



The Female Workforce in Bahrain

Underrepresentation,
Discrimination, and
Inadequate Reforms



BAHRAIN CENTER FOR HUMAN RIGHTS
Defending and promoting human rights in Bahrain

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About Us

The Bahrain Center for Human Rights (BCHR) is a non-profit, non-governmental organization, registered with the Bahraini Ministry of Labor and Social Services since July 2002. Despite an order by the authorities in November 2004 to close down, BCHR is still functioning after gaining a wide local and international support for its struggle to promote human rights in Bahrain.

The vast majority of our operations are carried out in Bahrain, while a small office in exile, founded in 2011, is maintained in Copenhagen, Denmark, to coordinate our international advocacy program. For more than 18 years, BCHR has carried out numerous projects, including advocacy, online security trainings, workshops, seminars, media campaigns and reporting to UN mechanisms and international NGOs. BCHR has also participated in many regional and international conferences and workshops in addition to testifying in national parliaments across Europe, the EU parliament, and the United States Congress. BCHR receives its fund from the Norwegian Human Rights Fund (NHRF), National Endowment for Democracy (NED), Sigrid Rausing Trust (SRT), CIVICUS, the International Federation for Human Rights (FIDH), IFEX and Digital Defenders Partnership (DDP).

BCHR has received several awards for its efforts to promote democracy and human rights in Bahrain.

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Abbreviations

ILO	International Labor Organization
UN	United Nations
BCHR	Bahrain Center for Human Rights
CEACR	ILO Committee of Experts on the Application of Conventions and Recommendations
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
DWs	Domestic Workers
MDWs	Migrant Domestic Workers
GCC	Gulf Cooperation Council
LMRA	Labor Market Regulatory Authority
BD	Bahraini Dinar
WPS	Wage Protection system

Introduction

Achieving 'gender equality and empower all women and girls' constitutes the fifth goal of the UN 2030 Agenda for Sustainable Development, adopted by the UN General Assembly in 2015. This goal goes hand-in-hand with the International Labor Organization's Agenda for Decent Work, in which gender equality is one of its key elements. The ILO has been consistent in its efforts to address gender discrimination at work by incorporating gender non-discrimination in all its fundamental conventions and by adopting numerous legal instruments dedicated to tackling gender disparity at work.

Gender equality is not only a fundamental human right but also a prerequisite to a prosperous and just society; similarly, an equitable and functioning labor market depends on addressing gender disparities at work. Providing equal economic participation and opportunity for women and decent work conditions in both formal and informal economies are essential in asserting other rights whether social or political.

The World Economic Forum ranked Bahrain 133 out of 153 countries included in its global gender gap report of 2020, in the category of economic participation and opportunity. In recent years, Bahrain has introduced many reforms and regulations to address gender disparity at work in line with its international obligation. However, many of these reforms have not materialized, as women are still behind men in the world of work.

Bahrain has adopted many provisions in its legal system to address gender discrimination at the workplace, but none of them was comprehensive and explicit in addressing the problem. The provisions were generic and mostly with unclear implementation mechanisms. The lack of impact assessments also contributes to the unclarity of the reforms' implications on the ground. The gender wage gap persists, despite outright legal prohibition. Maternity benefits do not comply with international standards. Official statistics demonstrate how Bahraini women's skills and education are underutilized. While women outnumbered men at every educational level, they are underrepresented in the labor market. Labor unions are dominated by men both in membership and leadership. The representation of women in the public sector is concentrated in specific domains, whereas it is minimal in critical public institutions. Men also predominantly occupy senior management positions in the private sector. Stereotyped gender roles prevail and hinder women's career growth.

Domestic workers are subject to legalized discrimination, as domestic work is minimally regulated. The labor legal system explicitly excludes domestic workers from fundamental protections. Migrant domestic workers

(MDWs) have been systematically ruled out from labor reforms. The unified contract for MDWs, adopted in 2017, was supposed to compensate for the legal loopholes, concerning their protection, but it failed to do so. The Bahraini government has been unserious in addressing forced labor crimes, as no convictions have been achieved. At the time Kafala system is eased for other migrant workers in Bahrain through the introduction of the Flexi-Permit scheme, it is continuing in full force for MDWs. Overall, Bahrain has not taken any radical reforms to protect this vulnerable group of workers.

International legal framework for gender equality at the workplace

Gender discrimination has been one of the most prevalent forms of discrimination globally. Women are being discriminated against in every societal sphere, including at the workplace. Numerous international conventions addressed gender equality, most importantly the Universal Declaration of Human Rights and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). More conventions have been drafted to tackle gender discrimination at work, such as:

- Workers with Family Responsibilities Convention 1981 (No. 156)
- The Equal Remuneration Convention 1951 (No. 100)
- The Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- The Maternity Protection Convention, 2000 (No. 183), and the Violence and Harassment Convention, 2019 (No. 190).

Besides the ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998, which commits all the ILO members to promote and respect four fundamental principles, regardless of their treaty obligations, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labor;
- (c) the effective abolition of child labor; and
- (d) the elimination of discrimination in respect of employment and occupation.

