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Gulf Cooperation Council (GCC) countries:



Women deserve dignity and respect

1 INTRODUCTION

“In our society, a woman who puts up with violence committed against her and does not complain is regarded as a ‘great woman’... We, and organizations such as Amnesty International, must work together with governments to ensure that women are protected from violence and change this reality”
Rania al-Baz, activist and a survivor of domestic violence.

A woman in Bahrain was left without adequate housing after police failed to prosecute her husband for beating and threatening her. Married at the age of 19, she remained silent about the abuse for several years because she knew she was expected to put up with the violence. When she did finally ask for a divorce, her husband assaulted her so severely she was hospitalized for 10 days. Despite her extensive injuries, the police took no action against her husband.

“I have been working...for two years and two months, but have not been paid a penny”, a domestic worker from Indonesia told Amnesty International after she was imprisoned in Qatar. “When I told my employer I would complain to the police, she immediately took me to the police. I was detained...for three days before they brought me to prison. I have been to court six times. I have no lawyer and don’t know what is happening. No one has visited me.”

Two women, one from India, the other from Indonesia, were each sentenced to one year’s imprisonment and 100 lashes in Ras al-Khaimah Emirate, the United Arab Emirates (UAE), for becoming pregnant outside marriage. The men responsible for their pregnancies were not arrested or charged with any offence.

These are just some of the women who have experienced violence and discrimination in the countries of the Gulf Cooperation Council (GCC) – Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates (UAE). They have been subjected to violence not only because they are women but also as migrant domestic workers unable to access the protection of the law. Failures of governments, the law and the justice systems in these countries increase their risk of gender-based violence from employers and other private individuals. Discrimination also hampers their ability to escape violence, and hinders their chances of gaining redress for abuses they have suffered.

1.1 Focus of this report

This report is part of a project to analyse and research discrimination and violence against women in the GCC countries. In July and August 2004, Amnesty International (AI) delegates carried out research in Bahrain, Kuwait, Oman, Qatar, and the UAE. They spoke to women in these countries, including foreign nationals, mainly female domestic workers living and working there. They met non-governmental organizations (NGOs), lawyers, judges, government

officials, and human rights activists, including those focusing specifically on women's rights. In most of the countries, they were able to visit prisons and interview women prisoners.

Despite repeated requests, AI was not given access to visit Saudi Arabia. Nevertheless, women activists, human rights defenders, and victims from Saudi Arabia have provided information about discrimination and violence against women in the country. On the basis of these interviews, AI has been able to build on earlier research findings about the ill-treatment of women in Saudi Arabia.

The introduction of this report describes the work being done by AI and local activists to address the issue of violence and discrimination against women in the GCC countries. Section 2 highlights key areas of international human rights law on violence and discrimination against women, and states' constitutional provisions on discrimination against women, and states' responsibilities in relation to human rights abuses by private individuals. Section 3 examines violence against women in the family in the GCC countries and the failure of public authorities, particularly the police, to provide protection. Section 4 argues that discrimination and various legal measures and social practices facilitate and perpetuate violence against women, and block their escape from violence in the home. The report examines in Section 5 the situation of migrant domestic workers, including violence against them, the multiple forms of discrimination they face, violations by the authorities, and abuses by employers. Section 6 details the framework of international human rights law and standards on violence and discrimination against women. The report concludes in Section 7 with a set of recommendations to the GCC countries for improving the situation of women, both nationals and migrant domestic workers.

This report reveals some of the multiple forms of discrimination faced by women in the GCC countries. It shows that discrimination affects women in many aspects of their lives, substantially impairs their dignity as human beings and prevents them from enjoying their full human rights. The report focuses on aspects of discrimination and violence against women in the family and domestic sphere as well as in public life. It shows that laws and practices regulating women's freedom, and restricting their

liberty and their access to justice and to protection mechanisms, directly contribute to violence. This violence may be committed by public officials or other agents of the state or by private individuals such as husbands and fathers or other "non-state actors".¹

AI has gathered evidence of how discrimination and gender-based violence affect women who are nationals of the GCC countries, and migrant women workers – in particular domestic workers. Violence in the domestic sphere encompasses family violence, which may be committed by members of the birth family, including fathers and brothers, or by husbands on marriage. However, the domestic space is also a sphere of work for women – particularly for women migrant domestic workers.

This report analyses personal status laws, which deal with family related issues such as marriage, divorce, custody and inheritance. In particular it analyses laws on marriage and divorce, and shows how they discriminate against women in practice, making it almost impossible for women to escape violence without major personal sacrifices. The report also discusses discriminatory elements of nationality laws and access to education, employment and political participation, which affect women's ability to escape violence or which perpetuate such violence. It shows that, although the numbers of women in education are rising across the GCC countries, the level of participation in the workforce by women who are nationals of the GCC countries remains very low.

Foreign nationals constitute a significant proportion of the workforce in the GCC countries. They occupy positions across the entire workforce and include

¹ The term "non-state actor" encompasses people and organizations acting outside the state, its organs and its agents. It includes not only individuals but also corporate bodies and corporations or other structures of business and finance. Abuses by non-state actors that infringe an individual's human rights can range from the actions of a violent husband, for example; to cruel, inhuman and degrading punishments inflicted by a group that exerts authority within the community such as a parallel legal authority; or to killings by a group acting unlawfully, such as a criminal gang or an extremist religious group.

health workers, teachers, bankers and other professionals. Some of these professionals are women, but a large proportion of women migrant workers are in insecure, low-paid domestic work. Women non-nationals living and working in the GCC countries such as migrant domestic workers face multiple forms of discrimination. They are denied rights accorded to citizens, and face discrimination both as workers and as women. Many women domestic workers are not accorded rights as workers and are at high risk of harassment, exploitation and violence at the hands of their employers. They are also at risk of being subjected to violations by the state.

1.2 AI's worldwide campaign: Stop Violence Against Women

AI launched a worldwide campaign to Stop Violence Against Women (SVAW) in March 2004. One particular focus of the campaign is the link between discrimination, particularly discriminatory laws, and violence against women. Accordingly, one of its goals is to combat discrimination, particularly by campaigning for the reform of laws that discriminate against women.

As part of this campaign, a project was devised to examine violence and discrimination in the GCC countries. It consists of four main parts: visits to a number of countries to conduct research; a report based on that research; a conference with activists in the GCC countries to discuss violence and discrimination; and worldwide campaigning by AI's membership and activists in the region to combat violence and discrimination against women in the GCC countries. With these contributions to regional and national activism, AI also seeks to support the efforts of civil society institutions in the GCC countries and enhance their capacity to undertake more effective campaigning and lobbying on the rights of women.

This report, a key part of the project, aims to challenge the discriminatory laws and practices in the GCC countries that impede women's enjoyment of human rights and their access to justice, and that facilitate violence against women. It seeks to strengthen the campaign for legal reform and to stop violence against women.

During the drafting of the report, AI organized a conference on combating discrimination and violence in the GCC countries, to open a space for debating the issue among concerned parties in the region. The conference, on 8 and 9 January 2005 in Bahrain, was the first of its kind in the GCC countries. It involved the broad participation of NGOs, women's organizations, lawyers, activists, academics and journalists. Discussions focused on violence against women and the discrimination against women that facilitates it. The conference made practical recommendations to the GCC countries aimed at improving the situation of women (see Appendix).² These were submitted by AI to the Secretariat of the GCC, but no response had been received by the end of April 2005.

Participants at the end of the SVAW Conference, January 2005. © PRIVATE

1.3 Activists oppose violence and discrimination against women

Women, human rights activists and other NGOs in the GCC countries have been increasingly lobbying governments to address violence against women, and to change discriminatory laws and practices that erode women's rights. Some governments in the GCC countries have signalled their intention to improve the situation of women in the region.

The discourse among activists and NGOs in the region focuses on the need to tackle violence against

² See also Amnesty International, *Gulf States: Letter to the Gulf Cooperation Council (GCC) on the recommendations of the "Conference on Violence and Discrimination against Women in the GCC"* (AI Index: MDE 04/003/2005), News Service No. 42, 21 February 2005.

women, to ensure women's enjoyment of political rights, to increase women's participation in public life, and the need for equitable personal status laws in those countries where they do not exist.³ For example, in Bahrain, women's NGOs are continuing to campaign for a unified personal status law that would safeguard their rights.⁴ Recently the High Council for Women's Affairs in Bahrain told AI that it is working on a draft personal status law, and will ask the government to take the appropriate measures to present the draft to the legislature. NGOs in Bahrain have also campaigned on women's political rights.

NGOs in Bahrain have also been active on the issue of violence against women. They have provided a hotline telephone number for abused women to call, and other NGOs are seeking to open shelters for abused women and domestic workers.

In Kuwait, women activists have been challenging the legality of the election law for years. On 20 February 2005, the Kuwaiti government announced that in May 2004 it had presented a draft resolution before parliament to amend the Electoral Law and to grant Kuwaiti women the right to vote and to stand as candidates in parliamentary elections.⁵ As this report goes for publication, the shura council (parliament) in Kuwait is still debating the bill.

Kuwaiti activist, Dr Roula al-Dashti, among around 500 activists protesting in front of the Kuwait National Parliament building on March 7, 2005 calling for female suffrage. © REUTERS

³ Personal status laws currently exist in Kuwait and Oman; Qatar and the UAE have draft personal status laws.

⁴ Women's NGOs in Bahrain call for a unified personal status law that applies to both Sunni and Shi'a sections of society.

⁵ BBC, February 2005.

In some of the GCC countries, governmental institutions have been set up to support women and families. For example the Family Consultation Centre in Qatar has a hotline number to receive complaints and offer advice. Other institutions include the Supreme Council for Family Affairs in Qatar, which has embarked on programmes aimed at raising awareness and educating women on their legal rights. The High Council for Women's Affairs in Bahrain recently announced at a press conference that it is embarking on a women's empowerment programme.⁶ The programme was reported to be aimed at raising women's legal awareness, empowering women politically to prepare them for future elections, and training women to enhance their ability to enter the labour market.

Activists in the GCC countries are engaged in debates on a broad range of issues, including women's political rights, dress codes, and whether women should cover their faces. For example, in Qatar, there are many debates in the media about whether covering a woman's face is an obstacle to her working life or whether she can be an active member of the community or a working woman if her face is covered.

In Saudi Arabia, activists and government officials recently started discussing openly in the press how to promote the role of women. On 15 June 2004, at the Third National Dialogue Conference, focusing on "Women's Rights, Duties and Education", a number of women activists and government officials met to discuss women's rights. Participants produced a set of 19 recommendations aimed at improving the civil and political rights of women in Saudi Arabia, which were presented to Crown Prince 'Abdullah. They called for the introduction of a national body to deal with women and family affairs, and the drafting of a national charter to address women's rights, within the framework of Shari'a based rules, and their duties and their role in the family and society. Conference participants recommended the introduction of women's sections in courts to resolve family cases, and strengthen women's access to justice. They also called for improvements in the public transport system to increase women's freedom of movement,

⁶ Bahrain TV, 24 January 2005, Bahrain Tribune, 25 January 2005.

and for women's education to be tailored to the demands of the employment market.

The National Human Rights Association in Saudi Arabia has been increasingly tackling the issue of violence against women, and have carried out activities and seminars on domestic violence and human rights awareness aimed at creating a human rights culture.

One of the practical challenges that face these NGOs and activists in the GCC countries is the fragile nature of civil society institutions; activists are not always allowed to form NGOs freely and often rely on their individual efforts. Other challenges include a lack of a human rights culture, and lack of necessary training for activists and NGOs.

2 CONSTITUTIONAL EQUALITY PROVISIONS AND KEY INTERNATIONAL LEGAL PROVISIONS ON VIOLENCE AND DISCRIMINATION AGAINST WOMEN

2.1 Constitutional provisions

The constitutions of some of the GCC countries contain equality provisions.⁷ For example Article 35 of the Qatari Constitution provides that: *"All persons are equal before the law and there shall be no discrimination whatsoever on grounds of sex, race, language, or religion."* Article 18 of the Bahrain Constitution provides that: *"People are equal in human dignity, and citizens are equal before the law in public rights and duties. There shall be no discrimination among them on the basis of sex, origin, language, religion or creed."* Article 17 of the Oman Constitution provides that: *"All citizens are equal before the Law, and they are equal in public rights and duties. There shall be no discrimination between them on the grounds of gender, origin, colour, language, religion, sect, domicile or social status."*

However, some constitutional provisions for equality are vague and general, and do not mention specifically equality between men and women, or are

qualified. Article 25 of the UAE Constitution provides simply that people are equal before the law, and that there is no discrimination on grounds of origin, religion, race or creed.

The position on equality in the Kuwaiti Constitution is less clear. The Arabic version of Article 29 of the Kuwaiti Constitution states that all people are equal in human dignity and in public rights and duties before the law, without distinction to origin, language, religion, or *"jins"*. It uses the word *jins*, which can be interpreted to mean gender or race. However, in the official English version of the Constitution, the word *jins* has been translated as "race". It states that *"all people are equal in human dignity and in public rights and duties before the law, without distinction to race, origin, language, or religion."*

The Basic Law in Saudi Arabia is silent on the question of women. It does not contain any reference to women or gender equality.

Even where constitutional provisions refer specifically to gender equality, such provisions for equality are not reflected in, or are clearly contradicted by, specific laws and practices. For example, in all of the GCC countries, laws dealing with the rights and responsibilities of spouses regarding marriage contracts, their dissolution, and custody of children fail to provide for equality between men and women in practice.

2.2 Obligations under international law

The principle of non-discrimination in the enjoyment of human rights, and in particular the equality of rights of men and women, is a fundamental principle of international human rights law and is found throughout the whole body of international human rights law and standards, including the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the UN Charter.⁸ It is so fundamental that it is one of the rights that cannot be set aside (derogated from) in any circumstances.⁹

⁷ Saudi Arabia has a Basic Law; the UAE has a temporary constitution; and Bahrain, Kuwait, and Oman have constitutions fully in force. Qatar's constitution is expected to be in force in June 2005.

⁸ UDHR, Article 2, ICCPR, Articles 2(1), 4(1) and 26; ICESCR, Articles 2(2) and 3; UN Charter, Articles 1(3), 13(1)(b) and 55(c).

⁹ See, for example, ICCPR, Article 4(1).

The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) focuses specifically on eliminating discrimination. Article 1 of the Convention, defines discrimination against women as: “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

Under Article 2 of CEDAW states parties undertake to ensure the equality of men and women in national law and practice, to establish legal protection of the rights of women on an equal basis with men, to prohibit discrimination in law and modify all existing laws, regulations, customs and practices which constitute discrimination against women, to ensure that organs of the state and public authorities and institutions do not discriminate against women, to take all appropriate measures to eliminate discrimination by other bodies and by individuals, and to ensure that women have effective protection, enforceable in the courts, against discrimination.

In its assessment of national achievements and challenges with regard to the commitments made at the Fourth World Conference for Women held in Beijing in 1995, the Sultanate of Oman, for instance, has recognized that gender-based discrimination in law and in the legal sphere continues to pose a challenge which must be addressed:

“The main future goals set by those concerned with this aspect [of ‘Women and Legislation’] are as follows:

1. To propose the amendment of various legal texts in order to grant women improved rights;
2. To close the gap between the law and its enforcement in regard to women’s rights;
3. To increase legal awareness among both sexes.”¹⁰

¹⁰ Oman Response to the Questionnaire on Implementation of the Beijing Platform for Action (1995) and the Outcome of the Twenty-Third Special Session of the General Assembly (2002),

All the GCC countries with the exception of Oman and Qatar have ratified CEDAW. The UAE acceded to it in October 2004 without reservations, although, so far as AI is aware, has not to date introduced plans to revise its domestic legislation to eliminate discrimination, as it is obliged to do under Article 2(f). When Kuwait, Bahrain, and Saudi Arabia ratified the Convention, however, they each made reservations or declarations that exclude or diminish the domestic applicability of the treaty, and run contrary to the spirit of the Convention. Under Article 28(2), reservations that are incompatible with the “object and purpose” of the Convention are not permitted.¹¹ Most of these states’ reservations, however, relate to the very purpose of the Convention, to eliminate discrimination and protect women from it. This includes reservations relating to the nature of state parties’ obligations, and other core provisions of the Convention related to equality. These reservations, coupled with discriminatory national laws and practices, have a direct effect in undermining the rights of women that are the focus of the Convention and that it is intended to guarantee, including protection from violence and discrimination, and women’s ability to access justice or to obtain redress.

Countries that have entered reservations to CEDAW argue that it conflicts with national legislation and Shari’a. AI takes no position on religiously-inspired law, although it notes that a number of states have used human rights law in conjunction with principles enunciated in Shari’a-based rules.

The CEDAW Committee, charged with overseeing states’ implementation of their obligations under CEDAW, has stressed repeatedly that states should take into consideration the overall effect of each reservation on the integrity of the Convention, to determine if the reservation is compatible with its object and purpose. The Committee has also stressed that Articles 2 and 16, which have been widely subject to reservations in the Middle East and North Africa, are core provisions of the Convention. In AI’s view, reservations to these provisions lodged on the

<http://www.un.org/womenwatch/daw/Review/responses/OMAN-English.pdf>

¹¹ For more details see AI, *Reservations to the Convention on the Elimination of All Forms of Discrimination against Women - Weakening the protection of women from violence in the Middle East and North Africa region* (AI Index: IOR 51/009/2004), 3 November 2004.

basis of national, traditional, religious or cultural reasons are incompatible with the Convention and should be reviewed and modified or withdrawn.

AI is calling on those GCC countries that have not yet ratified CEDAW – namely Oman and Qatar – to do so without reservations. Those that have ratified with reservations, namely Bahrain, Kuwait, and Saudi Arabia, should implement the Committee's recommendations to lift or modify the reservations, particularly those that are clearly incompatible with their fundamental obligations under the treaty. AI calls on the UAE, which ratified the Convention in October 2004, to modify its national laws and practices to ensure that its obligations under the Convention are met. AI also calls on all GCC countries to join the Optional Protocol to the Convention, which enables individual women or groups of individuals to submit complaints to the Committee about violations of their rights under the Convention.¹²

The UN Declaration on the Elimination of Violence against Women, adopted in 1993 by consensus (without a vote) by the UN General Assembly, including all the GCC countries, refers in its preamble to the interconnection between violence against women and discrimination in their enjoyment of human rights.¹³ It recognizes that violence against women is an obstacle to the achievement of equality and to the full implementation of CEDAW, and “constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms”. It states that “violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men”.

Gender-based violence against women in the home has been defined as “violence perpetrated in the domestic sphere which targets women because of

¹² For more details, see AI, *Reservations to the Convention on the Elimination of All Forms of Discrimination against Women* (op. cit).

¹³ UN General Assembly resolution 48/104 of 20 December 1993.

their role within that sphere or as violence which is intended to impact, directly and negatively, on women within the domestic sphere”.¹⁴ According to the Special Rapporteur on violence against women, an independent expert appointed by the UN Commission on Human Rights, gender-based violence within the family includes woman-battering, marital rape, violence against domestic workers, violence against girls, and traditional violent practices against women such as forced marriage, female genital mutilation, “honour crimes” and restrictions on women's freedom of movement.¹⁵

The UN Declaration on the Elimination of Violence against Women states that “physical, sexual and psychological violence occurring in the family [includes] battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation” (Article 2a).

Violence against women incurs the responsibility of states under the prohibition on torture or cruel, inhuman or degrading treatment in international law. International bodies such as the UN have reiterated that violence against women constitutes a violation of human rights and have pointed out the links between violence against women and basic human rights such as non-discrimination and torture. For example, the UN Human Rights Committee has described how the right to equality between men and women intersects with the right to freedom from torture and ill-treatment, with specific reference to gender-based violence, including rape.¹⁶

Discrimination and violence against women feed, encourage and perpetuate each other. The power

¹⁴ Report of the Special Rapporteur on violence against women, UN Doc. E/CN.4/1996/53, 6 February 1996, para. 28.

¹⁵ Reports of the Special Rapporteur on violence against women, *Violence against women in the family*, UN Doc. E/CN.4/1999/68, 10 March 1999, para. 17. *Cultural practices in the family that are violent towards women*, UN Doc. E/CN.4/2002/83, 31 January 2002, para. 84

¹⁶ Human Rights Committee, General Comment No. 28, The equality of rights between men and women (Article 3), 29 March 2000, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.7. .



structures within society that perpetuate violence against women are deep-rooted and intransigent. Discrimination disempowers women and can put them in a position where they are unable to take effective steps to seek protection or remove themselves from a situation of violence.

The CEDAW Committee has underlined the close inter-relationship between violence against women and discrimination. It has stated: "Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men..., impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law and human rights conventions, [and] is discrimination within the meaning of article 1 of the Convention."¹⁷

The UN Declaration on the Elimination of Violence against Women calls on states to take action against abuses by the state and its agents, and by private or other non-state actors in the family and the community.

Article 4 of the UN Declaration on the Elimination of Violence against Women provides that; "States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:...(c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons."

The Declaration explicitly makes clear that violence against women cannot be justified on the basis of culture or tradition, to avoid states' obligations with respect to the elimination of violence, and that states must adopt "all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women" (Article 4 (j)).

¹⁷ CEDAW Committee, General Recommendation No. 19, Violence against women (Eleventh session, 1992) paras 1 and 7, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.7.

States have an obligation to ensure that their own agents do not discriminate or commit violence against women, and do not condone or acquiesce in such abuses by others.

Under international law, states have clear responsibilities, and can be held accountable, for human rights abuses by non-state actors where they have failed to take all possible steps to prevent or respond to such abuses and to provide effective remedies and prosecute and punish abusers. This requires states to prevent, investigate and punish acts which impair any of the rights recognized under international human rights law. A state cannot, for example, avoid responsibility for the mistreatment of domestic workers by arguing that the abuse took place in the privacy of the employer's home, or that it is justified by social or cultural traditions.

The standard of due diligence provides a way to measure whether a state has complied with this aspect of its human rights obligations. It means that states must take all possible measures to respect, protect and fulfil women's human rights and in particular to eliminate discrimination and violence against women, including gender-based violence in the family. This standard has been explicitly incorporated into international instruments, such as the UN Declaration on the Elimination of Violence against Women.

3 VIOLENCE AGAINST WOMEN, STATE INACTION AND IMPUNITY

Violence against women is one of the most pervasive of human rights abuses worldwide. It is not confined to any particular political or economic system, but is prevalent in every society and cuts across boundaries of wealth, race and culture. From birth to death, in times of peace as well as war, women face discrimination and violence at the hands of the state, the community and the family. The experience or threat of violence inhibits women everywhere from fully exercising and enjoying their human rights.

The UN Declaration on the Elimination of Violence against Women describes some of the forms of violence against women:

Article 1

For the purposes of this Declaration, the term “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Article 2

Violence against women shall be understood to encompass, but not be limited to, the following:

- (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Violence against women in the family and the domestic sphere is directed not only against family

members but also at migrant domestic workers in their workplace, the household of their employers. Such violence includes involuntary confinement and verbal, physical and sexual abuse.¹⁸

3.1 Domestic violence

The UN Special Rapporteur on violence against women has stated: “[v]iolence against women in general, and domestic violence in particular, serve as essential components in societies which oppress women, since violence against women not only derives from but also sustains the dominant gender stereotype and is used to control women in the one space traditionally dominated by women, the home.”¹⁹

Gender-based violence coupled with discrimination against women is common throughout the GCC countries and affects women at all stages of their lives. As young girls they are treated by their families as subordinate to their brothers, who are given almost a free hand to exercise control over them. This exercise of control is manifest in restrictions on their freedom of movement and violence in the home. The family’s control over girls persists into adulthood, from the restriction of their choice of marriage partner to forced confinement and physical violence if they assert their right to marry the partner of their choice. In view of the very limited possibilities for women to lead their lives economically and socially independent of male relatives (described in more detail in Section 4), most unmarried women and girls who suffer such violence are faced with a stark choice: to endure the abuse or to try to extricate themselves from the situation by marrying a man considered by their family to be suitable. Some then, as wives, face violence in their new homes.

