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RECEIVING COUNTRIES

Kingdom of Bahrain



A. COUNTRY CONTEXT

The Kingdom of Bahrain is an archipelago of 33 islands located in the Persian Gulf. Bahrain is a high income country¹ and ranks “very high” on the UNDP’s latest Human Development Index.² However, beginning in February 2011, the country experienced a sustained period of unrest, resulting from mass protests calling for political reform. Troops were subsequently stationed around the country and extensive security operations, including attacks on peaceful protesters, led to the deaths of 52 people.³

Like many Gulf states, Bahrain has historically relied heavily on oil as a primary source of income, however, with reserves forecast to run dry in the next 10 to 15 years, Bahrain has diversified its economy and now the financial sector, tourism, construction and the service industry are also major contributors to the country’s gross domestic product.⁴

According to the 2010 census, Bahrain has a resident population of 1,234,571. It is predominantly a receiving country for migrant labour, and recently the number of foreigners overtook the number of nationals. As of 2010, 666,172 residents (54 per cent of the population) were foreigners. Nationals of Asian countries numbered 562,040, or 84.3 per cent of the foreign residents and 45.5 percent of the total population of the country.⁵

1 Available from: <http://data.worldbank.org/country/bahrain>

2 <http://hdrstats.undp.org/en/countries/profiles/BHR.html>

3 <http://www.state.gov/documents/organization/186633.pdf>

4 *Kingdom of Bahrain Decent Work Country programme 2010-2013*, p.3, ILO. Available at: <http://www.ilo.org/public/english/bureau/program/dwcp/download/bahrain.pdf>

5 Bahrain Census Department located at: www.census2010.gov.bh/results_en.php

Human Development Index	Rank 42, Very High ⁶
Stock of Immigrants (2010)	666,172
Annual growth rate of immigrant population	5.2% (1960-2005)
Immigrants' share of population (2010)	54%
Proportion of female immigrants (2009)	15.05% ⁷

According to the International Labour Organization (ILO), domestic work is the “single most important category of employment among women migrants to the Gulf. Foreign embassies and non-governmental organizations (NGOs) estimate that there are 70,000 foreign domestic workers in Bahrain of predominantly Sri Lankan, Indonesian, Indian, and Filipino origin.”⁸ However, to address high unemployment among locals, the government has recently begun reducing sponsorship opportunities for foreign workers and placed more emphasis on hiring Bahrainis.⁹

B. KEY GENDER AND HUMAN RIGHTS ISSUES

Bahrain’s labour legislation is relatively advanced compared to other countries in the region, making it one of the more “progressive” of the Gulf Cooperation Council (GCC) countries. For example Bahrain is one of the few countries in the GCC that allows trade unions. Additionally, in 2009 Bahrain partially repealed the Kafala system – the first country in the GCC to do so. Previously under the Kafala system, all unskilled labourers were required to have an in-country sponsor who was responsible for their visa and legal status.

Under the 2009 changes, the Bahrain Labour Market Regulatory Authority (BLMRA) became the direct sponsor of most expatriate contractual workers in the country. This move allowed workers to change from one employer to another without their employer’s agreement. It was hoped that this new law would decrease migrant workers’ vulnerability to abuse by their employer.¹⁰ However, in 2011 King Hamad Al Kalifa rolled back progress by amending the regulation so that now migrant workers are prevented from leaving their employer within the first year of employment.¹¹ Additionally, reforms to the Kafala system do not cover domestic workers, who continue to be trapped by the sponsorship system.¹²

6 <http://hdrstats.undp.org/en/countries/profiles/BHR.html>

7 IOM citing Bahrain labour Market Regulatory Authority, 2009 available at: http://www.iom.int/jahia/webdav/shared/shared/mainsite/published_docs/Final-LM-Report-English.pdf

8 *The Situation of Women Migrant Domestic Workers in Bahrain, Report Submitted to the 42nd Session of the CEDAW Committee*, Bahrain centre for Human Rights, Bahrain Youth Society for Human Rights, and Caram Asia, October 2008. Available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CARAMASIBahrain42.pdf>

9 *Kingdom of Bahrain Decent Work Country programme 2010-2013*, pp.3-4, ILO. Available at: <http://www.ilo.org/public/english/bureau/program/dwcp/download/bahrain.pdf>

10 *Bahrain’s Decision to Repeal the “Kafala” System*, Georgetown University School of Foreign Service in Qatar, centre for International and Regional Studies, available at: <http://cirs.georgetown.edu/events/conferences/104124.html>

11 *HM King Hamad Issues Law 15/2011*, Bahrain News Agency available at: <http://bna.bh/portal/en/news/461096>

12 *Trafficking in Person’s Report – Bahrain*, U.S. State Department, 2012.

Because domestic workers are employed in people's homes, they are not legally classified as "workers" and are not covered by many of Bahrain's laws governing employee rights.¹³ Consequently, domestic workers are vulnerable to abuse at each stage of migration, including:

- i) **During Recruitment** – Many women are exploited or trafficked by recruiting agents, either in the country of origin or the country of destination, and become heavily indebted to recruiters even before they start working. Additionally, employers are required to pay for employees' transportation costs, but in many cases do not comply with this rule.¹⁴
- ii) **Employment Contracts** – Conditions are generally set according to the employer's discretion and often there is no contract at all.¹⁵ The Bahrain Ministry of Labour has drawn up a model contract but its use is very limited. The BLMRA has studied the issue and found that 65 per cent of migrant workers had never seen an employment contract and 89 per cent were unaware of their terms of employment upon arrival in Bahrain.¹⁶
- iii) **At work** – Domestic workers regularly find themselves assigned unspecified and multiple forms of work. For example, they may be required to be babysitters, kitchen helpers, and cleaners, within the employers' home as well as in the employers' relatives' homes. They often work for undefined hours, have no days off, and in some cases salaries go unpaid. A 2005 ILO study reported that on average, domestic workers in Bahrain were required to work 108 hours per week.¹⁷ Employers often withhold domestic workers' passports and restrict their movements so that they are not free to move outside the sponsor's home, receive visitors or have partners. Many find it difficult to practice their own religion freely, and have problems with living conditions, inadequate food and medical provisions. In addition, there are cases of psychological, verbal, physical and sexual abuse.¹⁸ Consequently, an increasing number of women try to escape these exhausting conditions and seek shelter with NGOs or embassies.¹⁹
- iv) **Access to services** – Compounding these problems, female migrant domestic workers have extremely tenuous or no access at all to care and support services and legal redress. The fear of reprisal, arrest or deportation inhibits many from reporting abuse, and, although the government and local NGOs have carried out information campaigns, many migrant domestic workers are unaware of their rights.²⁰

13 *Trafficking in Person's Report – Bahrain*, U.S. State Department, 2012.

