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THE DRESSMAKER'S DILEMMA: SEXUAL ABUSE, CORPORATE ACCOUNTABILITY, AND THE CONVENTION FOR THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST MIGRANT WOMEN IN JORDAN'S QUALIFIED INDUSTRIAL ZONES

INTRODUCTION

On June 17, 2011, a twenty-six year-old Bangladeshi woman, encouraged by the Institute for Global Labor and Human Rights ("IGLHR"), a U.S.-based advocacy group, filed a formal complaint with Jordanian authorities that she had been raped by Classic Fashion Apparel ("Classic") factory's top manager, Anil Santha.¹ Mr. Santha was arrested that month under suspicion of raping the young woman three times since her arrival at the factory in March of 2011.² Following the Bangladeshi woman's complaint, several other female workers came forward charging similar acts of sexual harassment and abuse by Santha in 2010 and 2011 including one woman who had become pregnant from the assault.³ The controversy fueled worries about the future of the apparel manufacturing industry in

1. Miguel Bustillo, *Sex Abuse Alleged at Apparel Maker*, WALL ST. J., June 20, 2011, at B3.

2. *Id.*

3. Jamal Halaby, *Jordan Rights Group: No Proof of Rape at Factory*, THE GUARDIAN (Sept. 8, 2011), <http://www.guardian.co.uk/world/feedarticle/9837153> [hereinafter *No Proof of Rape*]. See INST. FOR GLOBAL LABOUR & HUMAN RIGHTS, SEXUAL PREDATORS AND SERIAL RAPISTS RUN WILD AT WAL-MART SUPPLIER IN JORDAN 6–10 (2011) [hereinafter SEXUAL PREDATORS], available at <http://www.globallabourrights.org/admin/reports/files/Content-Classic-0607-final.pdf>. The eighty-two page report, issued by the Institute for Global Labour and Human Rights ("IGLHR"), compiled a series of interviews with female guest workers at Classic Fashion in Al Hassan Industrial Estate. In the interviews, the women described the systematic rape and torture of female employees by workplace supervisors at the factory. *Id.* at 6–22.

Jordan, since textile exports to the United States are a main source of national revenue.⁴

Classic, which produces clothing for major U.S. retailers—including Wal-Mart, Target, Macy's, Kohl's and Lands' End—is Jordan's largest garment exporter.⁵ With Classic having annual exports estimated at US\$125 million, nearly 13% of Jordan's one billion dollar garment exports industry,⁶ Jordan has a large stake in the success and continued performance of Classic's business relationship with U.S.-based corporations. Thus, it did not come as a surprise when Jordanian investigators seemed reluctant to look into the veracity of the Classic rape allegations, perhaps out of fear for the economic repercussions of validating the claims.⁷ Notably, Mr. Santha was not prosecuted; rather, he fled to Sri Lanka, his native country, allegedly with the assistance of the Jordanian Ministry of Labor.⁸

4. Janell Ross, *Major American Brands Silent on Alleged Rights Abuses at Overseas Factories*, HUFFINGTON POST (July 21, 2011), http://www.huffingtonpost.com/2011/07/21/american-brands-abuses-factories-jordan-labor-conditions_n_903995.html.

5. Jamal Halaby, *Rape Case Involving Foreign Workers Turns Focus to Jordan's Factory Problems*, ARAB NEWS (Sept. 7, 2011), <http://www.arabnews.com/node/390209> [hereinafter *Rape Case Turns Focus*].

6. *Id.*

7. The Labor Ministry's director of inspection and safety, Adnan Raba-baa, told the Jordan Times shortly after the IGLHR report was issued that, "[w]e formed an ad hoc committee comprising members of all concerned entities who have already started arbitrary interviews with the labourers in this particular company in order to verify the accusations in the report;" however, the committee's findings have not yet been publicized. *Jordan Probing Abuse Claims*, DAILY MIRROR (June 13, 2011), <http://www.dailymirror.lk/news/11907-jordan-probing-abuse-claims.html>.

Investigation of the situation by the National Center for Human Rights ("NCHR"), a non-governmental rights group found "no information to support the rape allegations," alleging that there were contradictions in the victims' testimonies. *See No Proof of Rape*, *supra* note 3. However, the NCHR did not provide examples of the alleged contradictions or explain investigators' suspicions of the women's statements. *Id.* When a reporter from the Associated Press visited Classic's factory, supervisors from Classic, as well as Classic's owner and managing director Sanal Kumar, presented six women for interview with the reporter. *See Rape Case Turns Focus*, *supra* note 5. All six women were roommates of the women who reported rape, and speaking under the constant watch of the factory supervisors, disclaimed any knowledge of rape in the factory. *Id.*

8. *Major Progress in Jordan! Accused Rapist Flees, Public Pressure Forces Investigation*, CHANGE.ORG (Aug. 31, 2011), <http://www.globallabourrights.org/press?id=0375>.

The case of Classic points to the difficulties of assessing liability for human rights abuses against women working as overseas contract workers ("OCW") or guest workers within a multinational corporation ("MNC") framework. While Jordan is invested in promoting corporate contracts within its borders, it does not have a system of oversight to regulate the practices of those MNCs that are complicit in labor and human rights violations.⁹ That both Mr. Santha and the woman who initially came forward to report the rape have left Jordan, further illustrates the difficulties of preventing and managing abuses among OCWs—a vulnerable population that is viewed as easily replaceable.¹⁰ Though the victims and perpetrators of sexual abuse in the workplace may disappear, the problems Jordan faces with regards to violations of female workers rights remain a salient issue.

Non-American foreigners own most of the factories in Jordan's industrial zone and operate as subcontractors for MNCs.¹¹ This legal separation between factories and MNCs allows companies, such as Macy's, Kohl's, and Lands' End, to argue they have no control or responsibility over the abuses that occur within factories they do not own. Following the exposé of sexual abuse at Classic, the companies withdrew their business from the factory and wiped their hands clean of the situation.¹² However, the seamstresses for whom abysmal work conditions, sexual harassment, and physical abuse are a daily reality are not aided by MNCs ceasing to do business with the factories

9. NAT'L LABOR COMM., U.S.-JORDAN FREE TRADE AGREEMENT DESCENDS INTO HUMAN TRAFFICKING & INVOLUNTARY SERVITUDE 1 (2006) [hereinafter HUMAN TRAFFICKING & INVOLUNTARY SERVITUDE], *available at* http://www.globallabourrights.org/admin/documents/files/Jordan_Report_05_03.pdf.

10. LIN LEAN LIM ET AL., INT'L LABOUR ORG., PREVENTING DISCRIMINATION, EXPLOITATION, AND ABUSE OF WOMEN MIGRANT WORKERS: AN INFORMATION GUIDE, BOOKLET 1—INTRODUCTION: WHY THE FOCUS ON WOMEN INTERNATIONAL MIGRANT WORKERS 9–28 (2003).

11. IBRAHIM SAIF, THE SOCIO-ECONOMIC IMPLICATIONS OF THE QUALIFIED INDUSTRIAL ZONES IN JORDAN 44 (2006); *see also* Ran Dagoni, *China main beneficiary of US-Israel-Jordan QIZ*, GLOBES (May 4, 2006), www.globes.co.ilserveen/globes/docview.asp?did=1000088134.

12. *Rape Case Turns Focus*, *supra* note 5. "Days after news of the rape allegations emerged, U.S. retailers Kohl's, Macy's and Lands' End stopped placing orders from Classic . . . [W]ithin four weeks, Classic's losses reached US\$10 million, or 8 percent of its annual exports." *Id.*

they rely on for employment.¹³ MNCs who employ sweatshop type labor,¹⁴ such as Wal-Mart and Target, should not escape liability for their complicity in the inhumane treatment administered therein;¹⁵ the manufacturing plants would not be in business were it not for MNC demand of their products. MNC dependence on cheap labor to maintain high profits has engendered a business model that favors absolute output, without regard for the quality of workers' environment and supervision.¹⁶

The Convention on the Elimination of Discrimination Against Women ("CEDAW" or "Convention")¹⁷ along with its Optional Protocol,¹⁸ gives countries the tools to improve the condition of

13. See Debra Cohen Maryanov, *Sweatshop Liability: Corporate Codes of Conduct and the Governance of Labor Standards in the International Supply Chain*, 14 LEWIS & CLARK L. REV. 397, 412 (2010) ("Terminating the contract sends a clear message [to suppliers] . . . but also risks hurting the workers who may lose their jobs. Some labor organizations therefore recommend termination only when suppliers refuse to cooperate, and even then urge companies to seek alternative local suppliers to keep production in the country.").

14. See BUS. & HUMAN RIGHTS RES. CTR., <http://www.business-humanrights.org> (last visited Apr. 26, 2013). The Business and Human Rights Resource Center has tracked the human rights performance of over 5,000 corporations in over 180 countries. The Center has documented abuses ranging from health and safety violations in the workplace, to discrimination, and social and environmental degradation. *A Brief Description*, BUS. & HUMAN RIGHTS RES. CTR., <http://www.business-humanrights.org/Aboutus/Briefdescription> (last visited Apr. 26, 2013).

15. HUMAN TRAFFICKING & INVOLUNTARY SERVITUDE, *supra* note 9, at 61–67 (Walmart), 20–24 (Target).

16. Maryanov, *supra* note 13, at 424 ("MNCs profit from sweatshop conditions and cause investment injuries by using profits to perpetuate the arrangement with . . . monitoring systems that discourage involvement by stakeholders to improve labor conditions."). See also *Does I v. Gap, Inc.*, No. CV-01-0031, 2002 WL 1000068, at *3 (D.N. Mar. I. May 10, 2002) (concluding that "the plaintiffs have properly alleged an association-in-fact enterprise consisting of individual retailers and individual manufacturers" by alleging that the retailers used their collective "power through contracts, oversight, and economic pressure," to require garment manufacturers to continue unlawful policies and practices that perpetuated sweatshop conditions in textile plants).

17. Convention on the Elimination of All Forms of Discrimination Against Women [CEDAW], G.A. Res. 34/180, Annex, U.N. Doc. A/RES/34/180 (Dec. 18, 1979).

18. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 54/4, Annex, U.N. Doc. A/RES/54/4 (Oct. 15, 1999) [hereinafter CEDAW Optional Protocol]. For the history and

women in society. Jordan ratified almost all the provisions of the CEDAW in 1992; however, it did not adopt the Optional Protocol.¹⁹ The Optional Protocol would have given victims an additional complaint mechanism before the CEDAW Committee for claims alleging a violation of any of the rights set forth in the Convention.²⁰ So, women suffering from workplace abuse are constrained to seeking help from factory personnel, non-profit organizations, or Jordanian law enforcement and officials. It is therefore imperative that Jordan create a system of law and order that will address the root causes of violence against women in the workplace.

Jordan's current administration of the Convention,²¹ through the criminal prosecution of individual sex crimes, fails to pro-

detailed analysis of the Optional Protocol, see Felip Gomez Isa, *The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women: Strengthening the Protection Mechanisms of Women's Human Rights*, 20 ARIZ. J. INT'L & COMP. L. 291, 305–20 (2003).

