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## MIDDLE EAST & NORTH AFRICA

### MORALITY, MARRIAGE, AND MOROCCO: THE CRIMINALIZATION OF EXTRA-MARITAL RELATIONS IN RABAT

The sultry storylines of worldwide soap operas and movies often tell torrid tales of men and women moonlighting outside of their relationships. While much of society considers adultery objectionable, governments typically view the actions of two consenting adults as private and not criminal. In Morocco, however, perfidy could be a path to prison. The Moroccan law on adultery, combined with an allegedly unfair court system, has caught the attention of human rights defenders. According to a Human Rights Watch report, a recent criminal prosecution of adultery reflects Morocco's failure to respect the fundamental rights to fair trial and privacy guaranteed in its 2011 Constitution, and under Article 14 (right to fair trial) and Article 17 (right to privacy) of the International Covenant on Civil and Political Rights (ICCPR), which Morocco ratified in 1979.

In April 2015, a Moroccan court sentenced Hicham Mansouri, age 34, along with his female companion, age 30, to ten months in prison for adultery. On May 27, 2015, the Appeals Chamber of the Rabat Court of First Instance confirmed the verdict without considering evidence that placed significant doubt on the credibility of the police report. Additionally, Human Rights Watch expressed concern as to whether the prosecution of Mansouri for adultery was politically motivated by his status as a journalist with the Moroccan Association for Investigative Journalism, an organization whose activities, according to some sources, the government has "systematically blocked."

Freedom of press remains limited in Morocco. The government tightly controls television and journalists are at risk of imprisonment for criticizing the monarchy. As of 2015, Morocco is ranked 130th out of 180 countries in the Reporters Without Borders Press Freedom Index. According to critics, despite the

promises of reform by King Mohammed VI of Morocco in light of the Arab Spring uprisings, Moroccan citizens have not yet fully realized fundamental freedoms.

Mansouri's prosecution has also raised questions about the fairness of Morocco's judicial proceedings. According to Reporters Without Borders, after arresting Mansouri without a warrant, police undressed him and then began beating him. He was also deprived of access to his lawyers within the first twenty-four hours of his arrest. According to the 2014 Report of the United Nations (UN) Working Group on Arbitrary Detention, Section 66 of Morocco's Code of Criminal Procedure allows a detainee to access a lawyer during the first twenty-four hours of arrest only "upon the authorization of the Prosecutor's Office, for only thirty minutes and in the presence of an investigator."

Also, at Mansouri's trial, the judge refused to hear defense witnesses. Another Human Rights Watch report, examining the prosecution of six criminal cases between 2008 and 2013, found strong evidence of unfair trial proceedings in Morocco. According to the report, the use of confessions forced from defendants by police officers served as a main justification for the convictions. It also found that the judges failed to investigate claims by defendants that the government forced them, sometimes through torture or falsification, to confess to their crimes, including fraud and terrorism. The report concluded that the courts' lack of oversight and investigation encouraged law enforcement personnel to use coercive measures to obtain confessions from potentially innocent defendants.

Rights groups claim the case of Mansouri is clear evidence of Morocco's failure to fully respect the fundamental rights guaranteed under the ICCPR, including the right to privacy, freedom of expression, and the right to fair trial. The United Nations Working Group on Discrimination Against Women in Law

and Practice condemns the criminalization of adultery. It notes that when courts punish adultery, they often do so disproportionately against women. While acknowledging that in some cultures, adultery may be a ground for civil actions, the group stresses that it should never be a criminal offense punishable by fines, incarceration, flogging, or death.

Rights groups believe that if Morocco is not living up to its human rights obligations, including guaranteeing the rights to privacy, freedom of expression, and fair trial, it should move swiftly to implement necessary reforms. The UN Special Rapporteur on Torture, Juan E. Méndez, has recommended the country “monitor penalty enforcement and verify its validity,” and “strengthen the right to appeal for those affected by disciplinary measures.” Other rights experts have called for the end of laws criminalizing adultery because of their disproportionate impact on women. Finally, many believe King Mohammed should resume the political reforms he promised in 2011.

