



Enforcing Migrant Workers' Rights in the United Arab Emirates

David Keane

Lecturer in law at Brunel University, West London

Nicholas McGeehan*

Director of *Mafiwasta*, an organisation dedicated to migrant workers' rights
in the United Arab Emirates

Abstract

The appalling treatment of migrant workers in the United Arab Emirates (UAE), who constitute 80 per cent of the population and 95 per cent of the workforce, has largely escaped international scrutiny. The paper analyses the failure to protect migrant workers' rights in the UAE from a domestic and an international perspective. It outlines the extent of the abuses and demonstrates how the state's weak domestic laws have been further undermined by poor enforcement mechanisms and a lack of political will to address the issue. It examines violations of international human rights law and possible avenues of redress, notably those relating to the International Convention on the Elimination of All Forms of Racial Discrimination of 1965, one of only three international human rights treaties that the UAE has ratified. Furthermore, the paper will argue that the UAE's exploitation of the relative economic weakness of its South Asian neighbours has led to a situation that can be characterised as bonded labour of migrant workers, a form of slavery as defined under international law. It will be concluded that domestic labour provisions in the UAE will never be sufficient to provide basic rights to migrant workers due to the *de facto* control of the private sector by the public sector. Therefore, concerted international attention and pressure will be required to improve a situation in which over two million workers live in terrible conditions, wholly at odds with the wealth and luxury of the country they have helped to build.

*In war the strong make slaves of the weak, and in peace the rich make slaves of the poor.
We must work to live, and they give us such mean wages that we die. We toil for them
all day long, and they heap up gold in their coffers, and our children fade away before
their time, and the faces of those we love become hard and evil. We tread out the grapes,
and another drinks the wine. We sow the corn, and our own board is empty.
We have chains, though no eye beholds them; and are slaves, though men call us free.*
– Oscar Wilde, *The Young King* (1892)

Keywords

[Please supply keywords]

*) Nicholas McGeehan is currently on the LLM programme at the Irish Centre for Human Rights, National University of Ireland, Galway. See further at <www.mafiwasta.com>.



1. Introduction

Since the first oil flowed from the Umm Shaif offshore field in 1962, the United Arab Emirates (UAE), comprising seven semi-autonomous emirates, has seen phenomenal economic growth. The UAE had an Organization of the Petroleum Exporting Countries (OPEC) quota of 2.53 million barrels per day in May 2007, making it the third largest producer of oil and gas in the world, after Saudi Arabia and Iran respectively.¹ The former United Nations Secretary-General Kofi Annan recently described Dubai – the most high profile, although certainly not the richest of the emirates – as “one of the world’s greatest economic miracles”.²

By contrast, the sizeable South Asian workforce, whose labour has contributed enormously to the growth and without whom the vast development could not have taken place, has not shared in the wealth. Exact figures are not available, but according to Human Rights Watch, “95 percent of the UAE’s labor pool, some 2.7 million workers, are migrants”,³ with the official text *Doing Business with the UAE* stating that “the expatriate population of the UAE is close to 80 percent. Most are from the sub-continent”.⁴ Thus, millions of South Asians currently reside in the country as migrant workers, principally Indians, Pakistanis, Bangladeshis, Nepalese and Sri Lankans.⁵ According to two recent country reports of the Economist Intelligence Unit on the UAE: “Expatriate workers, and particularly low-skilled employees from Asia, have few rights”;⁶ and “traditionally, low-paid expatriate workers have enjoyed few, if any, rights in the UAE”.⁷

Exploitation of these workers, ranging from non-payment of wages to physical abuse, is not simply commonplace or widespread, it is systematic. The UAE’s labour laws are wholly biased in favour of employers, and the mechanisms used to enforce the laws are ineffective. The government agency in charge, the Ministry

¹ Organization of the Petroleum Exporting Countries (OPEC) *Monthly Oil Market Report*, June 2007, available at <www.opec.org/home/Monthly%20Oil%20Market%20Reports/2007/pdf/MR062007.pdf>.

² *Gulf News*, 7 February 2006.

³ Human Rights Watch, *The UAE’s Draft Labor Law: Comments and Recommendations*, 2007, available at <hrw.org/backgrounder/mena/uae0307/>.

⁴ J. Williams, ‘General Aspects of the Business Culture’, in P. Dew and A. Shoult (eds), *Doing Business with the UAE* (Kogan Page, London, 2000) p. 243, n. 2.

⁵ The UAE does not release breakdowns of the national backgrounds of its migrant workers. However, the UAE minister of labour was recently quoted as saying that Indian workers make up more than 50 per cent of the foreign workforce in the UAE. ‘UAE and India Sign Labour Pact’, *Gulf News*, 14 December 2006, available at <www.gulfnews.com/nation/Employment/10089313.html>.

⁶ Economist Intelligence Unit (<www.eiu.com>), *Country Report: UAE, Main Report*, 1 February 2005.

⁷ Economist Intelligence Unit, *Country Report: UAE, Main Report*, 8 November 2004.

of Labour and Social Affairs, has neither the ability nor the willingness to execute its brief. Furthermore, there is evidence to suggest that the government as a whole, far from acting to protect workers, is an active participant in the abuse, profiting directly from a system which keeps a large migrant workforce in conditions of bondage. Human Rights Watch, in its March 2007 commentary on the most recent proposed draft labour laws, identifies the areas in urgent need of further reform as including:

the exclusion of provisions on workers' rights to organize and bargain collectively; the prohibition of strikes; the exclusion of certain categories of workers, such as domestic and farming and grazing workers, from the protections of the labor law; ambiguity regarding the minimum age of employment; the prohibition of women from certain categories of work; the absence of provisions banning the confiscation of passports and other identity documents and requiring employment contracts to be made available in workers' native languages; and inadequate and unenforced penalties for violations of the law.⁸

This system of exploitation is underpinned by the denial of the most basic of labour rights – the right to freely associate and to bargain collectively. The UAE is an ILO member country,⁹ but has not signed core ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise and Convention No. 98 on the Right to Organise and Collective Bargaining. These core Conventions are described as being “among the founding principles of the ILO”,¹⁰ and form part of the most fundamental international labour law requirements:

Eight ILO Conventions have been identified by the ILO's Governing Body as being fundamental to the rights of human beings at work, irrespective of levels of development of individual member States. These rights are a precondition for all the others in that they provide for the necessary implements to strive freely for the improvement of individual and collective conditions of work.¹¹

The paper will analyse the protection of migrant workers' rights in the United Arab Emirates from a domestic and an international perspective. Section 2 will chart the domestic provisions in place in the UAE, including the most recent 2007 proposed draft labour laws, which have been criticised by international non-governmental organisations. Section 3 will look to the international human rights law that applies to the UAE. While its human rights obligations are limited by

⁸) Human Rights Watch, *supra* note 3.

⁹) International Labour Organisation member countries, available at <www.ilo.org/public/english/standards/relm/country.htm#N_2_>.

¹⁰) International Labour Organisation, *Rules of the Game: A Brief Introduction to International Labour Standards*, 2005, p. 84, available at <www.ilo.org/public/english/standards/norm/download/resources/rulesofthegame.pdf>.

¹¹) Conventions Nos. 87 and 98 form part of the core eight ILO documents, available at <www.ilo.org/public/english/standards/norm/whatare/fundam/>.

the fact that it has not signed the 1993 International Convention on the Protection of Migrant Workers and Their Families,¹² there are violations of international human rights law taking place, notably the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, which the UAE has ratified. The special mechanisms of the United Nations will also be examined as a possible recourse. Section 4 will describe the situation of migrant workers in the UAE as bonded labour, or slavery. The international standards and definitions of slavery will be used to support this position. Finally, the paper will seek means of enhancing protection for migrant workers beyond the current domestic laws, which are proving deficient. It will highlight how domestic provisions will never be enough to provide basic rights to migrant workers due to the *de facto* control of the private sector by the public sector.

The extraordinary wealth of the UAE contrasts sharply with the pitiful conditions of the migrant workers who constitute an overwhelming majority of the population. Unlike many issues which challenge civil society, the inequality and injustice of the situation of migrant workers in the UAE is one which can be resolved. There are more than sufficient resources in the UAE to provide a basic standard of living for migrant workers. It should become an urgent matter of international concern that this has not been done.

2. Does the UAE Violate Domestic Labour Law Protecting Migrant Workers?

The labour law system currently in operation in the UAE dates from 1980. The Federal Law No. 8 for 1980 on Regulation of Labour Relations governs the relationship between the state, the employer and migrant workers. The government has repeatedly pledged to implement a new regime of labour regulation in response to criticism; its most recent draft labour law was opened for public review and comment on 5 February 2007. It is unclear how long the review process will take. The following section outlines the problems inherent in the 1980 legislation, which is still in force. It concludes by detailing the proposed reforms in the draft law, and explains why the government's proposals are inadequate. These inadequacies were highlighted by Human Rights Watch in a reaction to the government's February 2007 announcement.

Labour law in the UAE is weak and superficial. It is designed to circumvent accountability by providing a veneer of regulation to a system that is wholly weighted in favour of the employer. The result is untrammelled development at the expense of the most basic human rights of South Asian migrant workers.

¹² UN Doc. E/CN.4/1997/14 (1997), entered into force 1 July 2003.

2.1 An Overview of the UAE Labour System

The recruitment of migrant workers can be carried out either by a recruitment agent, who must be an UAE national, or by an UAE company, whose partners must all be UAE nationals.¹³ Written contracts between employers and employees are not a legal requirement; however, in the absence of a written contract, adequate proof of terms of employment must be established if required.¹⁴ Workers must have a work permit, supplied by the employer, often referred to as a sponsor when discussing work permits, to work in the UAE.¹⁵ The operation of the system of agencies ensures that workers must spend around two years repaying their loans. Hickox, writing in the *Comparative Labor Law Journal*, explains the system:

In the U.A.E., for example, a foreign worker must be sponsored by a licensed entity, or an individual sponsored by such an entity, which is registered with the Ministry of Labour . . . Sponsorship requirements also play a role in the control of foreign workers within the country. The transfer of sponsorship is restricted by labor-importing states, so as to ensure that foreign labor remains where it fulfills the economic needs, as determined at the time a work permit was issued. In the U.A.E., the guestworker may work for no one other than his sponsor unless he leaves the country and returns under a new sponsorship. . . . *This system, as applied to lower level positions, has been analogized to slavery.* The system is so characterized because the employee is tied to one employer. . . .¹⁶

The question of slavery is discussed in Section III below. The sponsorship system ensures that employees are completely controlled by their employers. Employees cannot change sponsor without the express approval of their employer,¹⁷ and it appears that sponsorship may not be transferred unless the employee falls into one of the applicable categories for transfer and meets certain requirements laid down by the ministries.¹⁸ It is difficult to say with any certainty what these categories and requirements are as they are continually being revised. For example, there were three ministerial resolutions alone in 2005,¹⁹ and their interpretation and application is subject to the discretion of the ministries.²⁰

In general, laws exist to regulate maximum working hours,²¹ breaks,²² annual leave²³ and overtime.²⁴ Laws have also been introduced to ensure workers are not

¹³ Article 2, Ministerial Resolution No. 233.