19. *Status of the Convention on the Elimination of All Forms of Discrimination Against Women*, U.N. TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en (last visited Apr. 26, 2013) [hereinafter *CEDAW Status*]. Jordan ratified the CEDAW on July 1, 1992. *Id.* Pursuant to Jordanian law, the ratification of an international convention renders it a self-executing treaty, automatically incorporated into national law. Kathryn Christine Arnold, *Are the Perpetrators of Honor Killings Getting Away with Murder? Article 340 of the Jordanian Penal Code Analyzed under the Convention of the Elimination of All Forms of Discrimination Against Women*, 16 AM. U. INT'L L. REV. 1343, 1349 (2001). Jordan does not consider itself bound by Articles 9(2), 16(1)(d), and 16(1)(g). *CEDAW Sessions: Declarations, Reservations and Objections to CEDAW*, U.N. DIV. FOR THE ADVANCEMENT OF WOMEN, <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm> (last visited Apr. 26, 2013); *CEDAW Success Stories*, UNIFEM, http://www.unifem.org/cedaw30/success_stories/ (last visited Apr. 26, 2013).

20. CEDAW Optional Protocol, *supra* note 18, art. 2. The Protocol also contains a process that empowers the Committee to initiate inquiries into "grave or systemic violations by a State of rights set forth in the Convention," after receiving reliable information of such violations. *Id.* art. 8.

21. Jordan has not adopted the Optional Protocol. *CEDAW Status*, *supra* note 19. The Optional Protocol provides a mechanism for the CEDAW Committee to hold State Parties accountable for human rights abuses which moves beyond the reporting process and general comments. See CEDAW Optional Protocol, *supra* note 18. It contains a communications mechanism that allows individuals or groups of individuals under the jurisdiction of a State party to bring complaints to the CEDAW Committee alleging a violation of any of the rights set forth in the Convention. *Id.* art. 2. The Protocol also contains a process through which the Committee is empowered to initiate an

tect female workers in sexually violent work environments in the MNC supplier context.²² The Jordanian government attempted to discharge its duties under the CEDAW by prosecuting Classic's supervisor for rape,²³ a charge that carried a fifteen-year maximum prison sentence.²⁴ However, the imprisonment of one man fails to protect other women from the abusive factory conditions permitted by the MNCs employing factories like Classic.²⁵

The CEDAW's distinctive obligations call for systemic rather than individualistic sanctions. Therefore, to address this systemic problem, international response to the sexual abuse of female workers should include holding the "big fish"—the MNCs—accountable for the labor conditions that are conducive to these violations. Jordan is in a unique position to enforce human rights among companies it grants the privilege of doing business within its borders; it should not be considered to have met its obligations under the CEDAW until it addresses MNCs' role in human rights violations against female workers. With-

inquiry into "grave or systemic violations by a State of rights set forth in the Convention," after receiving reliable information of such violations. *Id.* art. 8.

22. See *infra* Part III.

23. See *No Proof of Rape*, *supra* note 3.

24. *Rape Case Turns Focus*, *supra* note 5.

25. Allegations of rape and sexual assault against female workers by Classic supervisors were brought to Wal-Mart and Target's attention at least as early as 2008 when female workers went on strike to resist workplace abuses. *Three Thousand Workers Strike in Jordan Sewing for Wal-Mart and Other Companies*, INST. FOR GLOBAL LABOUR & HUMAN RIGHTS (Dec. 14, 2007), <http://www.globallabourrights.org/alerts?id=0190>. However, after alleging that their investigations showed no proof of these human rights violations, both corporations continued to not only use Classic's products without any additional enforcement mechanisms of Classic's code of conduct, but also continued to employ the supervisors repeatedly accused of heinous activity as subcontractors. See *Responses by Textile Manufacturers and Clothing Retailers to Concerns about Working Conditions in Factories in Jordan*, BUS. & HUMAN RIGHTS RES. CTR., <http://www.business-humanrights.org/Documents/Jordanfactories> (last visited Apr. 26, 2013) (featuring letters from Wal-Mart and Target Corp. dated Oct. 17, 2006, and Oct. 17, 2006, respectively); see also Ross, *supra* note 4. Similar reports of sexual abuse are seen as early as 2006, when the IGLHR reported that four young women were sexually abused by factory managers at Western Factory, a textile supplier plant for Wal-Mart, Kohl's and GAP located in Jordan's Qualified Industrial Zone ("QIZ"). HUMAN TRAFFICKING & INVOLUNTARY SERVITUDE, *supra* note 9, at 11.

out government oversight and civil sanctions, corporations are unlikely to prioritize human rights over profits.

Numerous instances of human rights abuses in Jordan²⁶ demonstrate the need for additional protections of OCWs and a means of redress for sexual assault through a monetary punitive system.²⁷ While the imprisonment of a lower-level worker will have no impact on how MNCs organize their labor and enforce workplace health and safety provisions, if Jordan were to impose civil liability on corporations through pecuniary sanctions and compensation to the victim, MNCs would be more likely to self-monitor for violations and enforce a stricter code of conduct to deter violations.²⁸ Indeed, “[a]s a rational cost-benefit calculator, the company is [much more] likely to be responsive to a financial penalty.”²⁹ The failure of the Jordanian government to effectively enforce women’s rights against these larger corporate entities to date has left female garment workers in factory settings vulnerable to repeated human rights abuses.³⁰

This Note will focus on one particular case illustrating the plight of female overseas contract factory workers in Jordan to reveal the ineffectiveness of the CEDAW enforcement in MNC factory environments, and to identify the problems inherent to Jordan’s relationship with MNCs and its lack of oversight thereof. This Note will then argue that to realize the goals of the CEDAW, Jordan should focus on deterrence of sex crimes against women in the workplace through a top-down enforcement mechanism, by placing liability for workplace abuses not only on individual offenders, but also on the MNCs benefiting from such practices.

Part I describes Jordan’s OCW labor system with regards to women in the textile industry. Part II identifies the Articles of the CEDAW relevant to female factory workers and the rights Jordan must protect under the CEDAW. Part III discusses why Jordan’s current treatment of workplace abuses in the MNC

26. See *SEXUAL PREDATORS*, *supra* note 3, at 4; see also *HUMAN TRAFFICKING & INVOLUNTARY SERVITUDE*, *supra* note 9.

27. See *infra* Part III.

28. See James Gobert, *Controlling Corporate Criminality: Penal Sanctions and Beyond*, 2 WEB JCLI (1998), <http://webjcli.ncl.ac.uk/1998/issue2/gobert2.html>.

29. *Id.*

30. See *infra* Part III.

supplier factory setting does not offer proper relief for victims or the female workforce in general and thus does not discharge Jordan's duties under the CEDAW. Part IV suggests overall changes Jordan should make to better protect female workers—in the form of sexual harassment laws—and proposes to hold MNCs accountable for violations of such laws in order to end workplace abuse from the top down.

I. THE OCW SYSTEM AND FEMALE MNC TEXTILE INDUSTRY WORKERS

Jordan's worker demographics consists of approximately 17.38% migrant OCWs (also known as guest workers), non-Jordanian nationals engaging in labor activities.³¹ Migrants move from one state to another, in large part due to the structural economic inequalities among states with respect to access, opportunity, and compensation.³² While Jordan provided much of the migrant labor to the region's other Arab countries during the oil price increases of 1973 and 1974, recent economic agreements have reversed this trend and attracted OCWs to work within Jordan's borders.³³

The influx of OCWs into Jordan has been heightened by the manual labor and production needs of Western-based companies that established manufacturing plants in the country. In 1997, the Qualified Industrial Zone Agreement ("Agreement") was signed between Jordan and the United States, creating privileges for those factories that comply with the Agreement's

31. See *Jordan Background Note*, U.S. DEP'T. OF STATE, <http://www.state.gov/outofdate/bgn/jordan/180176.htm> (last updated Mar. 25, 2011). Of Jordan's estimated 1.8 million person workforce, 313,000 are registered guest workers. *Id.* International Convention of the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. Res. 45/158, art. (2)(1), U.N. Doc. A/RES/45/158 (Dec. 18, 1990) (definition of migrant laborer).

32. See Joan Fitzpatrick & Katrina R. Kelly, *Gendered Aspects of Migration: Law and the Female Migrant*, 22 HASTINGS INT'L & COMP. L. REV. 47, 64–65 (1998) (describing the disparities and noting that Singapore, Malaysia, Hong Kong, and oil-rich Gulf states constitute states receiving women for migrant labor).

33. DAVID ZISKIND, *LABOR LAWS IN THE MIDDLE EAST: TRADITION IN TRANSIT* 56 (1990); see also *Labor Force*, in JORDAN: A COUNTRY STUDY (Helen Chapin Metz ed. 1989), available at <http://countrystudies.us/jordan/48.htm>.

requirements.³⁴ Since 1998, Jordan has enjoyed duty- and quota-free access to the U.S. market, pursuant to the Agreement, for products made in the Qualified Industrial Zone (“QIZ”), production areas designated by Jordanian authorities and approved by the United States government.³⁵ QIZ factories in Jordan are also exempt from almost all local Jordanian taxes including: “all income tax on corporate profits; all income and social services taxes on the salaries and allowances paid to non-Jordanian workers; all import and export duties on raw materials, parts, and finished goods for export; and all licensing fees as well as local building and land taxes.”³⁶ QIZ factories, owned mainly by foreigners,³⁷ can also repatriate 100% of their profits to their country of origin.³⁸ Since signing the QIZ Agreement, Jordan has since become a magnet for apparel manufacturing.

In 2001, Jordan made steps to further attract industries to use its labor when it entered into a free trade agreement with the United States (“USFTA”), allowing American companies to import goods from Jordan tariff-free.³⁹ In addition, the USFTA

34. *The Agreement Establishing a Free Trade Area (FTA) Between Jordan and the United States of America*, MINISTRY OF INDUS. & TRADE, THE HASHEMITE KINGDOM OF JORDAN, [hereinafter *Jordanian Ministry on USFTA*], available at <http://www.mit.gov.jo/Default.aspx?tabid=703> (last visited Apr. 26, 2013).

35. *Id.*

[T]he objective of these zones is to promote peace and stability through economic integration in the region, Jordanian, Egyptian and Israeli goods originating in the QIZ's were granted un-reciprocal duty free access to US markets. Such an arrangement was beneficial to both Jordan and Israel: Israel was able to utilize Jordan's low wage advantages, and Jordan was able to utilize Israel's existing market channel link in the USA, as well as its sophisticated technology and management. As a result, QIZs have been able to operate at a higher level of productivity than the rest of the industries in the region. QIZ exports have now risen to top all other Jordanian exports, making the USA Jordan's main export destination.

SAIF, *supra* note 11, at 5.

