

# FREEDOM OF ASSOCIATION IN THE ARABIAN GULF: THE CASE OF BAHRAIN, KUWAIT AND YEMEN

ICCPR Article 22: 1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in the exercise of their article shall of this right. 3. Nothing in this authorize States Parties to the





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# ABOUT THIS REPORT

The present legal study that covers the right to freedom of association in three Arab Gulf countries, Bahrain, Kuwait and Yemen, was undertaken in preparation of a regional seminar, aimed at building civil societies' capacity to participate effectively in democratic transformation, to be organized jointly by the Arab Institute for Human Rights (AIHR) and the International Federation for Human Rights (FIDH). FIDH commissioned Ms. Samira Trad to carry out the study and the field research mission.

The preliminary research started in October 2007 and the field missions took place in February 2008, and the writing of the report started thereafter. It is important to mention that the cut date for the information in this report is end of February 2008. Exceptionally, some information was updated after that date.

The report focuses on the current legal and policy framework of the right to freedom of association in the three countries subject of this study. It is limited to the study of three specific categories of associations - independent human rights organizations, workers' trade unions (excluding professional and employers unions), and political parties. It analyses the compatibility of national laws and practice with international human rights standards and assesses current trends and policies. The report did not attempt to look at the historical development of these policies or legal frames, although at times this seemed relevant and necessary to gain a better understanding of the trends and policies.

The analysis was limited to two fundamental aspects of the right to freedom of association: the right to form or join an association and the right to function freely. As such the research concentrated on the five main factors that constitute the basic and fundamental rights of the freedom of association: the right to exist without prior authorization; the right to be free from control and interference in internal management and running of the organization; the ability to manage funding openly and transparently; the right to be affiliated to regional and international organizations; the right to carry out activities without fear of prosecution, suspension or dissolution. An assessment of the right of migrants to form and join non-governmental organizations and trade unions based on the principle of non-discrimination between nationals and non-nationals; the right not to be penalized for belonging to a non registered organization; the right to protection against anti-union discrimination, were as well components of this study.

The analysis is therefore limited to the *organic* elements, bearing in mind that a study of the full spectrum of freedom of association and the rights at stake would exceed the scope and objectives of our current study.

The information, analysis and findings of this report are the result of a twofold research methodology relying on both theoretical as well as field research. Firstly, primary and secondary sources, existing literature and related legal documents, were collected and reviewed. Secondly, field research including interviews with relevant officials and civil society actors were carried out in the three countries. Although the study approaches both legal and practice, the legal aspects are still predominant in the analysis.

The focus of both the theoretical and the field research was the countries' international obligations and the extent to which national legislations and other administrative regulations related to freedom of association and the related policies are in conformity with relevant international standards. The field research aimed at analyzing in more depth legal framework and the practical implementation of policy and the realities of freedom of association with respect to human rights NGOs, trade unions, and political parties.

In Bahrain, FIDH interviewed five governmental bodies, six human rights NGOs, three political associations and one alliance of political associations, and five trade unions (See list in Annex 2).

In Kuwait, FIDH delegation interviewed five different governmental bodies and Parliamentarians; as well as the representative of the International Labor Organization in Kuwait and representatives from three NGOs, three political blocs, one Trade Union, and four experts (See list in Annex 3).

In Yemen, FIDH delegation interviewed seven different governmental bodies, eleven human rights NGOs (including two working on migrant issues), three political parties (including a representative of a group of five opposition political parties), and three trade unions (See list in Annex 4).

Comprehensive annexes related to the three countries are available in a CD-Rom attached to this report.

# INTRODUCTION

## FREEDOM OF ASSOCIATION IS A BASIC AND FUNDAMENTAL HUMAN RIGHT

### CONCEPTUAL AND LEGAL FRAMEWORK

Freedom of association is “a general capacity for the citizens to join, without interference by the State, in associations in order to attain various ends”.<sup>1</sup>

The *UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* defines freedom of association to be “the right of persons, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels”.<sup>2</sup>

Organizations that are actively engaged in activities of public or private interest share a common characteristic in that they are non-profit. Al-Shani defines civil society as “[a] group of political, social, economic and cultural organizations working in different fields with a relative independence from the state and the profits of companies in the private sector.”<sup>3</sup>

Social theorists have always argued that the need to form associations is as a natural phenomenon. Adam Ferguson argues that “mankind cannot survive but in groups.” He further elaborated that “earliest and latest accounts alike from every corner of the earth, indicate that mankind assembles in groups and companies; the individual is always joined by affection to one party, while possibly opposed to another...The state of nature is both, a state of war and of amity, and humans instinctively unite from either a principle of affection or one of fear.”<sup>4</sup> Henry Home says that people enter into

associations with the aim of “securing their lives and their possessions.”<sup>5</sup> Montesquieu considers that the modern state itself is an association. For him, the “state is the association of men...” He elaborates by stating that the form of a confederate republic is “a convention, by which several petty states agree to become members of a larger one... a kind of assemblage of societies, that constitute a new one, capable of increasing by means of farther associations, till they arrive to such a degree of power, as to be able to provide for the security of the whole body.”<sup>6</sup>

Yet centuries later, it is possible to see that this basic and fundamental right has not been attained and is far from being guaranteed and respected. Autocratic and dictatorial authorities, fearful of the power their peoples may obtain if they enter into associations to defend their common interests, have resorted to systematically limiting freedom of association. In 1899, Gustave de Molinari wrote that the earliest movements in that direction came in the form of “...[placing] the judiciary and police system in dependence upon government, their first assigned duties being to repress attempts upon its supremacy, to discover the intrigues of rivals, and to supervise the actions, even the words, of malcontent subjects. The second measure of self-protection was to forbid the formation, without governmental sanction, of any association capable of serving as a dissident or revolutionary centre, to retain control over authorized associations by setting a term to their duration, and to reserve a right of dissolution in every case”.<sup>7</sup>

In contrast, in a democratic state, the freedom and commitment of individuals allow civil associations to exist and to pursue their ends, whether these are personal or communal. The role of the civil society is vital in raising awareness, informing the citizens of their rights and defending them, and holding governments more strictly accountable. The European Court of Human Rights has repeatedly stated that the

1. Definition of the European Commission quoted by Human Rights First, *The Neglected Right: Freedom of Association in International Human Rights Law*, 1997, available at <http://www.humanrightsfirst.org/pubs/descriptions/neglrt.htm>

2. G.A. Res 53/144 (9 December 1998).

3. Quoted in *Civil Society in the Arab World: The Missing Concept*, By Sa'ed Karajah, *The International Journal of Not-for-Profit Law*, Volume 9, Issue 2, April 2007, International Center for Not-for-Profit Law; available at [http://www.icnl.org/knowledge/ijnl/vol9iss2/special\\_1.htm](http://www.icnl.org/knowledge/ijnl/vol9iss2/special_1.htm)

4. Ferguson, Adam. *An Essay on the History of Civil Society* [1767],

Online Library of Liberty, available at [http://oll.libertyfund.org/index.php?option=com\\_staticxt&staticfile=show.php%3Ftitle=1428&layout=html#chapter\\_19702](http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php%3Ftitle=1428&layout=html#chapter_19702)

5. Home, Henry, Lord Kames in their “Sketches of the History of Man, vol. 1 [1778]”, Online Library of Liberty, [http://oll.libertyfund.org/index.php?option=com\\_staticxt&staticfile=show.php%3Ftitle=2032&layout=html](http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php%3Ftitle=2032&layout=html)

6. Montesquieu, Baron de, Charles Louis de Secondat, *Complete Works, The Spirit of Laws* [1748], vol. 1, Online Library of Liberty, available at [http://oll.libertyfund.org/index.php?option=com\\_staticxt&staticfile=show.php%3Ftitle=837&layout=html](http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php%3Ftitle=837&layout=html)

7. Molinari, Gustave de, *The Society of Tomorrow: A Forecast of its Political and Economic Organization* [1899], Online Library of Liberty, available at [http://oll.libertyfund.org/index.php?option=com\\_staticxt&staticfile=show.php%3Ftitle=228&layout=html](http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php%3Ftitle=228&layout=html)



right of citizens to form, unhindered, a legal entity to enable collective action in a field of mutual interest is one of the most important aspects of freedom of association, without which that right would be deprived of its essential meaning. Additionally, the ways in which national legislations enshrine this freedom and the extent to which it is practically applied by the authorities reveal the level of democracy in the country in question.<sup>8</sup>

In modern history, trade unions, political parties, and more recently, human rights organizations have become critical elements of what is currently known as civil society. They have been prominent models of non-profit associations that aim at promoting, defending and protecting their own rights and those of others.

Today, the right to freedom of association is strongly enshrined in the principles of international human rights law. This right is closely linked to other freedoms, such as freedom of expression and opinion, freedom of peaceful assembly, freedom of movement.

The Universal Declaration of Human Rights<sup>9</sup> which is today gaining authority of customary international law has declared the right to freedom of association. This right that has been embodied in a number of generalist and specific international human rights treaties:

- Articles 22 and 25 of the International Covenant on Civil and Political Rights.<sup>10</sup>
- Article 8 of the International Covenant on Economic, Social and Cultural Rights.<sup>11</sup>
- Articles 5 (d) (ix) and 5 (e) (ii) of the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>12</sup>
- Article 15 of the Convention Relating to

the Status of Refugees.<sup>13</sup>

- Article 15 of the Convention Relating to the Status of Stateless Persons.<sup>14</sup>
- Article 26 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.<sup>15</sup>
- Article 5 of the C87 Freedom of Association and Protection of the Right to Organise Convention, 1948.<sup>16</sup>

Generally speaking, the universally recognized standards of what constitutes an acceptable framework to protect and guarantee the right of individuals to form and establish associations includes the following basic principles

- *The Right to associate and form associations*
- *The Right to join or not join an association*
- *The Right of associations to freely carry out their statutory activities*
- *The Right of associations to raise funds*
- *The Right of associations to affiliate with national and international organizations*
- *The Right of individuals not to be penalized for belonging to an association*
- *The Right to non-discrimination between nationals and non-nationals*

The International Labor standards (Hereafter, ILO conventions), allows limited exception to the right to form and join an association. This concerns the police and armed forces, in case the formation of professional associations is contrary to national law.<sup>17</sup>

The Human Rights Committee (thereafter HRC or the Committee) General Comment (3) states that “the obligation under the Covenant is

8. Church Of Scientology Moscow v. Russia, Eur. Ct. H.R. (Application no. 18147/02), available at <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en>

9. Universal Declaration of Human Rights, G.A Res. 217 A (III), Art. 20 ( Dec. 10, 1948), <http://www.un.org/Overview/rights.html>

10. International Covenant on Civil and Political Rights, G.A Res 2200A (XXI) ( Dec. 16, 1966), [http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm)

11. International Declaration on Economic, Social and Cultural Rights, G.A Res 2200A (XXI) ( Dec. 16, 1966) [http://www.unhchr.ch/html/menu3/b/a\\_ceschr.htm](http://www.unhchr.ch/html/menu3/b/a_ceschr.htm)

12. International Convention on the Elimination of All Forms of Racial Discrimination, G.A Res. 2106 (XX) ( Dec. 21, 1965) <http://www2.ohchr.org/english/law/cerd.htm>

13. Convention relating to the Status of Refugees, (Dec. 14, 1950).

14. Convention Relating to the Status of Stateless Persons, (Sept.26, 1954) <http://www2.ohchr.org/english/law/stateless.htm>

15. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A Res. 45/158 of (Dec,18 1990) <http://www2.ohchr.org/english/law/cmw.htm>

16. Convention concerning Freedom of Association and Protection of the Right to Organise (Sept 7, 1948) <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C087>.

