



Americans for Democracy and Human Rights in Bahrain



European Center for Democracy and Human Rights

Contribution to the 71st session of the Committee of the Economic, Social, and Cultural Rights

Concerning Systematic Labor Rights Violations in Bahrain

Email: habdulla@adhrb.org

Web: www.adhrb.org

<https://www.ecdhr.org/>

1. Introduction

Americans for Democracy & Human Rights in Bahrain (ADHRB) is a non-profit organization fostering awareness of and support for democracy and human rights in Bahrain and the Middle East. ADHRB holds ECOSOC consultative status with the United Nations (UN). The European Center for Democracy and Human Rights (ECDHR) is a Brussels based NGO seeking to promote human rights and democracy in the Gulf Cooperation Council Countries.

2. Background of human rights situation in Bahrain

During the 2011 peaceful pro-democracy movement in Bahrain, more than half of the population protested against the Al Khalifa family's exclusive power, the lack of democratic political representation, structural inequalities, discrimination against the country's majority Shia population, and repression of human rights defenders, activists and political opponents. Since then, the Bahraini government's control of civil society has increasingly intensified. The Bahraini government has resorted to means of arrest, torture, extrajudicial killing, and imprisonment of human rights defenders, journalists, political opponents, and religious figures, leading to an extensive number of human rights violations.¹ Nine years after Bahrain's uprising, the human rights crisis in the country has only worsened, as demonstrated by the zero-tolerance policy for any free and independent political thought, the systemic patterns of torture used to convict detainees, the "culture of impunity"² that has become the norm in the country, and the continuous discrimination against the Shia community.

By ratifying the ICESCR in 2007,³ the Government of Bahrain has claimed to recognize universal labour and education rights without any kind of discrimination. The Bahraini government has promulgated a number of laws and legal provisions aimed at promoting equal access and equal economic, social and cultural rights (ESCR) for all its citizens. However, official implementation of these laws and provisions falls far short of the letter of the law. Despite nominal protections, the government has failed to actively work to promote and protect the rights of the Shia community and women. Many of these categories of persons, as it will be specifically addressed below, continue to face systematic violations of their fundamental rights, as the Bahraini government continues to disregard its international and domestic obligations.

3. Labour rights

Through ratifying the ICESCR, the Government of Bahrain agreed to recognize the universal right to work and engaged to take appropriate steps to safeguard this right, as provided by Article 6 of the Covenant. Nevertheless, the employment system in Bahrain is extremely weak in terms of social guarantees offered to workers, giving rise to a framework of systemic discrimination, abuse

¹ ADHRB, BCHR, and BIRD, "Collective efforts, International calls for accountability and reform in Bahrain", 2016, p. 4.

² Human Rights Watch, "Nine Years After Bahrain's Uprising, Its Human Rights Crisis Has Only Worsened", February 25, 2020, accessed 28/10/2020, available at <https://www.hrw.org/news/2020/02/25/nine-years-after-bahrains-uprising-its-human-rights-crisis-has-only-worsened>

³ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=13&Lang=EN

and exploitation. In particular, the Bahraini labour system entails inherently discriminatory policies that manifestly violate Article 2(2) of the ICESCR, which prescribes that:

*“States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”*⁴

Since 2011, Bahraini workers have been commonly subjected to abusive labour practices, including the use of arbitrary dismissals as a means of reprisal for engaging in the pro-democracy movement, being critical of the government, or for demanding fundamental human rights. Furthermore, the Government of Bahrain continues to violate its international obligations as a result of its deeply rooted discrimination against the Shia majority community and women in Bahrain’s workforce, by creating illegitimate work’s barriers and restrictions in both the public and private sectors. The Bahraini employment system also shows a systematic tendency towards the abuse and exploitation of migrant workers, leaving them extremely vulnerable and at heightened risk of being trafficked.

The serious breaches in government policies with regards to labour rights recognized by the ICESCR will be analyzed in the following sections, by focusing on labour discrimination and abuse against Shia community, women and migrant workers in Bahrain.

3.1 Work discrimination against the Shia community

In its initial report to the CESCR, the Government of Bahrain claimed they had successfully integrated and transferred the provisions of the ICESCR with regards to non-discrimination into Bahrain’s Constitution and national legislation.⁵ For example, Article 18 of the Bahraini Constitution states that *“(p)eople have equal human dignity and the same public rights and duties before the law. There shall be no discrimination on grounds of gender, origin, language, religion, or belief.”*⁶ According to the government, the *“policies and programs relating to work, health, housing and social security are all founded on equality and non-discrimination.”*⁷ Therefore, the Government of Bahrain considers that there is no discrimination in the economy, and all the citizens enjoy equal access to the labour market.

However, multiple evidences suggest the contrary. The Shia community, which accounts for 65-75% of the population, is systematically discriminated against and occupies the lower socio-economic strata of Bahrain’s society.⁸ Scholars, independent experts and human rights organizations have described Bahrain’s economic, political and social system as crony capitalism. The ruling elite uses the petrol rent, which accounts for 60-80% of its export revenue, to stay in power, offering privileges and opportunities to its inner Sunni circle, and further marginalizing the

⁴ ICESCR, Art. 2(2).

⁵ CESCR, UN Doc. E/C.12/BHR/1, *“Initial report submitted by Bahrain under articles 16 and 17 of the Covenant, due in 2009”*, May 28, 2020.

