

UNITED STATES-BAHRAIN FREE TRADE AGREEMENT

PUBLIC REPORT OF REVIEW OF
U.S. SUBMISSION 2011-01 (BAHRAIN)



OFFICE OF TRADE AND LABOR AFFAIRS
BUREAU OF INTERNATIONAL LABOR AFFAIRS
U.S. DEPARTMENT OF LABOR

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PUBLIC REPORT OF REVIEW OF U. S. SUBMISSION 2011-01 (BAHRAIN)

EXECUTIVE SUMMARY

Prior to 2011, Bahrain was widely considered a leader among the Gulf Cooperation Council (GCC) countries on labor matters. Workers' capacity to organize and collectively bargain had contributed to largely stable industrial relations and to a relatively well-paid work force with comparatively decent working conditions. Workplace and employment discrimination targeting opponents of the Sunni monarchy and/or targeting the Shia majority was generally absent. Bahrain enjoyed relative social and political stability. This changed with the events of 2011, described and analyzed in this report. The United States believes that implementation by the Government of Bahrain of the recommendations in this report would go a long way towards restoring Bahrain's more positive pre-2011 record and standing on labor relations.

This report responds to U.S. Submission 2011-01 (Bahrain), filed by the American Federation of Labor and Congress of Industrial Organizations on April 21, 2011, with the Office of Trade and Labor Affairs (OTLA) of the U.S. Department of Labor's Bureau of International Labor Affairs. The submission alleges violation of the Labor Chapter of the U.S.-Bahrain Free Trade Agreement (FTA), which has been in force since January 2006.

The report concludes that the Government of Bahrain, in particular the Minister of Labor, has made significant efforts to ensure reinstatement of dismissed workers. In this context, the Minister of Labor worked with the International Labor Organization (ILO) to establish a tripartite committee composed of himself, the Chamber of Commerce, and the General Federation of Bahrain Trade Unions (GFBTU). All but a few hundred of the workers dismissed following the March 2011 general strike have now been reinstated. However, the report also concludes that important components of the government's response to the unrest that began in February 2011 appear to be inconsistent with Bahrain's labor commitments under the FTA related to freedom of association and non-discrimination. The report also notes the deterioration in the labor rights environment in Bahrain, marked by restrictions on trade union freedoms and political and sectarian-based discrimination against Shia workers. The report recommends Consultations under the Labor Chapter of the FTA as an appropriate and formal step for the U.S. government to engage constructively with the Government of Bahrain on these critical labor rights issues.

PURPOSE OF THE REPORT

On June 10, 2011, the OTLA accepted U.S. Submission 2011-01 (Bahrain) and published its decision in a *Federal Register* notice on June 16, 2011.¹ During the course of its review, the OTLA has examined extensive documentation provided by the Government of Bahrain, the submitters, and others with direct knowledge of relevant events. Additionally, the OTLA

¹ 76 Fed. Reg. 35244 (June 16, 2011).

conducted two visits to Bahrain to gather additional information on the issues raised in the submission, as well as on subsequent allegations that arose during the course of the OTLA's review. The OTLA has consulted with the U.S. Department of State and the Office of the U.S. Trade Representative throughout the review process. This report presents the OTLA's findings and recommendations based on the information obtained in accordance with the OTLA's Procedural Guidelines.

SUMMARY OF U.S. SUBMISSION 2011-01 (BAHRAIN)

U.S. Submission 2011-01 (Bahrain) alleges the Government of Bahrain has failed to uphold its commitments under Article 15.1 of the FTA. The primary allegations include:

- trade unionists and, in particular, trade union leaders have been targeted for dismissal and, in some cases, prosecution, in part for their role in organizing and participating in the March 2011 general strike; and
- widespread dismissals after the March 2011 strike reflected discrimination based, in part, on political opinion and activities.

The OTLA received additional allegations during its review of the submission, including that many of the dismissals following the March 2011 general strike were also discriminatorily based, in part, on workers' religious (sectarian) identities. The OTLA took these allegations into account in its review of the submission.

FINDINGS

Under Article 15.1.1 of the U.S.-Bahrain FTA, "The Parties reaffirm their obligations as members of the ILO and their commitments under the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)*." Furthermore, each Party "shall strive to ensure that such labor principles," including freedom of association and the effective recognition of the right to collective bargaining, the elimination of discrimination in employment and occupation, and "the internationally recognized labor rights set forth in Article 15.7, are recognized and protected by its law."² Likewise, under Article 15.1.2, each Party "shall strive to ensure that its laws provide for labor standards consistent with the internationally recognized labor rights set forth in Article 15.7 and shall strive to improve those standards in that light."³

Based upon its review, the OTLA has concluded that the Government of Bahrain appears to have acted inconsistently with its commitments under Article 15.1 of the FTA. In particular, the OTLA finds that:

- Bahrain appears to have acted inconsistently with its commitments by failing (1) to strive to ensure that freedom of association and the right to organize and bargain collectively are recognized and protected by its law; (2) to strive to ensure that its labor laws provide

² United States-Bahrain Free Trade Agreement, Article 15.1.1 (hereinafter "U.S.-Bahrain FTA").

³ U.S.-Bahrain FTA, Article 15.1.2.

for standards consistent with the rights of association and to organize and bargain collectively; and (3) to strive to improve such standards. Specifically, the Government of Bahrain has not remedied shortcomings in its legal framework governing freedom of association, either by enacting reforms recommended by the ILO Committee on Freedom of Association or otherwise; actively applied or did not prevent or discourage employers from invoking these provisions to retaliate against organizers, supporters, or participants in the March 2011 general strike; and enacted labor law amendments that weaken protection of freedom of association. In particular, the Government of Bahrain:

- did not remedy and applied or supported the application of its bans on trade unions engaging in political activities; on public sector union formation; and on strikes in broadly defined “strategic undertakings”;
 - did not remedy and applied its criminal sanctions for engaging in or encouraging strikes in the public sector or in undertakings related to public services or public service requirements;
 - amended the Trade Union Law to ban multi-sectoral labor federations, prohibit individuals convicted of violating criminal laws leading to trade union or executive council dissolution from holding union leadership posts, and require the Minister of Labor to select the labor organization to represent Bahraini workers in international fora and in national-level bargaining.
- Bahrain appears not to have fulfilled its commitments by failing to strive to ensure that the principle concerning the fundamental right of elimination of discrimination in employment and occupation is recognized and protected by its law. Specifically, the Government of Bahrain has taken no steps to reform its labor law to directly ban discrimination in employment and occupation; and after the March 2011 general strike directly engaged in discrimination on the basis of political opinion and/or religion in the public sector and failed to sanction such discriminatory practices by private sector employers.

RECOMMENDATIONS

Engage in Cooperative Labor Consultations

According to the OTLA’s Procedural Guidelines for submissions, its public report shall include any recommendations made to the Secretary of Labor as to whether the United States should request consultations with another Party pursuant to Article 15.6.1 of the U.S.-Bahrain FTA, as relevant and appropriate. According to Article 15.6.1, such consultations may be requested “regarding any matter arising under this [Labor] Chapter.” As discussed in this report, the allegations raised in U.S. Submission 2011-01 (Bahrain) against the Government of Bahrain, as well as subsequent events, directly concern matters under the Labor Chapter and whether the Government of Bahrain has upheld its FTA commitments, in particular with respect to freedom of association and the elimination of discrimination in employment and occupation under Article 15.1.

The Government of Bahrain has instituted mechanisms to address many of the concerns in the submission, including reinstatement processes that have resulted in the rehiring of all but a few hundred of the workers dismissed in the context of the general strike of March 2011 and a tripartite committee that brought together the Ministry of Labor, labor leaders, and employers to resolve outstanding labor concerns through constructive engagement and dialogue. While these efforts were a positive and critical first step, important concerns remain. Therefore, the OTLA recommends to the Secretary of Labor that the Government of the United States request Labor Consultations under Article 15.6.1 of the FTA to consult with the Government of Bahrain on the matters raised in this report. The OTLA further recommends to the Secretary that in fulfillment of the Parties' obligation to "make every attempt to arrive at a mutually satisfactory resolution of the matter," the Parties seek during Consultations to develop a plan of action to resolve the matters at issue, taking into consideration the recommendations set forth below.

As a result of the findings above, the OTLA makes the following recommendations to guide consultations and facilitate compliance by the Government of Bahrain with its commitments under Article 15.1 of the U.S.-Bahrain FTA:

- Explicitly prohibit discrimination in employment and occupation in its labor law, including based on political opinion and religion;
- Repeal the ban on multi-sectoral labor federations;
- Amend the bans on public sector union formation, on trade unions engaging in political activities, on strikes in "strategic undertakings," and on individuals who have been convicted of any violations that lead to dissolution of a trade union or executive council from holding union leadership posts, to ensure consistency with international standards;
- Amend criminal sanctions for striking or encouraging others to strike in the public sector or in undertakings related to public services or public service requirements, consistent with international standards;
- Allow workers' organizations to select the most representative labor organization to represent them in international fora and national-level collective bargaining;
- Implement the commitments of the Minister of Labor's February 2012 plan and the Government of Bahrain's Tripartite Agreement, to the maximum extent possible, to ensure reinstatement of workers dismissed in response to the March 2011 strike to the same or equivalent positions without preconditions or discrimination and with back pay due and other remuneration owed or another appropriate compensation package;⁴

⁴ See: "Bahraini Government Announces Finalizing Reinstatement of Dismissed Workers," Bahrain News Agency, March 4, 2012, <http://bna.bh/portal/en/news/497115>; "Tripartite Agreement concerning the issues raised in the framework of the Complaint concerning the non-observance by Bahrain of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), made by delegates to the 100th Session (2011) of the International Labour

- Review all criminal cases against trade unionists and union leaders and drop outstanding charges for those whose charges do not consist of advocacy of violence and stem from organizing, participating in, or encouraging the March 2011 general strike, consistent with the Bahrain Independent Commission of Inquiry recommendation on such cases;⁵
- Refrain from engagement in or support of activities undermining freedom of association, in particular against the General Federation of Bahrain Trade Unions and its leadership;
- Investigate allegations of and sanction, as appropriate, employer acts of intimidation and harassment of trade union members and leaders and other similar employer actions to weaken workers' organizations.

Conference under Article 26 of the ILO Constitution” [hereinafter “Tripartite Agreement”], March 11, 2012, available as an Appendix to ILO CFA Case 2882 (Bahrain), Interim Report No. 364, June 2012 at: http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3063453; and the Bahrain Independent Commission of Inquiry Report, p. 408, paragraph 1667 and p. 425, paragraph 1723. Information on the Bahrain Independent Commission of Inquiry, including the full report, is available at <http://www.bici.org.bh/>. (hereinafter BICI Report).

⁵ BICI Report, p. 424, paragraph 1722 (h).

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LIST OF ACRONYMS

AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
ALBA	Aluminium Bahrain
ASRY	Arab Shipbuilding & Repair Yard
BANAGAS	Bahrain National Gas Company
BAPCO	Bahrain Petroleum Company
BAS	Bahrain Airport Services
BATELCO	Bahrain Telecommunications Company
BCCI	Bahrain Chamber of Commerce and Industry
BDF	Bahrain Defense Force
BICI	Bahrain Independent Commission of Inquiry
BMS	Bahrain Medical Society
BTS	Bahrain Teachers' Society
CEACR	Committee of Experts on the Application of Conventions and Recommendations (ILO)
CSB	Civil Service Bureau
DOL	United States Department of Labor
FTA	United States-Bahrain Free Trade Agreement
GARMCO	Gulf Aluminium Rolling Mill Company
GCC	Gulf Cooperation Council
GFBTU	General Federation of Bahrain Trade Unions
ILAB	Bureau of International Labor Affairs (U.S. Department of Labor)
ILO	International Labor Organization
ILO CFA	International Labor Organization Committee on Freedom of Association
ILO Declaration	ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)

ITUC	International Trade Union Confederation
OTLA	Office of Trade and Labor Affairs (U.S. Department of Labor)
SMC	Salmaniya Medical Complex
USTR	Office of the United States Trade Representative

I. Introduction

Prior to the entry into force of the United States-Bahrain Free Trade Agreement (FTA), the Government of Bahrain expressed its commitment to improved labor rights in Bahrain. In a November 2005 letter from Bahrain's Ministry of Finance to the United States Trade Representative, the Minister cited significant political and economic reforms in Bahrain and stated, "The Government of Bahrain recognizes the importance of making progress on labor rights and we are in the process of amending many of our labor laws to be consistent with international standards."⁶

The events of early 2011, the issues raised by the submission under review, information gathered by the Department of Labor's Office of Trade and Labor Affairs (OTLA) during its review process, and the Government of Bahrain's initial efforts but incomplete progress toward resolving those issues, however, raise concerns regarding the Government of Bahrain's respect for international labor standards, in particular freedom of association and discrimination in respect of employment and occupation. As a result, this report, which covers events and related information received up to August 15, 2012, recommends steps to address outstanding problems in both of these areas.

A. Submission Filed Under the United States-Bahrain Free Trade Agreement

1. Summary of the Submission and Subsequent Allegations

On April 21, 2011, the OTLA of the U.S. Department of Labor (DOL)'s Bureau of International Labor Affairs (ILAB) received a public submission under Chapter 15 (the Labor Chapter) of the FTA from the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). U.S. Submission 2011-01 (Bahrain) alleges the Government of Bahrain has failed to uphold its FTA commitments under Article 15.1 regarding international labor rights, in particular those relating to freedom of association and discrimination in respect of employment and occupation. In its submission, the AFL-CIO requests that the United States invoke its right under Article 21.5.2 of the FTA to withdraw from the Agreement (after providing 180 days notice) and, in the interim, enter into Labor Consultations with the Government of Bahrain under Article 15.6.1.

The primary allegations in the submission are that:

- trade unionists and, in particular, trade union leaders have been targeted for dismissal and, in some cases, prosecution, in part for their role in organizing and participating in the March 2011 general strike; and
- widespread dismissals after the March 2011 strike reflected discrimination based, in part, on political opinion and activities.

⁶ Letter from the Kingdom of Bahrain's Minister of Finance, Ahmed bin Mohammed Al Khalifa, to U.S. Trade Representative, Ambassador Robert Portman, November 10, 2005.

In support of these allegations, the AFL-CIO cites cases of six General Federation of Bahrain Trade Unions (GFBTU) leaders who were dismissed as well as cases of other union leaders who were dismissed and, in some cases, arrested and prosecuted for their activities during the political unrest in Bahrain in early 2011.