36. See HUMAN TRAFFICKING & INVOLUNTARY SERVITUDE, *supra* note 9, at 19.

37. See note 11 *supra* and accompanying text.

38. See Agreement on the Establishment of a Free Trade Area [USFTA], U.S.-Jordan, Oct. 24, 2000, 41 I.L.M. 63.

39. See *id.* The USFTA is supposedly the “gold standard” for incorporating international labor rights as set out by the International Labor Organization (“ILO”), into domestic law. However, the agreement has proved difficult to

allowed for the elimination of customs duties for garments produced in QIZs.⁴⁰ In 1998, before the USFTA and QIZ were signed, Jordan's exports to the United States barely reached US\$17 million, but by 2006 those exports surpassed the US\$1 billion mark.⁴¹ Garments currently account for almost 90% of Jordanian exports to the United States.⁴²

There are currently nine QIZs in Jordan and 114 investment companies located in these zones.⁴³ Out of these investment companies, fifty-nine export their products to the United States⁴⁴ and hold Qualified Product Request ("QPR") certificates issued by the Ministry of Industry and Trade.⁴⁵ Fifty-five

enforce with regards to labor violations. Marley S. Weiss, *Two Steps Forward, One Step Back—or Vice Versa: Labor Rights Under Free Trade Agreements from NAFTA, Through Jordan, via Chile, to Latin America, and Beyond*, 37 U.S.F. L. REV. 689, 700 (2003). ("[The USFTA] epitomize[s] the superficial solution of adding externally-set international labor standards to the supra-national enforceability of domestic ones, and incorporating labor provisions in the main body of the agreement . . . while nominally available, sanctions will virtually never be applied."). See USFTA, art. 6(1), 6(3), 41 I.L.M. at 70 ("Each Party shall strive to ensure that its laws provide for labor standards consistent with the [specified] internationally recognized labor rights and shall strive to improve those standards in that light."). Enforcing labor standards, and particularly the question of who should be enforcing them and who should be liable for violations, has been the subject of enormous litigation. The Alien Tort Claims Act ("ATCA") is a powerful instrument of remedy against U.S.-based MNC violations of international human rights. See generally Marisa Anne Pagnattaro, *Enforcing International Labor Standards: The Potential of the Alien Tort Claims Act*, 37 VAND. J. TRANSNAT'L L. 203, 205 (2004). This federal statute may be used as a way of giving force to international agreements pertaining to labor standards by holding companies responsible for their treatment of foreign workers. See *id.* at 205; see also Marjanov, *supra* note 13, at 417–22. However, the ATCA is not a substitute for domestic law, and Jordan must institute its own policies to protect women's rights in the workplace as is required under the CEDAW.

40. *Jordanian Ministry on USFTA*, *supra* note 34.

41. MINISTRY OF LABOUR, REPORT ON STATUS OF MIGRANT WORKERS IN THE QUALIFIED INDUSTRIAL ZONES 5 (2006) (Jordan), available at <http://www.dol.gov/ilab/programs/ocft/tvpra/20091027c.pdf> [hereinafter MINISTRY OF LABOUR REPORT].

42. *Id.*

43. *Id.*

44. *Id.*

45. AMIR PROGRAM, JORDAN'S MINISTRY OF INDUSTRY AND TRADE INDUSTRIAL DEVELOPMENT DEPARTMENT: QIZ UNIT 2–4 (2004), available at http://pdf.usaid.gov/pdf_docs/PNACY034.pdf (describing the Qualifying Product Request ("QPR") certification process). Companies receive a QPR certifi-

of these companies operate as subcontractors for U.S.-based labels, with migrant workers accounting for 76% of the labor force in these subcontracting companies.⁴⁶ In 2006, documented migrant workers totaled 36,149 out of the 54,077 workers in the 114 QIZ textile company factories.⁴⁷ The majority of these guest workers were women.⁴⁸

Most clothing is made by guest workers from Bangladesh, Sri Lanka and China, who typically work under low-wage contracts.⁴⁹ After conducting a survey of Jordanian women working in the QIZ in 2000, the Jordanian Ministry of Labor stated that, "the working conditions in the Qualifying Industrial Zones (QIZ) are of sub-standard levels as far as Jordanians are concerned."⁵⁰ In 2011, the IGLHR reported continued abuses committed by QIZ factory managers against Asian guest workers, including late payment of wages, withholding of passports, unsanitary lodging conditions, and police breaking up impromptu strikes.⁵¹

cate after meeting content and place of origin requirements. Their products must "add[] value of not less than 35 percent of the total appraised value of the product [in Jordan]." *Id.* In addition, the "QIZ products should be consigned directly from Jordan or Israel to the USA," and must meet minimum input requirements from Jordan, Israel, and the USA and/or Palestine. *Id.*; see also SAIF, *supra* note 11, at 12–13.

46. MINISTRY OF LABOUR REPORT, *supra* note 41, at 5–6.

47. *Id.* at 6.

48. *Id.*

49. Bustillo, *supra* note 1; Halaby, *supra* note 3. As of March 2012, there were approximately 335,000 migrant workers in Jordan. See INT'L LABOR OFFICE, DECENT WORK COUNTRY PROGRAMME 2012–2015: JORDAN, at 11 (March 2012) [hereinafter DECENT WORK PROGRAMME], available at <http://www.ilo.org/public/english/bureau/program/dwcp/download/jordan.pdf>. As many as 54,077 of those workers in 2006 were employed in the QIZ. INT'L LABOR OFFICE, DECENT WORK COUNTRY PROGRAMME, at 11 (Jordan 2006) [hereinafter Decent Work Programme 2006]. While Jordan's labor law does not discriminate between Jordanian and migrant workers, there are increasing reports of violations and abuse of migrant workers' rights. *Id.* With regard to women, abuses included the withholding of salary, long working hours without rest periods, the withholding of passports, and physical and sexual abuse. See *Asia Pacific and Arab States Regional Programme on Empowering Women Migrant Workers in Asia: Jordan*, U.N. WOMEN, <http://www.migration-unifem-apas.org/jordan/index.html> (last visited Apr. 26, 2013).

50. MINISTRY OF LABOUR REPORT, *supra* note 41, at 4.

51. See note 3 *supra*. "Unionized Jordanians may only strike with government permission; non-Jordanians, although allowed to join unions since 2008,

In 2006, the International Labor Organization (“ILO”), a specialized U.N. agency devoted to “promoting just working conditions,” reported that the Jordanian government had taken some measures to improve the protection of migrant workers’ rights.⁵² The ILO saw much room for improvement in Jordan’s existing infrastructure for protecting guest workers, and developed an “Action Plan” for the management of labor migration and the protection of migrant workers within Jordan’s borders.⁵³ This Action Plan was based on the International Labor Organization’s non-binding multi-lateral framework on labor migration.⁵⁴ However, the Action Plan has yet to receive official endorsement or enforcement by the Jordanian government.⁵⁵

are not allowed to strike.” HUMAN RIGHTS WATCH, WORLD REPORT 2010—JORDAN, <http://www.hrw.org/world-report-2010/jordan> [hereinafter WORLD REPORT 2010].

52. *See id.* The ILO was created in 1919 and is a tripartite organization comprised of three constituencies: governments, employers, and employees. *See Declaration Concerning the Aims and Purposes of the International Labor Organization* (Declaration of Philadelphia), Annex, Oct. 9, 1946, 15 U.N.T.S. 35, *available at* <http://www.un-documents.net/dec-phil.htm>. The goal of the organization is to “promote social justice by promoting just working conditions.” *Id.* Jordan has ratified a total of twenty-three ILO conventions. DECENT WORK PROGRAMME, *supra* note 49, at 19. This includes seven of the eight fundamental conventions (with the exception of the Freedom of Association and Protection of the Right to Organise Convention (No. 87)), and three of the four “priority” governance conventions (with the exception of the Labor Inspection (Agriculture) Convention (No. 129)). *Conventions and Recommendations*, INT’L LABOUR ORG., <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang-en/index.htm> (follow hyperlink for particular convention, scroll to bottom and select “ratifications by country”) (last visited Apr. 26, 2013). The fundamental conventions include: Freedom of Association and Protection of the Right to Organise Convention (No. 87), Right to Organise and Collective Bargaining Convention (No. 98), Forced Labour Convention (No. 29), Abolition of Forced Labour Convention (No. 105), Minimum Age Convention (No. 138), Worst Forms of Child Labour Convention (No. 182), Equal Remuneration Convention (No. 100), Discrimination (Employment and Occupation) Convention (No. 111). *Id.* The governance Conventions include: Labour Inspection Convention (No. 81), Employment Policy Convention (No. 122), Labour Inspection (Agriculture) Convention (No. 129), Tripartite Consultation (International Labour Standards) Convention (No. 144). *Id.*

53. MINISTRY OF LABOUR REPORT, *supra* note 41, at 3.

54. *Id.* *See* note 52 *supra*.

55. *Migrants*, HUMAN RIGHTS WATCH, <http://www.hrw.org/en/topic/migrants> (last visited Apr. 26, 2013).

Thus, Jordan currently lacks a method of monitoring factories in the QIZs,⁵⁶ and relies on corporate entities to manage their own facilities. However, the numerous human rights violations by MNC conscripted factories reported by the IGLHR, such as those at Classic, illustrate a lack of enforcement of corporate codes of conduct and a lack of monitoring for the safety and health of female workers under male supervision in the work place.⁵⁷

II. THE CEDAW'S APPLICABILITY

As one of the most widely ratified international human rights treaties,⁵⁸ the CEDAW has the potential to be a powerful tool for empowering female factory workers. The CEDAW makes State Parties responsible for the discriminatory conduct of non-state actors, and obligates states to take affirmative steps to eliminate those practices.⁵⁹ The CEDAW addresses systemic causes of discrimination and seeks to correct both discriminatory treatment, as well as the discriminatory effects of local stereotypes.⁶⁰ Combined with this guarantee of substantive

56. *Jordanian Ministry on USFTA*, *supra* note 34. Of the currently thirteen QIZs in Jordan, only three are governmental while the rest are owned by the private sector. *Id.* Though the Ministry of Labor has a labor inspection and complaints mechanism, it has many institutional limitations, such as a limited number of labor inspectors, hampering its ability to check the 114 separate companies and facilities in the QIZ on a consistent basis for human rights abuses. MINISTRY OF LABOUR REPORT, *supra* note 41, at 5, 8.

57. *See* sources cited *supra* note 3.

58. There are only seven states in the world that have not ratified the CEDAW: Iran, Palau, Somalia, Sudan, South Sudan, Tonga, and the United States. *CEDAW Status*, *supra* note 19.

59. *See* CEDAW, *supra* note 17, art. 2(e).

60. *See id.* art 1. "[T]he concept of substantive equality has been defined as 'directed at eliminating individual, institutional and systemic discrimination against disadvantaged groups which effectively undermines their full and equal social, economic, political, and cultural participation in society.'" Jennifer S. Hainsfurther, *A Rights-Based Approach: Using CEDAW to Protect the Human Rights of Migrant Workers*, 24 AM. U. INT'L L. REV. 843, 862 (2009) (quoting RATNA KAPUR & BRENDA COSSMAN, *SUBVERSIVE SITES: FEMINIST ENGAGEMENTS WITH LAW IN INDIA* 176 (1996)). Substantive equality does not necessarily mean treating men and women identically; rather, it focuses on equal opportunity, access, and outcome. *See id.* at 868; *see also* Claire L'Heureux-Dubé, *It Takes a Vision: The Constitutionalization of Equality in Canada*, 14 YALE J.L. & FEMINISM 363, 368 (2002) (describing substantive equality as affording "equality of opportunity and of result, not just similar treatment for those similarly situated").

equality, the state obligations detailed in Article 2, prohibiting discrimination against women, enable OCWs to claim that a state has violated its legal obligations under the CEDAW by failing to monitor private employers.⁶¹ Given that so many violations of female OCWs' rights take place at the hands of private actors,⁶² State Parties' obligations under Article 2(e), discussed below, play an essential role in creating the States' legal obligations towards women migrant workers under the CEDAW.

A. Overview of the CEDAW

The CEDAW contains a broad definition of discrimination against women, and describes a number of measures that State Parties must take to eliminate discrimination in areas such as participation in public life and the political process, education, employment, healthcare, economic and social life, and family relations.⁶³ Article 2 of the Convention condemns discrimination against women "in all [its] forms,"⁶⁴ and Article 3 further requires State Parties to take appropriate measures "in all fields"⁶⁵ to guarantee women's enjoyment of human rights. Since the CEDAW does not distinguish between the rights of female citizens and non-citizens,⁶⁶ it is truly a universal human rights treaty fully applicable to the plight of OCWs.