The international labor standards, which are set out by the International Labor Conference, along with recommendations that serve as guidelines, provide for global standards for gender equality at work.

Regulations concerning gender discrimination at work in Bahrain

Bahrain international obligations regarding the elimination of gender discrimination at the workplace stem from two main conventions: The Discrimination (Employment and Occupation) Convention, 1958 (No. 111) to which Bahrain has been a party since 2000, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which is considered the most comprehensive legal instrument to address gender discrimination, ratified by Bahrain in 2002. However, the Bahraini government has not ratified the majority of international conventions on gender equality at work.

Predominantly, Bahrain has not been demonstrating enough commitment to reform its labor laws and policies in line with international standards set by ILO. The latter's committee of experts on the application of conventions and recommendations (CEACR) commented in 2019 that the Bahraini government has seriously failed to submit the instruments, adopted by the International Labor Conference, to the competent authorities responsible for formulating national policies and regulations. The committee of experts expressed "the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018 and June 2019, that the Government will take immediate steps to submit Conventions, Recommendations, and Protocols to the National Assembly. The Committee therefore once again urges the Government to provide full information on the submission to the National Assembly of the 22 instruments adopted by the Conference at 14 sessions held between 2000 and 2017."¹ According to the ILO, Bahrain has not ratified three fundamental conventions, three governance conventions, and sixty-four technical conventions, at the time of writing.

Theoretically, the Bahraini legal system provides for equality and non-discrimination; the constitution of 2002 guarantees equal rights for all citizens, and prohibits discrimination based on sex among other discriminatory grounds, under Articles 4 and 18.

As for women's employment, the labor law for the private sector of 2012 stipulates "working women shall be subject to all the provisions governing the employment of workers without discrimination between them where their employment conditions are similar." Under Article 39 of the same law, discrimination in the payment of wages for the mere difference of sex, ethnic origin, language, religion or belief is prohibited. The law provides further protections for women workers: a female worker is entitled to maternity leave on full pay for sixty days

¹ Observation on submission to competent authorities – 2019, available at https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4013996

instead of forty-five days stipulated in the previous law, nursing breaks until a child is one-year-old without any reduction of the wage, and unpaid leave to look after her infant child under the age of six years. Nevertheless, the law provides for two articles that discriminate against women, namely Articles 30 and 31, under which the government can issue a resolution determining the jobs and events where it is unpermitted to employ women during the night and also determine the occupations for which the employment of women is prohibited.²

The Conference Committee on the Application of Standards, in their review of Bahrain's implementation of Convention (No. 111) in 2018, referred to Articles 30 and 31 of the Bahraini labor law of 2012, requesting the Bahrain government to "take the necessary measures to ensure that protective measures applicable to women are limited to maternity protection in the strict sense." The committee concluded that "protective measures applicable to women's employment, which are based on stereotypes regarding women's professional abilities and role in society, violate the principle of equality of opportunity between men and women in employment and occupation enshrined in the Convention."³

On 27 August 2020, the Bahraini Government issued Resolution No. 52 of 2020 setting out an outright prohibition on the discrimination of wages between male and female employees who hold the same job and who work in similar conditions. It also issued two Resolutions No. 50 and 51 of 2020 lifting the previous restrictions on women's employment that had been adopted by the government under the aforementioned articles in the labor law.⁴

Despite the amendments and reforms carried out by the Bahraini government in the last decade to address gender discrimination at the workplace, which Resolutions 50, 51, and 52 are their latest, Bahrain still needs to address several issues, especially with regard to the protection of female domestic workers, which we will discuss later in detail.

² It is worth noting that the law of civil service, which regulates employment in the public sector, has no special provisions on the employment of women.

³ Conference Committee on the Application of Standards – Record of Proceedings – International Labor Conference 107th, Geneva 2018.

⁴ The Resolutions are available at the Legislation and Legal Opinion Commission website (in Arabic):

<https://www.legalaffairs.gov.bh/120.aspx?cms=iQRpheuphYtJ6pyXUGiNqt8llceggBXk>

Gender discrimination and sexual harassment in the Bahraini labor law

The Bahraini labor legal system prohibits discrimination in a number of its provisions; however, until 2018, there had been no unequivocal prohibition of gender discrimination, and serious issues, such as sexual harassment had not been properly addressed. The UN Committee on the Elimination of Discrimination against Women, in its concluding observations on the third periodic report of Bahrain in 2014, noted “the need for the State party’s national legislation to contain an explicit prohibition of discrimination against women, as defined in article 1 of the Convention.” The committee also recommends the Bahraini government to review and revise discriminatory legal provisions, especially in its penal code and nationality law. As for women’s employment, the report concluded “women are disproportionately affected by unemployment and discrimination relating to work and:

(a) That a persistent wage gap between women and men exists in practice;

(b) That neither the Penal Code nor Law No. 36/2012 governing labor in the private sector specifically defines or criminalizes sexual harassment in the workplace.”⁵

The European Union reiterated the UN committee concern, regarding lack of explicit prohibition of sexual harassment at work, in its statement before the Committee on the Application of Standards in 2017, where it articulated that “although prohibited in the Penal Code, the Labor Law does not define nor prohibit sexual harassment in the workplace. Given the sensitivity of the issue (...) we call on the Government to include additional provisions also in the labor or civil law.”⁶

The ILO considers sexual harassment a “serious manifestation of sex discrimination” that needs to be handled expressly. The Bahraini government in its response to the ILO remarks regarding this issue stressed that “no cases of sexual harassment in the workplace have been reported and no complaints of this type have been registered by (...) relevant bodies.” The ILO Committee on the Application of Standards pointed out “the absence of reported cases on sexual harassment ... does not necessarily indicate that this form of sex discrimination does

⁵ Concluding observations on the third periodic report of Bahrain, the UN committee on the elimination of discrimination against women, 10 March 2014.