17. Ibid, Article 9.

not confined to the respect of human rights, but that States parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction. This aspect calls for specific activities by the States parties to enable individuals to enjoy their rights.”<sup>18</sup>

Yet, the right to freedom of association is not generally a “non-derogable” right under international law. The general rule clearly states that there should be no restrictions to these rights except for reasons of national security and public safety. Thus, it may be suspended, for example, in time of public emergency.<sup>19</sup>

In all its jurisprudence, the Committee stresses that in accordance with ICCPR, article 22 (2), any restrictions or measures should be necessary “to protect the national security and safety and that they are intended to protect against a real danger thereto”.<sup>20</sup> It further states that “the existence of any reasonable and objective justification for limiting the freedom of association is not sufficient. The State Party must further demonstrate that the prohibition of the association and the criminal prosecution of individuals for membership in such organizations are in fact necessary to avert a real, and not only hypothetical danger to the national security or democratic order and that less intrusive measures would be insufficient to achieve this purpose”.<sup>21</sup>

The Committee also observes that in order to justifiably interfere with freedom of association, any restriction must cumulatively meet the following conditions of ICCPR Article 22:<sup>22</sup>

(a) it must be provided by law;

(b) may only be imposed for one of the purposes set out in Article 22, paragraph 2;

(c) must be “necessary in a democratic society” for achieving one of these purposes;

The Committee also stresses that such

18. Committee on Civil and Political Rights, cmt No. 3, (Art. 2 Implementation at the national level), (Jul. 27, 1981) <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/c95ed1e8ef114cbec12563ed00467eb5?Open.document>

19. Committee on Civil and Political Rights, cmt.No 29 (Art. 4: Derogations during a state of emergency) ( Jul. 24, 2001)<http://unhchr.ch/tbs/doc.nsf/%28Symbol%29/CCPR.C.21.Rev.1.Add.13.En?Openocument>

20. Committee on Civil and Political Rights, Communication 1119/2002, Jeong-Eun Lee v. Republic of Korea (Aug. 23, 2005) <http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/a0b3e37471239a41c1257091002bc2ec?OpenDocument&Highlight=0,association at 7.2>

21. Ibid.

22. Ibid.

measures should be well assessed and emphasizes that proportionality of measures/restrictions to the undertaken activities is crucial.<sup>23</sup> The Committee additionally stresses the need to evaluate the restrictions in bearing in mind the consequences incurring upon the [authors] and their associations.<sup>24</sup> In its reference to “law” the Committee’s [in this context] refers to the domestic law of the State party concerned.<sup>25</sup> While the Committee’s argument was used in a case related to article 13 of the ICCPR, it could be concluded that it sets a general rule that the laws of the States Parties should conform with the tenets of the ICCPR as is clearly prescribed in Article 2 of the Covenant.

Further, the Committee articulates that a country cannot use its internal laws to be relieved from abiding by the Covenant. The Committee’s General Comment No. (31) reiterates that “this understanding flows directly from the principle contained in Article 27 of the Vienna Convention on the Law of Treaties.” This affirms that a state party “may not invoke the provisions of its internal law as justification for its failure to perform a treaty. Although Article 2, paragraph 2, allows states parties to give effect to Covenant rights in accordance with domestic constitutional structure, the same principle operates so as to prevent States parties from invoking provisions of the constitutional law or other aspects of domestic law to justify a failure to perform or give effect to obligations under the treaty”. Paragraph 13 of the same General Comment stresses that “Article 2, paragraph 2, requires that States Parties take the necessary steps to give effect to the Covenant rights in the domestic order.”<sup>26</sup>

The Committee concludes that unless Covenant rights are already protected by their domestic laws and practices, states parties are expected upon their ratification of the ICCPR to take necessary steps towards incorporating these rights in domestic legislation and ensure their general conformity with the Covenant in a manner which, as previously mentioned, is harmonious with the domestic constitutional process.<sup>27</sup>

23. Committee on Civil and Political Rights, Communication 1274/2004, Viktor Korneenko et al. v. Belarus, (Nov. 10, 2006) [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/2fdbcde4a15b6c0dc1257234004ee25d?Openocument, at 7.6](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/2fdbcde4a15b6c0dc1257234004ee25d?Openocument, at 7.6)

24. Committee on Civil and Political Rights, Communication 1093/2001, Boris Zvozkov et al. v. Belarus, and *ibid.* <http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/4b097910af933d2fc1257234004db127?OpenDocument&Highlight=0,association>

25. HRC, Communication 058/1979 Anna Maroufidou v. Sweden, available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/0f07be96bf5a7c5bc1256ab20048c2db?Openocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/0f07be96bf5a7c5bc1256ab20048c2db?Openocument)

26. *Supra*, note. 19.

27. *Ibid.*



# BAHRAIN

## The Legal and Policy Framework Relating to Freedom of Association

### International Obligations

Bahrain joined the international human rights community only towards the end of the twentieth century. It ratified the basic human rights instruments, namely:<sup>30</sup>

- The Convention on the Elimination of all forms of Racial Discrimination (CERD) ratified on 27/3/1990<sup>31</sup>
- Convention on the Rights of the Child (CRC), ratified on 13/2/1992<sup>32</sup>
- Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), ratified on 3/6/1998<sup>33</sup>
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified on 18/2/2002<sup>34</sup>
- The International Covenant on Civil and Political Rights (ICCPR), ratified on 20/9/2006<sup>35</sup>
- The International Covenant on Economic,

The Committee repeatedly stresses that a “democratic society” is conceptualized as one in which the existence and operation of peaceful associations, including those promoting ideas not necessarily favoring (or favored by) the government, or even the majority of the population, is essential and is a cornerstone of the democratic process.<sup>28</sup> Remarkably, neither the human rights instruments nor their interpretation by the relevant supervisory bodies have defined the parameters of the right of freedom of association. The most comprehensive definition and exhaustive elaboration regarding this right are found in international labor standards given the link between such right and the ability of workers to secure their economic and social status.<sup>29</sup>

In conclusion, associations of individuals or groups pursuing common interests, whether in the realm of human rights, workers rights or political activities, are protected by a comprehensive framework of international human rights and labor standards. The protection of these rights is provided for in a wide range of international instruments, which mandate that such rights be secured without distinctions of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. It should be reiterated that the statutory restrictions should be interpreted and implemented narrowly. In other words, the limitations should not hinder the right to form, join, and withdraw membership from groups or an association and the right of such an association to freely carry out its statutory activities without any interference of the state that function within the scope of law should be protected. It also requires that the state creates and maintains a legal and policy environment that is conducive to the exercise of free association. Written constitutions and legislations often translate these rights from an international to a national level. Of course, the definitive realization of these rights will finally depend on the authorities respecting and appropriating them and on the commitment of the courts to uphold these basic principles.

28. Supra, note. 23.

29. Articles 2, 3, 5 and 11 of the ILO C87 (1948); Articles 1 and 2 of the ILO C98 (1949), Article 1 of ILO C135 (1971); Articles 4 and 5 of ILO C151 (1978).

30. «Status by country», Bahrain, <http://www.unhcr.ch/tbs/doc.nsf/newhstatusbycountry?OpenView&Start=1&Count=250&Expand=13#13>

31. Ratified by the law - decree 8 of 1990 dated 24/2/1990 and deposited with the UN Secretary General on 27/3/1990. The Kingdom had put a reservation on Article 22 of the Convention regarding the jurisdiction of the ICTJ, available at <http://www.legalaffairs.gov.bh/htm/D0890.htm?%C7%E1%CA%E3%ED%ED%D2>

32. Ratified by law-decree 16 of 1991 dated 3 September 1991, available at <http://www.legalaffairs.gov.bh/htm/L1691.htm?%C7%E1%D8%DD%E1>

33. Ratified by law-decree 4 of 1998 dated 18 February 1998, available at <http://www.legalaffairs.gov.bh/htm/L0498.htm?%C7%E1%CA%DA%D0%ED%C8>

34. Ratified by the law- decree 5 of 2002 dated 2/3/2002 and deposited with the UN Secretary General on 18/2/2002. The Kingdom had put reservations on Articles. 2, 9 (2), 15 (4), 16 and 29 (1), regarding mainly the Islamic Sharia, available at <http://www.legalaffairs.gov.bh/htm/L0502.htm?%C7%E1%CA%E3%ED%ED%D2>

35. Ratified by the law- decree 56 of 2006 dated 12/8/2006 and deposited with the UN Secretary General on 20/9/2006. The Kingdom had put reservations on Articles Arts. 3, 9 (5), 14 (7), 18 and 23 regarding respectively the equity in civil and political rights, the compensation for illegally arrested persons, trying and punishing persons again for the same crime, freedom of religion and family related rights, available at <http://www.legalaffairs.gov.bh/htm/K5606.htm?%C7%E1%DA%E5%CF>

Social and Cultural Rights (ICESCR), ratified on 27/9/2007. Bahrain made a reservation on Article 8 (1-d) regarding the right to strike declaring that it preserves its right to specify vital sectors in which strikes are not allowed.<sup>36</sup>

### **Bahrain also signed:**

- The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict- CRC-OP-AC.<sup>37</sup>
- The Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography- CRC-OP-SC.<sup>38</sup>

In contrast, Bahrain had joined the International Labour Organization (ILO) in the 1970's and has since ratified a number of its conventions, excluding the two fundamental ILO conventions related to freedom of association, C87- Freedom of Association and Protection of the Right to Organize Convention and C98 - Right to Organize Collective Bargaining Convention.<sup>39</sup> This, however, does not exonerate a member state to ILO from being bound by all the general principles of the organization.<sup>40</sup>

36. ratified by the law- decree 10 of 2007 dated 16/7/2007 and deposited with the UN Secretary General on 27/9/2007. available at <http://www.legalaffairs.gov.bh/htm/K1007.htm?%C7%E1%DA%E5%CF>.

37. Supra, note. 30.

38. Ibid.

39. See Alphabetical list of ILO member countries, available at <http://www.ilo.org/public/english/standards/realm/countryb.htm#B>; and Decree 9 of 1977 "Adhesion of Bahrain to ILO", dated 16/5/1977 available at <http://www.legalaffairs.gov.bh/htm/D0977.htm?%E3%E4%D9%E3%C9+%C7%E1%DA%E3%E1>; see also conventions ILO Conventions ratified by Bahrain: C14 Weekly Rest (Industry) Convention, 1921, ratified on 11/06/1981; C29 Forced Labour Convention, 1930, ratified on 11/06/1981; C81 Labour Inspection Convention, 1947 ratified on 11/06/1981; C89 Night Work (Women) Convention (Revised), 1948, ratified on 11/06/1981; C105 Abolition of Forced Labour Convention, 1957, ratified on 14/07/1998; C111 Discrimination (Employment and Occupation) Convention, 1958, ratified on 26/09/2000; C159 Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983, ratified on 02/02/1999; C182 Worst Forms of Child Labour Convention, 1999, ratified on 23/03/2001. See ILO, ILOLEX, Documents in ILOLEX for Bahrain, available at <http://www.ilo.org/ilolex/english/newratframeE.htm>. All these conventions were ratified without any reservation, see decrees 15 of 1981 dated 4/5/1981 available at <http://www.legalaffairs.gov.bh/htm/D0581.htm?%E3%E4%D9%E3%C9+%C7%E1%DA%E3%E1>, 7 of 1998 dated 18/4/1998, available at <http://www.legalaffairs.gov.bh/htm/D0798.htm>, 17 of 1999 dated 4/4/1999 available at <http://www.legalaffairs.gov.bh/htm/L1799.htm>, 11 of 2000 dated 18/4/2000, available at <http://www.legalaffairs.gov.bh/htm/D1100.htm>, 12 of 2001 dated 20/2/2001 available at <http://www.legalaffairs.gov.bh/htm/L1201.htm?%E3%E4%D9%E3%C9+%C7%E1%DA%E3%E1>,

40. All member States should report to ILO on the position of their laws and practice on the matters dealt with in the Convention. However, in case of a member state not signatory to the specialized conventions, legislative aspects of a complaint may not be referred

International Conventions have the force of the law once ratified and published in the Official Gazette.<sup>41</sup> In practice, international treaties do not appear to have the force of the law automatically.

