

**PUBLIC SUBMISSION TO THE OFFICE OF TRADE & LABOR AFFAIRS
UNDER CHAPTER 15 OF THE US-BAHRAIN FREE TRADE AGREEMENT**

**CONCERNING THE FAILURE OF THE
GOVERNMENT OF BAHRAIN
TO COMPLY WITH ITS COMMITMENTS UNDER
ARTICLE 15.1 OF THE US-BAHRAIN FREE TRADE AGREEMENT**

SUBMITTED BY:

**THE AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)**

April 21, 2011

I. INTRODUCTION

On January 11, 2006, the United States signed into law the U.S.-Bahrain Free Trade Agreement (FTA), which entered into force between the United States and Bahrain on August 1, 2006. In light of the ongoing brutal repression of peaceful protest carried out by the police and armed forces of Bahrain and the Gulf Cooperation Council (the latter at the invitation of former), the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) urgently calls on the United States government (USG) to serve notice of its withdrawal from the FTA upon the government of Bahrain (GoB), pursuant to Article 21.5.2.¹ The U.S. simply should not provide preferential trade treatment to a country that has and continues to engage in well-documented widespread and serious violations of human rights, including labor rights, of its citizens and residents.

In the interim, the USG must immediately enter into consultations with the GoB under Article 15.6 of the FTA and insist that it end its ongoing campaign to punish trade union activity and to cease all forms of discrimination against trade unions and union activists. To date, several trade union leaders have been arbitrarily detained and investigated, and hundreds of rank and file union members and workers have been fired for participating in strikes and pro-democracy demonstrations. Indeed, a recent high-level delegation by the International Trade Union Confederation (ITUC) warned that “the government has clearly decided to try and destroy [the trade unions],” which “have been at the forefront of the movement for dialogue, peace and reconciliation.”² Failure to intervene now to support workers and their democratic institutions would make a mockery of the labor protections included in the FTA.

If these consultations (and any other engagement) result in a satisfactory resolution of the human and labor rights issues described herein within the six month notice period, we would withdraw our request for withdrawal from the FTA.

This submission is filed with the Office of Trade and Labor Affairs of the U.S. Department of Labor (OTLA) in accordance with the procedures set forth at 71 Fed. Reg. 76691, Section F. The submission sets forth several serious and repeated examples where the GoB has failed to “respect, promote and realize” core workers’ rights, as outlined in the ILO Declaration on Fundamental Principles and Rights at Work.³ Each of these acts occurred after the FTA entered into force.

¹ Article 21.5.2 provides “Either Party may terminate this Agreement on 180-days written notice to the other Party.”

² See, ITUC Bahrain: Urgent ITUC Mission Warns of Slide into Dictatorship, April 18, 2011, available online at <http://www.ituc-csi.org/bahrain-urgent-ituc-mission-warns.html>.

³ The GoB has also failed to “strive to ensure that such labor principles and the internationally recognized labor rights set forth in Article 15.7 are recognized and protected by its law.” The AFL-CIO intends to raise these issues once the more immediate concerns are fully addressed and resolved.

II. STATEMENT OF FTA PROVISIONS VIOLATED AND STATEMENT OF JURISDICTION

The government of Bahrain has violated the following provision of Chapter 15 of US-Bahrain FTA.

Article 15.1: Statement of Shared Commitment

1. The Parties reaffirm their obligations as members of the International Labor Organization (ILO) and their commitments under the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998)* (ILO Declaration).⁴ Each Party shall strive to ensure that such labor principles and the internationally recognized labor rights set forth in Article 15.7 are recognized and protected by its law.

The Office of Trade and Labor Affairs (OTLA) has jurisdiction to review this submission as it concerns “any matter arising under this Chapter.”⁵ This submission sets forth facts related to the government’s violation of its commitments under the ILO Declaration on Fundamental Principles and Rights at Work, specifically the rights of freedom of association and the right to organize and non-discrimination.⁶

III. BRUTAL REPRESSION OF PEACEFUL PROTEST

Political rights in Bahrain are severely restricted. In Bahrain, the king is the head of state and of all branches of government. The king appoints the Prime Minister, who selects the Cabinet of Ministers. The king also appoints the members of the Shura Council, the upper chamber of the nation’s legislature. The members of the Council of Representatives, the lower chamber, are elected by popular vote; however, the outcomes of those elections are undermined by extensive gerrymandering.⁷ In sum, the vast majority of Bahraini citizens have limited means of participating in the government and/or influencing state policy.

