Constitutional Protection of the International Declaration on the Fundamental Principles and Rights at Work 1998 in the Kingdom of Bahrain

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Introduction

Importance of this Thesis

This thesis will study the International Labour Organization's Declaration on the Fundamental Principles and Rights at Work ("ILO Declaration"), which was adopted in 1998 by the International Labour Organization ("ILO"). The thesis will also examine how the Kingdom of Bahrain as a member of the ILO has sought to adopt and implement the ILO Declaration in relation to its Constitution, Islamic Shari'a, and other laws such as its criminal and labour relations laws.

The ILO Declaration has been criticized by various ILO Member States for breaching Public International Law ("PIL"), as it obliges ILO Members States to abide by conventions which the individual Member States may not have ratified.

The ILO does not agree with this viewpoint and states that the ILO Declaration complies with the rules of Public International Law as ILO Member States are bound by the ILO's Constitution ("ILO Constitution").

The fundamental rights at work are:

1. the elimination of all forms of forced or compulsory labour;
2. the elimination of discrimination in respect of employment and occupation;
3. the effective abolition of child labour; and
4. freedom of association and the effective recognition of the right to collective bargaining;

And the Conventions which set out these fundamental rights ("Fundamental Conventions") are accepted as the minimum international standards to be adopted to protect workers.

This thesis will discuss the legitimacy of the ILO Declaration under PIL rules to oblige ILO Member States to respect, to promote and to realize, the principles concerning the fundamental rights which are the subject of the un-ratified

Fundamental Conventions even if these principles contradict with the Constitution of an ILO Member State.

The thesis will attempt to clarify: the nature of the ILO Declaration under PIL rules; and the differences between the ILO Member States' obligation to respect the principles of un-ratified Conventions and the obligation to implement ratified Conventions so as to implement the rights created by the Fundamental Conventions.

The thesis will attempt to clarify the reasons for issuing the ILO Declaration and imposing upon ILO Member States a clear duty to improve their legislation and practises so as to respect the principles of the un-ratified Fundamental Conventions.

The thesis will also examine the follow up procedures used by the ILO to ensure that ILO Member States comply with the ILO Declaration. Specifically, this thesis will examine the follow up procedures used by the ILO to ensure that the Kingdom of Bahrain has implemented the rights and principles set out in the Fundamental Conventions.

PIL rules oblige ILO Member States to implement the rights set out in ratified Conventions. Where a State recognizes the *Monism Path* an international convention will be adopted into domestic law. Even so where an international convention imposes criminal penalties these can only be imposed by specifically amending domestic laws, if this is not done the ILO Member State will not be able to implement the ILO Conventions.

This is especially so where the Constitution of an individual ILO Member State lays down specific procedures and laws governing the imposition of penal sanctions. Thus a judge would not be able to enforce the obligations created by the ILO Declaration unless a convention was adopted into domestic law and the limits of the penal sanction subscribed in law. Thus it is vital to ensure that the Fundamental Conventions are correctly adopted into domestic law if ILO Member States are to enforce the obligations created by these Conventions. Failure to do this will mean that Courts will be acting *ultra vires* their authority when imposing sanctions.

The ILO will need to implement its follow up procedures to ensure that ILO Member States are properly enforcing their obligations under the ILO Declaration. However, it should be noted that those Conventions which only organize rights and do not impose any penal sanctions, can be implemented merely by ratification and publication.

This thesis will also attempt to establish that the principles of Islamic Shari'a should not prevent ILO Member States, whose laws are based wholly or in part on the Islamic Shari'a, from implementing the Fundamental Conventions. Indeed, this thesis will show that Islam has always recognized and protected Human Rights even though the protections may not be exactly the same as the International Fundamental Rights at Work set out in the ILO Declaration and ILO Conventions[1] and that the failure of Muslim States to implement the International Fundamental Rights at Work is for other reasons.

The aims of this thesis can be summarized as follows:

1. to clarify the legitimacy of the ILO Declaration in imposing new obligations not imposed by PIL rules and the attitude of ILO Member States, especially the Kingdom of Bahrain to implementing the ILO Declaration;
2. to clarify the motives of the ILO in adopting the ILO Declaration;
3. to highlight the limitations of the obligations imposed by the un-ratified Conventions on ILO Member States and the extent to which the ILO can impose international sanctions on ILO Member States who fail to implement the Fundamental Conventions;
4. to examine the status of ratified Conventions in Bahrain as a *Dualist* State, and to assess how the Conventions have been adopted into and implemented under the domestic laws of Bahrain;
5. to assess the protection of the Fundamental Rights at Work afforded by the Bahrain Constitution and to ascertain whether these rights are implemented and enforced under Bahrain's domestic laws; and

[1]The Forced Labour Convention No. 29 of 1930; the Abolition of Forced Labour Convention No.105 of 1957; the Minimum Age Convention No.138 of 1973; the Worst Forms of Child Labour Convention No.182 of 1999; the Freedom of Association and Protection of the Right to Organize Convention No.87 of 1948; the Right to Organize and Collective Bargaining Convention No.98 of 1949; the Equal Remuneration Convention No.100 of 1951; and the Discrimination (Employment and Occupation) Convention No.111 of 1958.

6. to examine and emphasize similarities between the Fundamental Rights at Work and the protections afforded to workers by Islamic Shari'a.

Bahrain makes a suitable case study for several reasons: it has been an ILO Member State since 1977;[2] it follows the *Dualism Path*;[3] the Constitution of the Kingdom of Bahrain which was issued on the 14th of February 2002 ("Bahrain Constitution") states that no punishment should be imposed except by law;[4] Islamic Shari'a[5] is a source of Bahrain Law;[6] Bahrain has attempted to implement the ratified Conventions in accordance with PIL rules;[7] and as an ILO Member State Bahrain is bound by virtue of the ILO Constitution and the ILO Declaration to respect, to promote and to realize, in good faith, the principles set out in the Fundamental Conventions.[8] Accordingly, a study of Bahrain will reflect all the aims of this thesis.

Difficulties in Writing this Thesis

The various difficulties faced when writing this thesis can be summarised as follows:

a. The various divisions of Islamic doctrine. The *Sunni* doctrine has been chosen as it is the formal doctrine of Bahrain, and also it prevents this thesis from being divided between different doctrines. This does not exclude the fact there are other applicable doctrines in Bahrain, but for the sake of this thesis the formal doctrine has been used.

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[2]The Kingdom of Bahrain joined the ILO on 18 April 1977, see <http://www.ilo.org/ilolex/english/mstatese.htm>.

[3]Article 37 of Bahrain Constitution.

[4]Article 20, *ibid.*

[5]"Islamic *Shari'a* is the body of Islamic law, the term means "way" or "path"; it is the legal framework within which the public and some private aspects of life are regulated for those living in a legal system based on Islamic principles of jurisprudence. *Shari'a* deals with all aspects of day-to-day life, including politics, economics, banking, business law, contract law, family, sexuality, hygiene, and social issues. There is no strictly codified set of laws pertaining to *Shari'a*. *Shari'a* is more a system of devising laws, based on the Koran (Holy Book of Islam), *Hadiths* (sayings of Mohammed), and centuries of debate, interpretation and precedent. Before the 19th Century, legal theory was considered the domain of the traditional legal schools of thought. Most *Sunni* Muslims follow *Hanafi*, *Hanbali*, *Maliki* or *Shafii*, while most *Shia* Muslims follow *Jaafari*", <http://en.wikipedia.org/wiki/Sharia>.

[6]Article 2 of Bahrain Constitution.

[7]The Forced Labour Convention No.29 of 1930; the Abolition of Forced Labour Convention No.105 of 1957; the Worst Forms of Child Labour Convention No.182 of 1999; and the Discrimination (Employment and Occupation) Convention No.111 of 1958.

[8]The Minimum Age Convention No.138 of 1973; the Freedom of Association and Protection of the Right to Organize Convention No.87of 1948; the Right to Organize and Collective Bargaining Convention No.98 of 1949; and the Equal Remuneration Convention No.100 of 1951.

b. Koranic verses are written in an ancient language, and do not contain modern terms or concepts, so I had to interpret the meaning of the verses, and the *Sunnah*.[9]

c. The recent establishment of a Constitutional Court in Bahrain means that there is, as yet, no single judgment on to the subject matter of this thesis.

d. The lack of public judgments. I only had the Court of Cassation judgments to use as references and these are published many years after the judgment was issued. For that reason I had to depend on judgments from non-Bahraini courts, such as Egypt, England, the USA and others.

e. There is no relevant jurisprudence regarding the Bahrain Constitution. For that reason I used legal articles which relate to the Egyptian Constitution of 1971 because of its similarity to the Bahrain Constitution. Furthermore there is considerable Egyptian legal influence on the legislation of Bahrain. This influence arises from the fact that many Bahraini students study law in Egyptian Universities, and the use of Egyptian consultants in the legal and judicial field. Also many lawyers who draft Bahrain's legislation are Egyptian nationals.[10]

f. Despite the richness of the English and Egyptian materials which relate to this thesis, I chose not to go into an in-depth discussion of them. This was because they are not directly related to Bahrain, which is the relevant jurisdiction of the thesis. Also, I was keen to avoid unnecessary bifurcation in this thesis so I simply referred to these materials to understand this thesis.

g. I did not extend the understanding of standards further than that which is contained within the ILO Conventions. In addition I did not measure the social, cultural and religious deference in other laws, as what is

[9] "In Islam, the Arabic word '*Sunnah*' has come to denote the way the *Prophet Mohammed*, the Messenger of *Allah*, lived his life. The *Sunnah* is the second source of Islamic jurisprudence, the first being the *Koran*. Both sources are indispensable; one cannot practice Islam without consulting both of them. The Arabic word 'hadith' (pl. '*ahadith*') is very similar to *Sunnah*, but not identical. A *hadith* is a *narration* about the life of the Prophet or what he approved - as opposed to his life itself, which is the *Sunnah*". < http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah>.

[10] Bahrain appointed several Egyptian lawyers in the Public Prosecutor's office, Ministries, Council of Deputies and Consultative Council e.g. Royal Order No.5 of 2003, Royal Order No.20 of 2003, Royal Order No.32 of 2003, Decree No.33 of 2001, and Order No.35 of 2001, Bahrain Official Gazette.

acceptable in the Bahraini community and what it is acceptable in other communities is different. The Bahraini community is a Bedouin (traditionally nomadic) based Muslim community, which means the community rejects all unnatural sexual acts, e.g. in Bahrain homosexual acts even between consenting adults are frowned upon and most Bahrainis would not believe it discriminatory or unlawful to refuse employment on the grounds of sexual orientation.[11] For this reason Bahrain Law does not protect that which is unacceptable to the community and Bahrain has not introduced laws making it unlawful to discriminate against someone on the grounds of sexual orientation. The community rejects these acts with contempt and what is acceptable in one part in the world is not necessarily appropriate to another part.

h. Previously employment in the public sector was regulated by internal regulations issued by the Civil Service Bureau. This situation has now been changed by the Civil Service Law 2006 which was issued by Law No.35 of 2006 ("Civil Service Law 2006").[12] However due to the recent introduction of the Civil Service Law 2006 this thesis will focus on the private labour sector which is covered by the Labour Law for the Private Sector 1976 issued by Decree No.23 of 1976 as amended ("Labour Law 1976").

i. There was a serious shortage of relevant sources for this thesis. For that reason I concentrated on Egyptian jurisprudence, research papers and theses from Cairo University. I also sourced information from the daily newspapers, for such things as law reports on cases in the Bahrain courts. In addition, I used publications from the ILO press with regard to international labour standards, which ILO Member States make available as training materials. The final source of materials came from internet searches for cases and materials from British and American law reports and journals, the last updates to these websites being on the 15th of April 2008.

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[11]In United Kingdom law discrimination on the ground of sexual orientation has been held not to constitute sex discrimination *MacDonald v. Advocate General for Scotland* [2003]UKHL 34, HL see Honeyball Simon, *Honeyball & Bowers' Textbook on employment* Law, (United Kingdom: Oxford, 2008) p 240.

[12]The Civil Service Law 2006 was issued after this thesis was submitted for the author's *viva voce.*

j. In terms of the existing literature the distinctive contribution of this thesis is to relate the general standards of the ILO to the specific context of Bahrain Law. This thesis is based mainly on primary sources, because there is no existing academic literature on the relationship between international standards and Bahrain law. The existing literature including PhD work is concerned mainly with international aspects of the relationship between international institutions and States, and Arabic legal systems, at a very general level, for example Al-Lagani Ahmed, *Social Dimensions of GATT*, PhD Thesis, Cairo, Cairo University, 2004. There is also some literature concerning practical aspects of Middle East and North African labour law; for example Al Fiky Eskander bin Ahmed, International Declaration on Fundamental Principles and Rights at Work and its Effectiveness on the Developed Countries, LLM Thesis, Cairo University, Cairo, 2002, however, that thesis did not deal with Bahrain Law.

k. I have also had to translate some Arabic sources into English which has often proved difficult especially where the Arabic sources themselves are drawn from countries such as France sources.

l. I chose English Law as the developed model of law in this area because the United Kingdom has been an ILO Member for nearly 90 years[13] and English labour laws are amongst the best developed laws in Europe due to the United Kingdom's early industrialisation and its effects on work practices.[14] English laws also influenced labour laws in the USA, and latterly the American Civil Rights movement has in turn influenced labour laws in the United Kingdom. Finally, as a member of the European Union current UK labour laws reflect best practices throughout the European Community states.

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[13]United Kingdom joined ILO in 1919, see <http://www.ilo.org/dyn/natlex/country_profiles.basic?p_lang=en&p_country=GBR>.

[14]For a history of labour law from the Black Death to the present see chapter 1 of Bowers John, *Bowers on Employment Law*, (United Kingdom: Oxford,2002) pp 1-12. In addition The anti-slavery movement was started in the United Kingdom in the 1770s by the Quakers. See Brycchan Carey, Markman Ellis, and Salih Sara, *Discourses of Slavery and Abolition, Britain and its Colonies*, (United Kingdom: Palgrave Macmillan, 1976-1838) pp 141-154. The Court of King's Bench refused to recognize the foreign status of slavery. See *Somersett's Case* (1772) 20 State Tr.1.

m. Often the Arabic legal references used in the thesis do not follow the methods of citation used in English legal texts. For instance they did not contain the year of publication, the edition, or the publisher which may be misunderstood and seen by English readers as an incomplete reference.

Thesis Plan

In order to fulfil the objectives of the thesis it is necessary to examine the ILO Declaration and its implementation by an ILO Member State. Accordingly, this thesis is divided into two parts: the first part will examine the ILO's legal status and its adoption and implementation of the ILO Declaration; whilst the second part will build upon the first part by examining the extent of the implementation by Bahrain of the Fundamental Rights at Work enshrined in the ILO Declaration.

The first part is the introduction which is divided into two chapters. The first chapter is concerned with the ability of the ILO under the PIL rules to adopt the ILO Declaration and oblige ILO Member States to abide by the principles set out in Conventions which they have not ratified individually.

The second chapter discusses the protection afforded by the Bahrain Constitution to the fundamental rights at work set out in it, which can be achieved by the constitutional review of the constitutionality of laws. In addition the chapter examines the legal position of the ratified Fundamental Conventions under the Bahrain Constitution, and how these Conventions are implemented by the laws of Bahrain. The chapter also deals with secular constitutions and compares them to Islamic constitutions, to ascertain the compliance of the Islamic Shari'a with the Fundamental Rights at Work.

Part two, which is chapter three, is the core of the thesis. It is divided into four sections and is concerned with the Fundamental Rights at Work which are set out in the ILO Declaration. Each section deals with one fundamental right as they are the minimum rights; the section examines each fundamental right and the ILO Conventions related to it. It examines the extent to which Bahrain acknowledges the principles of un-ratified Fundamental Conventions, and it clarifies the extent to which

Bahrain compiles with its international obligations set out in the ILO Declaration. Finally each section examines to what extent Bahrain has implemented the ratified conventions to comply with its PIL obligations and its obligation to enforce the fundamental rights set out in the Fundamental Conventions.

Each section also compares the Fundamental Rights at Work with Islamic Shari'a to emphasize the similarity between international conventions and the Islamic Shari'a with regard to the fundamental rights at work set out in the eight Conventions.

Finally, it is worth mentioning, that while it is important to compare Islamic fundamental rights at work with International fundamental rights at work it is impossible to do so fully in this thesis due to the lack of research on this subject and the lack of an in-depth analysis of Islamic fundamental rights at work. However, having written this thesis I am of the opinion that Islamic fundamental rights at work deserve a full thesis in their own right as these have not been thoroughly researched by any writer before.

Part I

Fundamental Rights at Work in the International Declaration on the Fundamental Principles and Rights at Work 1998 and their Protection under the Bahrain Constitution

Chapter 1

International Labour Organization

The ILO adopted its Declaration on Fundamental Principles and Rights at Work in1998. The ILO Declaration affirms the international minimum labour rights for workers set out in the Fundamental Conventions. The ILO Declaration confirms the need for ILO Member States to follow the principles set out in the Fundamental Conventions even if they are not ratified by a particular ILO Member State. This appears to be a new PIL rule which contrasts with the established rule set out in the Vienna Convention on the Law of Treaties of 1969 ("VCLT") which states that a State shall only be bound by a particular Convention if that Convention has been ratified by that State.

In order to clear up this ambiguity it is necessary to examine the legal personality of the ILO which allowed it to issue the ILO Declaration; and to examine the extent of the obligation placed on ILO Member States by the ILO Declaration to respect, promote and to realize, in good faith the principles set out in the Fundamental Conventions even when a particular ILO Member State had not ratified a particular Fundamental Convention. In addition it will be necessary to examine the ability and legitimacy of the ILO to follow up on and assess the implementation of the principles set out in the Fundamental Conventions when an ILO Member State has not ratified a particular Fundamental Convention.

1-1 Legal Personality

PIL defines Legal Personality as "the ability to acquire rights, abide by obligations, and the ability to take legal action and sue".[15] PIL "is the essential source of legitimacy for international organizations"[16] and the PIL rules are "superior to any other rules governing international organizations".[17] The legitimacy of an international organization depends on PIL rules.

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[15]Alwan Abdulkarim, *Public International Law (International Organizations - Human Rights)*, Vol. 2, (Alexandria: Monshat Alma'arf, 2007) p 335.
[16]Abou Alwaffa Muhammad Ahmad, *Intermediary in the Organizations' Law*, (Cairo: Dar Al-Thaqafa AlArabia, 1984) pp 149-150.
[17]Samy Abdulhameed Muhammad, *The Basis of International Law*, Vol.1, 5th Edition, (Alexandria: 1996) p 317.

The advisory opinion of the International Court of Justice ("ICJ") in *the Reparation for Injuries Suffered in Service Case*, "gives judicial support to the argument that an international organization can have a separate legal personality".[18] This case arose out of,

> "...the murder of a UN mediator in Jerusalem by a Jewish group. The UN General Assembly requested an opinion from the ICJ on whether the UN had the capacity to bring an international claim against Israel for the purpose of obtaining reparation for injuries done to the organization and its agent".[19]

The ICJ advisory opinion depended on Article 104 of the UN Charter which imposes an obligation on UN Member States to confer legal personality on the UN within their domestic legal systems, although there is nothing in the UN Charter which expressly grants legal personality to the UN. Nevertheless, the ICJ found that the UN possesses an international legal personality, as this is necessary for the fulfilment of its functions.

The ICJ also inferred legal personality from the powers and rights that had been given to the UN under the UN Charter. The Court also noted that:

> "The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community. Throughout its history, the development of international law has been influenced by the requirements of international life, and the progressive increase in the collective activities of States has already given rise to instances of action upon the international plane by certain entities which are not States. This development culminated in the establishment in June 1945 of an international organization whose purposes and principles are specified in the Charter of the United Nations. But to achieve these ends the attribution of international personality is indispensable".[20]

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[18] *The Reparation for Injuries Suffered in Service Case*, Advisory Opinion, ICJ General list No.4, 174 of 1949. (1949 I.C.J. 174).
[19] Evans Malcolm D., *International Law*, 2nd Edition, (Oxford: Oxford University Press, 2006) p 281.
[20] *The Reparation for Injuries Suffered in Service Case*, Advisory Opinion, ICJ General list No.4, 174 of 1949. (1949 I.C.J. 174).

In addition, the ICJ adopted a new PIL rule which states that, "The Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties".[21]

The advisory opinion of the court in the *Reparation for Injuries Suffered in Service Case* was not unanimous. Some of the ICJ judges recognized the ICJ as "possessing a power, to develop international law and to contribute to its creation in face of new situations",[22] while some of them stated that:

> "Powers not expressed cannot freely be implied. Implied powers flow from a grant of expressed powers, and are limited to those that are 'necessary' to the exercise of powers expressly granted",[23]

Some judges criticized the opinion on the grounds that:

> "The Court is not entitled to create a right of functional protection which is unknown in existing international law, the Court cannot create a new rule of international law, it can only interpret and develop the international law in force; it can only adjudicate in conformity with international law".[24]

The ICJ advisory opinion led to judicial acknowledgment of the legal personality of international organizations and, in addition the ICJ recognized international organizations should possess those powers which are conferred upon it by necessary implication as being essential to the performance of its duties

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The ICJ decision which held that international organizations possess a legal personality has meant that, "international organizations are allowed to challenge non-member States. This is contrary to the earlier theory of relativism which stated that a State is only bound by the rules of an international organization of which it is a member".[25]

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[21] *Ibid.*
[22] Judge Alvarez, *ibid.*
[23] Judge Hackworth, *ibid.*
[24] Judge Krylov, *ibid.*
[25] Alwan Abdulkarim, *op cit,* p 338.

An important outcome of the finding that an international organization has a legal personality is that the organization has, "the power to issue Conventions, the power to sue, and the right to diplomatic protection".[26]

The recognition that international organizations possess a legal personality means that, "An international organization is bound by the rules of Public International Law which recognize the legitimacy of the organization's constitution which is considered the basic source of the organization's internal rules".[27] Also as "the Constitution is superior to any other rules adopted by the organization",[28] it should not contradict PIL rules which legitimize the organization's functions and create the organization.

International organizations are "bound by the Rules of Public International Law, other than when dealing with internal matters of the organization, such as its creation, the rules governing its international activities, and its dissolution".[29] In addition international organizations "should respect the boundaries on their competence, which are set out under the general rules of Public International Law and an international organization should be responsible if it violates these rules".[30]

In addition,

> "...legitimacy of a forum will only succeed, however, if it is seen to be acting in accordance with its specific mandate and the general principles of fairness; *i.e.* in a disinterested, principled fashion and not simply to gratify some short-term self-interest of a faction".[31]

To summarize, the legitimacy of an international organization depends upon the articles of its constitution being applied by its members in accordance with relevant PIL rules.

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[26] *Ibid,* p 339.
[27] Amer Salah AlDean, *The Law of International Organizations (Public Theory),* 3rd Edition, (Cairo: Arab Revival House, 1983) p 180. Shokry Muhammad Aziz, *Universal Organizations between Theory and Application,* 1st Edition, (Damascus: Dar Alfiker, 1973) p 72. And Samy Abdulhameed Muhammad, *The Basis of International Law,* Vol.1, 5th Edition, (Alexandria: 1996) pp 317-318.
[28] Abou Alwafa Muhammad Ahmed, *op cit,* p142.
[29] Al Far Abdulwahed, *International Organizations,* (Cairo: Alam AlKitab, 1979) p 32.
[30] Abou Alwafa Muhammad Ahmed, *op cit,* p 650.
[31] Franck Thomas M., *Legitimacy in the International System,* (1988) 82(4), the American Journal of International Law 725.

Like any other organization the ILO is subject to the objectives and competences set out in its Constitution. It is limited in the extent to which it can follow up on the implementation of its objectives by its members and to the extent to which it can impose sanctions upon its members. These limitations comply with PIL rules which legitimize the members' obligations as set out in the ILO Constitution. Thus, the ILO has to be aware that unless its conventions, recommendations and declarations comply with PIL rules they will be considered to be *ultra vires* the ILO Constitution and will not bind the ILO Member States.

1-2 Obligations of ILO Member States, and the ILO's Mechanism to Apply its Conventions

The ILO Constitution sets out the ILO's objectives. The ILO imposes these objectives by adopting Conventions, Recommendations, and Declarations. The ILO encourages Member States to ratify ILO Conventions because ratification insures that ILO Member States are committed to implementing the ratified ILO Conventions, because ratified conventions are binding under PIL rules. Also the ILO Constitution obliges ILO Member States to impose the ILO's objectives on ILO Member States how have to agree to meet the obligations set out in the ILO Constitution when they join the ILO.

In order to impose its objectives the ILO has a follow up mechanism to track the progress of legislative changes and practices in ILO Member States. In addition the follow up mechanism promotes the ILO Conventions to the competent authority in each ILO Member State, regardless of whether the Member State has ratified the Conventions or not. The ILO follow up procedure has the added benefits of informing the ILO why a particular Member State is not ratifying a particular Convention and of informing the ILO of Member States who are not implementing ratified Conventions. The ILO follow up procedure also allows the ILO to implement its Constitution and impose sanctions on Member States who are reluctant to implement ILO Conventions ratified by that State.

1-2-1 ILO Principles and Objectives

The Preamble of the ILO Constitution mentions the principles and objectives of the ILO. They are the same principles and objectives which were set out in the Philadelphia Declaration of 1944 which are as follows:

1. the regulation of the hours of work including the establishment of a maximum working day and week;
2. the regulation of the labour supply;
3. the prevention of unemployment;
4. the provision of an adequate living wage;
5. the protection of the worker against sickness, disease and injury arising out of his employment;
6. the protection of children, young persons and women;
7. provision for old age and injury;
8. protection of the interests of workers when employed in countries other than their own;
9. recognition of the principle of equal remuneration for work of equal value;
10. recognition of the principle of freedom of association; and
11. the organization of vocational and technical education and other measures.

Any State wishing to the join ILO has to believe in the ILO's objectives and accept the obligations placed on it by the ILO Constitution. In order for the ILO to achieve its objectives ILO Member States must give the ILO the means to ensure that ILO Member States are meeting the obligations imposed on them by the ILO Constitution and ILO Declaration. If ILO Member States do not give the ILO the means to enforce these obligations the ILO is meaningless.

States seek to join the ILO for different reasons. For instance many believe that industrialized nations join the ILO to protect their economies from unfair working practices in third world countries by manipulating the ILO agenda to suit their own economic interests.

1-2-2 Domestic Law Obligations of ILO Member States

The obligations imposed by the ILO Constitution on ILO Member States to implement the ratified conventions are international in their nature. Member States which choose the *dualism* path[32] will have to take proper measures to adopt international law into domestic law, or the convention will remain ineffective as it is not automatically adopted into in domestic law.

Bahrain issued Decree No.9 of 1977, on the 16th of May 1977, when it wished to join the ILO. This Decree was published in the Bahrain Official Gazette and the ILO Constitution was accepted by the Bahrain government. Consequently the ILO's binding principles and objectives are laid down in its Preamble. In addition to issuing Decree No.9 of 1977, Bahrain, as per Article 1(3) of the ILO Constitution, informed the ILO Director General of its formal acceptance of the obligations set down in the ILO Constitution.[33]

ILO Member States which have chosen the *monism* path do not have to take similar measures, as for them international law is superior to domestic law, and it is adopted into domestic law once the Member State ratifies the ILO Constitution and Conventions.[34]

1-2-3 Obligations of the Specialized Authority to Display

The ILO wishes to accomplish its objectives and for that reason it has adopted various Conventions, which should be ratified by ILO Member States. However, an ILO Member State may not wish to ratify a particular Convention when it is against its internal policies, which are conditioned by political, economic, and social interests.

For this reason the ILO Constitution imposes an obligation on the governments of ILO Member States to show all the ILO's Conventions[35] and Recommendations,[36]

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[32]Bahrain has adopted *Dualism*. See Chapter 2.
[33]Article 1(3) of the ILO Constitution stated that," Any original member of the United Nations and any State admitted to membership of the United Nations by a decision of the General Assembly in accordance with the provisions of the Charter may become a member of the International Labour Organization by communicating to the Director-General of the International Labour Office it is formal acceptance of the obligations of the Constitution of the International Labour Organization".
[34]*Dualism* and *Monism* will be dealt with in detail in Chapter 2.
[35]Article 19(5)(E) of the ILO Constitution.
[36]Article 19(6)(E), *ibid.*

which have been adopted by the ILO General Conference, to their legislatures in order to obtain the consent of the legislatures or authorities within whose competence the power of ratification lies (i.e. "the Specialized Authority") in order to encourage ratification of the ILO Conventions and Recommendations.

The Specialized Authority is not necessarily the parliament if a parliament does not in reality adopt laws. For instance in some of the Gulf Co-operation Council Countries ("GCC"), the consultative councils are considered to be parliaments,[37] but these councils cannot adopt laws, as the laws in reality are adopted by the governments. Accordingly these councils even when called parliaments are not the authorities within whose competence the power to adopt and ratify lies. Likewise, the parliament may dissolve and the government will take over until the election, in this case the authorities within whose competence the matter lies is the government. Thus to comply with this obligation the Member State should obtain the consent of the authorities within whose competence the matter lies.

Obtaining the consent of the authorities within whose competence the matter lies will be ineffective when the legislative authority bends to the executive authority, or in the case of the replacement of the legislative authority by the executive authority as happened for example in Bahrain when in 1975 the National Council was dissolved and the executive authority replaced it until 2002.

Where the government of an ILO Member State complies with its duty to show the ILO Conventions to its Specialized Authority, but then decides not to ratify a particular ILO Convention it is not in breach of the ILO Constitution and cannot be sanctioned. For this reason the duty to display the ILO Conventions and Recommendations to the Specialized Authority is "considered to be "Soft Law" under the Rules of Public International Law".[38]

Apart from bringing the ILO Conventions and Recommendations before the Specialized Authority no further obligation rest upon the Member States, except that

[37]Kingdom of Saudi Arabia and the Sultanate of Oman.
[38]O'Brien John, *International Law*, 1st Edition, (United Kingdom: Cavendish Publishing Limited, 2001) p 98.

they have to report at appropriate intervals as requested by the ILO Governing Body, the position of the law and practice in their country in regard to the matters dealt with in the Recommendation, showing the extent to which effect has been given or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as it has been found or may be found necessary to make in adopting or applying them.[39]

The display to the Specialized Authority does not mean any obligation is placed on an ILO Member State to adopt the legal instrument in question, but merely that a defined legal instrument has been adopted by the General Conference. This is published internationally and publically, and is given to the governments and the public of all ILO Member States. However, ILO Member States have the right to object to the ratification of any Conventions so displayed provided the governments of the ILO Member States set out their reasons for not ratifying the Conventions to their legislatures.

The final decision on whether or not to ratify an ILO Convention lies with the ILO Member Country's legislative authority. In addition, "governments may choose not to give their approval even if they are voting within the ILO General Conference, because the ratification process is the responsibility of the legislative authority".[40]

Thus if the Bahrain government does not fulfil its obligations to display ILO Conventions to its legislative authority a complaint maybe lodged with the ILO General Conference which will have the effect of embarrassing the Bahrain government before the ILO.

The Bahrain National Assembly[41] as the authority which passes laws in Bahrain is the Specialized Authority and unless the National Assembly ratifies an ILO Convention Bahrain will not be bound by it. However, even though the Bahrain government is not

[39]Article 19(6)(D) of the ILO Constitution for Recommendations, and Article 19(5)(E) for Conventions.
[40]Al Fiky Eskander Bin Ahmed, *International Declaration on Fundamental Principles and Rights at Work and it is Effectiveness on the Developed Countries*, LLM Thesis, (Cairo: Cairo University, 2002) pp 49-50.
[41]The National Assembly consists of two chambers: the appointed Consultative Council and the elected Chamber of Deputies.

bound by un-ratified ILO Conventions it still has a duty to report to the ILO Governing Body on its progress or lack of progress in ratifying ILO Conventions.

1-2-4 Reporting Obligations

The ILO uses the annual reporting mechanism as a method of insuring the adoption and implementation of the ILO Conventions into the domestic law of an ILO Member State. In addition, the ILO accepts complaints concerning non-application of ILO Conventions.

The ILO Constitution states[42] that annual reports by ILO Member States on their progress in adopting and implementing ILO Conventions and recommendations can be used as a method of review. These reports differ depending on whether the individual ILO Member State has ratified a particular ILO Convention or not.

1-2-4-1 Reports on Un-ratified Conventions

A government's obligation does not end once it has displayed the conventions to its Specialized Authority.[43] Moreover, to promote transparency the report should be provided to employee and employer organizations.[44]

The ILO does not wish to leave reports in government hands only, so through this mechanism reports can be written by employees and employers' organizations which may conflict with government reports. This is intended to give the ILO a more realistic view of the situation when an ILO Member State has not ratified an ILO Convention. In addition, contradictory reports lead to criticism of ILO Member States at the General Conference which encourages governments to act in good faith.

1-2-4-2 Reports on Ratified Conventions

The ILO uses annual reports as a way of reviewing ratified ILO Conventions. These reports show the progress made by the ILO Member States in implementing ratified

[42]Article 19(5)(E) of the ILO Constitution.
[43]*Ibid.*
[44]Article 23(2), *ibid.*

Conventions. These reports give the ILO a far wider picture of what is actually occurring within a Member State.[45]

In order to give ILO Member States the ability to write such reports and the specific methodology needed, the ILO organises seminars for report writers. Topics covered in these seminars are such things as detailed reports, or direct questions which can be regarded in an ambiguous form by the committee of experts when they come to examine the annual reports.[46] The ILO Declaration follow up procedure is dependant on the reporting mechanism which is imposed by the ILO Constitution.

As stated the annual reporting mechanism is an important weapon to ensure that ILO Member States are meeting their ILO obligations, as countries are often embarrassed by having to admit to their peers that they have made little or no progress in implementing ILO Conventions. However, these annual reports can also be used by other ILO Member States to influence trading policy with ILO Member States that have not implemented particular ILO Conventions. Also the reports can be used by industrialized nations to influence ILO decisions in their favour.

The ILO also examines reports submitted by ILO Member States to other international organizations in order to clarify and validate the credibility of the reports submitted to it. This cross-referencing of reports is another important weapon in ensuring that ILO Member States are meeting their ILO obligations.

1-3 Complaints

The ILO uses the complaints mechanism as a way of reviewing the implementation of its Conventions. It also accepts complaints against Member States from employee and employer organizations, when a State has not ratified a binding ILO Convention. In addition, the ILO will accept a complaint against one of its Member States from another Member State when both have ratified the same ILO Convention, but one State has not complied with it.

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[45]Article 20, *ibid.*

[46]The author was appointed to attend these seminars, which is considered one of the technical aids provided by the ILO to Member States.

1-3-1 Procedures adopted in the case of Complaints filed by Employee and Employer Organizations

Under the complaint mechanism for instances of not complying with ratified ILO Conventions, and for cases of complaints filed from employee and employer organizations the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it thinks fit.[47]

This means that ILO Member States are under an obligation to report back to the ILO. However, an ILO Member State may not completely fulfil it is obligations to the ILO, e.g. if no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.,[48] In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it thinks fit.[49]

The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a delegate to the Conference.[50]

1-3-2 Procedures Adopted in Inter State Complaints

Ratified States have the right to complain about other ratified States, which do not comply with the ILO Conventions which they have all ratified.[51] In this case, the ILO has the right to move the complaint to an investigation committee.[52] "The Governing

[47]Article 24 of the ILO Constitution.
[48]Article 25, *ibid.*
[49]Article 24, *ibid.*
[50]Article 26(4), *ibid.*
[51]Article 26, *ibid.*
[52]ILO committee ILO Committee of the Fact-finding and Conciliation Commission on Freedom of Association, "It was established in 1950 and composed of independent persons. Its mandate is to examine any complaint concerning alleged infringements of trade union rights, which may be referred to it by the Governing Body of the ILO. Although it is essentially a fact-finding body, it is authorised to

Body may, if it thinks fit, before referring such a complaint to a Commission of Inquiry, as hereinafter provided for, communicate with the government".[53] "If the Governing Body does not think it necessary to communicate the complaint to the government in question, or if, when it has made such communication, no statement in reply has been received within a reasonable time which the Governing Body considers to be satisfactory, the Governing Body may appoint a Commission of Inquiry to consider the complaint and to report".[54]

The government in question can be represented and can "send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on which the matter will be considered has to be given to the government in question",[55] this procedure is necessary to complete the reports and make clear the concerned State's point of view on the complaint.[56].

In this case, the ILO Member State in question is under an obligation to co-operate with the Commission of Inquiry.[57] The Commission will state its recommendations at the end of its investigation and as an enforcement mechanism suggest a date for complying with its recommendations.[58] The Director-General of the International Labour Office should then pass the report of the Commission of Inquiry, on each of the governments concerned, to the Governing Body, who will publish it.

Each government receiving a report must inform the Director-General of the ILO within three months as to whether it accepts or rejects the recommendations contained

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discuss with the government concerned the possibilities of securing the adjustment of difficulties by agreement. This Commission, which has dealt with six complaints to date, only requires the consent of the government concerned for its intervention when the country has not ratified the conventions on freedom of association. The procedure, which is set in motion, is determined on a case-by-case basis by the Commission itself, and generally includes the hearing of witnesses and a visit to the country concerned. Consisting as it does of a procedure which respects traditional procedural, oral, and written guarantees; it is relatively long and costly and has only been used in a limited number of cases". *Freedom of Association Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, 4th Edition, (Geneva: International Labour Office, 1996) p 2.

[53]Article 26(2) of the ILO Constitution.

[54]Article 26(3), *ibid.*

[55]Article 26(5) *ibid.*

[56]Article 26, *ibid.*

[57]Article 27, *ibid.*

[58]Article 28, *ibid.*

in the report of the Commission or not[59] and if not, whether it proposes to refer the complaint to the International Court of Justice. The International Court of Justice may affirm, vary or reverse any of the findings or recommendations of the Commission of Inquiry,[60] and the decision of the International Court of Justice concerning a complaint is final.[61]

Under the Protocol signed between the ILO and the Organization for Economic Co-operation and Development ("OECD"), governments, employee and employer organizations have the right to,

> "File a case when a breach has been committed against the rights of Freedom of Association and the right to Collective Bargaining by a Member State in the UN or the ILO. The protocol is applicable in this case, even if the State has not ratified any of the conventions relating to the Freedom of Association and the right to Collective Bargaining".[62]

The Protocol is considered to extend the powers of the ILO to impose the rights of Freedom of Association and the right to Collective Bargaining on States which have not ratified these conventions or who are not members of the ILO. This is considered to be a development of PIL rules.

1-4 Sanctions

Every international organization should have sanctions to impose its objectives.

> "In the event of any Member State of the ILO failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith".[63]

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[59] Article 29, *ibid.* For more details, see Lauterpacht Elihu, *Aspects of the Administration of International Justice*, (Cambridge: Cambridge Grotius Publications Limited, 1991) pp 59-66.
[60] Article 32 of the ILO Constitution.
[61] Article 31, *ibid.*
[62] *Freedom of Association Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, 4th Edition, (Geneva: International Labour Office, 1996) p 1.
[63] Article 33 of the ILO Constitution.

Furthermore procedures give the chance to negotiate. If the negotiations fail, then sanctions should be imposed, similar to those in the *Myanmar Case.*[64] In this case the ILO imposed "sanctions against the Myanmar government which is the most severe action ever taken by the ILO".[65] For using forced labour contrary to ILO obligations.[66] The ILO proposals for international sanctions against Myanmar affected a gas sales agreement and acted as a *force majeure* clause.

On the 30th of November 2000, the following ILO measures took effect,

"(i) recommending that the ILO's members (countries, employers and labour Organizations/trade unions worldwide) review their relations with Myanmar and take appropriate measures to ensure that compulsory labour is not perpetuated or extended in Myanmar;

(ii) advising all international Organizations to reconsider any co-operation with/activities in Myanmar with a view to ceasing such co-operation/activities as soon as possible; and

(iii) adopting U.N. resolutions to reconsider all UN agency activities in, or with, Myanmar".[67]

After studying the recommendations of the fact finding committee of the ICJ the ILO Constitution sets out the sanctions that the ILO can impose on negligent States. These sanctions are as follows:

1. The ILO, "because its Constitution provides States with expert aid when requested can refuse or prevent any State from taking advantage of, or using expert aid,"[68] if the State in question does not co-operate with the ILO and obey court judgments or committee decisions.

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[64]*Forced Labour in Myanmar (Burma)*, Report of inquiry appointed under Article 26 of the Constitution of the International Labour Organisation to examine the observance by Myanmar of Forced Labour Convention 1930, No.29, (Geneva: The International Labour Office [official bulletin])
[65]*Application of the International Labour Standards 2004 (1), Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (part 1 A), 1st Edition, (Geneva: International Labour Office, 2004) pp 146-152.
[66]Including mine clearance and road building.
[67]Christie Alec, *Myanmar: Gas Sector - New Measures Against Myanmar*, (2001) 2, International Energy Law and Taxation Review 11-12. (I.E.L.T.R. 2001, 2, N11-12).
[68]Article 10(2)(B) of the ILO Constitution.

2. ILO also provides indirect aid through international organizations,[69] which have general or specialized responsibilities in related fields.[70] Accordingly, the UN has an agreement with the ILO which was accepted into the International Labour Conference at it is 72nd session, held in Paris on 3rd November, 1945 and the ILO has signed a Protocol with the OECD.[71]

Through these agreements the ILO was able to use UN technical aid and in addition,

> "The ILO used part of the UN technical aid, in the form of specialists who carried out research into employment in the service sectors, occupational creation, social security and indemnity, produce, project management, co-operative movements, handcrafts, mine workers and work reviewing and attitude studies". [72]
>
> "The ILO also establishes training centres in States which are needy, for example the Labour Institute in Istanbul, the Vocational Training Centre in Iran, the Vocational, Industrial and Trade Training Centre in Tripoli, Libya and the Regional Centre for Graduate Specialists in Diesel Machines in Burma. In addition the ILO provided expert aid through private UN funds to establish vocational centres around the world, the Basic Industrial Development Centre in Egypt, the Vocational Textile Centre in Morocco and the International Training Centre in Turin, Italy".[73]

The ILO provides aid in two ways, either directly or indirectly through co-operative international organizations. This means that the only sanctions the ILO can impose are those of imposing judgment from the ICJ, or recommending an investigation by a Commission of Inquiry, or preventing experts giving advice to the country.

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[69]The UN engages with specialized agencies like the ILO under Article 57 of the UN Charter.
[70]Article 12(1) of the ILO Constitution.
[71]Pursuant to negotiations and agreements between the Governing Body of the ILO and the United Nations Economic and Social Council, a special procedure was established between 1950-1951 for the protection of freedom of association, supplementing the general procedures for the supervision of the application of ILO standards. *Freedom of Association Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, 4th Edition, (Geneva: International Labour Office, 1996) p 12...
[72]Abdullrahmman Mustaffa Sayed, *Specialized International Organizations*, (Cairo: Arab Revival House, 2003-2004) pp 43-44.
[73]*Ibid.*

This is an ineffective method of imposing sanctions, as in reality it means that wealthy and developed countries undergo no sanctions. Whilst the sanctions taken by the ILO in the *Myanmar Case* are the strongest sanctions which can be imposed by it, without an effective method of enforcing the sanctions it is almost impossible to ensure compliance with the sanction order. This is despite the trade sanctions imposed by other ILO member States.

1-5 International Declaration on Fundamental Principles and Rights at Work

On the 18th of June 1998, the ILO Declaration was issued by consensus.[74] Under the ILO Declaration the fundamental rights at work are,

1. the elimination of forced and compulsory labour. The related ILO Conventions are the Forced Labour Convention No.29 of 1930 and the Abolition of Forced Labour Convention No.105 of 1957.
2. the elimination of discrimination in the workplace. The related ILO Conventions are the Equal Remuneration Convention No.100 of 1951, and Discrimination (Employment and Occupation) Convention No.111 of 1958.
3. the abolition of child labour. The related ILO Conventions are the Minimum Age Convention No.138 of 1973, and the Worst Forms of Child Labour Convention No.182 of 1999.
4. Finally, the freedom of association and the right to collective bargaining. The related ILO Conventions are the Freedom of Association and Protection of the Right to Organise Convention No.87of 1948, and the Right to Organise and Collective Bargaining Convention No.98 of 1949.

[74]Al Boraii Ahmed Hassen, personal communication, an ILO expert who was involved in the drafting. The ILO considered several conventions as labour standards before adopting the ILO Declaration. These conventions were the basis of labour regulations in many States which wished to improve its labour relations and social polices. These conventions were favoured as they were tripartite i.e. adopted by all three parties in a working relationship (the Employer, the Employee and the State) and globally agreed upon. In addition these conventions had been adopted as codes of conduct for many companies, organizations, and collective agreements.
<http://www.ilo.org/public/english/standards/norm/introduction/used.htm>.

The ILO Declaration was "adopted because the Ministerial Conference of the World Trade Organization held in Singapore in 1996 failed to correlate free trade to the adoption of fundamental rights at work".[75]

The industrialized nations which were already economically developed "tried to impose what was called a Social Condition"[76] i.e. "... imposing economic sanctions through the World Trade Organization ("WTO") on States which did not review fundamental rights at work".[77]

By imposing the social conditions of their choice, the industrialized nations intended to minimise the effects on their economies of the economies of third world countries which were seeing unprecedented growth which had lead to an increase in unemployment in developed countries and the weakening of their economies by using human rights as an umbrella for their real intentions. "This was rejected by the WTO Conference because labour standards and follow-up are all within the authority of the International Labour Organization".[78]

By adopting the ILO Declaration the ILO hoped to increase ratification of the Fundamental Conventions. The ILO reasoned that the ILO Declaration would promote the Fundamental Conventions by ensuring that the ILO follow-up mechanisms would lead to greater ratification and implementation of the Conventions. Also the ILO reasoned that the follow-up mechanism would identify individual problems in individual ILO Member States which could be rectified by technical aid to those States.

1-5-1 Correlation between Free Trade and the Fundamental Rights at Work

Making the freedom of trade dependent on fundamental rights at work is the aim of many industrialized nations. This is an important, as well as a dangerous aim, as it

[75]Al Boraii Ahmed Hassen, *The Effect of the ILO Declaration on Fundamental Principles and Rights at Work on the Arab Countries*, (Cairo: Research at Cairo University, 1999) pp 7-8.
[76]Al-Lagani Ahmed, *Social Dimensions of GATT*, PhD Thesis, (Cairo: Cairo University, 2004) pp 23-252.
[77]Alston Philip, *Core Labour Standards and the Transformation of the International Labour Rights Regime*, (2004) 15, European Journal of International Law 457-521. (E.J.I.L. 15 (2004) 457-521).
[78]Al Boraii Ahmed Hassen, *op cit*, pp 5-7. And see Alston Philip, *op cit*, 457-521. (E.J.I.L. 15 (2004) 457-521)

may be used to hinder developing countries from gaining the advantages of free trade. This is because the principle puts countries which have achieved a high level of economic development on an equal footing with less developed countries, and does not allow the latter to apply the fundamental rights at work properly.

The fundamental rights at work have for a long time been aimed,

> "At industrially developed countries with an individual high income. This led to the developing countries abstaining from adopting or enforcing the fundamental rights at work. Consequently, setting international standards by taking the Social Condition in developed countries as a reference, but ignoring the other Member States in the ILO represents a refusal of competition as the fundamental rights at work and the environment is used as pretexts to impose protective procedures against developing countries".[79]

The correlation between free trade and the fundamental rights at work "aims to cover the political intentions of the Social Condition, and makes free trade seem like a means of protecting human rights".[80]

In order to give the ILO Declaration credibility in developing countries, the ILO Declaration provides, that fundamental rights at work should not be used for protectionist trade purposes, individually or collectively; in addition, the comparative advantage of any country should in no way be called into question.[81]

Fundamental rights have been used for protectionist ends by some States such as the United States of America whose laws reflect that it has used the labour standards for such purposes, in addition to pursuing its economic interests at the expense of human rights. This is reflected in the Tariffs Act of 1998 which permits access to American markets to goods produced in countries with a record of forced labour, including child labour, in order to meet the needs of the market.[82]

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[79]Al Boraii Ahmed Hassen, *"The Future of International and Arab Labour Standards and National Legislations under Globalization"*, a worksheet at the National Symposium on the Declaration of Fundamental Principles and Rights at Work (Seminar), (Beirut: 15th -18th October 2001) pp 11-17.
[80]Al Lagani Ahmed, *op cit*, p 87.
[81]Article 5 of the ILO Declaration.
[82]United States Code Annotated, *Title 19. Customs Duties ,Chapter 4-Tariff Act Of 1930*, Subtitle-Special Provisions, Part I-Miscellaneous, 1307. Convict-Made Goods; Importation Prohibited

The use of fundamental rights at work to create protectionist policies ensures that laws lose their essence, which is to protect human rights in general and workers' rights in particular.[83] It also harms the credibility of the ILO, even if these breaches are committed individually. Accordingly, the ILO needs to ensure that all ILO Member States abide by these rules so that developed States do not subvert the trade policies of less developed States as the ILO has a duty to all its Member States to see that the ILO Declaration is not used to promote protectionist policies.

Many consider the ILO Declaration to be just another way of introducing the Social Condition into free trade and thus "the ILO Declaration can be used as a source of political pressure internationally to subvert free trade".[84] The ILO's stated intention in introducing the ILO Declaration was to protect workers from exploitation and the effects of unrestrained globalization. However, some believe that the United States of America has,

> "Succeeded in imposing the Social Condition through the ILO by ensuring that its trade interests are protected from globalization i.e. developed nations are using the ILO Declaration to impose the Social Condition against the interests of less developed countries".[85]

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provided that, "All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labour or/and forced labour or/and indentured labour under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision. The provisions of this section relating to goods, wares, articles, and merchandise mined, produced, or manufactured by forced labour or/and indentured labour, shall take effect on January 1, 1932; but in no case shall such provisions be applicable to goods, wares, articles, or merchandise so mined, produced, or manufactured which are not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States. 'Forced labour', as used herein, shall mean all work or service which is exacted from any person under the menace of any penalty for it is non-performance and for which the worker does not offer himself voluntarily. For purposes of this section, the term 'forced labour or/and indentured labour' includes 'forced or indentured child labour'. It is clear from this amendment of the USA tariff act of 1998 that the interests of the USA are more valuable than forced labour or child labour. The consumptive demand exception potentially ranks the interests of the US economy higher than measures to outlaw forced or child labour. However the exception has been held not to apply to the product of convict labour (CHINA DIESEL IMPORTS v US 18 C.I.T. 1086; 870 F. Supp. 347) and the US Congress has voted for improved enforcement of § 1307 in so far as it applies to forced or indentured child labour."

[83]This means that free trade is given superior value to human rights. Al Lagani Ahmed, *op cit,* p 93.

[84]Al Boraii Ahmed Hassen, "*Political, Economic, and Social Transformation of Industrial Relations and its Effectiveness*", (Seminar) unpublished paper, (Jordon: 1995) p 86 *et seq.*

[85]Al Lagani Ahmed, *op cit,* p 248.

In conclusion I agree that the Social Condition which was defeated in the WTO has been imposed by developed economies through adoption of the ILO Declaration and that more and more developed economies will use the ILO Declaration to meet protectionist objectives.[86]

1-5-2 Legitimacy and Effectiveness of the ILO Declaration on Fundamental Principles and Rights at Work

The adoption of the ILO Declaration has received considerable comments regarding its legitimacy, from ILO Member States, because it appears to contradict established PIL rules by imposing an obligation upon ILO Member States to abide by un-ratified conventions. In addition the ILO Declaration imposed the follow-up mechanism on ILO Member States which was a departure from earlier ILO practices.