61. See CEDAW, *supra* note 17, art. 2(e).

62. See Rebecca Cook, *Accountability in International Law for Violations of Women's Rights by Non-State Actors*, in RECONCEIVING REALITY: WOMEN AND INTERNATIONAL LAW 93 (Dorina Dallmeyer ed., 1993) ("[W]omen's exposure to discrimination and other denials of human rights will originate through acts of private persons and institutions, and will continue at this level as women mature to recognize parallel denials of rights directly attributable to state action that they encounter in the political, economic and other spheres of national life.").

63. See CEDAW, *supra* note 17, art. 1. ("For the purposes of the present Convention, the term 'discrimination against women' shall mean 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 the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."). See also *id.* arts. 7–16.

64. *Id.* art. 2.

65. *Id.* art. 3.

66. See generally CEDAW, *supra* note 17. The CEDAW refers to the rights of women generally, without any qualification based on citizenship.

To interpret the broad spectrum of rights guaranteed under the Convention and to create rules of procedure giving effect to the Convention's provisions, Part V of the CEDAW establishes the CEDAW Committee—a board of twenty-three experts selected by State Parties.⁶⁷ The Committee is empowered to make general recommendations and suggestions after examining the annual progress reports by State Parties on the administration of the CEDAW.⁶⁸ Although these general recommendations are not binding, State Parties are generally expected to follow them in order to fulfill their obligations under the treaty.⁶⁹ The Committee also issues “Concluding Comments” to State Parties after they submit their progress reports, with specific recommendations for each country to undertake before the next reporting deadline.⁷⁰

B. The Unique Obligations Imposed by the CEDAW

Nearly all major human rights instruments—for example, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights—prohibit sex-based discrimination.⁷¹ However, the CEDAW is unique in that it deals with discrimination against

67. *Id.* arts. 17–19.

68. *Id.* arts. 21, 18. Each State Party is required to submit a progress report to the Secretary-General within a year after the CEDAW's entry into force and then at least every four years thereafter, or whenever the CEDAW Committee so requests. *Id.* art. 21. This reporting mechanism is rather weak, since responsibility falls primarily on the State Party to submit honest and thorough information regarding its own weaknesses and successes in protecting women's rights. However, the CEDAW does allow for NGOs to present “shadow reports” to the Committee as a commentary on the State Party official report. *Id.* art. 18; see also *A Note About Shadow Reports*, STOP VIOLENCE AGAINST WOMEN, http://www.stopvaw.org/a_note_about_shadow_reports (last updated Nov. 1, 2003). Shadow reports by NGOs can provide reliable and independent information to the CEDAW Committee on the actual progress of the State Party in implementing and enforcing reform. *Id.*

69. See Hainsfurther, *supra* note 60, at 860.

70. See *id.* at 857.

71. INT'L COUNCIL ON HUMAN RIGHTS POLICY, BEYOND VOLUNTARISM: HUMAN RIGHTS AND THE DEVELOPING INTERNAL LEGAL OBLIGATION OF COMPANIES 24 (2002) [hereinafter BEYOND VOLUNTARISM], available at http://www.ichrp.org/files/reports/7/107_report_en.pdf.

women from a systemic standpoint.⁷² Article 2(e) of the Convention dictates that State Parties must “take all appropriate measures to eliminate discrimination against women by any person, organization, or enterprise.”⁷³ This includes violence committed by private citizens.⁷⁴ The CEDAW Committee established that a State Party is liable for failing to protect a woman from abuse by her husband, and proposed that a state must act “with due diligence to prevent and respond to such violence against women.”⁷⁵ In addition, a State Party is also liable for the actions of corporations within its borders under the “due diligence” standard.⁷⁶ The standard, which has been accepted by many international tribunals, dictates that:

An 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 [of human rights] or to respond to it as required by the Convention.⁷⁷

A state has an obligation to “prevent, investigate, and punish”⁷⁸ any violation of the rights in the Convention that occurs within

72. See Jo Lynn Southard, *Protection of Women's Human Rights under the Convention on the Elimination of All Forms of Discrimination Against Women*, 8 PACE INT'L L. REV. 1, 7–8 (1996).

73. See CEDAW, *supra* note 17, art. 2(e).

74. See Comm. on the Elimination of Discrimination Against Women, Consideration of Communication No. 2/2003 (*A.T. v. Hungary*) pursuant to article 7, paragraph 3 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, ¶ 9.2, UN Doc. CEDAW/C/32/D/2/2003 (Jan. 26, 2005) (noting that the CEDAW Committee held the state had failed to uphold its CEDAW obligations in failing to protect woman from being battered by her husband).

75. *Id.* ¶ 9.6(II)(f) (explaining that under the CEDAW, a state must “[i]nvestigate promptly, thoroughly, impartially and seriously all allegations of domestic violence and bring the offenders to justice in accordance with international standards.”).

76. See *Velasquez-Rodriguez v. Honduras*, Merits, Judgment, 1988 Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 172 (July 29, 1988).

77. *Id.* This court was addressing state liability for non-state actions with regard to violations of the American Convention on Human Rights. The CEDAW Committee has since adopted the “due diligence standard” with regard to the CEDAW. See *infra* note 79.

78. *Id.*

its jurisdiction.⁷⁹ Thus, a state that fails to monitor and investigate MNC supplier factories, and fails to hold offenders accountable for abuses against women in the workplace, would fail under the due diligence standard of the CEDAW.

The CEDAW also protects the interests of women with provisions on gender-equality in the workplace. States Parties must take all appropriate measures to ensure the right of men and women to equal employment opportunities,⁸⁰ and equal remuneration and treatment.⁸¹ State Parties must also work to prohibit dismissal on the grounds of pregnancy or maternity leave,⁸² and allow for maternity leave “with pay or some comparable social benefits without the loss of [] employment, seniority or social allowances.”⁸³ While the CEDAW appears to provide broad protections to women in the workplace, a major gap exists in that migrant women employed in QIZ factories are not protected by Jordan’s normal labor laws that institute these protections.⁸⁴ This limitation on the scope of enforcement of the CEDAW was made as a concession by Jordanian authorities to encourage economic growth in the QIZ.

Although violence against women is not explicitly mentioned in the CEDAW text, in its 1992 General Recommendation, the Committee determined that gender-based violence is in fact “discrimination” within the meaning of the term, as broadly

79. U.N. Comm. on the Elimination of Discrimination Against Women, CEDAW General Recommendation No. 19: Violence Against Women, ¶ 9, U.N. Doc. A/47/38 (1992) [hereinafter CEDAW Gen. Rec. 19] (adopting the *Velasquez-Rodriguez* due diligence standard).

80. CEDAW, *supra* note 17, art. 11(1)(b).

81. *Id.* art. 11(1)(d).

82. *Id.* art. 11(2)(a).

83. *Id.* art. 11(2)(b).

84. See *Statement on Labor Strikes in the Qualifying Industrial Zone (QIZ)*, JORDANIAN LABOR WATCH 2 (2011), http://www.phenixcenter.net/en/files/docs/Statement_on_Strikes_in_QIZ_25_April_2011_copy.pdf (discussing the Jordanian Government’s decision to exclude workers in the QIZ from eligibility for minimum wage). Such exclusions have worsened the situation of laborers in the QIZ by favoring MNCs and inviting their business, at the expense of worker health, safety, and justice. *Id.* at 2–3. See also Human Rights Comm., Gen. Comment No. 8: Equality of Rights Between Men and Women, ¶ 31, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (Mar. 29, 2000).

defined in Article 1.⁸⁵ The Declaration on the Elimination of Violence Against Women, adopted by the United Nations General Assembly the following year, also recognized the relationship between violence and equality.

Recognizing 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 the violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men . . .⁸⁶

Jordan has taken steps toward addressing violence and sexual abuse against domestic guest workers.⁸⁷ However, similar measures have not been taken to address these issues in the public sector of the factory workplace. Sexual harassment, abuse, and rape in the context of worker-supervisor relationships is clearly within the purview of the Convention and thus Jordan is obliged to take measures to combat these types of violence.⁸⁸ Yet, in spite of Jordan's professed commitment to ensuring equal rights and protecting women migrant workers,⁸⁹ and in spite of its obligation to address violence against women "in all fields," there is no law within the Jordanian civil or penal code defining and forbidding sexual harassment in the workplace or in other public areas.⁹⁰

85. CEDAW Gen. Rec. 19, *supra* note 79, ¶ 6 (interpreting articles of the CEDAW that are relevant to violence against women and making recommendations to states to address this issue).

86. Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, U.N. Doc. A/RES/48/104 (Dec. 20, 1993).

87. *See* DECENT WORK PROGRAMME, *supra* note 49, at 18.

88. *See infra* notes 115–16 and accompanying text.

89. *See* MINISTRY OF LABOUR REPORT, *supra* note 41, at 9 (discussing Jordan's commitment to migrant worker's rights through its UNIFEM project).

90. *See Preserving Rights*, JORDAN TIMES (Aug. 29, 2011), <http://jordantimes.com/preserving-rights>; *see also* AMIRA EL-AZHARY SONBOL, WOMEN OF JORDAN: ISLAM, LABOR & THE LAW, 114 (2003). The Committee of Experts on the Application of Conventions and Recommendations ("CEACR"), the legal body responsible for examining compliance by ILO member-states with the Convention recommended in 2010 that Jordan include "a clear definition of what constitutes sexual harassment in the workplace" and "take appropriate measures to raise awareness of and prevent and protect against sexual harassment in the workplace." Although Jordan has apparently made amendments to the Labour Code (Act No. 48 of 2008), in particular section 29 that provides for sanctions in the case of sexual assault by an employer), the

C. Intersectionality Between Marginalized Status and Sexual Violence

The experience of female guest workers in Jordan must be understood not only through the eyes of a woman, but also from the perspective of an immigrant and ethnic minority. “[L]egal policies at the national and international levels continue to be framed with inadequate knowledge of, and responsiveness to, the distinct experiences of female migrants.”⁹¹ Gender-based discrimination intersects with discrimination based on other forms of otherness, such as immigrant or foreigner status, race, ethnicity, religion, and economic status. These multiple forms of discrimination place migrant women in the QIZ in situations of double, triple, or even quadruple the disadvantage, marginalization, and vulnerability.

Human Rights Watch reports that in general, “many migrants silently accept the exploitation and deprivation of their rights because they view themselves as powerless and without effective remedy.”⁹² This vulnerability is due in part to the concentration of women migrant workers in certain occupations such as textile manufacturing—a sector that is not covered by Jordan’s normal labor codes.⁹³ The *kafala* sponsorship system⁹⁴ in the Middle East contributes to this vulnerability in that it makes each worker’s sponsor or employer almost completely

CEACR noted, “it remains doubtful whether the legislation is effectively addressing all forms of sexual harassment.” Direct Request of the Committee of Experts on the Application of Conventions and Recommendations, *Discrimination (Employment and Occupation) Convention, 1958 (No. 111)—Jordan*, 81st Sess. (2010).

91. Fitzpatrick & Kelly, *supra* note 32, at 48.

92. HUMAN RIGHTS WATCH, *BAD DREAMS: EXPLOITATION AND ABUSE OF MIGRANT WORKERS IN SAUDI ARABIA* 5 (2004) [hereinafter *BAD DREAMS*].

