

***THE DARK SIDE OF THE DUNES: THE PLIGHT OF  
MIGRANT LABOURERS IN THE UNITED ARAB EMIRATES,  
RELATIVE TO INTERNATIONAL STANDARDS PROTECTING  
THE RIGHTS OF MIGRANT WORKERS***

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**I. INTRODUCTION**

Beneath the untrammelled prosperity of the United Arab Emirates (UAE) lies the plight of an exploited migrant workforce. This study will investigate hitherto underexplored questions regarding the state's non-compliance with international standards governing the rights of migrant workers. It submits that international human rights law is neglected and, indeed, violated in an unrelenting pursuit of economic growth. While the primary aim of this study is to ascertain the extent to which international standards are flouted, it will also evaluate the economic and political forces that underlie the neglect of the migrant workforce and the lack of political will on the part of the Government to redress the problem.

After establishing the guiding conceptual framework, the investigation will begin by providing a contextual overview of the difficult circumstances with which the UAE's South Asian migrant workers are confronted. This will involve reviewing the existing literature on the subject, presenting evidence of the mistreatment of migrant workers in Dubai and its neighbouring emirates (Abu Dhabi, Ajman, Fujairah, Ras al-Khaima, Sharjah and Umm al-Qwain), as well as citing specific examples of abuse and exploitation.

To substantiate the premise of the paper and to evaluate other existing accounts, the study will draw on international standards established by the United Nations (UN) and its subsidiary agency, the International Labour Organisation (ILO), as parameters for

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measurement. The paper will assess the claim that the country's indentured labour system gives rise to conditions tantamount to slavery.<sup>1</sup>

It will draw on analyses of the existence of forced or bonded labour,<sup>2</sup> whereby unscrupulous employers confiscate passports and withhold wages to prevent recruits from absconding, and whereby recruiting agents engage in the illicit practice of debt bondage. The essay will argue that international standards proscribing slavery and its contemporary equivalents are contravened, invoking ILO Conventions No 29 and No 105 on the elimination of forced and compulsory labour, as well as the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery as benchmarks for analysis.

The study will then provide an insight into alternative perspectives on migrant lives, which refer to the elements of opportunism, free will and temporary employment that inform migrants' decisions to work in the Emirates.<sup>3</sup> Criticism of this rationale will draw on the argument that exploitation and 'choice' are not mutually exclusive.<sup>4</sup> Indeed, employers operating in the UAE exploit the weak financial positions of workers from the Asian subcontinent by offering the next best alternative. In response to the notion that migrant workers' motivations are informed by opportunism and the temporary nature of employment, the investigation will counter that many are promised higher wages than they actually receive and accumulate mounting debts to recruitment agencies as employers withhold wages. Consequently, they are compelled to work for protracted periods in order to settle these debts. In view of the Federation's extraordinary combined wealth, the paper will stress that the plight of its migrant workers is a problem that is fundamentally resolvable. Such a resolution requires greater political will to implement labour reforms.

The investigation will then assess the UAE's commitment to international standards protecting the rights of migrant workers. It will

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<sup>1</sup> S Hickox, 'Labor Market Needs and Social Policy: Guestworkers in West Germany and the Arab Gulf States' (1987) 8 *Comparative Labor Law Journal* 357, 369-370.

<sup>2</sup> D Keane and N McGeehan, 'Enforcing Migrant Workers' Rights in the United Arab Emirates' (2008) 15 *International Journal on Minority and Group Rights* 81, 104-113.

<sup>3</sup> CM Davidson, *Dubai: The Vulnerability of Success* (Hurst Publishers Ltd, London 2008) 186-187.

<sup>4</sup> D Keane, 'UAE Facts and Figures' (c2009) <[http://www.mafiwasta.com/UAE\\_statistics.html](http://www.mafiwasta.com/UAE_statistics.html)> accessed 21 October 2010.

examine aspects of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (the Migrant Workers' Convention) which make the absence of the UAE's signature conspicuous.

The paper will call attention to the UAE's eschewal of its responsibility, as an ILO member, to provide for migrants' fundamental labour rights to freedom of association and collective bargaining. The prohibition of trade unions by domestic labour law underpins the system of exploitation.<sup>5</sup> Without these basic labour rights, migrants are unable to apply collective pressure to redress their grievances and to lobby for reforms. The study will then present evidence of the trade and investment incentives for implementing such reforms.<sup>6</sup> Despite the Government's repeated pledges to legalise unions, however, it is evident that such assurances are merely token gestures contrived to stave off international criticism as the country sprints towards consummate opulence. Owing to a lack of domestic political will, the need to bring to bear international pressure is crucial.

As a final line of inquiry, the investigation will examine the problem of racial discrimination. As the UAE is a state party to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the existence of widespread discrimination against migrant workers in the country is in breach of the state's Convention obligations. Discriminatory practices in the administration of justice, the provision of inadequate and segregated housing, and the restriction of access to public spaces and services constitute egregious violations of the CERD.

Alongside its concluding observations, the paper will prescribe recommendations derived from the international standards examined.

## **II. CONCEPTUAL FRAMEWORK AND TERMINOLOGY**

The investigation will base its analysis on the following assumptions:

- i) the international standards invoked herein reflect best practices which states should adopt and respect, and;

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<sup>5</sup> Keane and McGeehan (n 2) 95.

<sup>6</sup> N Ghana, 'Enhancing the Protection of Migrant Workers in Dubai' (Issue Paper) (June 2006) 1-3 <<http://www.policy.hu/ghanea/Issue%20Paper.pdf>> accessed 21 October 2010.

- ii) the intergovernmental organisations (the UN and the ILO), under whose auspices these standards have been established, represent legitimate and authoritative institutions of global governance.

In order to appraise the extent to which international standards are violated in the UAE, it is necessary to define in widely accepted terms what constitutes a migrant worker. The Migrant Workers' Convention states that 'the term "migrant worker" refers to a person who is to be engaged, is engaged or who has been engaged in a remunerated activity in a State of which he or she is not a national.'<sup>7</sup> Although the Convention has not been signed or ratified by the UAE, it is recognised as an 'authoritative source of international law on the definition of "migrant worker".'<sup>8</sup> As established in the Convention, the category of migrant workers includes seasonal, project-tied and specified-employment workers who are admitted by a receiving country for the express purpose of undertaking an economic activity.<sup>9</sup> Given that project-tied and specified-employment workers are defined as those employed under contractual arrangements to carry out specific assignments for a limited and defined period in receiving countries, such migrants have been variously characterised as contract workers.<sup>10</sup> Accordingly, this study identifies foreign persons who are employed and reside in the UAE under term-limited contracts, with a specific employer, as migrant workers.<sup>11</sup> While the paper will primarily use the term 'migrant workers' to identify this grouping, it will also refer to these

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<sup>7</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, UNGA Res 45/158 (adopted 18 December 1990, entered into force 1 July 2003) UN Doc A/RES/45/158, 2220 UNTS 3 (Migrant Workers' Convention) Art 2(i).

<sup>8</sup> Human Rights Watch (HRW), *Building Towers, Cheating Workers: Exploitation of Migrant Construction Workers in the United Arab Emirates* (11 November 2006) 20 <<http://www.hrw.org/en/reports/2006/11/11/building-towers-cheating-workers-0>> accessed 21 October 2010.

<sup>9</sup> Migrant Workers' Convention, Art 2(ii).

<sup>10</sup> KC Zachariah, BA Prakesh and SI Rajan, 'The Impact of Immigration Policy on Indian Contract Migrants: The Case of the United Arab Emirates' (2003) 41 *International Migration* 161, 162; Brigitte Suter, 'Labour Migration in the United Arab Emirates: Field Study on Regular and Irregular Migration in Dubai' (Master's Thesis, Malmö University, Sweden 2005) 18.

<sup>11</sup> HRW (n 8) 20.

persons as 'contract workers', 'migrant labourers' and 'labour migrants' interchangeably.

The ILO has highlighted that the phenomenon of contract migration, propelled by the processes of globalisation, has overtaken that of long-term settlement migration.<sup>12</sup> Those who migrate for the explicit purpose of undertaking work are, therefore, largely perceived as temporary residents rather than potential citizens.<sup>13</sup> As a consequence, they often suffer discrimination in countries of employment.<sup>14</sup>

### III. AN EXPLOITED UNDERCLASS

The United Arab Emirates is a federation of seven semi-autonomous emirates, some of which are cosmopolitan metropolises replete with spectacular skylines of steel and glass towers, man-made marinas and artificial islands. These showpieces have become iconic of the UAE and, in particular, of Dubai's construction boom and its lucrative tourist and real-estate industries.<sup>15</sup> But they veil a harsh and disturbing reality afflicting the country's migrant labourers, an underclass of immigrants who toil to create a paradise in which they will seldom, if ever, indulge.

Dubai and Abu Dhabi constitute the urban hubs around which many migrant workers are situated and mobilised for labour. Given that their five neighbouring emirates are relatively sparse in terms of both population and urban development in the form of architectural mega-projects, reports of mistreatment of migrants within them are less common.<sup>16</sup> According to Mafiwasta, a non-governmental organisation dedicated exclusively to the promotion and protection of migrant workers' rights in the UAE, however, '[m]igrant workers in all unskilled and semi-skilled sectors – cleaners, taxi drivers, hotel staff, oil workers,

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<sup>12</sup> International Labour Organisation (1989), cited in KC Zachariah, BA Prakesh and SI Rajan, 'Gulf Migration Study: Employment, Wages and Working Conditions of Kerala Emigrants in the United Arab Emirates' (26 March 2002) Working Paper No 326, Centre for Development Studies, Trivendrum, 14-15 <[http://www.cds.edu/download\\_files/326.pdf](http://www.cds.edu/download_files/326.pdf)> accessed 21 October 2010.

<sup>13</sup> *ibid.*

<sup>14</sup> *ibid.*

<sup>15</sup> M Davis, 'Metropolitan Disorders: Fear and Money in Dubai?' (2006) 41 *New Left Review* 47, 47-68.

<sup>16</sup> Mafiwasta, 'Country Shadow Report to the UN Committee on the Elimination of Racial Discrimination: The United Arab Emirates' (May 2009) 5-6 <[http://www2.ohchr.org/english/bodies/cerd/docs/ngos/Mafiwasta\\_UAE\\_cerd75.PDF](http://www2.ohchr.org/english/bodies/cerd/docs/ngos/Mafiwasta_UAE_cerd75.PDF)> accessed 21 October 2010.

gardeners, clerks – face the same problems in all seven of the UAE’s constituent sheikhdoms, although their plight tends to go unreported.<sup>17</sup> While this paper will therefore cite instances of abuse in Dubai and Abu Dhabi, in particular, it will use the unifying title of the United Arab Emirates as the referent with which to invoke federal legislation and other sources of central governmental authority.

Numbering more than 2.7 million, migrant workers constitute an estimated 95 per cent of the UAE’s private sector workforce.<sup>18</sup> They represent an ‘invisible majority’ in the country’s stratified society and cater to all aspects of its luxuriant culture.<sup>19</sup> As non-citizens, they have negligible rights and are ‘immediately deportable.’<sup>20</sup> The largest contingents come from India, Pakistan, Bangladesh, Sri Lanka, the Philippines and Nepal to do menial construction work for a marginally better wage than they can expect to earn in their home countries.<sup>21</sup> In recent years, the UAE has witnessed countless developments and megaprojects rise from the dust of its desert landscape in a construction boom of monumental proportions.<sup>22</sup> The country has depended on huge numbers of unskilled migrant labourers, predominantly from the Indian subcontinent, to bear the burden of this labour-intensive process.<sup>23</sup> In a bid to expedite development by minimising costs and maximising productivity, the difficult economic conditions in migrants’ home countries have routinely been exploited by construction companies operating in the Emirates.<sup>24</sup> These migrants work twelve-hour shifts, six and a half days a week,<sup>25</sup> in the often oppressive heat of the Gulf where temperatures can reach up to 50 degrees Celsius in the summer months.<sup>26</sup> They wake in their guarded labour camps before dawn and

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<sup>17</sup> *ibid* 6.

