was not widely and exclusively adopted, but it did help the Commission's subsequent work in providing recommendations to protect the rights, interests and properties of Palestinian refugees. In 1950, the Commission established a branch office to undertake the task of determining Palestinian refugees' properties in Israel. The office drew up a listing of all individual properties, based on British Mandate records. The data prepared remains among the most comprehensive UN documents on Palestinian refugees' properties<sup>5</sup>.

UNRWA, on the other hand, defines Palestinian refugees as individuals whose original place of residence was Palestine for a period of no less than two years before the start of the conflict in 1948 and who lost their homes and means of livelihood as a result of this conflict. The children of registered refugees and their descendants on the father's side are registered as such. Recently, children born to Palestinian refugee mothers also started receiving UNRWA services, but they are regarded as a category separate from the rest of the refugees. This operational definition is used to determine who is eligible to benefit from the assistance. It is not considered an exhaustive definition of Palestinian refugees, as the refugee's status from a law point of view differs from UNRWA's operational definition of refugees as individuals entitled to benefit from the Agency's services<sup>6</sup>.

Similarly, Palestinian refugees were excluded from the provisions of the 1951 Convention relating to the Status of Refugees, amended by the 1967 Protocol on the Status of Refugees, which defines the refugee as a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable to avail himself of the protection of that country. Article 1, Paragraph D states that the provisions of this Convention do not apply to persons receiving assistance from organizations or agencies of the United Nations other than the United Nations High Commission for Refugees (UNHCR)<sup>7</sup>.

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2 - The current mandate ends on 30 June 2011, by UN General Assembly Resolution 102/62 dated 17 December 2007.

3 - UNRWA's mission was to (a) carry out in collaboration with local governments the relief and works programs, and (b) to consult with Near East Governments concerning measures to be taken by them preparatory to the time when international assistance for relief and works projects is no longer available, as per UN General Assembly Resolution 302.

4 - Lex Takenberg, *The Place of the Palestine Refugee in International Law*, 1998, p. 49.

5 - Badil Resource Center Working Paper No. 5, August 2000.

6 - From UNRWA's website on the Internet.

7 - From the UNHCR website.

**Absence of a Clear Definition of Palestinian Refugees in Lebanese Law:** There is no clearly stated definition of Palestinian refugees in Lebanese law. The State of Lebanon has not issued any definition of Palestinian refugees. Every person who sought refuge in Lebanon as a result of the conflict in Palestine, regardless of nationality, original residence location and economic situation, is considered to be a refugee<sup>8</sup>. This shortcoming generated many problems, both de facto and de jure. Lebanese law does not consider Palestinian refugees as “political refugees” in the sense stipulated in Article 26 of the Law of July 10, 1962, which reads: “Any foreigner subject to pursuit, condemned for a political crime by a non-Lebanese authority or whose life or freedom is threatened for political reasons can request to be granted the right of political asylum”.

**Services Provided by UNRWA to Refugees in General, and in the Republic of Lebanon in Particular:** Based on 2005 statistics, UNRWA provides services to some 4.2 million refugees in its five zones of operation (Syria, Jordan, Lebanon, the Gaza Strip, and the West Bank). In Lebanon the total number of UNRWA registered refugees is about 400,000, of whom 220,000 live in 12 camps (Ein el-Hilweh, Rashidieh, Nahr el-Bared, Burj el-Barajneh, Burj el-Shemali, Beddawi, Shatila, El-Buss, Wavel, Mieh Mieh, Dbayeh, and Mar Elias) and 13 gatherings, according to statistics issued by UNRWA on June 30, 2008. Work is currently under way to rebuild the Nahr el-Bared camp<sup>9</sup>. UNRWA offers services in education (elementary and secondary) as well as health, relief and social services to the Palestinian refugees inside and outside the camps. It also undertakes infrastructure work within the camps when funding is available.

**Early Legislation Governing the Entry, Stay and Work of Palestinian Refugees in Lebanon:** Palestinians came to Lebanon after the *Nakba* (Catastrophe) of 1948 and entered the country without any specific legislation being formulated. The State of Lebanon at the time merely declared a state of emergency<sup>10</sup>. It wasn't until ten years later that the first legislative texts relating to Palestinian refugees were passed:

- ❑ **Legislative Decree No. 42 dated March 31, 1959** which stipulated the creation of a Department of Palestinian Refugee Affairs within the Ministry of the Interior.
- ❑ **Decree No. 2867 dated December 16, 1959** which stipulated in Article 25 and subsequent articles the duties of the Department of Palestinian Refugee Affairs, the most important being<sup>11</sup>:
  - To make contact with the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Lebanon Field Office, to secure relief, shelter, and education for the refugees and offer them health and social care services.
  - To designate the locations of the camps and carry out the formalities required to rent or to acquire by compulsory purchase the necessary lands.
  - To register civil status events such as births, marriages, divorces, marriage annulments, deaths, changes of domicile, changes of religious denomination or religion, etc.
  - To receive applications for travel documents to travel outside Lebanon, and to review and assess them prior to forwarding to the departments of competent jurisdiction of the General Security.
  - To grant permits for relocation from one camp to another.

8 - Decree No. 11770/1948 dated 13 May 1948.

9 - From UNRWA's website on the Internet.

10 - Decree No. 11657 dated 26 April 1948, which stipulated that central committees be charged with “concern for all affairs of persons incoming from Palestine”.

11 - Some of these functions were either cancelled by subsequent texts or else ceased to apply in practice.

The Department of Palestinian Refugee Affairs consists of two main divisions, each of which is headed by an officer of the Internal Security Forces with a minimum rank of First Lieutenant who is appointed according to the provisions of the laws in force. These two divisions are the Registration Division<sup>12</sup> and the Division of Security Personnel and Inspectors<sup>13</sup>.

The Department's role is to facilitate UNRWA's work by providing Palestinian refugees with basic services such as health, nutrition and education. It is also concerned with the refugees' residence in the camps and their relocation from one camp to another. The State does not undertake any infrastructure work in the camps, while UNRWA does; unlike its other zones of operation. Building or repair of homes in some camps is subject to measures taken by security authorities as seen fit. As for residing outside the camps, Palestinians have the right to reside in rented apartments and are subject to the Lebanese laws in force, which do not include any exceptions related to the nationality or situation of the tenant.

Ownership and inheritance laws before 2001 authorized Palestinian refugees, as individuals belonging to Arab communities, to own built lots or lots zoned for building. The overall size of the lots would vary by law depending on whether they were located within Beirut or outside it<sup>14</sup>. This remained the prevailing rule until the issuance of Decree No. 296 dated March 20, 2001, which barred the Palestinian refugees from ownership due to their status as individuals who lack a citizenship issued by a recognized State and in view of the incompatibility of ownership with the provisions of the Constitution related to the rejection of settlement (tawteen).

- ❑ **Decree No. 3909 dated April 26, 1960** stipulated the establishment of a "High Committee for Palestinian Affairs", in accordance with the decision of the League of Arab States Council (September 1959)<sup>15</sup>. Its functions were defined as follows:
  - Gather all information related to the Palestinian problem in all its aspects, political, military, economic and so on. Study every aspect of the Palestinian question, monitor its development, and prepare constructive solutions to confront it.
  - Observe Zionist activity abroad in all its forms and prepare active measures to resist it.It should be pointed out that this body is not currently active.

**Right of Refugees to Enter and Exit Lebanon:** The Law dated July 10, 1962 set forth the rules that a foreigner must follow in order to enter Lebanon, but did not consider the situation of the Palestinian refugees until the Ministry of Interior issued Decision No. 319 dated August 2, 1962 regulating the status of foreigners. The Decision stipulated in Article 1 that "non-Lebanese nationals currently in Lebanon must rectify their situation in terms of residency and enter one of the five categories stipulated hereunder". One of these categories (Article 3) refers to "foreigners who do not hold identification documents from their countries of origin and reside in Lebanon by virtue of residency cards issued by the General Security or identification cards issued by the Directorate General for the Administration of Palestinian Refugee Affairs in Lebanon". Article 4 of the Law set the end of September 1962 as the deadline for granting these foreigners temporary or permanent cards. The Palestinian refugees did indeed receive such cards at that time.

12 - In charge of vital statistics records, monthly tables of the names of newborns and deceased persons, personal status data, provision of identification cards, receiving the declarations and documents of the data and inspecting and registering them and providing official certified copies of them.

13 - In charge of monitoring the social and health conditions of the refugees, monitoring movement of refugees politically affiliated with parties, organizations, and associations; reconnoitering matters and acts that undermine security; monitoring suspicious persons among the refugees; overseeing the work of Governorate personnel and inspectors of the camps; notifying administrative authorities in the Governorate of all matters relating to security; receiving the mail of the camps; addressing routine matters and bringing all else to the attention of the Director General.

14 - Legislative Decree No. 196 dated 24 July 1954; Decree No. 15740 dated 11 March 1964; Law No. 59 dated 1 September 1966; then Decree No. 11614 dated 4 June 1969.

15 - Consisting of the Ambassador Director General of the Civil Chamber in the Office of the Prime Minister of the Republic, Lebanon's representative to UNRWA, the Director General of the Ministry of National Defense, an officer from the Second Branch, the Director General of the Department for Palestinian Refugee Affairs in the Ministry of the Interior, the head of the Israel Boycott Office in the Ministry of National Economy and Tourism, the head of the Palestine Section in the Ministry of Foreign Affairs and Emigrants, and the Director of Economic and Cultural Affairs in the Ministry of Foreign Affairs and Emigrants.

“The Government of All Palestine” issued at first passports for Palestinians throughout the 1950s. However, Arab disputes and lack of support for this Government gradually resulted in a non-recognition of these documents by the Arab States<sup>16</sup>. This explains the delay in carrying out a census of refugees in Lebanon and the legislation related to granting them travel documents issued by the Lebanese authorities. Palestinian refugees’ travel documents are currently issued by the Directorate General of the General Security for refugees who are registered with the Directorate of Refugee Affairs in the Ministry of the Interior and Municipalities and with UNRWA. Palestinian refugees who are registered only with the Directorate of Refugee Affairs are granted a *laissez-passer* valid for one year. Right now solutions for non-registered Palestinian refugees are being studied by the Lebanese Palestinian Dialogue Committee and the Palestine Liberation Organization (PLO).

During the 1980s, a number of measures were taken by the Directorate General of the General Security to terminate Palestinian refugees’ travel documents upon obtainment of citizenship from any country and to delete them from the records of the Directorate General for Political and Refugee Affairs, without recourse to any legislative text. These measures were later withdrawn.

**Right to Work and Legislation:** All legislation issued to date has not adequately addressed the civil, economic and social rights of Palestinian refugees. Nor was their access to work the subject of specific regulations, as was the case with their residency or with conducting the census. This matter created a legislative vacuum and introduced a certain inequality between the Palestinians and all other foreigners. It caused a dilemma that pervaded all other aspects of the issue: humanitarian, political, and legal. The legislative vacuum goes back to the beginnings of the forced refuge and a belief by the Arab States, including Lebanon, that the Palestinian’s plight would not last long. With the upturns and downturns of the relationship between Palestinian refugees and the Lebanese State and people, the question of refugee rights continued to be deferred and became linked with the matter of settlement. The Taif accord contains a clause specific to the Palestinian refugees, rejecting their settlement in Lebanon and formulating said rejection as a clause of the Constitution which is agreed upon by all political parties in the country. Therefore, any proposal relating to Palestinian refugee’s work in Lebanon is approached with caution.

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16 - Abbas Sheblaq, “Decisions of the League of Arab States to Render the Palestinians Residents of the Arab States”, published in the website of the Palestinian Diaspora and Refugee Center (Shamel).



# Chapter One

## Arab and International Agreements and Treaties and Their Impact on the Employment of Palestinians in Lebanon

International charters are regarded as the foundation of the constitutions and legislations of States, and the source of inspiration for the drafting of these constitutions and legislations. They constitute the basis of the main criteria determining basic personal rights and freedoms of human beings. If ever a State fails to heed said charters it would be in violation of human rights and dignity. The following sections present the most important international and Arab conventions on Palestinian refugees' rights to social security and work, regardless of whether Lebanon is a signatory to them or not.

### Section One

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#### Arab and International Agreements and Treaties Concerning Human Rights

##### 1. The Universal Declaration of Human Rights

The Universal Declaration of Human Rights was issued by the UN General Assembly on December 10, 1948. It states in its preamble that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. Member States have pledged themselves to promote respect for and observance of human rights and fundamental freedoms, in cooperation with the United Nations. Article 1 of the Declaration stipulates that all human beings are born free and equal in dignity and rights and that they should act towards one another in a spirit of brotherhood. Article 22 refers to the right of everyone, as a member of society, to social security, which is indispensable for his dignity and the free development of his personality. Article 22 also stipulates that this security should be realized through national effort and international cooperation in accordance with the organization and resources of each State.

In Article 23, the Declaration contains a clear reference to the right “to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment”, as well as to the right of “everyone, without any discrimination, to equal pay for equal work”.

Article 25 states that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control”.

##### 2. International Covenant on Civil and Political Rights

Lebanon acceded to this Covenant by virtue of Decree No. 3855 issued on September 1, 1972. In the Covenant's preamble, the States Parties declare that “in accordance with the principles proclaimed

in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. They also recognize that the creation of conditions whereby everyone may enjoy civil and political rights, as well as economic, social and cultural rights is the only way, according to the Universal Declaration of Human Rights, to achieve the ideal of free human beings enjoying civil and political freedom and freedom from fear and want. They state as well that their obligations, under the Charter of the United Nations, include the promotion of universal respect for, and observance of, human rights and freedoms.

The most important point in this Covenant against discrimination between persons residing in a given State is found in Article 2, which indicates that “each State Party to the present Covenant undertakes to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

### **3. International Covenant on Economic, Social, and Cultural Rights**

Lebanon became a party to this Covenant by virtue of Decree No. 3855 issued on September 1, 1972. This Covenant is of special importance in terms of the rights set forth in Article 4, which recognizes that the States providing rights may not subject the enjoyment of these rights to any limitations, except as determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society. The Covenant also stipulates that the States Parties recognize the right to work, which includes the right of everyone to the opportunity to gain their living by work which they freely choose or accept and that they will take appropriate steps to safeguard this right (Article 6).

The States also recognize, under Article 7 of this Covenant, the right of everyone to the enjoyment of just and favorable conditions of work which ensure the following: A fair and equal remuneration for work of equal value without distinction of any kind; The enjoyment by women of conditions of work not inferior to those enjoyed by men, with equal pay for equal work; Safe and healthy working conditions; Equal opportunity for everyone to be promoted in their employment to an appropriate higher level without being subject to considerations other than those of seniority and competence; Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 8 stipulates the right of everyone to form trade unions and join the trade union of their choice, subject only to the rules of the organization concerned, for the promotion and protection of their economic and social interests. No limitations 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.

Article 9 stipulates that the States Parties to the Covenant recognize the right of everyone to social security, including social insurance.

Article 10 recognizes the need to accord special protection to mothers during a reasonable period before and after childbirth and to accord working mothers paid leave or leave with adequate social security benefits during such periods.

### **4. Elimination of All Forms of Discrimination**

There are a number of UN and other multilateral conventions concerned with the elimination of discrimination in general, notably the 1965 International Convention on Elimination of All Forms of Racial Discrimination, the 1966 International Covenant on Economic, Social and Cultural Rights and on Civil and Political Rights and the 1979 International Convention on the Elimination of All Forms of Discrimination Against Women. Though these conventions contain provisions relating to equality at work, their scope is broader. Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, to which Lebanon became a party by virtue of Law No. 44/71 dated June 24, 1971, defines “racial discrimination” as any distinction, exclusion, restriction or preference based on

race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

However, Article 1 also stipulates that the Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party between citizens and non-citizens. The importance of this Convention lies in the desire to urge States to bring people of the world closer together and to sensitize citizens to the importance of dealing with other human beings without any kind of discrimination.

## **5. The Arab Charter on Human Rights**

This is the most recent human rights-related convention in the Arab sphere. It was signed in Tunis on May 23, 2004 and ratified by Law No. 1 issued on September 5, 2008. As the Charter had to accommodate all the Arab States, it was weaker than other international charters with respect to the right to work; addressing only the right of citizens to work and to social security. It only mentions foreign workers in terms of the responsibility of each State Party to the Charter to ensure the necessary protection of workers who migrate to its territory, in accordance with the laws in force.

# **Section Two**

## **International and Arab Labor Agreements Regarding the Right to Work and to Social Security**

### **1. The Declaration of Philadelphia**

The Declaration was adopted by the General Conference of the International Labor Organization (ILO) meeting at its 26<sup>th</sup> session in 1944. It stated that all human beings, irrespective of race, creed or sex, have the right to a decent material life and freedom of thought within a system that ensures economic security.

The principle of elimination of discrimination in employment and occupation is of central importance to the ILO, and is prominent in the Declaration of Philadelphia appended to the ILO's Constitution: "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity and of economic security and equal opportunity".

To achieve this, the Declaration called on all member States in the ILO to pursue economic and social policies that serve to achieve full employment, and hence raise standards of living, maintain a minimum wage and expand social security policy, and to ensure a basic income to all in need of protection due to social contingencies. States were also called upon to introduce a public health policy that ensures adequate protection for the sick regardless of their professional activity and to make special provisions for mother and child welfare.<sup>17</sup>

### **2. ILO Convention No. 102 (1952)**

This Convention is concerned with the minimum standards for social security that the ratifying States should commit themselves to in their national legislations. The Convention designated nine branches that should be covered as a minimum basis for any social security system; namely: medical care (expenses for treatment), sickness benefit (compensation for wage loss), unemployment benefit,

<sup>17</sup> - Magistrate Hussein Hamdan, Social Security: Its Provisions and Applications, pp. 118-119.

old-age benefit, employment injuries and occupational illnesses benefit, maternity benefit, invalidity benefit, survivors benefit and family benefit. The Convention also set commitment to a minimum of three of the nine branches as a condition. The State committed to providing social security in accordance with the Convention pledges to achieve it in the branches selected for 50% of all employees or 20% of the working population. Although the minimum standard for social security adopted by this Convention is below that in advanced countries, it is considered a starting point for determining what branches should be covered, especially in the underdeveloped countries which are preparing to enter its fold.<sup>18</sup> Until May 2008, only 43 States had ratified the Convention; Lebanon was not one of them.

### **3. Agreements on Equality of Opportunity and Elimination of Discrimination in Employment and Occupation**

Equality of opportunity and of treatment in employment and occupation is considered an important aspect of the overall principle of equality that nearly the whole world recognizes today. It is one of the basic principles required by any democratic society. The eradication of discrimination and encouragement of equality in employment and occupation may be regarded as two sides of the same coin. These principles are advocated in a number of agreements and recommendations of the ILO, the most important of which include:

- ILO Convention No.100: Equal Remuneration (1951).
- ILO Convention No.111: Discrimination (Employment and Occupation) (1958)

The General Conference of the ILO adopted Convention No. 100 on June 6, 1951 at its 34th session, and Lebanon ratified it by virtue of Decree No. 70 issued on June 25, 1977.

The General Conference of the ILO adopted Convention No. 111 on June 25, 1958 at its 42<sup>nd</sup> session, and Lebanon ratified it by virtue of Decree No. 70. Article 1 of Convention No. 111 defined the term “discrimination” to include the following:

- 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 treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers’ and workers’ organizations, where such exist, and other appropriate bodies.”

Each Member State for which this Convention is in force pledges “to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.”

Thus, Convention No. 111 defines discrimination as 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.

The use of the phrase “which has the effect of nullifying or impairing” addresses the issue of direct and indirect discrimination. Special attention should be paid to the importance of preparing texts that cover both types of discrimination equally when drafting laws at a national level. Direct discrimination results when unequal treatment is a direct effect of laws, statutes and practices that clearly discriminate between one foreigner and another.

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18 - Ibid., pp. 120-122.

*Indirect* discrimination refers to the considerations, statutes and practices that appear to be neutral but in fact lead to abuses against a given group of persons in particular. When laws pertaining to employment and related benefits apply to all groups of foreigners working within a State's territory, but do not take into account the existence of a group of persons that does not meet the conditions required for employment and for benefiting from the advantages associated with the work contract, the State must issue laws that are specific to this group of foreigners and administer their affairs in an adequate manner. If said State fails to do so, it would be in violation of the principle of equality enshrined in the Declaration of Philadelphia. It is not enough for a State to say that its laws forbid discrimination; the application of these laws must also not lead to discrimination between working foreigners.

In such cases where, within the territory of a given State, a category of foreigners is unable to exercise the right to work (a right guaranteed by international agreements) and in the absence of any text clearly barring such category from this right, if the State refrains from issuing special legislations to regulate employment of this category of foreigners, then said State would be in breach of the international agreements stipulating the elimination of all forms of discrimination between foreigners. This is referred to as an act of omission.<sup>19</sup>

Here there is a need to clarify the term "national extraction" used in Convention No. 111 as it is often mistaken with "nationality". The intent behind it is to cover possible differences between the citizens of any particular country (such as persons of different foreign origins, or different denominations with ties to different national cultures), however not in the sense of differences between citizens and foreigners. Moreover, the situation of foreign workers presents certain specific problems and is subject to specific clauses in the agreements and recommendations relating to migrant workers.

#### **4. Agreements Relating to the Status of Migrant Workers**

The call for equal treatment in the application of labor legislation and social security can be found in one of the clauses of Convention No. 97 (Article 6). Broader clauses were adopted in 1975 with Convention No.143 and Recommendation No. 151. Lebanon has not yet ratified any of them. These Conventions include clauses aimed at taking into consideration the special characteristics and needs of foreign workers (in relation to problems regarding language, culture, etc.) so as to enable them to enjoy real equality and not merely the semblance of equality. These clauses permit special limitations on certain aspects of the employment of foreigners (especially their employment in posts linked to the interests of the State), but they set a time limit not exceeding two years as a general rule to any limitation pertaining to the free choice of employment. Minimum standards are also set for equality in rights that should be enjoyed even by migrant workers who live under unusual conditions. So far, no wide scale ratification of Convention No. 143 has occurred (18 countries since mid-2003). This may be due to the fact that the Convention adopted goals far above what is achievable at the present time. However, this Convention, in addition to Recommendation No. 151, had a clear and major impact on the general trend reflected in demands and practices in this domain.

Later Agreements (except for Convention No. 98) were appended with recommendations that propose ways to implement the principles stated in the major Conventions:

- Conventions No. 97 and No. 143, which stipulate the application to migrant workers of a treatment equivalent to that applied to nationals, and require pursuing a national policy designed to promote and guarantee equality of opportunity and treatment in respect of employment and occupation, social security, trade union and cultural rights, as well as individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully present within a State's territory. (Lebanon is not yet a party to either Conventions.)

<sup>19</sup> - At the individual level persons can agree to meet obligations requiring that they omit to do certain acts of commission (Article 25 of Lebanon's Law of Obligations and Contracts); these would be called acts of omission. In criminal law an act becomes a crime "by omission" when a person refrains from providing assistance to a wounded person in need of it, even though he was not the cause of what had occurred.

— Convention No. 98, which stipulates that there must be no discrimination based on membership or union activities. (Lebanon became a party to it by virtue of Decree No. 70)

### **5. ILO Convention No. 122: Employment Policy**

This Convention was adopted at the ILO General Conference of July 9, 1964, at its 48<sup>th</sup> session. Lebanon ratified it by virtue of Decree No. 70 issued on June 25, 1977. Article 1 stipulated that each Member State shall declare an active policy designed to promote full, productive and freely chosen employment and pursue its application as a major goal to stimulate economic growth and development, raise levels of living, meet manpower requirements, and overcome unemployment and underemployment. Said policy should aim at ensuring the following basic points:

- a) that there is work for all who are available for and seeking work;
- b) that such work is as productive as possible;
- c) that there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, color, sex, religion, political opinion, national extraction or social origin.

Article 2 states that each Member State shall pursue the methods that are appropriate for its circumstances and to such an extent as may be permitted by these circumstances, and decide on the measures to be adopted for attaining the objectives specified in Article 1 within the framework of a coordinated economic and social policy.

### **6. ILO Declaration on Fundamental Principles and Rights at Work (1998)**

The Declaration was adopted during the 86<sup>th</sup> session of the ILO, the conclusion of which was announced on June 18, 1998. The Declaration reminded the Member States in the ILO that by joining it they all “have endorsed the principles and rights set out in its Constitution and in the Declaration of Philadelphia, and have undertaken to work towards attaining the overall objectives of the Organization to the best of their resources and fully in line with their specific circumstances. These principles and rights were expressed and developed in the form of specific rights and obligations in a number of Conventions, both inside and outside the Organization.”

The Declaration also affirmed that all Member States, 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, promote and realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights that are the subject of those Conventions, namely:

- a) freedom of association and the effective recognition of the right to collective bargaining;
- b) the elimination of all forms of forced or compulsory labor;
- c) the effective abolition of child labor;
- d) the elimination of discrimination in respect of employment and occupation.

### **7. Arab Labor Charter and Constitution of the Arab Labor Organization**

Lebanon ratified these by virtue of Decree No. 547 dated February 3, 1970. Article 4 of the Charter stipulated the agreement of the Arab States to reach comparable levels in employment legislation and social security. In Article 6, they agreed to give employment priority to workers from other Arab nationalities as needed.

## Section Three

### International Agreements to Which Lebanon is not a Party Convention Relating to the Status of Refugees (1951); the 1967 Protocol

To this date, Lebanon has not signed the 1951 Convention nor the 1967 Protocol, both of which pertain to the status of refugees. The country has many reservations in regard to the Convention, most of which relate to the presence of Palestinian refugees on its territory. The main concern as for the application of the convention is that it would result in the settlement of said refugees in Lebanon; an outcome rejected as per the Constitution's introduction. Ratifying the Convention may entail obligations towards the refugees that Lebanon cannot handle. Contracting States are committed to extend to refugees the same treatment as foreigners in general or even preferential treatment and to ensure that there is no discrimination between refugees based on race, religion or country of origin.

The 1951 Convention stipulated that the Contracting State shall not expel a refugee. Furthermore, it shall afford refugees protection, enjoyment of fundamental freedoms, most importantly freedom of religion, and authorization to acquire movable and immovable property. Moreover, said State should accord refugees the same treatment granted to foreigners with respect to the aforementioned freedoms. Refugees shall enjoy the following rights:

- right to continuity of residence;
- right to obtain identity papers and travel documents in the event of a lack of identity papers and travel documents issued by the country of persecution;
- right of access to courts, same as accorded to nationals, including right to legal assistance;
- right to the same treatment granted to nationals with respect to elementary education and other levels of education, with exemption from fees and costs, and to the provision of scholarships.

The most important point in the Convention is commitment by the State to exempt all refugees, after a period of three years' residence, from the condition of reciprocity of treatment in the territory of the Contracting State.

As for employment, the Contracting State shall accord refugees the most favorable treatment granted to nationals of a foreign country in the same circumstances, in terms of right to engage in wage-earning work. Moreover, restrictive measures imposed on foreigners or their employment for the protection of the national labor market shall not be applied to refugees. The Contracting State shall also grant refugees right to engage in agriculture, industry, handicrafts and commerce on their own account and to establish commercial and industrial companies.

On the other hand, the Contracting State shall grant the most favorable treatment, or in the least treatment equivalent to that accorded to foreigners in the same circumstances to refugees who hold accredited diplomas and are desirous to practice a liberal profession. The most important clause is the accordance to refugees of treatment equal to that given to nationals in the area of social security (legal provisions relating to employment injury, occupational diseases, maternity, sickness, disability,... and any other contingency which, according to national laws and regulations, is covered by the social security scheme). Finally, the Contracting State shall facilitate the assimilation and naturalization of refugees and shall make every effort to expedite naturalization proceedings and to reduce as much as possible the charges and costs of such proceedings.

As a result, the Convention's clause on naturalization clashes with the core of the Arab-Israeli conflict in the region, as well as with the safeguard of the right of return and the non dilution of the Palestinian refugee question. However, the spirit of the Convention can be beneficial in granting Palestinian refugees special status to enable them to live with dignity and enjoy the right to work and to receive social security; which is the least refugees should benefit from. It should be added here that the Arab States are not parties to the 1951 Convention and the 1967 Protocol.

## Section Four

### Arab Agreements Relating to the Status of Palestinian Refugees in Arab States Casablanca Protocol; Cairo Agreement

Within the framework of the League of Arab States, the Arab States took a series of decisions in regard to Palestinian refugees and the Palestine question in general. These decisions were taken at the level of the League's Council or that of summit meetings. Most were reached in the League's Ministerial Council, based on recommendations from the permanent delegate for Palestine in the League, on draft decisions submitted by the Directorate General for Palestinian Affairs in the Secretariat General of the League of Arab States, or on recommendations from the Conference of Supervisors of Palestinian Affairs in the host countries; an entity created in 1964 and which holds meetings every six months. Other decisions are taken within the framework of specialized ministerial councils, such as the Economic and Social Council, Labor Ministers Council, Information Ministers Council, or Council of Arab Interior Ministers. Councils relevant to the subject of this study will be presented and addressed.

In the early years after the *Nakba* (Catastrophe) of 1948, the Arab host countries bordering Palestine (Lebanon, Jordan, Egypt, Syria) were preoccupied with addressing urgent humanitarian issues resulting from the uproot and dispersion forced on the Palestinian people. Thus in the 1950s, decisions taken within the framework of the League focused on providing facilities to ensure the reaching of aid and relief from international bodies, to facilitate the reunion of dispersed families, and to issue standardized travel documents for the refugees to help them in travel and mobility.