The OTLA received additional allegations during its review of the submission, including that many of the dismissals following the March 2011 general strike were also discriminatorily based, in part, on workers' religious (sectarian) identities. The OTLA took these allegations into account in its review of the submission.

2. Relevant Provisions under the Labor Chapter of the Free Trade Agreement

The FTA entered into force on August 1, 2006. Under Article 15.1.1, "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)." Under Article 15.1.1, each Party "shall strive to ensure that such labor principles," which include, inter alia, freedom of association and the effective recognition of the right to collective bargaining and the elimination of discrimination in employment and occupation, "are recognized and protected by its law." Article 15.1.1 also states that each Party "shall strive to ensure that ... the internationally recognized labor rights set forth in Article 15.7 "are recognized and protected by its law." Article 15.7 includes the right of association and the right to organize and bargain collectively. Likewise, under Article 15.1.2, each Party "shall strive to ensure that its laws provide for labor standards consistent with the internationally recognized labor rights set forth in Article 15.7 and shall strive to improve those standards in that light."⁷

B. Office of Trade and Labor Affairs Review of the Submission

The Labor Chapter of the FTA states that each Party shall establish an office within its labor ministry to serve as a contact point with the other Parties and with the public.⁸ In the case of the United States, the OTLA was designated as the contact point in a *Federal Register* notice issued on December 21, 2006.⁹ Under the Labor Chapter, each Party's contact point shall provide for the submission, receipt, and consideration of communications on matters related to the provisions of the Chapter, as well as review such communications in accordance with domestic procedures.¹⁰

1. Office of Trade and Labor Affairs Procedures for Receiving Submissions

The 2006 *Federal Register* notice informed the public of the Procedural Guidelines that the OTLA would follow for the receipt and review of such public submissions. According to the definitions contained in the Procedural Guidelines, a "submission" means "a communication

⁷ U.S.-Bahrain FTA, Article 15.1.2.

⁸ *Ibid.*, Article 15.4.2.

⁹ 71 Fed. Reg. 76691 (Dec. 21, 2006).

¹⁰ U.S.-Bahrain FTA, Article 15.4.2.

from the public containing specific allegations, accompanied by relevant supporting information that another Party has failed to meet its commitments or obligations arising under a labor chapter.”¹¹

On June 10, 2011, the OTLA accepted U.S. Submission 2011-01 (Bahrain), determining that it met the criteria for acceptance, and published its decision in a *Federal Register* notice on June 16, 2011.¹²

2. Office of Trade and Labor Affairs Procedures for Reviewing Submissions

Under its Procedural Guidelines, the OTLA shall issue a public report within 180 days of the acceptance of a submission for review unless circumstances as determined by the OTLA require an extension of time.¹³ The objectives of the review are to gather information to assist the OTLA to better understand and publicly report on the issues raised by the submission. On December 29, 2011, the OTLA issued a *Federal Register* notice indicating that it was extending the period of review for the submission against the Government of Bahrain.¹⁴

Throughout the review process, the OTLA has consulted with the U.S. Department of State, the Office of the U.S. Trade Representative (USTR), and the U.S. National Security Staff. The OTLA requested additional information from the Government of Bahrain, the submitters and others with direct knowledge of events in Bahrain. In response, the submitters have provided numerous documents, primarily from the GFBTU, including copies of dismissal letters, strike notifications, statistics, and lists of dismissals and reinstatements. The Government of Bahrain provided written responses to questions from the OTLA on June 20, 2011, and on December 16, 2011, and provided additional information throughout this period, as well.

The OTLA has reviewed the documentation provided by the Government of Bahrain, the submitters, and from others with direct knowledge of relevant events. Additionally, the OTLA conducted two visits to Bahrain to gather additional information on the issues raised in the submission. From October 23-27, 2011, four representatives from DOL’s ILAB and officials from the U.S. Embassy in Bahrain met with workers and union leaders from 22 public, private and quasi-governmental enterprises, senior management of six companies, and Bahraini

¹¹ 71 Fed. Reg. 76691, Section B (Dec. 21, 2006).

¹² 76 Fed. Reg. 35244 (June 16, 2011). The Procedural Guidelines state that the OTLA shall consider six factors, to the extent that they are relevant, in determining whether to accept a submission for review. These are as follows: (a) whether the submission raises issues relevant to any matter arising under a labor chapter; (b) whether a review would further the objectives of a labor chapter; (c) whether the submission clearly identifies the person filing the submission, is signed and dated, and is sufficiently specific to determine the nature of the request and permit an appropriate review; (d) whether the statements contained in the submission, if substantiated, would constitute a failure of the other Party to comply with its obligations or commitments under a labor chapter; (e) whether the statements contained in the submission or available information demonstrate that appropriate relief has been sought under the domestic laws of the other Party, or that the matter or a related matter is pending before an international body; and (f) whether the submission is substantially similar to a recent submission and significant, new information has been furnished that would substantially differentiate the submission from the one previously filed. 71 Fed. Reg. 76691 (Dec. 21, 2006).

¹³ 71 Fed. Reg. 76691 (Dec. 21, 2006).

¹⁴ 76 Fed. Reg. 81984 (December 29, 2011).

government officials.¹⁵ Two OTLA officials and a representative of the Department of State's Bureau of Democracy, Human Rights, and Labor conducted a follow-up visit from February 7-9, 2012, to gather updated information on the status of dismissals and reinstatements. The OTLA also reviewed supplemental information submitted by the Government of Bahrain, AFL-CIO, GFBTU, workers, and other stakeholders, including multiple human rights organizations.

3. Other Relevant Processes Addressing Labor Rights in Bahrain

During the period of the OTLA's review of this submission, labor rights issues were examined by the Bahrain Independent Commission of Inquiry (BICI), established by the Government of Bahrain in June 2011. In addition, two labor-related complaints against Bahrain were filed with the supervisory mechanisms of the ILO.

The Government of Bahrain established the BICI composed of international jurists tasked with investigating and reporting on the events of February and March 2011. The BICI was established by Royal Decree in June 2011. The BICI released a public report on November 23, 2011, including a section entitled, "Termination of Public and Private Sector Employment."¹⁶ Following the release of the BICI report, the Government of Bahrain established a National Commission to follow-up on the report's recommendations. The National Commission issued its report to the King on March 20, 2012, and has made it available to the public through its web site.¹⁷ Section II(E) of this report provides further information on the implementation of BICI recommendations.

The first ILO complaint was filed on June 16, 2011, under Article 26 of the ILO Constitution by 12 worker delegates to the 100th Session of the International Labor Conference. This complaint alleges that Bahrain violated provisions of ILO Convention 111 on discrimination in employment and occupation and seeks the establishment of a special high-level Commission of Inquiry, reserved for the most serious violations of ratified conventions.¹⁸

¹⁵ The OTLA interviewed the following affected parties:

- workers and union leaders from 22 private, public and quasi-governmental enterprises: Aluminium Bahrain, American Express, Arab Shipbuilding and Repair Yard, Bahrain Airport Services, Bahrain Chamber of Commerce and Industry, Bahrain International Circuit, Bahrain National Gas Company, Bahrain Petroleum Company, Bahrain Telecommunications Company, General Federation of Bahrain Trade Unions, Gulf Air, Gulf Aluminium Rolling Mill Company, New York Institute of Technology, Ritz-Carlton Hotel, Bahrain Bourse, Central Bank of Bahrain, Information Affairs Authority, Ministry of Health, Ministry of Municipalities Affairs and Urban Planning, Ministry of Culture, Ministry of Education, and University of Bahrain;
- representatives of four government ministries: Civil Service Bureau, Ministry of Commerce and Industry, Ministry of Education, and Ministry of Labor; and
- senior management of six companies: Aluminium Bahrain, Bahrain Chamber of Commerce and Industry, Bahrain Petroleum Company, Bahrain Telecommunications Company, Gulf Air, and the Gulf Petrochemical Industries Company.

¹⁶ BICI Report.

¹⁷ National Commission report, March 20, 2012. Available at the National Commission's web site: <http://www.biciactions.bh> (hereinafter National Commission Report).

¹⁸ International Labour Conference, Complaint under Article 26 of the ILO Constitution against the Government of Bahrain, Provisional Record No. 30, 100th Session, June 16, 2011.

At its November 2011 meeting, the ILO Governing Body (ILO GB) deferred consideration of the Article 26 complaint until March 2012 to allow Bahrain to implement its proposal to establish a tripartite committee composed of representatives from the Ministry of Labor, the GFBTU, and the Bahrain Chamber of Commerce and Industry (BCCI), to address the matter. In early March, the tripartite committee signed an agreement concerning the issues in the complaint, which Bahrain submitted to the Director General of the ILO as the first promised progress report. In light of these developments, at its March meeting, the ILO Governing Body again suspended consideration of the Article 26 complaint until November 2012, with a request that Bahrain continue to provide reports on implementation of the tripartite agreement. The work of the tripartite committee is discussed further in Section II of this report.

The International Trade Union Confederation (ITUC) and its affiliates, including the GFBTU, submitted a second ILO complaint, to the ILO Committee on Freedom of Association (ILO CFA), on November 10, 2011. The ILO CFA complaint is based on the same events as U.S. Submission 2011-01 (Bahrain). The ILO CFA issued interim conclusions and recommendations in June 2012, and the case remains open.¹⁹

¹⁹ International Labour Office, Governing Body, reports of the Committee on Freedom of Association, 312th Session, Geneva, November 2011. Examination of Case No. 2882 (Bahrain) was deferred until the next meeting of the Committee.

II. Overview of Events in Bahrain

A. Protests and Demonstrations in Bahrain: February and March 2011

In the wake of protests in Egypt and Tunisia, calls for political, social and economic reform in Bahrain emerged in early 2011. Many of these calls were circulated through online fora and social networking sites such as Facebook and Twitter. A Facebook page called “February 14th Revolution in Bahrain” was established calling for widespread protests on February 14.²⁰ Demonstrations took place throughout Bahrain on February 14 and police and protesters clashed violently. The first protester killed was Mr. Ali Abdulhadi Almeshaima, a death which the BICI report concluded was the result of excessive force by police.²¹

On February 15, Mr. Almeshaima’s funeral procession, which started at the Salmaniya Medical Complex (SMC), drew a large number of mourners who were confronted by police. A clash with police resulted in a second death, that of Mr. Fadhel Ali Matrouk, which the BICI also attributed to the excessive use of police force.²² This second death heightened public anger and increased the size of demonstrations at the SMC, as well as at a roundabout in central Manama, then known as the Pearl Roundabout, where protesters began to erect tents. SMC medical staff also put up a tent to treat wounded demonstrators.²³ As the number of demonstrators and mourners at the Roundabout reached several thousand, King Hamad ordered that processions be allowed to occupy the Roundabout to mourn the deaths.²⁴

Later on February 15, the GFBTU issued a statement offering condolences to families of the two individuals killed in the unrest and calling for full respect for freedom of expression, the right to protest peacefully, and the release of those detained during the protests. The GFBTU also called for national dialogue with the participation of social partners to calm the situation and to address employment and wage issues.²⁵ That same evening, King Hamad gave a televised address in which he reaffirmed the right of Bahrainis to peacefully exercise their right to freedom of expression.²⁶ The statement of the King and the restraint of the police forces at the former Pearl Roundabout were welcomed in a February 16 statement by the GFBTU, which also called for an Extraordinary Meeting of the GFBTU Central Council on February 17.²⁷

In the early morning hours of February 17, the police commenced an operation to remove all demonstrators from the former Pearl Roundabout. It is estimated that approximately 1,500 demonstrators were staying in tents at the Roundabout and, according to the Ministry of Interior, over 1,000 security forces were sent to remove them and their tents.²⁸ In the clearing of the Roundabout, police fatally wounded four individuals, and these deaths were later characterized

²⁰ BICI Report, p. 65, paragraph 188.

²¹ Ibid., pp. 228 - 229, paragraphs 896-900.

²² Ibid., p. 230, paragraph 905.

²³ Ibid., p. 71, paragraph 215.

²⁴ Ibid.

²⁵ “Statement by General Federation of Bahrain Trade Unions,” February 15, 2011.

²⁶ BICI Report, p. 71, paragraph 217.

²⁷ “Statement of the General Federation of Bahrain Trade Unions (2) on Recent Events,” February 16, 2011.

²⁸ BICI Report, p. 73, paragraph 229.

by the BICI as the result of “unnecessary and disproportionate” use of force against civilians.²⁹ The Ministry of Interior reported that over 50 demonstrators suffered various injuries and 47 police officers were wounded in the confrontation.³⁰

The decision to clear the former Pearl Roundabout led to additional protests, including attempts to return to the Roundabout. At the SMC, protesters, including medical staff, commenced demonstrations in the SMC parking lot.³¹

On February 17, the GFBTU issued another statement condemning the use of force against peaceful protesters and calling on the political leadership to intervene immediately to stop the violence and to respect the right to protest peacefully.³² The statement also noted that “the participants confirmed that the meeting of the Central Council and the heads of trade unions in permanent session [were prepared to] take the necessary steps, including the call for general strike.”³³

The Bahrain Teachers’ Society (BTS) issued a strike call on February 17, asking teachers to participate in a strike outside of school premises on February 20.³⁴ The BTS also asked parents not to send their children to school to avoid the risk of injury in the event that the planned strike triggered a confrontation with security forces.³⁵

On February 17, the Bahrain Defense Force (BDF) announced that armed BDF units had been deployed to the capital of Bahrain, Manama, and affirmed that the BDF was prepared to take punitive actions to restore stability and called on individuals to avoid gathering in certain areas.³⁶

Clashes between protesters and security forces, including police and the BDF, continued until relative calm was restored mid-day on February 19, when security forces withdrew from the former Pearl Roundabout and demonstrators were again allowed to access the area.³⁷ The Crown Prince appeared on television that evening and announced that the King had issued a decree calling for a national dialogue.³⁸

On February 19, the GFBTU issued a statement that, while the Crown Prince’s call for dialogue was welcome, the Federation was calling for a general strike (excluding workers in essential humanitarian services) beginning on February 20 “to protect citizens and their safety.”³⁹ The strike call demanded the “immediate withdrawal of the army from the streets and the respect of

²⁹ Ibid., p. 166, paragraphs 659-660.

³⁰ Ibid., p. 74, paragraph 233.