<sup>18</sup> HRW (n 8) 21.

<sup>19</sup> Davis (n 15) 64.

<sup>20</sup> *ibid*.

<sup>21</sup> Davidson (n 3) 187&190; Tremor Productions, *Dubai: Miracle or Mirage?* [Television programme] (National Geographic Channel, November 2008).

<sup>22</sup> HRW (n 8) 2.

<sup>23</sup> *ibid* 22.

<sup>24</sup> *ibid*.

<sup>25</sup> Davis (n 15) 65.

<sup>26</sup> BBC Weather Centre, ‘Climate Guides: Average Conditions: Sharjah, UAE’ (c2009) <[http://www.bbc.co.uk/weather/world/city\\_guides/results.shtml?tt=TT002910](http://www.bbc.co.uk/weather/world/city_guides/results.shtml?tt=TT002910)> accessed 21 October 2010.

leave for their construction sites at daybreak.<sup>27</sup> When the sun sets on the myriad luxury beach resorts, migrant labourers are quietly marshalled into shuttle buses and ushered away from the cities, into the desert and en route to their cramped and squalid camps; out of sight and out of mind.<sup>28</sup>

The few liberties that migrant workers enjoy in the UAE are extended to them on a very limited basis. Evidence of the exploitation they suffer is manifest in the very first dealings they have with their prospective employers via the country's indentured labour system. Under the *Kafala* (sponsorship) system of employment, UAE labour law stipulates that migrant workers may be issued entry and employment visas only if an Emirati national licensed by the Ministry of Labour sponsors them.<sup>29</sup> As recipients of this sponsorship, migrants are prohibited from working for any employer other than their sponsors. Given that such an exclusive contract binds workers to a single sponsor-employer, this indentured labour system has been analogised to slavery.<sup>30</sup>

The sponsorship system is often abused by employers who unlawfully confiscate migrant workers' passports and withhold wages as 'security' to preclude them from absconding.<sup>31</sup> In a 2006 report by Human Rights Watch (HRW), all 107 migrant workers who were interviewed claimed that their passports had been confiscated by their employers upon arrival in the Emirates.<sup>32</sup> KC Zachariah *et al* have reported that many migrants have been unable to retrieve their passports when they wanted to return to their home countries.<sup>33</sup> HRW has asserted that such practices amount to forced labour – an offence proscribed by international law.<sup>34</sup> As the UAE has ratified ILO Conventions No 29 and No 105 on the elimination of forced and compulsory labour, its failure to implement adequate mechanisms to enforce the protections enshrined

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<sup>27</sup> J DeParle, 'Fearful of Restive Foreign Labour, Dubai Eyes Reforms' *New York Times* (6 August 2007).

<sup>28</sup> BBC Panorama, *Slumdogs and Millionaires* [Television programme] (BBC One, 6 April 2009).

<sup>29</sup> M Baldwin-Edwards, 'Migration in the Middle East and Mediterranean' (A regional study prepared for the Global Commission on International Migration, January 2005) 28.

<sup>30</sup> Hickox (n 1) 369-370.

<sup>31</sup> HRW (n 8) 30.

<sup>32</sup> *ibid* 38.

<sup>33</sup> Zachariah *et al* (n 10) 167.

<sup>34</sup> HRW (n 8) 12-13.

in domestic labour law constitutes a violation of these international standards.<sup>35</sup>

Moreover, under UAE labour law employers are obligated to pay an employment visa request fee and an employment visa issuance fee to the Government for every contract worker they enlist from abroad.<sup>36</sup> They must also cover the cost of travel from migrants' home countries. While it is illegal for UAE recruitment agencies to charge migrant workers for any of these costs, they routinely and openly flout this law and allow employers to recoup expenditure on these fees.<sup>37</sup> Where migrants cannot initially afford these payments, as is generally the case, the illegal practice of debt bondage is often carried out by recruitment agencies.<sup>38</sup> Migrant workers become indebted to recruitment agents for visa fees and are consequently forced to continue working for an indefinite period until they have settled these debts. As employers frequently withhold wages, migrants immediately fall into arrears and accrue further interest on their debts.<sup>39</sup> Under Article 1(a) of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, debt bondage is defined as follows:

‘Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services ... 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.’<sup>40</sup>

While debt bondage is exercised by private entities in the UAE, it is the responsibility of the state to eliminate the practice.<sup>41</sup> The state’s

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<sup>35</sup> *ibid.*

<sup>36</sup> Federal Law No 8 of 1980 on Regulation of Labour Relations, UAE Labour Law, Chapter II, Art 17.

<sup>37</sup> *ibid* Art 18; HRW (n 8) 27.

<sup>38</sup> HRW (n 8) 39.

<sup>39</sup> *ibid* 29.

<sup>40</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, UN Economic and Social Council Res 608 (XXI) (adopted 7 September 1956, entered into force 30 April 1957) 266 UNTS 3, Art 1(a).

<sup>41</sup> Keane and McGeehan (n 2) 106-112.

indentured labour system underpins this practice and thus represents an infringement of its obligations *erga omnes* (to the international community as a whole)<sup>42</sup> under the Convention.

In his critique of Dubai's human rights record, Mike Davis scrutinises the relationship between the city-state's affluent expatriates and its South Asian migrants; a master-servant hierarchy reminiscent of the age of empire. He likens the hedonistic lives of its 'pampered mercenaries' (Lebanese, Iranian, American, British and other European expatriates) to the 'lost splendour of gin-and-tonics at Raffles and white mischief in Simla's bungalows.'<sup>43</sup> The country's social strata are adeptly ordered to indulge Western penchants for 'colonial nostalgia.'<sup>44</sup> As Nick Meo has highlighted, the resemblances between the indentured labour system and the system of slavery that accompanied Britain's nineteenth century imperial adventures in the sheikhdoms are palpable:<sup>45</sup> 'Like their impoverished forefathers, today's Asian workers are forced to sign themselves into virtual slavery for years when they arrive in the Emirates.'<sup>46</sup>

Dr Christopher M Davidson, a policy expert on Gulf monarchies,<sup>47</sup> is less sympathetic. According to his reasoning, these contract workers are 'opportunistic' migrants eager to make a fast buck.<sup>48</sup> Davidson opines against taking pity on migrant workers:

'While such foreigners may have experienced poor working conditions ... their employment was entirely voluntary, was normally for a short term of two or three years, and was usually paying wages several times greater than could be expected in South Asia... Such workers...

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<sup>42</sup> CJ Tams, *Enforcing Obligations Erga Omnes in International Law* (CUP, Cambridge 2005) 175.

<sup>43</sup> Davis (n 15) 64-65.

<sup>44</sup> *ibid* 65.

<sup>45</sup> F Heard-Bey, *From Trucial States to United Arab Emirates: A Society in Transition* (Longman, London 1996); Davidson (n 3) 282.

<sup>46</sup> N Meo, 'How Dubai, the playground of businessmen and warlords, is built by Asian wage slaves' *The Independent* (London 1 March 2005).

<sup>47</sup> Davidson has offered his policy expertise in consultations with several state and non-state institutions. See Global Expert Finder, 'Christopher Davidson' (c2009) <<http://www.globalexpertfinder.org/experts/expert-location/west-europe-expert-location/christopher-davidson>> accessed 21 October 2010.

<sup>48</sup> Davidson (n 3) 186-187.

[return to their home countries] much wealthier than hitherto.<sup>49</sup>

This argument rests on the assumption that the temporary nature and limited period of their hardship excuses their abusers.<sup>50</sup> Such notions are reminiscent of the rhetoric frequently voiced in the UAE to salve expatriates' consciences.<sup>51</sup> David Keane's commentary on the plight of the country's migrant workers aptly captures the exploitative nature of their employment:

‘To base wages and conditions on the relative weakness of a migrant worker’s native land, rather than the strength of the economy in which they work, is blatant exploitation. The oft-heard argument that these workers chose to take the jobs and ... “they’re better off than they would be at home” show an ignorance of the true nature of exploitation; choice and exploitation, far from being mutually exclusive, are more often than not bedfellows.’<sup>52</sup>

Indeed, the contention that contract workers are employed in the Emirates on a voluntary basis is espoused by those apologists for the labour system – many of whom are Western expatriates representing multinational companies – who capitalise on the cheap labour market provided by migrants from the Asian subcontinent.<sup>53</sup> Choice alone cannot vindicate the use of exploitative practices which violate migrant workers' basic rights.

In Roland Marchal's conception of migrant livelihoods and lifestyles, the assumption that the wealth with which a few years' toil endows migrant workers quickly enables them to transform their impoverished lives at home is refuted and identified as one of Dubai's

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<sup>49</sup> *ibid* 187.

<sup>50</sup> T Shelley, *Exploited: Migrant Labour in the New Global Economy* (Zed Books, London 2007) 6-7.

<sup>51</sup> During a four-year residence in Dubai (September 1998 – June 2002), this justification was offered to me by several Emirati nationals and expatriates extolling the virtues of life in the Emirates.

<sup>52</sup> D Keane, 'UAE Facts and Figures' (c2009) <[http://www.mafiwasta.com/UAE\\_statistics.html](http://www.mafiwasta.com/UAE_statistics.html)> accessed 21 October 2010.

<sup>53</sup> Meo (n 46).

many 'urban myths'.<sup>54</sup> In reality, they are often promised higher wages than they actually receive,<sup>55</sup> and in many instances it has transpired that UAE contracting companies have withheld wages from labourers for months at a time.<sup>56</sup> The failure of the Government to set a minimum wage is telling of its proclivity to favour corporate interests and profitability over one of the most basic rights of migrant workers.<sup>57</sup> Earning on average what is equivalent to \$175 a month,<sup>58</sup> contract workers have scarcely enough money for a minimal subsistence.<sup>59</sup> Under financial pressure to repay debts, coupled with the burden of a strong sense of familial responsibility to send remittances to relatives at home, many labourers have resorted to suicide.<sup>60</sup> Despite a reversal of the trend of rising suicide rates in recent years, it is worth noting that, at their peak in 2007, the number of suicides among Indian migrants in the UAE is reported to have reached 118.<sup>61</sup> Almost certainly owing to the physically and emotionally testing circumstances they encounter in the UAE, the majority of the millions of South Asian migrant workers are reported to suffer from psychological depression.<sup>62</sup> As Hadi Ghaemi, head of

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<sup>54</sup> R Marchal, 'Dubai: global city and transnational hub' in M Al-Rasheed (ed), *Transnational Connections and the Arab Gulf* (Routledge, New York 2005) 100.

<sup>55</sup> HRW (n 8); M Janardhan, 'Poor Living Conditions Prompt Protests' *Inter Press Service* (c2004) <<http://ipsnews.net/migration/stories/protests.html>> accessed 21 October 2010.

<sup>56</sup> Economist Intelligence Unit, 'Country Report: UAE, Main Report' (1 August 2004) <<http://www.eiu.com>> accessed 21 October 2010.

<sup>57</sup> HRW (n 8) 7.

<sup>58</sup> *ibid* 56.

<sup>59</sup> Bureau of Democracy, Human Rights and Labor, US Department of State, '2008 Human Rights Report: United Arab Emirates' (25 February 2009) <<http://www.state.gov/g/drl/rls/hrrpt/2008/nea/119129.htm>> accessed 21 October 2010.