In dealing with Palestinian refugees, the positions of the Arab States were governed by two basic principles: (1) Arab hospitality and brotherhood, which required receiving those refugees temporarily and helping them; and (2) the desire by these States at the official level to sustain the refugee question and constantly remind the international community of the need to apply the UN resolutions regarding it. In line with these two principles, the Arab States took a series of decisions at more than one level. They called on the States hosting the refugees to treat them like their own nationals with respect to civil, social and economic rights, including freedom to work and mobility. They also required host States not to naturalize refugees but rather grant them standardized travel documents in order to safeguard their own identity.<sup>20</sup>

**The Casablanca Protocol:** This Protocol on the treatment of Palestinian refugees, issued by the Council of the League of Arab States on September 11, 1965, was essentially an endorsement of this official Arab position, and was approved by the foreign ministers of the Arab States. However, Lebanon included a reservation about granting Palestinian refugees residing on its land the right to work and employment on an equal footing with nationals in the memorandum of signature dated August 3, 1966. In the reservation, it subjected the granting of such right to economic and political circumstances prevailing in the country. A decision was also issued by the League's Council, Decision No. 4243 dated March 31, 1983, which called on States that had not yet joined the Protocol to do so and on the States Parties to apply its provisions.<sup>21</sup>

**The Cairo Agreement:** The Cairo Agreement, signed secretly in 1969 between the PLO delegation headed by Mr. Yasser Arafat and the Lebanese delegation headed by Army Commander General Emile Boustany, allowed the Palestinians in Lebanon to conduct armed struggle and commando activities

20 - Sheblaq, op. cit.

21 - Adib Zakhour, *The Legal Status of Foreign Wage Earners from the Standpoint of Legislation and International Independent Legal Judgment*, p. 124.

regulated in coordination with the Lebanese Army. The Agreement also stipulated granting the right to work, residence and movement to Palestinians residing in Lebanon.<sup>22</sup> Application of the clause concerning armed struggle led, among other things, to the entanglement of the Palestinians in the internal Lebanese conflict. As for the clause relating to work, it was not given importance to by the PLO nor by the Lebanese authorities. The Cairo Agreement was cancelled by Law No. 25/87, published in the Official Gazette, issue No. 25 dated June 18, 1987. By virtue of this Law, the May 17, 1983 Agreement, signed between Israel and Lebanon, was cancelled and the Cairo Agreement was considered null and void and cancelled.<sup>23</sup>

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23 - Ibid., p. 80.



# Chapter Two

## Employment of Palestinian Refugees in Lebanon

### Introduction

#### The Right to Work in the Lebanese Constitution and International Charters

Work is regarded as the sole source of livelihood for most people and the main driver of the building process, development, achievement of progress and prosperity in any State. The right to work is a fundamental human right which gives every individual the opportunity to earn a living with dignity and achieve material and moral independence. The preceding sections shed light on clauses of international conventions and charters concerning the right to work. The following will focus on the provisions pertaining to this right as set forth in the Lebanese Constitution, which is the first guarantor and referral authority on setting the standards for rights and obligations in the State.

The Lebanese Constitution does not contain a clear reference to the economic and social rights of human beings, including the right to work, as Lebanon adheres to a free enterprise economy that relies on individual initiative. However, it states in its preamble, Paragraph (c) that “Lebanon is a democratic parliamentary republic based on respect for public liberties, especially the freedom of opinion and belief, and respect for social justice and equality of rights and duties among all citizens without discrimination”. Also, paragraph (b) of the preamble states that Lebanon “is a founding and active member of the League of Arab States and abides by its pacts and covenants. [It] is also a founding and active member of the United Nations Organization and abides by its covenants and by the Universal Declaration of Human Rights. The Government shall embody these principles in all fields and areas without exception”. Herein lies the importance of the texts discussed earlier to which Lebanon is consequently committed to as per the Constitution’s preamble. These texts are considered the principal criteria for determining fundamental human rights and freedoms. If the State does not heed them it would be in violation of human rights and dignity thus allowing the stronger party, i.e. the employer, whether an employing institution or any other party, to exercise power over the weaker party, i.e. the wage-earner, regardless of nationality, without any deterrence or protection for the latter.<sup>24</sup>

The key point about the abovementioned international conventions is the commitment of the State of Lebanon to them. In case of a lack of legal texts regulating the details of rights and obligations, or where such texts are imprecise or unclear, foreign wage-earners can, in the event of dispute with their employer, ask for the enforcement of the preamble of the Constitution and its contents to safeguard their rights.<sup>25</sup> This procedure is in line with the principle of the chain of the rules of precedence, which gives precedence to international agreements over ordinary laws, as confirmed by Article 2 of the Code of Civil Procedure: “Courts shall be bound by the principle of the chain of the rules of precedence. When the provisions of international treaties disagree with the provisions of common law, in implementation the former take precedence to the latter”. Also, Decision No. 59 issued by the Civil Court of Cassation states that it is an elementary tenet of public international law that in the event of disagreement between the provisions of a treaty and the provisions of domestic law it is the provisions of the treaty alone that should be applied.<sup>26</sup>

24 - Zakhour, op. cit., p. 53.

25 - Ibid., p. 63.

26 - Ibid., p. 66.

# Section One

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## Labor Legislation

### 1. Aims of the Legislation

As work is a basic mainstay of humanity, all labor laws aim at preventing the exploitation of man by fellow man through:<sup>27</sup>

- securing work for the able and willing;
- guaranteeing every individual's freedom to choose the work that suits his talents, abilities and desires in accordance with the interests of society;
- rewarding workers according to the quantity and quality of their work, with the assurance of a minimum wage sufficient to achieve an appropriate level of livelihood for the worker and his family;
- guaranteeing equal remuneration for equal work; and
- providing the working conditions favorable for achieving the most and best possible output.

Only legislations pertaining to or in connection with employment, such as the provisions of the Constitution and international charters, general laws, namely the Code of Obligations and Contracts, labor laws, employment injury laws, and social security laws, can guarantee and secure a worker's remuneration for his work. Thus, workers are not reduced to servitude which in turn leads to:

- **Safeguarding human dignity** by enabling individuals to make a living and avert poverty and need;
- **Safeguarding social peace** by protecting society from the problems arising from or linked to unemployment, some of which could be of a criminal nature; and
- **Regulating the various relations arising from the work contract**, most important being the relationship between employer and employed, and between all labor sectors and associations, employers' associations, and the State.

### 2. Labor Legislation

The first legislation relating to employment can be found in the Ottoman Journal, which was cancelled and replaced by the Code of Obligations and Contracts issued on March 9, 1932. In Tome 5, Article 624 and subsequent articles, the Law addresses the service remuneration contract or what is generally understood as the work contract. The Code of Obligations and Contracts is considered the general law that governs relations between individuals in all civil and commercial matters for which no special private laws have been set forth by legislators.

The Labor Law was issued on September 23, 1946. It encompassed all matters of work, with certain specific exceptions for some categories that do not fall under its provisions. It was followed by the Social Security Law, implemented by Decree No. 13955 dated September 26, 1963, then by the Employment Injury Law issued by Legislative Decree No. 25 dated May 4, 1943 and amended by Decree No. 136/83 dated September 16, 1983. As the Code of Obligations and Contracts is a general law, it must be resorted to where special laws are found to be deficient. This study will only discuss its provisions if referred to by later private legislation or where they are insufficient or incomplete.

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27 - Dr. Muhammad Labib Shanab, *Explaining the Lebanese Labor Law*, p.10; referred to by Magistrate Hussein Hamdan, *op.cit.* p.26n.

## ❑ First Point of Inquiry: The Labor Law

**Definition of the Labor Law:** A collection of legal rules that regulate private relations between individuals and groups arising from persons (wage earners) providing work for, and under the authority and supervision of, other persons (employers) in return for wages.<sup>28</sup> Dr. Hasan Kirah defines the Labor Law as “the law that governs special legal ties relating to work in return for wages that individuals perform for other persons and under their direction and authority or under their supervision and control”.<sup>29</sup>

Jurists distinguish between two types of paid work: work whose executor is subordinate to the employer, which is called dependent work, and work that does not entail this dependence, called independent work. Hence, dependent work alone is considered within the scope of the Labor Law, to the exclusion of independent work. The grounds for this differentiation is that the basic goal of the Labor Law is the prevention of exploitation of man by fellow man, and this exploitation can only occur within the domain of dependent work. The Labor Law concentrates on dependent work, as is concerned with protecting the class that is subordinated to others in its work from injustice.<sup>30</sup> Based on Article 624 of the Code of Obligations and Contracts, and Article 1 of the Labor Law, the key elements of the work contract, which also serve as criteria to distinguish it from other contracts, are the following:

- 1st criterion** : legal subordination<sup>31</sup>
- 2nd criterion** : the wage<sup>32</sup>
- 3rd criterion** : the work.<sup>33</sup>

**Definition of the Wage Earner:** Article 624 of the Code of Obligations and Contracts defines remuneration for work or service as a contract by virtue of which one of the contractors pledges to work as a subordinate to the other party and under his management against remuneration that this party pledges to give. Article 2 of the Labor Law defines the wage earner (salaried person) as being any man, woman or adolescent who works against a salary for an employer in the cases indicated in the preceding Article 1 by virtue of an individual or collective agreement, whether written or oral.

**Categories of Wage Earners:** Article 3 of the Labor Law classified wage earners into employees and workers.

- **The employee** is every wage earner engaged in clerical or non-manual work;
- **The worker** is every wage earner who does not fall under the employee category.<sup>34</sup>

The categories of wage earners may be determined on the basis of Article 7 of the Labor Law as follows:

- **Wage earners working in the public sector**, i.e. wage earners who work for the Lebanese State<sup>35</sup> and municipalities and who are not subject to the Public Officers Regulations;<sup>36</sup>
- **Wage earners working in the private sector**, i.e. all workers and employees;
- **Household servants and agricultural workers** (excluded from the provisions of the Labor Law).

28 - Jalal Adwi, *The Labor Law, General and Specific Rules for Work in the Public Sector*, 1968, pp. 13-14.

29 - Magistrate Hussein Hamdan, *The Labor Law, a Comparative Study*, Halabi Legal Publications, 2009 edition, p. 25n, and the references mentioned therein.

30 - Ibid., p. 153+

31 - Ibid., p. 154.

32 - The work contract is a type of reciprocal contract, and the wage is the obligation in return for the work. It could be in cash or in kind. This was stipulated in Article 9, First/1/a, of the Social Security Law: “...whatever the form or nature of their earning or wages, even if this earning or wage was paid in full or in part, in the form of commission or a share of the profits or output, and whether it was paid by the employer or by third persons”.

33 - William Ghareeb, *Arising between Legislation and Independent Legal Judgment*, p. 112.

34 - As for temporary wage-earners or daily-paid laborers, they are regarded as a category of hirelings if they used to do work that is usually given to hirelings, as a category of labor if they used to do other than such work.

35 - By Legislative Decree No. 112 dated 12 June 1959, the staff statute of the State excluded wage earners from its provisions and subjected them to a statute of their own. The Wage Earners Statute was issued by Decree No. 6110 dated 10 February 1961, subsequently cancelled and replaced by Decree No. 5883 dated 3 November 1994.

36 - Every municipality has one statute for its staff and another for its wage earners, both of which are drawn up by the municipal council. Likewise some public institutions have statutes specific to their wage earners. As for independent establishments, wage earners there are subject to the Labor Law and the provisions for social security.

**Scope of Application of the Labor Law:** Under Article 8, all wage earners and employers, Lebanese and foreigners, are subject to the provisions of Lebanon's Labor Law.<sup>37</sup>

Exceptions to the provisions of this Law are specified under its Article 7 and are limited to:

- Servants in private homes;<sup>38</sup>
- Agricultural syndicates with no connections with commerce and industry, for which special legislation will be drawn up. To date, such legislation has not been passed,<sup>39</sup> however this category now falls within the jurisdiction of labor arbitration boards;<sup>40</sup>
- Establishments in which all working individuals are members of a family under the management of the father, mother or legal guardian,<sup>41</sup> and
- Government administrations and municipal bodies, in respect to employees and daily-paid and temporary wage earners not included in the Public Officers Regulations; special legislation will be drafted.<sup>42</sup>

### ❑ Second Point of Inquiry: The Social Security Law

**Definition of Social Security:** Magistrate Hussein Hamdan defined social security as “a system adopted by the State aimed at protecting the weak categories specified by the law and assuring their security of livelihood in the contingencies of illness, maternity, employment injury, unemployment, invalidity, old age, and demise, by granting them an income replacing that suspended due to these contingencies, and covering family burdens and exceptional expenditures that arise from illness, injury or demise, along with working to end the suspension of earnings as quickly as possible. Funding is by contributions or tax money, within the limits and ratios set by the law”.<sup>43</sup>

**Social Protection Prior to the Social Security Law:** Before 1963, there was no social security system in the modern sense in Lebanon. However, social protection was not at a lack. Among special legislations pertaining to providing services, the Code of Obligations and Contracts in force since October 11, 1934 granted the wage earner a number of rights, including the right to obtain compensation for damages incurred as a result of arbitrary dismissal from work. The determination of this compensation was left to the courts of competent jurisdiction. The Law issued on May 27, 1937, which amended Article 656, granted the wage earner the right to compensation in the case of termination of the contract by the employer so long as such termination was not caused by a breach of the contract or a mistake or error on behalf of the wage earner.

Article 347 also resolved that the employer shall be held responsible for any violation of the provisions requiring the supply of all necessary means to meet health and safety requirements in the workplace. Article 648 held the employer responsible for injuries and accidents suffered by the wage earner during the performance of assigned work, in case these injuries and accidents arise from the employer's violation of the statutes relating to the practice of the business, industry or profession, or said employer's failure to observe these statutes.

37 - All employers and wage earners are subject to the provisions of this Law unless otherwise stipulated in special clauses. Also subject to it are institutions in all their commercial and industrial branches and subsidiaries and types, national and foreign, whether public or private, secular or religious, including national and foreign educational institutions and welfare institutions. Foreign companies that have a commercial center, branch or agency in the country are also subject to it.

38 - Servants in private homes are subject to the Obligations and Contracts Law, particularly Tome 5, Article 624 and subsequent articles.

39 - Ghareeb, op. cit., p. 97.

40 - Decree No. 3572 dated 21 October 1980 Concerning the Prerogatives of Labor Arbitration Boards is for the deliberation of individual labor disputes and disputes arising from the application of the Social Security Law.

41 - Decree No. 3273 dated 26 June 2000, which stipulated in Article 2, paragraph 4, the monitoring of preventive and safety measures in family institutions, especially regarding work that by its very nature or because of the conditions in which it is performed involves a threat to the life or health or morality of the hirelings therein.

42 - On 10 February 1961 Decree 6110/61 was issued and set forth the “Wage Earners Statute”. Article 1 defined the wage earner as any person working in the service of public administrations and is not affiliated with any of its permanent or temporary official bodies nor is subject to the provisions concerning contractors. It was cancelled by Decree No. 5883 dated 3 November 1994, which is currently applied on wage earners in the State. It should be mentioned that the Lebanese State introduced some statutes specific to wage earners in a number of public institutions.

43 - Magistrate Hussein Hamdan, Social Security, p. 23.

The Law passed by Legislative Decree No. 25 dated May 4, 1943 relating to employment injuries (cancelled and replaced by the Law passed by Legislative Decree No. 136 dated September 16, 1983), granted the wage earner the right to compensation for damages incurred by him during or because of the performance of his work, whether the injury is due to a mistake or error committed by the employer or the wage earner himself or due to unforeseen circumstances or force majeure.

The Labor Law passed on September 23, 1946 granted more protection to wage earners, such as:

- specifying working hours and compensation for hours worked overtime,
- requiring that the wage be sufficient to meet the essential needs of the wage earner and his family;
- regulating dismissal from work;
- adopting a new basis for severance pay;
- imposing preventive measures to ensure the safety of wage earners in commercial and industrial establishments;
- indicating weekly, annual and sick leaves;
- permitting union activity;
- protecting Lebanese workforce from foreign competition

However, these legislations were not sufficient to ensure protection for the weak as they did not cover risks and were not drawn within a clear policy framework for social protection. The Social Security Law was issued by Decree No. 13955 dated September 26, 1963. It applied to all Lebanese wage earners (employees and workers, permanent and temporary, seasonal workers, trainees and apprentices), who work for one or more Lebanese or foreign employers, regardless of the duration, type, nature, form or validity of their contracts with the employer, and the form or nature of the wages. Consequently, whether these wages are paid in full or in part, in the form of commission or a share in the profits or output, and whether they are paid by the employer or by third parties is of no regards.<sup>44</sup>

**Lebanon's Social Security System:** The Social Security system includes four branches, as stipulated in Article 7. These are:

1. Sickness and Maternity;
2. Employment Injuries and Occupational Illnesses;
3. Family Allowances; and
4. End of Service.

The inception of each branch is by Cabinet decree, based on the recommendation of the Minister of Labor and Social Affairs and pending completion of the Board of Directors. Implementation was to be in three stages according to a timeline set forth in Article 8 and subsequently applied: Decree No. 1519 regulating the End of service branch was issued on April 24, 1965; Decree No. 2957 regulating the Family and Education Allowances branch was issued October 20, 1965; and Decree No. 14035 regulating the Sickness and Maternity branch was issued on November 1, 1970. As for the Employment Injuries branch, no decree for its implementation has yet been issued; the Employment Injury Law of 1983 is still the law applied.

**Merits of Lebanon's Social Security System:** The system is distinguished by its comprehensiveness which covers all citizens (bearing in mind that its draft bill adopted the principle of phased application, thus appreciating the need to provide all means of successful application). It also stands out for being compulsory. Legislators introduced the adjective 'compulsory' on the provisions related to social security for both employers and insured so that neither may depart from the system or remain outside its scope. The Social Security system is linked to public order, its stipulations are authoritative to the extent that no agreement may violate or annul them. In case of such an agreement, it would be rendered as null. This means that it is not admissible to dispose of the cash benefits it provides. The Social Security system is funded through professional contributions. Usually these contributions are borne by the employer and the wage earner participates through deduction from his wages. Yet in some

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44 - Article 9 of the Social Security Law.

cases, the employer alone makes the payments.<sup>45</sup>

**Scope of Application of the Social Security Law:** The Social Security Law stipulated the phased application of its various branches.

**a) In Phase One**, individuals covered by Social Security were divided under Article 9 of the Social Security Law into four groups:

- Wage earners subject to all branches of Social Security set out under Article 7 on the condition that work be rendered on the Lebanese territory, are:
  - Lebanese wage earners (employees and workers), permanent and temporary, trainees, seasonal workers and apprentices who work for one or more Lebanese or foreign employers. Regardless of the duration, type, nature, form or validity of the contracts that tie them to the employer and the form or nature of their earnings or wages.
  - Lebanese wage earners not tied to any particular employer and working in the maritime, ports, contracting, building, and freight and lading sectors; also, Lebanese wage earners not tied to any particular employer, regardless of the form, nature or means of their earnings or wages.
  - Members of the academic community in institutions of higher education stipulated in the Law regulating higher education issued on 26 December 1961 and in vocational institutes stipulated in Article 12 of Organizational Decree No. 7880 dated 27 July 1967.
  - Lebanese nationals who work for the State, municipalities, public administration or institution, or who work for an independent establishment no matter the duration, type, nature, form or validity of their appointment or contract, including those who deal with the Ministry of Information.

Permanent public officers identified in paragraph 2 of Article 1 of Legislative Decree No. 112 dated 19 June 1959 are excluded from the provisions of subsection (d).

- Those benefiting from medical care in cases of illness, maternity, employment injuries and occupational illnesses are:
  - Permanent public officers defined in clause (1) of the aforementioned subsection (d), excluding military men and personnel of the Internal Security Forces and the General Security. The public officers cooperative will continue to provide benefits or differences in the balance of benefits that the Social Security Fund does not provide to its members, with the rate of the material contribution paid by the State to the cooperative to be set by Cabinet decree.
  - Members of the academic community in all private schools, whether or not they are official staff members.
- Wage earners benefiting from medical care in cases of illness and maternity only are:
  - Lebanese students and students without any specific citizenship or whose citizenship is under consideration, enrolled in institutions of higher education and technical institutes;
  - Foreign students residing in Lebanon according to bilateral agreements concluded between Lebanon and the States to which these students belong.

**b) Phase Two** was marked by the passing of Law No. 8/74, which gave all Lebanese wage earners working in the agricultural sector a right to the Social Security Law.

**c) In Phase Three**, legislators reserved the right to extend the provisions of the Social Security Law to individuals who were not covered by them in the first two Phases but are in need of such assistance,

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45 - Khalil Majed, "The Social Security System and Balanced Development", from Social Security: Arising from Legislation and Independent Legal Judgment, p. 31.

in order to avert the risks that threaten their health, standard of living and means of livelihood. Article 12 of the Social Security Law stipulated that a special law would determine the conditions of application of the Social Security system or some of its branches in a compulsory manner for those persons who were not yet subjected to its provisions in Phases One and Two (workers without wage, independent workers, employers, etc.). For example, wage earners on construction sites are not subject to the provisions of the Social Security Law, and to date no legislation has been passed to protect the rights of this large segment of society. Legislators ought to address this shortage in coverage. As for foreign wage earners, the conditions for their entitlement to social security benefits will be discussed later in this study.

### □ **Third Point of Inquiry: Employment Injury Law**

**Definition of Employment Injury:** Article 1 of Legislative Decree No. 136 dated September 16, 1983 defined employment injuries<sup>46</sup> as “sudden injuries arising from an external factor sustained by a wage earner with a work contract as understood in Article 624, paragraph 1 of the Code of Obligations and Contracts, as a consequence of implementation or in the course of implementation of said contract”. The Employment Injury Law neglected occupational illnesses and compensation to wage earners who incur damages as a result of said illnesses.<sup>47</sup> Some experts define injury as any bodily injury resulting from an external and violent cause.<sup>48</sup>

**Scope of Application of the Employment Injury Law:** The Employment Injury Law is considered the most comprehensive of legislations pertaining to labor, as all wage earners without exception, Lebanese and foreign, are subject to its provisions, whether they are covered by the Social Security Law or not. It excludes foreign wage earners from its provisions in only one case, stipulated in Article 10.<sup>49</sup> Article 10 contradicts the provisions of Article 1 which pertain to equality between national and foreign workers, and those of Article 1 of ILO Convention No. 19 on the equality of treatment of national and foreign workers with respect to compensation for employment injuries. This Convention, which was signed in Geneva on June 5, 1925 and entered into force on September 8, 1926, was ratified by Lebanon by virtue of Legislative Decree No. 70 dated June 25, 1977.<sup>50</sup>

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46 - The old definition of employment injuries is to be found in Article 28 of the Social Security Law: (a) injury sustained by the insured during or on the occasion of undertaking his work; (b) injury sustained by the insured while going from his home to his place of work, or from his place of work to his home, provided that the going or coming is uninterrupted or he does not take other than the usual road for reasons other than his work; (c) injury sustained by the insured during, or on the occasion, of rescue operations taking place in the institution where he performs his work; (d) injury sustained by the insured outside Lebanese territory during, or on the occasion of, undertaking his work.

47 - Arising between Legislation and Independent Legal Judgment, op. cit., p. 603.

48 - Mt Lebanon Arbitration Board, chairman Eid, decision dated 30 December 1950, Judicial Newsletter, 1951.

49 - Heirs of the foreign wage earner may not request the compensations stipulated in this Legislative Decree if they resided outside Lebanese territory on the date of occurrence of the accident. Excepted from the provisions of this Article are foreign wage earners belonging to a State that grants Lebanese in this regard the same rights it grants its nationals.

50 - Arising between Legislation and Independent Legal Judgment, op. cit., p. 618.

## Section Two

### Employment of Foreign and Palestinian Wage Earners in Lebanon

**Definition of the Foreign Wage Earner:** The Law passed on July 10, 1962 concerning the entry to, exit from and stay in Lebanon defined foreigners as any natural persons who are not Lebanese citizens.<sup>51</sup> Later, Decree No. 17561 dated September 18, 1964 was issued to regulate the work of foreigners in Lebanon and set forth the general conditions for granting them work permits. It is worthy to note that these legislations did not address Palestinian refugees specifically, as they focused on non-resident foreigners in Lebanon.

**The Principle of Freedom of Entering into a Work Contract and its Limitations:** Freedom of contract is a basic principle stated in Article 166 of the Code of Obligations and Contracts;<sup>52</sup> but legislators placed some limitations on it. These limitations partly served humanitarian considerations, national considerations, and public interest considerations. The limitations for humanitarian considerations concern youngsters<sup>53</sup> and the employment of women.<sup>54</sup> Limitations for national considerations are the most important and include the protection of national workers from foreigners competing for their jobs, whether by setting a maximum number of foreign wage earners within companies and institutions, requiring foreigners to obtain work permits,<sup>55</sup> or limiting the professions that foreign wage earners may practice. **The principle of reciprocity is what guarantees protection for the national workforce in the State itself or for nationals working in other countries.**

Lebanese legislators set forth the principle of reciprocity of treatment in more than one law and legislative text. In some, they specified the method that should be followed to provide proof of reciprocity;<sup>56</sup> in others, they left the matter up to court decisions and jurisprudence. However, according to the law regulating foreigners' work, the principle of reciprocity stipulates that a foreigner is allowed to work in Lebanon only to the extent that the country of that particular foreigner accords a Lebanese worker the same rights. In addition, the right of residency and the principle of reciprocity are not only the conditions for initiation but also for continuation".<sup>57</sup>

Lebanese jurisprudence not only shows differences regarding the interpretation of the principle of reciprocity but also regarding its application, and, in particular, its mode of proof. Some decisions hold that reciprocity of treatment is not based on actual treatment or treatment inferred from the provisions of foreign legislation but rather on diplomatic reciprocity. Thus, it is based on what is agreed upon by diplomatic treaties or agreements between Lebanon and the country of the foreign wage earner. Other decisions sufficed themselves with a recognition by the State to which a foreign wage earner belongs, of the principle of equality of treatment between the Lebanese working on its territory and its own nationals.<sup>58</sup>

51 - Article 1: A foreigner is any natural person who is not a Lebanese subject.

52 - Article 166: The Law of Contracts is subject to the principle of freedom of contract; individuals may arrange their legal ties as they see fit on condition that they uphold the requirement of public order, public decency and rules of law that are compulsory.

53 - Article 22 of the Labor Law stipulated an absolute ban on employment of youngsters before they complete the age of 13. This is in accord with Arab Labor Agreement No. 18, and with the limitations relating to night shift work by youngsters in industry stipulated in Agreement No. 90, approved at the ILO General Meeting at its 31st session held in San Francisco on 10 July 1948.

54 - Limitations on night shift work for women hirelings in industry (ILO Convention No. 89), which bars the employment of women in occupations that are hazardous and harmful to health and bars their employment in night shifts (Arab Labor Agreement No. 1).

55 - Hasan Kirah, *op. cit.*, p. 204.

56 - Article 9 of the Social Security Law stipulated that States that treat Lebanon in a reciprocal manner with respect to social security, in some or all of its branches, and the conditions for benefit by its nationals, shall be identified by decisions of the Board of Directors of the National Social Security Fund (NSSF) after consultation with the Ministry of Foreign Affairs and Emigrants. Also, in many free professions, permission for the foreign wage earner to work in Lebanon is conditional on the presence of reciprocity of treatment set forth in an agreement between Lebanon and the foreign State, as will be seen later in the section on free professions.

57 - *Arising between Legislation and Independent Legal Judgment*, *op. cit.*, p. 761.

58 - Issam Kaisi, *The Lebanese Labor Law*, 3rd edition, 1997, p. 97.

As for the Palestinians, they are the most harmed by the principle of reciprocity, whether based on legislations or on jurisprudence, as will be shown later.

### ❑ **First Point of Inquiry: Regulating the Work of Foreign Wage Earners**

#### Note 1: Professions Foreigners May Practice as Wage Earners

Decree No. 17561 issued on September 18, 1964 (Labor) set forth the procedures to be followed by foreigners desiring to come to Lebanon in order to work. Foreigners must obtain prior permission from the Ministry of Labor before coming to engage in work or a profession, whether gratis or against remuneration. Artists, however, must obtain prior permission from the Directorate General of the General Security.<sup>59</sup> As for foreigners residing in Lebanon, they are required to obtain a work permit. Foreigners shall submit an application for prior approval to the Ministry of Labor through Lebanon's representatives abroad or by way of an official proxy acting on their behalf in Lebanon. The Decree details the documents that should be attached to the application and the process to be followed by foreigners, whether they are wage earners or exercise an independent profession.<sup>60</sup>

#### ❑ Paragraph 1: The Work Permit and Conditions for Obtaining it:

Work permits are requested and granted directly in the case of foreigners residing in Lebanon. If they are abroad, work permits are only granted after prior approval and the process of obtaining such permit is considered as the continuation and endpoint of the prior approval process.<sup>61</sup>

In order to specify the conditions required to grant foreigners work permits, Article 1 of Decree No. 17561 issued on September 18, 1964 (Labor) stipulated:

- the observance of the principle of reciprocity
- the special laws and legislative texts in effect
- the agreements ratified or being ratified by the Legislature
- the agreements that previously needed the approval of the Ministry of Labor and Social Affairs as in the case of calling in foreign technicians to carry out work for public interest.

