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**HUMAN RIGHTS CONCERNS  
RELEVANT TO THE MINISTRY OF FOREIGN  
AFFAIRS AND TRADE FOR A  
NEW ZEALAND-GULF COOPERATION COUNCIL  
FREE TRADE AGREEMENT  
October 2008**

**Amnesty International is an independent movement of over 2.2 million people in more than 150 countries who contribute their time, money and expertise to the promotion human rights and international campaigning to prevent some of the most serious violations.**

**Amnesty International**, recognising that human rights are indivisible and interdependent, also works to promote all the human rights enshrined in the Universal Declaration of Human Rights and other international standards, through human rights education programs and campaigning for ratification of human rights treaties.

**Amnesty International's** Aotearoa New Zealand section has approximately 8,100 members and regular donors, and active members in some 30 local community groups, specialist groups and various action networks. At any one time its members are working on cases and issues in approximately 90 countries. The work of Amnesty International's New Zealand members is supported by paid staff and volunteers based in Auckland, and the movement's International Secretariat based in London.

**Amnesty International** is impartial. It is independent of any government, political persuasion or religious creed. It does not support or oppose any government or political system, nor does it support or oppose the views of the victims whose rights it seeks to protect

**Amnesty International's** policies and plans are discussed and decided at general meetings of the membership and meetings of their elected representatives held every two years (International Councils). In New Zealand their implementation is managed by the Chief Executive Officer overseen by an elected Governance Team. Between International Councils the international affairs of Amnesty International are managed by the Secretary General, who reports to an elected International Executive Committee of members from at least seven different countries.

**Amnesty International** is financed by its worldwide membership and the public. Strict guidelines exist to safeguard its independence of the organisation; AI does not accept government funds for its campaigning work or organisation.

**Amnesty International** has formal relations with the United Nations Economic and Social Council (ECOSOC), UNESCO, the Council of Europe, the Organization of American States, the Organisation of African Unity, and the Inter-Parliamentary Union.

**Amnesty International** was awarded the United Nations Human Rights Prize for "outstanding achievements in the field of human rights" on the 30th anniversary of the Universal Declaration of Human Rights. The movement received the Nobel Peace Prize in 1977 for its contribution to "securing the ground for freedom, for justice, and thereby also for peace in the world".

## Introduction

1. Amnesty International welcomes the opportunity to raise human rights concerns about a Free Trade Agreement (FTA) between New Zealand and the Gulf Cooperation Council (GCC). This paper details specific labour rights issues, backgrounds Amnesty International's wider human rights concerns with this proposed FTA, and makes recommendations about how New Zealand could usefully engage at every level on these issues within this FTA process.
2. Amnesty is not opposed to this proposed FTA, nor any other preferential trade agreement that New Zealand signs. Rather, Amnesty International seeks to ensure that such agreements adequately incorporate and endorse human rights and, in particular, international labour rights obligations.

## Labour Rights

### **Fundamental labour principles**

3. Amnesty International welcomes the government's commitment to addressing human rights concerns and, in particular, its International Labour Organization (ILO) obligations within its Framework for Integrating Labour Issues into Free Trade Agreements.<sup>1</sup> The 2001 Framework acknowledges the connection between the ILO's fundamental labour principles and free trade agreements. It includes the four core principles that are *binding on all ILO member states*.<sup>2</sup>

These are:

- Freedom of association and the effective recognition of the right to collective bargaining;
- The elimination of all forms of forced or compulsory labour;

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<sup>1</sup> 2001 Framework for Integrating Labour Issues into Free Trade Agreements.

<sup>2</sup> Adopted in 1998, clause 2 of the ILO Declaration on Fundamental Principles and Rights at Work "[d]eclares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation."

- The effective abolition of child labour; and
  - The elimination of discrimination in respect of employment and occupation.
4. The Framework comments that "...as a minimum, the outcomes of all trade agreements to which New Zealand is a party *must* be generally consistent with and not undermine these core principles, the promotion of decent work, and the promotion and protection of universal human rights standards."<sup>3</sup> Thus the Framework recognises New Zealand's obligation to uphold the ILO's core principles, irrespective of whether they have signed or ratified the relevant Conventions.<sup>4</sup>
5. As such, any New Zealand-Gulf Cooperation Council FTA *must* incorporate and uphold the ILO's core principles. In order to do so, the FTA should expressly commit all participating countries to uphold the ILO's fundamental Conventions and to incorporate them into domestic law and practice. For that commitment to be a meaningful protection for labour rights, binding compliance mechanisms should be included within the FTA. A failure to uphold and implement the ILO core Conventions would leave all nations in breach of their ILO obligations.

### **Women's labour rights**

6. Amnesty International is deeply concerned about the discrimination against women within a number of countries in the Gulf Cooperation Council. The Universal Declaration of Human Rights recognises that there should be no discrimination based on sex in the enjoyment of the right to work, to free choice of employment or to just and favorable conditions of work.<sup>5</sup> It also recognises that everyone has the right to equal pay for equal work.<sup>6</sup> The International Covenant on Economic, Social and Cultural Rights also protects the "equal right of men and women to the enjoyment of all economic, social,

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<sup>3</sup> 2001 Framework for Integrating Labour Issues into Free Trade Agreements (emphasis added).

<sup>4</sup> Refer to footnote 2.

<sup>5</sup> Article 2 and 23 of the Universal Declaration of Human Rights.

<sup>6</sup> Article 25 of the Universal Declaration of Human Rights.

and cultural rights”, including the right to work.<sup>7</sup> Similarly, the Convention on the Elimination of All Forms of Discrimination Against Women explicitly guarantees the right of women “to the same employment opportunities” as men, including the “right to free choice of profession and employment” and the right “to equal remuneration... and to equal treatment in respect of work of equal value.”<sup>8</sup>

7. Given that the elimination of discrimination in respect of employment and occupation is a core ILO principle, it is incorporated into the New Zealand government’s Framework, and is binding on all seven participating countries,<sup>9</sup> any FTA that New Zealand signs with the Gulf Cooperation Council must explicitly reaffirm countries’ commitment to abolishing discrimination of employment and occupation based on sex.<sup>10</sup>
  
8. In Saudi Arabia, the system of male legal guardianship denies women many of their fundamental rights. “Women must obtain permission from their father, husband, even sons, acting as male guardians to work, travel, study, marry, receive health care, and access government agencies, including when they seek protection or redress as victims of domestic violence.”<sup>11</sup> By requiring women to obtain consent to work, the Saudi system of male legal guardianship is in direct contravention of Article 1 of the Convention concerning Discrimination in Respect of Employment and Occupation (No 111) which requires states to “...declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.”
  