*By Andrew F. Mutavdzija, staff writer*

### **SAUDI ARABIA AND ITS ROLE IN THE UNITED NATIONS HUMAN RIGHTS COUNCIL**

In late September 2015, the United Nations (UN) Human Rights Council and Saudi Arabia came under scrutiny for electing the Kingdom's UN Permanent Representative Faisal Bin Hassan Trad to the Council's Consultative Group, which is in charge of proposing a list of independent human rights experts. This criticism comes two years after Saudi Arabia's highly contentious election to the Council, in which allegations arose that it traded promises and financial support with the United Kingdom in exchange for mutual support in its bids to secure membership to the Council.

The most prominent aspect of the recent criticism facing Saudi Arabia and the Council is the apparent disconnect between electing a representative from a country with a long history of human rights violations to such a key position in the U.N. body responsible for

monitoring human rights across the world.

Critics cite Saudi Arabia's sentencing of Raif Badawi to 1000 lashes for blogging about free speech and its indiscriminate attacks on civilians during the recent military coalition against Houthi rebels in Yemen as the two recent examples of human rights violations. Furthermore, on September 9, 2015, Amnesty International submitted a report to the Council detailing grave concerns over Saudi Arabia's justice system, such as passing death penalty sentences without sufficient legal safeguards.

Under Paragraph 47 of the Annex to Human Rights Council Resolution 5/1, the Consultative Group must “propose to the President, at least one month before the beginning of the session in which the Council would consider the selection of mandate-holders, a list of candidates who possess the highest qualifications for the mandates in question and meet the general criteria and particular requirements.” Mandate-holders, also called special rapporteurs, are independent human rights experts who “report and advise on human rights from a thematic or country-specific perspective.” While Paragraph 39 of the resolution considers the general criteria of independence, impartiality, and objectivity as “of paramount importance” in nominating, selecting, and appointing mandate-holders, there are concerns that Saudi Arabia's appointment runs counter to the Council's creation in 2006 to replace the widely-criticized UN Human Rights Commission. Hillel Neuer, the Executive Director of UN Watch organization, also criticized the appointment, calling it “scandalous” as the country has “beheaded more people this year than ISIS.” Ensaf Haidar, blogger Raif Badawi's wife, described the appointment as “a green light” for Saudi Arabia to start flogging her husband again.

In response to mounting criticism, the Council issued a press release on September 24, 2015, describing the condemnation as “a highly distorted narrative.” It emphasized that the Consultative Group is comprised of five ambassadors “who are not elected by the Human Rights Council, or any other UN body, but

appointed by the five regional groups and serve in their personal capacity.” It also refuted the suggestion that an ambassador can unilaterally select a mandate-holder, calling it “patently untrue.” This allays concerns over Saudi Arabia’s position in the Council and the Consultative Group, but it does little to assuage concern that politics are undermining the Council’s stated purpose. The UN General Assembly Resolution 60/251, which established the Council, states that the organ should be focused on addressing human rights violations and that it should do so in a non-politicized system.

Contrary to those criticisms, the U.S. Department of State’s Deputy Spokesperson Mark Toner said that the U.S. “would welcome” the appointment. In his statement, Toner took the position that while the U.S. government continues to support Saudi Arabia, there would be a strong dialogue whenever human rights concerns arise. He further expressed hope that the leadership position would be “an occasion for [Saudi Arabia] to look at human rights around the world also within [its] own borders.”

While Saudi Arabia’s appointment to the Council has raised concerns in the international community, UN leaders have argued against the notion that the Council will regress to the behavior that typified the ineffective Human Rights Commission. As Secretary General Kofi Annan stated in an address to the Commission, the Council will be “be more accountable and more representative” than its predecessor. However, he also stated, “The Council will not overcome all the tensions that accompany our handling of human rights [because a] degree of tension is inherent in the issues.” Some of the tension with the Saudis is a product of the competing goals of holding the country accountable for its violations in some areas of human rights while acknowledging its progress in others. Such progress, while slow, is present in Saudi Arabia, with previous Saudi King Abdullah appointing thirty women to the Shura Council and giving women the right to vote and participate in municipal elections beginning this year. Although there are fears that the new king, Salman bin Abdulaziz, is slowing

progress, the country’s leadership position in the Council may serve as a signpost indicating not only recognition of human rights progress, but also an increased responsibility to uphold human rights.