Article 8 of said Decree specified the conditions that should be met by foreigners in order to be granted a work permit or to renew it, whether they reside on the Lebanese territory or desire to enter it for work purposes, after obtaining prior approval. It stipulated that "subject to the observance of the principle of preferential employment of Lebanese nationals, a foreigner desiring to work in Lebanon should meet one of the following conditions:

- Be a specialist or expert whose work cannot be performed by a Lebanese.<sup>62</sup>
- Have resided in Lebanon before the beginning of the year 1954 and have worked in an institution without interruption for at least nine months per year.
- (For men) Be married to a Lebanese.<sup>63</sup>
- Be born to a mother who is Lebanese or of Lebanese origin.<sup>64</sup>
- Be a manager or chief accountant or deputy manager in a foreign company or its branches in Lebanon, or a company operating in the Middle East.
- Be a representative of a foreign company with appropriate confirmation documents, and not engage in any work that deals directly with the public.

59 - Article 2 of Decree No. 17561 issued on 18 September 1964.

60 - Articles 3-6 of the aforementioned Decree.

61 - Article 7 of Decree No. 17561.

62 - In this case the department of competent jurisdiction may request the party concerned to publish an ad, at his own expense, in three newspapers of its own choosing, and at least three times. Mention should be made in these ads of the type of work and the qualifications required, and instructions should be given to those concerned to refer to the Foreigners Work Control Department in the Ministry of Labor and Social Affairs in this regard. The latter should verify this in the foreigner's file. The competent department can appraise cases that make conditional training a Lebanese and define the duration in light of the importance of the specialization and of the qualifications of the Lebanese.

63 - He must prove his marriage by a statement given to him from the Directorate General of Personal Status or from one of its departments in the addenda, and show that he has been married for at least one year.

64 - He must prove this either by a statement given to him by the Directorate General of Personal Status or from one of its departments in the addenda, or by a court ruling that has acquired the degree of complete certainty.

Article 9 of the same Decree also stipulated that the Minister of Labor and Social Affairs shall specify, during December of each year, all occupations and professions which the Ministry considers should be restricted to Lebanese nationals only.

□ Paragraph 2: Conditions and Effects of the Work Permit for Palestinians

**Leniency:** There was a certain tendency to overlook the principle of reciprocity in regard to Palestinians. Palestinians were classed within the category of foreigners present in Lebanon since 1954, and the matter of granting them work permits was left to the discretion of the Minister of Labor.

In the decisions issued as of 1995 to determine the professions and occupations which should be restricted to Lebanese citizens (Decision No. 621/1 dated December 15, 1995), Palestinians became eligible for work permits provided they have resided in Lebanon since birth.

**Decision No. 79/1:** In an unprecedented act aiming to dissolve the obstacles that stop Palestinians from obtaining work permits, Article 2 of Decision No. 79/1 dated June 2, 2005 excluded Palestinians born on the Lebanese territory and officially registered in the records of the Lebanese Ministry of the Interior from the conditions that apply to foreigners. This exception was confirmed by subsequent decisions, the latest being Decision No. 94/1 published on June 26, 2008.

**Facts and Realities:** Although this Decision is important and positive, it could still be repealed by a decision to the contrary of a succeeding minister. Moreover, there are other practical difficulties in obtaining a permit, the most important being the following:

- The documents that must be presented, which include a work contract with a specific employer, as stipulated in Decree 17561 and in subsequent organizational decisions. In a number of professions such as guard, painter, etc., cited in the Decision and where the employing party changes quickly, obtaining such contracts and subsequently the permit becomes more difficult for Palestinian workers.
- The possibility of canceling the work permit on the grounds of preferential employment of Lebanese nationals if they meet the conditions of work, based on Article 17 of the above mentioned Decree.
- The validity of the permit, which may be renewed for only two years.

It should be mentioned that Palestinians legally reside in Lebanon, which in principle means that they should be able to obtain work permits easily. However, due to the above mentioned practical difficulties, many Palestinians have resorted to unformalized work. This is apparent from the very low number of work permits issued each year (no more than 500), **despite the imperativeness of obtaining a work permit in order to benefit from the basic rights of workers and wage earners, as will be shown later.**

**Work permit fees:** Law No. 1/70, which was passed on January 19, 1970 and amended more than once, determined the fees imposed on work permits for foreigners. It gave special treatment to Palestinian refugees registered in the Directorate General of Refugee Affairs, by charging them fees amounting to only 20% of the fees imposed on foreign workers, thus treating them equally to Syrians and residents whose citizenship is under consideration. However, it is not possible to exempt Palestinians entirely from the fees as the 1947 Budget Law of March 19, 1947 only allows the exemption of foreigners whose country accords a similar treatment to Lebanese nationals working on its territory.

Note 2: Other Categories of Wage Earners; the Status of Foreigners therein

**Wage earners working for the State:** Article 4 of Decree No. 5883 of November 3, 1994 (Wage Earners Regulations) stipulated that wage earners must be Lebanese, except for seasonal workers, servants and cleaning staff, who may be non-Lebanese. Therefore, it is not possible for foreigners to be

employed in the Lebanese State, unless they are seasonal workers, servants or cleaning staff.

**Contractors with the State:** Article 87 of Legislative Decree No. 112 dated June 12, 1959 stipulated the following: the Minister shall enter into contract with Lebanese nationals for a specified period of time and for carrying out specific work requiring special knowledge or qualifications.

**Workshop and construction workers:** There is no text in the Lebanese law regulating the status of construction and workshop workers specifically, even though these, along with agricultural workers, constitute the great majority of the workforce in Lebanon; and most of them are not Lebanese.

#### ❑ **Second Point of Inquiry: Rights of Foreign Wage Earners in Comparison to Lebanese Wage Earners**

Note 1: Rights where the Law Does Not Differentiate between Lebanese and Foreign Wage Earners, including Palestinian Refugees

Lebanese and foreigners enjoy equal basic rights in relation to work contracts, such as wage, working conditions, and employment injury compensation. This is based on the sanctity of work and its definition as a human need, both of which are primary considerations, and on the sanctity of wages. This is also due to the work contract being a type of reciprocal contract that gives rise to mutual obligations between wage earners (the obligation to carry out the work) and employers (the obligation to provide the wage), all of whom must respect their obligations. Furthermore, Lebanon is a signatory to international conventions pertaining to work conditions that must be respected, as must be respected the right of prosecution given to foreign wage earners not only based on the provisions of equality of foreign and Lebanese wage earners, but also on the provisions of general law.

**The wage:** It is the employers' obligation towards wage earners for the latter undertaking their work. Wage is sacred. Article 59 of the Labor Law stipulated the following, without discriminating between Lebanese and foreign wage earners: "Every text in a contract of service and, more generally, every agreement concluded between an employer and a wage earner prior to performing the work and throughout its duration which aims at abrogating the provisions of Part IV related to wages or reducing the remuneration wage earners are entitled to by virtue of these provisions, is null and void". In addition, Lebanon has signed international conventions pertaining to the equality of wages:

- ILO Convention No. 95 on the protection of wages, Geneva, July 1, 1949.
- ILO Convention No. 100 on equal remuneration for men and women workers for work of equal value, Geneva, June 29, 1951.

**Health and occupational safety:** The passing of the Labor Law on September 23, 1946 was considered a victory for wage earners in terms of health and protection. It constituted an important turning point in their interest by requiring commitments from the employers to ensure the health and safety of wage earners working for them by providing a healthy and safe working environment and taking all measures and precautions for industrial safety. Legislators introduced these special measures in order to protect wage earners from occupational illnesses they may incur. Furthermore, Chapter Six of the Labor Law was devoted to the protection of wage earners. Lebanon is considered committed to many international and Arab conventions in this regard. Among them:

- ILO Convention No. 127, on the maximum load that may be permitted to be wholly borne by one worker.
- ILO Convention No. 115, on the protection of workers against ionizing radiations.
- ILO Convention No. 136, on the protection against hazards of poisoning arising from benzene.
- ILO Convention No. 139, on the prevention and control of occupational hazards caused by carcinogenic substances and agents.

**Working hours and holidays:** Article 24 of the Universal Declaration of Human Rights stipulated that “everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay”. The International Covenant on Economic, Social and Cultural Rights also stipulated in Article 7, paragraph (d) that every State Party to the Covenant shall assure “rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays”. And, indeed, the Labor Law assured the above mentioned rights without discriminating between foreigners and Lebanese. Moreover, there are a number of other Arab and international labor agreements that guarantee these rights and to which Lebanon is a signatory. Among them:

- ILO Convention No. 1, which limits the hours of work to 8 hours a day or 48 hours a week.
- ILO Convention No. 14, on weekly rest (industry).
- ILO Convention No. 30, on paid vacations in commerce and offices.
- ILO Convention No. 52, on annual holidays with pay.
- Arab Labor Agreement No. 1.

These international conventions override regular Lebanese laws. Magistrates must apply the provisions of international conventions in the event they disagree with ordinary law, in conformity with the principle of the chain of the rules of precedence.<sup>65</sup> These international conventions deal with equality between national and foreign wage earners, without discrimination as to color, sex or creed.

**Employment injuries:** Sudden injuries arising from external factors and sustained by wage earners bound by a work contract (as understood in Article 624, paragraph 1 of the Code of Obligations and Contracts) as a consequence of or in the course of implementation of said contract, are subject to the provisions of the Employment Injury Law as per its Article 1. This Article does not differentiate between Lebanese wage earners and foreign wage earners. There is however one exception, stated in Article 10, concerning the principle of providing compensation in the event of demise of a foreign wage earner as a result of an employment injury. Said Article stipulates that the heirs of foreign wage earners may not claim the compensation allowed under this law if their place of residence was outside the Lebanese territory on the date of the accident; with the exception of foreign wage earners whose country grants Lebanese citizens in this matter the same rights they accord their nationals, based on the principle of reciprocity.

In addition to the above, the Employment Injury Law covers all wage earners in the sense set forth in Article 624 of the Code of Obligations and Contracts. Accordingly, and as stipulated in Article 59 of the Labor Law, obtaining a work permit is not a necessary condition for benefiting from its provisions. Lebanese law thus rendered Lebanese wage earners and foreign wage earners equal (Labor Arbitration Board, Beirut, Decision No. 160 dated December 17, 1991).<sup>66</sup>

Lebanon signed two conventions in this regard:

- ILO Convention No. 17, relating to workmen’s compensation for accidents, adopted in Geneva on June 10, 1925, and
- ILO Convention No. 19, on the equality of treatment of national and foreign workers with respect to compensation for employment injuries, adopted in Geneva on June 5, 1925.

65 - Article 2 of the Code of Civil Procedure: Courts shall be bound by the principle of the chain of the rules of precedence. When the provisions of international treaties disagree with the provisions of common law, in implementation the former take precedence to the latter. Courts may not declare null and void the works of the Legislature for inapplicability of ordinary laws on the Constitution or international treaties.

66 - Nabilah Zeine, attorney at law, *Labor Issues*, 1992, p. 210. It should be noted that Lebanon is a party to Conventions No. 17 and 19 pertaining to employment injuries and the equality of treatment of national and foreign workers with respect to such injuries.

**Right to prosecute in general:** Article 7 of the Code of Civil Procedure defined the right to prosecute as follows: “The right to prosecute is the right to submit a claim to the Judiciary in order to get a ruling on the case. For the adverse party, it is the right to defend oneself and to present reasons refuting the claim. The right of prosecution and right of defense apply to any natural or legal person, Lebanese or foreign”. It is a legal means through which individuals can raise a given dispute to the Judiciary so as to deliberate the validity of a claimed right. It is also the recognized power of individuals to turn to courts in order to ensure their rights and legitimate interests are respected.<sup>67</sup> Initiating an action before the courts is the first step that is taken in the legal battle between the two adverse parties.<sup>68</sup>

The principle, based on Article 7 of the Lebanese Code of Civil Procedure, maintains that the right to prosecute is to be granted to every person without exception; whether they be Lebanese or foreign. The law in this domain only places a few limitations on foreigners, such as the condition of reciprocity when requesting judicial assistance.<sup>69</sup>

**Right to prosecute before the Labor Arbitration Board:** Based on Decree No. 3572 of October 21, 1980, the scope of jurisdiction of the Labor Arbitration Board was extended to include every dispute arising over an individual work contract between an employer and a wage earner, between foreign and Lebanese wage earners, as well as disputes relating to servants in households. Moreover, the jurisdiction of the Labor Arbitration Board stems from public order, which means no department or administrative referral authority or other courts may divest it of its jurisdiction, notwithstanding the agreement of both parties. The Decree states that all individual labor disputes arising from work relations in the sense of Article 624 of the Code of Obligations and Contracts, and all disagreements and conflicts mentioned in Article 85 of the Social Security Law, fall within the jurisdiction of the Labor Arbitration Board.

The Board’s wide scope of jurisdiction is important as it includes disposing of disputes arising from dismissal from service or from withdrawal of service, and more generally of any dispute arising from a work contract. Foreigners, including Palestinians, can, like the Lebanese, resort to prosecution to secure their rights.

However, one must differentiate between the right to prosecute, which is an inalienable right not dependent on any condition in Lebanese law, and the outcome of lawsuits for foreign wage earners. The Lebanese law does indeed give foreigners the right to prosecute before Lebanese courts without distinction or condition, but it applies the Lebanese legislations with respect to the grounds of lawsuits and the claims presented. Thus, for example, the courts look for reciprocity of treatment where required, and for the extent of the plaintiff’s right to benefit from the advantages that go with or are related to the work contract based on the laws governing the work of foreigners in Lebanon.

#### Note 2: Rights where the Law Differentiates between Lebanese and Foreign Wage Earners, including Palestinian Refugees

The Law differentiates between Lebanese wage earners and foreign wage earners in two ways. The first is in regard to professions restricted by law to Lebanese nationals as per the decisions issued by the Minister of Labor at the beginning of every year. The second is in regard to equality of benefit from the allowances accorded by all legislations relating to work.

67 - See Vincent, No. 18; Solus et Perrot, T 1, No. 94. Also, Magistrate Dr. Hilmi Muhammad al-Hajjar, *Private Law of the Courts*, 1987 edition, p. 25.

68 - See Morel, No. 38; also, Magistrate Hajjar, *op. cit.*, p. 29.

69 - Criminal Court of Cassation, 7th, 17 June 1999, Ahmad al-Muallem chairman, Fouad Geagea and Claude Karam counselors, wherein it was decided: “that...came forward on 2 January 1998 requesting judicial assistance to submit cassation in the lawsuit in consequence of which he was sentenced by Criminal Court...on 18 December 1997, Article “Burglary”, in order to appoint a defense attorney for him...and as the claimant is of Syrian nationality and did not show a statement furnishing evidence of reciprocity of treatment in a case of this nature by the Syrian judicial parties of competent jurisdiction, Article 426 of the Civil Court Proceedings Law...therefore, it was decided to deny the request...” It is necessary to point out that the provisions of the Civil Court Proceedings Law are applied in conformity with Article 6 therein wherever there is a deficiency in other rules of procedure.

## □ Paragraph 1: Social Security Benefits

**a - Conditions that govern the subjection of foreign wage earners to the Social Security Law:** The Social Security Law passed by Decree No. 13955 dated September 26, 1963 did not define the foreign wage earners mentioned in Article 9, paragraph 3 and Article 10, paragraph 2. The applied definition remains that of every natural person who is not a Lebanese national, as stated in the Law regulating foreigners' work.

Article 9, Clause 3 of Decree No. 13955 dated September 26, 1963 stipulated that foreign wage earners working on the Lebanese territory are subject to the sickness and maternity, family allowances, and employment injuries and occupational illnesses obligations of the National Social Security Fund (NSSF).<sup>70</sup> The basic principles of social security are based on the compulsory nature of subjection to its provisions with respect to contributions to all its branches, except the end of service branch. Employers are not bound by the obligations pertaining to the end of service branch unless the wage earners are entitled to its benefits. Which means that, in the event the condition of reciprocity is not met, the employer may refrain from paying the contributions to the NSSF. Enjoyment of the aforesaid benefits by foreign wage earners is subject to two conditions:

- That they hold a work permit in compliance with the laws and regulations in force, and
- That their country of origin grant Lebanese the same treatment it accords its own nationals with respect to social security.<sup>71</sup>

It is clear that if foreigners do not obtain work permits, they will not receive social security benefits.<sup>72</sup> According to Article 9, States that treat Lebanon in a reciprocal manner with respect to social security, in some or all of its branches, and the conditions of extending its benefits to their nationals, are determined by decisions of the NSSF's Board of Directors after consultation with the Ministry of Foreign Affairs and Emigrants. So far, no decisions have been issued by the NSSF's Board of Directors specifying the States that deal with Lebanon in a reciprocal manner. Only public information memoranda were issued in this regard. According to these memoranda, the States that deal with Lebanon in a reciprocal manner are, to date, Italy, France, Belgium, and Britain.<sup>73</sup>

Jurisprudence varies on the subject. Some decisions took into consideration the official statements issued by the US Embassy declaring that the Lebanese are granted the same rights as those enjoyed by US wage earners (Labor Arbitration Board, Beirut, Decision No. 730, 1970).<sup>74</sup> Statements issued by the Australian Embassy on the reciprocity of treatment of Lebanese were also taken into consideration (Labor Arbitration Board, Beirut, Decision No. 877, 1970).<sup>75</sup> As for Iraqi wage earners, the provisions of the Iraqi Labor Law granting Arab wage earners the same rights as those accorded to Iraqis were considered sufficient proof of reciprocity treatment.<sup>76</sup>

In view of their importance, we shall cite some jurisprudence cases relating to wage earners whose citizenship is under consideration and to Palestinian wage earners.

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70 - Article 9, Third/1: Foreign wage earners working on Lebanese territory and tied to one employer or more than one employer, and employers who employ them, are subject to all the requirements stipulated in the Social Security Law according to the specific conditions set forth therein in respect of the sickness and maternity branch, family compensations plan, and employment injuries and occupational illnesses insurance. The employers are not subject to the requirements relating to the part concerning end of service unless the wage earners are entitled to the benefits forthcoming therefrom.

71 - Article 9, Third/2: The said foreign wage earners may enjoy the benefits stipulated in the Social Security Law provided that they hold work permits in accordance with the laws and statutes in force and the States to which they belong avail for Lebanese the principle of reciprocity of treatment they accord their nationals in respect of social security.

72 - Magistrate Hussein Hamdan, *Social Security: Philosophy and Application*, 1986, p. 169.

73 - *Ibid.*, p. 382.

74 - Zakhour, *op. cit.*, p. 114.

75 - *Ibid.*, p. 115.

76 - *Ibid.*, p. 111.

**b - Wage earners whose citizenship is under consideration:** Since they are not Lebanese, these wage earners are considered as foreigners. Jurisprudence varies over their eligibility to social security benefits with respect to whether the condition of Article 9/Social Security and Article 59-3/Labor on reciprocity of treatment applies to them or not. Opinions are split in two, as follows:

- One holds that they are foreigners and that the condition of reciprocity of treatment does not apply to them for lack of proof of its existence. The Labor Arbitration Board of Beirut, in its Decision No. 251 dated March 14, 1972, resolved that individuals who do not have a known country of their own, or who have no country that recognizes them, are not to be regarded as Lebanese, but rather as foreigners. It concluded that claimants who carry a statement from the competent authority in Lebanon declaring that their citizenship is under consideration, are not entitled to social security benefits unless they meet two conditions: they hold a legal work permit and their country recognizes the principle of reciprocity towards the Lebanese in respect to social security.
- A second, opposing opinion holds that it is impossible to apply Article 59-3/Labor and Article 9/Social Security since individuals belonging to this category have no specific citizenship and cannot be asked to prove reciprocity of treatment as they do not belong to any particular foreign State. An example of this is the Labor Arbitration Board of Beirut Decision No. 173 dated February 21, 1975 which considered that it was absolutely impossible for the claimant, whose citizenship was under consideration, to meet the condition of reciprocity of treatment, as he had no specific citizenship, and that he could not be asked to provide proof of reciprocity since he did not belong to a foreign State.<sup>77</sup>

**c - Palestinian wage earners:** Jurisprudence differed over the extent of application of the reciprocity clause to Palestinian wage earners. The question regarding Palestinian wage earners benefiting from the same rights enjoyed by Lebanese or all other foreign wage earners at their dismissal from work and how to fulfill the condition of reciprocity was posed. The following can be found in jurisprudence:

*Whereas the Palestinians in Lebanon are a special case, as they are not refugees in the legal sense of the word because the Government recognized their representative and did not recognize the Zionist occupation of their country. Moreover, it did not ratify the international agreement relating to the rights recognized for refugees*

*Whereas the Board recognizes from previous lawsuits filed before it that it is impossible to apply the provisions of Article 59/Labor; and therefore Article 9/Social Security Law, and obtain a statement from the competent party showing whether the State of Palestine prior to Israeli occupation accorded the Lebanese equality of treatment in respect to social benefits*

*Whereas the burden of proof always falls on the claimant, the Board considers that they are foreigners whose country does not grant the Lebanese equality of treatment...*

*And whereas Palestinian wage earners are among those wage earners, which requires freezing half of the contributions due by employers to the end of service branch for employing them...*

**(Labor Arbitration Board, No. 62 dated January 21, 1975; Nabilah Zeine, Labor Cases Pages 199 and 200).**

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77 - Ibid., pp. 116-120.

**d - Palestinian wage earners and family allowances:** Jurisprudence varies in this area as well. The opinions are once again split in two; *one states that there should be no payment of family compensation in the absence of reciprocity of treatment:*

*The Lebanese legislator required in Article 9 of the Social Security Law that foreign wage earners meet two conditions to be subject to and benefit from social security benefits. The first one, which is basic, is that their country accords the Lebanese equality of treatment with its nationals in respect to Social Security Law. The second is that they hold a work permit.*

*As for the second condition, namely the work permit, it complements the first and cannot be considered present or in effect unless the first, basic condition, namely reciprocity of treatment, is met. Thus, in the event the first condition is not met, it is not possible to consider the second one separately.*

*Based on this legal text, employers are under no obligation to pay contributions to the family allowances branch for Palestinian and Syrian wage earners since the condition of reciprocity of treatment is not fulfilled in their case.*

*Supporting this interpretation is that it is not permissible, neither logically nor legally, to require employers to bear family allowance obligations twice for their foreign wage earners, the first time according to the provisions of the Social Security Law and the second time according to the provisions of Legislative Decree No. 29 dated May 12, 1943. If the opposite were true, an employer contracting with a foreign wage earner whose country does not grant the Lebanese reciprocity of treatment with its nationals in respect to social security, would be obliged to pay contributions to the family allowances branch for the foreign wage earner to the NSSF, then pay a second time, to the wage earner himself, the family allowances stipulated in Legislative Decree No. 29/1943...*

***(Labor Arbitration Board of Beirut, Decision No. 1431 dated October 28, 1969, Muhammad Shukhaibi chairman, Saadeh and Deryan members).***

*...the obligation of employers to pay contributions to the family allowances branch for foreign wage earners working for them in Lebanon is a general and comprehensive one, regardless of whether these wage earners actually benefit from the compensations of said branch...*

***(Labor Arbitration Board Decisions of October 12, 1970 and November 9, 1970).***<sup>78</sup>

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78 - Magistrate Hussein Hamdan, Social Security, p. 381.

Jurisprudence sometimes went so far as to penalize employers by obliging them to pay the NSSF contributions on behalf of foreign wage earners, while at the same time requiring them to pay family allowances to their wage earners at their own expense:

*Whereas subjection of foreign workers to social security is one thing, and their enjoyment of the benefits of that social security is a different thing, considering that the Lebanese legislator did not distinguish between Lebanese and foreigners in respect to subjection to the Social Security Law, and that the text that was adopted encompassed all, while imposing some specific conditions to allow foreigners to benefit from social security, namely the granting of equality of treatment by the country of these foreigners and the existence of a legal work permit (see Article 9, paragraph 4 in the Social Security Law, amended on May 24, 1969).*

*And whereas the Board, pursuant to the texts and explanations cited above, concluded as a result that:*

*1) Foreign wage earners working in Lebanon – except for a special case stipulated in Article 9, paragraph 6 of the Social Security Law – are subject generally and fully to the provisions of the Social Security Law, nonetheless they may not enjoy its benefits unless the two conditions mentioned in paragraph 4 of that Article 9 are met, and*

*2) Employers who employ foreign wage earners are obliged to pay to the NSSF the contributions due to the family allowances branch, regardless of whether these wage earners benefit from this branch or not, because the enjoyment by wage earners of social security benefits does not constitute a condition for the employer's obligation to pay the contributions.*

*And as it cannot be said in reply to this that employers are therefore obliged to pay the family allowances twice, first to the NSSF as contributions, and second in accordance with the provisions of Legislative Decree No. 29 dated May 12, 1943; because the employer who is aware that the provisions of the Social Security Law relate to the public order and as such must be applied to all Lebanese and foreign wage earners, and still chooses to contract with a foreign wage earner whose country does not accord foreigners equality of treatment with its nationals and who has not obtained a work permit from the competent authority, must bear the consequence of his mistake regardless. If he does not wish to be requested to pay family allowances twice in case the required conditions are fulfilled, he must confine his contracting to the Lebanese or to foreigners who meet the two conditions stipulated in Article 9, paragraph 4 of the Social Security Law.*

*And whereas jurisprudence of the Labor Arbitration Boards in Beirut and Mount Lebanon agrees not to oblige the NSSF to return contributions paid by employers to the family allowances branch on behalf of their foreign wage earners who do not enjoy the social security benefits, from which we mention:*

1) *Labor Arbitration Board of Mount Lebanon Decision No. 472 dated May 8, 1970,*

2) *Labor Arbitration Board of Beirut, chamber of Chairman Shukheibi, Decision No. 1297 dated December 11, 1970...*

***(Labor Arbitration Board of Beirut, No. 1141 dated November 9, 1971, Nazih Tarabiyeh chairman, Abdel Malek and Berbery members).***

Changes have been recently noted in *some* decisions of the Labor Arbitration Boards. A decision issued by the chamber of Chairman Roula Jedayel *ruled that the condition of reciprocity of treatment stipulated in Article 59/3 is to be considered an unachievable condition for Palestinian wage earners who reside lawfully in Lebanon, and who stand out as a special case in that they cannot be said to belong to a state whose existence is the object of dispute.* Which means that they should be regarded as not being concerned by this Article and should therefore benefit from the provisions of the Labor Law with respect to end of service compensation, and the requirement of a work permit is not mandatory (Labor Arbitration Board of Beirut Decision No. 1354/98, Third chamber).<sup>79</sup> However, these decisions did not change the mainstream situation; they were issued for certain specific cases and did not motivate legislators to amend existing laws to accommodate the situation of Palestinian wage earners in regard to the principle of reciprocity of treatment, nor to issue new laws.

#### □ Paragraph 2: End of Service Compensation in the Labor Law and the Social Security Law

**a. The Principle:** The rights of wage earners in the case of dismissal from work consist of receiving the following compensations:

- 1) End of service compensation.
- 2) Compensation in lieu of notice if the latter's duration was not observed.
- 3) Additional compensation in the case of arbitrary dismissal from work, in accordance with the provisions of Article 50 of the Labor Law.

According to Article 59 of the Labor Law, foreign wage earners enjoy, upon dismissal from work, the same rights as the Lebanese *provided that the condition of reciprocity of treatment is met.* They must also hold a valid *work permit* from the Ministry of Economy.

Although the Labor Law stipulates the equality of Lebanese wage earners and foreign wage earners with regard to rights arising from dismissal from work, it tied foreigners' entitlement to these rights to the condition of reciprocity of treatment, in addition to the presence of a work permit belonging to the wage earner, in accordance with the rules. Thus, a number of issues arise; most importantly, the inhumanity of a possible dismissal of the employee or worker from service without severance pay or end of service compensation.<sup>80</sup> In addition, the possible inability of foreign wage earners to provide proof of reciprocity of treatment between their country and Lebanon, or the likelihood that Lebanese courts might not be

<sup>79</sup> - Zakhour, op. cit., pp. 126-127.

<sup>80</sup> - Which in turn gives rise sometimes to presence of the elements of unexplained wealth for the employer.

satisfied with the proof presented in view of the conflicting opinions in jurisprudence as to acceptable methods of proof of reciprocity.

Jurisprudence decisions were lenient on foreign wage earners regarding the possession of a work permit when a claim for compensation for dismissal from work was filed, holding that failure to obtain a work permit does not preclude exercising the right to ask for compensation. However, it does constitute an offense punishable under Article 107,<sup>81</sup> where the punishment is not limited to the worker alone, but includes the employer as well.<sup>82</sup>

**b. Agricultural workers and their exclusion from the Labor Law:** Agricultural workers are excluded from the provisions of the Labor Law. However, they do have the right, under Article 7 of that Law, to invoke the provisions of general law, in particular Article 624 of the Code of Obligations and Contracts.<sup>83</sup> The obvious reason for the exclusion is that agricultural work is influenced by seasonal factors. It cannot be characterized as continuous throughout the four seasons of the year; agricultural workers thus cannot work permanently and continuously under the control or management of their employers.<sup>84</sup>

This position of inequality means that agricultural workers do not fall within the laws and decrees regarding minimum wage and cost of living. Moreover, Lebanon did not ratify several ILO conventions relating to the rights of agricultural workers:

- Convention No. 10 (1921), concerning the minimum age for admission to employment in agriculture.
- Convention No. 11 (1921), concerning the rights of association and combination of agricultural workers.
- Convention No. 12 (1921), concerning Workmen's Compensation in agriculture.
- Convention No. 99 (1951), concerning the minimum wage in agriculture.
- Convention No. 101 (1952), concerning holidays with pay in agriculture.
- Convention No. 110 (1958), concerning conditions of employment of plantation workers.