The ILO has adopted many conventions and recommendations since it was established. Under PIL a convention is binding only when it is ratified,[87] and recommendations and declarations are soft laws which are not binding on ILO Member States. For instance when the ILO adopted the 1944 Philadelphia Declaration it was adopted to fulfil the ILO's objectives[88] as set out in the ILO Constitution, but it did not impose any obligations on ILO Member States which contradict PIL rules. Rather the legitimacy of the 1944 Philadelphia Declaration came from its conformity with PIL rules and the ILO Constitution.

The ILO's 1998 Declaration on Fundamental Principles and Rights at Work, differs from the 1944 Philadelphia Declaration as it reminds the ILO Member States that in freely joining the ILO, they have endorsed the principles and rights set out in the ILO Constitution and in the Philadelphia Declaration and have undertaken to work towards attaining the overall objectives of the ILO to the best of their resources and in line with their specific circumstances.[89] Also it reminds ILO Member States that these principles and rights have been expressed and developed in the form of specific rights

[86]The ILO Declaration was mentioned indirectly in the WTO Doha Declaration.
[87]Vienna Convention on the Law of Treaties ("VCLT") of 1969.
[88]Article 1 of the ILO Declaration.
[89]Article 1(a), *ibid.*

and obligations in Conventions recognized as fundamental both inside and outside the ILO.[90]

The ILO Declaration recognizes that there are fundamental rights at work which are based on universal minimum rights at work which differ from the earlier work standards and that these fundamental rights comply with PIL rules.

The ILO Declaration recognizes that all ILO all Member States even if they have not ratified the Fundamental Conventions, have an obligation arising from the very fact of membership in the ILO to respect, to promote and to realize, in good faith, and in accordance with the ILO Constitution, the principles concerning the fundamental rights which are the subject of those Conventions.[91] This has made all ILO Member States realize that the ILO Declaration intended to ensure that all ILO Member States implement the Fundamental Conventions even if, and in contradiction of PIL principles, [92] the ILO Member State has not ratified the Fundamental Conventions.

The ILO's Legal Advisor refuted that the 1998 ILO Declaration breaches any PIL rules of. He stated that:

> "The declaration does not aim at the particular provisions of the fundamental conventions, but it merely relates to the principles of these conventions. Concerning the difference between "values", "principles", and "rights", the use of the term 'values' refers to the moral concepts including those stated in the Constitution such as 'freedom', 'equal opportunity', 'solidarity', while the term 'principles' refers to the practical enforcement of these values on the material level. As an example 'syndical freedom' is an application of the 'freedom' value. On the other hand, the definition of 'rights' shows recognition that on the legal level rights must be capable of direct application and enforcement. However, in spite of the differentiation between the 'principles' and the 'rights', the terms are still used interchangeably".[93]

[90]Article 1(b), *ibid.*
[91]Article 2, *ibid.*
[92]VCLT.
[93]Al Fiky Eskander Bin Ahmed, *op cit,* pp 57-58.

"A straightforward explanation of the difference was offered by the original provision contained in the 1995 Copenhagen text, which suggested that the standards to be applied in countries which had ratified the relevant conventions were to be considered as 'Rights', while those to be applied in States which were not parties to the conventions were 'principles'".[94]

This explanation is not realistic in practice because it is difficult to differentiate between principles and rights in any meaningful way.

The ILO General Director has declared that "the ILO declaration did not impose any further legal obligations on member States, and the declaration is an instrument to confirm the principles and values that the member States are freely bound by when they join the organization".[95]

For example by adopting the principles but not the legal terms, Bahrain is obligated to implement the principles of an un-ratified convention. Bahrain has not ratified the Freedom of Association and Protection of the Right to Organize Convention No.87 of 1948, but Bahrain has to acknowledge that the employees and employers have the right to organise without any discrimination or previous authorization, and they have the right to join any unions. But Bahrain is not bound by the legal terms of the Convention.

The ILO's explanation is not realistic for the following reasons:

1. It is impossible in reality to distinguish between "rights" and "principles" as a State cannot acknowledge fundamental rights and then not be obliged to implement them; and
2. When the ILO evaluates a country on its the application of the principles, the evaluation is based on the implementation of the ILO Declaration e.g. one of the ILO Conventions' is the Minimum Age Convention No.138 of 1973 and any evaluation of the application of this Convention will need examine such things as minimum age at which people can legally work.

[94]Alston Philip, *op cit,* pp 457-521.
[95]GB. 274/42-A 99.

Thus, by adopting the ILO Declaration the ILO has required the ILO Member States to implement the ILO Conventions, whether or not ratified, in contradiction of the established PIL rules.[96]

The ILO adopted the Declaration because the ILO did not have the power to enforce ratification of the Fundamental Conventions on its members as such a power would interfere with an ILO Member State's sovereignty. In addition ILO Member States will not ratify a Fundamental Convention which contradicts with its political, economic, and social interests. Therefore, the ILO Declaration was the best way to impose the terms of un-ratified Fundamental Conventions upon ILO Member States.

Thus, Bahrain based on its membership of the ILO, and the obligations set out in the Declaration on Fundamental Principles and Rights at Work 1998 should acknowledge the fundamental rights set out in the un-ratified conventions, as the legitimate rights of workers in Bahrain. Accordingly Bahrain should recognize freedom of association and an effective right to collective bargaining, equal wages for equal value, and a minimum age for workers. Whilst Bahrain is not under an obligation to implement the fundamental principles, in practice ILO evaluations will point out instances where Bahrain fails to meet the legal requirements set out in the Fundamental Conventions.

Bahrain is, of course under an obligation to implement the rights set out in its ratified conventions. Bahrain has currently ratified conventions which deal with the elimination of all forms of forced or compulsory labour; the effective abolition of worst forms of child labour; and the elimination of discrimination in respect of employment and occupation.

1-5-3 ILO Declaration and Follow-up Mechanism

The ILO Declaration has also created an effective follow up mechanism to ensure that ILO Member States are implementing the Declaration.[97]

[96]VCLT.
[97]Article 4 of the ILO Declaration.

The aim of the follow-up mechanism is to "encourage the efforts made by the Members of the Organization to promote the fundamental principles and rights enshrined in the Constitution of the ILO and the Declaration of Philadelphia as reaffirmed in this Declaration".[98] The follow-up will allow,

> "The identification of areas in which the assistance of the Organization through its technical cooperation activities may prove useful to its Members to help them implement these fundamental principles and rights. It is not a substitute for the established supervisory mechanisms, nor it impedes their functioning; consequently, specific situations within the purview of those mechanisms will not be examined or re-examined within the framework of this follow-up".[99]

The follow-up mechanism is divided into two parts: the Annual Report; and the Global Report. The Annual Report based on the procedure reports requested from ILO Member States,[100] while the Global Report "aims to provide a dynamic global picture relating to each category of fundamental principles and rights".[101]

1-5-3-1 Annual Reports

The purpose the Annual Report is to provide:

> "An opportunity to review each year, by means of simplified procedures to replace the four-year review introduced by the Governing Body in 1995, the efforts made in accordance with the Declaration by Members which have not yet ratified all the fundamental Conventions".[102]

The follow-up will "cover each year the four areas of fundamental principles and rights specified in the Declaration",[103] by "means of simplified procedures to replace the four-year review introduced by the Governing Body in 1995, the efforts made in accordance with the Declaration by Members which have not yet ratified all the fundamental Conventions".[104]

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[98]Article I(1) of the Follow-up to the Declaration.
[99]Article I(2), *ibid.*
[100]Article 19(5)(E) of the ILO Constitution.
[101]Article III(A)(1) of the Follow-up to the Declaration.
[102]Article 19(5)(E) of the ILO Constitution.
[103]Article II(A)(2) of the Follow-up to the Declaration.
[104]Article II(A)(1), *ibid.*

The Annual Report is legitimate because it does not add any new obligations to those set out in the ILO Constitution as it just amends the form of the report which was in the first place formed by the governing body.

For transparency reasons each Member State should communicate to the representative organizations recognized copies of the information and reports.[105] This procedure will allow the ILO to obtain informal responses to be certain about the situation in each Member State. The Director-General will "lay before the next meeting of the Conference a summary of the information and reports communicated to him by Members".[106]

Amendments need to be made to the Standing Orders of the Governing Body to allow the unrepresented ILO Member States to send representatives.[107] This will give ILO Member States the opportunity to clear up any misunderstandings in the Annual Reports.

The Annual Reports aim to attaint the ILO objective of adopting the ILO Declaration, by promoting to the Fundamental Conventions and achieving more ratifications and realizing the real reasons of the failure by ILO Member States to ratify the Fundamental Conventions.

1-5-3-2 Global Report

The purpose of the Global Report is to,

> "provide a dynamic global picture relating to each category of fundamental principles and rights noted during the preceding four-year period, and to serve as a basis for assessing the effectiveness of the assistance provided by the Organization, and for determining priorities for the following period, in the form of action plans for technical co-operation designed in particular to mobilize the internal and external resources necessary to carry them out".[108]

[105]Article 23 of the ILO Constitution.
[106]Article 23(1), *ibid.*
[107]Article IV(1) of the Follow-up to the Declaration.
[108]Article III(A)(1), *ibid.*

The report will cover, "each year, one of the four categories of fundamental principles and rights in turn".[109] The reports will be based on the information collected from both government and non-government organisations. The reports are analysed by the ILO Committee of experts who will write the Global Report. "The report will be drawn up under the responsibility of the Director-General". [110]

The global report will be,

> "Submitted to the Conference for tripartite discussion as a report of the Director-General. The Conference may deal with this report separately from reports under article 12 of its Standing Orders, and may discuss it during a sitting devoted entirely to this report, or in any other appropriate way. It will then be for the Governing Body, at an early session, to draw conclusions from this discussion concerning the priorities and plans of action for technical cooperation to be implemented for the following four-year period".[111]

By relying on voluntary reports provided by the ILO Member States the ILO Declaration maintained a formalistic review aspect whereby reviews within the ILO are based on discussion and consultation and exclude all forms of compulsion and coercion, The ILO Declaration was also restricted to a promotional aspect without sanctions and penalties. In explaining the follow-up mechanism, the ILO's Legal Advisor sets out the intentions of the ILO Declaration when he makes the following points:

> "1. The Global Report does not aim at judging States' stances, rather it basically aims at assessing the effectiveness of the Organization's work regarding Fundamental Principles and Rights, as well as promoting mutual commitments imposed by the declaration on the Organization together with the members' commitment to promote Fundamental Rights and Principles through the necessary assistance provided for the purpose.

[109] Article III(A)(2), *ibid.*
[110] Article III(B)(1), *ibid.*
[111] Article III(B)(2), *ibid.*

2. The follow-up of the Global Report does not mean judging States for violating the conventions they have ratified. Rather, it aims at assisting these States properly to implement these conventions.
3. In case the follow-up leads to finding of violations in implementing the conventions, the facts of the violation shall be submitted to the existing mechanism according to the legal constitutional bodies".[112]

While the ILO's Legal Advisor has established that the ILO Declaration is a promotional instrument, as mentioned in paragraph 3; that ILO Member States will be subject to complaints; and that any violations will be transferred to the investigation committee or ICJ.

In this way the ILO's assessment of violations and infringements, whether the ILO Member State has or has not ratified the core Conventions, results in classifying the States by the Annual Report or the Global Report into States respecting the fundamental rights and others not respecting them. This classification may pose more dangers to States outside the ILO than to Member States, as it may be used for protectionist purposes by individual States or through other organizations.

This classification is consistent with the ILO Declaration being an extension of the Social Condition, through which developed countries impose their will on less developed countries.

Thus ILO Member States need a commitment from the ILO that the ILO Declaration will not be used for protectionist purposes, and it should remain as a promotional instrument.

Conclusion

The ILO derives its legitimacy from PIL rules, and from the ILO Constitution which limits its objectives and bodies. To achieve this goal it has the right to issue legal instruments and to promote it objectives internationally, it does not have the right to breach PIL rules or the ILO Constitution.

[112]Al Boraii Ahmed Hassen, *The Effect of the ILO Declaration on Fundamental Principles and Rights at Work on the Arab Countries*, (Cairo: Research at Cairo University, 1999) p 25.

The ILO Declaration is one of the instruments issued to achieve the ILO's objectives. Although the ILO Declaration obliges ILO Member States to abide by the principles of un-ratified conventions, in the ILO's opinion, the Declaration does not contradict PIL rules. However, in reality ILO Member States are obliged to fulfil the legal terms of the Fundamental Conventions even when a State has not ratified a particular Fundamental Convention.

The obligations, placed by the ILO Declaration, on those ILO Member States that have not ratified the ILO Conventions does not contradict international norms, but complies with the advisory opinion of the ICJ in the *Reparation for Injuries Suffered in Service Case*, which established a new international rule that, "the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties".[113]

The acceptance of the legitimacy of the ILO Declaration by its Member States is an indirect acceptance of the ILO Declaration's obligations on Member States, even if there is still doubt if the ILO Declaration is legitimate under PIL rules.

The ILO Declaration is not merely a promoting instrument as can be seen clearly from the ILO Legal Adviser's explanation of the follow up mechanism's procedures when he explained that if the follow-up revealed serious breaches of the Fundamental Conventions that the reports would be sent to an investigation committee. This means that the ILO Declaration is an indirect peer review and extension of the Social Condition.

On the other hand the ILO Declaration can be used for protectionist purposes by individual States even when the Declaration stresses the proper use of it.[114] This means that in reality the obligations imposed by un-ratified Fundamental Conventions are effectively the same as those imposed by ratified Fundamental Conventions.

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[113] *The Reparation for Injuries Suffered in Service Case*, Advisory Opinion, ICJ General list No.4, 174 of 1949. (1949 I.C.J. 174).
[114] Article 5 of the ILO Declaration.

Thus, ILO Member States who have still not ratified the Fundamental Conventions will need to amend their domestic laws, subject to their political, economic and social situation, to implement the principles set out in the Fundamental Conventions. This is especially true for those ILO Member States that wish to join established Economic Unions such as the EU or enter into free trade agreements as failure to meet the rights set out in the Fundamental Conventions will classify them as rogue states that do not fulfil their international obligations as ILO Members. Further developed countries will protect their economies by using this failure to justify excluding developing countries on the grounds that they indulge in unfair employment practices.

Chapter 2
Protection of International Work Standards under the Bahrain Constitution

Introduction

The Bahrain Constitution is "placed at the top of the legal hierarchy because it is the fountain-head of law. This semi-rigid structure is known as the Principle of Supremacy of the Constitution".[115] "The complexity of amending the constitution is attributed to the fact that constitutional rules follow procedures which are different from those needed for ordinary laws".[116] The constitution is about general objectives with the details being set out by supplementary laws.

From these two points it can be said that the rights and freedoms set out in a constitution enjoy more protection than if they were set out in laws. "The constitution sets out the principles and objectives of the State and the basic features of its society, which are inspired from various sources,[117] for instance religion, custom, and jurisprudence".[118] "It is necessary for the constitution to add a process which ensures the imposition of these principles and objectives",[119] or its existence will be redundant. This process is considered useful in preventing governments abusing constitutional objectives and laws.

In this manner, the Bahrain Constitution provides that, public rights and freedoms stated in the Constitution may only be regulated or limited by, or in accordance with, the law, and such regulation or limitation may not prejudice the essence of rights or freedoms.[120] In addition, the Bahrain Constitution recognises the economic right to work.[121]

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[115]Badawi Tharwat, *Constitutional Law and the Development of the Constitutional Regulations of Egypt*, (Cairo: Arab Revival House) pp 90-116. Darweesh Ebrahim, *Constitutional Law Public Theory*, (Cairo: Arab Revival House, 1996) pp 119-142.
[116]Badawi Tharwat, *op cit,* pp 95-116. Darweesh Ebrahim, *op cit,* pp 119-131. Bahrain Constitution sets out different procedures to amend the Constitution, which is more complex than the procedures to amend ordinary laws.
[117]The legislative sources in Islam are the Koran and *Sunnah*. All Islamic jurisprudence agrees on this, then comes the opinions, Jaffer Muhammed Anas, *Principles of Islamic Ruling (Combative Study)*, (Cairo: Arab Revival House, 2001) pp 83, 91-104. Saliman Abdullaziz, *Review of the Constitutionality of the Laws*, 1st Edition, (Cairo: Arab Thought House, 1995) p 118.
[118]Darweesh Ebrahim, *op cit,* pp 53-95.
[119]*Ibid,* pp 150-178.
[120]Article 31 of Bahrain Constitution.
[121]Article 13, *ibid.*

Accordingly, "the constitution can be divided into two distinct areas or texts known as, *regles de droit positif* and the *regles directives*".[122]

> "*Regles de droit positif* can be applied immediately. Courts can enforce the legal text without waiting for the legislature to ratify or adopt it into Law by means of enabling statutes. *Regles de droit positif* also bind the legislature and prevent the legislature from issuing laws which contradict them".[123]

For instance Article 13(C) of the Bahrain Constitution provides that:

> "Compulsory work cannot be imposed on any person except in the cases specified by law for national emergency and for a fair consideration, or pursuant to a judicial ruling".

Regles directives are "unlimited texts related to objectives that the legislature aims to achieve. They cannot be enforced without being ratified or adopted into Law by enabling statutes passed by the legislature".[124] For instance Article 13(A) of Bahrain Constitution provides that:

> "Work is the duty of every citizen, is required by personal dignity and is dictated by the public good. Every citizen has the right to work and to choose the type of work within the bounds of public order and decency".

In turn, *regles directives* bind the legislature because of "political obligation and legal obligation".[125] "The political obligation arises because the legislature has to adopt legal instruments in order to introduce these rights, within a reasonable time scale".[126] The legal obligation arises because "the legislature cannot adopt any legal instrument which contradicts the constitutional *regles directives* either directly or indirectly, as this text reflects the future programmes that the legislature has to achieve".[127]

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[122]Shiha Ebrahim, *Administrative Judiciary*, (Alexandria: Monshat Alma'arf, 2006) p199. These distinctions are made by the school of legal thought that considers the preamble to the constitution and bill of rights to have legal power.
[123]*Ibid*
[124]*Ibid.*
[125]Abou Zaid Mustafa, *The Constitutional Regime for the United Arab Republic*, (Cairo: 1966) p 200.
[126]Shiha Ebrahim, *op cit,* p 200.
[127]Abou Zaid Mustafa, *op cit,* p 200.

In both instances plaintiffs can take legal action in the Civil Courts where they believe that a statute is unconstitutional because it contradicts the constitution.

The rights set out in the Fundamental Conventions have dual constitutional protection in Bahrain, the first under the Bahrain Constitution and the second from the ILO Constitution. The Bahrain Constitution acknowledges some of the rights set out in the Fundamental Conventions, thus they are protected by the Constitution which is the superior law in the hierarchy of legislation. Furthermore, the Bahrain Constitution does not allow for international ratified conventions to override domestic law and accordingly, PIL rules require Bahrain to adopt these treaties into domestic law.

This chapter will examine the protections offered by the Bahrain Constitution to the fundamental rights at work. The chapter will then discuss the power to review the constitutionality of Bahrain laws. Finally, the chapter will examine the position of international conventions under Bahrain law and the means of implementing such conventions.

Throughout the chapter comparisons will be made in order to establish how the Islamic Shari'a deals with the implementation of the fundamental rights at work, as while Bahrain has not adopted the Islamic Shari'a, the Bahrain Constitution states that Islamic Shari'a is a source of Law.[128]

2-1 Fundamental Rights at Work under the Bahrain Constitution

As detailed in paragraph 1-5 above, the fundamental rights at work were adopted by the ILO Declaration. The ILO Declaration covers four areas:

1. The Elimination of all Forms of Forced or Compulsory Labour;
2. The Elimination of Discrimination in Respect of Employment and Occupation;
3. The Effective Abolition of Child Labour; and
4. Freedom of Association and the Effective Recognition of the Right to Collective Bargaining.

[128]This Article does not mean that Islamic Shari'a is applicable to non- Muslims. Various pieces of legislation have been issued in Bahrain to organise the life of non-Muslims, regarding their faith.

By adopting the ILO Declaration Bahrain has acknowledged the fundamental rights at work as being legitimate rights of workers under domestic law. Thus it is obliged to implement the rights set out in ratified conventions and to acknowledge the fundamental rights contained in un-ratified conventions as they are principles whose implementation is examined by the ILO in Annual Reports.

The recognition of the fundamental rights of workers should be enshrined in legislation and because of the Principle of Supremacy of the Constitution protection accorded to the rights will be strongest if the rights are set out in the constitution. This is because the legislature has a legal obligation not to adopt any law or regulation which contradicts the programmes set out in the constitution or curtails a right of action before the courts on the grounds that any law or regulation is unconstitutional.

As will be seen later in this chapter the Bahrain Constitution has acknowledged some of the Fundamental Rights at Work, both directly and indirectly. Those rights that are not recognized by the Bahrain Constitution will have to be adopted into Bahrain Law by enabling legislation. Such enabling legislation will fulfil Bahrain's ILO obligations as the Fundamental Rights at Work do not have to be enshrined in a country's constitution.

This chapter and chapter 3 will go on to discuss this enabling legislation and the rights of workers under Islamic Shari'a and the Bahrain Constitution's recognition of these Islamic rights.

2-1-1 International Fundamental Rights at Work

The Bahrain Constitution mentions the right to work in general and the fundamental rights at work specifically. The Bahrain Constitution considers that work, ownership and capital are basic constituents of the social fabric of the State and national wealth, and that all individual rights with a social function are regulated by law.[129] Article 13(A) of the Bahrain Constitution further provides that,

[129] Article 9(A) of Bahrain Constitution.

"Work is the duty of every citizen, is required by personal dignity and is dictated by the public good. Every citizen has the right to work and to choose the type of work within the bounds of public order and decency".

This Article did not discriminate on the grounds of nationality and allows for expatriate workers to be given jobs when there are no national workers available to do a particular job.

The Bahrain Constitution places an obligation on the State to ensure reasonable working conditions for its citizens as it is an economic right.[130] Also the Bahrain Constitution deals generally with fundamental rights at work as Article 13(A) constitutes *regles directives*, which means that the legislature has to adopt specific laws to give legal effect to the intentions of the constitutional draftsmen and these specific laws will be dealt with in detail in Chapter 3 of this thesis.

2-1-1-1 Elimination of all Forms of Forced or Compulsory Labour

Article 13(C) of the Bahrain Constitution prohibits forced labour which provides that:

"Compulsory work cannot be imposed on any person except in the cases specified by law for national emergency and for a fair consideration, or pursuant to a judicial ruling".

This article prohibits forced labour and mentions the exceptions stated in the ILO Forced Labour Convention No.29 of 1930.[131] Even though Article 13(C) does not define slavery or the slave trade it constitutes a *regles de droit positif*, because it does not stipulate that a specific law is required to implement it. Accordingly, it is enforceable immediately and requires no enabling legislation.

[130]Article 13(B), *ibid.*

[131]Exceptions stated in Convention No.29 are for national necessity or judicial ruling and with fair payment.

2-1-1-2 Elimination of Discrimination in Respect of Employment and Occupation

Article 18 of the Bahrain Constitution provides for equality between citizens, and is very similar to the Universal Declaration of Human Rights of 1948,[132] and to the Last Sermon (*'khutbat ul wida'a'*) of the *Sunnah.*[133] Article 18 provides:

> "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".

The prohibition of discrimination on the grounds of gender acknowledges the sexual equality of men and women. However, Article 18 constitutes a *regles directive* which means that the legislature has to adopt specific laws to give legal effect to the intentions of the constitutional draftsmen.

In addition, whilst Article 4 of the Bahrain Constitution shows that equality of opportunity for citizens, regardless of their gender, origin, language or religion (Bahrain has citizens of several faiths) is a pillar of society, it does discriminate against non-citizens as "citizens" are persons who are Bahraini nationals. Article 4 also constitutes *regles directives.*

Article 16(B) of the Bahrain Constitution provides that, "Citizens are equal in the assumption of public posts in accordance with the conditions specified by law". This means there is no discrimination of any kind in the assumption of public posts. Again Article 16(B) constitutes *regles directives.*

Finally, Article 5(B) deals with discrimination on the grounds of gender, and gives women additional rights, by providing that: "The State guarantees reconciling the

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[132]Article 2 of the Universal Declaration of Human rights 1948 provides that,

> "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self-governing or under any other limitation of sovereignty".

[133]"O' people! Verily, your Lord is one and your father is one. All of you belong to one ancestry of Adam, and Adam was created out of clay. There is no superiority for an Arab over a non-Arab and for a non-Arab over an Arab; or for white over the black or for the black over the white except in piety. Verily, the noblest among you is he who is the most pious". Rafi Salim bin Muhammad, *Mohammed the Beloved of Allah,* 1st Edition, (Kingdom of Saudi Arabia: Darussalam, 1999) pp 315-320. See also <http://www.islamdoor.com/k/wadah.htm>.

duties of women towards the family with their work in society, and their equality with men in political, social, cultural, and economic spheres without breaching the provisions of Islamic Shari'a". Again Article 5(B) constitutes *regles directives*.

2-1-1-3 Effective Abolition of Child Labour

Articles 5(A) and (C) of the Bahrain Constitution recognize the importance of family and the protection of children as follows:

> "The family is the basis of society, deriving its strength from religion, morality and love of the homeland. The law preserves its lawful entity, strengthens it is bonds and values, under it is aegis extends protection to mothers and children, tends the young, and protects them from exploitation and safeguards them against moral, bodily and spiritual neglect. The State cares in particular for the physical, moral and intellectual development of the young".

The abolition of child labour is not explicit in Article 5, but the consequences of child labour are morally, physically and spiritually harmful and thus child labour is an exploitation of childhood.[134] The Bahrain Constitution recognizes that children must be protected by the State from neglect and abuse, and as Articles 5(A) and (C) are *regles directives* as they leave the details of this protection to specific laws.

In addition, Article 7(A) of the Bahrain Constitution, which constitutes *regles directives* provides that compulsory education must be given in the early stages of childhood, as specified and provided by law. This, in addition, protects children from work in their early years because they will be attending school and be unable to work.

2-1-1-4 Freedom of Association and the Effective Recognition of the Right to Collective Bargaining

Article 27 of the Bahrain Constitution regulates the existence of Social Civil Organisations, but restricts them from dealing with religious or national security issues. It also guarantees them one of the principles mentioned in the ILO Freedom of Association and Protection of the Right to Organize Convention No.87 of 1948.[135]

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[134]See chapter 3, section 3.

[135]The right to join and withdraw from associations is provided in Article 2 of ILO Convention No.57 of 1945.

Article 27 recognizes that:

> "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 dawn by law, provided the fundamentals of the religion and public order are not infringed. No one can be forced to join any association or union or to continue as a member".

The first sentence of Article 27 amounts to *regles directives* whilst the second sentence constitutes *regles de droit positif.*

Articles 28(A) and (B) of the Bahrain Constitution regulate the right to assemble, and provides that:

> "A. Individuals are entitled to assemble privately without a need for permission or prior notice, and no member of the security force may attend their private meetings.
>
> B. Public meetings, parades and assemblies are permitted under the rules and conditions laid dawn by law, but the purposes and means of the meeting must be peaceful and must not be prejudicial to public decency".

Article 27 constitutes *regles directives.*

The above-mentioned Articles of the Bahrain Constitution acknowledge some of the international fundamental rights at work, but they do not fulfil all Bahrain's obligations under the ILO Declaration. In addition, the Bahrain Constitution contradicts Convention No.111 and there are other fundamental rights at work which are not protected under the Bahrain Constitution. However, these are not necessarily considered to be a breach of the ILO Declaration as these rights are often dealt with under Bahrain's general laws.

2-1-2 Islamic Fundamental Rights at Work

The Bahrain Constitution protects the fundamental rights at work recognized under Islamic Shari'a by including them in the Constitution itself i.e. the Bahrain Constitution protects those parts of the Koran and *Sunnah* which have a strong focus

on social security and wages. Accordingly, these can be viewed as Islamic fundamental rights at work.

There are several verses in the Islamic Shari'a which impose the right to social security and fair wages upon the employment of any worker or slave in an Islamic State and although there is no Islamic equivalent of the ILO Declaration, it can be seen from the Koran and the *Sunnah* that Islam recognized minimum working standards which are protected under the Bahrain Constitution.

2-1-2-1 Social Security

The Bahrain Constitution mentions Islamic fundamental rights at work, both directly and indirectly. Article 5(C) directly provides that:

> "The State guarantees the requisite social security for it is citizens in old age, sickness, disability, orphan hood, widowhood or unemployment, and also provides them with social insurance and healthcare services. It strives to safeguard them against ignorance, fear and poverty".

Article 5(C) constitutes *regles directives* and differs from the Islamic Shari'a, which covers everybody and not just citizens.

Also Article 15(B) mentions social security indirectly when it ensures the minimum of living standards, by allowing that, "The law regulates exemption of low incomes from taxes in order to ensure a minimum standard of living is safeguarded".

Again Article 15(B) constitutes *regles directives*.

2-1-2-2 Wages

The Bahrain Constitution recognizes the right to wages in an indirect way in Article 9(A) which provides that, "Ownership, capital and work in accordance with principles of Islamic justice are basic constituents of the social entity of the State and the national wealth, and are individual rights with a social function regulated by law".

Also Articles 13(A) and (B) provide that:

"A Work is the duty of every citizen, is required by personal dignity and is dictated by public good. Every citizen has the right to work and to choose the type of work within the bounds of public order and decency.

B. The State guarantees the provision of job opportunities for its citizen and the fairness of work conditions".

Again these Articles constitute *regles directives* and detailed wage legislation is left to laws such as the Labour Law 1976, the Civil Service Law 2006, and the Civil Law 2001.

As can be seen many of the fundamental rights at work set out in the Bahrain Constitution need to be implemented by enabling laws. Accordingly, to ensure that the ideals set out in the *regles directives* are implemented the Bahrain Constitution ensures a review process by which that the legislature implements the texts.

This chapter will now discuss constitutional review under the Bahrain Constitution, in to order ascertain the amount of protection given to the Fundamental Rights at Work guaranteed by the Bahrain Constitution and the position of international conventions under Bahrain Law, in order to assess their implementation, application and enforcement under Bahrain's domestic law.

2-2 Application of Constitutional Rules

No matter what texts are written to impose restrictions on the ruling authority a constitution, by itself, does not guarantee the establishment of a democracy as it merely sets out the rights and duties of a State and its citizens. However, citizens can ensure that the State is not acting unconstitutionally by asking the courts to review the acts of the executive and the legislature to ensure that they are they are acting within the bounds of the Constitution.

2-2-1 Constitutional Review of the Application of Laws

"The review of the constitutionality of laws, in most jurisdictions, takes the form of judicial review i.e. after a law is issued it is reviewed by the Courts to see if it is

constitutional or not".[136] Judicial review can examine both laws issued by the legislature and any order or regulation issued by the executive or its political sub-divisions. A political review normally occurs before the law is issued and prevents the issue of laws which are *ultra vires* the Constitution. But sometimes the two reviews occur simultaneously.

Those fundamental rights at work which are set out, directly or indirectly, in the Bahrain Constitution are protected by both judicial and political review of legislation. The judiciary review system is modelled on the US while the political review modelled on France a brief history of each will be given to illustrate the two systems.

2-2-1-1 Judicial Review

Although the US Constitution did not provide the right to review the constitutionality of laws, the power of review was imposed on the judiciary by the Supreme Court, which was supported by jurisprudence. The efforts of the Supreme Court were preceded by many judicial precedents in different Courts, advocating the need for review of the constitutionality of laws.

It started with the case of *Marbury* v. *Madison.*[137] The case revolves around the refusal of Thomas Jefferson the newly elected President of the United States to confirm Judge Marbury to his appointment by Jefferson's predecessor to the Supreme Court.

The Supreme Court supported Marbury's right to be nominated but abstained from issuing an order to Jefferson's Home Secretary to appoint him, because of the Paragraph 3 of the Judicial Power Law 1789. This entrusted the Supreme Court with the authority of determining which laws were unconstitutional, but it contradicted Article 3 of the Constitution which restrictively determined the competence of the

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[136]Osfor Muhammed, *Constitutional Review on Laws Application*, (1970) year 50, Lawyer Magazine. Also see Osfor Muhammad, *Democracy from Constitutional Review on Laws Application*, (1971) year 51, Lawyer Magazine. Also see, Sayed Sayed Ali, *Constitutional Review on Laws Application*, (1950) year 1, Council of State Magazine.

[137](1803) 5 U.S. (1 Cranch) 137. Also see <http://www.jmu.edu/madison/center/main_pages/madison_archives/era/judicial/bkgrnd.htm>. Also see, <http://www.lectlaw.com/files/case14.htm>.

Supreme Court. This did not include the authority of issuing judicial orders. According to the Constitutional Court:

1. "the Constitution is the basic law so it is more sublime and more powerful than any law. Consequently the Legislative Power has to comply with the Constitution while exercising its functions; otherwise its work will be unconstitutional;
2. If the Legislative Power exceeds the proper limits of its constitutional authority and enacts a law whereby it contradicts the Constitution, the Supreme Court will not be bound to enforce it;
3. The Constitution decrees that judges, when appointed to their positions, have to take an oath to respect the texts of the Constitution and not to underestimate their values nor overestimate the text that contradicts the Constitution, since such a practice means perjury and emptying the oaths of any value; and
4. The Constitution decrees that the authority of the judicial power is general and comprehensive of all disputes that occur under the Constitution, and this means the Judiciary has the right to check the constitutionality of laws"[138].

Usually a constitution will set out the type of court which has competence to here constitutional cases. The 1973 Bahrain Constitution was interpreted to give competence to hear such cases to the Cassation Court as the 1973 Bahrain Constitution did not create a specialist constitutional court. The current Bahrain Constitution, promulgated in 2002, clearly provides that constitutional matters should be heard before a specialist constitutional court.[139]

As can be seen the failure by the 1973 Bahrain Constitution to set up a constitutional court "does not mean that there is no right to judicial review, as it is acceptable for judges to interpret the Constitution as giving them the power of indirect judicial

[138] *Ibid.*
[139] Article 106 of Bahrain Constitution.

review".[140] The judges have the right to give their judgment in disputes, and the applicable law gives the right to Courts to interpret laws in making their judgments.

> "So if there are any conflicts between the laws they will follow the rule of explanation in law. The later laws cancel previous ones, and the enforcement of the higher laws in the hierarchy of legal rules in the State. For that reason the judge has an obligation to apply the constitutional rules, and can ignore the lower laws if they contain regulations which are in conflict with the constitution".[141]

A judicial review is usually brought about in the following ways:

1. *Original Suit or Direct Method* whereby,
   "The person damaged by the law can sue directly without waiting until this law applies to him. If the Court realizes that the law conflicts with the constitution, the Court has to set aside the law. The effect of this judgment is applicable to all people and it is effective from the date of judgment or such other date as the court shall order".[142]

The Bahrain Constitution recognizes this method. However, the Law which created the Constitutional Court of Bahrain limits the persons who can petition directly for judicial review as only the Courts, the Prime Minister, the Head of the Consultative Council or the Head of the Chamber of Deputies can refer cases to the Constitutional Court for judicial review.[143] The rationale behind this is to ensure that only genuine cases are sent to the Constitutional Court for review. The ordinary citizen would use the next method to bring a challenge the Civil Court acting as a filter.

2. *Review by Suing or Indirect Method* whereby, a case is raised by the Court.

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[140]Badawi Tharwat, *op cit,* pp 137-138, and Fakri Fathi, *Constitutional Law (First Book- Basics Constitutional Rule)*, (Cairo: 2001) p197.
[141] Badawi Tharwat, *op cit,* pp 137-138, and Fakri Fathi, *op cit,* p197.
[142]Badawi Tharwat, *op cit,* pp 137-192, and Fakri Fathi, *op cit,* p162-198..Al Jarf Ta'ama, *The Public Theory of the Constitutional Law and the Development of the Political Regime in Egypt*, 3rd Edition, (Cairo: Arab Revival House, 2001) pp 163-166.
[143]Article 18 of Decree No.27 of 2002 establishing the Constitutional Court.

> "One of the disputing parties would state that the law is applicable to this dispute and is unconstitutional. If the judge agrees that the law is applicable and is in conflict with the constitution, he should exclude the law from application. The judgment of this Court has limited effectiveness, it is not binding on other Courts and the law is not in conflict with the constitution. Furthermore, the same Court can in different cases have different reasoning and decide that the law is constitutional, and its judgment will be binding on it".[144]

In Bahrain the system ensures that the Civil Court refers the issue to the Constitutional Court so that the decision is universally binding. Thus, if the Laws of Bahrain do not apply the rights set out in the Bahrain Constitution an individual can challenge an unconstitutional law in an indirect way. The person affected by the law can sue directly. If the Civil Court realizes the law conflicts with the constitutional rule, then the Court has to stop the case and ask the constitutional court to consider the law. The effect of this judgment is applicable to all persons and it is effective from its issuance or the date set down in the judgment.

If there were no specialist Constitutional Court, it might lead to different judgments on the constitutionality of the same law, and even from the same Court in different cases. This is inconvenient. For that reason the existence of a Constitutional Court which is able to determine constitutional matters will provide certainty of decision making.

The Bahrain Constitutional Court was established in 2002[145] but the court has not heard any cases regarding the fundamental rights at work recognized by the Bahrain Constitution.[146]

Judicial review is also recognized in Islamic Shari'a as the first Muslims knew how to say "This is unconstitutional", even if they did not know the exact rules in the Koran and *Sunnah*. The claimant in Islam was a constitutional specialist too and the

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[144] *Ibid.*
[145] *Ibid.*
[146] The Bahrain Constitutional Court had issued six judgments up until the end of 2007.

historical stories prove this. If the legislative authority or the governor issued a law, the first thing to consider was whether it conflicted with the Koran and the *Sunnah*. If it was in conflict, then no individuals could be forced to abide by it.

2-2-1-2 Political Review

Political review occurs before the law is issued in order to study the constitutionality of laws. This idea was,

> "First advocated by the French Jurist Sieyes, after the French Revolution. He proposed a review should be carried out by a constitutional jury to ascertain that no legislation would be issued by Parliament which contradicted the Constitution, and the jury would have the authority to prohibit such legislation".[147]

This implies that the basic function of this jury is the prevention of any violation of the Constitution. However,

> "It is not the case that the jury succeeded unscathed; under the Constitution of 1852 and that of 1875 it fell under the influence of the governing authority. Its real beginning was with the Constitution of the Fourth Republic in 1946 which guaranteed the establishment of a jury to be named the Constitutional Committee, which was composed of 13 members, according to Article 91 of the Constitution. The role of that committee was limited to investigating whether the legislation issued by the National Assembly had any contradiction with the Constitution".[148]

> "This committee had the function of reconciliation between the National Assembly and the council of the Republic. If it was unable to solve the conflict, it carried out an examination of the law and if it found a constitutional discrepancy, it returned the draft law to the National Assembly for examination and amendment. If the draft was not amended the law was not enacted"[149].

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[147]Fakri Fathi, *op cit,* p17. Also see Al Jamal Yehia, *The Constitutional Adjudication in Egypt,* (Cairo: Arab Revival House, 2000) p 47.
[148]Fakri Fathi, *op cit,* pp 51-54.
[149]*Ibid.*

"As previously stated, the committee did not succeed in achieving what it set out to do. It did not succeed in being a committee of reconciliation and arbitration inside Parliament. This status lasted until 1958 when the Constitution clarified the reviewing of the constitutionality of laws, and as a result the committee became more effective".[150]

"The Constitution of the Fifth Republic in 1958 followed the parliamentary system, improved it and set up a Constitutional Council that has the authority of political review of the constitutionality of laws. The members of this committee are chosen according to their previous positions".[151]

"They are the former Presidents of the Republic who have a lifetime membership, nine members are nominated for a renewable 9 year term, three of whom are appointed by the President of the Republic, three members are appointed by the President of the National Assembly and three members are appointed by the President of the Senate. The Council chooses a president from it is members".[152]

"The members of the Council do not have the right to combine between being a member of the Council and having a position in a ministry, Parliament or the Economic and Social Council or any other public position. They enjoy immunity from dismissal unless they are dismissed by the Council itself and for exceptional circumstances".[153]

"The Council has the authority to review the constitutionality of laws, supervise the validity of the Presidential Elections, examine any contestations, announce the results of elections, decide on the validity of litigation related to

[150]Al Jarf Ta'ama, *op cit,* pp 152-160. Darweesh Ebrahim, *op cit,* pp 152-155..
[151]Badawi Tharwat, *op cit,* pp 118-127. Fakri Fathi, *op cit,* pp 162-184. Al Jarf Ta'ama, *op cit,* pp 152-160. Darweesh Ebrahim, *op cit,* pp 152-155. Jafar Muhammed Anas, *Review on the Constitutionality of Laws (Comparative Study),* 2nd Edition, (Cairo: Arab Revival House, 1999) pp 37-45.
[152]Badawi Tharwat, *op cit,* pp 118-127. Fakri Fathi, *op cit,* pp 162-184. Al Jarf Ta'ama, *op cit,* pp 152-160. Darweesh Ebrahim, *op cit,* pp 152-155. Jafar Muhammed Anas, *op cit,* pp 37-45.
[153]Badawi Tharwat, *op cit,* pp 118-127. Fakri Fathi, *op cit,* pp 162-184. Al Jarf Ta'ama, *op cit,* pp 152-160. Darweesh Ebrahim, *op cit,* pp 152-155. Jafar Muhammed Anas, *op cit,* pp 37-45.

the elections of Representatives and Senators, supervise the validity of referendums and announce their results".[154]

The Bahrain Constitution recognises political review. The political review contained in the Bahrain Constitution is not through a political council (as in France), but through the Constitutional Court, similar to judicial review. Prior to promulgation laws may be passed to the Court, from the King, who is empowered to refer such laws as he determines to the Constitutional Court to decide the extent of their conformity with the Constitution.[155] Up until now the King has passed no laws to the Bahrain Constitutional Court for political review.

In Islamic Shari'a there was a type of political review where Allah's Messenger used to undertake the administration of justice in accordance with Allah's statement, "But no, by your Lord, they can have no Faith until they make you (O' Mohammed) judge in all disputes between them, and find in themselves no resistance against your decisions, and accept (them) with full submission".[156] And, "Surely, We have sent down to you (O' Mohammed) the Book in truth that you might judge between men by that which Allah has shown you (i.e. has taught you through Divine Revelation), so be not a pleader for the treacherous".[157]

The Prophet's judgments were the results of his progressive reasoning by analogy (*'Ijtihad'*), rather than inspirations revealed to him. This is what is referred to as the *Sunnah*. The *Sunnah* prevented individuals living in conflict with the Koranic rules, when they asked the Prophet concerning things that they wished to do, which is a type of the political review. Also this judgment in any dispute is a judicial review. The Caliphs also applied the Koran as a statement of Allah, "Surely Allah commands you to make over trusts to their owners and that when you judge between people you judge with justice; surely Allah admonishes you with what is excellent; surely Allah is Seeing, Hearing".[158]

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[154]Badawi Tharwat, *op cit,* pp 118-127. Fakri Fathi, *op cit,* pp 162-184. Al Jarf Ta'ama, *op cit,* pp 152-160. Darweesh Ebrahim, *op cit,* pp 152-155. Jafar Muhammed Anas, *op cit,* pp 37-45.
[155]Article 17 of Decree No.27 of 2002.
[156]*An-Nisa* (the Women) 65.
[157]*Ibid,* 105.
[158]*Ibid,* 58.

It is narrated that:

> "Abu Bakr, when asked to solve a dispute which had no direct judgment in the Koran, or a direct recollection of the Prophet's actions, went to the people and explained the problem. He then asked if anyone knew if the Prophet had passed judgment on a similar case. If anybody said they had heard the Prophet dealing with a similar case, he would thank Allah for assistance from the Prophet. If he did not find anybody he would then ask the Prophet's companions for their opinions, and if they agreed to one opinion, then he would approve it".[159]

Thus, Umar bin Al Khatab did likewise, and "if he did not know of a similar act by the Prophet he would ask if anybody knew of an act by Abu Baker, and if he did not find anyone he then asked for the opinions of the Prophet's companions".[160]

Thus as can be seen Islamic Shari'a recognizes the theory of political review.

2-3 Position of ILO Conventions under the Bahrain Constitution

The ILO adopted eight fundamental Conventions which relate to fundamental rights at work. Bahrain has ratified the following four:

1. Forced Labour Convention No.29 of 1930;
2. Abolition of Forced Labour Convention No.105 of 1957;
3. Discrimination (Employment and Occupation) Convention No.111of 1958; and
4. Worst Forms of Child Labour Convention No.182 of 1999.

As a result of these ratifications Bahrain is under an obligation to implement these Conventions in its domestic laws. Accordingly, this section will now examine the position of the four ratified fundamental Conventions under the domestic laws of Bahrain.

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[159] Al Salabi Ali Muhammed, *Umar bin Al Khattab (His Era and Personality)*, 1st Edition, (United Arab Emirates [Sharja]: Al Sahwa Library, 2002) pp 341-342.
[160] *Ibid.*

It is clear that once an "...international agreement is put into effect in international law it becomes binding on the member States after being ratified by them".[161] There is however a strong disagreement as to the legal value of an international treaty under domestic law. There are two jurisprudential schools with regard to this matter, namely the "Legal *Dualism* School" and the "Legal *Monism* School". Among the supporters of *dualism* are Triepel and Anzilotti. The supporters of *monism* are Hans Kelsen and Georges Schelle.

> "The Legal *Dualism* School is of the opinion that treaties are a principal source of international rules because they do not emanate from references of domestic rule. The State, even though it is internationally bound to implement the principles of the treaty in domestic law, needs to produce a separate legal procedure in accordance with which it can incorporate the treaty in its domestic system. Without this procedure the treaty will not be considered a binding one internally".[162]

In other words, the State should initiate a procedure to change the treaty from a number of international rules into domestic law. Unless the State enacts this change, the rules which are included in the treaty remain international ones and have nothing to do with domestic law.

> "The Legal *Monism* School is of the opinion that as soon as the international treaty comes to effect after ratification, it becomes a reference for international rules as well as domestic ones. This school also believes that the incorporation of treaties into the domestic systems does not require a separate procedure to change it to a domestic law, because both the international laws and the domestic ones are not disconnected. The validity of the international law does not require a legal procedure to adopt or change it. They are two parts of the same legal system".[163]

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[161] Article (14) of VCLT.

[162] Zainaty Esam Mohammed, *The Reasons of the Relative Nullity (Study in the International Convention Law)*, (Cairo: Arab Revival House, 2000) pp 64-72. Also see O'Brien John, *op cit*, pp 108-111.

[163] Younis Muhammed Mustafa, *Execution of the Resolutions of the International Organisations*, (Cairo: Arab Revival House, 1999) pp 75-76, Zainaty Esam Mohammed, *op cit*, pp 64-72.

"In this system the upper hand and priority are given to international law, the rules of which become valid in the area of domestic law without the need for a separate procedure. Thus, despite the fact that certain constitutions impose as a condition to validate the treaty, by its publication, this is not a legal procedure which alters the nature of the rule or introduces a new description for it. It is simply a task, meant to provide work, to those addressed within its sphere".[164]

The Bahrain Constitution has not made the position of ratified international conventions clear. However, as detailed below Article 37 of the Bahrain Constitution is similar to Article 151 of the Egyptian Constitution, which has been interpreted by judges and jurists as meaning that Egypt follows the *Dualism school.* There for Bahrain should be regarded as *Dualist.* This means that under the Bahrain Constitution the Fundamental Rights at Work even when ratified do not override domestic law, and need to be adopted into domestic law by enabling legislation before they can be implemented.

Article 37 of the Bahrain Constitution provides that:

"The King shall conclude treaties by Decree, and shall communicate them to the Consultative Council and the Chamber of Deputies forthwith accompanied by the appropriate statement. A treaty shall have the force of law once it has been concluded and ratified and published in the Official Gazette.

However, peace treaties and treaties of alliance, treaties relating to State territory , national resources, nights of sovereignty, the public and private rights of citizens, treaties pertaining to commerce, shipping and residence, and treaties which involve the State Exchequer in non - budget expenditure or which entail amendment of the Laws of Bahrain, must be promulgated by law to be valid. Under no circumstances may a treaty include paragraph which conflict with those openly declared".

The first paragraph relates to treaties which do not impose any financial obligations, or need any legislative amendments for their incorporation. In addition, these treaties

[164]Younis Muhammed Mustafa, *op cit,* pp 75-76. Zainaty Esam Mohammed, *op cit,* pp 64-72.

are issued by a Decree which is less prestigious whereas more onerous treaties must be issued by a Law. Decrees in the Kingdom of Bahrain are signed by the King, the Prime Minister and the related Minister, and then communicated to the Consultative Council and the Chamber of Deputies, which means it does not need legislative approval. For a treaty to be applicable in the Domestic Courts, it must be published in the Bahrain Official Gazette. Once it is published it applies to the public and has the force of law behind it.[165]

The ILO Fundamental Conventions as they deal with *inter alia* public and private rights must be promulgated under paragraph 2 of Article 37 of the Bahrain Constitution. Consequently in order to implement the ILO Fundamental Conventions laws may need to be amended either in part or in full. In addition, when assessing which principle the Bahrain Constitution adopts, *dualism* or *monism*, it can be seen that the Constitution has not clarified this. For that reason it is necessary to follow the jurisprudential schools which have given opinions on the constitutional texts and judgments that deal with the position of the ILO Fundamental Conventions and their incorporation into domestic law. However, with newly born constitutions there is no jurisprudential analysis to assist with this task.

Article 37 of the Bahrain Constitution follows the text of Article 151 of the Egyptian Constitution of 1971.[166] It will therefore be necessary to depend on Egyptian jurisprudential analysis as there is a large amount of Egyptian jurisprudence which discusses *dualism* or *monism*. Dr. Muhammad Hafid Ganim says that,

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[165]Because of the similarity between Article 37 of the Bahrain Constitution and the text of Article 151 of the Egyptian Constitution of 1971, judgments of the Egyptian Court of Cassation in this area are relevant. Civil Cassation, 8 March 1956, Cassation Judgments S7, p. 274 No.39 'When the treaty between the government of Egypt and the government of Sudan was ratified by the reviewing Council on 17 May 1902, and published in the Official Gazette as well as published with the Egyptian Group of Laws and Resolutions, so that it is considered one of the State laws'. For a similar meaning see Penal Cassation on 28 March 1971 Cassation Judgments S22, p303, No.70. Also Civil Cassation on 22nd December 1980 Cassation Judgments S31, No.389 p. 209. In addition, Penal Cassation on 4 February 1982, Cassation Judgments S33, No.33 p.149. Abou Hijazah Ashraf Arafat, *The Situation of International Public Law in the Frame of Domestic Rules of the Constitution and Legislature*, (Cairo: Arab Revival House, 2004) p. 39 Footnote 3.

[166]"The President shall conclude treaties, and shall communicate them to the National Council (parliament) forthwith accompanied by the appropriate statement. A treaty shall have the force of law once it has been concluded and ratified and published as regulations.
However, peace treaties and treaties of alliance, treaties pertaining to commerce, shipping and residence, all treaties needed for amendments to State territory, rights of sovereignty, and treaties which involve the State Exchequer in non-budget expenditure must be approved by the National Council".

