

**THE INTERNATIONAL CONVENTION
ON MIGRANT WORKERS
AND ITS RELEVANCE
FOR THE MIDDLE EAST**

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Mariette Grange is a board member of December 18.

INTRODUCTION

“I never got a chance to rest, I woke up at 4 am, made breakfast for the children, I worked all day without rest. I went to sleep at 3 a.m. So many times I didn’t get a chance to sleep at night, I worked around the clock. My employer had my passport. He is a policeman [a member of the National Guard]. I never got a chance to leave the house. They locked me in from the outside. When I had stayed there for one year, I got a chance to escape, it was a Thursday and I ran out. My condition was bad, my left eye couldn’t see, I was swollen all over. I got a taxi that took me to a police officer.... My employer came to the station and took me back. I refused, I said, “My employer is a bad person.” My employer said, “You haven’t finished your contract yet, it should be two years.” [...] It got worse after I tried to run away.... In the last month I slept in the bathroom.... they put tape on my mouth so I couldn’t say anything because my employers didn’t want the neighbours to know about me.”

Nour Miyati (real name used upon request) *Indonesian domestic worker, Riyadh*

Interviewed by Human Rights Watch December 5, 2006, and March 11, 2008

Why examine the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) in relation to the Middle East as few countries have ratified it in the region? International human rights standards adopted by the United Nations General Assembly after open and lengthy inter-governmental drafting processes do set a norm. Aside from obligations contracted out by State parties to it the ICRMW - which extensively builds on the International Bill of Human Rights - can also be used to shed light on specific rights of migrants and define violations. It provides a framework of reference for research and analysis and can inspire policy changes.

This paper, published by December 18, first studies the distinct characteristics of migration in the Middle East. Hardly any other part of the world includes countries where migrants outnumber the national population. The migration pattern generated by the Law of Return in Israel is also unique. Demographics are further affected by forced migration as the region hosts millions of refugees and internally displaced persons, some for over half a century, and others due to more recent conflicts. Last but not least, the Middle East is also a source of large numbers of emigrants to Europe and North America and experiments substantive intra-regional migration flows. The paper then details some of the main features of the ICRMW and illustrates the use/relevance of the Convention to protect migrant workers in Middle East states that have ratified it - and even non states parties when its provisions are invoked by independent investigation mechanisms. This section includes research findings from international and regional non-governmental organisations (NGOs), United Nations (UN) independent human rights experts, as well as media, government and academic sources. In many respects, the Middle East provides exemplary case studies that demonstrate why a specific human rights treaty to protect migrant workers and members of their families is necessary. Finally, a short section looks at challenges for ICRMW ratification in the region.

As we purport to analyse migration dynamics in the Middle East in light of the ICRMW, the paper primarily focuses on groups of population defined as migrants in the Convention:

The term “migrant worker” refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national [...] “frontier workers”; “seafarers”; “seasonal workers”; “project-tied workers”; “workers on offshore installations”; “itinerant workers”; “specified-employment workers” and “self-employed workers” are included in the ICRMW definition (Article 2)

POPULATION FLOWS IN THE MIDDLE EAST – IN AND OUT-MIGRATION

According to the Population Division of the UN Department of Economic and Social Affairs (UNDESA) there are over 195 million international migrants in the world: the Division indicates that this figure includes some 27 million, primarily in the former USSR, who have had new national frontiers emerge around them after 1990.¹

The Middle East region hosts over 22 million migrants. This represents an average of 8.4% of the population while international migrants represent 2.9% of the world population. In Kuwait, Qatar and the United Arab Emirates (UAE) migrants far outnumber the national population (See Annex I). UAE Ministry of Labour figures of mid-2007 indicate there were 4.5 million foreigners in the country, compared to 800,000 Emirati citizens.² Yet, contrary to other situations where large transmigration movements have dramatically upset previous demographic structures, the rights of nationals, who de facto find themselves in a minority, are not negatively affected by these migration flows whereas the majority – in this case migrant workers – routinely suffers harsh abuse, often in a climate of impunity.

However, UNDESA figures include refugees, which is not helpful for the purpose of this paper. The UN Relief and Works Agency (UNRWA), responsible for Palestinian refugees in the region, gives a figure of 4.6 million refugees under its mandate (1.9 million in Jordan, 422 thousand in Lebanon, 461 thousand in Syria, 762 thousand in the West Bank and one million in the Gaza strip).³ UNRWA figures do not include refugees from other countries. According to the UN High Commissioner for Refugees, government estimates indicate that there are very large numbers of Iraqi refugees in Syria (1.1 million), Jordan (450,000), Lebanon (50,000) and to a lesser extent Egypt, as well as Somali refugees in Yemen.⁴

For the purpose of this paper therefore, a more accurate picture of “economic” migrants in the region is provided by another UN body, the Economic and Social Commission for Western Asia.⁵ According to it, in 2005 there were 5.7 million migrants in the Arab Mashrek⁶ and 12.8 million in the Gulf Cooperation Council States (GCC).⁷ UNDESA gives an overall figure of 2.6 million for Israel out of 6.7 million inhabitants. This reflects the country’s Law of Return and other laws on immigrant eligibility which encourage waves of Jewish immigration. Aside from this, a temporary migrant labour policy implemented in the early 1990s has brought several hundred thousand workers from Asia, Africa and South America, many of whom have stayed. Unofficial estimates by Kav La’ Oved, a non-governmental organization dedicated to worker’s rights, put the number of migrant workers in Israel at about 200,000.⁸