The mechanism and procedures for their incorporation in the national legal system is unclear. It seems that each ministry is responsible for the implementation of the ratified convention in its relevant area and is expected to propose to the government the necessary amendments to bring national law to conformity with the provisions of the Kingdom's international obligations.<sup>42</sup>

## **National Legal Framework**

### **The Constitution**

The Bahraini Constitution of 2002 guarantees the right to freedom of association in several instances:<sup>43</sup>

Article 1(e) stipulates:

*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 may be deprived of the right to vote or to nominate oneself for elections except by law.*

And Article 27 states:

*The freedom to form associations and unions..., for lawful objectives and by peaceful means is guaranteed under the rules and conditions laid down by law and as long as the fundamentals of the religion and public order are not infringed. No one can be forced to*

to the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and remains at the level of the Governing Body, Applying and promoting ILS, The Committee on Freedom of Association, available at <http://www.ilo.org/public/english/standards/norm/applying/index.htm>

41. Constitution of the Kingdom of Bahrain, Art. 37.( 2002)[http://www.election.gov.bh/english/pdfs/e\\_constitution.pdf](http://www.election.gov.bh/english/pdfs/e_constitution.pdf)

42. Interview with the Head of the Directorate of Legal Affairs, 17/2/2008.

43. Supra, note. 41.

*join any association or union or to continue as a member*

Article 31 further states:

*The public rights and freedoms stated in this Constitution may be regulated or limited in accordance with the law, and such regulation or limitation may not prejudice the essence of the right or freedom*

The Explanatory Memorandum of the Constitution explains the rationale for the limitations of the right to freedom of association and other fundamental public freedoms. It states:

*...these articles were amended in a way to guarantee the freedom of association... and keeping the Islamic principles and the unity of the people.<sup>44</sup>*

## Laws and Regulations

Three separate legal frameworks regulate the different categories of associations:

### 1. **The Law of Association, No. 21 of 1989** (Law of Associations),<sup>45</sup> amended by *Law 44 of 2002*,<sup>46</sup> and the implementing Ministerial Resolutions (decisions):<sup>47</sup>

- Resolution No.27 (2006) related to the rules and conditions for licensing collecting money by the societies, social and cultural clubs, and private establishments.<sup>48</sup>
- Resolution No.4 (2007) on the standard regulations of the basic supervisory rule for societies, and

44. Memorandum to the 2002 Constitution, Section 3-1. (Unofficial Translation), available at <http://www.shura.gov.bh/default.asp?action=Article&ID=400#3-2-g>

45. Decree No .21, related to Societies, social and cultural clubs, and private establishments that operate in the field of youth and sports, <http://www.social.gov.bh/portal/page/portal/layout/NGOs/21-1989.pdf> (1989).

46. Decree No. 44 of 2002 amending some provisions of the law decree 21 of 1989 related to Societies, social and cultural clubs, and private establishments that operate in the field of youth and sports, available at <http://www.legalaffairs.gov.bh/htm/L4402.htm?44>

47. The ministerial Decisions were issued in 1990 replaced by the current ones in force.

48. Ministry of Social Development, Res. 27 of 2006 available at <http://www.legalaffairs.gov.bh/htm/RSOC2706.htm>

cultural and social clubs.<sup>49</sup>

- Resolution No.9 (2007) related to the licensing procedures and conditions for the allocation and operation of the housing places, social rehabilitation and welfare establishment centers and homes.<sup>50</sup>

The resolutions of Law of Association have the force of the law as Article 91 of the Law of Association states that a violation of any of their provisions is punishable by a penalty not exceeding 50 Dinars.

### 2. **The Law No. 26 of 2005 of political societies** (*Law of Political Societies*)<sup>51</sup> and four ministerial resolutions issued on 17 August 2005:

- Resolution No.1 (2005) regarding the procedures for the establishment of a political association.<sup>52</sup>
- Resolution No.2 (2005) regarding the adaptation of status of associations wishing to exercise political activities.<sup>53</sup>
- Resolution No.3 (2005) establishing the register of political associations.<sup>54</sup>
- Resolution No.4 (2005) establishing the rules for communication with foreign parties and political organizations.<sup>55</sup>

There are no provisions regarding the force of these resolutions.

### 3. **The Workers Trade Union Law No.33 of**

49. Ibid., Res. 4 of 2007, available at <http://www.legalaffairs.gov.bh/htm/RSOC0407.htm?4>

50. Ibid., Res. 9 of 2007, available at <http://www.legalaffairs.gov.bh/htm/RSOC0907.htm?9>

51. Law No. Political Societies, (Jul 26, 2005) (Unofficial Translation), <http://www.moj.gov.bh/default.asp?action=category&ID=402>

52. Res. 1, (Aug. 17, 2005) <http://www.moj.gov.bh/default.asp?action=Article&id=1003>

53. Res. 2, (Aug. 17, 2005) <http://www.moj.gov.bh/default.asp?action=Article&ID=1004>

54. Res. 3, (Aug. 17, 2005) <http://www.moj.gov.bh/default.asp?action=Article&ID=1005>

55. Res. 4, (Aug. 17, 2005) <http://www.moj.gov.bh/default.asp?action=Article&ID=1006>



2002 (Trade Unions Law),<sup>56</sup> amended by law 49 of 2006<sup>57</sup>, and specific articles from the Labour Code (Article 2 as amended by Decree 14 of 1993 and Article 110 *bis* amended by Law No. 73 of 2006)<sup>58</sup> and several circulars and resolutions. The main ones are:

- Civil Service Board Circular No.1 (2003) regarding the right of workers under the civil service regulations to join trade unions<sup>59</sup>
- Civil Service Board Directive No.3 (2007) explaining the procedures and measures that could be taken against workers in the public sector who try to establish trade unions in ministries and public establishments/enterprises<sup>60</sup>
- Resolution No.9 (2005) related to the granting of paid leave to union members to carry out union activities<sup>61</sup>
- Resolution No. 62 (2006) listing the vital sectors where strikes are prohibited.<sup>62</sup>

There are no provisions regarding the force of these resolutions.

The Ministry of Social Development<sup>63</sup> is

56. Law No.33 of 2002, Official Translation, available at <http://www.mol.gov.bh/MOL/En/Legislations/ListLaws.aspx?ChnlNm=Trade%20Unions%20Law>

57. Law No. 49 of 2006, amending some provisions of law 33 of 2002 regarding trade unions, available at <http://www.legalaffairs.gov.bh/htm/K4906.htm?49>

58. Decree No. 23 of 1976 amended by law decree 8 of 1981, law decree 20 of 1982, law decree 14 of 1993, law decree 2 of 1999, law decrees 8 and 43 of 2002, available at <http://www.mol.gov.bh/MOL/ar/Legislations/ListLaws.aspx?ChnlNm=Labour%20Law>

59. Civil Service Board, Circular 1, dated 10/2/2003 regarding the right of workers under the civil service regulations to join trade unions, (Unofficial Translation), available at <http://www.csb.gov.bh/laws2/c2003-01.htm>

60. Civil Service Board issues its Directives regarding what is called "Trade unions in the governmental bodies", dated 18/6/2007 (Unofficial Translation), "Civil Service Board, News", available at <http://www.csb.gov.bh/news79.htm> dated 18/6/2007

61. Ministry of Labour, Decision 9 of 2005 regarding granting leave to trade unionists, dated 9 May 2005, available at <http://www.legalaffairs.gov.bh/htm/RLAB0905.htm?%C7%E1%CA%DD%D1%DB>

62. Council of Ministers, Decision 62 of 2006 designating the vital sectors in which strike is prohibited, dated 20 June 2006, available at <http://www.legalaffairs.gov.bh/htm/RCAB6206.htm?%C7%E1%E3%E4%D4%C2%CA>

63. Article 1 of the Decree issuing the law 21 of 1989, supra. Decree 73 of 2005 renamed the Ministry of Social Affairs "Ministry of Social Development", Decree 73 of 2005, Reorganizing and renaming the

responsible for NGOs, the Ministry of Justice, for political societies,<sup>64</sup> and the Ministry of Labour, for trade unions.<sup>65</sup>

## Specific Provisions Related to the Formation, Functioning, and Dissolution of Associations

### *The Right to Establish an Association or a Union*

Although the Constitution guarantees the right to freedom of association, the Bahraini legal and policy framework regarding freedom of association is restrictive and gives the authorities a wide scope of control regarding the formation of an association.

## NON GOVERNMENTAL ORGANIZATIONS

### The legal framework

The Law of Association states that the legal personality of an association is realized only after the application for registration is approved and published in the Official Gazette by the administrative authority (**Article 1**); Associations that are considered to compromise public order or morals, or are established for an illegitimate aim such as undermining the well being of the state or the government or its social order shall be considered void (**Article 3**); The establishment of an association requires a minimum of 10 natural founding members (**Article 4**); In addition, Resolution No. 4, (**Article 11**) requires that members should not be less than 18 years of age. The right to form a federation between three or more NGOs and other types of non-profit making associations was guaranteed in the Law No. 44 of 2002 (**Article 55bis**).

Associations have to submit applications for registration within 30 days of founding the organization (**Article 8**); the authorities should complete the registration procedures within 60 days of the date of the application (**Article 10**).

Ministry of Social Affairs, dated 23 November 2005, available at <http://www.legalaffairs.gov.bh/htm/D7305.htm?73>

64. Law 26 of 2005, Article 7 mentions that the application is to be filed with the Ministry of Justice, available at [http://www.moj.gov.bh/tmp\\_lowpage.asp?action=category&ID=402](http://www.moj.gov.bh/tmp_lowpage.asp?action=category&ID=402)

65. Supra, note. 56.

The administrative authority has the right to refuse the registration of an association if it considers that there is no need for its services, or if another association already exists that fulfills the same objectives, or if its establishment is against state security interests, or if its offices/headquarter are considered inadequate or if the intention behind its creation is to revive another association which has been previously dissolved (**Article 11-1**). The silence of the authority or the lack of response signifies an implicit rejection (**Article 11-3**).

The association has the right to appeal an explicit or implicit negative decision (silence of the authorities) on two levels: firstly, before the administrative authority itself (**Article 11-4**); here the appeal should be submitted within 60 days of receiving notification of the negative decision or after the expiry of the delay for receiving the notification with no reply (**Article 11-4**). The administrative authority in turn has 60 days to decide on the appeal. If no decision is taken, this is again presumed to imply a negative decision (**Article 11-5**). Secondly, the applicant may resort to submitting an appeal before the High Civil Court within 60 days after the notification of the negative decision or the expiry of the prescribed delay in case there is no reply from the administrative authority (**Article 12-1-2**).

## In practice

The Ministry of Social Development confirmed that there are currently three registered human rights NGOs.<sup>66</sup> The Bahraini Human Rights Society was the first to register in 2001, followed by the Bahraini Association for Public Freedoms and Support of Democracy and the Bahraini Human Rights Center in 2002, and the Migrant Workers Protection Society in 2004.<sup>67</sup> The Bahraini Human Rights Center registered in 2002 was dissolved in 2004.<sup>68</sup> The proclamation

66. Interview with Ministry of Social Development, 18/2/2008.

67. Ministry of Social Affairs and Labour, Decision 10 of 2001 authorizing the registration of Bahrain Human Rights Society, dated 29 May 2001, available at <http://www.legalaffairs.gov.bh/html/RLSA1001.htm>; Ministry of Social Affairs and Labor, Decision 42 of 2002 authorizing the registration of the Bahraini for Public Freedoms and Support of Democracy, available at <http://www.legalaffairs.gov.bh/html/RLSA4202.htm?%CC%E3%DA%ED%C9+%CF%DA%E3>; Ministry of Social Affairs and Labour, Decision 58 of 2004 authorizing the registration of Migrant Workers Protection Society, dated 27 December 2004, available at <http://www.legalaffairs.gov.bh/html/RLSA5804.htm>

68. Ministry of Labor and Social Affairs, Decision 47 of 2004 regarding the dissolution of the Association of Bahrain Human Rights Center, available at <http://www.legalaffairs.gov.bh/html/RLSA4704.htm>

of the four associations did not specify that they are human rights associations.