The prohibition on violence against women applies to both women and girls. In respect of girls, states also have binding obligations under the UN Convention on the Rights of the Child, which contains an explicit prohibition on violence against children:

¹⁸ Gender-based violence against migrant domestic workers is addressed in Section 5 of this report.

¹⁹ Report of the Special Rapporteur on violence against women, UN Doc. E/CN.4/1996/53, 6 February 1996, para 27.

UN Convention on the Rights of the Child, Article 19

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

All GCC countries are party to the Convention on the Rights of the Child and thereby legally bound by its provisions.

The World Health Organization has defined partner violence as any behaviour within an intimate relationship that causes physical, psychological or sexual harm, including:

- Acts of physical aggression, such as slapping, hitting, kicking and beating
- Psychological abuse, such as intimidation, constant belittling and humiliation
- Various controlling behaviours, such as isolating a person from their family and friends, monitoring their movements, and restricting their access to information or assistance.²⁰

Unmarried women and girls who suffer abuse at the hands of their relatives are often even more disadvantaged than women subjected to abuse by their marital partners. The police usually fail to act in response to complaints of violence by women. However, in the case of unmarried women and girls, the police are even less likely to deal with cases of violence committed against an unmarried woman or girl. The police may not consider such violence as a crime, although it qualifies as an assault under strict application of the law.

Where women have safe alternatives, to be housed, to work, to be educated, and to live with their children without fear, they can escape to live free from violence. However, criminal justice systems in the GCC countries must be reformed to ensure that police take complaints seriously, that women who

²⁰ World Health Organization, *World Report on Violence and Health*, Geneva, 2002. (http://www.who.int/violence_injury_prevention/violence/world_report/wrvh1/en/)

have been subjected to violence are treated with understanding and respect, and that perpetrators are effectively prosecuted.

Legal systems in the GCC countries do not contain specific provisions on assault/violence against women, but treat such cases as general assault. The identical Articles 339 of the UAE and Bahrain Penal Codes, for example, provide that anyone who subjects another to violence leading to injury shall be punished to a prison term or a fine.²¹

Baderiya Rabi'ah before and after she was badly beaten by her former husband. © PRIVATE

Baderiya Rabi'ah told AI in August 2004 that in practice violence against women is not perceived by the police as a crime because the wife is considered to be under the authority of her husband.

N.A. has been left without adequate housing after police failed to prosecute her husband for beating and threatening her. A Bahraini woman, N.A. was married in 1983 at the age of 19. She told AI in August 2004 that her husband was violent and controlling, and that he beat her throughout their marriage, subjecting her to mental as well as physical violence. N.A. obtained a divorce in January 2004. She said that she had kept silent about the violence for years because she was expected to put up with it and because she was afraid of requesting a divorce from her husband because of the effect that a divorce would have on her children. In addition, she hoped that her former husband's behaviour would change. She told AI that, when she did ask for a divorce, her husband said he would come home and kill her. She went to a friend's house. "He came round to my friend's house and stormed into the sitting room. He

²¹ Bahrain Penal Code, Law No 15, 1976 in each case. UAE Penal Code, Federal law No. 3 1987

started insulting me in front of everyone; he slapped me on the face, dragged me by the hair and told me in front of friends, children and maids: 'I'm taking you home so I can kill you.' He pulled me towards the car and shoved me inside it. He said that he would tell everybody I had committed suicide."

When they reached their house, N.A. said that her husband pulled her out of the car and dragged her by the hair to the stairs. She was screaming, but there was no one at home. He locked the doors and started hitting her. "I begged him to stop, but he did not," she said. When he went to sleep, she used a mobile telephone to call relatives. Her brother called the police, and when they arrived at the house the gate was open. When her husband woke up and saw the police there, "he went mad", according to N.A. He grabbed her before she could reach the police at the gate. The officers forced the front door open. N.A. went with the officers to the police station, where she made a statement. She was then taken to Thawra Centre Hospital where she spent 10 days. She told AI that the police took photographs of her injuries, but that the pictures later disappeared from her police file. The only photographs she has of her injuries are those taken by her family.

N.A recovering from her injuries in hospital. © PRIVATE

Despite N.A.'s extensive injuries, the police took no action against her husband, although they repeatedly told N.A. that they would bring proceedings against him for assault. N.A. believes that the inaction by the police may be connected to her husband's influence as a prominent businessman. She filed for divorce and he agreed. Today, he has custody of their children, where they have more financial security, and N.A. has nowhere to live. The personal status court

awarded her 120 Bahraini Dinars (US\$320) a month as maintenance, and she is struggling in the personal status court to be given housing so she can receive visits from her children in dignity. In January 2005, N.A. told AI that the police had failed to bring a case against her former husband for assaulting her, despite her repeated requests and demands and despite frequent empty promises that the case would be brought before the courts.

Many unmarried women and girls who are subjected to violence by members of their families put up with the abuse. They may see marriage as the only escape route from violence at the hands of members of their families. Some of the girls and women who choose this route continue to face violence in their new homes.

If such violence becomes intolerable, their lack of economic independence or other options usually means that their only way of escaping the violence is to divorce, often on unfavourable terms, and return to their family home where they may be at risk of facing further violence at the hands of their relatives.

J. A., a 27-year-old Saudi Arabian national, told AI in November 2004 that as a child she suffered severe beatings at the hands of her father. In her desperation, she contemplated committing suicide when she was 14 years old. She sought to contact the police when she was about 15 years old, but they told her that because she was a child she would be returned to her parent's home, that most girls suffer beating at home and that it is normal. She finally agreed to her family's wishes and married a much older man in order to escape the beatings at home. She told AI that she did not know that he was at least 40 years older than her and requested a divorce soon after she got married. However, she had to return to her parent's home where the beating continued, this time at the hands of both her father and her brother. She said that there was nowhere she could go and live safely in Saudi Arabia, and that she was confining herself in her room in her parent's home to avoid being beaten.

The authority of a father or husband over a woman can be virtually limitless. Some women told AI that their husbands restricted their freedom of movement by not allowing them to visit their families or only letting them leave the house at specific times of the

day. One woman told AI that her husband had forcibly confined her in a room for months.

3.2 Police inaction and impunity for the perpetrators

The prevailing perception of violence against women in the family is that it is a “family issue” or “normal”. Moreover, social norms lead police to disregard the criminal nature of such assaults against women. This disregard by the police to the assault and suffering by women and girls also play an important role in deterring women from reporting violence in the home. Instead of being encouraged to go to the police, women are expected to endure violence from an intimate partner for the sake of “not ruining the family”. This approach is based on pursuing reconciliation between the parties and resolution through mediation and agreements, rather than seeking justice for the victim and prosecution of the perpetrator or other action by the courts to ensure the victim’s protection. In reality, this approach often puts women at greater risk of further violence, and women find that they cannot break out of a perpetual cycle of violence.

The police prefer to deal with violence by an intimate partner through mediation and reconciliation. As a result, women in violent relationships know that the police are likely to issue only a warning to their husband and to encourage them to return to their marital homes. When women approach the police to complain of being beaten, the husband is normally taken to the police station for questioning. In some cases the police rebuke the man for attacking his wife and warn him that if he hits his wife again, proceedings will be brought against him. If the man accepts that he made a mistake, the police then ask him not to repeat it, and he is made to sign a declaration that he will not beat his wife again. The police often do not investigate the matter any further but try to convince the wife that she should return home. For example, in the UAE, a mediation service is provided at police centres in cases of violence against women and other disputes. The mediation is carried out by social workers at some police centres. The authorities in the GCC countries have told AI that such an approach by the police is aimed at “protecting” families from disintegration. However, it is not women seeking to free themselves from violence who “ruin families” but the men who batter

and abuse their partners. Where the state seeks to protect family life, this must never be done at the expense of protecting those women who are subjected to violence in their family relationships. On the contrary, where the state provides effective protection against gender-based violence in the family to girls and women, levels of such violence are likely to be reduced and families protected.

In order to comply with the state’s obligation to protect women from violence, the police should take action to ensure the victim’s protection where they receive complaints about any form of assault, including in cases of gender-based violence in the family. There is nothing in the laws of the GCC countries that oblige police to refer such assault cases to mediation rather than prosecution. The reverse is the case: the state’s obligation of due diligence requires that the police investigate cases of violence against women under the criminal law on assault. However, even where women show physical evidence of violence, police authorities are often unwilling to take appropriate measures to protect them, exposing them to the likelihood of further violence. AI is concerned that the authorities’ preference for mediation over prosecution results, in the vast majority of cases, in women being denied their basic right to protection against physical abuse.

Not one of the women interviewed by AI who had suffered violence in the family had obtained any form of redress. They had not received immediate relief from the abuse – for instance through access to a shelter or other alternative accommodation. None had been able to obtain legal aid, a court injunction to restrain the perpetrator, or compensation for the injuries they suffered. In no case was the perpetrator prosecuted.

M. Mussa, a 21-year-old woman of Bahraini nationality, married S.F., a 28-year-old Saudi Arabian national, in Bahrain in 2001. In September and October 2001 they visited his family in Riyadh, Saudi Arabia. His family did not approve of the marriage because he is a Sunni Muslim and she is a Shi’a Muslim. Her family was not allowed to visit her after the couple moved to Saudi Arabia. The couple have a two-year-old daughter. M. Mussa told AI in August 2004 that her husband used to beat her repeatedly, both while they were living in Bahrain and in Saudi Arabia. On one occasion she went to the police

station in Mina'a Salaman in Bahrain after he had beaten her. Her injuries were later recorded at a hospital. She said that the police told her husband they would charge him and seek his imprisonment for the crime. S.F. apologized and was made by the police to sign a declaration that he would not beat her again. M. Mussa withdrew the case against him. Two days later they went to Saudi Arabia where the beatings resumed. Her husband would hit her every time she said she wanted to visit her family in Bahrain, she told AI. She was afraid to go to the police in Saudi Arabia. She told AI that her husband did not allow her out of the house on her own and that he would only take her out himself in the early hours of the morning.

When M. Mussa's mother visited her in Saudi Arabia in November 2003, M. Mussa told her husband that she wanted to return with her mother to Bahrain. S.F. then beat her mother too, before throwing both of them out of the house at 2am.

Where the state does not offer effective protection, women who are subjected to violence in the family may be deterred from reporting the crime by their fear of increased violence if they report their abusers to the police. Unless the state responds adequately to women's reports of violence in the family, it is effectively encouraging women to believe that abstaining from reporting such crimes is their best self-protection strategy.

Even in the rare event where cases are referred for prosecution, women find that they are put under intense pressure to withdraw the case against their husbands. Sometimes women withdraw cases against husbands or former husbands in return for custody of the children.

Rania al-Baz before and after being severely assaulted by her husband in April 2004 © Essam Al-Ghalib, Arab News

In a much publicized case, a court in Saudi Arabia sentenced her husband to six months' imprisonment and 300 lashes for the attack. However, Rania al-Baz, a Saudi Arabian national, later withdrew her right to retribution in the case.²² It was not clear why she withdrew this right, but it was believed to be connected with retaining custody of her children. Her husband was released after serving over half of his sentence.

Men who abuse their wives are often confident that the authorities will not vigorously pursue them for crimes of domestic violence.

N.A. (see above) told AI that when faced with the prospect of a criminal case, her husband said: "I am not worried about this case. At most I will get away with a 50 Bahraini Dinars (US\$130) fine." The prosecution has not brought a case against her former husband to this date, despite her repeated requests and police promises that they will commence proceedings against him.

The **UN Declaration on the Elimination of Violence against Women, Article 4**, calls on states to take action against abuses by the state and its agents, and by private or other non-state actors in the family and the community.

States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women, and, to this end, should:

²² The right to retribution or reprisal is based on the principle of, an "eye for an eye" "*Qisas*", or where an injured party or a victim of a crime has the right to demand a reciprocal punishment against the guilty party. This right can be waived by the victim or a family member. However the state retains the power to punish such crimes. "*Qisas*" offences, have two legal aspects, public and civil. The public aspect relates to the role of courts in deciding the guilt or innocence of the accused. The civil aspect relates to the right of victims or their nearest relatives or heirs to decide whether the convicted offender should be subjected to punishment equal to the physical harm caused by the crime, or ask for compensation instead, or pardon the offender.



(c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;

(i) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;

(j) Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women.

Women have been forced to endure violence in the family because social norms obstruct them from seeking protection. Yet it is unacceptable for governments to evade their human rights obligations by leaving it to the victims of violence to assert their human rights. Gender-based violence in the family is a grave violation of women's fundamental human rights, and states have an obligation to take active measures to protect those rights.

3.3 Government failures

Governments' condemnations of violence against women ring hollow when crimes of violence by intimate partners or family members are not prosecuted under the criminal law on assault because such crimes are considered a "family matter" or "normal" and not of public concern. Instead of abandoning women to fend for themselves, states should take measures to prevent such acts of violence, to stop them where they occur, and to enable women who have been subjected to violence to obtain redress. Action by the state should include affirmative measures to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes

or on stereotyped roles for men and women".²³ Women will be empowered, at a very basic level, to recognize that they are being subjected to violence at the hands of their husbands, fathers or brothers only if the state validates their claims for justice and enforces justice on the victims' behalf.

The state's obligation of due diligence includes taking effective steps to prevent abuses, to investigate them when they occur, to seek out the perpetrators and bring them to justice in fair proceedings, and to ensure adequate reparation, including compensation. In addition to ensuring that the law is accessible to women who have experienced any form of violence, the state must also ensure that the law can effectively serve their needs.

UN Declaration on the Elimination of Violence against Women, Article 4

States...should... (k) Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women.

There are currently no clear, comprehensive statistics or information in the GCC countries on the incidence of crimes of violence against women. In its reply to the Questionnaire on governments' implementation of the Beijing Platform for Action (1995), Qatar stated that: "Statistics on the number of women at risk of various forms of violence are scanty, but it seems likely that some women have been victims of domestic or social violence as a result of the socioeconomic changes that Qatari society is experiencing, including the changing roles of women and the fact that they are entering the work force and participating more extensively in public life."²⁴

²³ UN Women's Convention, Article 5(1) (a); see also similar provision in the Declaration on the Elimination of Violence against Women, Article 4(j)

²⁴ Reply by the State of Qatar to the Questionnaire to Governments on Implementation of the Beijing Platform for Action (1995) and the Outcome of the Twenty-third Special Session of the General Assembly (2000) Supreme Council for Family Affairs 2004 <http://www.un.org/womenwatch/daw/Review/responses/QATAR-English.pdf>

Such vagueness about the extent of violence against women does not comply with the provisions of the Declaration on the Elimination of Violence against Women. Moreover, Qatar's statement suggests that violence against women is a by-product of women's social advancement and empowerment. AI has not seen any evidence that women suffer violence because they have entered the workforce or because of their participation in public life or social advancement. What is clear is that one of the reasons why violence against women persists is because the authorities tolerate such crimes.

States' obligation to respect, protect and fulfil human rights require that governments adopt a whole range of measures. These include promoting research, training state personnel, and adopting practical policies and mechanisms to protect women's rights. They should include not only legal measures such as penal sanctions, civil remedies and other avenues for obtaining compensation, but also preventive measures such as public information and education programmes, and protective measures, including the availability of shelters and services for women who have been exposed to violence.

AI believes that the governments of the GCC countries should be held accountable for failing to exercise due diligence in preventing violence against women, stopping such violence, bringing the perpetrators to justice and ensuring redress for the victims.

Among its recommendations, AI is calling on the GCC countries to embark on a process to research violence against women and adopt a range of measures to ensure that women's rights are fully protected, respected and fulfilled. In doing so, governments should engage with a wide range of governmental and legislative authorities, NGOs, and civil society institutions, and agree a plan of action and protection for women.

Governments in the GCC countries should also ensure that laws to protect women against violence are supported by official policy and practice, and that measures are taken to ensure their effective implementation. Governments should carry out a

regular assessment of these laws, practices and policies, and make any appropriate changes.²⁵

AI believes that domestic violence is prevalent in part because men are able to commit violence in the home with virtual impunity. In failing to exercise due diligence to protect women against this violence, and in allowing the persistence of a climate of impunity, the authorities in GCC countries effectively condone violence against women. Impunity for violence against women – brought about by states' failure in or resistance to condemning, prosecuting and punishing violence by intimate partners, for instance – contributes to a climate where such acts are seen as normal and acceptable rather than criminal, where women do not seek justice because they know they will not obtain it, and where the pain and suffering caused by the original abuse are prolonged and aggravated by the denial that a serious violation of human rights has been committed. Impunity also enhances a social climate in which violence against women is normalized.

4. DISCRIMINATION PERPETUATES VIOLENCE AGAINST WOMEN

Discrimination and violence against women are closely interlinked. In the GCC countries discriminatory laws and practices exacerbate and compound violence against women. Some forms of discrimination impact on women disproportionately and can therefore amount to gender-based violence. In extreme cases, restriction on women's freedom of movement is a discriminatory practice that can amount to gender-based violence. Discrimination disempowers women, and can put them in a position where they are unable to take effective steps to seek protection or extract themselves from a situation of violence.

In addition, women in all the GCC countries face other forms of gender-based discrimination and restrictions as mothers, wives, students, workers and citizens. The discrimination they face is wide-ranging and includes discrimination in family law; the exercise of male authority; restriction on their rights to

²⁵ CEDAW Committee, General Recommendation No. 19, Violence against women, para 24.



freedom of movement and expression; and lack of respect for their personal integrity.

Discrimination, and the social and cultural prejudices underlying it, results in women being denied their basic human rights including their rights to legal protection, equal treatment in work and education, and freedom of movement and expression. It also prevents women from achieving economic independence. This in turn limits the choices available to women, since those suffering gender-based domestic violence often have no practical option but to remain in the home and risk further violence. Economic and social pressures arising from discriminatory attitudes and treatment contribute to women's experience of violence and limit their opportunities to make strategic choices about their options.

4.1 Family laws

In the GCC countries, personal status law or family law matters – including those relating to marriage, the annulment and dissolution of marriage, divorce, maintenance and custody of children – are governed by Shari'a-based rules (Islamic law)²⁶. In some of the GCC countries, Shari'a-based rules are codified in law; in others they are not. In Kuwait and Oman Shari'a-based personal status laws are codified and operational. In Qatar and the UAE, the personal status laws remain in draft form, although they are sometimes referred to and applied by judges who also refer to the opinions of Muslim scholars in determining cases. In Bahrain and Saudi Arabia, which do not have codified rules or even draft laws relating to personal status, judges refer to the opinions of Muslim scholars and jurisprudence schools.

The personal status courts in most of the GCC countries are divided into at least three divisions -- Sunni, Shi'a and non-Muslim. Cases brought by a Shi'a litigant are heard by a Shi'a judge in the Shi'a division of the personal status court applying the Shi'a school of jurisprudence. Shi'a rules on personal status issues, however, are not codified in the GCC

²⁶ Shari'a based rules, are a set rules derived from the Qur'an and the Sunnah (practices of the Prophet Mohammed), and other secondary sources including Islamic jurisprudence.

countries. Judges refer to the opinions of Shi'a scholars and Shi'a jurisprudence when determining cases.

For the Sunni branch of Islam, codified personal status laws, where they exist, apply overwhelmingly to Sunnis.²⁷

Rules relating to personal status which are not codified in law, whether in the Sunni or the Shi'a branch, often lead to confusion regarding the rights of individuals and to a general lack of cohesion and standardization of rights in the GCC countries. The fact that judges in both Shi'a or Sunni courts refer to different and sometimes conflicting opinions of scholars can make legal entitlements a lottery for litigants.

Judges and officials in the GCC countries have told AI that different judges reach different conclusions on cases involving similar facts. Some Shi'a judges have noted this lack of conformity and predictability in legal practice and have sought to draft Shari'a rules based on Shi'a schools of jurisprudence as guidance to other judges. However, these drafts are merely advisory, not binding.

In Bahrain, Kuwait and the UAE, Sunni jurisprudence is based on al-Madhahab al-Malki²⁸ or the Malki School, while the Shi'a jurisprudence is mainly based on the J'affari School.²⁹ In Oman the personal status law is based on the Abadi School³⁰ and can be applied to both Sunni and Shi'a litigants. AI was told that this was to ensure equality for all citizens in the country.

In Qatar and Saudi Arabia Shari'a-based rules are interpreted in accordance with the Hanbali³¹ School,

²⁷ However Oman's personal status law is unified and can apply to both Sunnah and Shi'a.

²⁸ *al-Madhahab al-Malki*, is a school of Islamic jurisprudence that was established in al-Madina al Monaoura, Saudi Arabia in the second half of the eighth century by al-Imam Malik ibn Anaas (713-795)

²⁹ The *J'affari* school is the main Shi'a school of jurisprudence that was established by al-Imam J'affar al Sadiq (699-765)

³⁰ The Abadi school was established by 'Abdullah ibn Ibad around the year 700

³¹ *al-Madhahab al-Hanbali* is a school of Islamic jurisprudence that was established in the first half of the ninth century, by al-Imam Ahmed ibn Hanbal (780-855)

although officials in Qatar told AI that the draft personal status law in Qatar will not be restricted to the Hanbali School. AI was informed that the reason for not restricting the personal status law in Qatar to the Hanbali School was to ensure that the law is based on interpretations of Shari'a-based rules taken from different schools of Islamic jurisprudence which most favoured a rights-based approach in relation to marriage and divorce.

AI believes that all laws, whether secular, religious or based on customary law, should be consistent with international human rights standards. The organization has no position on Shari'a or any legal systems based on religion. AI notes the experience in Morocco, for example, where human rights law in conjunction with the principles enunciated in Shari'a-based personal status laws have resulted in a legal framework which provides greater protection of rights and consistency with human rights law and standards.

4.1.1 Marriage and the choice of marriage partner

Many women around the world face violence at the hands of their husbands or other family members. However, in the GCC countries, in social environments where many women may be denied autonomy in choosing their marriage partner, women enter marriage under conditions which leave them at a strong risk of violence from their husbands. States have an obligation to exercise due diligence in protecting all individuals within their jurisdiction against abuses of their rights by private individuals.

However, in many cases even when women actively seek the protection of the state against such abuses, state agencies fail them.

Marriage in Islamic law is contract-based. Each party has the right to stipulate conditions or terms in the marriage contract. Grave breaches of, or non-compliance with, these conditions entitle the wronged party to seek a divorce. At the time of the marriage, one party to the marriage (the husband) presents to the other party (the wife) a gift of value (known as *mabar*), either in money or as a benefit in kind. The *mabar* is usually given in monetary form by the man to the woman and her family. Without such *mabar* the marriage contract cannot be valid. The husband is entitled to terminate the marriage contract

at will and instantaneously (see section 4.1.2 on dissolution of marriage).

According to some schools of Islamic jurisprudence, women have the right to include conditions in their marriage contracts to safeguard their rights and entitlements. For example, a woman may stipulate that her husband cannot refuse to grant her a divorce if she demands it, or that she is entitled to a divorce if her husband takes a second wife. Numerous women insert conditions regarding financial compensation in the event of the husband terminating or dissolving the marriage.

However, apart from the financial compensation, most women in the GCC countries do not in practice stipulate safeguards and entitlements. Lack of awareness, social attitudes and customs, and the pressures on women not to be perceived as "difficult" strongly militate against their stipulating conditions in the marriage contract. Besides, in many of the GCC countries, marriage is primarily viewed as a contracting relationship between two families rather than between two individuals.

Even women who know that they are entitled to stipulate conditions do not necessarily know of the extent to which they can use their marriage contract to protect themselves.

A further obstacle to women's ability to safeguard their rights in marriage is their weak economic and social status. The majority of women in the GCC countries are financially dependent on their parents and then on their husbands or future husbands. Women's participation in the workforce is minimal (see section 4.5 below). In such circumstances, women are not in a position to insist on what they may regard as minimum acceptable rights and benefits in the marriage contract.

None of the Islamic schools of jurisprudence expressly restrict women's right to choose a marriage partner. Most hold, however, that a woman must ensure that she obtains the permission of her *walli* (guardian), normally her father or another male relative, who represents her in the marriage contract. If the *walli* does not grant permission then, according to most schools, the marriage contract cannot be concluded since women cannot represent themselves in their marriage contracts. If a woman marries

without the permission of her *walli*, then the *walli* may file a case in court for the annulment of the marriage on the grounds that he did not agree to the marriage. His application may prevail against the woman's wishes.