93. See note 84 *supra* and accompanying text.

94. See *Middle East: End ‘Sponsored’ Gateway to Human Trafficking*, HUMAN RIGHTS WATCH (June 14, 2010), <http://www.hrw.org/news/2010/06/14/middle-east-end-sponsored-gateway-human-trafficking> [hereinafter *End ‘Sponsored’ Gateway to Human Trafficking*]; see also Azfar Khan & Hélène Harroff-Tavel, Presentation: The Implications of the Sponsorship System: Challenges and Opportunities, <http://www.unescap.org/sdd/meetings/beirut-June2011/Harroff-ILO-Implications-of-the-sponsorship-system.pdf> (last visited Apr. 26, 2013) (“[The] *kafala* system is denounced globally as [a] system of structural dependence between an employer and migrant worker[.] . . . [It] provides the legal basis for the residency and employment of migrant workers[.]”).

responsible for the worker.⁹⁵ A strong criticism of the *kafala* system is that, “[i]n combination with gaps in labor protections . . . the *kafala* system gives employers tremendous control over workers”⁹⁶ since employees feel indebted to their sponsors for the mere opportunity to work. Jordan also mandates that employers in the QIZ be responsible for repatriating the migrant factory workers upon termination of their employment. Migrant workers who cannot afford the plane fare back to Bangladesh, Sri Lanka, or China therefore have no choice but to continue to work for their employer. These workers cannot leave until their employer unilaterally decides that they are no longer needed, or allows them to work for another employer.⁹⁷ Otherwise, women may quit their jobs and be deported, likely without compensation for whatever abuses and wage theft were perpetrated against them at the factory.⁹⁸ Therefore, women that want to work in Jordan may have to endure whatever conditions their employers place them in.⁹⁹

Notwithstanding the known risks to their safety and freedom, female workers have increasingly turned to jobs in low-wage factory settings.¹⁰⁰ “Third World women have become the new ‘factory girls,’ providing cheap labor for globetrotting corporations.”¹⁰¹ While a female assembly line worker in the

95. See Ministry of Labour, Instructions for the Conditions and Procedures of Bringing and Employing Non-Jordanian Workers in the Qualified Industrial Zones issued pursuant to Labour Law Art. 12, Regulation No. 36 (1997) (Jordan) [hereinafter QIZ Regulation of Fees], available at <http://www.mol.gov.jo/Portals/1/qize.pdf>. Both IGLHR’s 2008 and 2011 publications on factory abuse in Jordan reported employers withholding workers’ passports, forcing workers to work long hours without rest, working overtime without pay, inadequate food and housing conditions, among other abuses. The women subjected to such conditions reported feeling trapped without any form of redress, fearing termination and deportation if they complained. See generally SEXUAL PREDATORS, *supra* note 3.

96. See *End ‘Sponsored’ Gateway to Human Trafficking*, *supra* note 94.

97. See *id.* Human Rights Watch reports that most governments in the Middle East require workers to obtain their sponsor’s written consent before allowing them to take up new employment. See *id.*

98. See *id.*

99. See LIM, *supra* note 10, at 16.

100. *Id.* at 34–35 (discussing how the feminization of poverty affects the incentives to migrate and the role a woman’s lack of education may play in the decision to enter a demeaning work environment).

101. ANNETTE FUENTES & BARBARA EHRENREICH, WOMEN IN THE GLOBAL FACTORY 5 (1983).

United States is likely to earn between US\$5 and US\$9.19 an hour,¹⁰² in Jordan, the minimum wage is between US\$7 and US\$8 a *day*.¹⁰³ Some have pointed out:

Low wages are the main reason companies move to the Third World . . . Corporate executives, with their eyes glued to the bottom line, wonder why they should pay someone in Massachusetts on an hourly basis what someone in the Philippines will earn in a day. And, for that matter, why pay a male worker anywhere to do what a female worker can be hired to do for 40 to 60 percent less?¹⁰⁴

Female workers have historically been subject to inequality and abuses in the workplace. For that reason, the CEDAW plays a crucial role in guaranteeing their human rights are respected in such an exploitative environment. Women migrant workers are exposed to harassment, intimidation or threats to themselves and their families, economic and sexual exploitation, racial discrimination and xenophobia, poor working conditions, increased health risks, and other forms of abuse—including trafficking into forced labor, debt bondage, involuntary servitude and situations of captivity.¹⁰⁵

In Jordan, women guest workers are more vulnerable to discrimination, exploitation, and abuse relative not only to male migrants but also to native-born women.¹⁰⁶ Until recently, migrant workers in Jordan were not permitted to join labor un-

102. See *Minimum Wage Laws in the States—January 1, 2013*, U.S. DEP'T OF LABOR, <http://www.dol.gov/whd/minwage/america.htm> (last visited Apr. 16, 2013).

103. *2008 Human Rights Report: Jordan*, U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR (Feb. 25, 2009) <http://www.state.gov/g/drl/rls/hrrpt/2008/nea/119118.htm>. As of 2009, the minimum wage in Jordan is 110 Jordanian dinars (€109) or US\$154 per month. Jordan Ministry of Labor inspectors enforce the minimum wage for Jordanians but due to limited resources, are unable to ensure full compliance by all employers. *Id.*

104. FUENTES & EHRENREICH, *supra* note 101, at 5–6. See also Laura Fitzpatrick, *Why Do Women Still Earn Less Than Men?*, TIME (Apr. 20, 2010) <http://www.time.com/time/nation/article/0,8599,1983185,00.html#ixzz1cIZDv1YI>.

105. See LIM, *supra* note 10, at 9–28.

106. *Id.* at 13–14. In Jordan, the Ministry of Labor is actively working to substitute Jordanians into jobs held by migrant workers in the QIZ. However, there has not been much voluntary movement into those positions by Jordanian's given the low wages and demeaning work conditions associated with the positions. See QIZ Regulation of Fees, *supra* note 95.

ions, and currently, Jordan still does not allow migrant workers to strike against employers.¹⁰⁷ Thus, women in MNC supplier factories lack negotiation power and are unable to react against abuse and breaches of their human rights unless some other agency assists in the complaint process. For this reason, female guest workers are among the most vulnerable persons in society to sexual harassment and rape.¹⁰⁸ Additionally, because such women have limited standing in society, and limited access to the legal process, the need to protect them is much higher.

Fortunately, there is a growing international consensus to prevent and combat sexual harassment in the workplace, which is considered a form of violence against women.¹⁰⁹ India's landmark case, *Vishaka v. State of Rajasthan*,¹¹⁰ is a beacon of hope for the human right to be free from sex-based violence by employers. The Indian Supreme Court held that the guarantee of equality for women should be interpreted in light of the principle that "[g]ender equality includes protection from sexual harassment and the right to work with dignity."¹¹¹ The *Vishaka* court concluded that the complete absence of a sexual harassment law and damages remedy in Rajasthan violated global norms and constitutional human rights guarantees.¹¹² The court reasoned that with sexual harassment laws in place, and enforced, more women may feel comfortable coming forward to report systemic abuses by private actors and states may move toward effective deterrence of such violations.¹¹³

The CEDAW Committee has authored several Comments discussing the specific problems of migrant women. These Comments called upon states to "monitor closely the terms and

107. See WORLD REPORT 2010, *supra* note 51.

108. INT'L LABOR ORG., IN SEARCH OF DECENT WORK—MIGRANT WORKERS' RIGHTS: A MANUAL FOR TRADE UNIONISTS 25 (2008), *available at* http://www.globalmigrationgroup.org/uploads/gmg-topics/labour/ILO_A_manual_for_trade_unionists_ILO_2008.pdf.

109. See Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, *supra* note 86; Special Rapporteur on Violence Against Women, Rep. in Accordance with Commission on Human Rights Resolution 1995/85, ¶¶ 42–50, Comm'n on Human Rights, E/CN.4/1997/47 (Feb. 5, 1996) (by Radhika Coomaraswamy).

110. *Vishaka v. Rajasthan*, A.I.R. 1997 S.C. 3011 (India).

111. *Id.* ¶ 10.

112. See *id.* ¶¶ 10, 14.

113. See *id.* ¶ 7.

conditions of contracts, conditions of work and salaries of women migrants, and devise strategies and policies for their full integration in the labour force and for elimination of direct and indirect discrimination.”¹¹⁴ The Comments recommended that in following these guidelines, states should “focus on the causes of women’s migration and to develop policies and measures to protect migrant women against exploitation and abuse.”¹¹⁵ In addition, states should “take more effective measures to eliminate discrimination against refugee migrant, and minority women and girls.”¹¹⁶ However, even these recommended measures fail to adequately address the problem of intersectionality faced by female migrant factory workers in Jordan, a concept that is integral to assessing liability for sexually-based human rights abuses.

Professor Kimberle Crenshaw, who writes extensively on critical race theory, reflected that, “battering and rape, once seen as private (family matters) and aberrational (errant sexual aggression), are now largely recognized as part of a broad-scale system of domination that affects women as a class.”¹¹⁷ In the specific context of rape and sexual harassment in the work place, where male employers exercise domination over female workers, there are many sex, gender, race, and ethnic stereotypes at play. Although the CEDAW and CEDAW Committee partly address these issues using notions of substantive and procedural equality, they fail to explicitly draw the connection between isolated crimes of sexual abuse and harassment, and the context of systemic discrimination and coercion that often makes such crimes possible. In the corporate factory setting,

114. Comm. on the Elimination of Discrimination Against Women, Concluding Comments: of the Comm. on the Elimination of Discrimination Against Women: Cyprus, 35th Sess., May 15–June 2, 2006, ¶ 30, U.N. Doc. CEDAW/C/CYP/CO/5 (May 30, 2006).

115. Comm. on the Elimination of Discrimination Against Women, Concluding Comments of the Comm. on the Elimination of Discrimination Against Women: Cambodia, 34th Sess., Jan. 16–Feb. 3, 2006, ¶ 22, U.N. Doc. CEDAW/C/KHM/CO/3 (Jan. 25, 2006).

116. Comm. on the Elimination of Discrimination Against Women, Concluding Comments of the Comm. on the Elimination of Discrimination Against Women: Australia, 34th Sess., Jan. 16–Feb. 3, 2006, ¶ 29, U.N. Doc. CEDAW/C/AUL/CO/5 (Feb. 3, 2006).

117. Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1241 (1991).

this parallel is especially important because workplace rape and harassment gain their lifeblood from corporate complicity in those, among other, human rights violations.

The recognition of crimes once thought to be individualistic, as social and systemic, is an important shift towards holding MNCs responsible for the conditions in subcontractor factories that facilitate the sexual abuse this Note seeks to address. It is crucial to understand that while women suffer many of the same types of human rights violations, the experience of every woman whose rights the CEDAW seeks to protect is different. Such differences in experience may compound a woman's vulnerability to, and degree of, abuse suffered. Accordingly, this increased vulnerability should be taken into account by State Parties when adopting measures to address these human rights violations and when assessing the degree of intervention required of states by the CEDAW. Female guest workers need special protection from Jordanian authorities to come forward and vindicate their rights, to avoid being shamed, silenced, deported, and forgotten.

III. CORPORATE ACCOUNTABILITY

In the private sector, MNCs have adopted codes of conduct in response to accusations of irresponsibility in monitoring garment factories.¹¹⁸ Jordan only began inspecting private sector workplaces in 2004; it has less than eighty inspectors to enforce all labor laws in more than 55,000 companies and factories.¹¹⁹ Like other developing countries, Jordan relies on corporate enforcement of internal codes of conduct in lieu of government oversight of supplier factories.¹²⁰ These codes of conduct are

118. See generally Lance Compa & Tashia Hinchliffe- Darricarrère, *Enforcing International Labor Rights Through Corporate Codes of Conduct*, 33 COLUM. J. TRANSNAT'L L. 663 (1995) (discussing the development of external and internal codes of conduct for international business operations).