9. While New Zealand must be sensitive to cultural differences, women’s right to work (and resulting economic independence) as a fundamental human right

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<sup>7</sup> Article 3 and 6 of the International Covenant on Economic, Social and Cultural Rights.

<sup>8</sup> Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women.

<sup>9</sup> Refer to footnote 2.

<sup>10</sup> See Article 1 of the Convention concerning Discrimination in Respect of Employment and Occupation (No 111).

<sup>11</sup> World Report, Human Rights Watch, 2008. Available at: <http://hrw.org/englishwr2k8/docs/2008/01/31/saudia17618.htm>.

must outweigh this inherently discriminatory cultural and historic practice. Compounding Amnesty's concern, Saudi Arabia has not yet committed to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

10. Amnesty International welcomes the recent progress made by Bahrain on women's rights. In particular, King Hamad's electoral reforms to afford women the right to vote in 2002 mark a significant step forward for women's rights in Bahrain. Despite wide-ranging reforms, however, discrimination of women is still prevalent. Unemployment rates for women are more than twice that for men (11% for women and 5% for men). Furthermore, on average women still earn less than half the income of men. Women's estimated income in 2000 was US\$ 7,010, compared with US\$ 21,059 for men.<sup>12</sup> Additionally, Bahrain has not yet committed to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, nor the International Labour Organization's Equal Remuneration Convention (No 100).

11. While Qatar's constitution provides protection to women from gender-based discrimination, no formal mechanisms exist by which women can file complaints about discrimination.<sup>13</sup> Compounding this problem, most rights in the constitution, including rights related to employment and property ownership, apply only to Qatari citizens, which account for a very small percentage of the population. Citizenship is only granted to descendants of those who resided in Qatar before 1930. Additionally, Qatar has not yet committed to either the Convention on the Elimination of All Forms of Discrimination against Women or its Optional Protocol, nor the International Labour Organization's Equal Remuneration Convention (No 100).

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<sup>12</sup> The Status and Progress of Women in the Middle East and North Africa Region, World Bank, 2005, p 21. Available at: [http://www-wds.worldbank.org/servlet/main?menuPK=64187510&pagePK=64193027&piPK=64187937&theSitePK=523679&entityID=000160016\\_20060614165618](http://www-wds.worldbank.org/servlet/main?menuPK=64187510&pagePK=64193027&piPK=64187937&theSitePK=523679&entityID=000160016_20060614165618)

<sup>13</sup> Qatar, Freedom House. Available at: <http://www.freedomhouse.org/template.cfm?page=181>.

12. Amnesty International welcomes Kuwait's recent move to allow women the right to vote. Again, while this is a positive step forward for women's rights, it highlights how much more progress is still needed. Kuwait has not yet committed to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, nor the International Labour Organization's Equal Remuneration Convention (No 100).
13. Amnesty International again welcomes the recent political reforms in the United Arab Emirates (UAE). In 2006 the UAE held their first ever elections. Despite this positive move, while the UAE has over 300,000 people over the age of 18, only 6,595 people were eligible to vote. Furthermore, out of those who were entitled to vote, less than 20 percent were females. Finally, while 63 women stood as candidates, only one female representative was elected.<sup>14</sup> Additionally, the UAE has not signed the Convention on the Elimination of All Forms of Discrimination against Women.
14. In Oman, the Sultan's move in 2000 to allow all citizens over 21 years old to vote, is a positive step forward for political representation in Oman. Furthermore, Amnesty International acknowledges the government's move in 2003 to introduce amendments on the electoral law to allow women to participate in legislative elections. However, Oman has not yet committed to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the International Labour Organization's Equal Remuneration Convention (No 100), nor the ILO's Discrimination (Employment and Occupation) Convention (No 111).
15. Given the extent of discrimination against women in Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates, Amnesty International believes it is essential that any FTA New Zealand signs with these countries include a binding commitment to effectively abolish discrimination against women. In order to affect a meaningful reduction in discrimination against women, the commitment should include an enforcement mechanism to ensure

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<sup>14</sup> Sole woman elected in UAE maiden polls, Middle East Online, 2006. Available at: <http://www.middle-east-online.com/english/?id=18884>.

compliance with countries' ILO obligations. As the country that led the world with universal suffrage, New Zealand may be able to play an instrumental role in encouraging these countries to comply with their ILO obligations and afford women equal rights in employment.

16. This proposed FTA provides a unique opportunity for the New Zealand government to engage with Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates on women's rights in the workplace. As "the number of women migrating into GCC countries and other Arab League States [has been] increasing rapidly in recent years..."<sup>15</sup> the issue of women's rights will only become more pressing. Given New Zealand's proud legacy in women's rights, and the extent of discrimination against women in these countries, a failure to address women's rights during the FTA process will leave New Zealand in breach of its own Framework for Integrating Labour Issues into Free Trade Agreements and its obligations as a member of the International Labour Organization.

### **Independent Trade Unions**

17. Noting that a number of GCC countries have not ratified the fundamental Conventions on freedom of association and collective bargaining,<sup>16</sup> Amnesty International is concerned about anti-union discrimination within the GCC. Bahrain, Oman, Qatar, Saudi Arabia and the United Arab Emirates have not signed either the Freedom of Association and Protection of the Right to Organise Convention (No 87) or the Right to Organise and Collective Bargaining Convention (No 98). Furthermore, Oman has not ratified either the Equal Remuneration Convention (No 100) or the Discrimination (Employment and Occupation) Convention (No 111). Additionally, Bahrain, Kuwait and Qatar have not ratified the Equal Remuneration Convention (No 100). Even where countries have ratified the ILO Conventions on freedom of association and collective bargaining and provided for trade unions in domestic law,

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<sup>15</sup> Smith, M., and S. Esim (eds) 2004. Gender and migration in Arab states: the case of domestic workers. International Labour Organization, Regional Office for Arab States, Beirut.