Two human rights organizations stated that they obtained their registration only after the direct intervention either of the King or the Prime Minister.<sup>69</sup> For example, the Bahraini Human Rights Center (BHRC) applied for registration in August 2001. First, the administrative authorities asked them to change the name of the association from “center” to “association” on the grounds that “centers” are not among the categories falling under the competency of the Law of Associations. BHRC complied, adding ‘association’ to its name. The authorities then argued that there is no need to establish the center as there exist already a similar human rights organization, the Bahrain Human Rights Society (BHRS). The founders of BHRC did not receive a negative decision but also never succeeded in registration until June 2002 and only after the founders met with the King.<sup>70</sup>

It is also apparent that the administrative authority resorts to remain silent to evade giving reasons behind negative decision. The Bahraini Youth Human Rights Society (BYHRS)<sup>71</sup> submitted an application for registration on June 12<sup>th</sup>, 2005. They state that they did not receive an official reply from the authorities despite the expiry of the response delay and their repeated requests, the last of which was submitted in November 2005. The administrative authorities repeatedly reported that the application is still under consideration. However, the founders believe that their application has been rejected because one of the founders was formerly a member of the BHRC, a dissolved NGO, and therefore BYHRS may be suspected of attempting to revive the dissolved Center.<sup>72</sup> BYHRS did not take the case before the court although the Law gives them that right since they have not received an official response from the authorities. In September 2006, the World Movement for Democracy quoting the Al-Ayam Newspaper reported that the administrative authority “*is monitoring the activities of a number of non-proclaimed associations, and is planning to take the necessary measures against them. Among these associations is the BYHR that has been rejected.*”<sup>73</sup>

69. Interviews with BHRS, 17/2/2008; and BHCR, 20/2/2008

70. Interview with BHCR, 20/2/2008.

71. BYHRS activities include monitoring human rights violations in Bahrain, and campaigning on different human rights issues.

72. Interview with BYHRS, 16/2/2008.

73. World Movement for Democracy: Defending Civil Society, Report on M.E. dated October 2007, available at <http://www.wmd.org/documents/DSCReportArabicJan08.pdf>



## Migrants

According to the Law of Association, migrants have the right to form or join associations since the law does not limit it to Bahraini nationals.<sup>74</sup>

In practice however, and since **Resolution No.4** leaves it to the founders of an association to set the rules and conditions of the membership, migrants are not necessarily able to fully participate in such associations.<sup>75</sup> For example, the BHRS statutes states that active members must be Bahrainis.<sup>76</sup> Although the national legal provisions do not explicitly prohibit discrimination between national and non-national, BHRS's statutes are clearly in contradiction with international standards.

Today, there is one migrants' association, the Migrant Workers Protection Society (MWPS) that aims at assisting and protecting migrant workers in Bahrain.<sup>77</sup> Before its registration in 2004, MWPS was one of the BHRC committees. Following the dissolution of the Center, the Ministry of Social Affairs contacted the Migrants Committee and "encouraged" them to apply for registration. They stated that the Ministry did not make it a requirement to have Bahraini nationals among the founding members.<sup>78</sup> The association's By-law opens membership to anyone residing in Bahrain and is over 18 years of age.<sup>79</sup>

## TRADE UNIONS

### The legal framework

The *Trade Unions Law* defines a trade union as "an organization established by a number of workers, in a specific organization, specific sector or specific activity"; and defines a trade unions federation as "an organization comprising a number of trade unions" (**Article 1**[amended]). No minimum number is required to establish a trade union, and there are no conditions on nationality.

74. Art. 5 (b), *supra*, note. 45.

75. Para 22 of the annex to the Resolution 4 stipulates that the founders are free to add to Article 11 (membership conditions) whatever conditions they would like; Para 23 adds that members could be classified to active, supporters, honorary...and that associations could set the conditions of these membership categories, provided that only active members would have the right to vote and be elected; Ministry of Social Development, Decision 4 of 2007 *supra*.

76. Statutes of BHRS, (on file).

77. Ministry of Social Affairs, Decision 58 of 2004, *supra*.

78. Interview with MWPS, 20/2/2008.

79. Ministry of Social Affairs, Decision 58 of 2004, *supra*.

According to the provisions of Trade Unions Law, only workers subject to the *Labour Law for the Private Sector*, the *Maritime Code*, as well as workers subject to the rules and regulations of civil service may form trade union organizations (**Article 2**). As such, workers are not subject of the latter laws are also excluded from the Trade Union Law. This is the case for example of domestic helpers and temporary workers.<sup>80</sup>

The newly formed trade union gains the status of an independent moral legal personality from the date of depositing its statutes with the Ministry of Labor (**Article 4**). The procedures for establishment of trade unions are not elaborated in the law. However, the Ministry confirmed that upon depositing the statutes, the administrative authorities deliver to the founders a deposit receipt as well as an official letter addressed to all the authorities that indicates the persons authorized to sign on behalf of the union.<sup>81</sup> There are no procedures for the publication of the deposit of the statutes in the Official Gazette. Only one trade union is permitted per establishment, (**Article 10-1-2**).

The authorities may refuse to receive the deposit of the statutes of a trade union organization if it considers that they contain provisions that contradict the laws and regulations in force (**Article 11**). Violation of law includes any additional restrictions such as conditions of membership on ground of nationality that for example may prohibit migrants from joining the union.<sup>82</sup> In the event the authorities did not notice upon the deposit that the statutes contain illegal articles and a conflict arises with a third party, and the matter is brought before the court, the legal provisions rather than the statutes are applied. The individual victims have also the right to seek justice before the courts. Nevertheless, the union can challenge the application of the law rather than of the statutes.<sup>83</sup>

### Federation/Confederation

It is permissible, since 2006, for two or more trade unions to form a general trade union federation

80. Interview with Ministry of Labour, 20/2/2008; Also See Article 2 of the Labour Code of 1976, amended in 1993, available at <http://www.legalaffairs.gov.bh/htm/L2376.htm?%C7%E1%DA%E3%E1>. According to the Ministry of Labour, there is a draft labor law project that proposes the lifting of all the exceptions of Article 2 except the domestic workers and members of the family, due to the specificity of the employment relationship.

81. *Ibid*. Also see Annex 1.

82. *Supra*, note 80. The Ministry stated that no union with such a condition had deposited its documents at the Ministry.

83. *Supra*, note. 80.

(**Article 8-1**). Nevertheless, today there remains only one general trade union federation, the GFBTU.

## The Public Sector

The right of workers in the public sector to form trade unions is currently subject to different interpretations and consequently, policies. This is primarily due to the existence of two articles (**Articles 2 and 10**) in *Trade Union Law*. **Article 2 (c)** defines the workers covered by the Law of Trade Unions as "...workers employed according to the civil service schemes," while Article 10 states that "...public workers have the right to join trade unions."<sup>84</sup> The trade unions in the public sector and GFBTU argue that Article 2 gives them the right to unionize,<sup>85</sup> but the authorities insist that workers in the civil service may only join existing unions in the private sector.<sup>86</sup> The Ministry of Labor argues that the legislators' real intention is to prohibit workers in the public sector from forming or joining trade unions. They may only join existing trade union organizations in a similar profession. Therein lays the main obstacle: actually finding a similar profession in the private sector.<sup>87</sup>

The Ministry further argues that the Civil Service law No. 35 was enacted in 2006 after the Trade Union Law and as such, the Civil Service Law takes priority and should be applied to the civil service workers and employees.<sup>88</sup> The Civil Service Law does not contain any provision on trade unions. This restriction is provided for in its related circulars. This Law sets the mandatory instructions, rules and regulations related to the Civil Service (**Article 55**). Also, it prohibits civil servants from carrying out activities such as gathering petitions or distributing leaflets inside the work place (**Article 56**), as well as provides for disciplinary measures and/or civil or penal charges for anyone who violates the Law and its related regulations (**Article 59**).<sup>89</sup>

84. This text is omitted in the Official English translation of the law.

85. Interview with Trade Union of the Post, 17/2/2008 and GFBTU, 18/2/2008.

86. ILO Bahrain case no. 2433, Government Communication of 19 July 2005, Iavailable at <http://webfusion.ilo.org/public/db/standards/normes/libsynd/lsggetparasbycase.cfm?PARA=7819&FILE=2453&hdroff=1&DISPLAY=INTRODUCTION,BACKGROUND#BACKGROUND> and Directive No. 3 of 2007 at 3-2, available at <http://www.csb.gov.bh/news79.htm>; interview with the Ministry of Labour on 20/2/2008; Court Judgment (On file), Circular No. 1/2003 para 4 available at <http://www.csb.gov.bh/laws2/c2003-01.htm>

87. Supra, note. 80.

88. Ibid.

89. Civil Service law 35 of 2006, available at <http://www.csb.gov.bh/law.htm>

The Civil Service Board had issued a number of regulations asserting the official policy:

- Circular No. 1, issued February 10<sup>th</sup> 2003, provides the government's interpretation of Article 10 of the Trade Union Law.<sup>90</sup> The Circular confirms the prohibition of trade union formation within ministries and public institutions. It also confirms that workers in the public sector may join other trade unions established in similar or related professions in the private or maritime sectors and reiterates that trade unions operating in the public sector, whether already established or undergoing establishment, are illegal entities and considered non-existent.
- Directive No. 3, issued March 18<sup>th</sup> 2007, repeated the prohibition of the establishment of trade unions in the public service. It also stated that workers who make public statements using the "false capacity of a trade unionist" are in violation of the law and could be subject to prosecution according to Article 55 of the Civil Service Law.<sup>91</sup>

These provisions implicitly prohibit unionism in the civil service sector and the civil service executive circulars and resolutions are considered as to have the force of the law.

## In practice

The Trade Union Law is the result of over 40 years of struggle by the Bahraini workers. Before that, the Labor Law of 1976 allowed only the formation of joint worker-employer Committees.<sup>92</sup> Currently, more than 60 trade unions are affiliated to the General Federation of Bahrain Trade Union (GFBTU) including six trade unions in the public sector (not recognized

[www.csb.gov.bh/law.htm](http://www.csb.gov.bh/law.htm) and at <http://www.legalaffairs.gov.bh/htm/K3506.htm?%E3%D1%C7%DD%DE>

90. Civil Service Board, Circular 1, dated 10/2/2003 regarding the right of workers under the civil service regulations to join trade unions, Civil Service Circulars (CVC)/1/2003, Volume 400, dated 10 February 2003, based on the Council of Ministers instructions and on the interpretation of the legal affairs directorate and the Ministry of labor and social affairs available at <http://www.csb.gov.bh/laws2/c2003-01.htm>

91. Civil Service Bureau Directives 3/2007 regarding what is called "Trade unions in the governmental bodies, <http://www.csb.gov.bh/laws7/G-003-2007.pdf>

92. There were 18 Joint Committees on the establishment level and one General Committee of Bahrain Workers at the country level Interview with General Federation of Bahrain Trade Unions, 18/2/2008.

by the competent authorities). The first trade union organization was established in 2002.<sup>93</sup>

Trade unions represent around 20 000 workers out of the total 300 000 workers in the country of which 200 000 are migrant workers.<sup>94</sup> Unlike Kuwait and Yemen, trade unions in Bahrain are mainly active in the private sector, although their number is not high.<sup>95</sup> Trade unions have presented various reasons for this phenomenon. Firstly, the fact that there could be no more than one union per enterprise or establishment reduces the potential and ability of all workers to be involved in trade unions. Also, there is a negative perception of trade unionism associated with chaos and trouble making. As for skilled workers, they do not join the trade union in fear of losing their job and privileges. Further, it has been observed that women are generally discouraged by their husbands from joining trade unions.<sup>96</sup> Finally, migrant workers rarely join trade unions due to the insecurity of their jobs and the threat of repercussions from their sponsors.<sup>97</sup>

The Shura Council is presently reviewing the issue of multiple unions operating in one establishment. It is also looking into the category of temporary workers to address their exclusion from the groups of workers who may not form or join trade unions.<sup>98</sup> Previously, the GFBTU and trade unions were engaged in the process of parliamentary consultations regarding these issues.

