

mafiwasta

UN Committee on the Elimination of Discrimination Against Women

Country Shadow Report: The United Arab Emirates

October 2009

Contents

Executive Summary.....	3
Recommendations	7
1. Mafiwasta and NGOs in the UAE	10
2. Report Methodology.....	10
3. Discrimination Against UAE Nationals	12
3.1 Marriage and Family Life – Article 16	12
3.2 Nationality – Article 9	13
3.3 Equality before the Law – Article 15	14
3.4 Domestic Violence and Absence of Support Services – General Recommendation 19	15
4. Discrimination Against Female Non-Citizens in the Formal Sector	18
4.1 Equality before the law – Article 15.....	20
5. Discrimination Against Female Domestic Workers.....	21
5.1 Exclusion from Labour Laws – Article 2	21
5.2 Healthcare – Article 12.....	22
5.3 Right to Just and Favourable Conditions At Work	22
5.4 Right not to be subject to Cruel, Inhuman or Degrading Treatment or Punishment	24
5.5 The Recruitment Process – Article 2(e).....	25
6. Forced Labour – General Recommendation 26	27
7. Trafficking – Article 6	27
Appendix 1: Interview with Sharla Musabih, founder of City of Hope Shelter	30

Executive Summary

There is gender-based discrimination against women in the UAE, as there is in all states, but in the UAE the form of that discrimination is inextricably linked to nationality. In its most virulent form discrimination against women is manifest in the treatment of non-citizens, particularly unskilled and semi-skilled workers. Accordingly, this shadow report differentiates between citizens and non-citizens.

Emirati women experience discrimination in relation to marriage and family life, nationality, access to justice and criminal law, and domestic violence. However, the most severe discrimination is experienced by migrant workers, who suffer not only from racial discrimination, but also from the gender-bias of migration which affects them disproportionately. Within this group of workers, who outnumber Emirati women by at least three to one, domestic workers can be considered the most vulnerable group of Emirati society, discriminated against both in effect and in purpose.

This executive summary lists, in order of priority, the main violations detailed in Mafiwasta's shadow report, with reference to the appropriate Convention articles, or the Committee's interpretation of these norms as outlined in its General Recommendations on Women Migrant Workers (No.26) and Violence Against Women (No. 19). For the purposes of simplicity, this summary contains no citations, but all relevant sources and citations can be found in the full report.

Right to just and favourable conditions of work and right not to be subject to cruel, inhuman or degrading treatment or punishment (Domestic workers): If it were not automatically clear to States Parties that ratification of CEDAW enjoins them to observe certain fundamental human rights, the Committee made it explicitly clear in General Recommendation 19, which states that Article 1 of CEDAW entails the protection of basic rights, such as the right to just and favourable conditions of work, and the right not to be subject to inhuman or degrading treatment or punishment. Where domestic workers are concerned, these rights are customarily violated. Domestic workers returning to Sri Lanka describe a life of perpetual servitude, punctuated only by whatever sleep is granted them. Workers report arbitrary deduction from their salaries for basic necessities or for perceived mistakes in the workplace, food deprivation, and working hours of up to 18 hours per day. Average monthly salaries are between US\$136 and US\$204 per month. Employers exert further control over their workers by confiscating their passports, a practice which is illegal but nonetheless customary in all unskilled and semi-skilled sectors. Many domestic workers are confined in their employers' home and denied any private life – most do not receive a day off. The forced seclusion entails physical, psychological, social and cultural isolation and is

in itself a form of abuse, but it also serves to facilitate abuses of a physical and mental nature. Domestic workers report serious physical assaults, and psychological abuse is equally common.

Systematic racial discrimination dehumanizes its victims, facilitating the type of abuse and exploitation described above. It is little surprise to find that this has a disproportionate effect on domestic workers in the informal sector, whose living and working conditions are characterized by injustice, and cruel, degrading and inhuman treatment. The UAE has taken no steps to prosecute private actors for their role in these abuses, in violation of Article 2(e), and its failure to properly regulate the recruitment process has created a culture of impunity among recruiters and employers which serves to perpetuate the cycle of abuse. *See sections 5.3 and 5.4.*

Equality before the Law (Citizens and Non-Citizens) – Article 15: Under certain precepts of Sharia law, a woman's evidence in criminal proceedings is only worth half of that of a man. Those who do attempt to access legal channels may well encounter further gender-based discrimination, either in their treatment or the categorisation of their complaint. Spousal rape is not recognised as a criminal offence in the UAE, which leaves married women without any legal recourse if forced by their husbands to have sex without their consent. Women who are raped by men other than their husbands find themselves in a perilous legal situation, since reporting the rape may result in their being charged with the crime of adultery or illicit sexual relations.

Non-citizen women face serious problems when seeking redress for crimes of a sexual nature. Victims of rape and sexual violence in the United Arab Emirates find themselves not only unsupported, but re-victimised and ultimately criminalised for an act to which they did not consent. Women of various nationalities have been prosecuted and imprisoned after pursuing a charge of sexual assault. In addition, a woman's status as a sex worker precludes the prosecution of a charge of sexual assault upon her, despite the country's unofficial tolerance of prostitution. *See sections 3.3 and 4.*

Absence of Support Services for Victims of Domestic Violence (Citizens and Non-Citizens) – General Recommendation 19: The UAE does not collate or maintain official statistics on the scale of domestic violence, either against Emirati women or domestic workers. Its failure to take action to combat domestic violence, coupled with discriminatory legislation, has had disastrous consequences. UAE criminal laws prohibiting physical or verbal violence do not apply to acts committed within a family home; in fact, the Penal Code gives men a positive legal entitlement to 'discipline' their female family members and children as they see fit, up to and including physical violence. A UAE university study from 2005 cited by the US State Department indicated that 66% of women who were permanently resident in

the country had been victims of domestic abuse, while 50% of respondents said they had seen their mother abused in the family home. Resident intake forms from the privately-run City of Hope refuge centre, which opened its doors to citizens and non-citizens alike, detailed harrowing tales of physical and sexual abuse, as well as attempts to induce the women into prostitution, intimidation and mental abuse. Presumably due to the fact that its well-publicised work revealed the existence of violence against women in the UAE, the UAE authorities effectively closed the refuge down, and a well-orchestrated campaign was launched to discredit its founder, who was forced to leave the UAE. The UAE is not simply in breach of a positive obligation to provide support services, it actively conspired to deny women access to support by its actions in the City of Hope affair. *See section 3.4 and Appendix 1.*

Forced Labour (Non-Citizens) – General Recommendation 26: In the UAE - a highly developed and wealthy country - the absence of any regulation of employers and agents has created conditions of forced labour. The US State Department's 2009 trafficking report states that domestic servants are subject to conditions 'indicative of forced labour' and that there have been 'no discernable anti-trafficking efforts against the forced labor of temporary migrant workers and domestic servants.' The UAE has ratified ILO Convention No. 29 on Forced Labour, which defines forced labour as 'all work or service which is exacted from any person under menace of any penalty and for which the said person has not offered himself voluntarily. In its elaboration of the two elements of forced labour – 'under menace of penalty' and 'involuntary' – the ILO listed contributory elements to a condition of forced labour: physical or sexual violence; restriction of movement; debt bondage; withholding wages; retention of passports; threat of denunciation to the authorities; dismissal from current or exclusion from future employment; and removal of rights or privileges. These elements can all be found in the domestic work sector of the UAE. *See section 6.*

Trafficking (Non-Citizens) – Article 6: The US's 2009 Trafficking Report states that, '[T]he Government of the United Arab Emirates does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant, and increasingly public, efforts to do so.' The UAE's recent progress in anti-trafficking has been described as 'uneven'. The UAE prohibits all forms of trafficking under its federal law Number 51, but it has resulted in only six convictions and the government has yet to prosecute, convict, or punish any labor trafficking offenders, despite the extent of the problem. In the US State Department's annual report on trafficking, UAE was downgraded from a Tier 2 country in 2008 to Tier 2 Watchlist in 2009. In 2008 seven members of the UAE's ruling Al Nahyan family were arrested on trafficking charges by Belgian police, following their treatment of seventeen Middle Eastern and North African domestic servants who had been working for them in a year-long stay at Brussel's Conrad Hotel. The incident, which remains under investigation, took place outside the UAE's territorial

jurisdiction, but it does indicate a private acceptance and tolerance of mistreatment of domestic workers, which stands in marked contrast to what the US State Department has called its ‘increasingly public’ efforts to combat trafficking. Its disbandment of the City of Hope, the only organization which provided refuge, care and support to trafficked women lends further credence to the view that the image of the country takes precedence over the protection of vulnerable women. *See section 7.*