³¹ Ibid., p. 75, paragraph 241.

³² “Statement of the General Federation of Bahrain Trade Unions and presidents of trade unions on the brutal attack on demonstrators in the Pearl Roundabout,” February 17, 2011.

³³ Ibid.

³⁴ BICI Report, p. 75, paragraph 241.

³⁵ Ibid., p. 79, paragraph 257.

³⁶ Ibid., p. 75, paragraph 237.

³⁷ Ibid., p. 81, paragraph 264.

³⁸ Ibid., p. 82, paragraph 273.

³⁹ “Statement Issued by the General Federation of Bahrain Trade Unions,” February 19, 2011.

fundamental rights to freedom of expression and to demonstrate peacefully as an enabling condition for dialogue, and without having to face force from the security forces.”⁴⁰

On the afternoon of February 19, the BDF General Command announced that armed units had been ordered to return to their bases.⁴¹ In light of that development, the GFBTU announced on February 20 that the general strike was suspended, lasting only one day, calling for workers to return to work the following day on February 21.⁴²

The BTS strike, however, which began on February 20, remained in effect until it was suspended on February 23, with an announcement from the BTS that teachers were to return to work on February 24. The announcement called on the Ministry of Education not to retaliate against teachers and staff who had participated in the strike and noted that BTS would continue to organize demonstrations outside of school hours.⁴³

Over the next few weeks, there were continuing demonstrations in Bahrain, mostly organized by various political societies and student groups. In early March, some of these events began to trigger violent confrontations between supporters of the government and opposition protesters, as well as sectarian clashes between Shia and Sunnis. By March 13, the general security situation in Bahrain had deteriorated significantly, as there were numerous clashes between protesters and security forces, as well as between residents of various communities, and heightened tension due to the spread of information about assaults and vandalism. In this climate of insecurity, citizen groups from various neighborhoods and villages began to organize roadblocks, checking identities of travelers and preventing unknown individuals from entering certain areas.⁴⁴

B. General Strike and Declaration of State of National Safety

On March 13, the GFBTU responded to the deteriorating security situation, escalating tensions, and violence in the country by issuing a call for a second general strike, stating:

The General Federation of Bahrain Trade Unions hereby declares a general strike as of today, March 13, 2011 due to the security repercussions and social aggravations against the civil safety as a result of the excessive force employed by security forces in dispersing the sit-in gatherings near the Financial Harbor and Pearl Roundabout and the incidents in different locations all over the country. Unidentified individuals were instigated by some entities leading to several casualties. The General Federation considers this as breaches and violations of human rights and international agreements ratified by the Kingdom of Bahrain.

⁴⁰ Ibid.

⁴¹ BICI Report, p. 82, paragraph 270.

⁴² “Statement of the General Federation of Bahrain Trade Unions Regarding Suspension of the General Strike,” February 20, 2011.

⁴³ BICI Report, p. 331, paragraph 1342.

⁴⁴ Ibid., p. 126, paragraph 468.

The General Federation demands that all the political forces and the civil institutions of society join forces and consolidate their efforts in order to reach a final solution to save the country and the people from more aggravation and tensions, and from being ensnared in the vicious circle of casualties and more bloodshed.⁴⁵

In interviews with the OTLA, representatives of the GFBTU and several enterprise-level unions underscored that the general strike call was, in important part, an attempt by workers through collective action to defend themselves and their interests in the face of a declining security situation. It was not, they claimed, “purely political,” contrary to what the Government of Bahrain asserted to the OTLA in June 2011.⁴⁶ The BICI report also cited workers’ efforts to defend themselves from the deteriorating security situation as one motive behind the strike.

The BICI report explained:

The calls by various labour and trade unions to strike were related, at least in part, to concerns for the safety and mistreatment of workers, calls for an improvement in the socio-economic conditions of their members and their families, and assurances against retaliation against participating members, pursuant to the purposes outlined under Article 20 of Decree Law No. 33 of 2002.⁴⁷

On March 13, King Hamad requested military assistance from the GCC.⁴⁸ On March 14, the GCC Peninsula Shield force entered Bahrain, beginning with troops from Saudi Arabia and followed by troops from the United Arab Emirates and the State of Qatar.⁴⁹

On March 15, King Hamad declared a three-month State of National Safety, authorizing security forces to search and arrest individuals suspected of disturbing public order, to restrict public gatherings and the dissemination of certain types of information, and to regulate the activities of individuals and organizations suspected of subversive activities.⁵⁰ The State of National Safety remained in effect until it was lifted on June 1, 2011, and according to the Government of Bahrain, during its implementation, all laws remained in effect, including the labor and trade union laws.⁵¹

⁴⁵ “Statement of the General Federation of Bahrain Trade Unions,” March 13, 2011 (translation by the U.S. Department of State).

⁴⁶ Government of Bahrain, “Response of the Government of Bahrain to the Public Submission Filed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) Under the Bahrain-United States Free Trade Agreement”, submitted to the OTLA, June 20, 2011, p. 15 (hereinafter Government of Bahrain response, June 20, 2011). The Government of Bahrain told the OTLA, specifically, that the “demand related to the strike call was the replacement of the government and the overthrow of the regime.”

⁴⁷ BICI Report, p. 353, paragraph 1448.

⁴⁸ Ibid., p. 132, paragraph 490.

⁴⁹ Ibid., p. 134, paragraph 501.

⁵⁰ Government of Bahrain, Royal Decree No. 18 for the year 2011 to declare a State of National Safety, March 15, 2011.

⁵¹ Government of Bahrain response, June 20, 2011, p. 9.

On March 16, Bahraini security forces commenced operations to remove demonstrators from the former Pearl Roundabout, the Financial Harbor, and from the SMC. At the Roundabout, demonstrators clashed with security forces using tear gas and sound bombs to disperse the crowds. Shortly after government forces regained control of the area, two police officers were killed nearby after being struck multiple times by a demonstrator's vehicle.⁵² There were also reports of several civilian fatalities over the course of the day.

Over the next several days, security forces carried out numerous arrests of opposition figures.⁵³ The security environment became increasingly fragile as the government established security checkpoints throughout Bahrain and both violent pro- and anti-government actors carried out acts of vigilantism. Security forces conducted searches of vehicles and mobile phones, detaining individuals accused of possessing "anti-government" materials. Checkpoint searches, both official and unofficial, were reportedly often accompanied by mistreatment at the hands of security personnel, including physical abuse (kicking, shoving, and beating with batons) and verbal abuse based on religious and sectarian beliefs.⁵⁴ Some workers in transit to and from work were particularly impacted by the general security situation on the roads from March 13 to 20. Some directly faced violence, while others were afraid to travel due to the threat of insecurity, as described to the OTLA by former employees from: Gulf Aluminium Rolling Mill Company (GARMCO), alleging a company bus transporting workers was stolen, forcing 22 employees to walk to work; Bahrain Petroleum Company (BAPCO), alleging several workers were assaulted and injured during their commute to work; Bahrain Telecommunications Company (BATELCO), alleging that over half of the employees were prevented from attending work due to lack of safety on the roads; Bahrain Airport Services (BAS) and Gulf Air, citing particular difficulties in travel to the airport; Bahrain National Gas Company (BANAGAS), alleging security conditions prevented workers from even leaving their houses and reporting that several BANAGAS employees were assaulted by mobs of unknown civilians; the Ritz-Carlton Hotel, where one employee provided evidence that his car had been shot during his commute to work; and the New York Institute of Technology, citing general insecurity on the roads preventing a safe commute.⁵⁵

On March 20, the GFBTU announced that it was extending the March 13 general strike indefinitely, with the Secretary General stating, "Workers are scared to go out to work as there are checkpoints everywhere, and in some cases they are questioned unnecessarily by authorities."⁵⁶

Over the next few days, security conditions improved, though there were still checkpoints and sporadic clashes between demonstrators and security forces, and on March 22, the GFBTU announced that it was suspending the general strike and called for workers to return to work on March 23. In its statement suspending the strike, the GFBTU noted that it received assurances

⁵² BICI Report, p. 144, paragraph 533 and p. 227, paragraph 884 (in which the BICI attributes the police officers' deaths to demonstrators).

⁵³ Ibid., p. 147, paragraph 552.

⁵⁴ Ibid., p. 150, paragraph 564.

⁵⁵ OTLA interviews with dismissed workers (various), October 2011 and February 2012.

⁵⁶ BICI Report, p. 155, paragraph 589.

from unspecified government officials “concerning an end to the attacks, assaults and insults against the workers, which had prevented the workers from getting to and from their work places safely.” The GFBTU urged workers to coordinate with their unions to document any assaults during their work commute and called upon all workers to “preserve the social fabric, national unity and solidarity in the current circumstances.”⁵⁷ The GFBTU also called on public ministries and private institutions to be understanding of the “extraordinary circumstances in the country in order to protect the rights of all workers.”⁵⁸

On March 23, the security situation in Bahrain was reported to be continuing to improve, although demonstrations continued, as government offices and many private businesses resumed normal activity.⁵⁹

C. Widespread Dismissals Following Unrest in Bahrain

In the weeks and months after the March 2011 protests and general strike, thousands of workers, including union leaders, were dismissed, and in some cases suspended, from their jobs in a wide range of businesses, varying in size and sector of activity. Based on comments by senior government officials quoted in media reports at the time, such dismissals appear to have received high-level support.⁶⁰

Workers interviewed by the OTLA, however, asserted that the dismissals were unjustified and unlawful. They claimed that the dismissals were largely motivated by discrimination on the basis of political opinion and/or religion and/or were retaliation for legitimate trade union activities, and they noted that employers often provided multiple discriminatory grounds for each dismissal. They further alleged that trade union leaders were discriminatorily and disproportionately targeted first for dismissal, prior to their rank-and-file counterparts. And they noted that the dismissals generally failed to follow mandatory legal dismissal procedures, such as providing prior notice and allowing workers to participate in their investigations. In particular, employers regularly cited prolonged absenteeism as the basis for dismissal without following the legal requirements for such dismissals.⁶¹ In doing so, they appeared to contradict clear Ministry of Labor guidance, issued in the context of the March 2011 general strike, which underscored that employers must warn workers of possible dismissals after five days of absence; must investigate and determine whether the absenteeism was “without reasonable cause” before dismissing workers; and, in this case, must factor in security conditions during the March 2011

⁵⁷ “Statement of the General Federation of Bahrain Trade Unions Regarding the General Strike,” March 22, 2011. Translated by U.S. Department of State.

⁵⁸ Ibid.

⁵⁹ BICI Report, p. 156, paragraph 599.

⁶⁰ See, e.g., “All Criminal Acts will be Punished,” Gulf Daily News, April 18, 2011, available at <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=304045>.

⁶¹ Article 113(4) of Bahrain’s Labour Law for the Private Sector allows for dismissal “if the worker absents himself without reasonable cause for more than twenty days in one year or for more than ten consecutive days,” provided that such dismissal is preceded by the appropriate warning. Government of Bahrain, Labour Law for the Private Sector, 1976, Article 113(4) (hereinafter Labour Law).

general strike into the “reasonable cause” analysis.⁶² The Prime Minister’s Special Committee chaired by the Minister of Labor that reviewed all reported cases of wrongful dismissals found that “[m]any of these cases related to the political events of the period, while a significant number did not.”⁶³

In some cases, dismissals seemingly motivated by discrimination were also preceded by arrest and detention, allegedly facilitated by the employer or agents of the employer, and by torture.

1. Dismissals in the Private Sector

The Ministry of Labor informed the OTLA during the review visit to Bahrain in February 2012 that a total of 2,462 private sector employees were dismissed following the unrest.⁶⁴ The official dismissal figures from the Government of Bahrain are included in Table 1 below.

Table 1: Private Sector Dismissal Statistics from the Government of Bahrain⁶⁵

Company	Number of Workers Dismissed
Aluminium Bahrain	541
Bahrain Petroleum Company	316
APM Terminals	256
Gulf Air	224
Bahrain Telecommunications Company	172
Bahrain Airport Services	88
Bahrain National Gas Company	68
Arab Shipbuilding & Repair Yard	64
Gulf Aluminium Rolling Mill Company	36
Others	697
Total	2,462

The highest concentration of private sector dismissals occurred in the large parastatal institutions, which account for a significant portion of Bahrain’s economy. While classified as private sector and falling under the jurisdiction of the Labour Law, many of these companies are held by the Kingdom of Bahrain’s investment company, Mumtalakat, created by Royal Decree in

⁶² “Rules and Guidelines of Dismissal from Service according to the Provisions of the Labour Law for the Private Sector Promulgated by Legislative Decree No. (23) for 1976, as Amended,” (undated) provided to OTLA by the Ministry of Labor during the meeting in October 2011.

⁶³ Government of Bahrain response to OTLA questions, received via email on December 16, 2011.

⁶⁴ The GFBTU, however, reported 2,241 private sector workers dismissed. One possible explanation for the higher figure presented by the Government of Bahrain is that the Ministry of Labor’s figures include workers whose employers notified the Ministry of their intent to dismiss specific workers, who were ultimately not dismissed. The Ministry of Labor told OTLA that there were approximately 300 workers who fell into this category. Additionally, the Ministry of Labor has reported that 201 workers did not file complaints with the Ministry regarding their dismissals, and it is possible that these workers also did not approach the GFBTU to register their cases.

⁶⁵ Government of Bahrain, Information Affairs Authority, *BICI Follow-Up Unit: Follow-Up Report*, June 2012, p. 9.