¹⁴ Article 35, Chapter 3, Federal Law No. 8 for 1980 on Regulation of Labour Relations.

¹⁵ Article 11, Chapter 2, Federal Law No. 8 for 1980 on Regulation of Labour Relations.

¹⁶ S. Hickox, 'Labor Market Needs and Social Policy: Guestworkers in West Germany and the Arab Gulf States', 8 *Comparative Labor Law Journal* (1987) pp. 369, 370 (emphasis added).

¹⁷ Article 2, Ministerial Decision No. 826.

¹⁸ Article 2, Ministerial Decision No. 826.

¹⁹ See the Ministry of Labour website, available at <www.mol.gov.ae>.

²⁰ Clarendon Parker, UAE employment specialists, available at <www.clarendonparker.com>.

²¹ Article 65, Chapter 4, Federal Law No. 8 for 1980 on Regulation of Labour Relations.

²² Article 66, Chapter 4, Federal Law No. 8 for 1980 on Regulation of Labour Relations.

²³ Article 75, Chapter 4, Federal Law No. 8 for 1980 on Regulation of Labour Relations.

²⁴ Articles 67 and 68, Chapter 4, Federal Law No. 8 for 1980 on Regulation of Labour Relations.

required to work in extreme summertime temperatures.²⁵ Employers must meet the costs of treatment for work-related injuries,²⁶ and in the event of a work-related death, the members of a deceased worker's family are entitled to compensation.²⁷ Workers are entitled to severance pay,²⁸ and repatriation costs on completion of a contract.²⁹ A worker may abandon his work if the employer fails to honour either his contractual or legal obligations to the worker.³⁰ Trade unions do not exist, and strikes and lock-outs are expressly banned.³¹

In the case of a collective dispute between the employer and all or a group of the employees, a complaint in writing must be submitted to the Ministry of Labour and Social Affairs by the employees.³² The Ministry adjudicates the matter through a Conciliation Board,³³ or in some cases, a Supreme Arbitration Board.³⁴ Employees have the right to file a case with the Court of First Instance if the Ministry of Labour does not solve their problems. The second and third stages of litigation are the Court of Appeal and the Court of Cassation respectively.

2.2 Enforcement of Labour Law/The Ministry of Labour

In their own words, the UAE Ministry of Labour is responsible for “the administration of the labour market and forming and implementing the labour policy in the country”.³⁵ Its aim is to achieve a “balance between the interests of the workers, employers and the society as a whole”.³⁶ In contrast to their stated aims, the Ministry of Labour guards only the interests of public and private enterprises, obstructs the filing of complaints and appeals and is incapable of enforcing either their rulings or their directives. Human Rights Watch note that

the real test of a country's respect for workers' rights and compliance with international human rights law does not rest solely in the language contained in the country's laws; rather it rests equally in the government's serious enforcement of its laws regulating the conduct of employers, its creation of institutions that fairly resolve disputes between workers and employers, and its aggressive investigation and prosecution of employers who violate its laws.³⁷

²⁵ Ministerial Resolution No. 467 (2005).

²⁶ Article 144, Chapter 8, Federal Law No. 8 for 1980 on Regulation of Labour Relations.

²⁷ Article 149, Chapter 8, Federal Law No. 8 for 1980 on Regulation of Labour Relations.

²⁸ Article 132, Chapter 7 (Section 2), Federal Law No. 8 for 1980 on Regulation of Labour Relations.

²⁹ Article 131, Chapter 7 (Section 1), Federal Law No. 8 for 1980 on Regulation of Labour Relations.

³⁰ Article 12, Chapter 7, Federal Law No. 8 for 1980 on Regulation of Labour Relations.

³¹ Article 14, Ministerial Resolution No. 307 (2003).

³² Article 155, Chapter 9, Federal Law No. 8 for 1980 on Regulation of Labour Relations.

³³ Article 158, Chapter 9, Federal Law No. 8 for 1980 on Regulation of Labour Relations.

³⁴ Article 158 Chapter 9, Federal Law No. 8 for 1980 on Regulation of Labour Relations.

³⁵ UAE Ministry of Labour website, available at <www.mol.gov.ae/index.php?option=com_content&task=view&id=31&Itemid=54>.

³⁶ UAE Ministry of Labour Vision and Mission, available at <www.mol.gov.ae/index.php?option=com_content&task=view&id=12&Itemid=53>.

³⁷ Human Rights Watch, *supra* note 3.

Laws are only as strong as the mechanisms that enforce them, and there is overwhelming evidence that UAE labour law does not, in its realisation, protect migrant workers from exploitative labour practices. The only reliable way of keeping track of labour disputes is through the national press since the Ministry of Labour has never released any figures on the matter. According to one official, they did not even keep records until September 2005.³⁸ The available information on worker protests probably represents only a fraction of worker abuses. There is a general reluctance on behalf of workers to make a complaint. One Ministry official was quoted in the *Gulf News* as saying: “[W]e only recognize it [abuses] when there’s a complaint, but there’s rarely a complaint. Workers are too scared or they’ve paid money for their visa and they have to pay that back.”³⁹ In addition, all of the English language broadsheets from which reports were taken are based in the emirate of Dubai,⁴⁰ which accounts for only 37 per cent of the national workforce.⁴¹ Disputes in Abu Dhabi, Umm Al Qwain, Ajman, Fujairah and Ras Al Khaima are rarely covered.

Workers wishing to file a complaint frequently encounter difficulties. Aggrieved employees must submit a written complaint in either Arabic or English, the two official languages of the UAE, to the Ministry of Labour and to their employer.⁴² Migrant workers are invariably of South Asian origin and do not speak either Arabic or English. Language represents a serious barrier at all levels of interaction, including complaints. Officials at the Ministry of Labour are obstructive, even when complaints are brought in person to one of the two main Ministry offices in Abu Dhabi or Dubai.

For example, the *Gulf News* reports how 38 South Asians were prevented from making a complaint because they could not afford to pay a AED 20 typing charge.⁴³ The men had instead brought a handwritten complaint, which was rejected. In addition, Ministry staff informed the men that they would each have to submit an individual complaint (and each incur an individual charge), when in fact labour law allows for the submission of joint complaints.⁴⁴ The men, whose complaint was that they had not been paid for five months (they were reported to be surviving on dates from a farm near their accommodation), were ultimately unable to lodge an official complaint.

³⁸ *Gulf News*, 29 September 2006.

³⁹ *Gulf News*, 4 July 2005.

⁴⁰ *Gulf News* maintains a small office in Abu Dhabi, but the journalist who was primarily responsible for labour stories worked out of Dubai. Since this journalist, Diah Hadid, left *Gulf News* in the summer of 2006, there has been a marked reduction in labour stories.

⁴¹ Ministry of Planning National Abstract 2001–2004, available at <www.uae.gov.ae/mop>.

⁴² Article 155, Chapter 9, Federal Law No. 8 for 1980 on Regulation of Labour Relations.

⁴³ *Gulf News*, 23 September 2005.

⁴⁴ Article 155, Chapter 9, Federal Law No. 8 for 1980 on Regulation of Labour Relations.

Four days earlier, Ministry officials refused to accept a complaint from the same workers on the grounds that they could not provide proof of identification. The reason for this was that the men's employer had confiscated their passports and labour cards, leaving them with no money and no means of even proving who they were. The employer admitted to not having paid his workers, citing his own financial difficulties as the reason. The Economist Intelligence Unit, in its country report on the UAE, similarly describes how "[a] series of cases have emerged ... in which UAE contracting companies have failed to pay the wages of labourers for months at a time".⁴⁵

Even if a complaint is successful, employers may simply ignore the ruling. A group of workers whose complaint had been upheld by the Ministry of Labour made three separate complaints to the police asking them to enforce the Ministry's decision. The employer was ordered to pay five months salary and only paid three. He was quoted in the press as saying he "would not pay one dirham" of the extra amount he owed his employees as they were "liars".⁴⁶

The shortcomings of the complaints procedure are echoed in the appeals procedure. Far from enhancing rights, the Court of First Instance, which represents the first stage of any appeal, acts as a further obstacle to plaintiffs.⁴⁷ In order to register a complaint, the plaintiff must provide the following: a fee of AED 500 (USD 136); a deposit of AED 1,000 (USD 272); a letter from the Ministry of Labour stating that a friendly settlement is not possible; two further copies of the original submission to the Ministry of Labour; and a copy of the original Ministry of Labour judgement. In effect this means that aggrieved employees may only appeal to the Court with the express approval of the Ministry of Labour.

The *Gulf News* notes that "workers cannot appeal to the Court of First Instance directly",⁴⁸ and if the Ministry decides not to hear a case or feels that its decision was fair, workers are denied leave to appeal. In the event that a worker obtains the required documentation from the Ministry, they must then pay AED 1,500 to register their complaint. Given that the majority of cases relate to withheld monies, it is highly unlikely employees have access to such funds. While the AED 500 registration fee is waived in instances of labourers filing complaints against their employers, the regulations also state that "if it was proved that the workers who filed the case have no rights, they will have to pay all the fees for the case".⁴⁹

⁴⁵ Economist Intelligence Unit, *Country Report: UAE, Main Report*, 1 August 2004.

⁴⁶ *Gulf News*, 24 December 2005.

⁴⁷ The Ministry of Labour often uses the local press as a means of disseminating information on changes to the law. Procedural directives on the workings of the Court of First Instance can be found in *Gulf News*, 12 May 2007, available at <archive.gulfnews.com/uae/uaessentials/more_stories/10124556.html>.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

Despite the vague language, the intention is to make workers who lose their appeal liable for *all* costs. Thus, a revised system which is supposed to provide workers with the right to appeal further strengthens the hand of the Ministry of Labour in stopping cases from reaching appeal. Moreover, it sets financial penalties to discourage workers who are granted leave to appeal from exercising that right.

In addition to managing the complaints procedure, the Ministry of Labour passes directives with the aim “of providing stability, increasing productivity and creating jobs opportunities”.⁵⁰ Directives appear to be legally binding edicts which do not pass any formal parliamentary process. There is no mechanism to oversee their consistent implementation. As a result, the Ministry’s application and supervision of its directives is erratic. The following example highlights how the Ministry’s response can be decisive when faced with labour protests, but halting and ineffective when required to protect the health of migrant workers. The only conclusion is that the Ministry consistently enforces the directives that protect the interests of employers only.