<sup>60</sup> HRW (n 8) 46-47; Mafiwasta, 'The Denial of the Right to Freedom of Association in the United Arab Emirates: Complaint to the Committee of Freedom of Association of the International Labour Organisation' (February 2006) <<http://www.mafiwasta.com/links.htm>> accessed 21 October 2010; Al Jazeera, *Blood, Sweat and Tears* [Television programme] (Al Jazeera, 18 August 2007) <<http://english.aljazeera.net/programmes/general/2007/08/2008525185333546126.html>> accessed 21 October 2010.

<sup>61</sup> J Stewart, 'Indian migrant worker suicide rate falls 42%' *Construction Week* (29 April 2009) <[http://www.constructionweekonline.com/article-5046-indian\\_migrant\\_worker\\_suicide\\_rate\\_falls\\_42/](http://www.constructionweekonline.com/article-5046-indian_migrant_worker_suicide_rate_falls_42/)> accessed 21 October 2010.

<sup>62</sup> CM Davidson, 'The Impact of Economic Reform on Dubai', in A Ehteshami and S Wright (eds), *Reform in the Middle East Oil Monarchies* (Ithaca Press, Reading c2008) 170.

HRW's Middle East research division, has asserted, '[t]he suicide rate among impoverished immigrant labourers in Dubai is a clear reflection of the conditions many workers are forced to endure.'<sup>63</sup>

In his criticism of the UAE's increased acquiescence to the International Labour Organisation's policies<sup>64</sup> and its social corollaries, Davidson warns of a violent public menace emanating from the country's migrant labourers. He cautions that ratifications of the agency's new conventions in 2002 are commitments that threaten the Federation's continued rapid development:<sup>65</sup>

'...the new ILO-inspired relaxations have been responsible for a huge upsurge in serious and violent labour actions, many of which have delayed the completion of construction projects.'<sup>66</sup>

Legislation proscribing collective bargaining in the UAE has been undermined by these concessions, giving rise to 'several informal and worryingly confrontational workers' associations' composed of a restive contingent of construction labourers.<sup>67</sup> In his account of the riots that took place in Dubai in 2005-2006, the city's police force and development infrastructure are portrayed as the victims of unwarranted violence and sabotage, whereas those who participated in the protests are cast as gratuitous vandals.<sup>68</sup> But these demonstrations are symptomatic of a surging undercurrent of social ills. It is necessary to address the underlying grievances that have galvanised such unrest in order to explore possible avenues of redress.

Citing another instance of disruptive behaviour in early 2007 in which over three hundred workers formed a human blockade on a main road in protest against cramped living conditions and poor pay, Davidson characterises the reluctance of the police to subdue them as a

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<sup>63</sup> H Ghaemi (2006), quoted in R Jones, 'Labour needs laws. And fast' *Gulf News* (UAE 28 April 2006) <<http://archive.gulfnews.com/articles/06/04/28/10036249.html>> accessed 21 October 2010.

<sup>64</sup> M al-Tayir, Minister of Labour and Social Affairs, speaking at the Dubai Chamber of Commerce and Industry (2002), quoted in CM Davidson, *The United Arab Emirates: A Study in Survival* (Lynne Rienner Publishers, London 2005) 285.

<sup>65</sup> Davidson (n 3) 186.

<sup>66</sup> *ibid* 187.

<sup>67</sup> *ibid* 186.

<sup>68</sup> *ibid* 187.

‘remarkable development.’<sup>69</sup> He notes the goodwill exhibited by the Government and the restraint exercised by a police force which, in previous years, would have harboured few scruples about resorting to coercion and more stringent punitive measures. Given that trade unions remain illegal and new laws reinforcing the ban on strikes were introduced in 2003<sup>70</sup> and 2006,<sup>71</sup> it is difficult to conceive of more lenient police and immigration authorities as a development that represents considerable progress in the protection of migrant workers’ rights.

Davidson’s analyses retain a focus on the negative impact that the huge influx of foreign workers is having on Emirati society and the implications that this dependency on expatriate labour has for future development.<sup>72</sup> Irrespective of the costs incurred and hardships endured by those migrants at the bottom of the social ladder, their plight is viewed as an inevitable corollary of ‘market fundamentalist globalisation.’<sup>73</sup> In the global free market economy, multinational companies take advantage of cheap, expendable foreign workforces to squeeze labour costs and increase profit margins, with the tacit approval of national governments willing to turn a blind eye to exploitation in the name of economic growth.<sup>74</sup> The British governmental department UK Trade & Investment champions Dubai as [o]ne of the most pro-business and liberal regulatory environments in the region.<sup>75</sup> As the liberalisation of international commerce has driven people to cross national borders in search of more competitive remuneration, it has also empowered corporations to exploit the weak financial positions of migrants in order to drive down expenses, regardless of the human cost.<sup>76</sup>

The abject poverty of the migrant workforce is in marked contrast to the life of leisure led by many UAE nationals, who are

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<sup>69</sup> *ibid* 187-188.

<sup>70</sup> Ministry of Labour and Social Affairs, Ministerial Resolution No 307 (2003) Art 14.

<sup>71</sup> Ministry of Labour and Social Affairs, Ministerial Resolution No 707 Regarding Rules and Regulations of Employment in the Country (UAE) for Non-citizens (2006) Art 13.

<sup>72</sup> Davidson (n 3) 189-193.

<sup>73</sup> J Hari, ‘The dark side of Dubai’ *The Independent* (7 April 2009).

<sup>74</sup> K Bales, *Disposable People: New Slavery in the Global Economy* (Revised edn University of California Press, London c2004); Shelley (n 50) 82.

<sup>75</sup> UK Trade & Investment, ‘UAE Economic Overview and Guide to Doing Business’ (2006) 3 <<http://www.uktisoutheast.com/ContentDisplay.aspx?ID=840>> accessed 21 October 2010.

<sup>76</sup> Bales (n 74) 249.

awarded government hand-outs in the form of ‘income transfers, free education [and] subsidised homes’ by virtue of their birthright.<sup>77</sup> Given that those who complete their funded higher education generally receive a monthly allowance in excess of \$3,500 from the Government (over \$1,000 more than most migrant workers earn in a year),<sup>78</sup> it is little wonder that only 28 per cent of Emirati citizens are employed.<sup>79</sup>

The juxtaposition of extreme poverty against extraordinary wealth in the UAE brings the plight of its migrant workforce into sharp focus. Although the effective protection of migrant workers’ rights will require meaningful reforms of domestic labour law, the economic prosperity that the UAE enjoys as a state means that it possesses more than ample resources which could be harnessed to ameliorate the pitiful existence of its migrant labourers.<sup>80</sup>

#### IV. THE UAE’S COMMITMENT TO INTERNATIONAL STANDARDS PROTECTING MIGRANT WORKERS

Despite its accession to the International Labour Organisation in 1972 and its proclaimed commitment to protecting the rights of migrant workers,<sup>81</sup> the UAE has yet to sign and ratify the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereafter referred to as the Migrant Workers’ Convention). The treaty delineates a series of fundamental international standards governing the treatment, and safeguarding the welfare and human rights, of migrant workers. Moreover, it lays down the obligations and responsibilities of sending and receiving states,<sup>82</sup>

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<sup>77</sup> Davis (n 15) 64.

<sup>78</sup> Bureau of Democracy, Human Rights, and Labor (n 59): ‘Salaries ... range upward from ... \$164 per month for construction workers.’

<sup>79</sup> Migration News, ‘Middle East: Gulf Cooperation Council, Saudi Arabia, UAE’ (January 2009) 15 *Migration News* <[http://migration.ucdavis.edu/mn/more.php?id=3497\\_0\\_3\\_0](http://migration.ucdavis.edu/mn/more.php?id=3497_0_3_0)> accessed 21 October 2010.

<sup>80</sup> Keane and McGeehan (n 2) 84.

<sup>81</sup> International Labour Organisation, Departments and Offices, ‘Country Profiles: UAE’ <[http://www.ilo.org/dyn/natlex/country\\_profiles.basic?p\\_lang=en&p\\_country=ARE](http://www.ilo.org/dyn/natlex/country_profiles.basic?p_lang=en&p_country=ARE)> accessed 21 October 2010.

<sup>82</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, UNGA Res 45/158 (adopted 18 December 1990, entered into force 1 July 2003) UN Doc A/RES/45/158, 2220 UNTS 3; United Nations, Press Release: ‘Convention on Protection of Rights of Migrant Workers to Enter into Force Next July’ (19 March 2003) <<http://www.un.org/News/Press/docs/2003/LT4371.doc.htm>> accessed 21 October 2010.

pertinent among which are Article 8(1), which provides for migrant workers' freedom to leave any state, and Articles 11(1) and 11(2), which state that '[n]o migrant worker ... shall be held in slavery or servitude' or 'required to perform forced or compulsory labour.' Article 21 establishes the illegality of any attempt, other than those made by authorised public officials, to confiscate or destroy 'identity documents, documents authorising entry or stay, residence or establishment in the national territory or work permits.' These provisions complement international law proscribing slavery and practices and institutions similar to slavery. Taken together, the Emirates' indentured labour system, the existence of debt bondage, and the confiscation of passports constitute violations of these laws.

Other standards of the Migrant Workers' Convention that are germane to the case of the UAE include the provision of Article 10 which proscribes torture and cruel, inhuman or degrading treatment.<sup>83</sup> Article 16(2) explicates migrant workers' entitlement to state protection against violence and intimidation by public officials and private individuals or institutions alike. Reports of such physical abuse in the Emirates are widespread, however. Writing in the *Financial Times* in 2006, Steve Negus has cited an instance in which a supervisor kicked a construction labourer's meal out of his hands for taking an unauthorised break.<sup>84</sup> Country Watch has reported that systematic abuses meted out by the Government and its security forces are committed with impunity.<sup>85</sup> The fourth provision of Article 16 of the Convention protects workers from arbitrary arrest or detention, while Article 20(1) prohibits imprisonment on the grounds of 'failure to fulfil a contractual obligation.' In its 2008 review of the Emirates, however, Country Watch has highlighted infringements of these prescriptions by Emirati public officials and the police force.<sup>86</sup>

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<sup>83</sup> The UAE is not a signatory to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UNGA Res 39/46 (adopted 10 December 1984, entered into force 26 June 1987) UN Doc A/39/51, 1465 UNTS 85.

<sup>84</sup> S Negus, 'Union troubles start to emerge from Dubai's glittering facades' *Financial Times* (London 19 May 2006) <[http://www.ft.com/cms/s/0/69981c14-e6d3-11da-a36e-0000779e2340.html?nclick\\_check=1](http://www.ft.com/cms/s/0/69981c14-e6d3-11da-a36e-0000779e2340.html?nclick_check=1)> accessed 21 October 2010.

<sup>85</sup> Country Watch, 'United Arab Emirates Country Review' (2008) 29 <<http://www.countrywatch.com>> accessed 17 December 2008.

<sup>86</sup> *ibid.*

The Migrant Workers' Convention also prohibits treatment which is favourable to nationals of the state and discriminates against migrant workers. Article 18(1) entrenches the right of migrant workers to equality with nationals before courts and tribunals. Similarly, Article 24(1) specifies that '[e]very migrant worker ... [has] the right to recognition everywhere as a person before the law', and Article 54(2) prescribes that '[i]f a migrant worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State of employment.' In the UAE, however, this right comes at a substantial financial cost, which discourages many migrant workers from squandering their meagre wages on voicing their grievances – a gamble that is unlikely to pay off.<sup>87</sup> Furthermore, Article 43(1) states that migrant workers shall enjoy equal opportunities to those afforded by the state to nationals as regards '[a]ccess to housing ... [and] [a]ccess to and participation in cultural life.' The existence of inequality of treatment in the above respects in the Emirates is tantamount to racial discrimination. Given that the UAE is a signatory to the International Convention on the Elimination of All Forms of Racial Discrimination, such discriminatory practices constitute egregious violations of international law.