⁶ Constitution of Bahrain, Art. 18.

⁷ *Ibid.*

⁸ Pew Research Centre, *“Mapping the Global Muslim Population. A Report on the Size and Distribution of the World’s Muslim Population”*, October 2009.

Shia community.⁹ In this sectarian system, the Sunni population, backed by the ruling elite, are favored in terms of education and employment opportunity and thus maintain an economic advantage over their Shia counterparts.¹⁰ Since the Government of Bahrain does not publish official statistics that account for citizens' occupations, it is difficult to assess the extent of this discriminatory phenomenon and its related inequality in employment rates, income and wealth. However, despite a few exceptions of well-known Shia families, the vast majority of Bahrain's rulers, members of government, high-ranked military, business leaders, and landowners are Sunni Muslims.¹¹ By contrast, the poorer Bahrain's citizens disproportionately belong to the Shia community. It is also worth mentioning that equal employment opportunities were one of the most critical and consensual demands of the pro-democracy movement of 2011.¹² Therefore, ADHRB considers that the Government of Bahrain failed to respect Articles 2(2) and 7(c) of the ICESCR, which guarantee equal opportunity to work and without discrimination against religion and political opinion.

The discrimination against the Shia community is particularly pertinent and visible in Bahrain's security sector.¹³ The security-related government agencies, such as the Minister of Interior (MOI), the Bahrain Defense Force (BDF), and the National Security Agency (NSA) are some of the largest employers in Bahrain. According to defense experts, the combined number of employees of Bahrain's security sectors is above 21,000 and evidence suggests that these numbers have grown throughout the decade.¹⁴ However, the Government of Bahrain traditionally and systematically refuses to hire a consistent number from the Shia community.¹⁵ Parallel with the exclusion of Shia citizens, the Government of Bahrain hires a large number of Sunni nationals, as well as naturalizing a high number of foreign Sunnis from Syria, Jordan, Yemen, and Pakistan.¹⁶

According to the Article no. (9) of the Civil Service Act No. 48 of 2010, the government agencies must notify the Bureau of their vacant positions. Then, the Bureau "*determines which vacancies are to be announced in the local and foreign press. In this way, citizens are fully free to choose whatever work they feel is best compatible with their qualifications or inclinations and may apply to take exams and interviews.*"¹⁷ Therefore, according to the government's initial report, the public

⁹ Open Democracy, "Bahrain - from national celebration to day of rage", February 2011, accessed October 3, 2020 <https://www.opendemocracy.net/en/5050/bahrain-from-national-celebration-to-day-of-rage/>.

¹⁰ ADHRB, "*Apart in Their Own Land*", *Government discrimination against Shia in Bahrain*, Vol. II, 2015.

¹¹ Brian Dooley, "*Bahrain's Soldier Sailor Sunni Shia Struggle*", The Huffington Post, February 7, 2014, accessed October 10, 2020, http://www.huffingtonpost.com/brian-dooley/bahrains-soldier-sailor-s_b_4745595.html.

¹² Tahiyya Lulu, "*The real story of Bahrain's divided society*", The Guardian, March 3, 2011, accessed October 3, 2020, <http://www.theguardian.com/commentisfree/2011/mar/03/bahrain-sunnis-shia-divided-society>.

¹³ ADHRB, "*Sectarian Discrimination and Extremism in Bahrain's Security Forces*", 2017.

¹⁴ Anthony Cordesman and Khalid R. al-Rodhan, "*The Gulf Military Forces in an Era of Asymmetric War*", Center for Strategic and International Studies (CSIS), 28 June 2006; Laurence Louer, "*Sectarianism and Coup-Proofing Strategies in Bahrain*", *Journal of Strategic Studies*, May 2013.

¹⁵ Maryam al-Khawaja, "*Beneath Bahrain's Shia-versus-Sunni narrative, only the tyrants benefit*", The Guardian, October 27, 2012, accessed October 2, 2020, <http://www.theguardian.com/commentisfree/2012/oct/27/bahrain-shiaversus-sunni-narrative>.

¹⁶ Maryam al-Khawaja, *op. cit.*

¹⁷ CESCR, UN Doc. E/C.12/BHR/1, *op. cit.*, par. 34.

service's hiring process is transparent and thus respects the ICESCR's provisions. However, ADHRB, independent experts and human rights organizations have documented many irregularities in this hiring process which is intrinsically flawed and discriminatory against the Shia community. For example, the MOI's recruitment process entails elements which enable the recruiter to engage in "sectarian profiling."¹⁸ In doing so, the MOI requires specific documents which contain the sect of the candidate, such as the marriage certificate. Moreover, the Government of Bahrain continues to publish and advertise for positions in Bahrain's security forces in foreign countries, such as in Pakistan, despite a lack of job opportunities and local demand of the Shia community.¹⁹ The Bahrain Independent Commission of Inquiry recognized the presence of "a large number [of] non-nationals from Iraq, Jordan, Syria, Pakistan and Yemen" in the BDF.²⁰ A research conducted by Justin Gengler and published by the Indiana University Press found that "not a single Shi'i [sic] of those randomly sampled for interview reported working for the police or armed services" and 17% of respondents identified themselves as Sunni male.²¹ In 2015, new estimations established that Shia citizens made up less than 5% of the total manpower of Bahrain's security forces.²² Finally, a leak from the NSA indicated that the Shia population represents less than 4% of this governmental agency.²³ As a result of this strategically biased hiring process, the Shia community remains widely underrepresented in Bahrain's security forces.