14 *The Situation of Women Migrant Domestic Workers in Bahrain, Report Submitted to the 42nd Session of the CEDAW Committee*, Bahrain centre for Human Rights, Bahrain Youth Society for Human Rights, and Caram Asia, October 2008. Available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CARAMASIA Bahrain42.pdf>

15 *The Situation of Women Migrant Domestic Workers in Bahrain, Report Submitted to the 42nd Session of the CEDAW Committee*, Bahrain centre for Human Rights, Bahrain Youth Society for Human Rights, and Caram Asia, October 2008. Available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CARAMASIA Bahrain42.pdf>

16 *Trafficking in Persons Report, Bahrain*, U.S. State Department 2012. Available at: http://bahrain.usembassy.gov/news_from_washington/bahrain-trafficking-in-persons-report.html

17 <http://www.caramasia.org/reports/FDWlegislationAsia.pdf>

18 *The Situation of Women Migrant Domestic Workers in Bahrain, Report Submitted to the 42nd Session of the CEDAW Committee*, Bahrain centre for Human Rights, Bahrain Youth Society for Human Rights, and Caram Asia, October 2008. Available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CARAMASIA Bahrain42.pdf>

19 *Trafficking in Persons Report, Bahrain*, U.S. State Department 2012. Available at: http://bahrain.usembassy.gov/news_from_washington/bahrain-trafficking-in-persons-report.html

20 *The Situation of Women Migrant Domestic Workers in Bahrain, Report Submitted to the 42nd Session of the CEDAW Committee*, Bahrain centre for Human Rights, Bahrain Youth Society for Human Rights, and Caram Asia, October 2008. Available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CARAMASIA Bahrain42.pdf>

C. KEY STAKEHOLDERS

The Ministry of Labour and Social Affairs enforces and implements the Government's policy of enhancing the living standards of the Bahraini people through measures that contribute to sustaining workforce stability, higher worker productivity, and fair working conditions.

The Labour Market Regulation Authority (LMRA) was created to reform Bahrain's labour market and is responsible for prescribing the conditions for work permits and issuing them for foreign workers. This includes renewal procedures, prescribed fees, procedures and cases for suspending the renewal of such a permit or withdrawing it before expiry, and procedures for making exceptions to the normal conditions for issuing permits. The body also carries out workplace inspections to ensure that workers are doing the job specified in their work permit.

The Bahrain centre for Human Rights (BCHR) is a non profit NGO, dedicated to promoting democracy and human rights, including the rights of migrant workers. BCHR has repeatedly called attention to the plight of female migrant domestic workers in Bahrain, noting that "To a great extent, this sector of Bahraini society has been ignored and excluded from the discourse on women's and migrants' rights in Bahrain."²¹

The Migrant Workers' Protection Society also works to promote and protect the rights of migrant workers. However, in August 2010, the Government ordered it to close down its shelter, alleging that it was not registered, despite the fact that the organization had provided the ministry with a copy of the registration certificate.²²

D. RATIFICATION RECORD

The following table illustrates Bahrain's ratification status of international treaties related to women migrant workers.

TREATIES	RATIFICATIONS
MWC	-
CEDAW	18 June 2002(a)
ICCPR	20 September 2006(a)
ICESCR	27 September 2007(a)
ICERD	27 March 1990(a)

²¹ <http://www.bahrainrights.org/en/node/3692>

²² See Human Rights Watch 2011 UPR Submission on Bahrain <http://www.hrw.org/news/2011/11/21/human-rights-watch-upr-submission-bahrain>

ILO 29 Forced or Compulsory Labour	11 June 1981
ILO 87 Freedom of Association	-
ILO 97 Migration for Employment	-
ILO 98 Right to Organize and Collective Bargaining	-
ILO C100 Equal Remuneration	-
ILO 105 Abolition of Forced Labour	14 July 1998
ILO 111 Discrimination in Employment	26 September 2000
ILO 138 Minimum Age for Admission to Employment	2012
ILO 143 Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers	-
ILO 181 Private employment agencies	-
ILO 182 Prohibition worst forms of child labour	23 March 2001

E. COMPLIANCE WITH CEDAW

The Kingdom of Bahrain acceded to the CEDAW in 2002 but made reservations to: Article 2; Article 9, paragraph 2; article 15, paragraph 4; Article 16; and Article 29, paragraph 1, stating they are incompatible with the provisions of the Islamic Shariah law. The CEDAW Committee has urged Bahrain to withdraw these reservations “as they are contrary to the object and purpose of the Convention.”²³

DISCRIMINATION

Bahrain’s Constitution enshrines the principle of equality between men and women and the CEDAW is directly applicable in national law. However, the CEDAW Committee has raised concerns about the lack of a specific definition of discrimination against women in domestic legislation, noting that the absence of such a provision, encompassing both direct and indirect discrimination in both the public and private spheres, constitutes an impediment to the full application of the Convention.²⁴

²³ *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Bahrain*, Art. 17, Forty second Session, 2008 (CEDAW/C/BHR/CO/2)

²⁴ *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Bahrain*, Art. 17, Forty second Session, 2008 (CEDAW/C/BHR/CO/2)

The CEDAW Committee also expressed its concern about entrenched stereotypes regarding the roles of Bahraini women and men in the family, and noted the detrimental effect these have had on women's participation in education, the labour market and in political and public life. The Committee urged the Government to invest more in public awareness campaigns that promote the equal status of men and women in private and public life.²⁵