In 2005, the proportion of women migrants was 46 per cent in the “developed” countries across the world. Migration of women to the GCC States was 27.8 per cent. The proportion of migrant women in the labour force is some 34 per cent in Oman, 19 per cent in Bahrain and 22 per cent in Kuwait, while the proportion is lower in Qatar and Saudi Arabia, at 15 per cent. In her report to the June 2009 session of the Human Rights Council, the UN Special Rapporteur on Violence against women reports that according to Government and NGO estimates, in early 2008 the number of women domestic workers in Saudi Arabia ranged from 1 to 1.5 million. The countries of South-East Asia are the major source of women migrants to the GCC States, Jordan and Lebanon, while Indonesia and Sri Lanka are the major source of women migrants to Saudi Arabia and the United Arab Emirates, with women accounting for 90 per cent of all migrants from Indonesia. Most women migrants are in low-skilled jobs and 54 per cent of them have not received primary education. Most of them work in the health, domestic and other services.⁹ About one-third of migrant workers in Israel are women, mostly employed in the 24-hour home health-care industry.¹⁰

The region is also a source of emigration. The International Organisation for Migration compiles statistics and analyses from various sources on a yearly basis.¹¹ According to it, people flows from the Arab Mashrek to GCC states are considerable and mobility between Arab Mashrek countries is also significant. In 2005, 461,211 Syrian citizens left their country to go to Saudi Arabia, the second most popular destination for Syrians after Lebanon (in 2005, 2.45 million Syrian citizens entered Lebanon).

In 2003, an estimated 400,000 Syrians were cross-border commuters, who lived in Syria and worked in Lebanon. In 2005, 1.68 million Lebanese citizens went to Syria, followed by Jordanians, whose numbers increased from 609 to 940 thousand over the 2001-2005 period. Recent data indicate that Europe is increasingly becoming a destination for migrants from Egypt and Lebanon, with stocks [sic] of 127,060 and 111,691 migrants, respectively, followed by Syria with 70,879 migrants. Italy has become a popular destination for Egyptians. In 2006, there were 46,834 Egyptians regularly residing in Italy. The United States of America is another popular destination for Arab Mashrek migrants, with Egypt and Lebanon ranking first and second among countries of origin (113,995 and 105,920 migrants, respectively).

Finally, another type of persons move to the Middle East for work related reasons. They rarely think of themselves as migrants, yet they self-admittedly move for economic reasons. In the international community, they are usually described as “expats” or expatriate experts.¹² The term is often applied to richer and well educated persons who migrate to other parts of the world for work purpose, mostly from North to South. Some argue that the term is used, as opposed to “immigrants”, because it applies to persons who intend to move for short-term periods.¹³ Yet, many such expats remain in host countries for decades while others termed “migrants”, especially poorer Asian migrants in the Middle East, have no intention of settling there.

Although, especially in the Arabic Peninsula, “expats” is at times used by officials and media to describe poor economic migrants and richer ones alike, migration think tanks, academic institutions, UN and other inter-governmental organisations do not collect data on this type of North South migration.¹⁴

“Expats” generally do fit the ICRMW migrant workers definition. This research gap shows that political considerations – deliberate or not - and value judgements at times affect the collection of data on migration flows. Data on expatriates is available from governments of origin or other official sites, reliable media and work abroad agencies.

I've been living in Riyadh for almost two years. I came here because of the expat salary, which enabled me to pay off a mortgage in the UK in one year. Living here will give me financial freedom in the future and allow me to move on to something better. I miss the seasons in the UK. Every day here is the same. I miss the Scottish scenery and sense of humour. I am very grateful for the education, training and opportunity that I was given, that allowed me to work for a better lifestyle.

Stuart Piper, *Technical Manager, Riyadh, Saudi Arabia*, BBC News, Brits Abroad: Middle East web page

For instance there are 187 thousand British expats in the Middle East: the largest number, 55 thousand, live in the United Arab Emirates.¹⁵ There are close to 200 thousand US citizens registered with the consulates and embassies in the Middle East.¹⁶ This figure is based on optional voluntary registration with consulates and embassies and the total number of US citizens abroad is reportedly much higher. Further, it does not include US Government (military and non-military) employees and their dependents.

Members of the expat community are seldom found amongst victims of human rights violations in the region and generally enjoy a much higher level of personal freedom and protection than poor migrants. Their economic status, position in the labour force and nationality generally protects them from exploitation and harassment. A distinct characteristic of expats in the Middle East, as opposed to migrants from Asia, is that they move with their families (except in regions or countries affected by conflicts)

THE ECONOMICS OF MIGRATION

The World Bank estimates that remittances by migrants to developing countries exceeded \$300 billion in 2008 and outstrip private capital flows and official development aid.¹⁷ This includes 34 billion of remittance flows from the Middle East and North Africa to developing countries. Migration generates wealth even though paradoxically, individual migrants, particularly in the Middle East, often experiment life in poverty.

However, as illustrated above, not all non-nationals working in the Middle East live in poverty. According to a recent survey by a leading international bank “People save more when they become expats [...] Expats in Saudi Arabia, Russia and Qatar manage to save more now since moving away from their country of origin than expats in any other country (90%, 97% and 98% respectively).”¹⁸ Expats are usually not included in data on remittances both because they are not viewed as migrants by research institutions, inter-governmental organisations and international financial institutions and also because they are allowed to move with their families and thus do not transfer large shares of their earnings to their home countries.

Migration has also become a thriving business for employment agencies in various guises, both in countries of origin in Asia and in countries of destination in the Middle East. These agencies often violate national laws by charging workers excessive fees for travel, visas, employment contracts and post-departure training at times putting them in debt for years. Some recent inter-governmental initiatives have been launched to curb these abuses. For instance, the Colombo Process is a regional Consultative initiative on the Management of overseas employment and contractual labour for countries of origins in Asia. It was initiated in 2003 and includes 11 Asian countries.¹⁹ Ministerial level consultations have been held with the participation of several countries of destination in the Middle East, including Bahrain, Kuwait, Malaysia, Qatar, Saudi Arabia and the United Arab Emirates.