### **KUWAIT’S RECENT EFFORTS IN RECOGNIZING THE RIGHTS OF DOMESTIC WORKERS**

On June 24, 2015, Kuwait passed legislation to promote the rights of over 660,000 migrant workers within its borders, seeking to address the abuses that many of those individuals face. The legislation comes five years after the government passed Law No. 6 on labor law in the private sector, which specifically left the rights of domestic workers out. Although the new legislation falls short of the standards under the International Labor Organization’s (ILO) Domestic Workers Convention, many consider it the most progressive piece of domestic workers’ labor law among the Gulf States.

Kuwait’s recent legislation signals an awareness of the criticism that the Gulf States have been facing due to their failure to prevent and redress well-documented abuse of domestic workers. According to Kuwait’s 2015 Universal Periodical Review submitted to the United Nations (UN) Human Rights Council, foreign workers amount “to more than two-thirds of the population, representing more than 164 different nationalities,” many of whom perform domestic work. The abuse of domestic workers is frequently attributed to the kafala sponsorship system, which grants employers “substantial control over workers.” Under this system, practiced by the majority of Gulf States, a migrant worker’s sponsor directly controls his immigration status and freedom to change employment for the duration of the employment contract. Such a framework is contrary to Article 3 of the Domestic Workers Convention, which calls on the States Parties to respect, promote, and realize domestic workers’ “freedom of association and the effective recognition of the right to collective bargaining” and to eliminate “all forms of forced or compulsory

[labor].” Kuwait has yet to ratify the Convention. According to the Migrant Forum in Asia, the kafala system “often leads to the securitization of migrants should they attempt to challenge its restrictions or escape from abuse and exploitation.” In response, the ILO Committee of Experts in 2014 urged the government of Kuwait to ensure that its labor laws do not “place or maintain the workers concerned in a situation of increased vulnerability to discrimination and abuse, as a result of disproportionate power exercised by the employer over the worker.”

A 2010 Human Rights Watch Report documented some of those abuses which included the non-payment of wages, long working hours with little or no rest, physical and sexual abuse, and no judicial venues to seek legal redress. Recently, those abuses prompted India’s Ministry of External Affairs to issue a statement regarding the treatment of the 90,000 Indian workers in Kuwait, warning others to be careful in seeking employment in the country.

While a number of other Gulf States, including Bahrain and Saudi Arabia, have joined Kuwait in adopting similar legislative measures on domestic workers’ rights in order to mitigate the abusive system of kafala, Qatar, the United Arab Emirates, and Oman continue to completely omit domestic workers from their labor-related protective laws. However, there are indications that Kuwait’s efforts have begun a move towards progress, with the United Arab Emirates enacting an initiative to protect migrant workers which will take effect in January 2016. While this initiative will not address domestic workers’ rights in particular, it will allow migrant workers to seek more effective means of addressing situations in which they lack compensation, suffer abuse, or wish to terminate their employment.

While Kuwait’s new legislation seems to represent a positive step, the country still retains the kafala system. Another significant concern about the law is its existing ambiguity that can adversely affect migrant domestic workers. Despite the fact that the legislation provides a number of previously nonexistent

protections, it is unclear how this information will reach uninformed workers or those currently living in abusive situations. Furthermore, even if workers are aware of the safeguards, it is unclear what legal venues they will have to report violations of the new legislation.

