LEGAL REGULATION OF MATERNITY LEAVE FOR WORKING MOTHERS

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ABSTRACT

This paper explores the legal regulation of maternity leave for working mothers in the Jordanian Labour Law, their entitlement to this leave, the period of rest she deserves, and her lawful right to a leave that covers the entire duration of pregnancy and after delivery. We discuss the responsibility of law to protect the health of the working mother and that of her fetus until born alive, the rights entitled to them by the law, the legal obligations of the employer, the social function of the Labour Law, and how far the legislature has succeeded in regulating maternity leave. The findings of this study revealed that the current maternity leave must be modified to ten weeks in accordance with international agreements.

Keywords: Maternity Leave, Working Mothers, Law

INTRODUCTION

The working mother is entitled to receive a maternity leave with full pay before and after delivery. The Labour Law's regulation of maternity leave is intended as a manner of aid to the working mother considering her circumstances and the heavy responsibilities that accompany pregnancy. The Social Security Law also added a type of insurance that regulates maternity leave and the rights of the working mother during this period: the Maternity Insurance.

The study problem lies in that the maternity leave granted to working mothers is not sufficient, and unequal between the private and the public sectors. This contradicts relevant international agreements such as the International Labour Organization's (ILO) (Maternity Protection Convention, 2020) (No. 183).

The study significance lies in the importance of this paid leave in guaranteeing the pre-natal protection of the mother and enabling her to fully recover after delivery. This is also relevant to the issues of mother and child health, gender equality in the workplace and the protection of mothers' jobs and salaries, mitigating poverty, and the right to decent work for both women and men. We explore the length and conditions of maternity leave and how far the legislature has succeeded in regulating it.

The Labour Law limited the maternity leave to 10 weeks, provided that at least six weeks of which are after delivery. But, what are the criteria that the legislature followed in calculating this period? Are these criteria local or derived from relevant international agreements? Are they based on health grounds or others?

Research Questions

- 1) What is maternity leave?
- 2) When does the working mother become entitled to a maternity leave, and what are the conditions thereof?
- 3) When can a woman demand a maternity leave, and is it possible to waive it?
- 4) What is the legal obligation of the employer in case they refuse to grant this leave to the working

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5) Can an employer end the pregnant woman's contract before or during the leave or after delivery?

To answer these questions, we will examine different aspects regarding the maternity leave, including its definition, its length, the conditions for granting it, its legal regulation, and the rights arising from meeting the conditions thereof. Accordingly, we will divide this paper into five parts as follows:

Part one: Definition of maternity leave. Part two: Length of maternity leave. Part three: Conditions of maternity leave. Part four: The extent to which the legislature succeeded in regulating this leave. Part five: Rights arising from meeting the conditions of maternity leave.

Part One: Definition of Maternity Leave

The legislature preserved the rights of the working woman by introducing, in addition to family leaves, an additional leave that guarantees she and her newborn receive the needed care. In comparison to the former law, this is considered a development in the rights of the working woman (Ramdan, 2004).

The Jordanian legislature did not, however, define maternity leave, which was a good decision; it is the responsibility of jurisprudence, not the legislature, to define terminologies and explain related issues. The former defined maternity leave as the leave granted by virtue of law to the pregnant woman before and after delivery, the duration of which is a specific number of weeks before and after delivery (The Unified Dictionary of Law Term). Article 70 of the Jordanian Labour Law states: "Women workers shall be entitled to maternity leave with full pay for ten weeks including rest before and after delivery. Leave after delivery shall be no less than six weeks long and employment before the expiry of such a period shall be prohibited."

The Jordanian legislature was not very successful in using the word "maternity", which mainly refers to pregnancy or delivery (in Arabic). Although terminology is not as important as regulation, the legislature should have used the word "childbirth" instead, or left it nondescript, and deleted the word "maternity". This modification, in our opinion, would serve to indicate that maternity starts after the birth of the baby, not before.

The childbirth leave can be defined as: The statutory period granted to the working mother since the first day of gestation or discovering it till after childbirth and postpartum recovery, provided her ability to perform her duties.