Therefore, the aggregate results of estimations by most international experts, human rights organizations, the BICI, and US congressional services provide enough evidence to consider that the Shia community is "highly underrepresented in the security forces, serving mainly in administrative tasks" and that they account for less than 10% of Bahrain's security sector.²⁴ Considering that the Shia community account for 65-75% of Bahraini population, the government of Bahrain is in flagrant violation of the Articles 2(2) and 7(c) of the ICESCR, which guarantee equal opportunities to work without discrimination against religion and political opinion. Despite having successfully transferred ICESCR obligations into national laws, the Government of Bahrain has deliberately failed to effectively enforce these aspects of its Constitution and domestic legislation.

3.2 Work discrimination against women

According to Article 3 of the ICESCR:

¹⁸ Laurence Louer, "Sectarianism", *op. cit.*, p. 265.

¹⁹ "King of Bahrain vows to enhance military cooperation at JSHQ," Dawn, 20 March 2014, <http://www.dawn.com/news/1094257/king-of-bahrain-vows-to-enhance-military-cooperation-at-jshq>

²⁰ BICI, "Report of the Bahrain Independent Commission of Inquiry", November 2011.

²¹ Justin Gengler, "Group Conflict and Political Mobilization in Bahrain and the Arab Gulf: Rethinking the Rentier State", Indiana University Press: 2015, Print.

²² Laurence Louer, "Sectarianism", *op. cit.*, p. 265.

²³ BCHR, "Bahrain: Dangerous Statistics and Facts about the National Security Apparatus", ...

²⁴ Brian Dooley, "Bahrain's Soldier Sailor Sunni Shia Struggle", *op. cit.*; Atlantic Council, "Bitter Divides Persist Below Bahrain's Relatively Calm Surface", July 2011, accessed October 2, 2020, <https://www.atlanticcouncil.org/blogs/new-atlanticist/bitter-divides-persist-below-bahrains-relatively-calm-surface/>.

“The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.”²⁵

In its initial report to the CESCR, the Government of Bahrain claimed that it has examined “*the place of women in society*” and evaluated “*their contribution and their potential*.”²⁶ The authorities created the Supreme Council for Women in 2001, launched two national plans for the advancement of Bahraini women, and committed “*to empower women, enhance their role in everyday life*.” Moreover, Bahrain’s Labour Code explicitly prohibits wage discrimination on the basis of sex.²⁷ Although we recognize positive steps towards the commitment of the Government of Bahrain to gender equality and women empowerment, we are concerned about the lack of efficacy and achievements of the national plans and the Supreme Council for Women. Despite ostensible advancements, Bahraini women continue to face wide-ranging discrimination, are not integrated in the workforce at a proper rate, and systematically earn less than men occupying the same position.²⁸ More specifically, we are particularly concerned about the gap between the women’s education rate, which is particularly high, and the women’s employment rate, which is low and stagnating.²⁹

According to the 2009 Gender Gap Report issued by the World Economic Forum, Bahrain scored 0.9911 on the sub index of educational attainment, which measures the “*gap between women and men’s current access to education (...) in primary-, secondary-, and tertiary-level education*” and ranked 69 out of 134 countries.³⁰ In 2020, Bahrain’s score of the same index is 0.985 and is ranked 90 out of 153 countries.³¹ Therefore, Bahrain witnessed a slight decrease of women’s educational attainment during the last decade. These relatively good scores on education are mitigated by the stagnating and low scores on the sub index of “*Economic Participation and Opportunity*.” In 2009, the due date of the CESCR initial report, Bahrain’s labour force participation rate was 0.41 and in 2020 the score is 0.521. Moreover, in 2009, Bahrain’s ratio of wage equality for similar work was 0.73 and in 2020, the ratio is 0.74. These numbers indicate that women have the same education attainment than men.³² However, after education, the number of women who are integrated into the workforce is approximately half of the number of men, and they are paid 25% less than men for the same position.

In light of this, ADHRB considers that the Government of Bahrain has failed to respect Articles 2(2), 3 and 7(i) of the ICESCR, which guarantee for equal rights of men and women to the enjoyment of all economic rights and equal pay for equal work. Moreover, despite governmental rhetoric and the establishment of women empowerment’s national plans, the aforementioned ratios did not improve significantly over the last decade. We therefore consider that the

²⁵ ICESCR, Art. 3.

²⁶ CESCR, UN Doc. E/C.12/BHR/1, *op. cit.*, par. 20.

²⁷ *Ibid.*

²⁸ U.S. Department of State, “2019 Country reports on Human Rights Practices: Bahrain”, 2019.

²⁹ ADHRB, BCHR, BIRD, “Bahrain’s Third Cycle UPR - A Record of Repression”, January 2017, pp. 67-75.

³⁰ World Economic Forum, “Gender Gap Report 2009”, 2009.

³¹ World Economic Forum, “Gender Gap Report 2020”, 2020.