Despite its shortcomings, the law reflects Kuwait’s effort to stand by its ratification of the International Covenant on Economic, Social and Cultural Rights by enacting what will be the most progressive legislation in the Gulf States on the rights of domestic workers. Although it may not rise to the standards set forth by the ILO, it will afford domestic workers significant protections, such as a twelve-hour working day, a day off once a week, thirty-day paid leave, and overtime pay. There is still work for the Kuwaiti Parliament to take in ensuring the dignity of domestic workers, but its most recent legislation signals not only the willingness, but also an initiative to ensure that the country’s domestic workers equally enjoy the fundamental human rights, particularly the freedom of movement and compensation for work performed.

*By Isaac Morales, staff writer*

### **HOLDING THE FREE SYRIAN ARMY ACCOUNTABLE FOR ITS USE OF CHILD SOLDIERS**

Over the past four years, the Free Syrian Army, a coalition of non-state militias, has been fighting against both the Assad regime and Islamic extremist groups. Recently, human rights groups have criticized the army for its use of child soldiers. Even amidst severe human rights abuses committed by its rivals, the Free Syrian Army is not exempt from accountability. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict obligates its States Parties to “take all feasible measures” to prevent armed groups from recruiting or using children under the age of eighteen in hostilities. The Rome Statute of the International Criminal Court (ICC) makes it a war crime to “conscript or enlist children

under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.” The Additional Protocol II to the Geneva Conventions of 1949 also stresses that “children who have not attained the age of fifteen years shall neither be recruited in the armed forces . . . nor allowed to take part in hostilities.” The critical question here is whether any of the three treaties can help hold the Free Syrian Army accountable for its actions, given its status as a non-state actor.

According to its 2014 report, Human Rights Watch interviewed Syrian boys and girls as young as fourteen years of age who acknowledged joining and assisting the Free Syrian Army with a range of different duties such as carrying supplies, loading ammunition, informing on enemy movements, or even fighting on the frontlines. While factions and affiliates of the Free Syrian Army have entered into agreements to eliminate the enlistment of children into their ranks, leaders within those entities told Human Rights Watch that the practice continues.

In October 2013, the Syrian government ratified the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. It declared that it does not “permit any person under [eighteen] years of age to join the active armed forces.” While the prosecution of alleged violations of the protocol is theoretically in the hands of the government, the nature of the ongoing civil war precludes the regime from exercising this power over the Free Syrian Army. In addition, the international community has strongly condemned the regime for its gross human rights violations, including its use of children in hostilities. As such, the Assad regime does not seem to be in a position to hold the Free Syrian Army accountable.

Another avenue to justice, the Rome Statute, imposes individual criminal responsibility on war criminals. Pursuant to its Article 25, a natural person is criminally responsible, if he or she commits an enumerated crime, “whether as an individual, jointly with another or through another person.” Under Article

12, however, in order for the ICC to exercise its jurisdiction over an individual who is not a national of a State Party, the country concerned must first accept the ICC’s jurisdiction over the conduct at issue. As Syria is not a party to the Rome Statute, and as the international community has already accused its armed forces of a slew of atrocities, it seems highly unlikely Syria will invite the ICC to prosecute its rebel groups.

A third option, Article 6 of the Additional Protocol II to the Geneva Conventions, calls for the prosecution and punishment of criminal offenses occurring in non-international armed conflicts, including the recruitment of children under the age of fifteen by non-government forces. In fact, Article 8(2)(e) of the Rome Statute implicitly refers to this measure; it considers the act of “[c]onscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities” as a serious violation “of the laws and customs applicable in armed conflicts not of an international character.” Furthermore, according to a study conducted by the International Committee of the Red Cross, the prohibition against the recruitment of children in hostilities “is a norm of customary international law applicable in both international and non-international armed conflicts.” However, the ongoing civil war in Syria coupled with alleged gross human rights violations by the Assad regime and extremist militia groups makes the prospect of holding the Free Syrian Army accountable in the near future a remote one.

As the civil war continues to devastate Syria, human rights organizations will continue to document gross violations on all sides of the conflict. But it is critical for the future of any post-war nation to hold accountable the perpetrators of gross human rights violations and to recognize the power of international human rights and humanitarian law in doing so.