Part Two: Length of Maternity Leave

Maternity leave is one of the most important rights ensured by both the Labour Law and the Social Security Law. It is regulated by virtue of legal rules stated in these laws to grant working women their lawful rights (Errah, 2016).

The nature of this leave differs from that of the sick leave in that the reason why the working women is entitled to it is because of her physical nature, whereas an employee is entitled to a sick leaf only in the case where they are having a health problem that requires taking some time off (Masarweh, 2011).

In Article 70 of the Jordanian Labour Law, the legislature regulated maternity leave by stating: "Women workers shall be entitled to maternity leave with full pay for ten weeks including rest before and after delivery. Leave after delivery shall be no less than six weeks long..." We notice that the Jordanian legislature used weeks as a time unit instead of days or months. This selection is only symbolic, since pregnancy is usually calculated by months. The symbolism lies in the period during which a working woman is unable to perform her duties during pregnancy, which differs from one woman to another depending or her health or physical state. Some women need some rest during the first stages of pregnancy; others need rest during different stages of pregnancy. For these reasons, only the working woman is entitled to decide the length of maternity leave; neither the employer nor the nature of work determines it.

The legislature has limited the maternity leave in the Jordanian Labour Law to ten weeks, which equals seventy days or two months and ten days. But, what are the criteria that the legislature followed in calculating this period? Are these criteria local or derived from relevant international agreements? Are they based on health grounds or others?

To answer these questions, we must search into the set of legislations which regulate the maternity leave within the labour system:

Civil Service Bylaw and its Amendments, 2020 (No. 9)

The legislature has regulated the leave of the female public servant in Article 106: "A pregnant employee is entitled to a maternity leave of ninety consecutive days before and after delivery with full salary with the allowances that she deserves, based on a medical report from a doctor or a midwife. The maternity leave does not affect the employee's entitlement to the annual leave."

This indicates that the legislature did not treat the female public servant and the worker subject to the terms of the Labour Law on equal grounds. Such discrimination is not a positive action on the part of the legislature, but rather a negative one; Article 70 of Labour Law contradicts Article 6 of Jordan's Constitution that states that Jordanians shall be equal before the law and that there shall be no discrimination between them in regard to their rights and duties on grounds of race, language or religion. This signifies that maternity leave is not equal in all the legislations that regulate labour. In addition, it suggests that the legislature did not take into consideration health-related criteria to calculate the leave duration, since the health of the female public servant is no less important than that of the woman working in the public sector. We shall accordingly seek other criteria for calculating the length of maternity leave: international criteria.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 2007

Jordan is one of the countries that not only entered into this convention, but also endorsed it. It entered into force on 31/7/1992; this is approximately four years ahead of the issuance of the current law in 1996. Article 11/2 of the convention clearly states:

- a) In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:
- b) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- c) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- d) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
- e) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

By analyzing the text of the convention, we find that it did not obligate the participating and endorsing states to a specific length for maternity leave, but rather to grant working women their full pay during the maternity leave. The Jordanian legislation did comply with this amendment.

Maternity Protection Agreement (Revised) No. 103 of 1952 Article 3:

- 1) A woman to whom this Convention applies shall, on the production of a medical certificate stating the presumed date of her confinement, be entitled to a period of maternity leave.
- 2) The period of maternity leave shall be at least twelve weeks, and shall include a period of compulsory leave after confinement.
- 3) The period of compulsory leave after confinement shall be prescribed by national laws or regulations, but shall in no case be less than six weeks; the remainder of the total period of maternity leave may be provided before the presumed date of confinement or following expiration of the compulsory leave period or partly before the presumed date of confinement and partly following the expiration of the compulsory leave period as may be prescribed by national laws or regulations.
- 4) The leave before the presumed date of confinement shall be extended by any period elapsing between the presumed date of confinement and the actual date of confinement and the period of compulsory leave to be taken after confinement shall not be reduced on that account.
- 5) In case of illness medically certified arising out of pregnancy, national laws or regulations shall provide for additional leave before confinement, the maximum duration of which may be fixed by the competent authority.
- 6) In case of illness medically certified arising out of confinement, the woman shall be entitled to an extension of the leave after confinement, the maximum duration of which may be fixed by the competent authority.