<sup>16</sup> See: <http://www.ilo.org/ilolex/english/docs/declworld.htm>.

“...existing human rights instruments are largely ineffective in the protection of vulnerable migrant workers in the GCC states.”<sup>17</sup>

18. Since 2002 it has been legal to join and form trade unions in Bahrain. While this was a positive step, freedom of association has not been fully recognised as all trade unions must belong to the General Federation of Bahrain Trade Unions. The sponsorship system (Kafala) is used in Bahrain. Indeed, “the kafala system is used in every GCC State.”<sup>18</sup> “Migrant workers receive an entry visa and a residence permit only if a GCC citizen or a GCC institution employs them. Sponsorship requires the sponsor-employer to assume full economic and legal responsibility for the employee during the contract period. This system requires that the worker can only work for the sponsor and renders workers entirely dependent on their contract in order to remain in the country.”<sup>19</sup>

19. Additionally, in October 2006 a decree was issued prohibiting the dismissal for trade union activities. “However, a few weeks later they decided to ban strikes and demonstrations in a large number of sectors.”<sup>20</sup> Furthermore, government employees are still not able to form or join trade unions.

20. In Kuwait, only one national trade union federation is permitted, the Kuwait Trade Union Federation (KTUF). The KTUF is only permitted to organise public sector workers. Furthermore, some of the most vulnerable workers are excluded from joining trade unions. “Domestic workers and maritime workers are excluded from the application of the law and are therefore not permitted to

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<sup>17</sup> Jureidini, R. Migrant labour: xenophobia, indenture and trafficking in the Gulf States, paper presented at the Fourth Mediterranean Social and Political Research Meeting, Florence and Montecatini Terme, 19-23 March, organized by the Mediterranean Programme of the Robert Schuman Centre for Advanced Studies at the European University Institute, <http://www.iue.it/RSCAS/RestrictedPapers/conmed2003free/200303Jureidini05.pdf>.

<sup>18</sup> Barria, L. International Labor Migration to the Gulf: Understanding Variations in the Kafala System, paper presented at the annual meeting of the ISA's 49th ANNUAL CONVENTION, BRIDGING MULTIPLE DIVIDES, Hilton San Francisco, SAN FRANCISCO, CA, USA, Mar 26, 2008. Available at: [http://www.allacademic.com/meta/p252177\\_index.html](http://www.allacademic.com/meta/p252177_index.html)

<sup>19</sup> Barria, L. International Labor Migration to the Gulf: Understanding Variations in the Kafala System, paper presented at the annual meeting of the ISA's 49th ANNUAL CONVENTION, BRIDGING MULTIPLE DIVIDES, Hilton San Francisco, SAN FRANCISCO, CA, USA, Mar 26, 2008. Available at: [http://www.allacademic.com/meta/p252177\\_index.html](http://www.allacademic.com/meta/p252177_index.html)

<sup>20</sup> Annual survey of violations of trade union rights, International Trade Union Confederation, 2007. Available at: <http://survey07.ituc-csi.org/getcountry.php?IDCountry=BHR&IDLang=EN>.

either found or belong to a trade union.”<sup>21</sup> Women domestic workers commonly work excessive hours for little pay and allege that they are the subject of physical and other abuse, including sexual abuse, at the hands of their employers, against which, in practice, they often have no remedy. The new standardised contract for foreign domestic workers introduced in 2006 bans workers from transferring to a different employer, and thus curtails their ability to avoid abuse. The contract also provides that workers who leave their employer or are dismissed will be deported.

21. Migrant workers in Kuwait are also bound by the sponsor system, thus restricting their movements and putting them at the mercy of their employers. Strikes are very rare as they are only permitted in the private sector, which only accounts for 6% of the total workforce of Kuwait.<sup>22</sup>

22. Since July 2006 it is legal to form trade unions in Oman. Since that date it is also prohibited to punish employees for trade union activities. Additionally in October 2006 the rights to collectively bargain and peacefully strike were recognised. As with Kuwait, however, domestic workers, along with the armed forces, security and government personnel, are not covered by the law. Additionally, “[h]alf of Oman’s workers are foreigners and they represent a cheap and vulnerable source of labour. Most are from southern Asia and they have a particularly strong presence in the construction industry. Like most of the Gulf countries, the Sultanate of Oman wishes to create more jobs for its own nationals, particularly in the private sector. As a result of that policy many sectors are not open to expatriates and the number of employed foreign workers has dropped.”<sup>23</sup> The sponsorship system is also present in Oman.<sup>24</sup>

23. A new labour code entered into force in Qatar in January 2005, providing for free trade unions for Qatari nationals. Although the new law allows for

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<sup>21</sup> Ibid, Available at: <http://survey07.ituc-csi.org/getcountry.php?IDCountry=KWT&IDLang=EN>.

<sup>22</sup> Annual survey of violations of trade union rights, International Trade Union Confederation, 2007. Available at: <http://survey07.ituc-csi.org/getcountry.php?IDCountry=KWT&IDLang=EN>.

<sup>23</sup> Ibid. Available at: <http://survey07.ituc-csi.org/getcountry.php?IDCountry=OMN&IDLang=EN>.