Bahrain has undertaken some positive measures to eliminate discrimination against women, including: adoption of the National Strategy for the Advancement of Bahraini Women to promote women's enjoyment of their rights in all areas; establishment of the Supreme Council for Women in 2001 as the national mechanism for the advancement of women, and the establishment within the Supreme Council of a committee on women's complaints; a new "Citizenship" curriculum with the aim of empowering women in society; and the cooperation protocol of 2006 to eliminate stereotypical portrayals of women in educational material.²⁶

POLICY MEASURES

Bahrain's Policy on Labour Migration requires migrant workers to have a contract of employment and to undertake health assessments as prescribed by the Ministry of Health, in order to ascertain their physical fitness and determine that they do not carry any infectious diseases.²⁷ The pre-employment medical tests include a general medical examination and chest X-ray, as well as testing for HIV, hepatitis B and syphilis for certain occupation groups, including domestic workers. Workers who fail these tests are considered unfit for work and are not issued a work permit.²⁸

Studies have shown that conducting such assessments without access to proper counselling and referrals makes migrants more vulnerable to abuse and exploitation.²⁹ Additionally, in General Recommendation 26, the CEDAW Committee states that subjecting migrant women to compulsory testing for contagious diseases, including for HIV/AIDS, and handing test results over to agents and employers is a violation of women's right to privacy.³⁰ Bahrain should therefore ensure that tests are not conducted without women's consent; that follow-up services are adequately provided; and that results are not shared with anyone without the woman's consent.

25 *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Bahrain*, Art. 22-23, Forty second Session, 2008 (CEDAW/C/BHR/CO/2)

26 *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Bahrain*, Art. 5, 6, 8 & 32, Forty second Session, 2008 (CEDAW/C/BHR/CO/2)

27 *Labour Migration from Indonesia, An Overview of Indonesian Migration to Selected Destinations in Asia and the Middle East*, p. 74, IOM, 2010.

28 *Bahrain Medical Bulletin*, Vol. 33, No. 1, March 2011. Available at: http://www.bahrainmedicalbulletin.com/march_2011/Medical_News.pdf

29 *Asian Labour Migrants and Health: Exploring Policy Routes*, p.3 IOM and the Migration Policy Institute, June 2011. Available at: <http://www.migrationpolicy.org/pubs/MigrationandHealth.pdf>

30 General Recommendation 26, Art. 17, CEDAW Committee.

Employment contracts must specify that employers of foreign workers are obliged to meet the costs of repatriating the foreign worker to their country of origin at the completion, expiry or cessation of the work contract. Should a foreign worker change employers, the new employer is liable to pay the repatriation costs at the end of the work contract.³¹ This is a good-rights based practice as it decreases the likelihood of migrant workers falling into extreme debt or being stranded in Bahrain with no means of paying for a ticket home.

Regarding immigration policy, all foreigners staying in Bahrain for more than three months are required to acquire a resident permit. The Directorate of Immigration and Passports issues a residence permit, which is generally valid for two years. Work permits for all migrant workers are also valid for two years and are renewable, subject to medical clearance.³²

TRAFFICKING AND FORCED LABOUR

Forced Labour

Forced labour is punishable by imprisonment and/or a fine pursuant to section 302 of the Penal Code of 1976 and 1993 amendments made by Legislative Decree No. 6. The legislation notwithstanding, many foreign workers are vulnerable to forced labour as a result of high recruitment fees charged by employment agencies in Bahrain and source countries. One study found that 70 per cent of foreign workers borrowed money or sold property in their home countries in order to secure a job in Bahrain.³³ Additionally, some Bahraini employers illegally charge workers exorbitant fees to remain in Bahrain and work for third-party employers (under the free visa arrangement). Bahrain's LMRA estimates that approximately 10 per cent of migrant workers are in Bahrain under illegal free-visa arrangements – a practice that can contribute to debt bondage – while the Bahrain Chamber of Commerce and Industry puts the figure at 25 per cent.³⁴

Trafficking

According to the US State Department's 2012 Trafficking in Persons (TIP) Report, Bahrain is a destination country for women subjected to human trafficking. Women from India, Pakistan, Nepal, Sri Lanka, Bangladesh, Indonesia, Thailand, the Philippines, Ethiopia, and Eritrea migrate voluntarily to Bahrain to work as domestic workers or as unskilled labourers in the construction and service industries. Upon arrival however, many are subjected to forced labour and sex work through the use of such practices as unlawful withholding of passports, restrictions on movement, contract substitution, non-payment of wages, threats, and physical or sexual abuse.³⁵

31 *Labour Migration from Indonesia, An Overview of Indonesian Migration to Selected Destinations in Asia and the Middle East*, p. 74, IOM, 2010.

32 UNIFEM, 'Legal Protection for Migrant Domestic Workers in Asia and the Arab States' (2008)

33 http://bahrain.usembassy.gov/news_from_washington/bahrain-trafficking-in-persons-report.html

34 US Department of State, Trafficking in Persons Report 2012.

35 *Trafficking in Persons Report – Bahrain*, U.S. State Department, 2012

The 2012 TIP report found that women from Thailand, the Philippines, Morocco, Jordan, Syria, Lebanon, Russia, China, Viet Nam and eastern European states are the majority of those forced to work as sex workers in Bahrain. The Report also concluded that, although the Government made some reforms to its migrant worker sponsorship system, the reforms are not sufficient and continue to give employers inordinate power over foreign workers, particularly domestic workers. NGOs and labourers have also claimed that officials allow Bahrainis to sponsor more expatriate workers than they could reasonably employ, and illegally engage in the free-visa arrangements, employing workers without going through the required procedures, and withholding their passports and salaries by way of coercion.³⁶ The TIP report noted that this illegal behaviour contributes to forced labour and debt bondage, however few victims are able to be assisted by the Government, due to the lack of a formal victim identification procedure.³⁷