Remittance flows from the GCC countries are not correlated with the falling oil prices. There have been reports that migrants in Dubai (part of the U.A.E) are being affected by a slowdown in construction and financial services sectors. However, it is important to distinguish between the impact of the crisis on Dubai which is more dependent on trade and finance and real estate than other parts of the UAE and other Gulf Cooperation Council countries which depend primarily on oil revenues. In recent years remittance outflows from Saudi Arabia have been uncorrelated with oil prices. Many GCC countries are following a long term strategy of infrastructure development for which they have funding from large reserves accumulated over the years. It is unlikely that they would slow down infrastructure investments and lay off migrant workers in large numbers.

World Bank, *Revised Outlook for Remittance Flows 2009-2011*

Women reportedly are more consistent than men in sending remittances, and send a larger portion of their earnings back home. Not only do migrants help build and contribute to the wealth of countries in the Middle East, but they also maintain families and relatives left behind in their countries of origin. They often do so at a terrible personal cost. Research indicates that migrants in the region are often held in sub-standard conditions, victims of racism and xenophobia,²⁰ exploited through forced labour and trafficking,²¹ and often held in slavery-like conditions, especially women domestic workers.²² Hardly a week goes by without reports of abuse of migrant workers in the region, including in the media of countries of origin of migrants, mostly in Asia.

Yet migrants have rights. A series of expert studies commissioned by UN bodies throughout the late 1970s and early 1980s led to the codification of international human rights norms to protect migrant workers.

THE CONVENTION ON MIGRANT WORKERS

An international human rights treaty addresses the special vulnerability of migrant workers and members of their families. For many years, it was jokingly known amongst the small number of human rights advocates that campaigned for its ratification as “the best kept secret in the United Nations”.²³ The need for such a treaty much follows the rationale which led to the adoption of specific human rights treaties to protect other sets of persons rendered vulnerable on ground of gender or age: women and children respectively. With 42 ratifications, it far from enjoys the near universal support given to the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. Yet, recognition of the need for human rights instruments to protect specific groups remains a valid concern as demonstrated with the adoption of instruments to protect persons with disabilities and indigenous peoples in 2006.

No Western state has ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which is one of the nine international core human rights treaties.²⁴ The scope of this paper does not allow for expanding on the reasons why Western democracies, often countries of destination of hundred of thousands of migrants do not ratify the ICRMW. Serious research indicates that this is mainly due to lack of political will, self-perpetuated ignorance about ICRMW provisions and main thrust and peer pressure for non-ratification.²⁵ Only Egypt and Syria are parties to it in the Middle East. In what is traditionally described as the Middle East and North Africa region, (MENA), Algeria, the Libyan Arab Jamahiriya and Morocco have ratified it. Turkey, neighbour to MENA ratified it in 2004. A number of states in another grouping relevant to the Middle East, and fairly influential in the UN Human Rights Council, the Organisation of the Islamic Conference, have also ratified this core human rights treaty (including Albania, Azerbaijan, Burkina Faso, Guinea, Kyrgyzstan, Mali, Mauritania, Niger and Tajikistan).

BACKGROUND

The ICRMW was adopted by the UN on 18 December 1990, after a drafting process which began in 1980. Contrary to other human rights treaties, the studies and initiatives which led to the General Assembly decision to draft the Convention were spearheaded by the G77 non aligned movement in the late 1970s. This is worth remembering as the universality of human rights gets challenged and multilateralism loses strength and supporters.

The International Labour Organisation (ILO) has adopted labour standards protecting migrant workers: Convention No. 97 of 1949 (C97) concerning Migration for Employment and Convention No. 143 of 1975 (C143) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers. Both have been complemented by non-binding recommendations. Some countries wanted the drafting of the new Convention to take place at the ILO, but countries of origin argued for the need to look at migrant workers as subjects of a broader set of rights than labour rights, and for the need to expand protection to families of migrant workers.

The drafting process was lengthy, reflecting tensions and divergent perspectives among states. Although the first draft was issued in 1984 discussions went on for another 6 years. In the meantime, the evolution of migration flows and resulting government policies influenced the text. Earlier pro migration countries such as France and the United States of America were faced with increased clandestine migration, and became more conservative, while some traditional countries of emigration began receiving migrants, which modified their attitude. Japan only became a country of immigration in the late 1980s and joined the drafting process during its last stages, becoming fairly influential.²⁶

MAIN FEATURES

The ICRMW consists of nine parts: scope and definitions, non-discrimination with respect to rights; human rights of all migrants (Part III, which also includes the rights of migrants in an irregular situation or “undocumented”); other rights of migrants who are documented or in a regular situation; provisions applicable to particular categories of migrants; the promotion of sound, equitable, humane and lawful conditions in connection with international migration; application of the Convention; general provisions and final provisions. It is a comprehensive international treaty, inspired by existing legally binding agreements, by United Nations human rights studies, by the conclusions and recommendations of meetings of experts, and by the debates and resolutions on the migrant worker question in UN bodies over two decades.²⁷

- The ICRMW bridges a gap in protection due to the situation of vulnerability in which migrant workers and members of their families frequently find themselves owing, among other things, to their absence from their State of origin and to the difficulties they may encounter arising from their presence in the State of employment
- Migrant Workers are viewed as more than labourers or mere economic entities
- The CMW provides, for the first time, an international definition of migrant workers, categories of migrant workers, and members of their families
- Minimum universal human rights standards are guaranteed for all migrant workers, both documented and undocumented
- Further rights are extended to documented migrant workers and members of their families, notably in the equality of treatment with nationals of states and in employment in a number of legal, political, economic, social and cultural areas.²⁸

THE ICRMW: AN ILLUSTRATION OF ITS RELEVANCE FOR THE MIDDLE EAST

The ICRMW draws extensively on the International Bill of Human Rights.²⁹ Most articles on civil and political rights included in Part III of the ICRMW on human rights of all migrants reiterate corresponding articles in the International Covenant on Civil and Political Rights. Corresponding articles on the right to physical and moral integrity and the right to procedural guarantees can be found in the Convention against Torture. Most of them are directly relevant to situations of abuse and human rights violations routinely encountered in the Middle East.