In May 2006, a committee of 14 officials met with representatives from local and federal departments, including the Ministry of Labour, Dubai Municipality and the Dubai Naturalisation and Residency Department, to discuss problems facing the labour market.⁵¹ After the meeting Labour Minister Dr. Ali Bin Abdullah Al Ka’abi stated that the panel had prepared a 29 clause memorandum to be submitted to the Cabinet to deal with labour protests. He indicated that the memorandum included a provision referring workers to court if they protested without a genuine, legal grievance – in his words, “with no right” – or if they damaged property. The memorandum also included provisions to allow companies to bring in workers free of charge to replace those who cause problems or protest.⁵²

This directive is being fully enforced. On 11 March 2007, local press reported that 3,500 workers from ETA Ascon, with salaries ranging from AED 550 to AED 650 per month, had stopped working, demanding pay raises of between AED 250 and AED 450. The workers also wanted annual leave of one month and a return air ticket to their home country. According to a company spokesman, it was a peaceful protest which ended at 1100 with the employees returning to work.⁵³ The following day the same newspaper reported that 200 workers of the same company were to be deported, following riots in which a company bus was damaged and a manager was attacked. No reason was given for the sudden outbreak of violence, but the report did contain details of the offer ETA Ascon made to its

⁵⁰ Ministry of Labour website, available at <www.mol.gov.ae/index.php?option=com_content&task=view&id=31&Itemid=54>.

⁵¹ *Gulf News*, 5 August 2006, available at <archive.gulfnews.com/indepth/labour/more_stories/10038481.html>.

⁵² *Ibid.*

⁵³ *Gulf News*, 11 March 2007, available at <archive.gulfnews.com/articles/07/03/11/10110309.html>.

employees: a pay increase of two dirhams (USD 0.55) per day and a return air ticket home every two years. The paper quoted Abdullah Saeed Bin Suloom, head of the labour inspection unit at the Ministry of Labour and member of the Permanent Committee of Labour Affairs in Dubai (PCLAD), who was in negotiations with the workers and the company: “Although the workers’ claims are illegal, we agreed with the company’s raising their salaries before the end of the contract period.”⁵⁴ By 15 March 2007, a mere three days after the reported riot, 65 workers had already been deported.⁵⁵ No reports were made of arrests, trials or convictions, or due process of any kind. The Minister of Labour ordered that 250 work permits be issued to the company free of charge to replace the deported workers. He stated that “this is being done to compensate the company”, who claimed to have lost four million dirhams as a result of the protest. ETA Ascon is owned by the Al Ghurair family of Dubai.⁵⁶

When one compares this swift, decisive action with the Ministry’s actions on summer working hours, one finds a marked difference in attitude. On 29 June 2005, Ministerial Directive No. 467 banned employers from forcing employees to work from the hours of 1200 to 1630 during the months of July, August and September.⁵⁷ One week later, a senior Ministry official was reported to be instructing labour inspectors *not* to fine companies breaking the Directive.⁵⁸ The same official stated: “With all due respect to the minister, the decision is great, but where’s the staff to implement it?” He claimed that punitive measures to halt company transactions were pointless: “Most companies write a letter to the Ministry asking to reactivate their transactions and we do it after two days. Just two days.” This was supported by Sulaiman Abdullah, inspections head at the Ministry of Labour, who admitted: “We restart their transactions after they sign a letter agreeing not to break the rule again.”⁵⁹

A full month after the Directive was announced the Ministry of Labour stated it would finally start fining companies who were breaking the law.⁶⁰ Labour inspectors made 164 visits to companies in July and August – 61.5 per cent were found to be breaking the law.⁶¹ The law was not continued into September (although the Directive indicated it should), with the Labour Minister Dr. Ali Al Ka’abi saying: “[T]he weather is cooling now, there’s no need for it.”⁶² The daily maximum temperature in September is 38.7 degrees as opposed to 40.4 degrees in August.⁶³

⁵⁴ *Gulf News*, 12 March 2007, available at <archive.gulfnews.com/articles/07/03/12/10110462.html>.

⁵⁵ *Gulf News*, 15 March 2007, available at <archive.gulfnews.com/articles/07/03/15/10111249.html>.

⁵⁶ See ETA Ascon website, available at <www.etaascon.com/ascon/management.asp>. Abdul Aziz Al Ghurair is, according to *Forbes* magazine, the 77th richest man in the world, with a net worth of USD 6.9 billion, <www.forbes.com/lists/2006/10/JDP8.html>.

⁵⁷ Ministerial Resolution No. 467 (2005).

⁵⁸ *Gulf News*, 7 July 2005.

⁵⁹ *Gulf News*, 20 July 2005.

⁶⁰ *Gulf News*, 1 August 2005.

⁶¹ *Gulf News*, 31 August 2005.

⁶² *Gulf News*, 29 August 2005.

⁶³ World Meteorological Organization, available at <www.worldweather.org>.

Overall, three of the seven emirates (Sharjah, Ajman and Umm Al Qwain) had no labour inspector to check on implementation of the Directive.⁶⁴ Some companies claimed they would rather pay the fines – up to AED 600,000 – than adhere to the new Directive.⁶⁵ In the end not one company was ever fined. A labour official noted the complete absence of sufficient enforcement mechanisms in relation to the Directive: “We don’t have a mechanism, no receipt book, no way of entering information into the computer’s system to fine the violating companies.”⁶⁶

The dangers and hardship endured by migrants working outdoors in temperatures exceeding 100 degrees are appalling. Yet, there are far more serious examples of migrant worker abuse in the UAE. The near complete lack of enforcement of Ministerial Directive No. 467 illustrates the broader pattern of labour law rendered impotent by poor enforcement mechanisms, and an absence of willingness on the part of the Ministry of Labour to prosecute companies or vindicate the basic rights of migrant workers.

Until 25 January 2005, there were only 80 labour inspectors employed to look after the interests of approximately 2,738,000 expatriate workers. On that date, an extra 50 labour inspectors were employed, meaning there are now 130 inspectors – one UAE national inspector for every 21,062 expatriate employees.⁶⁷ In August 2005, the Ministry’s industrial safety section had to close down due to holiday leave and resignations. A former employee said it had not undertaken a factory or company inspection for years and was ignored by senior officials.⁶⁸ The conclusion is that the Ministry of Labour is not capable of dealing with the severe pattern of worker abuse in the UAE.

Labour Minister Dr. Ali AL Ka’Abi recently claimed his Ministry was “about to complete” a study recommending a new inspection authority to replace the current system.⁶⁹ There has been no indication whether such a move will make the radical changes required to cause some redress for migrant workers. According to Human Rights Watch,

the problem in the UAE is not merely that these labour abuses occur, but that the government has breached its duty to enforce its own laws and regulate the conduct of employers. We found that the UAE is failing to investigate and prosecute employers who violate labour laws; [and] failing to establish a transparent, well-documented, and accessible system for the resolution of labour disputes.⁷⁰

⁶⁴ *Gulf News*, 4 July 2005.

⁶⁵ *Gulf News*, 4 July 2005.

⁶⁶ *Gulf News*, 31 August 2005.

⁶⁷ All these figures are quoted in *Gulf News*, 26 January 2005.

⁶⁸ *Gulf News*, 2 August 2005.

⁶⁹ *Gulf News*, 28 January 2006.

⁷⁰ Human Rights Watch, *supra* note 3.

The summer working hours issue remains a problem. In June 2006, the year following the initial debacle, the Ministry announced that companies flouting the rule would be “named and shamed”,⁷¹ but not prosecuted. The success of this strategy can be gauged by an announcement, almost exactly a year later, from the same minister of labour – midday break violators will be “named and shamed”.⁷² This is redolent of the system of labour regulation in the UAE. A violation of a legal regulation with severe and horrific consequences for the health of migrant workers carries a derisory sanction, ensuring almost total non-compliance. The rule’s impotence was confirmed in July 2007 with the revelation that municipal workers are not covered. In response the Ministry of Labour stated that all government departments are responsible for their own workers, with a Dubai Municipality official stating that there are regulations for the safety of its workers – but these do not mention the midday break rule.⁷³

2.3 *Health and Safety Issues*

There is evidence that the figures for deaths and suicides amongst migrant workers are being manipulated, both by private companies and by the government. Since employers are legally required to report certain work-related incidents to the Ministry of Labour,⁷⁴ and to meet the costs of medical treatment and sick leave,⁷⁵ it is in a company’s interests to not report such cases.

In September 2005, 75 construction workers complained to the Ministry about unsanitary living conditions, unpaid wages, poor safety procedures and unpaid medical bills. Workers suffering cuts from metal grinders had spent weeks unable to work. In addition to having to pay their own medical bills, they did not receive any sickness benefit, despite their injuries being work-related. During this time they went unpaid. Such practices are illegal,⁷⁶ but no action was taken against the company. The Economist Intelligence Unit has drawn attention to the link between suicides and work and accommodation conditions in its main report on the UAE:

An Indian worker killed himself after his employer refused to give him Dh50 to visit a doctor ... The case highlighted the plight of many unskilled foreign labourers in Dubai and the UAE, many of whom go unpaid for months and are forced to live in cramped, poor-quality accommodation.⁷⁷

⁷¹ *Gulf News*, 30 June 2006, available at <archive.gulfnews.com/articles/06/06/30/10050451.html>.

⁷² *Gulf News*, 1 July 2007, available at <archive.gulfnews.com/articles/07/07/01/10136111.html>.

⁷³ *Gulf News*, 26 July 2007, available at <www.gulfnews.com/nation/Employment/10142087.html>.

⁷⁴ Article 142, Chapter 8, Federal Law No. 8 for 1980 on Regulation of Labour Relations.

⁷⁵ Article 144, Chapter 8, Federal Law No. 8 for 1980 on Regulation of Labour Relations.

⁷⁶ Article 144, Chapter 8, Federal Law No. 8 for 1980 on Regulation of Labour Relations.