<sup>24</sup> Barria, L. International Labor Migration to the Gulf: Understanding Variations in the Kafala System, paper presented at the annual meeting of the ISA's 49th ANNUAL CONVENTION, BRIDGING MULTIPLE DIVIDES, Hilton San Francisco, SAN FRANCISCO, CA, USA, Mar 26, 2008. Available at: [http://www.allacademic.com/meta/p252177\\_index.html](http://www.allacademic.com/meta/p252177_index.html)

collective bargaining, government control over the rules and procedures for bargaining severely curtail this right. Similarly, while workers are entitled to strike, numerous limitations on this right make it very difficult to practice within the law. "Civil servants and domestic workers cannot strike. ... In the private sector, although most workers have the right to strike, they can only do so after the Labour Department of the Ministry of Civil Service has ruled on the dispute, which effectively neutralises the purpose of striking."<sup>25</sup> Migrant workers make up three quarters of the labour force in Qatar. As with other GCC countries, migrant workers may only enter country under the sponsor system. Under this system, they often fall victim to abuse from their employers. In May 2007 hundreds of Nepalese workers staged protests to demand an increase in, and monthly payment of, their salaries and benefits. They were reportedly arrested and ill-treated before being deported to Nepal.<sup>26</sup>

24. Trade union rights in Saudi Arabia are non-existent, although the government does allow for workers' committees. The new labour law which came into force in April 2006 does not give workers the right to organise, bargain or strike. "Trade unions and strikes are banned. Whoever tries to form a union can be dismissed, imprisoned or (in the case of the huge number of migrant workers) deported."<sup>27</sup> Furthermore, wages are fixed by the employer based, in part, on the nationality of the worker. "The lack of union rights and protection of workers are tangible. Migrant workers, particularly women, are frequently subjected to blatant abuse, such as non-payment of wages, forced confinement, rape and physical violence. In recent years reports of serious cases of abuse towards domestic migrant workers have continued to flood in. What is more, migrant workers are regularly condemned to death and

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<sup>25</sup> Barria, L. International Labor Migration to the Gulf: Understanding Variations in the Kafala System, paper presented at the annual meeting of the ISA's 49th ANNUAL CONVENTION, BRIDGING MULTIPLE DIVIDES, Hilton San Francisco, SAN FRANCISCO, CA, USA, Mar 26, 2008. Available at: [http://www.allacademic.com/meta/p252177\\_index.html](http://www.allacademic.com/meta/p252177_index.html)

<sup>26</sup> Amnesty International Report 2008: The State Of the World's Human Rights, p 245.

<sup>27</sup> Annual survey of violations of trade union rights, International Trade Union Confederation, 2007. Available at: <http://survey07.ituc-csi.org/getcountry.php?IDCountry=SAU&IDLang=EN>.

executed.”<sup>28</sup> As with all other GCC countries, the sponsorship system is present in Saudi Arabia.<sup>29</sup>

25. Finally, in the United Arab Emirates, as at the end of 2007<sup>30</sup> “the Labour Law does not permit the formation of trade unions, although workers are allowed to associate for the furtherance of common goals and interests.”<sup>31</sup> Additionally, the law does not recognise the right to collectively bargain. “The bill allowing the formation of trade unions in the private sector was approved by the legislative committee of the Ministry of Justice in October 2004, but had still not been passed by the end of 2006... UAE nationals and foreign workers who have been employed, with a valid labour card, in the UAE for a minimum of three years will be allowed to form trade union committees in companies that employ not less than 20 UAE nationals.”<sup>32</sup> Even though this would mark a significant step forward for worker rights, again Migrant workers will largely be excluded from legal protection.

26. Furthermore, domestic workers, along with agriculture and public service workers are not protected by labour laws. Consequently, domestic workers, particularly women, are often mistreated and struggle to obtain legal redress. Again, migrant workers, who account for 85% of the workforce, are bound by the sponsor system.<sup>33</sup> “They risk deportation if they try to organise trade unions or take strike action.”<sup>34</sup>

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<sup>28</sup> Annual survey of violations of trade union rights, International Trade Union Confederation, 2007. Available at: <http://survey07.ituc-csi.org/getcountry.php?IDCountry=SAU&IDLang=EN>.

<sup>29</sup> Barria, L. International Labor Migration to the Gulf: Understanding Variations in the Kafala System, paper presented at the annual meeting of the ISA's 49th ANNUAL CONVENTION, BRIDGING MULTIPLE DIVIDES, Hilton San Francisco, SAN FRANCISCO, CA, USA, Mar 26, 2008. Available at: [http://www.allacademic.com/meta/p252177\\_index.html](http://www.allacademic.com/meta/p252177_index.html)

<sup>30</sup> See: <http://www.arabianbusiness.com/504984-uae-to-discuss-labor-unions>.

<sup>31</sup> As at the end of 2006. Annual survey of violations of trade union rights, International Trade Union Confederation, 2007. Available at: <http://survey07.ituc-csi.org/getcountry.php?IDCountry=ARE&IDLang=EN>.

<sup>32</sup> Ibid.

<sup>33</sup> Barria, L. International Labor Migration to the Gulf: Understanding Variations in the Kafala System, paper presented at the annual meeting of the ISA's 49th ANNUAL CONVENTION, BRIDGING MULTIPLE DIVIDES, Hilton San Francisco, SAN FRANCISCO, CA, USA, Mar 26, 2008. Available at: [http://www.allacademic.com/meta/p252177\\_index.html](http://www.allacademic.com/meta/p252177_index.html)

<sup>34</sup> Annual survey of violations of trade union rights, International Trade Union Confederation, 2007. Available at: <http://survey07.ituc-csi.org/getcountry.php?IDCountry=ARE&IDLang=EN>.

27. As freedom of association and the effective recognition of the right to collective bargaining are recognised by the New Zealand government as core ILO principles<sup>35</sup> and are binding on New Zealand and all GCC countries,<sup>36</sup> the government must ensure that any New Zealand-GCC FTA effectively protects and promotes the independence of trade unions for *all* workers. In order to do so, the FTA should expressly reaffirm all parties' commitment to the ILO's fundamental Conventions on freedom of association and collective bargaining and New Zealand should encourage the governments involved to expressly commit to those Conventions.<sup>37</sup> Additionally, the New Zealand government should encourage the GCC states to develop more comprehensive labour laws that protect *all* workers.

28. Amnesty International also notes that neither New Zealand nor any of the GCC countries have committed to the Migrant Workers Convention<sup>38</sup> and encourages them to do so.<sup>39</sup> While noting that the Convention may be difficult to incorporate into New Zealand's domestic legislation, Amnesty International strongly encourages the government and MFAT to work towards signing this important Convention. New Zealand's commitment to this Convention is particularly important when, through the trade agreements it is currently negotiating, there is likely to be an increase of migrant workers into New Zealand and an increasing need for legally binding commitments to protect their rights.