2006. Mumtalakat holds stakes in 35 companies, often referred to as the “major companies” or “public-private” companies, with a portfolio value of approximately US\$9.1 billion.⁶⁶

2. Dismissals in the Public Sector

Shortly after the suspension of the general strike on March 23, the Government of Bahrain called for an examination of worker absences from public ministries during the period of the general strike. Specifically, on March 27, while chairing the weekly Cabinet meeting, the Prime Minister ordered all government ministries and departments to “strictly enforce Civil Service regulations,” particularly with regards to work attendance and performance during that time. Additionally, the Prime Minister ordered all government institutions to submit reports on employees’ compliance with applicable regulations over that period.⁶⁷

Over the course of the next several weeks and months, public sector workers were suspended and dismissed from a variety of ministries and other government entities. Over 200 civil servants were also referred to the Public Prosecutor’s office for investigation into alleged criminal acts during the period of unrest. According to the Civil Service Bureau (CSB), responsible for processing public sector dismissals, as of mid-December 2011, 2,075 cases had been referred to the CSB with a recommendation for dismissal from the employing ministry. Of those, over half (roughly 1,275) were from the Ministry of Education, representing the largest group of public sector workers facing disciplinary action for their strike participation.⁶⁸ On March 23, the Ministry of Education announced the establishment of committees to investigate the events that led to the disruption of classes in February and March 2011 and to determine whether, in that context, any ministry employees had violated Civil Service Regulations governing their employment.⁶⁹

As of December 2011, the CSB reported that of 2,075 public sector workers referred to them, they had finalized 180 dismissals and imposed ten-day suspensions without pay for an additional 1,631 civil servants.⁷⁰ The Government of Bahrain reaffirmed these numbers in the March 2012 Tripartite Agreement.⁷¹ The majority of cases were from the Ministries of Education (1,275 of the cases referred with 79 dismissed and 1,014 recommended for suspension) and Health (337 of the cases referred with 36 dismissed and 237 suspended).⁷²

The actual number of dismissed public sector workers has been the subject of ongoing dispute, as other bodies have gathered information inconsistent with the statistics provided by the CSB. The BICI, which collected testimony from dismissed workers, stated that BICI investigators had

⁶⁶ For more information on the Mumtalakat companies, see <http://www.bmhc.bh/default.aspx>.

⁶⁷ “Bahrain Clamp Down on Absent Employees”, Trade Arabia, Business News Information, March 28, 2011, http://www.tradearabia.com/news/LAW_195842.html. See also, BICI Report, p. 157, paragraph 624.

⁶⁸ These disciplinary actions against teachers appear to be largely directly related to the two teachers’ strikes occurring on February 20-24 and March 14-24, 2011.

⁶⁹ BICI Report, p. 157, paragraph 603.

⁷⁰ Government of Bahrain response to OTLA questions, received via email on December 16, 2011.

⁷¹ Tripartite Agreement, p. 3.

⁷² *Ibid.*, Appendix B.

received statements from 465 public sector workers reporting that they had been dismissed and another 355 workers who reported being suspended.⁷³ The GFBTU also collected information on public sector dismissals, which was inconsistent with CSB statistics. According to the GFBTU, 246 public sector workers were dismissed, while 415 were suspended.⁷⁴

3. Dismissals from Quasi-Governmental Institutions

Dismissals also occurred in quasi-governmental institutions, including the University of Bahrain, Bahrain Polytechnic University, the Shura Council (the national legislature that acts in an advisory capacity only), and the Bahrain Bourse (Bahrain's regulatory agency for securities and official stock market).⁷⁵ These employers do not fall under the purview of the Ministry of Labor or the CSB and, for that reason, do not appear to have been captured in the public sector statistics that the Government of Bahrain provided to the OTLA.

In interviews with workers, the OTLA collected limited data on this category of workers. Regarding the University of Bahrain, academics reported that 19 faculty members were dismissed and an additional 66 staff members were either dismissed or suspended.⁷⁶ Shura Council staff members alleged there were “systematic dismissals” of 20 employees, and workers from the Bahrain Bourse reported to the OTLA that four employees were fired from the company after the March 2011 general strike.⁷⁷

D. Targeted Dismissals

1. Targeted Dismissals Based on Union Leadership

In its submission to the OTLA, the AFL-CIO alleged that “prominent trade union leaders have been specifically targeted for firing . . . for their role in organizing and participating in strikes and demonstrations.” The submission reported that six members of the Executive Board of the GFBTU and 22 leaders of enterprise-level trade unions had been dismissed in the wake of the March 2011 general strike. That number of trade union members and leaders dismissed reportedly increased since the submission was filed on April 21, 2011. A complaint to the ILO CFA filed by the GFBTU and others on November 10, 2011 included the following statistics of fired union leaders, provided in Table 3.⁷⁸

⁷³ BICI Report, p. 333, paragraph 1356.

⁷⁴ Tripartite Agreement, p. 3.

⁷⁵ OTLA interviews with dismissed workers, October 2011 and February 2012.

⁷⁶ “Summary List: Status of University of Bahrain Suspended/Dismissed as of January 30, 2012”, provided to the OTLA on February 8, 2012.

⁷⁷ OTLA interviews with dismissed Shura Council staff, October 2011.

⁷⁸ Complaint to the ILO Committee on Freedom of Association, filed by the ITUC, GFBTU, and Education International, November 10, 2011, pp. 20-22 (copy on file with the OTLA).

Table 2: Trade Union Officer Dismissals

Trade Union Organization	Number Dismissed
General Federation of Bahrain Trade Unions ⁷⁹	9
Bahrain Petroleum Company Trade Union	10
Bahrain Telecommunications Company Trade Union	3
Arab Shipbuilding and Repair Yard Trade Union	8
Gulf Air Trade Union	3
General Flight Attendants Union	3
Hotels and Catering Union	1
General Trading and Food Processing Company Union	3
Gulf Aluminium Rolling Mill Company Union	10
Bahrain Aviation Fueling Company Union	1
Bahrain National Gas Company Trade Union	1
Bahrain Airport Services Trade Union	1
Bankers Trade Union	1
Sphinx Trade Union	3
Bahrain Precast Concrete Company Trade Union	1
Gulf City Cleaning Company Union	1
Total	59

In its response to the allegations in the AFL-CIO submission to the OTLA of discrimination against union leaders following the March 2011 general strike, the Government of Bahrain has stated, “There has been no effort directly or indirectly by the Government of Bahrain to encourage the dismissal of workers in general or any union officers or workers specifically.”⁸⁰

i. Arab Shipbuilding and Repair Yard (ASRY)

According to workers at ASRY, dismissals commenced with the firing of all nine members of the Executive Board of the ASRY trade union on April 10, 2011. Although ASRY ultimately dismissed a total of 64 workers for their participation in or absence related to the general strike, those dismissals occurred after the union leaders were fired.⁸¹ According to ASRY’s Human Resource manager, the dismissals of all ASRY Executive Board members were based on “disrupting work and calling for a general strike as a result of the political events in Bahrain.”⁸² The grounds for dismissal in one union leader’s termination letter reviewed by the OTLA also

⁷⁹ The nine dismissed GFBTU members are from the following companies: BANAGAS (1); BAS (1); Aluminum Bahrain (ALBA) (1); BAPCO (2); BATELCO (3); and GARMCO (1).

⁸⁰ Government of Bahrain response, June 20, 2011, p. 11.

⁸¹ In interviews with the OTLA, ASRY union leaders indicated that when they returned to work on March 23, 2011, following the GFBTU’s suspension of the general strike, they were informed by company leadership that no punitive actions would be taken against any employees for strike-related activities. Eighteen days later, all of the nine elected union leaders received letters stating that they were being terminated, effective immediately. OTLA interviews with dismissed ASRY employees, October 2011.

⁸² Email to the OTLA from ASRY, November 10, 2011.

cited primarily to the role of the union in the March 2011 general strike, indicating that union leaders had “committed a gross violation by inciting workers not to report for work, which disrupted the progress of work in the company, leading to significant losses.”⁸³

ii. Bahrain Petroleum Company (BAPCO)

According to BAPCO union board members interviewed by the OTLA, dismissals at BAPCO commenced on March 31 with the firing of the union’s leader. The following week, on April 6, an additional 11 members of the 15-member union board were dismissed, receiving letters that cited the union’s call for and participation in an illegal strike as the grounds for dismissal. BAPCO ultimately dismissed a total of 316 workers for their involvement in or absence during the general strike, but the other dismissals targeting non-union leaders did not occur until after the union leaders were dismissed.⁸⁴

In meetings with the OTLA, senior management of BAPCO confirmed that investigations into employee actions and attendance related to the March 2011 general strike initially targeted union leaders suspected of instigating the strike at BAPCO. According to BAPCO management, the 12 trade union leaders who admitted to calling for a strike were dismissed, while those three who denied involvement were not dismissed.⁸⁵

2. Targeted Dismissals Based on Political Affiliation and Activity

The submission filed by the AFL-CIO also alleged that the “targeted dismissal of workers who have engaged in protest which is in part political in nature also violates the principles on non-discrimination. . . . 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.”⁸⁶ Similarly, the June 16, 2011, complaint under Article 26 of the ILO Constitution, filed by worker delegates to the 100th Session of the International Labor Conference, alleged in relevant part that the widespread dismissals following the March 2011 general strike were based, at least in part, on political opinion.⁸⁷

In interviews with the OTLA, many workers from all sectors (public, private, and quasi-governmental) described a political focus of the investigations leading up to their dismissals. Many alleged that they were fired, at least in part, in retribution for their political views and their suspected involvement in political activity outside the workplace, including attending political gatherings or otherwise demonstrating against the leadership of Bahrain.⁸⁸ Workers described, for example, pre-dismissal investigations in which they were questioned about participation in protests at the former Pearl Roundabout and shown Facebook postings and photos as evidence of

⁸³ ASRY dismissal letter, (employee name withheld) April 11, 2011 (translation provided by U.S. Department of State).

⁸⁴ OTLA interviews with dismissed BAPCO employees, October 2011.

⁸⁵ OTLA interview with BAPCO senior management, October 2011.

⁸⁶ U.S. Submission 2011-01 (Bahrain), p. 9.

⁸⁷ International Labour Conference, Complaint under Article 26 of the ILO Constitution against the Government of Bahrain, Provisional Record No. 30, 100th Session, June 16, 2011.

⁸⁸ OTLA interviews with dismissed workers (various companies), October 2011.

their political dissent.⁸⁹ Some noted that they were fired the day after they were identified on state-run television as threats to the state.⁹⁰

Union leaders from Gulf Air told the OTLA that the company sent a circular soliciting photos and other evidence from employees that would show that their colleagues participated in political demonstrations.⁹¹ While the company denied sending out the circular, company officials acknowledged receiving a large number of photos from “volunteers” providing evidence of participation by fellow employees in political protests.⁹² In the case of the BCCI, several employees told the OTLA that they had been dismissed following colleagues’ allegations that they had “promoted hatred of the regime” in violation of BCCI policies.⁹³

The political tone, in many cases, of investigations that culminated in worker dismissals was particularly pronounced in the public sector. In discussing their cases with the OTLA, dismissed Ministry of Education staff indicated that suspensions of teachers commenced in March, prompted in part by “volunteers” or colleagues who submitted photos, videos and other materials documenting participation in political demonstrations. They further explained that the investigations that preceded their dismissals, conducted by the Ministries of Interior and Education, included repeated questions about the teachers’ political activities, generally, and attendance at demonstrations at the former Pearl Roundabout, in particular.⁹⁴ Ministry of Health employees similarly described the dismissal procedures followed by the Ministry of Health, stating that the investigations consisted of a series of questions focused largely on their political activities and views.⁹⁵ Likewise, workers dismissed from several other ministries told the OTLA that during investigation committee proceedings prior to their dismissal, they were also repeatedly asked questions about their participation in protests and their political views. In one case, the investigation committee reportedly had photos of a worker at the former Pearl Roundabout, taken after work hours, and in others, investigation committees examined whether workers had expressed approval of the demonstrations on social networking sites, such as “like” on Facebook.⁹⁶

The CSB provided the OTLA information from a sample group of public sector dismissals. These documents demonstrated that disciplinary committees convened by the CSB repeatedly asked workers about their participation in demonstrations at the former Pearl Roundabout, political statements made to colleagues or posted on social networking sites such as Facebook or Twitter, and membership in political societies.⁹⁷ When the OTLA asked the CSB about allegations that dismissed workers were questioned by CSB disciplinary committees about political activities outside of the workplace, in particular attendance and participation in

⁸⁹ Ibid.

⁹⁰ OTLA interview with dismissed Gulf Air employees, October 2011.

⁹¹ Ibid.

⁹² OTLA interview with Gulf Air senior management, October 2011.

⁹³ OTLA interview with dismissed BCCI employees, October 2011.

⁹⁴ OTLA interviews with dismissed Ministry of Education employees, October 2011.

⁹⁵ OTLA interviews with dismissed Ministry of Health employees, October 2011.

⁹⁶ OTLA interviews with dismissed employees (employers names withheld at the request of interviewees), October 2011.

⁹⁷ Sample employee case file documentation provided to OTLA by the CSB, October 2011.

demonstrations at the former Pearl Roundabout, a CSB official noted that while workers might have been asked such questions, dismissals were not based on these activities. The CSB official, however, did not provide an alternative basis for the terminations or an explanation for why such questions were asked by CSB disciplinary committees whose sole purpose was to review and approve or deny recommendations for dismissals from employing government ministries.⁹⁸

Dismissal processes in several quasi-governmental institutions, such as the University of Bahrain, appear to have followed a similar pattern, with employers basing employment decisions, at least in part, on political activities. On March 13, 2011, protesters held a large demonstration at the university resulting in violent clashes between demonstrators and security forces. Within several weeks, professors were called to meetings with university officials, during which an investigation committee questioned them on their political activities, including off-campus activities, such as their participation in demonstrations at the former Pearl Roundabout or other locations, political emails and postings on social networking sites such as Facebook and Twitter, political conversations with expatriate colleagues, and membership in political societies.⁹⁹

University of Bahrain academics interviewed by the OTLA reported that after the investigation committees' proceedings, they were suspended and their cases transferred to the university disciplinary councils to determine whether they would be terminated. While on suspension from work, several academics were taken into police custody for interrogation, where they were reportedly also threatened and physically abused.¹⁰⁰

On August 11, 2011, 19 academics were dismissed from the University of Bahrain. The academics informed the OTLA in November 2011 that the University of Bahrain had agreed to reinstate eight of the 19 dismissed but that those reinstated would receive a "final warning," which could indefinitely deprive them of certain rights related to promotion, nomination for study or research grants, and nomination for other administrative or academic positions.¹⁰¹ In March 2012, the national commission to implement the recommendations of the BICI reported that 17 of the 19 academics were reinstated and the remaining two did not return to the university, due to travel outside of Bahrain.¹⁰² The OTLA does not have specific information as to whether academics continued to receive "final warnings" upon reinstatement.

University of Bahrain employees' dismissal letters, obtained by the OTLA, specifically cited political activities as justification, at least in part, for dismissal. In one letter, a University of Bahrain employee was notified that "it was proven to the Primary disciplinary council with actual evidence that you participated in an illegal gathering at the cooperative council in which

⁹⁸ OTLA interviews with CSB representatives, October 2011.

⁹⁹ OTLA interviews with dismissed University of Bahrain academics, October 2011.