By November 2005, the Ministry of Labour had received reports of work-related injuries from just six companies.⁷⁸ An official admitted that there were no reliable figures for worker injuries or deaths because companies were holding back information. The Ministry appears to have no power to force companies to inform them of worker injuries or deaths, despite this being a legal requirement. The undersecretary at the Ministry of Labour, Dr. Khalid Khazraji, complained: “[W]e have tried to get these reports, but they don’t cooperate.” Dubai police, using ambulance reports, claimed there had been 40 deaths. A Dubai Municipality official claimed there had been 31 construction deaths. A representative of the Department of Health and Medical Services said his department did not keep complete statistics.⁷⁹

The validity of these confused records has been thrown into doubt by a French documentary team from the French terrestrial channel, France 2. In an interview with the Indian consul in Dubai for the documentary *Dans les Soutes de l’Eldorado*, journalists Philippe Levasseur, Philippe Jasselin and Alexandre Berne claim to have been shown confidential reports showing that two Asians per day die on the construction sites of Dubai, and that there is a suicide every four days.⁸⁰ Companies are legally obliged to pay two years salary to the family of any worker who dies in a work-related incident.⁸¹

Suicides amongst migrant workers are acknowledged to be inordinately high. The Indian consulate did release figures on suicides showing that 67 Indians killed themselves in Dubai and the northern emirates in 2004. This tallies with the figures reportedly shown to the French journalists.⁸² Unfortunately the problem seems to be getting worse. In August 2006, the Indian ambassador to the UAE reported that 100 Indian nationals had committed suicide in the previous 12 months.⁸³ Relevant officials in the UAE have held that suicides are not related to work conditions. According to Brigadier Khamis Mattar Al Mazeina, director of the Criminal Investigations Department in Dubai, most suicides are related to problems in the deceased’s home country, and he added: “Most of these people are non-Muslims.” Professor Adnan Fadil of the Al Rashad Psychiatric Clinic in Dubai named a number of contributory factors including schizophrenia, alcoholism, homosexuality and AIDS.⁸⁴ Of a total of 30 Nepalese deaths in 2005, only 1 was reported to have been due to a labour accident. There were, according to the *chargé*

⁷⁷ Economist Intelligence Unit, *Country Report: UAE, Main Report*, 1 February 2005.

⁷⁸ *Gulf News*, 21 November 2005.

⁷⁹ *Gulf News*, 21 November 2005.

⁸⁰ English translation transcript of the *Envoye Speciale* programme *Dans les Soutes de L’Eldorado* (France 2).

⁸¹ Article 149, Chapter 8, Federal Law No. 8 for 1980 on Regulation of Labour Relations.

⁸² *Gulf News*, 22 October 2005.

⁸³ Ambassador Nada S. Mussallam, 19 August 2006.

⁸⁴ *Gulf News*, 22 November 2005.

d'affaires at Nepal's embassy, 13 deaths from cardiac arrests, 7 suicides, 7 road accidents, 2 from unknown reasons, as well as the reported solitary work-related death.⁸⁵

2.4 *The 2007 Draft Labour Law*

The UAE opened its draft labour law to public review on 5 February 2007. Human Rights Watch issued a response, which stated in its introduction that, “[u]nfortunately, major omissions and provisions in violation of well-established international labour relations plague the draft law”,⁸⁶ and identified several areas in urgent need of reform which are neglected in the proposed legislation. They include: exclusion of provisions on workers' rights to organise; prohibition of strikes; the exclusion of domestic workers; absence of provisions banning the confiscation of passports; and inadequate and unenforced penalties for violations of the law.

In relation to freedom of association, the response urges the UAE to “amend the UAE labour law to comply with international standards and explicitly protect workers' right to organise. The law should provide for the formation of independent unions free from employer and government interference.”⁸⁷ It has been noted that the UAE, although a member of the ILO, has not ratified core ILO Conventions Nos. 87 and 98. Similarly, Human Rights Watch emphasises the customary nature of the right to freedom of association within international labour standards, quoting the ILO Committee on Freedom of Association that ILO members, by virtue of their membership, are “bound to respect a certain number of general rules which have been established for the common good... Among these principles, freedom of association has become a customary rule above the Conventions.”⁸⁸

The ILO and the UAE had held discussions on the issue of trade unions. Dr. Taleb Al Rifa'i, regional director of the International Labour Organisation, told a *Gulf News* reporter in April 2005 that trade unions will be established in the UAE even though they may pose challenges to residents.⁸⁹ Dr. Khalid Al Khazraji, undersecretary at the Ministry of Labour and Social Affairs, agreed, also saying in 2005, that the UAE could expect to have labour unions “very soon”.⁹⁰ Again, the rhetoric of the government contrasts sharply with the reality. It is difficult not to conclude that the word of the UAE government on labour issues cannot be accepted.

⁸⁵ *Gulf News*, 19 December 2005.

⁸⁶ Human Rights Watch, *supra* note 3.

⁸⁷ *Ibid.*

⁸⁸ ILO Committee on Freedom of Association, quoted in *ibid.*

⁸⁹ *Gulf News*, 4 April 2005.

⁹⁰ *Ibid.*

The inability to form trade unions underpins the entire system of abuse of migrant workers in the UAE. “Without the right to organize”, Human Rights Watch notes, “[workers] are significantly impeded from collectively seeking structural reforms”.⁹¹ Granting migrant workers the right to collectively bargain would lead to reform in all areas. It is only by granting migrant workers a collective voice that improvements will percolate through the migrant labour system, leading to a basic standard of living for migrant workers and respect for their dignity.

With regard to the right to strike, it is recommended that the draft law be amended “to guarantee workers’ right to strike, including by establishing explicit procedures for workers to exercise this right, such as strike voting requirements and strike notification rules”.⁹² The ILO Committee on Freedom of Association has recognised the right to strike as “an essential element of trade union rights”, and the ILO Committee of Experts has described the right to strike as “an intrinsic corollary of the right to organize protected by Convention No. 87”.⁹³ Article 162 of the proposed UAE draft labour law effectively bans strikes, stating: “It shall be strictly prohibited to engage in a work stoppage, whether wholly or partially, or firm shutdown by reason of or during group labour disputes.”⁹⁴ Anyone who starts a work stoppage may be dismissed (Article 122) and deported (September 2006 Ministry of Labour resolution).⁹⁵

Importantly, Human Rights Watch calls for the draft labour law to be extended to domestic workers. Domestic workers are excluded from national labour laws. No reason has ever been offered for this. Instead, the UAE proposes issuing a standard contract for domestic workers which would offer lower protection than that provided for in the labour laws. Domestic workers presently operate in a vacuum. They are “at particularly high risk of labour exploitation”.⁹⁶ Furthermore,

[t]he exclusion of domestic workers from national labour laws, while neutral on paper in its focus on a form of employment, has a disparate impact on women and girls since the overwhelming majority of domestic workers are female. The lesser protection extended to domestic work reflects discrimination against a form of work usually performed by women and girls... No legitimate reasons exist for these exclusions. Therefore the unequal protection of domestic workers under national laws constitutes impermissible disparate impact discrimination on the basis of sex.⁹⁷

Finally, the draft law provides insufficient remedies for violations of its provisions. Human Rights Watch recommends: “Amend Article 183 of the proposed UAE labour law to mandate imprisonment for egregious violations of the law and to

⁹¹) Human Rights Watch, *supra* note 3.

⁹²) *Ibid.*

⁹³) *Ibid.*

⁹⁴) *Ibid.*

⁹⁵) *Ibid.* The resolution bans workers instigating or causing a strike from working for one year, which results in deportation.

⁹⁶) *Ibid.*

⁹⁷) *Ibid.*

increase the maximum fine for unlawful conduct significantly.” The maximum financial penalty for violations is AED 12,000 (approximately USD 3,268), “barely a slap on the wrist for employers who withhold tens of millions of dirhams in wages and reap untold financial rewards”.⁹⁸

3. Does the UAE Violate International Law Protecting Migrant Workers?

In order to protect peoples who are engaged as migrant workers, it is imperative that the UAE sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which entered into force in 1993. The Convention provides a set of binding international standards to address the treatment, welfare and human rights of both documented and undocumented migrants as well as the obligations and responsibilities on the part of the sending and receiving states.

Until sufficient levels of international condemnation require the UAE to ratify the Migrant Workers’ Convention, the state is under an obligation to respect international human rights as stipulated in three treaties which it has ratified. It should be stressed, however, that the UAE has not signed or ratified the core human rights treaties, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both of 1966.⁹⁹ It has acceded to the International Convention on the Elimination of All Forms of Racial Discrimination of 1965,¹⁰⁰ under which it reported most recently in 1995; the Convention on the Rights of the Child of 1989,¹⁰¹ under which it has submitted one report; and the International Convention on the Elimination of Discrimination Against Women of 1979,¹⁰² under which it has not submitted a report. The following section will discuss how the relevant United Nations treaty-monitoring bodies have addressed migrant workers’ rights in the UAE through the state reporting procedure. In addition, the work of the Special Rapporteur on the Human Rights of Migrants will be examined, the first of whom was appointed in 1999.¹⁰³

⁹⁸ *Ibid.*

⁹⁹ See <www.unhcr.ch/tbs/doc.nsf> for a table of ratifications. In addition, the United Arab Emirates has not signed the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

¹⁰⁰ UN Doc. A/6014 (1966), entered into force 4 January 1969.

¹⁰¹ UN Doc. A/44/49 (1989), entered into force 2 September 1990.

¹⁰² UN Doc. A/34/46 (1979), entered into force 3 September 1981.

¹⁰³ Commission on Human Rights resolution 1999/44. In August 2005 Mr. J.A. Bustamante (Mexico) succeeded Ms. Gabriela Pizarro as Special Rapporteur on the Human Rights of Migrants.

3.1 *The International Convention on the Elimination of all Forms of Racial Discrimination*

The UAE acceded to the International Convention on the Elimination of Racial Discrimination of 1965 on 20 June 1974.¹⁰⁴ Some theoretical aspects of the Convention's scope ought to be clarified before stressing its requirements in relation to migrant workers. Article 1(2) provides that the Convention shall not apply to distinctions, exclusions, restrictions or preferences made between citizens and non-citizens. However, the Committee on the Elimination of Racial Discrimination (CERD), the body charged with monitoring the treaty's implementation, has stressed that

[a]lthough some of these rights, such as the right to participate in elections, to vote and to stand for election, may be confined to citizens, human rights are, in principle, to be enjoyed by all persons. States parties are under an obligation to guarantee equality between citizens and non-citizens in the enjoyment of these rights to the extent recognized under international law.¹⁰⁵

Under Article 9(1), states parties are required to report to CERD on the legislative, judicial, administrative or other measures adopted that give effect to the provisions of the Convention. In 1995, CERD examined the eleventh periodic report of the UAE.¹⁰⁶ The UAE has not submitted a report since, despite the requirement under Article 9(1)(b) that a report be submitted periodically every two years. It is therefore ten years overdue.

CERD has adopted thirty general recommendations since its inception, which promote an expansive interpretation of the substantive obligations contained in the Convention. The recommendations enable the Committee to indicate to states parties the scope of the Convention's provisions and to offer guidance on the legal interpretation of the Convention.¹⁰⁷ General recommendations directly affect reporting obligations and shape state practice in applying the Convention.¹⁰⁸

General Recommendation XI, which represented the Committee's views on the issue of non-citizens,¹⁰⁹ was replaced in 2005 by General Recommendation XXX on "Discrimination Against Non-Citizens",¹¹⁰ the result of a thematic discussion conducted by CERD on the issue. Paragraph 4 states:

¹⁰⁴ Table of ratifications available at <www.ohchr.org/english/countries/ratification/2.htm>.