Deducing from this convention, which entitles the working woman to a maternity leave of twelve weeks and no less than six weeks after confinement, we notice that the Jordanian legislature did not abide by the duration stated in international conventions, but rather with a shorter duration of ten weeks. Nor did the Jordanian legislature take into consideration the possibility of the working woman contracting a pregnancy-related illness, which would also require a special leave; instead, the sick leave is used in this case. It follows that the Jordanian legislature should have granted the working woman a leave exceeding ten weeks, and to regulate another type of leaves in case she contracts a pregnancy-related illness, provided fixing a maximum limit for this leave.

In its introduction on Jordan on 21/3/2021, the ILO stressed the need to increase the minimum maternity leave to 90 days in alignment with the public sector, and not to discrimination between working woman in the public sector and the private sector in compliance with the Maternity Protection Convention, 2000 (No. 103) (Al Mamlaka TV Website).

We also notice that the Jordanian legislature did not follow the international criteria in determining the valid minimum length of maternity leave, and that the legislated duration varies among the laws and bylaws regulating labour in Jordan. It is thus necessary that the legislature unifies, under Labour Law, the duration of maternity leave in conformity with the agreements and to avoid groundless discrimination among the working class.

Part Three: Conditions of Maternity Leave

Maternity leave is stated in Article 70 of the Jordanian Labour Law, which determines the working woman's right to a maternity leave with full pay. The legislature stated conditions for regulating this leave:

First Condition: Working Woman

The legislature defined the employee in Article 2 of Labour Law as "Every, male or female, who performs a job against wages and is a subordinate to the employer and at his service. This covers the juveniles and those under probation or rehabilitation."

This law clearly states that an employee can be either a male or a female; this includes all those females subject to the Labour Law, whether on probation, under a vocational training or employment contract, or even juvenile females. This condition is implied, since the legislature did not explicitly stipulate the presentation of a marriage certificate to be entitled to such a leave.

The Social Security Law defines maternity leave in article 2 as "A period of time off given to the insured female due to childbirth." In addition, article 3 of the aforementioned law determined the insurances included in this Law, including Maternity Insurance.

This Law also states in Article 43a that "maternity insurance shall apply to all the insured persons covered by the provisions of this law," whereas Article 44 states:

The insured female may benefit from the period specified in the Labour Law in force; provided that:

- a) The insured female is subject to the provisions of this insurance during the last six months preceding her entitlement to the maternity leave.
- b) The childbirth is established by means of an official certificate.

Article 45a of the same Law states: "The insured female shall be paid an allowance, during her maternity leave, equivalent to her last wage subject to deduction at the beginning of her maternity leave."

In addition, Article 46 of the same Law states "the maternity leave allowance shall be suspended in the vent the insured commences any employment during said leave." By revising the texts cited above, and based on our arguments above:

The researchers deduce that the maternity leave comes into effect at the moment of childbirth, and that these texts mentioned clearly the words delivery/childbirth/confinement, without distinction even in the cases of stillbirth or when the infant dies few days after delivery.

In this situation the terms of the Social Security Law would apply to the working woman, including Social Security insurance with her organization. Once the delivery (childbirth) event takes place, the working woman would be entitled to the maternity leave of ten weeks stated in the Labour Law. The allowance for this leave would be covered by the Social Security Corporation (SSC) that pays the insured a maternity leave allowance equivalent to her last wage, subject to deduction at the beginning of maternity leave. This must be communicated to the SSC by the employee's organization by completing the relevant form and submitting it to the SSC within 70 days of the date expected for childbirth. In case the insured returns to her work before the end of this leave, this allowance would be suspended.

Second Condition: Verification or Discovery of Pregnancy

Considering the scientific developments of the twenty-first century, it has now become easy to validate pregnancy using the simplest tools and with minimum expenses. Still, the Jordanian legislature did not explicitly stipulate presenting a pregnancy verification certificate, unlike the Civil Service Bylaw No. 9 of 2020, which states in Article 106a: "A pregnant employee is entitled to a maternity leave of ninety consecutive days before and after delivery with full salary with the allowances that she deserves, based on a medical report from a doctor or a midwife. The maternity leave does not affect the employee's entitlement to the annual leave."