¹⁰⁰ Ibid. In interviews with the OTLA, academics alleged that large groups of masked men reportedly forcefully entered their houses late at night or early in the morning, blindfolded and verbally abused the academics, and took them to police facilities where they were interrogated, threatened and physically abused. Several of the academics told the OTLA that they had observed that the security authorities had their files from the University investigation committees, leading them to suspect that the University may have directly referred their cases to these authorities.

¹⁰¹ Email from dismissed academic (name withheld) to the OTLA, November 7, 2011.

¹⁰² National Commission Report, p. 61.

political slogans were raised denouncing the ruling system [of] the Kingdom of Bahrain, [sic] also you have been attending at the roundabout and participated in illegal political activities.”¹⁰³ A second employee’s dismissal letter stated that “it was proven to the Primary disciplinary council that you have severely violated Articles 28, 29 and 30 of the list of rules and regulations of Bahrain University administrative employees by actually participating in demonstrations that call for the fall of the political and constitutional rule [of] the Kingdom of Bahrain, and deeply abusing your duties as a public civil servant working at a University with scientific and educational objectives that are remote from [the] political atmosphere.”¹⁰⁴

3. Targeted Dismissals Based on Religion

Nearly all workers interviewed by the OTLA also alleged that dismissals were carried out along sectarian lines. Dismissed workers, from all sectors, claimed that the burden of dismissals fell almost exclusively on Shia workers and that no Sunni staff had been dismissed.¹⁰⁵ They commented that while there was no formal tracking of religious affiliation at the workplace, their examination of the lists of those dismissed indicated generally that Shia had been fired, while Sunni had not.¹⁰⁶ One interviewed worker, who participated in the disciplinary proceedings at his company (prior to his own dismissal), indicated that the investigation committee at his company that reviewed absences exempted those employees “with Sunni names” from the company’s wave of dismissals. The process, he explained, was marked with such blatant sectarian discrimination that the representatives from the legal department who served on the investigation committee stopped attending meetings as their input was ignored.¹⁰⁷ According to other interviewed workers, dismissed Shia workers included several who had continued attending work during the unrest of early 2011 and workers who had had no history of work problems and had received positive performance feedback or had pending promotions.¹⁰⁸ Dismissals based on sect were also addressed in the BICI report, which found:

Shia employees were often treated differently from similarly-situated employees who were not Shia, thus creating a reasonable presumption that many were subjected to discrimination. This is the case especially in circumstances where the employer admitted not dismissing Sunni employees who had been absent during the events of February/March 2011. This indicates an assumption that Shia employees who missed work during the events of February/March 2011 participated in the demonstrations and were subject to disciplinary action.¹⁰⁹

¹⁰³ Letter from University of Bahrain Office of the Legal Advisor to Employee [name and date withheld].

¹⁰⁴ Ibid.

¹⁰⁵ OTLA interviews with dismissed workers (various), October 2011 and February 2012.

¹⁰⁶ Ibid.

¹⁰⁷ OTLA interview with dismissed worker (name and company withheld), February 2012.

¹⁰⁸ OTLA interviews with dismissed workers (various), October 2011 and February 2012.

¹⁰⁹ BICI Report, p. 354, paragraph 1453.

E. Rehiring of Workers Dismissed Following Unrest in Bahrain

Throughout 2011, the Government of Bahrain made repeated recommendations to private employers to reinstate workers expeditiously and reinstated many workers in the public sector. Despite these efforts, progress in resolving the dismissals following the March 2011 general strike was slow. It was not until the first few months of 2012, nearly a year after the general strike, that a significant number of workers were reinstated.¹¹⁰ Although most terminated workers have now been reinstated, some cases still remain unresolved, with several hundred dismissed workers still without reinstatement or reemployment agreements. For example, in some private and parastatal sectors, including banking, steel, and newspaper sectors, the GFBTU reported that it had received allegations of employers refusing to rehire the terminated workers.¹¹¹ Some employers have told U.S. Embassy Manama this was in part due to the lack of available, appropriate positions or a breakdown in negotiations between the employer and worker.¹¹²

Furthermore, of those workers who have been rehired, some have returned to inferior positions, some have not been fully compensated for their periods of unemployment, and some have been required to accept preconditions for re-employment that negatively impact their pay, benefits, and job security, all of which combine to create a climate of financial and job insecurity. Some have reported being required to renounce any political or strike activity as an employment precondition. Some have alleged that anti-Shia discrimination is being reflected in hiring decisions regarding replacement workers, with some enterprises reportedly only hiring Sunni workers, even when they may lack the credentials or specific skills required for the job.¹¹³ In August 2012, the GFBTU alleged a *de facto* “recruitment ban” on Shia, particularly in high-level positions, in large private and parastatal companies and in the public sector, where an important percentage of new high-ranking government officials are Sunni.¹¹⁴ Similarly, the ILO Article 26 complaint filed by the worker delegates to the ILO similarly alleges that “new hiring processes are taking place with explicitly stated preference for specific workers based on such grounds as belief, trade union affiliation and national extraction” and are “marked by screening processes that discriminate on political and religious grounds.”¹¹⁵

As a result, although the data indicate that most of the workers dismissed following the March 2011 general strike have largely been reinstated, the reinstatement process raises serious concerns about workers’ freedom of association and discrimination based on political opinion and religious (sectarian) identity. Workers have reported fears of retaliation and repercussions for engaging in associational activity, based largely on the anti-union activity that followed the

¹¹⁰ See, e.g., “Bahraini Government Announces Finalizing Reinstatement of Dismissed Workers,” Bahrain News Agency, March 4, 2012, <http://bna.bh/portal/en/news/497115>.

¹¹¹ Email from GFBTU representative to the OTLA, August 12, 2012.

¹¹² U.S. Embassy Manama meetings with ALBA, American Express, Ministry of Labor, BAPCO, and Mumtalakat, Spring 2012.

¹¹³ OTLA worker interviews (various), October 2011 and February 2012. (Names of specific employers and employees withheld).

¹¹⁴ Email from GFBTU representative to the OTLA, August 12, 2012.

¹¹⁵ International Labour Conference, Complaint under Article 26 of the ILO Constitution against the Government of Bahrain, Provisional Record No. 30, 100th Session, June 16, 2011.

March 2011 strike. They have further reported that the general lack of accountability for state security personnel alleged to have perpetrated violence and intimidation against dismissed workers has also contributed to a climate of fear in which workers continue to refrain from associational activity. Fully addressing the 2011 terminations requires far more than mere unconditional reinstatement to equivalent posts with back pay and other remuneration owed. It requires the restoration of a climate conducive to freedom of association and non-discrimination in employment and occupation, which has yet to be achieved.

1. Rehiring of Workers in the Private Sector

As the number of dismissals grew after the general strike of March 2011, the Government of Bahrain established a High Level Special Committee, composed of the Minister of Justice and Islamic Affairs, the President of the CSB, the President of the Legislation and Legal Opinion Commission, and chaired by the Minister of Labor. The Committee was established on April 30, 2011, and charged with reviewing whether private sector dismissals that occurred in the wake of that strike were consistent with applicable Bahraini laws and regulations. By June 10, 2011, the Special Committee had received 1,635 cases for review and had recommended reinstatement for 571 workers whose dismissals were deemed unlawful. The Special Committee also found that approximately 150 dismissals were carried out lawfully, reported that nearly 350 cases had already resulted in settlements between workers and employers, and indicated that it was continuing to review the remaining cases.¹¹⁶ On June 16, the Ministry of Labor sent a letter to the GFBTU informing the Federation that the Special Committee had determined that 571 dismissals were illegal and that the Ministry of Labor would be contacting the relevant companies requesting the reinstatement of these workers.¹¹⁷

The Government of Bahrain has clarified, however, that the Special Committee had no legal authority to order reinstatement in such cases where dismissals were deemed to be illegal:

It is important to make clear that under the law the Government has no authority to order reinstatements. The power to remedy any wrongful employment dismissal is with the courts, not the executive branch. Under the law, the courts can order compensation for a wrongfully dismissed worker, and can also order reinstatement (only) for trade union executive board members.¹¹⁸ (emphasis in original).

On July 3, the Prime Minister directed the Committee to expedite its coordination with private sector companies in evaluating whether dismissals were lawful. The Prime Minister also instructed the Committee to examine whether the terminated workers had committed crimes or were found to be in breach of their job duties. Lastly, he instructed employers to reinstate, within ten days, all workers found by the Committee to have been wrongfully terminated and

¹¹⁶ Government of Bahrain response, June 20, 2011, p. 11.

¹¹⁷ Letter from Ministry of Labor to GFBTU, June 16, 2011 (translated by U.S. Department of State). The Government of Bahrain explained to the OTLA that the findings of illegality were based primarily on procedural flaws in the termination processes, in particular under Article 113 of Bahrain's Labour Law for the Private Sector.

¹¹⁸ Government of Bahrain, "Response to Questions Submitted October 7, 2011 by the U.S. Department of Labor, Office of Trade and Labor Affairs", December 16, 2011, p.3 (on file with the OTLA).

who were not involved in criminal activity or failure to perform their employment duties.¹¹⁹ The Prime Minister's reinstatement instructions, however, were also not legally binding.

Based on the Special Committee's findings and the Prime Minister's reinstatement instructions, the Ministry of Labor issued non-binding directives to employers beginning in July, urging but not requiring, that they "reinstatement the dismissed workers, who were found to have been dismissed illegally, who did not commit any criminal activities or who did not fail to perform their employment tasks and duties."¹²⁰

The issues of private sector dismissals, as well as academic expulsions, following the March 2011 general strike were also addressed by the King in his August 28, 2011, speech commemorating the last ten days of Ramadan. Acknowledging the difficulties that had beset Bahrain in the preceding months, the King stated:

Despite our full commitment to achieving security, safety and tranquility for our people, we do not want any prejudice to any of our citizens in their security, freedom, source of income or education, in a way that results in bitterness and that affects their contribution to the nation. Our aspiration is for tolerance and for shunning violence, and not for excessive punishment that affects our unity... When we see workers at their place of work and students at their learning institutions, while some other workers are not working and some other students are not studying, we are prompted to look into their situation in order to help them join their colleagues and classmates. Such an accomplishment will benefit the workers, the students, their families and the whole nation. *These are our orders to the concerned institutions and they should implement them more quickly.*¹²¹ (emphasis added).

In response to the King's speech, as well as the findings and recommendations of the Special Committee, the Council of Ministers issued an additional non-binding directive to "guarantee the fast implementation of the supreme royal directives to reinstate the dismissed and suspended workers, and to remove the impediments which had obstructed or delayed the reinstatement of those workers who were found [by the Committee] to have been dismissed without any proper legal justification."¹²²

Despite the directives from the Council of Ministers and Ministry of Labor, the recommendations of the High Level Special Committee, the instructions of the Prime Minister, and the encouragement of the King to reinstate wrongfully dismissed workers expeditiously-- none of which were legally binding, the reinstatement process for the workers who were dismissed following the March 2011 general strike proceeded slowly. According to the Government of Bahrain, by December 2011, only roughly 775 terminated workers from the

¹¹⁹ "Prime Minister Urges Private Sector Sackings to be Reconsidered," Bahrain News Agency, July 3, 2011, <http://www.bna.bh/portal/en/news/463524>.

¹²⁰ Ministry of Labor, Bahrain, letter to ALBA Chief Executive Officer, July 5, 2011.

¹²¹ "HM the King Speech on the Occasion of the Last Ten Days of the Holy Month of Ramadan," Bahrain News Agency, August 28, 2011, <http://bna.bh/portal/en/news/470288>.

¹²² Ministry of Labor, Bahrain, letter to Seef Properties Director General, September 11, 2011.

private sector had been reinstated, though the government statistics indicate a total of 2,462 private sector employees had been fired.

In apparent response to the slow progress, in February 2012, the Minister of Labor announced further plans to address private sector dismissals. First, all dismissed workers from private companies, including parastatal enterprises, were to be reinstated without preconditions and regardless of the legality of their terminations. Secondly, unemployment insurance benefits were to be paid retroactively to all dismissed workers. On March 4, 2012, following a visit to Bahrain by a delegation from the ILO, the Minister of Labor announced that “procedures for reinstating dismissed workers were successfully finalized by the government.”¹²³

On March 11, 2012, also following the ILO visit, a tripartite committee—composed of representatives from the Ministry of Labor, the GFBTU, and the BCCI—signed an agreement, providing updated figures on reinstatements and committing to certain steps to address remaining cases of dismissals. Specifically, the parties agreed to “continue their efforts to ensure the full reinstatement in both the public and private sectors of all the remaining workers to the maximum extent possible.”¹²⁴ With regard to workers in the parastatal companies, the Government of Bahrain committed to the reinstatement of all workers. With respect to workers in the “purely private sector,” the government and BCCI agreed to take “all necessary action to find alternative employment for the remaining workers who seek placements,”¹²⁵ if denied reinstatement by their original employers.

As of June 2012, the Government of Bahrain asserted that approximately 2,318 of the 2,462 cases of dismissed workers in the private sector, including parastatal enterprises, had been resolved, with workers returning to their previous jobs, accepting similar jobs with other companies, or in the process of such reinstatement or reemployment.¹²⁶ The Government of Bahrain’s figures on private sector reinstatements are included in Table 3 below.

¹²³ “Bahraini Government Announces Finalizing Reinstatement of Dismissed Workers,” Bahrain News Agency, March 4, 2012, <http://bna.bh/portal/en/news/497115>.

¹²⁴ Tripartite Agreement.

¹²⁵ Ibid.

¹²⁶ Government of Bahrain, Information Affairs Authority, *BICI Follow-Up Unit: Follow-Up Report*, June 2012, p. 9.