Exclusion from Labour Laws (Non-citizen domestic workers) – Article 2: Domestic workers are explicitly excluded from the provisions of UAE labour law and the provisions of the draft labour law of 2007. The exclusion of domestic workers is discriminatory not only in effect but in purpose. Mafiwasta requests that the Committee address not only the statutory lacuna which excludes domestic workers from legal protection, but also the effective absence of regulation, which is a more serious obstruction to the realization of migrant workers’ rights. Although their inclusion in a new labour law is of great symbolic importance, female domestic workers will not enjoy significantly improved protection simply by their inclusion in the provisions of domestic labour law. Any legislative protection must be complemented by an effective complaints mechanism and the sanctioning of offenders. *See section 5.1.*

Healthcare (Non-citizen domestic workers) – Article 12: The recent privatization of health care provision in Abu Dhabi, and Dubai’s proposals to do similarly, will leave domestic workers with no access to avenues of redress, since the system is regulated by the Ministry of Labour, which has no remit to regulate workers in the informal sector. *See section 5.2.*

Marriage and Family Life (Citizens) – Article 16: The family law provisions in the UAE are significantly skewed against female partners, fail to satisfy the relevant provisions of the Convention, and are emblematic of a larger inequality in Emirati society between men and women. *See section 3.1.*

Nationality (Citizens) – Article 9: It is clear from even a cursory examination of nationality provisions that Emirati women occupy a significantly inferior status in the eyes of the law. A woman’s citizenship and in certain situations even her continued residence in the country are dependent on the citizenship entitlements of her husband or children, while a man’s citizenship may be passed on and propagated through the simplest clerical procedures. *See section 3.2.*

Recommendations

In stark contrast to the progressive image it attempts to project globally, the United Arab Emirates is a serial violator of human rights. It is of deep concern that, with some notable exceptions,¹ its institutional disregard for basic international human rights norms has not been effectively questioned at UN level. The UAE displays a worrying ability to placate the international community with hastily drafted legislation, ratification of treaties it has no intention of implementing, and an array of pledges, promises and initiatives, which it consistently fails to implement. Thus, where recommendations are concerned, Mafiwasta would urge the Committee be robust in questioning the effectiveness of the UAE's myriad initiatives and to seek firm commitments on issues relating to the treatment of domestic workers, women's inequality before the law, and domestic violence.

Mafiwasta is fully aware of the difficult role of UN Committees whereby criticism of States Parties must be balanced against the need for their continued engagement in treaty-based processes. However, in the case of the UAE it is our belief that the State Party cynically exploits the diplomatic concerns of UN Committees and mechanisms. It views international human rights institutions as public relations tools, which can be manipulated to serve its own ends. Mafiwasta therefore strongly urges the Committee to consider the adoption of more forceful recommendations and not to shy away from criticism of the State Party, whose continued engagement with the Committee is all but guaranteed in view of its economic reliance on international trade and tourism, and its ongoing public relations offensive to depict itself as a progressive state which is respectful of human rights. Mafiwasta has limited its recommendations to three key areas which we view as being of paramount importance: the living and working conditions of migrant workers; equality before the law; and domestic violence and the absence of support services.

- Mafiwasta urges the Committee to raise the issue of the living and working conditions of domestic workers. Their exclusion from domestic labour laws is an inexcusable omission, but we would request that the Committee address more serious underlying problems which lead to the cruel, inhuman and degrading treatment of domestic workers, treatment which constitutes discrimination against women under the terms of Article 1 of the Convention. The UAE must publicize, introduce and enforce legislation which sanctions employers and recruitment agents

¹ Consideration of Reports, Comments and Information Submitted by States Parties Under Article 9 of the Convention: United Arab Emirates. UN Doc. CERD/C/SR.1937, 7 August 2009. The criticisms of CERD Committee members Pierre Prosper and Patrick Thornberry, echoed by many other Committee members, were not reflected in the Committee's concluding observations.

with material sentences. The Committee should ensure that the UAE does not simply scapegoat non-nationals in the recruitment sector, as the majority of offences are committed by private employers. This will require a fundamental overhaul of the UAE's current regulatory system on migrant workers, but anything short of this cannot guarantee the realization of these basic rights, and will ensure that many domestic workers continue to live in conditions of forced labour. The government must also introduce policies and initiatives which promote the values of equality and non-discrimination. These are values very much ingrained in Emirati culture and society, but there has been a collective failure on the part of wealthier sections of Emirati society – national and non-national - to stress that these principles of equality also apply to domestic workers. A well-publicized, well-coordinated campaign to ensure all domestic workers receive at least one day off per week, would be a simple and practical way to start what will necessarily be a long process.

- In terms of equality before the law, the UAE must recognise the crime of spousal rape and take steps to ensure that prosecutions for such a crime are possible. A major barrier to the reporting of such crimes is a male-dominated police force and judiciary. The arrest and prosecution of victims of serious sexual assault can not be tolerated and we would urge the Committee to impress this upon the UAE in the strongest terms possible. In addition, the UAE should commence judicial reviews of all such cases, and involving independent experts in that process. Crucially, the UAE must acknowledge the existence of prostitution within its territorial jurisdiction and explicitly criminalize the act of a sexual assault upon a sex worker.
- Figures in authority in the UAE actively conspired to close down the only available support service for victims of gender-based violence. At the same time, Emirati politicians deny the existence of domestic violence, despite all the available evidence pointing to a serious problem. Domestic violence is an unfortunate reality in all societies, but it can be mitigated through campaigning, education and the effective and public sanctioning of offenders. The UAE does none of these things. Furthermore it provides no support or sanctuary for the victims of domestic violence. The City of Hope shelter offered first-rate support and care for women who endured domestic violence, but the attention it drew to the existence of domestic violence in the UAE led to its closure and the banishment of its founder, a committed humanitarian. These are not the actions of a state which values the rights of women, and Mafiwasta believes that Committee criticism of the UAE, however difficult, would be both appropriate and effective. We would also

request that the Committee urge the UAE to involve independent experts in the setting up of a new centre for victims of domestic abuse.

1. Mafiwasta and NGOs in the UAE

Mafiwasta is an organization dedicated to the advancement of migrant workers' rights in the United Arab Emirates. It was founded in 2005 by Nick McGeehan, who worked for two state-owned oil and gas companies in Abu Dhabi between 2003 and 2006, and is currently doctoral candidate at the European University Institute conducting research into international law and migrant workers in the Gulf. In 2006, Mafiwasta submitted a complaint to the ILO's Committee on Freedom of Expression. In 2008 we submitted a document for the UAE's first Universal Periodic Review session, and actively engaged in the subsequent lobbying process. In 2009 Mafiwasta briefed the Committee at the UAE's CERD session and was the only NGO to submit a shadow report. Nick McGeehan and Dr David Keane are the authors of the first and only peer-reviewed human rights law paper to address the issue.²

A member of the CERD Committee requested information on the role of NGOs at the UAE's session in August 2009.³ The UAE did not respond to the query in its official response for the simple reason that no NGOs exist in the UAE and it would prove impossible for an Emirati-run organisation to offer criticism, however constructive, of its government. This report therefore differs from others received by the Committee in that it has been written by non-nationals based outwith the UAE. Mafiwasta's criticism of the government precludes our operating in the country or indeed recruiting UAE based volunteers. This is regrettable but unavoidable in view of the government's active harassment of NGOs of whom it does not approve.⁴

2. Report Methodology

There is gender-based discrimination against women in the UAE, as there is in all states, but in the UAE the form of that discrimination is inextricably linked to nationality. In its most virulent form discrimination against women is manifest in the treatment of non-citizens, particularly unskilled and semi-skilled workers. The UAE is *de facto* segregated, with a clear hierarchy; Emiratis at the top, wealthy expatriates – typically but not exclusively Western – in a second tier, and the unskilled and semi-skilled migrant worker underclass, typically but not exclusively south Asian. In view of the gender-bias of migration, these stark societal divisions have a significant bearing on the form of the gender-based

² David Keane & Nicholas McGeehan, *Enforcing Migrant Workers' Rights in the United Arab Emirates*, 15 Int'l J. Mty. & Gp. Rts., 81 (2008).

³ Committee member Patrick Thornberry enquired about the status and operating conditions of NGOs in the United Arab Emirates and whether they had contributed to the preparation of its CERD report. *Supra* note 1.

⁴ See for example the treatment of Emirati lawyers Mohammed Al Roken and Mohamed Al Mansoori who have both been subject to arrest. Details available at <http://www.frontlinedefenders.org/taxonomy/term/461>

discrimination experienced and its severity. This shadow report is structured accordingly as to have done otherwise would have been to imply that nationals and non-national women endure not just similar forms of discrimination, but similar levels. This is not the case.