⁶ ILO – ILC 106 – EU Statement – Committee on the Application of Standards: Bahrain (Convention No 111), Geneva, 15 June 2017.

not exist; rather, it is likely to reflect the lack of an appropriate legal framework (...) understanding and recognition of this form of sex discrimination.”⁷

In December 2018, the government issued decree-law number 59 made it illegal for employers to discriminate against workers based on sex, origin, language, religion, or creed. Practically, the new provision has not added additional value in addressing gender discrimination at the workplace. It is generic, as it prohibits gender discrimination among other criteria, with no explicit articulation of means and areas of discrimination. The definition of discrimination in the ILO Discrimination (Employment and Occupation) Convention (No. 111), to which Bahrain is a party, constitutes an important reference in addressing discrimination. Article 1 stipulates: the term discrimination includes:

(a) any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organizations, where such exist, and with other appropriate bodies.

The decree-law of 2018 also criminalized sexual harassment at work. The amendment states: “Every worker sexually harasses one of his co-workers, during work or because of it, whether by reference, speech, deed, or any other means, shall be punished by imprisonment for a period not exceeding one year or by a fine not exceeding one hundred dinars. The penalty of imprisonment for no less than six months or a fine of not less than five hundred dinars and not more than one thousand dinars, if the crime is committed by the employer or his representative.”⁸

The Minister of Labor and Social Development stated that this amendment was in line with the -
aforementioned- observations of the ILO.

⁷ Conference Committee on the Application of Standards – Record of Proceedings – International Labor Conference 107th, Geneva 2018.

⁸ The decree-law is available at the Legislation and Legal Opinion Commission website (in Arabic):

<https://www.legalaffairs.gov.bh/14597.aspx?cms=q8FmFJgiscJUAh5wTFxPQnjc67hw%2Bcd53dCDU8XkwhyDqZn9xoYKj0tY0%2B%2FNpcC9o1UE%2FdI8%2BoEpZEM37MaDcg%3D%3D>

Although it is a step forward, the amendment of the labor law is again too general and lacks clarity. It does not define sexual harassment or what behaviors constitute sexual harassment. It has not specified complaint mechanisms nor addressed reprisals. What is the scope and coverage of this provision, does it cover the recruitment phase, for example? What about third-party sexual harassment (clients, customers, etc.), is it the responsibility of the employers to secure a safe environment? Who is responsible for investigating complaints? Are persons appointed by the employers handle such cases? It is also unclear if this amendment covers DWs, as they are the most vulnerable to sexual harassment due to their work in private houses. Two years after adopting this amendment, there are no clear answers to these questions.

Social and cultural norms play a significant role in reporting sexual harassment incidents at the workplace, and fear of reprisal is another significant determining factor; this is especially true for migrant female workers, who out of fear of losing their jobs may avoid seeking justice. Without a comprehensive and convenient legal system, along with a clear enforcement mechanism, victims would be unable to access remedies. Lack of implementation measures, confidentiality, and a clear policy could prevent victims from reporting violations. The ILO adopted the Violence and Harassment Convention, 2019 (No. 190) in its effort to prevent sexual harassment at work, by which the ILO sets a clear legal framework; Bahrain has not ratified this convention.

Manifestations of gender discrimination at work

The rate of women's participation in the workforce and the wage gap are other manifestations of gender discrimination at the workplace. The United States department of state, in its 2019 country report on human rights practices in Bahrain, concluded that "Labor laws prohibit discrimination against women, but discrimination against women was systemic, especially in the workplace, although the law prohibits wage discrimination based on gender."⁹ This conclusion is evident in the official statistics of different public institutions in Bahrain.

The number of Bahraini female students enrolled in higher education was higher at every level, including doctoral, in the academic year 2013-14, according to the ministry of education statistics, yet women's employment does not correspond with this reality. The percentage of women's participation in the Bahraini workforce differs between the public and private sectors. Female labor force participation in the public sector has been steadily increasing during the last three decades; it has risen from 29 percent in 1990 to 45 percent in 2020.¹⁰ Although 45 percent is relatively high compared to the region¹¹, employment of women is concentrated in specific sectors, such as education and health, while vital institutions, such as the supreme judicial council, and the ministry of finance and national economy are dominated by men, where gender gap reached 90.2 percent, and 63.5 percent in favor of men, respectively.¹² In the private sector, women made up 32.8 percent of the total workforce in 2016; it is unclear whether this percentage includes domestic workers. Bahraini women also owned 39 percent of the Individual Commercial Registrations as of August 2016.¹³