³² *Ibid.*

Government of Bahrain did not respect its obligation of progressive realization contained in Article 2(1) of the ICESCR. Finally, it is worth mentioning that women of the Shia community find themselves at the intersection of two forms of discrimination, meaning they face additional difficulties and lack of economic opportunity. Therefore, we urge the Government of Bahrain to establish a national plan and strategy to integrate Shia women in the economy in order to eliminate the two forms of discrimination examined in this section.

3.3 Abuse and exploitation of migrant workers

In the approximately 1.6 million resident population of Bahrain, over 600,000 of these are migrant workers, making up around 54,7% percent of the country's workforce. Most of them work in low-skilled or low-wages jobs, in industries such as construction, retail, wholesale and domestic work. Around 99,500 migrants are domestic workers, including 75,305 women.³³

The Government of Bahrain expressed and recently reiterated in its State Report to be committed to improving migrant labour practices. Apparently, its efforts include new safety regulations, measures to combat human trafficking, workers' rights education campaigns, and reforms aimed at repealing the *Kafala* system and allowing migrants to freely leave their jobs. However, such reforms remain illusory with regard to both their adequacy to effectively ameliorate the labour rights situation in Bahrain, and the government's actual willingness to implement them. Furthermore, recent reforms to the labour migration system remain limited in practice and have largely failed to protect migrant workers at the bottom of the social pyramid.

ADHRB has documented many forms of abuse and exploitation that continue to be experienced by migrant workers, as well as major obstacles and systemic failures that prevent them from being identified as victims and thus from seeking protection and redress for such treatment.³⁴ Despite acceding to the ICESCR, the Government of Bahrain fails to respect and take appropriate steps to achieve the full realization of the right to work of migrants, or ensure their steady economic, social and cultural development and related freedoms.

Furthermore, without the availability of adequate protection, medical care, or unions, migrant workers are being intensely and disproportionately affected by the COVID-19 pandemic.³⁵ ADHRB has documented that since the beginning of the outbreak, the majority of COVID-19 deaths in Bahrain are migrant workers, mainly due to their unsanitary living conditions and lack of medical and social assistance. While the Government of Bahrain has put financial assistance mechanisms in place to face the impact of the pandemic on Bahraini nationals, such protective measures do not apply to non-citizens. Therefore, migrant workers do not receive government support to ensure that salaries are secured and paid on time, no bank loan payment extensions, no housing privileges, no medical support, and no government allowance.³⁶ Such a discriminatory

³³ ECDHR, "*Bahrain – Migrant workers' rights*", *op. cit.*, p. 1.

³⁴ ADHRB, "*Living as Commodities: Human and Sex Trafficking in the GCC*", 2016, pp. 16-17.

³⁵ Migrant-Rights.org, "*The COVID-19 crisis is fueling more racist discourse towards migrant workers in the Gulf*", April 5, 2020.

³⁶ Migrant-Rights.org, "*Migrants in Bahrain face an eviction crisis amid Covid-19 pandemic*", September 15, 2020.

policy violates Article 2(2) of the ICESCR and blatantly contradicts the Government of Bahrain's claims contained in its 2019 report, according to which:

*“(31.) Bahraini legislators strive to apply the principle of equality between the sexes, between national workers and migrant workers and between other categories within society;” and
“(32.) [...] no groups are vulnerable or disadvantaged.”³⁷*

The unfair exclusion of migrant workers from the application of protective measures and the systematic violation of their ESCR rights reflects the rationale of a national system that deeply marginalizes migrants. The systematic lack of law enforcement and the institutionalized acceptance of abusive practices, including the revocation of passports, contributes to the deep marginalization of migrants in Bahrain, leaving them at greater risk of forced labour, human trafficking, and prostitution.

Article 6 - Right to work

The pattern of abuse against migrant workers in Bahrain finds its roots in an inherently exploitative recruitment and employment system. Under Article 6, the ICESCR recognizes the universal right to work freely, thus including everyone's opportunity to gain his living by work which he freely chooses or accepts.

Article 6

“The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”³⁸

However, the existing recruitment system sets up the conditions for a vicious cycle of debt and exploitation that deprives migrant workers of their right to work freely and by consensus. Although technically forbidden by Bahraini laws, migrant workers often seek work through third party recruitment agencies who charge the workers with high fees that they cannot reasonably pay.³⁹ As a direct consequence, the fees are often converted into debt bonds, leaving many migrant workers indebted to their employers before even starting work. This forces migrant workers to maintain their jobs despite unpaid wages, ill-treatment, or unsafe housing and working conditions for months and even years. Within this system, migrant workers often end up entrapped in a cycle of exploitation even before their arrival in Bahrain.

Once in Bahrain, most migrant workers are victims of contract substitution, with employers unilaterally changing the terms of the contract provided by the recruitment agencies. Most migrants are not aware of the new terms. In many cases they do not even have access to their contracts and, when they do, they are very rarely provided with a translated version.⁴⁰ Furthermore, although prohibited by Bahraini penal code and anti-human trafficking law,

³⁷ CESCR, UN Doc. E/C.12/BHR/1, *op. cit.*, par. 31-32.

³⁸ ICESCR, Art. 6 (1).

³⁹ Human Rights Watch, “*For a better life: Migrant Worker Abuse in Bahrain and the Government Reform Agenda*”, October 2012, p. 23.