## PALESTINIAN CHILD LABOR IN ISRAELI SETTLEMENTS

In November of 2015, the European Commission issued new guidelines related to goods made in Israeli settlements. The Commission reiterated the European Union's position of not recognizing Israel's sovereignty over the occupied territories, including the Golan Heights, the Gaza Strip, the West Bank, and East Jerusalem, under international law. In response to a demand for clarity as to the source of products from the areas annexed by Israel, the new guidelines require the goods to have labels stating the word "settlement" and the geographical origins of the products. But one crucial issue lost in the discussion of the product-labeling regulations is the employment of hundreds of Palestinian children in Israeli settlements.

In April 2015, Human Rights Watch published a seventy-eight-page report detailing the employment of Palestinian children in Israeli settlements, particularly in the agricultural sector. It documents "rights abuses against Palestinian children as young as [eleven] years old who earn around \$19 for a full day of working in the settlement agricultural industry." It also finds many children do not attend school and work in hazardous conditions with pesticides and dangerous equipment. Some children interviewed described "vomiting, dizziness, and skin rashes after spraying pesticides with little protection, and experienced body pain or numbness from carrying heavy pesticide containers on their back."

While the dispute over the occupied territories and Israel's annexation of the West Bank remains a highly contested issue both domestically and internationally, the respect for the rights of the child, including the prohibition of child labor, is well settled. Article 32 of the United Nations (UN) Convention on the Rights of the Child (CRC), to which Israel is a party, requires states to "recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to

the child's health or physical, mental, spiritual, moral or social development." The provision also mandates that states establish a minimum age of child employment along with appropriate hours and proper work conditions. In 1998, the Israeli government amended the country's Youth Employment Law in an effort to implement the CRC. The law prohibits the employment of children under the age of fifteen. It also forbids children from work that would adversely affect their physical, mental, and educational development, including "potentially hazardous mechanical, physical, chemical, and biological elements." Yet the Human Rights Watch report indicates that Israel has failed to equally apply the law to Palestinian children working in the settlements. The CRC Committee, in its 2013 Concluding Observations on Israel, highlighted the government's "persistent refusal to provide data and to respond to the Committee's written questions on children living in the [occupied territories]."

Furthermore, Article 10 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) imposes a similar obligation on Israel. It underscores that "[c]hildren and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law." According to Human Rights Watch, twenty-one of the children who were working full-time on the farms had dropped out of school in tenth grade or earlier. Schoolteachers and administrators told Human Rights Watch that many students drop out to work in the settlements. Under impoverished conditions, severely restricted access to water, and with limited agricultural development in the West Bank, Palestinian families often permit their children to work for settler-employers who pay them well below the minimum wage for minors in Israel in order to help support the family. In its last Concluding Observations of 2011, the ICESCR Committee particularly recommended the Israeli government "intensify its efforts to lower the high dropout rate for Arab Israeli

and Bedouin children.”

Israel is also a State party to the Minimum Age Convention of the International Labour Organization (ILO). Pursuant to Article 2 of the Convention, the minimum age of employment “shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than [fifteen] years.” In addition, under Article 3, “The minimum age for admission to any type of employment . . . likely to jeopardize the health, safety or morals of young persons shall not be less than [eighteen] years.” Article 7, however, allows the employment of minors between the ages of thirteen to fifteen on “light work” that would not adversely affect their health and educational development. In 2012, the ILO Committee requested the Israeli government “take the necessary measures to bring its national practice into conformity with the Convention by permitting employment in light work only for children who have reached the age of [fourteen] years.”

While the overarching issue remains the legality of the Israeli settlements in the occupied territories, violations of international child labor laws raise serious human rights concerns. Under the relevant international treaties, the financial hardship of Palestinian families does not give license for allowing children to work in a way that would adversely affect their health and educational development.