"Article 151 did not prove the assumption of the supremacy of the international Convention over Egyptian Law. The article did not give the force of law to the Convention unless it was ratified and published in the Official Gazette as it demands. Thus, if the judge was not successful in equating between an international Convention and domestic law in the case of a conflict between them, he will give priority to the domestic law on the grounds of issuing conflicting legislation after the ratification of the Convention. This shows the intention of the legislature to do this, even if it affects Egypt's international responsibility".[167]

This means that Article 151 of the Egyptian Constitution recognizes the principle of *dualism*. This is the same conclusion reached by Dr. Al-Gunaimi Muhammad Tala'at who says that the treaty:

"Did not get the force of law, so it was not applicable in the Egyptian law unless it has completed the formal stage needed to enact the domestic law (the ratification and publication) as is demanded in law. Thus, the judge cannot apply the treaty even if it is exhausted at the international level, unless it has become exhausted in the Egyptian law".[168]

Dr. Abou- AlWaf'a Ahmad also agrees with this approach and he sees:

"Article 151 has clear evidence, of the *dualism* path which Egypt has taken. The treaty is not a part of the Egyptian legal system, unless it completes the procedures needed in the previous text, which is ratification and publication. This conflicts with the principle of Monism, that the Treaty bestrides all domestic bars to implementation directly in States, but under the *Dualism* principle, the Treaty is not applicable in a State unless it follows several domestic procedures and that is what is mentioned in Article 151 of the Egyptian Constitution".[169]

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[167]Ganim Muhammad Hafid, *Brief in Public International Law*, (Cairo:1979) p 54.
[168]Al Gunaimi Muhammad Tala'at, *Al Gunaimi Mediation in the Peace Law- Public International Law or Law of Nations in the Peace Time*, (Alexandria: Monsha't Almaarif, 1982) p 90.
[169]Abou Alwafa Ahmad, *Mediation in the Public International Law*, (Cairo: Arab Revival House, 1998-1999) p 50.

Against this view, other contributors to Egyptian jurisprudence say that they see Article 151 of the Egyptian Constitution as adopting *monism*, Dr. Sarhan Abdul Aziz Muhammad says, "If it is necessary for the Treaty to have the force of law after its ratification and publication, that means that this article intends the treaty to become part of the domestic legal system in as few steps as required in the issuing of laws".[170]

The same approach was taken by Dr. Shihab Mufid Muhmud when he said, "The rules of international law obligated the domestic legislature to not issue a rule which conflicts with the international law. It also obligated the domestic legislator to apply the ratified Convention. Egypt has taken the same path".[171]

This means he believes the Egyptian Constitution applies the principle of *monism*. Finally, Dr. Ameer Salah Al Deen states that:

> "Article 151 takes the *monism* principle, and the distinction between the less important Conventions which the President ratified without referring to the Nation Council, and important Conventions which are required to be ratified under the condition of the Nation Council approval. This does not have any effect in the application of a Convention in the State, when it completes the process of ratification and publication in the Official Gazette".[172]

In addition, the Egyptian Courts had a similar difference of judgment and did not have a conflict as to which system they were following. The Egyptian Court of Cassation held in the Civil Cassation, on 8th March 1956, Cassation Judgments S7, p 274, No.39, that

> "When the treaty between the government of Egypt and the government of Sudan was ratified by the reviewing council on 17th May 1902, and published in the Official Gazette as well as published with the Egyptian group of laws and resolutions, then it is considered to be one of the State laws".[173]

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[170]Sarhan Abdul Aziz Muhammed, *The Legal System of the International Relationship in Egypt Constitution*, (1973) 2, The Egyptian Magazine of International Law 27.
[171]Shihab Mufid Muhmud, *Public International Law*, (Cairo: 1991) p55.
[172]Ameer Salah Al Deen, *Introduction Public International Law*, (Cairo: Arab Revival House, 2003) p 149.
[173]The Judgments of the Court of Cassation, 7th year, (Bahrain: Court of Cassation Experts Office 1996) p 274.

In this judgment the Court followed the *monism* principle. Also,

> "The Court of Cassation took the *dualism* principle when it held in Cassation No.450, of 17th November 1979 that the Vienna Convention on Diplomatic Relations issued on 18th April 1961 is a part of the Egyptian Law as it has been ratified by the Republican Resolution No.469 of 1946 and published in the Official Gazette on the 25th of November 1946. Mentioning of the Republican Resolution and the treaty, and it is publication in the Official Gazette, gives clear evidence of the dualism principle".[174]

The Egyptian High Constitutional Court followed the doctrine of *dualism* when it held that "the convention is not superior to the law...".[175]

Similar to the Egyptian Courts, the Bahrain Courts clarified the legal position of the ratified international conventions under Bahrain Law when the Court of Cassation judgment in Cassation No.88 of 1996, dated 8th of December 1996 held that:

> "The rules of the Warsaw Convention as amended which was ratified by the State of Bahrain[176] are an internal law, as stated in Article 59 of the Civil Aviation Law, which is applied to all kinds of air cargo from the date this law came into force".[177]

This judgment unequivocally adopts *dualism*. Thus, the Warsaw Convention is adopted into domestic law from the date the Civil Aviation Laws came in to force.

Article 37 of the Bahrain Constitution means that Bahrain recognizes *dualism*, because the Bahrain Constitution requires that a ratified international Convention be adopted into domestic law by a legal instrument. Thus under Bahrain Law ratified conventions cannot be enforced unless adopted into domestic law by enabling legislation. This is especially apparent where a convention requires that a sanction be

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[174]Abdulsalam Jaafar, (1979) 35, The Egyptian Magazine of International Law 221-227.
[175]Ruling of 7th May 1983, Case No.31, 3, The Constitutionality of Laws Collection, (Egypt) Vol.2, rule 18, p 121.
[176]Bahrain's name was changed in 2002 to the "Kingdom of Bahrain" by the Bahrain Constitution.
[177]The Judgments of the Court of Cassation, 7th year, (Bahrain: Court of Cassation Experts Office 1996) p 880.

imposed for breaching the terms of a convention as under the Bahrain Constitution a punishment cannot be imposed other than by law.[178]

This is applicable when the fundamental convention criminalizes certain acts, but if the convention only organizes employee rights, the convention can be implemented since it was ratified and published in the Official Gazette. Therein it will applicable as it is equal to the other domestic laws.

Thus Convention No.111 of 1958, which has been ratified by Bahrain, has been adopted directly into Bahrain Law and a judge can order that compensation should be paid to an employee who has been discriminated against under the Convention.

However, the Bahrain courts have not, as yet, adjudicated upon a claim made under any of the ILO Fundamental Conventions which have been ratified by Bahrain. This may be because of the ignorance of employees in Bahrain of their rights under the ILO Fundamental Conventions or it may be due to ignorance of the judiciary in implementing ratified conventions.

Incorporation of international law into domestic law may lead to a contradiction of laws,

> "In cases of Legal *Monism* the Courts should apply the treaty in contradiction of the domestic legislation, as gradual implementation of the legal rules, in view of the fact that the international convention is an international rule superior to domestic rules. In cases of Legal *Dualism* the Courts should not apply the rules in contradiction to domestic legislation...".[179]

Thus the Egyptian Courts which follow the *dualism school* have held that "the International Convention on Civil and Political Rights which was ratified by Egypt repealed Article 124 of the Penal Code, which prohibited strikes, as the Convention was ratified after the Penal Code".[180]

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[178]Article 20 of Bahrain Constitution.
[179]Younis Muhammed Mustafa, *op cit,* pp 75-76. Also Zainaty Esam Mohammed, *op cit,* pp 64-72.
[180]State Security Court, Cairo, Case No.4790, year 1986, Al Azbakia. Shiha Ebrahim, *op cit,* p 58.

The Civil Law 2001 provides in Article 2(C) the rules governing contradictions in domestic legislation. Thus, the legislature can repeal ratified conventions by issuing laws which contradict the convention; however, the State is obliged under PIL rules to abide by the convention until the State formally withdraws from the convention.

In addition, the Labour Law 1976 is considered private law, but the Civil Law 2001 is public law. This means that if the Labour Law 1976 as amended does not govern certain matters, then this should be governed by the Civil Law 2001. Article 1(B) of the Civil Law 2001 clarifies the sequence of sources which should be implemented in reaching a decision. If there are no provisions controlling certain matters the judge should consider customary law, then Islamic Shari'a and then the Rules of Natural Justice.

If a convention requires the imposition of a criminal penalty the Courts in Bahrain cannot impose such a penalty without enabling legislation being passed to implement the convention.

For example Article 5 of Convention No.29 of 1930, requires that a criminal penalty be imposed for breaching the Convention. Ratification alone is not enough to impose this penalty as the Bahrain Constitution requires enabling legislation.

Furthermore, an International Convention which conflicts with the constitution (if the State takes that path) would not have any power in the domestic system. But there is a differentiation between domestic law and the international validity of the international rule. In other words if the effect of a domestic law is to cancel or amend the international rule,

> "This cancellation or amendment is only in the domestic system and the international Convention will continue to be valid Under Public International Law. For the supremacy of Public International Law to occur, the State and its domestic laws when in conflict with Public International Laws will be held to be legally responsible for that conflict. Thus, the State will be obliged to amend it is domestic legislation".[181]

[181] Abou Hijazah Ashraf Arafat, *op cit,* pp 34-37.

By virtue of membership in the ILO, the ILO Declaration binds the ILO Member States to the principles set out in the ILO Declaration even when a State has not ratified a convention or it conflicts with the State's Constitution. Non-compliance with the ILO Declaration will be revealed under the follow-up process. Thus even though the Bahrain Constitution contradicts Convention No.111 Bahrain is under an obligation to implement the rights set out in the Convention as Bahrain ratified it and is bound by the principles by virtue of its ILO membership.

Furthermore, some countries use international Conventions to interpret domestic laws before they are ratified,[182] or to fill gaps[183] in domestic laws. The judge can define the term in international law and not define it in domestic law, for example trafficking in persons, racial discrimination and others. This phase has not been adopted by the judges in Bahrain.

Hopefully the Judicial Studies Institution ("JSI") which has recently been established in Bahrain will begin to train judges on how to apply international Conventions to domestic laws without conflicting with the Bahrain Constitution. Such training is supplied in several other countries, and has led several organisations such as the ILO to organize technical seminars in which people are trained in how to apply the ILO Conventions to domestic laws.[184] This training is one of the technical aids that the ILO provides for its Member States.

By searching the Islamic Shari'a to discover which path it has taken (either *dualism* or *monism*) it appears that the Islamic Shari'a does not recognize these paths but does recognize various kinds of treaties. "The Prophet Mohammed ratified a treaty with the

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[182]In Argentina the Courts use international treaties to interpret domestic laws. *Susana Elena* v. *Gobierno De La Tierra De Fuego*, Antardita e Is. Del Atlantico Sur (Poder Ejecutivo Judicial) s/ Contenzioso administrativo s/ incidente, sentencia n. 787 del 29 agosto de 2000 Case. The same practice has been used in Australia in *John Ward* v. *Commissioner of Police* (1998) 9 F.C.A. Unreported, (14 January 1998). The report is available from Austlii <http://www.austlii.edu.au> (Federal Court of Australia) Case. And in England in *Rantzen* v *Mirror Group Newspapers (1986) Ltd*, [1994] Q.B. 670 (Eng.C.A).

[183]There was use of international Conventions in order to fill gaps in the national legislation in Australia in the *Chang and Redundancy Case*, (1984) 8 I.R. 34 (Australian Conciliation and Arbitration Commission) Case and in South Africa in *the Hoffman v South African Airways Case* CCT 17/00, 28 September 2000 (Constitutional Court of South Africa).

[184]The author was appointed to represent Bahrain at one of these seminars.

Jews and Christians of the Arabian Peninsula",[185] as was the case with the Caliphs. "Both were looking at the loyalty contained within the conditions of the treaty before they agreed to ratify any treaty with their enemy. This would prevent the situation in which they were unable to be loyal to the conditions contained in the treaty".[186] The evidence that Islam approved the treaties can be found in the Koran.

It is worth mentioning here that the language of the Koran was different then to what it is now, but the Prophet Mohammed used several Koranic verses as evidence of the obligation in Islam to respect treaties, this comes about through the statement made by Allah, "And draw not near to the property of the orphan except in a goodly way until he attains his maturity and fulfils the promise; surely (every) promise shall be questioned".[187] Also the statement of Allah,

> "And approach not the wealth of the orphan save with that which is better, until he reaches maturity. Give full measure and full weight, in justice. We task not any soul beyond its scope. And if ye give your word, do justice thereunto, even though it is (against) a kinsman; and fulfil the covenant of Allah. This He commandeth you that happily ye may remember".[188]

It must be noted that any treaty signed by a Muslim must not conflict with the Islamic Shari'a. The reasoning for this can be found from the Prophet Mohammed when he said, "Any condition which is not in the Holy Book of Allah is a falsehood".[189] When a Convention or treaty does not contradict Islamic Shari'a, a Muslim is under an obligation, because of their religion,[190] to the Convention when it is ratified, which means the Islamic State recognizes *monism.*

Conclusion

The Bahrain Constitution acknowledges some of the Fundamental Rights at Work, which acknowledgment gives the Fundamental Rights set out in the Constitution extra protection as any person can apply to the Constitutional Court for a judicial review to

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[185]Afifi Muhammad Al Sadiq, *Islamic Community and International Relations*, (Cairo: Al Khananji Library) pp 245-246.
[186]Al Salabi Ali Muhammed, *op cit,* pp 594-595.
[187]*Al-Isra* (Isra', The Night Journey, Children of Israel) 34.
[188]*Al- Anaam* (the Cattle, Livestock) 152.
[189]Afifi Muhammad Al Sadiq, *op cit,* p 226.
[190]"O you who believe! fulfill the obligations". *Al Maidah* (the Table)1.

ensure that Fundamental Rights at Work recognized by the Constitution are implemented.

However, as Bahrain follows the *dualism school* the Fundamental Rights at Work, must be adopted into domestic law. In the case of some Fundamental Rights the instrument of ratification itself will accomplish this but where the Fundamental Rights contradict existing domestic law, and especially where the Fundamental Rights require the introduction of criminal penalties, the Fundamental Rights can only be fully implemented by the introduction of enabling legislation.

The Islamic Shari'a provides that a State is bound by the treaties which it ratifies and as such Shari'a follows the *Monism school.*

Part II

The Core Standards

Chapter 3

Implementation of the ILO Declaration on Fundamental Principles and Rights at Work under Bahrain Law

This chapter will examine Bahrain's implementation of the rights imposed on it by its ratified ILO Conventions, the principles imposed on it by un-ratified conventions under the ILO Declaration, and the duties imposed on it by its constitutional acknowledgement of some of the Fundamental Rights at Work. The chapter will also draw comparisons with Islamic Shari'a, as it is a source of "legislation" in Bahrain,[191] in order to see the extent to which Bahrain Law complies with the protection afforded to workers under Islamic Shari'a and with the Fundamental Rights at Work.

As stated in chapter 1, the ILO adopted the ILO Declaration in 1998. The ILO Declaration identified the eight core ILO Conventions relating to Fundamental Rights at Work as:

1. The Elimination of Forced and Compulsory Labour;
2. The Elimination of Discrimination in the Workplace;
3. The Abolition of Child Labour; and
4. Freedom of Association and the Right to Collective Bargaining.

The ILO Declaration requires ILO Member States which have not ratified the ILO Conventions to respect promote and realise, in good faith, the principles concerning the Fundamental Rights, which regulate work standards by means of the ILO Conventions.

The ILO Constitution requires the ILO Member States to abide by the ILO Declaration and States when they become ILO Member States are obliged to respect, promote and realise, in good faith, the principles concerning the Fundamental Rights, even if they have not ratified the individual ILO Conventions.

Bahrain is member of the ILO. It is obliged by PIL rules to implement the rights set out in the ILO Conventions which have been ratified by it, and obliged by the ILO

[191] Article 2 of Bahrain Constitution.

Declaration to implement the principles set out in the ILO Conventions which have not been ratified by Bahrain. In addition the Bahrain Constitution acknowledges some of the Fundamental Rights. Accordingly, Bahrain is constitutionally obliged to protect these rights which can be enforced in the courts of Bahrain (*ab initio* if the rights are interpreted as legal text) or by means of judicial review if Bahrain introduces laws which contravene it's Constitution.

This chapter deals with the laws in the Kingdom of Bahrain which protect the Fundamental Conventions and examine to what extent the Kingdom of Bahrain fulfils its international responsibilities by implementing the rights and principles. Bahrain has not yet ratified the Equal Remuneration Convention No.100 of 1951, the Minimum Age Convention No.138 of 1973, the Freedom of Association and Protection of the Right to Organise Convention No.87of 1948, and the Right to Organize and Collective Bargaining Convention No.98 of 1949.

The acknowledgement of some of these Fundamental Rights in the Bahrain Constitution does not fulfil Bahrain's ILO obligations to respect, promote and realise, in good faith, the principles concerning the Fundamental Rights. As confirmed by the ILO's Legal Adviser, this means that the ILO has the right to transfer any complaint against Bahrain to the Investigation Committee. Any failure by Bahrain to apply any recommendations issued by the Investigation Committee gives the ILO the right to impose sanctions upon Bahrain. Sanctions mean that Bahrain will not receive any technical aid or assistance from the ILO or its associated organizations. Any classification of Bahrain by the ILO as a state which has not implemented the Fundamental Rights at work will also have political and economic ramifications as the Governments of most industrialized nations would face pressure from their legislatures not to trade with Bahrain. Realistically therefore, a classification by the ILO of one of its Member States as having not implemented some of the Fundamental Rights can be seen as an extension to the Social Condition which can be used for protectionist purposes and effect the ability of a country to trade freely, and enter into economic treaties and free trade agreements.

As Bahrain is obliged by virtue of its membership of the ILO to apply the principles of the Fundamental Rights Bahrain laws and administrative practices should comply

with the principles. Accordingly, if an employer in Bahrain pays an expatriate worker less than a Bahraini worker for the same or similar employment when they have the same experience and qualifications ILO Convention No.100 of 1951 should apply and a court, on the application of the aggrieved worker should apply the Convention's principles and order the employer not to discriminate on the grounds of nationality and to pay wages commensurate with skills, experience and qualifications alone.

Bahrain is obliged, under PIL rules, to implement those ILO Fundamental Conventions which it has ratified. To date Bahrain has ratified the Forced Labour Convention No.29 of 1930, the Abolition of Forced Labour Convention No.105 of 1957, Discrimination (Employment and Occupation) Convention No.111 of 1958, and the Worst Forms of Child Labour Convention No.182 of 1999.

Section 1

The Elimination of Forced and Compulsory Labour

Introduction

Voluntary labour is a person's right, which was clarified in 1926 by the adoption of the International Convention on Slavery.[192] Slavery, as a practice, was part of various ancient civilizations (especially Egyptian and Roman societies) and was also permitted by some religions (Judaism and Christianity).[193] Slavery was not prohibited by Islam because of the reliance on slaves by pre-Islamic societies in which slaves were sold as goods and inherited like cattle and property.

There were several sources of slaves. One was the capture of free men, women and children in peace time who were then sold in markets as slaves. As stated by Allah through the prophet Joseph,

> "A caravan happened to pass and sent their water-carrier to bring water from the well. He let down his bucket and pulled Joseph up with it. 'What luck' said the man, 'Here is a boy' and they hid him as if he were an item of merchandise. They didn't know his worth to Allah and so sold him for a few pennies. The Egyptian who bought him instructed his wife, 'House him honourably. He may be of use to us. We may even adopt him as a son'. Thus

[192]The anti-slavery movement was started in the United Kingdom in the 1770s by the Quakers. See Brycchan Carey, Markman Ellis, and Salih Sara, *op cit,* pp 141-154. In *Somersett's Case* (1772) 20 State Tr.1. Lord Mansfield held that slavery was not recognized in English law so that a slave on arrival in England should go free. See Samuels Alec, *What did Lord Mansfield actually say?*, (2000) Law Quarterly review, p 379

[193]It was mentioned in the Old Testament, Exodus, and chapter 21, 2-12, "When you buy a Hebrew slave, he shall be your slave for six years, but in the seventh year he shall go free and pay nothing. If he comes to you alone, he shall go away alone, but if he is married, his wife shall go away with him. If his master gives him a wife, and she bears him sons or daughters, the woman and her children shall belong to her master and the man shall go away alone. But if the slave should say, 'I love my master, my wife and my children, I will not be free', then his master shall bring him to Allah: he shall bring him to the door or the door post and his master shall pierce his ear with an awl, and the man shall be his slave for life. When a man sells his daughter into slavery, she shall not go free as a male slave may. If her master has not had intercourse with her and she does not please him, he shall let her be ransomed. He has treated her unfairly and therefore has not right to sell her to strangers. If he assigns her to his son, he shall allow her the rights of a daughter. If he takes another woman, he shall not deprive the first of meat, clothes and conjugal rights. If he does not provide her with these three things, she shall go free without payment". This text concerns the Hebrew slave, while the non-Hebrew slave has another text in the Old Testament, Genesis, chapter 9, 25-27, '"He said, "Cursed be Cain! Slave of slaves shall he be to his brothers"'. He also said, "Bless, O Lord, the tents of Shem; may Canaan be his slave. May God extend Japheth's bounds, let him dwell in the tents of Shem, may Canaan be their slave". English clergy referred to the Old Testament texts above when Queen Elizabeth I asked for evidence justifying her business in slavery. Al Gazali Mohammed, *The Human Rights between Islamic Teachings and UN Declaration*, 5th Edition, (Cairo: Dar Al-Da'wa, 2002) p 79.

did we establish *Yusuf* (Joseph) in the land, that we might teach him the interpretation of events? And Allah has full power and control over His Affairs, but most of men know not".[194]

Secondly "prisoners who were taken in war were turned into slaves and thirdly if a man did not pay his debts then it was possible that he might become a slave".[195]

Slavery, the slave trade[196] and its institutions, and practices similar to slavery and forced labour have, over time, been rejected internationally.[197] This happened in two stages and at each stage several Conventions were adopted for the needs of the international community. The ILO stated in the ILO Declaration that the abolition of forced labour is an International Labour Standard.

Forced labour is dealt with in ILO Conventions No.29 of 1930 and No.105 of 1957. Bahrain has ratified these two ILO Conventions which means it is obliged to implement the rights set out in them.

Accordingly, this section is divided into two sub-sections. Each sub-section expresses the international changes which led to the prohibition of slavery and its institutions, and practices similar to slavery and forced labour. Bahrain Law will then be examined for the application of rights set out in the ILO Conventions and the incorporation of the ILO Conventions into domestic law. Other international conventions will be dealt with briefly as they are not one of the Fundamental Conventions.

3-1-1 Early Conventions Regarding Slavery and Forced Labour

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[194]Yusuf (*Joseph*) 19-21.
[195]Rafi Salim bin Muhammad, *op cit,* p 177.
[196]The Slave trade was abolished on board British vessels in 1807, while slavery was abolished in British colonies in 1833. One of the most recent states to abolish slavery was Saudi Arabia in 1962. *Om Al Quara'a*, Saudi Arabia Official Gazette, (1962) year 40, No.1944.
[197]By adopting several Conventions by different organizations e.g. Slavery Convention 1926, Forced Labour Convention No. 29, 1930, International Human Rights Declaration in 1948, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery in 1956, Convention No. 105 of the Abolition of Forced Labour Convention, 1957, International Covenant on Civil and Political Rights of 1966, and the United Nations Convention on the Law of the Sea of 1982.

At the beginning of its establishment the League of Nations adopted a Slavery Convention in 1926. Then in 1930 the ILO adopted ILO Convention No.29 on Forced Labour. The adoption of these Conventions happened because,

> "....colonial countries imposed compulsory, or forced, labour on the natives during colonialism. The administrations of the colonists used, in large areas of the world, many kinds of compulsion to force workers to improve the sub-structure of colonial countries. Workers were also forced to work in mines, farms, or as labourers".[198]

Slavery and the slave trade was defined in Article 1 of the Slavery Convention of 1926, as being,

> "(1) The status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.
>
> (2) The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, in general, every act of trade or transport in slaves".

Forced labour was described in Article 2 of Convention No.29 of 1930 as being, "...all jobs or services that are extorted, under threat of punishment, from any person who has not volunteered to do it by choice".[199]

The development of compulsory or forced labour was considered to be conditions analogous to slavery.[200]

Bahrain has ratified the Slavery Convention of 1926 by Decree No.7 of 1990 which was promulgated on the 24th of February 1990. In addition, it ratified the Forced Labour Convention No.29 of 1930 by Decree No.5 of 1981 which was promulgated on the 4th of May 1981. Thus, Bahrain is under an obligation to implement these two

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[198] *Global Report following from the ILO Declaration on Fundamental Principles and Rights at Work, Stopping Forced Labour*, (Geneva: the International Labour Office, 2001) p 10.

[199] The advisory expertise in the organization discovered a misconception in some countries regarding forced and compulsory labour. *Ibid,* p 4, footnote No.9. See also document No.GB.277/3/1, March 2003.

[200] Article 5 of the Slavery Convention of 1926.

conventions into its domestic law, which means that Bahrain is bound by these conventions.

Article 13(C) of the Bahrain Constitution has abolished Forced Labour by providing that, "It is not permitted to impose forced labour on a person unless in the cases identified by law for national necessity, for a fair payment or for complying with a judicial judgment". However, the Bahrain Constitution did not abolish slavery or the slave trade as is required by the Slavery Convention of 1926 nor does it comply with Article 6 of the Slavery Convention of 1926 which requires Bahrain to impose severe penalties on slavers.

Bahrain has not introduced specific laws against slavery because the Bahrain legislature has relied upon the instrument of ratification to implement the ratified convention. However the instrument of ratification is not able to do this as whilst ratification of the Slavery Convention of 1926 sets out the crime it requires a ratifying state to impose penalties on slavers which requires an implementing law to be passed which sets out the extent of the punishment. Without such a law Bahrain courts cannot enforce the Slavery Convention of 1926 and a person accused of slavery can petition the Constitutional Court for a declaration that the Public Prosecutor, the agency vested with prosecuting crimes in Bahrain, is acting *ultra vires* its powers to prosecute. In order for Bahrain to fully comply with the Slavery Convention of 1926 it will have to introduce either stand alone legislation or amend its existing laws.

Bahrain Law has not defined forced labour which was set out in Article 13 of the Bahrain Constitution, however, International Conventions can be used to fill in gaps found in domestic legislation[201] and ratification of a convention will be sufficient to adopt the definitions contained in the Conventions into domestic law. While, Bahrain Law does not prohibit forced labour by any clear articles there are several Articles in the Bahrain Penal Code 1976 which was promulgated by Decree No.15 of 1976 ("Penal Code 1976") which prohibit several acts which accompany forced labour, for

[201]Several examples of using international Conventions to fill gaps of the domestic legislation can be found in the following cases, Australia, in the *Termination, Chang and Redundancy case*, (1984) 8 I.R.34 (Australian Conciliation and Arbitration Commission) Case. South Africa, in the *Hoffman v. South African Airways, Case* CCT 17/00, 28 September 2000 (Constitutional Court of South Africa) Case. [2001] 1 S. Afr.L.R.1.

instance holding people against their will, depriving them of their freedom and kidnapping them.[202] These crimes and their appropriate penalties are set out in the Penal Code 1976 and the criminal courts are able to impose the appropriate penalties upon those found guilty.

Bahrain did not incorporate the Slavery Convention of 1926 and the Forced Labour Convention No.29 of 1930 into its body of law. In addition Bahrain did not implement the rights set out in ILO Convention No.29 of 1930 as it is obliged to under international law. Thus, Bahrain should, using the definitions set out in the Conventions, amend the Penal Code 1976 to criminalize Forced Labour, and Slavery and the Slave Trade in accordance with the relevant ILO Conventions

It is worth mentioning here that not all kinds of work are considered to be forced labour. Article 2(2) of the Forced Labour Convention has excluded some kinds of work. It provides that:

> "The expression of compulsory or forced labour in the conception of this Convention does not include:
>
> a. 'Any actions or services taken by force according to the laws of obligatory military service for actions with absolute military character.'
> b. 'Any actions or services that are considered a part of the citizens' natural civil obligation in a self governed country.'
> c. 'Any actions or services taken by force from any person based on a conviction by a legal Court provided that these actions or services are under a higher power supervision or control. Moreover, this person should not be hired by or put at the disposal of any individual, company, or community.'
> d. 'Any actions or services taken by force in emergency cases, such as war or disaster, or if there is anything that might lead to a disaster, such as fire, flood, famine, plague, epidemic, epidemic disease, attack by animals or insects, or by blight. In

[202] Articles 357 and 358 of the Penal Code 1976.

general, emergency is any circumstance that threatens the survival or peace of some or all of the population.'

e. 'Simple social services provided by the society in order to accomplish direct interest to that society.'

Thus, they can be considered as natural civil obligation on individuals provided that these individuals or their representatives should be consulted regarding these services".

The Bahrain legislature did not consider all the exceptions stated in the Convention. The legislature did not permit actions taken by force according to laws of military service, because the military law of Bahrain does not impose compulsory military service on its citizens.

Regarding the freedom of members of the armed forces to leave their service the ILO Committee of Experts has raised the following Individual Direct Request to Bahrain concerning Forced Labour Convention No.29 of 1930:

"The Committee previously noted that, officers undertake to serve in the Bahrain Defence Force for an uninterrupted period of 15 years, during which they do not have the right to resign. In addition, any officer who submits a resignation is not entitled to leave the service before it is accepted, under penalty of disciplinary sanctions imposed by the commanding officer or military tribunals.

While noting that such a lengthy period of an uninterrupted service of officers can be explained by the high cost of military training received by the officers, the Committee again recalls, that persons who have voluntarily entered into an engagement cannot be deprived of the right to leave the service in peacetime within a reasonable period, either at specified intervals, or with previous notice, subject to the conditions which may normally be required to ensure the continuity of the service and also taking into account the possibility of proportional reimbursement of the cost of training incurred.

The Committee therefore hopes that measures will be taken to ensure that career members of the armed forces will fully enjoy the right to leave their

service in peacetime at their own request within a reasonable period, either at specified intervals, or with previous notice, in conformity with the Convention".[203]

Bahrain breaches ILO Convention No.29 of 1930, regarding resignation from military service and Legislative Decree No.16 of 1977 should be amended to except resignation after a reasonable time and to ensure that the acceptance of this resignation will be issued in a reasonable time.

It is worth mentioning here, that the members of the armed forces are aware that they have to serve for a certain time when they attend training sponsored by the armed forces. This arises from the idea that the armed forces should retain the benefit of the training which members of the armed forces receive; alternatively the employee can pay a proportional reimbursement of the cost of training incurred.

Bahrain has received an Individual Direct Request concerning ILO Convention No.29 of 1930:

> "Freedom of civil servants to leave the service of the State, the Committee noted penalties of imprisonment 'when three or more civil servants abandon their work, even in the form of resignation, if they do so by common accord with a view to achieving a common objective'. This is also applicable to persons who are not civil servants, but who perform work related to the public service.
>
> The Committee pointed out that the prohibition from resigning, as set out in the penal code, namely under menace of imprisonment, places a constraint upon the persons concerned to continue working. The Committee expresses firm hope that measures will be taken, in the course of the legislative reform, to bring legislation into conformity with the Convention".[204]

Article 293 of the Penal Code 1976 prohibits the collective resignation of public servants, because collective resignation by public servants may cause an emergency

[203] <http://www.ilo.org/ilolex/english/newcountryframeE.htm>.
[204] *Ibid.*

within the public sector, which the Bahrain legislature considers may harm the national interests of Bahrain to such an extent that this practice needs to be curtailed by criminal sanction. In addition, Article 294 of the Penal Code 1976 provides punishment for every public servant who leaves his job or refuses to work intentionally. This article contradicts ILO Convention No.29 of 1930. Accordingly, Article 293(1) should be amended to give a specific time frame in which the resignation can be accepted. In Article 297 an additional paragraph should be added which states that public servants should give an additional amount of notice. The judgement of the Egyptian Cassation Court effectively repealed Article 124 of the Egyptian Penal Code (which is the same as Article 293(1) of the Penal Code 1976) when it held that Article 124 conflicted with ILO Convention No.29 of 1930 which was adopted into Egyptian domestic law upon ratification and publication in the Official Gazette of Egypt.

Accordingly, judges in Bahrain should hold that Article 293(1) of the Penal Code 1976 should no longer be enforced as it contradicts ILO Convention No.29 of 1930 which was ratified and adopted into Bahrain law after the Penal Code 1976. Indeed judges in Bahrain generally need to be taught to follow ratified Conventions over domestic laws where they are later in time and conflict with domestic laws.

In addition, Bahrain Law does not permit the imposition of actions which are considered to be part of the civil obligation of citizens, or social services. Actions which directly affect society are optional for each citizen. Finally, actions that are obligatory in emergency situations were not included in the Bahrain Law. Thus, the exceptions determined by ILO Convention No.29, which are provided for in Article 2(2) have been reduced.

Whilst the Bahrain Constitution prohibits forced labour it has not been criminalized. In addition Bahrain Law does not define forced labour or slavery and the slave trade. Thus the Bahrain legislature has not fulfilled its obligations to implement ILO convention No.29 of 1930 and the Slavery Convention of 1926.

3-1-1-1 Gradual Abolition of Slavery

The Slavery Convention 1926 abolished the slave trade immediately.[205] However, the international community meant by adopting several Conventions regarding Slavery and Forced Labour to gradually abolish slavery completely.[206]

This international effort to end slavery was mirrored in Islamic Shari'a. Slavery occurred in pre-Islamic times because it already existed in Jewish and Christian religions. "Islam brought about a gradual end to slavery by setting slaves free using *manumission*[207] and the atonement of many offences",[208] "such as the offence of not fasting in Ramadan, or the killing of a person by mistake by freeing a slave".[209] Islam also gives Muslims the motivation to set slaves free by knowing that such acts will be re-paid by Allah, as is stated in the Koran, "But he would not attempt the uphill road, and what will make you comprehend what the uphill road is? It is the setting free of a slave".[210]

It is also narrated by Abu-Dawood, "When a man sets free a Muslim slave he will have the same number of bones set free in his body when meets his doomsday. When a woman sets free a slave, every equivalent bone in her body will be set free on her doomsday".[211]

In addition, there is a punishment for selling a free person:

> "The Almighty Allah said there will be three people whose opponent I shall become on the day of resurrection; a man who gave a promise in my name and then broke trust, a man who sold a free man and enjoyed his price, and a man who engaged a labourer and enjoyed full labour from him but did not pay his wages".[212]

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[205]Article 2(A) and (B) of the Slavery Convention 1926.
[206]See footnote 197.
[207]A technical expression, taken from Roman law, meaning the freedom given to slaves.
[208]Rafi Salim bin Muhammad, *op cit,* pp 178-179.
[209]Al Gazali Mohammed, *op cit,* p 74.
[210]*Al-Balad* (the City, This Countryside) 11-13.
[211]Al Gazali Mohammed, *op cit,* pp 76-77.
[212]Rafi Salim bin Muhammad, *op cit,* p 179. See also, Al Gazali Mohammed, *op cit,* p 71.

Finally "Islam was ahead of international developments because it freed prisoners of war".[213]

ILO Conventions took a similar path to the Islamic Shari'a and brought about a gradual end to slavery and forced labour. Conditions to shorten the use of slavery and forced labour eventually meant slavery was abolished in the international community.

ILO Convention No.29 of 1930 compounds this with Islamic Shari'a, as forced or compulsory labour may be used, during the transitional period, for public purposes only and as an exceptional measure, subject to the conditions and guarantees hereinafter provided.[214] But the Governing Body at the expiration of a period of five years after the coming into force of this Convention has to consider the possibility of the suppression of forced or compulsory labour in all its forms without a further transitional period.[215]

The Convention introduced various conditions and regulations. For example, it provided that forced or compulsory labour acted as a tax, and forced or compulsory labour for the execution of public works by authorities who exercise administrative functions, should be progressively abolished.[216]

The authority concerned should first satisfy itself that the work to be done, or the service to be rendered, is of direct interest to the community called upon to do the work or render the service; that the work or the service is of present or imminent necessity; that the work or service will not lay too heavy a burden upon the present population, having determined the ability of the labour available and its capacity to undertake the work; the work or service will not entail the removal of the workers from their place of habitual residence; finally the execution of the work or the rendering of the service will be directed in accordance with the needs of religion, social life and agriculture.[217]

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[213]Yahya Muhammad Kamal, *Historical Roots of Egyptian Women's Freedom in the Modern Era*, (Egypt: Public Egyptian Book Institute, 1983) p 37.
[214]Article 1(2) of Convention No.29 of 1930.
[215]Article 1(3), *ibid.*
[216]Article 10, *ibid.*
[217]*Ibid.*

The Convention prohibited any concession granted to private individuals, companies or associations to become involved in any form of forced or compulsory labour.[218] In addition it directs officials of the administration to put no constraints upon the said populations or upon any individual members thereof to work for private individuals, companies or associations.[219]

Further more the Convention limited the exercise of forced labour by administrative function[220] and limited forced labour as a method of precaution against famine or a deficiency of food supplies.[221] Finally, it provided for the prohibition of forced labour when it is used as a collective punishment.[222]

The Slavery Convention of 1926 and the ILO Forced Labour Convention No.29 of 1930 both comply with Islamic Shari'a and brought about a gradual end to slavery, the slave trade and forced labour using conditions and regulations. The Bahrain Constitution abolished slavery immediately.[223] However, Bahrain still needs to amend its domestic laws to define and criminalize forced labour as although slavery is abolished by the Constitution slavers cannot be punished as the Penal Code does not define and criminalize forced labour.

3-1-1-2 Human Rights' Defence

The Islamic Shari'a and the ILO Conventions brought about a gradual end to slavery and forced labour, but until the abolition of slavery it was necessary to impose protocol guarantees for the humane treatment of slaves. This protocol applied to anyone who owned a slave. The State was required to apply this protocol and impose it upon its own people. The Prophet Mohammed instructed his followers to treat slaves well, he said:

> "They are your brothers, Allah put them under your hands, who was his brother under his hand, he shall feed him from his food, and clothe him from

[218]Article 5, *ibid.*
[219]Article 6, *ibid.*
[220]Article 7, *ibid.*
[221]Article 19, *ibid.*
[222]Article 20, *ibid.*
[223]Article 13 of Bahrain Constitution.

his cloth, and do not ask him what he cannot do, if he does ask him to do something he can not do, so shall he be damned".[224]

On the subject of humane treatment of slaves it is narrated, "Abu Dhar Al-Gafari argued with a Negro and said 'You are the son of a black woman'. When the Prophet heard this he said 'that's enough; don't compare the son of a white woman with the son of a black woman unless it is with good work'".[225]

Othman bin Afan said:

> "Slave, pinch his ears for he has made a mistake. Then he asked him to pinch his ears too, and the slave began to pinch his master's ears gently. Othman told him to pinch harder, as 'I am afraid of when Allah will ask me about this' and the slave said, 'I am afraid of that too'".[226]

It is narrated by Abu Mas'ud:

> "I was assaulting my slave when I heard a voice from behind me which said, 'Know, O'Abou Mas'ud! Allah is all powerful over you more than what you have got over him'. When I looked it was the Messenger of Allah. I said, 'O' Messenger of Allah! He is free for the sake of Allah' He said, 'Beware! Had you not done it, the fire would surely have burnt you, or the fire would have touched you'".[227]

The ILO Forced Labour Convention No.29 of 1930 is similar to the Islamic Shari'a in that it stipulates protection for forced labourer until the abolition of such acts.
The Convention prevents the removal of workers from their place of habitual residence.[228] In addition it sets out the conditions imposing forced labour only on adult able-bodied males, who are of an apparent age of not less than 18 and not more than 45 years. In addition, there were limitations and conditions to be applied: the persons concerned should not suffer from any infectious or contagious disease, be physically fit for the work required and for the conditions under which it is to be

[224]Al Gazali Mohammed, *op cit,* p 74.
[225]Al Zubaidi Zain Alden Ahmed, *Al Boukhari Brief,* 1st Edition, (Kingdom of Saudi Arabia: Dar Al-Salam Publication, 1996) p 31
[226]Al Gazali Mohammed, *op cit,* p 77.
[227]Al Gazali Mohammed, *op cit,* p 78.Rafi Salim bin Muhammad, *op cit,* p 178.
[228]Article 8 of the ILO Convention No.29 of 1930.

carried out; school teachers, pupils and officials of the administration in general are exempted; and in each community the number of adult able-bodied men indispensable for family and social life must be maintained.[229]

The proportion of the resident adult able-bodied males who may be taken at any one time for forced or compulsory labour must never exceed 25 per cent. In fixing this proportion the competent authority should take into account the density of the population, its social and physical development, the seasons, and the work which must be done by the persons concerned on their own behalf in their locality, and, generally, should have regard to the economic and social necessities of the normal life of the community concerned.[230]

Further more it sets the maximum period for which any person may be taken for forced or compulsory labour of any kind in any one period of twelve months. This should not exceed sixty days, including the time spent in going to and from the place of work. Every person should be furnished with a certificate indicating the periods of such labour which he has completed.[231]

In addition it sets out that the normal working hours of any person from whom forced or compulsory labour is exacted shall be the same as those prevailing in the case of voluntary labour, and the hours worked in excess of the normal working hours shall be remunerated at the rates prevailing in the case of overtime for voluntary labour. In addition, the authority should grant a weekly day of rest to all persons from whom forced or compulsory labour of any kind is exacted and this day should coincide as far as possible with the day fixed by tradition or custom in the territories or regions concerned.[232]

The Convention clarified the cash remuneration for workers at rates not less than those prevailing for similar kinds of work either in the district in which the labourer is employed or in the district from which the labourer is recruited, whichever may be the higher. The wages shall be paid to each worker individually and not to his tribal chief

[229]Article 11, *ibid.*
[230]Article 11, *ibid.*
[231]Article 12, *ibid.*
[232]Article 13, *ibid.*

or to any other authority. For the purpose of payment of wages the days spent in travelling to and from the place of work should be counted as working days.[233]

Nothing should prevent ordinary rations being given as a part of wages, such rations must be at least equivalent in value to the money payment they are taken to represent, but deductions from wages shall not be made either for the payment of taxes or for special food, clothing or accommodation supplied to a worker for the purpose of maintaining him in a fit condition to carry on his work under the special conditions of any employment, or for the supply of tools.[234]

The Convention sets out that the compensation for accidents or sickness, relating to workmen arising out of the employment of the worker and any laws or regulations providing compensation for the dependants of deceased or incapacitated workers which are or should be in force in the territory concerned should be equally applicable to persons from whom forced or compulsory labour is exacted and to voluntary workers.[235]

The obligation on any authority employing any worker in forced or compulsory labour is to ensure the subsistence of any worker who, by accident or sickness arising out of his employment, is rendered wholly or partially incapable of providing for himself, and to take measures to ensure the maintenance of any persons actually dependent upon such a worker in the event of his incapacity or decease arising out of his employment.[236]

The ILO adopted the Forced Labour Convention No.29 of 1930 to prevent the practices which had been carried out by colonial State armies in the past. This can be compared to an Islamic State where no slavery or forced labour of peoples of a conquered State was allowed and conquered peoples had their human rights and dignity preserved.

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[233] Article 1 ٤, *ibid.*
[234] Article 1 ٤, *ibid.*
[235] Article 1 ٥, *ibid.*
[236] *Ibid.*

It is worth mentioning that Islamic Shari'a has not defined forced labour in the same way that modern law defines it. However, Islamic Shari'a set down rules which the Islamic armies followed during the life of Prophet Mohammed. The Prophet, recommended armies should not kill women, children, old men and the disabled. He also ordered animals, trees and priests in their cells to be spared from death, because they could not participate in wars against Muslims.[237] It is narrated by Ibn Abbas that the Prophet said, "Go in the name of Allah and fight who disbelieved in Allah. Do not betray, steal, mutilate, do not kill children, or those in hermitages".[238]

To summarize, Islamic armies when entering a city asked the conquered people if they would like to embrace Islam. If they chose to become Muslims they were given Islamic rights and obligations, however, if they refused and preferred to keep their religion of birth, then they were expected to pay alms ("*Jaziah*").[239] If the tax was

[237] As narrated by Buraida: "When the Prophet appointed someone as a leader of an army, or detachment, he would teach him to fear Allah and to be good to the Muslims who were with him. He would say, 'Fight in the name of Allah and in the way of Allah. Fight against those who disbelieve in Allah. Make a holy war, do not embezzle the spoils; do not break your pledge; and do not mutilate the dead bodies; do not kill the children. When you meet your enemies who are polytheists, invite them to three courses of action. If they respond to any one of these, you also accept it and withhold yourself from doing them any harm. Invite them to accept Islam; if they respond to you, accept it from them and desist from fighting against them. Then invite them to migrate from their lands to the land of Muhajirs and inform them that, if they do so, they shall have all the privileges and obligations of the Muhajirs. If they refuse to migrate, tell them they will have the status of Bedouin Muslims and will be subjected to the Commands of Allah like other Muslims, but they will not get any share from the spoils of war or Fai' except when they actually fight with the Muslims against the disbelievers. If they refuse to accept Islam, demand from them the *Jizya*. If they agree to pay, accept it from them and hold off your hands. If they refuse to pay the tax, seek Allah's help and fight them. When you lay siege to a fort and the besieged appeal to you for protection in the name of Allah and His Prophet, do not accord to them the guarantee of Allah and His Prophet, but accord to them your own guarantee and the guarantee of your companions for it is a lesser sin that the security given by you or your companions be disregarded than that the security granted in the name of Allah and His Prophet be violated. When you besiege a fort and the besieged want you to let them out in accordance with Allah's Command, do not let them come out in accordance with His Command, but do so at your own command, for you do not know whether or not you will be able to carry out Allah's behest with regard to them'". See Al Monthiry Zki Aldean, *Muslim Brief*, 1st Edition, (Kingdom of Saudi Arabia: Dar Al-Salam Publication, 1996) pp 572-573.

[238] Omari Mohammed Buraik Abumaila, *Brigades and Prophetic Delegates Around Mecca and Al Medina Criticizing Analytic Studies*, 1st Edition, (Kingdom of Saudi Arabia: Ibn Al Jowzi Publication, 1996) pp 66-67.

[239] The payment of social insurance is considered to be a fundamental Islamic labour standard and includes non-Muslims who live in Islamic countries. It was narrated Omar bin Al-Khatthab "saw a Jewish beggar and asked him, 'What makes you do this?' The Jewish beggar replied, 'Tribute, need, and age'. Then, Omar gave him some money and took him to the treasurer and said, 'Look at him and his equals, I swear to Allah that we have not been just with him, for we have consumed his age and let him down when he is old'. Shaker Mahmoud, *Islamic History (The Islamic Law)*, 1st Edition, (Beirut: The Islamic Bureau, 1986) pp 89-90.

paid, then the Muslims would stop fighting with them. As Allah said, "To you be your way, and to me mine".[240]

"In the countries the Muslims conquered they did not force the people to work for the army, and civilians were safe in Islamic countries".[241] It is narrated by Abdullah Bin Omar that the Prophet said, "Whoever kills a person with whom we have a treaty will not even come close enough to smell its scent and its scent can be found at a distance of forty years travel".[242] Jowaira bin Qudama Al-Tamimi also said he heard Omar bin Al-Khatthab talk about his will, "I recommend to you the pledge of Allah and your Prophet, and your children's livelihood".[243]

The Bahrain legislature considered the possibility that the government, or its employees, could impose compulsory or forced labour upon its citizens, which was the central idea of ILO Convention No.29 of 1930. The Penal Code 1976 has criminalized ILO Convention No.29 of 1930 by stating that civil servants or any other public sector employees who subject anyone to forced labour or who withhold wages, in whole or in part is liable to imprisonment and/or a fine.[244]

It is worth noting that the non-payment of wages can be considered to be a form of forced labour according to the Labour Law 1976 as amended and as provided by the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons 2000. The Labour Law 1976 considers the non-payment of wages to be a form of trafficking in people because the victims are obliged to work in inappropriate circumstances or semi-slavery to ensure the payment of their retained wages.

The Penal Code 1976 does not however define forced labour and judges will have to look to international conventions to fill in the gaps in the Penal Code 1976. Finally, subjecting someone to forced labour also results in other crimes under the Penal Code 1976 such as false imprisonment and kidnapping.

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[240] *Al Kafirun* (Non Believers) 6.
[241] Shaker Mahmoud, *op cit,* pp 89-90.
[242] Al Zubaidi Zain Alden Ahmed, *op cit,* p 618.
[243] Al Gazali Mohammed, *op cit,* pp 26-34. Also see Shaker Mahmoud, *op cit,* pp 84-85.
[244] Article 198 of the Penal Code 1976.

3-1-1-3 Member States' Obligations

To insure the implementation of the ILO Forced Labour Convention No.29 of 1930 very important obligations are imposed by the ILO Conventions on the member States which have ratified them. The Convention requires Member States which ratify the Convention to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.[245]Bahrain has fulfilled this obligation by prohibiting forced labour in under the Bahrain Constitution.

In addition the Convention provides that adequate measures shall in all cases be taken to ensure that the regulations governing the employment of forced or compulsory labour are strictly applied, and to ensure that the regulations are brought to the knowledge of persons from whom such labour is exacted.[246] By prohibiting forced labour there was no need to ensure that the regulations governing the employment of forced or compulsory labour are strictly applied. Furthermore, Bahrain imposes penalties by law which should be adequate and strictly enforced.[247] In addition, the Convention applies to the territories placed under Bahrain's sovereignty, jurisdiction, protection, suzerainty, tutelage or authority.[248]

Bahrain Law needs to define forced labour, slavery and the slave trade before it can be said that Bahrain fully implements the Forced Labour Convention No.29 of 1930.

3-1-2 Later Conventions Regarding Slavery and Forced Labour

In the middle of the twentieth century, at the end of the age of military colonialism, economic or social bondage which is a type of forced labour appeared internationally, and was imposed for political or ideological purposes. This was contrary to the Philadelphia Declaration of 1944,[249] which clarified that, "All people have the right to work for their material luxury and spiritual improvement in circumstances that provide freedom, dignity, economic security, and equivalence of chances". In addition the International Universal Declaration for Human Rights in 1948 clarified that

[245]Article 1 of the ILO Convention No.29 of 1930.
[246]Article 24, *ibid.*
[247]Article 25, *ibid.*
[248]Article 26, *ibid.*
[249]Article 2(A).

slavery was not permitted by anyone to anyone. It also confirmed the right to choose one's job.[250]

For that reason the UN adopted the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956.

Article 1 provides that:

"Each of the State Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in Article 1 of the Slavery Convention signed in Geneva on 25 September 1926:

(a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;

(b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;

(c) Any institution or practice whereby:

(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or

(ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or

(iii) A woman on the death of her husband is liable to be inherited by another person;

[250]Articles 4 and 23.

(d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to "the exploitation of the child or young person or of his labour".

The UN Supplementary Convention encouraged the ILO to adopt Convention No.105 of 1957.[251] The ILO used this Convention to ban new forms of forced labour and included them in Article 1 which provides that:

> "Every member country in the International Labour Organisation ratifying this Convention is obligated to ban the forms of compulsory or forced labour and not to follow it as,
>
> A means of political imposition or guidance, a punishment for embracing political opinions or opinions which clash belief-wise with the present political, economic, or social system, or a punishment for declaring these ideas.
>
> A means of gathering workers or using them for economic development purposes.
>
> A means to discipline workers.
>
> A punishment for participating in strikes.
>
> A means of racial, social, national, or religious discrimination".