A major problem inherent in any rights-based analysis of the United Arab Emirates remains the dearth of reliable sources. The press practices self-censorship, whereby stories which are deemed embarrassing to either the country or the powerful ruling families are suppressed.⁵ In the case of domestic workers, the problem is exacerbated by their effective confinement in the workplace. There are no independent NGOs operating in the country and therefore the vast majority data on domestic workers is collected in sending states. This report, assembled from the reports of highly reputable organisations including Human Rights Watch, the International Labour Organisation and the U.S. State Department, as well as from Mafiwasta's extensive network of UAE-based contacts, nonetheless provides clear evidence of discrimination against women, particularly non-citizen domestic workers. The information provided by the State Party has been of no assistance in this regard, it does not acknowledge the existence of gender-based discrimination, it largely ignores the huge role played by non-citizen women and any data it has provided is confusing and often misleading.⁶ In a country with the highest net migration rate in the world⁷ and a GDP per capita of \$39,900,⁸ such negligence is inexcusable. UAE nationals only account for 20% of the entire population, which is approaching 5 million and the country therefore has, at a conservative estimate, a migrant workforce of approximately 4 million, from predominantly south Asian neighbours such as India, Pakistan and Bangladesh.⁹ In the absence of accurate data from the State Party, it seems reasonable to state that this shadow report is an assessment of the rights of 2 million women.

This report first addresses Emirati women, in relation to marriage and family life, nationality, access to justice and criminal law, and domestic violence. It goes on to address the rights of non-citizens, where its focus is unskilled and semi-skilled women, typically, but not exclusively, from south Asia and east Africa. In particular, the report addresses the violation of the fundamental rights of domestic workers, an exclusively female subset of the non-citizen workforce whose legal status and working environment

⁵ Human Rights Watch 'Just the Good News, Please: New UAE Media Law Continues to Stifle Press' April 2009.

⁶ The UAE's initial submission only discriminates between citizens and non-citizens. CEDAW Initial Periodic Report of States Parties: The United Arab Emirates. UN Doc. CEDAW/C/ARE/1. 17 September 2008, at 21.

⁷ The net migration rate indicates the contribution of migration to the overall level of *population* change. The UAE's net migration rate is 22.98 per 1000. See CIA World Factbook at <https://www.cia.gov/library/publications/the-world-factbook/geos/ae.html>

⁸ *Ibid.* CIA 2008 figure.

⁹ CIA World Factbook puts the labour force at 3.26 million of whom 85% are migrants. This does not include domestic workers who total nearly 800,000 according to UAE figures. See Gulf News 'Domestic workers form 5% of UAE's population' 11 November 2007, available at <http://gulfnews.com/news/gulf/uae/employment/domestic-workers-form-5-of-uae-s-population-1.131364> See CIA World Factbook *supra* note 7 for country statistics.

places them at particular risk of exploitation. Domestic workers come from India, Ethiopia, Sri Lanka, the Philippines, Bangladesh and Indonesia. Finally the report looks at the prevalence of women working under conditions of forced labour, and assesses the country's anti-trafficking efforts.

3. Discrimination Against UAE Nationals

The Committee asked whether the State party has put in place a policy aimed at accelerating *de facto* equality of women in the area of employment.¹⁰ In this regard, and in education, the State has performed relatively well. According to Freedom House,

[T]he government has worked to improve certain aspects of women's rights over the last five years, though some reforms have been slow to take effect. Certain steps in the right direction are obvious: women are entering new professional fields such as engineering and information technology; there has been a rapid expansion in higher education for women; the ratio of females to males in the workforce is increasing; and women have been appointed to high-profile positions within the government and the business world.¹¹

Emirati women play an ever-increasing role in the workplace and their success should serve as a model for the region, elevating the status of women and paving the way for further advances. However, these advances must be put in context and it remains the case that fathers or husbands may exercise legal authority to forbid their wives or daughters from participating in professional or social life.¹² Women's advances are not based on the assertion of any rights, rather they have progressed in spite of the deep-seated gender-based discrimination against women, which is evident in many other areas of public and private life in the UAE.

3.1 Marriage and Family Life – Article 16

Although the UAE has signed and ratified the CEDAW Convention, in October 2004 it submitted a reservation regarding its acceptance of Article 16 of the Convention, stating 'The United Arab Emirates will abide by the provisions of the article insofar as they are not in conflict with the principles of the sharia'.¹³ The reservation goes on to state that sharia law 'makes a woman's right to divorce conditional

¹⁰ CEDAW List of issues and questions with regard to the initial report of the United Arab Emirates, UN Doc CEDAW/C/UZB/Q/4, 13 March 2009, para 29.

¹¹ Freedom House 'Women's Rights in the Middle East and North Africa: The United Arab Emirates' 11 February 2009.

¹² *Ibid.*

¹³ CEDAW/SP/2006/2: Declarations, reservations, objections and notifications of withdrawal of reservations relating to the Convention on the Elimination of All Forms of Discrimination against Women – United Arab Emirates, 6 October 2004.

on a judicial decision, in a case in which she has been harmed'.¹⁴ The Committee has stated that it considers Article 16 to be a core provision of the Convention, and that reservations to Article 16, 'whether lodged for national, traditional, religious or cultural reasons, are incompatible with the Convention and therefore impermissible and should be reviewed and modified or withdrawn'.¹⁵ Fourteen states have lodged formal objections to the reservation entered by the UAE,¹⁶ on the grounds that it is contrary to the object and purpose of the Convention.

A number of provisions of Emirati legislation relating to family law matters appear to fall substantially short of the requirements and standards contained in the Convention. Article 56 of the Personal Status Law (No. 28 of 2005) states that a husband has the right to his wife's obedience 'in accordance with custom',¹⁷ while under Article 39, the parties to a marriage contract are a woman's guardian and her potential husband, although her signed consent is at least a requirement for the contract to be valid.¹⁸ Muslim Emirati women are prohibited from marrying outside their faith, and entering into such a marriage can result in the arrest and trial of both parties.¹⁹ A woman may request a divorce on condition of the return of her *mahr* or dowry, and is held to have forfeited the right to custody of children from a previous marriage in the event of remarriage. Custody rules prescribe that divorced women may retain custody of male children until the age of 10 and female children until the age of 13, at which point the family law courts will re-assess custody arrangements.

The family law provisions in the UAE are significantly skewed against female partners, fail to satisfy the relevant provisions of the Convention, and are emblematic of a larger inequality in Emirati society between men and women.

3.2 Nationality – Article 9

Under current Emirati law, it is impossible for an Emirati woman to transfer her nationality to a non-citizen husband without special permission from the Presidential Court prior to the marriage.²⁰ Without a specific dispensation from the Naturalisation and Residence Directorate of the emirate in which she lives, she forfeits her own citizenship should she choose to marry a foreign national. For an Emirati man to

¹⁴ *Ibid.*

¹⁵ Statements on Reservations to the Convention on the Elimination of All Forms of Discrimination against Women adopted by the Committee on the Elimination of Discrimination Against Women, U.N. Doc. A/53/38/Rev.1 47-50 at 49.

¹⁶ The fourteen States in question are Austria, Denmark, Finland, France, Germany, Greece, Latvia, the Netherlands, Norway, Poland, Portugal, Spain, Sweden and the United Kingdom. The text of their objections may be found at <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>

¹⁷ Quoted by Freedom House *supra* note 11.

¹⁸ *Ibid.*

¹⁹ US State Department Country Report on Human Rights Practices: United Arab Emirates (23 February 2001), available at <http://www.state.gov/g/drl/rls/hrrpt/2000/nea/824.htm>

²⁰ Freedom House *supra* note 11.

transfer citizenship to his non-national wife, however, all that is required is a copy of the wife's passport and the marriage contract and proof of the husband's nationality. According to data from the Ministry of Labour and Family Affairs from 2005, 28% of the marriages registered in the UAE were between an Emirati man and a foreign woman.²¹ Similarly, an Emirati man will automatically pass his nationality on to his children, while the children of an Emirati mother and non-citizen father are unable to claim citizenship of the UAE.²² Where the Emirati husband is dead or divorced from a non-national mother, even minor children can sponsor the mother's residency in the country as they will automatically inherit UAE citizenship from their father. Quite aside from the procedural and legal difficulties which such a citizenship regime generates, it is clear from even a cursory examination of nationality provisions that Emirati women occupy a significantly inferior status in the eyes of the law. A woman's citizenship and in certain situations even her continued residence in the country are dependent on the citizenship entitlements of her husband or children, while a man's citizenship may be passed on and propagated through the simplest clerical procedures.

