

BYLA Report on UPR 2016 Recommendations

At BYLA, we consider the recommendations of the UPR 2016 a priority in our community activity as we monitor the State's commitment to implementing these recommendations towards achieving further security and peace and meet our society's needs on the basis of citizen rights and human dignity.

Moreover, we actively contribute our reviews on all issues highlighted by the UPR, as with the Bahrain Women Union's third Shadow Report of the CEDAW and UPR 2014 Report, both of which we contributed to preparing as members of the Union, along with what we discussed during the presentation of the third Civil Periodic Report of 2014, Geneva. We pay great attention to these issues and closely monitor all updates.

Following are our recent observations;

(1) Withdraw reservations to CEDAW as well as to other conventions and ratify the Optional Protocol to CEDAW and other outstanding core human rights instruments (UPR 115: 7 Uruguay, 8 Chile, 9 Slovenia, 10 South Korea).

We emphasize on the positivity of the State signing the Convention. However, reservations on Articles (2, 9/2, 10/4, 15/4, 16) violate the essence of the Convention and are conflicting with Article (18) of the Constitution.

According to closing remarks of the CEDAW Committee, November 2008, the State argued that the reservation on Article (2) does not negatively affect women enjoying their rights. Nevertheless, discrimination continues with the lack of translation of Article (18) of the Constitution into laws guaranteeing equality between genders, such as the "Citizenship Law", and the absence of the Jaafari section of the Family Law.

With reference to the third Civil Periodic Report of Bahrain, February 2014, reservations on recommendations (9) and (10); the international committee calls upon the State to accelerate reviewing its reservations in order to either withdraw them or narrow their scope within a specified timeframe, with full cooperation with women NGOs. It also calls the State to specifically withdraw its reservations on Articles (2) and (16) as they are incompatible with the spirit of the Convention.

The reservations are still constrained with the condition "without incompatibility with the provisions of the Islamic Sharia", which is a

restricting condition subject to interpretations that may result to be against the spirit of the Convention. This stance is also contrary to the positions of other Arab and Islamic countries on the same articles, which negates the justification to retain those reservations.

Reference to Decree (70) year 2014 to amend certain provisions of Law No.(5) year 2002 to approve joining the Convention, which was debated in the Parliament, agreed upon by the Council of Representatives in 2016 and included redrafting reservations on Articles (15/4) and (16) narrowing the scope of the reservations; this decision is a positive step in responding to civil society demands, which are concerned to lift all reservations, however, this practically means merely reducing the State's reservations on the Convention articles.

- **Lifting the reservations and effectively cooperating with NGOs to develop measures to achieve the agreement's articles.**
- **Community awareness of the Convention content, especially that it is not incompatible with Sharia.**
- **Reviewing national legislations and laws to adapt them to the Convention.**
- **Ratification of the Optional Protocol.**

(2) Reconsider the restrictions imposed by the Ministry of Social Development and take appropriate measures to ensure that civil society organizations can take an active part in the public debate on human rights (44 Sweden).

Based on provisions of Constitutional Article (27)¹ and reference to Law No.(33) year 2002 with regards to social and cultural clubs associations and Law No.(21) year 1989 that organizes their activities, these associations are to have their corporate bodies from the date of publishing their registration in the official gazette.

Bahrain's NGOs boast a long and growing cumulative experience, which earned them the trust and confidence of the international community and enabled them to be active partners in developing and implementing programs. However, the administrative and financial restrictions imposed by the Ministry of Labour and Social Development, especially with regards to fundraising and membership in regional and international organizations, represent an obstacle in playing a leading role, wastes opportunities and

¹ **Article (27):** "Freedom to form associations and trade unions on a national basis and for lawful objectives and by peaceful means shall be guaranteed in accordance with the conditions and procedures prescribed by the law, etc,"

disrupts the implementation of programmes, thus threatening the continuity of NGO existence.