The clearest implementation of this ILO Convention can be seen in the Myanmar case where,

> "The government imposed forced labour on minorities, women and children and persons unsuitable for work. Forced labour was imposed to build and maintain the camps and also in other jobs to support the army, working in agriculture, wood chopping, and other projects carried out by the authorities or the army, and the maintenance and building of the railway. Forced labour prohibited farmers from farming and children from going to school".[252]

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[251] 167 countries have ratified this Convention. See the ILO's website at <http://www.ilo.org/ilolex/english/newratframeE.htm>.

[252] *Global Report Following from the ILO Declaration on Fundamental Principles and Rights at Work, Stopping Forced Labour*, (Geneva: the International Labour Office, 2001) p 51. For more details, see *Forced Labour in Myanmar (Burma), report of inquiry appointed under Article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of Forced Labour*

This thesis will now compare ILO Convention No.105 of 1957 with the Islamic Shari'a and will examine the application of both the convention and the Islamic Shari'a under Bahrain law.

Whilst Bahrain has ratified the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956, this is not considered to be one of the ILO Fundamental Conventions and will not be discussed in this thesis.

Article 1 paragraphs (2), (3) and (4) of the ILO Abolition of Forced Labour Convention No.105 of 195٧, are enforced by Islamic Shari'a, which established a protocol or rule for the treatment of slaves. This means that any act imposing forced labour, as set out in the above paragraphs, is not permitted because it contradicts Islamic Shari'a. Article 1(1) and (5) prohibited imposing forced labour as a consequence of embracing political opinions or opinions which clash with current political, economic, or social systems, or as a way to impose racial, social, national, or religious discrimination.

Islam did not distinguish between people on any grounds as can be seen through the words of Allah, "O' you men! Surely We have created you of a male and a female, and made you tribes and families that you may know each other; surely the most honourable of you with Allah is the one among you most careful (of his duty); surely Allah is Knowing, Aware".[253]

Preventing distinctions on any grounds means that the fundamental importance in Islam is freedom, and consequently Islam allows all personal rights, including political, economic and opinions to be followed. However there is one condition, which is that while in an Islamic country the religious practice will be Islam. Thus, Islam protected these rights and did not impose any forced labour on any person.

Convention 1930, No. 29, (Geneva: The International Labour Organization Office [official bulletin]), pp 68-74.

[253] *Al-Hujraat* (the Private Apartments, the Inner Apartments) 13.

Bahrain Law implements the ILO Abolition of Forced Labour Convention No.105 of 1957 by means of the Bahrain Constitution, which provides that compulsory work cannot be imposed on any person except in the cases specified by Law for national exigency and for matters considered to be pursuant to a judicial ruling.[254] However, the imposition of forced labour under Article 1 of the Convention is not considered to be national exigency nor a matter pursuant to a judicial ruling. Accordingly, the acts described in Article 1 of the Convention have not been criminalized under Bahrain law and any prosecution under the Constitution would fail as Bahrain has no law penalizing these acts.

3-1-2-1 Member States' Obligations

Member States who ratified ILO Convention No.105 of 1957 are under the obligations set out in the Convention. This obligation is to take effective measures to secure the immediate and complete abolition of forced or compulsory labour.[255]

Bahrain has ratified the Abolition of Forced Labour Convention No.105 of 195Y by Decree No.7 of 1998. Bahrain has an obligation under this ratified Convention to incorporate them into domestic law. Thus the crimes set out in Article 1 should be added to the Penal Code 1976 as Bahrain is obliged to take effective measures as it has ratified the Convention. The text of the Bahrain Constitution does not meet Bahrain's ILO obligations and Bahrain must incorporate the Convention into law.

The Bahrain government has depended upon the ratifying Royal Decree to incorporate this Convention into domestic law but has forgotten about Article 20 of the Bahrain Constitution which provides that no punishment or crime should be imposed without law. Thus a judge cannot impose any penalties recommended by the Conventions. Accordingly, Bahrain needs to draft a law which implements the Conventions.

3-1-2-2 Modern Forms of Slavery

Trafficking in persons and the economic exploitation of workers from developing countries are two new forms of slavery which have arisen as a result of globalization and the movement of workers.

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[254] Article 13(C) of Bahrain Constitution.
[255] Article 2 of ILO Convention No.105 of 1957.

3-1-2-2-1 Trafficking in Persons

A modern form of slavery has appeared in the world; the trafficking of people and domestic workers. The international community has paid much attention to this form because,

> "The right to freedom from slavery was the first human right to be protected by international treaty. That freedom also came to form one of the peremptory norms of international law *"jus cogens"* which meant that every nation State was bound by the principle, irrespective of whether it was a party to a relevant treaty. Additionally, each State was deemed to be affronted be slavery and therefore to have an interest in its suppression, with the consequence that, for example, interference with the interest of another State (such as seizure of slave ships) was permissible".[256]

Accordingly, the UN has adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime of 2001. In addition there are regional Conventions to abolish trafficking in persons such as the European Convention on Human Rights ("ECHR").

The following Conventions were adopted by the ILO to regulate domestic labour: the Forced Labour Convention No.29, 1930; the Abolition of Forced Labour Convention No.105, 1957; the Minimum Age Convention No.138, 1973; the Worst Forms of Child Labour Convention No.182, 1999; the Freedom of Association and Protection of the Right to Organize Convention No.87, 1948; the Right to Organize and Collective Bargaining Convention No.98, 1949; the Equal Remuneration Convention No.100, 1951; the Discrimination (Employment and Occupation) Convention No.111, 1958; and the Workers with Family Responsibilities Convention No.156, 1981.

Furthermore there were several Recommendations: the Minimum Age Recommendation No.146, 1973; the Worst Forms of Child Labour Convention

[256]Drew Sandhya, *Human Trafficking: A Modern Form of Slavery*, (2002) 4, European Human Rights Law Review 481. (E.H.R.L.R.2002, 4).

Recommendation No.190, 1999; the Equal Remuneration Recommendation No.90, 1951; the Discrimination (Employment and Occupation) Recommendation No.111, 1958; and the Workers with Family Responsibilities Recommendation No.165, 1981.

The Director General of the ILO issued several reports in accordance with the ILO Declaration's follow-up mechanism,

> "The 2001 report identified domestic labour as one of the main instances of forced labour today. The 2005 report explained migrant and domestic workers are especially vulnerable to forced labour because of unprotected nature of there work and the highly personalized relationship between the worker and employer. Domestic works take place in the private household, which is typically excluded from labour market regulation".[257]

Domestic workers in Bahrain are excluded by Article 2 from the protections afforded to workers by the Labour Law 1976 but are covered by the Civil Law 2001 which regulates contracts. The Civil Law 2001 does not include any conditions similar to the Labour Law 1976 as amended. Accordingly, Bahrain should introduce a separate law for domestic workers, which would include conditions similar to those in the Labour Law 1976 but which would take into account the special relationship between a domestic worker and his employer.

The following statement of principle set out by the Supreme Court of India in 1982, in a case involving construction workers working on the Asiad Sports Complex *"Asiad Case"*, will help to explain the reasons behind considering domestic workers to be a form of forced labour. The *Asiad Case* held that, "Any factor which deprives a person of a choice of alternatives and compels him to adopt a particular course may properly be regarded as 'force' and if labour or service is compelled as a result of such 'force' it would be forced labour".[258]

Bahrain protects expatriate workers from being trafficked and has ratified the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons of 2000.

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[257]Mantouvalou, Virginia, *Servitude and Forced Labour in the 21st Century: the Human Rights of Domestic Workers*, (2006) 35(4), Industrial Law Journal 395. (I.L.J.2006, 35(4)).
[258]Drew Sandhya, *op cit,* p 481.

Under US Law the US State Department must prepare an annual report on Trafficking in Persons. In 2002 the USA categorised Bahrain as a tier 3 country (worst performing countries). Because of this rating Bahrain established an inter-governmental task force to work on improving its rating. The task force explained to the US that Bahrain Law does protect expatriate workers, especially domestic workers, which the US government thought were not covered by any legislation. The task force explained that because domestic workers were excluded from the Labour Law 1976 that their contracts were governed by the Civil Law 2001. If a problem occurs they are able to file an Application of Dispute with the Ministry of Labour, under Article 155. The Ministry of Labour transfers the cases to the Labour Court within two weeks if the dispute cannot be resolved within this period.

In addition, the task force distributed flyers for expatriate workers at all the entry points to Bahrain (the airport, sea ports and the Saudi-Bahrain causeway). This flyer contained important numbers and information relevant to expatriate workers in Bahrain. The task force also distributed leaflets which described the laws protecting expatriate workers to all Bahrain Embassies in foreign countries and foreign embassies in Bahrain. Additionally, the Ministry of Labour provides a telephone hot-line for trafficking-in-persons which gives advice to all workers on places they can go to help solve their problems. The Ministry of Social Affairs, along with the Ministries of the Interior and Foreign Affairs, has built a shelter for victims. All of these actions raised Bahrain to tier 2 in 2004.[259]

With regard to domestic workers, the Committee of Experts has appointed an Individual Direct Request to Bahrain concerning Convention No.29, Forced Labour of 1930:

> "According to Article 25 of the Convention: The Committee has taken note of information on the conditions of recruitment through recruitment agents and the working conditions of foreign female domestic workers (who have purportedly been required to do domestic work other than that initially provided for in the contract, been paid less than the wages agreed upon, and

[259]The author represented the Ministry of Labour and Social Affairs (before it was divided into two ministries) on the task force.

been subjected to long working hours, and sometimes to beating and aggression).

According to this information some of these workers would be held against their will; if they try to escape, anyone protecting them, particularly by hiding them, is guilty of an offence.

The Committee refers to its observation on the Convention, in which it notes the promulgation of a new Article 302(B) of the Penal Code which provides that, without prejudice to the provisions of section 198 of the Code, anyone who subjects workers to forced labour for a specific job or who withholds without due cause the whole or a part of their wages is liable to imprisonment and/or a fine.

The Committee would appreciate if the Government would provide information on the practical effect given to this provision and on the measures taken or contemplated to ensure the protection of domestic workers against all forms of exploitation, including information on police action, on legal proceedings engaged and on penalties".[260]

There is no law in Bahrain which prohibits a domestic worker from leaving an employer, but if a domestic worker does leave then they cannot take up employment elsewhere unless the employer agrees to transfer their work permit to another employer. In addition there are a few cases where the Ministry of Labour can transfer the work permit without the approval of the original employer as set out in Order No.21 of 2001. This is because the employer issued the work permit which permitted entrance in to the country. An alternative to this is for the domestic worker to reside in the country illegally and consequently work illegally. Another alternative is for the domestic worker to buy an air ticket in order to return to their home country. The employer is not responsible for the return ticket, except at the end of a contract (normally two years). In addition, Article ٣٠٢(B) of the Penal Code 1976 is not

[260]<http://www.ilo.org/ilolex/english/newcountryframeE.htm>.

If the domestic worker's wages are withheld by their employer, the domestic worker is entitled to file a case with the Ministry of Labour. Under the Labour Law 1976 the Ministry will examine the papers and transfer it to the Labour Court if it is not solved, at the Ministry's premises, between the employer and employee. If the domestic workers do choose this option then there work permit will be come invalid and they must leave the country because they are now illegal residents and their embassies are supposed to follow up their case in their stead. Evidencing whether or not a domestic worker has received wages is difficult as usually there are no verifiable records kept and no movements through bank accounts. This is a problem when domestic workers accuse their employers of withholding their wages and use this as an excuse to leave their lawful employ and stay illegally in Bahrain in order to follow-up their cases in the courts. This has helped to create a so called free visa market in Bahrain which acts as a cheap pool of illegal labour which is often exploited as the illegal workers have no rights. In order to tackle this practice the Ministries of Interior and Labour should act together to trace and deport these illegal workers while allowing the workers' embassies to follow up on their claims.

In addition, the UN Human Trafficking Expert gave a mixed report after a fact-finding visit to Bahrain in November 2006. In the report Sigma Huda, said that:

> "A significant number of people, including women, are trafficked into the country to work in private homes, hotel rooms or labour camps, and their plight remains virtually unknown to a large part of society.
>
> She also found that victims' access to justice over complaints of mistreatment is lacking. Domestic workers who flee situations of exploitation and abuse are frequently re-victimized. In many cases these victims end up in a detention centre before being deported, while the perpetrators enjoy impunity.
>
> The government's creation of a safe house to accommodate victims of abuse and exploitation was a positive development, but viewing the magnitude of the problem, Bahrain needs to assure that more such safe houses are created. Ms.

> Huda was particularly concerned about the estimated 300,000 domestic migrant workers, about 50,000 of them women, and also about girls recruited by agencies in countries of origin and in Bahrain that falsify the ages of minors. In light of the fact that some "entertainers" or "artists" brought into Bahrain end up in prostitution".[261]

In the light of the above-mentioned UN Report I recommend that Bahrain should create more safe houses, and act through diplomatic channels to ensure that agencies in the countries of origin cannot falsify the ages of minors who are brought to Bahrain as domestic workers. However, I believe that the UN Report did not rely on official sources for its statistics, and I believe that the Penal Code 1976 adequately criminalizes prostitution and abuse.[262]

In June 2007 the USA re-categorised Bahrain as a tier 3 country, the US Report stated that:

> "Bahrain made no discernible progress on preventing trafficking this year. The government initiated no new campaigns to prevent trafficking, but continued to distribute multilingual brochures on workers rights and resources to incoming workers. The government should insure that recruitment agencies and employers aware of the rights of foreign workers to prevent their abuse.
>
> The government of Bahrain does not fully comply with the minimum standards for the elimination of trafficking and is not making significant efforts to do so. In addition it failed to enact a comprehensive anti-trafficking law and did not provide evidence of prosecuting any cases of trafficking for involuntary servitude or forced prostitution. The government should significantly increase investigations and criminal prosecutions of labour traffickers, sex traffickers, and recruitment agencies complicit in trafficking.

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[261] <http://www.un.org/apps/news/story.asp?newsID=20453&Cr=bahrain&Cr1=>.
See also,
<http://www.unhchr.ch/huricane/huricane.nsf/view01/58FAF1D58BE8FAAFC1257219005C3225?opendocument>.

[262] For more details see chapter 3 section 3.

Foreign victims of sex trafficking receive no protection from the government, but are directly processed for deportation. Local NGOs supporting trafficking victims in informal shelters did not receive any government funding.

The government does not encourage victims to assist in the prosecution of their traffickers. The government should institute formal victim identification procedures, allow victims to refer themselves to the shelter, and also permit victims of sex trafficking access to the facility for protection".[263]

Bahrain adopted a comprehensive anti-trafficking law in 2008;[264] this law is considered the most recent and best developed in the Arab world. Article 1 of the law defines trafficking in persons. This definition complies with the definition contained in Article 3 of the Protocol. This is a great strength as Bahrain does not have to rely upon the Protocol to fill in any gaps in the law

In addition the law raises the age of majority to 18 years old and imposes penalties on any person (natural or legal) who commits the crime of trafficking in persons. These penalties are more severe if the crime is:

1. is committed by criminal gang;
2. if the victim is under 15 years of age, or female, or a person of special needs;
3. if it is a transnational crime; and
4. if the accused is a member of the victim's family or the victim is in his custody, or he has authority over the victim or servant.

The law complies with the Protocol by ensuring that: the victim has a translator available to him so that he can understand his legal situation; the victim is considered as a victim and not as a criminal; the victim is provided with medical care, shelter and security; and that the victim's physical, social, mental and legal condition are considered in the handling of his case. The law provides for the victim's circumstances to be evaluated by an Evaluation Committee, so that the Public

[263]<http://www.state.gov/documents/organization/82902.pdf>.
[264]Law No.1 of 2008.

Prosecutor may decide whether the victim needs to reside in Bahrain during the prosecution, and has created a National Anti- trafficking in Persons Committee.

Whilst the law maybe the best in the Arab world it is as yet untested and Bahrain can only truly comply with its ILO obligation once the law has been implemented and traffickers tried and convicted.

1-2-2-2 Immigrant Workers

"The States of the Arabian Gulf depend on immigrant workers and in some States expatriate labour comprises up to 90% of the labour force".[265] Such high percentages of foreign labour is a demographic time bomb as in many Gulf States the local population is out numbered by expatriates which is leading to social, economic and religious tensions. However, the Gulf States are economically dependent on these workers as they often work in low paid, untrained, menial and labour intensive jobs which the local population to not want to do.[266]

Bahrain like its Gulf neighbours depends upon unskilled expatriate labour which due to regional economic disparities is cheaper to employ than Gulf nationals.[267] This is so even though expatriate labour is protected by the Labour Law 1976 and the Civil Code of 2001.

Although these unskilled jobs are badly paid' expatriate workers, especially those from Asia still earn more than in their own countries which enables them to remit monies to their family at home.[268]

In order to deal with this imbalance in the work force, and to ensure that employment of Bahraini nationals increases and that where needed specialised expatriate labour can be recruited the Bahrain Government cancelled its policy of imposing

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[265]<http://hrw.org/arabic/docs/2003/09/19/uae10782_txt.htm>

[266]In 2007 thousands of Asian building workers in Dubai went on strike for better wages and improved working conditions. The Dubai authorities deported 1000 workers, of whom 50 workers committed suicide because of the bad financial conditions in their home countries. Al Ayam Newspaper, No.6795 issued 16 November 2007.

[267]Manpower ratio in Bahrain is 127.121 Bahrainis to 181.200 expatriate's workers, in 2001 statistics. <http://www.cio.gov.bh/pdf/stat/stat2005/11.pdf>.

[268]In 2002 expatriate workers in Dubai transferred US$80 million to their home countries. <http://hrw.org/arabic/docs/2003/09/19/uae10782_txt.htm>.

Bahrainisation quotas on employers in favour of introducing a Labour Market Regulatory Authority ("LMRA"). The LMRA is tasked with accurately assessing the numbers of Bahraini and expatriate workers in the workforce and ensuring that high work permit fees will make the employment of Bahraini nationals more commercially attractive to employers.

In parallel the Ministry of Labour has established a programme for training Bahraini nationals so that they have the required skills' sets to meet the needs of employers.

Unfortunately, even with these reforms the exploitation of low paid workers will still take place where there are no job opportunities in their home countries, where racial and religious persecution exists in their home countries, and where regional economic disparities exist which make it attractive for expatriate workers to take up low paid and unskilled jobs in wealthier countries.

3-1-2-3 State Responsibilities

It is important to know what the State is responsible for when it does not apply a ratified ILO Convention, especially when someone sues the State. In *Siliadin v. France* before the European Court of Human Rights ("ECHR"),

> "The applicant mentioned that France was in breach of Article 4 of the European Convention on Human Rights ("ECHR"), for not having effective criminal legislation to combat slavery, servitude, and forced or compulsory labour. The Court emphasised that the 1930 Convention on Forced Labour is of particular relevance when it comes to the interpretation of Article 4(3) ECHR, and Article 2(2) of ILO Convention No.29. The Court noted that the relevant provisions of the Criminal code were mach more limited than Article 4, as there was no clear prohibition of slavery and servitude as such in French criminal law. The provisions were open to many different interpretations. They were neither concrete nor effective, although one of the fundamental values of democratic societies was at stake. France was, therefore, in breach of the ECHR".[269]

[269]Mantouvalou Virginia, *op cit,* p 395.

Recently ILO expertise was used in order to clarify the scope of human rights,

> "The ECHR and the Inter-American Courts in their recent jurisprudence show increasing deference to the ILO, not only by encouraging applicants to turn to the specialist Organisation, but by utilizing ILO expertise in order to clarify the scope of human rights treaties. This is true both in respect of ILO Conventions and Recommendations, and when it comes to decisions of the Committee on Freedom of Association and Committee of Experts on the Application of Conventions and Recommendations. This practice affords a new, binding character to international labour rights, making them potentially justifiable through individual petition procedures, which do not exist in the context of the ILO itself".[270]

Unfortunately Bahrain has no decided cases which can help it in defining its responsibilities. Even so Bahrain must apply the Fundamental Rights at Work even if it has not ratified a specific convention as the international community expects ILO Member States to apply these rights.

Conclusion

Bahrain has not met its international obligations with regard to incorporating the ILO ratified Conventions into its domestic laws.

The lack of incorporation and application was due to the Bahrain government depending on the ratification decree or law. This contradicts Article 20 of the Bahrain Constitution which clearly states that no punishment or crime should be imposed without a law. Thus a judge cannot impose any of the penalties set out in the ILO Conventions unless enabling legislation is introduced to incorporate the punishments set out in the ILO Conventions into Bahrain Law. Without such laws Bahrain can not begin to implement the ILO Conventions and thus meet its ILO obligations.

Accordingly, every relevant Ministry should draft laws to incorporate the ratified ILO Conventions as set out in the ILO Declaration into domestic law. This should be done regardless of practices in the Kingdom of Bahrain, because the Conventions put

[270] *Ibid*, p 408.

Bahrain under an obligation to take all effective measures to prohibit and criminalize the acts set out in the Conventions. These measures include effective provisions to define and criminalize such acts. The provisions will be used in the international co-operation and extradition process which requires that the acts should be criminalized in the two counties of extradition.

Section 2

Elimination of Discrimination in the Workplace

Introduction

Equality is one of the basic principles of Islam; divine obligation is intended for all, without exception. Allah states that, "Men, have fear of your Lord, who created you from a single soul. From that soul He created its mate, and through them He bestrewed the earth with countless men and women"[271] and also , "Children of Adam, when apostles of your own come to proclaim to you My revelations, those that take warning and mend their ways will have nothing to fear or to regret".[272]

Islam does not differentiate between languages, colours or races and states that none of them are a cause for disagreement, or reason for discrimination between people, rather they are a reflection of Allah's creativity, "Among his other signs are the creation of the heavens and the earth and the diversity of your tongues and colours. Surely there are signs in this for all mankind".[273] Through Allah's wisdom people come to know and love each other, "Men, We have created you from a male and a female and made you into nations and tribes, that you might get to know one another".[274]

In his last sermon ("*khutbat al wadaa*"), the Prophet indicated Islam does not discriminate between people because of their race, sex or colour. The criteria for discrimination in Islam are piety and good action,

> "All mankind is from Adam and Eve, an Arab has no superiority over a non-Arab nor has a non-Arab any superiority over an Arab; a white has no superiority over a black, nor has a black any superiority over a white, except by piety and good action. All those who listen to me shall pass my words on to others and those on to others again. Be my witness, O' Allah, that I have conveyed your message to your people".[275]

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[271] *Al-Nisa* (the Women) 1.
[272] *Al A'raf* (the Heights) 35.
[273] *Ar-Rum* (the Greeks) 22.
[274] *Al Hujarat* (Dwellings) 13.
[275] Rafi Salim bin Muhammad, *op cit,* pp 315 - 320. See also Al Gazali Mohammed, *op cit,* p 14.

Article 2 of the Universal Declaration of Human Rights 1948[276] provides that:

> "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinctions shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self-governing or under any other limitation of sovereignty".

In addition, Article 2(2), of the International Covenant on Economic, Social and Cultural Rights 1966[277] provides for the same principle,

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

These objectives can also be found in regional conventions.[278]

The Declaration of Philadelphia, adopted by the International Labour Conference in 1944 represents a predominant part of the ILO Constitution. It provides that, "All people, whatever their races or beliefs might be, have the right to work for their material comfort, moral progress in conditions guaranteeing their freedom, dignity, economic security, and equal opportunity".

The ILO Declaration "re-emphasized the constitutional principle relating to the opposition of discrimination at work and employment and thus highlighted

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[276]Bahrain joined UN in 21st September 1971, see <http://www.un.org/arabic/aboutun/unmember.htm>.
[277]Bahrain ratified the Covenant in 16th July 2007 by the law No. 10 of 2007.
[278]Such as the ECHR, which provides in Article 14 that: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".

international opposition to discrimination in the world of work by promoting equality both in treatment and in opportunity".[279]

Islam granted equality to all, without discrimination. This equality embraces employment and occupations which is one of the work standards in the title of this thesis, and is reflected in ILO Convention No.100 of 1951, Equal Remuneration and Convention No.111 of 1958, Discrimination (Employment and Occupation).

Bahrain ratified ILO Convention No.111 on the 26th of September 2000, by Decree No.11 of 2000. Accordingly Bahrain is obliged by PIL rules to implement and apply the rights set out in the ratified Convention. Bahrain is also obliged by the ILO Declaration to apply the principles set out in Convention No.100 of 1951 on Equal Remuneration which it has not ratified.

3-2-1 Discrimination (Employment and Occupation) Convention No.111 of 1958

Article 1(1) of Discrimination (Employment and Occupation) Convention No.111 of 1958 defines discrimination as:

"a. Any distinction, exclusion, or 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;

b. Such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employer and worker organisations, where such exist, and with other appropriate bodies".

ILO Convention No.111 made exceptions in some cases and did not deem them as instances of discrimination. Article 1(2) provides, "Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination".

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[279] *International Report Concerning the Follow Up to the Declaration of the International Labour Organisation Related to the Basic Principles and Rights at Work. Time of Equality at Work*, (Geneva: International Labour Bureau, 2003) pp 1-2.

Accordingly, Article 18 of the Bahrain Constitution provides that, "All people are equal in human dignity, and all citizens are equal before the law in rights and duties, without distinction of any kind such as sex, origin, creed or belief".

The ILO Committee of Experts has addressed an Individual Direct Request concerning ILO Convention No.111 to Bahrain:

> "The Committee notes the Government's clarification in respect of Article 18 of the Constitution that the term 'origin' is intended to cover both social and national origin and that the term 'creed' covers political and religious creed. The Government also reiterates its view that non-discrimination in employment was ensured by the fact that the provisions of the Labour Code are equally applied to all workers, regardless of nationality, sex, religion, political convictions or any other ground referred to in Article 1 of the Convention.
>
> The Committee also notes the Government's indication that a dismissal on discriminatory grounds would be considered as dismissal without legitimate reason under section 110 of the Labour Code. Noting from the Government's report that no cases concerning discrimination in employment or occupation have been brought before the courts, the Committee is of the view that this raises doubt as to the effectiveness of legal protection currently available for work-related discrimination. It also draws to the Government's attention that Article 18 of the Constitution does not prohibit discrimination on the basis of race and colour and that it does not appear to protect non-nationals from discrimination on the grounds listed in the Convention, which may leave the many foreign workers living in the country without legal protection from such treatment".[280]

The comments of the Committee of Experts should be considered and the Labour Law 1976 amended to prohibit discrimination based on race and colour so as to abolish all types of discrimination in Bahrain. Indeed, it would be better if the Labour Law 1976

[280]<http://www.ilo.org/ilolex/english/newcountryframeE.htm>.

was amended to follow the International Declaration of Human Rights 1948 as it is more comprehensive. Finally, even though the Bahrain Constitution acknowledges that there should be no discrimination it does not effectively criminalize all forms of discrimination.

Discrimination has two forms:

"1. Direct Discrimination: If regulations, laws and policies openly exclude workers and do not regard their views because of political opinion, social status, sex, colour or age.

2. Indirect Discrimination: If the conventions and practices, which appear to be neutral, have negative effects on a disproportionate number of a group of people regardless of whether they meet the requirements of the occupation or not".[281]

In conclusion, discrimination is based on race, colour, sex, religion, political opinion, national extraction and or social origin. It may also embrace any other forms of discrimination which an ILO Member State considers important enough to be included in its laws, following discussions with the Member State's employer and employee organisations.

Firstly, this section will deal with instances of direct forms of discrimination, as included in the ILO Convention and to see if the Islamic Shari'a, in general, deals with such forms. Secondly, the section will assess Bahrain Law to see if it effectively ensures that there is no discrimination in occupation and employment as is required by ILO Convention No.111.

The section will be divided into four sub-sections following the same format as used in ILO Convention No.111. The first sub-section will include discrimination based on race, colour, national extraction and social origin. The second sub-section will deal with discrimination based on sex. The third sub-section will concentrate on religion and the fourth sub-section will assess political opinion.

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[281] *International Report Concerning the Follow Up to the Declaration of the International Labour Organisation Related to the Basic Principles and Rights at Work. Time of Equality at Work*, (Geneva: International Labour Bureau, 2003) p 20.

It is worth mentioning that there are more grounds for discrimination set out in the laws of several ILO Member States, e.g. it is often illegal to discriminate on the basis of handicap or age a form of discrimination not found in Bahrain. However in order to remain faithful to the title of the section it will only address the concerns of ILO Convention No.111. Also the section will only study direct discrimination[282] as reflected in the law making process. The study of indirect discrimination will be excluded as this relates to practices which are hard to prove in Bahrain, unless adjudicated upon by the courts and to date there have been no cases based on indirect discrimination brought before the Bahrain courts.

The subject of discrimination is very wide ranging and needs separate and additional research because of it is richness and divergence and to study how each ILO Member State has legislated against discrimination within its jurisdiction is outside of the scope of this thesis.

3-2-1-1 Race, Colour, National Extraction and Social Origin

Islamic Shari'a does not divide people. As mentioned above the Prophet said in his Last Sermon (*"khutbat al wadaa"*):

> "An Arab has no superiority over a non-Arab, nor a non-Arab has any superiority over an Arab; also a white has no superiority over a black, nor does a black have any superiority over a white except by piety and good action".

In the same sermon he said, "All mankind is from Adam, and Adam is from earth". This has been interpreted as proving that the Prophet does not discriminate between people, whether by race, colour, national extraction or social origin. Allah also says, "And for all, there will be degrees according to that which they did".[283] This text clarifies that work is measured in degrees. It is narrated, "That Abu Dhar Al-Gafari argued with a Negro and said 'You are the son of a black woman'. When the Prophet

[282] As stated earlier, the Member States can embrace any other areas they consider important enough to be included in their laws such as: pregnancy, sexual harassment, transsexuals or sexual orientation.
[283] *Al Ahqaf* (the Sand Dunes) 19.

heard this he said 'that's enough; don't compare the son of a white woman with the son of a black woman unless it is with good work'".[284]

Discrimination also includes depriving an individual from earning money from work they have performed, it also means preventing people from doing certain jobs. During the lifetime of the Prophet, ex-slaves and Mawalis[285] were amongst the Prophet's companions and consultants and occupied high positions in society. The problems faced by ex-slaves at that time are referred to in verses 52-53 of *Al Ana'am* (the Cattle- Livestock).[286] When the leaders of Kureish wanted the Prophet to dismiss the ex-slaves and Mawalis as a condition for their embracing Islam, the Prophet refused to do so. In another reference to the problems faced by ex-slaves:

> "Amru Ibn Al A'as sent Ubada Ben Al-Samit as the head of a delegation to negotiate with the Muqawqis, the Great Copt, and the Muqawqis were angered by Ubada's colour and size and asked for someone else to represent the party. The party refused the request by saying he was their master and had been chosen by their governor, so they must obey him. The Muqawqis was astonished at the thought that a black man could be seen to be the best within the delegation. When they asked questions, relating to this, the delegation answered that colour was not a criteria by which they determined a man's intelligence or skill, and in Islam the evaluation of people relies only on morals and talents".[287]

In another story:

> "Zeid, a slave liberated by the Prophet, was appointed as commander of the army and also married Zainab, the Prophet's cousin. Eventually their son Ussama occupied the same employment position and was one of the Prophet's companions, in the same manner as Umar and Abu Bakr. In addition, the first Muezzin was Bilal the Prophet's ex-slave and Ali Ibn Abi Talib, the Prophet's

[284]Al Zubaidi Zain Alden Ahmed, *op cit,* p 31.
[285]Mawali are people who do not belong to any tribe, thus they become members of another tribe which provides protection for them. See Refai Anwar, *Islam in its Civilisation and Systems*, 3rd Edition, (Damascus: Dar Alfikr, 1986) p 23.
[286]"Do not drive away those that call on their Lord morning and evening, seeking only to gain His favour. You are in no way accountable for them, nor are they in any way accountable for you. If you dismiss them, you shall yourself become an evil-doer. Thus have we made some among them a means for testing others".
[287]Al Gazali Mohammed, *op cit,* p 15.

cousin considered his ex-slave, Salman Al Faresi, to be a member of his family".[288]

In addition,

> "During the Caliphate of Umar, Ibn Al Khattab, a man who was a Mawali, asked a Kureishite woman for her hand in marriage but her brother refused to comply with the request simply because the man was a Mawali. Umar intervened by asking the brother why he would refuse a man who had both the best of this present life, money and the afterlife, piety. Umar advised him to accept the man's request if the sister consented, and this he eventually did".[289]

The above stories show that race, colour, national extraction, tribal and social origins did not prevent any one from occupying any job in an early Islamic State. In that case Islam complies with ILO Convention No.111.

Article 18 of the Bahrain Constitution prohibits forms of discrimination in general between all citizens.[290] This article follows the Prophet's Last Sermon and the Universal Declaration of Human Rights 1948. In the same context Article 4 of the Bahrain Constitution provides equality of opportunity for citizens.

With regard to work, Article 13(A) and (B) of the Bahrain Constitution provides "Work is the duty of every citizen, and every citizen has the right to work and to choose the type of work within the bounds of public order and decency and that the State guarantees the provision of job opportunities for it is citizens and the fairness of work conditions".

It is clear from these two articles that Bahrain does not countenance discrimination between people on the basis of race, colour or social origin. The word "citizens" in the Bahrain Constitution maintains equality between all nationals. It must also be stated

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[288]Rafi Salim bin Muhammad, *op cit,* p 178.
[289]Al Salabi Ali Muhammed, *op cit,* p 173.
[290]This Article does not interpret and organise the Law in the same way as it is organised in the English Race Relations Act 1976.

that the citizens of Bahrain are a mixture of races,[291] social origins and colours. On other hand this Article discriminates on the basis of National Extraction, as it mentions citizens instead of persons.

Again the Labour Law 1976 distinguishes between Bahraini workers and expatriate workers. For the national advantage the Bahrain government is attempting to minimize unemployment, and for this reason Article 13 of the Labour Law 1976 provides, every employer has to afford priority of employment to citizens; thereafter to other Arab nationals whenever both are available and possess the capacity and competence as required by the nature of employment.

Further, whenever there is a labour force which is surplus to requirements, employers have to dismiss non-Arab nationals before Arab nationals and citizens, and have to dismiss Arab nationals before citizens provided citizens or Arab nationals possess the competence required for employment.

Accordingly, both the Bahrain Constitution and the Labour Law 1976 contravene ILO Convention No.111.

To give effect to Article 13 the Minister of Labour and Social Affairs issued Order No.7 of 1996 which sets out the percentage of Bahraini workers required to be employed by all companies in Bahrain. This is considered to be a quota.

In addition, Order No.8 of 1994 issued the rules regarding work permits for non-Bahraini workers. This Order provides that an expatriate worker, or in reality his employer, must apply for a work permit. This is not required for Bahraini workers as is set out in Article 3 of the Labour Law 1976 and finally an employer should not employ a foreigner without a valid Work Permit issued by the Ministry of Labour and Social Affairs.

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[291]Many Bahrainis are descended from non-Arab origins. See Al Nabhani Muhammed Khalifa, "*The Nabhani Masterpiece in the History of the Arab Peninsula*", 2nd Edition, (Bahrain: National Library, 1999) pp 152-7.

Article 5(1) of Order No.8 of 1994 requires that expatriate workers should not rival Bahraini workers. This means that if there is a specific job which a Bahraini worker is capable of doing, a non-Bahraini should not be employed to do it.

These Articles discriminate against expatriate workers, however, from the point of view of the Bahrain legislature; the priority is to ensure the employment of citizens. In addition another reason for employing other Arab nationals is because they are members of the Arab League, and are presumed to have the same culture and language as Bahrainis. However, this thinking contradicts ILO Convention No.111, so that it will be necessary to repeal Article 13 of the Bahrain Labour Law 1976. This is especially true with globalisation of the economy. This Article has not, so far, been repealed because of the strength of the Bahrain Workers Federation.

Article 13 will probably be repealed in the next few years because the Bahrain government has established the LMRA. The LMRA has cancelled the Bahrainisation quotas and will gradually cancel the employment limitations currently imposed on expatriate workers, and as a consequence raise the fees for work permits. In real terms this will mean the cost of hiring an expatriate worker will be higher than that of employing a Bahraini. Furthermore, the Ministry of Labour has adopted programmes for training Bahrainis to meet skill shortages in the labour market so that Bahraini workers will be more attractive to employers.

Whilst the viewpoint of the Bahrain Workers Federation towards Article 13 is understandable the fact cannot be escaped that the Labour Law 1976 contravenes the ILO Convention No.111 which has been ratified by Bahrain. This is in contravention of Bahrain's obligation under PIL rules and the Labour Law 1976 should be amended to meet Bahrain's obligations and abolish discrimination on the basis of ILO Convention No.111.

In addition to Article 13 of the Labour Law 1976 working practices in Bahrain also discriminate on the basis of National Extraction. For instance in one of the biggest supermarkets in Bahrain expatriate women workers are forced to work the night shift because Bahraini women workers refused to work the night shift.

Employers in Bahrain not only discriminate between nationals and expatriates but also between expatriates from different regions. For instance in one private hospital in Bahrain nurses from EU countries are paid higher wages than nurses from Asian countries based merely on their National Extraction. This differential is justified by the hospital on the basis that nurses in the EU are paid higher wages in their original country.

Whilst these practices are not enshrined in Bahrain Law they are not illegal and little is done by the Bahrain authorities to stamp them out.

In addition, the Social Insurance Law promulgated by Decree No.24 of 1976 as amended, discriminates on the basis of National Extraction as while Article 2 prohibits discrimination on the basis of nationality and sex, parts of the Social Insurance Law were suspended and do not apply to expatriate workers,[292] thus in practice the Social Insurance Law 1976 only applies to expatriate workers in cases of injury at work.

The Insurance against Unemployment Law promulgated by Decree No.78 of 2006 covers both Bahraini and expatriate workers and provides that unemployment benefit is payable to workers who lose their jobs because of their employer's bankruptcy. The expatriate worker's work permit is automatically transferred to a new employer on him finding alternative employment.

3-2-1-2 Sex

Discrimination against women is one of the most prevalent forms of discrimination throughout the world. From ancient times women have been deprived of their basic rights and have fought since then for equal rights with men as stated earlier. During the Islamic era many tribal and religious customs which considered women as inferior, valueless, creatures disappeared.

In the pre-Islamic era in the Arabian Peninsula, women were deprived of all rights and freedoms. In many cases they are thought of as bringing shame on their family.

[292]Decree No.12 of 1977.

Parents used to kill their daughters[293] for fear they might be enslaved or made mistresses. This practice is forbidden under Islam as Allah says, "...when the infant girl is buried alive, she asks for what crime she was slain",[294] and:

> "When a new born girl is announced to one of them, his countenance darkens and he is filled with gloom. On account of the bad news he hides himself from men; should he put up with the shame or bury her in the earth? How ill they judge! Evil are the ways of those who deny the life to come".[295]

"Women were deprived of inheritances and had no rights against their husbands. Divorce was barred and the number of wives a husband could take was unlimited. Women were objects to be inherited by the eldest son after the death of his father".[296] However, with the coming of Islam women were granted civil, economic, social and political rights. Islam considered women to be equal to men and not inferior to them in any way.[297] The Prophet said, "Women are brothers to men"[298] i.e. he considered them to constitute the same sex referring to Allah's words which said, "Men, have fear of your Lord, who created from a single soul Adam. From that soul He created its mate (Eve), and through them He bestrewed the earth with countless men and women".[299]

Together Allah made men and women the basic cell of the community and together they became the pillars of society. Allah says, "Men, we have created you from a male and a female, and made you into nations and tribes, that you might get to know

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[293]Through burial.
[294]*Al-Takwir* (Cessation) 8-9.
[295]*Al-Nahl* (the Bee) 58-59.
[296]Al Sebai Mustapha, *Woman between Jurisprudence and Law*, 6th Edition, (Beirut: Islamic Library, 1984) p 22.
[297]Some people state a woman is inferior to a man, basing their view on the Koranic verse, "Women shall with justice have rights similar to those exercised against them, although men have a status above women". *Al Baqarah* (the caw) 228. However, Al Azhar argued this refers to the guardianship of men on women according to verse 34 of *Al-Nisa'* (the women)". "Men have authority over women because Allah has made one superior to the other and because they spend their wealth to maintain them. Because guardianship is taking care of the family it is a responsibility from which woman are relieved. The Koran made leadership dependant upon qualifications and not merely upon sex. However, not every man can be a guardian. So if a man cannot take care of the family it becomes the woman's responsibility to do that, for example if she is better qualified than a man. However, it is often the man who is thought to be more eligible for leadership as he knows more about the well being of the family and has the ability to carry out the requirements of maintaining the family by his strength and his money". See also < http://www.elazhar.com/ftawa.htm>.
[298]Al Jundi Muhammad Al Shahhat, *Human Rights in Islam from a Contemporary Perspective*, (Cairo: Arab Revival House) p 61.
[299]*Al-Nisa* (the Women) 1.

one another. The noblest of you in Allah's sight is he who is most righteous (*Al-Taqwa*)".[300] According to Allah, men and women compliment each other, "They are *libas* ('body cover, or screen, or sakan and you enjoy the pleasure of living with them') for you and you are the same for them".[301]

Allah gave women an honourable status within society and made their education a cause for reward and a path to paradise. The Prophet said, "Whoever had three daughters or three sisters, or two daughters or two sisters, and taught and educated them, and feared Allah in them, he will be rewarded absolute paradise".[302] The Prophet also said, "Whoever treats women gently is generous; whoever treats them badly is base".[303]

One of the most important rights granted to women by Islam was the right to employment and to participate in war.[304] Women used to accompany the army, nurse the wounded and support the soldiers. This is proved by Rabi'a Bint Muawwadh who said, "We used to go for invasions with the Prophet, give water to warriors and take back the wounded and the dead to Al Medina".[305] Women also worked in education and *Hissba*, and Umar Bin Al Khattab appointed Al-Shifa Bint Abdullah to be responsible for transactions and market affairs. *Hissba*[306] is a position that is today equal to that of a judge. This was in spite of the contradiction between the jurisprudential views supporting[307] and opposing women taking juridical jobs.[308] The

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[300] *Al Hujurat* (the Chambers) 13.
[301] *Al Baqarah* (the Cow) 187.
[302] Al Jundi Muhammad Al Shahhat, *op cit,* p 62.
[303] *Ibid.*
[304] *Al Jihad* ("a holy war, or holy fighting") was not imposed on woman according to the narration by Aisha. When she asked the Prophet if a woman had to perform jihad he answered her, "A Jihad without fighting; the Hajj and the Umra". < http://www.elazhar.com/ftawa.htm>.
"Because *Jihad* requires patience, strength and effort, women were exempted from carrying it out. However, a woman is allowed to defend herself if she fights with the army. This is supported by the narration in the Sahih of Moslem that Um Muslim took a dagger on Hanin's Day to defend herself from the non-believers". Al Monthiry Zki Aldean, *Muslim Brief,* 1st Edition, (Kingdom of Saudi Arabia: Dar Al-Salam publication, 1996) p 35. See also the fatwa of Al Azhar, concerning the *Jihad* of woman on the following website, < http://www.elazhar.com/ftawa.htm>.
[305] Al Monthiry Zki Aldean, *op cit,* p 54.
[306] Al Jundi Muhammad Al Shahhat, *op cit,* p 66.
[307] "Al Azhar has removed all doubts about the ineligibility of woman to hold judicial posts by shedding light on the following points:
1. What we have in our heritage is no more than Islamic thinking and jurisprudential interpretation that was brought about by religious views. Neither the Koran nor the *Sunnah* explored this issue and it was not raised during the early period of Islam. Consequently, all opinions concerning it are interpretations. Moreover, such issues become part of the business of Islam and not the worship.

political role played by woman in society was reflected through her consultations and her opinions.

Business is required not to contradict the text. Jurisprudential views are the interpretations of jurisprudence that, like fatwas, change with time and place, and the intended legal good. So, a woman's assumption of judicial posts remains a jurisprudential issue that was, and still is, subject to jurisprudential interpretation.

2. The interpretation of ancient jurisprudence about this issue are numerous and various due to the difference in doctrines. The disagreements appeared later and since there was no compromise between earlier generations, there is nothing binding for later ones. Some jurisprudence even denied the possibility of unanimous agreement on such issues. One of these jurisprudents is Ahmad Bin *Hanbal* who said, 'He lied who pretended unanimous agreement'.
3. Even though it is a habit to give judicial posts only to men, it does not mean it was or is forbidden by Islam.
4. In the absence of relevant texts in both the Koran and the *Sunnah*, the decision about this issue is an analogy forbidding a woman from holding the *Imamah*: that is the political and spiritual leader of all Moslems. However Al Azhar has allowed women to become the President of a country and the *Shafiite* jurisprudence agreed to this, that is, except for the dissenters who stipulate the Imam must be male.
5. Manhood was not the sole condition causing disagreement between jurisprudence about a woman's eligibility to hold a judicial post. They disagreed about the interpretation of the judge and illiteracy when compared to the Prophet's literacy. They also disagreed about whether the judge should merely apply the Islamic Shari'a or be knowledgeable about jurisprudence: the Koran, the *Sunnah*, agreement and analogy. *Abu Haneefa* stated the judge must be an Arab *Kureishite*.
6. The position of a judge has, like any other political and legislative position, been subject to change, taking it from the authority of the individual to the authority of the institution. Consequently, it does not matter whether the judge is a man or a woman, what matters most is the functioning of the institution of which the man or the man makes part. The issue is a new one that requires new understanding, new interpretation in the new era of institutional organisation, representing the different authorities and including woman's assumption of judicial jobs". See the fatwa of Al Azhar on the following website < http://www.elazhar.com/ftawa.htm >.

[308]The majority of Arab and Islamic countries do not appoint women in judicial positions because of the incongruity between jurisprudential views. Only Morocco, Tunisia, the Lebanon and recently Bahrain and Egypt have women judges, and it must be stated that Islam is not the state religion of the Lebanon. Recently, Egypt appointed Justice Tahani Al Jebali in the Supreme Constitutional Court. The General Assembly of the same court on 31st December 2002 adopted the appointment of Justices Samiha Al Disiawi and Amani Abu Al Niaas as commissioners in the court. Published in Constitutional Journal, (Egypt: 2003) 1, p 60.

The Kingdom of Bahrain preceded Egypt in appointing women judges to supervise the referendum committees in February 2001. Two women were nominated to supervise the referendum committees for the National Referendum as auxiliaries. They were Shaikha Mariam Bint Hassan Al Khalifa and Shaikha Muneera Bint Abdullah Al Khalifa (the author). Two women were also appointed as heads of the legislative election committees on 24th November 2002. They were Shaikha Muneera Bint Abdullah Al Khalifa (the author) head of General Committee No.11 and Consultant Massouma Abderrasoul head of General Committee No.10. This was authorised by Order No. 11 of 2002 of the Minister of Justice and Islamic Affairs of 6th October 2002, concerning the creation of election and vote counting committees for the legislative elections. This function had never before been assigned to a woman in the Arab world. Recently on 6 of June 2006 by Royal Order No.15 of 2006, Bahrain appointed its first woman judge, Mona Jassim Al Kawari who took her place on the bench of the Civil Court on 25th June 2007.

Relating to this, the ILO presented a request to the State of Kuwait regarding Convention No.111. It was presented by a committee of experts in the session held in Geneva in 2000. See *International Report Concerning the Follow Up to the Declaration of the International Labour Organisation Related to the Basic Principles and Rights at Work. Time of Equality at Work*, (Geneva: International Labour Bureau, 2003) p 19, footnotes 13.

"It is historically proven that Aisha used to give her opinion on religious issues"[309] following the death of the Prophet. She used to narrate the Prophet's sayings (Haddith), for she had been the closest to him. Likewise, "Umar Bin Al Khattab would ask for advice from Al-Shifa Bint Abdullah".[310] Woman in Islam also enjoyed the right to directly challenge the decision of the ruler and give him advice should he err.

It is narrated that Umar Bin Al Khattab decided to limit the amount of a dowry to no more than 40 ounces of gold. His decision was challenged by a woman who based her opposition to this from Allah. In the Koran the dowry is not limited,

> "If you wish to replace a wife with another, do not take from her the dowry you have given her even if it be a talent (qintar).[311] That would be improper and grossly unjust; for how can you take it back when you have lain with each other and entered into a firm contract?"[312]

It was then Umar Bin Al Khattab made his famous statement, "A woman was right in what Umar was wrong".[313] From the above we can clearly clarify Islam does not prevent a woman from working. However, there are conditions, for if she works, she should not neglect her duty towards the care of her husband and children.

The current Bahrain Constitution granted women numerous rights. For the first time they were referred to specifically, unlike the Bahrain Constitution of 1973 ("Bahrain Constitution 1973"),[314] which spoke in general terms[315] causing the interpretative laws that followed to be biased against women. As a direct result woman were deprived of political rights.[316] Article 1(E) of the Bahrain Constitution provides that,

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[309]Al Jundi Muhammad Al Shahhat, *op cit,* p 65.
[310]Al Salabi Ali Muhammed, *op cit,* p 167. See also Al Jundi Muhammad Al Shahhat, *op cit,* p 66.
[311]A large amount.
[312]*Al Nisa* (the women) 20.
[313]Al Salabi Ali Muhammed, *op cit,* p 129.
[314]The Bahrain Constitution of 1973 was adopted after independence and amended after a referendum held in 2001.
[315]Article 1(E) of the Bahrain Constitution 1973, provided that, "Citizens shall have the right to participate in the public affairs of the State and enjoy political rights, beginning with the right to vote, in accordance with this Constitution and the conditions and procedures set forth in the law".
[316]Decree No.10 of 1973 deprived women of their political rights by inserting a condition that voters must be men.

"Citizens, both men and women, are entitled to participate in public affairs and may enjoy political rights including the right to vote and to stand for elections, in accordance with this Constitution and the conditions and principles laid down by law. No citizen can be deprived of the right to vote or to nominate oneself for election, except by law".

Therefore the Bahrain Constitution establishes equality between all citizens, both men and women, especially in the right to hold public office. Article 16(B) provides that, "Citizens are equal in the assumption of public posts in accordance with the conditions specified by law". Accordingly, Decree No.14 of 2002 concerning political rights granted women the political right to stand for election to be the Members of the Chamber of Deputies. Article 1 of Decree No.14 of 2002 provides that:

"Citizens, men and women are entitled to enjoy the following political rights:

1. to vote in any referendum, in accordance with the Constitution.
2. to elect of the members of the Chamber of Deputies. Citizens enjoy the above stated rights by themselves and in the manner and condition provided for in this law".

Furthermore, women have the right to elect members of Municipality councils.[317]

This contrasts with laws issued under the Bahrain Constitution 1973, which deprived women of political rights, specifically through Article 4(A) of Degree No.10 of 1973, which provided that, "Each Bahraini male exceeding 20 years of age has the right to vote for members of the National Assembly."

Changes occurred in 2002 and women were appointed to the Consultative Council[318] by Royal Order No.41 of 2002. This Royal Order states the names of members of the Consultative Council. In addition in 2005, for the first time a woman member of the Council, Ms. Alice Thomas presided over a session because of the absence of the President and the two Vice-Presidents. This was because the internal legislation of the Council states that the oldest member present at the session should preside over the

[317]Article 2 Decree No.3 of 2002 regarding Municipal Council Elections.
[318]6 women out of 40 members representing the different groups of Bahraini Society were appointed by Decree No.41 of 2002 concerning the appointment of the members of the Consultative Council. Before this date only four women had been appointed to the Consultative Council.

meeting, in the absence of the President and the two Vice Presidents. Thus, there was no discrimination on the grounds of sex and religion (she is the only Christian member of the Council). Upon reaching the dais she said, "My presidency of this session, is the living form of the democracy we live in Bahrain every single day".[319] It worth mentioning that Ms. Thomas was appointed as the second Vice-President to the current Consultative Council which was convened in December 2006.