Some rights had not explicitly been articulated in previous human rights instruments as they inherently relate to the protection needs of migrant workers. For instance, it is unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry or stay, residence or establishment in the national territory or work permits (Art. 21).

M.D. Laminiti, a 26-year-old Sri Lankan national, told AI that she had worked in Kuwait for 18 months without being paid. Her employer informed the police that she was pregnant and she was brought to the deportation centre. She had been there with her baby son for five months when AI spoke to her in July 2004. She wanted to go home but could not do so as her employer had retained her passport and would not provide her with a ticket. It is standard practice for employers in the Gulf Cooperation Council countries to take possession of the passports of domestic workers. This may result in domestic workers being detained at deportation centres for weeks or months, while their paperwork is being completed.

Amnesty International, *Gulf Cooperation Council countries: Women deserve dignity and respect*, 2005

The ICRMW also protects the right of migrants to enter their country of origin. In addition, it includes a small number of civil and political rights specific to the condition of migrant workers, such as the right to have recourse to the protection and assistance of the consular or diplomatic authorities of their state of origin whenever the rights recognized under the ICRMW are impaired (Art. 23), and protection against collective expulsion (Arts. 22 and 56).

The UN Committee on Migrant Workers considered the initial report of Egypt in April 2007.³⁰ Its recommendations demonstrate the usefulness and scope of the ICRMW, addressing both the situation of migrants to Egypt as well as issues relating to the situation of Egyptian migrant workers abroad. It advised that consular services respond more effectively to the need for protection of Egyptian migrant workers and members of their families and, in particular, provide the necessary assistance to those in detention and promptly issue travel documents to all Egyptian migrant workers and members of their families who wished or had to return to Egypt. It also advised Egypt to encourage its embassies and consulates to provide assistance to migrant workers who are subject to a “sponsorship” or kafalah system designed to give the sponsor control over them, and that it endeavour to negotiate with the relevant countries of destination with a view to the system being abolished.

Economic, social and cultural provisions of the ICRMW are broadly derived from the International Covenant on Economic, Social and Cultural Rights. Here again, more specific provisions have been included in light of the situation of migrant workers. Upon termination of their stay in the state of employment, migrant workers and members of their families shall have the right to transfer their earnings and savings and their personal effects and belongings (Art. 32). In the event of death, States Parties shall facilitate, whenever necessary, the repatriation to the state of origin of the bodies of deceased migrant workers and members of their families (Art. 71). Again, these are directly relevant to the situation of migrant workers in the Middle East.

Domestic workers are dying in Lebanon at a rate of more than one per week. All those involved – from the Lebanese authorities, to the workers’ embassies, to the employment agencies, to the employers – need to ask themselves what is driving these women to kill themselves or risk their lives trying to escape from high buildings.

Nadim Houry, *HRW senior researcher* ³¹

Among these rights, labour rights are routinely denied to migrant workers. The list of recommendations below provides a clear illustration of the situation faced by many migrants:

Human Rights Watch calls on each candidate [to the June 2009 Parliamentary election in Lebanon] and party to adopt as part of its platform a commitment to:

- Urge the Ministry of Labor to create a labor inspection unit tasked with monitoring working conditions for migrant domestic workers.
- Amend the labor code to provide legal protection for domestic workers equal to that afforded to other workers, including provisions governing hours of work, payment of wages, rest days, paid holidays.
- Reform sponsorship laws that require the consent of the employer to change sponsors. Facilitate transfer of sponsorship by making temporary employment-based visas nonspecific about employer. In addition, grant migrant workers temporary visas (or an alternative to detention) while they have pending legal procedures.
- Enact legislation that sets up a quick and simplified dispute resolution mechanism to settle salary disputes between employers and migrant workers.
- Support efforts to implement judicial oversight of all detention, including that of foreigners, to ensure that no one is detained without legal basis or beyond their sentence.
- Ratify the Convention on the Protection of the Rights of all Migrant workers and Members of their Families.

HRW, *Lebanon’s 2009 Parliamentary Elections – A Human Rights Agenda*

The ICRMW recognizes **non-derogable rights**, such as the right to life (Art. 9); protection from torture or cruel, inhuman or degrading treatment or punishment (Art. 10); freedom of thought, conscience and religion (Art. 12); the right to liberty and personal security and protection against arbitrary detention (Art. 16); freedom from slavery, servitude or forced or compulsory labour (Art. 11) and the right to procedural guarantees (Art. 18). All are directly derived from the International Bill of Human Rights. They are included in the core set of rights applicable to both documented and non-documented migrant workers and members of their families.

Dhaka, May 13. Bangladesh, whose economy depends heavily on remittances from citizens employed abroad, received over 8,000 coffins in the last five years, a report said. Job insecurity, tension at work, poor working conditions and unhealthy food habits have been cited as among the main reasons for the deaths.

The debate over the deaths is on as Prime Minister Sheikh Hasina secured major concessions for Bangladeshi expatriates from Saudi Arabian authorities during her visit earlier this month. Around 44 percent of the Bangladeshi migrant workers who returned home in coffins between January 1 and May 9 this year had died of cardiac arrests in West Asian and Southeast Asian countries, raising serious questions about the living standards of migrant workers in those countries.

Thaindian News, *May 13, 2009*

Not only do working conditions lead to premature and unaccounted death of migrants, but the right to life is also violated with lack of respect for due process of law.

Edirisinghe Jayasooriyage Victor Corea, a migrant worker and a Sri Lankan citizen, was sentenced to death in Saudi Arabia on a charge of theft. According to his family, Mr. Edirisinghe, a married man with two young children who started work in Saudi Arabia in May 1996, had no legal representation at his trial.