The GFBTU position is in favour of multiple trade unions operating in one establishment as well as that of including temporary workers. Trade union organizations oppose the multiplicity of unions in one establishment but are in favour of including temporary workers in order to stop employers' abuses that conceal the permanent positions by recruiting workers on a temporary basis and resorting to renew the "temporary work contracts" indefinitely to prevent the formation of trade unions in their enterprises.<sup>99</sup>

The Ministry disagrees with GFBTU on this accusation, arguing that the definition of a temporary worker is a person working for

an employer on temporary basis for less than one year and in a job not directly linked to the employer's business. Therefore, employers cannot employ someone outside the scope of this definition for other positions.<sup>100</sup>

As a result of the government policy, workers in the public sector have been forbidden from forming trade unions in their place of work. Despite that, seven unions were established in the public sector and were recognized by the General Federation despite the refusal of the authorities to do so.<sup>101</sup> The trade unionists insist that their existence is "legal" and that the refusal of the authorities to acknowledge the receipt of the deposit of their statutes is discriminatory as well as unconstitutional.<sup>102</sup> They further argue that the administrative authority must accept their statutes and if it insists that the formation of their union to be "illegal", it should undertake to resolve the matter in a court of law.<sup>103</sup>

In September 2004 the GFBTU together with 12 trade unionists in the public sector filed a law suit before the Chamber of 1<sup>st</sup> Instance Civil Court, against the Civil Service Bureau. They demanded the annulment of Circular 1/2003 on the grounds that it is in violation of a constitutional right [right to form a union] guaranteed to all without discrimination and that the authorities incorrect interpretation of Article 10 has limited the right of the workers in the public sector to join other unions. The plaintiff defense stated that Article 10 of the Law on Trade Unions comes after Article 2 which gives the right to three categories of workers, among them workers according to the public scheme to form union. Article 10, in addition to the principal right of forming a union guaranteed in Article 2, gives the workers in the public sector the possibility to join other unions. Therefore, they have the choice to either form their union or join another union. Considering that this Circular has wrongly interpreted the law thereby creating new legal consequences such as prohibiting the formation of a union in

100. Interviews with GFBTU, 18/2/2008, and with Ministry of Labor, 20/2/2008.

101. List of trade unions members of GFBTU (on file). The seven unions in the public sector are: Postal workers union, Water and Electricity Ministry workers union, Retreat Fund Workers Union, Maritime Ports Workers Union, Public Works and Housing Workers Union, Workers in Ministry of Public Health Union. Workers Union of the Ministry of Interior.

102. Interview with a member of Electricity and water Union, 21/2/2008, and interview with the Ministry of Labour on 20/2/2008. Two of the seven attempted to deposit their status by hand. The administration refused to receive them. Following that the deposit of the statutes was done through the registered post. But the Ministry says that sending the statutes by post cannot be considered as deposit according to the prescribed procedures.

103. Supra, note 94.

93. Supra. note 80.

94. Interview with GFBTU, 18/2/2008.

95. Interview with Batelco, 19/2/2008; only 765 out of 1200 workers at Batelco Trade Union were members of their trade union in 2008.

96. Ibid.

97. Supra, note. 78.

98. Supra, note. 80.

99. Supra, note 94.



the public sector, it has therefore exceeded the limits of a simple administrative instruction and has become an administrative decision subject to appeal. In February 2005, the Court of First Instance decided that the case falls outside its jurisdiction on grounds that the Circular is not an administrative decision and hence cannot be controlled by a court of law. The case was lost before the Courts of Appeal and Cassation. At all levels of the judicial process, the courts affirmed that the Circular has not created new legal grounds and hence is not considered an administrative decision as such.<sup>104</sup> Indirectly, the courts are endorsing the interpretation of Article 10 of Law of Association put forth by the Circular.

In parallel, in June 2005, the GFBTU filed a complaint to ILO's Committee of Freedom of Association raising the same issues and concern about Circular 1/2003 and the repeated refusal of the administrative authorities to register the six unions in the public sector.<sup>105</sup>

In its first communication in July 2005, the Bahraini government reiterated its interpretation of Article 10 and informed the ILO Committee that the parliament was "*currently examining amendments to Article 10 to allow workers in the public sector to establish their own unions.*"<sup>106</sup> In 2007, GFBTU informed ILO that the parliament recommended the amendment of Article 10 to allow workers in the public sector to form their unions. However, the government then announced a delay to the proposed amendment. It argued that the phenomenon of unions in Bahrain is a new and thus it is wiser to move forward cautiously in order to secure the continuity of the public sector services.<sup>107</sup> The result is that by the beginning of 2008, the case was still active within the ILO Committee.

In brief, the position of the Federation is clear when it comes to unions in the public

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104. Court Case documents (on file).

105. ILO, Bahrain (Case No. 2433), The General Federation of Bahrain Trade Unions (GFBTU), 13 June 2005, Report No. 340 (Vol. LXXXVIX, 2006, Series B, No. 1), available at <http://webfusion.ilo.org/public/db/standards/normes/libsynd/lsggetparasbycase.cfm?PARA=7819&FILE=2453&hdroff=1&DISPLAY=INTRODUCTION#INTRODUCTION>

106. ILO, Bahrain (Case No. 2433), The General Federation of Bahrain Trade Unions (GFBTU), 13 June 2005, Report No. 340 (Vol. LXXXVIX, 2006, Series B, No. 1), available at <http://arasbycase.cfm?PARA=7819&FILE=2453&hdroff=1&DISPLAY=INTRODUCTION#INTRODUCTION>

107. GFBTU Communication to ILO dated 22/2/2007 (on file), also see ILO, Committee on Freedom of Association Report Bahrain (Case No. 2433), The General Federation of Bahrain Trade Unions (GFBTU), Report no 348, (Vol. XC, 2007, Series B, No. 3), available at <http://webfusion.ilo.org/public/db/standards/normes/libsynd/index.cfm?hdroff=1>

sector. For this it does not distinguish between the issue of legality and legitimacy. Rather, it evidently recognizes and defends trade unions in the public sector as some are even represented in the GFBTU board.<sup>108</sup>

Still, these unions continue to face a variety of serious difficulties in performing their functions and activities such as the inability to freely hold meetings and elections inside their institutions, and restrictions from making public statements and signing petitions. Most importantly, they cannot train the workers on the trade unions' rights and participate in conferences and obtain the privileges assigned to other trade unionists, for example, paid time off for trade union activities.<sup>109</sup>

## Migrant Workers

Migrant workers may form or join trade unions.<sup>110</sup> Although they are permitted to vote and stand for elections, no migrant worker has been elected to a leadership position in any of the trade union organizations yet.<sup>111</sup>

Presently, migrant workers are estimated to constitute between 14 to 17% of trade union membership. The low percentage of migrant worker involvement in trade unionism is mainly due to the insecurity in their job and their dependence on the "sponsorship" system. Nevertheless, the recent solidarity among trade unionists and migrant workers in the construction field who went on strike early 2008 demanding better working conditions and remuneration has encouraged migrant workers to join unions. Following this solidarity 650 out of 1500 migrant workers have joined the union in the construction field.<sup>112</sup>

Despite the legal guarantees of the migrant workers' rights to join trade a union, some trade union organizations' statutes seem to restrict such right. While the Ministry of Labor states that no union should exclude migrants<sup>113</sup> some unions,

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108. Interview with Postal and Electricity and water Unions, 18/2/2008, Also Interview with GFBTU, 18/2/2008, Postal and Electricity and water Unions - Two representatives of unions in public sector were on board of the constitutional committee for the Federation and the president of Postal trade union is a member of the General Secretariat of the Federation.

109. Interview with Postal and Electricity and water Unions, 18/2/2008.

110. Supra note 80 and note 94.

111. Supra, note 94.

112. Ibid.

113. Supra note 80.

such as Batelco for example, limit membership to Bahrainis nationals.<sup>114</sup> Batelco union argues that 72 out of 122 migrants staff are mainly in the management and hence not eligible to join the trade union. The Batelco union explained that it might review this restriction in future.<sup>115</sup>

## POLITICAL PARTIES

### The legal framework

The Law on Political Societies stresses that it recognizes the right to form political associations and not parties. In principle, the law guarantees the right to all citizens, men and women to form and join political associations (**Article 1**). Political associations (societies) are defined as “*organized groups, established according to this Law, and have common principles and objectives, and participate in the public political life in a democratic and legitimate way in order to achieve their political, economic and social programs*” (**Article 2**). Political association is exclusively restricted to Bahraini nationals as all members and founding members must be Bahrainis (**Article 5-1**).

The legal provisions restrict the rights of political associations: the association’s objectives, mission, programmes, policies, and methods of work should not contradict the principles of the Sharia’ of Islam and the national pillars of the political system of Bahrain (**Article 4-3**); the establishment of an association requires at least 50 members (**Article 4-2**); the founding and regular members must be at least 21 years old (**Article 5-2**) and residing in Bahrain (**Article 5 -3**). Further, the statutes of the association should mention, inter alia, that it will respect the provisions of the National Action Charter, the Constitution and the rule of law (**Article 6-4a**), the principle of political pluralism (**Article 6-4b**), and will not have any organizational or financial relationship with non Bahraini entities (**Article 6 (4d)**).

A political association may not start any public activity before it submits an application to the competent Ministry (**Article 7**). The administration should announce the formation of the within 60 days of the date of submission of the application if all the conditions for the

establishment are met (**Article 9-1**), and acquires legal personality and may start to operate ten days after the announcement and/or the publication of the administrative authority announcement in the Official Gazette, or from the date of receiving a positive court decision (**Article 11-1**).

The administrative authorities may refuse an application if they consider it incomplete or not meeting the conditions required by law. In this case, the administrative authorities notify the applicants, through a registered letter, the reasons of the negative decision (**Article 9-2**).

The administrative authorities may also not respond within the prescribed period and this is to be considered as implicit rejection to the establishment of the political society (**Article 9-3**).

In the event of an explicit or implicit rejection, the political association may take the case before the High Civil Court within 30 days of the receiving the registered letter or upon the expiry of the prescribed delays. If the court decides in favour of the applicants, the establishment of the association will be automatically published in the Official Gazette (**Article 10**).

After the enactment of the Law on Political Societies in 2005, associations intending to exercise political activities or were already registered under other legal provisions were required to adjust their status according to this Law within three months of the date of the Law’s entry into force (**Article 27**). It is worthy to note that prior to the enactment of the Law on Political Societies, a plan was underway to amend the Law on Association to include political parties as such. The King recommended, as a temporary measure, that the political societies register under the Law of Association No. 21 of 1989, despite the fact that the Law of Association prohibits political activities.<sup>116</sup> Resolution No. 2 of 2005 details the procedures for such adjustments. Firstly, the association must decide to declare its intention to exercise political activities, which will be the basis for the application of adjustment of status. The adjustment process will follow the procedures prescribed in the new Law of Political Association. The response period commences from the date of submission of the application for adjustment (**Resolution no. 2, Article 2, and Article 3-1-2**).

114. Supra, note 95.

115. Ibid.

116. Interviews with the National Democratic Action and Islamic Action, 19/2/2008.



## In practice

The procedures for adjustment of registration seem to have been subject of numerous objections and negotiations between political groups and the administrative authority. The political associations' main objection stemmed from the fact that their statutes have to include the provisions stipulated in **Article 6** of the Law of Political Societies: pledging to adhere to the provisions of the National Charter and the Constitution of the Kingdom of Bahrain and respect of the rule of law. In effect, this restricts their right to demand amendments to the laws and the Constitution.<sup>117</sup> However, the Ministry insisted that all statutes must include that provision.<sup>118</sup> In essence, the political associations were forced to accept such a stipulation rather than being totally rejected.<sup>119</sup> Effectively the choice was either to remain registered under the Law of Association of 1989 and then be prohibited from carrying out political activities, or concede to the Law of Political Societies with its current restrictions. They described the situations as being given the choice “*between what was absolutely unacceptable and what is unacceptable*”.<sup>120</sup> As such, perhaps it is understandable that the political associations opted for the second.