In a related form of discrimination, an Emirati woman requires the permission of her husband or father to travel outside of the country. A man may confiscate the passports of his wife, children and unmarried adult daughters, or contact the immigration authorities in order to prevent them from leaving the country,²³ a clear violation of Article 15(4) of the Convention.

3.3 Equality before the Law – Article 15

One of the primary obstacles to access to justice for women in the UAE is the extent of male domination of the police, judiciary and legal professions, although there has been some progress in this regard.²⁴ This is a social rather than a legal issue. Emirati women may feel discouraged from accessing legal services or making a complaint to the police as it involves formal interaction with males from outside the family circle in relation to typically private matters.

²¹Statistic quoted in Khaleej Times, 'Polygamy a Major Cause of Divorce: Study' (9 December 2005), available online at http://www.khaleejtimes.com/DisplayArticle.asp?xfile=data/theuae/2005/December/theuae_December248.xml§ion=theuae&col=. The majority of these are second, polygamous marriages between men in their sixties and women in their twenties.

²² Freedom House *supra* note 11 at 3.

²³ OECD Social Institutions and Gender Index: 'Gender Equality and Social Institutions in the United Arab Emirates', available online at <http://genderindex.org/country/united-arab-emirates>

²⁴ In early 2008 UAE law was amended to allow women to serve as federal prosecutors and judges, and Kholoud al-Dhahiri was appointed the first female judge in the Abu Dhabi Justice Department. Al-Dhahiri is niece of the Justice Minister. As Freedom House point out 'though this in no way discredits her accomplishments, some doubt whether a woman without such influential connections would be able to achieve the same status.' Freedom House *supra* note 11 at 12.

Under certain precepts of Sharia law, a woman's evidence in criminal proceedings is only worth half of that of a man.²⁵ Those who do attempt to access legal channels, may well encounter further gender-based discrimination, either in their treatment or the categorisation of their complaint.

Spousal rape is not recognised as a criminal offence in the UAE, which leaves married women without any legal recourse if forced by their husbands to have sex without their consent. Women who are raped by men other than their husbands find themselves in a perilous legal situation, since reporting the rape may result in their being charged with the crime of adultery or illicit sexual relations. This problem manifests itself most seriously in relation to non-citizens and is dealt with in section 4.

3.4 Domestic Violence and Absence of Support Services – General Recommendation 19

Domestic violence is a serious issue in the UAE, as it is in all countries. However, in the UAE it is all but impossible to quantify due to the State's misguided insistence that no such problem exists. The UAE does not collate or maintain official statistics on the scale of domestic violence, and did not contribute to the UN Secretary General database on violence against women.²⁶ Their failure to take action to combat domestic violence, coupled with discriminatory legislation, has had disastrous consequences.

UAE criminal laws prohibiting physical or verbal violence do not apply to acts committed within a family home; in fact, the Penal Code gives men a positive legal entitlement to 'discipline' their female family members and children as they see fit, up to and including physical violence.²⁷ The lack of an effective legal recourse is a major disincentive to women to come forward when subjected to abuse, added to which are the universal obstacles faced by victims of domestic violence: financial or residential dependence on an abusive partner; fear (in this case well-founded) of losing custody of or access to children; shame; and distress.

In an interview with the Gulf News, Raja al Midfaa, Director of the Family and Child Care Department at the Ministry of Labour and Social Affairs, claimed that domestic violence was 'less serious' as a problem in the UAE because of the country's 'strong social values and religious ethics'.²⁸ She went on to say that some men are 'nervous by nature... This reduces their ability to control themselves when they get angry or feel irritated. Women, especially UAE nationals, choose to keep the peace at home and do not take up

²⁵ Freedom House *supra* note 11 at 3.

²⁶ Established pursuant to General Assembly Resolution 61/143 of 19 December 2006; UAE country page available at <http://webapps01.un.org/vawdatabase/countryInd.action?countryId=1361>. The UAE entry contains a reference to legislation on trafficking, but no information whatsoever relating to strategies, services for victims, preventative measures or research and statistical data.

²⁷ OECD *supra* note 23.

²⁸ Gulf News, 'Violence Against Women – Innocent Victims of Violence', 16 December 2000, available at <http://www.gulf-news.com/Articles/print.asp?ArticleID=5016>.

the issue with the authorities. They forgive their husbands and life goes on'.²⁹ Lt. Abdullah Rashid Al Mazroei of the Criminal Investigation Department in Ras Al Khaimah stated that the number of women who do report incidents to the authorities is well below the actual figure.³⁰ In 2005 the Dubai police department apparently recorded only four cases of family problems involving violence against women.³¹ A UAE university study from 2005 cited by the US State Department indicated that 66% of women who were permanently resident in the country had been victims of domestic abuse, while 50% of respondents said they had seen their mother abused in the family home.³² Police are often disinclined to intervene in what is viewed as a 'private family matter', and frequently urge beaten women to return home. In some cases, the police have contacted an abusive husband to collect their wife from the station and bring her home.³³ The State Department report highlighted the case from July 2005 of a man who was found guilty of beating his wife to death, but who was convicted only for involuntary manslaughter as the court recognised his right to beat her as an act of discipline.³⁴

Given the extent and seeming pervasiveness of domestic violence, and the lack of adequate responses from the authorities, it is essential that women who are victims of domestic violence have recourse to support services, particularly residential services and shelters, to enable them to remove themselves and their children from a violent home. Between 2001 and 2008, only one such organization – albeit privately and voluntarily run – existed in the UAE. The City of Hope Shelter was established in Dubai in 2001 and expanded to three operational shelters, and provided both long- and short-term refuge to hundreds of abused women, both victims of domestic violence and female domestic workers who had suffered abuse. The organisation initially had the apparent support of the ruling family and local police chiefs, but the attention the shelter received, both domestically and internationally, led to a dramatic change in the attitude of the authorities,³⁵ and an orchestrated campaign to discredit and destroy the shelters.

In March 2007, City of Hope's Director Sharla Musabih was contacted with a proposal to merge the City of Hope organisation and shelters into a similar project proposed by the Dubai Women and Children's Foundation. The initial proposal was that her organisation would be co-opted into a government-run structure which would maintain the standards of the City of Hope shelters and that Ms. Musabih would be

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ This figure is quoted in the New Internationalist 'Interview with Sharla Musabih as she builds City of Hope', November 2006, available online at <http://www.newint.org/columns/makingwaves/2006/11/01/sharla-musabih/>

³² US State Department Country Report on Human Rights Practices (2005), available at <http://www.state.gov/g/drl/rls/hrrpt/2005/61701.htm>.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ See for example The New York Times 'Voice For Abused Women Upsets Dubai Patriarchy' 23 March 2008, available at <http://www.nytimes.com/2008/03/23/world/middleeast/23dubai.html>

kept on in a similar role and would have input into the selection of board members. However, later in the year she was belatedly informed of the appointment of Afra Al Basti as Chief Executive Officer of the Women and Children's' Foundation. Towards the end of 2007, the women resident in the City of Hope shelter were moved to the new government-run facility, with guards, barbed-wire fencing and bars on the windows. The residents were understandably distressed by their new prison-like environment, and had further cause for concern when Ms. Al Basti informed them that they would be given plane tickets and deported to their home countries. One resident committed suicide in December 2007 by drinking bleach.³⁶ Ms. Al Basti is said to have told a City of Hope case worker that the organisation had been shut down by the Government and was under investigation for allegedly being 'a house of prostitution'.³⁷ In 2008, stories began to be carried by national newspapers alleging abuse of detainees by Ms. Musabih herself, including lurid and baseless claims that she had attempted to sell one resident's baby.³⁸ A prominent cleric also gave a revealing statement to the media accusing Ms. Musabih of 'going against the traditions of Emirati people' by "instigat[ing] wives against their husbands".³⁹ In 2008, Ms. Musabih, who was born in the US but has lived in the UAE for 26 years, is married to an Emirati national and has raised six children in the country, was forced to leave the UAE and return to the United States. She is continuing to run City of Hope as a registered international NGO but is unable to care for the women who had been resident in the shelters, which have since been closed down.

The City of Hope organisation provided a vitally important service for battered and abused women of all nationalities in the United Arab Emirates, and the manner in which it was undermined and then closed is of serious concern. Recent resident intake forms from the organisation detailed harrowing tales of physical and sexual abuse of female domestic workers by their employers or employers' family members, attempts to induce the women into prostitution, intimidation and mental abuse.⁴⁰ No support structure now exists for these women.

A more detailed description of Mrs Musabih's work at City of Hope and the events which led to its closure is attached to this report in Appendix 1. Recent reports indicate that the government-run service is palpably inadequate.