⁴⁰ ADHRB, “*Living as Commodities*”, *op. cit.*, p. 17.

employers continue to routinely confiscate migrant workers' passports and restrict their movement. As a result, they exercise an illegitimate degree of control over their employees and prevent them from freely leaving their abusive employers and unsafe working conditions.⁴¹

Many of these abuses are the direct results of the persistence of the *Kafala* system, a deeply rooted segment of Bahrain's migration system, which regulates the relationship between the employers and migrant workers. By requiring that employers sponsor their migrant workers in order to live and work in the region, the sponsorship system enables employers to exert significant control over their employees' lives. It is documented that "*the kafala system may be conducive to the exaction of forced labour*"⁴² and it "*has been likened to a contemporary form of slavery.*"⁴³ *The kafeels (employers and/or sponsors) meet their labour needs in the context of immense control and unchecked leverage over workers, creating an environment ripe for human rights violations and erosion of labour standards.*"⁴⁴

In 2009, the Bahraini government declared it would repeal the *Kafala* system by establishing that migrant workers would be sponsored through the Labour Market Regulatory Authority (LMRA),⁴⁵ claiming that this policy would give migrant workers the opportunity to freely leave their employers and work for a new one. However, in the same year, it was documented that Bahrain failed enormously to enforce this policy, leaving most of the *Kafala* structure intact. This left many migrants to be subjected to the same exploitative practices.⁴⁶ Nevertheless, the Government of Bahrain scaled back these reforms in 2011 and instituted new policies requiring migrant workers to stay with their current employer for at least one year before seeking other working options.⁴⁷ While this was meant to appease employers, the regulation reinstated one of the most abusive aspects of the system and only led to the exposure of migrant workers to further abuse.⁴⁸

As claimed in its recent State report,⁴⁹ the government in 2017 introduced a new flexible permit system allowing migrant workers to independently obtain a personal permit to work, without sponsorship. Although representing an apparent positive step towards improvement, such permits can be obtained only by very limited categories of migrant workers. In this regard, the ILO notes that "*workers who have a sponsor are not eligible for the FLEXI working permit. Skilled workers and "runaway criminals", a category that includes workers who have escaped abusive employers, are also not eligible for the scheme.*"⁵⁰ Furthermore, along with being required to pay

⁴¹ U.S. Department of State, *op. cit.*, Section 7, par. B.

⁴² ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), retrieved from International Labour Organization, "*Labour Migration in the Arab States*", 2015, p. 2.

⁴³ *Ibid.*

⁴⁴ Migrant Forum in Asia, "*Policy Brief No. 2: Reform the Kafala (sponsorship) system*", July 2012, p.1.

⁴⁵ ADHRB, BCHR, BIRD, "*Bahrain's Third Cycle UPR, op. cit.*", p. 111.

⁴⁶ Human Rights Watch, "*Bahrain: Labor Reforms a Major Advance*", May 2009, retrieved online at <https://www.hrw.org/news/2009/05/13/bahrain-labor-reforms-major-advance>.

⁴⁷ ECDHR, "*Bahrain – Migrant workers' rights*", *op. cit.*

⁴⁸ ADHRB, "*Bahrain's Forgotten Workers: a Status Report on Labor Discrimination and Forced Dismissals since 2011*", June 2017, pp. 7-8.

⁴⁹ CESCR, UN Doc. E/C.12/BHR/1, *op. cit.*, par. 70.

⁵⁰ ILO, "*Observation (CEACR)*", adopted 2017, published 107th ILC session (2018).

a fee, the workers must provide a valid passport when applying for the permit. Consequently, such provision further excludes and disregards migrant workers who are entrapped in regular and abusive situations and have had their passports confiscated by their employers.

As a result, migrants' right to work freely in Bahrain is not ensured nor protected. The lack of explicit criminalization of the abusive practices, their systematic acceptance, and the lack of protections and law enforcement, commonly lead to conditions of forced or compulsory labour in breach of Article 6 of the ICESCR. In order to tackle the inherently exploitative system, the Government of Bahrain should take effective measures to abolish the *Kafala* system of sponsorship-based employment, and establish a new, fair, and justiciable system aimed at ensuring migrant workers' right to work.

Article 7 - Enjoyment of just and favorable conditions of work

By recognizing the right of everyone to the enjoyment of just and favorable conditions of work, the States Parties to the Covenant agreed to ensure:

Article 7

"[...] (a) *Remuneration which provides all workers, as a minimum, with:*

(i) *Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;*

(ii) *A decent living for themselves and their families in accordance with the provisions of the present Covenant [...]*"⁵¹

Nevertheless, in Bahrain many workers face the employers' rampant practice of non-payment or late-payment of wages.⁵² Although criminalized by the Bahraini domestic law both as a criminal and civil offense, such practice continues due to the government's systematic lack of law enforcement. Unpaid or delayed wages constitute one of the main and most common complaints of migrant workers in Bahrain, especially in the domestic and construction sectors, where employers often withhold wages for many months. As a result, this practice continues to seriously impact the migrants' ability to provide for themselves and to send wages back to their country of origin to assist their families.⁵³ This is a clear violation of Article 7(a) of the ICESCR. In particular, it has been documented that the current COVID-19 pandemic is being used by most employers as an illegitimate justification to further withhold migrant workers' wages.