Public assembly, particularly of a political nature, was highly restricted even before the recent events of 2011, with protestors sometimes treated severely. Human rights groups reported that political activists were subject to abusive tactics and torture while in detention last year.⁸

⁴ Article 2 of the Declaration provides that “all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, 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.

⁵ See Article 15.6(1).

⁶ See, e.g., ILO Conventions 87, 98 and 111.

⁷ U.S. State Department, 2010 Country Reports on Human Rights, Bahrain, April 8, 2011.

⁸ Id.

Bahrain has a large, poor working class population, which does not participate in the distribution of the nation's wealth. The lack of decent work, basic social services and adequate housing is major problem confronting many Bahraini citizens. These same problems, to an even greater degree, exist for many migrant workers in Bahrain.

It is in this context that peaceful mass pro-democracy protests commenced at Pearl Roundabout on February 14, 2011. From February 14-17, the peaceful protests grew, drawing several thousands to join the encampment at the roundabout. On the morning of February 17, riot police moved in and, using tear gas and batons, dispersed thousands of protestors. Several people were reported killed, some by live rounds, and hundreds sustained injuries. Public security forces continued the attacks into the following day, using live rounds against protestors and mourners, leaving more dead and wounded.

On February 15, the General Federation of Bahraini Trade Unions (GFBTU) urged the GoB to open an investigation into the attacks and to guarantee free assembly and expression. The GFBTU also called on the government to commence a national dialogue to address a long list of concerns, including job creation and fair wages.⁹ The GFBTU threatened a general strike on February 19 but withdrew the strike call when the GoB announced that it would engage in a dialogue with civil society – which subsequently failed to materialize. In the following weeks, demonstrations continued, at times met by harsh repression by state security forces.

Events took a dramatic turn when the Gulf Cooperation Council (GCC) agreed to send troops into Bahrain. On March 14, Saudi and UAE troops arrived in an armored convoy, right on the heels of bloody clashes between protestors and Bahraini security forces in downtown Manama. On the following day, March 15, the King declared a three-month state of emergency under Article 36(b) of the Constitution,¹⁰ which prohibits most forms of public assembly and speech related to such assembly, as well as to prohibit the operation of non-governmental organizations, political societies and unions. Reports also emerged of security forces occupying medical facilities, denying access to care to the wounded, harassing doctors and nurses and redirecting the wounded to military facilities – where they were certain to be detained and interrogated. Following the incursion of the GCC troops, the GFBTU issued a call for a general strike, which lasted until March 22.

Labor and pro-democracy protests continue. Human rights NGOs have reported serious human rights abuses committed by state actors in March and April 2011.

Human Rights Watch has documented in detail the denial of medical services to those who were victims of state-sponsored violence. Ambulances were turned away from hospitals, and in some cases were attacked. Medical staff also reported being threatened,

⁹ See Exhibit 1

¹⁰ Article 36 b): Martial law shall be proclaimed only by law, unless otherwise dictated by urgent necessity to be by a decree giving the justification therefore, provided that the matter shall be referred to the National Assembly within two weeks for decision. In all cases the period of martial law shall not exceed three months, but this period may be renewed in whole or in part once or more, provided that approval by a majority vote of the members constituting the National Assembly has been obtained.

searched and questions, with personal belongings confiscated. Some patients awaiting or receiving critically needed medical care were taken from their beds and led out by security forces.¹¹ On April 6, the GoB suspended the Bahrain Medical Society's Board of Directors and 30 doctors and nurses were summoned for investigation. All of them had treated protestors injured in demonstrations. The NGO Physicians for Human Rights has identified nearly 30 medical professionals who have been detained or are missing in Bahrain.¹²

Human Rights Watch has also reported the arbitrary detention of activists, human rights defenders, defense lawyers and doctors, some of whom were picked up in pre-dawn raids of their residences and held in unknown locations without access to counsel or family. Some reported being verbally and physically abused by security forces. HRW reports that there is no registry of those detained since demonstrations commenced on February 14.¹³ At this point, several hundred protestors are believed to be held by the police and military.

On April 15, the Committee to Protect Journalists reported that Karim Fakhrawi, founder of Al Wasat, an independent daily, died after ten days in custody. While authorities claimed he died of kidney failure, his body showed signs of cuts and bruises. The GoB also announced it will file criminal charges against three senior editors and already deported two other senior staffers. Online journalist Zakariya Rashid Hassan al Ashiri "also died under mysterious circumstances while in government custody."¹⁴

IV. VIOLATIONS OF ARTICLE 15.1.1 OF THE FTA

The GFBTU is a unique institution representing Bahrain's pluralistic society. It is a multi-party, non-sectarian union that represents all workers - including migrants. Since its founding, it has played a leading role in the movement for political reform; in the context of recent events, it has called for peaceful protest and genuine dialogue with the government. However, the government has rebuffed overtures by the trade union movement to resolve the current crisis. The March 15 declaration of a state of emergency, which prohibits trade union activity, has foreclosed the possibility of any meaningful dialogue.