These restrictions in relation to the *walli* are relaxed in the Shi'a branch of Islam, and in al-Madhahab al-Hanafi³² (the Hanafi School, see below), according to which a divorced woman may not need the permission of her father or brother to marry, and may request that the personal status court marry her, in which case the judge becomes her *walli*. Mature women (over 21 years of age) are also able to request such intervention from the personal status courts throughout the GCC countries regardless of whether they were divorced or not; in practice, however, women face reluctance from judges to intervene in such cases and allow them to marry.

The requirement for women to obtain a *walli's* permission in order to contract a marriage clearly restricts women's right to freely choose a spouse, as set out in Article 16 of CEDAW, and women's equal rights to marriage, as set out in Article 16 of the UDHR. It denies women "legal capacity identical to that of men", thereby violating women's right to equality before the law, as set out in Article 15 of CEDAW.

In the GCC countries, many women are subjected by their families to physical violence or to restrictions on their freedom of movement when they assert their right to marry a partner of their choice against the wishes of their families. Other women are trapped in limbo for years while their *walli* persists in refusing to allow them to marry the partner of their choice. In October 2001, **F.A.**, a UAE national, married M. al-Husseini, a Saudi Arabian national. The marriage took place in Egypt where the personal status laws are based on the Hanafi School which allows women to marry without their *walli's* approval. The couple decided to marry in Egypt after F.A.'s *walli*, her father, refused to give his consent to his daughter's marriage. They returned to the UAE in an attempt to resolve the disagreement with F.A.'s family over the marriage. Soon after, on 17 March 2002, M. al-Husseini was

arrested at 2am by members of the security forces accompanied by F.A.'s father, in the couple's room in a hotel in Dubai. Both F.A. and M. al-Husseini were reportedly attacked. F.A. was taken from the hotel to her family home. M. al-Husseini was taken to al-Qasees police centre in Dubai, where he was questioned and reportedly told that he must either divorce his wife or risk being detained indefinitely. He was released the same day after he divorced his wife. He told AI in September 2004 that he revoked the divorce and registered the revocation of the divorce in a court in Saudi Arabia.

Meanwhile, F.A.'s father applied to the personal status court in the UAE for the annulment of the marriage contract on the basis that the marriage was concluded without his permission. The court ruled that the marriage had not been carried out in accordance with Shari'a and the Maliki School and consequently annulled it. M. al-Husseini was rearrested on 25 September 2002 in a hotel in al-'Ain while he was attempting to attend the court proceedings. He was taken to al-'Ain prison and then on 28 September to the Central Police Station, Abu Dhabi. He was reportedly released without charge on 1 October 2002. He says he does not know where F.A. is and has not been able to speak to her since 13 April 2002, when he was last allowed by her family to speak to her on the phone.

AI wrote to the UAE Minister of Interior in September 2004, and again in February 2005, seeking clarification regarding an international arrest warrant against M. al-Husseini issued by the UAE authorities. AI raised its concerns regarding his arrest and arbitrary detention solely on grounds of his exercise of his right to marry, a right guaranteed by international human rights standards. No reply had been received by the end of April 2005.

In other cases, women have been forcibly confined by their relatives for choosing a husband without their family's permission.

Hamda Fahad Jassem Ali al-Thani, a 28-year-old Qatari national, is being forcibly confined to her family home and ill-treated because of her father's disapproval of her choice of husband. She was earlier reportedly detained for a year by members of the security forces for marrying against her father's wishes.

³² al-Madhahab al-Hanafi is the first Islamic school of jurisprudence. It was established in Iraq in the first half of the eighth century, by al-Imam Abu Hanfia al N'uman (699-767)

Hamda al-Thani married Sayed Mohammed Sayed Saleh, an Egyptian national, on 5 November 2002 in Egypt in accordance with the Hanafi School and their marriage was duly registered in Egypt. Nine days later, she was allegedly drugged and abducted by members of the Qatari security forces, who took her back to Qatar. According to reports, she was detained in secret in the al-Selyea area of Doha for five months until April 2002, and then transferred to the offices of the state's Special Security Directorate in Doha, where she was detained until November 2003. The security forces reportedly then handed her over to the custody of her family, who have held her against her will at their home since then. She is apparently confined to one room and is not permitted access to lawyers, doctors or visitors of any kind. Her family has reportedly beaten her on several occasions.

AI brought Hamda al-Thani's case to the attention of the Qatari authorities on 3 September 2004, and on 22 February 2005 wrote to the Amir of Qatar, the State's ruler, expressing grave concern regarding her continued confinement. No response had been received by the end of April 2005. Hamda al-Thani's husband has apparently contacted many authorities in Qatar including the Supreme Council for Family Affairs, which is in charge of women's affairs, in an effort to draw the attention of the authorities to her case, but he has not received a response. AI is concerned about the conduct of the Qatari security forces in detaining Hamda al-Thani and about their complicity in the violence apparently perpetrated by her family against her. The organization is also concerned that the authorities failed to act to rectify the situation after the case has been brought to their attention.

On 15 March 2005, AI issued an Urgent Action appeal, expressing concern at Hamda al-Thani's case and calling on the Qatari authorities to protect her human rights.³³

Women have the right to freedom from arbitrary detention and freedom of movement (Articles 9 and 13 of the UDHR, and Articles 9 and 12 of the ICCPR). The Human Rights Committee, the body responsible for monitoring states' implementation of

the ICCPR, has asked states parties to report, with regard to Article 9, on practices which deprive women of their liberty on an arbitrary or unequal basis, such as by confinement within the house.³⁴ For women who are detained by their families or deprived of their freedom of movement for marrying against their families' wishes, the failure of the state to act on their behalf can mean they have no prospect of release until they renounce their choice of husband. In such situations the state fails women doubly, by denying them both their right to freedom from arbitrary detention and freedom of movement, and their right to freely choose a spouse.

In the GCC countries, women who want to exercise their right to choose their marriage partner in contravention of their *wallis'* wishes can bring a case in the personal status court against their *walli*, arguing that they unreasonably withheld their permission. Women have to prove to sometimes reluctant judges that their marriage partner of choice can be deemed a suitable choice or shares the same religious background, and has similar social status, level of education or employment (known as *kufu*).

If the judge agrees with the woman, he then acts as her *walli* and can allow her to marry her partner of choice. Even when women decide to go to court to claim their right to exercise their right to choose a marriage partner, the legal system does not accord them personal decision-making authority. Rather, it substitutes one legal representative authorized to take a decision on the woman's behalf with another. This means that, even where a woman is able to marry the partner she chooses, her choice is always subject to approval by her *walli*. Women effectively continue to be obstructed in exercising their right to freely choose a spouse (Article 16 of CEDAW) and their equal rights as to marriage (Article 16 of the UDHR). They also continue to be denied full legal capacity (Article 15 of CEDAW).

In practice, women are generally reluctant to bring cases in court against their own family members, especially if the *walli* is their father. Those who do seek to put into effect their choice of partner often

³³AI Urgent Action UA 63/05 (AI Index: MDE 22/001/2005), 15 March 2005
<http://web.amnesty.org/library/Index/ENGMD220012005?open&of=ENG-QAT>

³⁴ Human Rights Committee, General Comment No. 28, Equality of rights between men and women, para. 14.

have to endure a long process with little chance of success.

H.A., a 28-year-old Sunni Bahraini national, told AI in August 2004: "I'm desperate to marry a man I met who is a Shi'a. He met my parents back in 1998 to ask for my hand in marriage but my father refused. He refused on the basis that it was a dishonourable thing, although a lot of couples have mixed religious backgrounds. I begged my father but he remained inflexible. I brought a case in the personal status court in order to be able to marry the man I chose. The court ruled against me... If I wanted to, I could have travelled abroad and married him, but I wanted to do things the right way".

Many women are deterred from approaching the personal status courts to challenge their *walli's* disagreement with their choice of partner by the fact that positive outcomes in such cases are rare and by the financial implications of pursuing such a case, especially if they do not have independent means. Social attitudes and customs can act as a further deterrent. In addition, women who do seek justice through the courts often suffer physical violence at the hands of their relatives for "bringing shame on the family".

The majority of women whose *walli* disagrees with their choice of husband abandon their plans and bow to pressure to marry someone approved of by the *walli*. Women's agreement to marriage is a fundamental requirement in the marriage contract; forced marriages are prohibited under Shari'a. Yet some women may find that they are put under considerable pressure by their families to agree to the family's choice of husband, in violation of their right to enter a marriage only with their free and full consent (Article 16 of the UDHR).

The CEDAW Committee has said that states should not seek to limit women's right to choose their partner on the basis of custom, religious beliefs or the ethnic origins. It stated that: "A woman's right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being [and that] subject to reasonable restrictions based for example on a woman's youth or consanguinity with her partner, a woman's right to choose when, if and whom she will marry must be protected and enforced at law." The Committee has

expressed concern that some states have asserted that social or cultural factors or religious beliefs prevent compliance with this requirement and has called on states to "resolutely discourage any notions of inequality of women and men which are affirmed by laws, or by religious or private laws or by custom."³⁵

Article 33 (a) of the draft Arab Charter on Human Rights states that:

"Men and women of full age have the right to marry and to found a family according to the rules and conditions of marriage. No marriage can take place without the full and free consent of both parties. The laws in force regulate the rights and duties of the man and woman as to marriage, during marriage and at its dissolution."

Commenting on the draft Arab Charter, AI has voiced its concern that national legislation in some instances might not guarantee equality between men and women.³⁶ The "rules and conditions of marriage" in the GCC countries generally work to severely disadvantage women. Women's "free and full consent" to marriage can be very problematic in social circumstances in which the control of families – and in particular *wallis* – over girls and women is generally accepted and serves as a central concept in the legal regulation of marriage.

In some cases, women are not only prevented from marrying the person of their choice, but are subjected to forced marriage, in that they are pressured by their families to marry someone against their will.

J. A. (see above) told AI that she faced considerable pressure from her family to marry her first husband, and that she only found out that he was at least 40 years older than her after she had been married to him.

The practice of forced marriage, which has been recognized as a form of violence against women,³⁷

³⁵ CEDAW Committee, General Recommendation No. 21, Equality in marriage and family relations (13th session, 1994), paras 16 and 41-47.

³⁶ AI, *Middle East and North Africa Region, Re-drafting the Arab Charter on Human Rights: Building for a better future* (AI Index: MDE 01/002/2004), 11 March 2004.

³⁷ See, for instance, Report of the Special Rapporteur on violence against women, Violence against women in the family, UN Doc. E/CN.4/1999/68, 10 March 1999, para. 17.

raises distinct but related concerns. Former UN Special Rapporteur on violence against women, Radhika Coomaraswamy, writes:

“Relentless pressure and emotional blackmail are used by parents and relatives to force the young girl into an unwanted marriage. Their more extreme forms can involve threatening behaviour, abduction, imprisonment, physical violence, rape, and in some cases, murder... It is a violation of internationally recognized human rights standards and cannot be justified on religious or cultural grounds. While both men and women experience forced marriages, it is primarily seen as an issue of violence against women.”³⁸

4.1.2 Dissolution of marriage

As the cases documented by AI show, violence against women in the family is unlikely to come to the attention of the courts. In its research, with the exception of the case of Rania al-Baz’s, AI has been unable to document a single case in the GCC where gender-based violence in the home has been brought before a criminal court. All of the women interviewed by AI had suffered further beatings by their husbands after making official complaints.

When the police fail to refer cases of violence in the family to the criminal justice system, many women find that the only way for them to escape violence in the home is to file for divorce in the personal status courts on the basis of the injuries they have suffered at the hands of their partners. But this means of escaping violence is only open to some married women; those who are abused as daughters, sisters or mothers have no such escape.

“I’m asking for a divorce because my husband has threatened me with a gun,” **Maryam**, a Bahraini national, told AI. “I turned towards a Muslim scholar who would be able to give my husband some calming advice, but my husband did not heed any advice.

³⁸ Report of the Special Rapporteur on violence against women, Cultural practices in the family that are violent towards women, UN Doc. E/CN.4/2002/83, 31 January 2002, para. 57. (The Working Group on Forced Marriage referred to in this passage was set up by the UK Home office to discuss, raise public awareness of and provide a strategy for tackling forced marriage. The report referred to was published by the UK Home Office Communications Directorate in June 2000.)

After this, I went to the police to submit a statement about the beating. But the prosecutor tried to slow down the procedure and didn’t even ask any question regarding my case. I wanted to get a divorce but my husband first refused. He then demanded that I pay him so that he would consider divorcing me.”

“I requested a divorce in July 2003. We met the judge around five times. He didn’t even tell my husband that it is wrong to beat me, nor did he tell me when I would get my divorce. He asked my husband, ‘If you were in your wife’s shoes, would you allow anyone to prevent you from divorcing?’... He finally consented to a divorce after the judge transferred to him a pastry shop we owned.”

Maryam’s experience is typical across the GCC countries. Most women interviewed by AI who were beaten by their husbands faced institutional apathy towards their suffering, both at the hands of the police and the personal status courts.

Marriage can be dissolved in three ways under Shari’a-based rules – *talaq* (divorce initiated by the husband), *tatleeq* (divorce accorded as a result of a court ruling) and *kbulu’* (divorce initiated by the wife). Each of these has particular features which in practice strongly discriminate against women, on the one hand increasing the likelihood that women will be divorced at whim, forcing them into socially and economically vulnerable positions, and on the other hand strengthening the probability that women who seek to divorce their husbands – including those trying to leave abusive relationships – will either be discouraged from doing so or else will pay a very heavy unilateral price in terms of their social and economic security.

It should be noted that, in accordance with international law, gender equality requires that women and men are accorded “the same rights and responsibilities during marriage *and at its dissolution*” (CEDAW Article 16(1)(c), see above). Commenting on Article 23(4)³⁹ of the ICCPR which contains

³⁹ Article 23 (4) of the ICCPR provides that: “States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.”

essentially the same language, the Human Rights Committee has stated:

“During marriage, the spouses should have equal rights and responsibilities in the family... Such equality continues to be applicable to arrangements regarding legal separation or dissolution of the marriage... any discriminatory treatment in regard to the grounds and procedures for separation or divorce, child custody, maintenance or alimony, visiting rights or the loss or recovery of parental authority must be prohibited, bearing in mind the paramount interest of the children in this connection.”⁴⁰

The Government of Qatar lists high divorce rates (31.9 per cent in 1995 and 31.1 per cent in 2002) as one of the “main challenges confronting Qatari families and women’s position in the family”. It has stated: “In view of the adverse consequences resulting from divorce, ranging from responsibility for the care and education of the children to socio-economic impacts, which tend to bear disproportionately upon the woman involved, it is clear that women are confronted by a serious challenge here, one that has a negative effect on their psychological and socio-economic abilities and capacities.”⁴¹

However, despite the “adverse consequences” of divorce, some women turn to divorce as the only means to escape violence because of the lack of state protection for the victims of gender-based violence. Where the GCC countries place obstacles in the way of women’s access to divorce, they compound the harm women suffer as a result of the lack of state protection from violence against women in the family.

4.1.3 *Talaq* (divorce)

Talaq is the exercise of the husband’s unilateral right to divorce. It is regarded as mainly the prerogative of the husband and applies instantaneously. The divorce

⁴⁰ Human Rights Committee, General Comment No. 19: Article 23 (The family), 27 July 1990, paras 8-9.

⁴¹ Reply by the State of Qatar to the Questionnaire to Governments on Implementation of the Beijing Platform for Action (1995) and the Outcome of the Twenty-third Special Session of the General Assembly (2000) Supreme Council for Family Affairs 2004 <http://www.un.org/womenwatch/daw/Review/responses/QA-TAR-English.pdf>

is deemed valid as soon as the husband informs or pronounces to the wife his intention to divorce, for example by saying, “I divorce you”.

Men in the GCC countries exercise their right to divorce freely. A UAE official told AI of a case, where a man exercised his right to divorce at least five times in seven months. Although this case may be an extreme example that does not represent the norm in the GCC countries, there are no institutional safeguards against such practices.

The option given to men of obtaining instant divorces can have a very negative impact on women. Several women told AI that they were divorced over the telephone. One of them was **Fareeda A.**, a Bahraini woman who married ‘Abdel Aziz, a Saudi national, in January 1998. During the first five years of the marriage he used to come to Bahrain and she would go to Saudi Arabia. In 2002 ‘Abdel Aziz asked Fareeda, who was two months pregnant at the time with their second child, to come to Saudi Arabia. She went on the basis that she would return to Bahrain after two days as usual. However, ‘Abdel Aziz took her passport and refused to allow her to return to Bahrain until she gave birth. On 17 January 2003, 15 days after she gave birth to a son, he sent her to Bahrain and refused to allow her to take the children with her. Fareeda told AI: “He used to beat me to force me to give up my children. But I refused”. One week after she was sent to Bahrain, ‘Abdel Aziz told her on the telephone that he had divorced her in Saudi Arabia and that she had no custody rights to her children.

The courts in the GCC countries are not authorized to stop the practice of *talaq* divorce and some court officials told AI that they were powerless to prevent such “disrespect towards women”, as one has put it. The draft personal status law in Qatar is said to include some steps to limit the automatic entitlement to divorce. These include binding the party wanting to exercise their entitlement, almost invariably the man, to go before the court and explain the reasons for wanting a divorce and to attend mediation and reconciliation services prior to the divorce. Despite this, AI was told that in Qatar a divorce could be approved by the court in only one session.

If a *talaq* or *tatleeq* divorce is sought, then the wife is entitled to the following by way of compensation:

- special maintenance (*nafaqa*) for three months following the divorce (*'idaa*);
- maintenance for any children, while they remain in their mother's custody⁴²;
- adequate housing if there are children;

Shari'a guarantees such forms of maintenance to women regardless of whether they are in a better financial position than their former husbands. A divorced woman must be paid by her former husband either in the form of *nafaqa* or *muta'a* (a form of gift or compensation, in cases where divorce took place prior to the consummation of the marriage).

Lacking independent means of earning a living, many divorced women become dependent on male relatives, social security and charitable organizations. Denied the option of independent housing arrangements, and often having no financial independence, childless divorced women generally return to their parental home. Some women's NGOs in Bahrain told AI that they advise women not to leave their marital home as they have a right to remain there and if they leave they may not be able to return to it.

N.S., a 32-year-old divorced Qatari woman with no children, told AI in July 2004 that she has nowhere to go. Her family does not want her and she is unable to obtain housing. AI asked the Qatari authorities what a woman's rights were in such a case, and was told that the woman is entitled to publicly financed housing. AI has not been able to ascertain whether this is true. What is clear, however, is that whatever entitlements are accorded to childless divorced women in theory, many women are simply not aware of the existence of such entitlements or are unable to access them.

Housing laws are often discriminatory, with state guaranteed rights for the provision of adequate housing only applying to men or divorced women who have children, not to childless female divorcees. For example in Kuwait, the housing laws discriminate against divorced women who have no children by providing that only the head of the household is entitled to apply for or benefit from state sponsored housing.⁴³ The housing laws in Kuwait do not specify the beneficiaries of these laws, they merely define them as low income heads of family or

household.⁴⁴ Although the definition is left vague and general, childless divorced women are not considered in practice as "heads of households" and are therefore denied state housing.

4.1.4 *Tatleeq*

Tatleeq normally applies in cases of divorce that are decided by a personal status court. *Tatleeq* in practice mainly applies in cases where a wife, files for divorce in the courts. In all the GCC countries those seeking *tatleeq* divorce are referred to mediation and reconciliation services. Only if mediation is unsuccessful is the case transferred to the personal status court for determination. This provision is said to be part of the GCC governments' attempts to reduce the divorce rates, now according to officials in the GCC running between 25 and 35 per cent of all marriages in the GCC countries.

Any application for divorce has to be made on specific grounds and must be supported by evidence. Grounds for seeking *tatleeq* divorce include *dharrar* (injury or harm) arising out of the husband's failure to provide maintenance, denial of conjugal rights, abusive behaviour, cruelty, infidelity, impotence, disability of which the other party had no knowledge prior to the marriage, and lengthy absence or abandonment without proper justification.

Women filing for *tatleeq* divorce on the basis of *dharrar* have to present a broad range of evidence to the court before it will accept their application for divorce as justified. For example, according to lawyers in the GCC countries, a wife who has suffered intimate partner violence at the hands of her husband will have to obtain at least two or more of the following types of proof:

- a police report;
- a medical examination;
- evidence of prosecution for intimate partner violence;
- testimony of a witness.

Proof of this kind is very difficult to obtain. Most violence in the home takes place without witnesses behind closed doors. Where abuse is reported, it may be dismissed as insufficiently serious by the

⁴² See custody of children, section 4.1.6

⁴³ Decision No.5 of 1967.

⁴⁴ Decision No.13 of 1967.

authorities to warrant either a medical examination or prosecution under the law. Consequently, women are often left with insufficient evidence of abuse by their husbands on which to base an application for *tatleeq*. The fact that the police rarely if ever prosecute cases of violence against women (see Section 3), often means that a woman who is seeking such a divorce is unable to present to the personal status court evidence of prosecution. In addition, a woman may also find that she is unable to provide the personal status court with a police report of the violence committed against her because often cases of such marital violence are reconciled at the police station without proper documentation.

As a result, many women have to endure abuse by husbands as there is a strong chance that an application for *tatleeq* will fail before the court because of lack of evidence. Most women will also face strong social pressure discouraging them from seeking a divorce in the courts.

The exact legal status of statements or declarations signed by a husband in the police stations vowing not to beat his wife again is not clear (see Section 3). However, the statement can be used by women in the personal status courts when they apply for divorce on the basis of *dharrar* to show that they have suffered injuries at their husbands' hands in the past. In many cases, judges in personal status courts do not regard such statements or declarations on their own as sufficient proof of injury entitling women to automatic divorce.

While men can divorce without having to provide any reason, the same is not true for women. One official in the UAE told AI that only in cases where the woman had needed 21 days of medical treatment due to the effects of violence perpetrated against her by her husband would she be entitled to an automatic *tatalaq li al-dharrar* (*tatleeq* on the basis of injury or harm). In any instances of intimate partner violence with less severe physical consequences, women have to go through a lengthy procedure of proving that their husbands subjected them to violence. AI has come across cases where women who needed extensive treatment were still not able to obtain *tatalaq li al-dharrar* for the violence inflicted by their husbands, because of the reluctance of the judges in the personal status courts to grant them this particular type of divorce (see 4.1.5 below).

Even where women do go to court and seek *tatleeq*, personal status court judges are often reluctant to grant them a divorce. Personal status court judges enjoy total discretion to grant divorce or to refuse it. They are authorized to impose *tatleeq* not only if *dharrar* has been suffered, but also if the husband unreasonably refuses to divorce his wife. However, AI is aware of a case where the judge tried to convince the husband to divorce his wife. When the husband refused, the judge did not impose a divorce order to grant the woman a divorce based on *dharrar*. Instead he tried to convince her to seek *kbulu'*, an annulment of the marriage on terms much more unfavourable to her (see 4.1.5 and 4.1.6 below). This practice of women resorting to *kbulu'* instead of being granted divorce seems to be common throughout the GCC countries.

In cases where their husband refuses to grant *tatleeq*, women often find that they have to go through lengthy negotiations with him and the judge to reach an agreement that is acceptable to all parties. Frequently, women are made to accept outcomes unfavourable to them. For example, they may be forced to agree to a reduced financial settlement or to make other concessions regarding custody of their children.

Despite any financial compensation that may be provided, women often still end up disadvantaged at the end of the *talaq* or *tatleeq* divorce process. In many cases they are granted a low maintenance payment by the courts and have to leave their marital home, yet in the case of divorced women with no children they are not provided with adequate alternative housing. Women also face great difficulties in enforcing judgments in their favour regarding maintenance.

4.1.5 *Khulu'* (*tafreeq*)

Khulu' is the annulment of a marriage, and is usually initiated by the wife. Most schools regard *kbulu'* as the wife's right to release herself from the marriage contract. Under *kbulu'*, the husband is asked by the personal status court to accept the return of money, goods or benefit in kind, which he gave his wife as *mabar*, and divorce his wife. Women need not provide a reason for why they seek *kbulu'* nor do they have to show harm or *dharrar* on the part of the husband. However, they may have to pay compensation to the husband in return for having the marriage contract

annulled. In addition, they are not entitled to compensation since there is no *dharrar* for which they should be compensated. However, as AI research has shown, women normally resort to it in cases where no judicial finding of *dharrar* has been made.