Decree No.42 of 2002 provided women can assume judicial positions[320] and during the reign of H.M King Hamad (both as King and Emir) Bahrain has appointed women to the positions of Ambassadress,[321] Minister,[322] University President,[323]and judge.[324] In addition, Shaikha Haya Bint Rashid Al-Khalifa was "appointed as President of the 16th General Assembly session of the UN. She is the first Arab Muslim woman and only the third woman in the world who has been appointed to this position".[325]

The Labour Law 1976, contrary to ILO Convention No.111, which Bahrain has ratified, contains some discrimination against women. Currently the Bahrain government is considering amending the Labour Law 1976 to explicitly prohibit discrimination against women.[326] The Labour Law 1976 does not contain any articles which explicitly prohibit discrimination against men, and the Bahrain government is

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[319]Alwasat Newspaper, No.956, issued 19 April 2005.
[320]2 women were appointed as public prosecutors by Royal Decree No.5 of 2003. However, no woman was appointed as a judge until 2006.
[321]A Decree was issued on 25th December, 1999 appointing Shaikha Haya Bint Rashid Al Khalifa as Ambassador Extraordinary and Plenipotentiary. Article 1 provided that: "Shaikha Haya Bint Rashid Al Khalifa the Ambassadress at the Council of the Ministry of Foreign Affairs and the Head of the Bahraini Diplomatic Delegation in France is appointed as Ambassador Extraordinary and Plenipotentiary to the French Republic".
[322]Dr. Nada Abaas Hafd was appointed to her position as Minister of Health, by Decree No.43 of 2001. The Minister of Social Affairs, Dr. Fatima al Baloshi, was appointed to her position by Decree No.7 of 2005. Mrs. Lulwa Salah Al Awadhi was appointed Secretary General of the High Council of Woman, which position carries Ministerial Status. In Bahrain, there are female Undersecretaries of State or Deputy Undersecretaries in many ministries.
[323]Article 1 of Decree No.6 of 12 January 2003 provided for the appointment of Dr. Shaikha Mariem Bint Hassan Al Khalifa as President of the University of Bahrain for 4 years from the issue date of the Decree. Before that she was Dean of the Law College.
[324]Mona Jassim Al Kawari was appointed as the first woman judge in Bahrain by Royal Order No.15 of 2006.
[325]Al Ayam Newspaper, No.6300, issued 9 of June 2006, p 1.
[326]English law prohibited discrimination against women by virtue of s1(1)(a) Sex Discrimination Act 1975.

not currently considering amending the Labour Law 1976 to include any such prohibition.[327]

Even though the Labour Law 1976 contains a chapter on women's employment, some of the articles contain discrimination on the grounds of sex. For instance Article 59 provides that,

> "No female shall be employed between the hours of 8 pm and 7 am, except in employment in infirmaries and other institutions for which the conditions of work therein shall be prescribed in an order to be made by the Minister for Labour and Social Affairs".

The Minster of Labour and Social Affairs issued Order No.18 of 1976 with regard to the occupations and occasions when women may be required to work between the hours of 8 pm and 7 am. Article 1 provided that:

> "Women may work at night between 8 pm and 7 am in the following circumstances and occupations, and on the following occasions:
>
> 1. employment in tourist offices, airline companies, airports and wireless and radio communications
> 2. employment in hotels and restaurants
> 3. employment in principal positions and positions requiring confidentiality
> 4. where the work is intended to prevent the occurrence of an accident, or to repair damage resulting there from, or to avoid certain loss of perishable materials. It is provided in this event that the Ministry of Labour and Social Affairs shall be informed of the period required for the completion of the work
> 5. feasts and occasions referred to in Order No.20 of 1976 issued in enforcement of Article 79(4) of the Labour Law referred to
> 6. women working on a daily two-shift schedule basis, on condition that they may not be required to start work before 5 am on the morning shift and not to work after 10 pm on the evening shift

[327]English law prohibited such discrimination (SDA 1975, s2(1), also s2(A)).

7. employment in hospitals, sanatoria and other infirmaries".

In this case ILO Convention No.89 of 1948 regarding night work for women, in conjunction with the work women are prohibited to do at night, is different to Article 1 of Order No.18 of 1976, which provides that,

"1. For the purpose of this Convention, the term industrial undertakings includes particularly,

(a) mines, quarries, and other works for the extraction of minerals from the earth;

(b) undertakings in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including undertakings engaged in ship-building or in the generation, transformation or transmission of electricity or motive power of any kind;

(c) undertakings engaged in building and civil engineering work, including constructional, repair, maintenance, alteration and demolition work.

2. The competent authority shall define the line of division which separates industry from agriculture, commerce and other non-industrial occupations".

Accordingly Article 59 of the Bahrain Labour Law discriminates against women, on the grounds of their sex, as the prohibitions against night shift workers in Article 59 and Order No.18 of 1976 are much wider than the prohibitions set out in ILO Convention No.89 of 1948 or any ILO convention.

Article 59 should be amended to specifically limit the prohibition against women night shift workers to those categories set out in ILO Conventions.

With regards to protecting women from dangerous work, which could affect their health and the health of unborn children, Article 60 of the Labour Law 1976 as amended provides that,

"It is prohibited to employ any female in industries or occupations which are dangerous or unhealthy for her unborn child. Such industries and occupations shall be prescribed in an Order to be made by the Minister for Health, in agreement with the Minister for Labour and Social Affairs".

Ministry of Health Order No.5 of 1977 describes industries or occupations which are hazardous to health and forbids women to be employed therein. It provides,

"It is forbidden to employ women in the following occupations:

1. those performed underground;
2. those subjecting them to extreme heat such as working in any smelting process;
3. those subjecting them to continuous physical strain such as involves carrying or pulling weights of more than 15-20 kilograms;
4. operations subjecting them to vibrations which are harmful to the upper limbs or to the entire body such as drilling operations on roads rocks, buildings and such others; and
5. operations which involve the handing or manufacture of lead such as -
   A. melting of lead;
   B. handling or treatment of sand containing lead oxide or operation pertaining to scrubbing lead paint;
   C. welding or manufacture of welding materials or ingots containing lead in excess of 10%;
   D. process of mixing lead in the manufacture or repair of electrical batteries;
   E. cleaning places of work the aforementioned operations are carried out".

Article 2 of Order No.5 of 1977 states that the following jobs are dangerous for pregnant women:

"It is forbidden also to employ pregnant women in the following occupations:

1. Occupations which would expose them to atomic or unclear radiation, or x-rays to an extent in excess of 1.30 rimes per

month during period of gestation and one rime during the period of pregnancy;

2. Any occupation that requires handling or exposure to the vapours or fumes of benzene or any of it is derivative such as phenol or toluene;
3. Occupations involving exposure to materials which endanger or deform the embryo (radiogenic); and
4. Occupations involving exposure to aniline during the dyeing process or to carbon disulphide in rayon and cellophane industries, hydrocarbon materials in crude oil refining and processing, mercury, phosphorus, nitrobenzol,, manganese, cadmium and berkelium".

This order is complies with Article 3 of the Maternity Protection Convention No.183 of 2000 which states that:

> "Each Member shall, after consulting the representative organisations of employers and workers, adopt appropriate measures to ensure that pregnant or breastfeeding women are not obliged to perform work which has been determined by the competent authority to be prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother's health or that of her child".

The prohibition against women working in the occupations specified above was not considered to be discriminatory as the legislation was intended to protect women and the health of their foetus. This is provided for in Article 5 of ILO Convention No.111, which states that:

> "Special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference is not to be deemed to be discrimination. And any Member may, after consultation with representative employers' and workers' organisations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally

recognized to require special protection or assistance, is not be deemed to be discrimination."

In addition, the Labour Law 1976 protects women from dismissal from their jobs because of marriage or taking maternity leave.[328] This was provided for in Article 63 of the Bahrain Labour Law.[329]

Article 63(1) does not allow the termination of the service of a female worker on the grounds of her maternity leave or because of her marriage. However, Article 63(2) discriminates against women on the grounds of sex in relation to termination of employment upon marriage, even though the Minister of Labour has not issued any orders relating to this article. Thus it is important to amend this article by deleting Article 63(2), and for flexibility a paragraph could be added giving the employer the right to offer alternative employment to a female worker because of her pregnancy, if it effects her job, or if she will not be able to do her job because of her pregnancy, on condition that she receives the same wage, and can return to her job after giving birth to her child.

The ILO Committee of Experts has addressed the following Individual Direct Request concerning Discrimination (Employment and Occupation) Convention, 1958 (No.111) to Bahrain:

> "The Committee refers once again to section 63 of the Labour Code which provides that 'the Minister for Labour and Social Affairs shall make an order prescribing the occupations and jobs in respect of which an employer may offer alternative employment to a female worker because of her marriage'. However, the Government states that section 63 of the Labour Code merely prohibits the employer from dismissing female workers due to marriage, pregnancy or giving birth. The Committee requests the Government to confirm that section 63 has been amended to the effect that it no longer authorizes the Ministry of Labour and Social Affairs to prescribe occupations and jobs in respect of which an employer may offer alternative employment to female workers because of their marriage, and to provide full information on any

[328]The English law recognizes such articles (SDA 1975, s3).
[329]This Article complies with Article 8 from the ILO Convention No.183 of 2000.

restrictions or exclusion in respect of employment and occupation imposed on women, in law or in practice, due to marriage or family responsibilities. Please also indicate whether any orders have been issued under section 65 of the Labour Code with respect to the employment of women and their conditions of work and to provide the text of any such order".[330]

Article 110 of the Bahrain Labour Law provides that, "...The burden of proof that the dismissal was for reasonable cause shall lie with an employer" as he has the documentary evidence to prove the claim.

It is clear that some provisions of the Labour Law 1976 discriminate against women on the grounds of their sex and Bahrain is under an obligation to amend these articles because they contradict ILO Convention No.111 which was ratified by Bahrain.

Finally, it is worth mentioning that other laws in Bahrain also prohibit sex discrimination for instance sexual harassment is prohibited under the Penal Code 1976 but discrimination on the ground of trans-sexuality and sexual orientation is not prohibited. The reason that Bahrain has not prohibited on these grounds is that the prevailing circumstances of cultural, religious and moral traditions still see such actions as shameful and contemptible.

The ILO Committee of Experts has addressed the following Individual Direct Request concerning Discrimination (Employment and Occupation) Convention, 1958 (No.111) to Bahrain:

> "Discrimination on the basis of sex: Sexual harassment. Recalling its 2002 general observation on this issue, the Committee notes the Government's statement that sexual harassment is prohibited under the Penal Code. Noting that the Penal Code establishes the crimes of rape and sexual assault, the Committee considers that these provisions may not provide adequate protection against sexual harassment at the workplace, as certain practices or behaviour may not amount to such crimes, but nevertheless constitute discrimination on the basis of sex. The Committee requests the Government to

[330]<http://www.ilo.org/ilolex/english/newcountryframeE.htm>.

indicate whether any cases of sexual harassment in the workplace have been brought before the courts under the relevant provisions of the Penal Code. It encourages the Government to take specific measures to define, prohibit and prevent sexual harassment in the workplace".[331]

The Penal Code 1976 covers more offences than rape and sexual assault and is wide enough to cover incidents of sexual harassment in the work place and as long as these acts are criminalized Bahrain is in compliance with its obligations under ILO Conventions. Still sexual discrimination needs to be covered by the Labour Law 1976 to ensure that victims of sexual discrimination can sue for unfair dismissal.[332]

The Labour Law 1976 does not have an exception which relates to domestic workers. Most applications for work permits are for female domestic workers. Islamic and Bedouin tradition did not allow males to work as domestic servants and therefore to discriminate in favour of women female domestic workers is not considered to be discrimination under the Labour Law 1976.

Where the Bahrain Law and the Labour Law 1976 in particular contain provisions which contain discrimination on the grounds of sex the laws should be amended, or repealed as Bahrain is obliged to apply ILO Convention No.111 which has been ratified by Bahrain. In addition Bahrain is also is under an obligation to apply the rights set out in the Convention as required by the ILO Declaration.

In practice there is sexual discrimination in several Bahrain Ministries. For instance women are not allowed to serve as frontline troops in the Military and women are not allowed to serve as patrolmen in the police force. Also neither the Labour Law 1976 nor the Penal Code 1976, because of religious and cultural sensibilities, has criminalized discrimination against homosexuals or transsexuals. All of which mean that Bahrain is in breach of its international obligations to implement ILO Convention No.111.

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[331] *Ibid.*
[332] Article 350, 351,354, and 356.

3-2-1-3 Religion

Islam guarantees the freedom of religious choice, "There shall be no compulsion in religion. True guidance is now distinct from error",[333] and, "Say; 'this is the truth from your Lord. Let him who will believe in it and him who will, deny it'".[334] In addition the Koran states, "Would you then force people to have faith?"[335] From these holy verses it is clear that Allah has stated that Islam does not compel people to embrace it.

The Prophet Mohammed's mission was to remind and guide people, not to compel them to embrace Islam, as the Almighty said to the Prophet Mohammed, "But teach thy message: for teaching benefits the believers".[336] "Therefore give warning. By the grace of Allah, you are neither soothsayer nor madman".[337] "Therefore give warning, if warning will avail".[338] And "Therefore give warning. Your duty is only to give warning: you are not their keeper".[339] Islamic Shari'a does not impose the embracing of Islam. It ordered the Prophet to have his own religion, remind people of it and never compel anyone to follow it. As Allah says:

> "Say O' ye that reject faith! I worship not that which ye worship, nor will ye worship that which I worship, and I will not worship that which ye have been wont to worship, nor will ye worship that which I worship to you be your way, and to me mine".[340]

The orthodox Caliphs followed the example of the Prophet, and it was narrated that:

> "A Christian woman came to Umar bin Al-Khatthab and she needed him, he told her: 'Embrace Islam and you shall be safe; Allah has sent Mohammed with the truth'. The woman replied: 'I am old and death is closer to me'. He helped her, but he was afraid his behaviour was taking advantage of her need, so he asked Allah for mercy and said: 'O' Allah I guided and did not compel'".[341]

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[333] *Al-Baqarah* (the Cow) 256.
[334] *Al-Kahf* (the Cave) 29.
[335] *Yūnus* (Jonah) 99.
[336] *Al-Dhāriyat* (the Winds) 55.
[337] *Al-Tūr* (the Mountain) 29.
[338] *Al-A'la* (the Most High) 9.
[339] *Al-Gāshiyah* (the Overwhelming Event) 21-22.
[340] *Al-Kāfirūn* (those Who Reject Faith) 1-6.
[341] Al Salabi Ali Muhammed, *op cit,* pp 120-121.

In addition it is narrated that:

> "Umar had a Christian slave called Ashakk and he narrated, 'I was a Christian slave for Umar, and he told me: 'Embrace Islam so we can benefit from you in some of Moslem affairs, because we should not ask for helping those who are not of us,' but I refused. And he replied, there is, 'No compulsion in Islam.' When he was dying he set me free and said: 'Go wherever you want'".[342]

The Islamic Shari'a does not use religious difference as an impediment to establish justice. Allah says, "Do not allow your hatred for other men to turn you away from justice. Deal justly; that is nearer to true piety. Have fear of Allah; Allah is cognizant of all your actions".[343]

Islam does not hinder one from working and earning a living, provided that non-Muslims do not assume positions where they make decisions which affect Muslims' lives. This is justified as Allah says:

> "Let believers not make friends with infidels in preference to the faithful, he that does this has nothing to hope for from Allah, except in self-defence. Allah admonishes you to fear Him: for to Him you shall all return".[344]

Times have changed, and Muslims and non-Muslims are often citizens of the same State.[345] Constitutions and laws address citizens without reference to their religion. They are assigned the same rights and duties because the authority is institutionalized.[346] Thus, there is no fear a non-Moslem would not respect the Islamic Shari'a and violate it, because Islamic Shari'a is only applicable in family law in the modern States (like Bahrain). In addition, non-Muslims represent a small minority within the Islamic States.

Bahrain has discerned changes in society and has established equality between citizens, whether Moslem or non-Moslem. Religion has never been a reason for

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[342] *Ibid*, p 121.
[343] *Al Maidah* (the Table) 8.
[344] *Al Imran* (the Family of Imran) 28.
[345] There is a minority of Jewish, Christian and Hindu citizens in Bahrain.
[346] Modern States are ruled by three authorities executive, legislative and judicial. They are not ruled by a single person and subject to his sole opinion.

discrimination in any field within Bahrain. Non-Muslims have the freedom to practice their religious rituals in churches, temples or synagogues.[347] However, while the Bahrain Constitution[348] expounds equality and laws such as the Labour Law 1976 do not differentiate between citizens on the grounds of religion[349] neither do any laws in Bahrain actually criminalize religious discrimination as is required by ILO Convention No.111.

The Bahrain government does not discriminate against the minorities and they have been given the opportunity to defend their rights and interests equally with other citizens through the appointment of representatives to the Consultative Council.[350] This has been done because minority members are unlikely to be elected to the Chamber of Deputies.[351] These appointments embody the application of Article 16 of the Bahrain Constitution which says that, "Citizens are equal in the assumption of public posts in accordance with the conditions specified by law".

Bahrain Law conforms to the Islamic Shari'a, by ensuring that fair and just treatment is given to non-Muslims in an Islamic State. Their peace, security and interests are guaranteed.[352] Bahraini Law has no direct position on religious belief in employment. Indeed it appears that Order No.19 of 1996, which established the Supreme Counsel of Islamic Affairs, is the only law which stipulates a religious qualification, as it

[347]13 Churches are registered with the Ministry of Labour and Social Affairs. <https://www.e.gov.bh/wps/portal>.
[348]Article 18 of Bahrain Constitution.
[349]See p 126 of this section (the President of the Council was Alice Thomas, even though she is a Christian).
[350]Ms. Alice Thomas, a Christian, and Ibrahim Nonoo, a Jew, were appointed in the National Assembly by Royal Decree No.41 of 2002. N.B. it was not their first appointment, they were appointed in previous terms.
[351]The National Assembly is composed of two houses: the Consultative Council and the Chamber of Deputies. Each chamber is composed of 40 members (Articles 51 and 52 Bahrain Constitution).
[352]The Prophet said, "For them what is for us and on them what is on us. Whoever harms a non-Moslem, I will be his rival on judgment day". See Al Gazali Mohammed, *op cit,* p 34.
On the same subject, Al Gazali said: "Islam is the Judaism of *Moses* with new additions, the Christianity of *Jesus* with new additions". See *ibid,* p 63. It is known that every Prophet added to his predecessor's thoughts and sayings, as is stated about *Jesus*, "Do not suppose that I have come to abolish the Law and the prophets; I did not come to abolish, but to complete". See Matthew, 5-17. In addition, in the statement of Allah, "Say we believe in Allah and that which is revealed to us; in what was revealed to Abraham, *Ismail* (Ishmael), *Ishaq* (Isaac), *Yaqub* (Jacob), and the tribes; to *Moses* and *Jesus* and the other prophets by their Lord. We make no distinction among any of them, and to Allah we have surrendered ourselves". *Al Baqarah* (the Cow) 136, and, "This is the book, whereof there is no doubt, a guidance to those who are Al-Muttaqun, who believe in the Ghaib and perform As-salat, and spend out of what we have provided for them, and who believe in which has been sent down to you, and in that which was sent down before you and they believe with certainty in the hereafter". *Ibid,* 2-4.

requires anyone appointed to the Counsel to have studied the Shari'a. This, it is probably not discriminatory on the grounds of religion as it is a position where religious belief is a genuine occupational requirement, and one which it is proportionate to apply. However, Bahrain should consider enacting legislation to ensure that where religious belief is a genuine occupational requirement and one which it is proportionate to apply it is not challenged as discriminatory.

Finally, though Bahrain Law does not support discrimination on the grounds of religion, at work there are no provisions in Bahrain Law specifically prohibiting such acts and such provisions need to be introduced into Bahrain Law.

3-2-1-4 Political Opinion

Islam secured freedom of opinion and expression to all individuals, as long as the freedoms are were exercised within the general boundaries laid down by Islam, and do not spread injustice or promote indecency, or disappoint the Islamic nation. As Allah stated, "If the hypocrites and those who have tainted hearts and the scandal mongers of Madinah do not desist, We will rouse you against them, and their days in that city will be numbered. Cursed wherever they are found, they will be seized and put to death".[353]

For Muslims the seeking of the truth is not a legislated right, it is a religious obligation. As Allah said, "Say: One thing I would ask you: stand up before Allah in pairs, or singly."[354] Islam equates admitting the truth with refusing, denying and fighting injustice, without any fear or dread of the power or the mightiness of the dominant, this is considered one of the best *Jihads*.[355]

The Caliph Umar bin Al Khatthab allowed people to express their opinions freely and without restriction. Criticism of the other orthodox Caliphs was allowed during his period of rule. It is narrated that:

> "While he was preaching, he told the people, 'If any one of you people sees any deviation in me, he should correct it'. It was then a man stood up and

[353] *Al-Ahzāb* (the Confederate Tribes) 60-61.
[354] *Saba'* (Sheba) 46.
[355] *Jihads* in Arabic are things done that are hard or difficult to do. It is also a holy battle, in Allah's cause. It is given the utmost importance in Islam and is one of the pillars of Islam.

said, 'I swear to Allah that if we saw any deviation in you, we would correct it with our swords'. And Umar replied, 'Thank Allah who made in this nation someone who corrects Umar's deviation with his sword'".[356] It is also mentioned "that on the day he took over the caliphate, Umar's preached, 'Help me to rule with the truth, forbid indecency and listen to advice'".[357]

In addition, Abu Bakr announced in his first sermon that, "I was chosen as your ruler and I am not your best. If you see me doing right, help me. If you see me doing wrong, correct me. Obey me as long as I obey Allah; disobey me if I disobey Allah".[358]

Islam also encourages people to spread the right information, as to do otherwise affects the nation's security. As Almighty Allah said, "When they hear any news, good or bad, they are at once to make it known to all, whereas if they reported it to the Apostle and to the men in charge, those who sought news could learn it from them".[359]

Finally, freedom of opinion must not include insulting or mocking other beliefs, as this is clearly forbidden in the Koran, "Do not revile the idols which they invoke besides Allah, lest in their ignorance they revile Allah with rancour. Thus have we made the actions of each community seem pleasing to it itself. To their Lord they shall return".[360] Because Allah has said, "Say: Allah alone has the conclusive proof. Had He so pleased He would have guided you all".[361]

The Bahrain Law includes texts embodying an understanding of the importance of the freedom of expression and constructive opinion for the public interest. Article 23 of the Bahrain Constitution provides that:

> "Freedom of opinion and scientific research is guaranteed. Everyone has the right to express his opinion and publish it by word of mouth, in writing or

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[356]Al Salabi Ali Muhammed, *op cit,* pp 127-128.
[357]*Ibid.*
[358]Al Salabi Ali Muhammed, *Abu Bakr's Era and Personality*, 2nd Edition, (United Arab Emirates [Sharja]: Al Sahwa Library, 2002) p 149.
[359]*Al-Nisā'* (the Women) 83.
[360]*Al-An'ām* (the Cattle) 108.
[361]*Ibid,* 149.

otherwise, under the rules and conditions laid down by law, provided that the fundamental beliefs of Islamic doctrine are not infringed, the unity of the people is not prejudiced, and discord or sectarianism is not aroused".

Article 24 provides that, "With due regard for the provisions of the preceding article, the freedom of the press, printing and publishing is guaranteed under the rules and conditions laid down by law".

In the democratic reign of His Majesty King Hamad, "all forcibly exiled political opposition members were allowed to return to Bahrain".[362] All employees who had lost their jobs because of arrest or judgment under the National Security Law were allowed to return to their previous jobs or equivalent positions.

In addition, the King sent private aeroplanes to Iran to bring all Bahraini asylum seekers home. Some of them have been appointed to political positions[363] and are practising their right of freedom of opinion and expression in legitimate fora.[364] This has happened through their representation in the Chamber of Deputies.

In addition, expressing a political opinion does not prejudice job applications and there have been no cases in the Bahrain courts of discrimination based on the grounds of political opinion. That being said there are no provisions in the Labour Law 1976 prohibiting discrimination on the grounds of political opinion. This is in contradiction of Bahrain's obligation to apply ILO Convention No.111 which has been ratified by Bahrain. In addition Bahrain is also is under an obligation to apply the rights set out in the Convention as required by the ILO Declaration.

Accordingly, a new article should be added to the Labour Law 1976 which clearly criminalizes discrimination in employment and occupation on any grounds. This article should define discrimination, as set out in Article 1(1) of ILO Convention No.111.

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[362]<http://www.bahrainbrief.com.bh/arabic/february-2001.htm>.

[363]H.E the Minister of Labour, Mr. Majed Al Alawi, was previously expelled and given political asylum in Britain.

[364]Six political associations have been formed (Bahrain Law forbids the establishment of political parties but it has allowed political societies to take a similar role to that of political parties) and they supported the election of some members to the Chamber of Deputies in 2002 and 2006.

3-2-1-5 Member States' Obligations

Those ILO Member States which ratified ILO Convention No.111 are under an obligation to follow the rules set out therein. These rules are as follows:

1) National policy: Article 2 provides for each Member which ratified the Convention to "undertake to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof".

Despite being obligated by Article 2, Bahrain has not introduced a National Policy.

2) National Conditions and Practice: Article 3 provides for each Member to "undertake methods appropriate to national conditions and practice:

   (a) to seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of this policy;

   (b) to enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;

   (c) to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;

   (d) to pursue the policy in respect of employment under the direct control of a national authority;

   (e) to ensure observance of the policy in the activities of vocational guidance, vocational training and placement services under the direction of a national authority;

   (f) to indicate in its annual reports on the application of the Convention the action taken in pursuance of the policy and the results secured by such action".

In order to fully apply this article Bahrain needs to establish a National Committee to re-draft the Labour Law 1976 and to ensure the adoption of the obligations mentioned in Article 3 as Bahrain's National Policy.

3) Application of the Convention to non-metropolitan territories: Article 6 provides that each Member which ratifies this Convention: "undertakes to apply it to non-metropolitan territories in accordance with the provisions of the Constitution of the International Labour Organisation".

Bahrain has not adopted all the obligations set out in ILO Convention No.111 and the ILO has the right to transfer any complaint against Bahrain to the investigation committee whose published the reports which will effected Bahrain's economic relations. In addition the report may used by industrialized nations to impose trade sanctions on Bahrain. Accordingly, Bahrain should fulfil its obligations under the rules of Public International Law and introduce legislation to comply with ILO Convention No.111.

3-2-2 Equal Pay (Equal Remuneration) Convention No.100 of 1951

Bahrain has not ratified the Equal Pay (Equal Remuneration) Convention No.100 of 1951 but it is still obliged to implement the principles of this Convention as it is an obligation set out in the ILO Declaration. Bahrain is also obliged to send an annual report examining the development of laws and practises in Bahrain related to this Convention and the ILO's Legal Adviser has held that the ILO has the right to transfer any complaint against Bahrain to the investigation committee.

Accordingly ILO Members who have not ratified Conventions cannot hide behind the defence that under PIL rules a state is only obliged to implement ratified conventions as the ILO Declaration obliges ILO Member States to implement the principles of the ILO Fundamental Conventions even if a state has not ratified the a particular convention. This obligation arises from the ILO Constitution which the ILO Member States agreed to upon joining the ILO.

Bahrain, therefore needs to adopt and implement legislation to ensure compliance with the Equal Pay (Equal Remuneration) Convention No.100 of 1951 or it runs the risk of receiving an unfavourable report which may used by industrialized nations to impose trade sanctions on Bahrain.

Article 1 of ILO Convention No.100, relating to equal pay defines the minimum wage and stipulates equal remuneration for equal value of work and it provides that the term 'remuneration' includes the "ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment".

Furthermore the term 'equal remuneration' for men and women workers for work of equal value refers to rates of remuneration established without discrimination based on sex.

Pay is one of the Islamic fundamental rights at work. Islam views activities carried out by workers and employees as essential. Islamic Shari'a opposes extravagance, oppression, greed and failure, and requires all scientific, artistic and manual activities to be remunerated adequately to avoid workers feeling that their efforts have been in vain, or their talent sold cheaply. This principle is embodied in the verse, "If you repent, you may retain your principle, suffering no loss and causing loss to none".[365]

It is forbidden in Islam to pay an employee a salary which is lower than his level of competence demands or to pay a worker a salary which is does not adequately reflect his level of skills. This is so even if the salary is a result of an agreement signed between the employer and employee. In addition a worker must be compensated similarly to other workers doing the same work. The Koran states the salary must meet the effort exerted. This is shown by the verse which says, "Give just weight and measure and do not defraud others of their possessions. Do not corrupt the land after it has been purged of evil".[366] In this respect, Islamic Shari'a does not discriminate between the sexes, provides for pay parity and provides that salaries must meet the

[365] *Al Baqarah* (the Cow) 279.
[366] *Al-Araf* (the Heights) 85.

effort exerted. In this way Islamic Shari'a and ILO Convention No.100 fulfil similar goals.

The law of the Bahrain Civil Service Bureau ("CSB") confers equality between men and women, the Council of Ministers Order No.39 of 2002 increased the minimum pay of state employees who occupy public and ordinary posts, or who work on a shift system. The Order included schedules defining an employee's pay according to his position and did not discriminate on any basis except for the qualifications gained by the employee. It is purely qualifications and years of experience which govern the grades. In this way equality was established between men and women, religions, ethnic origins, the citizen and the expatriate.[367] The grades are awarded according to the employees' qualifications and experience and as such are not discriminatory.

With regards to the private sector, the Labour Law 1976 not does provide equality in pay. The issue was not mentioned as supply and demand in the local market determines employment and salaries. In addition the Labour Law 1976 does not set out salary structures for employees or jobs, or, except for minimam guidelines as to working hours and overtime or state what the conditions of employment in the private sector should be.

Wage equality is a fundamental principle under ILO Convention No.100. Even though Bahrain has not ratified this Convention it is obliged, due to the ILO Declaration and its membership of the ILO, to apply these principles, and the Bahrain government could face an application for judicial review of its failure to implement the Convention.

However, the Labour Law 1976 does conform to Islamic Shari'a with regard to equal pay. Article 70 provides that:

> "If the wage for which an employer is liable for employment is not contained in a contract of employment or in the basic work regulations, it shall be calculated for work performed of the same nature. Where no such wage exists, it shall be calculated in accordance with the usage of the occupation and that

[367]Housing allowance is given to some expatriates but not to nationals.

of the location wherein the employment is performed. If no such usage exists, a judge shall determine the wage according to the exigencies of equity. Similar recourse will be followed in determining the nature of the employment to be performed by a worker".

This text has been criticised on the grounds it does not conform to ILO Conventions concerning tripartite discussions and collective labour contracts. However, a woman can sue if she does not receive a similar wage to a man for a similar job but Bahrain legislation does not recognize the principle of equal value for work performed and accordingly Bahrain is in breach of its obligations under the ILO Declaration.

This is because Bahrain Law does not set a minimum wage, which would encourage workers to sue their employers to ensure that their wages were increased to a similar level obtained by employees performing similar jobs. If this takes place without a minimum wage law, it would need to be done on an individual basis, and also the setting of wages would not be in accordance with the needs of certain jobs in the Bahrain market. In addition, the Bahrain courts have not examined any case regarding a claim of equal value, whereby a woman can compare the value of the work she does with the value of a different job or jobs done by men in the same employment.

Conclusion

Bahrain Law does not fully meet the obligations set out in ILO Conventions No.100, and No.111. Discrimination can be found in several areas of Bahrain labour relations, which means Bahrain has not fulfilled its international obligations to apply ratified Conventions. At the same time it has not fulfilled its obligations under the ILO Declaration by not applying the principles of ILO Convention No.100.

Accordingly, the Bahrain Labour Law should be further amended by adding articles which prohibit discrimination in employment and occupation on any grounds. In addition discrimination should be defined in the Labour Law 1976 in accordance with the definition set out in Article 1(1) of ILO Convention No.111.

Furthermore, the Labour Law 1976 should apply equal value to rates of remuneration as set out in ILO Convention No.100, as it obliged to apply the principles of the Convention, and categorise wages.

Section 3

Child Labour

Introduction

Statistics in the ILO's *The End of Child Labour* Report state that the,

"Number of child labourers globally fell by 11 per cent over the last four years".[368] The "new estimates suggest there were about 317 million 'economically active'[369] children aged 5 to 17 in 2004, of whom 218 million could be regarded as 'child labourers'[370] of the latter, 126 million were engaged in 'hazardous work'".[371]

In addition,

> "The corresponding figures for the narrower age group of 5 to 14 year-olds are 191 million 'economically active children', 166 million 'child labourers', and 74 million 'children in hazardous work'. The number of child labourers in both age groups of 5-14 and 5-17 fell by 11 per cent over the four years from 2000 to 2004".[372]

However,

> "The decline was much greater for those engaged in hazardous work: by 26 per cent for the 5-17 age group, and 33 per cent for 5 to 14 year-olds, the incidence of child labour (percentage of children working) in 2004 is

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[368] *The End of Child Labour: Within Reach, the Global Report Under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, Report I (B), International Labour Conference 95th Session (Geneva: International Labour Office, 2006) p vii.

[369] *"Economic activity"* is a broad concept that encompasses most productive activities undertaken by children, whether for the market or not, paid or unpaid, for a few hours or full time, on a casual or regular basis, legal or illegal; it excludes chores undertaken in the child's own household and schooling. To be counted as economically active, a child must have worked for at least one hour on any day during a seven-day reference period. "Economically active children" is a statistical rather than a legal notion. See *ibid,* p 6.

[370] *"Child labour"* is a narrower concept than "economically active children", excluding all those children age 12 years and older who are working only a few hours a week in permitted light work and those aged 15 years and above whose work is not classified as "hazardous". The concept of "child labour" is based on the ILO Minimum Age Convention, 1973 (No.138) which represents the most comprehensive and authoritative international definition of minimum age for admission to employment or work, implying economic activity. See *ibid.*

[371] *"Hazardous work"* by children is any activity or occupation that, by its nature or type, has or leads to adverse effects on the child's safety, health (physical or mental) and moral development. Hazards could also derive from excessive workload, physical conditions of work, and/ or work intensity in terms of the duration or hours of work even where the activity or occupation is known to be non- hazardous or safe. See *ibid.*

[372] *Ibid,* pp 6-7.

estimated at 13.9 per cent for the 5-17 age group, compared to 16 per cent in 2000. The proportion of girls among child labourers, however, remained steady".[373]

This reduction is the result of the several important steps taken by "the ILO in the recent past, for example statistics and studies".[374] In addition the ILO, in 1994,

> "Issued a statement on economic exploitation of children, it invited financial institutions, including the World Bank and the International Monetary Fund (IMF), to a discussion on the need to protect the rights of the child in programmes for economic reform".[375]

The ILO now believes that, "The elimination of child labour has over its ten years of existence become the largest single technical co-operation programme of the ILO",[376] the ILO and it is member States "continue to pursue the goal of the effective abolition of child labour, committing themselves to the elimination of all the worst forms of child labour by 2016".[377]

"The International Programme on the Elimination of Child Labour ("IPEC") has spent US$350 million,"[378] and over the next four years,

> "The ILO will strengthen its efforts to develop coherent and comprehensive approaches to abolishing child labour. The proposed action plan rests on three pillars: supporting national responses to child labour, in particular through effective mainstreaming in national development and policy framework; deepening and strengthening the worldwide movement; and promoting further integration of child labour concerns within overall ILO priorities regarding decent work as a global goal. This more focused and strategic approach to

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[373] *Ibid,* p7.
[374] Anon., *ILO: Focus on Child Labour,* (1987) 13(1), Commonwealth Law Bulletin 219. (C. L. B. 1987, 13(1)).
[375] Anon., *Committee on Rights of Child: Statement on the Economic Exploitation of Children,* (1994) 20(1), Commonwealth Law Bulletin 286. (C. L. B., 20(1)).
[376] *Global Report Under the Follow-up to the International Labour Organisation of the Fundamental Principles and Rights at Work: A Future without Child Labour,* (Geneva: International Labour Office, 2002) p 2.
[377] *The End of Child Labour: Within Reach, the Global Report Under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work,* Report I(B), International Labour Conference 95th session, (Geneva: International Labour Office, 2006) p xiii.
[378] *Ibid,* p xii.

global leadership will help ensure that the ILO will make a more effective contribution to making child labour history".[379]

In recognition of the fact that abolition of child labour is an issue at the heart of social and economic development, and not just at it is margins, the elimination of the worst forms of child labour has become one of the fundamental rights at work. The ILO Minimum Age Convention No.138 of 1973 and the ILO Worst Forms of Child Labour Convention No.182 of 1999

> "...triggered a show of commitment to take action to eradicate the worst forms of child labour, this commitment was expressed first and foremost through the unsurpassed rate of ratification, in addition, Convention No.138 has received 73 ratifications since 1999, infect the rate of ratification of Convention No.138 had already begun to accelerate before Convention No.182 was adapted".[380]

This section will study these two Conventions which set out the principles to abolish child labour, will compare the principles and rights with Islamic Shari'a, and then discover those principles that are applicable to Bahrain Law in order to conclude whether or not Bahrain has implemented the principles of ILO Convention No.138 and the rights of ILO Convention No.182.[381]

In addition this section will examine the reasons for the non-implementation of these Conventions under Bahrain Law.

3-3-1 ILO Organisation Convention No.138 of 1976

By adopting the ILO Convention No.138 Minimum Age Convention of 1973 the ILO aimed to give the previously narrow worded Conventions a broader scope of application. Article 10(1) of ILO Convention No.138 includes all fields of economic activities where children can be employed, whether with or without payment and

> "...revises, the terms set forth in this article the Minimum Age (Industry) Convention, 1919; The Minimum Age (Sea) Convention, 1920; Minimum

[379] *Ibid,* p xiii.
[380] *Ibid,* p 15.
[381] 150 ILO Member States have ratified Convention No.138, and 164 ILO Member States have ratified Convention No.182. < http://www.ilo.org/ilolex/english/newratframeE.htm>.

Age (Agriculture) Convention, 1921; Minimum Age (Trimmers and Stokers) Convention, 1921; Minimum Age (Non-Industrial Employment) Convention 1932; Minimum Age (Sea) Convention (Revised), 1936; Minimum Age (Industry) Convention , (Revised), 1937; Minimum Age (Non-Industrial Employment) Convention, (Revised), 1937; Minimum Age (Fisherman) Convention, 1959; and Minimum Age (Underground Work) Convention, 1965".

ILO Convention No.138 contains a many exceptions because,

"Special consideration is given to countries where child labour is widespread, by allowing some exceptions. This was on the condition that the activities permitted do not harm a child's health, or character, and do not hinder them from completing their education. The Convention also made these exceptions dependent on consultations between employers and workers. However, notwithstanding the flexibility of this Convention, only a few countries where child labour is widespread ratified it".[382]

Article 1 of ILO Convention No.138 sets out the aims of the Convention and states that,

"Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons".

3-3-1-1 Age for Work

Article 2 of ILO Convention No.١٣٨ sets out the minimum age for children to work as 15 years and is applicable to all kinds of work carried out by children, without exception. It applies to all activities carried out within the boundaries of the ratifying country, and even to the ships which carry its flags. The Convention also emphasized the impossibility of determining a minimum working age lower than the age at which a child starts school.

[382]Al Harri Khaled, *The Legal Protection of Child Labour in International Legislation*, LLM Thesis, (Cairo: Cairo University, 2002) p 55.

It also took into consideration those countries whose economy and educational systems were not completely developed; for example, the minimum age of a child labourer is 14 years old, but developing States may, after consultation with employer and worker organisations, specify a minimum working age which is lower than that determined by the ILO. However, to do this, the State has to justify its reasons.

A comparison of ILO Convention No.138 to Islamic Shari'a shows that age limits set under Islamic Shari'a may, in some cases, conform to those established by the ILO whilst in other cases age limits will differ. However, the minimum working age as stated in Islamic Shari'a is the age of puberty for as was stated by the Prophet, "Three people will not be punished, the sleeping person until he wakes up, the child until he reaches puberty and the crazy person until he becomes sane".[383]

Unfortunately, puberty occurs in different persons at different times.[384] In Islamic Shari'a the State is responsible for providing for the child's needs to guarantee their growth. Children are taught the Koran and the *Sunnah* in their early years and although there is no minimum age for compulsory education Shari'a generally equates puberty to the ending of childhood. In short Islam sees puberty as the time at which a person is ordered to worship and work.

Article 49 of the Labour Law 1976 sets down the minimum working age in Bahrain and provides that, "In accordance with the provisions of this Law a 'juvenile' means every male or female person of fourteen years of age but not exceeding sixteen years of age". In addition, Article 50 provides, "It is prohibited to employ a child of either sex who is under the age of fourteen years".

Clearly Articles 49 and 50 of the Labour Law 1976 do not comply with the minimum age requirements of ILO Convention No.138 and Bahrain cannot take advantage of

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[383]Sabiq Sayed, *The Jurisprudence of the Sunnah*, Vol. 2, (Cairo: Almanar international and Alfath for Arab Information, 1995) "commission of prayer p 107", "'commission of fast p 581".

[384]Some jurisprudes, among them *Abu Haneefa*, distinguished between the age of maturity for boys and girls. For others like *Shafii*, *Al- Azeri*, *Abu Tharp*, *Ahmad Ibn Hanbal*, *Muhammad* and *Abu Yusuf*, it is the same for male and female. They defined the age of maturity to be 15. *Abu Haneefa* took the view that a girl is mature by the age of 17, but for the boy he had two opinions: his first is 17 and the second 18. The companions of *Malik* defined maturity to be 17 and 18. see < http://imamsadeq.org>.

the Article 2(4) exceptions of the Convention as Bahrain's economy and facilities are not insufficiently developed.

In addition Article 3 of ILO Convention No.138 sets the minimum age for those engaged in hazardous labour at 18 years of age.[385] ILO Convention No.138 refers to the labourer who is protected as the "young person".[386]

The Convention allows domestic laws or regulations or the competent authority, after consultation with the organisations of employers and workers concerned, where such organisations exist, to authorise employment or work from the age of 16 years. This is conditional on the health, safety and morals of the young persons concerned being fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.

ILO Convention No.138 allows that:

> "The general minimum age for admission to employment or work is 15 years (13 for light work) and the minimum age for hazardous work at 18 (16 under strict conditions). It provides for the possibility of initially setting the general minimum age at 14 (12 for light work) where the economy and facilities are insufficiently developed".[387]

Islamic Shari'a does not differentiate between different types of work and states the same minimum age for all types of work.

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[385] Article 1 of the Convention on the Right of Child ("CRC") stats that: " For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier". "The CRC enshrines a legally ideal Western conception of Childhood, which is a model of childhood based on the fact that children should be protected from the adult world. The universal standard to be enforced under the Convention is the age of eighteen". Bentley Kristina Anne, *Can there be any Universal Children's Rights?*, (2005) 9(1), International Journal of Human Rights 117. (I.J.H.R. 2005, 9(1), 107-123).

[386] "The committee of the Ministers of the COE and the Parliamentary Assembly has made a distinction between "child" and "young adult". A child used to be defined as a minor under the age of 16 and a young adult as a person age between 16 and 21". Bakirci Kadriye, *Child Pornography and Prostitution: Is this Crime or Work that should be Regulated?*, (2007) 14(1), Journal of Finance Crime 8-10. (J.F.C. 2007, 14(1)).

[387] *Rules of the Game, A Brief Introduction to International Labour Standards*, (Geneva: International Labour Office) p 30. <www.ilo.org/public/english/standards/norm/download/resources/rulesofthegame.pdf>.

The Labour Law 1976 does not raise the child's age in any job that jeopardizes the health, safety or morals of young persons. This is similar to what is set down in Article 3 of ILO Convention No.138, but it states that the work of a child should not be dangerous. Article 51 provides that juveniles between the ages of 14 and 16 years old may be employed in accordance with the following conditions:

1. to have obtained the permission of the Ministry of Labour and Social Affairs;
2. to have undergone a medical examination before engagement and periodically thereafter to ensure a satisfactory standard of health; the result of such examination to be recorded in a certificate the particulars of which shall be prescribed by an Order to be made by the Minister for Health in agreement with the Minister for Labour and Social Affairs;
3. that such employment of juveniles shall be in industries and occupations other than those deemed to be hazardous or unhealthy and enumerated by an Order made by the Minister for Health in agreement with the Minister for Labour and Social Affairs.

Thus if these conditions are met child labourers between the ages of 16 and 18 can work in hazardous conditions in contravention of Article 3 of ILO Convention No.138. Accordingly, in this respect Bahrain Law does not comply with ILO Conventions.

3-3-1-2 Range of Application of Convention No.138

ILO Convention No.138 is not applicable to all types of work. Article 4 states that after consultation with the organisations of employers and workers concerned, where such exist, ILO Member States may exclude from the application of the Convention limited categories of employment or work in respect of which special and substantial problems of application arise.

Each ILO Member State who ratifies this convention is obliged in accordance with Article 22 of the ILO Constitution to list in its first report on the application of the Convention any categories which may have been excluded under Article 4(1) of ILO Convention No.138 together with the reasons for such exclusion, the Member States'

laws and practices in respect of the excluded categories, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories. Finally, Article 4 exclusion does not cover all types of employment or work and the Labour Law 1976 does not contain any Article 4 exclusions, it merely covers children working for their parents in private businesses.[388]

Article 5(1) of ILO Convention No.138 limits the scope of the Convention for a Member State whose economy and administrative facilities are insufficiently developed. This condition was introduced after consultation with various concerned organisations of employers and workers. Article 5(2) specifies that Member States which wishes to rely upon Article 5(1) declare upon ratification the branches of economic activity or types of undertakings to which the Member State will apply the provisions of the Convention.

The provisions of ILO Convention No.138 must be applied, at a minimum, to the following industries: mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers.

Member States should indicate in their reports under Article 22 of the ILO Constitution their general position as regards employment or work of young persons and children in the branches of activity which are excluded from the scope of application of this Convention and any progress which may have been made towards wider application of the provisions of the Convention; in addition Member States may extend the scope of application by a Declaration addressed to the Director-General of the International Labour Office.

In accordance with the exclusions allowed under ILO Convention No.138 Article 2 of the Labour Law 1976 excludes the following categories of adult workers from the Law:

[388]Articles 2 and 58 of the Labour Law 1976 as amended.

1. Civil servants and employees of public corporate entities that are subject to the Civil and Military Service Regulations.
2. Domestic servants and persons regarded as such;
3. Persons employed in temporary and casual work which is outside the scope of the employer's business and for duration of less than one year;
4. Marine ships' officers, engineers, seamen and other persons whose employment contract is subject to a special law;
5. Persons employed in agricultural work other than:
    a. workers employed in agricultural firms which process or market their products.
    b. Workers permanently employed in operating or repairing mechanically driven equipment used in agriculture.
    c. Workers engaged in management or as security guards in agricultural operations.
6. Members of the employer's family, who are husband, wife, his parents and offspring whom he actually supports.

In addition Article 58 reads "Exempted from the application of the provisions of this Chapter are juveniles employed within the environment of the family where members of the same family only are working under the supervision of the father, mother, husband, brother, sister, uncle or grandfather".

Thus, Article 2(6) and 58 of the Labour Law 1976 exclude child labourers of any age working in Families business in these sectors. This means that the Labour Law 1976 does not apply the principles of ILO Convention No.138 which require minimum working age of 14 years old.

Indeed this limiting of its application is the most obvious fault of this Convention, even though the limitations were meant to encourage greater ratification of ILO Convention No.138.

Article 6 of ILO Convention No.138 makes it clear that the Convention does not apply to work done by children and young persons in schools for general, vocational or technical education, or in other training institutions, or to work done by persons at

least 14 years of age in such undertakings. Article 6 applies provided that: such work is carried out in accordance with conditions prescribed by the competent authority after consultation with the organisations of employers and workers concerned, where such exist, and is an integral part of a course of education or training for which a school or training institution is primarily responsible; or a programme of training mainly or entirely in an undertaking which programme has been approved by the competent authority; or a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training.

Vocational or technical training is often considered to be more suitable for children who are less academically minded and the Ministry of Labour in Bahrain has started a vocational training and hiring programme. "The purpose of this programme is to encourage less academic children to obtain technical qualifications and to provide qualified Bahraini artisans to suit the requirements of the labour market".[389]

Article 7 of ILO Convention No.138 clarifies that national laws or regulations may permit the employment or work of persons aged between 13 and 15 years old in light work, which is not likely to be harmful to their health or development; and not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received. Article 7 also permits the employment of persons who are at least 15 years of age but have not yet completed their compulsory schooling.

Some commentators believe that ILO has not considered that the term child labour encompasses:

> "...all work performed by children, millions of young people legitimately undertake work, paid or unpaid, that is appropriate for their age and level of maturity. By so doing, they learn to take responsibility, they gain skills and add to their families' and their own well-being and income, and they contribute to their countries' economies".[390]

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[389]< https://www.e.gov.bh/wps/portal >.

[390]*Global Report under the Follow-up to the International Labour Organisation of the Fundamental Principles and Rights at Work: A Future without Child Labour*, (Geneva: International Labour Office, 2002) p 9.

Kadriye Bakirci mentioned that some social scientists:

> "...point out that some kinds of work may be completely unobjectionable except for one thing about the work that makes it exploitative. For instance, a child who delivers newspapers before school might actually benefit from learning how to work, gaining responsibility, and earn a bit of money, if he did not get paid then he or she is being exploited".[391]

Furthermore,

> "Human Rights Watch ("HRW") report on the subject of child labour notes that 'In some cases, a child's labour can be helpful to him or her and to family; working and earning can be a positive experience in child's growing up. This largely depends on the age of the child, the conditions in which the child works, and whether work prevents the child from going to school.' The concern is not therefore that children do not work at all, but rather that they are not forced to work, and more importantly not forced to work under circumstances detrimental to their health and well-being, and that disrupt their education.
>
> According to the same HRW report, 'children, who work long hours, often in dangerous and unhealthy conditions, are exposed to lasting physical and psychological harm.' However, the report also notes that many of the abuses of children in work place are violations of their *human rights,* rather than their specific derivable rights as children".[392]

I agree with these opinions and believe that NGOs should promote such work, through their activities, as this kind of work teaches children the value of work and responsibility.

Finally, Article 8 of ILO Convention No.138 does not apply to children engaged in artistic performances provided the number of working hours and working conditions

[391]Bakirci Kadriye, *op cit,* pp 8-10.
[392]Bentley Kristina Anne, *op cit,* p 117.

are within prescribed limits. In contrast to the Convention the Labour Law 1976 has only one exception which is set out in Article 58[393] and provides that:

> "Exempted from the application of the provisions of this Chapter are juveniles employed within the environment of the family where members of the same family only are working under the supervision of the father, mother, husband, brother, sister, uncle or grandfather".

3-3-1-3 Protection of Child Labour under the Labour Law 1976

Although Bahrain has not ratified ILO Convention No.138, it applies some of the principles of this Convention in Chapter 8 of the Labour Law 1976. However, as an ILO Member State Bahrain is obliged by the ILO Declaration to apply all of the principles of ILO Convention No.138. Chapter 8 is aimed at protecting juveniles from abuse of all kinds. It also sets out several regulations to protect children in the work place.