119. SOLIDARITY CENTER, JUSTICE FOR ALL: THE STRUGGLE FOR WORKER RIGHTS IN JORDAN 33–34 (2005), available at www.solidaritycenter.org/files/JordanFinal.pdf. “One way to reduce gender and ethnic inequities in the workplace is through strong enforcement of labor law, using a system of consistent inspection. But Jordan’s labor inspection service is ineffective and not always enforced.” *Id.* at 33.

120. See Richard Locke et al., *Beyond Corporate Codes of Conduct: Work Organization and Labour Standards at Nike’s Suppliers*, 146 INT’L LABOUR REV. 21, 22–23 (2007).

voluntary¹²¹ and have inherent shortcomings due their limited scope and lack of meaningful enforcement.¹²² For example, the language of MNC codes of conduct has historically been more aspirational than a hard and fast legal policy.¹²³ However, MNCs have recently begun to use codes of conduct as contractual instruments, rather than idealistic goals, to set guidelines for their suppliers.¹²⁴ Therefore, while MNCs have traditionally claimed innocence when a subcontractor committed a violation, given the shift in the understanding of codes of conduct as enforceable contracts, ignorance of a subcontractor's noncompliance can no longer separate an MNC from the abuses it benefits from.

Human rights abuses in the MNC textile industry occur mainly within the supply chain.¹²⁵ Therefore, the issue arises as to whether MNCs may be held responsible and liable for human rights violations of their supplier factories. Like many companies in the manufacturing sector, the MNCs utilizing the services of factories like Classic rely on a "triangle" manufacturing system.¹²⁶ The recent economic developments in Jordan provide a perfect illustration of this system, where MNCs outsource labor-intensive products to subcontracted companies in newly industrialized, low-wage countries.¹²⁷ This business strategy provides an inherent separation between MNCs (being the parent companies) and their subcontractors which are considered independent legal entities.¹²⁸ This position of independence from the subcontractors allows MNCs to place the blame for human rights violations onto their supplier plants to protect

121. For example, U.S. President Clinton announced a voluntary code of human rights principles for American companies operating abroad. See David E. Sanger, *Clinton to Urge a Rights Code for Businesses Dealing Abroad*, N.Y. TIMES, Mar. 27, 1995, at D1.

122. See Compa & Hinchliffe-Darricarrère, *supra* note 118, at 686–89 (discussing that while it is easy to draft a corporate code of conduct, "effective implementation is the real test" of the corporation's commitment to human rights).

123. Maryanov, *supra* note 13, at 407–08.

124. *Id.*

125. See Caroline Kaeb, *Emerging Issues of Human Rights Responsibility in the Extractive and Manufacturing Industries: Patterns and Liability Risks*, 6 NW. U.J. INT'L HUM. RTS. 327, ¶ 54 (2008).

126. See *id.* ¶ 56.

127. See *id.*

128. See *id.*

their own brand reputation—just as Macy's, Kohl's, and Lands' End attempted to do in the Classic case.¹²⁹ However, for the CEDAW to have legal teeth in Jordan's QIZ factory context, MNCs must be held accountable for the work environments of their supplier factories since it is the MNCs that are effectively making the labor policies through their action and inaction.

The U.S. Court of Appeals for the 9th Circuit, in *Doe I v. Unocal Corp.*,¹³⁰ set a valuable precedent in the international community that a company can be liable for knowingly aiding and abetting a state actor to commit human rights abuses, such as forced labor, murder, rape, and torture, by providing "practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime."¹³¹

129. See *supra* note 12 and accompanying text.

130. *Doe v. Unocal Corp.*, 395 F.3d 932 (9th Cir. 2002), *rev'g in part and aff'g in part* 110 F. Supp. 2d 1294 (C.D. Cal. 2000), *vacated*, 403 F.3d 708 (9th Cir. 2005).

131. *Id.* at 950. This case was brought in a federal district court against Unocal Corporation for the use of forced labor in Unocal's gas pipeline project in Burma. The case is notable because of its two seemingly conflicting opinions. The first judge who presided in the case issued an opinion that established that Unocal, as an MNC, could be sued for violations of international law under the ATCA—specifically, for continuing to employ the Burmese military, even after knowing of the military's use of forced labor. *Id.* The case was reheard and affirmed in part and vacated in part, and in a subsequent opinion issued by a different circuit court judge, the case was dismissed and the district court decision vacated. *Doe v. Unocal*, 403 F.3d 708. The district court decision upon remand from the 2002 decision found that Unocal's actions were not sufficient to create liability, because Unocal had not affirmatively sought out forced labor for the pipeline. 110 F. Supp. 2d at 1310. The two opinions provide conflicting accounts of the kind of MNC conduct that is sufficient to trigger possible corporate liability. However, in the case of Jordan's QIZ factories, it seems that MNCs affirmatively seek out companies with the lowest cost of labor in order to gain the greatest profit, however lower labor costs are correlative with lower labor standards and an increased number of human rights violations. See Miles Wolpin, *Fair Labor Standards, Economic Well-Being and Human Rights as Costs of "Free-Trade,"* INT'L JOURNAL OF PEACE STUDIES, n.10, http://www.gmu.edu/programs/icar/ijps/vol2_1/Wolpin.htm. "[L]ack of safe working conditions and independent unions in Mexico contribute to phenomenally low labor costs, thus creating an unfair trade advantage." *Id.* (quoting Thomas Karter, *Free Trade Agreement is President Bush's Class Act*, IN THESE TIMES, Nov. 1992, at 11, 16) (internal quotation marks omitted). "Since Mexico has much lower wages and a poor record of enforcing its often weaker environmental and consumer laws, U.S. businesses would have a strong incentive to move across the border." *Id.* (quoting *Public Health Achievements*

Furthermore, even if the corporation has not actively participated in human rights abuses carried out by state actors, “a company that voluntarily enters a business environment, or stays there, when they know or should know that they are somehow benefiting from ongoing human rights violations, has, at least, a moral duty to take reasonable steps to prevent or stop the violations.”¹³²

In the case of Jordan, reports of sexual abuse in MNC factories have been present since 2006.¹³³ Furthermore, allegations of rape and sexual assault of female workers by Classic supervisors were specifically brought to Wal-Mart and Target’s attention at least as early as 2008, when female workers at the Ad Dulayl Industrial Zone went on strike to resist workplace abuse.¹³⁴ However, neither corporation took an active position on the matter, and Wal-Mart in particular maintained that the allegations lacked evidentiary support.¹³⁵ Wal-Mart and Target continued to use Classic’s products, without any changes to their codes of conduct or enforcement mechanisms, and even continued to employ the supervisors that were repeatedly accused of engaging in these heinous activities.¹³⁶ Critics of MNC self-regulation have pointed out that MNCs find greater compliance in supplier plants when they schedule factory inspections in advance. This allows the plants to prepare viewing areas, and select and coach the workers that will be interviewed, as was the case in the 2011 Classic rape investigation.¹³⁷ Indeed, inadequate monitoring of factories by the state and contracting MNCs creates an “environment of impunity”¹³⁸ for subcontractor and supervisor abuse of workers.

Endangered by North American Free Trade Agreement, PUB. CITIZEN HEALTH RES. GROUP HEALTH LETTER, Mar. 1993, at 8–9) (internal quotation marks omitted).

132. BEYOND VOLUNTARISM, *supra* note 71, at 132.

133. See, e.g., HUMAN TRAFFICKING & INVOLUNTARY SERVITUDE, *supra* note 9, at 16, 20.

134. See *Human Trafficking and Abusive Conditions at the Mediterranean Garments Factory in the Ad Dulayl Industrial Zone in Jordan*, NAT’L LABOR COMM., <http://www.globallabourrights.org/reports?id=0530> (last updated Sept. 6, 2008).

135. See Bustillo, *supra* note 1.

136. See *supra* notes 25–26.

137. See *supra* note 7 and accompanying text.

138. HUMAN RIGHTS WATCH, SWEPT UNDER THE RUG: ABUSES AGAINST DOMESTIC WORKERS AROUND THE WORLD 34 (2006).

The corporate entities that knowingly continued to engage in business with Classic, despite the reported abuses, may be seen as aiding and abetting the sexual assault and harassment carried out by supervisors at the factory.¹³⁹ Though the concept of corporate liability for aiding and abetting human rights abuses stemmed from U.S. cases, such as *Unocal*, the International Criminal Court and the International Criminal Tribunals for Rwanda and the former Yugoslavia have explicitly incorporated this standard into their statutes for liability of non-state actors.¹⁴⁰ Thus, the crime of aiding and abetting has been applied in an international context,¹⁴¹ and it would not be a far reach for Jordan to institute a similar statute in its civil laws with respect to the sexual abuse and harassment of women in the workplace.

While a corporation technically cannot rape an employee, its role is analogous to knowingly supplying a perpetrator with the place, authority, opportunity, and funds to carry out rape, physical assault, forced labor, and other human rights abuses.¹⁴² Acknowledging corporations as tortfeasors is essential to

139. See *infra* note 142 and accompanying text.

140. Rome Statute of the International Criminal Court, art. 25, ¶ 3(c), July 17, 1998, 2187 U.N.T.S. 90; Statute of the International Criminal Tribunal for Rwanda, S.C. Res. 955, art. 6, ¶ 1, U.N. Doc. S/RES/955 (Nov. 8, 1994); Statute of the International Criminal Tribunal for Rwanda, S.C. Res. 827, art. 7, ¶ 1, U.N. Doc. S/RES/827 (May 25, 1993).

141. See BEYOND VOLUNTARISM, *supra* note 71, at 55–58.

142. See Sanford H. Kadish, *Complicity, Cause and Blame: A Study in the Interpretation of Doctrine*, 73 CAL. L. REV. 323, 336–37 (1985).

[T]he doctrine of complicity (sometimes referred to as the law of aiding and abetting, or accessorial liability) emerges to define the circumstances in which one person (to whom I will refer to as the secondary party or actor, accomplice, or accessory) becomes liable for the crime of another. . . . The nature of complicity liability follows from the considerations that called it forth. The secondary party's liability is derivative, which is to say, it is incurred by virtue of a violation of law by the primary party to which the secondary party contributed. It is not direct [liability]. . . . One who "aids and abets" [the primary party] to do these acts, in the traditional language of the common law, can be liable for doing so, but not because she has thereby caused the actions of the principal or because the actions of the principal are her acts. Her liability must rest on the violation of law by the principal, the legal consequences of which she incurs because of her own actions. It is important not to misconstrue derivative liability as imparting vicarious liability. Accomplice liability

holding them accountable for their actions, or inactions, in order to promote the welfare of migrant women in Jordan and improve their work environment. The sexual and non-sexual abuses carried out at Classic were one of many factors that served to frighten the female workers at the factory, and coerce them into doing exactly as their supervisors demanded. Many of these demands, such as working overtime, and working without pay or rest, directly benefited the MNC contracting parties' interests by keeping costs low and ensuring an efficient, obedient work force.¹⁴³

While criminal prosecutions are currently used to hold the factory supervisors charged with these abuses liable, they are an inadequate legal remedy. Since individual criminal prosecutions "focus attention on personal guilt and away from structural or systemic causes,"¹⁴⁴ these trials do not address the full problem of discrimination. For example, as seen in the United States and abroad, even the death penalty does not deter violent behavior when the root causes of such behavior are systemic and societal in nature.¹⁴⁵ Though criminal prosecutions are necessary to deter individuals from committing crimes against vulnerable populations, the CEDAW aims to address the root causes of violence against women. In the case of Jordan's QIZ factories, corporate complicity in abusive workplace environments is a main reason such violence against migrant women in the QIZ persists.¹⁴⁶ Such abuse will sadly continue so

does not involve imposing liability on one party for the wrongs of another solely because of the relationship between the parties. Liability requires action by the secondary actor . . . that makes it appropriate to blame him for what the primary actor does. The term "derivative" as used here merely means that her liability is dependent on the principal violating the law.