Under *kbulu'* the contractual obligations arising out of the marriage cease and the position of both parties reverts to the situation before marriage. Therefore, if a man paid *mahar* of a certain amount, the wife must return that amount to him. The decision about how much is to be paid or how to settle *kbulu'* cases is often reached with the judge's close involvement, as is the case in all divorce cases which are initiated by women. It is not uncommon for a woman to find that she not only has to pay back *mahar* but also has to pay compensation. In some cases this can involve women being forced to give up the family home or even custody of their children.

L.A., a Bahraini national born in 1974, married H.A., a Kuwaiti national, on 13 February 1992 in Bahrain. H.A. returned to Kuwait six months after they were married, telling her that he would get everything ready so she could join him. L.A. told AI in August 2004 that he then stopped all contact and did not even visit her after she gave birth to their son K. in 1993 (see 5.1.6 below). After seven years of waiting for divorce she finally decided to apply for *tatleeq*. She was only able to obtain a divorce on 2 May 2000 after she renounced her right to maintenance and opted for *kbulu'*. L.A. had to pay her husband 9,500 Kuwaiti dinars (US\$32,400) in compensation.

G.A., a 36-year-old Bahraini national, was married in 1984. She told AI in August 2004 that she was beaten by her husband until 1988 when she suffered a slipped disc and received treatment in hospital. In 1991 she applied for a divorce and this was granted in 1992. However, evidence had gone missing from her medical files so that the divorce was not granted on the basis of *dharrar* (see above). She was forced to give up everything. She told AI that she left her house with just the clothes she was wearing. She also said that her experience in court was very difficult and that the judge did not give her a chance to speak. She said that if she had insisted on a divorce on the basis of *dharrar* it would have taken longer than *kbulu'*.

Zainab I., a 31-year-old Bahraini national, told AI that her husband hit her repeatedly. On one occasion

she needed 14 stitches. In June 2004 she brought a case to court for divorce on the basis of *dharrar*. If she had won the case, her husband would have had to pay her approximately US\$90,000, as agreed in the marriage contract. He refused and told her that he would only divorce her if she gave up her entitlement under the marriage contract and relinquished custody of their children. Zainab I. told AI that she was attempting to agree with the judge on a *kbulu'* divorce, accepting all her husband's demands. However in January 2005 Zainab I. told AI that her case was far from resolved and that she was facing pressure to withdraw the divorce case.

4.1.6 Custody of children

In all the GCC countries, divorced women are entitled to custody of their children, depending on the children's age, irrespective of whether they divorced on the basis of *talaq* or *tatleeq li al-dharrar* or *kbulu'* or any other ground for divorce. The age of the children under this entitlement differs from one Madhahab (or school) to another. In most cases a boy is meant to be with his mother up to the age of 13 and a girl up to the age of 15, and then their father can ask for and be given custody over the children. However, some schools of jurisprudence provide that the father may have custody of boys who reach the age of seven and girls who reach the age of nine or 11.⁴⁵

In the case of L.A. described above, because her son K. was older than seven when she divorced her husband, the court granted the father custody with the provision that L.A. would have access to K three times a month. L.A. told AI that, despite the court ruling, her former husband had not allowed her to see her son since 2000. In desperation, she rented a house near the residence of her former husband in Kuwait in the hope that she could see K. She went to her former husband's house several times to plead with him to allow her to see her child, but he refused. She enlisted the help of the Bahraini authorities, who in turn contacted the Kuwaiti Minister of Interior. The personal status court in Kuwait ordered L.A.'s

⁴⁵ For example, in both Saudi Arabia and Kuwait, a father may have custody when a son reaches the age of seven and when a daughter reaches the age of 11, provided that the father has not remarried. If the father remarries, then the mother may retain custody of the children.

former husband to allow her to see K., but he did not comply with the order. L.A. told AI that no steps had been taken by the Kuwaiti authorities to enforce the judgments in the case.

A divorced mother or father may lose custody of their children if they seek to remarry. If one party remarries, then the other unmarried party may file a case at the personal status courts for custody of the children. The issue of custody is then determined by the court in accordance with the order of priority of relatives considered suitable custodians and whom the court deems most fit to have custody of the children. Generally, the order of relatives considered to be suitable custodians places the mother of the child first, then the mother's mother, followed by the father and then the father's mother. A woman should, therefore, be able to remarry safe in the knowledge that her mother would gain custody of the children. The draft personal status law in Qatar however, is said to state that the father is second in line for custody before the mother's mother. Lawyers in Qatar told AI that the draft law, which is already applied by the courts, in some cases has a huge impact on women, forcing some to postpone plans to remarry until their children become adults. In practice, it is also the case that courts exercise discretion in relation to custody so women cannot be certain to whom custody will be given.

M. 'Abdullah (see above) told AI that she brought a case to the court against her former husband for non-payment of maintenance and won. The former husband went to court to reduce the amount of maintenance or take custody of their daughter, but lost. M. Abdullah told AI that she is both mentally and physically exhausted of pursuing cases to force her former husband to pay the maintenance provision set out by the court, but is too afraid of losing custody of her daughter to consider a new marriage. She told AI that her desperate financial situation would improve if she remarried, but that she fears losing custody of her daughter if she does so.

Custody of children can also be lost if either party's "behaviour" is deemed unacceptable. Former husbands can submit an application to the personal status court for custody of their children on the grounds that their former wife's "immoral behaviour" is unacceptable. There is no exact definition of what constitutes "immoral behaviour" or "unacceptable

moral behaviour"; being in the company of a man who is not a relative, for example, could be deemed unacceptable behaviour. It is left to judges in the personal status courts to decide whether a woman should lose custody of her children on "moral" grounds. Applications for denial of custody on "moral" grounds have to be accompanied by evidence. Such applications can also be made by a woman on the same grounds if her former husband has custody of the children. However, this provision affects women disproportionately as women normally have custody and a woman's "moral behaviour" is more likely to be questioned than a man's. The mere questioning of a woman's morality in the GCC countries, with or without evidence, can be extremely damaging to her not only in relation to the custody of her children but also in relation to the stigma that attaches even to an unproven allegation of "immoral behaviour" (see Section 5.2.).

Applications lodged on grounds of women's "immoral behaviour" are often used against women to deny them custody of their children. One woman who had lost custody of her children on this basis told AI that husbands sometimes submit an application to the court with limited evidence in order to gain custody of the children. Charges of "immoral behaviour" or "unacceptable behaviour" can also be used by former husbands to gain custody of the children and consequently avoid paying maintenance.

G.A. (see above) told AI that once the court in Bahrain had granted her former husband custody of their child, he stopped paying maintenance, but he never actually took custody of their daughter. She told AI that the issue of immorality was used as a pretext to deny her custody, and that her former husband argued in court that G.A. was not bringing up their daughter in accordance with appropriate moral codes of behaviour, and that consequently she should not have custody of their daughter. Women in the GCC countries have little protection against such manipulation of the law by their former husbands.

B.R., a Bahraini national, told AI that her second husband beat her. She eventually managed to get divorced and gain custody of the children. However, her husband repeatedly tried to overturn the ruling by levelling accusations against her. Despite a lack of convincing evidence to support his claims, the court provisionally ruled in his favour, and awarded him

custody of the children. The court's decision was reversed on appeal because of the lack of evidence, and B.R.'s mother was eventually granted custody of the children.

The problems arising out of legal, social and cultural discrimination against women who divorce or seek a divorce include violence, financial and custody difficulties, and a lack of effective protection and just solutions to such problems.

In the case of **M. Mussa** (see Section 3.3 above), her husband threw her out of her home and did not allow her to take her daughter back to Bahrain. The court in Bahrain ruled that the daughter should be brought back from Saudi Arabia to be with her mother, and asked Interpol to intervene. M. Mussa told AI that her husband S.F. had refused to divorce her until their daughter reached the age of seven, at which point he would gain custody. M. Mussa told AI that she desperately wants her daughter back. She asked the Saudi Arabian embassy and the Bahraini Ministry of Foreign Affairs to contact S.F. Both sent letters to him, but they have been returned. M. Mussa told AI that she is afraid of going to Saudi Arabia as she fears that she will not be able to leave the country. She has nobody to help her in Saudi Arabia.

G.A., told AI that her former husband used to pay approximately 50 Bahraini dinars (US\$130) maintenance for his daughter. In 2002 he brought a case to court for custody of their daughter, by then 16 years old, and won (see above). However, two months later he returned the daughter to G.A., but no longer had to pay maintenance as he technically had custody. G.A. told AI that she was scared of going back to the court as she feared losing her daughter again. She is scared of remarrying for the same reason and now relies on social security and charitable organizations to survive.

"States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women ... [t]he same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount."
CEDAW Article 16(1)(d)

The notion of the best interests of the child referred to in this provision of CEDAW is also a fundamental underlying principle of the Convention on the Rights of the Child (CRC), to which all the GCC countries are party. In particular, Article 3(1) of the CRC states that in all actions concerning children undertaken by social welfare institutions and relevant public bodies, including courts of law, the best interests of the child shall be a primary consideration.

The threat of the consequences of being accused of "immoral behaviour", or in some cases *zina*, weighs heavily on girls and women in the GCC countries. Accusations of immorality can be employed maliciously by a former husband to deny a woman custody of her children or to force her to give up her rights in a divorce settlement. A woman's fear of rumours regarding her behaviour also makes her vulnerable to blackmail.

A.M. (see below), a 26-year-old divorced Kuwaiti woman, told AI in July 2004 that her former husband wanted her to give him her share of the home and other property before agreeing to a divorce. When she refused, he accused her of committing *zina*, a charge that she strongly denied. A.M. told AI that her former husband, a police officer, agreed to divorce her after he made her give up her share of the marital home by threatening her with a *zina* charge. A.M. told AI that she was convicted of *zina*, despite medical evidence that there was no sign of sexual intercourse. She was sentenced to a two-year prison term, which was subsequently reduced to one year and eight months. Her case was pending before the Cassation Court at the time of writing.

In the GCC countries, the state's failure to provide any kind of meaningful protection against gender-based violence by marital partners forces women to resort to divorce in order to escape continuing violence. The law, legal practice (in particular the extent to which courts can exercise their discretion in reaching decisions) and pervasive discrimination and discriminatory attitudes, conspire to disadvantage women who seek to divorce their husbands. This can be seen both in relation to finding fault for the failure of the marriage – which determines which party will have to pay compensation and be accorded custody of children – and in terms of accessing divorce options not based on proof of wrong-doing. While men are able to obtain a divorce easily and at little

cost to them, women have to contend with financial barriers, the fear of losing custody of their children and the threat of charges of “immoral behaviour”. These obstacles to obtaining relief from and justice for the abuse they suffer force many women to remain in abusive relationships. Those who do obtain a divorce also face further obstacles in building a new life for themselves and their children.

As a consequence women do indeed bear the burden of divorce disproportionately. At the same time divorce often remains the only exit route they have from abusive relationships.

4.2 Discriminatory effect of morality laws

All the GCC countries have laws which criminalize sexual intercourse outside marriage (*zina*). For example, Article 194 of the Kuwait Penal Code⁴⁶ provides that anyone who commits *zina* and was caught during the commission of the offence shall be punished by imprisonment for a period not exceeding three years and not less than six months. Other laws criminalize “shameful or immoral acts”. For example, Article 203 of the Qatari Penal Code provides that anyone who commits “shameful acts” in a public place is liable for imprisonment for a period not exceeding six months or a fine not exceeding 600 Qatari riyals or both. There is no exact definition in any of the laws in the GCC countries as to what constitutes “immoral conduct” or a “shameful act”. This gives the law enforcement authorities wide powers in determining what kind of behaviour constitutes such acts.

While both men and women can be charged with crimes relating to sexual relations outside marriage (*zina* and attempted *zina*) or other “immoral” conduct, in practice these laws impact in a discriminatory way on women because of the operation of prevailing social attitudes, and because women are more likely to be convicted. Moreover, these laws form part of the overall structure of laws and social attitudes, described throughout this report, which regulate the behaviour of women to a greater extent than that of men.

The threat or fear that morality laws may be invoked can have a powerful impact on women in the GCC

countries who are victims of gender-based violence. For example, women may be deterred from reporting acts of rape or sexual violence, not only because of the shame and social stigma they fear will result from this, but also because of the fear that they could be accused of *zina* or attempted *zina*. The fear of being accused of “immoral acts” can force women to remain in abusive domestic situations for fear of losing custody of their children.

Women who are from socio-economically deprived backgrounds and migrant domestic workers in particular, face the discriminatory effects of the application of morality laws. Such women are rarely afforded the right to legal representation from the initial police interrogations to appeal stages and often face arbitrary detention.

The application of the *zina* and morality laws also has a discriminatory effect on women, as they are more likely to be accused of such offences because of social expectations regarding appropriate behaviour for women.

N.A., a Qatari national, told AI in July 2004 that she had been arrested by police in Doha on 1 July 2004 for sitting in a car with her fiancé after they went to the market. The police apparently made little or no effort to detain or prosecute her fiancé. She had vehemently denied to the police that she carried out any immoral act. She told AI that she and her fiancé had been discussing their wedding and their plans to go on pilgrimage. When AI representatives met her, N.A. had been held in administrative detention for three weeks without charge or legal representation or the opportunity to defend herself. She said to AI “Why do they pick on us? Is it because we are poor, have no influence and are unable to defend ourselves?”

While there are relatively few cases of women, or men, being charged with and convicted of *zina*, it is more common to be accused of attempted *zina* or other “immoral acts”. In many such instances, even when not formally charged, women accused of “immoral behaviour” are often held in administrative detention for periods of up to several months, without being given any clear explanation of the legal basis for their detention, and without being brought

⁴⁶ Law No 16, 1960 (as amended by law No. 62, 1976).

to court.⁴⁷ Such cases can amount to arbitrary detention in violation of Article 9 of the UDHR which states that no one shall be arbitrarily arrested or detained. Detention, even if legal under national law, may be arbitrary if the law under which the person is detained is vague, excessively broad, or violates other fundamental human rights standards.

A.M. (see above), a 26-year-old divorced Kuwaiti woman, who had been imprisoned on a *zina* charge, a charge that she denied, was interviewed by AI in July 2004. The case highlights the discriminatory application of the morality laws. While A.M. was convicted of *zina* and sentenced to two years' imprisonment, the man who was with her when the police stormed her house was not punished.

"I was arrested at my home by two policemen. The arrest took place at around 8pm. They broke down the door without any warning. They started beating us without saying anything. They hit us with their hands and their feet, and then they hit me on the head. Blood started running down my face. The man who was with me was hit in the face and his nose was bleeding. I don't remember how long they hit us for, because it was a long time.

"Next they locked us up in the bedroom. We were bleeding and they left us there without calling an ambulance or medical aid. They went back to the living room, but I don't know what they were doing. After that they took us out of the apartment and down to the street. My ex-husband was standing there. He had gathered a crowd to stare at us.

"We were then forced into a police car and we were still bleeding. They took us to the 'Amiriya police station, not to the hospital. They locked us up in separate cells. The prosecutor and police investigator then questioned me. The prosecutor saw that I was covered in blood. He asked me what I was wearing underneath my clothes, and this was in the presence of my ex-husband, his friend, the supervisor of the police post, the investigator and the man who was at home with me. Everyone saw my underwear.

"Then they locked me up in a cell where I stayed for some time. I was called up for interrogation. I was questioned about my underwear, my marital status,

⁴⁷ See also Section 5.1 for cases of women migrant workers detained on this basis.

about the man I was with at home, and if I was in a relationship. The prosecutor and police investigator were the only ones present and they are men, there wasn't a woman in the police station. After that, two men took me into a room where policemen were waiting.

They ordered us to sign the record of the interrogations. We signed the report without knowing what was written in it. The prosecutor told the investigator that he'd asked us whether we wanted a lawyer and that we had refused. This was untrue because he didn't ask us. Next, they took us back to our cells and didn't send any medical assistance. It must have been around midnight. We were locked up until sunset without any treatment. At around 7am they took us to the clinic to obtain proof and not for medication. They refused to examine my injuries. They took the clothes I was wearing to keep them as evidence. We stayed at the 'Amiriya police station for a week. After that they took us to al-Riq'i police station to carry on with the inquiry."

A.M. told AI that she was convicted of *zina*, despite medical evidence that there was no evidence of sexual intercourse. She was sentenced to a two-year prison term which was later reduced to one year and eight months. Her case is now pending before the Court of Cassation. The man she was with was released by the police on bail and was not punished for the "crime".

A.M. believes that the treatment she received at the hands of law enforcement officials was due to the fact that her former husband is a policeman and was designed to force her to agree to passing her share of the marital home to her former husband.

Article 12 of the UDHR provides that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence", and Article 17 of the ICCPR contains a similar provision.

4.3. Restrictions on freedom of movement and the exercise of male authority

Discrimination and restrictions on women's lives in the home are reflected in and reinforced by discrimination and restrictions on their freedom of movement. This in turn means that women may find themselves at risk of violence and unable to escape from it.

In some of the GCC countries, women face discriminatory restrictions on their freedom of movement when they apply for a passport. In Bahrain, Oman and Saudi Arabia, women require the written approval of their husband or guardian to request a passport. In Bahrain and Oman, this approval is required by law.⁴⁸ In Saudi Arabia, the requirement arises out of practice or custom. This is a flagrantly discriminatory practice that seeks to restrict women's freedom of movement and reaffirms women's low status in society.

In Saudi Arabia, in particular, the law places many gender-based constraints on the freedom of movement of women. These restrictions include legal prohibition on women taking up employment without the written permission of a male relative, or leaving the country unless accompanied by a *mahram* (a husband or a male relative to whom marriage is not permissible).

Further gender-based restrictions on freedom of movement include the prohibition on women driving cars. Fifteen years ago, 47 women took part in an unprecedented protest against what was then customary law. They drove a convoy of cars in Riyadh and were immediately arrested and detained for several hours. They were released only after their male relatives signed undertakings that the women would not violate the ban again. Those among them who had jobs in the public sector were dismissed from their jobs by a royal decree. A *fatwa* (religious ruling) was issued by the senior council of *Ulama* (scholars) stating that women were not allowed to drive. This was followed by a government statement supporting the *fatwa* and warning that women who did not respect it would be punished. However, opposition to the ban is growing once again as the economy opens up and more women enter the workforce. In June 2004, a group of Saudi Arabian women who participated in the third national dialogue (see section 1.3) were reported to have submitted further recommendations to the Secretariat of the King 'Abdel 'Aziz Centre for National Dialogue. These included the formation of an all-female consultative committee to the Senior Council of *Ulama* to assist the *Ulama* in issuing *fatwa* and the withdrawal of the requirement that women obtain the

⁴⁸ Oman: Article 12, Passport Law 1997, Bahrain: Decree No 15, 1976, Article 14, Law No. 11, 1975.

approval of a *walli* on issues such as education, health and employment.

Article 13 of the UDHR provides that "Everyone has the right to freedom of movement within the borders of each state [and] the right to leave any country, including his own and to return to his country". This right to freedom of movement is set out also in Article 12 of the ICCPR. The Human Rights Committee, in its General Comment on the right to freedom of movement, stated that states' obligation to protect freedom of movement is particularly pertinent in the case of women. It went on to say "it is incompatible with article 12, paragraph 1, that the right of a woman to move freely and to choose her residence be made subject, by law or practice, to the decision of another person, including a relative."⁴⁹

"States Parties shall take all appropriate measures... To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."

(CEDAW Article 5(a))

Legal and social norms governing dress codes and other behaviour often have a disproportionate impact on women whose dress and appearance are subject to particular regulation. These restrictions lead to violence against women as a penalty for transgressing such codes.

The religious police in Saudi Arabia, the Committee for the Propagation of Virtue and the Prevention of Vice (al-Mutawa'een), are authorized to ensure compliance with these strict established codes of moral conduct. In doing so, they beat, arrest, and detain people. In particular, women are at risk of being stopped, beaten and detained by al-Mutawa'een for perceived infractions of rules relating to dress, such as showing the ankles or face. Breaching these codes gives rise to suspicion of prostitution and may result in arrest, brutality, and torture by police, particularly the religious police (al-Mutawa'een), who patrol the streets monitoring, among other things, women's conduct, dress or behaviour.

⁴⁹ General Comment No. 27: Freedom of Movement (Article 12) (2 November 1999), para. 6.

A person's dress can be an important expression of their personal, cultural, religious or other identity and is an element of the right to freedom of expression. AI recognizes the right of individuals to express themselves in such a manner and opposes the forcible imposition of dress codes. Under international human rights standards, states are obliged to ensure freedom of expression for everyone, without discrimination. Restrictions of this kind on women are not only a violation of their freedom of expression but also put them at risk of cruel, inhuman or degrading treatment or torture at the hands of law enforcement agencies. Such treatment amounts to gender-based violence because it is directly linked to discriminatory restrictions which have a disproportionate impact on women.

On 11 March 2002, 14 girls lost their lives and dozens of others were injured following a fire at their school in Mecca after the Mutawa'een prevented them from escaping from the fire because they were not wearing headscarves and their male relatives were not there to receive them. The Mutawa'een were also reported to have prevented rescuers from entering the school because they were men and therefore not permitted to mix with women and girls.⁵⁰ This is a tragic illustration of how gender discrimination can have lethal consequences.

4.4. Education

Women in the GCC countries can point to outstanding academic achievements. The literacy rate among women in the GCC countries is high. In Qatar for example there are more women in secondary and university education than there are men.⁵¹ Throughout the GCC countries, women are attaining significant academic achievements.

However, women tend to be educated only in certain fields, such as social sciences and humanities. The educational choices that women in the GCC societies

⁵⁰ See *Saudi Arabia: Investigation into tragic death of 14 schoolgirls must be transparent and public* (AI Index: MDE 23/003/2002) 15 March 2002 - News Service No. 48.

⁵¹ UN Economic and Social Commission for Western Asia, Gender Statistics Programmes, *Where do Arab women stand in the development process? A Gender-based Statistical Overview*, p. 5 (http://www.escwa.org.lb/gsp/documents/papers/arabwomen_E.pdf).

are encouraged to undertake reflect the persistence of strong gendered stereotypes. For example, there is a general perception that engineering work is not suitable for women. Women in the GCC countries are therefore unlikely to pursue educational paths in engineering. Rather they tend to be trained to carry out work in sectors such as education. As a result, women compete with each other for jobs in a limited number of occupations. Women who seek employment in these areas often face the prospect of unemployment and consequently suffer financially. Limited employment opportunities increase women's dependence on their husbands and male relatives.

In Saudi Arabia, women's right to education is constrained not only by social and cultural stereotypes, but also by the laws on education. Article 153 of the Policy of Education states that one of the primary aims of girls' education is to prepare them for work compatible with what is considered their disposition as women, such as teaching and nursing. This clearly violates Saudi Arabia's obligations as a state party to CEDAW.

"States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education..."

(CEDAW Article 10)

Cultural attitudes in other GCC countries which discourage women's education in fields considered to be "traditionally male" also breach the principle of non-discrimination in access to the right to education. Such restrictions, whether they are the result of laws

or social attitudes, have a serious practical impact on women's lives in that they limit the qualifications that women are able to obtain and their subsequent access to employment opportunities and economic independence.

The Dean of the College of Management at King Sa'ud University was reported to have said in a television interview that there was a shortage of women experts in fields such as law and nursing, and that women should be given adequate training in these areas. He went on to highlight the growing number of women working in the hotel and banking sector and the importance of giving women full citizens' rights.⁵²

AI calls on all GCC governments to ensure that their laws, policies and practices comply fully with international standards prohibiting discriminatory practices against women and girls in education. In particular, the government of Saudi Arabia must amend its Policy on Education to ensure women have equal access in law to all forms of education and training. With regard to eliminating cultural stereotypes, in education as in all other areas, all GCC countries should ensure compliance with Article 10 of CEDAW and heed the CEDAW Committee's advice to the government of Kuwait to "design, implement and strengthen comprehensive awareness-raising measures to foster a better understanding of equality between women and men, at all levels of society, with a view to eradicating traditional stereotypes regarding the roles and responsibilities of women and men in the family and society".⁵³

Women in the GCC countries will continue to face restrictions on entering the labour force as long as they lack the necessary educational skills and expertise that allow them to enter the job market.