The Civil Service Law stipulated requesting a medical report from a doctor or a midwife in order to be entitled to a maternity leave. We therefore wish the legislature would amend the text of Article 70 to mention this condition explicitly in order to protect the rights of employers and employees. In this case, the employer incurs the reporting expenses in light of the absence of a legal regulation that obligates employers to insure their employees medically. This also protects employers against fraud attempts to take paid leaves.

5

Once the two mentioned conditions are met, the working woman shall be entitled to this leave, and she would have the right to divide the leave duration (of ten weeks) as she sees fit, provided that no less than six weeks of this leave follow delivery. The Jordanian legislature did not stipulate a number of times where the working woman may be entitled to this leave, which was a positive decision. Similarly, the Egyptian legislature stated in the Labour Law No. 12 of 2003, Article 91 that:

A female worker having spent ten months in the service of the employer or more shall have the right to a maternity leave of ninety days, with a compensation equal to her comprehensive wage, comprising the period before delivery and after parturition, providing she shall submit a medical certificate indicating the date on which delivery most likely took place. A female worker shall not be required to work during the forty five days following childbirth. The maternity leave shall not be entitled more than twice throughout the female worker's period of service.

The Egyptian legislature's objective is different than that of the Jordanian legislature in terms of the social function of the labour law. The Egyptian legislature aims through this Article to regulate households and pregnancies in the Egyptian state, considering that the population exceeds the normal size. This reminds us that labour laws aim to achieve a social function.

Part Four: The Extent to which the Legislature Succeeded in Regulating this Leave

In order to determine how far the legislature has succeeded in regulating the maternity leave from the legislative aspect, we need to compare among the texts regulating such leaves in different laws and legislations, before analyzing those texts to determine how far the Jordanian legislature succeeded in comparison with other legislations and what guarantees it provided to the working woman. In the following lines, we will provide a comparison between the Jordanian legislature and other legislatures.

The Egyptian Labour Law

The Egyptian legislature regulated the maternity leave in its Labour Law No. 12 of 2003 in Article 91, stating:

A female worker having spent ten months in the service of the employer or more shall have the right to a maternity leave of ninety days, with a compensation equal to her comprehensive wage, comprising the period before delivery and after parturition, providing she shall submit a medical certificate indicating the date on which delivery most likely took place. A female worker shall not be required to work during the forty five days following childbirth. The maternity leave shall not be entitled more than twice throughout the female worker's period of service.

By analyzing the position of the Egyptian legislature on maternity leave, it is evident that it specified a time requirement of ten months for the female worker in any institution to be entitled to such a leave. The Jordanian legislature, on the other hand, did not specify any time requirement for this leave to be entitled, so as to guarantee the protection of the female worker and of her health condition. This renders the Jordanian legislature more successful in this aspect.

Contrastingly, the Egyptian legislature was more successful in granting the worker a longer leave (ninety days) than that granted by the Jordanian legislature (seventy days). Therefore, we wish the Jordanian legislature would increase the leave duration in the next amendment to protect the worker's health and grant her more time to rest from pregnancy and focus on looking after her newborn while being on paid leave. Consequently, a socially-healthy community would arise from such facilitation.

As for the condition where the working woman must submit a medical certificate to be granted maternity leave, the Egyptian legislator's stipulation of such a condition guarantees the entitlement of this leave and protects the employer from fraud and obligation in case the leave was taken without any verification of pregnancy. The Egyptian legislator, however, was not successful in not specifying who incurs the expenses of issuing such a certificate, in comparison with the Jordanian legislature - in the Civil Service Law rather than Labour Law - that requires the working woman desiring to take a maternity leave to issue a medical certificate. This, nonetheless, does not prevent the employer from regulating an article in their internal system or reaching a mutual agreement where they would incur such expenses instead, since not all rules in the Labour Law are imperative, but rather complementary. In the case where the Labour Law text was amended to require a medical report, the legislature must treat female workers in both the public and the private sectors on equal grounds by not requiring the worker to incur the expenses of issuing such a certificate, but rather the employer or the health insurance the employer provides to its workers.