Article 52 of the Labour Law 1976 prohibits employment of child labour during the period from sunset to sunrise, the duration of which shall be not less than eleven hours. In addition Article 53 sets out the maximum working hours for children and provides for breaks and intervals to ensure that child labourers do not suffer health problems. Article 53 effectively prohibits the employment of child labour for a period exceeding six hours a day; states that child labour should not be permitted to remain in the work place for more than seven consecutive hours; and that the hours of work should be interrupted by one or more intervals, the total of which should be not less than one hour for rest and a meal, and that intervals shall be so arranged that juveniles shall not work for more than four consecutive hours.

For the same reasons Article 54 prohibits juveniles from working overtime or from remaining at the work place beyond the hours of work fixed for them or to be employed during the weekly days of rest, and prohibits juveniles from being paid on the basis of piece-work or productivity. In addition Article 55 has set the annual leave at not less than one full month and provides that a juvenile can neither waive nor defer any of his leave entitlements.

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[393]ILO Convention No.1.

Article 42 prohibits a child who has reached fourteen years of age but who has not yet attained the age of sixteen years from entering into a contract of employment without the permission of his guardian, otherwise such contract shall be null and void. In addition, a minor who has attained the age of sixteen years may, as a worker, enter into a contract of employment but the Court may terminate such contract upon the request of his guardian or any person who has the right to look after the minor's interest, his future or any other evident interest.

Article 56 provides that a business which employs child labour must:

1. post up in a prominent place within the work place a copy of the provisions prescribing the employment of juveniles;
2. maintain a permanent register for juveniles recording their names, ages, the date of their engagement for employment and their jobs;
3. post up in a prominent place within the work place a list recording the hours of work and the intervals for rest; and
4. notify in advance the Ministry of Labour and Social Affairs of the names of persons employed to supervise child labour.

The Labour Law 1976 provides for labour inspectors to question if children are working in a business and Article 57 entrusts the Minister for Labour and Social Affairs with the task of adding additional regulations through the process of ministerial resolutions. The reason for this is that changing laws through the legislative process is time consuming and ministerial resolutions are preferred; though they occupy a status lower than that of a law, breach of regulations can result in denial of the rights to employ foreign labour.

When enacting Chapter 8 of the Labour Law 1976 the Bahrain government aimed to protect children who had reached the age of 14 years, but who have not yet reached 16, from working conditions that may harm their childhood.

The Employment Service Office which is attached to the Ministry of Labour which registers employees has never investigated a case of child employment as in practice, employers do not wish to employ persons under the age of 18 because they do not

contribute in any way to the numbers needed to satisfy the requirements of Bahrainisation i.e. the process whereby for an employer to obtain work permits for foreign workers a specific percentage of Bahrainis need to be employed too. This is a favourable side effect of the Bahrain government's Bahrainisation policy as it provides little economic advantage to employing child labour. Foreign children of course cannot obtain the right to work in Bahrain.

The protection imposed by the Labour Law 1976 as amended does not comply with ILO Convention No.138 as it has does not impose a minimum age for work and does not adequately protect young workers between the ages of 16-18 as they are not included in the law. Accordingly, Bahrain should introduce minimum working age legislation as a matter of urgency.

Although currently there are no cases before the Bahrain courts, by failing to abide by the ILO Constitution and to adopt and implement the principles of the ILO Declaration and the Fundamental Rights at Work, the Bahrain Government is leaving itself open to a court action demanding that the Government fulfil its obligations and introduce legislation to adopt and implement ILO Convention No.138.

3-3-1-4 Penalties

Article 9 of ILO Convention No.138 provides that a competent authority should take all the necessary measures, including the provision of appropriate penalties, to ensure the effective enforcement of the provisions of this Convention.

In addition, the domestic laws or regulations or the competent authority has to define the persons responsible for compliance with the provisions giving effect to the Convention. The domestic laws or regulations or the competent authority should prescribe the registers or other documents which shall be kept and made available by the employer; such registers or documents shall contain the names and ages or dates of birth, duly certified wherever possible, of persons whom he employs or who work for him and who are less than 18 years of age.

In this respect Article 56 of the Labour Law 1976 requires that a permanent register for juveniles is maintained but it does not require certification from the Ministry of

Labour as it relies on the process of labour inspections to check on the registers and other documents.

Article 163 of the Labour Law 1976 imposes penalties for non-compliance with the law by providing that any person contravening the provisions of chapter 8 or of Orders made there under concerning the employment of juveniles will be guilty of an offence punishable by a fine. Such fines shall be repeated as many times as there are juveniles in relation to whom such offences are committed concerning their employment or admission to work places in contravention of the Chapter and Orders made under it.

Likewise, such a fine will be repeated as many times as the offence is committed against the same worker. A prosecution will be instituted against the manager of the business concerned or the supervisor of the work place in which the employment is undertaken; and a prosecution can be instituted against the employer concerned if the circumstances of the offence lead to the belief that he had knowledge of the facts constituting the offence.

A prosecution will also be instituted against any person acting as a guardian of a juvenile when he permits the employment of a juvenile in contravention of the provisions of Chapter 8.

ILO Convention No.138 is riddled with numerous loopholes which mean it has lost much of its value. Whilst Article 1 has been effective in publishing the effects of widespread use of child labour, and in progressively raising the minimum age many countries still condone the use of child labour either by exploiting the exceptions or by not implementing the Convention.

Indeed, Bahrain has failed to apply ILO Convention No.138, specifically with regards to the minimum age for work. For that reason I suggest that the Bahrain government should amend the minimum age for work to 18 years. However, I also suggest that children should be allowed to work from the age of 15 years in programmes laid down by NGOs in order to learn responsibility and ready them for the work-place.

3-3-1-5 Reasons for Bahrain Non-ratification of Convention No.138

I believe that Bahrain has not ratified ILO Convention No.138 for the following reasons:

1. Under Bahrain law the age of majority is uniform across several laws including the Penal Code 1976. The Bahrain government has not wished to cause confusion by amending the minimum working age requirement as defence lawyers in criminal prosecutions may try and use the discrepancy to ensure that persons under 18 cannot be tried as adults.

2. The ILO accepts the "connection between the abolishing of child labour and education", in addition it recognizes that, "adopting coherent policies in areas of poverty reduction, basic education and human rights, is central to the progress made by countries in combating child labour".[394]

In order to eliminate child labour the ILO advocates that:

> "There must be an attempt to cure the social ills that spawn it: poverty and unemployment. Although education plays an important role in the fight against child labour, it is cost may be too high for very poor families to pay. Some studies show that children's earnings can constitute 30 per cent or more of family's income. To relinquish these wages by sending children to school could spell disaster for households already living at subsistence level".[395]

This is not applicable in Bahrain as under the Education Law 2005 as issued by Law No.27 of 2005 ("Education Law 2005") education is compulsory and free in the early stages.

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[394] *The End of Child Labour: Within Reach, the Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, Report I(B), International Labour Conference 95th session, (Geneva: International Labour Office, 2006) pp xi- xii.

[395] Anon., *ILO: Focus on Child Labour*, (1987) 13(1), Commonwealth Law Bulletin 219. (C. L. B. 1987, 13(1)).

3. Bahrain has a system of retirement pension (dependant upon contributions) and social allowance which supports employees. However, Bahrain's system does not include family allowance paid for every child born, or for a specific number of children per family. This makes for a point of difference with Islamic Shari'a with the allotting of allowances for children.[396] Such an allowance means that generally families are not reliant upon the income from child labour which allows children to attend school and gain an education.

Bahrain should ratify Convention No.138 as there are no essential reasons for the non-ratification. Education in Bahrain is developing, as stated in the statistics distributed by the Ministry of Education; 124,010 students in 2005-2006. In the statistics of 2001 the population aged between 10-19 years of age is 48,511. In addition, the Bahrain economy has grown each year in many economic sectors and activities.

The provisional data:

> "For the national accounts indicate Bahrain's economic growth rate in the year 2005 rose by 7.8%, compared to 5.6% in the year 2004. Private consumption expenditure reached BD 2,189.6 million in 2005 compared to BD 1,852.0 million in 2004. Also, the GDP ratio slightly decreased from 43.5% in the year 2004 to 44.0% in the year 2005".[397]

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[396] It is recounted by Aslam, Umar's servant that, "he and some other merchants went to the oratory in Madinah. Umar and Abdulrahman Ibn Awf were consigned to guard the merchants and they spent the night there praying and watching over them. While they were there Umar heard a child crying and so he went to the baby's mother and said, 'Fear God and do well for your child'. He then returned to where he had been sitting. Then later the same night he heard the same child crying. Umar went back to the baby's mother and rebuked her by saying, 'What a bad mother you are! Why is your child crying all night?' She replied, 'I am trying to distract him from breastfeeding, but he refuses'. Umar asked her why she was trying to wean her baby and she answered, 'Umar gives pensions only to the weaned children'. It was true; Umar had set a grant for the weaned. He asked her how old her child was and she told him his age was so and so months. When she told him he was angry and ordered her not to coerce the baby into being weaned. Umar returned to his prayers but the child's crying was so loud Umar's recitation could not be heard. He blamed himself for his decision which could have killed many children and he ordered the town crier to announce Umar would give child support to every newborn, and consequently parents did not have to wean their children before they reached a specific age". See Al Salabi Ali Muhammed, *Umar bin Al Khattab (His Era and Personality)*, 1st Edition, (United Arab Emirates [Sharja]: Al Sahwa Library, 2002) pp 197-198.

[397] < https://www.e.gov.bh/wps/portal >.

This means that the national economy is rising, leading to a rise in private consumption expenditure. This Convention should be ratified because there are no real reasons preventing the relevant authorities from ratifying it, especially since the number of countries ratifying this Convention is growing following the adoption of ILO Convention No.182 and because of the actions of developed nations in taking into account the failure of ILO Member States to implement the Fundamental Rights at Work when assessing economic relations.

3-3-2 ILO Worst Forms of Child Labour Convention No.182 of 1999

In spite of providing legal protection for working children through international Conventions issued before the ILO Worst Forms of Child Labour Convention No.182 of 1999,[398] there were still many obstacles hindering the application of these Conventions. These obstacles resulted in the ILO including child labour on to the agenda of the 83rd session of the International Labour Conference in June 1996. The conference issued a decision which recommended that more effort be put into the elimination of child labour and the setting out of new criteria to effectively eliminate the worst forms of child labour.

The report of the Director General of the International Labour Office stated that,

> "The 86th session in June 1998, whose topic was, 'Child Labour: Toward Eliminating the Disgrace', included a realistic assessment of the dangers children continue to face. The report included many suggestions and measures to solve the problem and to close the gaps in international child labour laws. Hence, the International Labour Conference in its 87th session in June 1999 adopted Convention No. 182 which relates to prohibiting and immediately eliminating the worst forms of child labour".[399]

3-3-2-1 Essence of Worst Forms of Child Labour

Article 2 of ILO Convention No.182 states that, "For the purposes of this Convention, the term 'child' shall apply to all persons under the age of 18".

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[398]Never in the history of The ILO has a Convention been so widely ratified. 163 State members had ratified this Convention. See <http://www.ilo.org/ilolex/english/docs/declworld.htm>. Bahrain ratified this Convention on 23rd March 2001 by Decree No.12 of 2001.

[399]Al Harri Khalid, *op cit*, p 56.

This definition of the minimum working age follows Article 3 of ILO Convention No.138 and the UN Convention on the Rights of the Child 1989, which Convention has been ratified by Bahrain.

Article 3 of ILO Convention No.182 states that:

> "For the purposes of this Convention, the term 'the worst forms of child labour' comprises:
>
> a. All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom[400] and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
>
> b. The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
>
> c. The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; and
>
> d. Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children".

Article 4 of ILO Convention No.182 leaves the definition of the provisions in Article 3(D) to national laws after consultation with employers and workers organisations.

Article 3 of ILO Convention No.182 complies with Article 32 of the UN Convention on the Rights of the Child 1989 which recognises the right of a child to be protected from economic exploitation and from performing any work likely to be hazardous to, or to interfere with, a child's education, or be harmful to a child's health or physical, mental, spiritual, moral or social development. In addition, it provides for a minimum age or minimum ages for admission to employment, appropriate regulation of the

[400]Serfdom means the state of, or condition of, a person forced by custom or law, or by agreement to live and work on someone else's land and to present certain taxes to the landowner for or without pay. A serf does not have the ability to change his state. *Global Report following from the ILO Declaration on Fundamental Principles and Rights at Work, Stopping Forced Labour*, (Geneva: The International Labour Office, 2001), p 11, footnote 10.. In addition it was defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956 which was mentioned in first section of this chapter.

hours and conditions of employment and appropriate penalties or other sanctions to ensure the effective enforcement of Article 32.

Sexual exploitation of children has recently been defined as:

> "Use of children for the sexual satisfaction of adults. It is a comprehensive term which mainly includes child prostitution, use of children in pornographic performances and materials, sale of children and trafficking in children for sexual purposes. The basis of the exploitation is the unequal power and economic relations between the child and the adult. The child is exploited for his/her youth and sexuality. Frequently, although not always, this exploitation is organised by a third party for profit. Sexual exploitation of children is not always for exchange of money; in some cases a child can exchange his/her sexuality for other benefits such as, shelter, food and friendship. Therefore, it is not correct to define child sexual exploitation as 'the sexual use of children for economic purposes' and call it 'commercial sexual exploitation of children'".[401]

The forms of child labour which ILO Convention No.182 stipulates should be abolished, fall into the following three categories:

> "1. Labour that is performed by a child, who is under the minimum age specified for sexual activity (as defined by national legislation, in accordance with accepted international standards), and is thus likely to impede the child's education and full development.
>
> 2. Labour that jeopardizes the physical, mental or moral well-being of a child, either because of its nature, or because of the conditions in which it is carried out, known as hazardous work.
>
> 3. The worst forms of child labour, which are internationally defined as slavery, trafficking, debt bondage and other forms of forced labour, forced recruitment of children for use in armed conflict, prostitution and pornography, and illicit activities".[402]

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[401] Bakirci Kadriye, *op cit,* pp 8-10.

[402] *The End of Child Labour: Within Reach, the Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, Report I(B), International Labour Conference 95th session, (Geneva: International Labour Office, 2006) p 9.

3-3-2-2 Member States' Obligations

ILO Convention No.182 obliges Member States that have ratified the Convention as follows:

1. Article 1, obliges ILO Member States to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. This includes amending existing laws to criminalize such practices.

   The Royal Decree ratifying ILO Convention No.182 did not amend the Penal Code 1976, and accordingly the worst forms of child labour are not defined or criminalized in Bahrain. Further the Convention itself does not set out any penalties for persons abusing child labour and under the Bahrain Constitution no punishment can be imposed except by law.[403] However, although the Penal Code 1976 does not fully criminalize the worst forms of child labour it does criminalize some forms of child labour.

   As a result of Article 1 Bahrain has received an Individual Direct Request from the Committee of Experts concerning ILO Convention No.182 which states that:

   > "The Committee takes note of the Government's contention that under Article 1 of the Convention measures have been taken to secure the prohibition and elimination of the worst forms of child labour. In its report, the Government states that the worst forms of child labour do not exist in Bahrain and accordingly there is no need to take immediate measures to eliminate those forms of child labour. The Committee reminds the Government that Article 1 also requires the Government to take urgent measures to prohibit those forms of child labour. The Committee notes that the Government has made the Convention part of domestic law by Decree No.12 of 2001 and that most of the prohibitions contemplated by the Convention

[403] Article 20 of Bahrain Constitution.

have been given effect in legislation. The Committee wishes to point out however that legislative prohibition does not exhaust the measures expected of a government under the Convention".[404]

Accordingly, the Bahrain government has an obligation under PIL rules to define and criminalize the worst forms of child labour, even if they do not currently exist in Bahrain, as Bahrain has ratified ILO Convention No. 182.

2. Article 5 of ILO Convention No.182 obliges ILO Member States to establish or designate appropriate mechanisms to monitor the implementation of the provisions to give effect to the Convention. Currently, Bahrain has no such mechanisms but they can be achieved by establishing a national committee made up of concerned Ministries to oversee the implementation of the Convention.

As a result of this Article Bahrain has received an Individual Direct Request from the Committee of Experts concerning ILO Convention No. 182 which states that:

> "Monitoring mechanisms: The Committee, however, reminds the Government that it is required under Article 1 not only to take immediate and effective measures to eliminate the worst forms of child labour but also to take measures to secure the prohibition of those forms of child labour. The requirement to establish or designate a monitoring mechanism is as pertinent to the prohibition of the worst forms of child labour as it is to their elimination. The Committee accordingly calls on the Government to consult with the employers' and workers' organisations as it is required to do under Article 5 and to

[404]<http://www.ilo.org/ilolex/english/newcountryframeE.htm>.

designate or establish appropriate mechanisms to monitor the implementation of the provisions of the Convention".[405]

3. Article 6 of ILO Convention No.182 obliges Member States to design and implement action programmes to eliminate as a priority the worst forms of child labour. This can be accomplished by establishing the above-mentioned national committee which would co-operate with the ILO's experts and seek the technical aid from the ILO.

As a result of this Article Bahrain has received an Individual Direct Request from the Committee of Experts concerning ILO Convention No.182 which states that:

> "Programmes of action to eliminate the worst forms of child labour: The Government states that it has not established programmes of action to eliminate the worst forms of child labour under this article because no such forms of child labour exist in Bahrain. In view of the report of the Special Reporter of the United Commission on Human Rights which is mentioned in detail in Article 7, paragraph 2(a) (E/CN.4/2001/73/Add.2, 6 February 2001, paragraph 56), the Committee would be grateful if the Government would respond to those reports and, if correct, the measures it intends taking to eliminate this form of child labour".[406]

Bahrain should implement such mechanism and programmes. In this writer's view its unlikely to uncover child labour in the forms prohibited by ILO but may highlight the use of children in political demonstrations. Being immune from prosecution, children are sometimes encouraged by demonstrators up in to the front line.

4. Article 7 of ILO Convention No.182 obliges Member States to take all necessary measures to ensure the effective implementation and

[405] *Ibid.*
[406] *Ibid.*

enforcement of the provisions giving effect to the Convention including the provision and application of penal sanctions or, as appropriate, other sanctions. It clarifies the importance of education in eliminating child labour, and obliges Member States to take effective and time-bound measures to:

A. prevent the engagement of children in the worst forms of child labour;
B. provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;
C. ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;
D. identify and reach out to children at special risk; and
E. take account of the special situation of girls.

As a result of this Article Bahrain has received an Individual Direct Request from the Committee of Experts concerning ILO Convention No.182 which states that:

> "Paragraph 1 Penalties: The Committee observes that compulsory labour is prohibited under Article 13 of the Constitution. Noting the absence of penalties for the violation of the legal provision prohibiting compulsory labour, the Committee requests the Government to provide information on the measures taken or envisaged to ensure that effective and dissuasive penalties apply to a person who violates the legal provision on compulsory labour".[407]

Under Article 189 of the Penal Code 1976 employees or an employee assigned for public service is prohibited from hiring workers to work for the country or for one of the authorities mentioned in Article 107 as *corvee* or retaining some or all of their salary for no reason. In addition

[407] *Ibid.*

Article 357 of the Penal Code 1976 punishes people who hold other people against their will or kidnap them, for gain or to profit from him or any other reasons.[408] Unfortunately, these articles are not sufficient to implement Article 13 of the Constitution 2002. Accordingly I advise that the Penal Code 1976 should be re-drafted to implement Article 13 in of the Constitution 2002.

As a result of Article 7(2) Bahrain has received an Individual Direct Request from the Committee of Experts concerning ILO Convention No.182 which states that:

> "Effective and time-bound measures: The Government states that it has not established time-bound measures contemplated under Article 7(2) because the worst forms of child labour do not exist in Bahrain. The Committee notes, however, that the Government has implemented an important measure to prevent the engagement of children in the worst forms of child labour by making education free and intends to implement an important measure by passing a law making education compulsory - see the Government's statements to the UN Committee on the Rights of the Child (CRC/C/11/Add.24, 23 July 2001, paragraph 272)".[409]

The Bahrain government has enacted the Education Law 2005 which provides compulsory education for children until the age of 15 years; in addition this education is free until high school (18).

Finally, as a result of Article 7(3) Bahrain has received an Individual Direct Request from the Committee of Experts concerning ILO Convention No. 182 which states that:

> "Competent authority for the implementation of the provisions giving effect to the Convention: The Committee notes that, according to section 147 of the Labour Law, officers of the

[408]See chapter 3, section 1 "Forced labour".
[409]<http://www.ilo.org/ilolex/english/newcountryframeE.htm>.

Ministry of Labour and Social Affairs shall be empowered to undertake industrial inspections and enforce the application of the provisions of this Law, and any regulations made there under.

It also notes that, according to section 8 of Order No.28 of 1976, as amended by Order No.38/1976, labour inspectors shall conduct periodical and comprehensive inspections (i.e. wages, working hours, employment of juveniles and women, etc.) of the workplaces falling under the scope of the application of the Labour Law and subsequent regulations, and prepare data concerning matters falling under their competence.

Labour inspectors are entitled to enter all places of work without prior notice during working hours, to examine all relevant documents, obtain samples from the materials used and dealt with in the establishments, and to question the employer and the workers (section 14 of Order No.28 of 1976 as amended by Order No.38/1976). The Committee asks the Government to provide information on the activities of labour inspectors, including the number of workplaces investigated per year, and on the findings with regard to the extent and nature of violations detected concerning children involved in the worst forms of child labour".[410]

An inspection mechanism is one of the best measures of ensuring the implementation of the Labour Law 1976 and ILO Convention No.182.

5. The ILO Conventions impose international co-operation to ensure the punishment of criminals engaged in transnational organized crimes or a crime identified as such under international criminal law. Since the phenomenon of child labour is international in scope it necessitates co-

[410] *Ibid.*

operation between ILO Member States to guarantee the implementation of the Convention.

Article 8 of ILO Convention No.182 provides that:

> "Members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international co-operation and/or assistance including support for social and economic development, poverty eradication programmes and universal education".

As a result of Article 8 Bahrain has received an Individual Direct Request from the Committee of Experts concerning ILO Convention No.182 which states that:

> "International co-operation: The Committee notes that Bahrain is a member of Interpol which helps co-operation between countries in the different regions especially in the fight against trafficking of children. It also observes that the Government ratified the Convention on the Rights of the Child in 1992.
>
> The Committee also notes the Government's indication that, due to the absence of the worst forms of child labour, no steps are taken to establish international co-operation. The Committee reminds the Government that, by virtue of Article 8 of the Convention, Members must take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international co-operation and assistance, including support for social and economic development, poverty eradication programmes and universal education".[411]

As can be seen from its answers the Bahrain government has not fulfilled its obligations under ILO Convention No.182, as the Bahrain government has

[411] *Ibid.*

misinterpreted the requirements of the Convention. Accordingly, the Bahrain government should now follow the ILO's findings and systematically adopt the Convention into law.

3-3-2-4 Application of Convention No.182 under Bahrain Law

Bahrain did not fully adopt ILO Fundamental Convention No.182 into law as it relied on existing offences under the Penal Code 1976 as being sufficient to fulfil the criteria of the Convention.

3-3-2-4-1 Slavery and Similar Practices

Article 3 of ILO Convention No.182 lists what the ILO considers to be the worst forms of child labour. Article 3(A) states that, "The sale[412] and trafficking of children,[413] debt bondage and serfdom and forced or compulsory labour including forced or compulsory recruitment of children" is one of the worst forms of child labour.

As stated earlier when discussing Forced Labour in section 1 of this chapter Islamic Shari'a does not differentiate between adults and children when considering the abolition of slavery, and forced labour.

The slave trade had an enormous effect on the pre-Islamic economies and as a result Islam did not prohibit slavery. However, because Islam considers masters and slaves to be equal and the emancipation of slaves is a remedy for committing sins, Islam gradually helped to abolish slavery. In relation to slavery, the Islamic principle of

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[412]Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography Article 2(A) provides that for the purposes of the Protocol, the sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.

[413]"'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs; (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used; (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (a) of this article".

equality between master and slave imposed a duty upon masters to treat their slaves well and not to torture them.

As stated earlier Bahrain Law does not impose specific Articles dealing with child slavery, and consequently Articles dealing with the adults are applicable to children.[414]

As a result of Article 3(A) Bahrain has received an Individual Direct Request from the Committee of Experts concerning ILO Convention No.182 which states that:

> "Worst forms of child labour: Clause (A). All forms of slavery or practices similar to slavery. 1. Sale and trafficking of children. The Committee notes that the Government has ratified the UN Anti-Slavery Convention and that section 357 of the Penal Law prohibits deprivation of freedom. The Committee notes that there does not appear to be any penal provision expressly prohibiting the sale and trafficking of children under 18 years. The Committee reminds the Government that it is obliged under Article 1 to take immediate and effective measures to prohibit this form of child labour. It requests the Government to inform the Committee of the measures taken or envisaged to ensure that the sale and trafficking of children under 18 is effectively prohibited".[415]

The Individual Direct Request has considerable consequences as Bahrain Law does not define sale or trafficking in persons. Thus, laws need to be introduced in Bahrain to ensue the full implementation of the ratified ILO and UN Conventions and the Bahrain judiciary needs to be trained in the application of these treaties. It is worth mentioning here that Bahrain has ratified but not incorporated the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime of 2000 by Decree No.4 of 2004.

[414]See chapter 3 section 1 "Forced Labour".
[415]<http://www.ilo.org/ilolex/english/newcountryframeE.htm>.

It is also worth mentioning that Bahrain military law does not impose forced or compulsory recruitment and in compliance with the UN Convention on the Rights of the Child 1989 the youngest age at which a person can join the military is 18 years.[416]

As a result of this Bahrain has received an Individual Direct Request from the Committee of Experts concerning ILO Convention No.182 which states that:

> "Compulsory recruitment of children for use in armed conflict. The Committee notes the Government's indication to the Committee on the Rights of the Child (CRC/C/11/Add.24, 23 July 2001, paragraph 302) that there is no compulsory military service in Bahrain".[417]

3-3-2-4-2 Prostitution and Production of Pornography

While ILO Convention No.182 considers prostitution and pornography[418] as "child labour", Bakirci argued that:

> "Children involved in this work should not be viewed as 'sex workers' or 'child labourers', as viewing the sexual exploitation of children as a kind of labour might cause it to be legitimised in some countries and cause more trauma for children. The ILO should either consider it to be a kind of modern slavery in a separate paragraph in Convention No.182, or introduce a separate instrument in order to combat against child sexual exploitation. It was wrong to include illegal activities in the definition of child labour".[419]

I agree with this opinion as it is a modern form of slavery imposed on a child in order to sexually exploit him or her.

Article 3(B) of ILO Convention No.182 states that one of the worst forms of child labour is the procuring or offering of a child for prostitution, for the production of

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[416]Article 24 of Law No.32 of 2002.

[417]<http://www.ilo.org/ilolex/english/newcountryframeE.htm>.

[418]Several international instruments have been adopted in relation to the sexual exploitation of children and young adults for instance: The Parliamentary assembly of the COE adopted Recommendation No.1065 on Trafficking in Children and Other Forms of Child Exploitation in 1987 and Resolution 1099 on the Sexual Exploitations of Children in 1996. The committee of Ministers of COE adopted the Recommendation No. 11 on Sexual Exploitation, Pornography and Prostitution of, Trafficking in Children and Young Adults in 2000 and Recommendation No. 16 on the Protection of Children against Sexual Exploitation in 2001. In addition UN adopted the CRC in 1989, and ILO has adopted Convention No.182 Worst Forms of Child Labour in 1999.

[419]Bakirci Kadriye, *op cit,* pp 8-10.

pornography or for pornographic performances. Islamic Shari'a forbids any sexual relations outside the legitimate relationship of marriage and therefore children are included in the prohibition of sexual acts outside marriage. Allah stated "You shall not commit adultery, for it is foul and indecent".[420] Adultery in Islam is punishable by stoning to death for the married adulterers, and by lashing and exile for the unmarried adulterers.[421]

The Islamic Shari'a, however, does not punish a person for something they were coerced to do, even if the act is adulterous. A coerced person is neither punished in life[422] nor in the afterlife. Allah stated:

> "Yet those who cannot afford to marry live in continence until God shall enrich them from His own bounty. As for those of your slaves who wish to buy their liberty, free them if you find in them any promise and bestow on them a part of the riches which God has given you. You shall not force your slave-girls into prostitution in order that you may enrich yourselves, if they wish to preserve their chastity. If anyone compels them, God will be forgiving and merciful to them".[423]

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[420] *Al-Israa* (the Night Journey) 32.

[421] He is to be flogged 100 times and exiled for one year. Flogging is stated in the Koran in *Al-Nur* (light) 2, "The adulterer and the adulteress shall each be given a hundred lashes. Let no pity for them cause you to disobey God and the Last Day; and let their punishment be witnessed by a number of believers". Punishment for adultery already existed in other religions. The Old Testament in Deuteronomy, Chapter 22-24 says: "When a man is discovered lying with a married woman, they shall both die, the woman as well as the man who lay with her; you shall rid Israel of this wickedness. When a virgin is pledged in marriage to a man and another man come upon her in the town and lies with her, you shall bring both of them out to the gate of that town and stone them to death; the girl because, although in the town, she did not cry for help, and the man because he dishonoured another man's wife: you shall rid yourselves of this wickedness".

[422] It is narrated that, "some female slaves who were forced into adultery by male slaves were taken to Umar Ibn Al-Khattab. However, Umar ordered the flogging of the male slaves only. It is also narrated that a woman was taken to Umar for judgment because of adultery. She said she woke up from her sleep to find a man standing on her. Umar let her go and did not order her punishment. In the Caliphate of Umar it happened that a woman asked a shepherd for water to drink, however, the shepherd refused to let her drink unless she allowed him to have her, which she did. The case was taken to Umar for judgment. Umar asked for Ali's view and Ali said the woman was coerced to commit adultery, and consequently Umar gave her some money and let her go". See Al Salabi Ali Muhammed, *Umar bin Al Khattab (His Era and Personality)*, 1st Edition, (United Arab Emirates [Sharja]: Al Sahwa Library, 2002) p 347.

[423] *Al-Nur* (the Light) 33.

It is also worth mentioning that the "ability to apply punishment depends on four conditions: choice, maturity, knowing about the prohibition and sensibility".[424] The Islamic Shari'a punishes the coercer, but does not punish the coerced, even if they are compelled to practice prostitution, and this relates to adults, as well as to children. This implies that Islamic Shari'a meets the provisions of Article 2(B) of ILO Convention No.182, as the Shari'a punishes those who commit or force someone else to commit sexual intercourse.

Bahrain Law does not impose specific penalties for procuring or offering a child for prostitution or for the production of pornography or for pornographic performances but the Penal Code 1976 and other laws do prohibit certain forms of sexual assault and exploitation which apply to both adults and minors.

Articles 344 of the Penal Code 1976 prohibits sexual intercourse with a female without her consent, and with child not reached 16 years old. The consent of child under seven years old is not recognized.[425] The penalty of this crime will be death sentence or life in prison.

Article 345 of the Penal Code 1976 prohibits sexual intercourse with a female who has reached seven years of age, but not 16 years and with her consent. The punishment is reduced if the victim is a female who has completed 16 years, but is not yet 21 years and with her consent. Likewise, Article 346 of the Penal Code 1976 prohibits assaults against the honour of a person, the penalty becoming harsher if the victim is less than seven years of age. The legislature has set the penalty in accordance to the victim's age; the punishment being reduced if the victim is more

[424]Due to confusion in marital relations and the destruction of the family which may result from adultery, the punishment for adultery was toughened to encourage people to refrain from it. To prove a case of adultery strict conditions need to be applied and there must be at least four witnesses to the adulterous behaviour. Allah says in *Al-Nur* (the Light) 4, "Those that defame honourable women and cannot produce four witnesses shall be given eighty lashes. Do not accept their testimony ever after, for they are great transgressors - except those among them that afterwards repent and mend their ways". However, if the accused confesses to having committed adultery he makes himself punishable without the need for witnesses. It is narrated by Abu Huraira that a man came to the Prophet in the mosque and said, 'Oh Messenger of God, I committed adultery!' The Prophet ignored him. When the man repeated his story four times, the Prophet considered it a testimony, looked to the man and asked him if he was a fool. The man answered 'No'. The Prophet asked him if he was married. The man answered 'Yes' and the Prophet ordered the man to be stoned to death. On the other hand Islam invites people to hide their evil doings and not to spread word of it so problems do not escalate. See Sabiq Sayed, *op cit,* p 557.

[425]Article 320, see below at para. 3-3-2-4-4.

than seven, but less than 16. Article 347 of the Penal Code 1976 prohibits anyone assaulting the honour of a person who has not completed 14 years of age, but is not yet 21 years with his consent. The age in this article should be raise to 18 instead of 14 as a child of 14 years old still can still be affected materially and incorporeally by being forced into sexual relations.

Article 348 imposes increased penalties in the following circumstances:

"1. If the criminal is a relative of the victim, or one of those responsible for his nurturing, or looking after him, or one of those who have authority on him, or his servant or a servant of one of those stated above;
2. If the criminal is a public official, or entrusted with a public service or a member of the clergy or one of the doctors or one of their aids and used his position, job or the trust given to him;
3. If the crime is committed by two persons or more than two persons who co-operated to overpower the victim or alternated to the act:
4. If the victim is affected by a venereal disease because of the crime;
5. If the victim becomes pregnant or loses her virginity as a result of the crime".

Article 349 imposes the death sentence or life imprisonment if the crime leads to the death of the victim.

Article 324 of the Penal Code 1976 prohibits the instigation of a male or a female to perpetrate acts of fornication or adultery and the aiding and abetting of such acts. The punishment for these offences is more severe if the victim is less than 18 years of age.

Article 325 prohibits the incitement of a male to perpetrate acts of fornication or prostitution by means of coercion, threats or tricks. The punishment for these offences is more severe if the victim is less than 18 years of age.

Finally, Article 326 prohibits any person, whether a male or a female, from living partly or wholly on what they earn from acts of fornication or prostitution. And thus includes those profiting from indecency with children.

Article 327 provides that these offences shall be aggravated if the perpetrator is,

> "...the spouse of the victim or one of his relatives or one of those responsible for his nurturing or taking care of him, or of those who have authority on him, the penalty shall be doubled in its both minimum and maximum and without exceeding 15 years in its maximum".

Article 328 prohibits the use of establishments or premises for purposes of immorality or prostitution and the aiding an abetting of such acts.

Article 329 prohibits soliciting in a public place to perform acts of immorality or prostitution.

Article 355 prohibits printing, importing, exporting, owning, possessing, carrying or displaying, with the intent of exploiting, distributing or showing any publications, drawings, pictures, films, symbols or such other items if they violate public morals. Whilst this Article is wide enough to cover pornography a new separate Article should be created to deal specifically with child pornography and impose higher, penalties on child pornographers.

Also Article 22 of the Juveniles Law 1976 which was issued by Decree No.17 of 1976 ("Juveniles Law 1976") protects juveniles from being exploited by adults and covers the forms of exploitation and abuse set out in ILO Convention No.182. Article 22 provides that:

> "Without the violation of a stricter offence, any person who exposes a juvenile to delinquency or to one of the cases stated in Article 3 of this law by preparing him or helping or inciting him to do it, or facilitates it for him in any way whatsoever, even if the case of exposure to delinquency did not actually occur shall be sentenced to detention. The penalty shall be detention for a period not less than 3 months if the criminal uses coercion and threats, or if he is a relative of the juvenile, or one of those responsible for his nurturing or supervising, or entrusted to him by Law.
>
> In all cases, if the act is committed on more than one juvenile even at different times, the penalty shall be detention for a period of not less than 6 months, and

not more than 5 years, and it is presumed that the criminal knows the age of the juvenile, unless it is proved on his side the impossibility of knowing the age of the juvenile".

As a result of Article 3(B) of ILO Convention No.182 Bahrain has received an Individual Direct Request from the Committee of Experts which states that:

> "Regarding use, procuring or offering of a child for prostitution: The Committee observes that, several acts have been criminalised by virtue of section 324(1), section 325(1), section 326, section 328, and finally section 329 of the Penal Law. The Committee notes that, by virtue of section 355 of the Penal Law, it is an offence to print, import, export, own, possess, carry or display, with the intent of exploiting, distributing or showing any publications, drawings, pictures, films, symbols or such other items if they violate public morals.
>
> The Committee observes however that the Penal Law 1976 does not prohibit the use, procuring or offering of a child for the production of pornography or pornographic performances. The Committee reminds the Government that, by virtue of Article 3(B) of the Convention, the use, procuring or offering of a child for the production of pornography or for pornographic performances, constitutes one of the worst forms of child labour and is therefore prohibited for children less than 18 years.
>
> The Committee also reminds the Government that it is required under Article 1 to take 'immediate measures' to ensure the prohibition of the worst forms of child labour. The Committee accordingly requests the Government to take measures as a matter of urgency to prohibit the use, procuring or offering of a child for the production of pornography or for pornographic performances, and to provide for effective penalties".[426]

Although Bahrain has no specific law covering child abuse most forms of abuse and exploitation are prohibited. However, there are, as was pointed out by the Committee

[426]<http://www.ilo.org/ilolex/english/newcountryframeE.htm>.

of Experts, some shortfalls in Bahrain Law in regarding to the lack of criminalisation of the use, procuring or offering of a child for the production of pornography or for pornographic performances. Even if the worst forms of child labour do not occur in Bahrain, Bahrain is under an obligation to implement Article 1 of ILO Convention No.182. Accordingly, the Penal Code 1976 should be amended specifically to prohibit the worst abuses of child labour in line with the Convention.

3-3-2-4-3 Illicit Activities

Article 3(C) of the ILO Convention No.182 maintains that one of the worst forms of child labour is, "The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties".

The Islamic Shari'a also prohibits the procurement of illicit activities for example the Prophet said:

> "May God's curse be on wine and on he who drinks it, who serves it, who sells it, who buys it, who makes it, who it is made for, who delivers it and who it is delivered to".[427]He also said, "He who garnered grapes in their season so as to sell them to those who make liquor of them, he has deliberately chosen to be in hell".[428]

The Islamic Shari'a prohibits all that is considered harmful. As Allah says, "He will make good things lawful to them and prohibit all that is foul. He will relieve them of their burdens and of the shackles that weigh upon them". [429] This is with regard to all things, deeds, beliefs, persons, and foods, and prohibits them as unlawful or "*Al-Khabaith*". *Al-Khabaith* refers to all that is harmful to man, and so by default the consumption, use, delivery, making, selling and buying and promotion of narcotics is prohibited. For example children cannot sell drugs.

When making comparisons with the Islamic Shari'a, it should be appreciated "if something is not mentioned in a text from the Shari'a, but for any other reason is

[427]Sabiq Sayed, *op cit,* p 234.
[428]*Ibid.*
[429]*Al-Araf* (the heights) 157.

prohibited by analogy, or is part of an opinion which is one of the five pillars of Islam, then it is treated as analogous or similar to the cause".[430] The Islamic Shari'a does not contain any specific prohibition for the child, yet this prohibition is general and includes children and adults, as the deed harms man's health. It should be taken into account that, as previously stated, he who is coerced is not guilty because he did not commit the act willingly.

Bahrain Law does differentiate between adults and children, and protects the child by passing laws. However, Legislative Decree No.4 of 1973 Regarding the Control, Use and Circulation of Narcotic drugs does not specifically prohibit the use, procuring or offering of a child in the production and trafficking of drugs. Nor does the Penal Code specify such an offence. Thus, there appears to be no offences under Bahrain law preventing the use, procuring or offering of a child in the production or trafficking of drugs, despite the fact Bahrain is obliged by the ILO Fundamental Declaration to criminalize any acts defined in ILO Convention No.182

Bahrain has given much attention to the problem of illicit drugs and has formed a national committee to combat drugs under the Prime Ministerial Order No.29 of 2006. The duty of this committee is to devise an inter-governmental national plan to combat the use of drugs and implement programmes and measures to protect against and combat trafficking in narcotic drugs. Unfortunately, however, this committee has not been assigned any resources to examine what Bahrain must do in order to comply with Article 3(C).

As a result of Article 3(C) of ILO Convention No.182 Bahrain has received an Individual Direct Request from the Committee of Experts which states that:

> "The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs: The Committee observes that sections 2 and 3 of Law No.4 of 1974[431] on controlling the use and circulation of narcotic substances and preparations prohibit the importing, exporting,

[430]Jaffer Muhammed Anas, *Principles of Islamic Ruling (Combative Study)*, (Cairo: Arab Revival House, 2001) pp 83, 91-104.
[431]The year of publication of the Legislative Decree is actually 1973 and not 1974.

producing, possessing, buying, selling, exchanging or disposing of narcotic substances.

Since the use, procuring or offering of a child for the production and trafficking of drugs does not appear to be prohibited, the Committee asks the Government to indicate the measures taken or envisaged to this end. The Committee also asks the Government to provide information on the legal provisions prohibiting the use, procuring or offering of a child less than 18 years for other illicit activities".[432]

Thus, Bahrain has not identified or criminalized the use, procuring or offering of a child for illicit activities, in particular the production and trafficking of drugs. Therefore Bahrain Law must be amended to comply with Article 3(C) of ILO Convention No.182.

3-3-2-4-4 Work Which Harms the Health, Safety or Morals of a Child

Article 3(D) of ILO Convention No.182 considers one of the worst forms of child labour to be "Work which by its nature or the circumstances in which it is carried out is likely to harm the health, safety or morals of children". This paragraph was left to be determined by national legislation after consultation with the employer and worker organisations in accordance with Article 4 of ILO Convention No.182.

Under Islamic Shari'a it is forbidden to cause harm to another in accordance to the Islamic rule, "Do no harm your self or others whether intentionally or unintentionally".[433] Islam also urged man not to exhaust his body even if this exhaustion is for the purpose of worshipping Allah. The Prophet said, "Your body has a right over you".[434] By analogy it is not allowed for a person to harm another person or expose him to danger.

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[432]<http://www.ilo.org/ilolex/english/newcountryframeE.htm>.

[433]It is included here that a man either harming someone who has not harmed him intentionally, or harming someone who unlawfully harmed him. Both cases are prohibited and forbidden by Divine Jurisdiction. Al Baghi Mustapha and Mestou Moheddine, *The Complete Explanation of the Al Arbaian Al Nawawia*, 9th Edition, (Damascus: Dar Al Kalam Altayab, 1997) pp 239-255.

[434]Al Gazali Mohammed, *op cit,* p 142.

These principles of the Islamic Shari'a and Article 3(D) of ILO Convention No.182, are codified in Article 320 of the Penal Code 1976 which stipulates that

> "Any person who exposes to danger a child who has not reached 7 years of age, or a disabled person incapable of protecting himself because of his health or mental state, or causes others to do so shall be punished by detention or a fine. The penalty shall be prison if the crime occurs in a deserted place. Should the crime result in the death of the victim or in causing him a permanent physical handicap, without the intention of the criminal, the penalty shall be that for beating resulting in death or in a permanent physical handicap. Shall the crime be committed by a parent of the victim, or by someone who has authority on him, or someone responsible for his protection this shall be aggravating circumstances".

The Article, to comply with Article 73(B) of the Civil Law 2001 and Islamic Shari'a, designates the age of seven as the age of a non-judicious child, who as such is not yet responsible for his deeds, and consequently needs protection.

Bahrain has not identified the types of work which by their very nature or the circumstances in which they are carried out are likely to harm the health, safety or morals of children.

As a result of Article 3(D) of ILO Convention No.182 Bahrain has received an Individual Direct Request from the Committee of Experts which states that:

> "Determination of hazardous work: The Committee notes that Ministerial Order No.6 of 1976 on hazardous industries and occupations which jeopardize the health of young persons provides for a list of 25 types of hazardous work that persons under 16 years of age may not perform. It observes that national legislation does not provide for a list of hazardous work for children between 16 and 18 years of age.
>
> The Committee reminds the Government that, by virtue of Article 4, paragraph 1, of the Convention, the types of hazardous work referred to under Article 3(D) must be determined by national laws or regulations or by the competent authority, after consultation with the organisations of employers and workers

concerned, taking into consideration relevant international standards, in particular paragraph 3 of the Worst Forms of Child Labour Recommendation, 1999 (No.190).

In this regard the Committee draws the Government's attention to paragraph 3 of Recommendation No.190, which provides that, in determining the types of such hazardous work, consideration should be given, inter alia, to:

1. work which exposes children to physical, psychological or sexual abuse;
   work underground, underwater, at dangerous heights or in confined spaces;
2. work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
3. work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels or vibrations damaging to their health;
4. work under particularly difficult conditions, such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

The Committee hopes that a list determining the types of hazardous work that may not be performed by children less than 18 years of age will be adopted shortly, in consultation with the organisations of employers and workers concerned".[435]

Thus Bahrain needs to examine and compare its legislation with that of other countries in order to fully comply with Article 3(D) of ILO Convention No.162.

From the above-mentioned findings it is clear that the Bahrain government has depended totally on the ratification instrument to incorporate the Convention into domestic law and did not amend any laws to adopt and implement the Convention.

[435]<http://www.ilo.org/ilolex/english/newcountryframeE.htm>.

Thus the Bahrain government must now study the Convention in order to ascertain what amendments are required to adopt the Convention into domestic law.

3-3-2-5 Criminal Liability of Minors

Article 32 of the Penal Code 1976 provides that there shall be "no responsibility on him who has not reached 15 years of age at the time of committing the act of the crime. He shall be judged according to the provisions of the Juveniles Law".

Juvenile offenders are usually tried by special courts and punished under specific tariffs which are commensurate with their age. Many countries in accordance with the UN Convention on the Rights of the Child 1989 treat offenders under the age of 18 as juveniles. Accordingly, Article 32 of the Penal Code 1976 needs to be amended in order to ensure that juvenile offenders are properly protected and not dealt with as adults and that any punishment should be appropriate to the child's age and will not give rise to the death penalty or a life sentence in accordance with Article 37 of the UN Convention on the Rights of the Child 1989. Thus, the age of child should be raised to 18 years old in Bahrain Law to meet the UN convention requirements.

In the issue of punishing a child should not be confused with the presumption of criminal understanding i.e. the age at which a child might be presumed to understand right from wrong and realising the consequences of his actions. The *James Bulger Case* is useful here,

> "In England in February 1993, two ten-year olds, Robert Thompson and Jon Venables abducted and brutally murdered two-year-old James Bulger. Their case was to test the legal presumptions in their favour based on their age, and resulted in a clamour to try them as adults. The 'unparallel evil and barbarity' of the crime was to directly contribute to the decision to try them in an adult court in spite of their youth; they were both 11 when their case came before the court. This was to set a dangerous precedent and created confusion about the age of criminal liability in Britain, and while in 1999 the European Court of Human Rights ruled that the boys did not receive a fair trial and a future judgment from the house of Lords ordered that their parole should begin in

October 2001, the case nevertheless raises some troubling question about the age at which full criminal liability should begin".[436]

Children, who have been exploited under Article 3 of ILO Convention No.182, must be viewed as victims and witnesses regardless of the role actually taken. Although the Penal Code 1976 limits the age of the juveniles to 15 which is less than that defined by ILO Convention No.182, it actually raises this age in respect of ending the provisions which apply to juveniles. Article 18 of the Penal Code 1976 provides that:

> "The procedures shall definitely cease by the convicted reaching the age of 21.[437] Nonetheless, it is still possible under the article of crimes, and after consultation with the authorised party in the Ministry of Interior to decide to place the convicted under judicial probation for a period not exceeding two years".

Whilst the Bahrain Law protects juveniles from being tried and sentenced as adults it still falls short of providing the protection required by Article 3(D) of ILO Convention No.182 as the definition of juvenile is out of step with civilised norms and juvenile centres run by the Ministry of Interior do not provide adequate vocational training or social care. Accordingly, Bahrain is failing in its duty to ensure that juvenile offenders are rehabilitated into society. However, it is worth mentioning that the Bahrain government is contemplating handing over responsibility for the custody of juvenile offenders to the Ministry of Social Affairs instead of the Ministry of Interior.

Conclusion

Bahrain has applied some of the principles contained in ILO Convention No.138, however it has failed to apply and implement all the rights set out in Convention No.182. Thus, Bahrain Law has to be amended to apply all the principles and rights set out in the Conventions.

Unfortunately, the Bahrain government misinterpreted the Conventions and wrongly relied upon the instruments of ratification to give effect to the Conventions in

[436]Bentley Kristina Anne, *op cit,* p 117.
[437]It is the age of maturity according to the Law of Trusteeship on Money 1986 issued by Decree No.7 of 1986.

domestic law. Also the inter-action of the Conventions and Article 20 of the Bahrain Constitution was not fully understood.

Bahrain law does not draw attention to the predicament of child labourers because as yet no severe cases of child labour have come to light. In addition the Penal Code 1976 has not been amended to increase the punishments for the worse forms of child labour. Accordingly the Bahrain government should consider issuing a comprehensive "Children's Law" to regulate all issues relating to children as the current situation, whereby the rights of children are dealt with in several laws, leads to confusion and gaps in the legal protection of one of the most vulnerable and valuable elements of Bahrain society.

Section 4
Freedom of Association and the Right to Collective Bargaining

Introduction

At the start of the Islamic era, labour unions were not known in the same way as they are today. This is attributed to the fact that there was no need for them. The Prophet, after his migration ("*Hegira*") to Medina, built a mosque from which to govern and rule people according to the teachings of the Koran.

In the Mosque,

> "The Prophet also chose governors and nominated them to rule over the newly conquered regions. The mosque was also a place where the Prophet used to meet foreign delegations and discuss affairs of the Islamic community and the Islamic State".[438]

The Prophet, while setting the constitution regulating the state, was therefore also responsible for defending workers' rights and preventing any harm that might affect them.

He would carry out these roles through his being at the Mosque governing Muslims and teaching them about their religion and their life. One of the many examples that reflect this is the fact that "the Islamic Shari'a is taking care of the worker and protecting him from exploitation, the protection of the naive Bedouin from the exploitation of city dwellers, by imposing the sale of their goods at a fair price".[439]

After the Prophet's death, the Orthodox Caliphs followed his model. There was no need to organize workers into bodies to protect their interests for the Prophet had already established those principles in his lifetime. "The Caliphs implemented the laws and principles set down by the Prophet and embodied in the Prophetic traditions.

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[438]Naseer Abdelkarim, *Arbitration with the Arabs as a Means to Settle Disputes Between Individuals (A Study of the Arab Tribal Customs and Traditions and the Islamic Shari'a)*, (Cairo: Arab Revival House, 2002) pp 90-98.
[439]Al Gazali Mohammed, *op cit*, p 131.

In this way, none of the Caliphs could violate any of the principles set by the Prophet".[440]

However, due to the spread of Islamic conquests to remote regions, the weakening of the religious deterrent caused by the passage of time between the days of the Prophet and the new generations, and the preoccupation of people with their personal interests at the expense of their religion, it became necessary to organize and protect workers.

The gradual movement from the rule of the individual to the rule of the State and institutions was one of the causes underlying the urge to set down laws to organise the workers' movement. Hence laws replaced the Islamic Shari'a as the main basis for organizing the State.

Islam did not prohibit devising legislation to protect workers' rights. Islam left some issues undecided, relying on changes in conditions to reveal the wisdom of not regulating them. Islam also set down a fundamental base to establish social order, and did not refer to the details that would or could change with time.

This is attributed to Islam being the last of the religions, and consequently it had to meet changes and be valid at any time and at any place. Therefore, the regulation of Freedom of Association and the right to collective bargaining is not in conflict with the Islamic Shari'a, unless it contradicts with Islamic rules (there are not any in this area).