Asian Human Rights Commission, *22 March 2005*

The rights to equality before the courts and to a fair trial by an independent and impartial tribunal established by law (Articles 6 and 7 of the UDHR; Article 14 of the ICCPR) are fundamental human rights that apply to all people. Migrants, whatever their status, are entitled to these rights (Article 18 of the ICRMW). They are indispensable for the protection of other human rights, such as the right to freedom from arbitrary detention, freedom from torture or cruel, inhuman or degrading treatment, the right to life, and the right to freedom of expression.³²

Government information also documents abuse:

The Government of Saudi Arabia does not fully comply with the minimum standards for the elimination of trafficking and is not making significant efforts to do so. The government continues to lack adequate anti-trafficking laws, and, despite evidence of widespread trafficking abuses, did not report any criminal prosecutions, convictions, or prison sentences for trafficking crimes committed against foreign domestic workers.

US Department of State, *Trafficking in Persons Report 2007*, Washington, D.C. June 2008

Relevant reports of human rights violations of migrants illustrate the need for such protection:

The NGO Anti-Slavery International has received regular reports of boys as young as four years old being trafficked and exploited as camel jockeys in the United Arab Emirates (UAE). Reports of the use of child camel jockeys were received from races in March 2005. Traffickers abduct or lure young boys away from their families in South Asia and Africa with promises of well-paid work, education and training. But in reality, the boys are kept in brutal conditions, deprived of food and water to keep them light, and subjected to hazardous work racing at speeds of 40-50km per hour. Children have been seriously injured and some have died both as a result of their treatment and from falls during races. Using child camel jockeys has been illegal in the United Arab Emirates (UAE) since 1980.³³

UN independent human rights enquiry mechanisms, the thematic “special procedures” also receive allegations of abuse and report on violations of the human rights of migrants in the Middle East:

At the women’s prison in Riyadh, out of 1,200 inmates, most were foreign domestic workers from Asia and Africa, with the exception of two dozen Saudi nationals. They had been arrested and convicted either for “moral crimes” (adultery, sexual advances, khelwa - an offence under sharia law of being alone in private with an unrelated member of the other sex) or for offences such as stealing, begging, carrying false documentation, or running away. Frequently, women had been picked up by the police or the CPVPV [Commission for the Promotion of Virtue and the Prevention of Vice] for seemingly innocuous acts, such as being on the street or speaking to someone in a supermarket.

Special Rapporteur on violence against women, *Report on country visit to Saudi Arabia, 2008*

Other UN mechanisms to protect human rights, the independent expert bodies set up to supervise the implementation of core human rights treaties, also known as treaty monitoring bodies (TMB,) often make recommendations on the situation of migrants, based on numerous non-discrimination clauses in respective human rights treaties:

Conclusions are more specific when they address more developed countries as this mirrors the level of detail in country reports. There is also a difference in the issues raised according to regions, depending on the level of protection generally given to migrants. TMB conclusions will usually argue for application of relevant treaty provisions to undocumented migrants in European countries, whereas in the Middle East for instance, conclusions recommend a more general and basic protection for legally residing migrants.

December 18, *The UN Treaty Monitoring Bodies and Migrant Workers: a Samizdat, 2007*

Migrant workers in a regular situation have access to specific rights such as the right to be fully informed by their states of origin and employment about conditions applicable to their admission and concerning their stay and the remunerated activities in which they may engage (Art. 37); they can form trade unions (Art. 40); they can participate in public affairs of their state of origin and vote or be elected at elections of that state (Art. 41); and – to some extent – may enjoy political rights in the state of employment (Art. 42). They enjoy the same opportunities and treatment as nationals in relation to various economic and social services (Art. 43).

Qatar nationals have free access to a government-supported health care system while noncitizens must generally pay for services. The labor law stipulates that employers must provide health care for their workers and improves care for expatriates, although these relatively new regulations are not often carried out in practice.

Freedom House, *2009 Gulf Edition, Women Rights in the Middle East and North Africa*

States shall take appropriate measures to ensure the protection of the unity of the families of migrant workers. States Parties may facilitate family reunification according to Article 44. Documented migrants can choose their remunerated activity (Art. 49) and must enjoy the same protection as nationals against dismissals, and are entitled to similar unemployment benefits (Art. 54). Finally, they enjoy guarantees against expulsion (Art. 56).

A key point that emerges [...] is that human movement can be associated with tradeoffs—people may gain in some and lose in other dimensions of freedom. Millions of Asian and Middle Eastern workers in the GCC states accept severe limitations on their rights as a condition for permission to work. They earn higher pay than at home, but cannot be with their families, obtain permanent residence or change employers. Many cannot even leave, as their passports are confiscated on entry. For many people around the world the decision to move involves leaving their children behind.

UNDP, *Human Development Report 2009, Overcoming barriers: Human mobility and development*

As a rule, migrant workers to the Middle East are mostly hired through overseas labour agencies as contract labour for fixed terms and have to leave their families behind. Thus most of them are in regular situations (except situations of “runaway” migrants, or migrants trafficked into the Middle East). This, however, does not guarantee that their rights will be respected, in stark contrast to situations in industrialised countries where the most vulnerable migrants are undocumented.

Even when he succeeded, with the help of the people from Kav La’Oved, to file a complaint against Richard [a manpower agent in Kerala, India, with ties to an employment agency in Israel] and bring about his arrest, his own situation did not change for the better. Since he does not speak English, and certainly not Hebrew, all his requests for work at home healthcare agencies were turned down, while his work permit does not allow him to work legally at any other job. [...] It turns out that there are thousands like them, who were brought to Israel fraudulently, after paying thousands of dollars in their homelands in brokerage fees. Upon their arrival in Israel they quickly discover that it was a fraud. No one is waiting to welcome them at the airport, or they are abandoned on the road after handing over the money. The representatives of the employment agencies in Israel refuse responsibility for them. Their sole purpose in bringing them to Israel, as they learn, is not work but rather exploitation.

Zeruya Shalev, *The Man with no rights*, Haaretz.com, 11 June 2009

Migrant women are protected from discrimination in the application of the ICRMW, which uses inclusive language. Article 1 states that “the present Convention is applicable, except otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex...” Article 2 (1) defines a “migrant worker” as “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a national.”