4.5. Employment

Women's lack of economic independence increases their inability to flee violent homes. Many of the women that AI spoke to said that they had to endure violence because they were totally dependent for money on their husbands, and had no other financial

means. **M. 'Abdullah** (see above) told AI that she was economically dependent on her former husband and she had to put up with being beaten "for Hessa's sake", referring to the well being of her six years old daughter. **N.A.** (see above) told AI that after years of being beaten by her husband, she finally decided to leave and is forced to live in a bedroom at her sister's house. Women who are economically dependant are fearful of escaping violence as well as being fearful of violence itself.

A large proportion of the women in the workforce in the GCC countries are migrant workers. According to the UN Economic and Social Commission for Western Asia, Gender Statistics Programmes, "In the year 2000, Arab women constituted only 29% of the region's labor force. The economic activity rate of Arab women remains lower than that of women in other developing regions of the world. Women's share of the labour force was generally lower in high-income Arab countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and UAE) ranging between 13% and 23%. In the GCC countries, the economic activity rate of women is more accurately a reflection of the proportion of foreign and migrant female workers in the Gulf Region."⁵⁴

There are few statistics on the participation of women nationals of the GCC in the labour force in the GCC countries, and those which do exist are incomplete or partial. For example, recent information on women in the labour force issued by Qatar⁵⁵ does not distinguish between women who are GCC nationals and those who are migrant workers.

The International Labour Organization (ILO) Committee of Experts on the Application of Conventions and Recommendations has called on Qatar and Kuwait to collect information regarding the situation of men and women nationals in the workforce, as well as specific measures taken to promote women's access to training and employment. The Committee also suggested that Qatar should take specific steps to create conditions to encourage women to train for different occupations and

⁵² BBC, 12 June 2004

⁵³ CEDAW Committee, Concluding Comments: Kuwait, UN Doc. CEDAW/C/2004/L/CRP.3/Add.4/Rev. 1, para 26

⁵⁴ *Where do Arab women stand in the development process?* op. cit.

⁵⁵ *Women & Men in Qatar, statistical view 2004*, published by the Supreme Council for Family Affairs.

professions, including occupations traditionally considered to be male.⁵⁶

Article 11 of CEDAW provides that women should have the same rights as men in relation to work and that, in order to prevent discrimination against women on the grounds of marriage or maternity, dismissal on grounds of pregnancy should be prohibited; provision should be made for maternity leave and for supporting social services to enable people to combine work and parental responsibilities; and special protection should be provided to pregnant women in types of work known to be harmful to them.

Some constitutions in the GCC countries provide for the right to employment for citizens and equality between the sexes. For example Article 13 of the Bahrain Constitution provides that every citizen has the right to work and to choose the type of work within the bounds of public order and decency and that the state guarantees the provision of job opportunities for its citizens and the fairness of work conditions.

Furthermore, all the GCC countries, with the exception of Oman, have ratified ILO Convention No. 111 on Discrimination (Employment and Occupation). In practice, however, women in the GCC countries are legally restricted from entering into certain professions. In particular, labour codes in the GCC countries prohibit women from working in occupations perceived to be dangerous or hazardous. In Bahrain, for example, the Labour Law states that women are not allowed to work between the hours of 8pm and 7am and cannot be employed in “dangerous” occupations.⁵⁷ Oman’s Labour Law⁵⁸ and the UAE’s Labour Law⁵⁹ contain similar provisions. Saudi Arabia’s Labour Code⁶⁰ stipulates

⁵⁶ Qatar (ratification: 1976), CEACR 2001/72nd Session, Observation. Qatar Comments made by the Committee of Experts on the Application of Conventions and Recommendations (from 1990), Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Kuwait (ratification: 1966), *Direct request*, CEACR 2002/73rd Session *ibid.*; Report of the Committee of Experts on the Application of Conventions and Recommendations, Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

⁵⁷ Articles 59 and 60 of the Bahrain Labour Law 1963.

⁵⁸ Articles 81-82 of Oman’s Labour Law 2003.

⁵⁹ Articles 27-29 of the UAE Labour Law, 1980.

⁶⁰ Article 48 of the Saudi Arabia Labour Code, 1969.

that all Saudi Arabian workers have an equal right to work in all parts of the kingdom without discrimination. However, this general guarantee is undermined by Article 160, which prohibits the employment of women in “hazardous operations”.

However, the labour codes fail to specify what occupations or operations are considered “dangerous” or “hazardous”. When AI asked officials in Bahrain whether there is a list detailing what would be regarded as a “dangerous” professions, officials said that there was no such list. While in certain situations special provisions may be needed to protect women in employment (for example, provisions to protect women in pregnancy or while breastfeeding) and safeguards against dismissing a woman because of her pregnancy (such as Article 63 of the Bahrain Labour Law), no such protection rationale or detailed information has been offered as a basis for restricting women from participating in certain occupations. For example in Bahrain, chemical engineering was deemed until recently to be a “dangerous” profession that women were not allowed to work in.

Restricting women’s opportunity to engage in certain occupations contravenes **CEDAW Article 11** which provides that:

“(a) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training.”

Saudi Arabia is a party to CEDAW, as well as to ILO Convention No. 111 which deals with discrimination in employment. Article 48 of the Labour Code stipulates that “...all Saudi workers have equal right to work in all parts of the Kingdom, without discrimination.” However, this provision is undermined by Article 160 of the Saudi Arabian Labour Code which prohibits the co-mingling of men

and women in the workplace and its facilities, and aims to segregate the sexes. The ILO Committee of Experts, commenting on Saudi Arabia's implementation of ILO Convention No. 111, noted that Article 160 of the Labour Code "has the effect of prejudicing equality of opportunity and treatment between men and women and is therefore incompatible with the Convention". In particular, the Committee criticized the restriction of women to occupations deemed suitable to their nature and not contrary to "tradition". It also stated that the prohibition on men and women jointly using the same workplace results in occupational segregation as it restricts women to jobs where they will only be in contact with other women. The committee called on Saudi Arabia to review the occupations and activities that women may not perform, in light of current scientific knowledge and technology relevant to those occupations.⁶¹ The Committee also said that it is not necessary for measures to have a discriminatory intent for them to be in breach of the Convention. The Committee observed that the impact of this section of the Labour Code on the working conditions of women does fall within the definition of discrimination on the basis of sex contained in the Convention.⁶²

In addition to facing restrictions on the kind of occupations they may take up, women in Saudi Arabia are restricted from carrying out work-related activities without the assistance of a *wakil* or representative whose role normally entails tasks such as follow-up paperwork on behalf of a woman and representing her in meetings. In May 2004 the Saudi Arabian Ministry of Commerce announced that women may carry out business activities without the need for a *wakil*.⁶³ Although the practical impact of this decision is still unclear, AI welcomes it as a potential step towards reducing discrimination against women and restrictions on women's right to work. However, some women were reported to have faced

⁶¹ Report of the Committee of Experts on the Application of Conventions and Recommendations, Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Saudi Arabia (ratification: 1978), Direct request, CEACR 2001/72nd Session, para 14. International Labour Organization, Saudi Arabia (ratification: 1978), Direct request, CEACR 2001/72nd Session, para 14.

⁶² Report of the Committee of Experts, ILO, Geneva 1996.

⁶³ Details on the issue of *wakil* can be found in AI's report, *Saudi Arabia: Gross Human Rights Violations Against Women* (AI Index: MDE 23/057/2000) September 2000.

obstacles when they sought to obtain business licences without a *wakil*.

Even where the law is not expressly discriminatory, social and cultural constraints limit or deny women the opportunity to enjoy their employment rights free from discrimination. In addition, some interpretations of Shari'a-based rules are deemed to restrict women's right to become a *wu'ali* (guardian or representative), which prevents them from assuming positions of responsibility such as judges.

The law in Bahrain, Kuwait, Oman, Qatar and the UAE does not explicitly bar female judges. However, not a single woman in the GCC countries has been appointed as a judge or Chief Prosecutor. The highest judicial post reached by women in the GCC countries is prosecutor, in both Oman and Qatar.

In relation to access of women to judicial careers, and in particular the appointment of women as judges, the ILO Committee of Experts stressed, regarding Kuwait for example, the responsibility of the state to ensure the effective pursuit of a policy of equality of opportunity and treatment in respect to employment by the state. The Committee noted the importance of applying the provisions of the ILO Convention relating to discrimination in employment generally, at the legislative, regulatory and practical levels.⁶⁴

In his 2003 report on Saudi Arabia, the UN Special Rapporteur on the independence of judges and lawyers encouraged the government to take steps to encourage more women to enter into legal practice and, in particular, to "make the judiciary more representative by ensuring the appointment of women judges". Stating that "Principle 10 of the Basic Principles on the Independence of the Judiciary requires that in the selection and appointment of judges there be no discrimination on the basis of sex", he found that the Saudi Arabian government needed to "do more to ensure the selection and appointment of women judges". The Special Rapporteur found

⁶⁴ Report of the Committee of Experts on the Application of Conventions and Recommendations, Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Kuwait (ratification: 1966), Direct request, CEACR 2002/73rd Session, para 4.

“no reason why women cannot practise as lawyers”.⁶⁵

The lack of participation of women in the legal profession, and in particular acting as judges, is likely to reinforce gender-discriminatory outcomes of cases in the courts, including those relating to personal status and family law issues such as those referred to in Section 4.1 of this report.

Apart from restrictions on their participation in certain occupations, the reasons for women’s lack of participation in the workforce can be traced to the social and cultural perception of women in the GCC countries. It is a common belief in the GCC countries that a “woman’s place is the home”, and women themselves often shy away from jobs in mixed gender sectors. In addition, women in employment often leave work following marriage, never to return.

State action aimed at eliminating prejudices and stereotypes is particularly important with regard to women’s exercise of equal rights to employment, as provided for under Article 11 of CEDAW, since it is one of the main factors that lie behind women’s lack of economic independence.

Article 5 of CEDAW provides that states should take appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

Article 4 of CEDAW notes that any temporary special measures aimed at accelerating de facto equality shall not be considered discriminatory in terms of the Convention. In interpreting Article 4, the Committee notes: “The position of women will not be improved as long as the underlying causes of discrimination against women, and of their inequality, are not effectively addressed. The lives of women and men must be considered in a contextual way, and measures be taken towards a real transformation of opportunities, institutions and systems so that they are no longer grounded in historically determined

⁶⁵ Report of the Special Rapporteur on the Independence of Judges and Lawyers, UN Doc. E/CN.4/2003/65/Add.3, 14 January 2003.

male paradigms of power and life patterns”.⁶⁶ However, AI is not aware of any temporary special measures taken by governments in the GCC countries to combat discrimination against women in relation to employment.

The CEDAW Committee has highlighted its concern regarding the persistence of traditional stereotypes. The Committee further recommended that the Kuwait authorities encourage the media to promote cultural changes with regard to the roles and responsibilities attributed to women and men.

AI calls on all governments in the GCC to take steps to eliminate discrimination against women in employment, including the right to the same employment opportunities as men, with appropriate protections to prevent their being discriminated against on grounds of marriage or maternity, in accordance with the provisions in Article 11 of CEDAW and the recommendations and views of UN and other specialized international bodies entrusted with monitoring the implementation of human rights treaties.

In its General Recommendation No. 19 on violence against women, the CEDAW Committee has stated that “[l]ack of economic independence forces many women to stay in violent relationships”. In her 2003 report to the UN Commission on Human Rights, the first Special Rapporteur on violence against women, Radhika Coomaraswamy, reiterated the substance of these requirements and drew attention to the additional obligation on states under the due diligence standard “[to] take all measures to empower women and strengthen their economic independence and to protect and promote the full enjoyment of all rights and fundamental freedoms”.⁶⁷

4.6. Political participation and decision-making

The participation of women in political life is virtually non-existent in Saudi Arabia and the UAE, and extremely limited in other GCC countries. The UAE have, to date, not held parliamentary or municipal

⁶⁶ CEDAW General Recommendation No. 25, Article 4, paragraph 1 (Temporary Special Measures), January 2004, para. 10.

⁶⁷ Report of the Special Rapporteur on violence against women, UN Doc. E/CN.4/2003/75, 6 January 2003, para. 85(b).



elections, so neither women nor men can vote. In both Saudi Arabia and Qatar, no parliamentary elections have been held. In Qatar, one woman was elected to the Central Municipal Council in April 2004. Sheikha Youssef al-Jiffri became the first female member of the previously all-male Central Municipal Council when she was elected on 7 April 2004 in the Central Municipal Council's second elections. Voting for municipal elections in Saudi Arabia was introduced in February 2005; however women were excluded from taking part. Women are excluded by law from voting in Kuwait. There are no discriminatory laws in Bahrain, Oman and Qatar in relation to elections, yet in all these countries women continue to be under-represented in government and in decision-making in general. The majority of government posts and seats for women in the GCC countries have come through appointment, not elections. Generally, the reason for this under-representation has more to do with social and cultural factors than legal prohibitions on their participation. Practices in the GCC countries constraining women's full participation in public life result from, and are underpinned by, a widespread belief that women are subordinate to men.

CEDAW Article 7, on non-discrimination in political life, holds that:

"States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of country."

General Recommendation No. 23 of the CEDAW Committee examines in more detail states' obligations in this area.⁶⁸ It sets out states' obligation to take

⁶⁸ CEDAW Committee, General Recommendation No. 23, Article 7 (political and public life) (16th session, 1997).

appropriate steps to ensure that women, on the basis of equality with men, enjoy the right to vote in all elections and referendums, and to be elected. In particular, states are responsible for identifying, implementing and monitoring measures to:

- achieve a balance between women and men holding publicly elected positions;
- ensure that women understand their right to vote, the importance of this right and how to exercise it;
- ensure that barriers to equality are overcome, including those resulting from illiteracy, language, poverty and impediments to women's freedom of movement;
- assist women experiencing such disadvantages to exercise their right to vote and to be elected;
- ensure equality of representation of women in the formulation of government policy;
- ensure women's enjoyment in practice of the equal right to hold public office;
- ensure that recruiting processes directed at women are open and subject to appeal;
- ensure that effective legislation is enacted prohibiting discrimination against women;
- encourage non-governmental organizations and public and political associations to adopt strategies that encourage women's representation and participation in their work.

The low participation of women in public life means that issues that particularly concern them, such as violence, discrimination and other causes of violence, problems arising out of personal status issues, and the status of women in society are less likely to be discussed at the legislative and executive levels.

Governments of the GCC countries (with the exception of Saudi Arabia and the UAE) have appointed women as members of consultative councils (or second chambers). Women are not allowed to stand as candidates for election to the Kuwaiti elected chamber (the Majilis al-Omah). In Saudi Arabia, it was reported that women will be appointed as advisors to the Shura Council, an appointed consultative council, but not as full members.

In Oman four women hold ministerial posts. The first female minister, Sheikha A'isha Bint-Khalfan Bin

Jumil al-Siyabiah, was appointed on 3 March 2003 as President of the Public Authority for Crafts and Industries.⁶⁹ On 8 March 2004, Dr Rawiya bint Sa'ud bin Ahmed al-Busaidi was appointed as Minister of Higher Education. She was the first woman to be appointed as Minister with Portfolio in Oman⁷⁰, followed by followed by Rajhaa bint 'Abdel Anir bin 'Ali, who was appointed Minister of Tourism. On 20 October 2004, Dr. Sharifah bint Khalfan al-Yahayai was appointed as Minister for Social Development.⁷¹ Nine women were appointed by the Sultan of Oman to the Majlis al-Dawla (an appointed consultative second chamber), and two were elected to the Majlis al-Shura (an elected legislative first chamber).

In Bahrain Nada 'Abbas Haffadh became the first woman cabinet minister in April 2004 when she was appointed Minister of Health. The second female minister, Fatima al-Bulushi, was appointed Minister for Social Affairs in February 2005. Six women are appointed to the Shura (an appointed Consultative Council) in Bahrain, but women candidates failed to win seats in the 2002 parliamentary elections.

In Qatar, one woman holds a ministerial post. On 6 May 2004, Sheikha bint Ahmed al-Mahmud became the new Minister for Education and Teaching.

The first female minister in the UAE was appointed in November 2004. Sheikha Lubna al-Qasimi was appointed Minister for the Economy. There are no elections in UAE.

Registration for the municipal elections in Saudi Arabia commenced in November 2004 and the first municipal elections were held in February 2005. These elections allow voters to choose half of the members of the municipal councils; the other half are appointed by the government. For Saudi Arabia, the elections are a positive development; unfortunately, for Saudi Arabian women they are another setback. Saudi Arabian women activists publicly denounced the decision to exclude women from the municipal elections.

Saudi Arabia's electoral law is clear about women's participation. The law uses the word "citizen" -- in

Arabic, this refers to both men and women -- in indicating those eligible to vote. Despite this, the Minister of Interior, Prince Nayef bin 'Abdel 'Aziz, announced in October 2004 that women would not be allowed to take part in the elections, saying "I don't think that women's participation is possible", without giving any specific explanation for this position.

It is not clear why a decision to delay women's participation was made, or when women will be allowed to vote. On 19 September 2004, the General Committee for Municipal Elections in Saudi Arabia announced that Saudi Arabian women would not be allowed to vote or stand for office in the municipal elections. This practice is blatantly discriminatory against women, and clearly violates Saudi Arabia's obligations as a party to CEDAW. Saudi Arabia ratified CEDAW in October 2000 without reservation to Article 7 on political participation.

The Head of the Election Committee, Prince Mut'ab bin 'Abdul 'Aziz, said, "I expect women to participate in elections in future stages, after conducting studies to assess whether it is useful or not." It is imperative to ensure that women can participate in elections on an equal basis, because public life is one of the significant areas where women face discrimination.⁷² For similar reasons, both Saudi Arabia and the UAE should ensure women's participation in the Federal Council in the UAE and the Shura Council in Saudi Arabia, so that they can be represented in the formulation or discussions of government policy.

Women have become more vocal in asking for greater equality in relation to both political and decision-making posts. In 2003, three women were allowed to take positions on the executive board of Saudi Arabia's first human rights committee. In 2004 a woman was elected to the Board of Directors of the Journalist Union, after considerable pressure from women activists for female journalists to be allowed to vote in the Journalist Union's elections. In November 2004, following calls from many women, the Saudi Arabian Ministry of Commerce announced that it had granted businesswomen the right to vote in the elections to the Riyadh Chamber of Commerce and Industry. A number of women had also

⁶⁹ Royal Decree 24/2003.

⁷⁰ Royal Decree 28/2004.

⁷¹ Royal Decree 113/2004.

⁷² For details see AI, *Saudi Arabia: Women's exclusion from elections undermines progress* (AI Index: MDE 23/015/2004), 17 November 2004.



expressed their wish to run as candidates for the municipal elections; however they were blocked from doing so by the official announcement.

Women in Kuwait are allowed to participate in public life and hold decision-making posts. However, discrimination against them in relation to their political rights is legally entrenched. Article 1 of the Kuwaiti Electoral Law 1962 clearly prohibits women from voting or standing as candidates. Numerous challenges against this law have been brought by women activists – Kawther al-Jaw'an, Farida al-Dashti, Roula al-Dashti, and Badria al-Awadi – at the Constitutional Court, but all have been unsuccessful.

The Kuwaiti government has repeatedly signalled its intention to bring a new law before the shura council (parliament) to grant women full political rights. In Kuwait's report to the CEDAW Committee in January 2004, the authorities repeated their "intention to present, during the current legislative session, legislation that would grant women their full political rights".⁷³

The Kuwaiti government has acknowledged that: "Women's public-interest associations are working to empower women and promote their rights by organizing campaigns aimed at the enactment of amendments to legislation that discriminates between men and women. They are also working to eliminate discrimination and violence against women."⁷⁴

The CEDAW Committee has expressed its concern at Kuwait's failure "to ensure that women have, on equal terms with men, the right to vote in all elections and public referendums, and to be eligible for election to all publicly elected bodies. The committee considered the lack of political rights of women a very serious limitation of their rights, which also has a significant negative impact on women's enjoyment of other rights protected under the Convention".⁷⁵

⁷³ CEDAW Committee, Concluding Comments: Kuwait, UN Doc. CEDAW/C/2004/I/CRP.3/Add.4/Rev. 1, para 1.

⁷⁴ Brief overview of Kuwait's experience in the implementation of the Beijing Platform for Action (Beijing + 10), <http://www.un.org/womenwatch/daw/Review/responses/KUWAIT-English.pdf>

⁷⁵ CEDAW Committee, Concluding Comments: Kuwait, op cit, para 15.

The Committee called on Kuwait "to take all necessary steps, as a matter of utmost urgency, to introduce and actively support the adoption of legislation to amend the discriminatory provisions of the Electoral Law in line with the constitutional guarantee of equality and in order to ensure compliance with the Convention." The Committee also urged Kuwait to take all necessary measures to harmonize its domestic legislation with the principles and provisions of the Convention and to abolish differences with regard to rights and responsibilities between women and men and to achieve full gender equality.⁷⁶ The Committee expressed concern at the continuing existence of discrimination against women in various laws and called on Kuwait "to take urgent steps to incorporate the definition of discrimination against women as contained in Article 1 of the Convention in its national legislation."⁷⁷

Concerns have also been voiced by other international mechanisms. The UN Committee on Economic, Social and Cultural Rights expressed concern about the persistence of discrimination against women in Kuwait, particularly "with regard to their participation in the political decision-making process, especially in the parliament, as well as in their enjoyment of economic, social and cultural rights."⁷⁸

In April 2005, the Kuwaiti parliament voted (in the first reading) in favour of amending Article 3 of the municipal council law to grant women the right to vote and stand as candidates in municipal elections. However on 3 May 2005 the Kuwaiti parliament (in the second reading) failed to vote in favour of giving women the right to participate in municipal elections.

The Kuwaiti government was reported to have presented a draft resolution before the shura council in May 2004 to amend the electoral law and grant women the right to vote and stand as candidates in parliamentary elections. This led to significant discussions in Kuwait and throughout the GCC countries regarding women's political rights and the

⁷⁶ CEDAW Committee, Concluding Comments: Kuwait, op cit, para 16.

⁷⁷ CEDAW Committee, Concluding Comments: Kuwait, op cit, para 20.

⁷⁸ Concluding Observations of the Committee on Economic, Social and Cultural Rights: Kuwait, UN Doc. E/C.12/1/Add.98, 7 June 2004, para 14.

issue of *millia* or guardianship (see below). Women's activists in Kuwait intensified their campaigning during the shura council's deliberation on the issue in March 2005 and held a series of demonstrations calling on members of the council to vote in favour of the bill.

Beyond the law, the reason for the limited number of women in parliaments and in decision-making post in the GCC countries is linked to a number of factors:

- Few women are in formal employment. As result, women are un-represented or under-represented in certain fields and are therefore less likely to be found in leadership roles and positions of power within these fields.

- Early retirement laws in the GCC countries encourage women to take early retirement if they so wish to. Consequently, working women often take early retirement, thereby missing opportunities to gain promotion and reach decision-making positions in their professions.

- Social and cultural customs discourage women from standing in elections or putting themselves forward as candidates for political posts. Even when women stand as candidates for elections, they often find that they are able to win few if any seats. In Bahrain none of the women who stood for parliamentary elections was elected. In Qatar, only one woman was elected to the Central Municipal Council after the male candidates withdrew from the elections. In Oman, two women standing in urban areas were elected to Majlis al-Shura (an elected legislative council). This failure to win seats can be traced to social and cultural customs, which discourage electorates from voting for women candidates.