Furthermore, as Bahraini legislators have continuously failed to identify a minimum wage for foreign workers in the private sectors,⁵⁴ wages are commonly negotiated through bilateral agreements which are easily circumvented.⁵⁵ As a result, migrants continue to be underpaid and

⁵¹ ICESCR, Art. 7 (a).

⁵² Human Rights Watch, "*For a better life*", *op. cit.*, p. 34.

⁵³ Migrant-Rights.org, "*Non-payment of wages: An issue on the rise for low-income migrant workers in Bahrain*", October 13, 2019.

⁵⁴ CESCR, UN Doc. E/C.12/BHR/1, *op. cit.*, par. 55.

⁵⁵ Gulf Labour Markets and Migration, "*Demography, Migration, and the Labour Market in Bahrain*", 2019, p. 5; Human Rights Watch, "*For a better life*", *op. cit.*, pp. 34-35.

are left with no legal guarantees with regards to minimum remuneration provided by Article 7(a)(ii) of the ICESCR.

Amongst many others, ADHRB has documented that one of the biggest government contractors in Bahrain, the Ahmed Nass Business Group, withheld salaries of its predominantly Indian and Bangladeshi workers for more than six months. They were later notified that their contracts would be terminated, and their travel expenses would not be covered by the company. Many of these workers addressed the Bahraini Ministry of Labour & Social Development (MLSD) with the hope that the government would respond to their legitimate demands and inspect the company's practices. Conversely, they faced a denial of access to justice and experienced forms of retaliations for seeking redress. As a result, some of these workers went into hiding in Bahrain, becoming illegal workers, many others fled back to their home countries, and many other committed suicide. This case is not an isolated incident. ADHRB also documented serious cases of abuse in a series of hotels owned by the Prime Minister and the King of Bahrain himself. These hotels hired migrant workers predominately from the Philippines and Thailand to work as hospitality workers under a contract of one year. In order to extend their contracts, migrant workers had to work for free for a period of three months, however, were promised that their return tickets to their home countries would be paid by the hotel management. However, their contracts were provided exclusively in Arabic and with no other guarantees, they found themselves obliged to simply trust the employers' promises. Therefore, the workers ended up working for six months for free and were told that those who wanted to leave would have to pay for their own return tickets. Subsequently, some sought redress from the MLSD but received no assistance or protection. Such cases are not unique but need to be included to illustrate the blatant lack of proper redress and investigation mechanisms, as well as the authorities' systematic breaches of the ICESCR provisions.

Furthermore, although Bahrain's labour law stipulates that employers must provide their employees with accommodation or a housing allowance, ADHRB has documented that many migrant workers' living conditions do not meet minimum standards of safety and health.⁵⁶ The Government of Bahrain has attempted to demonstrate its efforts by "*conducting inspection visits to ensure that workers' housing complies with safety and security specifications.*"⁵⁷ Nevertheless, these inspection visits do not ensure the employers' compliance due to the lack of legal sanctions and consistent follow-up inspection visits. Furthermore, a great number of labour accommodations in Bahrain are illegal and unregistered, meaning most migrant workers live in overcrowded, unsafe and unsanitary labour camps, without government interference.⁵⁸

The Government of Bahrain also fails to uphold the provisions enshrined in Article 7(b), (c) and (d), particularly with regards to domestic workers. Although Bahrain has included domestic workers in the Private Sector Labour Code, the Government of Bahrain intentionally disregards the abuses that employers commit by alleging the inviolability of the employers' homes, where

⁵⁶ ADHRB, "*Living as Commodities*", *op. cit.*, pp. 18-19.

⁵⁷ CESCR, UN Doc. E/C.12/BHR/1, *op. cit.*, par. 82.

⁵⁸ ADHRB, "*Living as Commodities*", *op. cit.*, p. 19.

domestic workers normally reside.⁵⁹ Such a justification cannot be accepted as it is documented that domestic workers - the majority of whom are women - continue to suffer abuses, physical violence, threats and sexual harassment and violence in the home.⁶⁰

ADHRB documented that employers who violate migrant workers' rights typically do not face penalties and rarely, if ever, face criminal consequences provided for by the Bahraini penal code and the anti-trafficking law. The lack of accountability finds its roots in the Bahraini judicial system, where impunity and discriminatory practices runs rampant. As a result, migrant workers who are victims of abuse are discouraged from seeking legal redress and protection, and also fear reprisals for any action taken. Therefore, whilst Bahrain has attempted to make reforms in this area, the government continuously fails to address and effectively react to the root causes of migrants' exploitation and abuse in the country, placing Bahrain in clear contravention of the provision contained in the ICESCR.

4. Right to education

In its report for the CESCR, the Bahraini government asserted that the right to education without any discrimination is guaranteed in the Kingdom, and that both the Bahraini Constitution and the Education Act No. (27) of 2005 reaffirm this principle. Nevertheless, in practice, the Shia population are systematically subjected to discriminatory practices due to their religion, with Shia students suffering the most from this inequity.

4.1 Discrimination in education against the Shia community and stateless population

Article 13 of the ICESCR states:

"1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education [...] shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

*[...] (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education; [...]"*⁶¹

In its report, the Government of Bahrain stated that human rights and the values of coexistence and tolerance have been considered by the Ministry of Education (MOE). It also declared that the Education Act No. (27) of 2005 guarantees the right to education without discrimination on the basis of gender, race or group, and stated that it provides equal opportunities to every student in the country.⁶² Despite this legislative framework, the Shia population is clearly discriminated against in the field of education. A clear example of discrimination can be found in the allocation of scholarships. The MOE provides scholarships for students that obtained a 90% GPA or more.