The Haq Movement, an offshoot group from al Wifaq political association, stands alone in its continued refusal to register under what it deems an “illegitimate” law. The Haq group split from al Wifaq in 2006 following an internal conflict over the adjustment of status.<sup>121</sup>

The new Law on Political Societies falls short of the expectations of a number of political groups who have pointed out their concerns. Initially, it does not even recognize them as political parties; they insist that the minimum age (21 years) for membership should be reduced to 18 and that their existence should be contingent on a simple declarative system: if the administrative authority has any objection, it should do so by proceeding in courts. Most of them do however not challenge the condition of the minimum required number of 50 founding members.<sup>122</sup>

There are currently 15 registered political societies. The Ministry has not rejected any

application including those who applied for adjustment of their status.<sup>123</sup> The Haq movement is the only political association to have not applied for registration.

## *The Right of Associations to Freely Carry Out their Statutory Activities*

Bahraini associations cannot freely carry out their statutory activities due to unjustified government interference. The legal and policy restrictions in place give the authorities far reaching control: from regulating the thorough details of internal functioning and administration to tight supervision of the association's funding, membership and dissolution.

### *1. The Right to be free of Control, interference, and Supervision*

## NON GOVERNMENTAL ORGANIZATIONS

### The legal framework

The Law of Association contains a number of provisions that provide for the control, interference, and supervision by the authorities of the associations thus restricting them from carrying freely their activities. For example,

- Associations must detail in their statutes their objectives and type of activities; the covered geographical area(s); the names and personal details of the founding members; its financial resources and the ways and means of expenditure; the internal structure and functioning; the condition, the rights and obligations of the members; the internal financial control mechanism; the procedures for the amendments of the statutes as well as for merging or separation, or setting up branches; the rules for voluntary dissolution, and the name of the beneficiaries to whom the assets will

117. Ibid.

118. Interview with Haq Movement, 17/2/2008.

119. Supra, note 116.

120. Ibid.

121. Ibid and supra, note 118.

122. Supra, note 116

123. Interview with Ministry of Justice, 18/2/2008. Such as National Democratic Action; Wifaq; Islamic Action; al Asalah; Democratic Progressive Tribune; National Democratic Assembly; al Meethaq; al Shura; Arabic Islamic al Wasat.

be donated (**Article 5**); the beneficiaries should be a registered association or private institution working in the same field or, if they opt for a different beneficiary, they must obtain the approval of the competent Ministry (**Article 6**). Further, Resolution No. 4 states that associations may include additional provisions in their statutes as long as these do not contradict the law (Resolution no. 4, **Annex, para 19**) and that the administrative authority could amend the association's statutes if it considers it appropriate (Resolution no. 4, **Annex, Para 20**).

- Any amendment of the statutes has to follow the same registration procedures including their publication in the Official Gazette otherwise, the amendments would be considered as null and void (**Article 14**).
- Associations should not be involved in politics (**Article 18**). Resolution No. 4 related to the "Model Statutes" adds that this prohibition must be written in their statutes (Resolution No. 4, **Article 5**).

The interference and control further include:

- The examination of the associations' internal records, documents, and correspondence to ensure their compliance with the provisions of the Law (**Article 15**), this examination covers the activities of the association to ensure their compliance with the Law, the association's Statutes, and the association's General Assembly decisions (**Article 22**).
- The appointment, through a justified decision and for a limited period of time, a temporary director or board of directors. This may happen if the number of the members of the board of directors becomes less than the mandatory number; the quorum for holding the board of directors meetings is not met; or if the general assembly has not been convened for two consecutive years without a justified and acceptable reason. Such a decision may also be taken if the association commits minor violations that do not necessarily require the dissolution of the association (**Article 23**).

The intrusion of the administrative authorities covers other aspects of the internal organization and management of NGOs. The administrative authority may:

- Deprive for a period not exceeding three years certain members from standing for election of the executive board of the association, if they were responsible for the violations that led the authorities to appoint a temporary director or executive board (**Article 27**).
- Add new conditions for the membership of the board as it sees it necessary for the purpose of the association (**Article 43**).
- Call for a meeting of the General Assembly (**Article 30**) or of the board of the NGO (**Article 45**).
- Attend the general assembly meetings. NGOs are required to send in advance all the related documents for the upcoming meeting to the administrative authorities (**Article 33**). NGOs must also send the authorities copies of every decision taken by the board (**Article 46**).
- Halt the execution of the decisions taken by the association's executive board or its general assembly if these decisions violate the law or the association's statutes or the public order and morals. In this situation, NGOs may challenge the decision before the courts (**Article 28**).
- Annul the results of the elections of the board of directors if it considers the elections were "illegal" either because they violated the association's bylaws or the legislations in force. In such situation, new elections shall be held within one month from the date of the annulment of the results of the previous elections (**Article 47**).

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### **In practice**

Human rights NGOs may vary in their observance of the aforementioned restrictive legislative provisions. For example, in drafting their statutes, the founders of MWPS stated they had to follow the ministry's "Model Statutes" and, upon the request of the Ministry, amended the objectives of the association and included in their statutes clauses restricting members from

engaging in politics or participating or joining a society, association, club or federation based outside Bahrain, or obtaining funding without obtaining prior permission from the Ministry.<sup>124</sup>

On the other hand, BHRS' confirmed that they do not follow these restrictions. Their statutes also do not include any of the restrictive provisions imposed on MWPS. For example, the statute do not mention that the administrative authority should be notified of the association's executive board and general assembly meetings, or of the obligation to send the administration a copy of the minutes of these meetings. Most importantly, BHRS's statute clearly does not mention that the administration could call for a meeting if the executive board is dissolved, or that it should obtain the prior approval for obtaining funding. The statutes further do not state the prohibition of political involvement or membership with international organizations.<sup>125</sup> On a negative point, BHRS statutes restrict membership to Bahraini nationals only and set the minimum age for active members at 21 years old, while the legal provisions in place are silent on the issue of nationality and the minimum age is 18 years.

The attitude of NGOs regarding the implementation of their "legal" obligations also varies. For example, while MWPS invites the authorities to attend their meetings and regularly sends them activity and financial reports, BHRS has stated that they do not do so. However, the administrative authorities have sent BHRS a warning letter reminding them that they should communicate to the authorities all documents related to their meetings including the activity and financial reports.<sup>126</sup> Also, BHRS was subject to a law suit before the court initiated by a number of members because the administrative authority was not present during one election of the executive board members. The court canceled the results of the elections and ordered the organization to organize new elections.<sup>127</sup>

In 2006, the authorities appointed for a period of six months a temporary Director for the Bahraini Transparency Association for having violated a number of the provisions of the Law of Association including "amendments of the Statutes" (**Article 14**), "the accounting procedures"

(**Article 16**), "notification of the holding of the general assembly meetings" (**Article 33**), and "number of the board members" (**Article 40**). The administrative authority based its accusations on the reports of the association's regular and exceptional general assembly meetings.<sup>128</sup>

Thus far, the authorities may not be systematically harassing human rights NGOs but the control on their daily activities and functioning is extremely tight and therefore restricts their leeway.

## TRADE UNIONS

### The legal framework

Despite the fact that the establishment of a trade union occurs by simple declaration, the Trade Union Law [the Law] allows for the intervention of the authorities in the establishment process and procedures. Like NGOs, the statutes of a trade union must include extensive details covering most internal structure and organizational aspects. Such details include the members' subscription fees; the number and method of election the members of the Board of Directors; the frequency of governing body meetings, the disciplinary procedures; the method of maintaining the organization's fund (**Article 5, amended**).

Collective bargaining is restricted to only one federation that represents the largest number of workers. Further, it is the Minister that nominates that federation (**Article 8 (3)**). Today there is only one federation in Bahrain, the GFBTU. However, as the law allows for more federation in the country, this legislative provision regarding the representative federation in collective bargaining may be problematic as no other criterion is taken into account in the selection process, and thus may leave many workers unrepresented in the collective bargaining process.

In addition, trade unions cannot engage in any activity beyond the union's purpose such as political activities (**Article 20**). Trade unionists argue that the provisions are written in broad terms and the term political activity is not defined,

124. Supra, note 78. Also see Ministry of Social Affairs, Decision 58 of 2004, Authorization of Migrant Workers Protection Society, dated 27 December 2004, available at <http://www.legalaffairs.gov.bh/html/RLSA5804.htm>

125. Supra, note 69. Also Statutes of BHRS, (on file).

126. Warning letter from the Ministry of Social Development dated 4/2/2008 addressed to BHRS (on file), see annex BH.

127. Supra, note 69.

128. Ministry of Social Development decision 14/2006 regarding the assignment of a temporary director dated 28 March 2006, available at <http://www.legalaffairs.gov.bh/html/RSOC1406.htm>



thus, they fear that may be used to infringe their union normal activities.<sup>129</sup>

The Law guarantees the right of workers to strike as a legitimate means to defend their economic and social interests (**Article 21 (1) amended**). However, this right could be prohibited in vital and important facilities when it could harm the national security and the life of the individuals. Such vital and important facilities where strikes are prohibited were to be specified by a decision (**Article 21 (2d para 2) amended**). In 2006, the Prime Minister issued a decision listing among the vital sectors the security services, civil defense, hospitals, educational institutions, air and sea ports, public transportation, telecommunication, electricity and water services, bakeries, gas and oil installations and companies (**Decision 62 of 2006**).<sup>130</sup>

### In practice

According to GFBTU the government does not interfere in the running and managing of the internal union's affairs.<sup>131</sup> However, it has a reservation regarding the legal amendments concerning the right to strike by Law 49 of 2006 which grants the prime minister the right to specify an extremely wide range of services and facilities that include "almost all sectors" as vital sectors in which striking is prohibited.<sup>132</sup>

On 22/2/2007, the GFBTU filed a complaint before the ILO against the Bahraini government requesting the amendment of Law no. 49, Article 21 in order to be compatible with international labor standards and thus limit the government competence in the decision of vital sectors. In their complaints, they argued that the current law and the Prime Minister's decision [decision 62] "as regards essential services are contrary to principles concerning the right to strike."<sup>133</sup> The Federation made three main arguments. Firstly, the naming of services where strike is prohibited by the Prime Minister is a clear digression from legislative to administrative discretion. Secondly, the

government made a broad prohibition on the right to strike in these services without distinction between sensitive and non sensitive department within these sectors. Thirdly, the range of services is broader than those allowed by international labor standards. In its response, the Bahraini government stated that international standards leave it to each state to decide the services where strikes should be forbidden; that the law itself defines what constitutes the "essential" sectors; and lastly giving the prime minister the authority to decide these sectors allows for decisions to be taken quickly and thus avoid the difficulties and delays associated with legislative amendments.<sup>134</sup>

In its conclusions, the ILO stated that the definition set out in the law [**Article 21(2d) of Law 49**] is broader than the definition of essential services in the strict sense of the term. It recalled the international standards regarding the right to strike as a legitimate tool to defend workers' rights. It further confirmed that prohibition in essential services should be made in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety, or health of the whole or part of the population). It reminded that the definition of essential services provided for in ILO standards is based on the consideration of the general interests of the population. Further, the ILO recommended the following:<sup>135</sup>

*...(b) The Committee requests the Government to take the necessary measures to amend section 21 of the Trade Union Law so as to limit the definition of essential services to essential services in the strict sense of the term, that is, services the interruption of which would endanger the life, personal safety, or health of the whole or part of the population and to ensure that workers in services where the right to strike is restricted or prohibited are afforded sufficient compensatory guarantees. The Committee requests the Government to keep it informed of the steps taken in this regard.*

*(c) The Committee requests the Government to take the necessary measures to modify the list of essential services set out in the Prime Minister's Decision No. 62 of 2006 so that it includes only essential services in the strict sense of the term. With respect to services that are not essential in the strict sense of the term, but where the extent and duration of a strike might be such as to*

129. Supra note 94 and note 95.

130. Decision 62 of 2006 designating the vital sectors in which strike is prohibited, dated 20 June 2006, available at <http://www.legalaffairs.gov.bh/htm/RCAB6206.htm?%C7%E1%E3%E4%D4%C2%CA>

131. Supra note 94.

132. Supra, note 94.

133. ILO, Bahrain Case No. 2552, available at [http://webfusion.ilo.org/public/db/standards/normes/libsynd/LSGetParasByCase.cfm?PARA=8316&FILE=2576&hdroff=1&DISPLAY=BACKGROUND\\_INTRODUCTION.RECOMMENDATION.CONCLUSION#CONCLUSION](http://webfusion.ilo.org/public/db/standards/normes/libsynd/LSGetParasByCase.cfm?PARA=8316&FILE=2576&hdroff=1&DISPLAY=BACKGROUND_INTRODUCTION.RECOMMENDATION.CONCLUSION#CONCLUSION)

134. Ibid, and supra note. 80.

135. ILO Report No. 349 (Vol. XCI, 2008, Series B, No. 1) available at <http://webfusion.ilo.org/public/db/standards/normes/libsynd/LSGetParasByCase.cfm?hdroff=1&file=2576&PARA=8316>

result in an acute national crisis endangering the normal living conditions of the population, the Committee points out that the Government may consider setting up a minimum service, with the participation of workers' organizations and employers in defining such a service.

