

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)
**INTERNATIONALLY-RECOGNISED CORE LABOUR
STANDARDS IN BAHRAIN**
REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE TRADE
POLICIES OF THE KINGDOM OF BAHRAIN
(Geneva, 18 and 20 July 2007)

EXECUTIVE SUMMARY

Bahrain has ratified only four of the eight ILO core labour standards. In various areas Bahrain's law and practice require improvements in order to comply with the commitments Bahrain accepted at Singapore in 1996 and Doha in 2001 in the WTO Ministerial Declarations, and in the ILO Declaration on Fundamental Principles and Rights at Work adopted in June 1998.

The Government of Bahrain has not ratified either of the two ILO core Conventions on trade unions rights. Some progress has been made since 2002 to ensure that workers can enjoy their fundamental rights to form and join a trade union and to bargain collectively, but workers in the public sector are still denied the right to organise. Another source of concern is the long list of sectors in which strikes are banned.

The Government of Bahrain has not ratified the ILO core Convention on Equal Remuneration but has ratified the Convention on Discrimination in Employment and Occupation. Although some efforts have been made, migrant workers - who constitute 60 percent of the workforce - continue to be seriously discriminated against in virtually all aspects of employment and lack adequate legal protection. The situation of domestic workers is extremely worrisome. Changes both in law and in practice are required to ensure women equal access to opportunity on the labour market.

The Government of Bahrain has not ratified the ILO core Convention on Minimum Age. Although it has ratified the Convention on the Worst Forms of Child Labour, Bahraini legislation is not in conformity with that Convention.

The Government of Bahrain has ratified both ILO core Conventions on forced labour. However in several regards, Bahraini legislation on forced labour is not in conformity with ILO Conventions. In practice, the number of foreign workers being forced to work is a source of great concern. The situation of domestic workers is particularly alarming.

INTERNATIONALLY-RECOGNISED CORE LABOUR STANDARDS IN THE KINGDOM OF BAHRAIN

Introduction

This report on the respect of internationally recognised core labour standards in Bahrain is one of the series the ITUC is producing in accordance with the Ministerial Declaration adopted at the first Ministerial Conference of the World Trade Organisation (WTO) (Singapore, 9-13 December 1996) in which the Ministers stated: "We renew our commitment to the observance of internationally recognised core labour standards." The fourth Ministerial Conference (Doha, 9-14 November 2001) reaffirmed this commitment. These standards were further upheld in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work adopted by the 174 member countries of the ILO at the International Labour Conference in June 1998.

The ITUC's affiliate in Bahrain is the General Federation of Bahrain Trade Unions which represents 25,000 workers.

The gross domestic product (GDP) of the Kingdom of Bahrain is estimated at 11.5 billion US Dollars with a per capita GDP of about 20,500 US Dollars.

Agriculture contributes to less than 1% of the domestic product. Revenues from oil and natural gas currently account for about 11% of GDP and provide about 76% of government income. As Bahrain's hydrocarbon reserves are expected to run out in the not too distant future, Bahrain has worked to diversify its economy over the past decade and has stabilised its oil production at about 40,000 barrels per day. The state-owned Bahrain Petroleum Company refinery built in 1935, the first in the Gulf, has a capacity of about 260,000 barrels a day. Saudi Arabia provides most of the crude for refinery operation via pipeline.

Bahrain's development as a major financial center has been the most widely heralded aspect of its diversification effort. Bahrain is a regional financial and business center and the financial sector is currently the largest contributor to GDP at 27.6%. Some 370 offshore banking units and representative offices are located in Bahrain.

Bahrain is working to develop other service industries such as information technology, infrastructure in transportation and telecommunications which already account for 9% of GDP.

The major export products are petroleum and petroleum products, aluminium and textiles. The main destinations of exports are India, the US, Saudi Arabia and Japan. Imports are principally composed of crude oil, machinery and appliances, transport equipment, and foodstuffs. Imports are mainly from Saudi Arabia, the US, the EU and Japan.

Bahrain is a member of the Gulf Cooperation Council (GCC). The GCC has initiated several trade agreement negotiations with partners such as the EU, China, India, Australia, Jordan, Pakistan and Lebanon.