A 2006 survey of 600 domestic workers in Lebanon conducted by Dr. Ray Jureidini, of the American University in Cairo, found 31 percent of the women saying that their employers did not allow them to leave the home. Many domestic workers who find themselves locked up in Lebanon attempt to escape through balconies or windows. Since January 2007, Human Rights Watch has compiled 24 cases of domestic workers who died as a result of falling from a high-story building. In eight additional cases, the worker injured herself but survived the fall.

However, a major omission in the ICRMW is the lack of provisions addressing the specific problems faced by migrant women; to a certain extent, this also applies to youth.

Women and men performing the same type of work within the private sector must be paid equal wages under Article 27 of the labor law; similar protections exist in the public sector as well. If a woman feels that she has been discriminated against, she may file a complaint directly with the administrative court or MOSAL. However, MOSAL [Ministry of Social Affairs and Labor] lacks qualified staff to handle and investigate discrimination cases, and it has been swamped by a deluge of complaints that has rendered its work almost ineffectual. In 2007 alone, MOSAL received 14,840 complaints from expatriate workers, all related to unpaid wages and benefits. To date, 42 percent of these complaints remain unresolved. Although the penal code generally addresses harassment, no laws specifically protect women from sexual harassment in the workplace despite the urgent need for such legislation, particularly among foreign women and domestic workers.

Freedom House, 2009 *Gulf Edition*, *Women Rights in the Middle East and North Africa*

IMPLEMENTATION OF THE CONVENTION IN THE MIDDLE EAST

International human rights treaties are supervised by bodies made of independent experts. The Committee on Migrant Workers monitors the implementation of the ICRMW. Its dialogue with representatives of Egypt and Syria who presented their initial reports on implementation of the ICRMW at the national level demonstrates how relevant and useful this treaty is for the Middle East.

The Committee considered the initial report of Egypt in April 2007.³⁴ As quoted above, it made recommendations which demonstrate the usefulness and scope of the ICRMW, addressing both the situation of migrants to Egypt as well as issues relating to the situation of Egyptian migrant workers abroad. It advised that consular services respond more effectively to the need for protection of Egyptian migrant workers and members of their families and, in particular, provide the necessary assistance to those in detention and promptly issue travel documents to all Egyptian migrant workers and members of their families who wished or had to return to Egypt. It also advised Egypt to encourage its embassies and consulates to provide assistance to migrant workers who are subject to a “sponsorship” or kafalah system designed to give the sponsor control over them, and that it endeavour to negotiate with the relevant countries of destination in order to abolish the system.

Concerning migrant workers to Egypt, very practical recommendations were made that, if implemented, would considerably improve the situation of migrants. Their broad spectrum shows that drafters of the ICRMW were well inspired to craft an instrument that also covers the human rights of family members. The situation of women and children is extremely dependent on conditions meted out to male migrants. (It is worth noting here that large number of women migrate from Asia to the Middle East, leaving their children and husbands behind, a separation that puts an added strain on their lives and wellbeing and often puts children at risk).

Recommendations to Egypt included training for all officials and judicial personnel working in the area of migration, in particular police and border personnel; legislation and practice; non-discrimination; the right to file complaints and have access to redress mechanisms; that passports be issued to all women without the permission of any third party; equal treatment in respect of remuneration and conditions of work and employment; the right to a name for children and registration at birth; access to schools; migrant domestic workers; and that it needs to adopt specific anti-trafficking legislation.

The Committee considered the initial report of the Syrian Arab Republic in April 2008. The Committee noted the State party’s recent efforts to improve the situation of non-Arab migrant workers with regard to the enjoyment of some of their rights.

It recommended that Syria ensure equal access to information concerning their rights under the ICRMW to both Arab and non-Arab migrants; consider policies under which the detention of migrant workers in an irregular situation would generally be envisaged only as a measure of last resort and that, in all circumstances, necessary law enforcement measures, including deportation, would be carried out with respect for due process; provide adequate training to all judicial personnel and law enforcement officials on respect for human rights and non-discrimination on ethnic or racial grounds and on the rules of due process in connection with detention and deportation; ensure that private employers comply with the rule that the passports of migrant workers may not be withheld for any reason; and reconsider its current policy of limiting the amount of remittances allowed to be made by migrant workers in the Syrian Arab Republic. Finally the Committee recommended the adoption of the draft law on trafficking in persons.”³⁵

The Committee's oversight exercise is an excellent illustration of the relevance of the ICRMW to the situation of migrant workers in the Middle East. But even when states do not ratify the Convention, it can have an impact. For instance, a 2006 visit by the UN Special Rapporteur on human trafficking to Bahrain, Oman and Qatar identified many abusive practices, including confiscation of passports and other identity documents, restrictions on freedom of movement, denial of leave, non-payment of wages and overtime work and long working hours. Without a clear definition of these acts in the ICRMW (and other core international human rights treaties), the Rapporteur would have been on less solid ground to characterize these abuses. She did recommend that the countries ratify the Convention, as well as the relevant ILO instruments, in order to prevent recurring violations.³⁶

The broad array of thematic independent enquiry mechanisms created by the former UN Commission on Human Rights - the "special procedures"- which now report to the Human Rights Council, also base their work on instruments such as the Convention, and regularly use some of its provisions for leverage.

The Special Rapporteur on human trafficking visited Lebanon in 2005 and made requests for visits to Kuwait, Saudi Arabia and the United Arab Emirates, but these are still pending. The Special Rapporteur on the human rights of migrants requested to visit Bahrain. Saudi Arabia did accede to a request by the Special Rapporteur on violence against women for a visit which took place in early 2008. In her report, she noted that recognition of violence against domestic migrant workers continued to be problematic among the population as well as the authorities. She recommended that Saudi Arabia ratify the two International Covenants and the ICRMW. She also recommended that the general reservation to the Convention on the Elimination of All Forms of Discrimination against Women be lifted. This last series of recommendations hits the nail on its head.