Id.

143. See *infra* notes 146, 174–76 and accompanying text.

144. HENRY J. STEINER, PHILIP ALSTON & RYAN GOODMAN, INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS 1368 (2007).

145. *State v. Makwanyane* 1995 (3) SA 391 (CC) at ¶ 120 (S. Afr.) ("Homelessness, unemployment, poverty and the frustration consequent upon such conditions are other causes of the crime wave.").

146. The USFTA supports the claim that "economic well-being will be maximized by each country's specialization in producing at the lowest possible cost those exports in which it has a "comparative advantage." See Wolpin, *supra* note 131. Jordan's comparative advantage happens to be cheap labor.

long as MNCs continue to prioritize profits and consumer satisfaction over the human rights of the workers in the supplier plants.

There is no consensus in the international community as to whether a corporation may be held liable for international human rights abuses.¹⁴⁷ While it is clear that non-state actors operating under the color of the law may be penalized for committing abuses, including aiding and abetting such abuses, corpo-

This directly impacts labor because standards are deregulated in order to increase capital and maintain this advantage.

The transnational corporations generally have had an edge over national unions. Labor is less mobile than capital (since labor is tied to a particular community or region), and can protest only within the boundaries of the nation-state. But capital is highly mobile because it can move from one nation to another in search of labor, raw materials, credit, and markets. Each move across national boundaries, therefore, strengthens transnational capital at the expense of the national labor unions, local communities, and the nation-state, leading to loss of jobs, decrease in tax revenues, and dislocation of the national economy At its essence, then, "free trade" is more about unrestricted profit maximization and capital mobility . . . than eliminating residual barriers to trade in goods and services [in order to enrich the economies of all nations involved in the treaty].

Id.

147. While there are cases in which corporate entities have been found guilty of crimes, there have been no civil cases against corporate entities for violations of human rights which do not fall under crimes of universal jurisdiction. For example, in the war crimes trials at Nuremberg, corporations were implicated for the crimes of their directors in *United States v. Krupp*, see Anita Ramasastry, *Corporate Complicity: From Nuremberg to Rangoon—An Examination of Forced Labor Cases and Their Impact on the Liability of Multinational Corporations*, 20 BERKELEY J. INT'L L. 91, 112 (2002), and were implicated as criminal instrumentalities in *United States v. Krauch*, see *id.* at 106. Corporations may be held criminally liable under theories of agency, aiding and abetting, and accomplice liability. See generally Eric Engle, *Extra-territorial Corporate Criminal Liability: A Remedy for Human Rights Violations?*, 20 ST. JOHN'S J.L. COMM. 287 (2006). However, in order to be held civilly liable before a U.S. court, corporations need to be acting under the color of the law, or be a "willful participant in joint action with the State or its agents." See Ramasastry, *supra*, at 137. There is no cause of action for a corporation that is merely complicit in human rights abuses, independent of state action, for its own benefit. Under Article 2(e) of the CEDAW, the state may be held liable for failing to stop abuses against women by private actors. See *supra* note 74 and accompanying text. However, this does not provide victims of sexual abuse an actionable claim against the corporate entities themselves.

rations occupy an amorphous position. Indeed, over two centuries ago Edward, the First Baron of Thurlow, remarked that, “[c]orporations have neither bodies to be punished, nor souls to be condemned. They therefore do as they like.”¹⁴⁸ Recent U.S. litigation, questioning the principles of *Doe v. Unocal*, shows that the Baron’s observation still rings true and further obscures whether individuals have a cause of action against corporations.¹⁴⁹ However, U.S. MNCs are still subject to the law of their host nation.¹⁵⁰ The treatment of MNC liability under international and U.S. law sheds light on what Jordan can—and must—do in order to discharge its duties to respect, protect, and fulfill the rights of women in the factory workplace. The solution advanced must thus be broad enough to encompass the actions of contractors at all levels in the MNC supply chain, with a focus on changing both national and corporate fair labor enforcement mechanisms.

IV. WORKING TOWARDS ERADICATING SEXUAL ABUSE IN THE WORKPLACE

A. A Civil Cause of Action Against MNCs for Sexual Abuse Committed by their Subcontractors

After a visit to Jordan in November 2011, Rashida Manjoo, the UN Special Rapporteur on Violence Against Women, warned Jordanian authorities about the nation’s lack of efforts

148. Ramasastry, *supra* note 147, at 91.

149. *Doe v. Exxon Mobil Corp.*, 654 F.3d 11 (D.C. Cir. 2011) (holding that Torture Victim Protection Act (TVPA) was not applicable to corporation); *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111 (2d Cir. 2010) (holding oil corporation sued for aiding and abetting violations of human rights by Nigerian government, and corporations in general, cannot be sued for violations of the “law of nations” under the ATCA), *cert. granted*, 132 S.Ct. 472 (2011). The U.S. Supreme Court recently upheld the Second Circuit’s decision in *Kiobel*. *Kiobel v. Royal Dutch Petroleum Co.*, No. 10–1491, 2013 WL 1628935 (U.S. Sup. Ct. Apr. 17, 2013). The Supreme Court concluded that where there is only a weak connection to the United States, the perpetrators of serious human rights abuses committed abroad cannot be held to account using the ATCA. *Id.*, at *6. However, the Supreme Court did not decide on the issue of whether U.S. corporations can altogether be held liable under the statute for human rights violations abroad.

150. See Engle, *supra* note 147, at 288.

to address sexual abuse and harassment.¹⁵¹ She noted that although many individuals she interviewed did not identify these as national problems, "it is necessary to acknowledge that sexual violence and sexual harassment occur both within and outside the family in every society."¹⁵² Ms. Manjoo explained that, "the fact that certain subjects might be considered taboo within a society that largely describes itself as traditional, conservative, patriarchal and tribal might explain women's silence with regard to these manifestations of violence."¹⁵³

Contrary to Jordanian claims, sexual harassment is not a purely Western occurrence. Along with India's *Vishaka* decision in 1987,¹⁵⁴ other developing nations have begun to implement laws against sexual harassment as necessary to attain equal rights for women. In 2004, Morocco made an important change to its Labor Code, introducing the concept of sexual harassment in the workplace.¹⁵⁵ In 2009, using *Vishaka* as precedent, the Bangladeshi High Court ("High Court") issued a decision defining sexual harassment and the steps employers must take to protect against it.¹⁵⁶ In its interpretation of the nation's constitution, the High Court considered Article 11 of the CEDAW on equality in employment, and the CEDAW Committee's General Recommendation No. 19 on violence against women.¹⁵⁷ The High Court noted, "harrowing tales of repression and sexual abuse of women at their workplaces, educational institutions and other Government and Non-Governmental organizations,"¹⁵⁸ and "recognized that equality in employment can be seriously impaired when women are subjected to gender specific violence."¹⁵⁹

Jordan's apparent denial of the problem's existence does little to advance its women workers' rights. By failing to address the

151. *Jordan must act to end violence against women, UN rights expert says*, U.N. NEWS CTR. (Nov 24, 2011), <http://www.un.org/apps/news/story.asp?NewsID=40507&Cr=violence%20against%20women&Cr1=#.UXG7NLXqn94>.

152. *Id.*

153. *Id.*

154. See notes 110–13 *supra* and accompanying text.

155. See CEDAW Success Stories, UNIFEM, http://www.unifem.org/cedaw30/success_stories/ (last visited Apr. 26, 2013).

156. See *id.*

157. See *id.*

158. *Id.*

159. *Id.*

sexual harassment and abuse of female workers, Jordan is effectively in violation of its duties under the CEDAW that require it to “take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.”¹⁶⁰ Thus, Jordan is necessarily failing to exercise due diligence in ending abuses against women.¹⁶¹

The CEDAW Committee issued a general recommendation addressing states’ obligations to solve the problem of violence against women. General Recommendation No. 19 noted that under the CEDAW states must take steps to provide the following:

- (i) Effective legal measures, including penal sanctions, civil remedies, and compensatory provisions to protect women against all kinds of violence, including violence and abuse in the family, sexual assault and sexual harassment in the workplace.
- (ii) Preventative measures, including public information and education programs to change attitudes concerning the roles and status of men and women.
- (iii) Protective measures, including refuges, counseling, rehabilitation, and support services for women who are the victims of violence or who are at risk of violence.¹⁶²

In order to fulfill the positive rights propounded by the CEDAW, Jordan must institute laws against sexual harassment and create effective and confidential avenues for complaints against employers. Without doing so and enforcing such laws, Jordan is responsible for the actions of corporate bodies that facilitate human rights violations against women under the CEDAW’s Article 2(e) provisions.¹⁶³ Jordan is in a position to enforce human rights standards among those companies privileged to do business within its borders.

160. See *supra* notes 73–77 and accompanying text.

161. See *supra* notes 78–79 and accompanying text.

162. BAD DREAMS, *supra* note 92, at 64.

163. See *supra* note 73–77 and accompanying text. See also BAD DREAMS, *supra* note 92, at 64 (citing the Declaration on the Elimination of Violence Against Women—the obligation of state governments to prevent, investigate, and punish acts of violence against women apply regardless of “whether those acts are perpetuated by the State or by private persons.”).

In addition to the substantive equality provisions, Article 2(c) recognizes the "strong symbiosis"¹⁶⁴ between the successful enforcement of laws protecting women's rights and judicial action.¹⁶⁵ Sections (1) and (2) of Article 15 of the CEDAW elaborate on the legal status of women in their requirement that women receive equal status with men under the law, in the form of equal legal capacity and equal opportunity to exercise such rights in civil matters, such as court proceedings.¹⁶⁶ In light of these provisions, it is clear that in order to achieve substantive gender equality, Jordan must institute mechanisms for women to obtain legal redress through the courts for sexual abuse by workplace officials. Women must be able to obtain legal redress without fear of retaliation by employers, and without fear of the social or cultural repercussions that accompany discussion of a women's sexual activity. To accomplish the latter, there must be a means of educating the public and working women in particular of women's rights under domestic and international law.

By providing women workers protection in reporting abuses and an avenue of relief through the courts, Jordan would have a way to gauge which factories and corporations are committing violations. It can then more efficiently monitor those entities given its limited inspection capacity.¹⁶⁷ Moreover, corporations would be compelled to enforce human rights and the rights of women within factories to avoid scrutiny, liability, and bad press. But, it is not only due to "[p]overty, lack of resources, and weak governmental capacity . . . [that] developing countries [fail to] effectively enforce labor standards. Some also lack the political will to do so."¹⁶⁸ In failing to institute such procedures to date, an underlying concern for Jordan is undoubtedly the effect of the reforms on its relationship with corporations and factory administrators.