Table 3: Dismissal and Reinstatement Statistics from the Government of Bahrain

Company	Workers Dismissed	Workers Reinstated (or in Process of Reinstatement)	Workers Employed Elsewhere, Retired, or Resigned	Workers Nominated by the MOL to Join Other Companies	Workers Choosing not to Return to Previous Job	Workers Not Filing Complaints	Reinstatement Rejected by Employers
Aluminium Bahrain	541	493	48	0	0	0	0
Bahrain Petroleum Company	316	307	8	0	0	1	0
APM Terminals	256	229	22	0	0	0	5
Gulf Air	224	216	4	0	0	0	4
Bahrain Telecommunications Company	172	156	16	0	0	0	0
Bahrain Airport Services	88	64	12	0	4	5	3
Bahrain National Gas Company	68	67	1	0	0	0	0
Arab Shipbuilding & Repair Yard	64	61	2	0	1	0	0
Gulf Aluminium Rolling Mill Company	36	34	2	0	0	0	0
Others	697	160	416	46	19	26	30
Total	2,462	1,787	531	46	24	32	42

The GFBTU has been critical of the reinstatement statistics provided by the Government, asserting that workers in the process of being but not yet fully reinstated are being counted as resolved and that some workers counted as reinstated have not yet been allowed to return to work or have returned to inferior positions.¹²⁷ For their part, the Government of Bahrain and the BCCI have stated to the U.S. Embassy in Manama that the GFBTU continues to list employees that have already taken other jobs or were temporary workers.¹²⁸

In addition, despite the Minister of Labor’s February 2012 statement that all reinstatements should occur without preconditions, some employers have reportedly imposed prejudicial preconditions on reinstatement, including: issuing workers “final warnings,” which allow employers to terminate workers on short notice; requiring workers to sign new contracts or reinstatement agreements that waive claims for back pay or certain benefits associated with length of service, such as accrued leave or eligibility for promotions; and demanding that

¹²⁷ For example, the GFBTU reports that workers dismissed from BAPCO are receiving salaries but are not being allowed to return to work and that terminated workers from ALBA who signed reinstatement agreements are not being called back or are being offered jobs junior to their prior posts. Email from the GFBTU to the OTLA, August 12, 2012.

¹²⁸ U.S. Embassy Manama meetings with Ministry of Labor, September 4 and October 24, 2012.

workers sign “loyalty pledges” or other agreements to refrain from political activities or participation in strikes,¹²⁹ which the Government of Bahrain has acknowledged are illegal.¹³⁰

2. Rehiring of Workers in the Public Sector

As discussed above, government ministries in Bahrain referred a total of 2,075 workers to the CSB with recommendations of dismissal. According to the CSB, of those cases, 180 public sector workers were initially dismissed, 1,631 received ten-day suspensions, and 218 were referred for prosecution and suspended pending the outcome of their legal cases.

On December 20, 2011, Bahrain’s Information Affairs Authority issued a press release announcing that the Deputy Prime Minister and Vice Chairman of the Civil Service Council, Sheikh Khalid bin Abdullah Al-Khalifa, had issued an order reinstating the 180 dismissed public sector workers. These workers were to return to work by January 1, 2012. In the same release, the Chairman of the CSB indicated that all cases of public sector workers referred for prosecution would be examined by the Public Prosecutor and that these workers would continue to receive their salaries pending the results of the criminal investigations.¹³¹

Nonetheless, in interviews with the OTLA in February 2012, several suspended public sector workers from the Ministries of Education and Health facing criminal investigations reported that, despite the CSB announcement, they had not been receiving their salaries. In March 2012, however, the National Commission established to oversee the implementation of BICI recommendations reported that 179 of the 180 dismissed civil servants were effectively reinstated, with the remaining worker not returning to work because a criminal conviction had been handed down by the courts prior to the Government’s instruction to reinstate all dismissed workers.¹³²

3. Rehiring of Workers in Quasi-Governmental Institutions

The OTLA has not been able to obtain a detailed accounting of the status of those workers dismissed from quasi-governmental institutions. These workers, from entities such as universities, the Shura Council, and the Bahrain Bourse, are not included in the statistics of the Ministry of Labor or the CSB. They also appear to have been excluded from reinstatement directives applying to dismissed workers from the public and private sectors.

In February 2012, the OTLA interviewed several dismissed staff members and academics from the University of Bahrain, and they reported that reinstatements have been sporadic and often

¹²⁹ OTLA interviews with dismissed employees (various companies), February 2012.

¹³⁰ In December 2011, the Government of Bahrain told the OTLA that “if any worker went to court to contest such conditions in their employment contracts, the Ministry of Labour would support the worker against such illegal conditions and ask the court to hold such conditions are null and void.” Government of Bahrain response to DOL, December 16, 2011, p. 3.

¹³¹ Government of Bahrain, Information Affairs Authority, Press Release, December 20, 2011, <http://www.iaa.bh/pressReleasedetails.aspx?id=86>.

¹³² National Commission Report, p. 61. *See also*, Tripartite Agreement, March 11, 2012 (indicating that one civil servant with a criminal conviction was not reinstated).

accompanied by unfavorable preconditions, such as the issuance of “final warnings.” At the time, the academics informed the OTLA that the University of Bahrain had agreed to reinstate nine of the 19 dismissed.¹³³ By late March, however, the National Commission reported that 17 of the 19 academics had been returned to their jobs at the University of Bahrain, with the remaining two not returning due to travel outside the country.¹³⁴ In August 2012, the GFBTU had begun to refer to the University of Bahrain, as well as the BCCI, as “excellent examples of reinstatement,” where workers had received back pay and other remuneration owed and been reinstated into their previous or equivalent posts.¹³⁵

F. Allegations of Further Anti-Union Activities Following Unrest in Bahrain

In addition to the events directly linked to the widespread dismissals following the March 2011 general strike, the OTLA has received and reviewed reports of other alleged anti-union conduct following the strike. The ILO CFA characterized such complaints in its June 2012 Interim Report as “allegations of intimidation and harassment of trade union leaders and members.”¹³⁶ For example, the ILO CFA complaint refers to “an ongoing campaign in the media (on Bahraini TV channels, in particular) against the GFBTU and its leadership.”¹³⁷ The complaint also cites anti-union activity at GARMCO, alleging that the employer has taken steps to weaken the union, including: breaking into union offices; threatening not to renew foreign workers’ employment contracts if they remain union members and then unilaterally withdrawing union recognition after 130 foreign workers resigned from the union; and barring trade union officials from the premises.¹³⁸ In the Interim Report, the ILO CFA noted that “the Government of Bahrain had not yet replied” to these allegations and expressed “its deep concern” at the nature of these charges.¹³⁹ The Committee indicated that it “expects the Government to transmit its observations on these allegations without delay and to ensure that sufficient measure are taken to protect trade unionists from such acts of intimidation and harassment.”¹⁴⁰

Both in the ILO CFA complaint and in interviews with the OTLA, union leaders have also asserted that GARMCO, as well as ASRY and BAS, unilaterally ceased deduction and transfer of dues for all union members, regardless of whether they were working, suspended, or fired, violating long-standing agreements between the unions and employers.¹⁴¹ In the cases of GARMCO and BAS, the employers have claimed that workers requested cancellation of dues deductions. Even if that were the case, however, which union leaders dispute, the unilateral termination of dues collection violates the unions’ respective agreements with their employers, which require that employees wishing to withdraw from the union and cease paying dues first notify the unions of their resignations, which will then notify the employers. In addition, the above-referenced complaint under Article 26 of the ILO Constitution, alleged that that the hiring

¹³³ OTLA interviews with dismissed University of Bahrain employees, February 2012.

¹³⁴ National Commission Report, p. 61.

¹³⁵ Email from the GFBTU to the OTLA, August 12, 2012.

¹³⁶ ILO CFA, Interim Report, Report No. 364, June 2012, Paragraph 291, Case No. 2882.

¹³⁷ *Ibid.*, paragraph 239.

¹³⁸ ILO CFA complaint, November 10, 2011, p. 10.

¹³⁹ ILO CFA, Interim Report, Report No. 364, June 2012, Paragraph 291, Case No. 2882.

¹⁴⁰ *Ibid.*

¹⁴¹ ILO CFA complaint, November 10, 2011, p. 10.

processes established in the wake of the March 2011 general strike to replace fired workers have, in many cases, included requirements that workers pledge not to strike, as a precondition for employment.¹⁴²

¹⁴² International Labour Conference, Complaint under Article 26 of the ILO Constitution against the Government of Bahrain, Provisional Record No. 30, 100th Session, June 16, 2011.

III. Analysis of Submission Filed under the U.S.-Bahrain Free Trade Agreement

A. Freedom of Association

The AFL-CIO submission alleges that Bahrain has failed to fulfill its commitments under Article 15.1 of the U.S.-Bahrain FTA regarding freedom of association based on allegations that trade union leaders have been illegally targeted for dismissal and that widespread dismissals have been carried out in a discriminatory fashion, and on limits imposed under Bahraini law on legitimate trade union activity, including strikes and political action. The submission cites the civil and, at times, criminal application of those limits in response to the March 2011 general strike as undermining freedom of association, noting in particular that “prominent trade union leaders . . . even face prosecution for their role in organizing and participating in strikes and demonstrations.”¹⁴³

Article 21(1) of Bahrain’s Trade Union Law recognizes the right to strike as a “legitimate means for defending workers’ economic and social interests.”¹⁴⁴ Article 3 provides that trade union activities, including strikes, “shall not be used as a means and justification for discrimination in employment or influencing workers in any manner whatsoever.”¹⁴⁵ Law No. 73 of 2006 amended Article 110 of the Labour Law to specifically prohibit dismissal of workers due to their trade union activities, including strikes. Under the Labour Law, workers fired for trade union activities are to be reinstated to their positions and compensated for the period that they were dismissed.¹⁴⁶

Bahraini law, however, also places significant limitations on freedom of association. Such limits include a ban on public sector workers establishing unions, permitting only that civil servants join other unions in similar or related private sector professions or occupations;¹⁴⁷ a general ban on trade unions from engaging in any “political activities;”¹⁴⁸ a ban on strikes in “strategic undertakings;”¹⁴⁹ and criminal penalties against civil servants for participating in or encouraging others to participate in strikes in the public sector or in undertakings related to public services or public service requirements.¹⁵⁰

The ILO CFA has expressed that normally public sector workers “should, like workers in the private sector, be able to establish organizations of their own choosing to further and defend the interests of their members.”¹⁵¹ The ILO CFA has also expressed that “[p]rovisions imposing a

¹⁴³ U.S. Submission 2011-01 (Bahrain), p. 6.

¹⁴⁴ Act No. 49 of 2006 amending provisions of the Act on Trade Unions promulgated by Legislative Decree No. 33 of 2002, Article 21(1). [Hereinafter Trade Union Law.]

¹⁴⁵ Trade Union Law, Article 3.

¹⁴⁶ Bahrain, Law No. (73) of 2006 Amending Certain Provisions of the Labour Law for the Private Sector Promulgated by Decree Law No. (23) of 1976; Labour Law, Article 110.

¹⁴⁷ Trade Union Law, Article 10.

¹⁴⁸ *Ibid.*, Article 20(d).

¹⁴⁹ *Ibid.*, Article 21(2)(d).

¹⁵⁰ Bahrain Penal Code, Articles 293-297.

¹⁵¹ ILO CFA Report No. 340, Case No. 2433, paragraph 323; see ILO Committee on Freedom of Association, Digest of Decisions, 5th Edition, 2006, paragraph 220 (hereinafter CFA Digest of Decisions).

general prohibition on political activities by trade unions for the promotion of their specific objectives are contrary to the principles of freedom of association,”¹⁵² noting, “If trade unions are prohibited in general terms from engaging in any political activities, this may raise difficulties by reason of the fact that the interpretation given to the relevant provisions may, in practice, change at any moment and considerably restrict the possibility of action of the organizations.”¹⁵³

The ILO CFA has recognized that the right to strike is “an intrinsic corollary to the right to organize” and “one of the essential means through which workers and their organizations may promote and defend their economic and social interests.”¹⁵⁴ Although the right to strike may be limited in some cases, the ILO CFA has expressed that “arrests and imprisonment in connection with the organization of or participation in a peaceful strike . . . entail serious risks of abuse and are a grave threat to freedom of association.”¹⁵⁵ The ILO CFA has “pointed out the danger for the free exercise of trade union rights of sentences imposed on representatives of workers for activities related to the defence of the interests of those they represent.”¹⁵⁶ The circumstances in which the right to strike may be limited are narrowly defined and may also vary depending on country conditions. For example, limitations on the right to strike are justified in cases of “strategic undertakings,” more commonly referred to as “essential services,” discussed below, understood as those services the interruption of which would present “a clear and imminent threat to the life, personal safety or health of the whole or part of a population.”¹⁵⁷

1. Ban on Public Sector Workers’ Organizations

Article 10 of the Trade Union Law bans public sector workers from establishing trade unions and permits them only to join other, pre-existing unions.¹⁵⁸ Circular No. 1 of 2003 reiterates that trade unions are illegal in the public sector and that public sector workers wishing to join a union may only join other trade unions in similar or related private sector professions or occupations.¹⁵⁹ As a result, if public sector workers wish to organize themselves at the enterprise- or sector- or activity-wide level for the defense of their own interests, they are limited to establishing “associations” or “societies” regulated by the Ministry of Social Development and Human Rights and not covered by the Trade Union Law’s protections.

In June 2005, the GFBTU filed a complaint with the ILO CFA alleging that the ban on public sector union formation violates freedom of association and is also a breach of Articles 27 and 28 of the Bahrain Constitution and Article 5 of the National Charter, “which explicitly allows for

¹⁵² CFA Digest of Decisions, paragraph 500.

¹⁵³ Ibid., paragraph 501.

¹⁵⁴ Ibid., paragraphs 522, 523.

¹⁵⁵ Ibid., paragraph 671.

¹⁵⁶ Ibid., paragraph 92.

¹⁵⁵ Ibid., paragraph 581. Services considered non-essential may also become essential as a strike progresses. Ibid., paragraph 582.

¹⁵⁸ ILO CFA Report No. 340, Case No. 2433, paragraph 320.

¹⁵⁹ International Federation for Human Rights, *Freedom of Association in the Arabian Gulf*, p. 15, www.fidh.org/IMG/pdf/etude.pdf.

the right to organize of all workers without any distinction or discrimination.”¹⁶⁰ Responding to the complaint, the ILO CFA recalled that all public sector workers, with the exclusive exception of the armed forces and police, should be allowed to establish their own organization to defend their members’ interests, and in its recommendations noted that it “expects that the legislative amendment allowing public sector workers and employees to establish trade unions of their choosing will be adopted and promulgated in the very near future.”¹⁶¹

As a result of the ban on public sector trade unions, public sector medical professionals and teachers in Bahrain who wished to join together to defend their own particular interests established “societies,” the BTS and the Bahrain Medical Society (BMS), respectively. As nongovernmental organizations rather than unions, however, these societies are not covered by the Trade Union Law, including the requirement that dissolution of trade unions and their Boards of Directors be “in accordance with the provisions of their Constitution or by a court judgment.”¹⁶² On April 6, 2011, following the teachers’ strike in March, the Ministry of Social Development and Human Rights dissolved the BTS. The official news agency reported that the BTS “stands accused of calling for a strike at schools, disrupting educational establishments, in addition to manipulating school students, from all standards, to sow chaos.”¹⁶³ Also in April, the Social Development Ministry suspended the Board of Directors of the BMS for “issuing statements and engaging into practices which flout the law on NGOs and its bylaw.”¹⁶⁴

The ban on public sector workers establishing trade unions included in Article 10 of the Trade Union Law is thus inconsistent with freedom of association. By failing to address this inconsistency, either by following the ILO CFA recommendations or otherwise, and by applying or permitting the application of Article 10 following the March 2011 general strike, the Government of Bahrain appears not to be fulfilling its commitments under Article 15.1.1 and 1.2 of the FTA.