Administration of the Dubai shelter, however, included several practices harmful to victims' welfare, including detention of victims that the police wanted to hold for use as prosecution witnesses, an overly restrictive intake process that

³⁶ See Appendix 1.

³⁷ See Appendix 1.

³⁸ *Supra* note 35.

³⁹ *Ibid.*

⁴⁰ Intake forms from City of Hope provided to Mafiwasta. Copies on file with Mafiwasta.

prohibited assistance to victims who did not have appropriate immigration status, and tight restrictions on victims' movements and access to persons outside the shelter.⁴¹

According to internal City of Hope documents obtained by Mafiwasta, a female victim of domestic abuse was told by the new shelter that she had no case and should return home. She was accompanied by her daughter, who, it was alleged, had been sexually assaulted by the father.⁴²

In General Recommendation 19 on Violence Against Women, the Committee outlines the importance of support structures for victims of domestic violence.

States parties should establish or support services for victims of family violence, rape, sexual assault and other forms of gender-based violence, including refuges, specially trained health workers, rehabilitation and counseling...⁴³

The UAE is one of the wealthiest states in the world and its abject failure to provide women with any of the support services referred to above is inexcusable. The advisory tone of the recommendation – ‘states parties should’ – cannot be interpreted by wealthier states as the absence of an obligation on their part to provide support services for women. Moreover, the UAE is not simply in breach of a positive obligation, it actively conspired to deny women access to support by its actions in the City of Hope affair.

4. Discrimination Against Female Non-Citizens in the Formal Sector

In August 2009, seven out of ten members of the UN's CERD Committee expressed concern over the UAE's treatment of migrant workers.⁴⁴ The Committee's concluding observations outlined the extent of the problem: withholding of passports; arbitrary deduction and extended non-payment of wages; lack of implementation of laws and poor monitoring mechanisms; lack of access to health care; and poor living and working conditions.⁴⁵ These abuses are widespread and systematic, and they are endured by male and

⁴¹ US State Department Trafficking In Persons Report 2009 at 293.

⁴² Name withheld, Internal Document of City of Hope. Document on file with Mafiwasta.

⁴³ CEDAW General Recommendation No. 19 on Violence Against Women, 11th Session, 1992, Para 24(k).

⁴⁴ Consideration of Reports, Comments and Information Submitted by States Parties Under Article 9 of the Convention: United Arab Emirates. UN Doc. CERD/C/SR.1937, 7 August 2009.

⁴⁵ Concluding Recommendations of the Committee on the Elimination of Racial Discrimination: United Arab Emirates, UN Doc. CERD/C/UAE/CO/17, 31 August 2009. 'With reference to its General Recommendation 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party: a) continue to strengthen the protection of all foreign labourers through adequate legislation and policies aimed at curbing abuses, such as the withholding of passports by employers, extended non-payment of wages, arbitrary deductions of wages, non-payment of overtime and working hours; b) ensure implementation of existing laws and enhance monitoring mechanisms, such as labour inspections, with regard to payment of wages, medical care, housing and other living

female non-citizens alike. The illegal imposition of debt and the confiscation of passports is customary, and there is systemic violation of the procedural and substantive elements of non-citizens' right of access to justice.⁴⁶ Furthermore, they are not abuses suffered by all migrant workers, but the unskilled and semi-skilled underclass who migrate independently – UAE law stipulates that in order to a non-national must earn a yearly salary of 7,000 UAE dirhams (US \$1,905) for his or her family to be eligible for residency.⁴⁷ These workers typically hail from low income economies in close proximity to the Gulf states.⁴⁸

However, migration is not a gender-neutral phenomenon, and the racial discrimination encountered by female migrant workers is often compounded by gender-based discrimination. The increased vulnerability of female migrant workers has been recognized by the Committee in General Recommendation 26.

The position of female migrants is different from that of male migrants in terms of legal migration channels, the sectors into which they migrate, the forms of abuse they suffer and the consequences thereof.⁴⁹

This is certainly true of the UAE, and, while all non-citizen women in the UAE are discriminated against in terms of their equality before the law, the most disproportionate and severe discrimination is endured by domestic workers, an exclusively female, exclusively non-citizen sector of the labour force. Domestic workers are excluded from labour laws and associated complaints mechanisms, despite the fact that the nature of their work – they typically live in the home of their employers – leaves them highly vulnerable to abuse. There has been a nullification of domestic workers' fundamental rights, most notably the right to just and favourable conditions of work, and the right not to be subject to inhuman or degrading treatment or punishment.

If it were not automatically clear to States Parties that ratification of CEDAW enjoins them to observe certain fundamental human rights, the Committee made it explicitly clear in General Recommendation 19, which states that Article 1 of CEDAW entails the protection of these basic rights.⁵⁰ While these may

and working conditions of foreign workers; c) reinforce the effectiveness of complaint mechanisms and facilitate access to them by foreign workers; d) provide additional statistical data, in the next report, on the number of inspections carried out, complaints lodged, investigations, judgements and information on compensation granted if any...'

⁴⁶ See Mafiwasta UAE CERD Shadow Report at 24 – 30. Available online at http://www2.ohchr.org/english/bodies/cerd/docs/ngos/Mafiwasta_UAE_cerd75.PDF

⁴⁷ See *Gulf News* 'FNC Calls for Tightening of Sponsorship Rules' 16 December 2008. It has been proposed that this be increased to 10,000dhs

⁴⁸ See Mafiwasta *supra* note 46.

⁴⁹ CEDAW General Recommendation No. 26 on Female Migrant Workers, Para 5.

⁵⁰ CEDAW General Recommendation No. 19 on Violence Against Women. Para. 7

be acts committed by private actors, the UAE is responsible for failing to act with due diligence to prevent these systematic violations and as such is in violation of Article 2(3).

4.1 Equality before the law – Article 15

The problems associated with a male dominated police force and judiciary have briefly been addressed in relation to UAE citizens. In the case of non-citizens these problems are far more serious, particularly when non-citizens are seeking redress for crimes of a sexual nature.

Freedom House reports the 2002 case of a French woman in Dubai who made a complaint that she had been gang-raped, and was jailed for having ‘adulterous sexual relations’.⁵¹ An Australian woman who claimed to have been gang-raped after her drink was spiked was convicted of illicit sexual relations and consumption of alcohol and spent eight months in a UAE prison.⁵²

In January 2006 an Arab national went to the police alleging that five men of different Arab nationalities had tricked her into their car and taken her to a house where they subjected her to a series of sexual assaults. According to press reports, ‘due to her conflicting testimonies, the authorities suspected that the woman was a professional sex worker and put her behind bars on charges of adultery.’ She was subsequently sentenced to five years imprisonment and 150 lashes. Three of the men involved were sentenced to three months in jail and 150 lashes. The other two defendants were acquitted. The judge ‘issued strongly-worded warnings to the five men not to repeat such violations in the future.’ The conviction was handed out despite the fact that a lawyer of two of the five defendants had very publicly announced severance of contract with them, on the grounds that he believed that his clients had lied to him about their movements on the evening of the incident.⁵³ There are also numerous similar examples of female domestic workers who, on making a rape complaint, are themselves prosecuted.⁵⁴ Female domestic workers who are raped or suffer from sexual violence have good reason to fear coming forward. Their lack of support structures may put them at risk in the UAE’s criminal system, and, since they may not speak Arabic, they are at risk of not fully understanding proceedings, particularly if they are

⁵¹ Freedom House *supra* note 11 at 7.

⁵² <http://www.news.com.au/couriermail/story/0,,25658951-3102,00.html>

⁵³ ‘Women Gets Jail Term, Lashes for Adultery’ Khaleej Times, 13 March 2006, available online at http://www.khaleejtimes.com/DisplayArticle.asp?xfile=data/theuae/2006/March/theuae_March411.xml§ion=theuae&col=

⁵⁴ See for example the case of a Thai domestic worker who required hospitalisation for ten days after her rape and was then imprisoned for illicit sexual relations and consumption of alcohol: Asia Pacific Mission for Migrants, Newsletter, September 2003, available at <http://74.125.77.132/search?q=cache%3AeI2tbL0S5x4J%3Awww.apmigrants.org%2Fpublications%2FNDay2003-Sep.pdf+rape+UAE&hl=en&gl=ie> and the case of a Filipino woman who was raped by her employer’s son and then jailed for adultery: Philippine Daily Inquirer, ‘Pinay Raped, Then Charged With Adultery’, 12 May 2009, available at <http://infoweb.newsbank.com.proxy.lib.uiowa.edu/iw-search/we/InfoWeb>

themselves charged with a criminal offence. They may also fear deportation if they make a criminal complaint against their employer or an employer's family member, and consular and legal assistance to such women is haphazard at best and, where available, far below acceptable standards.