¹¹ See, e.g., Human Rights Watch, Bahrain: New Arrests Target Doctors, Rights Activists, March 20, 2011, available online at <http://www.hrw.org/en/news/2011/03/20/bahrain-new-arrests-target-doctors-rights-activists>; Human Rights Watch, Bahrain: Injured People Denied Medical Care, March 17, 2011, available online at <http://www.hrw.org/en/news/2011/03/17/bahrain-injured-people-denied-medical-care>.

¹² Physicians For Human Rights, Bahrain - Free the Docs!, Bahraini Government Continues to Abduct Physicians, list of missing doctors available online at <http://bahrain.phrblog.org/the-missing/>.

¹³ Human Rights Watch, Defense Lawyer Detained After Night Raid, April 16, 2011, available online at <http://www.hrw.org/node/98124>; Human Rights Watch, Bahrain: State of Fear Prevails with Arbitrary Detentions, Pre-Dawn Raids, April 7, 2011, available online at <http://www.hrw.org/en/news/2011/04/07/bahrain-state-fear-prevails-arbitrary-detentions-pre-dawn-raids>; Human Rights Watch, Bahrain: Protest Leaders Arbitrarily Detained, March 18, 2011, available online at <http://www.hrw.org/en/news/2011/03/18/bahrain-protest-leaders-arbitrarily-detained>.

¹⁴ Committee to Protect Journalists, *Al-Wasat Founder Dies in Custody in Bahrain*, April 15, 2011, available online at <http://www.cpj.org/2011/04/al-wasat-founder-dies-in-custody-in-bahrain.php>.

The International Labor Organization (ILO) immediately expressed concern regarding the state of emergency, stating in a press release on March 15th:

The Director-General of the International Labor Office, Juan Somavia, expresses his grave concern at today's declaration of a state of emergency in Bahrain. This constitutes a serious setback to civil liberties, including the rights to legitimate trade union action. In the current volatile situation it is even more urgent to intensify efforts towards the dialogue that has started between the Government of the Kingdom of Bahrain and the key actors of society.¹⁵

The state of emergency remains in effect to date, and has been used to prohibit the free association of Bahraini workers, including citizens and migrants.¹⁶

Since then, prominent trade union leaders have been specifically targeted for firing and even face prosecution for their role in organizing and participating in strikes and demonstrations.¹⁷ According to the ITUC, “[s]ome 2,000 workers in 30 mainly government enterprises have been sacked for joining trade union actions in support of dialogue and an end to violence, including 6 members of the Executive of the ITUC-affiliated General Federation of Bahraini Trade Unions (GFBTU) and 22 local trade union leaders.”¹⁸ The GFBTU itself has documented 881 workers, as of mid-April, who had been fired from their jobs for participating in strikes and pro-democracy demonstrations; the trade union leadership appears to be bearing the brunt of the dismissals. The GoB has also announced that trade union leaders will be the subject of investigations for their activities. In demanding the dismissal of workers who went on trade union endorsed strikes or who otherwise demonstrated for political and socio-economic reforms, largely in state owned or invested enterprises, the government, is actively working to intimidate and dismantle an independent, democratic and non-sectarian trade union movement.¹⁹

Once again, the ILO was swift to denounce the repression of trade union activity.

All this information is extremely alarming, in particular as the General Federation of Bahrain Trade Unions had called on workers to return to work and had been given assurances by State officials that they will not face any

¹⁵ ILO, *The crisis in Bahrain must be solved through national dialogue*, Statement by the ILO Director-General, available online at http://www.ilo.org/global/about-the-ilo/press-and-media-centre/statements-and-speeches/WCMS_153131/lang-en/index.htm

¹⁶ The parliament went further, on April 5, calling on the government to identify the organizers of the strikes and refer them to the Public Prosecutors office.

¹⁷ The AFL-CIO has on file copies of notices of dismissal which cite as a reason participation in strikes or pro-democracy demonstrations.

¹⁸ ITUC, Bahrain: Urgent ITUC Mission Warns of Slide into Dictatorship, available online at <http://www.ituc-csi.org/bahrain-urgent-ituc-mission-warns.html>.