¹⁰⁵ General Recommendation XXX, 1 October 2004, para. 3.

¹⁰⁶ Periodic Report – United Arab Emirates, 8 May 1995, CERD/C/279/Add.1.

¹⁰⁷ K. Boyle and A. Baldaccini, 'International Human Rights Approaches to Racism', in S. Fredman (ed.), *Discrimination and Human Rights* (Oxford University Press, Academy of European Law, 2001) p. 172.

¹⁰⁸ T. Meron, 'The Meaning and Reach of the International Convention on the Elimination of All Forms of Racist Discrimination', 79 *American Journal of International Law* (1985) p. 285.

¹⁰⁹ Non-citizens, UN Doc. A/46/18, 1993.

¹¹⁰ General Recommendation XXX, Discrimination Against Non-Citizens, para. 3.

Under the Convention, differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.

The UAE has recognised in its 1995 report that the reach of the Convention extends to non-citizens as well as citizens. It notes in paragraph 30 of that report:

The Constitution affirms that foreigners residing in the United Arab Emirates are entitled to enjoy the rights and freedoms provided for in the international instruments in force or in conventions and agreements to which the Union is a party.¹¹¹

In 1995, the Committee drew particular attention to the plight of foreign workers in the United Arab Emirates:

With regard to the application of article 5 of the Convention, members of the Committee asked to what extent foreign workers – who, according to some sources, made up 80 per cent of the total labour force – were entitled to have their children join them and to have them educated in their own language, and whether those children were free to practise their religion. They also asked which countries had bilateral agreements with the United Arab Emirates regarding the status of foreign workers and what was the content of those agreements. The members of the Committee expressed their deep concern at information from various sources that foreign workers, particularly women from Asian countries, were subjected to inhuman treatment, and asked for clarification in that regard. They also asked whether aliens living in the United Arab Emirates had the right to assemble freely and practise their culture.¹¹²

Due to the unsatisfactory nature of the replies received, the Committee's Concluding Observations expressed

[k]een concern ... as to the allegations of ill-treatment of foreign workers, including women domestic servants of foreign origin.¹¹³

The continued absence of a periodic report from the UAE since 1995 means that the UAE's failure to implement the Convention in its treatment of migrant workers has not been highlighted. In the intervening ten-year period, CERD has indicated increased concern with racially discriminatory practices against non-citizens in violation of the Convention, through General Recommendation XXX. Furthermore, the Convention requires states parties to prohibit racial discrimination in the provision of the economic, social and cultural rights of Article 5(e), which include: "The rights to work, to free choice of employment, to just and

¹¹¹) Periodic Report – United Arab Emirates, CERD/C/279/Add.1, 8 May 1995, para. 30.

¹¹²) Concluding Observations – United Arab Emirates, UN Doc. A/50/18.

¹¹³) *Ibid.*, Section (c) 'Principal Subjects of Concern'.

favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration.”¹¹⁴

Using General Recommendation XXX as a template, three instances of discrimination against non-citizen workers in the UAE will be briefly examined: housing, access to justice and minimum wage proposals.

Article 5(e)(iii) of the Convention holds:

States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (...) The right to housing.

General Recommendation XXX specifically underlines the application of the right to housing to non-citizens in its paragraph 32:

Guarantee the equal enjoyment of the right to adequate housing for citizens and non-citizens, especially by avoiding segregation in housing and ensuring that housing agencies refrain from engaging in discriminatory practices.

Reports of appalling housing conditions for migrant workers in the UAE who reside in segregated labour camps are widespread. Sometimes this is acknowledged by the UAE government. For example, the *Gulf News* quotes Rajeh Al Fahel, head of the Health Education Section at the Ministry of Health, who stated he was “shocked at the conditions the men in workers accommodation ... live in”.¹¹⁵ A further report asserts that “cramped living conditions and poor wages make migrant workers ‘highly susceptible’ to communicable diseases which often develop into serious health problems”; the reference to a health risk was in the context of “the Al Mussafah labour accommodation area where an estimated 12,000 workers often share cramped rooms containing up to 20 beds”.¹¹⁶

The UAE government insists that accommodation is the responsibility of companies. The *Gulf News* quotes “Assistant Undersecretary for Labour Hatim al Junaibi [who] recognises that there are health problems that must be attributed to the living conditions of migrant workers and insists it is the responsibility of the labour companies”.¹¹⁷ This is in violation of the government’s obligations under Article 5 of the Convention, which holds the state responsible for ensuring the right to housing is granted without racial discrimination.

¹¹⁴ Article 5(e)(i).

¹¹⁵ *Gulf News*, 10 April 2006.

¹¹⁶ *Gulf News*, 9 April 2006.

¹¹⁷ *Ibid.*

CERD General Recommendation XXX uses the word “segregation” in relation to housing, and stresses that this must be avoided. The atrocious policy of constructing “labour camps” in the UAE represents a practice of *de facto* segregation between citizens and non-citizens, in which housing conditions for non-citizen workers are significantly worse.¹¹⁸ This practice further represents a violation of Article 3 of the Convention, which states:

States Parties particularly condemn racial segregation and *apartheid* and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

In 1995, the Committee issued General Recommendation XIX on Racial Segregation and Apartheid, stating in its paragraph 1 that “the reference to *apartheid* may have been directed exclusively at South Africa, but the article as adopted prohibits all forms of racial segregation in all countries”.¹¹⁹ The Recommendation represents a re-interpretation of the Convention provision on apartheid to cover instances of segregation in housing.¹²⁰ The “labour camps” and conditions therein for migrant workers in the UAE represent a violation of Article 3 in this regard.

Section V of General Recommendation XXX incorporates seven paragraphs detailing the rights of non-citizens in relation to the administration of justice, and calls on states parties in its paragraph 18 to “ensure that non-citizens enjoy equal protection and recognition before the law”. The Convention emphasizes this obligation in Article 5(a), which upholds “[t]he right to equal treatment before the tribunals and all other organs administering justice”.

As highlighted above, in response to recent protests against migrant workers’ conditions in the UAE, severe restraints will be placed on migrant workers with regard to access to justice. As reported by the *Gulf News*, “[w]orkers who protest on flimsy grounds will be taken to courts”.¹²¹ The Dubai panel discussed above also warned of “referring workers to court if they protested without a genuine, legal grievance, ‘with no right’ ...”.¹²² Such rulings grant effective immunity to the authorities to not only declare protests unfounded, but to prosecute anyone engaged in such activities. The denial of access to justice and punishment of migrant workers who protest appears systematic. For example, “[i]n at least one previous protest, a cleaning company was

¹¹⁸⁾ *Ibid.* This report from the *Gulf News*, entitled ‘Labourers Forced to Share Space with Rodents’, describes the conditions in a labour camp occupied by 250 migrant workers. It notes that “poor workers find it very difficult to maintain a hygienic environment because of lack of resources and atrocious living conditions ...”.

¹¹⁹⁾ UN Doc. A/50/18, para. 1.

¹²⁰⁾ See M. Banton, *International Action Against Racial Discrimination* (Oxford University Press, 1996) pp. 159, 160, 201, 202. The draft Recommendation was introduced by CERD member Michael Banton in 1993.

¹²¹⁾ *Gulf News*, 8 May 2005.

¹²²⁾ *Ibid.*

reported to have fired several men who staged a protest for unpaid wages, leading to their repatriation. The source said ... where workers unfairly protest, something has to be done."¹²³ The general reluctance on behalf of workers to make a complaint has also been underlined. The closing of access to justice for migrant workers in the UAE represents an infringement of Article 5(a) and is a racially discriminatory practice in violation of the UAE's Convention obligations.

A minimum wage of AED 3,000 to AED 5,000 has been fixed for citizens of the UAE.¹²⁴ There is no minimum wage for non-citizens. Paragraph 4 of General Recommendation XXX states:

Under the Convention, differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.

It is submitted that not extending the minimum wage to non-citizens does not satisfy any criteria pursuant to a legitimate aim under the Convention, and is a clear instance of racial discrimination, as defined in Article 1, in violation of the UAE's Convention obligations.

The UAE has acceded to the International Convention on the Elimination of Racial Discrimination, and has indicated its willingness in theory to respect the provisions of the Convention by submitting to the reporting procedure. Nevertheless, the treatment of migrant workers appears to infringe the Convention's clear requirement that non-citizens be protected from racial discrimination. The three areas examined above represent a brief overview of a wider pattern of racial discrimination in all areas of socio-economic life in the UAE towards non-citizen migrant workers. General Recommendation XXX, and the continued work of CERD in its examination of state reports, consistently emphasises the need to protect non-citizens as an essential component in the elimination of all forms of racial discrimination. With regard to housing, access to justice and the minimum wage, migrant workers continue to suffer racial discrimination in the UAE. The UAE must respect its obligations under the 1965 Convention.

3.2 *The Convention on the Rights of the Child*

The UAE has submitted one report under the Convention on the Rights of the Child of 1989, its most recent engagement with any UN treaty-monitoring body.

¹²³ *Gulf News*, 2 May 2006. The Al Ahmadiya workers "protested to demand better wages and cook their own food... Labour and PCLAD [Permanent Committee for Labour Affairs] officials said to the men ... it was not permitted in Dubai for people to cook in workers' accommodation rooms. Company officials said they did not have enough land in current accommodation to build a kitchen."

¹²⁴ *Gulf News*, 6 April 2006.

In June 2002, the Committee on the Rights of the Child, the body charged with monitoring the implementation of the Convention, issued its concluding observations in relation to the initial report¹²⁵ submitted by the United Arab Emirates. Paragraph 24(b) of those observations reads:

The Committee recommends that the State Party ... consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Their Families.¹²⁶

The United Arab Emirates stated in reply to a question from a Committee member that “the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was proving difficult to implement”.¹²⁷

3.3 *The Convention on the Elimination of Discrimination Against Women*

The UAE acceded to the Convention in October 2004, but has not reported to its monitoring body, the Committee on the Elimination of Discrimination Against Women. The treatment of domestic workers raises serious questions as to the UAE’s compliance with its Convention requirements. Human Rights Watch has stressed the need to “amend Articles 25–35 of the proposed UAE labour law to repeal all limitations on the employment of women”.¹²⁸ There is a history of abuse against domestic workers, overwhelmingly female, in the UAE:

Domestic workers, excluded even from the protections of existing UAE labour law, report a long list of abuses committed by employers and labour agents, including forced confinement in the workplace; non-payment of wages for months or years; and excessively long working hours with no rest days. In some cases domestic workers experience physical or sexual abuse, or are trapped in situations of forced labour.¹²⁹

The full implementation of the Convention in the UAE is an urgent requirement. There is a dearth of information in relation to the problems faced by domestic workers, but some cases have been described in the media.