PROSECUTION

In 2008, Bahrain enacted Law No. 1 on Human Trafficking, which prohibits all forms of trafficking in persons and prescribes penalties ranging from three to 15 years' imprisonment, which is commensurate with penalties prescribed for other serious crimes. The Government also established the National Committee to Combat Human Trafficking to improve collection of data, and devise programmes for combating trafficking and protecting victims. This law is a good, gender-sensitive, rights-based practice in compliance with Article 6 of the CEDAW, which requires states to "take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women." In its most recent Concluding Observations for Bahrain the Committee commended Bahrain for its efforts and urged the Government to monitor the impact of these measures so that it can provide information on the results achieved.³⁸

With respect to prosecution, in 2011, the Government investigated 18 trafficking cases, five of which resulted in convictions. The 2012 TIP report notes, however, that because the government does not separate people-smuggling from human-trafficking offences, it is unclear how many of the convictions were actually for human trafficking.³⁹

PROTECTION

Women arrested for prostitution or fleeing their employer are often charged and detained with no regard for their personal circumstances. These women are generally sentenced to

36 *Trafficking in Persons Report – Bahrain*, U.S. State Department, 2012

37 *Trafficking in Persons Report – Bahrain*, U.S. State Department, 2012

38 *Concluding Observations – Bahrain*, Forty Second Session CEDAW Committee, 2008

39 *Trafficking in Persons Report – Bahrain*, U.S. State Department, 2012

two weeks' detention and then deported. Bahrain does not have adequate procedures for identifying potential victims of abuse among these vulnerable groups, and does not ensure that victims receive access to essential protective services, except for the very small number referred to the Government's primary shelter.⁴⁰ This failure to adequately identify and provide protection for women victims of trafficking violates Article 2 of CEDAW, which requires states to "take all appropriate measures to abolish regulations and practices which constitute discrimination against women." The CEDAW Committee's General Recommendation 19 on Violence against Women implores governments to provide protection and support services for victims of violence (including trafficking victims) as well as gender-sensitive training of judicial and law enforcement officers and other public officials.⁴¹

PREVENTION

Some notable efforts made by the Government to prevent human trafficking include an interagency committee to better monitor and identify trafficking issues, and a "know your rights" media campaign using television, radio and other media to educate vulnerable populations about the risks of trafficking. Despite these efforts, ten of thousands of women migrant workers remain at risk of forced labour and debt bondage as a result of the Kafala system which, although repealed for other categories of labourers, still applies to domestic workers. The problem is compounded by the fact that Bahrain's 2010 labour law does not cover domestic workers, thus increasing the chances of exploitation and abuse of this vulnerable population.⁴² The Special Rapporteur on Trafficking in Persons, Especially Women and Children, after a fact-finding mission in Bahrain, noted the link between these exemptions in the law and the increased likelihood of trafficking.⁴³ Thus, exempting domestic workers from labour laws and from legislative reforms to abolish the Kafala system is discriminatory and violates Articles 11 and 15 of the CEDAW, which require governments to protect women's health and safety in working conditions, and to ensure men and women are accorded equal protection under the law.

EMPLOYMENT

The Ministry of Labour enforces the labour law and mandates acceptable conditions of work for all adult workers, except domestic workers (who are outside the purview of labour laws), including a maximum working week of 48 hours, with special permission required by the ministry for work in excess of 60 hours per week. Because the Labour Law does not cover domestic workers many are required to work 15 to 17 hours a day, seven days a week. Since domestic workers' legal status in Bahrain depends on the continued visa sponsorship of their

40 *Trafficking in Persons Report – Bahrain*, U.S. State Department, 2012

41 General Recommendation 19, Art. 24 The CEDAW Committee

42 *Trafficking in Persons Report – Bahrain*, US Department of State, 2012.

43 Statement of Sigma Huda, *Special Rapporteur of the United Nations Commission on Human Rights on trafficking in persons, especially women and children*, UN Press Release, November 2006. Available at: <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/58FAF1D58BE8FAAFC1257219005C3225?opendocument>

employers, those who attempt to escape from exploitative situations risk arrest, prolonged administrative detention and deportation. Reports have also indicated that public authorities often privilege employers in disputes involving migrant workers.⁴⁴

Consequently, the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) has strongly urged Bahrain to take steps to ensure that new Labour Code includes provisions that explicitly define and prohibit direct and indirect discrimination, on all the grounds enumerated in Article 1(1)(a) of the Convention Concerning Discrimination in Employment, with respect to all aspects of employment and occupation, and covering all workers, including domestic workers, casual workers and agricultural workers.⁴⁵ The CEDAW Committee also remarked on the fact that female migrant domestic workers are not covered under the labour code, are unaware of their rights, and cannot easily file complaints or seek redress in cases of abuses. The Committee called upon Bahrain to take all appropriate measures to ensure that the labour code covers all migrant domestic workers.⁴⁶

In response to the various criticisms, the Government of Bahrain adopted Order No. 79 of 16 April 2009, which relates to the procedures governing the transfer of a foreign worker from one employer to another. Section 2 of the Order states that the foreign worker shall have the right to transfer to work with another employer without violating the rights of an employer by virtue of the provisions of the law or the text of the labour contract concluded between the parties. While such reform is encouraging it does not go far enough. The US Department of State reported that, while the new rules went into effect in August 2009, there are still restrictions on how migrant workers can change jobs without employers' permission. The report also indicates that most of the new rules do not apply to domestic workers. Migrant domestic workers need to be included in the protection provided by Order No. 79, and reform of the Labour Code still needs to be implemented in order for it to comply with Article 11 of CEDAW on equality in employment.⁴⁷

Bahraini law prohibits sexual harassment, and stipulates penalties of imprisonment of "up to one year or a fine of 100 dinars (265 dollars) if the victim is 14-21 years old, and up to three months in prison and a fine of 20 dinars (53 dollars) if the suspect is convicted of insulting or committing an indecent act towards a female in public."⁴⁸ Despite this, the US Department of State report continues, "sexual harassment remains a widespread problem for women, especially foreigners employed as domestic workers and in other low-level service jobs."⁴⁹ As noted in General Recommendation No. 26, women migrant workers are more vulnerable to sexual abuse, sexual harassment and physical violence, especially in sectors where women predominate. Domestic workers