**c. Criterion of defining agricultural workers:** Jurisprudence demonstrates an awareness of the unjust situation of agricultural workers as they are deprived of the numerous social benefits and guarantees provided by international legislation to many categories of workers. It decided that "the principal factor that needs to be taken into consideration to determine whether a worker is an agricultural worker or not is the type of institution he works for, not the type of work he carries out (Labor Arbitration Board of Mount Lebanon, Decision No. 209 dated October 30, 1950, Chairman Eid. From Hatem, 11, p. 46)." By using this criterion, i.e. the nature of the institution's work and not the type of work performed, labor legislations encompassed groups that include more than just agricultural workers. So if an institution undertakes agricultural work, and at the same time packages and sells the produce, it is classified as industrial commercial, not agricultural. Thus, its workers, even if their tasks are of an agricultural nature, i.e. working with the soil and crops, are considered as working for an industrial commercial institution and as such do not fall under the exception stipulated in Article 7 of the Labor Law.

Legislators are recently following the example of jurisprudence and gradually seeking to reduce the extent of exclusion of agricultural workers from the numerous social benefits and guarantees provided by international legislation to many other categories of workers. A number of legal texts were issued that contribute to lifting the injustice done to agricultural workers. However, said texts only cover Lebanese agricultural workers, not foreign ones:

81 - From the Labor Law.

82 - Comment on Labor Arbitration Board of Beirut Decision No. 806 dated 12 August 1953. From the Hatem Collection, Part 17, p. 48; referred to in *Arising between Legislation and Independent Legal Judgment*, op. cit., p. 352.

83 - *Arising between Legislation and Independent Legal Judgment*, section on Labor, p. 98.

84 - Magistrate Muhammad al-Shukhaibi, *The Mediator in the Labor Law*, Part 1, 1973, p. 176. Referred to in *ibid.*, p. 99.

• **Law No. 8 dated March 25, 1974:** It stipulated the following in Article 1: Lebanese wage earners working in the agricultural sector are subject to the provisions of the Social Security Law implemented by Decree No. 13955/63, in some or all of its branches. Every branch shall be put into force, consecutively, in all the Governorates (mohafazat) or in one Governorate or more, for all groups or one group or more, according to conditions set forth by Cabinet decrees based on the recommendation of the Minister of Labor and Social Affairs and after validation of the NSSF's Board of Directors.

• **Decree No. 7757 dated May 7, 1974:** Permanent Lebanese wage earners working in agricultural institutions are subject to all branches of Social Security and entitled to benefit from its provisions.<sup>85</sup>

## Section Three

### Employment of Foreigners and Palestinians Who Do Not Fall Under Wage Earner Categories

#### □ First Point of Inquiry: Independent Professions and Salaried Professions Regulated by Law

This section addresses the independent professions regulated by law and comments on whether Palestinians may practice these professions and the conditions for such practice. It is worthy to note that the major obstacle faced by Palestinians in the practice of these professions, in addition to the principle of reciprocity of treatment and the requirement sometimes to acknowledge this principle in a bilateral agreement between Lebanon and the foreigner's country, remains the need for foreigners to meet the conditions required to practice the profession in their own country. At a time when Palestinians are not regarded as citizens of any particular State, given the lack of international recognition and the absence of a geographic territory for the Palestinian State, these conditions are rendered highly unattainable.

Note 1: Professions Palestinian Refugees Cannot Practice Due to the Principle of Reciprocity, the Requirement to Acknowledge This Principle in a Bilateral Agreement, and the Need for a License to Practice the Profession in Their Own Country; With Exceptions Where Applicable

#### 1. Regulation of the Practice of the Medical Profession (Decree No. 1658 of January 17, 1979)

Article 5 of this Decree stipulated the qualifications and conditions required of a non-Lebanese physician in order to obtain a permit to practice medicine in Lebanon. Said requirements are: (1) that there must be reciprocity of treatment, acknowledged in an agreement between Lebanon and the non-Lebanese physician's country, and (2) that he be licensed to practice medicine in his own country.<sup>86</sup> As for the non-Lebanese physician who is part of the educational staff of a faculty of medicine in Lebanon, he must be devoted full-time to teaching in said faculty; provided he holds an officially recognized medical degree and *an officially recognized specialist diploma, both of which confer upon him the right to practice the medical profession in his own country.* This is another obstacle for Palestinian physicians, who are even unable to teach full-time in a faculty of medicine in Lebanon. The exception, though, is that Palestinians pursuing a specialization can undertake any work required by their curriculum. However, this does not render them medical practitioners nor does it authorize them to practice medicine in Lebanon in the future.<sup>87</sup>

85 - Magistrate Hussein Hamdan, *Social Security*, pp. 372-373

86 - Article 5 of Decree No. 1658/1979.

87 - Article 9 of Legislative Decree No. 107 dated 16 September 1983.

## **2. Regulation of the Practice of the Dentistry Profession (Law No. 485 of December 12, 2002)**

In principle, the same conditions required of physicians (paragraph 1 above) apply to dentists, according to Article 2 of Law No. 485/2002. Thus, it is imperative that there be reciprocity of treatment acknowledged in an agreement between Lebanon and the foreigner's State, and that the foreigner hold a degree in dentistry and an officially recognized specialist diploma, both of which confer upon him the right to practice dentistry in his own country. The exception is that a Palestinian who pursues specialization can undertake any work required by the curriculum, same as other non-Lebanese dentists who specialize in Lebanon, but this does not render him a dental practitioner nor does it authorize him to practice dentistry in Lebanon in the future.

**3. Regulation of the Health Inspection Profession (Legislative Decree No. 107 of September 16, 1983):** This Decree stipulates the differentiation between licensed health inspectors, health inspectors, and health workers.

- **For certified health inspectors**,<sup>88</sup> the principle of reciprocity of treatment must be present and acknowledged in an agreement between Lebanon and the State of the foreigner.
- **Health inspectors** must be licensed to practice the profession in their own country, in addition to the requirement of reciprocity of treatment acknowledged in an agreement between Lebanon and the State of the foreigner.
- **As for health workers**, this profession is restricted to Lebanese nationals.<sup>89</sup>

Note 2: Professions that Palestinian Refugees Cannot Practice Due to the Principle of Reciprocity and the Requirement to Acknowledge This Principle in a Bilateral Agreement; With Exceptions Where Applicable

There are other professions that Palestinians are unable to practice because of the principle of reciprocity and the requirement that it be acknowledged in a bilateral agreement between Lebanon and the foreigner's country, although the condition that foreigners be licensed to practice the profession in their own country is not required. Some of the most prominent of these professions are:

- 1. Medical Laboratories (Regulated by Legislative Decree No. 75 dated September 9, 1983).<sup>90</sup>**
- 2. Laboratory Professions (Regulated by Legislative Decree No. 76 dated September 9, 1983).<sup>91</sup>**
- 3. Professions related to preparation and fitting of artificial limbs and orthopedic apparatuses (Regulated by Law No. 397 dated January 12, 1995):<sup>92</sup>** The provisions of Article 5 of this Law exclude foreign specialists practicing within the framework of a foreign or national non-profit organization, or an academic or vocational institution. In such cases, **Palestinians are able to practice these professions.**

88 - Article 17 of Legislative Decree No. 107 dated 16 September 1983.

89 - Article 14 of Legislative Decree No. 107 dated 16 September 1983: "conditions for practice of the profession of health worker in Lebanon: no one may practice the profession of health worker in Lebanon except... (1) that he be a Lebanese subject..."

90 - Article 21: "The non-Lebanese may open and direct a medical laboratory... provided he belongs to a country that permits Lebanese... and the treatment is reciprocal, confirmed in an agreement between the State of Lebanon and the State concerned".

91 - Articles 6, 10 and 14 stipulated that no one may practice the profession of licensed laboratory technician, unlicensed laboratory technician or assistant in Lebanon except after obtaining a permit from the Minister of Public Health, proceeding from his being of Lebanese nationality. But Article 17 permitted exception for the non-Lebanese based on the principle of reciprocity of treatment confirmed in an agreement between the State of Lebanon and the State concerned.

92 - Article 5 stipulated that license may be given to a non-Lebanese to practice the profession of preparing and assembling prosthetic devices and orthodontics equipment in Lebanon on condition of reciprocity of treatment... and that this reciprocity of treatment be confirmed in an agreement concluded between the State of Lebanon and the State concerned.

Note 3: Professions that Palestinian Refugees Cannot Practice Due to the Principle of Reciprocity and/or the Requirement for Foreigners to Have the Right to Practice the Profession in Their Own Country; With Exceptions Where Applicable

1. Regulation of the Certified Chartered Accounting Profession in Lebanon (Law No. 364 dated August 1, 1994):

Palestinians are unable to practice the profession of certified chartered accountant due to the principle of reciprocity and their inability to prove prior obtainment of the required professional qualifications in their own country.<sup>93</sup>

2. Regulation of the Engineering Profession (Law No. 636 of April 23, 1997):

The Law stipulated additional conditions for non-Lebanese engineers. The most important being the principle of reciprocity and the right of foreigners to practice the engineering profession in their country of origin.<sup>94</sup> Due to the principle of reciprocity of treatment, Palestinian engineers do not even benefit from the provisions of paragraph 3, which permitted foreign engineers registered with the Association before Law No. 636/97 was passed to continue to practice their profession as before.<sup>95</sup>

3. Regulation of the Profession of Topographer and Establishment of the Association of Topographers (Law No. 522 dated June 6, 1996).<sup>96</sup>

4. Regulation of the Physiotherapy Profession (Law No. 8 dated February 20, 1978).<sup>97</sup>

5. Regulation of the Dental Laboratory Science Profession (Law No. 554 dated July 24, 1996).<sup>98</sup>

6. Regulation of the Practice of Veterinary Medicine in Lebanon (Law issued on February 10, 1948).<sup>99</sup>

7. Regulation of the Nursing Profession (Law put into effect by Decree No. 1655 dated January 17, 1979): The Law distinguished between registered nurses, nurses, and assistant nurses.

– **Registered nurses:** The Law did not include provisions authorizing non-Lebanese registered nurses to practice on the Lebanese territory; therefore, this profession is considered restricted to the Lebanese.<sup>100</sup>

– **Nurses:** Nurses must be licensed to practice in their own country and must also have been dispatched by an international agency, organization or institution licensed to practice this profession in Lebanon. There is no condition of reciprocity, due to affiliation with a licensed international agency, organization or institution. **The obstacle facing Palestinians in this case is the requirement of a license to practice the profession in their own country.**<sup>101</sup>

– **Non-Lebanese nurses who are members of the teaching staff of nursing schools in Lebanon:** Nurses must be licensed to practice the nursing profession in their own country. The obstacle facing

93 - Article 18: The Association may register a non-Lebanese in the general schedule of the Association for practice of the profession of certified accounting in Lebanon, if he meets, in addition to the conditions imposed on Lebanese experts, the following conditions: "(1) ...principle of reciprocity..., (2) the foreign expert does not work in Lebanon except alongside a Lebanese certified accountant, (3) he holds professional qualifications permitting him to practice the profession of certified accountant in his country..."

94 - Article 4: Conditional on the non-Lebanese engineer is that "(1) he be a national of the Arab States...(1) that he meets the conditions shown in Article 3 of this Law...(b) that the legislations of his country treat reciprocally Lebanese engineers, (c) that he verify that he enjoys right to practice the engineering profession in his country of origin..."

95 - Article 4, paragraph 3: Foreign engineers registered with the Association and practicing the profession in Lebanon at the time that this Law enters into effect shall be licensed to continue to practice it as before if they are holders of degrees and the laws in their country permit Lebanese engineers to practice their profession in them.

96 - Article 3 makes conditional that the law of the country of the non-Lebanese topographer give equal treatment to Lebanese topographers, and that he verify that he enjoys the right to practice the topography profession in his country of origin.

97 - By Article 4, non-Lebanese persons may be licensed to practice the physiotherapy profession in Lebanon if they meet the conditions applied to Lebanese and if they belong to a country that permits Lebanese to practice this profession on its territory

98 - Article 3 makes practice of the dental laboratory sciences profession by a non-Lebanese conditional on (1) presence of the principle of reciprocity and (2) furnishing evidence that he enjoys the right to practice the dental laboratory sciences profession in his country of origin.

99 - Article 2: "The foreign veterinarian does not have the right to practice his profession in Lebanon except if he meets the following conditions: (1) ..., (2) his country permits Lebanese veterinarians to practice their profession on its territory" (i.e., the principle of reciprocity).

100 - Neither Article 3 nor subsequent articles stipulated the possibility of a non-Lebanese registered nurse working in Lebanon.

101 - Article 12.

Palestinians in this case is the requisite of a license to practice the profession in their own country.<sup>102</sup>

– **Training nurses:** Training nurses must be licensed to practice the nursing profession in their own country.

**Assistant nurses:** This profession is restricted to Lebanese nationals.<sup>103</sup>

**8. Regulation of the Science of Nutrition and Meal Planning Profession (Law No. 623 dated November 20, 2004):** Palestinians cannot work in the science of nutrition and meal planning profession because of the principle of reciprocity and the requirement of a license to practice in their own country.<sup>104</sup>

#### Note 4: Professions that Palestinian Refugees May Not Practice in Lebanon Due to Their Restriction to Lebanese Nationals; With Exceptions Where Applicable

There are some professions that the non-Lebanese may not practice by virtue of the laws and decrees that govern them. The most important of which are as follows:

**1. Archeological and tourist guide in Lebanon** (Regulated by Decree No. 1863 dated May 25, 1965): Article 3 of this Decree required, among the conditions for obtaining a license to practice this profession, that the person be Lebanese and at least 18 years of age.

**2. Real estate agent** (Regulated by Decree No. 9952 issued on March 8, 1997).<sup>105</sup>

**3. Money exchange profession** (Regulated by Law No. 347 dated August 6, 2001):<sup>106</sup> It is evident that Palestinians cannot erect their own establishment to practice this profession as it is restricted to Lebanese natural persons only.

**4. Legal profession** (Regulated by Law No. 8 dated March 11, 1970): Palestinian lawyers may not register with the Bar Association since registration and practice of the profession are restricted to Lebanese nationals. Exception: The exception does not apply to the right of registering with the Bar Association and to the practice of the profession in Lebanon, but rather to permitting a non-Lebanese lawyer to plead a given case on condition of reciprocity by the association this lawyer is registered with.<sup>107</sup> This exception allows Palestinian lawyers to plead a specific case, like all non-Lebanese lawyers, provided they be members of a lawyers' association in a certain State. The criterion for applying reciprocity is the nationality of the association with which the lawyer is registered, not the nationality of the lawyer himself. If a Palestinian lawyer is registered in a lawyers' association in the United States of America, France or any European or Arab State, and if this association deals with the Beirut Bar Association on the basis of reciprocal treatment, then he can be granted the right to plead a particular case. Consequently, as mentioned, the criterion for reciprocity of treatment is not the nationality of the lawyer himself, but rather that of the Association with which he is registered.

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102 - Article 13.

103 - Article 11.

104 - Article 9: "The Minister of Public Health may license a non-Lebanese to practice the profession of nutrition and preparation of meals in Lebanon provided...he has a license to practice the profession in his country and there exists reciprocity of treatment..."

105 - Article 6 made conditional that the real estate agent be Lebanese.

106 - Article 4-1: The shares of money exchange establishments must be in the form of association of capital nominal shares at least two-thirds of which are owned by Lebanese natural persons or Lebanese private companies all of whose members are Lebanese natural persons, or else Lebanese association of capital two-thirds of whose nominal shares are owned by Lebanese natural persons. These two-thirds may not be disposed of, according to its statute, except to Lebanese natural persons.

Article 4-2: Two-thirds of shares in money exchange establishments formed as private companies or limited liability companies must be owned by Lebanese persons in the sense shown above.

Article 4-3: Formation of one-man establishments is restricted to Lebanese natural persons to the exclusion of all others.

107 - Article 115.

**5. Follow-up of formalities at the car and vehicle registration department** (Regulated by Law No. 33 dated May 31, 1966).<sup>108</sup>

**6. Driving instructors for cars and all other vehicles** (Put into effect by Decree No. 13670 issued on August 23, 1963).<sup>109</sup>

#### Note 5: Professions that Palestinian Refugees May Practice

Various Lebanese laws stated a number of professions that may be practiced without any limitation or condition as to nationality, reciprocity of treatment, or the need of a license to practice the profession in the country of origin. Furthermore, in cases where reciprocity was stated as a condition, said laws stipulated it was to be considered in effect unless proven otherwise. The most important of these professions are:

**1. Foreign press correspondent in Lebanon** (Regulated by Decree No. 10394 dated July 2, 1968): Article 7 of the Decree stipulated granting applicants a “foreign press correspondent” card. This card is accepted as an official proof of occupation, and may be used especially to obtain residence permits in Lebanon. Under Article 9, said card gives its holder the right to benefit from all facilities, privileges and exemptions granted to Lebanese journalists, **on condition that** the principle of reciprocity be met in the country where the organization that hired him is located. **This condition is considered met unless proven otherwise.** The criterion for enabling Palestinians to work in Lebanon as foreign press correspondents is the **country of location of the organization they work for.** Lebanese legislators took a substantial stride forward when they decided to consider the principle of reciprocity as being met unless proven otherwise. Hence, Palestinians are free to work in Lebanon as foreign press correspondents.

**2. Itinerant photographer** (Regulated by Law dated February 19, 1960).

**3. Financial brokerage** (Regulated by Law No. 234 dated June 10, 2000): The profession of financial brokerage is limited to legal persons, specifically corporations whose shares, by law, must be nominal. The Law does not however require the corporation or its shareholders to be Lebanese. Thus, corporations whose shares are owned by Palestinians may operate in Lebanon as financial brokerage firms, provided that they meet the specific conditions of the Law.

**4. Land surveyor or work instructor** (Decision No. 309 dated January 23, 1953): There is no provision in this Decision restricting the profession to Lebanese nationals.

**5. Midwife** (Regulated by Decree No. 1657 dated January 17, 1979): Definition of the legal midwife and her functions: According to Article 8, the non-Lebanese legal midwife may practice her profession in Lebanon if she meets the conditions<sup>110</sup> stipulated in Articles 5 and 7 of this Law and in accordance with Lebanon’s domestic need as deemed by the Ministry of Public Health. She may work in public or private institutions only after obtaining a work permit from the Ministry of Labor based on approval by the Ministry of Public Health. Consequently, since there is no condition of reciprocity of treatment nor a need for legal midwives to hold a license to practice the profession in their country of origin, Palestinian women may practice said profession.

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108 - Article 2.

109 - Article 1.

110 - See Articles 5 and 7 for the conditions of working as a legally certified midwife.

## Simple Table Comparing Independent Professions and Salaried Professions Regulated by Law

| Profession                                     | Restricted To Lebanese | Principle of Reciprocity | Confirmed in an Agreement | Licensed in his Country | Permitted with Conditions | Permitted to Palestinians |
|--|------------------------|--------------------------|---------------------------|-------------------------|---------------------------|---------------------------|
| Archeology guide                               | ×                      |                          |                           |                         |                           |                           |
| Money exchanger                                | ×                      |                          |                           |                         |                           |                           |
| Real estate agent                              | ×                      |                          |                           |                         |                           |                           |
| Attorney                                       | ×                      |                          |                           |                         | ×                         |                           |
| Follow-up of vehicle registration transactions | ×                      |                          |                           |                         |                           |                           |
| Driver training                                | ×                      |                          |                           |                         |                           |                           |
| Registered nurse                               | ×                      |                          |                           |                         |                           |                           |
| Assistant nurse                                | ×                      |                          |                           |                         |                           |                           |
| Medicine                                       |                        | ×                        | ×                         | ×                       |                           |                           |
| Dentistry                                      |                        | ×                        | ×                         | ×                       |                           |                           |
| Health controller                              |                        | ×                        | ×                         | ×                       |                           |                           |
| Engineering                                    |                        | ×                        | ×                         | ×                       |                           |                           |
| Licensed health controller                     |                        | ×                        | ×                         |                         |                           |                           |
| Medical Laboratories                           |                        | ×                        | ×                         |                         |                           |                           |
| Clinical health                                |                        | ×                        | ×                         |                         |                           |                           |
| Prosthetic devices                             |                        | ×                        | ×                         |                         | ×                         |                           |
| Certified accountants                          |                        | ×                        |                           | ×                       |                           |                           |
| Dental Laboratory Sciences                     |                        | ×                        |                           | ×                       |                           |                           |
| Nutrition and meals                            |                        | ×                        |                           | ×                       |                           |                           |
| Topography                                     |                        | ×                        |                           |                         |                           |                           |
| Physiotherapy                                  |                        | ×                        |                           |                         |                           |                           |
| Veterinary medicine                            |                        | ×                        |                           |                         |                           |                           |
| Foreign newspaper correspondent                |                        | ×                        |                           |                         |                           | ×                         |
| Nurse  |                        |                          |                           | ×                       |                           |                           |
| Trained nurse                                  |                        |                          |                           | ×                       |                           |                           |
| Legal midwife                                  |                        |                          |                           |                         |                           | ×                         |
| Financial brokerage firms                      |                        |                          |                           |                         |                           | ×                         |
| Roving photographer                            |                        |                          |                           |                         |                           | ×                         |
| Surveyor or public works trainer               |                        |                          |                           |                         |                           | ×                         |

## ❑ Second Point of Inquiry: Foreigners as Employers in All Sectors

### Note 1: Commercial Businesses in General

Lebanese law does not restrict commercial business activity to Lebanese nationals alone, therefore any foreigner legally residing in Lebanon may request to be registered as a merchant in the Commercial Registry. Article 6 of the Code of Commerce specified some activities as commercial, *but only as examples that include but are not limited to those cited*:

Article 6: The activities listed below are regarded by their very nature as commercial overland activities. Added to this list are all activities considered as similar due to comparable characteristics and purposes:

- 1 - Purchase of goods and other movables, both tangible and intangible, for sale in return for profit, whether sold in their initial form or after processing or manufacture.
- 2 - Purchase of such movable items in order to lease them, or their rental for purposes of sublease.
- 3 - Purchase or rental or sublease of the items purchased or rented in the manner indicated above.
- 4 - Money exchange and banking.
- 5 - Supply and procurement.
- 6 - Industrial plants, even if they involve agricultural investment, except if the processing is done by simple manual work.
- 7 - Land, air and sea transport.
- 8 - Commission and brokerage work.
- 9 - Fixed premium insurance.
- 10 - Landscaping.
- 11 - Printing.
- 12 - Public warehousing.
- 13 - Mining and oil drilling.
- 14 - Real estate construction works.
- 15 - Real estate buying and selling for profit.
- 16 - Commercial agencies.

Apart from these, where there is a need to define any activity not mentioned in Article 6, magistrates shall give the correct description based on the provisions of Articles 2 and 3 of the Code of Commerce,<sup>111</sup> as well as on the provisions of Article 370 of the Code of Civil Procedure.<sup>112</sup>

### Note 2: Journalism Firms

According to the Law governing printed matter of September 14, 1962, journalism firms, regardless of their nature, must meet the following conditions:

- 1 - **In the case of partnerships or limited liability companies**, all partners must be of Lebanese citizenship.

111 - Article 2: If the text in this Law is deficient, the provisions of public law shall be applied on the commercial articles, with their application being only to the extent of their compatibility with the pertinent principles in the Commercial Law. Article 3: If there is no legislative text that may be applied, the magistrate shall be guided by precedents of independent legal judgment and the requirements of commercial fairness and integrity.

112 - Article 370, Civil Court Proceedings Law: The magistrate shall give a correct legal description of the facts and works disputed without being bound by the description given by the litigants.

- 2 - **In the case of partnerships limited by shares**, the authorized partners must be of Lebanese citizenship and all nominal shares should be owned by Lebanese natural persons or companies considered purely Lebanese in accordance with the Law passed by Decree No. 11614 dated January 4, 1969.
- 3 - **In the case of joint-stock corporations**, all nominal shares must be owned by Lebanese natural persons or purely Lebanese companies, as per the Law mentioned in the above paragraph.
- 4 - **Disposal of the nominal shares** mentioned in the above two paragraphs to other than Lebanese natural persons or purely Lebanese companies is strictly prohibited.

### Note 3: Particularities of Certain Legal Persons

Article 2 of Decree No. 11614/69 dated January 4, 1969<sup>113</sup> stipulated the following regarding non-Lebanese legal persons:

- **Partnerships and limited liability companies** whose shares are not wholly owned by Lebanese natural persons are forbidden under their statutes to dispose of these shares to non-Lebanese persons or to companies other than purely Lebanese companies.
- **Joint-stock corporations and partnerships limited by shares** whose shares are not all nominal shares owned by Lebanese natural persons or purely Lebanese companies are forbidden under their statutes to dispose of these shares to non-Lebanese natural persons or to companies other than purely Lebanese companies.

Thus, any company that does not meet the conditions of Article 2 above is regarded as non-Lebanese, even if it was founded in Lebanon and registered in the Lebanese Commercial Registry.

The Law did not place any restrictions on the operation of foreign companies. The ultimate reason for the lack of said restrictions is to attract foreign investment and capital to Lebanon. Thus, there are no restrictions which would bar one or more Palestinians from founding a Lebanese company, partnership or corporation that would operate in Lebanon.

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<sup>113</sup> - Law of Ownership by Foreigners in Lebanon.



# Chapter Three

## Legislation Applied in the Arab States on the Employment of Palestinian Refugees as Compared to All Other Foreigners

### Section One

#### Legislation in Force in the Syrian Arab Republic<sup>114</sup>

**The Syrian Constitution:** The Constitution of the Syrian Arab Republic, and its amendments by Law No. 2 dated 29 March 1980, Law No. 18 dated July 3, 1991 and Law No. 9 dated June 11, 2000 stipulated its economy to be a socialist economic system aimed at eliminating all forms of exploitation. Article 36 of said law stated that work is a right and obligation for every citizen, and that the State undertakes the responsibility of providing it to all citizens. It also stipulated that every citizen has the right to receive wages based on the nature and yield of his work, and that it is the duty of the State to safeguard this. The State specifies the number of working hours, guarantees social security coverage to workers, and regulates their rights to rest and to a leave, as well as compensations and rewards.

Prominent in this Constitutional text is the importance of work and the rights of workers. The Constitution guarantees the regulation of employment and the creation of equal opportunities for citizens.

**The Status of Foreigners with Respect to Work:** Labor Law No. 91 issued in 1959 stipulated in Article 35 that foreigners may not engage in work unless they have obtained a permit from the Ministry of Social Affairs and Labor. In that regard, they must hold authorization documents to be residents and the condition of reciprocity of treatment with the State to which they belong must be fulfilled, to the extent of the limits of this treatment. The term “work” here encompasses all industrial, commercial, agricultural, financial or other types of work, and any profession, including household services.

Article 36 states that the Minister of Social Affairs and Labor shall determine, by issuing a decision, the conditions required to obtain a work permit, the information that the latter should contain, and the fees due. The Minister also has the power to determine cases of exemption from the condition of reciprocity of treatment or from that of obtaining a work permit.

Hence, it is clear that legislators gave the responsible Minister the power to exempt foreigners from obtaining a work permit, so long as their country exempts Syrians from obtaining such work permits, or in cases as subject to his discretion and the requirements of public interest.

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114 - “Sources of Syrian Law”, a study by the General Association of Palestinian Arab Refugees (Mustapha Ali director), Social Insurance, Halabi Publications.

**The Status of Foreigners with Respect to Social Security:** Syrian law did not differentiate between Syrians and foreigners as to the rights enjoyed by workers, public officers, employees and teachers. They all enjoy old age, invalidity and demise benefits, end of service and dismissal from work compensation, as well as employment injuries compensation. The Social Security Law No. 92 issued in 1959 applies to all workers, including apprentices, with the exception of:

- Workers employed in agriculture, except where mentioned otherwise by special text.
- Workers employed in incidental, temporary jobs, in particular migrant workers, and workers in freight and lading, contracting and seasonal work, except where mentioned otherwise by special text.
- Household servants and the like.

The Minister of Social Affairs and Labor may, after consulting with the Board of Directors of the Social Security institution and by issuing a ministerial decision, regulate the conditions pertaining to social security benefits, in whole or in part, for the following groups:

- The categories of workers referred to in Article 2.
- Individuals who work at home for employers.
- Practitioners of independent professions, self-employed individuals, and craftsmen.
- Employers themselves.<sup>115</sup>

Social security applies to all foreigners, including Arab workers; however, workers who leave the Syrian territory are not entitled to receive due wages and pensions.<sup>116</sup>

It should be noted that Syria has ratified the following conventions: ILO Convention No. 19 (1925) on the equality of treatment of national and foreign workers with respect to compensation for employment injuries, and ILO Convention No. 118 on the equality of treatment of nationals and non-nationals in social security.

**The Status of Palestinian Refugees:** Some 456,000 Palestinian refugees live in Syria; about 124,000 of them are registered in nine camps.<sup>117</sup> 70% of the refugees live in the camps (seven of which are in the Damascus area), which are no longer considered isolated from their surroundings, as Palestinians are treated like Syrians and enjoy the same rights except the right to vote in or to run for municipal council elections and Parliament elections.<sup>118</sup> Palestinian refugees were exempt from treatment as foreigners from the beginning of their forced displacement to Syria. Many laws and decisions regulating their presence were passed on the grounds that their stay was temporary and extended only until such time as they would return to their homes. The position of the Syrian Arab Republic towards Palestinian refugees who came to Syria stipulated two principles:

- Treating them exactly like Syrians, and
- Ensuring they retained their Palestinian citizenship, thus rejecting all forms of settlement no matter the circumstances. This Law was viewed as superseding all decisions issued by the League of Arab States concerning Palestinians residing in the Arab host countries. The Syrian position regarding the principles of Arabism and commitment to nationalist causes, the foremost being the case of Palestine, remains unchanged.