164. Arnold, *supra* note 19, at 1380.

165. See CEDAW, *supra* note 17, art. 2(c).

166. See *id.* art. 15(1)–15(2).

167. See note 119 *supra*.

168. KIMBERLY ANN ELLIOTT, LABOR STANDARDS, DEVELOPMENT, AND CAFTA, INTERNATIONAL ECONOMICS AND POLICY BRIEFS 4 (2004).

B. The Effect of Protection Against Sexual Harassment on MNC Activity Within Jordan

Economic growth and social development are not mutually exclusive. “[M]arkets can flourish and sustainable economic prosperity can be achieved only if there is a democratic and effective State that provides, through rules and institutions, an enabling environment for private sector development and economic growth.”¹⁶⁹ Thus, it is Jordan’s duty under the CEDAW, and to some extent under the USFTA, to consider female migrant workers’ rights and the workplace abuses documented against them when delineating guidelines for corporate industrial operations within Jordan’s borders. Such considerations entail not only the rights of women, but also the status and sustainability of MNC ventures.

Concededly, there is a significant imbalance in bargaining power between Western conglomerates and developing countries such as Jordan.¹⁷⁰ Jordan has thus far taken an accommodating stance on the operations of MNCs in the QIZ for fear that companies will relocate to countries with even lower labor and human rights standards and laxer enforcement.¹⁷¹ One QIZ manager of a large supplier plant for Victoria’s Secret, NIKE, Calvin Klein, and Target explained that “any rises in production costs . . . would cause Tefron [a distributor for the above-mentioned American companies] to move operations to Egypt since garment companies are generally only interested in the ‘bottom-line.’”¹⁷² Female guest workers’ rights will not be vindicated if MNCs retreat entirely from using QIZ factory labor, or are unable to achieve a profit from conducting business in the QIZ; however, concerns about sexually violent work conditions cannot simply be ignored.

169. GUIDO BERTUCCI & ADRIANA ALBERTI, *GLOBALIZATION AND THE ROLE OF THE STATE: CHALLENGES AND PERSPECTIVES* 17 (2001), *available at* <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan006225.pdf>.

170. *Id.* at 2 (“the present form of globalization is largely shaped by the rules advanced by one part of the world – namely the most influential—and these rules do not necessarily favour developing countries and countries in transition.”).

171. *See* ELLIOTT, *supra* note 168, at 3 (“Labor ministry officials sometimes concede in private that foreign investors threaten to go elsewhere if they must deal with unions.”).

172. *Jordan: QIZ Garment Factories: Jordanian-Israeli Business*, WWEEK.COM (Aug. 30, 2011), http://www.wwweek.com/portland/article-18364-jordan_qiz_garment_factories_jordanian_israeli_business.html.

Most textile manufacturing plants in Jordan's QIZs are owned by Asian investors.¹⁷³ However, these factories largely supply products to American MNCs. Therefore, their operations are inseparable from the American MNCs' economic ventures. The supply chain of MNCs is oftentimes highly complex, involving contractors, subcontractors, and perhaps even further subdivisions of labor in the subcontractor category. However, the overall cost structure of creating and selling a garment is set by the corporation, as are the factory codes of conduct. Addressing violations from the top down will inevitably result in greater scrutiny and enforcement of these codes of conduct, and lead to reduced human rights violations against women.

Though MNCs may not affirmatively assist or cause a lower-level employee to commit human rights violations, the MNC may passively allow the violation to occur in order to benefit from the coercive work conditions that result. If the company has not actually aided and abetted a state government in committing the abuses, it will not be held responsible under principles of international law, and victims will not be able to pursue charges against the company.¹⁷⁴ While it cannot be said that the corporations operating in Jordan have explicitly demanded that state authorities maintain this status quo, the Jordanian government is effectively accommodating and protecting MNCs' commercial interests in its failure to provide legal remedies for women suffering from sexual abuse in the workplace. In addition, compared to female migrant workers, the MNCs have far more leverage over Jordanian law-making through the threat to remove capital from Jordan's economy if labor costs increase. However, even if there is no legal claim against corporations who do not act under the color of international law, there is still the notion that corporations are morally complicit for benefitting from human rights violations.¹⁷⁵ Amnesty International commented that, "to accept the benefits of measures by governments or local authorities to improve the business

173. *See supra* note 11.

174. BEYOND VOLUNTARISM, *supra* note 71, at 132.

175. *See id.* "Beyond law, the idea that companies are morally complicit if they passively benefit from violations is gaining ground. The UN Global Compact (Principle 2) warns that 'should a corporation *benefit* from violations by authorities . . . corporate complicity would be evident.'" *Id.*

climate which themselves constitute violations of human rights, makes a company party to those violations.”¹⁷⁶

Regardless of a victims’ ability to sue an MNC under international law, the victim can still pursue a claim against Jordan for failing to exercise due diligence in protecting her from violence at private hands.¹⁷⁷ The best way for Jordan to discharge its duty to protect women is to spread liability to MNCs through civil sanctions under domestic law.¹⁷⁸

A large part of what makes Jordan attractive to MNCs is the lower cost structure and relaxed legal requirements for workers’ rights.¹⁷⁹ As noted previously, MNCs by nature of their corporate outsourcing mechanisms are able to deflect liability for workplace abuses to the subcontractor factories where human rights violations actually occur.¹⁸⁰ This structure reflects the low priority MNCs give to contracted workers and the standard of their working conditions.¹⁸¹ In the garment industry, a sector historically and culturally defined as “women’s work,” this low priority has allowed for the sexual abuse of employees that occupy a particularly vulnerable position in Jordanian society.

Individualized criminal liability for each factory manager or supervisor may be less complex to administer than civil liability of business enterprises, but it fails to reach the underlying infrastructure that condones violence against women as a form of labor coercion and sex discrimination. In comparison, a system of civil remedies for victims of sexual violence in factory settings that extends into the larger corporate infrastructure reaches these underlying structural concerns. Thus, Jordan

176. *Id.*

177. *See supra* notes 74–77 and accompanying text.

178. *See* Gobert, *supra* note 28. “When offenders are sentenced to prison, the government must bear the not inconsiderable expense of housing and feeding the offender, providing a secure facility, and employing the necessary personnel to maintain order and protect the public against escapes.” *Id.* In comparison, a fine against a business entity is relatively cost-free to administer and additionally generates the capital to provide compensation to the injured worker for the human rights offense. *See id.*

179. DENIS G. ARNOLD & LAURA P. HARTMAN, BEYOND SWEATSHOPS: POSITIVE DEVIANCY AND GLOBAL LABOR PRACTICES 26, *available at* <http://www.positivedeviance.org/pdf/research/ArnoldHartmanPositiveDeviance%5B1%5D.pdf>.

180. *See supra* notes 126–28 and accompanying text.

181. *See* ARNOLD & HARTMAN, *supra* note 179, at 27.

should impose joint and several liability against MNCs for the violations of its subcontractors. The doctrine of joint employer liability has promoted corporate accountability for the working conditions of garment workers in the United States¹⁸² and is a useful doctrine to promote female workers' rights and safety up and down the supply chain.

MNCs are in the best position to positively impact working conditions in their QIZ supplier factories, and judicial action against the MNCs for failing to do so will spur much needed reform.¹⁸³ Jordan must therefore hold them accountable through monetary civil liability for failure to monitor and enforce workplace safety standards and workers' rights in supplier factories.

Financial penalties are necessary to incentivize MNCs to enforce their codes of conduct in good faith to prevent human rights abuses against women in supplier factories. "Whereas

182. See *Zheng v. Liberty Apparel Co.*, 355 F.3d 61 (2d Cir. 2003). In *Zheng*, the plaintiffs were all employed by a garment factory that sewed apparel as a subcontractor to various clothing manufacturers, including Liberty Apparel ("Liberty"). The workers brought an action for wage theft under both the Fair Labor Standards Act and state law against both the garment factory and Liberty, claiming that most of their work had been performed for Liberty. *Id.* at 63–64. The case proceeded against Liberty when the supplier factory was no longer a viable defendant. *Id.* at 64. Although Liberty had never directly employed the garment workers, the Second Circuit Court of Appeals denied its motion for summary judgment and remanded to decide whether Liberty had functional control of the garment workers. *Id.* at 69. The pertinent factors included: (1) whether the corporation's premises and equipment were used for the plaintiffs' work; (2) whether the contractor company had "a business that could or did shift as a unit from one putative joint employer to another;" (3) the extent to which plaintiffs performed a discrete line item job integral to the corporation's process of production; (4) whether responsibility under the contracts "could pass from one subcontractor to another without material changes;" (5) the degree to which the Liberty Defendants or their agents supervised plaintiffs' work; and (6) whether plaintiffs worked exclusively or predominantly for the defendant corporation. *Id.* at 72.

183. See generally Larry Cata Backer, *Economic Globalization and the Rise of Efficient Systems of Global Private Law Making: Wal-Mart as Global Legislature*, 39 CONN. L. REV. 1739 (2007). The Global Compact suggests that MNCs have the authority to "enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment, and anti-corruption." *Id.* at 1754–55. Since QIZ factories supplying to MNCs are contractually bound by MNC supplier standards, MNCs are better able to enforce those norms through inspection, audit, sanctions, and possible contract termination for failure to comply. *Id.* at 1755.

the greatest threat to an individual may be the loss of liberty, the greatest threat to a company is the loss of profitability. Because such a loss strikes at the essential purpose of the company, a fine holds the potential to be an effective deterrent.”¹⁸⁴ The negative publicity associated with a court decision or colorable claim against a corporation is likely to cause reputational harm that most corporations will try to avoid in the interest of protecting their public image and maintaining their stock prices.¹⁸⁵ Judicial action and state sanctions against the corporation would spur the adoption of new corporate policies and enforcement practices for supplier plants that are designed to prevent future human rights violations.¹⁸⁶ Thus, reforms in MNC internal monitoring and enforcement practices will not only help to reduce violence against female workers, but will also help to reduce the concern on the part of MNC shareholders that their investments will suffer losses, either through actual legal liability, or through negative media attention.

While imposing sexual harassment penalties may at first deter MNCs due to the increased liability costs for operating factories in the QIZ, the law will lead to overall healthy business practices and long-term profitability. Safe and just work environments enhance satisfaction and productivity of workers. They also lead to greater customer satisfaction and loyalty, and improved corporate character, thus promoting financial stability in the long-term. Good corporate reputation may also create lower production costs over time, as supplier plants will prefer to work with such businesses. In addition, safe and healthy work environments “enhance the preference satisfaction of employees and shareholders who do not wish to benefit from working conditions and wages that they regard as unjustly exploitative . . . [and] of consumers who do not wish to benefit from working conditions and wages that they regard as ethically wrong.”¹⁸⁷ Increased productivity and employee loyalty may ultimately offset the cost of the implementing mechanisms that provide greater protection to female QIZ workers’ basic rights under the CEDAW.

184. Gobert, *supra* note 28.

185. See ANCA IULIA POP, CRIMINAL LIABILITY OF CORPORATIONS—COMPARATIVE JURISPRUDENCE 38 (2006).

186. See *id.*

187. See ARNOLD & HARTMAN, *supra* note 179, at 32.

CONCLUSION

Sexual abuse and harassment in the workplace are critical problems in Jordan's QIZ. The prevalence of abuse against migrant women in factory settings points to persistent and systemic discrimination against women in society. The discrimination encountered by women in the QIZ is multiplied after considering the intersectionality of their vulnerabilities. The Jordanian government must bear this in mind if it truly seeks gender equality in the workplace, as the CEDAW requires. By instituting laws against sexual harassment, making marginalized women in the QIZ aware of their rights, and giving such women a cause of action in a court of law, Jordan can uplift both the status of women and encourage fair labor practices that are likely to increase the profitability of MNCs operating in the region. A cause of action must exist both criminally against individual offenders, as well as civilly against higher corporate bodies. The latter will ensure that a commitment to human rights in the workplace trickles down to supplier plants where violations, such as the ones at Classic, take place.

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