44 OHCHR Compilation Report for the Universal Periodic Review of Bahrain (A/HRC/WG.6/1/BHR/2) (2008)

45 CEACR, 'Individual Observation concerning Discrimination (Employment and Occupation) Convention, 1958' (No. 111) Bahrain (ratification: 2000) (2010)

46 *Concluding Observations – Bahrain*, Forty Second Session CEDAW Committee, 2008

47 US Department of State, Human Rights Report 2010, Bahrain

48 *Human Rights Report 2011 – Bahrain*, p.27, U.S. State Department, available at: <http://www.state.gov/documents/organization/186633.pdf>

49 *Human Rights Report 2011 – Bahrain*, p.27, U.S. State Department, available at: <http://www.state.gov/documents/organization/186633.pdf>

are particularly vulnerable to physical and sexual assault, food and sleep deprivation and other abuses by their employers. Sexual harassment of women migrant workers in other work environments, such as on farms or in the industrial sector, is also a problem worldwide.

With respect to maternity protection, Article 61 of Bahrain's Labour Law provides for 45 days of maternity leave with full pay, and a further 15 days without pay. In addition, Article 62 provides for daily breast-feeding breaks.⁵⁰ This is a gender-sensitive, rights-based practice in line with Articles 11(2)(b) and (c) of CEDAW, which require the introduction of maternity leave with pay and the provision of necessary supporting social services to enable parents to combine family obligations with work responsibilities. However, since the Labour Law excludes domestic workers, and since the majority of these workers are women, the exclusion of domestic workers is discriminatory and contrary to the aims and purpose of CEDAW.

EMPLOYMENT CONTRACT

Bahrain's Policy on Labour Migration requires labour migrants to have a contract of employment. The contract must contain: the employer's name and address; the worker's name, qualifications, nationality, occupation, address, and identification; date of appointment; nature, type and place of employment; duration of contract; wage, method and date of payment; and any special conditions. Also, employers of foreign workers are required to pay the costs of repatriating the foreign worker to their country of origin at the completion, expiry or cessation of the work contract. If a foreign worker changes employers, the new employer is liable for paying the repatriation costs at the end of the work contract. Employers must also provide foreign workers with a receipt for all documents which may have been deposited with them for safekeeping.⁵¹

Contracts for migrant workers that stipulate working hours and minimum wages are regarded as good rights-based practices.⁵² However, a 2009 study by the LMRA found that 65 per cent of foreign workers had not seen their employment contract and that 89 per cent were unaware of their terms of employment.⁵³ When migrant workers are unaware of their contractual rights, they are less likely to challenge illegal behaviour by their employer. Additionally, when migrant workers' legal presence in a country is linked to an ongoing contractual relationship, the fear of deportation makes them less likely to report illegal conduct, and thus more vulnerable to abuse.⁵⁴

50 UPR National Report, Bahrain.

51 IOM, *Labour Migration from Indonesia* (2010)

52 Report of the Special Rapporteur on Migration to the UN Economic and Social Council of January 12, 2004. (E/CN.4/2004/76)

53 Human Rights Report – Bahrain 2012, U.S. State Department.

54 ILO, 'The Special Working Contract for Non Jordanian Domestic Workers' (2003)

MINIMUM WAGE

⁵⁵Several foreign governments have tried to introduce minimum wages for their nationals working in Bahrain, however, the Labour Minister has stated the government will not accept any minimum wage for foreign workers.⁵⁶ The lack of a minimum wage often results in very low pay for migrant workers. Many have found it increasingly difficult to cope with financial difficulties, and there has been an increase in the number of migrants taking their own lives.⁵⁷ Estimates show that foreign domestic workers in Bahrain earn approximately 20 per cent of average wages.⁵⁸ Because the vast majority of domestic workers are women, this constitutes de facto discrimination based on gender and is a violation of Article 11 (d) of the CEDAW, which guarantees women the right to equal remuneration.

MINIMUM AGE

The minimum age for employment is 16, however younger people aged between 14 and 16 may be allowed to work in special circumstances. They may not work more than six hours per day and are prohibited from working in industries that are hazardous or unhealthy, including construction, mining, and oil refining.⁵⁹ Some sending countries have established minimum ages for their citizens working in Bahrain. For example, Bangladesh does not allow women under 25 to work as domestic helpers,⁶⁰ Indonesia requires that its workers migrating to Bahrain must be 18 or older, but domestic workers must be at least 21,⁶¹ and an agreement with the Philippines states that domestic workers from that country must be at least 30 years old.⁶²

BENEFITS AND HEALTH CARE

The Government does not charge taxes from any workers, including female migrant workers. Medical care is also free for all people living in Bahrain, including female migrant workers.⁶³ These are good examples of gender-sensitive rights-based practices in that they do not discriminate between benefits available to men and women, or between Bahrainis and foreigners.

55 US Department of State, Human Rights Report 2010, Bahrain.

56 Wage Woes for Maids, Bahrain Centre for Human Rights, 2006

57 *Poverty drives migrant Indian workers in Bahrain to suicide*, Bahrain Centre for Human Rights, June 2012. Available at: <http://www.bahrainrights.org/en/node/1288>

58 *Domestic Work Policy Brief: Remuneration in Domestic Work*, ILO 2011 available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_155654.pdf

59 *Human Rights Report 2011 – Bahrain*, Section 7c, U.S. State Department. 50 UPR National Report, Bahrain.