2. Ban on Trade Union “Political Activities”

Article 20(d) of the Trade Union Law includes a general ban on trade unions engaging in “political activities.”¹⁶⁵

A broad prohibition on unions engaging in political activities not only undermines freedom of association, it is impractical and subject to abuse. As the ILO CFA has noted, “A general

¹⁶⁰ Constitution of Bahrain, Article 27: “The freedom to form associations and unions on national principles, for lawful objectives and by peaceful means is guaranteed under the rules and conditions laid down by law.” National Charter, Article 5: “With a view to enabling the society to make use of all civil capabilities and activities, the state ensures the freedom to form non- governmental, scientific, cultural, professional associations and unions at a national level for legitimate purposes through peaceful means under terms and conditions as may be prescribed by law.”

¹⁶¹ CFA Report No. 340, Case No. 2433, paragraph 327. In its June 2012 Interim Report, the ILO CFA reiterated this view. See CFA Report No.364, June 2012, Case No. 2882.

¹⁶² Trade Union Law, Article 17.

¹⁶³ “BTS Dissolved and BMS Suspended,” Bahrain News Agency, April 6, 2011, <http://www.bna.bh/portal/en/news/451954?date=2011-04-15>.

¹⁶⁴ Ibid.

¹⁶⁵ Trade Union Law, Article 20(d).

prohibition on trade unions from engaging in any political activities would not only be incompatible with the principles of freedom of association, but also unrealistic in practice. Trade unions may wish to express publicly their opinion regarding the government's economic and social policy.”¹⁶⁶

The Government of Bahrain has failed to address the incompatibility between Article 20(d) and freedom of association. Instead, the government has invoked or did not prevent or discourage employers from invoking this article as legitimate grounds for dismissal. In fact, the engagement of unionists in political activity was one of the many grounds for dismissal, as discussed in more depth below, cited by employers to justify the widespread terminations following the March 2011 general strike.¹⁶⁷

By failing to address this incompatibility and in the wake of the March 2011 general strike, invoking or permitting employers to invoke Article 20(d) as legitimate grounds for dismissal, the Government of Bahrain appears not to be fulfilling its commitments under Article 15.1.1 and 1.2 of the FTA.

3. Ban on Strikes in “Strategic Undertakings”

Under Article 21(2)(d) of the Trade Union Law, strikes were prohibited in “vital and important facilities that harm the national security and the life of individuals.”¹⁶⁸ The scope of Article 21(2)(d) was expanded by Act No. 49 of 2006 amending certain provisions of the Trade Union Law to prohibit strikes in “strategic undertakings, which may threaten national security, or disrupt the flow of daily life of citizens” and to provide that the Prime Minister will issue an order determining which services will be covered by the exclusion.¹⁶⁹ Prime Minister’s Decision No. 62 of 2006 lists the services, which include: security services, civil defense, airports, ports, hospitals, medical centers and pharmacies, all means of transport of persons or goods, telecommunications, electricity and water services, bakeries, educational institutions, and the petroleum and gas sectors.¹⁷⁰

On February 22, 2007, the GFBTU submitted a complaint to the ILO CFA,¹⁷¹ alleging that the list of “essential services” in which strikes are prohibited under Bahraini law is overly broad and exceeds the scope of permissible limitations under international standards relating to freedom of association. The ILO CFA agreed and requested the Government of Bahrain take the necessary steps to amend Article 21 of the Trade Union Law in order to “limit the definition of essential services to essential services in the strict sense of the term—that is, services the interruption of which would endanger the life, personal safety, or health of the whole or part of the population—and to ensure that workers in services where the right to strike is restricted or prohibited are

¹⁶⁶ CFA Digest of Decisions, paragraph 503.

¹⁶⁷ BICI Report, p. 340, paragraph 1386 and p. 347, paragraph 1424 [Grounds for dismissals at Gulf Air included: possession of material in support of regime change, making disparaging remarks about the royal family and members of government].

¹⁶⁸ Trade Union Law, Article 21(2)(d).

¹⁶⁹ Trade Union Law (as amended in 2006), Article 21(2)(d).

¹⁷⁰ “PM Issues Edict,” Bahrain News Agency, November 20, 2006, <http://www.bna.bh/portal/en/news/407683>.

¹⁷¹ ILO CFA Case No 2552 (Bahrain), February 22, 2007.

afforded sufficient compensatory guarantees.”¹⁷² The Government of Bahrain has failed to address these inconsistencies with international standards, either by following the ILO CFA recommendations or otherwise.

In the wake of the March 2011 general strike, employers at times based workers’ dismissals, at least in part, on their unlawful organization of or participation in a strike in a “strategic undertaking,” broadly defined under Bahrain law to encompass a wide range of sectors, including petroleum and gas (BAPCO and BANAGAS), airports (Gulf Air), and educational institutions.¹⁷³ For example, in a meeting with the OTLA, senior management from Gulf Air noted that strikes are illegal in the sector and indicated that, as a result, some workers were dismissed based on participation in the general strike, even if only for one day.¹⁷⁴

Article 21(2)(d) of the Trade Union Law, as amended, and the accompanying ministerial decision of 2006 include limitations on strikes that are inconsistent with freedom of association. By failing to address this inconsistency, and applying or permitting the application of Article 21(2)(d) following the March 2011 general strike, the Government of Bahrain, appears not to be fulfilling its commitments under Article 15.1.1 and 1.2 of the FTA.

4. Criminal Sanctions for Illegal Strike-Related Activity

Under Bahraini law, not only are workers subject to dismissal for violating strike bans in key Government installations and certain strategic undertakings, such as those discussed above, but they can face criminal prosecution linked to their strike-related activity.

Articles 293 – 295 of Bahrain’s Penal Code establish a prison term of up to one year for civil servants who join together, in a group of three or more, in a concerted effort to leave their employment or to refuse to perform their duties “either in agreement between themselves or seeking to achieve a common objective”;¹⁷⁵ a prison term of up to six months for civil servants who leave employment or refuse to perform duties with the intent of obstructing or disrupting business;¹⁷⁶ and a prison term of up to six months for any person who “instigates” civil servants to engage in such unlawful activity.¹⁷⁷ The Penal Code lists any resulting “disturbance or dissension or delays” against “a certain public interest” as one of several possible aggravating factors.¹⁷⁸ Article 297 extends the same penalties to any person, whether or not a civil servant, who engages in such activities and is “entrusted with public services” or “who undertakes duties

¹⁷² Ibid., paragraphs 421, 422.

¹⁷³ In the case of the education sector in Bahrain, these workers are civil servants employed by the Ministry of Education. As discussed later in this report, under the laws applicable to civil servants, strikes are prohibited.

¹⁷⁴ OTLA interview with Gulf Air senior management, October 2011.

¹⁷⁵ Bahrain Penal Code, 1976, Article 293. Article 293 of the Penal Code adds, “The punishment shall be a prison sentence if the relinquishment of duty or refusal to carry out such duty is likely to endanger public health or security or may cause disturbance or dissension or delays a certain public interest or if the perpetrator is an instigator.”

¹⁷⁶ Ibid., Article 294.

¹⁷⁷ Ibid., Article 295.

¹⁷⁸ Ibid., Article 294, “If the relinquishment of duty or refusal to carry out such duty is likely to endanger public health or security or may cause disturbance or dissension or delays a certain public interest or if the perpetrator is an instigator, this shall be regarded as an aggravating circumstance.”

relating to public services or meeting a public requirement, even though he is not a civil servant or entrusted with public service.”¹⁷⁹

According to the Government of Bahrain, the leadership of the BTS faces criminal charges “related to the incitement of an illegal strike and possession of materials encouraging the violent overthrow of the government.”¹⁸⁰ The petitioners in this case allege that Vice President Jalila al-Salman and four board members of the BTS were arrested on March 29, 2011, followed by the arrests of the BTS Secretary General and President Abu Dheeb within a week.¹⁸¹ The Vice President of the BTS was detained until released on bail on August 21, 2011. On September 25, she was tried and sentenced to three years imprisonment by the State of National Safety court, a quasi-military judicial body, but that sentence has since been vacated and her case transferred to the civilian courts. The President of the BTS was similarly tried and sentenced to ten years in prison also by the Court of National Safety before having his sentence vacated and case referred to civilian courts.¹⁸² To date, however, Mr. Abu Dheeb remains in prison, though on October 21, 2012, a Bahraini civilian court reduced Mr. Abu Dheeb’s sentence to five years.¹⁸³

Additionally, there are allegations that both Mr. Abu Dheeb and Ms. Jalila al-Salman were tortured while in detention, and the ILO CFA’s June 2012 Interim Report on the case pending against Bahrain before the Committee states with respect to the cases of the BTS Vice President and President that “the Committee observes with serious concern that Mr. Abu Dheeb remains in detention and that the complainant has raised grave allegations that he and Ms. Jalila al-Salman have been tortured in jail.”¹⁸⁴ The ILO CFA adds that it “expects the Government to provide information without delay on the specific steps taken to investigate allegations of torture in relation to Mr. Abu Dheeb and Ms. Jalila al-Salman and the outcome of these investigations and, in light of the concerns raised by the complainants over Mr. Abu Dheeb’s health, to ensure that he immediately receives all necessary medical attention.”¹⁸⁵

Additionally, workers from certain private enterprises were threatened with criminal prosecution for their role in strike-related activities, including workers from BAPCO and BANAGAS, among others. Such threats may have been based, at least in part, on an understanding that such enterprises may constitute “public services” or meet “a public requirement,” triggering the Article 297 criminal ban on strike-related activity by their workers;¹⁸⁶ Article 297 was explicitly cited, for example, in the threat against the GFBTU Executive Council, discussed below.

As the ILO CFA noted in the case against Bahrain presently before it, criminalization of certain trade union activities, culminating in “the detention of trade unionists for reasons connected with

¹⁷⁹ Ibid., Article 297.

¹⁸⁰ Government of Bahrain response, June 20, 2011, p. 12.

¹⁸¹ U.S. Submission 2011-01 (Bahrain), p. 7; ILO CFA, Interim Report, Case 2882 (Bahrain), paragraphs 252- 253.

¹⁸² BICI Report, p. 304, paragraph 1258.

¹⁸³ “Bahraini Teachers’ Convictions Upheld, Amnesty International, October, 25, 2012, <http://www.amnesty.org/en/library/asset/MDE11/060/2012/en/9c8ad0de-7fc8-4c49-8337-dca64e7d8838/mde110602012en.html>.

¹⁸⁴ ILO CFA, Interim Report, Case 2882 (Bahrain), paragraph 292.

¹⁸⁵ Ibid., paragraph 295.

¹⁸⁶ Ibid., Article 297.

their activities in defence of the interests of workers,” such as a strike, “constitutes a serious interference with civil liberties in general and with trade union rights in particular.”¹⁸⁷

On March 30, 2011, in the case of BAPCO, a “strategic undertaking” under Bahraini law BAPCO’s chief executive stated that the company’s legal department would be reviewing cases of absenteeism during the general strike and that “the BAPCO union and the employees could be taken to court or to the Labour Ministry.”¹⁸⁸ The company later reported that in mid-April, “the President of the governing body of the trade union and 11 members were sent to the public prosecutor to punish them criminally.”¹⁸⁹ In statements to the press, the head of a parliamentary committee investigating employee absences, strike activity and reduced productivity at BAPCO similarly called for further punishment of the BAPCO trade union leader and others involved in the general strike, stating, “Sacking the trade union president doesn’t satisfy us. We want him to be taken to the Public Prosecution for legal action to be taken. We will not stop here as we work to reveal the whole truth to the public on what has gone on at BAPCO. There are several others involved in the general strike during the unrest and protecting those involved.”¹⁹⁰

Likewise, in a June 12, 2011, letter, the Joint Committee of Major Companies called for the entire GFBTU leadership to resign immediately or potentially face criminal charges related to the general strike, pursuant to the Trade Union Law and Articles 293 – 297 of Bahrain’s Penal Code.¹⁹¹ The letter was directed to the Executive Council of the GFBTU and signed by the General Director of BANAGAS, also a “strategic undertaking” under Bahraini law.

Thus, the provisions of Articles 293 – 295 and 297 of the Bahraini Penal Code allowing for criminal sanctions for certain union activity, including strikes, undermine freedom of association. The Government of Bahrain has not only failed to remedy these shortcomings, but has applied the non-conforming legal provisions in its response to the March 2011 general strike. These actions and inaction appear to be inconsistent with Article 15.1.1 and 1.2 of the FTA.

5. Trade Union Law Amendments of 2012

In early August 2012, the Government of Bahrain enacted amendments to the Trade Union Law, initially proposed in April 2011, several of which, appear to limit freedom of association under the law and appear to be targeted to undermine the GFBTU. They amend Article 17 of the Trade Union Law to categorically ban from union leadership positions anyone convicted of violating criminal laws leading to trade union or union executive council dissolution for five years from

¹⁸⁷ Committee on Freedom of Association, International Labour Organization, Interim Report, Report No. 364, June 2012, Case No. 2882, paragraph 296.

¹⁸⁸ “BAPCO May Sue Workers’ Union,” Gulf Daily News, March 31, 2011, <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=302873>.

¹⁸⁹ “BAPCO Has Cooperated Fully with Parliament Probe Panel,” announcement in Gulf Daily News, May 11, 2011, www.gulf-daily-news.com/source/XXXIV/052/pdf/page04.pdf.

¹⁹⁰ “Parliament May Seek More BAPCO Layoffs,” Gulf Daily News, April 4, 2011, <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=303114>.