Victims of rape and sexual violence in the United Arab Emirates find themselves not only unsupported, but re-victimised and ultimately criminalised for an act to which they did not consent. There is also the worrying implication that a woman's status as a sex worker precludes the prosecution of a charge of sexual assault upon her.

5. Discrimination Against Female Domestic Workers

5.1 Exclusion from Labour Laws – Article 2

Article 2 of the Convention clearly outlines the obligation to establish legal protection for women and the right is not predicated on citizenship. General Recommendation 26 states that 'States Parties should ensure that ... labour codes provide to women migrant workers the same rights and protection that are extended to all workers in the country'.⁵⁵ Domestic workers are explicitly excluded from the provisions of UAE labour law and the provisions of the draft labour law of 2007,⁵⁶ which remains under consideration nearly three years after it was drafted. The draft laws provisions also exclude security workers, farming and grazing workers, and public workers,⁵⁷ but given that domestic workers far outnumber these other excluded groups – it has been estimated that domestic workers make up 5% of the entire population⁵⁸ -, it is arguable that the exclusion of domestic workers is discriminatory not only in effect but in purpose.

An amendment to UAE labour law to include the protection of domestic workers would represent a step forward but it is *de facto* not *de jure* discrimination against non-citizens which is of keenest concern. The weakness of complaints mechanisms and the denial of access to justice has been pinpointed as a major problem in the UAE labour system by legal scholars, NGOs and UN bodies alike.⁵⁹ Therefore the inclusion of domestic workers in the provisions of UAE labour law would constitute little more than symbolic progress unless accompanied by a significant strengthening of enforcement mechanisms. Mafiwasta requests that the Committee address not only the statutory lacuna which excludes domestic workers from legal protection, but also the effective absence of regulation. Female domestic workers will

⁵⁵ *Supra* note 49 para 26(b).

⁵⁶ Article 3, Federal Law No. 8 for 1980 on Regulation of Labour Relations

⁵⁷ Article 4 UAE Draft Labour Law 2007.

⁵⁸ Gulf News *supra* note 9.

⁵⁹ See for example Keane *supra* note 2. *Human Rights Watch* 'Building Towers, Cheating Workers' and 'The Island of Happiness: The Exploitation of Migrant Workers on Sadiyaat Island' November 2006 and May 2009 respectively.

not enjoy significantly improved protection simply by their inclusion in the provisions of a new labour law.

5.2 Healthcare – Article 12

In its initial report to the Committee the UAE referred to its success in improving the health of its citizens.⁶⁰ However, recent healthcare reform will have a clear discriminatory effect against non-citizens and may have particularly serious ramifications for female domestic workers. The Abu Dhabi healthcare system was recently privatised and the Dubai system is expected to follow suit.⁶¹ In order to access non-emergency healthcare, an individual must have insurance, and the responsibility for providing that insurance lies with the employer.⁶² Since 95% of Emiratis work in the public sector,⁶³ their costs will effectively be met by the state. Any worker in the private sector who feels his or her employer is failing to respect the code can lodge a complaint with the Ministry of Labour, an organisation which is already overloaded with responsibilities and wholly incapable of protecting a huge migrant workforce.⁶⁴ Again this is primarily an instance of *de facto* racial discrimination, but it has a gender bias in its application to domestic workers, who are exclusively female. Female domestic workers are not regulated by the Ministry of Labour, and it is therefore not clear what, if any, mechanisms of redress are available to them in the event of their employers refusing to bear the costs of their health insurance. A similar oversight system is in operation for potential victims of trafficking; the government refers them to the Ministry of Labour to file complaints through administrative labour resolution channels, but domestic workers are not eligible.⁶⁵ There is no reason to suppose the situation will be any different where the denial of healthcare is concerned.

5.3 Right to Just and Favourable Conditions At Work

The absence of any regulation on working conditions inevitably encourages abuse. The International Labour Organisation described typical working conditions in a 2002 report.

In general, the working day begins at six o'clock in the morning and ends at eleven o'clock at night, with two hours rest in the afternoon. Foreign female domestic workers are required to clean their employers' houses internally and externally, cook,

⁶⁰ UAE Initial CEDAW Submission *supra* note x at 19.

⁶¹ The Abu Dhabi government enacted a Code of Regulations of the Health Insurance Policy in July 2007 that requires all employers to purchase health insurance for their employees. Dubai is expected to follow suit. See Freedom House *supra* note 11 at 14.

⁶² Freedom House *supra* note 11.

⁶³ United States Library of Congress Federal Research Division 'Country Report: The United Arab Emirates' Available online at <http://lcweb2.loc.gov/frd/cs/profiles/UAE.pdf>

⁶⁴ Mafiwasta CERD Shadow Report *May 2009*, available at http://www2.ohchr.org/english/bodies/cerd/docs/ngos/Mafiwasta_UAE_cerd75.PDF

⁶⁵ US Trafficking in Persons Report 2009 at 293.

and take care of children, elderly family members and animals. Not all foreign female domestic workers constantly do heavy work, but they reported being on-call all the time for all family members. Working an average of 15 hours per day, these women earn an average of Dhs550 or US\$150 per month to Dhs700 or US\$200.⁶⁶

A 2007 Human Rights Watch report indicated that pay and conditions had worsened in the intervening five years. Domestic workers returning to Sri Lanka described a life of perpetual servitude, punctuated only by whatever sleep was granted them.

Women told Human Rights Watch that they typically worked 16-18 hours per day, some as many as 21 hours each day, seven days a week without a day of rest or holidays. Because of their long work hours, many domestic workers regularly suffered sleep deprivation. With only a few exceptions, domestic workers worked without a single day of rest, sometimes for years at a time.⁶⁷

Workers reported arbitrary deduction from their salaries for basic necessities or for perceived mistakes in the workplace.⁶⁸ Others reported that they were deprived food.⁶⁹ Average wages for those interviewed ranged from 400 to 450 dirhams (US\$ 136 – 204).⁷⁰

None of the women interviewed by Human Rights Watch received compensation for unpaid wages, and nearly all were unaware of redress mechanisms available to them.⁷¹

Employers exert further control over their workers by confiscating their passports. The practice is illegal but customary in all unskilled and semi-skilled sectors.⁷² In November 2007 the Dubai Court of First Instance charged a woman with the theft of her own passport,⁷³ in seeming ignorance of a previous decision by the Court of Cassation which ruled the confiscation of passports illegal.⁷⁴

⁶⁶ International Labour Organisation 'Migrant Women in the United Arab Emirates: The Case of Female Domestic Workers' GENPROM Working Paper No. 10, at 22.

⁶⁷ Human Rights Watch 'Exported and Exposed: Abuses against Sri Lankan Domestic Workers in Saudi Arabia, Kuwait, Lebanon, and the United Arab Emirates', November 2007, at 62.

⁶⁸ *Ibid.* at 48.

⁶⁹ *Ibid.* at 4 and 65.

⁷⁰ *Ibid.* at 45. This could be related to the nationality of the workers as a domestic workers' pay relates directly to her nationality.

⁷¹ *Ibid.* at 49

⁷² See Mafiwasta *supra* note 64, at 19.

⁷³ Gulf News 'Maid Says She Stole Passport to Return Home', 6 November 2007.

⁷⁴ Ruling by Dubai Court of Cassation, Case # 268 (2001), October 27, 2001.

5.4 Right not to be subject to Cruel, Inhuman or Degrading Treatment or Punishment

The majority of domestic workers are secluded and denied any private life - none of the women interviewed by Human Rights Watch or the ILO were given a day off. The ILO ascribed a cultural rationale to their physical confinement, since free time would give women the opportunity to date, something not permitted in its strict Islamic society, but it is more probable that the dehumanization process which systematic racial discrimination engenders and perpetuates legitimizes the forced seclusion in the eyes of employers. In the words of one worker, '[T]hey think we are lower, we are not considered humans, and that we [don't] have the same necessities as they do.'⁷⁵ Clearly this extends to the right of domestic workers to any modicum of a private life.

Forced seclusion entails physical, psychological, social and cultural isolation⁷⁶ and is in itself a form of abuse, but it also serves to facilitate abuses of a physical and mental nature.

The physical abuse women reported included beatings, deliberate burning with hot irons, kicking, slapping, and hair-pulling. Domestic workers told Human Rights Watch that their employers had beat them with their hands, slippers, rubber hoses, a vacuum cleaner, basins, wires, chairs, wooden planks, broomsticks, knives, an iron bar, and in one case, a cane. At the time Human Rights Watch interviewed them, several women bore the scars of this abuse: burns, scars, a cast, shorn hair. Some women told us they experienced enduring health consequences of injuries they had sustained, such as headaches, back pain, or loss of range of movement in their arms.⁷⁷

Psychological abuse is also common. In the aftermath of the Indian Ocean Tsunami in December 2004 after which several domestic workers reported that their employers forbade them from returning to Sri Lanka despite the death of family members, including children.