### **People Trafficking**

29. An FTA between New Zealand and the GCC is likely to result in an increase in migration between New Zealand and Saudi Arabia, Kuwait, Bahrain, Qatar, United Arab Emirates and Oman. While an increase in migration is of no concern per se, it is likely to increase the risk of people being trafficked into New Zealand. The trafficking of people is inherently an abuse of victims'

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<sup>35</sup> 2001 Framework for Integrating Labour Issues into Free Trade Agreements.

<sup>36</sup> Refer to footnote 2.

<sup>37</sup> See: <http://www.ilo.org/ilolex/english/docs/declworld.htm>.

<sup>38</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990.

<sup>39</sup> See: <http://www2.ohchr.org/english/bodies/ratification/13.htm>.

human rights. An FTA that results in an increase in migration must, therefore, incorporate safeguards to ensure that people trafficking is effectively countered.

30. While reliable evidence is very difficult to obtain, all countries within the GCC have significant people trafficking problems. Trafficking abuses in the GCC range from the imposition of excessive working hours, to physical and verbal abuse, to sexual harassment and sexual attack, to forcing victims to work in the sex industry. "Migrants residing illegally in the countries of destination are more exposed to this kind of abuses, but legal migrants are also subjected to exploitation."<sup>40</sup>

31. The following people trafficking issues exist within GCC countries. In the United States Department of State's Trafficking in Persons Report, Bahrain is reported as a destination country for women and men trafficked for involuntary servitude and commercial sexual exploitation.<sup>41</sup> The State Department has also classified Kuwait as a destination and transit country for men and women for forced labour and sexual exploitation.<sup>42</sup> The Report describes Oman as a destination and transit country for men and women for involuntary servitude and involuntary sexual exploitation.<sup>43</sup> Qatar is a destination country for men and women trafficked for involuntary servitude and commercial sexual exploitation.<sup>44</sup> Saudi Arabia is a destination country for women and men trafficked for involuntary servitude and commercial sexual exploitation.<sup>45</sup> Finally, the United Arab Emirates is described as a destination country for men and women trafficked for the purposes of labour and commercial sexual exploitation.<sup>46</sup>

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<sup>40</sup> Giuseppe Calandruccio, A Review of Recent Research on Human Trafficking in the Middle East, *International Migration*, vol 43, no 1-2, 2005. p 278, Available at: <http://www3.interscience.wiley.com/journal/118685801/abstract>.

<sup>41</sup> 2008 US Department of State Trafficking in Persons Report, p 65.

<sup>42</sup> *Ibid*, p 158.

<sup>43</sup> *Ibid*, p 201.

<sup>44</sup> *Ibid*, p 212.

<sup>45</sup> *Ibid*, p 219.

<sup>46</sup> *Ibid*, p 253.

32. The sponsor system plays a significant role in the trafficking of people in the GCC region. The Kafala sponsorship system is the guarantee system for a guest worker to enter and work in the country. Under the house visa, issued for domestic jobs, the sponsor (known as *Kafeel*) provides the migrant with a visa and a job. “The *Kafeel* is then responsible to the authorities if the worker changes residence or employment. More importantly, the *Kafeel* assumes control over the workers right to act as a judicial person. In essence, the worker’s freedom of movement, labour, and judicial action are handed over to the *Kafeel*.”<sup>47</sup>

33. The Kafala system “...entails elements of servitude, slavery, and practices similar to slavery, as defined by the UN Trafficking Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.”<sup>48</sup>

34. The two most common forms of people trafficking in the GCC are trafficking of women for sexual exploitation and trafficking of children for forced labour. “A significant number of children were trafficked every year from South-East Asia and Sudan to the Gulf States for employment as jockeys in the popular camel races. Due to their light weight, children as young as two years old have been used.”<sup>49</sup> “According to media reports, the children trafficked into the Gulf States for the purpose of camel jockeying were denied adequate food and rest to ensure that they did not gain too much weight. They were kept in inhumane conditions, crammed in small rooms, and often starved before a big race. Most of the children who were returned to their families failed to remember or

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<sup>47</sup> Giuseppe Calandruccio, A Review of Recent Research on Human Trafficking in the Middle East, *International Migration*, vol 43, no 1-2, 2005. p 278, Available at: <http://www3.interscience.wiley.com/journal/118685801/abstract>.

<sup>48</sup> Borkholder, J.L., and M. Mohammed. 2002 .Domestic service as a form of trafficking in persons in the Middle East., First World Congress for Middle Eastern Studies, Mainz, Germany, 12 September, <http://www.protectionproject.org/commentary/ele.htm>.

<sup>49</sup> Giuseppe Calandruccio, A Review of Recent Research on Human Trafficking in the Middle East, *International Migration*, vol 43, no 1-2, 2005. p 278, Available at: <http://www3.interscience.wiley.com/journal/118685801/abstract>.

recognize their parents since they were trafficked between the ages of two to five years.”<sup>50</sup>

35. Another form of trafficking, particular to the Middle East, is arranged marriages. Wealthy nationals of Gulf countries (Saudi Arabia and Qatar in particular) marry young women from poorer Islamic countries such as Egypt or Islamic societies in Asian countries, such as India. Young women forced into marriage “...are essentially invisible to society and ineligible for full protection under the law. Once abroad, the brides could find themselves quickly divorced, forced into menial unpaid jobs, or married to someone else by proxy.”<sup>51</sup>

36. These issues are of particular concern in relation to this FTA process given that the United States Department of State has reported that “New Zealand is a destination country for women from Malaysia, Hong Kong, the People’s Republic of China, and other countries in Asia trafficked for the purpose of commercial sexual exploitation.”<sup>52</sup> Whether or not New Zealand is already a destination country for people trafficking, increasing migration necessitates a proactive approach to eradicate people trafficking.

37. Amnesty International notes with concern that, while New Zealand and all GCC countries have committed to the United Nations Convention against Transnational Organized Crime,<sup>53</sup> a number of countries within the GCC have not committed to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol). Qatar and the United Arab Emirates have not committed in any way to the Trafficking Protocol supplementing the United Nations Convention against Transnational Organized Crime.<sup>54</sup>

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<sup>50</sup> Giuseppe Calandrucio, A Review of Recent Research on Human Trafficking in the Middle East, International Migration, vol 43, no 1-2, 2005. p 280, Available at: <http://www3.interscience.wiley.com/journal/118685801/abstract>.