Law No. 450 issued on January 25, 1949 stipulated the creation of the General Authority for Palestinian Refugees, linked to the Ministry of the Interior. Its purpose was to cater to all the needs of Palestinian refugees, assist them and find suitable jobs for them. Among its tasks, notably:

- Maintaining records with the names, civil status and professions of the refugees.
- Organizing relief efforts and providing clothing and residence in all parts of Syria.
- Finding suitable jobs for them *in all independent professions and government services*.

115 - First Arab Seminar on Social Security, Alexandria, 1975, pp. 30-31.

116 - Ibid., p. 47.

117 - UNRWA Statistics, June 2008, from the UNRWA website.

118 - Hamad Saeed al-Mawed, *The Palestinians in Syria – Past, Present, and Future*, 1999.

Some articles of this Law were amended by Republican Decree No. 1130, which changed the Institute's name to the General Authority for Palestinian Arab Refugees and placed it under the direction of the Ministry of Social Affairs.

**The Right to Work for Palestinian Refugees:** A number of decrees were issued exempting Palestinian refugees from the condition of citizenship for engaging in employment or a profession in general. Among them:

- Decree No. 33 issued on September 17, 1949, which exempted Palestinians from the condition of citizenship set forth in paragraph 1 of Article 11 of the Public Officers Basic Law when requesting employment in public administrations and institutions. The Decree stipulated Palestinians shall be accorded the same treatment as Syrians while maintaining their original citizenship.
- Decree No. 162 dated March 10, 1952, which exempted Palestinians from the condition of citizenship for the profession of certified translator.
- Decree No. 51 dated August 13, 1952, which exempted Palestinians from the condition of citizenship for the legal profession.
- Decree No. 497 dated September 15, 1952, which stipulated giving Palestinians the same treatment as Syrians with respect to employment in the customs administration, without being restricted by the condition of citizenship.
- Cabinet Decision No. 313 dated May 15, on the appointment of Palestinians to positions in the teaching profession, or entering into contracts with them.

Law No. 260 dated July 10, 1956 cancelled all previous legislations and accorded the Palestinians originally residing on the territory of the Syrian Arab Republic the same treatment as Syrians with respect to all provisions of the laws and statutes in force concerning the rights of employment, work, commerce and military service, all throughout maintaining their Palestinian citizenship.

**Passports:** Decree No. 448 on granting travel documents to Palestinian refugees was issued on February 6, 1955. Article 8 of the Decree stipulated the need for Palestinian refugees to obtain a return visa in order to return to Syria. The visa stipulation was cancelled by Decision No. 1311 issued by the Minister of the Interior on October 3, 1963.

Law No. 42 dated December 31, 1975 stipulated, in Article 5, paragraph (b), the regulation of passports, including travel documents for the Palestinian refugees. In accordance with Article 9 of this Law, the Minister of the Interior shall decide, after approval from the Ministry of Foreign Affairs, the format of passports and travel documents, their validity and mode of renewal, and the conditions and procedure for granting them.

Thus, it is apparent that the Syrian Arab Republic regulated the presence of Palestinian Refugees, and guaranteed and assured all their needs, thus rendering them equal to Syrian nationals in all fields and rights, especially those relating to employment in public and private sectors, independent professions, and in commerce. Furthermore, it also issued them travel documents.

## Section Two

### Legislation in Force in the Hashemite Kingdom of Jordan

**Regulating the Work of Foreigners in the Kingdom:** Article 12 of the Labor Law and its amendments (No. 8 – year 1996) regulated the employment of non-Jordanians. This Article, like all legislation relating to foreign labor in the Hashemite Kingdom of Jordan, did not differentiate between Palestinians and foreigners, whether Arabs or of other nationalities. And there are no exceptions regarding Palestinians in all legislations relating to work.<sup>119</sup> The reason is that Palestinian refugees in the Kingdom carry Jordanian citizenship and thus are not regarded as foreigners. Consequently, prohibitions relating to foreigners do not apply to them.

**List of Professions Closed to Incoming Labor:** It is noted that the Kingdom maintains firm policies when it comes to bringing in foreign labor,<sup>120</sup> and it restricts some professions to its own subjects. The purpose is to control and regulate the labor market, and to gradually extend Jordanian labor's share.<sup>121</sup> The following professions are closed to foreign labor:

Medical professions - Engineering professions - Administrative and accounting professions - Clerical professions, including typing and secretarial work - Switchboard, telephone and connection occupations - Warehouse jobs - All types of sales - Hairdressing - Decor - Education professions, except rare specializations not found among Jordanians - Sale of fuel in the principal cities - Electrical professions - Auto mechanics and repair - Drivers - Guards and couriers - Servants for buildings.

**The Rights of Foreigners under the Kingdom's Labor Laws:** Jordan's Labor Law treats Jordanians and foreigners on equal footing with respect to rights and obligations arising from the work contract. Article 3 stipulated that the provisions of this Law apply to all workers and employers, with the following exceptions:<sup>122</sup>

- a. Public officers and individuals working for municipalities.
- b. The members of the employer's family who work in his projects pro bono.<sup>123</sup>
- c. Household servants, gardeners, cooks and the like.
- d. Agricultural workers except those subjected to the provisions of the current Law, whose categories are set forth in regulations issued for this purpose.

Said Law does not state any exceptions as to the rights and obligations of non-Jordanian workers. Nor does it place any particular conditions or restrictions on foreign workers in order to benefit from the rights arising from work contracts, such as the reciprocity clause found in Lebanese law.

Jordanian law went even further in safeguarding the rights of foreign workers. Later instructions stipulated the need for the employer to submit a legal or bank guarantee that would be used...in the event he fails to fulfill any of his obligations under the law...and to guarantee the worker's right,<sup>124</sup> Whereas, there is no text in the Labor Law requiring employers to present any such assurances as a guarantee for the fulfillment of their obligations towards Jordanian workers.

119 - Article 12, (a): No non-Jordanian worker may be employed except with the approval of the Minister or whom he authorizes, conditional on the work requiring **experience and qualifications not available among Jordanian workers** or their number is not sufficient to meet the need, **with priority given to Arab experts, technicians and workers**.

120 - This accounts for the phrasing of the expression "professions closed".

121 - Article 12 of instructions for conditions and measures for employment and summoning of non-Jordanian workers to populated industrial areas.

122 - See Article 7 of the Lebanese Labor Law for analogous exceptions.

123 - Absence of the element of wage altogether denies existence of a work contract, since the wage is one of the most important elements of the work contract, stipulated in Article 2 of the Jordanian Labor Law: Definition: Work: all intellectual or bodily effort exerted by the worker in return for a wage.

124 - Article 4, paragraph c, clause 7 of the instructions for conditions and measures of employment and summoning of non-Jordanian workers issued by the provisions of Article 4 in the Statute on Fees for Work Permits for non-Jordanian Workers No. 36 (1997) and its amendments.

**The Work Permit and Documents Required from Employers and Foreign Workers:** Article 12 of the Jordanian Labor Law, and later instructions issued in the Kingdom, specified the documents required to bring in foreign workers, and the amounts of bank guarantees or agricultural guarantees and how they should be apportioned. The most important of these instructions were:

- Instructions related to the conditions and procedures for the employment and import of non-Jordanian workers, issued under Article 4 of Regulation No. 36 of 1997 concerning work permit fees for non-Jordanian workers and its amendments;
- Instructions related to the conditions and procedures of licensing private offices to introduce and employ non-Jordanian domestic workers and to the regulation of their work (2006), issued under Regulation No. 3 of 2003 concerning private offices that bring in and employ non-Jordanian domestic workers; and
- Instructions related to the conditions and procedures of employing and bringing in non-Jordanian workers to approved industrial areas, issued under Article 4 of Regulation No. 36 of 1997 concerning work permit fees for non-Jordanian workers and its amendments.

**Conditions for Bringing in Non-Jordanian Workers:** Non-Jordanian workers may only be employed with the approval of the Minister or his delegate, under the condition that the work to be performed requires experience and qualifications not available among Jordanian workers or that their numbers are not sufficient to meet the need; priority is given to Arab experts, technicians and workers. Non-Jordanian workers must obtain a work permit from the Minister or his delegate before being brought in or employed. The duration of the permit may not exceed one year, subject to renewal, and the duration on renewal is calculated from the date of expiry of the last work permit obtained.

The Ministry charges employers a fee for work permits issued or renewed for non-Jordanian workers, including workers excluded from the provisions of this Law by virtue of paragraphs (c) and (d) of Article 3 therein. This fee is regarded as revenue for the treasury, and its amount is determined by means of regulations.

In accordance with the appropriate regulations, the Ministry also charges employers, for the workers referred to in clause (1) of this section, an additional amount for every work permit, issued or renewed by the Ministry, to be allocated to the Technical and Vocational Education and Training Support Fund established by the Technical and Vocational Education and Training Council Law in force.

The following documents are to be attached to the employment application:

- Work contract, in duplicate.
- A valid professional license of the establishment.
- A photocopy of the worker's passport, which must be valid for at least six months.
- A statement issued by the Social Security Corporation showing that all the employer's workers are registered in the Social Security and that all contributions up to the date of submission of the application have been paid.
- A copy of the projects and bids awarded to the employer, if any.
- A certified police certificate issued by the competent authorities in the country of the worker.
- A legal or bank guarantee in the agricultural sector, and a bank guarantee in all other sectors.

**Foreigners and Social Security:** The Social Security Law treats Jordanians and foreigners as equals. Jordan is a signatory to the following international conventions: ILO Convention No. 19 dated 1925, on the equality of treatment of national and foreign workers with respect to compensation for employment injuries, and to ILO Convention No. 118 on equality of treatment of nationals and non-nationals in social security.

**Human Rights in Jordan:** The Jordanian Constitution, in the chapter on the rights and duties of Jordanians, stated that "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". Jordan sought to formulate a clear policy to protect human rights and enhance Jordan's image as a law abiding

regime that assures equality to all its citizens in both civil and human rights through the following:

- Human rights institutions at the national level in Jordan: New units and departments were created within existing institutions, such as the units formed in the Prime Minister's Office, the Ministry of the Interior, the Public Security Directorate, the Civil Service Bureau, or within independent institutions. The aim of said units and departments is to enhance and protect human rights, instill the principles of freedom and democracy, and assure the lack of discrimination between citizens irrespective of their origins.
- The signature and ratification of a number of international conventions relating to human rights.

**The Status of Palestinian Refugees:** Jordan received Palestinian refugees in three phases. Most, if not all, of said refugees came to hold the Jordanian citizenship. The Palestinians who were residing in Jordan since before 1948 are not regarded as refugees but as Jordanians enjoying all the rights of Jordanian citizens. The first, and largest, group of refugees arrived after the Nakba (Catastrophe) of 1948. Many of them chose to reside in the West Bank, which Jordan annexed and whose Palestinian population, whether refugee or non-refugee, was granted Jordanian citizenship in the early 1950s. Later, following the Israeli occupation of the West Bank and Gaza Strip in 1967, a large number of Palestinians fled to Jordan. The Jordanian Government decided to grant them temporary passports. Jordan's Citizenship Law No. 6 of 1954 stated in Article 3, paragraph 2 that any non-Jewish person who possessed the Palestinian nationality before May 15, 1948 and was a regular resident in the Hashemite Kingdom of Jordan between December 20, 1949 and February 16, 1954 was to be regarded as a Jordanian national.

The Passports Law No. 5 of 2003, published in the Official Gazette on February 16, 2003, stated in Article 2 that a Jordanian is any person who holds the Jordanian citizenship according to the Jordanian Nationality Law in force and who has a national registration number. Article 3 stipulated that Jordanian passports be granted to applicants who are originally Jordanians of established citizenship or who have obtained a certificate of citizenship or naturalization. Article 9 stated that ordinary passports are valid for five years from their date of issue. The Ministry of the Interior issues temporary passports valid for two years for Palestinian refugees from the West Bank and Gaza, to facilitate their movement outside the occupied Palestinian territories and for work, should they wish to live in Jordan for an extended period of time.<sup>125</sup>

Some 1.9 million Palestinian refugees live in Jordan, and about 335,000 of them are registered in ten camps.<sup>126</sup> They are divided into two categories:

- **Category 1:** Refugees who hold Jordanian citizenship and enjoy all their rights as Jordanian citizens according to Jordanian laws and regulations. They comprise most of the refugees.
- **Category 2:** Refugees who carry temporary passports and do not have national registration numbers. About 120,000 persons from Gaza carry these temporary passports and are treated as Jordanian nationals in all sectors, except in regard to the right to vote and run for elections in municipalities and the Parliament. They are granted the possibility of employment in all sectors except in the government. It is noted that a number of refugees from this category are being employed in the Ministry of Agriculture as workers; professional licenses are granted to those in need after approval from responsible authorities.

These refugees are given the same treatment as Jordanians in hospitals and in the Ministry of Health centers, particularly in chronic cases, as well as all children under six years of age. The children of this category of refugees receive the same treatment as Jordanians in their attendance of public schools.<sup>127</sup>

<sup>125</sup> - From Jordan's Ministry of the Interior website.

<sup>126</sup> - UNRWA Statistics, June 2008, from the UNRWA website.

<sup>127</sup> - Personal communication, engineer Wajih Azaizeh, Director General of the Department of Palestinian Affairs in Jordan's Foreign Ministry, December 2008.

**The Department of Palestinian Affairs:** Jordan's successive governments established various departments in response to the humanitarian and demographic aspects of the Palestinian cause. These departments were:

- The Ministry of Refugees, 1949-1950
- The Ministry of Construction and Building, 1950-1980
- The High Ministerial Committee for the Occupied Land Affairs, 1967-1971
- The Executive Bureau for the Occupied Land Affairs, 1971-1980
- The Ministry of the Occupied Land Affairs, 1980-1988
- The Department of Palestinian Affairs in the Foreign Ministry, 1988 till present (in parallel with the passing of the Law on disengagement between Jordan and the West Bank).

**Duties and Powers of the Department of Palestinian Affairs:** Based on Article 22 of the Regulations No. 34 of 1971 pertaining to the organization and administration of the Ministry of Foreign Affairs, the following responsibilities may be cited:

- Supervising refugee and displaced affairs, addressing their issues, and administering the camps' affairs in the districts of the Kingdom in coordination with other ministries and departments.
- Coordinating with the Relief and Works Agency for Palestinian Refugees for the provision of general services in accordance with the agreement concluded between the Government and the Agency in this regard. Also, coordinating with the government ministries and departments within the framework of the Agency's work.
- Activities relating to the Palestinian cause, including the follow-up of Palestinian affairs inside and outside the occupied Palestinian territories, and participation in the work of the Joint Palestinian-Jordanian Committee to support the steadfastness of Palestinians in the occupied territories.
- Studying the issues of Palestinians in the occupied territories that relate to government departments and public and civil institutions, and coordinating between the competent authorities to address them.

## Section Three

### Legislation in Force in the Arab Republic of Egypt

**Palestinian Refugees in Egyptian Legislation:** By law, Palestinians were given the same treatment as Egyptians as of 1954, during the era of the late President Gamal Abdel Nasser. In 1962, and in light of the Labor Law in effect at that time, the responsible Minister issued Decision No. 39 which exempted Palestinian Arabs from the need for a work permit. It was followed by Law No. 61 of 1971 regulating staffing in the public sector. Under Article 3-2 of this Law, Palestinian Arabs were given the same treatment as Egyptians regarding appointments, while retaining their Palestinian citizenship.

In Article 16-1 of the regulations pertaining to staffing in the public sector, issued by Law No. 48 of 1978, legislators dropped the provisions exempting Palestinians from the condition of reciprocity of treatment and according them the same treatment as Egyptians. This was in line with the stipulations of Law No. 47 of 1978 on passing legislation to organize civilian personnel in the State (Article 20). Counselor Al-Maligi believes that the underlying motive for such a step may have been that most Palestinians had already acquired citizenships in Jordan or other Arab States, where they resided or worked, and therefore they would be treated according to Article 16-1, which places the Egyptian citizenship on an equal footing with citizenships of Arab States that deal with the Arab Republic of

Egypt based on the principle of reciprocity.<sup>128</sup>

Ouroub al-Abed, however, believes that this measure may have been in retaliation for the assassination of the Minister of Culture Yousef Al-Sibai by a Palestinian faction.<sup>129</sup>

The above mentioned Article 16-1 stipulated that anyone appointed in public companies must hold the Egyptian citizenship or the citizenship of an Arab State that deals with the Arab Republic of Egypt based on the principle of reciprocity in regard to appointments to the public sector. This requires the existence of a bilateral agreement acknowledging the condition of reciprocity of treatment between Egypt and the Arab State to which the worker belongs, or the presence of Egypt as a signatory to an international agreement that includes the condition of reciprocity.

The condition of reciprocity of treatment when employing foreigners in public sector companies is not only a condition for appointment; it is also a condition for retaining the job. Article 96-5 of Law No. 48 of 1978 stipulated terminating the service of a worker in the event of loss of citizenship or if the condition of reciprocity of treatment is no longer met for nationals of other States. It should also be noted that the restrictions imposed on the employment of foreigners relate to public order, which means that their violation, in addition to rendering the work contract null and void, subjects foreigners to the penalty stated under Article 169 of the Labor Law No. 137 of 1981, amended by the Unified Labor Law No. 12 dated April 7, 2003.

As a result, Palestinians came to be treated as other foreigners, whether in regard to employment or social security. There were a few exceptions that rendered them distinct or which placed them on an equal footing with several other groups of foreigners. The paradox remains however that the treatment of foreigners is based on the condition of reciprocity, whereas this condition cannot possibly apply to Palestinians since there is no State of Palestine that can conclude agreements on reciprocity.

**Regulating Foreigners' Work:** When employing foreigners from Arab States, the condition of reciprocity of treatment must be met. Furthermore, the special rules and regulations within the laws which govern foreigners' employment must be observed. Law No. 137 of 1981 stated in Articles 27 and 28 the conditions pertaining to employing foreigners, namely; prior obtainment of a work permit, and the residence of said foreigners in Egypt.

The Unified Labor Law No. 12 was passed on April 7, 2003, replacing Law No. 137. According to Part 2, Articles 27-30 which regulate the work of foreigners, foreigners may practice specific professions after obtaining a permit from the competent authority.

Based on Article 27 of the Law regulating the work of foreigners, the employment of foreigners in all establishments of the private sector and public sector, as well as in public authorities, local administration, and administrative services of the State is subject to the provisions of the Labor Law and *the observance of the conditions regarding reciprocity of treatment.*

In regulating the work of foreigners, Egyptian legislators took steps to maintain a balance between the protection of the Egyptian workforce and the provision of opportunities for the various sectors to obtain expertise not available in the Egyptian labor market. For this purpose, they subjected all public and private sector establishments to the provisions of the laws and compliance with the condition of reciprocity of treatment, so as to safeguard national public interest.

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128 - Counselor Ahmad Shawqi al-Maligi, *The Intermediary in Social Legislations*, 1984, p. 476.

129 - Ouroub al-Abed, Research Report submitted during the Meeting of Experts on Protection for the Palestinian Refugee, Cairo, 5-8 March 2004.

This condition was interpreted as allowing foreigners to engage in work in Egypt only to the extent that their country permits Egyptians to engage in work in it. The Court of Cassation ruled that “the principle of reciprocity is not only a condition for initiation but also a condition for continuation, which means that the foreigner shall not be permitted to continue working if his country ceases to observe reciprocity of treatment for Egyptians”.<sup>130</sup>

Article 27 stipulated however that the responsible Minister shall determine cases of exemption of foreigners from this condition if one of the parties concerned so requests.

This text shows the flexibility of Egyptian legislators towards foreign labor, in particular towards the Palestinians. This flexibility differs from the position of Lebanese legislators, who to date, and as shown earlier, have not exempted foreigners or Palestinians from the condition of reciprocity of treatment.

Foreigners may only engage in work after obtaining a permit from the competent Ministry, and they must have permission to enter the country and reside therein for purposes of work. The term work includes every form of dependent work, profession or trade, including household services.<sup>131</sup>

Under Article 29, the responsible Minister shall determine, by issuing a decision, the conditions and procedure for obtaining a work permit, the information it should contain, renewal procedures and the fees due. According to Article 30, he shall stipulate the professions, occupations and trades that are barred to foreigners, as well as the maximum number of foreigners who may be employed in the establishments and departments indicated in the Law.

In implementation of the Law, Decision No. 136 was passed on July 21, 2003. It specified in Article 2-2 that the following are exempt from the condition of obtaining a permit:

- Those exempt according to an explicit text in an international agreement to which the Arab Republic of Egypt is a party, within the limits of such agreements.
- Other groups of foreigners, including administrative staff working in embassies and international organizations, foreign correspondents and foreign religious representatives serving without remuneration...

Article 4 of this Decision stipulated that, in granting the permit, the following conditions and considerations should be observed:

- The qualifications of foreigners should be suitable to the professions for which they are requesting a permission to exercise.
- Foreigners should obtain a license to practice the profession in accordance with the laws and regulations in force in the country.
- Foreigners should not compete with national workforce.
- Preference should be given to foreigners residing on a permanent basis in the country.

Article 6 of the Decision stipulated that Palestinians who hold travel documents issued by the Arab Republic of Egypt or by the Palestinian Authority are exempted from paying fees for work permits.

Article 7 stipulated that foreigners seeking to engage in work, or the establishment desiring to employ them, should submit an application for a permit before the administration of competent jurisdiction. Said application should include, in the case foreigners are themselves applying for the permit, the documents establishing approval of the party for whom they will work, in addition to the license to practice the profession where required.

130 - Magistrate Ali Amarah, “The New Labor Law in Light of the Opinions of Jurisprudence and Provisions of the Judiciary Based on its Latest Amendments by Law 180 for 2008”, October 2008, pp. 200-201.

131 - Article 28 of Labor Law No. 12 issued in 2003

Article 15 of the same Decision barred foreigners from employment in the following professions and trades: tourist guide, oriental dancer, export, and customs clearance. Palestinians are exempt from the ban on customs clearance occupations. Here again Egyptian law showed its flexibility and its inclusion of Palestinian labor.

As for the second restriction relating to the employment of foreigners, Article 18 of Decision No. 357 issued in 2004 stated that the number of foreigners in any establishment, including all branches, may not exceed 10% of its total staff. Moreover, the number of foreigners working in the free zones, public and private, may not exceed 25% of the total. Article 19 of the Decision enumerated those excepted from the principle of protecting Egyptian labor from foreign competition, and included the following:

- Palestinians who hold travel documents from the Arab Republic of Egypt and a non-tourist residence permit.
- Holders of passports issued by the Palestinian Authority.
- Palestinian men married to Egyptian women.
- Persons with unspecified citizenships residing in the country on a permanent and continuous basis.
- Political refugees, so long as they obtain the approval of the Refugee Affairs Bureau in the Presidency of the Republic.
- Individuals born in the country or residing in it provided that their residence be permanent and uninterrupted for no less than 15 years.

**Conditions that Must be Met by Foreigners Applying for a Work Permit:** The Central Administration for the Regulation of Employment and Labor Market Information in the Ministry of Manpower and Immigration set forth in its Decision No. 357 issued in 2004 the procedure for obtaining a work permit by foreigners. It states the conditions that must be met by foreigners requesting such permit, the rules of their employment according to their citizenships, and the documents that should be presented. Said documents include general documents (for all foreigners) and special documents relating to the status of the foreigners, such as citizenship, residence or the establishment for whom they will work.

Those holding the Palestinian citizenship should present a statement proving residency for five consecutive years from the Passport, Immigration and Nationality Administration in the Ministry of the Interior in order to obtain a permit. Exceptions are:

- Palestinian men married to Egyptian women.
- Palestinian women married to Egyptian men.
- Employers or partners.
- The employer's son or daughter.
- The Palestinian wife whose husband to whom she bore children has died or is separated from her.
- The son of the Palestinian wife whose Palestinian husband has died, is separated from her or has left the country
- A letter of recommendation from the General Union of Palestinian Workers.<sup>132</sup>

It should be mentioned that, based on the Minister of the Interior's Decision No. 8180 of 1996, Palestinian refugees who carry travel documents issued by Egyptian authorities, and who have resided in the Arab Republic of Egypt for ten years before obtaining the permit have the right to temporary residence for three years, subject to renewal.

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132 - Palestinian Workers in Egypt are represented by a Legally recognized Union since the 1960s, called the General Union of Palestinian Workers.

**Foreigners as Investors:** Egyptian legislators facilitated the obtainment of a residence permit for foreign investors in companies subject to the Law governing investment guarantees and incentives. They allowed temporary residence for a period of five years, renewable under the Minister of the Interior's Decision No. 8180 of 1996. On the other hand, despite the many facilities granted to foreign investors as incentives to invest, there are still some activities closed to foreigners. Some of them relate to the nature of the activity; others relate to the locale of the investment:

#### **Import**

- Registration in the Importers Register is limited to Egyptians to the exclusion of foreigners, as per Article 2 of Law No. 121 of 1982 concerning the Importers Register, whether the foreigner is a natural person or a legal person.
- Foreigners are barred from registering in the Commercial Agents and Intermediary Record and from serving as a commercial intermediary, whether as natural person or legal person.
- Dr. Osama Gamaledine Nasef believes that the wisdom in these two bans is the desire to attract foreign investment and to encourage foreigners to invest in Egypt so as to build a production base, and not to increase imports and foreign dependence or to have foreign investors be a façade for foreign companies and their agents in Egypt.
- Management of tourism companies.

**Rights of Foreign Workers to Social Security:** Social security in Egypt is regulated by four laws:

- Social Security Law No. 79 of 1975 and its amendments: Its provisions apply to virtually all those who work for others in the government, the public sector or the private sector, and it covers old age, invalidity, demise, sickness, employment injuries, and unemployment. For the provisions of this Law to apply to foreigners subject to the Labor Law, the duration of the work contract must be at least one-year long and there should be an agreement on reciprocity of treatment, without prejudice to the provisions of international agreements ratified by the Arab Republic of Egypt. The condition of an agreement on reciprocity of treatment constitutes an obstacle to the ability of Palestinians to benefit from the provisions of this Law, except in the case of employment injuries which can apply to Palestinians, as Egypt has ratified ILO Convention No. 17 on workmen's compensation (accidents), adopted in Geneva on June 10, 1925, and ILO Convention No. 19 on the equality of treatment of national and foreign workers with respect to compensation for employment injuries, adopted in Geneva on June 5, 1925.

- Law No. 108 of 1976: Its provisions apply to employers and those in similar positions. Coverage is limited to the risks of old age, invalidity and demise.

- Law No. 50 of 1978: Its provisions apply to Egyptians working abroad.

- Comprehensive Social Security Law No. 112 of 1980, which applies to irregular employment and covers all employees and workers not subject to the provisions of any of the aforementioned laws.

**Note:** There has been a recent improvement in the situation of Palestinian refugees in Egypt. It is now possible for the children of an Egyptian mother to obtain Egyptian citizenship, under the latest amendment of the Nationality Law following the passing of Law No. 154 of 2004.

## Tables Comparing Lebanese and Arab Legislations

The following tables contain a simple comparison between the occupations that Palestinians may engage in, in Lebanon, Syria, Jordan, and Egypt, whether as employer or as wage earner, and how they benefit from their labor, social security and employment injury laws.