As David Keane and Nicholas McGeehan have asserted, in order to protect the rights of its migrant workforce, it is essential that the UAE ratifies and abides by the provisions of the Migrant Workers' Convention.<sup>88</sup> It is worth noting, however, that the UAE is not the only UN member reluctant to ratify the Convention. Adopted in 1990 by the UN General Assembly, the Convention did not enter into force until 2003 upon receiving its requisite twentieth ratification from Guatemala.<sup>89</sup> To date there are only 43 states parties to the Convention and thus the authority of its intended universal application is found wanting.<sup>90</sup> Nonetheless, the accession of 23 states since 2003 represents noteworthy progress and is indicative of increasing recognition among national governments throughout the world of the Migrant Workers' Convention

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<sup>87</sup> Keane and McGeehan (n 2) 87-89.

<sup>88</sup> *ibid* 96.

<sup>89</sup> UN, Press Release (n 82).

<sup>90</sup> United Nations Treaty Collection, 'Databases: Status of Treaties' <[http://treaties.un.org/pages/ViewDetails.aspx?src=UNTS&online&tabid=2&msgidsg\\_no=IV-13&chapter=4&lang=en#Participants](http://treaties.un.org/pages/ViewDetails.aspx?src=UNTS&online&tabid=2&msgidsg_no=IV-13&chapter=4&lang=en#Participants)> accessed 11 September 2010.

as a legitimate and necessary international legal framework. As the UAE Government has in recent years received a considerable amount of criticism for its policies on migrant workers,<sup>91</sup> the absence of its signature is conspicuous. It is indicative of a lack of political will to take effective remedial action that is consistent with international standards.<sup>92</sup>

The far from universal scope of these international standards, however, draws attention to global systemic flaws rooted in the structural imperatives of a transnational capitalist economy, in which labour is treated (by transnational corporations in particular) as a commodity like any other; an article of trade to be bought and sold, imported and exported, in service of profitable enterprise.<sup>93</sup> In the light of the constitutive force that global capitalism wields in determining world order and shaping state behaviour, as the 'structuring principle of global relations',<sup>94</sup> any attempt to apportion blame solely to recalcitrant nation-states which do not abide by the checks and balances prescribed by the self-proclaimed 'international community'<sup>95</sup> would lead to facile and reductive conclusions which neglect the structural underpinnings of exploitative labour practices.<sup>96</sup>

As Arif Dirlik observes, the new technologies of a globalised capitalist economy have 'endowed capital and production with novel mobility', by means of which 'maximum advantage for capital against labor as well as freedom from social and political interference' are sought and often extensively achieved. Furthermore, given that inter-state legal instruments do little to enhance the accountability of transnational corporations, whose primary loyalties are to their shareholders and customers rather than to their globally dispersed and dislocated labour forces, the efficacy of state-centric regulatory mechanisms in precluding these increasingly powerful agents from engaging in oppressive and

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<sup>91</sup> HRW (n 8); Human Rights Watch, *The UAE's Draft Labor Law: Human Rights Watch's Comments and Recommendations* (March 2007) <<http://www.hrw.org/legacy/background/mena/uae0307/uae0307web.pdf>> accessed 21 October 2010.

<sup>92</sup> Keane and McGeehan (n 2) 96.

<sup>93</sup> A Dirlik, 'The Postcolonial Aura: Third World Criticism in the Age of Global Capitalism' (1994) 20 *Critical Inquiry* 328, 348-349.

<sup>94</sup> *ibid* 331.

<sup>95</sup> An 'international community' which is itself, in fact, deeply implicated in regulating and maintaining the global economic order, as is manifest in the proliferation of inter-governmental and supranational regional organisations tasked with preserving the productivity and coherence of the economy. See *ibid* 349.

<sup>96</sup> *ibid* 348-349.

exploitative practices is severely hampered.<sup>97</sup> ‘With power lodged in transnational corporations’, Dirlik notes, ‘the power of the nation-state to regulate the economy internally is constricted’.<sup>98</sup> This is reminiscent of Boaventura de Sousa Santos’s critique of the neoliberal model of development, which ‘makes nation-states tightly accountable to global capitalist enterprises, at the same time that it forces them or allows them to be more and more vaguely accountable to national individual citizens’,<sup>99</sup> or to non-citizens residing within their borders.

Although the existence of a global economic system – the composition, structure and latticework of power bases, relations and dynamics of which are intricate and multidimensional – makes it difficult, if not impossible, to impute exploitation to any one agent, the scale, complexity and fragmented nature of this order do not provide exculpatory grounds for national governments whose actions directly or indirectly implicate them in the exploitative and abusive treatment of migrant workers. Bearing this in mind, the UAE’s refusal to sign or ratify the core international human rights treaties – the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) – calls into question its commitment to the protection of human rights in general.<sup>100</sup> Signatories to these covenants are obliged to respect and provide for the rights of all persons residing in their territories, irrespective of distinctions such as ‘race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’.<sup>101</sup> Although the UAE is not a party to the abovementioned treaties and is not legally bound by their provisions, they are authoritative international benchmarks to which states should aspire.<sup>102</sup>

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<sup>97</sup> BS Chimni, ‘Third World Approaches to International Law: A Manifesto’ (2006) 8 *International Community Law Review* 3, 23-24.

<sup>98</sup> Dirlik (n 93) 349.

<sup>99</sup> BdS Santos, ‘Law and Democracy: The Global Reform of Courts’ in BdS Santos (ed), *Toward a New Legal Common Sense: Law, Globalization and Emancipation* (Butterworths, London 2002) 351.

<sup>100</sup> International Covenant on Civil and Political Rights, UNGA Res 2200 (XXI) (adopted 19 December 1966, entered into force 23 March 1976) UN Doc A/6316, 999 UNTS 171 (ICCPR); International Covenant on Economic, Social and Cultural Rights, UNGA Res 2200A (XXI) (adopted 16 December 1966, entered into force 3 January 1976) UN Doc A/6316, 993 UNTS 3 (ICESCR).

<sup>101</sup> ICCPR, Art 2(1); ICESCR, Art 2(2).

<sup>102</sup> HRW (n 8) 62.

## V. FREEDOM OF ASSOCIATION AND THE RIGHT TO COLLECTIVE BARGAINING

The conditions with which migrant workers are confronted in the UAE reflect a flagrant disregard for the best international practices explicated in the Migrant Workers' Convention and in the two UN international covenants. Constituting approximately 80 per cent of the total population and 95 per cent of the private labour pool,<sup>103</sup> the Emirates' 2.7 million migrant workers are denied two of the most basic labour rights: freedom of association and the right to bargain collectively.<sup>104</sup> While numerous associations representing the UAE's various migrant communities are permitted once licensed by the authorities, the country's domestic law, which imposes a number of controls and endows the Government with the power to dissolve any associations and organisations, dilutes this freedom and, in some instances, has stifled this right altogether.<sup>105</sup> Freedom of association and the right to collective bargaining are widely recognised as fundamental rights and are accordingly enshrined as customary labour standards in numerous international conventions.<sup>106</sup> Article 26(1) of the Migrant Workers' Convention stipulates that governments must recognise the right '[t]o take part in meetings and activities of trade unions and of any other associations ... with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organisation concerned.' This is echoed in Article 22 of the ICCPR which insists that '[e]veryone shall have the right to freedom of association with others', and in Article 8(1) of the ICESCR which also specifies 'the right of everyone to *form* trade unions and *join* the trade union of his choice' [emphases added], as well as 'the right to strike.' As a member of the United Nations, the UAE's non-derogable *erga omnes* obligations are extended by the Universal Declaration of Human Rights which

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<sup>103</sup> Human Rights Watch, *The UAE's Draft Labor Law: Human Rights Watch's Comments and Recommendations* (March 2007) 1 <<http://www.hrw.org/legacy/backgrounder/mena/uae0307/uae0307web.pdf>> accessed 21 October 2010.

<sup>104</sup> Minority Rights Group, 'United Arab Emirates' (c2005) <<http://www.minorityrights.org/4310/united-arab-emirates/united-arab-emirates-overview.html>> accessed 21 October 2010.

<sup>105</sup> Davidson (n 3) 210-211.

<sup>106</sup> Human Rights Advocates, 'Migrants and the Right to Life' (Report submitted to the UN Human Rights Council 4<sup>th</sup> Session 2007) 8-9 <[http://www.humanrightsadvocates.org/wp-content/uploads/2010/05/HRC\\_Johnson\\_Migrant-Right-to-Life.doc](http://www.humanrightsadvocates.org/wp-content/uploads/2010/05/HRC_Johnson_Migrant-Right-to-Life.doc)> accessed 21 October 2010; HRW (n 103) 4.

recognises the right of everyone ‘to form and to join trade unions for the protection of his interests.’<sup>107</sup> These rights are also enunciated in International Convention on the Elimination of All Forms of Racial Discrimination, to which the state is a signatory.<sup>108</sup>

The UAE celebrates its thirty-seventh anniversary as an ILO member this year. This notwithstanding, the superficial character of its commitment is further borne out by its omissions of the organisation’s core standards and conventions. It has not ratified core Convention No 87 on Freedom of Association and Protection of the Right to Organise (1948) and core Convention No 98 on the Right to Organise and Collective Bargaining (1949).<sup>109</sup> These conventions represent the institutional embodiment of what are considered to be among the ‘founding principles’ of the ILO.<sup>110</sup> As two of the organisation’s eight core conventions, they are identified by the ILO as fundamental international labour standards that are essential to the protection of workers’ rights:<sup>111</sup> ‘[t]hese 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.’<sup>112</sup> Under UAE labour law, however, trade unions and strikes are strictly prohibited.<sup>113</sup> While the right to strike is not enunciated in explicit terms

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<sup>107</sup> Universal Declaration of Human Rights, UNGA Res 217 A (III) (adopted 10 December 1948) UN Doc A/810.

<sup>108</sup> International Convention on the Elimination of All Forms of Racial Discrimination, UNGA Res 2106 (XX) (adopted 21 December 1965, entered into force 4 January 1969) UN Doc A/6014, 660 UNTS 195, Art 5(d)(ix) & 5(e)(ii).

<sup>109</sup> United Nations Development Programme, ‘Ratification: International Labour Organisation Conventions: UAE’ (undated) <<http://www.pogar.org/countries/ratification.asp?cg=2&cid=21>> accessed 21 October 2010.

<sup>110</sup> International Labour Organisation (ILO), *Rules of the Game: A Brief Introduction to International Labour Standards* (2005) 84 <[http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_084165.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_084165.pdf)> accessed 21 October 2010.

<sup>111</sup> Keane and McGeehan (n 2) 83.

<sup>112</sup> ILO, Inclusion on the agenda of the 86<sup>th</sup> Session of the International Labour Conference of an item concerning a Declaration on workers’ fundamental rights (Geneva, November 1997) GB.270/3/1, [16] <<http://www.ilo.org/public/english/standards/relm/gb/docs/gb270/gb-3-1.htm>> accessed 21 October 2010.

<sup>113</sup> Mafiwasta (n 60) 5 and 7; International Confederation of Free Trade Unions, ‘Annual Survey of Violations of Trade Union Rights’ (2004) 292-294 <<http://www.icftu.org/www/pdf/Survey04-EN.pdf>> accessed 21 October 2010; Federal Law No 8 of 1980 on Regulation of Labour Relations, UAE Labour Law, Chapter VI, Art 112; Ministry of Labour and Social Affairs, Ministerial Resolution No

in these conventions, the ILO Committee on Freedom of Association has identified the right to strike as ‘an essential element of trade union rights.’<sup>114</sup> This statement was reaffirmed by the ILO Committee of Experts on the Application of Conventions and Recommendations in its recognition of the right to strike as ‘an intrinsic corollary of the right to organise protected by Convention No 87.’<sup>115</sup>

Freedom of association and the right to collective bargaining constitute the first of the ILO’s four core labour standards which were established in 1998 when the organisation adopted the Declaration on Fundamental Principles and Rights at Work.<sup>116</sup> The Declaration sought to emphasise the universal nature of these rights and freedoms by placing emphasis on their application to all people in all states, irrespective of whether the relevant conventions have been ratified by countries of employment.<sup>117</sup> Not only do these core standards complement and reinforce the preceding core conventions, but they also extend the umbrella of international labour standards as they make fresh demands on recalcitrant states or those less forthcoming in their ratifications.<sup>118</sup> Similarly, the ILO Committee on Freedom of Association has attested that member states 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.’<sup>119</sup> Despite its efforts to circumvent its obligations, the UAE can no longer remain above the law or below the radar screen of the ILO.