(d) The Committee requests the Government to take measures to ensure that any determination of new essential services be made in full consultation with the representative workers and employers' organizations and in accordance with the principles of freedom of association. The Committee also requests the Government to keep it informed of developments in this regard and, should a new decision of the Prime Minister setting out essential services be issued, to provide it with a copy of the same

Since the ILO recommendations, no further development has occurred. The case remains active today.

## The Federation

While the Administration exerts little interference in the functions of trade unions (except in public sector), GFBTU's role extends to a number of areas that could be seen as having authority of supervision and control over trade unions. In principle, GFBTU considers a trade union to have an independent legal personality.<sup>136</sup> The legal provisions and policy of the federation allows it far reaching involvement, apparently needed for the protection of the trade unions. Its involvement includes technical as well as more managerial affairs. According to the Law of Trade Union (**Article 9** amended) the GFBTU responsibilities include:<sup>137</sup>

f) Authorizing member trade unions to join Arab and international labour organizations and giving notice thereof to the Ministry.

g) Permitting the representatives of the member trade unions to attend conferences outside the Kingdom of Bahrain.

i) Considering the suspension of members of the member trade unions' Boards of Directors.

136. Supra, note 94 and note 95.

137. The English official translation of Article 9 (d) states that the Federation participates in drawing Labour strategies in collective bargaining while in the Arabic official text it only states that the Federation participate in drawing Labour strategies.

j) Considering any matters referred thereto by the Board of Directors of the member trade unions.

The General Federation may also take over temporarily the powers of the trade union whose Board of Directors has been dissolved until a new Board of Directors is formed (**Article 18**)

In addition, the GFBTU stated that it is given some power over trade unions that derive either from the Federation's Statutes or the union's Statutes. For example, it is authorized to intervene if so solicited by the legislative body of the union or by more than two third of the members. This intervention could lead to the dissolution of the union board if two thirds of the members complain against it. In addition, the Federation supervises the elections of unions to guarantee their democracy, but only as an observer. However, if violations are noticed in the elections process, it is permitted to stop the elections.<sup>138</sup> For example, Batelco's statutes provide that the elections are held in presence of a representative of the GFBTU.<sup>139</sup>

## 2. The Right to Seek and Receive Funds

In addition to the specific provisions in the related laws of the different categories of associations, funding is also covered by a number of legislations including Law No. 4 of 2001 related to the Measures for the Prohibition and Prevention of Money Laundering; and the Ministry of Financial Affairs, Decision No. 7 of 2001 related to the Obligation of Institutions regarding the Prohibition and Prevention of Money Laundering.

## NON GOVERNMENTAL ORGANIZATIONS

### The legal framework

The Law of Association allows the authorities to have tight control over the funding of NGOs and makes the violation of

138. Supra, note 94.

139. Statutes of Batelco Trade Union, (on file).



the provisions related to funding punishable by a maximum of six months' imprisonment and/or fine (**Article 89**). The Law expressly states that NGOs must obtain prior approval from the authorities to receive foreign funding (**Article 20**), and stipulates that the authorities issue regulations setting the modes and procedures for the authorization of all other forms of funding and financial affairs (Law, **Article 21**).

The regulations made NGO financial activities subject to prior authorization (**Resolution No. 27 Article 2**); and obliged NGOs to list in their statutes the sources of funding such as donations, grants and fund raising activities clearly stating which ones require prior approval of the authorities (**Resolution No. 4, Article 43**). The legal provisions further detail the terms and conditions to be followed by NGOs to obtain such authorization. This include a time frame that is limited to a maximum two months renewable only upon request; the funding should be for a specific activity or project; the method of collecting the funds and the beneficiaries of the funds (**Resolution No. 27 Article 3**). The authorities may refuse, explicitly or implicitly the application for authorization for a fund raising activity (**Resolution No. 27 Article 4**). The administration does not seem to be obliged to give reasons for its negative decision. In such situations, NGOs may challenge the decision only before the Administration.

If an NGO violates the above mentioned procedures or carries out fund raising activities without authorization, the authorities take the necessary measures to stop the fund raising operation and confiscate the collected funds and redistribute them to other social activities (**Resolution No. 27 Article 14**).

### In practice

Once again it appears that the adherence to these restrictions by human rights NGOs vary. While MWPS states in its statutes that funding including foreign funding will only be obtained after the approval of the authorities,<sup>140</sup> the BHRS statutes is completely silent.<sup>141</sup> This variation is also reflected in practice. MWPS systematically presents requests to the authorities to obtain the authorization for its funding activities, while the remaining two human rights organizations stated that they do not.<sup>142</sup> For example, BHRS said that

it receives foreign funding without prior approval and, to avoid being punished, uses different strategies to inform the authorities such as through the press coverage of the funded activity.<sup>143</sup> On the other hand, BHRC, and before its dissolution, limited its foreign funding to be through being an implementing partner in a foreign funded projects or activities. They too argued that the authorities were *posteriori* informed of such funding as they would be invited to participate in such activity.<sup>144</sup>

NGOs also received government funds. The legal provisions do not provide for such government support but is based on the request and recommendation of the King. For example, human rights NGOs would have offices subsidized by the authorities. This support has apparently stopped two years ago, and today it rather takes the form of partnership with the ministry on specific projects and/or activities.<sup>145</sup>

In addition, NGOs have raised the issue of the difficulties of opening a bank account. Despite the fact that registered NGOs have legal personality once their registration is published in the Official Gazette, it appears that banks still request a letter from the ministry stating that the NGOs can open an account and indicating therein the persons who have the right to sign on its behalf as per the organization's board minutes.<sup>146</sup> These conditions are not provided for in any legal provisions. NGOs are only required to notify the ministry in the event of the change of the bank where they hold their account (**Resolution n°4, Article 49**). It seems that this practice is based on a Council of Ministers' decision,<sup>147</sup> and probably linked to the legal provisions related to the control of money laundering that request from the financial institutions to verify the clients' identity.<sup>148</sup> The authorities argue that the control of NGO falls under their responsibility in order to prevent money laundering, especially since Bahrain has to report to the World Bank in this regard. Every ministry is responsible to supervise the flow of money transactions for the subjects that fall under its competency, including the details of the foreign donors and the method of expenditure.<sup>149</sup>

140. Decision 58 of 2004 authorizing the registration of Migrant Workers Protection Society, dated 27 December 2004, available at <http://www.legalaffairs.gov.bh/html/RLSA5804.htm>

141. Statutes of BHRS, (on file).

142. Interview BHRS on 17/2/2008 and supra, note 70 and 78

143. Interview with BHRS on 17/2/2008, and Bahrain Women Union, 17/2/2008.

144. Supra, note 70.

145. Supra, note 70 and note 143

146. Interviews with BHRS on 17/2/2008, and MWPS and Public Freedoms and Democracy Support on 20/2/2008

147. The decision was not made available to us, despite repetitive requests

148. Ministry of Finances and National Economy, Decision 7 of 2001 related to institutions obligations regarding money laundering, available at <http://www.legalaffairs.gov.bh/html/RFNE0701.htm?%DB%D3%E1>

149. Supra, note 66.

The funding becomes a more precarious issue for non-registered or dissolved human rights NGOs as they cannot open bank accounts. For example, both BHRC and BYRHS bank accounts are in the name of individual members. This may be an obstacle that prevents them from carrying out internal fund raising or obtain funds from foreign donors, if the latter insist to fund only registered organizations.

## TRADE UNIONS

### The legal framework

The Trade Union Law provides that the financial sources of trade unions and federations may include membership fees, proceeds from activities, subsidies, gifts and donations. The law does not mention anything on the question of foreign funding but there is governmental control for receiving donations and gifts (**Article 15**). Trade unions are exempt from charges fees prescribed for property owned or rented and from customs duties on goods imported for the benefit of the trade union's activities (**Article 16**).

### In practice

The authorities justify the control over trade unions funding as a necessity only to ensure that the funding has no hidden political agenda. In general Bahraini trade unions are self-funded.<sup>150</sup> The government is said to support them as trade unions are financially in need, though this is not a right they are legally entitled to and is not included in the budget of the government.<sup>151</sup>

## POLITICAL PARTIES

### The legal framework

The provisions of the Law on Political Societies regarding the funding of political societies are more liberal than those concerning NGOs in the sense that they may receive donations and gifts and engage in investment

inside the country without any interference or prior authorization from the ministries (**Article 14 para 1,2**). Considering that the resources of the political associations enter into the public budgeting and expenditure, they are periodically investigated by the Financial Control Department (*Diwan rakaba maliya*) to verify the accounts of the political associations to ensure the appropriateness and legitimacy of the resources and spending (**Articles 15 and 16**).

As to foreign funding, the Law prohibits political associations from receiving any donations or gifts or services from a foreign individual or institution, international organization or an anonymous donor (**Article 14-2**). In the event of receiving donations from non Bahrainis, the grant will be confiscated and the members of the concerned political association subject to either a prison term of one year and/or a fine not exceeding 1000 Bahraini Dinars (**Article 24**).

The state provides financial support to political organizations according to precise and fair criteria and within the limits of the government budget (**Article 14-2**). This support aims mainly at encouraging equal competition between the political associations (**Resolution 30, Article 1**). This support takes the form of a) operational support which is given on a monthly basis to all registered political associations, and ceases in five years time from the date of the issuance of this resolution (**Resolution 30, Article 2**); b) political participation which is a support given to political association that won seats in the parliament. In the case an association has a woman member in Parliament, the amount of the support is increased (**Resolution 30, Articles 3 and 5**). However, there are conditions that may lead to the suspension or cessation of this governmental support, such as the ending of the reason or ground for the support or violation of the Constitution or the laws of the land (**Resolution 30, Article 4**).<sup>152</sup>

### In practice

None of the political associations met in the context of this study raised major concern regarding their funding situation. In general, they regard the governmental support as a right which is implemented in a fair manner, and does not affect their independence. They further do

150. Supra, note 80 and note 94 and note 95.

151. Supra, note 80.

152. Res. 30 of 2006 regarding the government subsidy to political societies, <http://www.legalaffairs.gov.bh/htm/RJUS3006.htm?%CF%DA%E3> (Unofficial Translation).

not see a reason to object to the government controlling their finances when they are receiving financial assistance from it. They only objected to the broad prohibition of receiving services from foreign entities. They consider that services such as training should not be included in this prohibition.<sup>153</sup>

Unlike NGOs, political association can open a bank account solely on grounds of their proclamation in the Official Gazette.<sup>154</sup> Considering that political societies are excluded from the Ministerial Decision No.7 of 2001,<sup>155</sup> the banks do not request a letter from the Ministry of Justice for opening a bank account for the political societies.