### 1. Works Palestinian Refugees May Engage in (as Employers or Wage Earners)

**Table 1. The Palestinian Employer/Independent Profession/Salaried Profession Regulated by law**

| Profession  | Lebanon  | Egypt | Syria | Jordan |
|---|--|-------|-------|--------|
| Organizing medical Laboratories   | No, due to reciprocity of treatment by a bilateral agreement and license to practice the profession in his country |       | Yes   | Yes    |
| Certified lab technician  | No, due to reciprocity of treatment by a bilateral agreement and license to practice the profession in his country |       | Yes   | Yes    |
| Lab technician  | No, due to reciprocity of treatment by a bilateral agreement and license to practice the profession in his country |       | Yes   | Yes    |
| Physician or Dentist  | No, due to reciprocity of treatment by a bilateral agreement and license to practice the profession in his country |       | Yes   | Yes    |
| Preparation and assembly of prosthetic devices and orthodontics equipment | No, due to reciprocity of treatment by a bilateral agreement and license to practice the profession in his country |       | Yes   | Yes    |
| Topographer   | No, due to reciprocity of treatment by a bilateral agreement and license to practice the profession in his country |       | Yes   | Yes    |
| Physiotherapist   | No, due to reciprocity of treatment by a bilateral agreement and license to practice the profession in his country |       | Yes   | Yes    |
| Certified health Controller   | No, due to reciprocity of treatment by a bilateral agreement and license to practice the profession in his country |       | Yes   | Yes    |
| Health controller   | No, due to reciprocity of treatment by a bilateral agreement and license to practice the profession in his country |       | Yes   | Yes    |
| Engineer  | No, due to reciprocity of treatment by a bilateral agreement and license to practice the profession in his country |       | Yes   | Yes    |
| Engineer  | No, due to reciprocity of treatment by a bilateral agreement and license to practice the profession in his country |       | Yes   | Yes    |
| Certified accountant  | No, due to reciprocity of treatment by a bilateral agreement and license to practice the profession in his country |       | Yes   | Yes    |

| Profession   | Lebanon   | Egypt | Syria | Jordan |
|--|---|-------|-------|--------|
| Specialist in dental laboratory sciences                                   | No, due to reciprocity of treatment by a bilateral agreement and license to practice the profession in his country                          |       | Yes   | Yes    |
| Veterinarian   | No, due to reciprocity of treatment by a bilateral agreement and license to practice the profession in his country                          |       | Yes   | Yes    |
| Registered nurse   | No, due to reciprocity of treatment by a bilateral agreement and license to practice the profession in his country                          |       | Yes   | Yes    |
| Subcontractor  | Yes   |       | Yes   | Yes    |
| Investor   | Yes   |       | Yes   | Yes    |
| Assistant lab technician   | No, due to restriction of the profession to Lebanese  |       | Yes   | Yes    |
| Archeology and tourism guide in Lebanon                                    | No, due to restriction of the profession to Lebanese  |       | Yes   | Yes    |
| Owner of private company for money exchange                                | No, due to restriction of the profession to Lebanese  |       | Yes   | Yes    |
| Real estate agent  | No, due to restriction of the profession to Lebanese  |       | Yes   | Yes    |
| Attorney   | No, due to restriction of the profession to Lebanese  |       | Yes   | Yes    |
| Health worker  | No, due to restriction of the profession to Lebanese  |       | Yes   | Yes    |
| Follow-up of transactions  | No, due to restriction of the profession to Lebanese  |       | Yes   | Yes    |
| Driver training  | No, due to restriction of the profession to Lebanese  |       | Yes   | Yes    |
| Surveyor or public works trainer   | No, due to restriction of the profession to Lebanese  |       | Yes   | Yes    |
| Assistant nurse  | No, due to restriction of the profession to Lebanese  |       | Yes   | Yes    |
| Physician or dentist pursuing specialization                               | Yes   |       | Yes   | Yes    |
| Preparation and as-sembly of prosthetic devices and orthodontics equipment | Yes, if practice of the profession is within a non-profit institution or university-level educational institution or vocational institution |       | Yes   | Yes    |
| Legally certified midwife  | Yes   |       | Yes   | Yes    |
| Roving photographer  | Yes   |       | Yes   | Yes    |

**Table 2. The Palestinian Wage Earner**

| Profession                          | Lebanon  | Egypt | Syria   | Jordan   |
|-------------------------------------|--|-------|---|--|
| Professions restricted to nationals | Before 2005 the Palestinian could not practice these professions. As of 2005, the Palestinian can practice them on condition that he is born in Lebanon. |       | The Palestinian is given the same treatment as the Syrian, without discrimination | The Palestinian may work in professions closed to migrant labor if he resides in the Kingdom, as in this case he would not be considered as summoned from abroad |

## 2. Rights Benefiting Palestinian Wage Earners by Virtue of the Work Contract

| Benefits  | Lebanon                  |                          |               | Egypt |         |             | Syria                    |                          |             | Jordan |         |             |
|---|--------------------------|--------------------------|---------------|-------|---------|-------------|--------------------------|--------------------------|-------------|--------|---------|-------------|
|   | Arab                     | Foreign                  | Palestinian   | Arab  | Foreign | Palestinian | Arab                     | Foreign                  | Palestinian | Arab   | Foreign | Palestinian |
| <i>Citizenship</i>  |                          |                          |               |       |         |             |                          |                          |             |        |         |             |
| <b>End of service compensation</b>                                | Reciprocity of treatment | Reciprocity of treatment | No            |       |         |             | Reciprocity of treatment | Reciprocity of treatment | Yes         | Yes    | Yes     | Yes         |
| <b>Illness and maternity insurance</b>                            | Reciprocity of treatment | Reciprocity of treatment | No            |       |         |             |                          |                          |             | Yes    | Yes     | Yes         |
| <b>Employment injuries &amp; occupational illnesses insurance</b> | Reciprocity of treatment | Reciprocity of treatment | No            |       |         |             |                          |                          |             | Yes    | Yes     | Yes         |
| <b>Family compensations plan</b>                                  | Reciprocity of treatment | Reciprocity of treatment | No            |       |         |             |                          |                          |             | Yes    | Yes     | Yes         |
| <b>Old age Pensions</b>   | Not available            | Not available            | Not available |       |         |             |                          |                          |             | Yes    | Yes     | Yes         |

# Questions & Answers about Employment of Palestinian Refugees in Lebanon

## 1 – How does the law define Palestinian refugees residing in Lebanon?

There is no clear and specific definition for Palestinian refugees in Lebanese law.

In accordance with Decree No. 11770/1948 dated 5/13/1948 every person who sought refuge in Lebanon as a result of the conflict in Palestine, regardless of nationality, original residence location and economic situation, is considered to be a refugee.

In accordance with Article 26 of the Asylum Law “Any foreigner subject to pursuit, condemned for a political crime by a non-Lebanese authority or whose life or freedom is threatened for political reasons can request to be granted the right of political asylum”.

According to the definition of Article 1 of the Law of 7/10/1962 (pertaining to foreigners), “Any natural person who is not of Lebanese nationality is [...] a foreigner.”

## 2 – Does Lebanon apply the international legislations and treaties to which it is a signatory to with regard to the right to work?

Theoretically, yes. Lebanon’s positive laws conform to international treaties in regard to granting foreigners the right to work on its territory without discrimination except where Lebanese nationals abroad do not benefit from the same right to work (the principle of reciprocity). Lebanese laws are devoid of any stipulations which discriminate between one foreigner and another.

In practice, however, there is a loophole which concerns every stateless foreigner such as the Palestinian refugees. Therefore, in the absence of an international entity for the State of Palestine and of recognized legislation issued by a Palestinian State, the principle of reciprocity which is obligatory for an overwhelming majority of occupations and professions a foreigner is permitted to practice in Lebanon, cannot be applied, particularly where the law requires a proof of reciprocity treatment in the form of a bilateral agreement between Lebanon and the foreigner’s State of origin. The foreigner must also possess a license to practice certain professions in his own country, such as medicine, dental medicine, engineering and other fields, which Palestinian refugees cannot obtain as a result of the absence of a regional entity for the State of Palestine.

There are also other loopholes, the most important of which is that Palestinian refugees must comply with all the obligations required of all foreigners with regard to Social Security but do not benefit like they do from its allowances due to the principle of reciprocity.

It should be noted as well that although the ministerial decision No.79/1 issued in 2005 by the Minister of Labor and the subsequent decisions were a positive step, there is still a risk that this decision could be repealed by a succeeding Minister of Labor or that the article pertaining to the Palestinian refugees may be omitted.

For Lebanese laws to conform to international treaties, the issue of employment for stateless Palestinian refugees residing in Lebanon must be attended to by changing the labor laws pertaining to them either by creating a special law specific to them or by modifying current laws.

## 3 – What are the legislative texts which govern the status, the rights and the obligations of Palestinian refugees in the Lebanese labor market?

There are no specific laws regarding the employment of Palestinian refugees in Lebanon. Their status is governed by legislative texts pertaining to the labor market such as the Contract Law, the Labor Law, the

Social Security Law, the Employment Injury Law, and their provisions with respect to foreigners working in Lebanon.

These laws do not stipulate any specific or explicit derogation of the rights of Palestinian refugees to work in Lebanon, which is evident and in conformity with the international treaties and conventions to which Lebanon is a signatory to. However, the conditions and general principles that govern foreigners working in Lebanon and the benefits conferred to them by the work contract lead to a situation of inequality between Palestinian refugees and all other foreigners due to Palestinians' inability to ensure the required conditions and qualifications for certain professions, and especially, proof of reciprocity.

#### **4 – What is meant by the principle of reciprocity in the Labor Law and the Social Security Law? And what are its implications on the Palestinian refugees in Lebanon?**

##### **General definition**

According to the Lebanese Labor Law, the principle of reciprocity means that a foreigner is allowed to work in Lebanon only to the extent that the country of that particular foreigner accords a Lebanese worker the same rights.

According to the Social Security Law, this principle means that foreign workers cannot benefit from Social Security allowances unless they possess a work permit in accordance with the laws and regulations in effect, and unless the State to which they belong endorses the principle of equality between Lebanese citizens and its nationals with regard to Social Security. The States which deal with Lebanon on the basis of reciprocity with respect to Social Security (part or all of its branches) and the conditions for extending its benefits to their citizens are determined in accordance with decisions issued by the Fund's Board of Directors after consultation with the Ministry of Foreign Affairs and Emigrants.

##### **The implications of this principle on Palestinian refugees**

The principle of reciprocity constitutes a major obstacle to the ability of Palestinian refugees to work in Lebanon. The reason is the following: In the absence of an international entity for the State of Palestine and of recognized legislation issued by the State of Palestine, the principle of reciprocity which is obligatory for an overwhelming majority of occupations and professions a foreigner is permitted to practice in Lebanon, cannot be applied, particularly where the law requires – as a proof of reciprocity treatment – a bilateral agreement between Lebanon and the foreigner's State of origin. As a result, a large number of occupations and professions are barred to many Palestinians, whether born in Lebanon or residing abroad.

Furthermore, Palestinian refugees cannot benefit from the allowances of the National Social Security Fund – although they have to comply with its obligations like all other workers – because of the principle of reciprocity. This is due to the fact that registration in Social Security is obligatory while the provisions of Social Security do not tackle at all the situation of refugees (in general), whether Palestinian or from other nationalities.

#### **5 – Does Lebanese law require a compulsory work permit for foreigners and Palestinian refugees for all authorized occupations? What are the laws and decisions which govern obtaining a work permit and what fees do the Palestinian refugees have to pay?**

Is the work permit compulsory? Yes, a work permit is required by law under Article 2 of Decree No. 17561 dated 9/18/1964 (work regulations for foreigners).

It is obvious from the above mentioned article that a work permit is compulsory for Palestinians and non Palestinians alike.

One must mention here the documents and formalities needed to obtain a work permit. These formalities are not easy and represent an additional obstacle for Palestinian refugees, who do not benefit from the work permit to the same extent as other foreigners working in Lebanon.

### **Documents needed to obtain a work permit**

- 1- An original labor contract authenticated by a notary that specifies the type of work.
- 2- An insurance policy with a photocopy of the card or the original receipt.
- 3- A Palestinian refugee ID.
- 4- A photocopy of the employer's commercial circular and certificate of registration in the trade register (if the employer is a business or a company) or a photocopy of the employer's ID.

### **Work permit fees for Palestinian refugees in Lebanon**

Article 26 of Law No. 1/70 dated 01/19/1970 (residence card fees for non-Lebanese and renewal fees for foreigners' work permits) and amended by the Budget Law for 2002 specifies the annual fees imposed on work permits of foreigners with the exception of musicians and artists as follows:

- 1,800,000 LL for first category foreigners (foreigners who exercise important professions in trade, industry, banking and tourism and earn per month at least three times the minimum monthly wage).
- 960,000 LL for second category foreigners (foreigners who exercise the same abovementioned professions but on a smaller scale or practice independent professions and earn per month more than two and up to three times the minimum monthly wage).
- 480,000 LL for third category foreigners (foreigners who work as craftsmen or operate a small business and earn per month an income ranging between the minimum monthly wage and its double).
- 240,000 LL for fourth category foreigners (all other foreigners, in particular those who are not subject to the Labor Law, who earn per month less than the minimum monthly wage (Article 1, Two, (1))

Law 61/88 stipulates that Palestinians registered in the Directorate for Political and Refugee Affairs should pay 25% of the abovementioned fees for work permits (Article 1, Two, (2)). According to Paragraph 4 of the same Article, the Minister of Labor shall rule after checking the category of the permit applicant.

### **6 – What are the occupations and professions that Palestinian refugees can practice? And are there any obstacles standing in the way of their ability to practice them?**

In theory, Palestinian refugees can practice the occupations and professions restricted to Lebanese nationals, by virtue of the Ministerial Decision No. 94/1 issued by the Minister of Labor in 2008, which excludes in Article 3, Paragraph 1, Palestinian refugees from said restrictions, provided that they are born in Lebanon, officially registered in the records of the Lebanese Ministry of the Interior, and have obtained a work permit. These occupations and professions are numerous and include:

a – Wage earners:

Banking and administrative work of all kinds, particularly:

Manager – Assistant manager – Staff manager – Treasurer – Accountant – Secretary – Clerk – Documentalist – Archivist – Computer worker – Commercial representative – Marketing representative – Foreman – Warehouse keeper – Salesman – Tailor – Electrical installations – Mechanics and maintenance – Paintwork – Installation of glass panes – Doorman – Watchman – Driver – Hairdresser – Electronic work – Arabic food cook – The technical professions in the construction sector and its derivatives such as tiling, coating, plastering, installation of aluminum, iron, wood or decoration works, and the like – Smithery and upholstery work – Nursing – All kinds of work in pharmacies, drug warehouses and medical laboratories – Teaching at the elementary, intermediate and secondary levels with the exception of foreign language teaching when necessary – Engineering work of all specialties – Measurement and surveying work – In general all occupations and professions which can be filled by Lebanese nationals.

b – Business owners:

Commercial work of all kinds – Money exchange – Accounting – Commissions – Engineering work of all types – Jewelry – Printing, publishing and distribution – Sewing and darning – Hairdressing – Ironing and dry-cleaning – Car repairs (blacksmith, paint, mechanics, installation of glass, upholstery and car electricity) – Independent professions (engineering, medicine, pharmacy, law) unless the foreigner obtains an authorization allowing him/her to practice a profession or occupation which he/she can prove to be non-prejudicial to or in competition with Lebanese business owners.

However, **in practice**, the Ministerial Decision No. 94/1 issued by the Ministry of Labor in 2008 did not have any concrete results, as it is not enough to allow Palestinian refugees access to a number of occupations and professions if they cannot benefit from the advantages that go with a work contract, like health insurance, severance pay insurance, etc. Therefore, although Palestinians were allowed to work in fields restricted to Lebanese nationals, the obstacle of the principle of reciprocity was not lifted with respect to benefiting from the allowances of the National Social Security Fund.

## **7 – What is the situation of Palestinian refugees with regard to practicing independent professions governed by the Labor Law?**

a – Professions that Palestinian refugees can practice in Lebanon

Contractor - Investor - Physician or dentist pursuing a specialization - Preparation and fitting of artificial limbs and orthopedic apparatuses provided that this occupation is practiced within the framework of a non-profit organization or an academic institution or a vocational training center - Legal midwife - Itinerant photographer.

b – Professions that Palestinian refugees cannot practice because they are restricted to Lebanese nationals

### ***With regards to wage earning professions governed by special laws***

Lebanese Law has regulated some wage earning professions –namely professions where the person working is an employee and not an employer– in a way as to prohibit workers from practicing them unless they fulfill specific conditions and qualifications. In some cases, the workers should even be members of the corresponding professional association. Therefore, Palestinian refugees cannot practice these professions because they are restricted to Lebanese nationals. Among these professions:

Health worker - Registered nurse - Assistant nurse.

### ***With regards to independent professions***

Regulation of the profession of archeological and tourist guides in Lebanon - Regulation of the profession of real estate agents - Regulation of the money exchange profession - Regulation of the legal profession - Regulation of the profession of follow-up of formalities at the car and vehicle registration department - Regulation of the profession of driving instructors for cars and all other vehicles - Assistant laboratory technician - Land surveyor or work instructor.

c – Occupations that Palestinian refugees cannot practice because of the principle of reciprocity

The provisions pertaining to independent professions differ from one profession to another depending on the laws governing them. A major obstacle faced by Palestinian refugees in the majority of independent professions is the principle of reciprocity.

Regulation of medical laboratories - Certified laboratory technician - Laboratory technician - Physician or dentist - Preparation and fitting of artificial limbs and orthopedic apparatuses - Topographer - Physiotherapist - Certified health inspector - Health inspector - Engineer - Certified chartered accountant - Dental laboratory specialist - Veterinarian - Registered nurse.

## **8 – Why does the Social Security Law require foreigners working in Lebanon with a work permit to subscribe and contribute to the Social Security Fund, yet does not allow them to benefit from its advantages?**

According to the law, the Social Security is an independent national institution of a social nature intended to provide insurance to Lebanese nationals only and not foreigners.

Foreign workers on Lebanese territory are subject to all the obligations stipulated by the Social Security Law yet cannot benefit from its allowances unless they possess a work permit in accordance with the laws and regulations in effect, and unless the State to which they belong endorses the principle of equality between Lebanese citizens and its nationals with regard to Social Security. The States which deal with Lebanon on the basis of reciprocity with respect to Social Security (part or all of its branches) and the conditions for extending its benefits to their citizens, are determined in accordance with decisions issued by the Fund's Board of Directors after consultation with the Ministry of Foreign Affairs and Emigrants (the principle of reciprocity).

With regards to the end of service branch, neither the employer nor the employee are bound by the obligations of the Fund unless the right of the employee to benefit from it is proven, namely on the basis of reciprocity.

The law requires that all foreigners and Lebanese nationals be subject to its provisions as registration in Social Security is obligatory, and the Fund's revenues are mainly composed of its registered members' contributions. Foreigners cannot be exempted of the obligations of the Fund, namely registration and contributions, as this would lead to the preferential employment of foreigners over Lebanese nationals.

The provisions of the Social Security do not tackle the situation of refugees at all (in general) whether Palestinian, political or other.



# Summary

**1. The General Situation:** Any study conducted on Palestinian refugees will conclude that there is no unique and unified definition of said refugees. This lack of a unified definition has led to discrepancies and disadvantages as to their situation in Lebanon. Perhaps the major problematic area lies within their work conditions in Lebanon.

The passage of legislations relating to employment in Lebanon was done in various stages, however none addresses the status of Palestinian refugees in Lebanon; neither directly nor indirectly. While some legislations were issued before 1948, it should be noted that others *were passed after the Palestinian displacement and migration, without addressing the Palestinians' prevailing situation in Lebanon*, thus creating a void. Laws passed after the migration examined, in a detailed and methodical manner, issues pertaining to employment, residence, and the entry of foreigners into Lebanese territory and their exit from it. However, said Laws failed to take into consideration the specific and exceptional situation of Palestinian refugees residing in Lebanon, including them into general texts covering all foreigners. Hence, Lebanese legislators placed Palestinians on an unequal footing with other foreigners as the foreign labor in Lebanon is unfortunately governed by the principle of “reciprocity of treatment”, which cannot be met by Palestinians.

**2. The Situation Regarding Employment:** Research on the employment of Palestinian refugees in Lebanon is not an easy task to undertake. Official documented information and legislation specific to Palestinian employment are practically inexistent in Lebanon, unlike some other Arab States. Hence, it was necessary to research and review existing legislations and jurisprudence closely. The legislative reality confirms the exceptional situation prevailing on the issue of employment of Palestinian refugees in Lebanon. Work, as previously pointed out in this study, constitutes one of the most important components of human dignity and social stability. Yet, despite the fact that Lebanon is a signatory to a number of Arab and international treaties guaranteeing work for all persons on its territory, without discrimination as to color, sex or religion, on the basis of equality between all in obligations, rights and guarantees, it is evident that Palestinians are unable to work in many fields and professions in Lebanon due to their special situation. The problem is essentially two-fold:

– *Political*, arising from the rejection of Palestinians' settlement in Lebanon, the common erroneous belief which holds that assuring Palestinians job opportunities will lead to their integration into the Lebanese society therefore reinforcing their presence in it, and the concern that this integration would lead to a kind of settlement.

– *Legislative*, relating to the conditions that positive Lebanese laws impose, such as the principle of reciprocity of treatment. This principle states that, in order to give a foreigner the right to work in Lebanon and enable him to benefit from the advantages associated with the work contract, this particular foreigner's country should accord the Lebanese working on its territory reciprocal treatment. Consequently, this principle is an obstacle to Palestinian employment in Lebanon so long as there is no international recognition of a State of Palestine and of Palestinian legislations, and therefore no proof of reciprocity. In addition, requiring reciprocity of treatment was not sufficient in many cases for Lebanese legislators; they went so far as to ask for the acknowledgment of this principle in a bilateral agreement

between Lebanon and the foreigner's State. This is an impossible requirement for Palestinians to fulfill.

This state of inequality between Palestinians and all other foreigners in Lebanon violates the spirit, if not the text, of the provisions of international charters and treaties, which Lebanon is a signatory to, with respect to equality without discrimination between foreigners working on its territory. It is incumbent on the Lebanese State to address this matter by introducing special legislations regulating the employment of Palestinians in Lebanon, in order to fill the void resulting from the absence of international recognition of a regional and geographical entity forming a Palestinian State.

**3. First Attempts:** The first attempt did not come from legislators but from the executive authority, through Decision No. 79/1 dated June 2, 2005 issued by the Minister of Labor. In Article 2 of this decision, Palestinians born on the Lebanese territory and officially registered in the records of the Lebanese Ministry of the Interior were exempted from the conditions applying to foreigners. This exception was confirmed by subsequent decisions, the latest being Decision No. 94/1 published on June 26, 2008.

Despite the importance of this groundbreaking decision, which constitutes an important step towards facilitating the employment of Palestinians in Lebanon, the fact that it was issued by the Minister of Labor gives rise to the risk that it could be repealed or amended by a succeeding minister. Thus, the matter becomes dependent on each minister's policy on foreign labor. In addition, ministerial decisions occupy the lowest rung of the legislative ladder, with decrees one level above them, followed by implementing decrees, legislative decrees, and laws. What is needed is a radical treatment of this situation, not through a decision of the Minister of Labor but at the legislator's level through the passing of legislations and laws that regulate the employment of Palestinians in Lebanon.

It should be noted that more than 400,000 Palestinian refugees are registered in the rosters of the Relief Agency for Palestine Refugees in the Near East (UNRWA), and they suffer from the scarcity of employment opportunities available to them in Lebanon.

No doubt the presence of such a large number of Palestinian refugees in Lebanon requires that the State of Lebanon take the necessary measures to enable them to work. Palestinian refugees should not be granted complete freedom and unconditional rights to labor, they simply should be rendered equal to all other foreigners. Said equality would entail taking into consideration their exceptional situation caused by the absence of a Palestinian State which could have addressed the issue of the principle of reciprocity of treatment and the bilateral agreements acknowledging it.

Once the matter is resolved at the legislative level, allowing Palestinians to work in Lebanon like all other foreigners, the solution would be a stable one and could only be revoked by same-level legislation.

**4. The Merits of Regulating the Employment of Palestinian Refugees in Lebanon:** Regulating the employment of Palestinian refugees in Lebanon by removing the obstacles that stand in their way would lead to thousands of job opportunities for them.

Work opportunities for the Palestinian refugees in Lebanon would not encroach on Lebanese employment. It may affect the employment of foreigners in that it would increase job opportunities for Palestinians in relation to all other foreigners or in comparison with them; but it would not affect the Lebanese workforce since the latter is protected by Lebanese law, irrespective of the citizenship of foreign workers or their jobs. Creating job opportunities for the Palestinians would lead to defusing discontent simmering in the Palestinian society, which in turn would reflect favorably on the Lebanese society.

The goal is only to remove the obstacles that confront Palestinian's ability to obtain jobs that assure them the income necessary for their sustainment, and to treat them like all other foreigners. The

employment of Palestinians will not lead to their integration into the Lebanese society. Rather, it will give rise to a healthier Palestinian society, a society that works and is productive in the State of Lebanon until such a time as it is able to exercise its right to return to its country - a society that lives in peace within the Lebanese society.

The necessitated legislations must not only remove the obstacles facing the employment of Palestinian refugees in Lebanon; they must also address in particular the basic guarantees associated with the work contract, such as employment injury compensation, end of service compensation, and all other benefits that ensure a just termination of the work contract. Foreign wage earners enjoy certain social security benefits, based on the principle of reciprocity. If the inclusion of the Palestinian workforce in Lebanon under the banner of social security benefits, whether some or all of them, would shake the foundations of this institution, a new institution can be created in cooperation with the State of Lebanon, UNRWA and all the popular organizations representing Palestinian refugees in Lebanon. This is only one of the many options suggested and examined by joint and specialized committees and bodies.

This, in brief, is the reality of the Palestinian refugees' employment situation in Lebanon. Improving this situation would reflect positively on the Lebanese society.

# Draft Bill Aimed at Regulating the Employment of Palestinian Refugees in Lebanon

## Necessitating Causes

**1 – The Republic of Lebanon and international agreements relating to the right to equality of opportunity and of treatment in employment and occupation:** The General Conference of the ILO adopted Convention No. 100 on June 6, 1951, at its 34th session, and Lebanon ratified it by Decree No. 70 dated June 25, 1977. The General Conference of the ILO adopted Convention No. 111 on June 25, 1958, at its 42nd session, and Lebanon ratified it by Decree No. 70 dated June 25, 1977. Article 1 of ILO Convention No. 111 held that the word “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 treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers’ and workers’ organizations, where such exist, and other appropriate bodies.

Each member State for which this Convention is in force pledges “to declare and pursue *a national policy designed to promote*, by methods appropriate to national conditions and practice, *equality of opportunity* and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.”

Thus, Convention No. 111 defines discrimination as 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.

The use of the phrase “which has the effect of nullifying or impairing” addresses the issue of *direct and indirect discrimination*. Special attention should be paid to the importance of preparing texts that cover *both types of discrimination* equally when drafting laws at a national level. Direct discrimination results when unequal treatment is a direct effect of laws, statutes and practices that clearly discriminate between one foreigner and another.

*Indirect* discrimination refers to the considerations, statutes and practices that appear to be neutral but in fact lead to abuses against a given group of persons in particular. When laws pertaining to employment and related benefits apply to all groups of foreigners working within a State’s territory, but do not take into account the existence of a group of persons that does not meet the conditions required for employment and for benefiting from the advantages associated with the work contract, *the State must issue laws that are specific to this group of foreigners and administer their affairs in an adequate manner. If said State fails to do so, it would be in violation of the principle of equality enshrined in the Declaration of Philadelphia.*

It is not enough for a State to say that its laws forbid discrimination; the application of these laws must also not lead to discrimination between working foreigners. In such cases where, within the territory of a given State, a category of foreigners is unable to exercise the right to work (a right guaranteed by international agreements) and in the absence of any text clearly barring such category from this right, if the State refrains from issuing special legislations to regulate employment of this category of foreigners, then

said State would be in breach of the international agreements stipulating the elimination of all forms of discrimination between foreigners. *This is referred to as an act of omission.*<sup>19</sup>

## **2 – Employment of Palestinian Refugees in Lebanon and Its Place in Lebanese Legislation:**

Research on the employment of Palestinian refugees in Lebanon is not an easy task to undertake. Official documented information and legislation specific to Palestinian employment are practically inexistent in Lebanon, unlike some other Arab States. The legislative reality confirms the exceptional situation prevailing on the issue of employment of Palestinian refugees in Lebanon. Here, a question is raised: Is Lebanon applying the international legislations and charters to which it is a signatory to with regard to the right to work?

**In theory**, Lebanon's positive laws conform to international treaties in regard to granting foreigners the right to work on its territory without discrimination except where Lebanese nationals abroad do not benefit from the same right to work (the principle of reciprocity). Lebanese laws are devoid of any stipulations which discriminate between one foreigner and another.

**In practice**, however, there is a loophole which concerns every stateless foreigner such as the Palestinian refugees. Therefore, in the absence of an international entity for the State of Palestine and of recognized legislation issued by a Palestinian State, the principle of reciprocity which is obligatory for an overwhelming majority of occupations and professions a foreigner is permitted to practice in Lebanon, cannot be applied, particularly where the law requires a proof of reciprocity treatment in the form of a bilateral agreement between Lebanon and the foreigner's State of origin. The foreigner must also possess a license to practice certain professions in his own country, such as medicine, dental medicine, engineering and other fields, which Palestinian refugees cannot obtain as a result of the absence of a regional entity for the State of Palestine.

Work constitutes one of the most important components of human dignity and social stability. Yet, despite the fact that Lebanon is a signatory to a number of Arab and international treaties guaranteeing work for all persons on its territory, without discrimination as to color, sex or religion, on the basis of equality between all in obligations, rights and guarantees, it is evident that Palestinians are unable to work in many fields and professions in Lebanon due to their special situation. The problem is essentially two-fold:

- Political, arising from the rejection of Palestinians' settlement in Lebanon, the common erroneous belief which holds that assuring Palestinians job opportunities will lead to their integration into the Lebanese society therefore reinforcing their presence in it, and the concern that this integration would lead to a kind of settlement.

- Legislative, relating to the conditions that positive Lebanese laws impose, such as the principle of reciprocity of treatment. This principle states that, in order to give a foreigner the right to work in Lebanon and enable him to benefit from the advantages associated with the work contract, this particular foreigner's country should accord the Lebanese working on its territory reciprocal treatment. Consequently, this principle is an obstacle to Palestinian employment in Lebanon so long as there is no international recognition of the State of Palestine and of Palestinian legislations, and therefore no proof of reciprocity. In addition, requiring reciprocity of treatment was not sufficient in many cases for Lebanese legislators; they went so far as to ask for the acknowledgment of this principle in a bilateral agreement between Lebanon and the foreigner's State. This is an impossible requirement for Palestinians to fulfill.

This state of inequality between Palestinians and all other foreigners in Lebanon violates the spirit, if not the text, of the provisions of international charters and treaties, which Lebanon is a signatory to, with respect to equality without discrimination between foreigners working on its territory. It is incumbent

on the Lebanese State to address this matter by introducing special legislations regulating the employment of Palestinians in Lebanon, in order to fill the void resulting from the absence of international recognition of a regional and geographical entity forming a Palestinian State. The presence of a large number of Palestinian refugees, more than 400,000, in Lebanon requires that the State of Lebanon take the necessary measures *not only* to supervise their presence in the camps, ensure their safety and security, and enable their mobility within the Lebanese society, but also to enable them to work. Palestinian refugees should not be granted complete freedom and unconditional rights to labor, they simply should be rendered equal to all other foreigners. Said equality would entail taking into consideration their exceptional situation caused by the absence of a Palestinian State which could have addressed the issue of the principle of reciprocity of treatment and the bilateral agreements acknowledging it. This matter must be resolved not only by decisions of ministries and official administration but also at the legislative level. Once it is resolved at the legislative level, allowing Palestinians to work in Lebanon like all other foreigners, the solution would be a stable one and could only be revoked by same-level legislation.