Nonetheless, migrants who feel cheated by the often exploitative conditions of their employment in the Emirates continue to be denied the opportunity to collectively bargain over grievances regarding poor

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307 (2003) Art 14; Ministry of Labour and Social Affairs, Ministerial Resolution No 707 Regarding Rules and Regulations of Employment in the Country for Non-citizens (2006).

<sup>114</sup> ILO Committee on Freedom of Association (1952), quoted in HRW (n 103) 6.

<sup>115</sup> ILO, *Freedom of Association and Collective Bargaining: General Survey of Conventions No 87 and No 98*, Conducted by the Committee of Experts on the Applications of Conventions and Recommendations (Geneva 1994).

<sup>116</sup> ILO, ‘The Declaration’ (c2009) <<http://www.ilo.org/declaration/thedeclaration/lang-en/index.htm>> accessed 21 October 2010.

<sup>117</sup> ILO, Declaration on Fundamental Principles and Rights at Work (Geneva, June 1998) <<http://www.ilo.org/public/english/standards/reim/ilc/ilc86/com-dtxt.htm>> accessed 21 October 2010.

<sup>118</sup> Ghana (n 6) 2.

<sup>119</sup> ILO Committee on Freedom of Association (1975), quoted in HRW (n 103) 5.

pay, unpaid wages, passport confiscation, hazardous working environments with no guarantee of healthcare coverage, or cramped and unhygienic housing facilities.<sup>120</sup> Without the freedom to form trade unions, migrant workers lack institutions representing their interests. Unions serve a necessary purpose. They enable workers to defend their rights to just remuneration and acceptable working conditions, and they empower workers to challenge abuses meted out by employers.<sup>121</sup> They provide a vehicle through which to air grievances to government departments and to instigate negotiations with employers, while also offering a platform from which to apply political pressure for structural reform with a louder collective voice.<sup>122</sup> The proscription of trade unions in the Emirates serves to underpin the exploitative labour system.<sup>123</sup> It precludes migrant workers from collectively lobbying the relevant public authorities to engender reforms, thereby ensuring their sustained vulnerability to abuse by unscrupulous employers.<sup>124</sup> As Keane and McGeehan note:

‘...[g]ranting 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.’<sup>125</sup>

Given that the Emirati Government continues to deny migrants this basic labour right, it has been appropriately characterised as ‘an active participant in the abuse’ of migrant workers.<sup>126</sup>

In spite of the Government’s repeated pledges to incorporate into its 2007 draft labour law provisions for freedom of association and collective bargaining which would legalise trade unions, these remain

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<sup>120</sup> Human Rights Advocates (n 106) 12.

<sup>121</sup> G Robertson, *Crimes Against Humanity: The Struggle for Global Justice* (3<sup>rd</sup> edn Penguin, London 2006) 184.

<sup>122</sup> HRW (n 8) 57.

<sup>123</sup> Keane and McGeehan (n 2) 114.

<sup>124</sup> HRW (n 103) 5.

<sup>125</sup> Keane and McGeehan (n 2) 95.

<sup>126</sup> *ibid* 113-114.

unfulfilled promises.<sup>127</sup> As the then Minister of Labour and Social Affairs, Matar al-Tayir, assured in 2002:

‘International conventions and commitments require the development of legislation in the UAE in order to ensure continuation of economic development without neglecting the ILO’s Declaration on Fundamental Principles and Rights of Workers. In the light of economic changes, a review of the country’s laws has become a pressing issue. ... [B]eing a member of the ILO, we feel that we should sign the conventions which benefit us and which reflect the civilised image of the UAE as a country committed to basic labour standards and rights which our constitution guarantees.’<sup>128</sup>

Similarly, in 2005 Dr Khalid al-Khazraji, Undersecretary at the Ministry of Labour, claimed that the legalisation of trade unions was imminent.<sup>129</sup> These assurances have proven to be little more than empty rhetoric, however. They betray the Government’s acute awareness of the problem coupled with a lack of political will to take remedial action, owing to the perceived implications that the introduction of trade unions has for the economy.<sup>130</sup> It is feared that such a step would dilute the ‘absolutist foundations’<sup>131</sup> of the ruling bargain and would undermine the most profitable enterprises operating under its control.<sup>132</sup>

Conversely, Nazila Ghanea argues that the introduction of trade unions and improved labour standards would promote more sustainable

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<sup>127</sup> Amnesty International, ‘United Arab Emirates: Submission to the UN Universal Periodic Review: Third Session of the UPR Working Group of the UN Human Rights Council, December 2008’ (14 July 2008) AI-Index MDE 25/006/2008, 3 <<http://www.amnesty.org/en/library/info/MDE25/006/2008/en>> accessed 24 October 2010; HRW (n 103).

<sup>128</sup> M al-Tayir, Minister of Labour and Social Affairs, speaking at the Dubai Chamber of Commerce and Industry (2002), quoted in Davidson (n 64) 285.

<sup>129</sup> D Hadid, ‘Unions are around the corner’ *Gulf News* (UAE 27 April 2005) <<http://archive.gulfnews.com/articles/05/04/27/162453.html>> accessed 21 October 2010.

<sup>130</sup> Keane and McGeehan (n 2) 114.

<sup>131</sup> Davis (n 15) 68.

<sup>132</sup> Keane and McGeehan (n 2) 114.

economic development in the sheikhdoms.<sup>133</sup> While such a volte-face in policy would certainly grant workers more latitude in negotiating the terms of their employment and more power to demand further reforms in the labour system, unionisation would foster more stable and less volatile forums in which to settle labour disputes. This more equitable system would mitigate the potential for violent public demonstrations that have tarnished the UAE's reputation in recent years.<sup>134</sup> Given that investors' confidence is sensitive to even the smallest hint of disruption, stable labour relations can only help to preserve the country's carefully cultivated image as an 'imperturbable paradise of capital' in the eyes of prospective foreign investors.<sup>135</sup> As UK Trade & Investment has recognised, Dubai 'ranks as one of the world's leading trading centres.'<sup>136</sup> If it is to retain its prominence as a major international trading and investment hub, the Government must be receptive to calls made by influential trading partners for enhanced workers' rights. The finalisation of free trade negotiations with the United States (US) which began in 2004, for example, will require the UAE to make significant changes to its labour laws in order to bring them into compliance with international standards.<sup>137</sup> These talks were instigated under the US-UAE Trade and Investment Framework Agreement, which recognised 'the importance of providing adequate and effective protection and enforcing workers' rights ... and of working toward the respect and promotion of internationally recognized core labor standards.'<sup>138</sup> Thus, there are substantive trade incentives for the UAE to implement labour reforms.<sup>139</sup>

At present, however, it would seem that the UAE is merely paying lip service to key trading partners like the US.<sup>140</sup> Indeed, reports

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<sup>133</sup> Ghanea (n 6) 1-3.

<sup>134</sup> Jones (n 63).

<sup>135</sup> Davis (n 15) 68.

<sup>136</sup> UK Trade & Investment (n 75) 3.

<sup>137</sup> Ghanea (n 6) 3.

<sup>138</sup> Agreement Concerning the Development of Trade and Investment Relations (US-UAE) (15 March 2004) [17] <[http://www.bilaterals.org/IMG/pdf/US-UAE\\_TIFA\\_2004\\_.pdf](http://www.bilaterals.org/IMG/pdf/US-UAE_TIFA_2004_.pdf)> accessed 21 October 2010.

<sup>139</sup> Ghanea (n 6) 3.

<sup>140</sup> International Confederation of Free Trade Unions, 'Report for the WTO General Council Review of the Trade Policies of the UAE' (Geneva, April 2006) 3 <<http://www.icftu.org/www/PDF/WTOTPRUAEfinal.pdf>> accessed 21 October 2010.

in the national press warned that bad publicity surrounding the numerous strikes and demonstrations orchestrated by migrant workers in 2006 could put the UAE's Free Trade Agreement (FTA) negotiations with America, the European Union and Australia in jeopardy.<sup>141</sup> Tellingly, soon after the publication of Human Rights Watch's 2006 report *Building Towers, Cheating Workers* – which called on these countries to condition FTAs on reforms in UAE law that protect migrant workers' rights to organise, bargain collectively and strike<sup>142</sup> – the succeeding Minister of Labour, Dr Ali bin Abdullah al-Ka'abi, claimed that the Ministry was drafting legislation which would endow migrant workers with the right to form trade unions.<sup>143</sup> The Government's pledges have failed to reassure the US, however, as negotiations have reached an impasse over unacceptable labour standards.<sup>144</sup> Sheikh Mohammed bin Rashid al-Maktoum, premier of the UAE and ruler of Dubai, also promised in 2006 that trade unions would be legalised by the end of the year.<sup>145</sup> In February 2007, the Government published a draft of a revised labour law. No such provisions were included in the proposed law.<sup>146</sup>

Additionally, in December 2008, in response to the UN Human Rights Council's Universal Periodic Review mechanism which recently examined the UAE's human rights record, the Government rejected its recommendations to adopt 'measures that allow for the creation of associations [and] trade unions' and to include the rights to 'organise, bargain collectively and strike in the law.'<sup>147</sup> It is not unreasonable to

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<sup>141</sup> Jones (n 63).

<sup>142</sup> HRW (n 8) 18.

<sup>143</sup> J Krane, 'UAE to give workers right to form unions' *Associated Press* (30 March 2006) <[http://www.business-humanrights.org/Links/Repository/466511/link\\_page\\_view](http://www.business-humanrights.org/Links/Repository/466511/link_page_view)> accessed 21 October 2010.

<sup>144</sup> S Rahimi, 'US puts UAE free trade deal on ice' *Emirates Business* 24/7 (UAE 23 December 2007) <<http://www.business24-7.ae/Articles/2007/1/Pages/40321042008.aspx>> accessed 21 October 2010.

<sup>145</sup> Human Rights Watch, 'UAE: Workers Abused in Construction Boom' (11 November 2006) <<http://www.hrw.org/en/news/2006/11/11/uae-workers-abused-construction-boom>> accessed 21 October 2010.

<sup>146</sup> Human Rights Watch, 'UAE: Draft Labor Law Violates International Standards' (24 March 2007) <<http://www.hrw.org/en/news/2007/03/24/uae-draft-labor-law-violates-international-standards>> accessed 21 October 2010.