*By David Weinstein, staff writer*

### **IRANIAN WOMEN’S RIGHT TO WORK IN PUBLIC SECTOR**

According to rights groups, Iranian women have been taking two-steps forward and one step back in their push for equality, particularly the right to equal employment opportunities and to hold public office. Prior to the 1979 Islamic Revolution, women could serve as judges, elected representatives to the Iranian Parliaments, and even members of the Cabinet. But when Iranians took to the streets in opposition to the Pahlavi Dynasty, women saw the future of Iran as even more promising. Young female students in particular viewed the Shah’s regime

as a monarchy heavily influenced by Western Powers that had no tolerance towards alternative political parties or ideologies. The Islamic Revolution was indeed a message of change for many Iranian women. Yet soon after Ayatollah Ruhollah Khomeini became Supreme Leader of the country, the hope for more civil liberties quickly dissipated, particularly the evolution of women’s right to equal employment opportunities.

The existing legal framework of the Islamic Republic may deny women the ability to hold high decision-making positions. Under Iran’s Constitution, many of those positions are “exclusively tailored for Shi’ite fuqaha (jurists) and mujtahids (Islamic jurists who are capable of an independent derivation of Islamic rules from the primary sources).” For example, Article 99 of the Constitution gives Iran’s Guardian Council the authority to supervise the elections of “the Assembly of Experts for Leadership, the President of the Republic, the Islamic Consultative Assembly [Parliament], and the direct recourse to popular opinion and referenda.” The Law No. 1234 of 1991 interpreted that provision to give the Council a sweeping power to monitor public elections, including the rigorous process of vetting candidates. According to Majlis Monitor, an Iranian watchdog organization, “[t]his aggressive vetting, which at times has prevented entire political groups from running in elections, persists today and has been a cornerstone of continued conservative dominance of Iran’s parliament.” This process in effect has barred many women candidates from participating in the decision-making process of the country. Although Article 115 of the Constitution does not expressly bar women from running for president, the Council in 2004 declared that it “has not changed its interpretation of Article 115 and women still may not be elected as President.” According to the United Nations Statistics Division, since 1997, Iranian women have held less than five percent of parliamentary seats. Specifically, during the course of nine parliamentary terms, out of 2700 members of Parliament, only seventy-three were women.



Women's right to participate in Iran's judiciary system is also limited. Although women may acquire a legal education, the existing laws bar them from serving as judges. Under Article 163 of Iran's Constitution, the conditions and qualifications to serve as a judge must be in accordance with "the criteria of fiqh [Sharia law or Islamic law]." Soon after the 1979 Revolution, conservative clerics made a series of religious pronouncements removing women, including Shirin Ebadi, the recipient of the 2013 Nobel Peace Prize, from their positions as judges. While an amendment to the Process of Appointment of Judges Act of 1982 recognized the possibility of women "as counselors and investigators," the role of judicial decision-making continues to remain exclusively with men.

Iran has ratified multiple international treaties relevant to women's rights. It is currently a State Party to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Under Article 25 of the ICCPR, every citizen "shall have the right and the opportunity . . . without unreasonable restrictions: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; [and] (b) to vote and to be elected at genuine periodic elections." Similarly, Article 6 of ICESCR calls on States Parties to recognize "the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts."

In response to Iran's third periodic report on the implementation of the ICCPR, the Human Rights Committee expressly requested Iran explain why the country continues to exclude women from decision-making positions including the Guardian Council, the Expediency Council, and the judiciary. The government of Iran replied to the Committee by claiming that "there is no gender limit stipulated for membership on the Guardian Council and the Expediency Council." With respect to judicial opportunity for women, it provided statistics indicating that in 2003, "there were exactly 161 women judges and 4 women deputies of

Judicial Complexes." According to Iran Human Rights Documentation Center, however, the "so-called women 'judges' [were] not permitted to make substantial decisions in any case," and none of the 100 branches of General and Revolutionary Courts included a female judge.

While Iran's existing legal framework continues to hinder women's participation in the country's decision-making process, rights groups and international organizations believe that by amending current laws, the government can still take positive steps in realizing the equal rights of Iranian women promised thirty-six years ago when the Islamic Revolution took place.

*By Jessica Lee McKenney, staff writer*