As for the postpartum duration, the Egyptian legislator specified forty-five days after delivery during which the working woman must not be forced to work, meaning that the duration of the leave after delivery must be no less than half the total duration she deserves. In comparison, the Jordanian legislature specified six weeks, or forty-two days, which is close to the duration specified by the Egyptian legislation.

The Egyptian legislature was nonetheless not very successful in granting this leave only twice during the entirety of the service time, which is a stipulation aimed to regulate pregnancy and birth spacing. And although this stipulation is intended for social purposes, it is not in the benefit of the female worker nor the employer. The Jordanian legislature includes no such condition.

The Kuwaiti Law

The Kuwait legislature, in its new Labour Law No. 6 of 2010, regulated the maternity leave in Article 24 by stating:

A pregnant working woman shall be entitled to a paid maternity leave of 70 days, not included in her other leaves, provided that she gives birth within this period. After the end of the maternity leave, the employer may give the working woman, at her request, an unpaid leave for a period not exceeding four months to take care of the baby. The employer may not terminate the services of a working woman while she is on such leave or during her absence from work because of a sickness that is proved by a medical certificate that states that the sickness resulted from pregnancy or giving birth.

Both the Kuwaiti and the Jordanian legislatures were not successful in limiting the length of the leave to seventy days. Instead, they should have increased it to ninety days following the Egyptian legislature's model. The Kuwaiti legislature also introduced a special type of leaves: an unpaid four-month postpartum leave for taking care of her baby/babies, unlike the Jordanian legislature that also regulated such type of leaves, provided the worker has more than two children and that the company has ten or more workers.

Saudi Law

The legislation regulating labour in Saudi Arabia is the Labour Law of 2005. In article 151, it states:

A female worker shall be entitled to a maternity leave for the four weeks immediately preceding the expected date of delivery and the subsequent six weeks. The probable date of delivery shall be determined by the physician of the firm or pursuant to a medical report certified by a health authority. A woman may not work during the six weeks immediately following delivery.

By analyzing this article, we deduce that the maternity leave is ten weeks, similar to the term stipulated by the Jordanian legislature. Still, as we have mentioned earlier, this period must be increased, considering the amount of rest and care a woman needs during such a period. The Saudi legislature, however, stipulates presenting a certificate that proves pregnancy, contrary to the Jordanian legislature.

By reviewing the terms for maternity leaves in comparison with few Arab countries, we found that the Jordanian legislature grants the Jordanian woman full payment during the leave free from any conditions related to the period of working for the current employer. This was a successful step on the part of the Jordanian legislature, since maternity leave is meant to serve for healthcare purposes and for the greater social interest of supporting the mother and her newborns in a difficult and demanding time, both emotionally and finically.

Still, the Jordanian legislature will need to amend the length of maternity leave (ten weeks), which it failed to do despite the many amendments to the Labour Law and the annual reports issued by the ILO on Jordan inviting it to increase the leave to ninety days, or to one hundred twenty days in former amendments. This step would guarantee better care for the health of the working woman and encourage her to be and continue to be part of the labour market and to contribute to the national production.

Part Five: Rights Arising from Meeting the Conditions of Maternity Leave

From the moment the woman discovers her pregnancy and her body starts changing, the Jordanian Labour Law entitles her to a ten-week leave she can use during pregnancy or after delivery, provided that at least six weeks of which follow delivery. She may divide those into four months before delivery and six months after. This part will discuss two aspects: the first is the legal implications of the maternity leave on the employer, and the second is the legal implications of the maternity leave on the employee.

Legal Implications on the Employer

The employer has no right to refuse this type of leaves. In case they do, the female worker may seek help at the Ministry of Labour (Labour Inspector), which results in her employer incurring a fine of between 300 and 500 Dinars, the minimum of which cannot be decreased, and is to be doubled in case of repetition. On any account, this penalty does not substitute the woman's right to receive her full right to a leave with full payment for that period.

It follows that the employer has no right to refuse a female worker's demand of her lawful right to a leave whenever she feels she is in need of such a leave, whether before or after delivery. This leave is needed to rest from work and to protect the woman's health and that of her baby, and it may be divided on different periods where the employer may not object. This also implies exempting her from mandatory overtime work or any obligation during the leave duration, especially during the times of sales, annual inventory, or any work that might be exhausting.