3.4 *The Special Rapporteur on the Human Rights of Migrants*

The UN Special Rapporteur on the Human Rights of Migrants has raised a number of serious individual cases in the UAE with regard to the treatment of migrant

¹²⁵ Initial Report of United Arab Emirates Under Article 44 of the Convention on the Rights of the Child, CRC/C/78/Add.224, October 2001.

¹²⁶ Concluding Observations – United Arab Emirates, CRC/C/15/Add.1837, June 2002.

¹²⁷ Summary Records, CRC/C/SR.795, Geneva, 10 June 2002, agenda item 4.

¹²⁸ Human Rights Watch, *supra* note 3.

¹²⁹ *Ibid.*

workers. These cases are necessarily of grave concern, and it is only the most exceptional situations that will come to the Rapporteur's attention. It is submitted that systematic discrimination against migrant workers underlies the more extreme examples that are found in several of the Special Rapporteur's annual reports. It is essential that the UAE invites the Special Rapporteur to assess the situation. The following are three brief examples of cases that have come to the Special Rapporteur's attention.

On 9 March 2000, the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on Violence Against Women and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions regarding the case of Kartini bint Karim, an Indonesian immigrant in the UAE. According to the information received, the woman was employed as a domestic servant in Fujairah and became pregnant in 1999, as a result of which her employers accused her of adultery. She was brought before the local authorities and gave birth during her detention. Appearing without legal representation, she was tried by the city court of Syriah Fujairah, which sentenced her to death by stoning. According to the information received, Kartini bint Karim did not receive information or consular assistance. The Special Rapporteur requested the government of the United Arab Emirates to commute Kartini bint Karim's sentence and release her. In a letter dated 14 April 2000, the government of the UAE reported to the Special Rapporteur on the case. The letter specified that the Indonesian authorities in the country had been informed and that Kartini bint Karim had received legal assistance. The Special Rapporteur received information from the source that Kartini bint Karim had been released and had returned to Indonesia.¹³⁰

The death of Alishir Muradov of Tajikistan is raised in the Special Rapporteur's 2004 report. Reportedly, the mother of Mr. Muradov requested the city attorney of Dushanbe to issue an order to exhume the body and conduct medical expertise. The report continues:

Since her son was in general good health conditions *and he had complained about discrimination at the work-place*, she was concerned that he might have been killed.¹³¹

The government of the United Arab Emirates has strongly refuted the claims, stating Mr. Murodov died of natural causes.¹³² The Special Rapporteur offered no comment on the veracity of the case.¹³³ It is interesting to note that the government

¹³⁰ UN Doc. E/CN.4/2001/83.

¹³¹ UN Doc. E/CN.4/2004/76/Add.1, para. 269 (emphasis added).

¹³² *Ibid.*, paras. 272, 273.

¹³³ *Ibid.*, para. 274. The Special Rapporteur thanked the United Arab Emirates for the response received, and sought further information on a second case highlighted in the report, that of Jovilyn Calonse, a 28 year old woman from the Philippines, regularly working in the United Arab Emirates, who was allegedly raped in May 2003 (para. 270).

of Tajikistan was sufficiently concerned so that “based on the medical expertise, the Attorney General of the Republic of Tajikistan initiated a criminal case on the killing of Alisher Murodov”.¹³⁴ Despite two *note verbales* from the government of Tajikistan requesting a joint medical expertise on the body by experts of the two countries, no response has been received.¹³⁵

In her 2005 annual report, the Special Rapporteur questioned the UAE about the specific case of Halil Yilmaz, a Turkish migrant, to which no reply was received.¹³⁶

In its resolution 2000/48, the Commission on Human Rights requested the United Nations Special Rapporteur on the Human Rights of Migrants to include in her work schedule a programme of visits with a view to improving the protection afforded to the human rights of migrants, thus implementing as broadly and fully as possible all aspects of her mandate. Article 8 of the resolution

[e]ncourages Governments to give serious consideration to inviting the Special Rapporteur to visit their countries so as to enable her to fulfil her mandate effectively.¹³⁷

The UAE should invite the Special Rapporteur to conduct a country visit to inspect allegations of abuse and discrimination. It is extremely unlikely that it will do so. The Special Rapporteur may also request such an invitation, and ought to do so given the absence of fundamental rights afforded to migrant workers and the failure to implement domestic protections. Such a request would place pressure on the UAE to open its labour practices up to international scrutiny.

4. Bonded Labour/Slavery

The existence of bonded labour and slavery in the UAE is relatively unexplored. Practices governing the recruitment of migrant workers and subsequent employment procedures signal a cycle of debt bondage that has not been officially acknowledged. However, there has been one instance in which the practice of slavery in the UAE has been directly confronted and condemned by the international community.

In 2005, an Anti-Slavery International report to the United Nations Working Group on Contemporary Forms of Slavery accused the UAE of consistent recal-

¹³⁴ *Ibid.*, para. 269.

¹³⁵ *Ibid.*

¹³⁶ UN Doc. E/CN.4/2004/85/Add.1, paras. 322–325.

¹³⁷ UN Doc. A/55/275, 8 August 2000.

citance in the enforcement of its decrees outlawing the use of child camel jockeys.¹³⁸ The practice of using children as camel jockeys, most coming from impoverished South Asian states such as Pakistan, was outlawed in the country in 1980 under the Federal Labour Code. Yet, despite a further 1993 presidential ban from the former ruler Shaikh Zayed, Anti-Slavery International obtained photographs of children clearly younger than 12 working as camel jockeys as late as 2004. In pursuance of the issue, a 2007 class action lawsuit was brought under the Alien Tort Claims Act of 1789 in the United States, directly accusing the ruler of Dubai, Shaikh Mohammed Al Makhtoum, of being responsible for the enslavement of thousands of boys from South Asia and Africa.¹³⁹ As a result, the UAE determined to settle the question of camel jockeys before the case could develop in the US courts. Shaikh Makhtoum, leader of Dubai, made a personal and very public plea to US President George W. Bush for help in dismissing the lawsuit brought by the US attorneys, from the lawfirm Motley Rice.¹⁴⁰ Association with the issue of child slavery strongly affected the government of Dubai, which is aware of the importance of its image, and it retains the services of a US-based strategic and crisis public relations firm as a result.¹⁴¹

The case of the camel jockeys before the US courts was recently dismissed on grounds of jurisdiction. While this particular issue saw prompt remedial action on the part of the UAE government, slavery, albeit in a less egregious, less emotive form than that of child camel jockeys, is a persistent reality in the United Arab Emirates. The following section explores the question of slavery and its corollary, bonded labour, as it affects migrant workers in the UAE, and how this practice continues without national or international intervention despite legal requirements.

4.1 *State Responsibility for Slavery/Debt Bondage*

Slavery is a crime against humanity and an established norm of customary international law or *jus cogens*.¹⁴² The two most significant international documents

¹³⁸ Anti-Slavery International, *Trafficking and Forced Labour of Children in the Gulf Region*, 6 June 2005, available at <www.antislavery.org/archive/submission/submission2005-cameljockeys.htm>.

¹³⁹ North America Inter-Press Service, 31 July 2007, available at <ipsnorthamerica.net/news.php?idnews=980>.

¹⁴⁰ 'Camel Jockey Suit Bad for Relations', *International Business Times*, available at <www.ibtimes.com/articles/20070530/fl-camel-jockey-lawsuit.htm>.

¹⁴¹ California-based public relations firm The Saylor Company runs and manages a website for the Dubai government, available at <www.dubaicameljockeys.org>.

¹⁴² C. Bassiouni, 'Enslavement as an International Crime', 23(2) *New York University Journal of International Law and Politics* (1990) p. 460: "It is well established that prohibitions against slavery and slave-related practices have achieved the level of customary international law and have attained *jus cogens* status."

relating to slavery are the Slavery Convention of 1926,¹⁴³ and the Additional Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956.¹⁴⁴ The Slavery Convention defines slavery as follows:

1. Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.
2. The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.

The 1956 Supplementary Convention reiterated the 1926 Convention's definition of slavery, adding a definition of persons of servile status, in reference to persons subject to the practices of debt bondage, serfdom, forced marriage and the sale or inheritance of female members of the family. Article 1(a), relating to institutions and practices similar to slavery, defines debt bondage as follows:

Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

While private individuals or criminal elements in global society control the trade in slaves, states retain responsibility to eradicate the practice where it occurs. Similarly, states hold responsibility for debt bondage if they fail to enact and enforce domestic protections. There is no example of legalised slavery or debt bondage existing in the world; yet, this does not imply that the practice does not occur, nor that States do not have obligations to prevent it. As Rassam points out: "Although no state denies a juridical personality to any individual subjected to these practices by explicitly recognizing legal ownership of him or her by other persons, the victims of these practices are indeed susceptible to ownership by others because of state complicity or lack of enforcement of domestic laws."¹⁴⁵

¹⁴³ Article 1, Convention to Suppress the Slave Trade and Slavery, 46 *Stat.* 2183, 60 *LNTS* 253, 255, entered into force 25 September 1926.

¹⁴⁴ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 *UNTS* 3, entered into force 30 April 1957.

¹⁴⁵ Y. Rassam, 'Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade Under Customary International Law', 39 *Virginia Journal of International Law* (1999) p. 320.

States' responsibilities do not consist only of negative obligations generally associated with the *jus cogens* principle. Slavery is also an obligation *erga omnes*,¹⁴⁶ and an emerging doctrine of state responsibility for the acts of private individuals suggests that states are increasingly obliged to be active participants in the fight against slavery in all its forms. In determining circumstances in which conduct is attributable to a state, the International Law Commission's Draft Articles on State Responsibility for Internationally Wrongful Acts of 2001 represents a significant development. The commentary on Article 1 reads as follows:

The term 'international responsibility' in article 1 covers the relations which arise under international law from the internationally wrongful act of a State, whether such relations are limited to the wrongdoing State and one injured State or whether they extend to other subjects of international law.¹⁴⁷

Therefore, states have a responsibility not only to other States for their acts, but also to other subjects of international law, such as international organisations, national liberation movements and, crucially, individuals.¹⁴⁸ Article 2 defines wrongful acts as follows:

There is an internationally wrongful act of a State when conduct consisting of an action or omission:

- (a) Is attributable to the State under international law; and
- (b) Constitutes a breach of an international obligation of the State.