Bahrain signed a trade agreement with the US in 2004 which entered into force in 2006.

I. Freedom of Association and the Right to Collective Bargaining

Bahrain has not ratified ILO Convention No. 87 (1948), the Freedom of Association and Protection of the Right to Organise Convention, nor ILO Convention No. 98 (1949), the Right to Organise and Collective Bargaining Convention.

The Workers' Trade Union Law of September 2002 introduced the right to belong to trade unions in Bahrain. It established the General Federation of Bahrain Trade Unions (GFBTU) but did not provide for full freedom of association, as all trade unions had to belong to the GFBTU. This law was amended in 2007 when new legislation allowed for the establishment of additional federations.

In the private sector, no prior authorisation is required to form a union. The only requirement is the obligation to communicate the union's constitution to the Ministry of Labour and Social Affairs, together with the names of the founding members. All workers in the private sector may join trade unions, including non-citizens, who make up the majority of Bahrain's workforce. Since October 2006, a decree on employment in the private sector has prohibited dismissal for trade union activities. Employers are obliged to reinstate sacked employees and to provide compensation if it is proven that they were fired because of their union work. Trade unions are not allowed to engage in political activities.

Government employees are not allowed to form trade unions. At least six public service unions have seen their registration repeatedly refused. Public authorities have rejected all complaints on the argument that the Trade Union Act expressly states that public servants may only join but not establish trade unions.

Trade unions have the right to bargain collectively and the GFBTU, which has 55 affiliated organisations, is involved in tripartite discussions, including those on labour law.

According to the Workers' Trade Union Law only one trade union may be formed at each establishment. This is caused the ILO Committee on Freedom of Association to request the Government of Bahrain to ensure that workers are granted the right to establish more than one union per enterprise if they so wish.

Migrant workers, who make up roughly 60% of the workforce, are allowed to join unions and run for union office. But in practice they tend not to get involved in trade unions' activities as they have no protection against dismissal.

Although the law states that "*the right to strike is a legitimate means for workers to defend their rights and interests*" there are restrictions to this right. In cases of conflict, workers and employers must first seek an amicable settlement of the dispute through conciliation. If this fails, the dispute is referred to a Committee of Conciliation and Arbitration. If the parties refuse the conciliation or if the conciliation fails, the dispute is settled through arbitration within a period not exceeding one week. Workers may only proceed with a strike after obtaining the approval of three quarters of the members of the general assembly of the union through a secret ballot. The employer must be notified of the strike no less than two weeks in advance, and the Ministry of Labour must also be notified.

In November 2006, the government considerably lengthened the list of vital services in which strikes are banned, which already went beyond the ILO definition. Hydrocarbons, health, education, pharmacies and bakers have now be added to the security, civil defence, airport, port and transport sectors in which strikes are prohibited.

Conclusions:

Although the Government of Bahrain has not ratified either of the two ILO core Conventions on trade unions rights, significant progress has been made since 2002 to ensure that workers can enjoy their fundamental right to form and join a trade union and to bargain collectively. Despite these positive developments, workers in the public sector are still denied the right to organise. Another source of concern is the long list of sectors in which strikes are banned.

II. Discrimination and Equal Remuneration

Bahrain has not ratified ILO Convention No. 100 (1951), the Equal Remuneration Convention, but ratified ILO Convention No. 111 (1958), the Discrimination (Employment and Occupation) Convention in 2000.

The provisions of the Labour Code apply to all workers, regardless of their nationality, sex, religion, or political convictions. However no explicit reference is made to the protection of non-nationals, which leaves the many foreign workers living in the country without adequate legal protection against discrimination.

In practice foreign workers remain extremely vulnerable to abuses and exploitation. In particular there are frequent reports of foreign women working in domestic positions, living in their sponsors' homes and having very limited access to the outside world, being beaten or sexually abused by their employers and recruiting agents. Victims are generally too intimidated to sue their employers, even though they have the right to do so. If a victim brings a suit against the employer, the plaintiff cannot leave the country for the duration of the case. Compensations paid to the few migrant workers having taken their cases to courts due to allegations of discrimination are reported to be low.