- Cultural and religious reasons have been cited by those who object to women's participation in elections to deny women their right to vote, stand for election or hold key positions. In Kuwait, for example, such arguments were used in debates relating to women's participation in elections. One view put forward was that Islam prohibits women from becoming a *nalli* (guardian or representative) and that therefore women should not hold representative posts such as members of parliament. Some Muslim scholars, however, have suggested that there is no reason why women should not be

members of parliament or participate in elections. A Saudi Arabian Ministry of Justice official was reported to have said in an interview with the *Okaz* newspaper that women's participation in elections is not forbidden.⁷⁹

The fragility of civil society, the small number of rights-based NGOs in the GCC countries, especially human rights organizations, and the general lack of a human rights culture in the GCC countries also contributes to this lack of representation and participation by women. Poor or non-existent representation in parliament, public life and decision-making posts⁸⁰ both reflects and exacerbates the marginalization of women. It strengthens the negative perception of women as subordinate and allows the persistence of social and cultural stereotypes and presumptions which might be challenged if women were able to play a greater part in public and political life. It also means that issues which concern women are not properly represented or discussed in decision-making forums, which has an especially grave impact in segregated societies.

Emphasizing the importance of women's participation in politics and public life generally, the CEDAW Committee urges states not only to provide for equal representation in law, but to ensure that equal representation is achieved in practice.⁸¹ One of the ways to achieve this is through special temporary measures which CEDAW endorses in Article 4. The CEDAW Committee has found that states should "evaluate the potential impact of temporary special measures with regard to a particular goal within their national context and adopt those temporary special measures which they consider to be the most

⁷⁹ *Okaz* newspaper, 4 December 2004.

⁸⁰ The UNDP's Gender Empowerment Measure, (GEM) measures the participation of women in economic, professional and political activities using the indicators of income per capita (PPPS), women's percentage share of professional and technical positions, and women's percentage share of parliamentary seats, respectively. This measure shows that women of the Arab countries have a very low rate of participation in public life. In all regions of the world, only sub-Saharan Africa scores worse, Arab Human Development Report UNDP: Creating Opportunities for Future Generations UNDP 2002).

⁸¹ CEDAW Committee, General Recommendation No. 23, Article 7 (political and public life), para 16.

appropriate in order to accelerate the achievement of de facto or substantive equality for women.”⁸²

The former Special Rapporteur on violence against women, its causes and consequences identified low rates of political participation as one of the key areas which has hindered women’s progress in the Arab region.

“Persisting inequities in the region — reflecting poverty, illiteracy, the urban/rural divide and gender inequality — continue to exclude many from public discourse. As a result, the process of political liberalization has bypassed too many people. For example, in one country that has an elected national assembly, women are denied the right to hold office. In other countries, despite the legal equality of women and men in terms of political rights, women are greatly underrepresented in all political organizations.”⁸³

Activists and human rights organizations from the Gulf sub-region who took part in an AI seminar, “The Gulf and the Arabian Peninsula Region: Justice and Human Dignity” held in Kuwait in February 2000, put forward a number of recommendations to remedy the under-representation of women in positions of influence in the Gulf.⁸⁴ These included:

- Governments should promulgate clear legislation to enable women to be involved in the structures of power and decision-making and to take part in national resources management without prejudice or discrimination. An institutional mechanism should be in place to monitor the implementation of such laws.
- Governments should take all necessary measures to help women understand the significance of their involvement in all phases of election processes, both as candidates and voters. An

⁸² CEDAW Committee, General Recommendation No. 25, Temporary special measures, para 27.

⁸³ For further details see The Arab Regional Development Report-UNDP (2002). Quoted in Report of the UN Special Rapporteur on Violence against women, UN Doc. E/CN.4/2003/75/Add.1, 27 February 2003.

⁸⁴ For details of the seminar and its recommendations, see AI report, “*Seminar on Justice and Human Dignity*”, Kuwait, 12-13 February 2000 (AI Index: MDE 02/04/00), available in English and Arabic.

information strategy should be developed to help modify attitudes within Gulf states.

- Women should be involved in the whole spectrum of civil society institutions and encouraged to assume positions of leadership as a step towards the real sharing of authority.

Some governments in the GCC countries have attempted to address the issue of women’s participation. For example the government of Qatar has identified the following as strategic objectives in its implementation of the Beijing Platform for Action, which includes a whole chapter on women in power and decision-making:

“1 – Action aimed at transforming the present situation of women, characterized as it is by a low level of participation in social life, into a more active situation that will enable women to play a meaningful and effective partnership role in a dynamically evolving society;

2 – Action to promote broader participation by women in power structures and decision-making;

3 – Action to alter social orientations and values that are not receptive to effective participation by women in comprehensive development projects;

4 – Affirmation of Arab and Islamic values and principles that serve to integrate the roles of women and men as a means to building a society that will be both modern and true to its origins.”⁸⁵

Officials in the Supreme Council for Family Affairs in Qatar told AI delegates that the council is undertaking programmes to educate women on their legal rights including their rights under the new draft personal status law. However, these efforts are still in their infancy. These challenges are still very much apparent and the objectives set out have yet to be attained.

4.7. Nationality and citizenship

All nationality laws within the GCC countries discriminate against women. Women in most of the

⁸⁵ Reply by the State of Qatar to the Questionnaire to Governments on Implementation of the Beijing Platform for Action (1995) and the Outcome of the Twenty-third Special Session of the General Assembly (2000) Supreme Council for Family Affairs 2004 <http://www.un.org/womenwatch/daw/Review/responses/QATAR-English.pdf>

GCC countries who wish to marry a non-national also face administrative decisions requiring them to obtain a licence from the authorities granting them permission to marry a non-national. Under the repealed Saudi Arabian nationality law, Saudi Arabian women who married a non-national risked losing their Saudi Arabian nationality.⁸⁶

The nationality laws in all the GCC countries provide that children take the nationality of the father, even when residing in the mother's country of nationality. Qatari nationality for example, may only be passed through a Qatari father.⁸⁷ The Committee on the Convention on the Rights of the Child recommended that Qatar ensure the right of a child to a nationality without discrimination on the basis of either parent's sex, in accordance with Articles 2 and 7 of the Convention on the Rights of the Child.⁸⁸

The Convention on the Rights of the Child, Article 2 provides that:

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 7 provides that:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

⁸⁶ The amended article 17, Saudi Arabian Nationality law, Royal Decree 8/20/5604 (19 October 1954) states that: a Saudi Arabian woman will not be deprived of her nationality if she is married to a non Saudi Arabian national unless she decides that and announced her willingness to join the nationality of her husband.

⁸⁷ Article 2 of the Qatari Nationality Act 1961.

⁸⁸ Concluding Observations of the Committee on the Rights of the Child: Qatar. UN Doc. CRC/C/15/Add.163, 12 October 2001, paras 41-42.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Saudi Arabia recently amended its nationality law; however, the new law fails to give women the right to pass their nationality to her children.

There are rare exceptions to the general rule that children take the nationality of the father. For example, Article 4 of Bahrain's Nationality law (1963) and Article 1 of Oman's Nationality Law state that a child may take the mother's nationality if the father is unknown, or has an unidentified nationality.⁸⁹

The impact of these discriminatory laws on women and children is significant. Children whose mother is a GCC country national but whose father is not a national of that GCC country enjoy fewer rights than others who are. They suffer financially and face severe restrictions on their freedom of movement and in carrying out daily activities. For example, they are treated as foreigners in higher education and consequently have to pay higher fees and as employees they are treated as migrant workers with restrictions on their residency, employment, and other benefits relating to their employment, such as retirement rights.

They experience similar financial consequences when accessing healthcare, as they often have to pay a set amount of money in order to be able to access health services. The impact of such nationality laws on women is significant. Women face discrimination in relation to employment and education as discussed earlier. Women, who are affected by the nationality laws, continue to face multiple discrimination, including in employment and education, which consequently make them even less able to flee violence than women of GCC nationality. These laws also strengthen the subordination of women.

Ahmed R.'s mother is a Kuwaiti national married to a Bedun⁹⁰ (stateless) man in Kuwait. As a result,

⁸⁹ Similar provisions can also be found in the Kuwaiti and UAE nationality laws.

⁹⁰ Bedun (also spelt Bedoon) is short for "bi-dun jinsiyyah" (without nationality), a term used for many thousands of Gulf residents. Many Bedun in Kuwait were born there and

Ahmed R. is not entitled to Kuwaiti nationality, and faces severe restrictions. He told AI that he does not have a passport so he cannot travel, and he is not allowed to obtain a driving licence. Ahmed says he cannot enrol at university because he will be treated as a foreign national for the purposes of the fees, which he cannot afford to pay, and therefore has limited work opportunities. Ahmed has siblings who are in the same position. When Ahmed went to the authorities in Kuwait to apply for naturalization, he was reportedly told to declare his true nationality before his case would be considered. Ahmed told AI that the Kuwaiti authorities seem convinced that Beduns hold other nationalities which they should declare first before their applications for Kuwaiti nationality can be considered. He told AI that he has a number of siblings and that the impact of the discriminatory nationality laws is greater on his sisters than his brothers. They are less able to find employment, because they face discrimination on more than one level; firstly for being female and secondly for being regarded as non-nationals. Ahmed told AI that those families that cannot afford the cost of higher education for all their children are often forced to choose to educate their sons rather than their daughters. In families where children are classified as non-nationals and so are required to pay higher fees, there is an even greater risk that girls will not have access to higher education.

In 2000, the UN Human Rights Committee called on Kuwait to confer nationality on a non-discriminatory basis and ensure that those who are granted Kuwaiti nationality are treated equally with other Kuwaiti citizens with regard to voting rights.⁹¹

some have lived there for decades, but are nevertheless treated as unlawful residents by the Kuwaiti authorities. Many have been deported or have left the country and been denied the right to return. In 2000, the Human Rights Committee recommended that Kuwait "must ensure that all persons in its territory and subject to its jurisdiction, including Bedoons, enjoy Covenant rights without discrimination... The right to remain in one's own country and to return to it must be scrupulously respected... The State party is urged to refrain from deporting residents on the basis of their classification as Bedoons who have failed to regularize their status." Concluding observations of the Human Rights Committee: Kuwait, UN Doc.A/55/40, Vol. I (2000), paras 478, 480.

⁹¹ Concluding observations of the Human Rights Committee: Kuwait, UN Doc.A/55/40, Vol I (2000), para 480.

The CEDAW Committee, in its concluding comments on Kuwait in 2004, expressed concern at the continuing existence of discrimination against women in various laws, including the Nationality Act, and called on Kuwait to amend or repeal discriminatory provisions so as to ensure compliance with the provisions of the Convention.⁹²

Asya 'Abdullah, a Bahraini national, told AI that she and her family faced severe restrictions as a result of the discriminatory provisions of Bahrain's Nationality Law. Asya 'Abdullah is married to a Pakistani national and has two daughters. She told AI that her daughters are treated as foreign nationals in law, despite having a Bahraini mother and being born and living in Bahrain. In Bahrain, as in other GCC countries, non-nationals do not benefit fully from the free health and university education available to nationals. Asya 'Abdullah told AI that the family have to pay towards the children's health costs and university education. Furthermore, she cannot leave Bahrain with her daughters without being accompanied by their father as they are registered on his passport. Similar restrictions, financial implications and other limitations on non-nationals can be found across the GCC countries. Once the children become adults, they are treated as foreign nationals, with limitations on their employment and sometimes their residency. Mothers of such people are sometimes forced to consider residing outside their own countries in order to preserve their family's unity.

Asya 'Abdullah told AI in January 2005 that she submitted her case to the High Council for Women's Affairs and that she was told that her daughters would be granted Bahraini nationality by royal decision.

Although such cases can be resolved by means of a royal or executive decision, women do not have direct entitlement in the law to pass their nationality to their children. The majority of women in this kind of situation do not benefit from such executive decisions.

Such restrictions on the acquisition of nationality by children violate CEDAW, which provides in Article 9(2) that, "States Parties shall grant women equal

⁹² CEDAW Committee, Concluding Comments: Kuwait, UN Doc. CEDAW/C/2004/I/CRP.3/Add.4/Rev. 1, paras 21-2.

rights with men with respect to the nationality of their children".⁹³ The UN Human Rights Committee, in its consideration of the equality of rights between men and women, has also commented on this point, holding that states must "ensure that the matrimonial regime contains equal rights and obligations for both spouses with regard to the custody and care of children, [including] the capacity to transmit to children the parent's nationality".⁹⁴

Women GCC nationals who are married to non-nationals are at greater risk of being affected by their already limited rights to custody of their children after divorce. For example, if a father takes custody of his children and resides abroad, the children will be treated as foreign nationals and will not have an automatic right to visit the GCC country of which their mother is a national. As a result the mother could have less access to her children. Once children of a GCC mother and non-national father reach the age of majority they find that they are treated as foreign migrants which again restricts their right to live and work in the country.

Women and human rights activists in the GCC are campaigning to reform discriminatory nationality laws; however, none of the governments in the GCC have indicated their willingness to amend their nationality laws to address discrimination against the children of GCC women married to non-nationals of the same country.

4.8 Conclusion

The kinds of discrimination faced by women outlined in this chapter – the lack of economic independence, the discriminatory laws and cultural practices, lack of access to justice, the fear of losing custody of children, and the lack of adequate housing for childless divorced women – contribute to the persistence of violence against women.

State inaction with regard to eradicating the structural, legal and cultural factors that facilitate the persistence of violence against women militate against women leaving violent relationships. AI believes that the majority of abused women in the GCC countries

⁹³ Article 9(2) of CEDAW.

⁹⁴ Human Rights Committee, General Comment No. 28: Equality of rights between men and women.

continue to live in their abusive situations without attempting to either seek justice or leave these homes.

The UN Commission on Human Rights has underlined states' "affirmative duty to promote and protect the human rights of women and girls", including by taking "all measures to empower women and strengthen their economic independence and to protect and promote the full enjoyment of all human rights ... in order to allow women and girls to protect themselves better against violence and ... to give priority to education, training, economic opportunity and political participation of women".⁹⁵ The GCC countries have yet to live up fully to this obligation to exercise due diligence in promoting and protecting women's human rights.

5 MIGRANT DOMESTIC WORKERS

Women constitute between approximately 20 and 40 per cent of a growing number of migrants in the GCC countries.⁹⁶ They are employed in a variety of jobs, including in the health, education and service sectors. They make a valuable contribution to society and fill gaps in the employment market not covered by nationals of the GCC countries, including in domestic service. Their work in the region often enables them to send money back to support their families in their countries of origin.

Yet in all the GCC countries, women migrant workers in domestic service are deprived of a wide range of human rights protections. They are at considerable risk of discrimination and gender-based violence, by both the state authorities and at the hands of private individuals and employers. They face discriminatory laws and practices when they try to exercise their rights, and are at risk of being arbitrarily detained or punished, for example under morality laws. Excluded from the protection of labour laws, in particular because domestic work falls outside the scope of these laws, they are also at risk of being subjected to rape or other forms of sexual violence by

⁹⁵ See, for instance, UN Commission on Human Rights, Resolution 2003/45 "Elimination of Violence against Women", 23 April 2003, see chap. XII.

E/CN.4/2003/L.11/Add.4, paragraphs 10 and 14 (c).

⁹⁶ International Labour Organization, *Gender and Migration in Arab States: The case of Domestic Workers*, June 2004, p. 11

their employers because they are vulnerable to rape/sexual violence and the failings in the criminal justice systems. Women migrant domestic workers do not normally obtain justice and are often not given access to legal advice or adequate language interpretation. A climate of impunity allows perpetrators of crimes against migrant domestic workers to go unpunished. If such workers are women, they face multiple discrimination because of their gender and lower economic and legal status, as well as their nationality.

In the course of its research, AI has documented the cases of a number of individuals who are vulnerable to human rights abuses because they lack access to basic services, or are at risk of physical and sexual abuse or of arbitrary detention. Many migrant workers are vulnerable to such abuses and to restrictions on their freedom of movement, discrimination, harassment and physical violence.

Women and girls among them suffer in addition multiple discrimination for reasons of their gender and age. They may thus also face gender-specific forms of abuses, such as discriminatory laws, sexual and other forms of gender-based violence, and discrimination by public officials or private individuals.

On 15 February 2005, the Saudi Arabian Minister of Labour acknowledged that migrant workers are subjected to abuses by employers (*kafeel*), and that the Ministry has started a process to ban more than 1,000 employers from employing migrant workers. It was also announced that the Ministry is setting up a labour protection administration for migrant workers, to protect their rights and resolve their problems.⁹⁷ It was not clear, however, whether such measures would extend to protecting the rights of women migrant domestic workers.

5.1 International law on the rights of migrants

Article 2 of the UDHR affirms that “everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, *national or social origin*, property, birth or other

⁹⁷ The Saudi Gazette, 15 February 2005

status” (emphasis added). This principle is also set out in Article 2(2) of the International Covenant on Economic Social and Cultural Rights (ICESCR), as well as in Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR), which places an obligation on state parties to ensure the rights in the Covenant to “all individuals within (their) territory and subject to (their) jurisdiction”. General Comment No. 15 of the Human Rights Committee specifies that “the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens”.⁹⁸

Rights particularly relevant to the situation of migrant domestic workers are established under the ICCPR, contained in the UDHR, and reiterated in the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Migrant Workers Convention). They include:

- the right not to be subjected to discrimination of any kind such as on the basis of sex, colour, language, national, ethnic or social origin, birth or any other status;
- the right of everyone to the enjoyment of just and favourable conditions of work which ensure remuneration which provides as a minimum fair wages and equal remuneration for work of equal value without distinction of any kind;
- safe and healthy working conditions;
- rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

The Migrant Workers Convention also explicitly states that migrants may not be deprived of their fundamental labour rights by reason of any irregularity in their stay or employment and that 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 to or stay, residence or establishment in the national territory, or work permits.

⁹⁸ Human Rights Committee, General Comment No. 15, The Position of Aliens under the Covenant, 11 April 1986, para. 2.

The Migrant Workers Convention is one of the seven core human rights treaties, and provides more extensive and specific protection to migrant workers and members of their families, regardless of their migratory status. Some International Labour Organization (ILO) Conventions are also of specific relevance to the situation of migrant domestic workers, such as ILO Convention No. 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, and ILO Migration for Employment Convention No. 97. Of some, albeit limited, relevance are the provisions of ILO Convention No. 111 on Discrimination (Employment and Occupation).⁹⁹

The UN Convention on the Rights of the Child, CEDAW, and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) are of particular relevance to migrant women and girls. Of relevance also is the Platform for Action of the Fourth World Conference for Women held in Beijing in 1995, which recognized that movements of people have profound consequences on families and may have unequal consequences for women and men. The Platform for Action highlights the vulnerability of migrant and refugee women and children to violence, sexual exploitation and other forms of human rights abuses, and included recommendations on the economic and legal empowerment of migrant women, including trafficked women.¹⁰⁰

All GCC countries are state parties to the International Convention on the Elimination of Racial Discrimination (ICERD), and are accordingly obliged to ensure that legislation and official practice is non-discriminatory in purpose and effect: Further, they are obliged to ensure that any legitimate and proportional distinctions made between citizens and non-citizens are accomplished in a manner that

⁹⁹ ILO Convention No. 111 defines discrimination as "any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. The definition of discrimination does not include discrimination on the grounds of nationality and therefore it is of limited value to the protection of non-national workers.

¹⁰⁰ <http://www.un.org/womenwatch/daw/beijing/platform/>

respects fundamental human rights. CERD General Recommendation 30 provides in this regard that "Under the Convention, differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim."¹⁰¹

The Special Rapporteur on the human rights of migrants, an independent expert appointed by the UN Commission on Human Rights, has also highlighted the human rights abuses facing migrant domestic workers in general and women migrant domestic workers in particular, as has the UN Division of the Advancement of Women in its *2004 World Survey on the Role of Women in Development: Women and International Migration*.¹⁰²

Kuwait is the only GCC country which is party to the ICCPR and the ICESCR. Most GCC countries (Bahrain, Kuwait, Saudi Arabia, and the UAE) are party to CEDAW. Bahrain, Kuwait, Saudi Arabia and Qatar are party to the Convention against Torture. All the GCC countries except Oman have ratified ILO Convention No. 111 on Discrimination (Employment and Occupation). To date, no GCC country has become party to the international treaties that specifically address the situation of migrant workers, notably the Migrant Workers Convention, and including also ILO Convention No. 97 on Migration for Employment, ILO Convention No. 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers.

AI holds that all migrants, including women migrant domestic workers, are entitled to respect for and protection of their fundamental human rights against

¹⁰¹ Committee on the Elimination of Racial Discrimination, General Recommendation No. 30, Discrimination against Non-Citizens, 1 October 2004

¹⁰² Report of the Special Rapporteur, Ms. Gabriela Rodríguez Pizarro, submitted pursuant to Commission on Human Rights resolution 2003/46, E/CN.4/2004/76, 12 January 2004; and UN Division of the Advancement of Women, *2004 World Survey on the Role of Women in Development: Women and International Migration*, 2005, <http://www.un.org/womenwatch/daw/Review/documents/pr ess-releases/WorldSurvey-Women&Migration.pdf>

abuses, whether by public officials or other agents of the state, or by private individuals or other non-state actors. These rights include the right to life, freedom from torture and ill-treatment, including sexual and gender-based violence, freedom of movement, freedom from arbitrary detention, as well as their social and economic and labour rights, and freedom from any kind of discrimination.

5.2 Women migrant domestic workers in detention

Women migrant domestic workers who are detained as a result of alleged breaches of the law or pending deportation may experience problems that are exacerbated by their gender, nationality and legal status.

It is standard practice for employers in the GCC countries to take possession of the passports of domestic workers. This may result in detained domestic workers being held at deportation centres for weeks or months, while their paperwork is being completed.

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.

Women in detention reportedly have limited or no access to female interrogators or prosecutors or to gender-trained staff. One reason for the use of male interrogators in the GCC countries is that very few women are employed as prosecutors (see section 4.4 above). They may face intimidation and threats during interrogation, as well as ill-treatment. All the women migrant domestic workers interviewed by AI while in detention had been interrogated by, and in the presence of, men only, including male prosecutors. Many said that they were fearful of the process, and felt intimidated and threatened by it. Women migrant domestic workers are particularly disadvantaged by their low social status as domestic workers, by language differences and by their lack of a social support network of friends and family.

Mary Ann K. told AI in July 2004 that her employer witnessed her talking to her male friend and took them both to the police station in al-Salimya, Kuwait, in June 2004. She said to AI “I confessed to the police that I was having a relationship because I was afraid, they were yelling at me, and slapped me on the face,” she said, “I didn’t have a lawyer during the interrogations. I’m a victim.”

Fredliza, Filipina convicted of forgery with her employer and others in Dubai Emirate, UAE, told AI that the interrogators put pressure on her and told her that if she testified as a prosecution witness, she would be freed. She testified and was nevertheless convicted of forgery.

The CEDAW Committee has recommended that “gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the [UN Women’s] Convention.”¹⁰³

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the UN General Assembly in 1988, applies “to all persons within the territory of any given State, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status” (Principle 5).¹⁰⁴ Principle 10 provides that “Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him”. Principle 13 states that “Any person shall, at...the commencement of detention..., or promptly thereafter, be provided by the authority responsible...with information on and an explanation of his rights and how to avail himself of such rights.” Principle 11(2) states that “a detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefore.”

Detained women migrant domestic workers may face the problem of not being provided with adequate information regarding their cases, in a language they

¹⁰³ CEDAW Committee, General Recommendation No. 19, Violence against women, paras 24(a)-(b).

¹⁰⁴ UN General Assembly resolution 43/173 of 9 December 1988.

understand or with adequate translation from the point of arrest, during interrogation and throughout the justice system. Many of the women AI spoke to did not fully understand the procedures they were involved in or what was going to happen to them. Some women told AI that they had no translator and did not understand the court and other proceedings. As a result they were vulnerable to violations, including unfair trials, because of their lack of understanding of judicial processes or because they had signed documents without understanding them or without understanding the full extent and the legal implications of doing so. Principle 14 of the Body of Principles provides that “A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive [information] promptly in a language which he understands...and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.”

Sylvia De La Cruz, a 27-year-old Filipina, told AI that her Kuwaiti employer took her to the police when he found out that she was pregnant. She told AI that she had attended three court sessions. No lawyer was present at any of the sessions. The translator provided to assist her spoke a Sri Lankan language to her that she did not understand, so she was still unable to understand the proceedings. Her family did not know she had been detained and, at her request, AI contacted them in August 2004 to inform them of her detention.