- **Lifting the guardianship on NGOs and restrictions based on Law No.(21) year 1989, under which NGOs' independence is limited and activity is constrained, by revoking the law and drafting a new law that guarantees NGOs more freedom and unrestricted capacity.**
- **Implementing practical measures for the effective participation of NGOs in Human Rights discussions.**

(3)Continue progress in the implementation of policies designed for the advancement of women and ensuring quality social services that are universal in coverage and benefit the whole of the population (39 Cuba, 48 Bangladesh, 49 Egypt, 50 Oman, 51 Senegal, 52 United Arab Emirates, 96 Argentina, 77 Nicaragua).

Progress continues, yet realization of the principle of equality continues to be challenging as the percentage of Bahraini women in decision making positions is limited and standards are unclear, in absence of mechanisms to monitor forms of discrimination, such as statistics and budgets reflective of gender, as well as adoption of national indicators to measure performance levels.

- **Activating mechanisms to monitor discrimination and adoption of clear criteria to end it.**

(4)Take further measures, including legislative, in order to expand rights and opportunities of women and promote gender equality (68 Belarus, 69 Jordan, 71 Morocco, 72 Republic of Korea, 73 Chile, 74 Singapore, 77 Nicaragua).

Despite existing achievements, the percentage of women in decision making positions remains low and challenging, with only 3 women to 37 men in the Council of Representatives, 8 women to 32 men in the Shura Council, 7 women judges, absence of women in Sharia courts, only 1 female director in Public Prosecution, 3 female Public Prosecutors and only 1 female minister in a cabinet of 22 ministers.

- **Continuation of efforts to take legislative measures to expand rights and opportunities to realize gender equality by adoption of the "quota" system according to Article (4) of CEDAW, setting a 30% national-level quota principle for political participation.**

- **Further expanding women's participation in decision making within the legislative, executive and judicial authorities and all State institutions.**
- **Issuing a law criminalizing discrimination and penalizing perpetrators.**

(5) Continue its efforts to empower women economically, politically and socially, and to take all necessary measures to eliminate all forms of discrimination against women. (71 Morocco, 73 Chile).

There are shortcomings in economic empowerment as seen with female employees on temporary annually-renewed contracts. These university graduates, employed by the Ministry of Labour and some of its companies, are denied job security, social insurance, promotions, incentives and paid leaves, all under the Labour Law, Civil Sector (36/2012). After working in their jobs for up to 8 years, they were dismissed in December 2002. Among these are 32 Batelco employees.

Official data indicates a growing number of unemployed Bahraini women among (7414) unemployed citizens in 2014, (3377) of which are Bachelor-degree holders, (19) Master's degree holders, (6368) are women (making up 86%)².

- **Qualitatively activating national economic empowerment programs to guarantee women's economic rights.**

(6) Continue taking temporary measures for granting citizenship to children of Bahraini women married to non-Bahrainis until the draft law amending the Nationality Law comes into effect (75 India, 95 Uruguay, 96 Argentina, 140 Japan, 141 Norway, 142 Sudan, 143 Algeria).

The decree, through a law, immediately grants minor children the Bahraini nationality once acquired by their father if he acquired it in accordance with Article (6) of the Bahraini Nationality Law. However, a Bahraini woman is denied the right to grant her children her nationality when marrying a non-Bahraini. The State continues to have reservations on Article (9) of CEDAW (which gives women equal rights with men to acquire, change or retain their nationality and with respect to the nationality of their children), despite the State reformulating the reservation on Clause (2) of Article (9).

The Bahraini Nationality Law, issued 1963, requires the father to be Bahraini in order for the child to acquire the Bahraini nationality, even though the

² Editor, "7414 Unemployed, Out of Which 3396 University Graduates", **Al Wasat Newspaper**, issue 4599, Saturday, 11 April 2015.

same law grants the nationality to a child born to a Bahraini father and a non-Bahraini mother and also grants the non-Bahraini wife the right to acquire the Bahraini citizenship after five years of residence in the country.

Bahraini mothers suffer problems caused by depriving their children of their nationality and citizenship rights including the rights of education, healthcare, employment and housing. Even when there are administrative measures to deal with these cases, they remain merely measures and not inherent rights. This represents a minimization of citizenship rights of Bahraini women married to non-Bahrainis and prevents achieving equality. It causes children to live like strangers in a country they were born in and belong to, deprived of exercising their rights.