According to the GFBTU, the difference in the labour cost between a local worker and a migrant worker is often as much as 300 euros a month. The situation of domestic workers is perhaps worst: the least paid, usually coming from Bangladesh or Sri Lanka only receive 80 euros a month. In 2006, Bahrain set up the Labour Market Regulatory Authority, on which the GFBTU is represented, whose objective is to increase the cost of low wage labour so as to reduce the difference between local and migrant workers. The GFBTU has insisted that all workers in the country, irrespective of origin, must be paid the minimum wage.

Labour laws prohibit discrimination against women but there is no specific policy on equal opportunities in employment and occupation.

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has requested the Government to make sure that article 5(b) of the Constitution, which provides that the State guarantee reconciliation of the duties of women towards the family with their work in society, does not conflict with the principle of equality of opportunity and treatment. The Committee has insisted that family responsibilities are relevant to the whole of the family and society and not solely to women, and that stereotypical treatment of women should be avoided.

Further the CEACR has requested the Government to amend Section 63 of the Labour Code (second phrase) providing that *“the Minister for Labour and Social Affairs shall make an*

order prescribing the occupations and jobs in respect of which an employer may offer alternative employment to a female worker because of her marriage” as it contravenes the Convention.

Under the Penal Code, sexual harassment is prohibited. No explicit reference is made to sexual harassment at the workplace.

In practice various forms of discrimination against women in employment and occupation exist, for instance with respect to access to vocational training and career advancement. The labour participation rate of Bahraini women is significantly lower than that of Bahraini men, with women constituting 11 percent of the private sector workforce and 42 percent of the government workforce. Particularly worrying is the fact that domestic workers (most of them being women), casual workers and agricultural workers are excluded from the scope of the Labour Code.

However some initiatives have been taken over recent years, including through the establishment of a Council for Women in 2003 whose main task is to elaborate a national plan for the advancement of women. Positive signs for the future are that the President of the University of Bahrain is a woman and that 60 percent of the students are women. In 2006 women activists had been eventually allowed to establish a Bahrain Women's Union whose objective is to defend and protect women's rights.

Conclusions:

Bahrain has not ratified ILO Convention 100 on Equal Remuneration but has ratified Convention 111 on Discrimination in Employment and Occupation. Although some efforts have been made, migrant workers - who constitute 60 percent of the workforce - continue to be seriously discriminated against in virtually all aspects of employment and lack adequate legal protection. The situation of domestic workers is extremely worrisome as they are excluded from the scope of labour law. Changes both in law and in practice are requested to ensure women and men equal access to opportunity on the labour market.

III. Child Labour

Bahrain has not ratified ILO Convention No. 138 (1973), the Minimum Age Convention, but ratified Convention No. 182 (1999), the Worst Forms of Child Labour Convention in 2001. However, in several respects the Bahraini legislation on the protection of children is not yet in conformity with the ILO Conventions.

According to section 51 of the Labour Law juveniles aged under 16 years may be employed in industries and occupations other than those deemed to be hazardous or unhealthy. This is in clear contradiction with ILO Convention No. 182, which defines a child as a person under the age of 18.

No penal provision expressly prohibits the sale and trafficking of children under 18 years. Yet under Article 1 of ILO Convention No. 182 the government has the obligation to take immediate and effective measures to prohibit this form of child labour.

The ILO Committee of Experts on the Application of Conventions and Recommendations has requested the Government to take immediate measures to legally

prohibit the use, procuring or offering of a child for the production of pornography or pornographic performances, and to provide for effective penalties. According to Convention No. 182, this constitutes one of the worst forms of child labour and is therefore prohibited for children less than 18 years.

Since self-employed workers, domestic servants, casual or temporary workers and agricultural workers are excluded from the scope of labour legislation in Bahrain, the government needs to introduce legal prohibitions such that any workers younger than 18 in these categories do not perform work likely to harm their health, safety or morals.

The list of 25 types of hazardous work that persons under 16 years of age may not perform defined by the Ministerial Order No. 6 of 1976 needs to be reviewed in the light of relevant international standards, in particular the ILO Worst Forms of Child Labour Recommendation, 1999 (No. 190).