A recent addition in the United Nations human rights toolbox, the Universal Periodic Review adopted by the Human Rights Council, has provided a venue for questions by UN member states on the protection of the rights of migrant workers. Jordan, Saudi Arabia and the UAE have already been reviewed. They received many specific recommendations and the UAE were asked to ratify the Convention.

TAKING THE RISK TO PROTECT MIGRANT WORKERS : A NORTH-SOUTH PARADOX

Even though provisions of international human rights and labour standards can be invoked in dialogue with governments by UN mechanisms or in bilateral governmental discussions, ratification of relevant standards remains the cornerstone of a solid and lasting protection system for migrant workers. Some of the worst abuses of migrant workers occur in the Middle East, in particular in the Gulf States and numerous efforts have been made to encourage governments in the region to ratify the Convention.

The scope of this paper does not allow for looking at some of the flows and weaknesses of the ICRMW.³⁷ Aside from the relatively low level of ratification of human rights treaties as a whole, human rights defenders face another difficulty when trying to advocate for ratification of the ICRMW.

Ratification campaigns for the Convention on Migrant Workers in the Middle East have limited clout when Western States themselves do not ratify it. What better (or rather worse) example of double standards in the use of human rights norms and tools? It is extremely unhelpful that countries which saw the need for and supported the creation of the United Nations; actively drafted the Universal Declaration of Human Rights and treaties that fleshed it out; and supported the creation of a whole array of UN independent enquiry mechanisms stop short of upholding the one instrument that protects the human rights of migrant workers. NGOs have argued that the lack of ratification of the ICRMW by Western states has been instrumental in the perception of double standards in human rights issues.

This instrument would help them protect non-citizens who often are victims of racism, xenophobia, labour exploitation and other abuse in many industrialized countries. In this respect it is encouraging that the High Commissioner for Human Rights Navanethem Pillay, announced in September 2009 that promoting a human rights based approach to migration would be one of the priorities of her office for 2010-2011.

As mentioned in the introduction, serious research indicates that obstacles to the ratification of the Convention in Western countries are chiefly of a political nature³⁸. If scores of countries in the South with serious problems with the rule of law, impunity, abuse and torture have come forth over the years and ratified the Convention against Torture, the North could easily ratify the ICRMW. Western host governments often object to ICRMW provisions on rights enjoyed by all migrants, including those in irregular situation (undocumented migrant workers). These provisions, however, largely come from non-discrimination clauses in other human rights treaties long ratified by Western countries or relate to customary humanitarian and emergency practices.

In the meantime, Western companies, universities and museums risk adding to the plight of migrant workers in the Gulf Countries. They race to set foot on far away shores and invest in the construction of beautiful buildings in the deserts of the Arabic Peninsula, at the expense of modern slaves: third millennium migrant construction workers, overwhelmingly men from South Asia, many of them illiterate and from impoverished rural communities. Institutional and government supporters of the new Louvre and the new Guggenheim should be reminded that the pyramids also were the invisible tombs of thousands of poor peasants forcibly enrolled for their construction. But for this, they need the commitment of governments: their own, those of countries of origin and those in the region to protect the human rights of migrant workers.

CONCLUSION

As demonstrated in this paper, documented evidence of the type and extensive scope of violations routinely suffered by millions of migrants in the Middle East make corresponding provisions in the ICRMW particularly relevant for the region. This treaty provides a unique catalogue of rights for a population rendered particularly vulnerable as it takes up employment away from home.

It is a tool for improvement of the situation by countries that have ratified it and can thus benefit from constructive dialogue with the supervisory body for the Convention. The International Community just celebrated the 20th Anniversary of the Convention on the Rights of the Child. Scores of conferences and publications emphasizing how pivotal these treaties have been to help governments and institutions who now view children as subject of rights and have adapted their legislation, policies and practice to implement gender justice. The ICRMW celebrates its 20th anniversary in 2010: migrant workers in the Middle East also have a right to be effectively protected.

ANNEX I:

MIGRANTS IN THE MIDDLE EAST: STATISTICS

Country or area	Total Population (thousands)	Migrant stock		Number of refugees a/ (thousands)
		Number (thousands)	Percentage of population	
	2005	2005		2004
	(1)	(2)	(3)	(4)
World	6 464750	190634	2,9	13 469
Bahrain	727	295	40,7	..
Cyprus	835	116	13,9	1
Egypt	74 033	166	0,2	90
Iraq	28 807	28	0,1	46
Israel	6 725	2 661	39,6	1
Jordan	5 703	2 225	39,0	1 778
Kuwait	2 687	1 669	62,1	2
Lebanon	3 577	657	18,4	401
Occupied Palestinian Territory	3 702	1 680	45,4	1 635
Oman	2 567	628	24,4	0
Qatar	813	637	78,3	0
Saudi Arabia	24 573	6 361	25,9	241
Syrian Arab Republic 19 043	19043	985	5,2	437
Turkey	73 193	1 328	1,8	3
United Arab Emirates	4 496	3 212	71,4	0
Yemen	20 975	265	1,3	66
Total Middle East	272 455	22 913		

Source: UN Department of Economic and Social Affairs , Population Division

FOOTNOTES

¹ “Because of the effect of the disintegration of major States, there is an unavoidable discontinuity in the global estimates. Between 1980 and 1990, the estimated number of international migrants increases by 56 million, rising from 99 million to 155 million. Yet 27 million of that increase stems from the reclassification of persons who had moved inside the USSR before 1990 as internal migrants and who became international migrants at the time of disintegration without moving at that time. This discontinuity needs to be taken into account in analyzing trends derived from the accompanying estimates. In 2005, international migrants constituted nearly 3 per cent of the world’s population, up from 2.9 per cent in 1990. But between 1960 and 1980 the share of international migrants had been declining, dropping from 2.5 per cent in 1960 to 2.2 per cent in 1970 and 1980. The sharp increase between 1980 and 1990 owes much to the effects of the disintegration of the USSR.”