According to the statistical report 2020 of the social insurance organization in Bahrain, the average salary for men in the public sector is 882 BD, while for women is 778 BD, whereas men are paid 885 BD a month on

⁹ The report available at <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/bahrain/>

¹⁰ Labor Force Participation Rate, female – World Bank, available at <https://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS?locations=BH>

¹¹ In 2018, the International Labor Organization estimated labor force participation among women in the Arab countries at 18.4 percent, whereas among men at 77.2 percent. The women's participation in the labor force in the region is significantly low compared to the global rate of 48 percent: Employment Promotion – Facts & Figures, available at <https://www.ilo.org/beirut/areasofwork/employment-policy/lang--en/index.htm>

¹² The Supreme Council for Women in Bahrain published a study indicating the gender gap in different ministries and public institutions in 2013. You can find the report in Arabic on their website: www.scw.bh

¹³ The Supreme Council for Women website: www.scw.bh

average in the private sector, compared to 593 BD for women.¹⁴ The gender disparity exists in both the public and private sectors, but it is more evident in the latter. It could be because “women are mostly concentrated in the entry and middle-level management roles, despite being proficient” in the Bahraini private sector.¹⁵ The low participation of women in ‘senior management’ despite a high level of education is another indication of gender discrimination.

Likewise, the lack of female representation in labor unions, maternity benefits and expenses, and cultural stereotypes are indicators of this disparity as well as its contributors, and they need to be addressed.

In 2014, the Bahrain Women Union estimated women’s participation in trade unions at only seven percent of the trade unions membership, and unionized women at only three percent of the country’s female workforce. As for leadership positions at trade unions, women constituted nine percent of the total members of the unions’ councils, which is much less than the global average of 28 percent.¹⁶ Collective bargaining is vital in improving the pay and employment conditions of women workers, and trade unions are excellent platforms for women to organize and voice their needs. Yet, women are less likely to join unions than men worldwide. ILO explains this trend as another face of gender discrimination, as trade unions reflect gender imbalance in the world of work. The ILO report noted that increased gender diversity in membership and leadership in trade unions result in more gender-responsive decisions and policies.¹⁷ The higher the representation of women in Bahrain in trade unions, the more likely they can improve their working conditions and advocate for their rights. Therefore, Bahrain needs to enact regulations to enhance female membership in trade unions. Several countries adopted quota systems to increase women’s representation in trade unions to reduce the gap, and Bahrain could follow suit.

Extending the maternity leave to fully-paid sixty days instead of forty-five days, and other protections provided for women in the new labor law of 2012, has raised some concerns that employers would refrain from recruiting women to avoid the additional burdens. In principle, extended maternity leave should not adversely affect the employability of women as long as the extension is taken within a clear framework of action to address gender discrimination. The ILO considers three dimensions when assessing the conformity of maternity leave regulations with international standards: the leave duration, the level of payment, and the source of funding.

¹⁴ Statistical Reports – The social insurance organization., available at https://www.sio.gov.bh/public/SIO_StatisticsReports?In=E

¹⁵ Role Enhancement for Bahraini Women in the Private Sector: Mainstreaming Women’s Needs in the Private Sector, Intellectual Resources Management W.L.L in Collaboration with Supreme Council for Women, Nov 2015.

¹⁶ Bahraini NGOs shadow report to CEDAW, 2014 – Bahrain Women Union. The report is available online in PDF form.

¹⁷ Empowering women at work – Trade unions policies and practices for gender equality, 2020, ILO, UN Women, and EU, available at https://www.ilo.org/global/docs/WCMS_760521/lang--en/index.htm

Although maternity leave in Bahrain is fully-paid, sixty days do not meet the international standards, stipulated by the ILO Convention on Maternity Protection of 2000, which set out a period of not less than 14 weeks. Moreover, under the Bahraini labor law, maternity benefits are paid by employers, which entails greater financial burdens; this may influence their decision to employ women. To avoid this result, the ILO seeks to replace individual liability schemes with maternity insurance scheme within the framework of social security law. According to ILO experience and available research, “employer liability schemes work against the interests of women workers, as employers may be reluctant to hire, retain or promote pregnant workers or women with family responsibilities or may seek to find reasons to discharge pregnant employees in order to avoid paying the costs of wage replacement during maternity leave as well as other (potential or actual) direct and indirect costs linked to their replacement. In many cases, this simply means not hiring women of childbearing age at all.”¹⁸

Overall, Bahrain does not meet international standards concerning maternity leave. Adopting a maternity insurance scheme funded through social security or public funds would incentivize more business owners to employ women, and all women, including self-employed and domestic workers, would be entitled to maternity benefits, which is a prerequisite to gender equality at work. As for paternity leave, the law provides for one day on full pay for new fathers. The absence of paternity leave is also a demonstration of gender discrimination at work because it reinforces stereotyped gender roles and unequal division of tasks within the household. Paternity leave encourages men to share unpaid care and household work.