The employer in this case commits to pay the full, unreduced wage to the worker, without deducting it from other leaves such as the weekend holiday, annual leaves, or national holidays.

Legal Implications on the Employee

The Jordanian legislature has granted the working woman the right to breastfeed her newborn one hour per day once the ten weeks of maternity leave are over and she is back to work. This is clearly stated in Article 71 of Labour Law: After the expiry of the maternity leave stipulated in article (70) of this law, the working woman shall be entitled to take paid intermittent period(s) for nursing her newborn baby during a year since the delivery date, the total of this period shall not exceed an hour per day.

The legislature also stipulated another special right, that in workplaces where several female workers with children of ages less than four years, and where the total number of those children is no less than fifteen, the organization must dedicate a place in the workplace as a nursery for children and one nanny or more.

But is the woman who lost her baby during pregnancy or at any point during the leave entitled to the entire leave duration? The legislature did not specify a condition regarding the health of the baby for the woman to be entitled to the entire duration of the leave. This implies that she is entitled to that entire duration whether or not her pregnancy is complete for any reason, because the main purpose of this leave is to protect the health of the working woman and of her newborn. She will not, however, be entitled the daily one-hour intermittent period since this right is specific to the baby, not the worker.

The implications of maternity leave on the working husband, on the other hand, are three days of fully-paid leave for each child he has in order to help his wife after birth. The legislature did not specify an exact time for this leave, leaving it to the working husband to decide it.

CONCLUSION

- 1) The Jordanian legislature calls this type of leave "Maternity Leave", whereas both the Egyptian and the Saudi legislatures call it "Childbirth Leave" (In Arabic).
- 2) The legislature stipulated ten weeks of maternity leave with full payment, at least six of which to follow delivery. It did not, however, treat working women subject to the Labour Law (private sector) and women subject to the Civil Service Bylaw (public sector) on equal grounds.
- 3) A woman is entitled to the leave from the moment of discovering pregnancy till after delivery, if she desires.
- 4) The working husband is entitled to a paternity leave of three days for each child he has.
- 5) A working woman is entitled to daily one-hour intermittent period(s) after the maternity leave to breastfeed her child.

RECOMMENDATIONS

- Amending the text of Article 70 of Labour Law by omitting the word "maternity" entirely or using the word "childbirth" instead in order to describe the leave more accurately leave.
- 2) Amending the text of Article 70 of Labour Law to increase the minimum length of maternity leave to twelve weeks or gradually to ninety days and then to twelve weeks to comply with international agreements and address the interest of the working woman.
- 3) Amending the text of Article 70 of Labour Law by adding the condition of presenting a medical certificate to the employer that verifies pregnancy and the expected due date, provided that the employer incurs the expenses of this certificate.

- 4) Stipulating an independent leave for pregnancy or childbirth illnesses not to be deducted from the maternity leave or the sick leave, provided it does not exceed fourteen days with full payment.
- 5) Amending the text of Article 71 of Labour Law to increase the breastfeeding time to two years and to a period of two hours instead of one.
- 6) Introducing a special text regarding the penalty imposed on the employer who forces a woman to work after childbirth during the legally stipulated leave to include imprisonment and the payment of a fine instead of only paying a fine.

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ENDNOTES

- This principle was confirmed by the legislature in the Civil Service Bylaw and its Amendments, 2020 (No. 9) of in Article 98: "The employee is entitled to obtain the stipulated licenses in this bylaw under the provisions and procedures outlined in it, in all cases, the interest of work must be taken into consideration when accepting to grant leave except for maternity leave, paternity leave, occasional leave or Hajj leave."
- 2) The General Conference of the International Labour Organisation, having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-fifth Session on 4 June 1952, and having decided upon the adoption of certain proposals with regard to maternity protection, which is the seventh item on the agenda of the session, and having determined that these proposals shall take the form of an international Convention, adopts this twenty-eighth day of June of the year one thousand nine hundred and fifty-two the following Convention, which may be cited as the Maternity Protection Convention (Revised), 1952.
- 3) Source: Al Mamlaka TV website https://www.almamlakatv.com/news/59455

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