This section will not dwell on the Islamic Shari'a because it does not have any specific texts regarding the organization of workers' associations. Rather the section will examine international Conventions relating to the freedom of association and the right to collective bargaining, which are covered by ILO Convention No.87, Freedom of Association and Protection of the Right to Organise Convention of 1948, and ILO Convention No.98, Right to Organise and Collective Bargaining Convention of 1949.

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[440]Al Salabi Ali Muhammed, *Abu Bakr's Era and Personality, 2nd Edition*, (United Arab Emirates [Sharja]: Al Sahwa Library, 2002) p 153. Also see Al Salabi Ali Muhammed, *Umar bin Al Khattab (His Era and Personality)*, 1st Edition, (United Arab Emirates [Sharja]: Al Sahwa Library, 2002) pp 104-105.

Although Bahrain has not ratified these Conventions it is still obliged to implement the principles set out in the Conventions and currently is the most advanced Arab State in its recognition of the rights to freedom of association and collective bargaining.

In 2002 Bahrain issued the Trade Union Law under Decree No.33 of 2002 ("Trade Union Law 2002") which was amended by the Trade Union Law No.49 of 2006 ("Trade Union Law 2006"). This latter law amended Articles 1, 8, 9, 21 and also added a new paragraph to Article 3 of the Trade Union Law 2002. This section will compare Bahrain's Trade Union Law 2002 as amended with the decisions of the Freedom of Association Committee of the Governing Body of the ILO[441] ("FAC") as published in FAC's Freedom of Association Digest of Decisions and Principles which publication is the most important reference on freedom of association and the right to collective bargaining, and interpretation of ILO Conventions No.87 and No.98.

Unfortunately, even though Bahrain's Trade Union Law 2002 as amended is the most modern and far reaching in the Arab world, it does not meet all the obligations imposed by ILO Conventions No.87 and No.98 due to the fact that trade unions have become highly politicized. This politicization means that trade unions engage in activities which are outside of their remit to protect and promote the rights of their members, which leads the Bahrain government to be wary of affording trade unions rights fully consistent with the ILO Conventions.

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[441]The committee on Freedom of Association, as it is widely known, is a tripartite body set up in 1951 by the Governing Body.

> " It is composed of nine members and their deputies from the government, workers and employers groups of the Governing Body, and has an independent Chairman. The Committee on Freedom of Association meets three times a year and, taking into account the observations made by governments, is responsible for carrying out a preliminary examination of the complaints submitted under the special procedure, and for recommending to the Governing Body, as appropriate, that a case requires no further examination, or that it should draw the attention of the government concerned to the problems that have been found and invite it to take the appropriate measures to resolve them, or, finally, that it should endeavour to obtain the agreement of the government concerned for the case to be referred to the Fact-Finding and Conciliation Commission. The examination of the committee of experts of over 1,800 cases in it is 44 years of existence has enabled it to build up a very full, balanced and coherent body of principles on freedom of association and collective bargaining based on the provisions of the Constitution of the ILO, and the relevant Conventions, Recommendations and Resolutions".

Freedom of Association Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO, 4th Edition, (Geneva: International Labour Office, 1996) p 2.

It is worth mentioning here that this section will only deal with the Trade Union Law 2002 as amended and will not deal with each article of ILO Conventions No.87 and No.98. The Trade Union Law 2002 has only recently been amended and there are no judgments from the Court of Cassation relating to its provisions. Since the principles and rulings of the Court of Cassation are published years after being issued, this constitutes a deficiency on the side of the judicial authority which should promptly provide rulings to ensure proper application of the principles decided and to facilitate research. This means that the only reports on decided cases under the Trade Union Law 2002 and on freedom of association are those reported in the media.

The Trade Union Law 2002 as amended and the Labour Law 1976 as amended do not deal with collective bargaining. This is dealt with in the draft Labour Law which is currently under consideration and this section will deal briefly with the extent to which collective bargaining will be allowed under this law when enacted.

Before the Trade Union Law 2002 was issued there were no trade unions in Bahrain and some of the functions of trade unions were performed by joint committees in a number of institutions determined by an order of the Minister of Labour and Social Affairs. This contravened ILO Convention No.87, Freedom of Association and Protection of the Right to Organize Convention of 1948, and ILO Convention No.98, the Right to Organize and Collective Bargaining Convention of 1949.

These joint committees were composed of employers' and workers' representatives. This was regulated by Chapter 17 of the Labour Law 1976. Article 142 of which provided that:

> "Employers and workers of any establishment may form amongst themselves joint committees for co-operation in the settlement of disputes, securing improvements to the workers' social standards, organising social services, fixing wages, increasing productivity and in any other matters of mutual interest to the two parties".

Likewise, Article 144 provided that:

> "Every joint committee shall have rules prescribing its purposes, the procedures for convening meetings and the adoption of resolutions. Such

committees shall be registered with the Ministry of Labour and Social Affairs. The said registration shall be regulated by an order made by the Minister for Labour and Social Affairs".

As trade unions were not permitted in Bahrain, the General Committee of the Workers of Bahrain brought a legal action (Case 1949) before the ILO's Freedom of Association Committee (FAC). Its claim was that Articles 27 and 28 of the Bahrain Constitution 1973 should be enforced, which permitted the setting up of trade unions, and that the proper application of Orders No.9 and No.10 of 1981 which required the Bahrain government to establish joint committees of employers and workers.

In addition, the government cancelled the Labour Union Law issued in 1957[442] and replaced it with Article 142 of the Labour Law 1976, whereby workers were deprived of the right to form unions, and the Minister of Labour and Social Affairs was given authority to refuse the registration of any member on the grounds of 'National Security'[443]

A representative of the Minister of Labour and Social Affairs had the right to attend meetings of the General Committee of the Workers of Bahrain as an observer, which contradicted the principle of freedom of association. On the other hand, Article 132 of the Penal Code 1976 prohibits association and provides that whoever infringes the law will be liable to punishment by imprisonment, or by a fine of One Hundred Bahrain Dinars, or both. Finally, the Minister of Labour and Social Affairs in August 1979 prevented the participation of workers in any international activities without first obtaining his permission.[444]

The Trade Union Law 2002 (as amended by the Trade Union Law 2006 together with Law No.32 of 2006) which amended Law No.18 of 1973 which *inter alia* banned the freedom of association for trade unions has repealed many of the laws which brought Bahrain in to contention with FAC decisions.

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[442]I could not find any copies of this law because it was adopted before the Bahrain Official Gazette was issued.

[443]This article is consistent with ILO Convention No.151, although this Convention is not within the ILO Declaration.

[444]See the summary of the Law Case and Report No.316 at <www.ilo.org>.

3-4-1 ILO Freedom of Association and Protection of the Right to Organize Convention No.87 of 1948

Article 2 of ILO Convention No.87 provides that, "Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization".

This Article clearly establishes the aim of ILO Convention No.87 as giving people the unfettered right to establish and to join organizations.

3-4-1-1 Formation of Trade Unions

The formation of trade unions which is dealt with in Article 2 of ILO Convention No.87 is allowed under Article 10 of the Trade Union Law 2002 which allows the workers of any establishment, or any particular sector, or any particular activity or of similar or associate industries or professions to establish their own trade union subject to the provisions of Law. In addition the article prohibited the setting up of more than one trade union for each establishment.

Article 10 allows workers in the same establishments, related establishments, sectors, industries or jobs to form trade unions. The formation of more than one trade union within the same establishment is not permitted this contradicts ILO Convention No.87 of 1948, which allows the multiplicity of such organizations in the same establishment.

Article 10 limits the number of workers in the same institution from having more than one trade union as more than one union could weaken the strength of the trade union within that establishment and would consequently render it ineffective in its defence of workers. The opposition in Bahrain's elected Chamber of Deputies has also defended Article 10 on the grounds that multiple trade unions within an establishment would cause the work force to divide along religious sectarian lines and would allow overseas workers to form their ethnic unions. These reasons are unlikely to find favour with FAC as the right to form multiple trade unions is an important principle under ILO Convention No.87.

Article 10 conflicts with previous FAC decisions which state that, "The existence of an organization in a determined occupation should not constitute an obstacle to the establishment of another organization, if the workers wish".[445]

FAC also stated that:

> "The provisions contained in national constitutions concerning the prohibition of creating more than one trade union for a given occupational or economic category , regardless of the level of organization, in a given territory conflicts with the principles of freedom of association".[446]

Finally FAC stated:

> "A provision of the law which does not authorize the establishment of a second union in an enterprise fails to comply with Article 2 of the Convention, which guarantees workers the right to establish and join organizations of their own choosing without previous authorization".[447]

The Bahrain government has altered it is view on this matter, and "has proposed an amended Article 10 to the legislature. This, if passed, will permit the formation of more than one union in any single facility".[448] However, as previously stated this amendment has met considerable opposition in the elected Chamber of Deputies.

The Trade Union Law 2002 as amended is a law for organizing trade unions in the private sector. However, if the paragraph in Article 10 which stipulates that public sector employees can only join existing unions was repealed, the Trade Union Law 2002 as amended would be applicable to workers in both the private and public sectors.

That is why the Bahrain government deemed it appropriate to postpone the amendment of this Article, until the law is amended to suit the requirements of both

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[445] *Freedom of Association Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, 4th Edition, (Geneva: International Labour Office, 1996) Para. 27 p 60.
[446] *Ibid,* Para. 277 p 60.
[447] *Ibid,* Para. 281.
[448] Al Ayam Newspaper, No.6179, issued 8 February 2006.

the public and private sectors. The Bahrain government sent the draft of the amended text of Article 10 of the Trade Union Law 2002 to the legislature accompanied by a memorandum,

> "stating the importance of delaying this amendment as the law should not stop public sector workers from joining trade unions. In addition, due to the fact that trade unionism represents a newly born experience requiring training unionists to practice restraint when exercising their rights, especially when exercising the right to strike, this might prevent some ministries from providing a regular and constant service to the people, such as the Ministry of Health, the Ministry of Education and other ministries whose work should not be interrupted".[449]

On the other hand, the General Federation of Workers Trade Unions of Bahrain ("GFWTUB") urged the Chamber of Deputies not to delay amending Article 10. In its statement to the Chamber, GFWTUB declared:

> "The rally of democratic unionists expresses their denunciation and astonishment at the government's demand to the Chamber of Deputies to postpone ratifying the suggested amendment of the Trade Union Law, whereby State employees are granted the right to establish their own unions within ministries. The rally declares the justifications presented by the government as invalid, and aimed at suspending public sector workers' union rights".[450]

After presenting the point of view of the Bahrain government to the Chamber of Deputies, the President of the Chamber "decided to send the amendments to Article 10 of the Trade Union Law 2002 to the Services' Committee for further study before the amendments are brought back for voting".[451] The decision was opposed by three representatives. From a personal point of view I think the union experience in Bahrain has not yet reached maturity as unionists still put politics before good industrial relations.

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[449] *Ibid,* No.5570 issued 5 June 2004.
[450] *Ibid,* No.5568 issued 3 June 2004.
[451] *Ibid,* No.5571 issued 6 June 2004.

The attitude of the Bahrain government did not contrast with the obligations set out in the ILO Declaration, which provides that all ILO Member States even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the ILO to respect, to promote and to realise, in good faith and in accordance with the ILO Constitution, the principles concerning the fundamental rights which are the subject of those Conventions. Therein the ILO Constitution provided that each of the Member States undertake to bring the Convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.

3-4-1-2 Obtaining Authorisation to Form Trade Unions

Article 11 of the Trade Union Law 2002 provides that, a trade union should submit to the Ministry of Labour its Constitution and the names of the founding members, provided that the Constitution should comply with the provisions of the applicable laws and regulations in the Kingdom.

This Article is an important step in ensuring the freedom of trade unions and in practice it has not proved, provided the union provides the correct documentation, to lead to a delay in setting up unions.

It is also is a codification of the principle of deposition, which complies with ILO Convention No.87 and FAC decisions which state that, "a provision whereby a minister may, at his discretion, approve or reject an application for the creation of a general confederation is not in conformity with the principles of freedom of association".[452]

Also states that:

> "Conditions laid down by law for the establishment of federations, and in particular a condition that those founding unions based in different provinces must first ask permission (which may be refused) from the minister, are

[452] *Freedom of Association Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, 4th Edition, (Geneva: International Labour Office, 1996), para.609, p 125.

incompatible with the generally accepted principles of freedom of association, which include the right of trade unions to establish and join federations of their own choosing".[453]

The role of the executive authority under the Trade Union Law 2002 is restricted to examining the documents and making sure they comply with the law, and in particular with Articles 2 and 14. However, in practice the Ministry of Labour should also provide technical aid to the unions to help them to submit complete documentation as the submission is required by law.

3-4-1-3 Discrimination

Discrimination against trade unions is one of the most important principles in the right to organize. To prevent discrimination, Article 3 of the Trade Union Law 2002 provides,

> "Membership of trade union organizations and continuation thereof as well as withdrawal therefrom has to be guaranteed. Trade union activities are not to be used as a means and justification for discrimination in employment or influencing workers in any manner whatsoever."

The Trade Union Law 2006 enacted a very important amendment to Article 3, by giving trade union members the right to compensation of not less than two months wages and not more than six months wages, when an employee can prove that the employer discriminated against him because of his trade union activity.

Article 110 of the Labour Law No.73 of 2006[454] provides that "the court shall return the employee to his job, and remunerate him for his period of unemployment, if the dismissal was a result of his union activities".

This maybe the most valuable amendment made to the Trade Union Law 2002, as it did not contain any penalties when it was passed. In addition I suggest that the amendments of the Labour Law No.73 of 2006 should be included in the Trade Union Law 2002 instead of the Labour Law 1976.

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[453] *Ibid,* Para. 617, p 127.

[454] Labour Law No.73 of 2006 amended the Labour Law 1976.

Whilst the law prohibits discrimination against trade unionists based on their union activities, there are still some employers who dismiss trade unionists because of their union activities. Indeed, the Bahrain Telecom Company ("BATELCO") dismissed several workers for trade union activity in 2007. The Ministry of Labour was called in to mediate but BATELCO refused to reinstate the workers and the matter is now before the courts.

Article ٢ as amended conforms to the decisions of the FAC which state that:

> "Protection against anti-union discrimination should apply more particularly in respect of acts calculated to cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside the workplace or, with the employer's consent, during working hours".[455]

In addition FAC has stated that:

> "Protection against acts of anti-union discrimination should cover not only hiring and dismissal, but also any discriminatory measures during employment in particular transfers, downgrading and other acts that are prejudicial to the worker".[456]

It is also mentioned that:

> "Since inadequate safeguards against acts of anti-union discrimination, in particular against dismissals, may lead to the actual disappearance of trade unions composed only of workers in an undertaking, additional measures should be taken to ensure fuller protection for leaders of all organizations, and delegates and members of trade unions, against any discriminatory acts".[457]

Finally, it stated that:

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[455] *Freedom of Association Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, 4th Edition, (Geneva: International Labour Office, 1996), Para. 694 p 141.
[456] *Ibid*, Para. 696 p 142.
[457] *Ibid*, Para. 702 p 143.

"The dismissal of workers because of a legitimate strike constitutes discrimination in employment".[458]

However, notwithstanding the existence of text in the Trade Union Law 2002 forbidding discrimination, the same law embodies an overt discrimination as it hinders public servants from forming their own trade unions within State owned establishments. It only permits them to join already existing trade unions. Although there is no direct text in ILO Convention No.87 stipulating its applicability to public servants like the other Conventions,[459] it is understood that it relates to state employees, as FAC states that: "Public servants, like all other workers, without distinction whatsoever, have the right to form and join organizations, for the promotion and defence of their occupational interests"[460] and FAC states that:

"public employees 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, and these organizations should be entitled to organise their activities and, in particular, to hold meetings without interference by the public authorities".[461]

Accordingly FAC states that:

"In view of the importance of the right of employees of the state and local authorities to constitute and register trade unions, the prohibition of the right of association for workers in the service of the state is incompatible with the generally accepted principle that workers, without distinction whatsoever, should have the right to establish organizations of their own choosing without previous authorisation".[462]

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[458] *Ibid*, Para. 204 p 43.
[459] Article 6 of Convention No. 98 of 1949 relating to the right of organization and collective negotiation provided "This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way".
[460] *Freedom of Association Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, 4th Edition, (Geneva: International Labour Office, 1996) Para. 213 p 47.
[461] *Ibid*, Para. 214 p 47.
[462] *Ibid*, Para. 215 p 47. Also see *ibid*, Para. 216 p 47. *Ibid*, Para. 217 p 47 and *ibid*, Para. 218 p 48.

There were no articles in the Trade Union Law 2002 permitting public servants to form their own trade unions. Following demands from public servants, amendments to the Trade Union Law 2002 were submitted to the legislature so as to allow public servants to have unions within their ministries and public institutions. The legislature accordingly suggested amending the text of Article 10 of the Trade Union Law 2002 by omitting the expression "those referred to by 'Public Servants' have the right to join them" but this amendment has still not been passed.

Whilst the amendments to Article 10 have not been passed the amendments to Article 21 which related to strikes were passed which means the Trade Union Law 2002 can apply to civil servants once the amendment to Article 10 is passed.

The Government restricted the right of civil servants to form trade unions as it feared that civil service trade unions would be politically motivated and that they would strike not to obtain better working conditions for their members, but to bring down the Government.

Unfortunately, the Government forgot that as an ILO Member State, Bahrain is subject to the ILO Declaration. Accordingly, Bahrain is obliged to apply the principles of ILO Convention No.87 and that failure to do so can lead to an application for judicial review.

Whilst the Trade Union Law 2002 does not discriminate on the grounds of National Extraction, GFWTUB internal regulations are discriminatory as they prevent expatriate workers joining GFWTUB. Also the regulations governing trade unions prohibit expatriate workers from being elected as the President of a trade union or to the positions of Vice-president or Secretary.

GFWTUB does not want expatriate members as it fears that because expatriates make up a majority of the work force they will end up driving GFWTUB policies to the detriment of Bahraini workers and to the detriment of GFWTUB's political influence as a lobby group.

Despite the fact that GFWTUB's internal regulations contravene ILO Convention No.87 little has been done about it as most expatriates are employed on short-term contracts and therefore cannot serve the four year term required for GFWTUB membership.

Even though there appears to be little desire among the expatriate community to join the GFWTUB the government should fulfil its ILO obligations and make GFWTUB open to expatriate membership and at the same time they should carry out an awareness campaign to encourage expatriates to join GFWTUB.

3-4-1-4 Regulation of Trade Unions

Article 3 of ILO Convention No.87 provides:

> "Workers' and employers' organizations have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes. In addition public authorities have to refrain from any interference which would restrict this right or impede the lawful exercise thereof."

The Bahrain government has never intervened by imposing internal regulations on the trade unions. Article 9 of the Trade Union Law 2002 entrusts GFWTUB with the role of drafting specimen regulations, ratifying the trade union liability regulations for the Board members of the trade union organizations and providing trade unions with model guidelines for internal financial and administrative rules and regulations.

This has lead to disputes between individual unions and GFWTUB. In 2004 such a dispute arose between the Gulf Air Trade Union ("GATU") and GFWTUB. In this instance GFWTUB interfered in an administrative dispute which arose between members of GATU's Board of Directors. GFWTUB held a secret meeting with the opponents of GATU's lawful administrators on the 27th of March 2004.

On the request of a majority of GATU's General Assembly, the 22nd of May 2004 was set as a date for electing new members to GATU's Board of Directors. The members also demanded the formation of a commission to supervise the elections. Following

this, seven members of GATU filed a case at the Urgent Court asking for the suspension of the meeting of the General Assembly.

They accused GFWTUB of breaching GATU's internal regulations. Consequently, a judicial decision was issued stipulating that there would be no GATU General Assembly. This lead the Chairman of GATU, the Vice-Chairman, and members of the preparatory commission to file a case before the High Court of Appeal, asking for an extraordinary meeting of the General Assembly to be held on the demand of 434 GATU members. The appeal was refused, but without any interference from the Bahrain government.

> The Article 3 model guidelines provided by GFWTUB are not mandatory for trade unions. Rather they serve as a guide to help trade unions draft their own general administrative and financial regulations. This means that Article 9 does not contradict Article 7 of ILO Convention No.87.

On the other hand, the Trade Union Law 2002 does not compel trade unions to join GFWTUB. This is reflected in Article 3 which provides that:

> "Membership of trade union organizations and continuation thereof as well as withdrawal there from shall be guaranteed...".

This conforms to the decisions of FAC which state that:

> "A workers' organization should have the right to join the federation and confederation of its own choosing, subject to the rules of the organizations concerned, and without any previous authorization. It is for the federations and confederations themselves to decide whether or not to accept the affiliation of a trade union, in accordance with their own constitutions and rules".[463]

The Trade Union Law 2006 gave this right, which in the past was restricted to the GFWTUB, to all federations. This means they can now be established under the new

[463] *Ibid*, Para. 608 p 125.

law which complies with ILO Convention No.87 as it does not restrict establishing federations.

On a procedural level Article 5 of the Trade Union Law 2002 sets out the information which must be stated in a trade union's constitution:

"A trade union's internal regulations shall in particular, include:

A) name of the trade union;

B) objectives for which the trade union is to be formed;

C) membership and dismissal procedure, admission and subscription fees and Cases of exemption there from;

D) Number of the members of the Board of Directors, manner of electing them, frequency of governing body meetings, by-elections and powers of the Board of Directors;

E) disciplinary procedures of trade union members for misconduct and penalties that may be inflicted upon them and the committees responsible for investigation and taking disciplinary action;

F) services and financial assistance that may be offered to members if required;

G) terms and conditions under which trade union organization's staff are appointed and the procedure therefore and for the termination of their services,

H) method of maintaining the organization's fund, financial system and accounting books and records; and

I) procedures for convening the organization's Board of Directors and the general assembly for ordinary and extraordinary meetings".

In practice the government does not interfere in the internal regulations of the federation or trade unions and thus Bahrain applies one of the principles of ILO Convention No.87.

3-4-1-5 Dissolution of Trade Unions

Article 4 of ILO Convention No.87 provides that "Workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority". Article 17 of the Trade Union Law 2002 conforms to this principle by providing that a trade union maybe dissolved as set out in its internal regulations or by judicial decision.

Likewise, Article 18 provides that, "The Board of Directors of the Federation will temporarily take over the powers of a trade union whose Board of Directors has been dissolved until a new Board of Directors is formed according to the union's internal regulation".

However Article 18 does not cover a trade union which is not a member of a federation. Thus, Article 18 should be amended to cover this situation. I suggest that the Trade Union should chose the members who will temporarily take over the powers of the trade union whose Board of Directors has been dissolved, until a new Board of Directors is formed.

3-4-1-5-1 Compulsory Dissolution

As stated earlier it is clear from the text of Article 17 of the Trade Union Law 2002 that it complies with FAC decisions as it does not impose compulsory dissolution by the administrative authority.

Article 17 complies with the FAC decision which states that, "The imposition of sanctions, such as banishment or control of overseas travel, for trade union reasons constitutes a violation of the freedom of association".[464] A similar decision states that, "The administrative dissolution of trade union organizations constitutes a clear violation of Article 4 of Convention No. 87".[465]

Finally, FAC has stated that "Legislation which accords the minister the complete discretionary power to order the cancellation of the registration of a trade union,

[464] *Ibid*, Para. 644 p 131.
[465] *Ibid*, Para. 665 p 136.

without any right of appeal to the courts, is contrary to the principles of freedom of association".[466]

3-4-1-5-2 Optional Dissolution

Article 17 of the Trade Union Law 2002 provides for optional dissolution in compliance with Article 4 of ILO Convention No.87 and with FAC decisions:

> "Where the decision to dissolve a trade union organization was freely taken by a congress convened in a regular manner by all the workers concerned, the committee was of the opinion that this dissolution, or any consequence resulting from it, would not be regarded as an infringement of trade union rights".[467]

The Trade Union Law 2002 also opted for judicial dissolution in compliance with FAC decisions:

> "...in one Case where the legislation required that there be at least 20 persons in order to found a union, and where a court had ordered the dissolution of a union of homeopathy workers because of the insufficient number of persons legally qualified to practice this profession, the committee considered that the dissolution did not appear to constitute a measure which could be considered an infringement of freedom of association".[468]

The decisions also support the contention that:

> "...the dissolution of trade union organizations is a measure which should only occur in extremely serious cases; such dissolution should only happen following a judicial decision so that the rights of defence are fully guaranteed".[469]

In addition, "Cancellation of a trade union's registration should only be possible through judicial channels".[470] and,

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[466] *Ibid*, Para. 672 p 137.
[467] *Ibid*, Para. 660 p 135.
[468] *Ibid*, Para. 662 p 135.
[469] *Ibid*, Para. 666 p136.
[470] *Ibid*, Para. 670 p 137.

"Even if they may be justified in certain circumstances, measures taken to withdraw the legal personality of a trade union and the blocking of trade union funds should be taken through judicial and not administrative action to avoid any risk of arbitrary decisions".[471]

In practice in Bahrain no trade union has been compulsorily dissolved nor have there been any optional dissolutions, or judicial dissolutions.

3-4-1-6 Forming or Joining Federations and Confederations

Article 5 of the ILO Convention No.87 provides that:

"Workers' and employers' organizations shall have the right to establish and join federations and confederations and any such organization, federation or confederation shall have the right to affiliate with international organizations of workers and employers".

The Trade Union Law 2006; and the Trade Union Law 2002 as amended comply with ILO Convention No.87 as they do not restrict the number of federations.

However, not allowing more than one federation contradicts FAC decisions as shown in the following Paragraphs:

"The principle laid down in Article 2 Convention No.87 that workers shall have the right to establish and join organizations of their own choosing implies for the organizations themselves the right to establish and join federations and confederations of their own choosing".[472]

"The question as to whether a need to form federations and confederations is felt or not is a matter to be determined solely by the workers and their organizations themselves after their right from them has been legally recognized".[473]

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[471] *Ibid,* Para. 680 p 138. Also see *ibid.* Para. 681 p 138. And *ibid,* Para. 683 p 139.
[472] *Ibid,* Para. 606 p 125.
[473] *Ibid,* Para. 610 p 125.

"Legislation which prevents the establishment of federations and confederations bringing together the trade unions or federations of different activities in a specific locality or area is incompatible with Article 5 of Convention No. 87".[474]

"When only one confederation of workers may exist in a country, and the right to establish federations are limited to such federations as may be established by the unions mentioned in the law, as well as such new Union as might be registered with the consent of the minister, this is incompatible with Article 5 of Convention No.87".[475]

Finally, the political situation forced the establishment of several federations as the politicization of GFWTUB by political associations made it necessary to increase the number of trade unions in Bahrain to protect workers rights as opposed to promoting the agendas of political associations.

An example of this politicization can be seen in the actions of the members of the board of the GFWTUB who on the suggestions of the *Al Wefaq* political association (*Al Wefaq* were at that time boycotting the National Assembly) "refused to sign a petition supporting the members of the elected Chamber of Deputies entrusted with an enquiry about the administrative breaches at the Pension Fund and Social Insurance bodies".[476]

Instead members of the board claimed the right to form a private commission of inspection, ignoring the fact that the National Assembly is the legislative power in Bahrain, and is the body entrusted by the Bahrain Constitution to observe the enforcement of laws and to provide government oversight.[477]

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[474]*Ibid*, Para. 612 p 126.
[475]*Ibid*, Para. 613 p 126.
[476]Al Ayam Newspapers, No.5455 issued 11 February 2004, No.5457 issued 13 February 2004, and No.5545 issued 11 May 2004, No.5565 issued 31 May 2004, and No.5568 issued 3 June 2004.
[477]See chapter 2.

A majority of GFWTUB members quickly signed a so called "constitutional petition",[478] and worked at promoting the constitutional petition among workers, while at the same time refusing to support the workers' demands by for an inspection commission made up of members of the Chamber of Deputies to investigate the Pension Fund and the Social Insurance bodies.

After the election of the members of the board of the GFWTUB,

> "Some union members resigned. It started with the resignation of Khaled Aradi, followed by that of Ibrahim Qassab two days after he officially joined the board. They attributed their resignations to the politicization of trade union work".[479]

By increasing the number of federations, the politicization of trade union activity will decrease, for political action will be divided amongst the various unions. It will still be possible to limit the number of unions in other ways, for example through a law providing that a union must comprise a minimum number of workers, or defining the number of trade unions, or both together.

This will not contradict FAC decisions unless the number required is very high as FAC has stated that, "The requirement of an excessively high minimum number of trade unions to establish a higher-level organization conflicts with Article 5 of Convention No.87 and with the principles of freedom of association".[480]

Accordingly, Article 8 of the Trade Union Law 2006 allows multiple federations each of which must represent a minimum of two trade unions. Even though the Trade Union Law 2002 as amended allows multiple federations as yet the GFWTUB is still the only federation established in Bahrain.

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[478]The petition demanded various amendments to Bahrain Constitution.
[479]Al Ayam Newspapers, No.5455 issued 11 February 2004, No.5457 issued 13 February 2004, and No.5545 issued 11 May 2004, No.5565 issued 31 May 2004, and No.5568 issued 3 June 2004.
[480]*Freedom of Association Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO,* 4th Edition, (Geneva: International Labour Office, 1996) Para. 611 p 126.

3-4-1-6-1 Joining International Organizations

Article 9 of the Trade Union Law 2002 as amended does not allow the government to interfere with the right of trade unions to join international organizations as these decisions are were left to individual federations. A trade union which is not a member of a federation has the choice to join Arab and international labour organizations itself.

This complies with FAC decisions which state that:

> "International trade union solidarity constitutes one of the fundamental objectives of any trade union movement and underlies the principle laid down in Article 5 of Convention No. 87 that any organization, federation or confederation shall have the right to affiliate with international organizations of workers and employers".[481]

Also,

> "Unions and confederations should be free to affiliate themselves with international federations or confederations of their own choosing without intervention by the political authorities".[482]

And,

> "The committee considered that there might be justification for one complainant's contention that the principle of the right of workers' organizations to affiliate with international organizations of workers includes by implication the right to disaffiliate from an international organization".[483]

Finally,

> "Legislation which requires that government permission be obtained for the international affiliation of a trade union is incompatible with the principle of free and voluntary affiliation of trade unions with international organizations".[484]

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[481] *Ibid*, Para. 622 pp 127-128.
[482] *Ibid*, para. 623 p 128.
[483] *Ibid*, Para. 625 p 128.
[484] *Ibid*, Para. 627 p 128.

Joining international organizations will enable federations to exploit the technical aid offered by the organization to the member federations. This will help federations and trade unions improve their practices, and the requirement that federations inform the Ministry of Labour of their membership of international organizations does not contradict FAC decisions.

3-4-1-6-2 Attending International Conferences

With regard to attending international conferences the Trade Union Law 2006, does not contradict FAC decisions as the Bahrain government has never interfered with the attendance of trade union members at international conferences.

It left this issue to be decided by individual federations in accordance with Article 9(F) which permits "...the representatives of trade unions to attend conferences outside the Kingdom of Bahrain".

Finally, the Ministry of Labour must issue a Ministerial Order choosing the federation with the largest number of members to represent Bahrain at international trade union events.[485]

This complies with the FAC decision which states that "the right of national trade unions to send representatives to international trade union congresses is a normal corollary of the right of those national organizations to join international workers' organizations".[486]

And,

> "Visits to affiliated national trade union organizations and participation in their congresses are normal activities for international workers' organizations, subject to the provisions of national legislation with regard to the admission of foreigners".[487]

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[485]Article 8(3) of the Trade Union Law 2006. At present there is only one such Federation.
[486]*Freedom of Association Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, 4th Edition, (Geneva: International Labour Office, 1996) Para. 636 p 130.
[487]*Ibid*, Para. 368 pp 79-80.

Also,

> "The occupation or sealing of trade union premises should be subject to independent judicial review before being undertaken by the authorities in view of the significant risk that such measures may paralyze trade union activities".[488]

Finally,

> "A government decision which requires workers' representatives wishing to attend an international meeting outside the country to obtain permission of the government body is incompatible with the principles set forth in Article 40 of the ILO Constitution".[489]

The Trade Union Law 2006 complies with the FAC decisions giving guidance on choosing which federation will represent workers at international conferences and in collective bargaining.

The FAC states that:

> "The committee has pointed out on several occasions, and particularly during discussion on the draft of the right to Organize and Collective Bargaining Convention, that the International Labour Conference referred to the question of the representative character of trade unions and, to a certain extent, it agreed to the distinction that is sometimes made between the various unions concerned according to how representative they are.
>
> Article 3(5), of the ILO Constitution includes the concept of 'most representative' organizations. Accordingly, the Committee felt that the mere fact that the law of a country draws a distinction between the most representative trade union organization and other trade union organizations is not in itself a matter for criticism. Such a distinction, however, should not result in the most representative organization being granted privileges extending beyond that of priority in representation, on the ground of their having the largest membership, for such purposes as collective bargaining or

[488] *Ibid*, Para. 183 p 39.
[489] *Ibid*, Para. 652 p 133.

consultation by governments, or for the purpose of nominating delegates to international bodies,

In other words, this distinction should not have the effect of depriving trade union organizations that are not recognized as being among the most representative of the essential means for defending the occupational interests of their members, for organizing their administration and activities and formulating their programmes, as provided for in ILO Convention No.87".[490]

Whilst the Bahrain government has never interfered with the selection of worker's representatives to attend the General Conference of the ILO, the Ministry of Labour's practice of providing airfares and *per diems* for the delegates made the delegates financially dependent upon the government. However, in practice this did not stop the delegates criticizing the government.

3-4-1-7 Financing Trade Unions

Independent financing of trade unions ensures that a trade union is not subject to the will of the employer or the government. Article 15 of the Trade Union Law 2002 as amended allows trade unions to be financed by the following means:

"A) Joining fees.

B) Subscriptions payable by the members.

C) Subsidies, gifts, donations and bequests accepted by the Board of Directors with the approval of the Ministry.

D) Proceeds from various functions and activities allocated for the trade union's benefit.

E) Other sources which do not conflict with the provisions of this Law or the organization's constitution".

The Bahrain government has not determined the level of joining fees or the annual subscription fees paid by members. This was left to federations as stipulated by Article 9(C) of the Trade Union Law 2006.

[490] *Ibid*, Para. 309 pp 67-68.

This follows FAC which states that:

> "A legal restriction on the amount which a federation may receive from the unions affiliated to it would appear to be contrary to the generally accepted principle that workers' organizations shall have the right to organise their administration and activities and those of the federations which they form".[491]

The Ministerial approval required by Article 15(C) of the Trade Union Law 2002 as amended is not meant to derogate from the rights of trade unions. Rather, it represents security for the state since the property of the trade union belongs to its members and trade unions should not be financed by bodies that may use them in illegal ways, for example money laundering or terrorism.

However, the provisions of Article 15(C) may well contradict the following FAC decisions:

> "Any assistance or support that an international trade union organization might provide in setting up, defending or developing national trade union organizations is a legitimate trade union activity, even when the trade union tendency does not correspond to the tendency or tendencies within the country".[492]

And,

> "Legislation which provides for the banning of any organization where there is evidence that it is under the influence or direction of any outside source, and also for the banning of any organization where there is evidence that it receives financial assistance or other benefits be approved by and channelled through government, is incompatible with the principles set out in Article 5 of Convention No.87".[493]

Also,

> "The granting of advantages resulting from the international affiliation of a trade union organization must not conflict with the law, it being understood

[491] *Ibid*, Para. 437 p 92.
[492] *Ibid*, Para. 629 p 129.
[493] *Ibid*, Para. 630.

that the law should not be such as to render any such affiliation meaningless".[494]

And,

"Legislation prohibiting the acceptance by a national trade union of financial assistance from an international organization of workers to which it is affiliated infringes the principles concerning the right to affiliate with international organizations of workers".[495]

Finally,

"The right to affiliate with international organizations of workers implies the right, for the representatives of national trade unions, to maintain contact with the international trade union organizations with which they are affiliated, to participate in the activities of these organizations to benefit from the services and advantages which their membership offers".[496]

In this respect, GFWTUB (the only established Bahrain federation at present) still seeks aid from the government because it is unable, at least for the time being, to achieve its financial independence. The government in the past provided the General Committee of the Workers of Bahrain with financial aid before it became GFWTUB.[497] In 2004 the GFWTUB asked for an increase in financial aid which was granted in 2005. Due to the nature of union work, trade unions need to enjoy actual financial independence so as to be able to fulfil their mission independently. Asking the government for financial support makes trade unions subject to government control.

Accordingly FAC has decided that:

"There should be outside control only in exceptional cases, when there are serious circumstances justifying such action, since otherwise there would be a risk of limiting the right that workers' organizations have, by virtue of article 3

[494] *Ibid*, Para. 631.
[495] *Ibid*, Para. 632.
[496] *Ibid*, Para. 635 p 130.
[497] Whether future financial aid from the government will be given to multiple federations is not clear as the law now allows for more then one federation.

of Convention No.87, to organize their administration and activities without interference by the public authorities which would restrict this right or impede it is lawful exercise.

The committee has considered that a law which confers the power to intervene on an official of judiciary, against whose decisions an appeal may be made to the Supreme Court, and which lays down that a request for intervention must be supported by a substantial number of those in the occupational category in question, does not violate these principles".[498]

In addition,

"With regard to systems of financing the trade union movement which made trade unions financially dependent on a public body, the committee considered that any form of state control is incompatible with the principles of freedom of association and should be abolished since it permitted interference by the authorities in the financial management of trade unions".[499]

In order to best represent their member's interests trade unions must be financially independent of governmental bodies and employers' associations. In order to achieve financial independence the trade unions in Bahrain must establish clear mission statements, recruit more members, engage in fund raising activities to collect fees, subscriptions and donations, and adopt international accounting standards to achieve financial transparency to ensure that a unions funds are properly managed.

3-4-1-8 Exonerations Granted to Trade Unions

The Trade Union Law 2002 as amended grants trade unions numerous exonerations to help them fulfil their objectives. In this respect Article 16 of the Trade Union Law 2002 as amended provides that:

"The trade union organization will be exempted from any charges prescribed for property owned or rented by such organizations and from customs duties on goods imported for the benefit of the trade union's activities. Duty-free

[498] *Freedom of Association Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, 4th Edition, (Geneva: International Labour Office, 1996) Para. 427 p 91.
[499] *Ibid*, Para. 429.

imported goods shall not be disposed of before the lapse of five years from the date of importation; otherwise such goods shall be subject to customs duties".

Financial support of the federation did not prevent the GFWTUB from raising complaints to the ILO. Thus even though the government provided the GFWTUB with financial support it was not subject to government control.

3-4-1-9 Proscriptions on Trade Union Work

Article 20 of the Trade Union Law 2002 as amended proscribes trade union activity as follows:

"The trade union organization shall not,

A) engage in any activity beyond the union purpose provided for herein;

B) invest any money in financial, real estate or other speculative activities;

C) use force, violence, threat or unlawful measures to infringe or attempt to infringe upon the right of others to work or upon any other of their rights; or

D) engage in political activities".

Banning any activity not pertaining to the union activities, as provided in Article 20(A) cannot be viewed as contradictory to FAC decisions, since the main role of trade unions is to defend workers' interests and improve their social and economic conditions. Activities other than these should be conducted by other organizations.

Article 20(B) sets out a guideline to the trade unions about how to manage their financial resources. However, this contradicts FAC decisions which state that,

"Provisions which give the authorities the right to restrict the freedom of a trade union to administer and utilise its funds as it wishes for normal and lawful trade union purposes are incompatible with the principles of freedom of association".[500]

[500] *Ibid*, Para. 438 p 93.

The aim of the Bahrain government in Article 20(B) was to protect the trade unions' funds from being used in speculation, which may result in losses. However, since the funds used by the trade unions in speculation pertain to all the members, only these members can control the way in which the money is spent, and protect this money being wasted.

Moreover, the financial independence of the trade union and its existence independently from the financial support of the administrative authority depends on allowing the trade union sufficient financial resources. Thus Article 20(B) prevents a trade union in engaging in certain commercial activities carried out by a trade union to improve its financial resources.

Therefore Article 20(B) should be repealed and trade union members should be allowed to manage their own funds, and to invest them in any legitimate way they deem proper.

Article 20(C) which forbids trade unions from using violence and aggression complies with FAC decisions which state that:

> "The committee has always attached great importance to the principle of prompt and fair trial by an independent and impartial judiciary in all Cases, including Cases in which trade unionists are charged with political or criminal offences".[501]

Also the Bahrain government, through the Public Prosecution and criminal justice system complies with the following FAC decisions:

> "If a government has sufficient grounds for believing that the persons arrested have been involved in subversive activity, these persons should be rapidly tried by the courts with all the safeguards of a normal judicial procedure".[502]

[501] *Ibid*, Para. 109 pp 25-26.
[502] *Ibid*, Para. 110 p 26.

"In many cases, the committee has asked the governments concerned to communicate the texts of any judgments that have been delivered together with the grounds adduced therefore".[503]

"The committee has pointed out that, where persons have been sentenced on grounds that have no relation to trade union rights, the matter falls outside it is competence. It has, however, emphasized that whether a matter is one that relates to the criminal law or to the exercise of trade union rights is not one which can be determined unilaterally by the government concerned. This is a question to be determined by the committee after examining all the available information and, in particular, the text of the judgment".[504]

"If in certain cases the committee has reached the conclusion that allegations relating to measures taken against trade unionists did not warrant further examination, this was only after it had received information from the governments showing sufficiently precisely that the measures were in no way occasioned by trade union activities, but solely by activities outside the trade union sphere that were either prejudicial to public order or political in nature".[505]

Article 20(D) appears to contradict the decisions of the FAC in relation to the permissibility of practising politics to change the workers' economic and social conditions. However, the proscription in Article 20(D) is not meant to ban the exercise of political rights granted by the Constitution,

Article 20(D) is meant to prevent trade unions from acting as or supporting political parties, which are not allowed under the Constitution. However, individual trade union members are allowed to be members of political associations which many view as akin to political parties. Indeed political associations were allowed to support candidates in the November 2006 legislative elections, with workers making the bulk of these associations' members.

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[503] *Ibid*, Para. 112.
[504] *Ibid*, Para. 114.
[505] *Ibid*, Para. 115 p 27.

Also the purpose of Article 20(D) is to ensure that trade unions promote and defend the employment interests of workers as opposed to engaging in political activity which can be better exercised through other legal channels.

The clearest example of this is that during the last general election in Bahrain the Vice President of the GFWTUB stood as a candidate for the *Al Wefaq* political block without being accused of breaching any laws.

The legitimacy of Article 20(D) was raised in Case 413 which was filed before FAC against Bahrain by the International Congress of the Arab Trade Unions ("ICATU"). ICATU claimed that a trade union member called Ibrahim Kassab was arrested while carrying out union activities.

The Bahrain government maintained that Mr. Kassab was arrested on the grounds of his affiliation to an unauthorised party known as "the National Front of Bahrain Freemen", which intended to upset the security of the state, as well as the social and economic order, by causing disorder, violence, strikes and murder by the use of arms and explosives.

Mr. Kassab was sentenced in Case 36/1 of 1987 to 5 years in prison according to Article 159(1) and (3) of the Penal Code 1976.[506] The FAC deplored the fact that the accused did not benefit from the guarantees of regular judicial proceedings and recommended his release "as soon as possible".

3-4-1-10 Right to Strike

Article 21 of the Trade Union Law 2002 as amended[507] deals with the right to strike. It provides that:

"1- The right to strike is a legitimate means for workers to defend their rights and interests and must be organized and announced only by trade union organizations.

[506]Summary of the Case reports, No. 272-259-254. See <www.ilo.org>.
[507]Amended by Law No.49 of 2006.

2- To be considered legal a strike is subject to the following restrictions:

A) The approval of majority of the General Assembly of the Trade Union must be obtained at an extraordinary general meeting to commence the strike.

B) The employer shall be provided with a notice period of not less than 15 days before the commencement of the strike,

C) Strikes must not be conducted while the matter is before the Conciliation and Arbitration Committee.

D) Strikes are prohibited in vital and important facilities where a strike can harm national security, and the safety of individuals. The Prime Minister shall issue a decree specifying the vital and important facilities in which strikes are prohibited.

3- In the case where a collective agreement exists in vital and important facilities, it is mandatory to refer disputes to conciliation and arbitration as mentioned in the previous article, if disputes cannot be resolved by the workers and the employer".

It is worth mentioning that ILO Convention No.87 does not include an article organizing the right to strike. It is the FAC which decided that this was a basic right of workers and workers' organizations. It does not deem going on strike to be a right unless it is used by workers as a means to defend their economic interests. This is complies with Article 21(1) as stated the right to strike is a legitimate means for workers to defend their rights and interests and must be organized and announced only by trade union organizations. In this respect, FAC states that:

> "While the committee has always regarded the right to strike as constituting a fundamental right of workers and of their organizations, it has regarded it as such only in so far as it is utilized as a means of defending their economic interests".[508]

[508] *Freedom of Association Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, 4th Edition, (Geneva: International Labour Office, 1996) Para. 473 p 101.

"The committee has stated on many occasions that *strikes* at the *national level* are legitimate in so far as they have economic and social objectives and not purely political ones; the prohibition of strikes could only be acceptable in the case of public servants exercising authority in the name of the state[509] or of workers in essential services in the strict sense of the term, i.e. services whose interruption could endanger the life, personal safety or health of the whole or part of the population".[510]

"A declaration of the illegality of a national strike protesting against the social and labour consequence of the government's economic policy and the banning of the strike constitute a serious violation of freedom of association".[511]

"As regards the general strike, the committee has considered that strike action is one of the means of action which should be available to workers' organizations. A 24-hour general strike seeking an increase in the minimum wage, respect of collective agreements in force, and a change in economic policy (to decrease prices and unemployment) is legitimate and within the normal field of activity of trade union organizations".[512]

"Provisions which prohibit strikes if they are concerned with the issue of whether a collective employment contract will bind more than one employer are contrary to the principles of freedom of association on the right to strike; workers and their organizations should be able to call for industrial action in support of multi-employer contracts".[513]

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[509]In November 1994 FAC defined public servants in respect of whom the right to strike could be prohibited or restricted as "public servants exercising authority in the name of the state". This differs from the manner in which the committee had defined them previously and the wording used in its 1985 Digest, in which it referred to "public servants acting as agents of the public authority".
[510]*Freedom of Association Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, 4th Edition, (Geneva: International Labour Office, 1996) Para. 492 p 104.
[511]*Ibid*, Para. 493.
[512]*Ibid*, Para. 494.
[513]*Ibid*, Para. 490 pp 103-104.

"Workers and their organizations should be able to call for industrial action (strikes in support of multi-employer contracts (collective agreements)".[514]

"The occupational and economic interest which workers defend through the exercise of the right to strike do not only concern better working solutions to economic and social policy questions and problems facing the undertaking which are of direct concern to workers".[515]

"Organizations responsible for defending workers' socio- economic and occupational interests should be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and standards of living".[516]

Article 21(2) demands some restrictions before a strike is considered to be legal. This article will now be compared with FAC decisions to see if it contravenes the principles set out in ILO Convention No. 87.

1. Article 21(2)(A) as amended by The Trade Union Law 2006 provides for the approval of a majority of the General Assembly of the Trade Union in an extraordinary general 1 meeting before a strike is called for. This contradicts FAC decisions which state that,
"The requirement of a decision by an overall majority of all the workers involved in order to declare a strike is excessive and could excessively hider the possibility of carrying out a strike, particularly in large enterprises".[517]

The following FAC decisions also show the contradictory nature of Article 21(A):

[514] *Ibid*, Para. 491.
[515] *Ibid*, Para. 479 p 102.
[516] *Ibid*, Para. 480.
[517] *Ibid*, Para. 507 p106.

"The requirement that an absolute majority of workers should be obtained for the calling of a strike may be difficult, especially in the case of unions which group together a large number of members. A provision requiring an absolute majority may, therefore, involve the risk of seriously limiting the right to strike".[518]

"A provision requiring the agreement of the majority of the members of federations and confederations, or the approval by the absolute majority of the workers of the undertaking concerned for the calling of strike, may constitute a serious limitation on the activities of trade union organizations".[519]

However, Article 21(2)(A) is justified because Bahrain is a small island with a small number of workers. When compared to other countries Bahrain could be considered as a district within a large country. Consequently, it is easy for a trade union to obtain the approval of three quarters of the workers to go on strike as recognized by FAC as follows:

"The committee has considered to be in conformity with principles of freedom of association a situation where the decision to call a strike in the local branches of trade union organization may be taken by the general assembly of the local branches, when the reason for the strike is local in nature and where, in the higher-level trade union organizations, the decision to call a strike may be taken by the executive committee of these organizations by an absolute majority of all the members of committee".[520]

2. Article 21(2)(B) as amended by the Trade Union Law 2006 which requires trade unions to give employers a minimum of 15 days strike notice does not contradict any FAC decisions.[521]

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[518] *Ibid*, Para. 508.
[519] *Ibid*, Para. 512 p 107.
[520] *Ibid*, Para. 513.
[521] For as stated ".... obligations to give prior notice to the employer before calling a strike may be considered acceptable". *Ibid*, Para. 502 p105.

Likewise, FAC decisions state, "Obligations to give prior notice to the employer before calling a strike may be considered acceptable".[522] Finally,

> "The legal requirement of a cooling-off period of 40 days before a strike is declared in an *essential service,* is so far as it is designed to provide the parties with a period of reflection, is not contrary to the principles of freedom of association. This clause which defers action may enable both parties to come once again to the bargaining table and possibly to reach an agreement without having recourse to a strike".[523]

3. Article 21(2)(C) as amended by trade Union Law 2006 provides that the Strikes must not be conducted while the matter is before the Conciliation and Arbitration Committee.

   This Article is acceptable as it merely suspends matters which have already been sent to conciliation and arbitration pending a ruling by the Conciliation and Arbitration Committee.

   This is complies with the FAC diction which is states that:

   > "The committee has emphasised that, although a strike may be temporarily restricted by law until all procedures available for negotiation, conciliation and arbitration have been exhausted, such a restriction should be accompanied by adequate, impartial and speedy conciliation and arbitration proceeding in which the parties concerned can take part at every stage".[524]

4. Article 21(2)(D) as amended by the Trade Union Law 2006, provides that strikes shall be prohibited in vital and important facilities where a strike shall harm national security, and individuals. The Article

[522] *Ibid,* Para. 504 p106.
[523] *Ibid,* Para. 505.
[524] *Ibid,* para. 501 p105.

provides for the Prime Minister to issue a decree specifying the vital and important facilities in which strikes are prohibited.

Prime Ministerial Order No.62 of 2006 defines vital and important facilities in which strikes are prohibited. The Prime Ministerial order complies with FAC decisions which have linked 'vital utilities' to the existing conditions of any country,

> "What is meant by essential services in the strict sense of the term depends to a large extent on the particular circumstances prevailing in a country. Moreover, this concept is not absolute, in the sense that a non-essential service may become essential if a strike lasts beyond a certain time or extends beyond a certain scope, thus endangering the life, personal safety or health of the whole or part of the population".[525]

> "It would not appear to be appropriate for all state-owned undertakings to be treated on the same basis in respect of limitation of the right to strike, without distinguishing in the relevant legislation between those which are genuinely essential and those which are not".[526]

As Article 21(2)(D) grants the Bahrain government the authority to determine what constitutes a "vital utility" it will not contradict the FAC decisions if when defining vital utilities it stays within the utilities listed in FAC decisions. However, determining these utilities, in any country, depends on the level of imminent danger, "To determine situations in which a strike could be prohibited, the criteria which has to established is the existence of a clear and imminent threat to the life, personal safety or health of the whole or part of the population".[527]

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[525] *Ibid*, Para. 451 p 96.
[526] *Ibid*, Para. 543 p 112.
[527] *Ibid*, Para. 540 p 111.