Mona Anion, a 50-year-old Filipina working in Kuwait, who has eight children in the Philippines, told AI that she was taken to court in connection with a case involving a debt. She said that the court papers were in Arabic, and that she had no translator in court and did not understand the case against her. She told AI that she had insufficient funds to telephone her family and was reduced to selling her watch to raise the necessary money.

Women migrant workers often have no social network. At a minimum, the detaining authorities should inform consular officials that a national of their country has been detained, as such officials may be the detainee’s only point of contact with the outside world. Principle 16(2) of the Body of Principles sets out the right of non-nationals to seek consular assistance: “If a detained or imprisoned

person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national”. Article 36(b) of the Vienna Convention on Consular Relations provides that: “If he [the detainee] so requests, the competent authorities of the receiving State shall without delay inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner.”

Samana W., a 30-year-old Sri Lankan national, was taken to the deportation centre in Kuwait on 21 October 2003. She told AI in July 2004 that she had been raped by her Kuwaiti employer, who was sentenced to six months’ imprisonment following conviction for the crime. She did not know why she had been kept in the deportation section of the prison for so long, while her paperwork is being finalised. She gave birth to a daughter, who at the time of the AI interview in July 2004 was about two months old. She said she had a husband and two children in Sri Lanka, and wanted to go back to her country, but that all her belongings were in her employer’s house and she had no money. She told AI that the Sri Lankan Embassy was not aware that she was in the prison.

The language difficulties that women migrant domestic workers face are exacerbated by lack of access to legal advice. Most of the women domestic migrant workers AI interviewed in detention said that they had no access to a lawyer at all, or that a lawyer had been appointed by the court only after they had been interrogated. None had been given access to a lawyer promptly following arrest and detention, as stipulated in the Body of Principles: Principle 17(1) states that “A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.” Principle 17(2) provides for counsel to be made available without payment if necessary: “If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.”

Kampen Btkawar, a 30-year-old domestic worker from Indonesia, told AI: “I have been working in Qatar for my Lebanese employer family for two years and two months, but have not been paid a penny. When on 6 January 2004 I told my employer I would complain to police, she immediately took me to the police. I was detained in al-‘Asima police station in Doha for three days before they brought me to prison. I have been to court six times. I have no lawyer and don’t know what is happening. The Indonesian embassy does not know I am here. No one has visited me. My family in Indonesia does not know I am here. My husband works in Saudi Arabia and he does not know what is happening to me. My child lives with my mother in Jakarta.”

Jarina Umma, a 34-year-old Sri Lankan woman, told AI: “I have been in Qatar for seven months. I was arrested two months after my arrival from Sri Lanka. My employer suspected me of beating his child. I have been to court six or seven times but I don’t know what is happening. I have no lawyer. I called my embassy but they have not visited me. They promised to come and visit me but have not done so. I contacted them about four months ago.”

According to the Body of Principles, sufficient information should be provided to detained migrant workers regarding their case and they should be given effective access to legal counsel, and the opportunity to contact their embassy or consulate immediately following their arrest.

All the GCC countries have laws that criminalize “immoral conduct” (see section 4.2 above). Women are more likely than men to be accused of such conduct. Due to their subordinate social position as migrants and lack of knowledge of the Arabic language, women migrant domestic workers are even more likely than female nationals of GCC countries to be charged with this type of offence. Once detained, they face further human rights violations at the hands of the authorities, including ill-treatment.

S. Manuel, a 32-year-old Filipina, told AI: “I was arrested on 17 July 2004. The police brought me to the women’s prison in Qatar on 19 July 2004. The reason was that a man came into the house and knocked on the door of my room. My employer saw that and suspected me of knowing and having a relationship with that man and reported me to the police. They took me to the public prosecutor on 18

July 2004 where the prosecutor asked me whether I wanted to stay and work in Qatar or go back to the Philippines. I said to him I want to stay in Qatar and work. I don’t know what is going to happen in my case. No one has clarified that to me and I don’t have a lawyer because I don’t have money. I want to inform the Philippine embassy but I don’t know how. They don’t know that I am here. I have not been visited by anyone and my family don’t know I am here.”

Maria M. S., a Filipina working in Kuwait, told AI in July 2004 that her employer found her with her male friend in his home and took them to the police station in Bayan in April 2004. She was questioned by the police without having access to a lawyer and was detained at the police station for 17 days before being transferred to prison. She informed the Philippines embassy, but was not provided with a lawyer.

Samboayati D., a 23-year-old Indonesian domestic worker in Qatar, told AI in July 2004 that her employer found her with her male friend and took them to the police. She said that she had been detained since 1 May 2004. On 13 July 2004 she was taken to court, where her detention was renewed for a further month. She did not know whether she had been charged with any offence, and did not have a lawyer.

Bearti L., a 35-year-old Indonesian national in Qatar, told AI that her employer found her with her male friend, and took them to the police station where she signed a confession statement that she had not written herself. She did not know the content of the statement as no translation was provided. After she had been detained for two months, the court renewed her detention on 8 July 2004 for a further month. Women migrant domestic workers have also been sentenced to the judicial punishment of flogging, a sentence imposed for, among other things, *zina* [defined in Section 4] and other “moral crimes”.

Rad Zemah Sinyaj, an Indian national, and **Wasini bint Sarjan**, an Indonesian national, were reported to have been sentenced to be flogged after being convicted of being pregnant outside marriage by a Shari’a court in Ras al-Khaimah Emirate, UAE. Rad Zemah Sinyaj was sentenced to 150 lashes, to be imposed in two sessions, followed by deportation to her country of origin. Wasini bint Sarjan was

sentenced to one year's imprisonment and 100 lashes, followed by deportation. However, the men responsible for their pregnancies were not arrested or charged with any offence, although the police were reported to be searching for them.

The Special Rapporteur on torture, an independent expert appointed by the UN Commission on Human Rights, has stated that "corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment".¹⁰⁵ Torture and other cruel, inhuman or degrading treatment is prohibited under international customary law and so this prohibition is a legally binding obligation on all states, irrespective of whether they have ratified particular human rights treaties which contain the prohibition. Moreover, Bahrain, Kuwait, Qatar and Saudi Arabia are party to the Convention against Torture, and so have explicitly undertaken to comply with its provisions.

Judicial corporal punishments cannot be regarded as lawful punishments, even if they are provided for in national law. To be lawful, punishments must be lawful under both national and international law. Judicial corporal punishments are unlawful because they entail key elements of torture or ill-treatment, including the deliberate infliction of severe pain and suffering as a punishment.

Some governments have claimed that corporal punishment is provided for under Shari'a. Responding to this, the Special Rapporteur on torture has stated: "As there is no exception envisaged in international human rights or humanitarian law for torturous acts that may be part of a scheme of corporal punishment...States applying religious law are bound to do so in such a way as to avoid the application of pain-inducing acts of corporal punishment in practice. In this connection, he draws attention to the axiomatic doctrine that a State may not invoke the provisions of its national law to justify non-compliance with international law."¹⁰⁶

In her 2001 report, the Special Rapporteur on violence against women reported on an urgent appeal

¹⁰⁵ Report of the Special Rapporteur on torture, UN Doc. E/CN.4/1997/7, 10 January 1997, para 6.

¹⁰⁶ Report of the Special Rapporteur on torture, UN Doc. E/CN.4/1997/7, para. 10.

she sent jointly with the Special Rapporteurs on extrajudicial, summary or arbitrary executions and on the human rights of migrants. Their appeals were on behalf of **Karteen Karikender**, a documented Indonesian migrant domestic worker in the UAE who was accused by her employers of adultery when she became pregnant.¹⁰⁷ The Special Rapporteur reported: "She was handed over to the local authorities and delivered her baby while in detention. In 2000, she was summoned to face trial at the Syariah Fujairah Municipal Court, reportedly without any legal assistance and unattended by any translator/interpreter during the local proceedings. The court found her guilty of adultery and sentenced her to death by stoning... According to reports, the man responsible for the pregnancy was an Indian citizen whom the court acquitted *in absentia*, as he had disappeared without a trace. The case reportedly will be appealed to a higher court in Fujairah. If the sentence is upheld on appeal the case may be referred to the Federal Supreme Court in Abu Dhabi and thereafter to the President for ratification. The Indonesian Embassy to the UAE had reportedly not been notified about the trial and only became aware of the case when the local mass media announced the death penalty nationwide. Article 36 of the Vienna Convention on Consular Relations recognizes the right to communicate with and receive assistance from one's own consular representatives. The alleged failure to inform the defendant of this right may have deprived her of important assistance in the preparation of her defence. The Special Rapporteurs appealed to the Government for Ms. Karikender's death sentence to be commuted if upheld on appeal." Karteen Karikender was reportedly taken to the police by her employer, for whom she worked as a housemaid, upon learning that she was pregnant. She gave birth to a baby girl in custody in February 2000. In the same month, a court in the Emirate of Fujairah sentenced her to be stoned to death, reportedly after she confessed to adultery. On 13 March 2000 appeal proceedings reportedly began on her behalf, and the Indonesian authorities were said to have appointed her a lawyer and translator. During her appeal, she reportedly denied that she had confessed to adultery, and her lawyer is said to have argued that this would not have been possible as she does not speak Arabic. The appeal court subsequently commuted the death

¹⁰⁷ UN Doc E/CN.4/2001/73/Add.1, para. 58, 13 February 2001

sentence to one year's imprisonment, with an order that she be deported at the end of her sentence.

5.3 Abuses by employers

Many women migrant domestic workers in the GCC countries face restrictions on their freedom of movement. Some are not even allowed to leave the house where they work. Others are required to work excessive hours, or do not receive the pay that is due to them. They are unable to obtain protection or redress under the labour laws, which do not apply to migrant workers. These factors, in addition to the inadequate protection they receive under the law and from the criminal justice system, make them particularly vulnerable to sexual and other physical abuse by their employers (see section 4.5 above).

Article 13 of the UDHR provides that everyone has the right to freedom of movement, and Article 24 provides that everyone has the right to rest and leisure, including reasonable limitation of their working hours. This means that not only should states and public authorities themselves respect those rights, but that they should intervene to prevent them being infringed by private individuals, companies and other non-state actors who employ migrant domestic workers.

Most women domestic workers interviewed by AI said that their freedom of movement was restricted by their employers. Some employers told AI that they restrict their domestic workers' freedom of movement because they believe the women are their responsibility and that they would be liable if anything happened to them. The level of restriction varies from one employer to another, ranging from relatively minor restrictions to total confinement.

Such restrictions on freedom of movement can make domestic workers extremely vulnerable to violence and other abuses in their workplace – that is, the homes of their employers. They can also prevent women from enlisting the support of friends or taking other steps to seek protection or assistance when problems occur.

Nicola R., a 28-year-old Indian national, who was married and had two sons in India, told AI that she had worked in Kuwait for three years. She told AI that her Kuwaiti employer had not allowed her out of

the house for the three years she had worked for him. She said that he did not even allow his own wife to leave the house. Nicole R. had been asked to work for a relative of her employer for three days. The relative raped her and she became pregnant. She went to the hospital to give birth and was then taken to the deportation section of the women's prison, where she was detained with her baby daughter. Her employer gave her passport and airline tickets to the police. The police told her that she could not leave the country with her baby daughter without the consent of the baby's father. However, she did not know where the man lived. She told AI that she had not been able to direct police to his house, where she had been raped because, never having been allowed out of the building, she did not know its location. At the time AI interviewed her in July 2004, she and her daughter had been detained in the deportation centre since December 2003 and her status remained unclear.

Kuwait, as a state party to the International Covenant on Civil and Political Rights, has explicitly entered into a legally binding obligation under Article 12 of that treaty to ensure that "everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence" and that "everyone shall be free to leave any country, including his own."

Because migrant domestic workers are excluded from the protection of the labour laws in all the GCC countries, they lack effective and adequate protection, often working without weekly rest, annual leave or in excess of 10 hours a day.

Latifa B., an Indonesian national who was a domestic worker in Bahrain, told AI: "I worked for two years for one employer. It was hard. I worked from 5am until 11.30pm every day with no weekly holiday. I was paid 50 Bahraini Dinars (US\$130) a month."

The Committee on Social, Economic and Cultural Rights, when considering the initial report of Kuwait on its implementation of the International Covenant on Economic, Social and Cultural Rights, expressed deep concern about the situation of migrant domestic workers in Kuwait, who are not covered by the Labour Code. The Committee stated that such workers are subjected to conditions "not dissimilar" to forced labour as they are poorly paid, cannot rest

sufficiently and are sometimes deprived of their freedom of movement because their passports are held by their employers.¹⁰⁸ It called on Kuwait to provide the same treatment to migrant workers as to Kuwaiti citizens, to consider ratifying the Migrant Workers Convention, and to include migrant domestic workers in the Labour Code.¹⁰⁹

In the case of Bahrain, the ILO Committee of Experts on the Application of Conventions and Recommendations noted in relation to the implementation of ILO Convention No. 111 on Discrimination (Employment and Occupation) that the Labour Code does not apply to domestic workers, and called on the Bahraini government to indicate how these workers are protected against discrimination.¹¹⁰

Some domestic workers interviewed by AI said they were treated well by their employers. However, the lack of domestic legislation to protect their rights as employees means that all are vulnerable to abuse.

Other domestic workers told AI that they had not been paid or that there were delays in payment of their salaries. Others who had been raped or beaten by their employer, and who had tried to escape their employer's house, had been handed back by the police or held in detention centres. They were detained in this way until the paperwork for their return to their country was finalized or until legal proceedings were brought against them by the employer for violating their contract of employment by running away.

Glory Bulan, a 38-year-old Filipina national, told AI: "I came to Qatar on 10 April 2003 to work for a family. They were wonderful to me until on 19 May 2004 my employer heard his child crying and suspected me of beating the child. He was very angry with me and locked me up in a room. I was scared and jumped out of the window from the second floor onto bedding which was on the ground. I injured my

foot slightly, but managed to run to the Philippine embassy. The embassy handed me over to the police, who in turn brought me to this prison, on 23 May 2004, probably for violating my visa and contractual obligation to work for my employer. On 1 July 2004 I was taken to court, but I don't know what is happening. I understand that my employer has lodged a complaint against me, accusing me of beating his child, which I didn't do... I don't have a lawyer and don't know what is going to happen to me."

Daya Watt, a 38-year-old Sri Lankan national, told AI that she worked for her first employer in Kuwait for a year. After she had not been paid for nine out of the 12 months, she ran away and went to work for a different employer. She worked there for four years. She wanted to go back to Sri Lanka, but her passport was with the first employer, so she went to the Sri Lankan embassy to get a new passport. She had to report to the police that she did not have a passport and she was then told by the police that there was a complaint against her and she would have to pay a fine if she wanted to leave the country. She told AI that she could not afford to pay the fine and did not understand why there was a case against her as she had not been paid for nine months. When AI interviewed her in July 2004, she had been in the deportation centre for two years, since 27 May 2002. She had four children being cared for in Sri Lanka by her mother.

The abuses and multiple forms of discrimination faced by female domestic workers in the GCC countries, be it at the hands of the authorities, their employers or other non-state actors, are exacerbated by their lack of alternatives. They often find themselves faced with three stark choices. They can remain in their employer's home and be subjected to further violence and abuse. They can go to the police and risk prolonged detention. Or they can become homeless, sometimes without papers, in a country where not being a national puts them at risk of arrest and detention. Each of these options puts them at risk of further human rights violations and abuses.

¹⁰⁸ Concluding Observations of the Committee on Economic, Social and Cultural Rights: Kuwait (see above), para 17.

¹⁰⁹ Concluding observations, the Committee on Economic, Social and Cultural Rights:

Kuwait (see above), paras. 32, 37.

¹¹⁰ Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Bahrain (ratification: 2000), Direct request, CEACR 2003/74th Session.

6 STATE OBLIGATIONS UNDER INTERNATIONAL LAW

International human rights standards are set out in treaties (also called covenants or conventions), which are legally binding on states that have ratified or acceded to them, and in declarations and other instruments adopted by resolutions of the UN General Assembly and other UN bodies. Such declarations include the 1948 Universal Declaration of Human Rights (UDHR) and the 1993 Declaration on the Elimination of Violence against Women. While such declarations are not in themselves legally binding in the same way as treaty law, many of the principles affirmed in them reflect principles of international customary law, which are binding on all states.

States that have acceded to or ratified (become party to) a treaty have an obligation to report periodically to the relevant treaty body, the body of independent experts established under the treaty to monitor its implementation by states. The treaty bodies also from time to time issue general comments or general recommendations elaborating on the content of states' obligations under the treaty. For example, the UN Human Rights Committee, the body of experts that monitors states' compliance with the International Covenant on Civil and Political Rights (ICCPR), has stipulated the steps that must be taken by states in order to ensure effective implementation of the principle of non-discrimination and equality of rights between men and women.¹¹¹ Treaty bodies can also hear complaints from individuals about breaches of their human rights under the relevant treaty, if the state concerned has ratified the relevant optional protocol to that treaty.¹¹²

6.1 The principle of non-discrimination

The UDHR sets out the rights of all human beings. These include life, liberty and security of the person (Article 3); not to be subjected to torture or cruel,

¹¹¹ Human Rights Committee, General Comment No.28 on Article 3 of the ICCPR: The equality of rights between men and women (adopted 29/03/2000,CCPR/C/21/Rev.1/Add.10).

¹¹² In the case of the Convention against Torture, this is done by a declaration under Article 22 of the Convention.

inhuman or degrading treatment or punishment (Article 5); recognition as a person before the law and equality before the law (Articles 6 and 7); an effective remedy in the courts for violations of fundamental rights (Article 8); privacy (Article 12); freedom of movement (Article 13); the equal rights of men and women to marry with full and free consent, and their equal rights during marriage and at its dissolution (Article 16).

Article 2 of the UDHR states that everyone is entitled to the rights it proclaims "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". This principle appears in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), and virtually every other major international and regional human rights instrument, as well as in the UN Charter.¹¹³ It applies in all circumstances without exception; it is so fundamental that it is one of the rights that cannot be set aside (derogated from) in any circumstances.¹¹⁴

CEDAW is one of two core human rights treaties which focus specifically on eliminating discrimination.¹¹⁵ The Inter-American Court of Human Rights has noted that the principle of equality, including between men and women, is a basic foundational principle of general international law, known as *jus cogens*.¹¹⁶ This means that the principle is absolutely binding on all states, regardless of their treaty obligations.

6.2 Convention on the Elimination of All Forms of Discrimination against Women

Under the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),

¹¹³ ICCPR, Articles 2(1), 4(1) and 26; ICESCR, Articles 2(2) and 3; UN Charter, Articles 1(3), 13(1)(b) and 55(c).

¹¹⁴ See, for example, ICCPR, Article 4(1).

¹¹⁵ The other is the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

¹¹⁶ Inter-American Court of Human Rights, *Judicial Condition and Rights of Undocumented Migrants*, Advisory Opinion OC-18, Series A, No. 18, 17 September 2003; See also AI, *Making rights a reality: The Duty of States to Address Violence Against women*, (AI Index ACT77/049/2004), June 2004.

states parties are obliged to accord women equality with men before the law, including legal capacity identical to that of men (Article 15). They must eliminate discrimination against women in family relations; to ensure that women have equal rights with men to enter into marriage, to freely choose a spouse and to marry only with free and full consent; to ensure that women have equal rights and responsibilities with men during marriage, at its dissolution, and as parents (Article 16); and to ensure that women and men have equal rights with respect to their own nationality and that of their children (Article 9). States parties are also required to eliminate discrimination against women in political and public life (Article 7), and between men and women with respect to the rights to education, work and health care (Articles 10 to 12); and to ensure women equal rights with men in economic life including access to finance (Article 13). A further important aspect of states' obligations under CEDAW is to take all appropriate measures to change discriminatory social, cultural and customary attitudes and practices (Article 5a).

UN Convention on the Elimination of All Forms of Discrimination against Women

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

6.3 Violence against women

Violence against women incurs the responsibility of states under the prohibition on torture or cruel, inhuman or degrading treatment in international law. International bodies such as the UN have reiterated that violence against women constitutes a violation of human rights and have pointed out the links between violence against women and basic human rights such as non-discrimination and not being subjected to torture. For example, the Human Rights Committee has described how the right to equality between men and women intersects with the right to freedom from torture and ill-treatment, with specific reference to gender-based violence, including rape.¹¹⁷

Universal Declaration of Human Rights,

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

A similar provision is included also in the ICCPR and in a number of other international treaties. The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) establishes the responsibility of the state for an act of torture when "such pain or suffering is inflicted by or at the instigation of, or with the consent or acquiescence of a public official, or other person acting in an official capacity" (Article 1).¹¹⁸ But the intentional infliction of pain and suffering by non-state actors can also incur responsibilities on the part of the state under

¹¹⁷ Human Rights Committee, General Comment No. 28, The equality of rights between men and women (Article 3), 29 March 2000, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.7.

¹¹⁸ Of the GCC states, Bahrain, Kuwait, Qatar, and Saudi Arabia are party to the Convention against Torture.

the international prohibition on torture and ill-treatment.¹¹⁹

The Special Rapporteur on violence against women, an independent expert appointed by the UN Commission on Human Rights, has drawn close comparisons between domestic violence, including marital rape, and torture. In her report to the Commission on Human Rights in 1996, she stated:

“It is argued that, like torture, domestic violence commonly involves some form of physical and/or psychological suffering, including death in some cases. Secondly, domestic violence, like torture, is purposeful behaviour which is perpetrated intentionally. Men who beat women partners commonly exercise control over their impulses in other settings and their targets are often limited to their partners or children. Thirdly, domestic violence is generally committed for specific purposes including punishment, intimidation and the diminution of the woman's personality. Lastly, like torture, domestic violence occurs with at least the tacit involvement of the state if the state does not exercise due diligence and equal protection in preventing domestic abuse. This argument contends that, as such, domestic violence may be understood to constitute a form of torture.”¹²⁰

The prohibition on torture and ill-treatment is an obligation on states under customary international law, irrespective of whether they are party to treaties that prohibit it. Like the prohibition on discrimination, it cannot be derogated from (set aside) in any circumstances. This shows the priority that states should attach to preventing violence against women and addressing it appropriately and effectively when it occurs.

Discrimination and violence against women feed, encourage and perpetuate each other. The power structures within society which perpetuate violence against women are deep-rooted and intransigent. Discrimination disempowers women and can put them in a position where they are unable to take

¹¹⁹ For more details on state obligations with regard to abuses by non-state actors, see Section 2.4

¹²⁰ Report of the Special Rapporteur on violence against women, UN Doc. E/CN.4/1996/53, 6 February 1996, para 44.

effective steps to seek protection or remove themselves from a situation of violence.

The CEDAW Committee has underlined the close inter-relationship between violence against women and discrimination. It has stated: “Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men...impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law and human rights conventions, [and] is discrimination within the meaning of article 1 of the Convention [CEDAW].”¹²¹

The UN Declaration on the Elimination of Violence against Women explicitly makes clear that violence against women cannot be justified on the basis of culture or tradition to avoid the state's obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women...and “Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women” (Article 4(j)).

Among the other specific measures that states should take, set out in Article 4 of the Declaration, are:

- becoming party to CEDAW (or, in the case of those which are already party to the Convention, withdrawing reservations to it);
- exercising due diligence to prevent, investigate and punish acts of violence against women, whether perpetrated by the State or by private persons;
- developing legal sanctions to punish and redress the wrongs caused to women who are subjected to violence, informing such women about their rights and providing them with access to the mechanisms of justice and effective remedies;

¹²¹ CEDAW Committee, General Recommendation No. 19, Violence against women (Eleventh session, 1992) paras 1 and 7, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.7.

- developing comprehensive preventive approaches and legal, political, administrative and cultural measures to promote protection of women against violence, and ensuring that they do not become re-victimized because of gender-insensitive laws or enforcement practices;
- working to ensure that women subjected to violence and their children have specialized assistance, including health and social services and support structures;
- ensuring that relevant law enforcement officers and public officials receive training to sensitize them to the needs of women;
- collecting data and statistics relating to the prevalence of violence against women and encourage research on its causes and consequences and the effectiveness of measures to prevent and redress it, and making such findings public;
- considering developing national plans of action, in cooperation with NGOs, to promote the protection of women against violence;
- including adequate budgetary provision for these activities.