According to UNICEF statistics there are 5% of children (6% male and 3% female children) aged 5-14 years who were involved in child labour during the period 1999-2005. This includes children of 5-11 years of age who did at least one hour of economic activity or at least 28 hours of domestic work during the week and children of 12-14 years of age who did at least 14 hours of economic activity or at least 28 hours of domestic work. Children are reported to work in family businesses and in informal activities as car washers, vendors or porters. In its report of 2001, the Special Rapporteur of the United Nations Commission on Human Rights noted that children are trafficked from Bangladesh to the Middle East to work as camel jockeys. This information has been confirmed by the Bangladeshi authorities.

Conclusions:

Bahrain has not ratified ILO Convention No. 138 on Minimum Age but did ratify Convention No 182 on the Worst Forms of Child Labour. Bahraini legislation is not in conformity with ILO Convention 182.

IV. Forced Labour

Bahrain ratified ILO Convention No. 29 (1930), the Forced Labour Convention in 1981 and ILO Convention No. 105 (1957), the Abolition of Forced Labour Convention in 1998.

Bahraini legal arrangements concerning civil servants contravene the provisions set forth in these ILO Conventions. Section 293(1) of the Penal Code provides for penalties of imprisonment “*when three or more civil servants abandon their work, even in the form of resignation, if they do so by common accord with a view to achieving a common objective*”. This provision is also applicable to persons who are not civil servants, but who perform work related to the public service (section 297 of the Penal Code). The ILO Committee of Experts on the Application of Conventions and Recommendations has requested the Government to remove the menace of imprisonment from the legislation concerned.

Likewise, legislation governing the service of military officers is incompatible with the Conventions. In the Defence Force, officers undertake to serve for an uninterrupted period of 15 years, during which they do not have the right to resign. Any officer who submits a resignation is not entitled to leave the service before it is accepted. In the Armed Forces, rank-

and-file members who submit their resignation are not entitled to leave the service until the resignation is accepted, under penalty of disciplinary sanctions. The ILO Committee of Experts has requested the government to take measures to ensure that career members of the military can fully enjoy the right to leave their service in peacetime at their own request within a reasonable period, either at specified intervals, or with prior notice.

The legislation on the right to strike in the public sector contravenes the provisions set forth in ILO Conventions. According to section 294(1) of the Penal Code, a punishment of imprisonment may be inflicted upon a civil servant who relinquishes his office or refuses to discharge any of his official duties with the intent of obstructing the pursuit of business or causes any disruption to the pursuit thereof. While the fact of imposing penalties, including an obligation to perform labour, could under some circumstances be compatible with the Conventions, the wording of the sections of the Penal Code concerned is so broad that it could lead to the imposition of such penalties in a wide range of cases, which is not in conformity with the Convention. The ILO Committee of Experts has therefore requested the Government to amend the legislation accordingly.

In practice there are many reports of domestic workers and undocumented workers being forced to work. While the law does not specifically prohibit trafficking in persons, trafficking in human beings is a serious problem. The most common forms of trafficking in persons involved unskilled construction labourers and domestic workers. Up to half the low-skilled and unskilled foreign workers are subject to illegal contract substitution, whereby workers agreed to a contract in their home country but are required to agree to and sign a different contract upon arrival, nearly always for less pay and often for different work. Victims of trafficking experience non payment of salaries; inadequate meals; physical, sexual, and psychological abuse; absence of rest days, and/or extremely long working hours.

Many workers from Southeast Asia, South Asia or the Horn of Africa, experience conditions that amount to forced labour. Employers withhold their workers' passports, restrict their movements, or intimidate them physically or psychologically in order to force them to work. Frequently foreign workers arrive in the country under the sponsorship of an employer and then switch jobs while continuing to pay a fee to their original sponsor. Some of these victims report having been forced into commercial sexual exploitation through deception or intimidation. There are a considerable number of reports concerning employers withholding salaries from their foreign workers for months and even for years, and refusing to grant them the necessary permission to leave the country. The fear of deportation or of retaliation prevents many foreign workers from complaining to the authorities, who focus too little attention on the problem.