60 ILO (2011), Report on the review of The Decent Work Country programme: Bangladesh 2006-2009. 52 Report of the Special Rapporteur on Migration to the UN Economic and Social Council of January 12, 2004. (E/CN.4/2004/76)

61 *Labour Migration from Indonesia*, p. 74, IOM, 2010

62 *International Migration Papers, No. 1, Women Migrant Domestic Workers in Bahrain*, p. 22, ILO, 2002 available at: <http://www.ilo.org/public/english/protection/migrant/download/imp/imp47e.pdf>

63 UNIFEM, 'Legal Protection for Migrant Domestic Workers in Asia and the Arab States' (2008)

REGULATION OF EMPLOYMENT AGENCIES

All recruitment agents must be licensed by the Ministry of Labour and Social Affairs, and employers are cautioned not to enter into a contract with a recruitment agent unless it holds a valid licence. According to regulations, the employee should not be charged with any costs related to obtaining or retaining employment.⁶⁴ However, in practice many labour recruitment agencies in Bahrain and source countries require workers to pay high recruitment fees, a practice that makes them highly vulnerable to forced labour once in Bahrain.⁶⁵ According to one trade union officer, female labour migrants who migrate to Bahrain to work in the domestic sector are particularly vulnerable to exploitation by recruitment agencies, which have reportedly demanded up to three months' salary in exchange for a visa, far in excess of the regular recruitment fees.⁶⁶

The Ministry of Labour and Social Affairs supervises and conducts regular inspection of employment agencies. Between 2002 and 2010, authorities closed 105 agencies that were accused of confiscating labour migrants' passports, switching contracts or withholding salaries.⁶⁷ Economic exploitation by recruitment agents and other service providers violates migrant women's equal right to employment. It is therefore critical that Bahrain continue to monitor recruitment agents closely, particularly those focused on hiring domestic workers, as they are particularly vulnerable to exploitation given that they are not covered under labour laws.

WORK SAFETY

The Ministry of Labour enforces the labour law and determines acceptable conditions of work for all employees, except domestic workers. During 2011, the Ministry of Labour employed 43 inspectors to check for compliance with workplace safety standards. Inspectors are authorized to issue fines and close worksites if employers are in violation of regulations. Penalties include fines from 50 dinars (133 dollars) to 300 dinars (798 dollars).⁶⁸ During the year inspectors visited 354 migrant labour camps to verify that workers' accommodation met required safety and hygiene standards. According to a report by the US State Department: "Violations were found in 348 camps; 230 were issued orders to rectify the violations, nine cases were transferred to the public prosecution for legal action, and the other cases remained under investigation as of year's end."⁶⁹

Unfortunately, however, inspectors are only authorized to inspect commercially registered workplaces, but not private homes where most domestic workers live, or unregistered "private" camps where many unskilled labourers work.⁷⁰ This lack of oversight leaves tens of

64 *Labour Migration from Indonesia*, p. 74, IOM, 2010

65 *Trafficking in Persons Report 2012 – Bahrain*, US Department of State.

66 *Labour Migration from Indonesia*, p. 76, IOM, 2010

67 *Labour Migration from Indonesia*, p. 77, IOM, 2010

68 *Human Rights Report 2011 – Bahrain*, U.S. State Department

69 *Human Rights Report 2011 – Bahrain*, U.S. State Department

70 *Human Rights Report 2011 – Bahrain*, U.S. State Department

thousands of women vulnerable to unsafe working conditions. There are credible reports of domestic workers being forced to work up to 16 hours per day with little time off, becoming malnourished, and being subjected to verbal and physical abuse, including sexual molestation and rape.⁷¹ Human rights advocates have reported that as a result, between 30 and 40 per cent of the recent attempted suicide cases handled by the government's psychiatric hospitals have been foreign domestic workers.⁷²

Excluding private homes from workplace inspections is discriminatory because the vast majority of migrant women in Bahrain work in domestic settings.⁷³ The lack of oversight has led to abuse and exploitation of domestic workers in violation of Article 11(f) of the CEDAW, which guarantees women the right to protection of health and safety in working conditions. Domestic workers are also excluded from the Law on Social Insurance (Decree Law No. 24/1976), which provides for insurance against: old-age pension payments; disability and death; employment injuries; and temporary disability by reason of sickness or maternity, among other benefits. However, it has been reported that the government is in the process of including domestic workers in the coverage of the law and there is a plan to establish an agency to deal with this matter.⁷⁴ Bahrain should move quickly to ensure coverage of domestic workers under the social insurance law in order to comply with Article 11 (e) of the CEDAW guaranteeing women the right to social security in cases of retirement, unemployment, sickness, invalidity and old age.

EQUALITY BEFORE THE LAW

Article 15 of the CEDAW requires States parties to accord to women equality with men before the law, including laws related to freedom of association and freedom of movement.

FREEDOM OF ASSOCIATION

The US State Department has reported that, “[w]ith the exception of domestic servants, foreign workers, who made up approximately 60 per cent of the workforce, are allowed to join unions. The law prohibits unions from engaging in political activities and states that all trade unions are required to join the General Federation of Bahrain Trade Unions (GFBTU).”⁷⁵ This law is discriminatory in that it only allows migrant workers who are not engaged in domestic work to exercise their freedom of association, thereby violating Article 15 of CEDAW, which guarantees women equality before the law.

71 *Human Rights Report 2011 – Bahrain*, U.S. State Department

72 *The Situation of Women Migrant Domestic Workers in Bahrain, Report Submitted to the 42nd Session of the CEDAW Committee*, Bahrain centre for Human Rights, Bahrain Youth Society for Human Rights, and Caram Asia, October 2008. Available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CARAMASIA Bahrain42.pdf>

73 *The Situation of Women Migrant Domestic Workers in Bahrain, Report Submitted to the 42nd Session of the CEDAW Committee*, Bahrain centre for Human Rights, Bahrain Youth Society for Human Rights, and Caram Asia, October 2008. Available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CARAMASIA Bahrain42.pdf>

74 UNIFEM, ‘Legal Protection for Migrant Domestic Workers in Asia and the Arab States’ (2008)

75 *Human Rights Report 2011 – Bahrain*, U.S. State Department

Bilateral Trade Union Agreements on Migrant Workers

In 2009, Bahrain entered into a bilateral trade union agreement about migrant workers with leaders of three national trade union centres in Sri Lanka. The aim of the agreement is to promote migrant workers' rights by: improving trade union protection; coordinating activities between trade unions in Sri Lanka and Bahrain; campaigning for ratification of relevant conventions; raising awareness of the benefits of labour migration; and addressing migrants' occupational health and safety and housing concerns. Importantly, the agreements call for gender equality, including equality of treatment and non-discrimination, and state the need for special protection for vulnerable categories of workers, such as agricultural and domestic workers.⁷⁶

These agreements are good gender-sensitive rights-based practices in line with the CEDAW, as they support equality between men and women, recognize domestic workers' contributions, and promote measures to ensure women's rights are protected in the workplace.