All states must address violence against women, regardless of which international human rights treaties they have ratified. The requirement on states to pay particular attention to the issue of violence against women, and to take active steps to eradicate it, through prevention, investigation and punishment has been spelt out in UN General Assembly Resolution 52/86 on Crime prevention and criminal justice measures to eliminate violence against women, and in UN Commission on Human Rights resolutions. It has been reiterated by human rights treaty bodies such as the CEDAW Committee in its General Recommendation 19, and the Human Rights Committee in its General Comment 28.¹²² This requirement has also been underlined by independent human rights experts such as the Special Rapporteur on violence against women, who has stated that states “have an affirmative obligation to confront those cultural practices of the community which result in violence against women and which degrade and

¹²² CEDAW Committee, General Recommendation No. 19, Violence against women; and Human Rights Committee, General comment No. 28: The equality of rights between men and women.

humiliate women, thereby denying women the full enjoyment of their human rights”.¹²³

6.4 State responsibilities for abuses by non-state actors

States have an obligation to ensure that their own agents do not discriminate or commit violence against women, and do not condone or acquiesce in such abuses by others. CEDAW explicitly places obligations on states parties to take action against abuses by the state and its agents, and by private individuals, employers, or other non-state actors in the family and the community.

States have obligations to respect, protect and fulfil human rights:

The obligation to **respect** focuses directly on what the government does through its organs, agents and the structures of the law. This means that government officials, or those acting with the authorization of the state, must not discriminate or commit acts of violence against women.

The obligation to **protect** requires the state and its agents to take all possible measures to prevent human rights being infringed by non-state actors. This means that the state must adopt and implement laws, policies, and practices that protect women against discrimination and violence, provide them with appropriate remedies and redress, and prosecute and punish perpetrators. General Recommendation No. 19 issued by the CEDAW Committee stresses that “States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act.”

The obligation to **fulfil** requires states to ensure that appropriate systems are in place to support these laws, policies and practices, and to make them effective.

Under international law, states have clear responsibilities, and can be held accountable, for human rights abuses by non-state actors where they have failed to take all possible steps to prevent or respond to such abuses, to provide effective remedies, and to prosecute and punish abusers. This requires states to prevent, investigate and punish acts that

¹²³ Report of the Special Rapporteur on violence against women, UN Doc. E/CN.4/1997/47, 12 February 1997, para. 154.

impair any of the rights recognized under international human rights law. A state cannot, for example, avoid responsibility for the mistreatment of domestic workers by arguing that the abuse took place in the privacy of the employer's home, or that it is justified by social or cultural traditions.

States must take a comprehensive approach to eliminating all forms of violence against women and adopt measures designed to eradicate all forms of violence and discrimination. If a state fails to act to prevent violence against women – from whatever source – or to investigate and punish such violence after it occurs, the state can itself be held responsible for the violation. States' obligations require also that they continually monitor the situation and respond accordingly, changing – or supplementing – tactics if progress subsides.

The standard of **due diligence** provides a way to measure whether a state has complied with this aspect of its human rights obligations.¹²⁴ It means that states must take all possible measures to respect, protect and fulfil women's human rights and in particular to eliminate discrimination and violence against women, including gender-based violence in the family. This standard has been explicitly incorporated into international instruments, such as the UN Declaration on the Elimination of Violence against Women.

UN Declaration on the Elimination of Violence against Women, Article 4

States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should: ...

¹²⁴ In human rights jurisprudence this standard was first articulated by the Inter-American Court of Human Rights which held that states have a duty to "organize the governmental apparatus, and in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights" and that "[a]n illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention". *Velasquez-Rodriguez v Honduras*, Series C, No.4 (1988), paras. 166, 172.

(c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons...

The CEDAW Committee, in its General Recommendation No. 19, which determined that discrimination within the meaning of CEDAW encompasses gender-based violence, also employed the due diligence standard to describe states' obligations.

CEDAW Committee, General Recommendation No. 19

8. The Convention applies to violence perpetrated by public authorities. Such acts of violence may breach that State's obligations under general international human rights law and under other conventions, in addition to breaching this Convention.

9. It is emphasized, however, that discrimination under the Convention is not restricted to action by or on behalf of Governments (see articles 2 (e), 2 (f) and 5). For example, under article 2 (e) the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.

Increasingly, UN mechanisms monitoring the implementation of human rights treaties, the UN independent experts, and court systems at the national and regional level are using this concept of due diligence as their measure of review, particularly for assessing the compliance of states with their obligations to protect bodily integrity.

The UN Special Rapporteur on violence against women explains:

"Unlike for direct State action, the standard for establishing state complicity in violations committed by private actors is more relative. Complicity must be demonstrated by establishing that the State condones a pattern of abuse through pervasive non-action. Where States do not actively engage in act of domestic violence or routinely disregard evidence of murder, rape or assault of women by their intimate partners, States generally fail to take the minimum

steps necessary to protect their female citizen's rights to physical integrity and in extreme cases, to life. This sends a message that such attacks are justified and will not be punished. To avoid such complicity, states must demonstrate due diligence by taking active measures to protect, prosecute and punish private actors who commit abuses."¹²⁵

6.5 Discrimination and violence persists, 25 years after CEDAW

2004 marked the 25th anniversary of the adoption of CEDAW by the General Assembly in 1979. Since its entry into force in 1981, the Convention has been ratified by 178 States including four GCC countries – Bahrain, Kuwait, Saudi Arabia, and the UAE.¹²⁶ Yet the promise of the “Women’s Convention” – an end to discrimination against women and substantive equality with men – has not yet been achieved in full measure in most countries around the world.

As the CEDAW Committee pointed out:

“Discriminatory laws are still on the statute books of many States parties. The co-existence of multiple legal systems, with customary and religious laws governing personal status and private life and prevailing over positive law and even constitutional provisions of equality, remains a source of great concern. Nationality laws also continue to discriminate against women by curtailing their capacity to confer their nationality to their children. Women continue to experience discrimination and disadvantage in the enjoyment of rights to own and inherit property, to access economic resources and social benefits and services. Women are far from enjoying equal and full participation in political and public spheres, especially at decision-making levels... Although violence against women – a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men – is now widely recognized as a public concern, it remains pervasive in all societies and is

¹²⁵ Report of the Special Rapporteur on violence against women, UN Doc. E/CN.4/1996/53, 6 February 1996, para. 33.

¹²⁶ The UAE ratified CEDAW in October 2004.

aggravated in situations of conflict and other forms of social upheaval.”¹²⁷

The concerns raised by CEDAW are the same as issues facing women in the GCC countries. As this report has shown, women suffer discrimination in laws and practices relating to marriage, divorce, nationality, education and employment.

While no country has ended discrimination or violence completely, many states have taken measures to tackle inequality and address issues of violence against women. However, in none of the countries that are the subject of this report have sufficient measures been taken to eliminate formal discrimination or to put into place positive laws and policies aimed at ending violence against women or providing redress to women who face violence.

7 RECOMMENDATIONS

The GCC governments must break the cycle of violence and discrimination against women to improve the situation of women in their countries. In particular, states must take effective measures to address violence in the home, state inaction and discriminatory application of family laws. The GCC countries should address the underlying social and cultural attitudes that discriminate against women and that facilitate and perpetuate violence against them. Governments must take effective steps to bring their laws, practices, policies and procedures into full conformity with international human rights law and standards. In addition, they must ensure that they apply the principle of non-discrimination to all people, including women migrant domestic workers, on their territory and under their jurisdiction.

AI calls on governments of the GCC countries to implement the following recommendations as essential minimum steps towards ending the patterns of discrimination and violence against women described in this report. They must:

- Publicly condemn violence against women and pursue by all appropriate means policies to eliminate it;

¹²⁷ CEDAW Committee, Statement to commemorate the twenty-fifth anniversary of the adoption of CEDAW, 13 October 2004.



- Not invoke any custom, tradition or religious consideration to avoid their obligations to eliminate violence against women;

- Take all appropriate measures to protect the right of women to equality with men and to be free from all forms of discrimination.

Specifically, all GCC governments should take the following measures and provide the resources necessary to implement them.

7.1 National laws and practices

- Take all necessary steps to establish protection in law of the human rights of women on an equal basis with men, and ensure through the courts and other public institutions the effective protection of women against discrimination;

- Modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women in family matters or which permit such discrimination to persist. In particular ensure that women are given legal equality with men in law and in practice in respect of: the right to freely choose a spouse, to enter into marriage only with full and free consent, and equal rights and responsibilities during marriage and its dissolution. Further, ensure equal rights as parents with regard to the custody of children, the right to pass their nationality to their children and ensure, by means of judicial training and other measures, that the law is implemented by the courts in a way that ensures equality in practice between men and women;

- Develop measures in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence, and ensure their effective implementation;

- Undertake a comprehensive review of all other legislation, and modify it or introduce new legislation where necessary with the aim of ensuring equality for women and their protection from violence, whether by public officials or other agents of the state, or by private individuals or other non-state actors;

- Ensure that laws against abuse, including beating, rape, sexual assault and other gender-based violence, provide adequate protection to all women and respect their integrity and dignity;

- Ensure that laws to protect women from violence are complemented by official policy and practice and exercise due diligence in taking practical measures, and monitoring and modifying them where necessary, to ensure effective implementation of the law;

- Laws on "immoral conduct" should be either repealed or reformed to ensure that they conform to international standards and do not impact in a discriminatory way against women;

- In those GCC countries whose laws provide for corporal punishment, abolish such punishments in law. Pending abolition, the infliction of such punishments should cease immediately;

- Extend the scope of the labour laws to include domestic workers and ensure that rights included in national legislation are in accordance with international human rights law and standards. They should ensure the prohibition of all forms of forced or compulsory labour or slavery; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. They should also ensure preview of contract; a minimum wage; payment of cash at regular intervals; and maximum hours of work and holidays with pay. Such laws should guarantee the right of freedom of movement; freedom of association or trade union; and freedom from sexual exploitation and other human rights abuses.

7.2 Education, employment, political participation and decision-making

- Take measures to empower women and strengthen their economic independence, including by ensuring their access to employment opportunities;

- Exercise due diligence in eliminating discrimination against women in education,

public life and employment. Take effective steps, by public education and other measures, to modify prevailing cultural ideas that discriminate against women and obstruct their advancement. Take all appropriate measures to eliminate prejudice and practices based on the idea of the superiority or inferiority of either of the sexes or on stereotyped roles for men and women;

- Develop and implement educational, social and other measures aimed at preventing violence against women, including the dissemination of information, legal literacy campaigns and the training of legal, judicial and health personnel to ensure sensitivity to the indications and effect of violence against women;
- Promote research, collect data and compile statistics on violence against women, especially on violence in the family, including against domestic workers, and ensure that the information is made publicly available. This research should cover such issues as the causes of violence against women, including social attitudes, customs and practice. It should also look into the effects of such violence, as well as the effectiveness of measures that could be taken to counteract violence against women and the social attitudes underlying it;
- Develop national plans of action including legal, political and administrative measures to ensure the protection of women against any form of violence, in cooperation with non-governmental organizations, especially those concerned with the issue of violence against women;
- Ensure that laws, policies and practices are made fully compliant with international standards that protect women and girls from discrimination in education. In particular, Saudi Arabia should amend its Policy on Education to ensure that women have access to education and training on an equal basis with men;
- Develop programmes with targets to encourage women to become involved in state and civil society institutions, to support women's full role in society and governance, and to take part on an equal basis with men in leading positions,

including in the judiciary and other positions in the legal system;

- Facilitate and encourage the emergence of a strong women's movement in the region to raise awareness of women's rights issues among men and women, and to highlight the need for women to be involved in power structures and decision-making.

7.3 Police and the justice system

- Ensure that women who are subjected to violence are provided with access to the mechanisms of justice and to just and effective remedies, including compensation and redress and, where relevant, access to accommodation where they can be protected from abuse;
- Exercise due diligence by preventing, investigating and punishing acts of all forms of violence against women, including women who are not nationals of GCC countries, in the home, workplace or community, by public officials or other agents of the state, or by private individuals or other non-state actors;
- Ensure that any person alleged to have committed violence against women is brought to justice, in accordance with international standards for fair trial;
- Exercise due diligence by protecting women and girls against abuses within the family, in particular forcible confinement, sexual abuse and physical violence, and ensure that violence in the family is treated as seriously as assaults in other contexts;
- Ensure that law enforcement officials and public officials receive training to sensitize them to the needs of women, and that women who are subjected to violence are not re-victimized because of gender-insensitive law enforcement practices;
- Ensure that all elements of the law enforcement and justice systems comply with the state's obligation to protect women, including women who are not nationals of GCC countries, and put an end to long-standing practices by police and

law enforcement officials that perpetuate violence against women;

- Take steps to recruit and train women police officers, prosecutors and interrogators in sufficient numbers and that women officers are present whenever women are arrested and detained or interviewed by the police or prosecutors;
- Ensure that law enforcement officials and members of the judiciary undertake comprehensive training in gender-sensitive approaches to violence and other abuses against women, whether by public officials or other agents of the state, by private individuals or other non-state actors;
- Where women, including non-nationals, are arrested or detained for alleged offences, ensure that they are treated in conformity with the principles set out in the UN Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment. These include in particular that they are informed of the reasons for their detention and of their rights; that where necessary they are provided with the services of an interpreter without charge; that they are allowed access to a lawyer, including if they do not have the means to pay; and that steps are taken to ensure that those who are not nationals are able to obtain consular assistance.

7.4 Migrant domestic workers

- Ensure that laws, practices, policies and procedures are in full conformity with international human rights law and standards, to safeguard, and to ensure that states apply, the principle of non-discrimination with regard to non-citizens, including women migrant domestic workers;
- Ensure that national legislation and policies expressly recognize the particular vulnerability to human rights abuse of non-national women and children, including women migrant domestic workers;
- Protect women migrant domestic workers and other non-nationals from discriminatory and unlawful practices and human rights abuses

perpetrated by state agents, such as arbitrary or prolonged detention, collective or mass expulsion, torture and ill-treatment, including sexual and other forms of gender-based violence;

- Exercise due diligence by ensuring that women migrant domestic workers and other non-nationals are protected from discriminatory and unlawful practices and human rights abuses, including restrictions on the freedom of movement and sexual and other forms of gender-based violence, committed by employers or any other non-state agents;
- Ensure that migrant workers, including women migrant domestic workers, are informed about their rights under national legislation as well as under international law and standards;
- Guarantee access to effective remedies, including equal access to national courts and the judicial system, for women migrant workers and other non-nationals who have been subject to discriminatory practices and other human rights abuses. Ensure that they are informed of their rights in a language they understand;
- Ensure that legislation prohibits employers from taking and keeping possession of passports, and that complaints by migrants that their passports are being withheld from them are investigated seriously;
- Where women migrant domestic workers and other non-nationals are arrested or detained for alleged offences, ensure that they are treated in conformity with the principles set out in the UN Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment. These include in particular that they are informed of the reasons for their detention and of their rights; that where necessary they are provided with the services of an interpreter without charge; that they are allowed access to a lawyer, including if they do not have the means to pay; and that steps are taken to ensure that those who are not nationals are able to obtain consular assistance;
- Ensure that women migrant domestic workers and other non-citizens who are detained have

access to legal assistance and consular representation from the time of their initial arrest and throughout their interrogation and any subsequent trial;

- Ensure that consulates and embassies of the countries of origin can play an active role in protecting the rights of women migrant domestic workers and other migrant workers by means including regular checks on their circumstances;
- Ensure that perpetrators of discrimination against non-nationals, whether carried out by public officials or other agents of the state, or by private individuals or other non-state actors, do not enjoy any degree of impunity;
- Protect and promote the economic, social and cultural rights of migrant workers and other non-nationals, including the right to an adequate standard of living.

7.5 Gulf Cooperation Council (GCC)

- Put in place mechanisms at the regional level to ensure the implementation of measures to end discrimination and violence against women and to monitor progress;
- Establish a public institution to carry out independent and impartial monitoring of complaints of human rights abuses against women, whether carried out by public officials or other agents of the state, or by private individuals or other non-state actors, to ensure proper investigations are carried out, and to ensure that victims obtain redress and reparation including compensation;
- Establish GCC-wide programmes aimed at strengthening and promoting civil society institutions, and assist in their efforts in combating violence and discrimination against women and in strengthening the protection of human rights.

7.6 International treaties

- Oman and Qatar should ratify the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

without reservation. Kuwait, Bahrain and Saudi Arabia should withdraw their reservations to that treaty;

- Those states that are party to CEDAW should fulfil their reporting requirements under the Convention and in particular report to the CEDAW Committee on steps they are taking to meet the Committee's recommendations on the removal of reservations;
- All GCC countries should ratify the Optional Protocol to CEDAW, enabling individual women and groups to petition the CEDAW Committee directly about violations of their rights under the Convention;
- States that have not yet done so should also ratify without reservation the following core international human rights treaties:

- * International Covenant on Civil and Political Rights and its Protocol
- * International Covenant on Economic, Social and Cultural Rights
- * International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- * UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Protocol
- * ILO Conventions, including the ILO Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers

Commented [YUN5]: Is this referring to ALL non-citizens, or to migrant workers and other non-citizens?

Appendix: Conference on Combating Violence and Discrimination against Women in the Gulf Cooperation Council (GCC) Countries – Manama, Bahrain (8-9 January 2005)

On 8 and 9 January 2005, Amnesty International (AI) organized a conference in Manama, Bahrain, on combating violence and discrimination against women in the Gulf Cooperation Council (GCC) countries – Saudi Arabia, Oman, Qatar, Kuwait, Bahrain and the United Arab Emirates (UAE). The conference was attended by over 70 participants, including women activists, lawyers, academics, journalists, religious scholars, survivors of discrimination and violence, and governmental and non-governmental organizations. The conference was attended by activists from Morocco and Yemen. Participants came from Bahrain, Kuwait, Saudi Arabia, Qatar, and the UAE. A number of activists in Oman had planned to be present but were unable to attend for personal reasons.

The conference included presentations, discussions and shared experiences. The first day began with opening speeches by Lulwa Al Awadhi, Secretary General of the High Council for Women in Bahrain; Abdel Salam Sidahmed, Director of AI's Middle East and North Africa Programme; and Ghada Jamsheer, the President of the Partnership for Combating Violence against Women in Bahrain. The Partnership for Combating Violence against Women is an umbrella network established on the initiative of AI in partnership with civil society organizations, and includes many individuals and activists concerned about violence against women.

Following the first session, participants were given the opportunity to establish contact and network with each other. This allowed the participants and AI to build bridges across the GCC region and learn of the experiences and the activities of a number of activists.

The afternoon of the first day began with a presentation by Mervat Rishmawi, Deputy Director of AI's Middle East and North Africa Programme, who is responsible for the Programme's involvement in AI's worldwide campaign to Stop Violence Against Women, spoke about violence against women worldwide and states' responsibilities regarding

violence against women. Dina El-Mamoun, Consultant on AI's Project on Combating Violence and Discrimination in the GCC, presented AI's research findings and a discussion paper, "The Cycle of Violence and Discrimination against Women in the GCC countries". Finally, Amina Lemrini, a women's rights activist from Morocco made a presentation on "The Moroccan NGOs' Experience", focusing on the grassroots activism that led to the adoption of a new family law in Morocco. Following the presentations, the floor was opened for discussion and an exchange of opinions.

On the second day of the conference, participants were asked to attend one of three workshops, depending on their area of interest or work. The subjects of the workshops were: the role of legislation and the judiciary in protecting women from violence and discrimination; challenges facing activism in stopping violence and discrimination against women; and opportunities and the role of NGOs and activists. Each workshop was opened with two presentations prepared by participants to help initiate and focus the debate. At the end of each workshop, a set of recommendations was agreed by the workshop participants. These were later presented to the plenary for discussion, debate and agreement.

The conference concluded with a set of clear and practical recommendations from activists and NGOs in the region that were presented in a widely attended press conference the following day.

Conference recommendations

On 8 and 9 January 2005, under the patronage of the Supreme Council for Women in the Kingdom of Bahrain, a conference was held in Manama, Bahrain, on combating violence and discrimination against women in the GCC countries.

This conference was organized by AI in cooperation with the Partnership for Combating Violence against Women in Bahrain and was attended by activists from civil society organizations in the GCC countries. It followed visits by AI delegates to a number of countries in mid-2004 to conduct research on discrimination and violence against women.

1: The role of legislation and the judiciary in protecting women from violence and discrimination

This conference calls upon the governments of the GCC countries to undertake the following:

- 1 – Introduce special legislation criminalizing violence against women.
- 2 – Ensure that the authorities and law enforcement bodies in their countries respect the rule of law and implement it in relation to violence against women and end impunity for such acts of violence.
- 3 – Raise awareness among relevant members of the executive, judicial and legislative authorities in the GCC countries, and provide them with legal studies concerning international human rights standards.
- 4 – Adopt legislation criminalizing all forms of discrimination against women in jobs and professions.
- 5 – Amend labour laws in the GCC countries to include domestic workers.
- 6 – Ratify the UN Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW). For those countries that have ratified the Convention, to review their reservations in order to ensure that the provisions of the Convention are implemented, and to bring national legislation into line with the Convention and in agreement with the spirit of the Islamic faith, to eliminate discrimination against women. These countries are further called upon to ratify the Optional Protocol to the Convention.
- 7 – Allocate part of their national budget to support initiatives and mechanisms working to combat violence and discrimination against women.
- 8 – Enable and give women the right to fully participate in political life in order to support their efforts to combat violence and discrimination against them.
- 9 – Enact or amend personal status legislation in their respective countries to ensure the human dignity of women.
- 10 – Enact or amend welfare, social services and nationality legislation to guarantee equality and non-discrimination against women.

2: Social and cultural issues relating to violence against women

The conference makes the following recommendations for progression in the social and cultural spheres, with the aim of bringing about

positive developments in combating violence and discrimination against women:

- 1 – Improve the educational curriculum and practices to change the stereotypical image of women and to introduce human rights education to the curriculum at all levels.
- 2 – Raise social and legal awareness, through multimedia and civil society institutions, about women's rights and to combat violence and discrimination against women.
- 3 – Relevant authorities: raise awareness among those who are about to begin married life and prepare them for the responsibilities of family life and inform them about reproductive health.
- 4 – Institutions working with young people: raise awareness and inform young people about the rights and duties of married life.
- 5 – Guarantee services for women who face violence by creating hotlines linked to institutions that offer protection to such women and provide safe houses to protect women and children from violence.
- 6 – The GCC: establish a regional centre to collate regular statistics on violence against women and to conduct studies on social, legal and Islamic law issues concerning the topic of violence and discrimination against women.

3: The role of organizations and activists in the GCC countries in combating violence and discrimination against women

All participants of this conference from the GCC countries and AI will work towards:

- 1 – Strengthening the resources and capabilities of civil society organizations to support them in their role in combating violence and discrimination against women.
- 2 – Establishing community partnerships, comprising members of all the relevant sectors of society, including religious scholars and journalists, with the purpose of ending violence and discrimination against women at both the local and regional levels in the GCC countries.
- 3 – Lobbying official institutions and decision-makers to support the work of local organizations in combating violence and discrimination against women.
- 4 – Developing proposals for introducing legislation and suggestions on how to amend existing legislation relating to combating violence and discrimination against women, and presenting these to the relevant authorities.

5 – Using the media to promote a legal culture, raising awareness among the different sections of society about the issues involved in combating violence and discrimination against women.

6 – Create a strategy to urge authorities in the GCC countries to implement international treaties on women's rights, such as CEDAW and the Declaration on the Elimination of Violence against Women.

7 – Develop a strategic plan to train law enforcement officials (the police, public prosecutors and judges) in the GCC countries, and present this to the relevant authorities.

8 – Work to establish centres to protect the victims of violence and provide them with access to the facilities they require (financial, legal, physical and psychological rehabilitation).

9 – Facilitating and promoting women's participation, as equal to men, in civil society organizations in the GCC countries.

Executive Recommendation

An official letter about the conference and a copy of these recommendations will be sent to the Secretary General of the GCC with a request that it is sent to all GCC member countries.