The case of domestic workers - who are not covered by labour legislation - is particularly alarming. There are approximately 50,000 foreign housemaids working in the country who are predominantly of Sri Lankan, Indonesian, Indian, and Filipino origins. Some of them are commonly forced to work 12 to 16 hour days, given little time off, inadequately nourished, and subject to verbal and physical abuse including sexual molestation and rape. The Philippine Embassy's shelter for victims of abuse reported that 749 workers in 2006, compared with 466 in 2005, ran away from their sponsors for reasons of alleged abuse. Domestic workers who have no embassy representation in the country (e.g. Sri Lanka) are often subjected to the worst types of physical and sexual abuse.

Public authorities have failed to respond satisfactorily to the serious problem of people being trafficked and/or forced to work. The fines applicable to employers guilty of forced

labour (about 2,650 US dollars) are not high enough to discourage these practices. Difficulties in accessing the courts and lengthy legal proceedings render it virtually impossible for victims to have their case legally redressed. Although the government has taken some initiatives such as the publication of pamphlets on foreign workers' rights, preventive measures need to be considerably strengthened. The government also needs to increase the level of assistance for victims of trafficking or of domestic abuses.

Conclusions:

The government of Bahrain has ratified both ILO core Conventions on forced labour. In a number of respects, the Bahraini legislation on forced labour is not in conformity with these Conventions. In practice, the number of foreign workers in conditions amounting to forced labour is a cause of great concern. The status of domestic workers is particularly alarming. Despite some isolated and limited initiatives the Bahraini government has failed to address the situation in a satisfactory way.

CONCLUSIONS AND RECOMMENDATIONS

1. The government of Bahrain must ratify ILO Conventions 87 and 98 on the protection of trade union rights as well as Convention 100 on equal remuneration and Convention 138 on minimum age.
2. The recommendations of the ILO Committee on Freedom of Association with regard to establishment of trade unions in the enterprise need to be applied.
3. The government of Bahrain must ensure that workers in the public sector are entitled to join and establish trade unions of their choosing.
4. The restrictions on the right to collective actions and strikes which are incompatible with ILO core Conventions must be lifted. In particular the list of vital services in which strikes are banned should be reviewed so as to include only essential services in the strict sense of the term.
5. The legislation regarding protection against discrimination must be strengthened, so as to protect migrant workers adequately against abuses. The situation of foreign domestic workers requires greatly increased attention from the Government. Compensations paid to victims should be in proportion with the nature and the extent of the discrimination and the damage suffered. In line with the long-standing recommendations of the GFBTU, all workers in the country must benefit from the labour code and be paid the minimum wage, irrespective of origin and including all workers currently excluded from the protection of the labour code.
6. The government of Bahrain should implement policies and programmes to achieve equal opportunities for men and women in employment and occupation.
7. The government of Bahrain should ensure that domestic workers, casual workers, temporary workers and agricultural workers fall under the scope of the labour legislation.
8. All workers must enjoy equal opportunities on the labour market regardless of their origins, sex, religion, or political convictions.
9. The government of Bahrain should ensure that its legislation on the protection of children is in conformity with the ILO Conventions. In particular the list of hazardous work needs to be reviewed in the light of relevant international standards, in particular the ILO Worst Forms of Child Labour Recommendation, 1999 (No. 190).
10. Legislation on forced labour must be amended so as to be in conformity with the ILO Conventions concerned. In particular the threat of imprisonment for public sector workers absent from their work needs to be removed from the legislation.
11. The government of Bahrain should take all necessary measures to prevent abuses and exploitation of foreign workers in conditions amounting to forced labour. This should include more and better preventive measures as well as higher penalties to discourage unscrupulous employers. The Government should increase its assistance to victims of forced labour and raise its budget for such measures accordingly.
12. In line with the commitments accepted by the Kingdom of Bahrain at the Singapore and Doha WTO Ministerial Conferences and its obligations as a member of the ILO, the

government should report to the WTO and the ILO on its actions to implement fully the core labour standards.

13. The WTO should draw to the attention of the authorities of Bahrain the commitments they undertook to observe core labour standards at the Singapore and Doha WTO Ministerial Conferences. The WTO should request the ILO to intensify its work with the government of Bahrain in these areas and provide a report to the WTO General Council on the occasion of the next trade policy review.

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