<sup>51</sup> Ibid.

<sup>52</sup> 2008 US Department of State Trafficking in Persons Report, p 193.

<sup>53</sup> For details see: <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist.html>.

<sup>54</sup> For details see: <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html>.

38. Amnesty International notes that the New Zealand Interagency Working Group on People Trafficking is currently consulting on the development of a Plan of Action to Prevent People Trafficking. A copy of Amnesty International's submission to the Interagency Working Group on People Trafficking is attached.
39. Despite these efforts, any FTA that will result in an increase in migration between New Zealand and GCC nations will have to develop safeguards to prevent the future trafficking of people from or through Bahrain, Kuwait, Qatar, Oman, Saudi Arabia and the United Arab Emirates to New Zealand. Whether through targeted increases in visas and permits (as occurred in the New Zealand-China FTA), or simply as a result of the consequential increase in trade between the countries, Amnesty International believes that migration between GCC nations and New Zealand will increase under an FTA.
40. Amnesty encourages all governments involved to share their knowledge, resources and expertise on people trafficking. In the context of negotiating this FTA, it is essential that the New Zealand government future-proof any resulting trade agreement and this country's immigration system in order to prevent people trafficking into New Zealand. Please see our submission to the Interagency Working Group for more detailed suggestions on how New Zealand can prevent the trafficking of people to this country. Additionally, the New Zealand government should utilise the increased level of engagement this FTA process provides to encourage Qatar and the United Arab Emirates to ratify the Trafficking Protocol. Amnesty International believes that the immigration implications of an FTA necessitate consideration of the issue of people trafficking within the FTA process.

### **Non-ratification**

41. Via their ILO membership, New Zealand and GCC countries are committed to respect, promote and realise in good faith the ILO's Declaration on

Fundamental Principles and Rights at Work (1998), irrespective of whether or not they have ratified the relevant Conventions.<sup>55</sup>

42. Nevertheless, Amnesty notes with concern that a number of GCC countries have not ratified many of the core ILO conventions. Table 1 (below) is a table of the ILO's fundamental conventions and their ratification status by country.

**Table 1:**

	Freedom of association and collective bargaining		Elimination of Forced and compulsory labour		Elimination of discrimination in employment and occupation		Abolition of child labour	
	Conv. 87	Conv. 98	Conv. 29	Conv. 105	Conv. 100	Conv. 111	Conv. 138	Conv. 182
<b>New Zealand</b>	X	√	√	√	√	√	X	√
<b>Bahrain</b>	X	X	√	√	X	√	X	√
<b>Kuwait</b>	√	√	√	√	X	√	√	√
<b>Oman</b>	X	X	√	√	X	X	√	√
<b>Qatar</b>	X	X	√	√	X	√	√	√
<b>Saudi Arabia</b>	X	X	√	√	√	√	X	√
<b>United Arab Emirates</b>	X	X	√	√	√	√	√	√

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43. Amnesty International encourages the New Zealand government to call on all governments involved in the New Zealand-GCC FTA to ratify these fundamental ILO Conventions.

44. Although New Zealand has not ratified the Freedom of Association and Protection of the Right to Organise Convention (No 87) and the Convention concerning Minimum Age for Admission to Employment (No 138), it has at least committed to all four core international labour standards: freedom of association and collective bargaining; elimination of forced and compulsory labour; elimination of discrimination in employment and occupation; and the abolition of child labour. It is of concern in this regard that half of the countries within the GCC have not committed to either of the conventions

<sup>55</sup> Refer to footnote 2.

<sup>56</sup> Data sourced from: <http://www.ilo.org/ilolex/english/docs/declworld.htm>.

within each of the ILO's four core labour standards.<sup>57</sup> As New Zealand has signed conventions on all four core international labour standards, it may justifiably call on Bahrain, Oman, Qatar, Saudi Arabia and the United Arab Emirates to do the same.

45. Furthermore, irrespective of whether New Zealand or the GCC countries have ratified ILO Conventions, all countries are bound to uphold the International Labour Organization's core principles of: freedom of association and collective bargaining; elimination of forced and compulsory labour; elimination of discrimination in respect of employment and occupation; and abolition of child labour.<sup>58</sup> Amnesty International therefore encourages the New Zealand government to raise the non-ratification of these core ILO Conventions with all governments involved in the New Zealand-GCC FTA. Given that all countries are bound by all core ILO principles, New Zealand is perfectly entitled to encourage nations to ratify the Conventions they are *already* bound to uphold.