<sup>147</sup> United Nations Human Rights Council (10th Session) 'Report of the Working Group on the Universal Periodic Review: United Arab Emirates' (12 January 2009) UN Doc A/HRC/10/75, 10 and 13 <[http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/AE/A\\_HRC\\_10\\_75\\_United\\_Arab\\_Emirates\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/AE/A_HRC_10_75_United_Arab_Emirates_E.pdf)> accessed 21 October

infer from this inconsistency that the Government's declaratory position on labour issues is at odds with the policies that it is willing to implement in practice.<sup>148</sup>

Although the UAE is not a state party to the Migrant Workers' Convention and therefore is not legally bound by its provisions, the abhorrent treatment of migrant workers, which persists in and pervades the Federation, attests to the Government's refusal to adopt corrective measures that conform to international standards. The UAE eschews its responsibility as an ILO member to provide for its migrant workers' rights to freedom of association and collective bargaining. The prohibition of trade unions underpins the system of exploitation. Migrant workers are unable to apply collective pressure for just remuneration, acceptable working and living conditions, or labour reforms. Despite the Government's pledges to amend labour law in this area, these remain unfulfilled promises. Owing to a lack of domestic political will, the need to bring to bear the leverage and pressure of the UN and its subsidiary agencies, key trading partners, as well as civil society actors such as Human Rights Watch, on the situation in the UAE is crucial.<sup>149</sup>

## **VI. THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION**

The Emirates' legal obligations are limited by its negligible or superficial commitment to international human rights law and institutions. The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) is one of only three international human rights treaties to which the UAE has acceded (1974) and for which it has not submitted a report to the supervising UN Committee since 1995.<sup>150</sup>

Before proceeding with analysis of the extent to which practices in the UAE contravene the CERD, it is necessary to determine the scope of the Convention in its application to migrant workers.<sup>151</sup> The

2010; Mafiwasta, 'UN Body Releases UAE Human Rights Recommendations' (11 December 2008) <<http://www.mafiwasta.com>> accessed 21 October 2010.

<sup>148</sup> Keane and McGeehan (n 2) 94.

<sup>149</sup> *ibid* 81.

<sup>150</sup> United Nations Treaty Body Database, 'Reporting Status by Country: United Arab Emirates' (undated) <<http://www.unhchr.ch/tbs/doc.nsf/RepStatfrset?OpenFrameSet>> accessed 21 October 2010; Keane and McGeehan (n 2) 96.

<sup>151</sup> *ibid* 97.

provisions of Article 1 appear to confine the application of the Convention to discrimination against citizens. Article 1(2) states that the Convention does not apply to ‘distinctions, exclusions, restrictions or preferences made between citizens and non-citizens.’ In spite of this, the Committee on the Elimination of Racial Discrimination (ERDC), the Convention’s monitoring body, has emphasised that while it is acceptable for certain political rights – such as voting and other electoral entitlements – to be reserved for citizens, the civil, economic, social and cultural rights explicated in the Convention and in other international treaties are, in principle, inalienable human rights to which all people are entitled, irrespective of citizenship: ‘States parties are under an obligation to guarantee equality between citizens and non-citizens in the enjoyment of these rights.’<sup>152</sup> The entitlement of non-citizen migrant workers to these rights is substantiated by Article 6 of the CERD, which requires states parties to guarantee to ‘everyone within their jurisdiction’ effective protection against racial discrimination.<sup>153</sup> The ERDC has stipulated that Article 1(2) must not be interpreted to detract from the rights and freedoms enshrined in the core international human rights treaties, namely the Universal Declaration and its two attendant Covenants.<sup>154</sup>

Article 9(1) of the CERD requires states parties to submit a report to the ERDC every two years on the legislative, judicial, administrative or other measures implemented which give effect to the provisions of the Convention. Article 9(2) outlines the reporting functions of the ERDC, stating that it can make recommendations in response to reports submitted by states parties. While these recommendations are not binding on states parties, they carry substantial normative power, serving as a means through which the ERDC can provide guidance to states on the legal interpretation of the Convention.<sup>155</sup> Furthermore, general recommendations influence reporting obligations and shape state practice in applying the

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<sup>152</sup> United Nations Committee on the Elimination of Racial Discrimination, ‘General Recommendation XXX on Discrimination against Non-citizens’ (Office of the United Nations High Commissioner for Human Rights, Geneva 1 October 2004) [3].

<sup>153</sup> Mafiwasta (n 60) 22.

<sup>154</sup> ‘General Recommendation XXX’ (n 152) [2]; United Nations, *The Rights of Non-citizens* (Office of the United Nations High Commissioner for Human Rights, Geneva 2006) 9.

<sup>155</sup> T Meron, ‘The Meaning and Reach of the International Convention on the Elimination of All Forms of Racial Discrimination’ (1985) 79 *American Journal of International Law* 283, 285.

Convention.<sup>156</sup> General Recommendation XXX on Discrimination against Non-citizens maintains that:

‘...[u]nder 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.’<sup>157</sup>

In its 1995 report to the ERDC, the UAE explicitly acknowledged that the provisions of the CERD apply to non-citizens as well as citizens: ‘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.’<sup>158</sup> However, the ERDC’s Concluding Observations on the report expressed ‘[keen] concern ... as to the allegations of ill-treatment of foreign workers.’<sup>159</sup> The inadequacy of the information provided in the report regarding legislative, judicial and administrative measures adopted to give effect to the Convention was also criticised owing to the inhibitive impact this had on the ERDC’s ability to make an accurate assessment of progress made in implementing the Convention.<sup>160</sup> The ERDC stressed that it required more information about the implementation of Article 5 of the Convention, which specifies ‘the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law’ in the expression of a number of civil, economic, social and cultural rights. The UAE’s neglect of its obligations is manifest in its failure to report to the ERDC

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<sup>156</sup> *ibid* Keane and McGeehan (n 2) 97.

<sup>157</sup> ‘General Recommendation XXX’ (n 152) [4].

<sup>158</sup> ‘Eleventh Periodic Report of the United Arab Emirates to the Committee on the Elimination of Racial Discrimination’ (8 May 1995) UN Doc CERD/C/279/Add.1, [30] <[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.279.Add.1.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CERD.C.279.Add.1.En?Opendocument)> accessed 21 October 2010.

<sup>159</sup> Committee on the Elimination of Racial Discrimination, ‘Report on the Elimination of Racism and Racial Discrimination: United Arab Emirates – Concluding Observations’ (22 September 1995) UN Doc A/50/18, [566] <[http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/b977bb2a42301f68c12563ea00384659/\\$FILE/N9528869.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/b977bb2a42301f68c12563ea00384659/$FILE/N9528869.pdf)> accessed 21 October 2010.

<sup>160</sup> *ibid*.

since its last submission in 1995.<sup>161</sup> Moreover, the absence of a subsequent periodic report has meant that the failure of the Government to apply the Convention's provisions to domestic law concerning migrant workers has not been highlighted.<sup>162</sup>

*A. Administration of justice*

While there are aspects of UAE law that constitute *de jure* discrimination against non-nationals and non-Arabs in the labour system,<sup>163</sup> it is the existence of widespread *de facto* discrimination against migrant workers from the Asian subcontinent that is a more insidious concern.<sup>164</sup> It is not difficult to identify several distinct violations of the rights established under Article 5 of the CERD, notable among which is the systematic discrimination against non-citizen migrant workers in the administration of justice. Article 5(a) states that everyone is entitled 'to equal treatment before the tribunals and all other organs administering justice.' The ERDC's General Recommendation XXX similarly calls on states parties to '[e]nsure that non-citizens enjoy equal protection and recognition before the law.'<sup>165</sup> Labour law in the UAE presents migrant workers wishing to file complaints or make appeals with a number of obstacles, however. Any worker wishing to report their grievances must submit written complaints in either Arabic or English (the two official languages of the UAE) to the Ministry of Labour and to their employer.<sup>166</sup> Given that the overwhelming majority of migrant workers in the UAE do not speak either Arabic or English, their access to justice is significantly impeded by this language barrier.<sup>167</sup> Taken in isolation, this bureaucratic

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<sup>161</sup> 'Eleventh Periodic Report of the UAE' (n 158).

<sup>162</sup> Keane and McGeehan (n 2) 98.

<sup>163</sup> Federal Law No 8 of 1980 on Regulation of Labour Relations, UAE Labour Law, Chapter II, Art 10: 'Where National workers are not available, preference in employment shall be given to: 1) Workers of other Arab nationalities 2) workers of other nationalities.'

<sup>164</sup> Mafiwasta, 'Universal Periodic Review Submission: Systematic Racial Discrimination in the UAE' (July 2008) 1-2 <<http://www.mafiwasta.com/links.htm>> accessed 21 October 2010; R Jureidini, 'Migrant Workers and Xenophobia in the Middle East' (United Nations Research Institute for Social Development, December 2003) Identities, Conflict and Cohesion, Programme Paper No 2 <[http://www.unrisd.org/unrisd/website/document.nsf/462fc27bd1fce00880256b4a0060d2af/045b62f1548c9c15c1256e970031d80d/\\$FILE/jureidin.pdf](http://www.unrisd.org/unrisd/website/document.nsf/462fc27bd1fce00880256b4a0060d2af/045b62f1548c9c15c1256e970031d80d/$FILE/jureidin.pdf)> accessed 21 October 2010.

<sup>165</sup> 'General Recommendation XXX' (n 152) [18].

<sup>166</sup> Federal Law No 8 of 1980 on Regulation of Labour Relations, UAE Labour Law, Chapter IX, Art 155.

<sup>167</sup> Mafiwasta (n 164) 2.

obstacle cannot necessarily be construed as unfair. It is, however, the cumulative build-up of hurdles limiting access to justice which is conspicuous.

Migrants who have sought to lodge complaints in person have been met with unaccommodating responses from Ministry officials.<sup>168</sup> In one instance in 2005, thirty-eight South Asian workers attempted to file a complaint against their employer for withholding five months' wages.<sup>169</sup> Officials at the Ministry of Labour wrongly instructed the men that their complaints would have to be submitted on an individual basis. Under UAE labour law, however, the filing of joint complaints is permitted.<sup>170</sup> Unable to afford to pay the obligatory typing fee for each individual complaint, they approached the Ministry with a handwritten complaint, which was rejected.<sup>171</sup> Those officials involved (who, under the labour law, are accorded 'the status of judicial officers for the purposes of the application of this Law and its executive regulations and orders')<sup>172</sup> either were ignorant of the provisions made by the labour law for the submission of joint complaints, or knowingly misinformed the men to obstruct their complaints.<sup>173</sup> Only a few days earlier, officials dismissed efforts made by the same men to lodge a complaint because they lacked identification documents. As is common practice in the UAE, their employer had confiscated their passports, leaving them without identity papers.<sup>174</sup> Ultimately, the men were precluded from submitting a complaint owing to the Ministry's inhibitive complaints procedure and inadequate mechanisms of enforcing legislation proscribing passport retention by employers.<sup>175</sup>

Zachariah *et al* also identify the ineffective system in place for addressing labour disputes as a serious problem confronting migrant

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<sup>168</sup> Keane and McGeehan (n 2) 87.

<sup>169</sup> D Hadid, 'Unpaid workers survive on dates' *Gulf News* (UAE 23 September 2005) <<http://archive.gulfnews.com/articles/05/09/23/183202.html>> accessed 21 October 2010.

<sup>170</sup> Federal Law No 8 of 1980 on Regulation of Labour Relations, UAE Labour Law, Chapter IX, Art 155.

<sup>171</sup> Mafiwasta (n 164) 2.

<sup>172</sup> Federal Law No 8 of 1980 on Regulation of Labour Relations, UAE Labour Law, Chapter XII, Art 188.

<sup>173</sup> Mafiwasta (n 164) 2.

<sup>174</sup> Keane and McGeehan (n 2) 88.