Striking is also forbidden in some non-vital utilities when their interruption poses a risk to the country's inhabitants. Prime Ministerial Order No.62 of 2006 has gone outside of the vital utilities defined in FAC decisions, but still its complies with FAC decisions as the prohibition depends on the level of imminent danger. However, so far the Bahrain government has received no formal representations from the ILO or other bodies on Prime Ministerial Order No.62 of 2006 and only time will tell if the Order meets internationally accepted norms.

5. Article 21(3) applies in the case of vital and important facilities and it is mandatory to refer the issue for conciliation and arbitration, if the dispute cannot be resolved by the workers and employer.

Article 21(3) complies with FAC decisions because:

> "Compulsory arbitration to end a collective labour dispute and strike is acceptable if it is at the request of both parties involved in a dispute, or if the strike in question may be restricted, even banned, i.e. in the Case of disputes in the public service involving public servants exercising authority in the name of the state or in essential services in the strike sense of the term, namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population".[528]

Also,

> "The right to strike can only be restricted (such as by the imposition of compulsory arbitration to end a strike) or prohibited in essential services in the strike sense of the term; i.e. those services whose interruption would endanger the life, personal safety or health of the whole or part of the population".[529]

[528] *Ibid*, Para. 515 pp 107-108.
[529] *Ibid*, Para. 516.

And

> "The committee has stressed that the imposition of compulsory arbitration is only acceptable in Cases of strike in essential services in the strict sense of the term or in Cases of acute national crisis".[530]

Unfortunately, the Trade Union Law 2002 as originally drafted approved of government intervention in trade unions on a large scale, which constituted a direct contravention of ILO Convention No.87. After the text was amended by omitting some of its articles, it was presented to ILO experts who approved the law as amended and it should be noted that despite its failings the Trade Union Law 2002 is the most recent and the most developed in the Arab world. In addition the amendments of the Trade Union Law 2002 which were made by the Trade Union Law 2006 have removed several of the points which did not comply with the ILO Convention No.87. However, even as amended the Trade Union Law 2002 does not fully comply with ILO Convention No.87 as in order to achieve true freedom of association trade union should be free of government influence when it comes to forming and financing a trade union and ensuring it has the right to carry out activities such as the right to strike.

In practice it also appears that the laws are not being applied uniformly due to interference by political and religious elements both from within and outside Bahrain which has politicized the Bahrain trade union movement to the detriment of the needs of the workers. However, even though Bahrain has not ratified ILO Convention No.87 and despite the above-mentioned problems the Bahrain government needs to comprehensively revise the Trade Union Law 2002 instead of making piecemeal amendments so that it fulfils its obligations to apply the principles set out in the ILO Declaration.

3-4-2 Right to Organize and Collective Bargaining Convention No.98 of 1949

ILO Convention No.98 is considered to be one of the fundamental rights at work and deals with enforcing the principles of freedom of association and collective bargaining

[530] *Ibid*, Para. 517.

as it consolidates the principles of freedom of association set out in ILO Convention No.87.

Articles 1[531], 2[532] and 4[533] of ILO Convention No.98 explicitly state the rights of workers and employers to form their own organizations which are independent from government intervention and allow these organizations the necessary freedom to bargain among themselves to organise working conditions.

Prior to ILO Convention No.98 the right to collective bargaining was recognised by the Philadelphia Declaration. Article 1(D) of which provided that:

> "The war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare".

Likewise, Article 3(E) provided that:

> "the effective recognition of the right of collective bargaining, the co-operation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures".

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[531] "1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. Such protection shall apply more particularly in respect of acts calculated to
(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours".

[532] "1. Workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.
2. In particular, acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations, shall be deemed to constitute acts of interference within the meaning of this Article".

[533] "Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements".

Consequently, the ILO issued many Conventions and Recommendations recognising and organising this right.[534]

3-4-2-1 Definition of Collective Bargaining

"Although ILO Convention No.98 deals with the right of collective bargaining, it does not define this right. Collective bargaining is defined in ILO Convention No.154 of 1981".[535] It provides in Article 2 that:

> "For the purpose of this Convention the term *collective bargaining* extends to all negotiations which take place between an employer, a group of employers or one or more employers' organizations, on the one hand, and one or more workers' organizations, on the other, for determining working conditions and terms of employment; and/or regulating relations between employers and workers; and/or regulating relations between employers or their organizations and a workers' organization or workers' organizations".

However, this definition is viewed by Dr. Salama Abdalhalim to be,

> "inappropriate and not comprehensive, because Article 3[536] of ILO Convention No.154 of 1981 cites that it is possible for national laws and practices to determine the extent of the inclusiveness of the term 'collective bargaining'. On the other hand, collective bargaining does not embrace the workers who do not belong to a trade union, a fact which limits the scope of collective bargaining".[537]

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[534]For instance Convention No. 98 of 1949 (Right of Association and Collective Bargaining), Convention No.154 of 1981 Relating to Encouraging Collective Bargaining, ILO Recommendation No.163 of 1981 Collective Bargaining, and ILO Recommendation No.91 of 1981 About Collective Agreements.

[535]Gernigon Bernard, Odreo Alberto and Gudio Horacio, *Collective Bargaining: ILO Standards and Principles of the Supervisory Bodies*, 1st Edition, (Geneva: International Labour Office, 2000) pp 10-11.

[536]"1. Where national law or practice recognises the existence of workers' representatives as defined in Article 3, subparagraph (b), of the Workers Representatives Convention, 1971, national law or practice may determine the extent to which the term collective bargaining shall also extend, for the purpose of this Convention, to negotiations with these representatives.
2. Where, in pursuance of Paragraph 1 of this Article, the term collective bargaining also includes negotiations with the workers' representatives referred to in that Paragraph, appropriate measures shall be taken, wherever necessary, to ensure that the existence of these representatives is not used to undermine the position of the workers' organizations concerned".

[537] Abdulhalim Salama Abdul Tawab, *Collective Bargaining in the Labour Law,* (Cairo: Arab Revival House, 2002) p 15.

Dr. Abdalbasset Abdalmohsen believes that:

> "Although the text incorporates most of the elements of collective bargaining, as it determines the parties and domains of collective bargaining, it is still subject to study for it is very detailed, in addition to being insufficient and inappropriate".[538]

I agree with this opinion as the definition is not comprehensive as it needs to consider Article 3 of the Convention, and the situation of the workers who are not trade union members.

The Labour Law 1976 does not provide for collective bargaining. This is a deficiency, as it fails to recognise a fundamental right necessary to defend the economic and social rights of workers. Despite various amendments to the Labour Law 1976 collective bargaining has never been recognised and even though Article 8 of the Trade Union Law 2006 accepted that the most representative federation has the right to bargain on behalf of the Bahrain workers it is still not an implementation of the principles of ILO Convention No.98. This because the law does not recognize the elements of collective bargaining. Accordingly, Bahrain is again failing to fulfil its obligations under the ILO Declaration.

Even though Bahrain has not ratified ILO Convention No.98 it is still obliged by the ILO Declaration to respect, to promote and to realise, in good faith and in accordance with the ILO Constitution, the principles concerning the fundamental rights which are the subject of the Convention.

The Bahrain government hopes to make up for this omission as a draft Labour Law currently before the legislature devotes a whole chapter to collective bargaining. Thus, it might be useful to make a comparison between ILO Convention No.98 and the collective bargaining provisions in the draft Labour Law as even though these are only draft proposals with no practical applications of the text or legal rulings on the text it is the only text dealing with collective bargaining in Bahrain that is available for study. This comparison will show the extent to which Bahrain wishes to meet its

[538]Abdulmohsen Abdulbasset, *The Legal Order of Collective Bargaining, a Comparative Study,* (Cairo: Arab Revival House, 2000) p 16.

obligations under the ILO Declaration. It should also be noted that the draft law may be amended during its passage through public consultation and the legislative process.

Article 148 of the draft Labour Law provides the following definition of collective bargaining:

> "Collective bargaining means the discussions and talks between workers and their organizations on the one hand, and employers and their organizations on the other hand in order to achieve the following goals:
>
> 1. Improve the working conditions and employees' circumstances;
> 2. Encourage co-operation between both parties at work to achieve economic and social development for the workers of the establishment; and
> 3. Solve collective work disputes occurring between workers and employers".

This definition compares well to the definition included in Article 2 of ILO Convention No.154 of 1981 as Article 3 of ILO Convention No.154 of 1981 allows national laws and practices to determine the comprehensiveness of the term collective bargaining.

The draft text is adapted from the unified Egyptian Labour Law issued in 2003. This law was subject to different views either supporting or criticizing it. It was maintained for example that this law, "Embodies the core elements of collective bargaining, such as determining its content, its parties, its levels and its aim. It is characterized by the lack of digression which makes it an all-inclusive law".[539]

It is has also been criticized as the Law,

> "Does not determine the nature of collective bargaining as being a direct cordial means whereby the work relations and conditions and circumstances are organized. It even clarifies its collective characteristic. It insists on the existence of trade unions as a party in collective bargaining which means

[539] *Ibid*, p 22.

excluding the workers who do not belong to a trade union from the scope of bargaining.

Moreover, it indicates that the aim of collective bargaining as well as defining its general object which allows the parties the opportunity to negotiate all topics relating to the circumstances and conditions of work without forcing them to raise any pre-defined topics.

In this way, the law contradicts the French Law which forces negotiating parties to discuss a predetermined set of topics in addition to other undefined ones. Hence, this law embodies two forms taken by collective bargaining: dialogues and discussions".[540]

I agree with Dr. Salama that this definition ignores the workers who do not belong to a trade union, and who cannot participate in negotiations through their elected representatives.[541] In this respect, it was stated by FAC that,

> "...for all purpose of this recommendation, the term collective agreements' means all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organizations, on the one hand, and one or more representative workers' organizations, or in the absence of such organizations, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other".

The Committee emphasised that: "the said recommendation stresses the role of workers' organizations where these exist, might in certain cases be detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted".[542]

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[540] Abdulhalim Salama Abdul Tawab, *op cit,* p 18.
[541] For more details see Gernigon Bernard, Odreo Alberto and Gudio Horacio, *op cit,* p 13.
[542] *Freedom of Association Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO,* 4th Edition, (Geneva: International Labour Office, 1996) Para. 786 p 160.

Thus, I suggest the draft definition of collective bargaining should be amended as follows:

> "Collective bargaining means the discussions and talks between workers and their organizations, *if in existence*, on the one hand, and employers and their organizations, *if in existence*, on the other hand in order to achieve the following goals:
>
> 1. Improve the working conditions and employees' circumstances;
> 2. Encourage co-operation between both parties at work to achieve economic and social development for the workers of the establishment; and
> 3. Solve collective work disputes occurring between workers and employers".

3-4-2-2 Aims of Collective Bargaining

Collective bargaining aims at organizing the circumstances, conditions and relations at work which lead to safeguarding social peace and security, and to achieving justice and social development, as collective bargaining is one of the most important industrial democracies, and compliments national legislation.

3-4-2-2-1 Organization of Work Circumstances, Conditions and Relations

"The aim of collective bargaining is organizing work conditions, relations and circumstances".[543] By concluding,

> "Collective agreements including provisions precisely organizing these issues. It reflects the demands of both parties at work, and the workers' reality, and takes into consideration the differences between establishments or jobs or industries".[544]

That is why it is quite difficult to apply unified rules to different establishments. In this way, "collective bargaining differs from legislative rules that organize these issues, for it is drafted in a more general way so as to apply to the majority of establishments and not to each one of them". [545]

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[543]For more details see Gernigon Bernard, Odreo Alberto and Gudio Horacio, *op cit,* pp 23-25.
[544]Abdulhalim Salama Abdul Tawab, *op cit,* pp 69-71.
[545]*Ibid.*

In addition, legislative rules are characterized by their relative constancy, being not easily changed, for their change requires long complicated procedures, contrary to "collective bargaining which can be held whenever it is deemed necessary, and if both parties at work wish to apply it. This gives collective bargaining the aspect of flexibility".[546]

Moreover,

> "Interpreting the rules set through collective bargaining depends on the interpretation of the negotiating parties, for they themselves have set these rules which are characterized by their clarity as they were drafted in detail. In the case of legislation, however, the rules are general which leads to understanding them differently. This renders their interpretation by the judicial authority imperative".[547]

The FAC has given many decisions on this issue, which are stated in the following paragraphs:

> "Legislation excluding *working time* from the scope of collective bargaining, unless there is government authorization, would seem to infringe the right of workers' organizations to negotiate freely with employers the working conditions guaranteed under Article 4 of Convention No.98".[548]

> "...legislation establishing that the Ministry of Labour has powers to regulate wages, working hours, leave and conditions of work, that these regulations must be observed in collective agreements, and that such important aspects of conditions of work are thus excluded from the field of collective bargaining, is not in harmony with Article 4 of Convention No.98".[549]

> ".... with regard to allegations concerning the refusal to bargain collectively on certain matters in the public sector, the committee has recalled the view of

[546] *Ibid.*
[547] *Ibid.*
[548] *Freedom of Association Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, 4th Edition, (Geneva: International Labour Office, 1996) Para. 806 p 164.
[549] *Ibid*, Para. 811 p 164.

the fact-finding and conciliation commission on freedom of association that there are certain matters which clearly appertain primarily or essentially to the management and operation of government business; these can reasonably be regarded as outside the scope of questions essentially relating to conditions of employment and that such matters should not be regarded as falling outside the scope of collective bargaining conducted in an atmosphere of mutual good faith and trust".[550]

3-4-2-2-2 Preserving Social Peace and Security

The working class constitutes the bulk of society and works in many types of economic activities. This makes society dependent on the stability of this class. Once the stability of this class is shaken, social peace and security become precarious as

> "collective bargaining contributes to establishing stable and sound work relations by organizing working conditions, circumstances and relations, it therefore prevents disputes that threaten this stability and promptly settles these disputes once they occur".[551]

On the other hand, collective bargaining contributes to social development, for the progress and development of the working class leads to the prosperity of society and the development of economic life, which in turn leads to the spread of social peace and security.

The economic development of the working class as a result of pay increases triggers an increase in consumption and the spread of stability. As a result,

> "Demand on goods goes up, resulting in an increase in the quantity of goods offered, and consequently, the number of factories goes up, which means a higher demand on workers, which results in more employment for the jobless, and more competition between workers through training in order to obtain better wages matching the skills required by the labour market".[552]

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[550] *Ibid*, Para. 812 p 165.
[551] Abdulhalim Salama Abdul Tawab, *op cit*, pp 71-74
[552] *Ibid.*

Hence the rate of crimes attributed to want and poverty goes down when improvements are made to the living conditions of the working class.

3-4-2-2-3 Completing the Legislation

Collective bargaining sets detailed and precise rules, unlike legislation which is characterised by its generality so as to suit all kinds of establishments in the different sectors and with all jobs. Therefore, "the precise details will allow the collective bargaining to complement the existing legislation, and fill the gaps caused by the general nature of legislation". [553]

All the details are agreed by the negotiating parties who are well acquainted with the smallest aspects of every establishment, job or sector. They reach an agreement on their differences, satisfying the workers who aspire to increase their wages with less effort on their part. On the other hand, employers hope to pay less money for as much work as possible. In addition, the rules set during the collective bargaining may alert the legislature to those rules which need regulation between the different parties. Thus, the legislature drafts a law if a lack of legislation is perceived in this area.

3-4-2-3 Characteristics of Collective Bargaining

Through the afore-mentioned definition of collective bargaining and the juristic opinions, its characteristics are perceived to be collective, direct, optional and peaceful. These aspects will now be dealt with separately.

3-4-2-3-1 Collective

Collective bargaining is known to be a collective practice pertaining to a group related by common interests. Article 8(3) of the Trade Union Law 2006 which amended the Trade Union Law 2002 states that the most representative organization will represent Bahrain workers in international conferences and collective bargaining, which "complies with FAC decisions".[554]

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[553] *Ibid*, pp 76-77

[554] *Freedom of Association Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, 4th Edition, (Geneva: International Labour Office, 1996) Para.822 p 166. para. 826 p 167. para. 827 p 167. and para. 829 p 167.

It is not compulsory for workers to have their own trade union representing them in negotiations if they are not organised in a trade union. They can still negotiate through the representatives they have already chosen in co-operation with the employers.

The existence of a trade union representing them does not prevent the participation of some interested workers,

> "The collective Agreement Recommendation, 1951 (No.91), stresses the role of workers' organizations as one of the parties in collective bargaining; it refers to representatives of unorganized workers only when no organization exists. In these circumstances, a direct negotiation between the undertaking and its employees, by–passing representative organizations where these exist, might be detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted".[555]

> "The workers' Representatives Convention, 1971 (No.135), and the Collective Bargaining Convention, 1981 (No.154), contain explicit provisions guaranteeing that, where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures are to be taken to ensure that the existence of elected representatives in an enterprise are not used to undermine the position of the trade unions concerned".[556]

> "Recalling the importance of the independence of the parties in collective bargaining, negotiations should not be conducted on behalf of employees or their organizations by bargaining representatives appointed by or under the domination of employers or their organizations".[557]

Collectivity is not stipulated for the employer. During negotiations at the level of the establishment, the individual employer can participate in the negotiation with the workers or with their trade union.

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[555] *Ibid*, Para. 785 p160.
[556] *Ibid*, Para. 787.
[557] *Ibid*, Para. 789 p 161.

3-4-2-3-2 Direct

This means that no third party whatsoever can intervene in the negotiation. Negotiations are therefore held directly between the, employer and the employees, as "...intervention by a representative of the public authorities in the drafting of collective agreements, unless it consists exclusively of technical aid, is inconsistent with the spirit of Article 4 of Convention No.98".[558]

This characteristic distinguishes collective bargaining from the other cordial means followed to improve working conditions, such as mediation, reconciliation and arbitration.

It is not required that negotiations be held by the rival parties face-to-face. Rather, it is still possible in the case of reaching an agreement between both parties themselves, and without the intervention of a third party, even if this intervention is through distant contact between the negotiating parties.

3-4-2-3-3 Optional

This means the rival parties resort to negotiation on the ground of their absolute choice and without any obligation whatsoever.[559] This aspect is highlighted in Report 279, Case 1563 (Iceland), Paragraph 372, as "... voluntary negotiation of collective agreements, and therefore the autonomy of the bargaining partners, is a fundamental aspect of the principles of freedom of association".[560]

Likewise, it is stated in Report 211, Cases 1035 (India) and 1050 (India), Paragraph 110, and Report 238, Case 1232 (India), Paragraph 46 that, "Collective bargaining, if it is to be effective, must assume a voluntary character and not entail recourse to measures of compulsion which would alter the voluntary nature of such bargaining".[561]

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[558] *Ibid*, Para. 866 p 174.
[559] For more details see Gernigon Bernard, Odreo Alberto and Gudio Horacio, *op cit*, p 13.
[560] *Freedom of Association Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, 4th Edition, (Geneva: International Labour Office, 1996) Para. 844 p 170.
[561] *Ibid*, Para. 845 p 171.

Thus, it is incumbent on each of the negotiating parties to convince the other of the importance of bargaining as a means to improve working conditions. Moreover, any of the parties can withdraw from the negotiation at any stage. However, this may result in the workers' going on strike if the employer withdraws from the negotiation. It may also lead to the employer deciding to close the establishment if the workers stop the negotiating process.

3-4-2-3-4 Peaceful

Collective bargaining is a peaceful means whereby the working conditions, circumstances and relations are regulated. It can take the form of dialogue, discussions or contacts which constitute peaceful means for each party to expound his opinion, supported by the necessary proof and logic about the issues presented for negotiation, in a cordial way.

3-4-2-4 Functions of Collective Bargaining

Collective bargaining basically aims at concluding collective labour contracts. None of the international Conventions has defined collective contracts. However, ILO Recommendation No.91 on Collective Agreements of 1951 incorporates this definition in Article 2(1):

> "For the purpose of this Recommendation, the term *collective agreements* means all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organizations, on the one hand, and one or more representative workers' organizations, or, in the absence of such organizations, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other".

Collective bargaining aims to adjust already existing work contracts, or to settle disputes emanating from these collective contracts. On the other hand, collective bargaining can also take the form of a preventive measure in the event that the signs of a dispute about collective contracts are perceived.

3-4-2-4-1 Concluding Collective Labour Agreements

Concluding a collective contract is viewed as one of the most eminent results of collective bargaining. This contract is concluded either at the onset or at the end of the collective contract if both parties wish to sustain working relations. This function is set out in Article 4 of ILO Convention No.98 of 1949, which provides that:

> "Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements".

In recognition of this function Article 152 of the draft Labour Law provides that, "If collective bargaining succeeds, the concluded agreement shall be drafted in a collective agreement according to the provisions of the collective work contract herein stated".

This Article indicates that the preferred outcome of collective bargaining is a collective contract, and that collective bargaining is the best means whereby disputes between rival parties are settled.

As the preferred outcome of collective bargaining is concluding collective labour contracts, it is necessary to define the collective labour contract in the draft Labour Law. Accordingly, Article 153 provides that:

> "A collective contract means any written agreement whereby the conditions and circumstances of work are regulated between one or many syndical organizations and one or many employers who employ workers belonging to these organizations or to the employers in a way to guarantee better conditions, circumstances or advantages".

FAC decisions specify the outcome of collective bargaining in its decisions as is stated that:

> "Measurers should be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the

regulation of terms and conditions of employment by means of collective agreements".[562]

3-4-2-4-2 Adjusting Collective Labour Agreements

A collective contract is adjusted as a result of the changes in the social and economic conditions of the community, such as inflation, stagnation and price rise. The work contract can also be adjusted as a result of a change in the establishment's conditions, for example, if the establishment's profits decrease, or increase in the case of economic recovery of the market.

It can be said, therefore, that adjusting the labour contract can result from general conditions affecting the market, or from special conditions merely relating to the establishment. It can also be the result of expiry in the case of determined-term contracts.

3-4-2-4-3 Joining Collective Labour Agreements

In this case it is presumed that an effective collective labour contract exists and it is what both parties wish to join, because they consider it the best existing contract, and they may not get a better one, and also may avoid starting lingering negotiations that may not lead to better contracts.

In order to realize this possibility Article 156 of the draft Labour Law provides that:

> "It is permissible for parties other than both parties of a collective labour contract, from the trade unions, employers' and workers' organisations to join this contract after its registration at the competent Ministry, and after publishing its digest in the Official Gazette. This shall be on the basis of the agreement between the parties wishing to join it and without any need for the consent of the initial parties of the contract.
>
> Joining shall be in a written demand signed by both sides and presented to the competent authority. The workers subject to the collective labour contract

[562] *Ibid*, Para. 781 p 159.

abide to it is provisions during it is term, even if the membership within this organization expires before the end of that period".

Article 4(1) of ILO Recommendation No.91 urges the extension of the application of these collective agreements. It provides that:

> "Where appropriate, having regarded to established collective bargaining practice, measures, to be determined by national laws or regulations and suited to the conditions of each country, should be taken to extend the application of all or certain stipulations of a collective agreement to all the employers and workers included within the industrial and territorial scope of the agreement".

The basis of joining a collective labour contract lies in the establishment of several trade unions within the same establishment, the same job or the same sector. This contravenes Article 10 of the Trade Union Law 2002 as amended which provided that "...no more than one trade union shall be set up for each establishment".

Consequently, to implement Article 156 depends on not limiting the number of trade unions within the same establishment, job or sector as stipulated by the FAC. On the other hand, Article 156 could be implemented if the draft Labour Law had allowed groups of trade unions to conclude collective labour contracts. However, Article 153 of the draft Labour Law provides that:

> "A collective labour contract refers to any written agreement according to which the work conditions and circumstances are organised between one or more trade unions and between one or more employers who employ workers belonging to these organizations or to employers' organizations, in a way to guarantee better conditions, advantages or circumstances".

Finally, Article 156 could be implemented because the number of federations is not limited, and federations are allowed to conclude collective labour contracts. However, the federations' functions as stipulated in Article 8 of the Trade Union Law 2006 include the conclusion of collective labour contracts by the most representative federation. This is a short coming as the law should give this right to every federation. This is contrary to FAC decisions which state that, "Convention 98, and in particular Article 4 thereof concerning the encouragement and promotion of collective

bargaining, applies both to the *private sector* and *to nationalised undertakings and public bodies*".[563]

Likewise, it is stated that:

> "All *public service workers other that those engaged in the administration of the state* should enjoy collective bargaining rights, and priority should be given to collective bargaining as the means to settle disputes arising in connection with the determination of terms and conditions of employment in the public service".[564]

Again FAC stated that:

> "A distinction must be drawn between, on the one hand, *public servants who by their functions are directly engaged in the administration of the state* (that is, civil servants employed in government ministries and other comparable bodies), as well as officials acting as supporting elements in these activities and, on the other hand, persons employed by the government, by public undertaking or by autonomous public institutions. Only the former category can be excluded from the scope of Convention No.98".[565]

Finally, it is stated that: "The workers of state-owned commercial or industrial enterprises should have the right to negotiate collective agreements".[566]

3-4-2-4-4 Preventing Collective Labour Disputes

Collective labour disputes may occur in cases where workers demand improving social and economic conditions, or when the establishment witnesses an economic growth or an increase in its profits. These disputes may lead the workers to go on strike as an expression of their legitimate demands. This may threaten the stability of the establishment.

That is why,

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[563] *Ibid*, Para. 792 p 161.
[564] *Ibid*, Para. 793 pp 161- 162.
[565] *Ibid*, Para. 794.
[566] *Ibid*, para. 796.

"The parties resort to collective bargaining in order to adjust an existing collective labour contract, or to conclude a labour contract according to the changing economic and social conditions, before the workers strike. A strike may lead the employer to close the establishment, so avoiding this may prevent the economic and social damages affecting both parties. Likewise, interpreting Articles and provisions through collective bargaining may decrease labour disputes, as each party will interpret them in a way to suit their own interest".[567]

In conclusion collective bargaining may settle a dispute before it actually takes place, if the cause of the dispute is negotiated by both parties. This eventually leads to ending the dispute with the consent of both parties. Even if no agreement is reached, such a situation paves the way for other procedures such as referring the matter to reconciliation or arbitration, if both parties still wish to reach a settlement.

Collective bargaining may also lead to the occurrence of a strike, or the closing of an establishment, if the negotiating parties do not reach a solution and do not agree on resuming talks through other possible means.

3-4-2-4-5 Settlement of Collective Labour Disputes

Disputes may occur between employers and employees as a result of the workers' dissatisfaction either with the working conditions, or with wages that are not increased in spite of the establishment's flourishing profits. They may also occur as a result of workers' aspirations to improve their economic and social conditions.

Such a dispute may end up causing damage to both parties. On the one hand, the workers may go on strike, "which means they will get no wages, as wages are paid for work, and if there is no work there is no pay".[568] On the other hand, the employer as a reaction to the strike may decide to close the establishment, which could result in the loss of reputation in the market and the possible concession of its place to competitors.

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[567]Abdulhalim Salama Abdul Tawab, *op cit,* p 66.
[568]Abdulmohsen Abdulbasset, *Striking in the Labour Law (Comparative Study)*, PhD thesis, (Cairo: presented to the Law College 1992) p 677. See also *ibid*, p 67.

Even if the "strike is legitimate and supported by the law, and workers are allowed to go on a legal strike in vital facilities, the peoples' interests will be affected, especially if the strike lasts for a long period".[569] Thus, settling labour disputes through collective bargaining helps the different sides avoid the imminent damage. Settling disputes constitutes one of the goals of collective bargaining as stipulated in Article 148(C) of the draft Labour Law.[570]

It is not a condition that collective bargaining always settles disputes as both parties may decide to use other means to solve the dispute, such as mediation and arbitration.

3-4-2-5 Levels of Collective Bargaining

ILO Convention No.98 does not deal with the levels of collective bargaining.[571] Rather it is Article 2 of ILO Convention No.154 that indirectly states that collective bargaining is carried out on various levels.

Article 4(1) of the ILO Recommendation No.163 of 1981 on Collective Bargaining Recommendations, directly provides that collective bargaining takes place on many levels. It says that:

> "Measures adapted to national conditions should be taken, if necessary, so that collective bargaining is possible at any level whatsoever, including that of the establishment, the undertaking, the branch of activity, the industry, or the regional or national levels".

Within the same context, Article 149 of the draft Labour Law provides for different levels of collective bargaining in accordance with ILO Recommendation No.163 of 1981. Article 149 provides that:

> "Collective bargaining takes place at the level of the establishment, or the city branch, or the industry, or the national level. If collective bargaining takes place at the level of the establishment, negotiations shall be held between the

[569] *Ibid*, pp 67-68.
[570] Article 148(C) deals with solving the collective work disputes occurring between workers and employers.
[571] For more details see Gernigon Bernard, Odreo Alberto and Gudio Horacio, *op cit*, pp 28-32.

employers or whoever represents the employer and the trade union representing the workers.

But, if collective bargaining is at the level of the activity city branch, negotiation shall be held between the organization representing the employers and the competent organization representing the workers. And if collective bargaining is at the national level, negotiation shall be between the Chamber of Commerce and Industry, and GFWTUB.[572] The representatives of each side are legally authorized to conduct negotiation and to conclude the ensuing agreement".

Although the text stated above complies with ILO Recommendation No.163 of 1981, the Bahrain legislature adopted the text of the Arab Convention No.11 of 1979.

Conclusion

Bahrain has not ratified ILO Conventions No.87 and No.98. However, Bahrain is obliged by the ILO Declaration and Bahrain's membership of the ILO to respect, promote and realise, in good faith and in accordance with the ILO Constitution, the principles concerning the fundamental rights which are the subject of the ILO Fundamental Conventions, which include Conventions No.87 and No.98.

Thus, Bahrain by not fully implementing the principles set out in these two Conventions is in breach of its ILO Declaration obligations and Bahrain Law should be amended accordingly, as Bahrain has not implemented any of the principles of ILO Convention No.98. This failure by Bahrain will have important economic implications for Bahrain as industrialized nations will use it to refuse Bahrain economic treaties and may also lead to calls for existing treaties to be terminated. Further because of its failure to implement these fundamental rights at work the Bahrain government may face claims for judicial review by aggrieved trade unionists.

[572]This was amended by the Trade Union Law 2006, to become the most representative federation.

Conclusion

Results

The ILO Declaration imposes upon the Kingdom of Bahrain an obligation to implement the principles set out in the Fundamental Conventions even if Bahrain has not ratified a particular Fundamental Convention. This is contrary to PIL rules. This new obligation derives its authority from the interaction of the ILO Declaration and the ILO Constitution. The ILO Constitution, as the superior internal law governing the ILO Member States, binds ILO Member States to abide by the principles of the ILO Declaration and as the ILO Member States agreed to this upon joining the ILO they cannot refuse to implement the ILO Declaration.

A detailed examination of Bahrain Law has shown that whilst Bahrain has implemented some of the Fundamental Rights at Work, there are still Fundamental Rights at Work which Bahrain has yet to implement. Thus Bahrain has not fulfilled its ILO obligations as it has failed to recognize the rules and principles set out in ratified and un-ratified conventions.

The ILO Declaration is an extension of the social condition, which industrialized nations failed to impose on developing nations under the WTO. By using the ILO follow-up procedure industrialized nations will categorize Bahrain as a country which has failed to meet its ILO obligations. This categorization will be used by some elements in industrialized nations to ensure that Bahrain is precluded from entering into economic agreements, such as free trade agreements, with their countries. Accordingly, failure to implement the Fundamental Rights at Work will be used for protectionist purposes by industrialized nations or NGO's within those nations.

Bahrain needs to examine its practices when dealing with discrimination on the grounds of National Extraction especially where Asians workers are concerned. Lack of implementation of this Fundamental Right at Work has lead to forms of forced labour being imposed on Asian workers as they are poorly paid and are not included in the social insurance system. In addition domestic workers work in conditions similar to forced labour, which has lead to Bahrain being accused of trafficking in persons because of the long working hours, low wages and lack of protection afforded

to domestic workers under the Bahrain Labour Law. This contradicts basic human rights that the international community insists are enforced even when Asian workers form a large part of the population and can affect the political, economic, and social system of Bahrain.

Discrimination on the grounds of gender has still not been abolished completely, even though the Bahrain government has taken steps in the right direction by appointing several women to senior public positions and private companies in Bahrain have promoted women to senior positions. This failure arises because gender equality depends on several elements the most important of which is the awareness of the community itself. Unfortunately, in Bahrain the community is still not convinced of the need for gender equality, even though the Islamic Shari'a does not discriminate on the grounds of gender.

Bahrain also needs to pay more attention to protecting children in the work place. The age of majority in Bahrain is very low and Bahrain Law does not adequately protect children. Consideration needs to be given to this area even if there is actually very little abuse of child labour in Bahrain. Again the argument that opposition groups would use children to undertake acts of sabotage and avoid criminal liability if the age of majority were raised is not a viable one as the Fundamental Conventions dealing with children's rights do not prohibit punishment, but merely demand that the punishment should be appropriate to the child's age.

Trade unions are used in Bahrain to achieve political ends, often to the detriment of the workers whose interests the trade union was established to protect. This abuse of the trade union process meant that Bahrain did not fully implement the Fundamental Conventions recognizing the right of collective bargaining and the right to organize. However, the introduction of laws allowing several trade unions in one establishment and multiple federations will weaken the hold of political groups over trade unions. This weakening of the political hold over trade unions will gradually lead to a wider acceptance of the rights of collective bargaining and the right to organize.

Recommendations

The Bahrain government has to work with the legislature to amend Bahrain's Labour and Trade Union Laws together with the Penal Code so that they fulfil the obligations set out in the ILO Declaration, even if Bahrain has not ratified a particular Fundamental Convention for political reasons. Not to do so will lead to Bahrain being categorized as a country which does not comply with the ILO Declaration and will mean that Bahrain could face objections when trying to negotiate economic treaties. This is especially relevant as Bahrain is engaged along with its Gulf Co-operation Council partners in negotiating Free Trade Agreements *inter alia* with the European Union and Japan.

Bahrain has recognized, through the introduction of the Labour Fund and LMRA that there is a need to decrease the skills-gap between Bahraini workers and employers. This will mean that employers will be more prepared to accept a Bahraini worker which means that the need for expatriate labour will be reduced and the economy will improve lowering the political, economic, and social risk. This in conjunction with the policy of hiring other Arab nationals over other ethnic groups will lead to a more stable environment which will allow laws to be introduced which will protect expatriate labour without causing a backlash from Bahraini nationals.

Bahrain needs to amend its laws in order to ensure gender equality. The government practice of nominating women to senior positions will encourage the belief that the women are suitable for every job. The Bahrain government has taken the right first steps but its efforts need to be increased as statistics show that women are still treated less favourably than men in the work place. The High Supreme Council for Women should adopt plans to ensure that girls are raised to be high achievers and that they are well educated in order to be able to perform jobs at the highest levels.

Bahrain needs to amend it laws on majority in order to comply with international minimum age requirements. This will ensure that child labour continues not to be exploited in Bahrain. Bahrain also needs to ensure that children are adequately educated so as to meet the requirements of available jobs which will in turn lead to less unemployment and dissatisfaction amongst Bahraini youth. These amendments

need to be coupled with schemes to promote sports and cultural activities which will prevent children being exploited for political purposes.

Finally, Bahrain needs to amend its laws to accept multiple trade unions which will weaken the influence of political groups over trade unions and allow them to pay more attention to the needs of their members. Bahrain should also use ILO technical assistance to train Bahraini trade unionists in the proper role of trade unions in society.

Bibliography

Books

Abdulhameed Muhammad Samy, *The Basies of the Public International Law*, Vol. 1, (Alexandria: Alexandria Youth Establishment,1972).

Abdulhalim Salama Abdul Tawab, *Collective Bargaining in the Labour Law*, (Cairo: Arab Revival House, 2002).

Abdullrahmman Mustaffa Sayed, *Specialized International Organizations*, (Cairo: Arab Revival House, 2003-2004).

Abdulmohsen Abdulbasset, *The Legal Order of Collective Bargaining, a Comparative Study*, (Cairo: Arab Revival House, 2000).

Abou Alwaf'a Ahmad, *Mediation in the Public International Law*, (Cairo: Arab Revival House, 1998-1999).

Abou Alwaffa waffa Muhammad Ahmad, *Intermediary in the Organizations'' Law*, (Cairo: Dar Al Thaqafa AlArabia, 1984).

Abou Hijazah Ashraf Arafat, *The Situation of the International Public Law in the Frame of Municipal Rules of the Constitutional and Legislative Law*, (Cairo: Arab Revival House, 2004).

Abou Zaid Mustafa, *The Constitutional Regime for of the United Arab Republic*, (Cairo: 1966).

Afifi Muhammad Al Sadiq, *Islamic Community and International Refashions*, (Cairo: Al Khananji Library).

Al Nabhani Muhammed Khalifa, "*The Nabhani Masterpiece in the History of the Arab Peninsula*", 2nd Edition, (Bahrain: National Library, 1999).

Al Baghi Mustapha and Mestou Moheddine, *The Complete Explanation of the Al Arbaian Al Nawawia*, 9th Edition, (Damascus: Dar Al Kalam Atayab, 1997).

Al Far Abdulwahed, *International Organizations*, (Cairo: Alam AlKitab, 1979).

Al Gazali Mohammed, *The Human Rights between Islamic Teachings and UN Declaration*, 5th Edition, (Cairo: Dar Al-Da'wa, 2002).

Al Gunaimi Muhammad Tala'at, *Al Gunaimi Mediation in the Peace Law- Public International Law or Law of Nations in the Peace Time*, (Alexandria: Monsha't Al Maarif, 1982).

Al Jamal Yehia, *The Constitutional Adjudication in Egypt*, (Cairo: Arab Revival House, 2000).

Al Jarf Ta'ama, *The Public Theory of the Constitutional Law and the Development of the Political Regime in Egypt*, 3rd Edition, (Cairo: Arab Revival House, 2001).
Al Jundi Muhammad Al Shahhat, *Human Rights in Islam from a Contemporary Perspective*, (Cairo: Arab Revival House).
Al Monthiry Zki Aldean, *Muslim Brief*, 1st Edition, (Kingdom of Saudi Arabia: Dar Al-Salam Publication, 1996).
Al Salabi Ali Muhammed, *Abu Bakr's Era and Personality*, 2nd Edition, (United Arab Emirates [Sharja]: Al Sahwa Library, 2002).
Al Salabi Ali Muhammed, *Umar bin Al Khattab (His Era and Personality)*, 1st Edition, (United Arab Emirates [Sharja]: Al Sahwa Library, 2002).
Al Sebai Mustapha, *Woman between Jurisprudence and Law, 6th Edition*, (Beirut: Islamic Library, 1984).
Al Zubaidi Zain Alden Ahmed, *Al Boukhari Brief*, 1st Edition, (Kingdom of Saudi Arabia: Dar Al Salam Publication, 1996).
Alwan Abdulkarim, *Public International Law (International Organizations - Human Rights)*, Vol. 2, (Alexandrina: Monshat Alma'arf, 2007).
Ameer Salah Al Deen, *Introduction to Public International Law*, (Cairo: Arab Revival House, 2003).
Amer Salah Al Dean, *The Law of International Organizations (Public Theory)*, 3rd Edition, (Cairo: Arab Revival House, 1983).
Badawi Tharwat, *Constitutional Law and the Development of the Constitutional Regulations of Egypt*, (Cairo: Arab Revival House).
Bowers John, Bowers on Employment Law, (United Kingdom: Oxford,2002).
Brycchan Carey, Markman Ellis, and Salih Sara, *Discourses of Slavery and Abolition, Britain and its Colonies*, (United Kingdom: Palgrave Macmillan, 1976-1838).
Darweesh Ebrahim, *Constitutional Law Public Theory*, (Cairo: Arab Revival House, 1996).
Evans Malcolm, *International Law*, 2nd Edition, (Oxford: Oxford University Press, 2006).
Fakri Fathi, *Constitutional Law (First Book- Basics Constitutional Rule)*, (Cairo: 2001).
Ganim Muhammad Hafid, *Brief in Public International Law*, (Cairo:1979).
Honeyball Simon, *Honeyball & Bowers' Textbook on employment Law*, (United Kingdom: Oxford, 2008).

Jafar Muhammed Anas, Review on the Constitutionality of Laws (Comparative Study), 2nd Edition, (Cairo: Arab Revival House, 1999).

Jaffer Muhammed Anas, *Principles of Islamic Ruling (Combative Study)*, (Cairo: Arab Revival House, 2001).

Lauterpacht Elihu, *Aspects of the Administration of International Justice*, (Cambridge: Cambridge Grotius Publications limited, 1991).

Muhammad Ahmed Abou Al Wafa, *The Intermediariesy in the International Organization Law,* (Cairo: Dar AlThaqafa Alarabia, 1984).

Naseer Abdelkarim, *Arbitration with the Arabs as a Means to Settle Disputes Between Individuals (A Study of the Arab Tribal Customs and Traditions and the Islamic Shari'a)*, (Cairo: Arab Revival House, 2002).

O'Brien John, *International Law*, 1st Edition, (United Kingdom: Cavendish Publishing Limited, 2001).

Omari Mohammed Buraik Abu Maila, *Brigades and Prophetic Delegates Around Mecca and Al Medina Criticizing Analytic Studies*, 1st Edition, (Kingdom of Saudi Arabia: Ibn Al Jowzi Publication, 1996).

Rafi Salim bin Muhammad, *Mohammed the Beloved of Allah,* 1st Edition, (Kingdom of Saudi Arabia: Darussalam, 1999).

Refai Anwar, *Islam in its Civilisation and Systems*, 3rd Edition, (Damascus: Dar Al Fikr, 1986).

Sabiq Sayed, *The Jurisprudence of the Sunnah*, Vol. 2, (Cairo: Al Manar international and Al Fath for Arab information, 1995).

Saliman Abdulaziz Muhammad, *The Review of Constitutional Rules and their Application*, 1st Edition, (Cairo: Arab Thought House, 1995).

Samy Abdulhameed Muhammad, *The Basis of Public International Law*, Vol. 1, (Alexandria: Alexandria Youth Establishment,1972).

Samy Abdulhameed Muhammad, *The Basis of International Law*, Vol.1, 5th Edition, (Alexandria: 1996).

Shaker Mahmoud, *The Islamic History (The Islamic Law)*, 1st Edition, (Beirut: The Islamic Bureau, 1986).

Shiha Ebrahim, *Administrative judiciary*, (Alexandria: Monshat Alma'arf, 2006).

Shihab Mufid Muhmud, *Public Intentional Law*, (Cairo: 1991).

Shokry Muhammad Aziz, *Universal Organizations between Theory and Application*, 1st Edition, (Damascus: Dar Alfiker, 1973).

Yahya Muhammad Kamal, *Historical Roots of Egyptian Women's Freedom in the Modern Era*, (Egypt: Public Egyptian Book Institute, 1983).

Younis Muhammed Mustafa, *Execution the Resolutions of the International Organisations*, (Cairo: Arab Revival House, 1999).

Zainaty Esam Mohammed, *The Reasons of the Relative Nullity (Study in the International Convention Law)*, (Cairo: Arab Revival House, 2000).

ILO PUBLICATIONS

Application of the International Labour Standards 2004 (1), Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (part 1 A), 1st Edition, (Geneva: International Labour Office, 2004).

Forced Labour in Myanmar (Burma), Report of inquiry appointed under Article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of Forced Labour Convention 1930, No. 29, (Geneva: The International Labour Organization Office [official bulletin]).

Forced Labour in Myanmar (Burma), report of inquiry appointed under Article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of Forced Labour Convention 1930, No. 29, (Geneva: The International Labour Organization Office [official bulletin]).

Freedom of Association Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO, 4th Edition, (Geneva: International Labour Office, 1996).

Gernigon Bernard, Odreo Alberto and Gudio Horacio, *Collective Bargaining: ILO Standards and Principles of the Supervisory Bodies,* 1st Edition, (Geneva: International Labour Office, 2000).

Global Report following from the ILO Declaration on Fundamental Principles and Rights at Work, Stopping Forced Labour, (Geneva: the International Labour Office, 2001).

Global Report under the Follow-up to the International Labour Organisation of the Fundamental Principles and Rights at Work: A Future without Child Labour, (Geneva: International Labour Office, 2002).

International Report Concerning the Follow Up to the Declaration of the International Labour Organisation Related to the Basic Principles and Rights at Work. Time of Equality at Work, (Geneva: International Labour Bureau, 2003).

Rules of the Game, A Brief Introduction to International Labour Standards, (Geneva: International Labour Office).

The End of Child Labour: Within Reach, the Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I (B), international labour Conference 95th session, (Geneva: International Labour Office, 2006).

JOURNALS

Abdulsalam Jaafar, (1979) 35,The Egyptian Magazine of International Law 221-227.

Alston Philip, *Core Labour Standards and the Transformation of the International Labour Rights Regime*, (2004) 15, European Journal of International Law 457-521. (E.J.I.L. 15 (2004) 457-521).

Anon., *Committee on Rights of Child: Statement on the Economic Exploitation of Children*, (1994) 20 (1), Commonwealth Law Bulletin 286. (C. L. B., 20(1)).

Anon., *ILO: Focus on Child Labour*, (1987) 13(1), Commonwealth Law Bulletin 219. (C. L. B. 1987, 13(1)).

Bakirci Kadriye, *Child Pornography and Prostitution: Is this Crime or Work that should be Regulated?*, (2007) 14 (1), Journal of Finance Crime 8-10. (J.F.C. 2007, 14(1)).

Bentley Kristina Anne, *Can there be any Universal Children's Rights?*, (2005) 9 (1), International Journal of Human Rights 117. (I.J.H.R. 2005, 9(1), 107-123).

Christie, A., *Myanmar: Gas Sector - New Measures Against Myanmar*, (2001) 2, International Energy Law and Taxation Review 11-12. (I.E.L.T.R. 2001, 2, N11-12).

Drew S., *Human Trafficking: a Modern Form of Slavery*, (2002) 4, European Human Rights Law Review 481. (E.H.R.L.R.2002, 4).

Franck T.M., *Legitimacy in the International System*, (1988) 82(4), the American Journal of International Law 725.

Mantouvalou, V., *Servitude and Forced Labour in the 21st Century: the Human Rights of Domestic Workers*, (2006) 35(4), Industrial Law Journal 395. (I.L.J. 2006, 35(4)).

Osfor Muhammad, *Constitutional Review on Laws Application*, (1970) 11 year 50, Lawyer Magazine.

Osfor Muhammad, *Democracy from Constitutional Review on Laws Application*, (1971) year 51, Lawyer Magazine.

Samuels Alec, *What did Lord Mansfield actually say?*, (2000) Law Quarterly review.

Sarhan Abdul Aziz Muhammad, *The Legal System of the International Relationship in Egypt Constitution*, (1973) 2, The Egyptian magazine of the international law 27.

Sayed Sayed Ali, *Constitutional Review on Laws Application*, (1950) 1st year, Counsel of State Magazine.

NEWSPAPERS AND PERIODICALS

Al Ayam Newspapers, No.5455 issued 11 February 2004.

Al Ayam Newspapers, No.5457 issued 13 February 2004.

Al Ayam Newspapers, No.5545 issued 11 May 2004.

Al Ayam Newspapers, No.5565 issued 31 May 2004.

Al Ayam Newspaper, No.5568 issued 3 June 2004.

Al Ayam Newspapers, No. 5568 issued 3 June 2004.

Al Ayam Newspaper, No.5570 issued 5 June 2004.

Al Ayam Newspaper, No.5571 issued 6 June 2004.

Al Wasat Newspaper, No.956, issued 19 April 2005.

Al Ayam Newspaper, No.6179, issued 8 February 2006.

Al Ayam Newspaper, No.6300, issued 9of June 2006.

Al Ayam Newspaper, No.6553, issued 19 March 2007.

Al Ayam Newspapers, No.6795 issued 16 November 2007.

OFFICIAL PUBLICATIONS

Bahrain Official Gazette.

Om Al Quara'a, Official Gazette, (Kingdom of Saudi Arabia: 1962) year 40, No.1944.

Technical Office of the Court of Cassation, (Egypt) 7th year.

The Constitutional Journal, (Egypt: 2003) 1, 60.

The Constitutionality of Laws Collection, (Egypt) Vol.2, rule 18.

The Judgments of the Court of Cassation, (Bahrain: Court of Cassation Experts Office 1996) 7th year.

The Reparation for Injuries Suffered in Service Case, Advisory Opinion, ICJ General list No.4, 174 of 1949. (1949 I.C.J. 174).

THESISES

Abdulmohsen Abdulbasset, *Strikes Under the Labour Law (Comparative Study)*, PhD thesis, (Cairo: presented to the Law College, 1992).

Al Fiky Eskander bin Ahmed, *International Declaration on Fundamental Principles and Rights at Work and it is Effectiveness on the Developed Countries*, LLM Thesis, (Cairo: Cairo University, 2002).

Al Harri Khaled, *The Legal Protection of Child Labour in International Legislation*, LLM Thesis, (Cairo: Cairo University, 2002).

Al Lagani Ahmed, *Social Dimensions of GATT*, PhD Thesis, (Cairo: Cairo University, 2004).

UNPUBLISHED RSEARCH

Al Boraii Ahmed Hassen, *The Effect of the ILO Declaration on Fundamental Principles and Rights at Work on the Arab Countries*, Cairo, Research at Cairo University, 1999.

AlBoraii Ahmed Hassen, *Political, Economic, and Social Transformation of Industrial Relations and its Effectiveness*, (Seminar) unpublished paper, Jordon, 1995.

AlBoraii Ahmed Hassen, *The Future of International and Arab Labour Standards and National Legislations under Globalization*, a worksheet at the National Symposium on the Declaration of Fundamental Principles and Rights at Work (Seminar), Beirut 15th -18th October 2001.

WEBSITES

<http://www.ilo.org/public/english/standards/norm/introduction/used.htm>.

< http://imamsadeq.org>.

< http://www.elazhar.com/ftawa.htm>.

< http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah>.

<http://en.wikipedia.org/wiki/Sharia>.

<http://hrw.org/arabic/docs/2003/09/19/uae10782_txt.htm>

<http://hrw.org/arabic/docs/2003/09/19/uae10782_txt.htm>.

<http://www.austlii.edu.au>

<http://www.bahrainbrief.com.bh/arabic/february-2001.htm>.

<http://www.cio.gov.bh/pdf/stat/stat2005/11.pdf>.

<http://www.ilo.org/ilolex/english/docs/declworld.htm>.

<http://www.ilo.org/ilolex/english/mstatese.htm>.

<http://www.ilo.org/ilolex/english/newcountryframeE.htm>.

<http://www.ilo.org/ilolex/english/newratframeE.htm>.

<http://www.islamdoor.com/k/wadah.htm>.

<http://www.jmu.edu/madison/center/main_pages/madison_archives/era/judicial/bkgrnd.htm>.
<http://www.lectlaw.com/files/case14.htm>.
<http://www.state.gov/documents/organization/82902.pdf>.
<http://www.un.org/apps/news/story.asp?newsID=20453&Cr=bahrain&Cr1=>.
<http://www.unhchr.ch/huricane/huricane.nsf/view01/58FAF1D58BE8FAAFC1257219005C3225?opendocument>.
<https://www.e.gov.bh/wps/portal>.
<www.ilo.org/public/english/standards/norm/download/resources/rulesofthegame.pdf>.
<www.ilo.org>.