According to a study carried out in 2015 to identify tools for effective implementation of mainstreaming women’s needs in Bahrain, twenty-nine percent of the respondents can handle their work well but face a problem at balancing personal and professional life. In the banking and financial sector, fifty-nine percent of the respondents found that lack of equal opportunity and management support is the number one challenge they face in their current positions, while sixty-five percent identified cultural barriers as the number one challenge to overall career growth. The study concluded that Bahraini women employees need “support from family and society and flexible arrangements for balancing personal and professional life.”¹⁹

Men’s insufficient participation in household and childcare responsibilities, along with certain cultural expectations, hinder women from seeking employment or reaching their full potential at work. The Bahraini government can address this through comprehensive cultural and social policy. Meanwhile, more flexible working arrangements for women, access to quality and affordable childcare, and more paid time off to care for family

¹⁸ Maternity and paternity at work: law and practice across the world, International Labor Organization, Geneva, 2014.

¹⁹ Role Enhancement for Bahraini Women in the Private Sector: Mainstreaming Women’s Needs in the Private Sector, Intellectual Resources Management W.L.L in Collaboration with Supreme Council for Women, Nov 2015.

members or new babies should be provided. The UN Committee on the Elimination of Discrimination against Women, in its concluding observations on the third periodic report of Bahrain in 2014, called Bahrain to address gender stereotypes by implementing measures to bring about change to the widely shared stereotypical roles of women and men. It concluded, "The Committee remains concerned ... about the persistence of traditional stereotypes regarding the roles and responsibilities of women and men in society and, in particular, within the family."²⁰

²⁰ Concluding observations on the third periodic report of Bahrain, the UN committee on the elimination of discrimination against women, 10 March 2014.

International legal framework for protecting migrant domestic workers

According to the ILO, there are at least 67 million domestic workers (DWs) worldwide. It is a feminized sector, as 80 percent of all domestic workers are women. The ILO estimates that one in every twenty-five women workers in the world are domestic workers, and it considers them one of the most vulnerable groups of workers globally. Migrant domestic workers (MDWs) are often subject to not only abuse but also intersectional discrimination, along the lines of gender, race, and class, which place them at a further disadvantage compared to other female workers. Therefore, additional and comprehensive protection should be accorded to them.

As domestic workers carry out their job hidden from the public eye, they are more likely to face exploitation. The Human Rights Watches conducted extensive research, in many countries around the world, on domestic workers in 2006; their research revealed “an alarming prevalence of abuses against domestic workers. Many [domestic workers] described deplorable working conditions and egregious violations of their rights that are strikingly similar across countries.”²¹ Since then, improvements have been made, but dramatic change has not been achieved globally. Domestic workers continue to suffer from abuse, ranging from psychological abuse to physical and sexual violence. Delayed payment and non-payment of wages, excessive working hours with no daily or weekly breaks, passport confiscation, and food deprivation are common violations, which prompted the ILO to adopt a convention on domestic workers in 2011, along with other legal instruments to protect migrant workers in general.

Besides the conventions that protect women’s rights at the workplace, to which we referred earlier, the international law provides for various legal instruments to protect migrant workers and migrant domestic workers, and they include:

- The UN Convention on the Elimination of All Forms of Racial Discrimination, 1990
- The UN Convention for the Protection of the Rights of all Migrant Workers and members of their families, 1990

²¹ Swept Under the Rug: Abuses Against Domestic Workers Around the World, the Human Rights Watch, available at <https://www.hrw.org/report/2006/07/27/swept-under-rug/abuses-against-domestic-workers-around-world>

- UN Convention against Transnational Organized Crime, 2000 and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Forced Labor Convention, 1930 (No. 29) and (its Protocol, 2014)
- Abolition of Forced Labor Convention, 1957 (No. 105)
- The Equality of Treatment (Social Security) Convention, 1962 (No. 118)
- The Private Employment Agencies Convention, 1997 (No.181)
- The Domestic Workers Convention, 2011 (No.189), and many other protocols, recommendations, and guidelines.

Bahrain ratified the UN Convention on the Elimination of All Forms of Racial Discrimination and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, as well as both ILO conventions on forced labor, (No. 29) (No. 105); however, it has not ratified any of the conventions pertaining specifically to the protection of migrant workers or MDWs.

The legalized discrimination against domestic workers in Bahrain

The total number of domestic workers in Bahrain was 86349 in the second quarter of 2019, a decline of 17 percent compared to the same period the previous year.²² They account for 10.2 percent of the total Bahraini workforce and 36.6 percent of the total female workforce.²³ Although domestic workers constitute the majority of female workers in the country, they are not adequately protected by the law.

In the last 15 years, Bahrain has introduced several legal and policy reforms to improve the working conditions of migrant workers, but domestic workers were excluded from many protections, and some reforms fall short of granting them equal rights.