United Nations, Department of Economic and Social Affairs, Population Division, Trends in Total Migrant Stocks: the 2005 Revision,

² Human Rights Watch, UPR Submission, United Arab Emirates July 2008

³ United Nations Relief and Works Agency, June 2009

⁴ United Nations High Commissioner for Refugees, Sub-Regional Operations Profiles – Middle East

⁵ Economic and Social Commission for Western Asia (ESCWA), International Migration and Development in the Arab States, United Nations, 2007

⁶ Egypt, Iraq, Jordan, Lebanon, the Occupied Palestinian territories, Syria and Yemen

⁷ Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates

⁸ Migration Policy Institute (MPI), Country Profiles, Israel: balancing demographics in the Jewish State

⁹ ESCWA, Ibid.

¹⁰ MPI, Ibid.

¹¹ International Organisation for Migration, World Migration 2008, Middle East

¹² Andrew Kureth, When an expat is an immigrant, Journal of Polish American Affairs, 20 August 2007

¹³ Marinette Matthey, Catégories d'étrangers.«Expats», «Secondos» ou migrants? in Terra Cognita 3/2008 - Identités - Identità, Revue Suisse de la migration et de l'intégration, Confédération Suisse,

¹⁴ The author contacted the UN Population Division and the Migration Policy Institute for such data in 2004/2005 and was told that this type of data was not collected.

¹⁵ BBC News website, Brits Abroad, Source: Institute for Public Policy Research

¹⁶ the Bureau of Consular Affairs, Americans Registered Abroad By Post, Overseas Digest, July 1999

¹⁷ World Bank, Migration and Development Brief 9, March 2009

¹⁸ HSBC Bank International, Expat Explorer Survey 2009, Report One: Expat Economics

¹⁹ Afghanistan, Bangladesh, China, India, Indonesia, Nepal, Pakistan, the Philippines, Sri Lanka, Thailand and Vietnam. See Colombo Process website.

²⁰ Ray Jureidini, Migrant Workers and Xenophobia in the Middle East, UNRISD, 2003

²¹ International Labour Office The cost of coercion, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2009

²² Human Rights Watch, Middle East: Move Quickly on Labor Reforms for Migrant Women, 2008

²³ The term was coined by Catholic scholar Graziano Battistella, who participated in the drafting of the Convention for the Holy See and carried out extensive research on migration in Asia

²⁴ The International Convention on the Elimination of All Forms of Racial Discrimination (1965, entered into force in 1969); the International Covenant on Civil and Political (1966, entered into force in 1976); the International Covenant on Economic, Social and Cultural (1966, entered into force in 1976); the Convention on the Elimination of All Forms of Discrimination against Women (1979, entered into force in 1981); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984, entered into force in 1987); the Convention on the Rights of the Child (1989, entered into force in 1990); the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990, entered into force in 2003); The Convention on the Rights of Persons with Disabilities (2006, entered into force in 2008) and the International Convention for the Protection of All Persons from Enforced Disappearance (2006, not yet into force)

²⁵ UNESCO, Country Reports on the Ratification of the UN Migration Convention: UNESCO Publications

- ²⁶ Graziano Battistella, “La naissance d’une Convention: les difficiles relations entre migrations et droits de l’homme”, in *Hommes & Migrations*, No 1271, January-February 2008,
- ²⁷ Office of the United Nations High Commissioner for Human Rights, Fact-Sheet No 24 (Rev.1), *The International Convention on Migrant Workers and its Committee*, 2005
- ²⁸ December 18, International NGO Platform on the Migrant Workers’ Convention, *A Guide for Non-Governmental Organisations on the Implementation of the UN Migrant Workers’ Convention*, Updated, 2007
- ²⁹ This section elaborates upon: Mariette Grange, *Strengthening Protection of Migrant Workers and their Families with International Human Rights Treaties – A do-it-yourself Kit*, International Catholic Migration Commission, 2006
- ³⁰ Report of the Secretary-General, *Protection of Migrants*, Sixty-second session, General Assembly, 2007
- ³¹ Human Rights Watch, *Lebanon: Migrant Domestic Workers Dying Every Week*, August 2008
- ³² Amnesty International, *Living in the Shadows – A primer on the human rights of migrants*, 2006
- ³³ Anti-Slavery International, *Trafficking and forced labour of children in the Gulf region*, submission to the UN Commission on Human Rights, Working Group on Contemporary Forms of Slavery, Geneva, 6-10 June 2005
- ³⁴ Report of the Secretary-General, *Protection of Migrants*, Sixty-second session, General Assembly, 2007
- ³⁵ Report of the Secretary-General, *Protection of Migrants*, Sixty-Third session of the General Assembly, 2008
- ³⁶ Report of the Special Rapporteur on trafficking in persons, especially women and children, Sigma Huda Mission to Bahrain, Oman and Qatar , April 2007
- ³⁷ It is too long, the UN remained silent on it for 6 years after its adoption etc. see Mariette Grange and Marie d’Auchamp, *Role of civil society in campaigning for and using the ICRMW* in Paul de Guchteneire, Antoine Pecoud, , Ryszard Cholewinski, (Eds) *Migration and Human Rights: The United Nations Convention on Migrant Workers’ Rights*, Cambridge University Press/UNESCO Publishing, December 2009
- ³⁸ Paul de Guchteneire, Antoine Pecoud, , Ryszard Cholewinski, (Eds) *Migration and Human Rights: The United Nations Convention on Migrant Workers’ Rights*, Cambridge University Press/UNESCO Publishing, December 2009

ABOUT DECEMBER 18

The mission of December 18 is to promote the protection of the rights of migrants worldwide.

Our goal is to ensure that the human rights of all migrants are known, recognized and protected effectively, and that an environment is created for migrants to be full participants in any society.

We promote an approach to migration policies that is based on existing international and regional human rights instruments and mechanisms.

DECEMBER 18



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