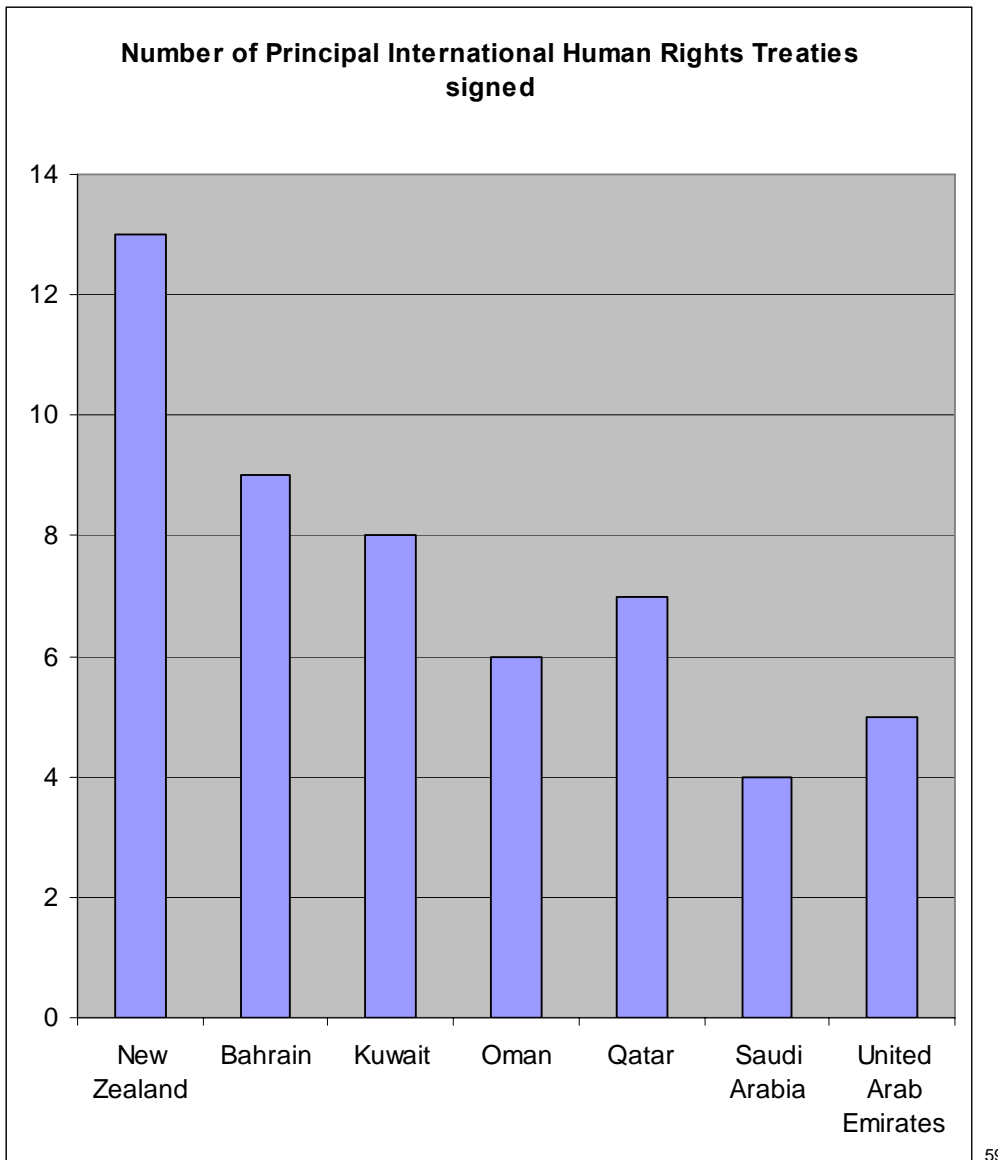
46. Amnesty International is also concerned at the lack of formal commitment to international human rights within a number of GCC countries. Graph 1 (below) indicates the number of principal international human rights treaties each country participating in the New Zealand-GCC FTA has committed to.

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<sup>57</sup> There are two conventions within each of the ILO's core areas of: : freedom of association and collective bargaining; elimination of forced and compulsory labour; elimination of discrimination in employment and occupation; and the abolition of child labour. See table 1 (above) for more detail.

<sup>58</sup> See footnote 2.

**Graph 1:**



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47. Table 2 (below) details the status of ratification of the principal international human rights treaties for each country involved in this FTA.

<sup>59</sup> Data sourced from the Office of the United Nations High Commissioner For Human Rights, Status of Ratifications of the Principal International Human Rights Treaties, June 2004. Available at: <http://www.unhchr.ch/pdf/report.pdf>.

**Table 2:**

Country:	CESCR	CCPR	CCPR-OP1	CCPR-OP2-DP	CERD	CEDAW	CEDAW-OP	CAT	CAT-OP	CRC	CRC-OP-AC	CRC-OP-SC	MWC	CRPD	CRPD-OP	CPED
New Zealand	√	√	√	√	√	√	√	√	√	√	√	√	X	√	X	X
Bahrain	√	√	X	X	√	√	X	√	X	√	√	√	X	√	X	X
Kuwait	√	√	X	X	√	√	X	√	X	√	√	√	X	X	X	X
Oman	X	X	X	X	√	√	X	X	X	√	√	√	X	√	X	X
Qatar	X	X	X	X	√	X	X	√	X	√	√	√	X	√	√	X
Saudi Arabia	X	X	X	X	√	√	X	√	X	√	X	X	X	X	X	X
United Arab Emirates	X	X	X	X	√	√	X	X	X	√	X	X	X	√	√	X

**Abbreviation:**

**Convention:**

- CESCR the International Covenant on Economic, Social and Cultural Rights
- CCPR the International Covenant on Civil and Political Rights
- CCPR-OP1 the Optional Protocol to the International Covenant on Civil and Political Rights
- CCPR-OP2-DP the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty
- CERD the International Convention on the Elimination of All Forms of Racial Discrimination
- CEDAW the Convention on the Elimination of All Forms of Discrimination against Women
- CEDAW-OP the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
- CAT the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- CAT-OP the Optional Protocol to the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment
- CRC the Convention on the Rights of the Child
- CRC-OP-AC) the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
- CRC-OP-SC the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
- MWC the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- CRPD the Convention on the Rights of Persons with Disabilities
- CRPD-OP the Optional Protocol to the Convention on the Rights of Persons with Disabilities
- CPED International Convention for the Protection of All Persons from Enforced Disappearance

For the purposes of table 2, commitment to a treat includes accession, succession, signing and ratification

48. As Table 2 and Graph 1 illustrate, the formal commitment to international human rights treaties within the GCC is significantly lower than that found in New Zealand. Amnesty International therefore recommends the New Zealand government utilise every opportunity within the FTA process to encourage GCC countries to formally commit to the principal international human rights treaties.

### **General Human Rights Concerns**

49. Amnesty International believes that the FTA process is a unique opportunity for New Zealand to raise human rights issues generally. The 2001 Framework acknowledges this opportunity, declaring "...the outcomes of all trade agreements to which New Zealand is a party must be generally consistent with ... the promotion and protection of universal human rights standards."<sup>60</sup> In order to fulfil its commitments under the Framework, the New Zealand government has an obligation to raise human rights concerns with potential trade partners within every FTA process. Whether or not a party to the negotiations believes that human rights concerns are relevant to trade negotiators, New Zealand negotiators must raise New Zealand's concerns to comply with the government's Framework.