Establishing the Labor Market Regulatory Authority (LMRA) in 2006 was one of the most important steps taken by the government in its reform efforts. The LMRA is mandated with “regulating and controlling work permits for expatriate employees and self-employed, in addition to issuing licenses for manpower and recruitment agencies.” In 2009, the LMRA carried out a reform of the Kafala system²⁴, in which foreign workers are allowed to change employment without the permission of the sponsoring employer after a notice period agreed upon in the employment contract. This decision was revoked in 2011, where the new regulation required migrant workers to finish one year of service before they can change jobs without the permission of their employers. Moreover, the Bahraini government issued an anti-trafficking law in 2008, prohibiting all forms of trafficking in persons. It also promulgated a new labor law in 2012, covering both nationals and migrant workers, which accorded more labor protections than those had been provided by the old law of 1976.²⁵ In 2015, the LMRA established the Expat

²² Local newspaper Alayam, January 29, 2020:

https://www.alayam.com/alayam/first/839057/News.html?utm_campaign=magnet&utm_source=article_page&utm_medium=related_articles

²³ For more statistics about domestic workers in The Gulf visit: <https://www.migrant-rights.org/statistic/domesticworkers/>

²⁴ According to the ILO, the Kafala (Sponsorship) System “emerged in the 1950’s to regulate the relationship between employers and migrant workers in many countries in West Asia. It remains the routine practice in the Gulf Cooperation Council (GCC) countries of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates (UAE), and also in the Arab states of Jordan and Lebanon.” Under the Kafala system “a migrant worker’s immigration status is legally bound to an individual employer or sponsor (kafeel) for their contract period. The migrant worker cannot enter the country, transfer employment nor leave the country for any reason without first obtaining explicit written permission from the kafeel.”

²⁵ Facilitating exploitation: A review of labor laws for migrant domestic workers in GCC, International Trade Union Federation, 2017.

Protection Center (EPC). It serves as a shelter for migrant workers, regardless of their visa status, and works on resolving their cases. The LMRA also adopted a standard contract for domestic workers in 2017.

The Bahraini labor law for the private sector of 2012 excludes domestic workers from the majority of its provisions. It stipulates fundamental rights and protections, such as working hours limit, fewer working hours for Muslims during Ramadan, overtime compensation. In addition to daily and weekly rest periods, leave on full pay in specific circumstances, sick leave, compensation for employment injuries and diseases, childcare leave, maternity benefits, and prohibition of dismissal due to pregnancy, from which domestic workers do not benefit.

On the other hand, many protections provided by the labor law for DWs do not serve their purpose for this vulnerable group of workers.²⁶ For example, the right to terminate the contract of employment, stipulated in Article 105 and 106 of the law²⁷, despite their immense importance in protecting DWs from abusive employers, is not feasible for a lot of them for several reasons. This also applies to the right to litigation in case of a dispute.

In assessing the viability of these protections, we have to take into consideration multiple factors. First, the majority of MDWs are under strict confinement in their employers' houses – nothing in the law prohibits this practice - and they are not allowed to go out. Second, a lot of them are ill-informed about the law, and they are unaware of their rights. The language barrier is another factor, dissuading MDWs from pursuing litigation or filing complaints, besides the fear of retaliation by the employer. Moreover, many MDWs are not willing to terminate their contracts, even if they face abuse, due to debt bondage in their countries of origin. This illegal practice makes MDWs extremely vulnerable and willing to endure exploitative employers.²⁸

The Private Employment Agencies Convention of 1997 explicitly stated that “Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.” Nevertheless, this practice is remarkably pervasive, and almost the norm. Contract substitution is another common fraudulent practice that may result in forced labor. Many MDWs accept different working conditions upon arrival in Bahrain

²⁶ The labor law provisions which apply to domestic workers are the following: Exemption from costs in a legal proceeding initiated by workers (Article 6), written contract with definite particulars (Articles 19 & 20), fixed-wage calculated by the hour, day, week, or month (Articles 37 & 38), regulations on payment of wages (Articles 40, 48 & 49), annual leave on full pay (Article 58), leaving indemnity (Article 116), penalties for violations of Articles 19 & 20 (Article 185), and part twelve and thirteen concerning termination of employment and individual labor disputes.

²⁷ Article 105 of the labor law gives the workers, including DWs, the right to terminate the contract of employment without notice in the events of an assault or immoral act committed against the worker, and Article 106 stipulates the conditions in which the worker can terminate the contract upon giving notice: employer's breach of any material obligation, and fraud by the employer towards the worker regarding employment terms and conditions.

²⁸ Ways Forward in Recruitment of Low-skilled migrant workers in the Asia-Arab Corridor, Dr. Ray Jureidini, the ILO, 2016.

than those promised before their departure, because of the debt and the fear to lose their legal status in the country as their stay is dependent on their employers. Under international law, such illegal practices by the recruitment agencies should be addressed by both origin and destination countries. Article 8 of the convention requires members to “adopt all necessary and appropriate measures, both within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies.” Bahrain has not taken enough measures to prevent such actions. Although the LMRA has penalized and revoked the licenses of several recruitment agencies since its inception due to irregularities in the recruitment process, “lack of central regulation and document monitoring from recruitment to arrival in the destination country is what makes these practices take place”, according to the ILO. Even Article 22 of the Bahrain labor law, which prohibits employers from changing the working conditions agreed upon, is not applicable to domestic workers.