### **3 – The Positive Effects of Regulating the Employment of Palestinian Refugees in Lebanon:**

There are no negative effects to any legislation regulating a reality or a *de facto* situation. Palestinian refuge in Lebanon is a reality that must be dealt with. This should be done constructively, with openness and realism. Regulating the employment of Palestinian refugees in Lebanon by removing the obstacles that stand in their way would lead to thousands of job opportunities for them. What Palestinian in Lebanon does not wish to find a job or profession that would permit him to live with dignity? Once Palestinians find job opportunities, the money they gain will flow back into the Lebanese financial market; it will not be sent abroad like the earnings of a large section of foreign labor. This will lead to the circulation of liquidity, without loss. Work opportunities for the Palestinian refugees in Lebanon would not encroach on Lebanese employment. It may affect the employment of foreigners in that it would increase job opportunities for Palestinians in relation to all other foreigners or in comparison with them; but it would not affect the Lebanese workforce since the latter is protected by Lebanese law, irrespective of the citizenship of foreign workers or their jobs. Creating job opportunities for the Palestinians would lead to defusing discontent simmering in the Palestinian society, which in turn would reflect favorably on the Lebanese society.

The goal of a draft bill is only to remove the obstacles that confront Palestinian's ability to obtain jobs that assure them the income necessary for their sustainment, and to treat them *like all other foreigners*. The employment of Palestinians will not lead to their integration into the Lebanese society. Rather, it will give rise to a healthier Palestinian society, a society that works and is productive in the State of Lebanon until such a time as it is able to exercise its right to return to its country - *a society that lives in peace within the Lebanese society*. The draft bill not only removes the obstacles facing the employment of Palestinian refugees in Lebanon; it also addresses in particular the basic guarantees associated with the work contract, such as employment injury compensation, end of service compensation, and all other benefits that ensure a just termination of the work contract. Foreign wage earners enjoy certain social security benefits, based on the principle of reciprocity. If the inclusion of the Palestinian workforce in Lebanon under the banner of social security benefits, whether some or all of them, would shake the foundations of this institution, a new institution can be created in cooperation with the State of Lebanon, UNRWA and all the popular organizations representing Palestinian refugees in Lebanon.

**4 – Proposed Solution:** It is necessary, in order for Lebanese laws to be in accordance with international charters, to address the question of the employment of refugees residing on its territory and who have no State, by changing the rules of employment relating to them. The Republic of Lebanon, by refraining from issuing such laws, is reinforcing the state of inequality between Palestinians and all other foreigners, which is a fundamental violation of the international agreements Lebanon is a party to. Laws are made to serve humanity and not inconvenience it. There are many documented cases in Lebanon in

which legislators purposely addressed exceptional situations imposed by reality. The following are some examples:

- 1) A succession of exceptional rent laws that required extending rent contracts, the last of which was Law No. 160/92, amended and expanded.
- 2) Law No. 302 dated March 21, 1994 on the implementation of capital punishment for homicides that are premeditated or politically motivated, or that have a political character (subsequently cancelled by Law No. 338 dated August 2, 2001).
- 3) Law No. 687 dated October 13, 1998, adding a paragraph to Article 49 of the Constitution (in order to elect General Emile Lahoud President of the Republic of Lebanon).

The draft bill proposed contains the following essential features:

**a) – No compromise on the principle of “rejection of settlement”:** Settlement entails canceling the Palestinian identity of Palestinian refugees and giving them the Lebanese identity so that they become Lebanese nationals. The attached draft bill does not contain any text allowing the settlement of Palestinian refugees in Lebanon, or giving them a Lebanese identity. Thus, the texts in force concerning Lebanese citizenship remain unchanged and unaltered.

**b) – No compromising on the right of return:** The proposed draft bill does not in any way compromise the reserved right of return of Palestinian refugees, in accordance with international treaties and charters.

**c) – No granting of any privileges over other foreigners to Palestinian refugees:** The proposed draft bill does not give Palestinian refugees any added privileges in relation to all other foreigners on Lebanon’s territory. Rather, it places the same burden on Palestinians concerning rights and obligations as those placed on all other foreigners, in return of enjoying the same benefits.

## Draft Bill Aimed at Regulating the Employment of Palestinian Refugees in Lebanon

**Article 1:** This Law is concerned with regulating the work of Palestinian refugees residing in Lebanon.

**Article 2:** By the expressions shown hereunder, wherever they appear in this Law, the following is meant:

- The State: The Republic of Lebanon.
- Palestinian refugees: The Palestinian refugees born on the Lebanese territory and officially registered in the records of the Lebanese Ministry of the Interior.
- Fund: The Palestinian Refugees Social Security Fund.

**Article 3:** Palestinian refugees are regarded as Arabs. They are subject to all provisions relating to the work of foreigners in Lebanon, in particular obtainment of the work permit against the same fee that all foreigners pay, with due consideration to the privileges granted to Arab subjects in general, except such privileges and provisions as are stipulated in bilateral agreements.

**Article 4:** Notwithstanding any text to the contrary, Palestinian refugees shall be exempt from the application of the principle of “reciprocity of treatment” wherever it appears in Lebanese laws. Pursuant to this they shall be exempted from the conditions of providing proof of reciprocity or acknowledgement of this principle in a bilateral agreement. The provisions relating to the numerical ratio rule shall remain in force and in effect. For application of the provisions of this rule, the records of the Lebanese Ministry of the Interior shall be adopted in determining the number of Palestinian refugees.

**Article 5:** Notwithstanding any text to the contrary, Palestinian refugees shall be exempt from the condition of obtainment of a license for the exercise of a profession in their country, wherever this appears in the text of Lebanese laws. This condition shall be replaced by obtainment of such license from the Lebanese authorities through competent administrations.

**Article 6:** Notwithstanding any text or agreement to the contrary, Palestinian refugees shall not be subject to the provisions of Decree No. 13955 dated September 26, 1963 (Social Security Law) nor to the requirement of paying the contributions. They shall not benefit from its provisions, but they shall be subject to the provisions of Legislative Decree No. 136 dated September 16, 1983 (Employment Injury Law) without prejudice to their exemption from the application of the principle of reciprocity.

**Article 7:** A special Fund named the “Palestinian Refugees Social Security Fund” shall be established in Lebanon. The Fund is an independent institution of a social nature that enjoys a legal personality and financial and administrative autonomy. Its head office is located in Beirut. It also has the right to establish area offices. The Fund is not subject to monitoring by the Civil Service Board or the Central Inspectorate, nor is it subject to the provisions of Legislative Decree No. 150 dated June 12, 1959 (Public Officers Act).

**Article 8:** The administrative organization of the Fund, its scope of application of social security and all its branches for the Palestinian refugees, date of initiation of operations in each branch, by-laws, all provisions relating to the Fund and the details of their application, staffing, and wage scale, shall all be determined by virtue of a Law and rest on legitimate foundations drawn up

by the Board of Directors stipulated in Article 8 of this Law. The Board of Directors shall complete, no later than two months from the date of its formation, the draft bill referred to, accompanied by necessitating causes, explanations and justifications where necessary.

**Article 9:** All texts contrary to this Law or in conflict with its provisions are hereby cancelled effective immediately following publication of said Law in the *Official Gazette*.

# Draft Social Security Bill for the Palestinian Refugees in Lebanon

## Book One – Creation of the Fund

### Part I – Administrative Organization and Scope of Application of the Social Security

#### Article 1: Creation of the Fund

- 1 – special Fund named the “Palestinian Refugees Social Security Fund” shall be established in Lebanon. It shall manage the social security system and all its branches for Palestinian refugees in Lebanon in accordance with the definition in Article 2 of this Law.
- 2 – The Fund is an independent institution of a social nature that enjoys a legal personality and financial and administrative autonomy. Its head office is located in Beirut. It also has the right to establish area offices.
- 3 – The Fund is not subject to monitoring by the Civil Service Board or the Central Inspectorate, nor is it subject to the provisions of Legislative Decree No. 150 dated June 12, 1959 (Public Officers Act).

#### Article 2: Fund Revenues

The revenues of the Fund consist primarily of the following:

- 1 – Contributions paid by members; from employers to wage earners.
- 2 – Contributions of the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA).
- 3 – Contributions of associations representing Palestinian refugees in Lebanon.
- 4 – The coverage provided by insurance and reinsurance companies through a group insurance contract signed between the Fund and the companies.
- 5 – Gifts and donations.
- 6 – Return on the investments of the Fund.

#### Article 3: Administration

The Fund shall be managed by a Board of Directors consisting of the following:

- 1 – A delegate representing the Lebanese State.
- 2 – A delegate of the UN Relief and Works Agency for the Palestinian Refugees in the Near East (UNRWA).
- 3 – A delegate representing the General Confederation of Labor Unions.
- 4 – A delegate representing the Association of Industrialists.
- 5 – A delegate representing the associations of independent professions.
- 6 – A delegate from the associations representing Palestinian refugees in Lebanon.
- 7 – A delegate representing insurance and reinsurance companies operating in Lebanon.

#### Article 4: Term of the Board of Directors

- 1 – The term of the Board of Directors shall be four years long.
- 2 – Should one of the delegates resign or pass away, a successor is to be appointed for the remainder of the term in accordance with the rules of succession.

- 3 – The Chairman of the Board of Directors shall be the delegate representing the Lebanese State.
- 4 – Decisions of the Board shall be taken by absolute majority. Every delegate shall have one vote and, in the event of a tie-vote, the vote of the Chairman shall decide.
- 5 – The Board shall keep a ledger of the minutes of its sessions, in which session proceedings and decisions taken shall be recorded. The ledger shall be signed by all attendees at the end of each session. Objections and reservations of members of the Board, if any, shall also be logged within.
- 6 – The Board shall convene once a month at the invitation of its Chairman. It may hold exceptional meetings if necessary upon written requests of at least one-third of the delegates or at the request of the Minister of Labor and Social Affairs.
- 7 – Each delegate shall be remunerated for actual attendance of every meeting of the Board. The amount of this remuneration shall be determined by Cabinet decree at the recommendation of the Minister of Labor and Social Affairs. No delegate may receive any additional wage or compensation or other benefit for any work performed in the interest of the Fund. The remuneration shall be paid from the Fund's budget.
- 8 – Members of the Board of Directors are personally accountable, even to third parties, for any acts of treachery they may have perpetrated in the performance of their duties. They are accountable individually and jointly for their actions in the Board and liable for any damages incurred by the harmed parties, with the exception of members who contravened the contested decision and whose breach was recorded in the minutes of the meeting.
- 9 – A claim of accountability shall become void after a five-year lapse from the date of such decision.

#### **Article 5: Prerogatives of the Fund's Board of Directors**

The prerogatives of the Board of Directors of the Fund shall entail:

- 1 – Organization and appointment of the Financial Committee entrusted with short-term, medium-term or long-term investments of the Fund's revenues in accordance with the provisions of this Law.
- 2 – Authorization of the Director General to acquire or sell immovable properties where these properties are allocated for the internal operation of the Fund or for social services that are under his direct jurisdiction.
- 3 – Adoption of all the Fund's by-laws, staff statute, and the wage scale for all the departments of the Fund.
- 4 – Adoption of the Fund's administrative budget and budget addendums.
- 5 – Closing of accounts for the administrative budget, budget addendums and all Fund accounts, and adoption of a general budget, reports and clarification statements set forth in the Fund's statute.
- 6 – Designation of the priorities in social appointments.
- 7 – Definition of the principles for the establishment of local and area offices.
- 8 – Deciding on matters that the Law does not require submitting to the Cabinet or securing endorsement from the trusteeship authority.
- 9 – Taking decisions following the reports of the Technical Committee, or the comments of trusteeship authority, provided those decisions are of an administrative or technical nature and need not be submitted to the Cabinet or trusteeship authority for a second time.
- 10 – Appointment of employees of the third and second categories by competition in accordance with the stipulations of this Law.

#### **Article 6: The Technical Committee**

- 1 – The Technical Committee is a permanent body of the Fund exercising functions designated for it in this Law and in the Fund's by-laws.
- 2 – The Committee consists of a Chairman, appointed by UNRWA, and two Members; one

- appointed by the Lebanese State and the other by the associations representing Palestinian refugees in Lebanon. The Chairman and both Members of the Technical Committee must each hold a university degree or its equivalent in the fields of law, finance, economics or commerce in addition to a minimum of 10 years' professional experience in their fields of specialization after obtainment of the degree.
- 3 – The Chairman and Members of the Committee shall receive a remuneration determined by Cabinet decree at the recommendation of the Minister of Labor. Payment of this remuneration shall be from the Fund's budget. The Chairman and Members may not be appointed to any position in the Secretariat of the Fund during two consecutive years following the end of their work in the Technical Committee.
  - 4 – The Chairman and Members of the Technical Committee shall benefit from the various branches stipulated in the Social Security Law within the conditions set forth therein.
  - 5 – The Chairman of the Technical Committee participates in discussions of the Board of the Directors without the right to vote. In the advent of his absence, one of the two Committee Members may attend on his behalf.
  - 6 – The provisions of paragraphs 9 and 10 of Article 8 of this Law shall apply to the Chairman and the two Members of the Technical Committee.
  - 7 – Funds and expenditures
    - a) Funds allocated to the Technical Committee shall be specified in the Fund's administrative budget.
    - b) The Technical Committee's expenditures shall be decided by the Chairman of the Committee or a delegate assigned by him for this purpose.
    - c) The expenditures of said Committee shall be liquidated, disbursed and paid according to the rules set forth in the Fund's financial by-laws.
  - 8 – The Technical Committee shall
    - a) Audit the Fund's operations and accounts according to annual or extraordinary programs or special expenses. The Committee shall set forth its annual program before the end of December of each year. Extraordinary programs shall be set forth as needed. As for special expenses, the right to issue them belongs to the Minister of Labor and Social Affairs, the Chairman of the Board of Directors, the Director General, and the Chairman of the Technical Committee.
    - b) Submit proposals on ways of improving work methods and simplifying the processing of transactions.
    - c) Undertake, within the scope of its functions, studies assigned to it by the Minister of Labor or the Fund's Board of Directors.
    - d) Prepare the following general and special reports:
      - i) The annual report on the results of the auditing for the previous year. To be completed no later than the end of March of each year and presented to the Minister of Labor, UNRWA, and associations representing the Palestinian refugees in Lebanon.
      - ii) The annual report on the closing of the administrative budget and budget addendums accounts, as stipulated in the financial by-laws of the Fund.
      - iii) Special reports related to work methods and the processing of transactions, in addition to any other studies and tasks requested by the technical committee.
  - 9 – The Committee has the right to contact all units of the Fund and its staff directly to obtain the documents and records needed to perform its functions as long as it has notified the Director General of the Fund.

#### **Article 7: The Director General**

- 1 – The Fund's Director General shall be appointed by Cabinet decree based on the recommendations of the Minister of Labor and Social Affairs and UNRWA, and shall be relieved of his duties or discharged in the same manner.

- 2 – The Director General must hold an accredited university degree, be qualified in social, administrative or financial issues and have professional experience in the banking and insurance sector. Also, he may not be a member of the Board of Directors or of the Technical Committee.
- 3 – The Director General is responsible for the implementation of the decisions of the Board and the management of the Fund’s Secretariat. He prepares and submits to the Board of Directors all the documents and projects requiring decisions from the Board. The Director General, or a representing delegate chosen by him among the directors, shall attend the sessions of the Board; he, or his delegate, may also attend sessions of the Technical Committee.
- 4 – Paragraphs 9 and 10 of Article 8 of this Law shall apply to the Director General and staff of the Fund’s Secretariat.
- 5 – Discharge of the Director General from his duties
  - a) The Director General may be relieved from his duties for one of the following reasons:
    - Committing a serious error in the performance of his duties.
    - Incompetence or gross negligence in the performance of his duties.
  - b) The Chairman of the Board of Directors shall submit a discharge request to the Minister of Labor and Social Affairs, with the following documents attached:
    - Minutes of the Board of Directors meeting regarding the discharge.
    - Written approval with justifications from the Government Commissioner.
    - Approval with justifications from the Technical Committee.
  - c) The Minister of Labor and Social Affairs shall forward the discharge request, attaching thereon his opinion, to the Cabinet.
  - d) In the event of resignation, the request shall be submitted to the Board of Directors, which shall forward it, attaching thereon their opinion, to the trusteeship minister, who in turn shall forward it to the Cabinet.

## **Article 8: Staff of the Fund**

### **1 – General Provisions**

- a) The Fund staff consists of technicians and administrators.
  - b) All Fund staff shall be appointed by competition.
  - c) Fund staff is appointed by decision of the Board of Directors based on the recommendation of the Director General.
  - d) Local candidates may be given right to choose the position they wish to occupy among vacant positions, in accordance with the conditions set forth by the by-laws.
  - e) Any Fund employee may be shifted from one department to another upon the approval of the heads of the two departments in question.
- 2 – Staffing of the Fund, wage scale, staff functions, and the terms and conditions governing their work shall be determined by the Fund’s staff by-laws.
  - 3 – A Medical Committee shall be formed by Cabinet decree at the recommendation of the Minister of Labor and upon the validation of the Board of Directors. This Committee shall be permanently linked to the Fund, and its prerogatives shall be determined by the Fund’s by-laws.

## **Part II – Phases and Scope of Application of the Social Security**

### **Article 9: Social security includes the following branches:**

- a) Sickness and maternity.
  - b) Family allowances.
  - c) End of service.
- It is implemented in three phases.

#### **Article 10:**

The first phase begins one year after the date of publication of this Law in the Official Gazette. The Cabinet shall decide by decree, based on the recommendation of the Minister of Labor and Social Affairs and upon the validation of the Board of Directors, the starting date for the implementation of each of the branches listed in the above Article.

The second and third phases shall begin two years after the date of publication of this Law in the Official Gazette at the latest.

#### **Article 11:**

**First:** Are subject to the provisions of this Law, as of the first phase, provided they work within Lebanon's territory, and with respect to all branches mentioned in Article 13:

- 1 – Palestinian refugee wage earners, (workers and employees) whether permanent or temporary, seasonal workers, trainees or apprentices, who work for one or more Lebanese or foreign employers, regardless of the duration, type, nature, form or validity of their contracts with the employer and the form or nature of the wages. Consequently, whether these wages are paid in full or in part, in the form of commission or a share in the profits or output and whether they are paid by the employer or by third parties is of no regards.
- 2 – Palestinian refugee wage earners not tied to any particular employer and working in the maritime, ports, contracting, building, and freight and lading sectors; also, Palestinian refugee wage earners not tied to any particular employer, regardless of the form, nature or means of their earnings or wages.
- 3 – Palestinian refugee individuals working for the State, municipalities, public administration or institution, or for an independent establishment no matter the duration, type, nature, form or validity of their appointment or contract, including those who deal with the Ministry of Information.
- 4 – Palestinian refugee members of the academic community, working in all private schools, whether or not they are counted as staff members.
- 5 – Palestinian refugee students enrolled in higher education institutions or in technical institutes.
- 6 – Cabinet decrees, based on the recommendation of the Minister of Labor and Social Affairs and upon the validation of the Fund's Board of Directors, shall designate, in accordance with the conditions specified therein, categories that include taxi drivers, craftsmen and all other categories of Palestinian refugee individuals not listed in this Article and found to require inclusion as of Phase 1 in some or all Social Security branches.

**Second:** Palestinian refugee wage earners contracted in Lebanon with institutions that have head offices or branches in Lebanon, but are working in branches abroad shall not be subject to or benefit from some or all branches; provided that they are benefiting from advantages at least similar to those stipulated in this Law in the countries they work in. The burden of proof shall rest on the employer.

In all cases, said wage earners who started to work in Lebanon then moved to work abroad, or initially contracted for work abroad and then returned to work in Lebanon, are subject to the provisions of the end of service branch. In this case the base wage or pay shall be adopted for calculating the contributions and shall exclude the compensations paid to them during their work abroad or for it.

## Book Two – Benefit

### Part I – Sickness and Maternity

#### Chapter One – General Provisions

##### Article 12:

- 1 – A Fund for social security against the contingencies of sickness and maternity shall be established. Its organization shall be in accordance with this Law.
- 2 – The cases covered by this social security are:
  - a) Any sickness which is not the result of an employment injury nor regarded as an occupational sickness.
  - b) Maternity (pregnancy, delivery and what is attendant to both).

##### Article 13:

The expression “insured” used in this Article refers to any individual covered, irrespective of gender.

- 1 – The Social Security covers the insured individual and the members of his family.
- 2 – “Members of the family” of said insured individual entails those who live with him and at his expense:
  - a) Father and mother who are at least 60 years of age or older or who are unable to make a living because of physical or mental disability.
  - b) The legitimate wife of the insured or, if there is more than one, the first of them.
  - c) The husband who is at least 60 years of age or older or is unable to make a living because of physical or mental disability.
  - d) The children of the insured (the father), legal and adopted, until they reach 18 years of age. After that, if they are unable to generate an income because they are full-time students, they shall benefit from the insurance until they reach 25 years of age.
  - e) The children of the insured (the mother), legal and adopted, if she has the responsibility of looking after them financially because the husband is invalid.

##### Article 14:

- 1 – Social security allowances for sickness and maternity include the following:
  - a) Medical examinations, prevention, and treatment.
  - b) In the case of maternity, pre-delivery examination and care, and any necessary care during and after delivery.
- 2 – The allowances for the contingencies of sickness and maternity will only be due to the insured if he or she is not entitled in the same case to employment injuries and occupational illnesses benefits.
- 3 – The allowances necessary in cases of pathological pregnancy or sickness arising from delivery shall be considered effectively as sickness allowances, starting from the date the pathological case is confirmed by a monitoring physician from the Fund.

##### Article 15:

- 1 – Sickness and maternity allowances will only be due if the insured has been contributing to the Social Security for at least three months of the six months preceding the date of medical confirmation or the date of demise.
- 2 – In addition to the preceding, and in order for the insured to benefit from maternity allowance, she must have been contributing to the Social Security for at least ten months prior to the expected date of delivery.
- 3 – The provisions of paragraph 1 of this Article shall not apply if the sickness or demise is the result of employment injury, provided the insured was contributing before the date the contingency occurred.
- 4 – The insured who no longer qualifies to benefit from sickness coverage is entitled to benefit from

sickness allowances, not only for sicknesses that appeared before the date of his enrollment in the Social Security has ended, but also for sicknesses that appear within three months after said date. The insured is also entitled to maternity allowances if the expected date of delivery falls within the three months that follow the end of her enrollment in the Social Security.

- 5 – To enable the insured to prove eligibility for the allowances, the employer shall give all wage earners registered in the Fund a statement of wages in the form drawn up by the Fund or acceptable to it.

## **Chapter Two – Medical Care**

### **Article 16:**

- 1 – Individuals entitled to the medical care include every person benefiting from the sickness and maternity coverage, and every person that is eligible or may be eligible for sickness or maternity allowances, including family members.
- 2 – Medical care includes the following at the least:
  - a) In the event of sickness:
    - Medical examinations, x-rays, and laboratory tests and analyses.
    - General examinations by a physician, including necessary house visits and specialists care within the conditions set forth in the Fund's by-laws.
    - Dental examinations.
    - Necessary medicines and pharmaceuticals, on condition they be listed in the authenticated schedule and prescribed by a physician or, where needed, by a dentist.
    - Hospitalization (nights in hospital plus meals, medical treatment and surgeries) in a hospital or other medical institution affiliated with the State or the Fund or acceptable to the latter, if and when the physician decides on the need for hospitalization.
    - Provision of the prosthetic and orthopedic devices that figure in the list designated by the Fund, on condition of approval of the Medical Control.
  - b) In the case of maternity:
    - Tests and examinations before, during and after delivery that are provided by a physician or a legal or accepted midwife.
    - Necessary medicines and pharmaceuticals, on condition they be listed in the schedule that is authenticated by the Fund and prescribed by a physician or a legal midwife.
    - Hospitalization (nights in hospital plus meals, medical treatment and surgeries) in a hospital, maternity center or other medical institution affiliated with the State or the Fund or acceptable to the latter, if and when the physician or legal midwife decides on the need for this hospitalization.

### **Article 17:**

- 1 – Medical care should aim at protecting the health of the insured and facilitating recovery in case of sickness, so as to help him regain his strength to work.
- 2 – When making prescriptions, physicians should be mindful to strike a balance between maximum economy and effectiveness of treatment.
- 3 – To monitor the health of persons insured by the Fund, in the ways set forth by the Board of Directors, these persons must undergo a medical examination by a physician selected by the Fund and, if necessary, in cooperation with the physician of the institution that the insured person works for.
- 4 – The Fund's by-laws shall determine the number and type of examinations, before and after delivery, that the woman benefiting from the coverage must undergo and the conditions these examinations shall be conducted under.
- 5 – The manner, organization and operation of the Medical Control department shall be determined by Cabinet decree based on the recommendation of the Minister of Labor and Social Affairs and upon the validation of the Board of Directors. The Board of Directors shall set forth in the by-laws the

means of provision of medical care and the rules that should be observed for this purpose by the insured, physicians, dentists, midwives, and medical and pharmaceutical institutions.

**Article 18:**

- 1 – Medical care shall be provided for every case of sickness for a maximum of 26 weeks.
- 2 – At the end of said 26 weeks, if the attending physician of the Fund considers that recovery is possible by a new period of treatment not exceeding 13 weeks, the Fund shall decide to carry on the allowances until the end of the second period.
- 3 – In case of sicknesses whereby the Board of Directors considers a period of medical treatment exceeding the overall 39 weeks is required, the Board may set the maximum duration of treatment at one year. At the end of this year the Fund shall notify public medical institutions about the case of the person in question.
- 4 – In cases of chronic or incurable sicknesses that do not necessitate continuous interruption of work, a special statute shall set forth the conditions of providing care and medicine after the end of the third period noted in paragraph 3 of this Article.

**Article 19:**

- 1 – The Cabinet shall appoint, by decree issued at the recommendation of the Minister of Labor and Social Affairs and upon the validation of the Board of Directors, the amounts which the insured should contribute to the costs of the medical care provided in the cases of sickness and maternity, as per the provisions of this Law.
- 2 – However, in the event the insured is temporarily unable to work, he shall be exempt from the contribution to the costs of medical care as of the sixth week of the disability.

**Article 20:**

- 1 – Medical care shall be provided through physicians, dentists, legal or accepted midwives, hospitals, clinics and so on among the medical and pharmaceutical institutions acceptable to the Fund. Physicians, dentists and legal midwives who practice their professions according to the statutes regulating professions, and also hospitals, clinics, and other medical or pharmaceutical institutions that are legally licensed are automatically accepted as well, on condition of compliance with the Fund's statute. As for their remunerations, they shall be paid according to the rules that the Fund sets forth for medical care after consulting the professional bodies concerned.
- 2 – Whereas in severe or emergency cases, patients unable to resort to one of the persons or institutions cited in the previous paragraph may turn to a person or institution not accepted by the Fund, with due observance of the conditions instructed by Cabinet decree.
- 3 – The Fund shall regularly establish an updated list showing for each area the names of persons, medical institutions or pharmacies acceptable to the Fund for provision of medical care to the insured. This list shall be prepared after consulting the professional bodies and medical institutions and will be reconsidered according to the same rules mentioned above.

**Article 21:**

- 1 – Within the scope of the appointments stipulated in this Law, the Fund can build, initiate or invest in medical clinics and institutions or pharmacies at its own expense, with due observance of the legal provisions regulating the medical and pharmacy professions.
- 2 – The Fund may import pharmaceuticals and medical and surgical supplies directly from abroad. It also has the right, upon approval of the Cabinet, to distribute these pharmaceuticals and medical and surgical supplies to the insured benefiting from its provisions at cost price.
- 3 – The Board of Directors can delegate, by mutual consent, the responsibility of providing medical treatment, in whole or in part, to the employer or any natural or legal person who possesses the instruments and equipment that the Board considers satisfactory for this purpose.

## Part II – Family Allowances

### Article 22:

A Fund for family compensations shall be established with its regulation determined in this Part and its resources in Book 3, Part I, Chapter 3 of this Law.

- 1 – Family allowances shall be granted to the wage earners mentioned in this Law, to those entitled to sickness and maternity or employment injury coverage, and to those unable to work if the degree of their disability is above 50%.
- 2 – Those eligible for family allowances are:
  - a) Every child who is a dependent.
  - b) Every child who is a dependent and has a disability, with no limitation on age and every daughter who is not married and does not work, until she reaches the age of 25.
  - c) The legitimate wife who resides in the home and does not work for pay.

### Article 23:

- 1 – The child shall not be given the right to more than one family allowance, as per the previous Article. If the conditions required for one child are met in several persons, according to the provisions of the previous Article, the family allowances shall be paid to:
  - The father if the father and mother meet the aforesaid conditions, except if custody of the children belongs to the mother alone.
  - The parents by adoption or the guardians provided they also fulfill said conditions.
- 2 – Family allowances are given only to the head of the household and for a maximum of five children.