¹⁹ Of note, several companies several companies had announced (in some cases on public television) that they would only issue a warning to striking workers. It appears that the GoB put direct pressure on these firms to dismiss these workers instead of warning them.

punitive measures for their participation in strikes. Indeed, the GBFTU had taken a constructive attitude in inviting the workers to return to work in the interest of the national economy and to allow for conditions that would strengthen the basis for a national dialogue.²⁰

To date, the following leaders of the GBFTU have been dismissed:

- Ibrahim Hamad, Deputy General Secretary
- Ahmad Hasan Al-Khabbaz, Assistant General Secretary, Occupational Safety and Health;
- Abdul Qader Shehabi, Assistant General Secretary, Youth;
- Hasan Madhi, Assistant General Secretary, Finance;
- Makki Abbas, Assistant General Secretary, Social Affairs
- Muhammad Abdul-Rahman, Assistant General Secretary, Organizational Affairs

The leaders of unions (both GBFTU affiliates and non-affiliates) have suffered retaliation for their trade union activity. The nine executive members of the Arab Shipbuilding & Repair Yard (ASRY) trade union have been dismissed, including GBFTU General Secretariat (executive) member Muhammad Abdul-Rahman, in addition to other workers. Bahrain National Gas (BANAGAS) fired the entire executive committee of the union, including GBFTU Deputy General Secretary Ibrahim Hamad, as well as 51 workers. The Bahrain Petroleum Company (BAPCO) fired trade union chairman and a founder of the Bahraini labor movement, Abdul Ghaffar Abdullah Hussein. On April 4, Rulla el Saffar, president of the Bahrain Nursing Society, was detained and her whereabouts are unknown. The president of the Gulf Air trade union was also dismissed in April, along with 40 other workers.

The vice-president and four board members of the Bahraini Teachers Association (BTA) were arrested on March 29 and the general secretary on March 30.²¹ They continue to be held incommunicado. Security forces also twice raided the house of BTA President Mahdi Abu Deeb and interrogated his wife and children. In addition to these arrests and raids, the government has launched an investigation against some board members, and the payment of salaries to some teachers and board members have been halted. Several students were arrested around the same time.

In April 5, security forces surrounded the GBFTU headquarters and blocked all roads leading into the area. The union's website has been shut down. At the same time, articles have appeared in at least two pro-government media calling for the dissolution of the GBFTU and the creation of a government-dominated union of civil servants.

²⁰ ILO, *ILO Director-General Sounds Alarm on Situation of Workers in Bahrain*, available online at http://www.ilo.org/global/about-the-ilo/press-and-media-centre/statements-and-speeches/WCMS_154099/lang-en/index.htm.

²¹ They include Mrs. Jalila Salman, Vice President; Mr. Sana Abdul Razzaq, General Secretary; Mr. Salah AlBari, Financial Secretary; Mr. Afrah Asfour, Administrative Member; Mr. Ahmed al-Aneisi, Management Member; and Mr. Falah Rabih, Management Member.

In response to the ongoing crackdown on the unions and the dismissal of leaders and workers, the ILO has stated:

it is a matter of the deepest concern that resort to discriminatory action in contradiction with ILO Conventions would, in addition to violating the basic rights of Bahraini workers, undermine the conditions for genuine and successful dialogue.²²

The prohibition of trade union activity by means of the declaration of the state of emergency, the shutting down of the union's website and the retaliatory arrests and dismissals, all of which are related to union leader and member participation in peaceful strikes over political, social and economic rights, are a clear violation of the principles of freedom of association.

The ILO Committee on Freedom of Association has repeatedly explained that unions may strike for reasons other than purely industrial disputes, including government economic and social policy.²³ The numerous statements and the basis of the strike called by the GFBTU explicitly referenced social and economic demands, to be resolved through a process of social dialogue – which the GoB rejected.

The right of freedom of association cannot be exercised in a climate of fear.²⁴ However, the GoB has created such a climate through prohibiting public assembly, arbitrary arrests,²⁵ surrounding the GFBTU's premises²⁶ and targeted dismissal of trade union leaders and union members.

²² Supra, fn. 20.

²³ See, ILO CFA Digest ¶¶ 526 (The occupational and economic interests which workers defend through the exercise of the right to strike do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions and problems facing the undertaking which are of direct concern to the workers); 527 (Organizations responsible for defending workers' socio-economic and occupational interests should be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and standards of living.); 529 (While purely political strikes do not fall within the scope of the principles of freedom of association, trade unions should be able to have recourse to protest strikes, in particular where aimed at criticizing a government's economic and social policies.); 531 (The right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement; workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their members' interests.).