My daughter died in the tsunami. I have no other children. She was 13 years old. I was in Abu Dhabi when the tsunami hit... I asked [my employers] to go home to Sri Lanka and the lady refused and said that, "If your child is dead, you have to put it in a kabar [grave]," which means put the dead body under ground. She said, "Why do you have to go?" I argued with that lady but...she did not want me to go.... When I said that I want to go home, the lady told me, "Your child is dead, why do you want to go

⁷⁵ ILO *supra* note 66 at 20.

⁷⁶ ILO *supra* note 66 at 18.

⁷⁷ Human Rights Watch *supra* note 67 at 55.

home now, are you a doctor?" Koormadhi N. eventually collected money from the household's driver and cook to pay for a plane ticket, and returned to Sri Lanka. Her employer never returned her confiscated passport.⁷⁸

Systematic racial discrimination dehumanizes its victims, facilitating the type of abuse and exploitation described above. It is little surprise to find that this has a disproportionate effect on domestic workers in the informal sector, whose working lives are characterized by overwork and cruel, degrading and inhuman treatment. The UAE has taken no steps to prosecute private actors for their role in these abuses, and its failure to properly regulate the recruitment process has created a culture of impunity among recruiters and employers.

5.5 The Recruitment Process – Article 2(e)

Since April 1st 2007 the recruitment of domestic workers has been regulated by the UAE Employment Agreement for Domestic Workers and Sponsors, a contract between employer and agent.⁷⁹ The Centre for Development Studies in Kerala, India, which has carried out extensive research on the problems facing Keralite domestic workers in the UAE, outlines the recruitment process:

...for an Emirate national getting a domestic worker is relatively easy... The practice is known as the issuance of free visa. In order to get a domestic worker the sponsor is supposed to make a security deposit of 5000AED (which is refundable). The visa is valid for a period of two years. There is no minimum prescribed income limit in the case of an Emirati to sponsor a domestic worker. An Emirati is eligible to sponsor up to three domestic workers.⁸⁰

The visa for a female domestic worker is cost free, therefore domestic workers are rarely encumbered with an initial debt, unlike their counterparts in the private sector who customarily endure the illegal imposition of visa and travel costs. Nonetheless, due to the ineffective regulation of the sector, employers and recruitment agents have conspired to trap domestic workers in situations of debt bondage. Recruitment agents charge a recruitment fee of between \$450 and \$1100⁸¹ to employers. For the first

⁷⁸ Human Rights Watch *supra* note 67 at 74.

⁷⁹ Copies on file with Mafiwasta.

⁸⁰ P Bindhulakshmi 'Gender Mobility and State Response: Indian Domestic Workers in the UAE' in S Irudaya Rajan (ed.) *Governance and Labour Migration: India Migration Report 2010* (New Delhi, Routledge Press, publication expected 2010). An advance copy was made available to Mafiwasta by kind permission of editor Dr S Irudaya Rajan. The procedure for non-nationals is more complicated and depends on their earning a minimum salary which corresponds to a skilled position. According to CDS this is 6000dhs. A thorough, albeit apparently unofficial explanation, can be found here <http://www.7days.ae/cjstory.php?id=87&title=Processing%20of%20Maid%20Visas>

⁸¹ Human Rights Watch *supra* note 67 at 80

three months of employment, which is considered to be a trial period,⁸² the agency must provide a replacement domestic worker free of charge or refund the recruitment fee in the event of any problem. After three months the agency has no obligation to the employer, who must pay another fee to recruit another domestic worker. The agency has no obligation to provide domestic workers with a new employer in the event of their mistreatment.⁸³ Human Rights Watch found several instances of employers refusing to allow workers to leave their jobs unless they reimbursed their employer for the recruitment fee.⁸⁴ The contract grants excessive power to agents and employers and leaves the domestic worker highly vulnerable to abuse. It furthermore absolves the government of any active regulatory responsibility.⁸⁵ It is therefore not surprising that agents exploit workers and feel at liberty to abuse them physically where necessary. A domestic worker in Dubai described her treatment at the hands of her agents.

The lady employer handed me over to an ... agent over there and those guys beat me up with a belt... There was a ... lady [at the agency] who...used her hands and hit me on the cheeks. I was very fragile... They told me that I had to stay with the employer for three months, and only after three months I could run away. But I didn't know how to run away... While I was in the agency I asked them to get me a better employer for me to work longer, but they didn't do that... When I went to the agent for a second time,...the agents beat me up again, with a belt. The agents beat me up and I started passing blood in my urine. They used a belt. The agents locked me up in a room for five days.⁸⁶

Despite the ramifications and the threats from agents, many workers abscond anyway. In the year 2000, United Arab Emirates police reported 11,798 cases of domestic workers absconding,⁸⁷ a measure of the abuses many endure in the workplace. The culture of impunity among employers and agents, which can be considered a direct result of the State Party's actions and omissions in regard to domestic workers, have engendered and perpetuated working conditions which often meet international definitions of forced labour.

⁸² According to Human Rights Watch *supra* note 67 the trial period is 3 months, but a copy of the contract obtained by Mafiwasta stipulates a four month trial period.

⁸³ Human Rights Watch *supra* note 67 at 86.

⁸⁴ *Ibid.* at 80.

⁸⁵ Contract states that '[I]n the event of conflict between the two parties, both are obligated to undergo mediate (sic) the Naturalization and Residency Administration, and if they do not reach a compromise in two weeks, they must take the dispute to local or federal courts.' Copies on file with Mafiwasta.

⁸⁶ Human Rights Watch *supra* note 67 at 85.

⁸⁷ ILO *supra* note 66 at 41.

6. Forced Labour – General Recommendation 26

In its General Recommendation 26 the Committee outlined the increased vulnerability of women migrants falling into situations of forced labour,⁸⁸ but it did so in reference to undocumented migrants, whose legal status leaves them susceptible to exploitation in all countries of the world. In the UAE - a highly developed and wealthy country - the almost complete absence of oversight and regulation of employers and agents has created conditions of forced labour in the documented sector.

The US State Department's 2009 trafficking report states that domestic servants are subject to conditions 'indicative of forced labour' and that there have been 'no discernable anti-trafficking efforts against the forced labor of temporary migrant workers and domestic servants.'⁸⁹

The UAE has ratified ILO Convention No. 29 on Forced Labour, which defines forced labour as 'all work or service which is exacted from any person under menace of any penalty and for which the said person has not offered himself voluntarily. In its elaboration of the two elements of forced labour – 'under menace of penalty' and 'involuntary' – the ILO listed contributory elements to a condition of forced labour: physical or sexual violence; restriction of movement; debt bondage; withholding wages; retention of passports; threat of denunciation to the authorities; dismissal from current or exclusion from future employment; and removal of rights or privileges. These elements can all be found in the domestic work sector of the UAE. And, as the ILO stated in a recent report, 'many victims enter forced labour situations initially out of their own choice, albeit through fraud and deception, only to discover later that they are not free to withdraw their labour, owing to legal, physical or psychological coercion.'⁹⁰

7. Trafficking – Article 6

The UAE is highly sensitive to its reputation on trafficking. In 2005, after seven years of criticism at UN level,⁹¹ the UAE finally initiated action on the issue of child camel jockeys only in the aftermath of its reclassification as a Tier 3 Destination Country in the US Trafficking On Persons Report. This is the lowest ranking possible and can have serious ramifications where relations with the US are concerned.⁹²

⁸⁸ General Recommendation 26, para 22.

⁸⁹ US State Department Trafficking In Persons Report 2009 at 292.

⁹⁰ International Labour Organisation, The Cost of Coercion, 2009, at 6.

⁹¹ Reference to 1998 criticism is made in para 77 of the 2000 report of the Report of the Working Group on Contemporary Forms of Slavery E/CN.4/Sub.2/2000/23.