▪ **It is necessary to continue implementing the CEDAW recommendations to grant the nationality to children of Bahraini mothers married to non-Bahrainis.**

▪ **Amendment of Article (4) of the Bahraini nationality law as follows; “a person is considered Bahraini if born inside or outside Bahrain if the father or mother is Bahraini at birth”.**

▪ **Fully lift reservation on Paragraph (2) Article (9) of the Convention.**

(7) Continue its efforts with a view to the prevention and elimination of trafficking in human beings (94 Azerbaijan, 97 Belarus).

Despite the State’s efforts to establish the "National Committee to Combat Human Trafficking" (NCCHT) and promulgation of Law No. (1) year 2008, intensifying penalties and measures to preserve the rights of victims included in Penal Code of year 1976 and expanding awareness campaigns, there is a lack of policies protecting victims and absence of a comprehensive national strategy to combat human trafficking, which hinders dealing with human trafficking effectively.

Female domestic workers (around 70,000) make up 40% of the migrant work force as per the LMRA and are subject to sexual and physical violations. Despite the Labour Law making reference to violations against them, these violations are on a rise, most notably retention of official documents, long delays and lack of payment of wages and deprivation of weekend leaves.

Following are some trafficking crimes reported by local media. There is the case of the “Ethiopian Maid” who was not paid her salary for 8 years and the police did not force the employer to neither return her passport to her, which

he claimed to have lost, nor purchase a ticket to fly her back to her country³. Also a report on (110) domestic workers describes that they were subject to physical abuse (47), no wage payment (41), lack of medical treatment (15) and sexual violation (7) and that is in comparison to (135) cases in year 2013, (2) sexual exploitation cases recorded during year 2016, (3) in year 2015 and (15) in year 2014, with the total number reaching (60) cases between years 2008-2016, ranging from exploitation of the employment contract to sexual exploitation⁴.

Another journalistic report reveals (50) suspects of trafficking victims in year (2014) as compared to (21) in year 2013, (40) sex traffic victims and (10) forced labour cases; signaling the rise of victim numbers. Despite courts investigating some cases and some police stations working directly on escape cases, some are not investigated for days and weeks. Failure to promptly investigate allegations of ill-treatment makes victims more vulnerable to exploitation and limits access to the necessary protection⁵.

The new Labour Law (36)⁶ gives a number of rights to domestic workers and persons regarded as such that are not included in the previous law, such as an employment contract, annual leave, entitlement to leaving indemnity, no delay in wage payments and a specified compensation when delayed, which are positive amendments. Still, there is a flaw and confusion in application of the law, especially that official reports do not refer to these articles with regards to domestic workers and in actuality, employers (families) are unaware of the law and its applications.

As for “Free Visa” cases among foreign domestic workers, this is an illegal yet widely-spread dealing that triggers the exploitation of workers in prostitution networks.

Major challenges include that the new formation of the NCCHT lacks the involvement of stakeholders directly responsible for monitoring women and migrant worker issues, besides the absence of a statistical database that includes stats on human trafficking cases, the lack of transparency by officials in publishing this data, continuation of violation of migrant labour rights, retention of official documents, practicing extortion to release official documents and the absence of a law to prevent sexual harassment and gender-based violence in the workplace as a form of human trafficking.

³ Ref **Bahrain Women Union report on UPR** recommendations, September 2014.

⁴ Hana Buhiji, "Law to Combat Human Trafficking in Bahrain Incapable of Protecting Domestic Workers", **Al Wasat Newspaper**, 16 June 2016.

⁵ Amaani Al Maskati, Report on Human Trafficking, **Al Wasat Newspaper**, issue 4708, 29 June 2015.

⁶ New Labour Law, published in the **official newspaper** under No. (36), issue 3063, 2 August 2012.