MDWs are also excluded from the Flexi-Permit scheme²⁹ introduced by the Bahraini government in 2017, meaning termination of the contract is not an easy option for this group of workers. The Flexi-Permit was supposed to ease the rules for migrant workers, and alternate the Kafala system. Despite the criticism leveled against this scheme, the Bahraini government’s failure to extend it to domestic workers places them in a greater unequal position compared to other migrant workers.

In 2017, the Bahraini government intended to bridge the legal gaps concerning MDWs by approving a unified contract for domestic workers; however, it failed to guarantee the fundamental rights. The contract does not decrease MDWs dependency on their employers. It does not even ensure better working conditions by neither stipulating mandatory daily and weekly rest periods nor limiting working hours. It lays out general responsibilities on both the domestic worker and the employer with no clear enforcement mechanisms.³⁰ The standard contract also does not set out a minimum wage, which is needed in Bahrain, as domestic workers are paid based on their nationalities, which is explicit discrimination.

Setting a minimum wage contributes to social justice by narrowing the gap between different social classes. It also helps in establishing decent jobs, improves the living standards of low-income households, and addresses the gender-based wage gap. Yet Bahrain has set a minimum wage only for nationals in the public sector. As for other sectors, minimum wages are set “through de facto nationality-based wage scales – rather than being set based on prevailing wages (in the country of destination) and on objective valid criteria such as skills,

²⁹ The Flexi-Permit is a scheme launched by the Bahraini government in 2017 to allow irregular migrant workers to sponsor themselves and work for multiple employers. For more about this scheme visit:

<http://lmra.bh/portal/en/page/show/325>

³⁰ Tripartite Domestic contract: <http://lmra.bh/portal/en/page/show/328>

education or work experience. This represents a concern surrounding the principle of equal pay for work of equal value. It also creates a difficulty in knowing where to set the minimum wage, given the large diversity in wages currently set by nationality". The standard contract also falls short of guaranteeing payment of wages. The Bahraini government started to implement a Wage Protection System (WPS) in September 2019 to pay wages via bank transfers, and it alerts the government of delayed or non-payment of wages. Again, domestic workers do not benefit from this system.³¹

The anti-trafficking law of 2008 was considered an important step in combating trafficking and forced labor. It stipulates penalties ranging from three to fifteen years of imprisonment, a fine of 2,000 to 10,000 BD, as well as the cost of repatriating the victims. However, after twelve years of its issuance, the efficacy of the law concerning MDWs is in question.

In 2020, Bahrain has remained on Tier 1 for the third consecutive year in the Trafficking in Person Report issued annually by the US state department.³² The report praised the efforts taken by the Bahraini government in combating trafficking, but it noted that "the government did not regularly investigate as potential trafficking crimes cases of unpaid or withheld wages, passport retention, and related abuses—all potential indicators of forced labor—but rather handled such matters administratively as labor law violations." According to the report, fifty-three alleged sex traffickers and seven individuals for alleged forced labor crimes were prosecuted during the reporting period, of whom fourteen individuals were convicted for sex trafficking under the anti-trafficking law, while no forced labor convictions have been achieved. The report ascribed the lack of forced labor convictions to "limited access of labor inspectors and other relevant authorities to domestic worksites." Part sixteen of the labor law of 2012 provides for labor inspection, but it is not carried out in private houses, which leaves MDWs further unprotected by the law. The report concluded that "Bahrain's sponsorship-based employment system continues to put some workers, particularly domestic workers, at risk of trafficking by limiting their ability to change employers or leave the country and by giving employers the unilateral power to control the status of residency permits."³³

This sponsorship system (Kafala) is also a cause of irregular migration and employment, which exacerbate the vulnerability of migrant workers in general, and MDWs in particular. A local newspaper reported

³¹ Minimum wages and wage protection in the Arab states: ensuring a just system for national and migrant workers, ILO Policy Advisory Committee on Fair Migration in the Middle East, the ILO, January 2019.

³² The report divides nations into tiers based on their compliance with standards outlined in the Trafficking Victims Protection Act (TVPA) of 2000. Tier 1 represents countries whose governments fully comply with the TVPA's minimum standards.

³³ The Trafficking in Persons report 20th Edition, US Department of State, June 2020.

that the number of irregular migrant workers had reached 84000 in 2019.³⁴ In the case of MDWs, they do not benefit from the Flexi-Permit scheme, so many recourses to the so-called “free visa”. According to the Bahrain Women Union report to CEDAW, “free visa” is widespread among migrant workers, particularly MDWs. “Free visa” facilitates exploitations of these women in prostitution and forced labor. Its holders do not file complaints out of fear of deportation and penalties, as it is illegal under Bahraini law.³⁵

“Free visa” labor is “workers whose papers are legal, but who do not work for the original sponsor whose name appears on their official records.” Migrant workers usually buy a “free visa”, cost around 1450 BD, and pay a commission to the original sponsor on a one or two-year basis. Irregular migrants also comprise “those registered in nonexistent entities, those whose work permits in the local market have not been renewed, and those whose permits were revoked but remain in the country.” Moreover, there is no mechanism in place to monitor every migrant enters the country whether they work in the sponsoring establishment, except through inspection. Although the LMRA has increased the number of its inspectors in the last few years, they cannot cover all the labor market, and MDWs do not benefit from the labor inspection in the first place.³⁶