Freedom of Movement

Article 15(4) of CEDAW requires States parties to accord to women equality with men before the law, including laws related to freedom of movement. In Bahrain, in contrast to many other Gulf nations, labour migrants have the right to keep their own passports. According to Bahraini law, no person is allowed to keep another person's passport. This makes it easier for labour migrants to move freely, leave their employers, contact their consulate or seek refuge at a shelter if they encounter problems at the workplace.

Despite this, the law prohibiting the withholding of employees' passports has not been effectively enforced, thus employers still routinely retain the passports of domestic workers.⁷⁷ Confiscation of travel documents and belongings by employers restricts freedom of movement and makes it difficult for women migrant workers to leave the country or return home if required. This practice is a violation of CEDAW Article 15(4), which accords men and women the same rights with regard to movement.

WOMEN'S ACCESS TO JUSTICE

Redress For Workers' Rights

A number of avenues exist for female migrant workers to seek redress for workplace violations. When a worker lodges a complaint, the Ministry of Labour is charged with opening an investigation and, when appropriate, taking remedial action. The ministry reportedly received 5,132 complaints during 2009, including an average of 11 from domestic workers per month. Ministry officials stated that they were able to resolve most cases through mediation, and

⁷⁶ *Bilateral trade union agreements on migrant workers rights between Sri Lanka and Bahrain, Kuwait and Jordan*, ILO 2009, available at: http://www.ilo.org/dyn/migpractice/migmmain.showPractice?p_lang=en&p_practice_id=32

⁷⁷ *Trafficking in Persons Report – Bahrain*, U.S. State Department, 2012.

public prosecutors took the remaining for investigation. Complaints that cannot be settled through arbitration must be referred to the court within 15 days. Resolutions of disputes are exempt from fees at all stages of the proceedings.⁷⁸ Additionally, if a contract dispute involving a domestic worker cannot be resolved and goes to court, the court will appoint a lawyer for the migrant worker.⁷⁹ Employers of citizens and migrant workers who fail to pay wages as required by law are liable to face fines and imprisonment.⁸⁰

In theory, these are good protections, however, many migrant women, particularly domestic workers who still work under the Kafala system, refrain from making complaints to authorities out of fear of deportation or employer retaliation.⁸¹ If a victim brings a suit against her employer, she cannot leave the country for the duration of the case, which is difficult without financial support. The Migrant Workers Protection Society (MWPS) provides some compensation to victims but the amount is reportedly low. Also, most victims of rape by their employers do not seek legal redress since local courts require witnesses to prove guilt for such assaults.⁸² As a result, the CEDAW Committee has urged Bahrain to strengthen its efforts to ensure that migrant domestic workers have adequate legal protection, are aware of their rights and have access to legal aid.⁸³

Redress For Violence Against Women

Bahrain has no laws or government policies that specifically address gender-based violence, and there is a lack of enforcement for the existing legal provisions that may apply. For example, the think tank Freedom House has noted that “the penal code generally addresses violence against citizens, but this is not adequate to protect against sexual harassment and domestic abuse. Wives, daughters, and female foreign workers rarely seek legal redress for violence committed against them, and when they do, the perpetrators often avoid punishment, thereby exposing victims to additional maltreatment ... Additionally, under Article 353 of the penal code, a rapist may avoid punishment if he agrees to marry his victim.”⁸⁴ This lack of legal protection for women who are victims of violence violates Article 2 of the CEDAW, which obligates States parties to “take all appropriate measures including legislation to modify or abolish existing laws, regulations, customs and practices, which constitute discrimination against women.” As the CEDAW Committee noted in its General Recommendation 19, gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.

The Government does run a hotline for victims of violence, and there is one government-run shelter in Bahrain, which is funded by the Ministry of Social Affairs. The shelter can accommodate up to 20 people and is offered to women and children who have been

78 Labour Law for the Private Sector, Article 155.

79 ECOSOC, ‘Report of the Special Rapporteur on Migrant Workers, (E/CN.4/2004/76) (2004) .

80 UNIFEM, ‘Legal Protection for Migrant Domestic Workers in Asia and the Arab States’ (2008).

81 US Department of State, Human Rights Report 2010, Bahrain.

82 US Department of State, Human Rights Report 2010, Bahrain.

83 Concluding Observations of the CEDAW Committee – Bahrain 2008.

84 *Women’s Rights in the Middle East and North Africa – Progress amidst resistance*. Bahrain Chapter p.6, Freedom House, 2010.

victims of violence, irrespective of their nationality. The shelter provides protection to victims, including legal assistance, accommodation, meals and recovery assistance. Prior to accommodating victims, police reports are filed to ensure that the claims of violence against the victims are processed, as well as confirming the identity of victims and ensuring that their status is not irregular.

The MWPS, with financial assistance from the government, also manages a shelter for both victims of trafficking and abused labour migrants, including female domestic workers.

Additionally, a number of embassies such as that of the Philippines offer shelter and other direct assistance to their nationals. The Indonesian Government shelter also has the capacity to accommodate 20 domestic workers fleeing abuse.⁸⁵

The Government also continues to conduct awareness campaigns and publishes pamphlets on foreign resident workers' rights in several languages, which are provided to local diplomatic missions. Yet despite these efforts, many foreign workers remain unaware of their rights under the law.⁸⁶ In its General Recommendation 26 the CEDAW Committee commented on the practical barriers that may prevent women from accessing justice. It noted that women migrant workers often lack knowledge of their embassies or of services available, due to their dependence on employers. General Recommendation 26 recognizes that it is very difficult for women migrant domestic workers who rarely leave the house to even register with embassies, let alone file complaints. Thus, the Government must take all steps necessary to ensure women migrant workers, particularly those working in private homes, have access to information about their rights and are able to access justice mechanisms when needed.