⁵⁹ CESCR, UN Doc. E/C.12/BHR/1, *op. cit.*, par. 73.

⁶⁰ U.S. Department of State, *op. cit.*, Section 6.

⁶¹ ICESCR, Art. 13 (1), (2).

⁶² CESCR, UN Doc. E/C.12/BHR/1, *op. cit.*, par. 51-52.

Before 2011, these scholarships were allocated exclusively on the basis of the merit of the students, but after 2011 the allocation system changed. The system is now based on two distinct criteria: students' merits (60% of the process) and interviews conducted by a selection committee formed by the MOE (40% of the process).⁶³ Due to this new process, the allocation of scholarships is biased and unjustly distributed. Some students reported that questions asked in the interview focused on their political and religious beliefs.⁶⁴ In addition, a Shia student who obtained a score of 99.1% and wanted to study medicine received a scholarship to study nutrition instead. The same year, other students reported that Sunni classmates received scholarships to study medicine with a score of 90% only.⁶⁵ Therefore, the discrimination between Shia and Sunni students is evident, with the chances of Shia students undertaking their desired path significantly reduced and based solely upon their religion. Because of this system, many Shia students are prevented from studying in the most prestigious and lucrative fields despite their higher scores.⁶⁶ This discrimination in the distribution of scholarships prevents the equal access to secondary education for Sunni and Shia students as provided by Article 13(2)(c) of the Covenant.

Furthermore, Shia beliefs are often directly undermined by educational materials, which denounce Shia followers as infidels and regard Shia beliefs as blasphemous. For example, Bahraini high school students are taught that prayers can only be directed to Allah, and that the Shia practice of allowing prayers to highly respected figures constitutes an act of blasphemy. In addition, according to the government curriculum, there are other Shia practices that can be regarded as acts of blasphemy against Islam.⁶⁷ Moreover, official historic narratives and educational textbooks de-emphasize or ignore the role of the Shia community in the history of the country.⁶⁸ Teaching the children that Shia practices are blasphemous can only increase disrespect, intolerance and hatred towards the religion. As Article 13(1) of the Covenant establishes that the educational system of every member state shall promote human rights and tolerance among all ethnic and religious groups, Bahrain's attempts to undermine the Shia religion puts them in clear violation of the ICESCR.

4.2 Religious discrimination in education

According to Article 13(3) of the ICESCR:

*"The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions."*⁶⁹

⁶³ ADHRB, "Apart in Their Own Land", Vol. II, *op. cit.*, p. 31.

⁶⁴ ADHRB, BCHR, BIRD, "Bahrain third circle UPR", *op. cit.*, p.173.

⁶⁵ ADHRB, "Apart in Their Own Land", Vol. II, *op. cit.*, p. 32.

⁶⁶ U.S. Department of State, "2019 Report on international Religious Freedom: Bahrain", Office of International Religious Freedom, p. 16.

⁶⁷ BCHR, ADHRB, BIRD, "Apart in their own land : government discrimination against Shia in Bahrain", Vol I, 2015, p. 27.

⁶⁸ ADHRB, Letter to the United States Commission on International Religious Freedom, 2019.

⁶⁹ ICESCR, Art. 13 (3).

Article 7(b) of the Bahrain Constitution also states that “(t)he law shall regulate religious and national education, at all stages and of all kinds, which shall serve to strengthen the character of citizens and their pride in their Arab identity.”⁷⁰ However, Article 18 stipulates that “(p)eople have equal human dignity and the same public rights and duties before the law. There shall be no discrimination on grounds of gender, origin, language, religion, or belief.”⁷¹

The Government of Bahrain has maintained that the country is tolerant of other religions and ethnicities, that all cultures are respected, and that “religious freedom is the law of the land.”⁷² However, Bahrain has failed to comply with its international and national obligations, as demonstrated by the religious discrimination in the education system against the Shia community. Despite claims by the Minister of Education that the Islamic studies of the public school curriculum are continuously reviewed and developed by a team of experts to promote tolerance, dialogue and respect for others,⁷³ university curricula taught at both public and private schools are solely based on the precepts of the Maliki school of Sunni jurisprudence, without considering the different Shia and Sunni traditions.⁷⁴ To the contrary, the popular Shia Jaafari tradition, endorsed by the majority of the Bahrain population, is not included in any educational text, but is instead denigrated. Shia children and youth are thus prevented from receiving an education based upon their own traditions and practices.⁷⁵

Despite government claims that public schools in Shia and Sunni neighborhoods are equally supported,⁷⁶ there is only one Shia-specific school, the Jaafari Institute, that can legally operate in the country. The Jaafari Institute only enrolls a small fraction of children and adolescents in elementary and secondary-education programs (around 1,200) compared to the several hundred thousand Shia citizens in Bahrain.⁷⁷ The existence of only one Shia-specific school and the continuous denigration of Shia’s traditions and religious beliefs in education is in flagrant violation of Article 13(3) of the ICESCR. Furthermore, the liberty of parents and legal guardians to choose schools where the religious and moral education of their children is in conformity with their own convictions is severely undermined. Such a discriminatory education system also disregards Article 18 of the Bahraini Constitution, which recognizes that all persons are equal without discrimination based on gender, origin, language, or faith.