²⁴ See ILO CFA Digest ¶ 44 (The rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected.).

²⁵ See ILO CFA Digest ¶¶ 62 (The arrest, even if only briefly, of trade union leaders and trade unionists ...for exercising legitimate activities in relation with their right of association constitutes a violation of the principles of freedom of association.); 64 (The detention of trade unionists for reasons connected with their activities in defense of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular.); 69 (The arrest and detention of trade unionists without any charges being laid or court warrants being issued constitutes a serious violation of trade union rights.); 75 (The arrest and detention of trade unionists, even for reasons of internal security, may constitute a serious interference with trade union rights unless attended by appropriate judicial safeguards.).

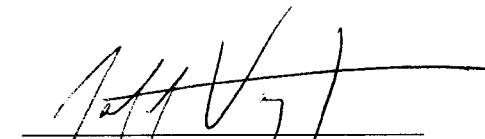
The ILO CFA has also been clear that a state of emergency does not give a government carte blanche to suspend the activity of trade unions.²⁷ The state of emergency declared by the King on March 15th should not serve as a basis to prevent peaceful strikes protesting the GoB's social and economic policy.

The targeted dismissal of workers who have engaged in protest which is in part political in nature also violates the principles on non-discrimination. Convention 111 is clear that workers must not suffer discrimination based on political opinion. In many cases, workers have been told at the time they were fired that the dismissals were due to participation in strikes and/or participation in pro-democracy rallies. Union leaders are specifically being investigated by the government for having encouraged workers to participate in these actions. Any reliance by the GoB on Article 4 of that Convention is without merit, as the workers have not engaged in activities prejudicial to the security of the State nor have they been given the right to appeal before a competent body.²⁸

V. CONCLUSION

For all of the reasons set forth herein, the USG should immediately invoke Article 21.5.2 to commence withdrawal from the FTA. In the interim, the USG must enter into consultations with the GoB under Article 15.6 of the FTA and insist that it end its ongoing campaign to persecute trade union activity and to otherwise frustrate the activity of the General Federation of Bahrain Trade Unions (GFBTU).

This petition is filed with the OTLA by the AFL-CIO on Thursday, April 21, 2011.



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²⁶ See ILO CFA Digest ¶ 192 (The access of trade union members to their union premises should not be restricted by the state authorities.).

²⁷ See ILO CFA Digest ¶¶ 193 (The Committee on Freedom of Association has recalled ... that the freedom of association Conventions do not contain any provision permitting derogation from the obligations arising under the Convention, or any suspension of their application, based on a plea that an emergency exists.); 201 (Emergency legislation aimed at anti-social disruptive elements should not be applied against workers for exercising their legitimate trade union rights.).

²⁸ Article 4 of Convention 111 provides: Any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State shall not be deemed to be discrimination, provided that the individual concerned shall have the right to appeal to a competent body established in accordance with national practice.

Exhibit 1

Statement by General Federation of Bahrain Trade Unions

The General Federation of Bahrain Trade Unions held this morning in an extraordinary meeting to discuss the ongoing tragic developments in Bahrain for the last couple of days with reports of a number of injuries and two dead yesterday and today morning. The GFBTU recalled the Bahrain National Charter and constitution and the hopes it brought about after being approved in a national referendum. Expressing concern regarding the draw back in the situation, the GFBTU appealed to safeguard the charter against all kinds of curtailing genuine reform at all levels. The GFBTU decided to:

1. Offer its condolences to families of the victims and wished the injured a very quick recovery.
2. To ask the concerned authorities to immediately start an investigation in the tragic events and to ensure bringing to justice all those responsible for the attacks on the protesters.
3. To call for the full respect of freedom of expression and the right to peaceful protest that is a guaranteed right for all citizens by the National charter and international Conventions and Charters ratified by the Kingdom.
4. Call for the full respect of human rights and the rejections of all forms of violence from all parties and their commitment to peaceful means of action.
5. Call for a national dialogue initiative to calm down the situation and reduce tensions that have led the country to dead-ends
6. Call to release all prisoners of opinion and all those detained during the protests
7. Call for the establishment of a national dialogue Council, with participation of the social partners and all those concerned to achieve a viable and quick solution the employment crisis, to secure job opportunities to thousands of new entrants to the labor, including new graduates, to find solution to imbalances between wages and prices, including the minimum wage policy
8. Opening the national media to all different points of view and not to maintain monopoly of media in the hands of certain groups and thus call for an objective, transparent and honest coverage of events.

GFBTU

Bahrain 15 Feb 2011