¹⁹¹ Letter from the Joint Committee of Major Companies to the GFBTU, dated June 12, 2011, copy provided by GFBTU. The Joint Committee of Major Companies comprises high-level officials from Bahrain’s major parastatal companies that dismissed the largest number of private-sector workers during the unrest in 2011.

the date of the final judicial ruling on such dissolution, even when the underlying criminal laws are inconsistent with freedom of association, like those criminalizing certain strike-related activity. They also amend Article 8(1) to require that trade unions be “similar” to form a union federation, thus prohibiting multi-sectoral federations. They also amend Article 8(3) to permit the Minister of Labor, rather than workers and their organizations, to determine which union federation may represent Bahrain’s workers in international fora and in national-level collective bargaining.¹⁹²

Recognizing that the amendments could have a profound effect on trade union organizations, DOL and USTR urged the Government of Bahrain to consider consulting with worker and employer organizations, as well as the ILO, before enacting the legislation. On December 19, 2011, DOL and USTR sent a letter to the Government of Bahrain, expressing concern that “these changes may be inconsistent with international standards,” in particular principles related to freedom of association.¹⁹³

In its complaint to the ILO CFA, the GBFTU characterized the amendment to Article 17 as an “obvious attempt to remove the trade union leadership that participated in the political mobilization earlier this year,” including trade union leaders from “a number of major enterprises, including Gulf Air, GARMCO, BAPCO, and DHL.”¹⁹⁴ In response, the ILO CFA recalled “that a law which generally prohibits access to trade union offices because of any conviction is incompatible with the principles of freedom of association, when the activity condemned is not prejudicial to the aptitude and integrity required for trade union office. . . . It requests the Government to amend the legislation to ensure respect for this principle and, in the meantime, to confirm that this provision cannot be used for convictions relating to the exercise of legitimate trade union activity or the exercise of the right to peaceably demonstrate.”¹⁹⁵

The ILO CFA complaint also asserted that amendment of Article 8(1) would “prohibit the establishment of a general labour federation, allowing instead only the establishment of a federation of “similar” trade unions.”¹⁹⁶ In its Interim Report of June 2012, the ILO CFA expressed “deep concern” about the provision’s non-conformity with the principles of freedom of association.¹⁹⁷ The Committee requested the Government of Bahrain to confirm that this amendment will not negatively impact freedom of association or the continued functioning of the GBFTU and asked the government to take any steps necessary to amend the provision, in full consultation with the GBFTU, to clarify that labor federations may be formed freely.¹⁹⁸

¹⁹² The August 2012 amendments also include a change to Article 10 of the Trade Union Law to allow for trade union pluralism at the enterprise level, an amendment the ILO CFA had repeatedly requested. However, the GBFTU has expressed concerns that the this change could also have been intended by the Government of Bahrain to weaken the GBFTU through the introduction of government-backed unions in the workplace, undermining workers’ right to establish and join organizations of their choosing without government interference. CFA Report No. 364, June 2012, Paragraph 301, Case No. 2882. It is still too early, however, to determine the impact of the amendment’s implementation in practice.

¹⁹³ USDOL and USTR letter to the Government of Bahrain, December 19, 2011.

¹⁹⁴ ILO CFA complaint, November 10, 2011, p. 11.

¹⁹⁵ CFA Report No. 364, June 2012, Paragraph 303, Case No. 2882.

¹⁹⁶ ILO CFA complaint, November 10, 2011, p. 10.

¹⁹⁷ CFA Report No. 364, June 2012, Paragraph 300, Case No. 2882.

¹⁹⁸ Ibid.

The GFBTU, presently recognized by the ILO as the most representative workers' organization, also asserted in the ILO CFA complaint that the amendment to Article 8(3) of the Trade Union Law "is a naked attempt by the government to prohibit the GFBTU from further denouncing government-sponsored violations of trade union rights before the International Labour Organization (ILO)."¹⁹⁹ While this issue was not addressed in the Interim Report, both the ILO Constitution and the ILO CFA have indicated that worker organizations, not the government, should select the most representative organization to represent workers in international fora and national-level collective bargaining.²⁰⁰

The above-cited 2012 amendments to the Trade Union Law weaken the protection of freedom of association under Bahrain's labor law. By enacting these provisions, the Government appears to have acted inconsistently with its commitments under Article 15.1.1 and 1.2 of the FTA.

B. Discrimination in Employment and Occupation: Based on Political Opinion and Activities and Religion

Bahrain's Labour Law prohibits retaliation against workers for actions, including political activities, outside the workplace,²⁰¹ and the Government of Bahrain, in its response to the AFL-CIO submission, stated that "the position of the Government of Bahrain is clear, mere participation in a demonstration or strike cannot be the basis for dismissal – a dismissal can only be on the basis of a violation of the labor code permitting an employer to dismiss a worker."²⁰² Bahraini laws, including the Constitution, also establish general principles of equality, with the most relevant stating, "People are equal in human dignity, and citizens are equal before the law in public rights and duties. There shall be no discrimination among them on the basis of sex, origin, language, religion or creed."²⁰³

Bahraini labor law, however, does not explicitly ban or define discrimination in employment and occupation, such as the type alleged by the AFL-CIO submission, workers interviewed by the OTLA in the course of its review, and the Article 26 complaint to the ILO. The labor law is silent on the principle concerning the fundamental right of elimination of discrimination in employment and occupation enumerated in the ILO Declaration. The right also is recognized in ILO Convention 111, Article 1 of which defines discrimination as "any distinction, exclusion or

¹⁹⁹ Ibid., Paragraph 262.

²⁰⁰ ILO Constitution, Article 3(5), "The Members undertake to nominate non-Government delegates and advisers chosen in agreement with the industrial organizations, if such organizations exist, which are most representative of employers or workpeople, as the case may be, in their respective countries." CFA Digest of Decisions, paragraph 733, "Unions and confederations should be free to affiliate with international federations or organizations of their own choosing without intervention by the political authorities."

²⁰¹ Labour Law, Article 102(4).

²⁰² Government of Bahrain response, June 20, 2011, page 16.

²⁰³ See, e.g., Constitution of Bahrain, Article 1(e) (entitling all citizens to participate in public affairs and enjoy political rights) and Labour Law for the Private Sector, Article 1 (applying labor code to men and women). See also, International Labour Organization, *Country baselines under the ILO Declaration Annual Review (200-2012): Elimination of Discrimination in Respect of Employment and Occupation*, March 8, 2012, Bahrain, p. 3, available at: <http://www.ilo.org/declaration/follow-up/annaulreview/countrybaselines>.

preference made on the basis of race, colour, 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.” The ILO’s Committee of Experts on the Application of Conventions and Recommendations (CEACR) urged Bahrain to amend its labor laws to explicitly define and prohibit discrimination in employment and occupation in conformity with Article 1 of the Convention [111].”²⁰⁴

The Government of Bahrain has failed to strive to remedy this legal void. Instead, in the wake of the March 2011 general strike, the Government of Bahrain directly invoked and did not prevent or discourage employers from conducting discriminatory dismissals based, at least in part, on political opinion and religion. Such action and inaction appear to be inconsistent with the Government of Bahrain’s obligation under Article 15.1.1 of the FTA.

²⁰⁴ CEACR Individual Observations on Convention 111, 2009 and 2010, ILOLEX.

IV. Conclusions

Based on a review of the events in Bahrain following the March 2011 general strike, it appears that trade unionists, in particular union leaders, were targeted for dismissal for their role in organizing, supporting, and participating in the strike. In some cases, union leaders who played an important role in organizing the strike were targeted, based on that leadership, for dismissal before non-union leaders. In other cases, like BAPCO, calling for a strike appeared to be the decisive factor in whether an employee was fired – the 12 union leaders who admitted to calling for a strike were dismissed, while the three who denied involvement were not.

Protected union activity was also explicitly cited as the reason for dismissal in a number of termination letters. Bahrain's legal framework governing freedom of association is inconsistent with international standards in important areas, namely: the ban on trade unions engaging in political activities; the ban on strikes in "strategic undertakings" defined to include services considered "non-essential" by the ILO; criminal sanctions for engaging in or encouraging strikes in the public sector or in undertakings related to public services or public service requirements; and the prohibition on public sector union formation. After the March 2011 general strike, the Government of Bahrain actively applied or did not prevent or discourage employers from invoking these laws against organizers, supporters, and participants in the strike. For example, unionists, especially union leaders, were fired for engaging in political activity. Workers were terminated for strike activity in "strategic undertakings." Union leaders were arrested, prosecuted, and imprisoned or threatened with criminal action for strike-related activity.

The Government of Bahrain has not taken steps to address the aforementioned shortcomings, either by implementing the ILO-recommended amendments or otherwise. Additionally, in August 2012, the Government of Bahrain enacted Trade Union Law amendments that weaken protection of freedom of association under Bahrain law, namely by banning multi-sectoral labor federations; prohibiting individuals convicted of violating criminal laws leading to trade union or executive council dissolution from holding union leadership posts; and requiring the Minister of Labor to select the federation to represent Bahraini workers in international fora and in national-level bargaining.

Bahrain law on discrimination in employment and occupation is also inconsistent with international standards, as its labor law is silent on the issue. The Government of Bahrain has taken no steps to directly ban discrimination in employment and occupation in its laws. In addition, it also appears that the widespread dismissals in the wake of the general strike of March 2011 have been carried out in a discriminatory fashion, punishing workers for their religious (sectarian) identity and/or for political opinion. For example, the CSB confirmed that disciplinary committees convened by the CSB repeatedly asked workers about their political activity. The BICI found that dismissals based on religious (sectarian) identity had also occurred, to the detriment of the Shia population in Bahrain.

Moreover, the reinstatement of all but a few hundred workers dismissed after the March 2011 general strike has not wholly mitigated the aforementioned shortcomings. Although the data indicate that most dismissals have been largely "resolved" through reinstatements, the reinstatement process raises serious concerns, including about failure to reinstate with full back

pay due and other remuneration owed or another suitable compensation package and about workers' freedom of association and discrimination based on political opinion and religious (sectarian) identity. For example, there are a number of credible reports of workers being required to renounce any political or strike activity as an employment pre-condition and of anti-Shia discrimination in rehiring, with some enterprises only rehiring Sunni workers.

For these reasons, Bahrain appears to have acted inconsistently with Article 15.1.1 of the FTA by not striving to ensure that freedom of association and the elimination of discrimination in employment and occupation are recognized and protected in its laws and Article 15.1.2 by not striving to ensure that its laws provide for standards consistent with the internationally recognized labor rights and not striving to improve those standards.

V. Recommendations

A. Cooperative Labor Consultations under Article 15.6.1 of the FTA

According to the OTLA's Procedural Guidelines for submissions, its public report shall include any recommendations made to the Secretary of Labor as to whether the United States should request consultations with another Party pursuant to Article 15.6.1 of the U.S.-Bahrain FTA, as relevant and appropriate. According to Article 15.6.1, such consultations may be requested "regarding any matter arising under this [Labor] Chapter." As discussed in this report, the allegations raised in U.S. Submission 2011-01 (Bahrain) against the Government of Bahrain, as well as subsequent events, directly concern matters under the Labor Chapter and whether the Government of Bahrain has upheld its FTA commitments, in particular with respect to freedom of association and discrimination in employment and occupation, under Article 15.1.

The Government of Bahrain has instituted mechanisms to address many of the concerns in the submission, including the rehiring of workers dismissed in the context of the general strike of March 2011. Nonetheless, important concerns remain. Therefore, the OTLA recommends to the Secretary of Labor that the Government of the United States request Labor Consultations under Article 15.6.1 of the FTA to consult with the Government of Bahrain on the matters raised in this report. The OTLA further recommends to the Secretary that in fulfillment of the Parties' obligation to "make every attempt to arrive at a mutually satisfactory resolution of the matter," the Parties seek during Consultations to develop a plan of action to resolve the matters at issue, taking into consideration the recommendations set forth below.

B. Recommendations to the Government of Bahrain

Under Article 15.1 of the FTA, each Party shall strive to "ensure that the labor principles of the ILO Declaration and the internationally recognized labor rights set forth in Article 15.7 are recognized and protected by its law" and "ensure that its laws provide for labor standards consistent with the internationally recognized labor rights set forth in Article 15.7 and ... improve those standards in that light." The OTLA has undertaken review of the present case in light of the Article 15.1 commitments, and as a result, makes the following recommendations to facilitate compliance by the Government of Bahrain with those commitments:

- Explicitly prohibit discrimination in employment and occupation in its labor law, including based on political opinion and religion;
- Amend the ban on trade unions engaging in political activities, consistent with international standards;
- Amend the ban on strikes in "strategic undertakings" to ensure consistency with international standards concerning limitations on the right to strike in "essential services";

- Amend criminal sanctions for striking or encouraging others to strike in the public sector or in undertakings related to public services or public service requirements, consistent with international standards;
- Amend the ban on public sector union formation consistent with international standards;
- Repeal the ban on multi-sectoral labor federations;
- Amend the ban on individuals who have been convicted of any violations that lead to dissolution of a trade union or executive council from holding union leadership posts, consistent with international standards;
- Allow workers' organizations to select the most representative labor organization to represent them in international fora and national-level collective bargaining.
- Implement the commitments of the Minister of Labor's February 2012 plan and the Government of Bahrain's Tripartite Agreement, to the maximum extent possible, to ensure reinstatement of workers dismissed in response to the March 2011 strike to the same or equivalent positions without preconditions or discrimination and with back pay due and other remuneration owed or another appropriate compensation package;²⁰⁵
- Review all criminal cases against trade unionists and union leaders and drop outstanding charges for those whose charges do not consist of advocacy of violence and stem from organizing, participating in, or encouraging the March 2011 general strike, consistent with the BICI recommendation on such cases;²⁰⁶
- Refrain from engagement in or support of activities undermining freedom of association, in particular against the GFBTU and its leadership;
- Investigate allegations of and sanction, as appropriate, employer acts of intimidation and harassment of trade union members and leaders and other similar employer actions to weaken workers' organizations.

²⁰⁵ See: "Bahraini Government Announces Finalizing Reinstatement of Dismissed Workers," Bahrain News Agency, March 4, 2012, <http://bna.bh/portal/en/news/497115>; Tripartite Agreement, March 11, 2012; and BICI Report, p. 408, paragraph 1667, and p. 425, paragraph 1723.

²⁰⁶ BICI Report, p. 424, paragraph 1722 (h).