Further evidence of the religious discrimination against the Shia community in the educational system is provided by the unsuccessful attempts aimed at including five sects of Islam (four Sunni sects and the single Shia sect) in the government curricula. This motion was first considered in 2005 by the House of Representatives and, later in 2007, was promoted by the Islamic “Olamaa”

⁷⁰ Constitution of Bahrain, Art. 7 (b).

⁷¹ Constitution of Bahrain, Art. 18.

⁷² ADHRB, Letter to the Kingdom of Bahrain on Religious Freedom, April 3, 2020, <https://usercontent.one/wp/www.adhrb.org/wp-content/uploads/2020/04/Religious-Freedom-Letter.pdf>.

⁷³ U.S. Department of State, *op. cit.*, pp. 5-6; 15. See also E/C.12/BHR/1, *op. cit.*, par. 52.

⁷⁴ ADHRB, “*Apart in Their Own Land*”, Vol. I, *op. cit.*, p. 27; ADHRB, “*Apart in Their Own Land*”, Vol. II, *op. cit.*, p. 22.

⁷⁵ *Ibid.*

⁷⁶ U.S. Department of State, *op. cit.*, p. 15.

⁷⁷ ADHRB, “*Apart in Their Own Land*”, Vol. II, *op. cit.*, p. 22; See also ADHRB, BCHR, BIRD, *op. cit.*, p. 173.

Scholars Council. On both occasions the motion was immediately halted by the votes of the predominant Sunni parliament and in January 2014, the Islamic “Olamaa” Scholars Council was dissolved by a Bahraini court for exercising unmonitored political activities.⁷⁸ Again, the hostile and repressive attitude towards the inclusion of Shia’s religious traditions in the government’s curricula is contrary to Article 13(3) ICESCR, and to the principle of equality without any kind of discrimination enshrined in Article 18 of the Bahraini Constitution. As a result, open discrimination against the Shia faith continues to be perpetrated in Bahrain, portraying an extensive level of religious discrimination for the Shia community.⁷⁹

5. Conclusion

By ratifying the ICESCR in 2007, the Government of Bahrain committed to taking all the required steps to progressively achieve the full realization of economic, social, and cultural rights, and to guarantee that these rights will be exercised without any kind of discrimination. However, the Bahraini government has failed to implement the provisions contained in ICESCR or to take reasonable steps to halt discrimination and inequalities in the employment and education sectors. The Government of Bahrain must take firm, effective, and serious steps to bring its legislation into compliance with the Convention’s provisions, to prevent all forms of discrimination, and ensure equal access to employment and education. Concrete action towards the modification and improvement of Bahrain’s labour and education laws are deeply required in order to make a tangible difference for its national and foreign population. The Government of Bahrain must make an adequate effort to ensure law enforcement, as it is currently one of the main causes and exacerbators of the systematic violation of ESCR in Bahrain. Furthermore, the prevention from abuse and exploitation can only be achieved through significant and broad reforms to the Bahraini judicial system, whose independence and capability to identify and assist victims of abuse needs to be ensured. With this in mind, the pervasive culture of impunity in Bahrain needs to be eradicated and the accountability of perpetrators needs to be guaranteed. The number of treaties a country has ratified does not reflect substantive improvement unless the country works to effectively implement those legal prescriptions. This must be within a framework of general commitment towards the achievement and full enjoyment of everyone’s rights.

6. Recommendations

We therefore call on the Government of Bahrain to implement the following recommendations:

1. Remove economic barriers that negatively impact employment and wealth accrual within Shia communities;
2. Integrate the Shia community into the nation’s security forces so they are adequately represented;
3. Provide official statistics which account for the sectarian divide;
4. Take further measures, such as the adoption of a national plan, to increase employment for women in all sectors of the Bahraini economy, and mandate equal pay for women and men;

⁷⁸ ADHRB, “*Apart in Their Own Land*”, Vol. I, *op. cit.*, pp. 27-28.

⁷⁹ *Ibid.*

5. Implement a reform of the scholarship system to ensure a fair distribution of scholarships between the Sunni and the Shia students; one exclusively based on the merits of the students and not their political and religious opinion;
6. Respect its commitment to promote tolerance in the educational system by eliminating the criticism of the Shia religion rooted in the schools' programs;
7. Show honest commitment to end its discrimination policies towards the Shia community by incorporating Shia's traditions and practices in the government curricula and allowing more Shia-specific schools to legally operate in the country;
8. Ratify the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and the International Convention on the Protection and Rights of all Migrant Workers and Members of Their Families;
9. Allow country visits by UN Special Procedures to independently report on human trafficking, debt bondage, wage withholding, and migrant rights violations;
10. Definitively abolish the *Kafala* system and all related practices, and enforce independent accountability mechanisms, labour safeguards and redress mechanisms in the government bodies to monitor and investigate employers and private companies;
11. Implement legal sanctions and adequate accountability mechanisms to hold abusive employers responsible; and
12. Provide a moratorium on all evictions, remove travel bans, and provide rent relief for workers who have lost their incomes due to the COVID-19 pandemic.