<sup>175</sup> *ibid.*

workers.<sup>176</sup> Owing to the absence of labour courts, the settlement of disputes can entail a lengthy process. At the ministry level alone, disputes can take up to fifty-four days before a settlement is reached.<sup>177</sup> Even when the Ministry has issued decisions in migrant workers' favour, enforcement of rulings has been lacking when met with recalcitrant employers. Citing his own financial difficulties, one employer refused to pay monies owed to his workers.<sup>178</sup> In another unexceptional case, no punishments or fines were enforced against a construction company for the non-payment of three months' wages to 7,000 employees.<sup>179</sup> The Ministry has been criticised for employing an insufficient number of inspectors to ensure that national laws governing the treatment of migrant workers by employers are upheld.<sup>180</sup>

Irrespective of this, few disputes are settled amicably at the ministry level,<sup>181</sup> and access to justice for migrant workers is also limited by the subsequent appeals procedure. In order to bring a case before the Court of First Instance – which constitutes only the first stage of any appeal – appellants are required to pay a registration fee of 500 dirhams (\$136) and a deposit of 1,000 dirhams (\$272).<sup>182</sup> Given that the majority of disputes arise due to unpaid wages, a financial outlay of this size is usually beyond the means of most migrants.<sup>183</sup> Although the registration charge is waived for workers appealing against their employers, those who lose their appeal are obliged to bear all costs.<sup>184</sup> This functions as a considerable disincentive for impoverished migrants to appeal.

Over and above the prejudices inherent in the complaints and appeals procedures, further discriminatory practices in the administration of justice have been adopted in response to protests staged by indignant

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<sup>176</sup> Zachariah et al (n 10) 167.

<sup>177</sup> Federal Law No 8 of 1980 on Regulation of Labour Relations, UAE Labour Law, Chapter IX, Arts 155-158. If the Ministry does not reach a settlement within ten days of receiving the written complaint, the case is referred to a Conciliation Board. The Board must then issue its decision within fourteen days. Either party is then entitled to contest the Board's decision before the Supreme Arbitration Committee within thirty days of its issuance.

<sup>178</sup> Keane and McGeehan (n 2) 88.

<sup>179</sup> HRW (n 8) 31.

<sup>180</sup> *ibid* 52; Keane and McGeehan (n 2) 91.

<sup>181</sup> Zachariah et al (n 10) 167.

<sup>182</sup> Keane and McGeehan (n 2) 88

<sup>183</sup> *ibid* Zachariah et al (n 10) 167.

<sup>184</sup> *ibid* 88-89.

migrant workers in recent years. A Dubai-based committee of 14 officials was convened in May 2006 with a view to tackling problems in the labour market.<sup>185</sup> Following consultations with local and federal representatives from the Ministry of Labour, Dubai Municipality and the Dubai Naturalisation and Residency Department, the committee drafted a 29-clause memorandum to be submitted to the UAE Cabinet.<sup>186</sup> Under the provisions of the memorandum, officials warned that migrants would be taken to court for protesting ‘without a genuine, legal grievance’ or,<sup>187</sup> in the words of the Labour Minister, Dr Ali bin Abdullah al-Kha’abi, ‘with no right.’<sup>188</sup>

Al-Kha’abi went on to assert that the Government ‘will take all necessary action after that.’<sup>189</sup> Such action has not been confined to the bringing of court cases against unruly labourers. Instances of immediate deportation of migrants – without first being arrested, tried before a court, or convicted of offences determined to be illegal under the terms of the memorandum – have been reported following protests staged by workers demanding pay raises and annual leave.<sup>190</sup> In March 2007, the local newspaper *Gulf News* reported that 200 migrant workers from ETA ASCON<sup>191</sup> were to be deported, following the outbreak of a riot in which company property was damaged and a manager was assaulted.<sup>192</sup> Although the reasons for the violence were not specified, the riot took place just one day after a peaceful protest had been staged, whereby 3,500 workers from the same company (at the time earning between 550 dirhams and 650 dirhams per month) demanded salary increases of

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<sup>185</sup> Mafiwasta, ‘Country Shadow Report to the UN Committee on the Elimination of Racial Discrimination: The United Arab Emirates’ (May 2009) 31; Keane and McGeehan (n 2) 89.

<sup>186</sup> *ibid.*

<sup>187</sup> *Gulf News*, ‘Workers who protest may face prosecution’ *Gulf News* (UAE 8 May 2006) <<http://archive.gulfnews.com/articles/06/05/08/10038481.html>> accessed 21 October 2010.

<sup>188</sup> *ibid.*

<sup>189</sup> *ibid.*

<sup>190</sup> Mafiwasta (n 185) 31-32; Keane and McGeehan (n 2) 89-90.

<sup>191</sup> ETA ASCON Group is a contracting firm which specialises in civil construction and engineering projects in the UAE <<http://www.etaascon.com/Nascon/article.asp?id=1>> accessed 10 September 2010.

<sup>192</sup> S Menon and W Issa, ‘Over 200 workers to be deported for violence’ *Gulf News* (UAE 12 March 2007) <<http://gulfnews.com/news/gulf/uae/employment/over-200-workers-to-be-deported-for-violence-1.117373>> accessed 10 September 2010; Keane and McGeehan (n 2) 89-90.

between 250 dirhams and 450 dirhams to meet the rising costs of living in the Emirates.<sup>193</sup> That the company was willing to concede a raise of no more than 2 dirhams per day is telling of the probable motivation for the hostile response.<sup>194</sup> Within three days of the riot, 60 workers had been deported, with no evidence to suggest that due process had been observed by the Emirati authorities.<sup>195</sup>

A memorandum of this nature undermines the right of migrant workers under Article 5(a) of the CERD to 'equal treatment before the ... organs administering justice', as it endows the state with tremendous power to rule protests unwarranted with 'effective immunity'.<sup>196</sup> It can be invoked to prosecute any migrant worker involved in demonstrations.<sup>197</sup> Furthermore, where companies require new workers to replace those who have challenged the conditions of their employment, the memorandum provides for the waiver of the transaction fees that companies would ordinarily incur when recruiting migrants from abroad.<sup>198</sup> Just as the due process rights of migrants have been eroded or nullified, corporate privileges have been extended.

Access to justice is also restricted by the prohibition of strikes. Under a ministerial resolution enacted in 2006 directed specifically at migrant workers, the Government can ban those who strike from employment in the country for at least one year.<sup>199</sup> This ruling has resulted in the deportation of several labour migrants.<sup>200</sup> Rather than taking steps to enhance labour rights, the Government is reverting to draconian measures to control its migrant population.<sup>201</sup> The recent initiative to develop an integrated immigration database by the Gulf

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<sup>193</sup> *ibid*; W Issa, 'Thousands of workers stop work demanding increase in salary' *Gulf News* (UAE 11 March 2007) <<http://gulfnnews.com/news/gulf/uae/employment/thousands-of-workers-stop-work-demanding-increase-in-salary-1.166234>> accessed 10 September 2010.

<sup>194</sup> Menon and Issa (n 192); Keane and McGeehan (n 2) 89-90.

<sup>195</sup> S Menon and W Issa, 'First batch of 60 workers deported for violent protest' *Gulf News* (UAE 15 March 2007) <<http://gulfnnews.com/news/gulf/uae/employment/first-batch-of-60-workers-deported-for-violent-protest-1.166778>> accessed 10 September 2010; Keane and McGeehan (n 2) 90.

<sup>196</sup> Keane and McGeehan (n 2) 100.

<sup>197</sup> *ibid*.

<sup>198</sup> *ibid* 89-90; *Gulf News* (n 187); Menon and Issa (n 192).

<sup>199</sup> Ministry of Labour and Social Affairs, Ministerial Resolution No 707 Regarding Rules and Regulations of Employment in the Country for Non-citizens (2006) Art 13.

<sup>200</sup> HRW (n 8) 57.

<sup>201</sup> Davis (n 15) 67.

Cooperation Council (GCC), of which the UAE is a member, represents another means by which the Emirati authorities are implementing more stringent checks on migrants.<sup>202</sup> Under this system, those who file complaints against their employers can be black-listed and banned from employment in other GCC states.<sup>203</sup> Regardless of this, the legal status of immigrants in GCC countries has long been predicated on sponsorship. Contract workers wishing to lodge a complaint against sponsor-employers find themselves in a vulnerable position. Any dispute with an employer would jeopardise their legal residence, their employment and their legal recourse.<sup>204</sup>

Fearing that their jobs are at stake, migrant workers are becoming increasingly reluctant to voice grievances to the authorities and are instead suffering in silence. As one official at the Ministry of Labour has reported, ‘we only recognise [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.’<sup>205</sup> The obstruction of migrant workers’ access to justice in the UAE constitutes racial discrimination and is in violation of the country’s treaty obligations under Article 5(a) of the CERD.<sup>206</sup>

### *B. Housing*

Discrimination against migrant workers is also discernible in the poor standard of accommodation provided by their employers. The prescription of Article 43(1) of the Migrant Workers’ Convention that migrant workers shall enjoy equal opportunities with nationals as regards ‘[a]ccess to housing’ is echoed by Article 5(e)(iii) of the CERD which affirms every person’s ‘right to housing.’ The entitlement of non-citizens to adequate accommodation is emphasised in the ERDC’s General Recommendation XXX, which calls on states parties to ‘[g]uarantee the equal enjoyment of the right to adequate housing for citizens and non-citizens, especially by avoiding segregation in housing.’<sup>207</sup>

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<sup>202</sup> Migration News (n 79).

<sup>203</sup> Asia Pacific Mission for Migrants, ‘Gulf Cooperation Council’s integrated immigration database: A threat to migrant workers’ job security’ (16 November 2008) <[http://www.apmigrants.org/press\\_releases/96.html](http://www.apmigrants.org/press_releases/96.html)> access 21 October 2010.

<sup>204</sup> Baldwin-Edwards (n 29) 29.

<sup>205</sup> Anonymous, quoted in Mafiwasta (n 164) 2.

<sup>206</sup> Keane and McGeehan (n 2) 101.

<sup>207</sup> ‘General Recommendation XXX’ (n 152) [32].

At a typical labour camp in Dubai named *Sonapur*, which means ‘City of Gold’ in Hindi, between two and three hundred thousand men are packed like sardines into small rooms to eat, wash and sleep in the little time they have on returning from the day’s work.<sup>208</sup> Overcrowding is a serious problem in many of the UAE’s labour camps.<sup>209</sup> It is commonplace to find between eight and twelve men crammed into one rudimentary room furnished only with ramshackle bunk-beds.<sup>210</sup> They share communal showers and toilets which, owing to a ‘chronic shortage of water’, are often unusable.<sup>211</sup> In a 2003 study into the employment of Indian contract migrants in the UAE, Zachariah *et al* claimed that insufficient water supplies and inadequate electricity, air conditioning, and cooking facilities were among the problems encountered in 25 per cent of the camps visited.<sup>212</sup> Kitchens consist of poorly maintained hobs in rooms with filthy work surfaces, walls and floors.<sup>213</sup>

The companies responsible for providing accommodation attribute these conditions to the alleged lower standards of hygiene and cleanliness practised by the workers.<sup>214</sup> After a long day of manual labour, however, workers have scarcely enough time to cook, eat and sleep, let alone clean, before returning to their work sites. Moreover, employers are responsible for maintaining these camps.<sup>215</sup> Pictures of Sonapur give a familiar, but no less harrowing, portrayal of the unhygienic conditions that labourers are forced to abide.<sup>216</sup> This is not an isolated case; dire conditions in migrant workers’ accommodation have been reported throughout the Federation. *Gulf News* reported that ‘poor workers find it very difficult to maintain a hygienic environment because

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<sup>208</sup> Tremor Productions, *Dubai: Miracle or Mirage?* [Television programme] (National Geographic Channel, November 2008); Hari (n 73).

<sup>209</sup> Zachariah *et al* (n 10) 168.

<sup>210</sup> BBC Panorama, *Slumdogs and Millionaires* [Television programme] (BBC One, 6 April 2009); Zachariah *et al* (n 12) 65.

<sup>211</sup> Davis (n 15) 66 and 68; HRW (n 8).

<sup>212</sup> Zachariah *et al* (n 10) 168.

<sup>213</sup> BBC Panorama (n 210).

<sup>214</sup> This was the excuse offered by the UAE construction company Arabtec to the BBC Panorama team during its investigation into conditions of worker camps in the Emirates.