### Article 24:

- 1 – The amount of the monthly family allowances, and methods of disbursement, shall be determined by Cabinet decree based on the recommendation of the Minister of Labor and Social Affairs and upon the validation of the Board of Directors.
- 2 – The family allowances shall be paid monthly to the entitled wage earners by the employer at the expense of the Fund. Family allowance debt is considered a privileged debt and comes in right behind the treasury debt, court fees and mandatory insurance, even in the case of bankruptcy.
- 3 – Family allowances paid directly by the employer to wage earners in accordance with the rules specified in the Fund's by-laws, shall lapse with the passage of time. If the employer does not settle accounts with the Fund within one year from the deadline for reimbursement of contributions for the period in which said allowances are due he shall no longer be entitled to reimbursement.
- 4 – The lapse of time for family allowances that are payable to the insured is two years from the date they were due, as specified by the Fund's by-laws.
- 5 – The lapse of time for allowances collected unrightfully is two years, starting from the date that the Fund learned that they were not due.

## Part III – End of Service

### Article 25:

A Fund for family compensations shall be established, with its regulation and resources determined in this Law.

- 1 – Family allowances shall be granted to the wage earners mentioned in this Law, to those entitled to sickness and maternity or employment injury coverage, and to those unable to work if the degree of their disability is above 50%.
- 2 – Those eligible for family allowances are:
  - a) Every child who is a dependent.

- b) Every child who is a dependent and has a disability, with no limitation on age and every daughter who is not married and does not work, until she reaches the age of 25.
- c) The legitimate wife who resides in the home and does not work for pay.

**Article 26:**

- 1 – Until such time as old age security plan is drawn, a Fund for end of service compensation shall be established, with its regulation determined in this Law.
- 2 – The end of service compensation plan established in this Part is compulsory for all wage earners among the Palestinian refugees governed by this Law, whether they were employed before or after the date of placement of this branch of Social Security into effect.

**Article 27:**

- 1 – Every wage earner subject to the end of service compensation plan has the right to receive this allowance provided he meets any one of the following conditions:
  - a) Having worked for at least 20 years. The duration of his contribution to the Fund shall be added to the years of service to the employer prior to the time said plan was put into effect for his group.
  - b) Being afflicted with invalidity to an extent of at least 50%, which prevents him from performing his work or comparable work, with due consideration to his professional situation.
  - c) This invalidity must be ascertained by the Medical Committee stipulated in this Law.
  - d) (For a woman) Getting married and leaving her work within the 12 months following the date of marriage.
  - e) Reaching the age of 60 for the insured man, or 55 for the insured woman.
- 2 – In the event of demise of the insured wage earner, whether his enrollment was compulsory or voluntary, end of service compensation shall be due to those concerned and entitled by Article 31, paragraph 2 of this Law.

**Article 28:**

The amount of end of service compensation shall be determined as follows:

1 – General Provisions

- a) An amount equal to the wage that the person concerned received for the month preceding the date of establishment of the right to compensation, for every year of service. If the wage is calculated wholly or in part on the basis of commission, the amount of the compensation shall equal, for every year of service, one twelfth of the total sum the person concerned received during the 12 months preceding the aforementioned date. If the wage is calculated on other bases, the by-laws of the Fund shall determine for each case separately the method to be adopted to decide the amount of compensation for each year of service. In any and all cases, the wage that is taken as a basis for carrying out the calculation of compensation is that set forth by this Law.
  - b) The insured who has reached 60 years of age (55 for the female wage earner) is entitled to receive additional compensation amounting to half a month for each year of service after the first 20 years. This additional compensation is not obligatory except for the period during which contributions due to the Fund are incumbent on the employer.
- 2 – In the cases noted in clause b, paragraph 1 of Article 50, the compensation should equal at least 20 months' wages.
  - 3 – The provisions of paragraph 2, Article 54 of the Labor Law shall remain in effect on the employers mentioned therein, for the services rendered prior to enrollment in the end of service compensation plan.
  - 4 – The Cabinet may, at the recommendation of the Minister of Labor and Social Affairs and upon the validation of the Board of Directors, take special measures with respect to the amount of the compensation due to the wage earners.

- 5 – In the event of demise of the wage earner, the end of service compensation shall be calculated according to one of the previous paragraphs on the basis of years of service up to the date of demise. In any and all cases the amount of compensation shall not be less than six months pay.
- 6 – The amount of compensation may be raised subsequently, by Cabinet decree based on the recommendation of the Minister of Labor and Social Affairs and upon the validation of the Board of Directors, with due consideration to the financial situation of the Fund.

**Article 29:**

The insured wage earner, whether his enrollment is compulsory or voluntary, shall only be entitled to reduced compensation in the following cases:

- 1 – Upon leaving the institution in which he was trained of his own volition, before the lapse of two years starting from the date of conclusion of his training. Or if he was insured voluntarily and left his work of his own volition before completing the 12 months period that follows the date of his contribution to the plan adopted in this Part. His compensation would then be one-third of the end of service compensation designated in Article 51 of this Law.
- 2 – Where the wage earner proves that he left his work permanently with no intention of returning to any other wage-earning work, in which case the compensation shall be:
  - 50% of said compensation if he contributed for five years at most.
  - 65% of said compensation if he contributed for more than five years and for 10 years at most.
  - 75% of said compensation if he contributed for more than 10 years and for 15 years at most.
  - 85% of said compensation if he contributed for more than 15 years and less than 20 years.

**Article 30:**

- 1 – In the case of voluntary enrollment in the end of service compensation plan, the employer is required to formalize calculations of the compensation for the period of uninterrupted work performed by the wage earner from the time of his employment until the date of his application for contribution in said plan. Compensation is calculated in accordance with the provisions of the Labor Law for end of service compensation. The employer shall notify the wage earners in writing of said calculation shown in the previous paragraph, mentioning duration of services and the average wage adopted. In the event of dispute over this calculation, the wage earner shall be given six months from the date of his notification of said calculations to voice his objection before the labor court. The Fund's statute shall determine the papers and documents that employers must submit to the Fund when their wage earners contribute voluntarily to the end of service compensation plan.
- 2 – Where the wage earner has worked for several employers during the period of service for which the right to compensation is given, the calculation of his compensations consists of his total accounts frozen with every change of work, to which shall be added the compensation due by the last employer. This account shall be frozen in the Fund and interest on it shall take effect at a rate designated by the Fund's by-laws.
- 3 – The Fund's by-laws shall specify the grace periods that may be granted to employers to pay any due outstanding compensations, with or without the addition of interest. The by-laws may also stipulate payment of compensations that are not outstanding by annual installments against a discount if necessary. The same by-laws shall indicate the grace periods and the ways for submitting declarations by the employer and wage earner in case of end of service, and the conditions for striking a balance between this Law and the consensual by-laws applied on the date of publication of this Law in the Official Gazette where they are more favorable to wage earners in respect to end of service compensation. The by-laws shall also include provisions for the settlement of debts that may be due to the employer by his wage earners.
- 4 – The Fund has the right to take direct legal action to obtain the compensations mentioned in the previous paragraph. It holds that said debt belongs to the category of privileged debts and is classified as coming directly after the treasury debt.

## Part IV– Common Provisions Applicable to All Benefits

### Article 31:

- 1 – The Fund shall extend an advance from the principal of end of service compensation to each insured wage earner, whether his enrollment is compulsory or voluntary, if he is forcibly unemployed and is the head of a household or is responsible for it, in case it is confirmed that he has been a contributor to the Fund for at least three years. The amount of this advance, which can only be given once to each wage earner based on the duration of work for pay at the rate of one month's pay for each year of service, may not exceed three times the latter wage, payable monthly at the rate of one-half the monthly wage until such time as the entire said amount is repaid.
- 2 – End of service compensation may be settled at the request of the wage earner or those entitled to it after him.
- 3 – Said end of service compensation due to the wage earner who has reached the age of 60 (or woman wage earner who has reached the age of 55) may be converted into a lifelong pension upon his request and in the ways set forth by the Fund's by-laws.

### Article 32:

For the purpose of acquiring the right to sickness and maternity allowances, the entire duration of employment and training prior to the date of compulsory enrollment of the wage earner in the Social Security shall be considered as included in the period covered by the Social Security.

### Article 33:

The prescription on sickness, maternity, employment injuries and occupational illnesses allowances shall be six months as of their due date.

The prescription on permanent invalidity or demise allowances is two years as of their due date. Invalidity pension arrears shall not be paid for more than six months.

### Article 34:

Cash allowances may not be a subject of cession or clearing or commitment of any kind. They may only be retained for the purpose of undertaking legitimate food obligations. In this case, up to half their amount may be retained.

### Article 35:

- 1 – Should an employment injury or occupational illness occur, the employer must notify the Fund within 48 hours maximum as of the time of its occurrence. Immediately thereafter, the employer must take all measures to prevent the aggravation of the victim's condition.
- 2 – Should the Fund's Medical Control facility find that the insured suffers from an occupational illness or employment injury that threatens to increase or worsen should he remain in his previous work, the employer must reassign the wage earner to work on a job that better suits his health condition. This measure shall be taken jointly with the institution when necessary.

### Article 36:

- 1 – The Fund shall support the measures taken for the prevention of illness and employment injuries in cooperation with the Minister of Labor and Social Affairs, the Minister of Public Health, professional bodies of employers and wage earners, and individual institutions.
- 2 – For this purpose, a High Committee for Prevention and Health shall be formed and its mode of creation and functions set forth in the by-laws.
- 3 – The employer must take all measures that ensure safety and health conditions at the workplace. The Fund may introduce in its by-laws some compulsory measures for monitoring the wage earners'

- health condition and undertaking methods of prevention in the workplace.
- 4 – The Fund shall cooperate with the institutions' physicians to plan preventive measures for the contingencies of illnesses and employment injuries, and, if necessary, prepare and carry out the measures imposed in paragraph 2 above, as well as counsel and guide the insured on health matters.

**Article 37:**

The Fund can enable victims of an employment injury or occupational illness to benefit from methods of professional preparation that would qualify them for another, more suitable job. Employers shall cooperate with the Fund in this regard, as per the conditions set forth in the Fund's by-laws.

**Article 38:**

- 1 – Those agreements and by-laws that grant more significant benefits than those stipulated in the Labor Law, and are effectively in force in any given establishment, shall remain in force compulsorily, until the date of implementation of every branch of the Social Security, in every respect that is greater than the benefits stipulated in this Law as to each branch of the insurance and shall constitute a vested right for the wage earners of the establishment.
- 2 – In this case, the benefits stipulated in this Law shall be deducted from the benefits agreed on and the increase shall be determined by agreement between the administration and the wage earners.
- 3 – A copy of this agreement shall be handed to the Minister of Labor and Social Affairs. In the event of dispute in this regard, the Minister of Labor and Social Affairs shall settle the matter.

## Book Three – Financial Provisions and Resolution of Disputes

### Part I – Resources and Financial Organization

#### Chapter One – General Provisions

##### Article 39:

- 1 – The implementation of this Law does not preclude the right of the insured or those entitled after him to request compensation for the damages incurred from those who caused the accident. The total amounts paid by the Fund shall be deducted from the principal of this compensation.
- 2 – The Fund, in all cases, has the right to recover, by direct legal action against those who have caused the accident, the amounts that it may have paid in consequence of it.

##### Article 40:

- 1 – Every branch of the Social Security stipulated in this Law enjoys financial autonomy and its resources are employed to cover its performance. The Fund's revenues and assets may not be utilized except for the purposes specified in this Law.
- 2 – A Financial Committee entrusted with the investment of the Fund's money for the short, medium and long terms shall be established by Cabinet decree at the recommendations of the Minister of Labor and Social Affairs and the Minister of Finance, and upon the validation of the Board of Directors of the Fund. The Committee's formation and prerogatives shall be set forth in the text of the decree, and it shall be placed at the disposal, and under the jurisdiction, of the Board of Directors of the Fund, which will be responsible for the investment policy.

The principal tasks of the Committee are the following:

- a) Assuring the minimal interest set forth in the by-laws for the capital of the Fund.
- b) Determining the social investments that are achievable each year without disrupting the Fund's financial equilibrium.

Short, medium and long term investments may only involve:

- a) Government securities.
- b) Government secured loans granted to public institutions and agencies.
- c) Immovable properties.
- d) Loans extended directly through the Fund, when they are for the purpose of providing dwellings for the groups insured in one or all branches of the Social Security and for employees of the public sector except for soldiers and personnel of the Internal Security Forces and the General Security, according to regulations introduced specifically for this purpose.

Contrary to the legal provisions in force, all compensations for end of service, dismissal from work, retirement pensions or retirement deductibles that were or are due and payable to the employee or public officer benefiting from the loan granted for the purpose shown above shall be retained for the Fund.

On settlement of these compensations, pensions or deductibles, those entitled will only be paid the amounts exceeding the amount of the contributions unpaid on the date of settlement, with the balance retained for the Fund until the loan is fully repaid along with the interests and adjuncts.

Any dispute arising between the Fund's Board of Directors and the Financial Committee shall be subject to arbitration by the Minister of Labor and Social Affairs.

##### Article 41:

- 1 – Every employer, whether of natural or legal personality in Private Law, must declare to the Fund any wage earners in his employ who are Palestinian refugees, by filling the forms prepared by the administration of the Fund for this purpose.

- 2 – The receipt given by the Fund is regarded as the required discharge and shall be valid for 12 months from its date of issue.
- 3 – A Cabinet decree will specify the transactions for which the employer is required to show the discharge.

**Article 42:**

- 1 – For every branch of the Social Security stipulated in this Law a permanent reserve fund shall be formed, reaching its minimum amount at the end of the financial year:
  - a) One-sixth in the case of sickness, maternity and family allowances;
  - b) One-third of the expenditures incurred during the three years prior to the financial year discussed, as a result of insurance for employment injuries and occupational illnesses.Said minimum for each branch mentioned must be assured, at the latest, by the end of the fourth financial year following entry of the branch into effect.
- 2 – If the expenditures of one of the branches stipulated in the previous paragraph, excluding the sickness and maternity branch, exceeds its revenues during one financial year, the difference shall be obtained from its reserve fund. If it is found at the end of that same financial year that the reserve fund is below the minimum, the Cabinet shall decide, based on the recommendation of the Minister of Labor and Social Affairs and upon the validation of the Board of Directors, to increase the contributions as of the first of July of the year that follows the financial year in deficit. The increase should be calculated in such a way that the contributions become sufficient to recover financial equilibrium and attain the minimum reserve fund required within a period of three years maximum

## **Chapter Two – Deductible Earnings**

**Article 43:**

- 1 – The Fund shall be exempt from all taxes and fees, including stamp duty, and legal and real estate fees required on real estate that may be owned by the Fund. Correspondence to and from the Fund shall benefit from postage exemption.
- 2 – Pharmaceuticals, prosthetic devices, eyeglasses and other such medical and surgical instruments imported by the Fund may be exempt from customs duties. The methods for this exemption shall be set forth by the High Customs Council and the Minister of Finance.
- 3 – The insured receiving social security benefits shall be exempt from all taxes and fees on funds collected and on all transactions and disputes arising from implementation of this Law, in particular applications for allowances submitted by the insured.

**Article 44:**

- 1 – Earnings that are taken as a basis for calculating the contributions include all income resulting from the work, with all components and adjuncts, in particular overtime hours that are paid in the usual way and amounts usually paid by third parties (gratuities), in addition to in-kind benefits provided to the worker.
- 2 – The maximum income that shall be taken into consideration as subject to deductions is a yearly income of LBP 6,000,000 (six million Lebanese Pounds). This maximum figure may be amended by Cabinet decree at the recommendation of the Minister of Labor and Social Affairs and upon validation of the Board of Directors.
- 1 – The provisions of paragraph 2 above shall be applied to the end of service compensation account.

**Article 45:**

The cash value of in-kind benefits, particularly food and lodging, shall be estimated within the Fund's by-laws, with due observance to average domestic prices.

**Article 46:**

The Fund's by-laws shall determine the earnings subject to deduction for individuals who pursue their social security contribution voluntarily.

**Chapter Three – Contributions****Article 47:**

Contribution rates shall be decided by Cabinet decree at the recommendation of the Minister of Labor and Social Affairs and upon the validation of the Board of Directors. They are determined as a percentage of the earnings subject to deductions so that returns on them may cover allowances and administrative expenses and generate the permanent reserve fund stipulated in this Law. Contribution rates for employment injuries and occupational illnesses coverage may be set according to the types of professional activities.

**Article 48:**

The Board of Directors may decide a lump sum contribution amount for the following groups:

- a) Institutions with less than 10 wage earners.
- b) Apprentices and trainees.
- c) Agricultural workers.
- d) Wage earners who receive all or part of their income in the form of gratuities or allocations paid by individuals other than the employers.
- e) Servants in private households.
- f) The daily-paid wage earners mentioned in the by-laws.
- g) Institutions designated as public utility by the Government.

The contributions due from societies for the handicapped and service institutions, for all branches except the end of service branch, is 15% (fifteen per cent) of the contributions applied to institutions not subject to the reduced or lump sum contribution. A request for this exemption shall be based on a statement issued by the Ministry of Labor and Social Affairs in accordance with the measures in force. As to the end of service branch, the Board of Directors of the NSSF shall determine the amount of the contribution required from this group of institutions or associations.

**Article 49:**

1 – Contributions for employment injuries and occupational illnesses coverage, and for family allowances and end of service compensation, are entirely the responsibility of employers.

When a wage earner incurs a reduction in wage while working for the same employer, the contributions of the employer will still be calculated on the basis of the higher wage. The employer's duty to pay contributions to the end of service fund will end when the insured wage earner, whether his enrollment is voluntary or compulsory, reaches the age of 60 for men, or 55 for women, each of whom may then automatically benefit from the end of service compensation.

In the case of a wage earner who has not reached 55 or 60 years of age, respectively, and who remains in service after collecting the end of service compensation, the employer shall continue to pay the annual contribution until the wage earner reaches said age. At that point his account will be settled on the basis of one month for every year of service without any additional compensation.

2 – Contributions for sickness and maternity allowances are the responsibility of the insured, their employers and the State. The State assumes 25% of the amount of benefits relating to said coverage and decides the contributions percentage for the employers and wage earners by Cabinet decree based on the recommendation of the Minister of Labor and Social Affairs and upon the validation of the Board of Directors.

However, contributions relating to trainees and individuals who do not receive cash wages higher than

an amount set by the Board of Directors, will be entirely the responsibility of the employer.

3 – Contributions of individuals whose enrollment in the Social Security is voluntary, as noted in this Law, are entirely their own responsibility.

4 – Prescription

a) The prescription for contributions and penalties for payment delays stipulated in this Law, and for all debts outstanding to the Fund from employers, is five years from the date of declaration by the individual subject to coverage on behalf of whom they are due, provided that this time span does not exceed 10 years from maturity date.

b) The prescription for amounts paid to the Fund without being due is five years from the date of payment.

c) The prescription for settlement amounts appearing at liquidation of the account of the insured, in accordance with the provisions of paragraph 4, Article 57 of the Social Security Law, is five years from maturity date, as set forth in the Fund's by-laws.

d) Debts outstanding to the Fund may be considered void and deleted from the records or logged in special accounts outside the scope of the budget, by decision of a special committee of the Fund if these debts are paltry or irredeemable.

The Fund's by-laws shall determine the size of amounts accumulated and regarded as paltry, as well as the necessary conditions for a debt to be considered as irredeemable.

The decisions of the committee mentioned in this clause shall be regarded as final and binding to the Fund.

The Fund's by-laws shall determine the details and rules for application of this paragraph, as well as the formation of this committee and the rules of its work. The committee shall be appointed by decision of the Board of Directors at the recommendation of the Director General for a term of one year subject to renewal.

e) All debts outstanding to the Fund from employers and individuals enrolled in the Social Security, in particular contributions, penalties for payment delays and settlement amounts stipulated in paragraph 4, Article 54 of the Social Security Law, shall be categorized as privileged debts and classified as coming directly after the treasury debt; this privilege shall be exempt from registration.

#### **Article 50:**

Contributions for sickness and maternity allowances due by the insured who only benefit from the medical care, shall be determined on a percentage basis lower than the contribution rates of the other people insured.

#### **Article 51:**

1 – While retaining the penalties and punitive measures stipulated in other laws, the Fund may, in respect to employment injuries and occupational illnesses, levy on the employer who proves to be negligent, or whose installations are not compatible with the regulatory provisions relating to the workers' protection and safety, or if the degree of exposure to injury and occupational illness is high, an additional premium on the contributions referred to in this Law. The Fund may, at the request of the employer, return part of the contributions paid if his installations and measures taken are compatible with the provisions stipulated in this Law and if the degree of exposure to employment injuries in his establishment is slight. The conditions for application of this Article shall be set forth by the by-laws of the Fund.

2 – The employer who fails to declare an employment injury or occupational illness within the time limit set in this Law shall be fined an amount ranging from three to ten times the amount of the contribution. Fines levied shall be proportional to the violations. If the violation recurs during the same year, the penalties shall double.

## Chapter Five – Auditing and Penalties

### Article 52:

The Board of Directors shall determine, in accordance with the provisions of Article 3 of this Law, the rules relating to the registration of the employers and the insured, as well as the declarations of starting or leaving work, the payment methods of the contributions, the premiums and advances, in addition to all other measures necessary for the application of this Law.

### Article 53:

- 1 – Employers shall be subject to auditing by the Fund, with respect to the application of the provisions of this Law and its complementary decrees and by-laws.
- 2 – Auditing work shall be carried out by auditors chosen among the Fund’s staff. The Fund’s by-laws shall determine the special auditing staffing, the auditors’ prerogatives, the rules of the auditing mentioned in paragraph 1 of this Article, and the rules for conducting it, in addition to the rules for presenting and deliberating objections on the reports and financial data prepared by the auditors.
- 3 – The Fund’s auditors mentioned in paragraph 2 of this Article shall, before undertaking their tasks, take the following oath before the Magistrate sitting alone of Beirut: “I do solemnly swear that I will faithfully and honestly perform the duties of my office and will not disclose any secrets of the industry or methods of investment that may have become known to me by virtue of the duties of my office”.
- 4 – Every breach of the oath mentioned in paragraph 3 of this Article renders the auditor subject to the sanctions stipulated in Article 579 of the Penal Code.
- 5 – Records of violations, reports of financial assignment and auditors’ statements on the results of the auditing work are considered, in accordance with the provisions of paragraph 2 of this Article, correct until proven otherwise. Information relating to the identity of the violator and his domicile are completed through the Public Prosecution for Appeals if the violator refuses to provide this information or the auditor is unable to obtain it.
- 6 – The employer must record and date in a special record, according to a form placed at his disposal by the Fund, without rewrite, insertion, erasure or correction, the name of each individual enrolled in the Social Security, the date and place of his birth, the amount of the wage and additional compensations he benefits from, before he even starts work. The employer must also record the date of interruption of work or discharge from it within three days at most from the date of occurrence.
- 7 – The employer shall place at the disposal of the Fund’s auditors the record mentioned in paragraph 6 of this Article and all records, papers and account documents that contain or may contain a log for wages, adjuncts or earnings of individuals enrolled in the Social Security as well as information pertaining to them.
- 8 – The employer or his representative shall receive the Fund’s auditors at the appointed dates and shall provide them with the required clarifications and information and corroborative papers and documents related in particular to the activities of the institution, the changes that occurred in its situation, the individuals enrolled in the Social Security, the dates on which their work started and was interrupted, the workplace of each one of them, and the form and amount of their wages or pay in addition to mode of calculation and payment.
- 9 – If the employer or his representative or any person associated with them or the institution refuses to cooperate with the auditor during the performance of his job, or because of it, prevents him from performing it, or obstructs his work, he shall face, in addition to the provisions stipulated in the Penal Code, a fine of LBP 500,000 to LBP 1,000,000 or anywhere between one to three months in prison, with the penalty doubled in the event of recurrence of the violation.
- 10 – The Fund’s auditors may request support and assistance from public administrations and the police in order to carry out the tasks assigned to them.

**Article 54:**

In the event that the employer refrains from showing the documents relating to wages within the time limits set, or in the event that within these same time limits he refrains from showing schedules and other declarations stipulated in the Fund's by-laws, or if these documents are incomplete, the Fund will issue a warning by registered mail calling on him to settle his situation and comply with the legal and regulatory provisions within eight days of receipt of that warning. If the employer does not comply with the content of the warning within said time limit, the Fund has the vested right to estimate arbitrarily the total amount of contributions due, and to implement the decisions relating to the estimation of the contributions and carry them out directly through the wage earner departments.

**Article 55:**

- 1 – Contributions that are not paid within the time limit set, will, in consequence thereof, increase by one half per mille for each day of delay.
- 2 – The amount of the penalty for payment delay referred to in the previous paragraph shall be collected by the Fund when the contributions are paid. In the event the employer refrains from paying said penalty when paying his contributions, it will be collected in accordance with the rules for collection of contributions and Fund debts.

**Article 56:**

- 1 – The employer who unlawfully withholds the contribution deducted from the wage or pay of the insured, which is due to the Fund, shall be sentenced to a period of three months to two years in prison or a fine of LBP 500,000 to LBP 1,000,000 or both sentences if he does not pay the amount due from him within a maximum of 15 days from the date of his notification, by one of the legal methods available, of the warning to pay.
- 2 – The employer who neglects to prepare the record stipulated in this Law shall be fined a lump sum of LBP 1,000,000 and an additional LBP 100,000 for each person he neglects to mention in the record or fails to enter therein the information required about said person within the required time. The penalty shall double if the employer does not pay the aforementioned fine within a maximum of 15 days from the date of preparation of the offense notice.
- 3 – Informing the Fund
  - a) The employer must inform the Fund of any legal or administrative changes that have occurred in his establishment and that may affect the application of the provisions of the Social Security Law no later than one month from the date of these changes.  
These cases shall be specified in the by-laws of the Fund.
  - b) The employer who fails to inform the Fund of the changes mentioned in the previous clause shall incur a fine ranging between LBP 500,000 and LBP 1,000,000.
  - c) In the event the establishment is sold or is the object of a transfer of ownership or of any of the contracts referred to in Legislative Decree No. 11 dated July 11, 1967, all parties to the contract must inform the Fund of this fact no later than three days from the date of its occurrence.
  - d) Anyone failing to carry out the obligations set forth in the previous clause shall be fined as per clause b of this paragraph and becomes jointly and severally liable with the primary debtor or debtors for the amounts due to the Fund notwithstanding any text to the contrary.
- 4 – Failure to declare
  - a) The employer who neglects to declare the engagement in work of an individual who is enrolled in the Social Security, or his leaving said work, within 15 days from the date of engagement or departure, shall incur a fine ranging between LBP 500,000 and LBP 1,000,000. If the delay in declaration exceeds three months from the date of engagement or departure, the violator shall be fined an additional LBP 100,000 for each person for each month, which in any and all cases shall not exceed LBP 500,000 for each person.

- b) No declaration to the Fund is necessary if the individual enrolled in the Social Security worked less than 10 days, except if he belongs to a group for which the Fund's by-laws have specific provisions. This does not exempt the employer from entering him in the record stipulated in this Law.
- 5 – The employer who neglects to present the yearly declaration of names stipulated in the Fund's by-laws within the deadline set, shall be fined LBP 500,000 if the establishment pays the contributions on a monthly basis and LBP 250,000 if the establishment pays the contributions on any other basis. If the delay exceeds three months, the violator shall incur an additional fine of LBP 100,000 per month per individual enrolled in the Social Security. Part of a month shall be considered as a full month, with the total penalty in this case being not less than LBP 500 and not more than LBP 5,000. The fine shall be automatically collected by and for the Fund upon presentation of the yearly declaration of names. In the event the employer refrains from payment when presenting said declaration, it will be collected in accordance with the rules for collection of contributions and Fund debts.
- 6 – Violators of the provisions of paragraphs 1, 3 and 4 of this Article will not be prosecuted before the courts if they pay a minimum of the original fine and the additional fines that may be due, discounted according to the duration of delay for the violations in paragraph 4 above, within 15 days from the date of preparation of the offence notice. The provisions of this paragraph shall not apply if the violation recurs within one year.
- 7 – Payment of fines
- a) Fines issued shall be paid to the administration of the Fund.
  - b) The penalty shall be doubled if the violation recurs within one year.

**Article 57:**

Every individual who willfully makes profits for himself or for others from allowances to which he has no right, through cheating or submitting fake or false declarations, shall be charged with fraud and penalized. The fine levied shall not be less than double the amounts he profited from, and he will be under the obligation to return to the Fund the amounts unrightfully paid.

## Part II – Resolution of Disputes

### **Article 58:**

In the case of the employment injuries and occupational illnesses branch, when the wage earner is not declared or when the employer had delayed in paying the contributions due, in whole or in part, up to the day the contingency occurred, the Fund shall provide the wage earner with all payable allowances, and the employer shall remain in debt to the Fund by an amount equal to the total allowances due or paid to the wage earner or those entitled to them after him; this shall remain the case until the full payment of the contributions and the ancillary amounts.

### **Article 59:**

In the event of dispute over sickness, ability to work, state of health or the date of recovery or healing of wounds due to an employment injury or occupational illness, the dispute shall be examined by both the treating physician and the monitoring physician of the Fund together. In the event that the two physicians' opinions differ, the Fund's Director General shall appoint a committee of three experts, chosen from the list of expert specialists compiled by the Board of Directors of the Fund and endorsed by Cabinet decree. The decision of this committee shall be final and may not under any circumstances be reconsidered.

### **Article 60:**

Other disputes or conflicts that may arise from application of this Law, whether between the insured and employers, or between the Fund and the employers or the insured respectively, shall fall within the jurisdiction of the labor courts.

### **Article 61:**

Compulsory enforcement of the decisions issued by said courts shall take place through the executive departments of competent jurisdiction, in accordance with the provisions of the Code of Civil Procedure.

### **Article 62:**

The application details of the provisions of this Law shall be specified through decrees issued by the Cabinet at the recommendation of the Minister of Labor and upon the validation of the Fund's Board of Directors.