### **Abolition Of The Death Penalty**

50. Amnesty International is concerned that *all* countries within the GCC still employ the death penalty as a form of punishment.<sup>61</sup> Additionally, none of the GCC countries have signed the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty. Out of all the GCC countries, Saudi Arabia is particularly concerning. In 2007 at least 158 people, including 82 Saudi Arabians and 76 foreigners, were executed in Saudi Arabia alone.<sup>62</sup> Furthermore, Saudi Arabia is one of

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<sup>60</sup> 2001 Framework for Integrating Labour Issues into Free Trade Agreements.

<sup>61</sup> Death Penalty: Abolitionist and Retentionist Countries, Amnesty International. Available at: <http://www.amnesty.org/en/death-penalty/abolitionist-and-retentionist-countries>.

<sup>62</sup> Amnesty International Report 2008: The State Of the World's Human Rights, p 257.

five countries that still executes youth offenders.<sup>63</sup> Noting the global trend to end the use of the death penalty, and New Zealand's strong support for a global moratorium, Amnesty International encourages New Zealand to use opportunities within the FTA process to urge these countries to formally abolish the death penalty and to end its use in practice.

## **Corporal Punishment**

51. Amnesty International is concerned at the use of corporal punishment within a number of GCC countries. Amnesty International opposes torture or other cruel, inhuman or degrading treatment or punishment of all prisoners without exception. Corporal punishment is in direct contravention of Article 5 of the Universal Declaration of Human Rights, which states "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

52. In Saudi Arabia judicial corporal punishments are routinely ordered by courts. Flogging sentences were frequently handed down as a main or additional punishment for most criminal offences and carried out almost daily.<sup>64</sup> Two men were sentenced to 7,000 lashes for committing sodomy in October 2007. Children were also sentenced to floggings.<sup>65</sup> Additionally, at least three people had their right hand cut off at the wrist after being convicted for theft.<sup>66</sup> Sentences of flogging continue to be handed down in Qatar also. In January 2007 a court sentenced an Egyptian national to 40 lashes for drinking alcohol.<sup>67</sup> A court in the United Arab Emirates convicted a teenage girl to 60 lashes for having 'illicit sex' with a man when she was 14 years old.<sup>68</sup>

53. Additionally, it is of concern that neither Oman nor the United Arab Emirates have signed the Convention against Torture and Other Cruel, Inhuman or

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<sup>63</sup> Human Rights Watch, UN: Five Countries Responsible for All Executions of Juvenile Offenders Since 2005. Available at: <http://hrw.org/english/docs/2008/09/08/mena19777.htm>.

<sup>64</sup> Amnesty International Report 2008: The State Of the World's Human Rights, p 257.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

<sup>67</sup> Ibid, p 245.

<sup>68</sup> Ibid, p 312.

Degrading Treatment or Punishment (CAT). Furthermore, not one of the six GCC countries has signed the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT-OP).

54. Amnesty International encourages the New Zealand government to pressure GCC countries to abolish the use of these inherently inhumane and degrading forms of punishment. Amnesty also recommends New Zealand encourage Oman and the United Arab Emirates to sign the CAT and all GCC countries to sign the CAT-OP.

### **Fair And Public Trials**

55. Amnesty International is concerned at the lack of fair and public trials in a number of GCC countries. Article 10 of the Universal Declaration of Human Rights stipulates that “[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.” Additionally, Article 12 states that “[e]veryone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”

56. Saudi Arabia, in particular, exhibits significant problems with: secrecy and lack of transparency of the criminal justice system; lack of adherence to international fair trial standards, such as the right to legal representation and appeal; and lack of independence of the judiciary. While it is yet to be seen whether initiatives late in 2007 will address these inadequacies, the judiciary remained silent or was complicit in violations committed in the context of countering terrorism, and it continued to apply discriminatory legislation and issue discriminatory judgements in cases involving women.<sup>69</sup>

57. A 20 year old woman, known as the ‘al-Qatif girl’ was gang raped by seven men in 2006. When the case came to court, she and a male companion who

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<sup>69</sup> Amnesty International Report 2008: The State Of the World’s Human Rights, p 255.

had been with her before the rape were each sentenced to 90 lashes for committing a khilwa offence (a meeting between a male and female who are not members of the same immediate family). The rapists were sentenced to prison for between one and five years and flogging. On appeal, the rape victim and her companion's sentence was increased to six months prison and 200 lashes, while the rapist's sentences ranged from two to nine years and flogging.<sup>70</sup>

## Freedom Of Expression

58. Amnesty International remains concerned at the lack of freedom of expression in a number of GCC countries. While the Universal Declaration of Human Rights states that “[e]veryone has the right to freedom of opinion and expression...”<sup>71</sup> and “...the right to freedom of thought, conscience and religion...”,<sup>72</sup> in many GCC countries the enjoyment of this right is far from a reality.

59. In Bahrain, for example, at least 22 internet sites, including some known for carrying criticism of the government, remained banned.<sup>73</sup> Additionally, the local media was banned from interviewing Ghada Jamsheer, a woman human rights defender.<sup>74</sup> The situation is similar in Kuwait, where Basher al-Sayegh, editor of the daily Al-Jarida newspaper, was arrested in August 2007 after a comment criticising the Emir was posted on a website he hosted, even though he removed the comment within hours.<sup>75</sup> Jassim al-Qames, a journalist who photographed the arrest, was also detained.<sup>76</sup> In the United Arab Emirates an administrative measure, widely seen as punitive, moved more than 80 teachers to other state jobs apparently because they were suspected of holding Islamic views.<sup>77</sup>

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<sup>70</sup> Amnesty International Report 2008: The State Of the World's Human Rights, p 256-257.

<sup>71</sup> Article 19 of the Universal Declaration of Human Rights.

<sup>72</sup> Article 18 of the Universal Declaration of Human Rights.

<sup>73</sup> Amnesty International Report 2008: The State Of the World's Human Rights, p 62.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid, p 183.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid, p 312.

## **Additional Comments**

60. For further information please don't hesitate to contact us. We are more than willing to discuss the content of this submission or any other issues or questions you may have. Please also see our website for human rights issues specific to GCC countries: <http://www.amnesty.org>