F. ANALYSIS AND CONCLUSIONS

In recent years the Government of Bahrain has taken steps towards improving the standing of women in Bahrain. The quasi-governmental Supreme Council for Women (SCW) has played an important role in this process, by: helping the government formulate policies on women's issues; promoting political participation of women; organizing workshops and publishing studies on gender issues; and generally advocating for gender equality. Additionally, the adoption of a national strategy for the advancement of women, and the new law to combat trafficking are welcome initiatives to further promote and protect the rights of women. A number of other concrete measures taken by Bahrain are also gender-sensitive and rights-based good practices, including:

85 IOM, *Labour Migration from Indonesia (2010)*

86 US Department of State, *Human Rights Report 2010, Bahrain*.

- Establishment of the National Committee to Combat Human Trafficking with the responsibility to devise programmes to prevent and combat human trafficking and protect victims from further harm, and to coordinate with national machinery with regard to human trafficking data.
- Gender-sensitive bilateral trade union agreements on migrant workers with Sri Lanka.
- A policy requiring all labour migrants, regardless of occupation, to have a contract of employment.
- A policy to not charge taxes from any workers, including female migrant workers.
- Provision of free medical care to all migrant workers, including domestic workers.
- A Ministry of Labour policy to review the records of complaints or disputes filed against employers before approving their applications for employment of migrant domestic workers.
- Distribution of brochures on workers' rights at airports, health centres, and foreign embassies.
- Establishment of centres within the Supreme Council for Women, with offices in all governorates, to receive and act on women's complaints.
- Establishment of complaint hotlines for migrant workers.
- Establishment of a shelter for women victims of violence, including migrant workers.
- The Constitution which enshrines the principle of equality between men and women and further provides that the CEDAW has the status of law in Bahrain and can thus be directly applied.
- Introduction of a new curriculum entitled "Citizenship," which addresses human rights issues, and aims to empower women in society.
- Partial repeal of the Kafala system.
- Requirements that employers meet the costs of repatriating foreign workers to their country of origin at the completion of the work contract.
- A media campaign to educate vulnerable populations about the risks of trafficking.
- Labour laws mandating a maximum of 48 hours of work per week, and 45 days of maternity leave with pay, plus 15 days without pay (although these exclude domestic workers).
- Provisions for daily breastfeeding breaks at work.
- Order 79 of 16 April 2009, which gives foreign workers (except domestic workers) the right to transfer from one employer to another.
- Laws prohibiting sexual harassment.
- Government licensing and inspections of recruitment agencies, and fines and closures for those that do not abide by regulations.
- Inspections for workplace safety (excluding private homes).
- Giving migrant workers the right to join trade unions (except domestic workers).
- Regulations providing that foreign workers have the right to keep their own passports.
- Legal mechanisms for resolving complaints by migrant workers include: investigations, mediation, appointments of lawyers that proceed to court.

Despite these positive developments, women migrant workers in Bahrain, particularly domestic workers, are particularly vulnerable to abuse and exploitation. They are not protected by labour laws and are often subjected to conditions of involuntary servitude, with long working hours, minimal wages, limitations on their movement, and exposure to threats and violence. Additionally, because domestic workers are isolated and fear deportation if they complain, it is very difficult for them to seek legal redress. To address these problems, and better protect

the rights of women migrant workers in Bahrain, it is recommended that the Government consider the following recommendations.

G. RECOMMENDATIONS

- Incorporate the definition of discrimination against women, as contained in Article 1 of the Convention, into domestic legislation.
- Revise the Labour Code again to ensure that it provides to women migrant workers, including domestic workers, the same rights and protection that are extended to all other workers in the country, including the right to organize and freely associate.
- Ensure that contracts for women migrant workers are legally valid and enforce wage and hour regulations, health and safety codes and holiday and vacation leave regulations. Ensure workers are shown their contracts and have it explained to them in their own language.
- Put in place mechanisms for monitoring working conditions of migrant women, especially in the kinds of workplaces where vulnerable women dominate, such as private homes.
- Enact regulations relating to independent residency status to allow for the legal stay of a woman who flees her abusive employer or spouse, or is fired for complaining about abuse.
- Dismantle the Kafala system and end domestic workers' forced seclusion.
- Train police officers to protect the rights of women migrant workers.
- Increase information exchange and bilateral cooperation agreements with countries of origin, to prevent trafficking.
- Provide mandatory awareness-raising programmes concerning the rights of migrant women workers, and gender-sensitivity training for: recruitment agencies; employers; and relevant State employees, such as criminal justice officers, border police, immigration authorities, border police and social service and healthcare providers.
- Improve procedures for examination of families who are allowed to employ domestic workers to ensure that they are financially capable and will respect the human rights of their employees.
- Enforce laws requiring employers to pay all transportation costs of migrant workers.
- Ratify the convention on migrant workers as well as other ILO conventions related to migrant work.
- Withdraw all reservations to CEDAW.
- Enhance efforts to eliminate stereotypes regarding the roles of women and men in the family and society.
- Ensure migrant women are not subjected to medical tests without their consent; ensure adequate counselling and services are provided to women when test results are provided; and ensure test results are not provided to anyone without workers' consent.
- Punish recruitment agencies found to be charging migrant workers exorbitant fees.
- Punish employers found to be withholding workers' passports and restricting their movements.
- Ensure mechanisms are in place to identify victims of trafficking and ensure victims are not punished for offences related to their having been trafficked.

- Include domestic workers under Order No. 79 of 16 April 2009 to allow them to transfer from one employer to another.
- Enhance enforcement of laws related to sexual harassment.
- Enact a minimum wage that allows all workers to make a decent living.
- Monitor recruitment agencies more closely, particularly those recruiting migrant women for domestic work.
- Include migrant women domestic workers in the Law on Social Insurance.
- Allow domestic workers to join unions.
- Increase access to justice mechanisms for migrant workers by providing legal assistance in contract negotiations and in seeking redress for violations. Provide adequate financial assistance to migrant workers participating in investigations.
- Enact a law to specifically address gender-based violence, and repeal the law allowing rapists to go unpunished if they marry their victim.
- Increase the number of services/shelters available to victims of violence.

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