Positive obligations of states are an emerging principle of international law, as first outlined before the Inter-American Court of Human Rights in the *Velasquez-Rodriguez* case,¹⁴⁹ and formalised in the International Law Commission's Draft Articles. When these principles are applied to the rights of individuals, the continued development of the doctrine of state responsibility is of great relevance to the issue of slavery. International legal doctrine leads to the conclusion that debt bondage is a form of slavery, and states have positive obligations to prevent it.

¹⁴⁶ *Obligatio erga omnes* were defined by the International Court of Justice as "obligations of a State towards the international community as a whole". *Barcelona Traction, Light and Power Co. Ltd. (Belgium v. Spain)*, 1970 ICJ, P33–34 (Second Phase) (Judgement of 5 February 1970).

¹⁴⁷ Commentary on International Law Commission Draft Articles on State Responsibility for Internationally Wrongful Acts, 12 December 2001, UN Doc. A/RES/56/83, p. 10, para. 5.

¹⁴⁸ A. Cassese, *International Law*, 2nd ed. (Oxford University Press, 2005) p.71.

¹⁴⁹ *Velasquez-Rodriguez Case*, Inter-Am. Ct. HR, Series C, No. 4 (1989), para. 170. The Court held that "under international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions".

4.2 *Debt Bondage in the UAE*

There is strong evidence to suggest that slavery, in the form of debt bondage, is widespread in the United Arab Emirates. There is also evidence that the government of the UAE is failing in its positive obligations to stop the practice of debt bondage within its borders and prosecute those responsible. Furthermore, the government itself is an active participant in the abuse of migrant workers, and is central to a situation of control and debt bondage between employers and employees.

There is little scholarly research in general articles on the situation in the Gulf on contemporary forms of slavery; however, some references to the UAE have been made. Thus, Miers describes how “[d]ebt bondage is not limited to poor countries. It also occurs, for instance, in the oil-rich states of the Persian Gulf.”¹⁵⁰ Furthermore, Rassam notes: “Immigrant domestic workers often find themselves in a situation akin to bonded laborers when employers – in countries such as Kuwait, the UAE and Saudi Arabia – confiscate their passports.”¹⁵¹

In November 2006, Human Rights Watch released a report entitled *Building Towers, Cheating Workers*¹⁵² detailing the appalling working and living conditions faced by the migrant construction workers of Dubai, one of the seven emirates which collectively comprise the United Arab Emirates. Despite limiting its scope to the construction workers of Dubai (who number approximately 500,000 out of a total migrant workforce of 2,738,000),¹⁵³ the report can legitimately claim to be the first in-depth, on-the-ground study of labour practices in the Arabic Gulf by an organisation of international standing. An aspect of the report describes the situation facing construction workers in Dubai as one of “forced labour”.

There is no precise understanding of the meaning of debt bondage; however, researchers for the ILO Social Finance Programme conducted a study into debt bondage in India,¹⁵⁴ described by one scholar as “a significant step forward in our understanding of this form of slavery”,¹⁵⁵ and identified factors which “contributed significantly to debt bondage”.¹⁵⁶ These include: asymmetric information, financial and labour market monopolies, multiple roles of employers and in-kind

¹⁵⁰ S. Miers, ‘On Slavery and Islam in African History: A Tribute to Martin Klein’, 34 *Canadian Journal of African Studies* (2000) p. 728.

¹⁵¹ Rassam, *supra* note 145, p.326.

¹⁵² Human Rights Watch, *Building Towers, Cheating Workers*, 2006, available at <hrw.org/reports/2006/uae1106/>.

¹⁵³ *Ibid.*, pp. 2, 6.

¹⁵⁴ ILO Social Finance Programme, *The Prevention of Debt Bondage with Microfinance-led Services*, available at <www.ilo.org/public/english/employment/finance/download/daru.pdf>.

¹⁵⁵ K. Bales, ‘International Labor Standards: Quality of Information and Measures of Progress in Combating Forced Labor’, 6(24) *Comparative Labour Law and Policy Journal* (2002) p. 337.

¹⁵⁶ *Ibid.*

linkages. Although the 2006 Human Rights Watch report is careful to avoid any direct reference to debt bondage, when we compare its findings to the findings of the ILO report, these “contributing factors” are apparent in the UAE.

The ILO report describes the first factor, that of “asymmetric information”, as follows: “Families vulnerable to bondage are generally illiterate. There is an inverse correlation between a family’s understanding of its contractual relationship with the employer and its vulnerability to bondage.”¹⁵⁷ In its response to the draft labour law of 2007, Human Rights Watch stated that “unscrupulous employers and labor recruiters at times take advantage of migrant workers’ language barriers, lack of familiarity with local law and practice, and fear of dismissal and deportation to deceive migrant workers about their terms of employment, including type of work, salary, and working conditions”.¹⁵⁸ In their report on construction workers, a similar observation was made: “The majority of migrant construction workers are illiterate and unaware of their rights in the UAE.”¹⁵⁹

Secondly, with regard to “financial and labour market monopolies”, the ILO report states: “Employers have significant leverage to link the labour and credit contracts and to define the loan terms. Some employers actively entice workers to take a loan as it allows them to trap the labourers in a cycle of indebtedness and exploitation.”¹⁶⁰ The Ministry of Labour is outspoken on the issue of recruitment agents, threatening closure via the press,¹⁶¹ but in reality little is done to curb these agents’ activities. According to Human Rights Watch: “[The UAE government], having made a point of passing a law that bans both local recruitment agencies and local employers from charging workers any fee in connection with the recruitment or employment process, has made little effort to punish recruiting agents who persist in making these charges, or the employers who are complicit.”¹⁶²

Thirdly, the ILO Report highlights the “multiple roles of employers”: “Multiple social and political roles of employers (or their relatives) in the community also appear to increase the vulnerability of labourers to exploitation. Direct or indirect influence in locally elected bodies and/or in the law and order system (police/judiciary) allows employers to prevent labourers from taking legal action.”¹⁶³ Several factors combine to ensure migrant workers are particularly vulnerable to

¹⁵⁷) ILO Social Finance Programme, *supra* note 154, p. 5.

¹⁵⁸) Human Rights Watch, *supra* note 3, p. 15.

¹⁵⁹) Human Rights Watch, *supra* note 152, p. 17.

¹⁶⁰) ILO Social Finance Programme, *supra* note 154, p. 5.

¹⁶¹) *See for example Gulf News*, 9 January 2007, available at <archive.gulfnews.com/indepth/labour/visas_and_the_law/10095849.html>.

¹⁶²) Human Rights Watch, *supra* note 152, p. 11.

¹⁶³) ILO Social Finance Programme, *supra* note 154, p. 5.

this type of discrimination in the UAE. Due to domestic laws on business ownership, quotas on the number of UAE nationals in the public sector and in the law and order system and the deeply tribal composition of Emirati society, Emirati nationals and extended members of large families fill multiple crucial roles.

Every business in the UAE, except those within government-run free trade zones, must be majority owned by a UAE national. In addition, the country's Emiratisation programme¹⁶⁴ has put quotas on the number of UAE nationals who must be employed in the public sector and certain parts of the private sector. Bodies such as the police and the Ministry of Labour are staffed with UAE nationals. A situation exists, therefore, where UAE nationals, who comprise a mere five per cent of the country's workforce,¹⁶⁵ own almost all of the enterprises in the country and hold positions of absolute authority in the law and order system.

The tribal nature of Emirati society further increases the likelihood of nepotism. In the UAE, "a person's individual existence is embedded in his [tribal] group, which is committed to him because of their common descent. The members of this group of common descent have a corporate responsibility to provide support and protection."¹⁶⁶ Tribal groups can be extremely large given that a person's tribal name "could also be the name of a forebear of countless generations back, who is considered the 'patron' or eponym of the many groups of families, which see themselves as his offspring".¹⁶⁷ Human Rights Watch found clear evidence of collusion between the law and order system and enterprises:

Some of the ministry [of labour]'s arbitrators have been accused of protecting the interests of construction companies... Human Rights Watch has not been able to document a single instance when an employer was sanctioned, either by prison time or financial penalties, for failing to pay its workers.¹⁶⁸

Fourthly, the ILO report refers to "in-kind linkages" as determinative of bonded status: "In-kind remuneration allows employers to hide low wage levels. For example a worker's remuneration package may include food, security, shelter, clothing, health or other essentials. In-kind compensation promotes dependency,

¹⁶⁴ The Emiratisation programme is run by a government body, Tanmia. Further information available at <www.tanmia.ae>.

¹⁶⁵ Human Rights Watch, *supra* note 3.

¹⁶⁶ F. Heard-Bey, 'The Tribal Society of the UAE and its Traditional Economy', in I. Al Abed and P. Hellyer (eds), *United Arab Emirates: A New Perspective* (Trident Press, 2001) pp. 98–117, available at <uaeinteract.com/uaeint_misc/pdf/perspectives/04.pdf>.

¹⁶⁷ *Ibid.*

¹⁶⁸ Human Rights Watch, *supra* note 152, p. 12. It should be pointed out that a recent article in the *Gulf News*, 16 July 2007, claims that 102 companies have been fined a total of AED 1,000,000 (USD 270,000). These claims, however, cannot be substantiated, available at <archive.gulfnews.com/indepth/labour/Pay_and_conditions/10139541.html>.

whereas monetary benefits would allow workers to make basic life choices.”¹⁶⁹ The key issue here is one of reliance on an employer for basic necessities.

Migrant workers in the UAE are dependent on their employer for housing and health. Article 85 of the UAE draft labour law¹⁷⁰ requires employers to cover the costs of workers’ healthcare, including coverage of migrant workers on arrival. As this excerpt from the Human Rights Watch report underlines, workers are entirely dependent on their employers:

While employers may ‘switch contracts’, the workers have no freedom to initiate a change of job and go to a different employer. For a migrant worker, changing jobs within the UAE is a cumbersome, bureaucratic process and requires the consent of the original employer. To begin with, labor regulations require a worker to have completed two years of service with his current employer before being entitled to switch employers. He may seek only the same kind of job, and there must be no UAE national available for the job. Most significantly, in order to move to a new employer, a worker must obtain a ‘letter of no objection’ from his current employer and request the Ministry of Labor to reregister his visa and work permit in the name of the new employer. The fact that employers usually hold on to workers’ passports makes it even more difficult for the worker to switch jobs.¹⁷¹

A worker who attempts to change employers without the consent of his current employer therefore runs the risk of losing shelter, access to healthcare and the means to feed himself. Employers do not so much promote dependency as create absolute dependency.