What also adds to the vulnerability of domestic workers is that they are not covered by the social insurance law. Article 3 of the law expressly excludes “domestic servants” from the application of the law’s provisions, and the standard contract does not compensate for this shortcoming. For example, the unified contract requires employers to provide health care to DWs, with no clear stipulation about maternity benefits, which leaves many MDWs stranded with limited access to reproductive services and maternity care. Many have been unfairly dismissed due to pregnancy, and they struggle to pay for delivery and postnatal care. Some of them resort to unsafe methods to terminate their pregnancies, as abortion is illegal in Bahrain.³⁷ In the absence of a clear legal obligation, it is up to each employer to provide maternity care for the domestic worker, meaning that the law again puts MDWs at the mercy of their employers.

The ILO Domestic Workers Convention (No. 189) set out the international standards for the employment of domestic workers, with which Bahrain does not comply. Article 7 requires that “domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner.” Although a written contract is obligatory under Bahraini labor law – it also applies to DWs – the translation of

³⁴ Local newspaper Alayam, September 2020: <https://www.alayam.com/alayam/economic/872306/News.html>

³⁵ Bahraini NGOs shadow report to CEDAW, 2014 – Bahrain Women Union. The report is available online in PDF format.

³⁶ Captives of Ignorance: Want and Greed, Free Visa Labor in Bahrain, and the Mirage of Wealth, Arab Reports for Investigative Journalism, November 2013.

³⁷ Born into uncertainty, Migrant-Rights.org. August 2020, available at <https://www.migrant-rights.org/2020/08/born-into-uncertainty-pandemic-aggravates-the-woes-of-migrant-mothers-and-their-newborns/>

these contracts is the responsibility of the recruitment agencies, which leaves room for fraud and deception. There is no mechanism in place to monitor the adherence of these agencies with the law in this regard. Plus, “all too frequently workers are pressured upon arrival to a GCC country to sign a (new) contract written in Arabic, which they do not understand.” Ensuring “equal treatment between domestic workers and workers generally” is the responsibility of the state under Article 10 of the convention, equality in relation to working hours, overtime compensation, and weekly and daily rest periods. Also, under the convention, states have “to ensure that domestic workers enjoy conditions that are not less favorable than those applicable to workers generally in respect of social security protection, including with respect to maternity.” Bahrain has explicitly excluded DWs from these protections. Members are required to “develop and implement measures for labor inspection, enforcement, and penalties with due regard for the special characteristics of domestic work”, while labor inspection does not cover domestic work in Bahrain. Lastly and most importantly, the convention reiterates the obligation of ILO member states under the 1998 Declaration on Fundamental Principles and Rights at Work, and affirms the entitlement of domestic workers to these rights:

- (a) Freedom of association and the effective recognition of the right to collective bargaining;
- (b) The elimination of all forms of forced or compulsory labor;
- (c) The effective abolition of child labor; and
- (d) The elimination of discrimination in respect of employment and occupation.³⁸

As mentioned earlier, despite its prevalence, cases of forced labor are not taken seriously by the Bahraini government, and convictions have not been achieved. MDWs are performing their jobs hidden from both the public eye and the legal authorities due to the absence of labor inspection. MDWs do not have a union to promote their rights and welfare, despite their large number.

Under the current regulations, MDWs are not adequately protected by the law in Bahrain, which facilitates exploitation and abuse. The exclusion of MDWs from many protections accorded to other workers in the country is nothing but explicit discrimination, an underestimation of the value of their work, and a violation of their human dignity.

³⁸ Facilitating exploitation: A review of labor laws for migrant domestic workers in GCC, International Trade Union Federation, 2017.

Recommendations

Based on the above, BCHR calls on the government of Bahrain to:

- abolish the Kafala system and ensure employment mobility for migrant workers, including migrant domestic workers;
- seriously investigate and prosecute crimes of forced labor;
- extend the coverage of both labor law and social insurance law to migrant domestic workers;
- initiate regularization programs to address irregular immigration;
- set a decent minimum wage and extend the Wage Protection System (WPS) to domestic workers;
- adopt clear implementation mechanisms to the legal reforms adopted in recent years, especially regarding sexual harassment and gender discrimination at work;
- explicitly prohibit passport confiscation, strict confinement, and delayed payment of wages;
- extend labor inspection to domestic work;
- ensure domestic workers have access to a convenient and effective compliant system;
- harmonize regulations and monitoring procedures with migrant workers' countries of origin to prevent fraudulent and exploitative practices;
- increase awareness-raising campaigns for migrant workers to inform them about their rights at work;
- adopt a female quota in trade unions in both membership and leadership;
- address gender stereotypes by adopting a comprehensive social and cultural policy;
- provide more support for working mothers, such as setting a flexible work schedule;
- increase the maternity leave in line with the international standard and adopt paternity leave;
- ratify all the ILO conventions on gender discrimination and women's rights at the workplace, along with the international conventions protecting migrant workers.

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