- **Continuation of State efforts to advance the fight against violence by investigating with visa dealers and preventing this practice.**
- **Amendment of Law (1) year (2008) with regards to human trafficking to expand its definition of the crime of trafficking.**
- **Setting deterrent penalties to prevent child sexual exploitation and trafficking.**
- **Activation of the articles of the Labour Law to spread awareness about migrant workers within community groups and including the topic of human trafficking within educational curriculums.**

(8) Carry-out awareness raising campaigns on the importance of adopting a unified law on the family and increasing the minimum age for marriage (138 Chile, 139 Brazil).

We stress the importance of family protection as in Article (5) of the Constitution and in the Family Law and what guarantees legal equality in rights and general duties under Article (18) of the Constitution, as well as the progress made by issuing Law No.(19) year 2009 regarding Family Law (Section 1) and the appropriate measures to guarantee rights and duties of spouses and protection of their children and provisions of Article (15, 22, 23, 24, 25), in addition to the decision of the Minister of Justice and Islamic Affairs No.(1) year 2016 regarding a list of officials authorized to perform marriage ceremonies and provisions of notarization of personal status documents and Articles (12, 36, 37, etc). However, the absence of the Jaafari section of the Law reflects a discrimination against Bahraini women belonging to the Jaafari sect, whom suffer in Sharia courts of differing jurisprudence views and absence of unified texts concerning litigation with regards to divorce, rights of custody, alimony and overall family relations.

Official statistics revealed (12,000) pending cases from years 2009-2015, related to issues of alimony, custody, divorce and Khula⁷, in addition to (3000) at-fault divorce cases pending since 2011⁸. It is also revealed that cases remain pending in courts for 4-6 years, confirming a strong necessity to approve the Jaafari section of the law, demanded since more than 20 years⁹. Its absence represents a flagrant prejudice against women rights as human beings whom rights of justice, security and safety are guaranteed under constitution.

- **Accelerate approving the “second section” of the Family Law; and preferably adoption of a Unified Family Law. We stress on the**

⁷ **Khula**, in Islam, is the right of a woman to seek a divorce from her husband in Islam for compensation (usually monetary) paid back to the husband from the wife.

⁸ Fawziyah Janahi, “CEDAW - Rights not Privileges” **Conference**, Bahrain Women Union, 2015

⁹ Editor, **Al Wasat Newspaper**, issue 4587, Monday, 30 March 2015.

necessity of a national campaign and have not detected officials' seriousness in presenting the law for review by the legislative authority.

- Perceived efforts remain limited, they neither exceed media statements nor meet pledges to create societal consensus for approval, especially when alleging the sensitively aspect of this issue. This requires identifying the effective steps necessary for issuing the second section of the law by the State. Bearing in mind the challenging social nature of the process, a political decision is required. Reference can be made to countries leading in this field with similar religious backgrounds and legal systems, such as Morocco.
- Reform of the judicial system of Sharia courts and creation of a mechanism to monitor the implementation of court rulings. There is a defect in litigation stages, requiring rapid implementation of personal status rulings. As for the "Alimony Fund", many women suffer the slow pace of court proceedings.
- Raising the minimum age for girls' marriage to (18) years, implementing the CEDAW Committee recommendations and aligning with the UNCRC, especially with Article (18)¹⁰. The Article, which refers to the permissible marriage of a minor female in Sharia courts, keeps the door open for individual interpretations and does not restrict marriage of young girls with a determined law, thus creating a legal gap.

(9) Continue to support efforts, programs and initiatives aimed at providing protection for all family members; (144 Saudi Arabia).

Despite issuance of the law of protection against domestic violence No. (17) year (2015) and adoption of the national strategy to combat domestic violence against women, violence continues to be widely practiced and the law has shortcomings, such as limiting the definition of violence to a domestic nature, in spite of women being subject to violence at the workplace, streets and shelters. Moreover, penalties are not deterrent enough and no role was mentioned for NGOs to address violence.

- **Adoption of a comprehensive definition for violence that includes the policies to protect women against violence and not limiting it to domestic violence.**

¹⁰ **Article (18) of the Bahraini Family Law, first section, stating:** "Marriage for female minors under the age of 16 is permitted with consent of the Sharia Courts after the verification of suitability"