The workers themselves are in no doubt as to their status. A Dubai psychiatrist, commenting on the suicide of a worker whose employer had withheld his wages and refused to give him money for medical treatment, commented:

When these workers reach here and they realize what they have gotten themselves into and see that they’ve lost everything, they react to it. They feel trapped as they now know they can’t go back either. There’s no escape. They know that they are in a bonded labor type of situation and are reacting to what they think is the biggest mistake in their life, an irreparable loss. It is the reaction to this loss which can lead to suicidal contemplation.¹⁷²

Further analysis of the ILO and Human Rights Watch documents substantiates workers’ belief that they are living in conditions of debt bondage. According to Human Rights Watch, “[workers] devote most of their pay during their first two years of employment to servicing the loans”.¹⁷³ This, according to the ILO report, constitutes debt bondage: “Bondage itself is not linked to the duration of contracts.

¹⁶⁹) ILO Social Finance Programme, *supra* note 154, p. 5.

¹⁷⁰) Human Rights Watch, *supra* note 3.

¹⁷¹) Human Rights Watch, *supra* note 152, p. 38.

¹⁷²) ‘Worker Borrowed to Buy Stamp for Suicide Letter’, *Construction Week*, No. 83, 6–19 August 2005.

¹⁷³) Human Rights Watch, *supra* note 152, p. 8.

One can be bonded for a month or for a lifetime.”¹⁷⁴ In addition, data on the UAE is rare – the Human Rights Watch report is, in all likelihood, only an indication of the potential levels of abuse. There are no organisations on the ground in the UAE collecting information on the treatment of migrant workers. The Human Rights Watch report covered only the construction industry in just one emirate.

As outlined, the government of the United Arab Emirates has *erga omnes* obligations to prevent the practice of debt bondage on its territory, in line with established principles of international law. It is not meeting these obligations. The practice of charging migrant workers for their recruitment, rendering them in debt for several years, is widespread. Yet,

[the UAE government] has made little effort to punish recruiting agents who persist in making these charges, or the employers who are complicit, nor has it acted against the circumvention of the law by UAE employers and recruitment agents who ‘outsource’ charging workers fees to recruitment agents located in source countries. The federal government’s efforts to counter employers’ withholding of wages has been sporadic, at best.¹⁷⁵

Human Rights Watch eschews the use of the term slavery, preferring to characterise the situation as one of forced labour;¹⁷⁶ however, it would be a mistake to assume that slavery is a crime of times past. It manifestly is not. The number of slaves in the world today is estimated to be 27 million,¹⁷⁷ and according to experts in contemporary forms of slavery, the most common form of enslavement is debt bondage.¹⁷⁸ Debt bondage is classed as a form of slavery in the 1956 Supplementary Convention, and as such its prohibition is enshrined in Article 4 of the Universal Declaration of Human Rights,¹⁷⁹ in Article 8 of the International Covenant on Civil and Political Rights,¹⁸⁰ in Article 4 of the European Convention on Human Rights¹⁸¹ and in Article 6 of the American Convention on Human Rights.¹⁸²

¹⁷⁴ ILO Social Finance Programme, *supra* note 154, p. 7.

¹⁷⁵ Human Rights Watch, *supra* note 152, p. 11.

¹⁷⁶ In their 2006 report on construction workers, Human Rights Watch is careful to avoid any direct reference to either debt bondage or forced labour. Nevertheless, five months later in their March 2007 report on the draft labour law, there are eight references to forced labour and one reference to debt bondage. Forced labour, outlawed by the Convention Concerning Forced or Compulsory Labour (ILO No. 29, 39 *UNTS* 55, entered into force 1 May 1932), is considered to differ from slavery in that it has a derogable character and is not a norm of *jus cogens*.

¹⁷⁷ Bales, *supra* note 155, p. 343.

¹⁷⁸ K. Bales, *Disposable People: New Slavery in the Global Economy* (University of California Press, 1999) p. 19.

¹⁷⁹ Universal Declaration of Human Rights, General Assembly resolution 217A(III), UN Doc. A/810 at 71 (1948).

¹⁸⁰ Article 8, International Covenant on Civil and Political Rights, 19 December 1966, *Fed. Reg.* 45, 934 (1993), 999 *UNTS* 171.

¹⁸¹ European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, 213 *UNTS* 221.

¹⁸² American Convention on Human Rights, 7 January 1970, OEA/Ser. K/XVI/1.1, Doc. 65, Rev. 1, Corr 1, 1141 *UNTS* 123, 9 *ILM* 99 (1970).

The issue of whether or not it is a contemporary or a classic form of slavery is of limited importance for, as Bales points out, “[y]ou can no more expect historical forms of slavery in contemporary societies than you can expect to find 19th century forms and expressions of social class”.¹⁸³

It is currently impossible to put a figure on exactly what proportion of the UAE’s 2.78 million migrant workers are enslaved, but it is clear that many are. The UAE is in breach of its responsibilities to stamp out the practice. Debt bondage is being perpetrated by agents and sponsors with the tacit consent of the UAE government.

4.3 *Collusion Between Government and Employers*

It is underestimating the problem to hold that the UAE’s responsibility for instances of slavery on its territory hinges solely on its failure to meet its *erga omnes* obligations, or its positive obligations to address the abuses of non-state actors, as outlined in Article 2 of the International Law Commission’s Draft Articles on the Responsibility of States for Internationally Wrongful Acts. In the United Arab Emirates, as in other Gulf states against whom many of the same accusations could be levelled, the line between state and non-state actors is blurred. In Dubai, this is the situation, to such an extent that the federal government of Dubai is regularly credited with making takeover bids for private enterprises,¹⁸⁴ and openly exhorts its prominent role in the booming construction business. In October 2005, the *Gulf News* reported that the value of construction contracts in the Gulf was USD 221.4 billion. It outlined the role of government agencies in the business:

Government entities such as Dubai Municipality, Dubai Properties, Nakheel, Department of Civil Aviation, Ports, Customs and Free Zone Corporation, Dubai Electricity and Water Authority (Dewa) and Emaar Properties are leading all the development activities with the private sector involved to a much lesser extent. Among the leading government organisations, Nakheel has the largest project portfolio with Dh110 billion (\$30 billion) currently under development.¹⁸⁵

Not only is the state failing to meet its obligations to stop debt bondage, it is an active participant in the abuse, and one of the principal beneficiaries. As Human

¹⁸³) Bales, *supra* note 155, p. 326.

¹⁸⁴) The most recent and high-profile example was the attempt by Dubai International Capital, regularly referred to as a “state-owned equity firm”, to buy a controlling stake in Liverpool Football Club in England. See further at <football.guardian.co.uk/News_Story/0,,1964137,00.html>.

¹⁸⁵) ‘Construction Grows \$4b a Week’, *Gulf News*, 20 October 2005. Figures used in the report are taken from the *Middle East Economic Digest*. Available at <archive.gulfnews.com/articles/05/10/20/187788.html>.

Rights Watch points out, the country's labour laws are ostensibly strong,¹⁸⁶ but the lack of proper enforcement mechanisms and the proscription of trade unions render those laws obsolete, thus underpinning an exploitative labour market which leaves its unskilled workers open to systematic abuse by private individuals. The UAE's failure to include provisions on freedom of association and collective bargaining in its draft labour law of 2007, despite repeated promises to introduce trade union legislation, provides further proof of a government aware of a problem but unwilling to act, because to do so would have serious financial repercussions for the powerful families who run both the country and its most profitable enterprises.

5. Conclusion

The paper has given an overview of a system of exploitation that is taking place in one of the wealthiest states in the world. It has provided a legal analysis of protections in place for migrant workers in the United Arab Emirates. By contrast, it has sought to provide reasons as to why those protections are not working. There are no states in the world which legalise exploitation of workers and debt bondage. Yet, it would be naive to presume that this has resulted in the elimination of these practices. The task of human rights organisations and international institutions is to monitor the implementation of law, and oversee how effective legal provisions are in achieving their formal aims, whether *de facto* as well as *de jure* protection is achieved.

The UAE government offers a smokescreen of legal regulation to cover the abuse of migrant workers taking place on its territory. Section 2 has given an outline of those laws, and has looked at examples of how they fail the majority of the people they are designed to protect: migrant workers, who constitute 95 per cent of the labour population. On a range of issues, such as health and safety, and complaints procedures, egregious violations of rights are occurring. The draft labour law proposed in February 2007 again fails to provide proper remedies. Given the scale of the abuse taking place, the UAE must accept that migrant workers' need to organise. If the myriad of problems and obstacles facing them are to be tackled, they must have the ability to form unions. There is no evidence that the UAE will allow this. It must be accepted by the international community as a result that the UAE has no will to treat its migrant workers justly and humanely.

This is a case which requires international intervention. Some has already taken place, as examined in Section 3 – the treaty bodies and charter bodies of the United Nations have, to some extent, questioned the UAE as to its treatment of

¹⁸⁶) ?

migrant workers. Thus far, the approach has been uncoordinated. The UN bodies must provide robust protections for migrant workers. This should be spearheaded by the Special Rapporteur on the Human Rights of Migrants, who must request an invitation to visit the UAE. If the UAE government wishes to contradict the body of evidence presented in this paper, in two Human Rights Watch reports and in the daily litany of cases reported in local and national newspapers, it should give serious consideration to issuing an invitation. If it does not do so then it is submitted that it is acknowledging the violations taking place. From the point of view of the international treaties, violations of the UAE obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination Against Women have been described. Finally, the ILO has a significant role in engaging the UAE, and moving the state towards accepting the need for unions.

Section 4 notes that bonded labour is endemic in the UAE, in violation of customary norms of *jus cogens*. This form of slavery means that migrant workers spend several years working to pay back debts over which they have no control. These periods of labour are a significant violation of the 1926 and 1956 conventions on slavery. The obligations to prevent debt bondage exist *erga omnes*. Yet, no steps are taken to prevent a practice which is widespread.

The involvement of the government in the system of exploitation is the reason why domestic UAE labour laws will never be effective. The government is deeply involved in industry, and the line between private and public enterprise is so blurred that it must be considered non-existent. The UAE government is profiting enormously from migrant labour, and has no incentive to improve workers' rights. This is extremely difficult to justify. It is shameful in a state of untold wealth that the most basic rights are not granted to migrant workers. In the interests of common justice, improvements must be immediately made to conditions of accommodation, working times in summer, safety regulations, holidays and complaints procedures. Moreover, equal status must be granted to domestic workers, almost exclusively women, who have no protection.

The UAE would gain stability by granting the right to form unions. It would gain respect in the international community, which it desperately seeks. Its tourist industry would not be tainted by newspaper accounts of filthy prison-like camps, suicides and Dickensian hardship. Yet, it seems that wealth is more important than all of this; indeed, the relatively small benefits accrued by refusing migrant workers basic rights are preferred. This problem, unlike many problems facing the world, can be solved. It is simple greed preventing the UAE from doing so. Sustained international criticism is required if meaningful change is to result.