⁹² The criticism was strong: '[T]he Government of the UAE does not fully comply with the minimum standards for the elimination of trafficking and is not making significant efforts to do so.' United States State Department Trafficking In Persons Report 2005, at 219. The exact ramifications differ. For example, Malaysia's classification as a tier 3 country will make it difficult for it to secure international loans from multilateral financial bodies and will

The UAE has since passed numerous pieces of legislation on trafficking. The National Committee for Combating Crimes of Trafficking in Humans was set up in 2006,⁹³ and the UAE has ratified the UN Convention Against Transnational Organized Crime.⁹⁴ Nonetheless, the UAE was downgraded from a Tier 2 country in 2008 to Tier 2 Watchlist in 2009. The US's 2009 Trafficking Report states that, '[T]he Government of the United Arab Emirates does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant, and increasingly public, efforts to do so.' In 2008, when seven members of the UAE's ruling Al Nahyan family were arrested on trafficking charges by Belgian police, following their treatment of seventeen Middle Eastern and North African domestic servants who had been working for them in a year-long stay at Brussel's Conrad Hotel.⁹⁵ The incident, which remains under investigation, took place outside the UAE's territorial jurisdiction, but it is relevant in that it does indicate the ruling elite's private acceptance and tolerance of mistreatment of domestic workers, which stands in marked contrast to what the US State Department has called its 'increasingly public' efforts to combat trafficking.

The UAE's recent progress in anti-trafficking has been described as 'uneven'.⁹⁶ The UAE prohibits all forms of trafficking under its federal law Number 51, but it has resulted in only six convictions and the government has yet to prosecute, convict, or punish any labor trafficking offenders, despite the extent of the problem. The UAE is home to a thriving sex industry and as a 2009 article in the Sunday Times indicates, prostitutes are easily available in the hotel bars of Dubai and Abu Dhabi.

40 or 50 more sit at tables, or stroll arm in arm along the pathways, begging western men to take them inside. These girls are almost exclusively Russian — but not from Moscow or St Petersburg, or even Kiev. They are Russians from the de-Russified 'stans, drawn here by the lack of work for people of their ethnic origin in Almaty, Dushanbe, Tashkent, Samarkand.⁹⁷

eliminate all opportunities for civil servants to take advantage of Fulbright Scholarships and other educational and cultural exchanges with the US. Information from Democratic Action Party, Malaysia.

⁹³ Federal Law No. (51)

⁹⁴ UN Convention Against Transnational Organized Crime UN Doc A/45/49 adopted 2000.

⁹⁵ See 'Women Enslaved by Arab Royals' The Telegraph, 2 July 2008, available at <http://www.telegraph.co.uk/news/worldnews/middleeast/unitedarabemirates/2236851/Women-enslaved-by-Arab-royals.html> Charges were brought but the Al Nahyan party had left the country and the status of the case is unclear.

⁹⁶ US State Department Trafficking In Persons Report 2009 at 293.

⁹⁷ The Sunday Times 'Sordid Reality Behind Dubai's Gilded Façade' 12 July 2009.

Women from Eastern Europe, South East Asia, the Far East, Iraq, Iran and Morocco are also trafficked for commercial sexual exploitation and there are reports of women being hired as secretaries or hotel workers, only to be forced into prostitution on their arrival.⁹⁸

The US State Department's reference to the UAE's 'increasingly public' efforts on trafficking can be taken as implied criticism that the its efforts focus on perception and public relations rather than action and results. Its actions in relation to the City of Hope shelter, the one organization which provided refuge, care and support to trafficked women lends further credence to the view that the image of the country takes precedence over the protection of vulnerable women.

⁹⁸ US State Department Trafficking In Persons Report 2009 at 292.

Appendix 1: Interview with Sharla Musabih, founder of City of Hope Shelter

The following is the result of an interview on 14th October 2009 between Nicholas McGeehan of Mafiwasta and Sharla Musabih. The views in this interview reflect those of Mrs Musabih alone.

Sharla Musabih, a US citizen, moved to Dubai in 1984 and has dual Emirati-US citizenship as the result of her marriage to an Emirati national, with whom she has six children. In 1991 she offered refuge in her home to an American citizen who was suffering domestic abuse at the hands of her Yemeni husband. She obtained a court order from a Dubai court to officially take the woman and her three children into her home but found that the husband's connection in the local police, which is heavily staffed at lower ranks with Yemeni citizens, enabled him to circumvent the judicial system. The woman was detained by police officers and returned to her husband who then beat her severely with an electric cable. The woman's safety was eventually guaranteed through the intervention of the US consulate in Dubai which instigated official action from the Dubai police. The experience led to Mrs Musabih to continue sheltering victims. She was immediately overwhelmed with victims seeking help. In 2001, with the help of friends, she raised funds to rent a large villa in Jumeirah/Um Saquem. A second shelter was set up in 2005.

In her time running the City of Hope shelter Mrs Musabih estimates that she dealt with thousands of women in cases involving rape, human trafficking, domestic violence, sexual abuse, incest, abuse of domestic workers, suicide, discrimination against the minority *badoons*, police brutality, and torture. The women came from a range of countries including the United Kingdom, Canada, the United States, Ireland, Germany, Eastern Europe, Uzbekistan, Afghanistan, Iran, the Philippines, China, South Korea, Pakistan, India, Sri Lanka, Uganda, Zimbabwe and UAE nationals. The vast majority of the women she dealt with were from Ethiopia. In 2007 alone, City of Hope was instrumental in the repatriation of 500 Ethiopian women, many of whom had been trafficked to the UAE and had suffered a range of abuses, with sexual assault being a common feature. She also estimates that she dealt with approximately 1,500 child camel jockeys who had been victims of trafficking.

Cases involving Emirati women, which were few, had to be handled with the utmost caution due to the increased risk of local families using their influence to gain access to their wives or daughters. Equally sensitive were cases where women had given birth to the children of married UAE nationals. The women involved were subject to immediate arrest and deportation.

The initial reaction of the low level authorities was one of irritation at the attention her activities received and the possibility of this leading to a tarnishing of the country's reputation and the concerned officers dismissal from his position by Sheikh Mohamed Al Maktum, who Mrs Musabih believes is sheltered from the truth. Senior figures in the police were more concerned with suppressing stories than with dealing with offenders. Mrs Musabih attributes the change in the authorities' attitude to her voluntary work to her involvement in the repatriation of trafficked child camel jockeys, prior to official UNICEF involvement in 2005, which was much publicized and which was the central point of the UAE's attempts to rehabilitate its reputation following concerted international criticism from Anti-Slavery International and the US State Department.

Rather than encouraging Mrs Musabih's work the Dubai police, in particular the then director of the Human Rights Department Mohammed Al Murr, launched a campaign to discredit Mrs Musabih:

I was thrown out of his office and told that this was no longer any of my business. I was defamed in the media and it was claimed that I was unstable. Police officers were ordered not to contact me anymore and he denied having had any association with me, even though 80% of the women/children who came through our doors were delivered to us by conscientious police/Immigration officers, many of whom defied orders and continued to contact me in secret and delivered child and female victims to the centre. This went on from 2001 right up until 2007.

Mrs Musabih took the issue to the UAE Ministry of Interior, in Nov of 2004 which was initially more sympathetic to her work. The Ministry of Interior offered its official support to the City of Hope shelter, a development which Mrs Musabih understandably took as extremely positive. She was also publicly presented with an award from the Chief of Police, Brigadier Dhahi Khalfan. Unfortunately, the good relations did not last. Mrs Musabih realized that the apparent goodwill of the authorities was predicated on her silence and the discontinuance of her work. The involvement of the authorities led to the effective ruin of City of Hope. Mrs Musabih became the victim of what appears to have been an orchestrated campaign of defamation. She was accused of theft, of operating an organization without the requisite government license, of selling stories to the international media – Mrs Musabih has indeed appeared on the BBC and Al Jazeera

among others, but at no stage did she offer any criticism of the government – and even of involvement in the illegal sale of infants, a ludicrous charge in view of her work, and a measure of the disquiet her activities caused in certain circles. A City of Hope case worker that the organisation had been shut down by the Government and was under investigation for allegedly being a house of prostitution.

On October 2007, 35 women and 10 children resident in City of Hope were loaded onto a bus by the authorities and told that they were being taken to a new shelter, the government run Foundation for Women and Children. On arrival they were chastised for bringing shame on the country and told that they would end up in prison ‘like Ms. Sharlah’. One of the women, a former domestic worker from Zimbabwe, was so traumatized that she committed a slow and painful suicide by drinking bleach. Mrs Musabih described the Foundation as ‘a horrible prison like center’.

Ultimately the US Consulate advised Mrs Musabih to leave the UAE for her own safety in June 2008. She is unable to return to her home of 26 years or to her family, for whose safety she fears. When asked her opinions on the extent of gender-based discrimination against women in the UAE, Mrs Musabih replied.

There is a commitment to elevate the status of women, but that is only aimed at UAE nationals. Well-connected Emirati women are given high level positions which sends a message to the world that women’s rights are advancing rapidly. But this only extends to a very small minority of citizens, and women who are not citizens continue to face serious discrimination.

Mrs Musabih made it clear that she did not hold the leaders of the UAE responsible for her treatment; rather she considers it to be the result of mid-level corruption.