<sup>215</sup> Federal Law No 8 of 1980 on Regulation of Labour Relations, UAE Labour Law, Chapter V, Art 101; Zachariah *et al* (n 12) 65.

<sup>216</sup> See Panorama’s undercover filming in *Slumdogs and Millionaires* (n 210); or Tremor Productions, *Dubai: Miracle or Mirage?* (n 208).

of lack of resources and atrocious living conditions.<sup>217</sup> This has even been acknowledged by the head of the Health Education Section at the Ministry of Health, Rajeh al-Fahel, whose reaction to the poor conditions in these camps was one of shock.<sup>218</sup>

Furthermore, it has been asserted by Dr Asrar Ur Rahman, a doctor at a medical centre in Abu Dhabi, that cramped living spaces make migrant workers ‘highly susceptible’ to infectious diseases.<sup>219</sup> Without the provision of health coverage by their employers and lacking adequate wages, many migrants are unable to afford medical treatment.<sup>220</sup> Left unchecked, illnesses often develop into more acute health problems that have dangerous implications for broader public health.<sup>221</sup> The UAE Government has, nonetheless, remained unresponsive to such criticism, and abdicates responsibility for living standards to the companies that employ migrant workers. While Assistant Undersecretary for Labour, Hatim al-Junaibi, has conceded that unhygienic conditions do pose a significant threat to workers’ health, he insists that it is the responsibility of their employers to provide adequate accommodation.<sup>222</sup> Keane and McGeehan condemn the Government for divesting itself of its constitutional obligation to ensure that adequate housing is provided without discrimination.<sup>223</sup> UAE labour law states that ‘[e]ach employer employing workers in areas remote from towns and not covered by regular means of transport shall provide his workers with ... [s]uitable living accommodation.’<sup>224</sup> Although responsibility for providing accommodation of an acceptable standard rests firmly on employers’ shoulders, the Government is accountable for ensuring ‘proper

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<sup>217</sup> C Stratford, ‘Labourers forced to share space with rodents’ *Gulf News* (UAE 9 April 2006) <<http://archive.gulfnews.com/articles/06/04/10/10031800.html>> accessed 21 October 2010.

<sup>218</sup> R al-Fahel, quoted in Mafiwasta (n 164) 2.

<sup>219</sup> AU Rahman, quoted in C Stratford, ‘Cramped in a room with poor wages and diseases to boot’ *Gulf News* (UAE 9 April 2006) <<http://archive.gulfnews.com/articles/06/04/09/10031665.html>> accessed 21 October 2010.

<sup>220</sup> Human Rights Watch, *World Report 2009: United Arab Emirates* (January 2009) 4 <[http://www.hrw.org/sites/default/files/related\\_material/uae.pdf](http://www.hrw.org/sites/default/files/related_material/uae.pdf)> accessed 21 October 2010.

<sup>221</sup> Keane and McGeehan (n 2) 99.

<sup>222</sup> H al-Junaibi, cited in Stratford (n 219).

<sup>223</sup> Keane and McGeehan (n 2) 99;

<sup>224</sup> Federal Law No 8 of 1980 on Regulation of Labour Relations, UAE Labour Law, Chapter V, Art 101.

compliance with the provisions of this Law.<sup>225</sup> While domestic laws are ostensibly strong in terms of their provisions for housing standards,<sup>226</sup> they are not rigorously enforced. Inspections conducted in 2005 found three-quarters of the 36 labour camps visited by public officials to be well below Government standards.<sup>227</sup> In August of last year, public health authorities reported that 40 per cent of Dubai's 1,093 camps did not meet minimum health and fire safety standards.<sup>228</sup> The abject conditions in the UAE's labour camps constitute a clear violation of Article 5 of the CERD which requires states parties to guarantee the right to housing without discrimination.<sup>229</sup>

Contrary to the ERDC's recommendation that segregation in housing should be avoided,<sup>230</sup> the policy of building labour camps serves to banish contract workers from the Emirates' cities and isolates them in substandard accommodation on the desert outskirts.<sup>231</sup> In practice, this segregates non-citizens from citizens. The existence of labour camps in the UAE is in breach of Article 3 of the CERD, which stipulates that states parties must 'condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.'

### C. *Access to public spaces*

The physical isolation from society that the use of labour camps entails represents an infringement of the Convention's Article 5(f) which establishes the right of 'access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks.' In his study of the relationship between Dubai's urban environment and its low-income migrants, Yasser Elsheshtawy notes that '[f]or most of these workers the city represents a distant image which can only be seen from buses taking them from their

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<sup>225</sup> Federal Law No 8 of 1980 on Regulation of Labour Relations, UAE Labour Law, Chapter X, Art 167(a).

<sup>226</sup> Dubai Municipality, 'List of standards for migrant workers' housing' (last updated 6 April 2009) <[http://news.bbc.co.uk/panorama/hi/front\\_page/newsid\\_7986000/7986720.stm](http://news.bbc.co.uk/panorama/hi/front_page/newsid_7986000/7986720.stm)> accessed 21 October 2010.

<sup>227</sup> HRW (n 8) 54.

<sup>228</sup> HRW (n 220) 4.

<sup>229</sup> Keane and McGeehan (n 2) 99.

<sup>230</sup> 'General Recommendation XXX' (n 152) [32].

<sup>231</sup> Keane and McGeehan (n 2) 100.

accommodations to the construction sites.<sup>232</sup> Unlike the public transport provided within the city, that offered to migrant workers consists of old, non-air-conditioned buses in a state of general disrepair.<sup>233</sup> These labourers are banned from some of the UAE's exclusive shopping centres, golf courses and restaurants.<sup>234</sup> And in those public spaces which do not impose an outright ban, various 'cues and measures' are employed to deter migrant workers from entering them.<sup>235</sup> Many of the Emirates' shopping centres are designed to be accessed by car. Deira City Centre, for example, one of Dubai's major shopping precincts, is surrounded by a network of busy multilane roads and is inaccessible by foot. Similarly, public parks are enclosed by high fences and admittance is restricted by entry fees.<sup>236</sup> Access to these ostensibly public places for migrant workers is significantly hampered by these barriers, further ostracising those on the periphery of society.

The above analyses have illustrated that racial discrimination against migrant workers in the Emirates is widespread and systematic. Discriminatory practices in the administration of justice, the provision of atrocious and segregated housing, and the restriction of access to public spaces constitute violations of the CERD.<sup>237</sup>

## VII. CONCLUSIONS AND RECOMMENDATIONS

Evidence of the widespread abuse and exploitation of migrant labourers in the United Arab Emirates is testament to the assertion that international standards governing the rights of migrant workers are neglected and violated in the pursuit of economic growth. The country's indentured labour system underpins exploitative methods practised by employers and recruitment agents. The failure of the Emirati Government to eliminate illicit practices such as passport confiscation, withholding wages and debt bondage contravenes ILO Conventions No 29 and No 105 on forced and compulsory labour, as well as the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. In view of the immense

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<sup>232</sup> Y Elsheshtawy, 'Transitory Sites: Mapping Dubai's "Forgotten" Urban Spaces' (2008) 32 *International Journal of Urban and Regional Research* 968, 973.

<sup>233</sup> *ibid.*

<sup>234</sup> Davis (n 15) 65.

<sup>235</sup> Elsheshtawy (n 232) 973.

<sup>236</sup> *ibid.*

<sup>237</sup> Keane and McGeehan (n 2) 101.

prosperity of the UAE, it is indubitable that the state possesses ample resources with which to reform the labour system in order to alleviate the plight of its labour migrants. The formulation and implementation of such reforms will require greater political will on the part of the Government to remedy the problem.

The UAE is not a state party to the Migrant Workers' Convention. Although it is not bound by its provisions, the existence of exploitative practices and the prevalence of abuses meted out by both public and private actors are telling of the Government's disinclination to take remedial action that is consistent with international standards. In order to protect the rights of its migrant workforce, it is imperative that the UAE ratifies and adheres to the provisions of the Migrant Workers' Convention.<sup>238</sup>

The superficial character of the Emirates' commitment to international institutions and laws protecting labour rights is further borne out by its refusal to ratify the ILO's core conventions on freedom of association and collective bargaining. The proscription of trade unions by domestic labour law betrays a flagrant disregard for the intergovernmental organisation's fundamental principles. Moreover, this ban underpins the exploitative labour system. Without recourse to unions – which offer more powerful institutional platforms from which to voice collective grievances, to negotiate terms of employment and to lobby for reforms – migrant workers remain vulnerable to mistreatment by unscrupulous employers. Migrants are unable to bargain collectively to redress injustices concerning low and unpaid wages, passport retention, dangerous working conditions and unacceptable housing standards. As the UAE continues to deny this core labour right, it is reasonable to conceive of the Government as complicit in the abuse of migrant workers.

In spite of repeated promises to revise the country's labour laws in order that they provide for the right to collective bargaining, the Government's declaratory stance is at odds with the laws that it is willing to enact and implement in practice. A lack of political will at home calls for international pressure. Given that there are tangible trade incentives for the UAE to enhance the protection of migrant workers' rights, key trading partners like the US and the EU should stipulate as a precondition for any trade agreement that such reforms must be

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<sup>238</sup> *ibid* 96.

implemented. The UAE should ratify ILO core Conventions No 87 and No 98 on freedom of association and collective bargaining. In order to improve the working and living conditions of its migrant population, the Government must amend domestic labour law to bring it into compliance with the provisions of these conventions by legalising trade unions, collective bargaining and strikes.<sup>239</sup>

As the UAE is a state party to the International Convention on the Elimination of All Forms of Racial Discrimination, it is obligated to prevent systematic discrimination against non-citizen migrants. Discriminatory practices in the administration of justice, the provision of inadequate and segregated housing, and the restriction of access to public spaces constitute egregious violations of the CERD. In order to resolve these inequities, the Emirati Government must comply with its Convention obligations by implementing reforms which ensure that impoverished migrant workers enjoy parity with nationals.

### VIII. ISSUES FOR FURTHER STUDY

As a final point, the paper will consider possible avenues of further study. What are the potential consequences for the Emirati Government if labour standards remain unimproved? In the light of the numerous riots that have been staged by indignant migrant workers in recent years, does the South Asian immigrant population – who constitute the overwhelming majority – represent a threat to national security?

Could the dire conditions with which labour migrants are confronted in the country give rise to a public health crisis such as HIV/AIDS, as witnessed in South Africa? An interagency policy brief on HIV and international labour migration has highlighted a number of social, economic and political factors which heighten the vulnerability of labour migrants to HIV infection, all of which are pertinent to the case of the UAE: ‘separation from spouses, families and familiar social and cultural norms, language barriers, poverty, substandard living conditions, and exploitative working conditions.’<sup>240</sup>

What prospects does the global financial crisis hold for this indebted workforce? Given that economic priorities took precedence on

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<sup>239</sup> HRW (n 8) 17.

<sup>240</sup> UNAIDS, International Labour Organisation and International Organisation for Migration, ‘Policy Brief: HIV and International Labour Migration’ (August 2008) 1-6 <[http://data.unaids.org/pub/Manual/2008/jc1513a\\_policybrief\\_en.pdf](http://data.unaids.org/pub/Manual/2008/jc1513a_policybrief_en.pdf)> accessed 21 October 2010.

the political agenda in the years of prolific growth, it is inevitable that the corporate employers which propel the UAE's economy will be looking to cut corners wherever possible.<sup>241</sup> Due to the economic downturn, construction projects have been suspended and many workers have been sent home lumbered with debt, confronted with financial ruin.<sup>242</sup>

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<sup>241</sup> S Furber, Interview with N McGeehan, founding member of Mafiwasta (18 January 2009) <<http://www.migrant-rights.org/2009/01/18/interview-with-nick-mcgeehan-from-mafiwasta>> accessed 21 October 2010.

<sup>242</sup> BBC Panorama (n 210).