### 3. *The Right of affiliation to regional and international organizations*

## NON GOVERNMENTAL ORGANIZATIONS

### The legal framework

The Law of Association requires NGOs to obtain from the competent ministry prior approval for membership in regional or international organizations and/or networks. If such a request is not answered within 45 days of the application, this is taken to indicate a negative decision (Law, **Article 20 para 1**). The regulations state that NGOs must include in their statutes a clause expressly saying that they are “forbidden from joining or adhering to an association, club or union that has its headquarter outside Bahrain without the prior authorization of the Ministry (**Resolution No. 4, Article 7**).<sup>156</sup>

153. Supra, note 116.

154. Ibid.

155. Ministry of Finances and National Economy, Decision 7 of 2001 related to institutions obligations regarding money laundering, available at <http://www.legalaffairs.gov.bh/htm/RFNE0701.htm?%DB%D3%E1>

156. Ministry of Social Development, decision 4 of 2007 “pertaining to the standard regulation of the basic rule for societies, and cultural and social clubs that are liable to the supervision of the Ministry of Social Development”, available at <http://www.social.gov.bh/portal/page/portal/layout/NGOs/4-2007.pdf>

### In practice

All the Bahraini human rights NGOs met by FIDH, except the BMWPS, were members of regional and international organizations. They did not request the prior approval of the ministry before taking this step.<sup>157</sup> Some said they would inform the ministry through their annual activity report submitted to the authorities or simply through press releases.<sup>158</sup> The two non-registered human rights NGOs are also members of international nongovernmental organizations.<sup>159</sup> To date, none of them has been subjected to harassment on grounds of membership in regional or international organizations without authorization.<sup>160</sup>

## TRADE UNIONS

### The legal framework

The Trade Unions Law adopts the concept of multiplicity of federations and provides that the federation that has the largest number of workers will represent Bahraini workers in international events. The minister of Labor nominates the representative federation (**Article 8 (3)**). As to affiliation to an international organization a trade union requires the approval of its federation and the latter notifies the ministry (**Article 9 (e)**).

### In practice

The GFBTU is a member of international organizations, namely, the International Trade Unions Confederation, The International Federation of Arab Trade Unions, and the International Federation of Asia and the Pacific Trade Unions.<sup>161</sup> Some unions stipulate in their statutes that they may be members of regional or international trade union organizations. For example, Batelco Trade Union statutes state that the union has the right to join regional and international federations.<sup>162</sup>

157. Interviews with BHRS, BHCR, Bahrain Women’s Union on 17/2/2008.

158. Interview with Bahrain Women Union, 17/2/2008, BHRS.

159. Supra, note 70 and note 72.

160. Interview with BHRS, 17/2/2008.

161. Supra, note 94

162. Statutes of Batelco Trade Union, (on file).

## *The Right to Protection from suspension, closure or dissolution*

### NON GOVERNMENTAL ORGANIZATIONS

#### The legal framework

The Law of Association gives the authorities wide power to take compulsory unilateral decisions affecting the functioning and stability of an association. These major decisions may address merging, suspending activities, closing premises, and dissolving associations.

The decision to compulsory merge an association is not subject to any challenge by the associations, while suspension and dissolution may be challenged before the first and appeal courts.

The authorities may decide to merge associations. This can take place if the two associations are seen to have similar aims and objectives or if merging would better serve the society and hence achieve their objectives. During the merging process, the authorities may amend the purposes or just unite the management (Law, **Article 24 (1)**). The merger decision should be reasoned; the method of implementation of the decision clearly explained, and all those concerned should be immediately notified. A summary of the decision will then be published in the Official Gazette (Law, **Article 24 (3)**). The representatives of the merged association are then to deliver all the assets and documents to the association that has taken over (Law, **Article 24 (4)**).

The authorities may dissolve an association or close it for a temporary period not exceeding 45 days (Law, **Article 50 para 1**) if the association:

- Is no longer able to achieve its aims (Law, **Article 50 para 1-1**);
- has used its assets for purposes other than the stated purposes of the organization (Law, **Article 50 para 1-2**);
- has not been able to convene the general assembly for two consecutive years (Law, **Article 50 para 1-3**);

- has committed a serious violation of the law, public order or morals (Law, **Article 50 (4)**)

In these situations, the administrative authority should inform the association of the decision and publish it in the Official Gazette (Law, **Article 50 para 2**). The affected associations or any other interested party has the right to challenge the decision before the High Civil Court within 15 days of its publication in the Official Gazette (Law, **Article 50 para 3**). Members of the board of the dissolved association who are proven to be responsible for the violations that led to the dissolution of the association are banned from nominating themselves for membership of any other board for a period of 5 years as of the day of the dissolution (Law, **Article 54**).

#### In practice

In September 2004, the administrative authority dissolved the Bahrain Human Rights Center on grounds that the latter had committed serious violations to the law and public order.<sup>163</sup> It seems that the “serious violations of law” was in connection with Article 18 that prohibits political activities. It appears that this decision was taken four days after the BHRC launched its report on poverty and corruption in Bahrain. The Center challenged the authorities’ decision in court and, by 2005, had lost the case on first as well as appeal levels.<sup>164</sup> Before these events, the Center had received formal warnings as a result of different events considered to be politically motivated.

### TRADE UNIONS

#### The legal framework

Regarding the dissolution of trade unions or the board of directors of a union, the Trade Union Law clearly states this should be in accordance with the provisions of the union’s Statutes or by a court judgment (**Article 17**). However, the law does not spell out the legal grounds for the dissolution.

163. Ministry of Social Affairs and Labour, Decision 47/2004 dated 28 September 2004 related to the dissolution of the Bahrain Human Rights Center Association, available at <http://www.legalaffairs.gov.bh/htm/RLSA4704.htm>

164. Supra, note 70.



## **In practice**

The Ministry of Labor confirmed that it has never requested the dissolution of a union; and clarified that the violations of the provisions of Article 20 of the Trade Unions Law (stated above) would be the legal grounds for taking such measure. Further, it stated that anyone who has direct interest may request the dissolution of a union: this could be a union member, the federation, or the ministry.<sup>165</sup>

## **POLITICAL PARTIES**

### **The legal framework**

Political associations are better protected against suspension or compulsory dissolution. The Law of Political Associations states that compulsory suspension or dissolution of political associations may not occur except through a court decision ( **Article 21**).

The administrative authority may request from the court the suspension of political societies for duration not exceeding three months. This request is made if the association has violated the Bahraini Constitution or any other law. The court should within a period of 30 days decide on such a request. If the court decision is positive, the association in question has to revoke the violation during the suspension period.

The association has the right to appeal the court decision unless the administrative authority decides to file a law suit for dissolution (**Article 22 -1**). The suspension order is effective immediately. During the suspension period, the administrators and employees of the association are forbidden from carrying out any activities related to the association (**Article 22-2**).

The administrative authority can also request the dissolution of a political association if the suspended association seriously violates the Constitution, the Law of Political Societies or any other law during the suspension period, or if it fails to eliminate the violation that caused it to be suspended. The court sets a date for a court session within 7 days of the notification of the President of the association and decides on the case 30 days after the starting of the court hearings. During this period the association

<sup>165</sup>. Supra, note 80.

is prohibited from carrying out any activities. The court decision becomes enforceable once all legal procedures have been exhausted and is published in the Official Gazette as well as in one local newspaper (Law, **Article 23**).

## **In practice**

In 2005 and before the enactment of Law of Political Societies, the government suspended the Islamic Action Society for 45 days which was registered under Law of Associations. Thus, the authorities invoked Article **50-4** of Law of Associations that list the crimes such as violation of the law, public order or societal norms.<sup>166</sup> This decision was taken after the association held a public event to celebrate their former leaders who were detained and tortured during the former regime, in the 1980's, before the reforms.<sup>167</sup> In contradiction with the text of the law, the decision to suspend was not reasoned.<sup>168</sup>

### ***The Right of Members to Protection from Prosecution and Discrimination***

### ***The Right of Human Rights Defenders not to be penalized for belonging to a non-registered Organization***

The law of Association provides for the prosecution of individuals who participates in the activities of a dissolved or unregistered organization. Any person who starts the activities of a non-registered organization or continues to be active in an organization after the publication of its dissolution in the Official Gazette shall be sentenced to a prison term not exceeding six month (**Article 89**), or by a

<sup>166</sup>. Supra, note 116 : The Islamic Action was registered in 2002 under Law 21 of 1989, Ministry of Social Affairs and Labor, Decision 67 of 2002 authorizing the registration of the Islamic Action Society, available at <http://www.legalaffairs.gov.bh/htm/RLSA6702.htm?%C7%E1%DA%E3%E1>; see the suspension decision 29 of 2005 regarding the administrative temporary suspension of the Islamic Action Society, available at <http://www.legalaffairs.gov.bh/htm/RSOC2905.htm>

<sup>167</sup>. Interview with Islamic Action Society, 19/2/2008.

<sup>168</sup>. Ministry of Social Development, Decision 29 of 2005, temporary closure of the Islamic Action Society, available at <http://www.legalaffairs.gov.bh/htm/RSOC2905.htm>

higher penalty provided for in the Penal Code or any other Law (**Article 92**).<sup>169</sup>

## In Practice

The President of the BYHRS – Mohamad al-Maskati<sup>170</sup> was subject to systematic harassment apparently by the authorities for his human rights activities. In 2006, he was charged by the Public Prosecutor of the crime of initiating the activities of a non registered association. He was summoned to a court hearing on November 27<sup>th</sup>, 2007.<sup>171</sup> In his defense before the court, Mr. al-Maskati argued that BYHRS is legal as it does not require prior authorization in conformity with international human rights standards that Bahrain had ratified [ICCPR].<sup>172</sup> The court adjourned the decision to January 21<sup>st</sup>, 2008 which coincided with an official. Mr. al-Maskati was not informed of the date of the next court sessions until June 4<sup>th</sup>, 2008 when he received unexpectedly a court summon for a hearing.<sup>173</sup> Mr. al-Maskati was subject to a number of appeals by international human rights organizations in his defense.<sup>174</sup>

Members of the dissolved BCHR continue today their human rights activities. The authorities are aware of these activities but are not taking any measures against them. However,

169. The Penal Code issued by Decree 15 of 1976 and amended in 2005 penalizes any persons accused of activities. For example: ...*participation abroad ...without authorization, any conference... with the intent of discussing political...in the State of Bahrain...* (Article 134 bis); ...*any person who joins ...{International} societies, organizations and institutions... including any citizen resident in Bahrain who "join[s] or participate[s] in any manner without the authorization of the Government in any of the aforesaid organizations which are based outside the country..(Article 163); ... societies, organizations and institutions should be dissolved and their offices closed by the judicial order, their resources are also confiscated...* (Article 164). ...*any person who deliberately disseminates false reports, statements or malicious rumors, or produces any publicity seeking to damage public security..(Article 168); ...publication of "untrue reports" that "undermine the public peace or cause damage to the public interest..( Article 169); ...who offends with the use of signs, saying, writing or by any other method a civil servant or officer entrusted with a public service...(Article 222);* available at <http://www.legalaffairs.gov.bh/htm/L1576.htm?%E3%E4%D2%E1> 170. The case is detailed Supra.

171. Judicial case No. 21741/2006 mentioned in the official Letter of summoning dated 24 September 2007 (on file). Also see Annex in CD-Rom.

172. Interview with BYHRS, 16/2/2008, and complementary interview on 4/6/2008

173. Ibid.

174. See for example Protectionline, the Observatory Urgent Appeal, BHR 001 / 1207 / OBS 162, Bahrain, Judicial proceedings / Obstacle to the freedom of association, available at <http://www.protectionline.org/Mohamed-Abdul-Nabi-Al-Maskati.5635.html>; FIDH, Judicial proceedings against Mr. Mohamed Abdul Nabi Al-Maskati - BHR 001 / 1207 / OBS 162, available at [http://www.fidh.org/Article.php3?id\\_Article=5028](http://www.fidh.org/Article.php3?id_Article=5028); Front Line, Bahrain: Trial of human rights defender Mohamed Abdul Nabi Al-Maskati, available at <http://www.frontlinedefenders.org/node/1312/print>

the freedom to organize public events is limited as these activities require notifying the authorities and other procedures. For this, they are holding public meetings under the umbrella of other associations. Considering that BCHR is legally dissolved, the media refer to it as the “Bahrain Center for Human Rights (dissolved)” to avoid prosecution according to the legal provisions related to the media and the press.<sup>175</sup>

## *The Right of Trade Unionists to Protection from Anti-Union Discrimination*

### The legal framework

Trade Union Law provides that:

*“Membership of Trade Union Organizations and continuation thereof as well as withdrawal there from shall be guaranteed.*

*Trade union activities shall not be used as a means and justification for discrimination in employment or influencing workers in any manner whatsoever.*

*The judgment of the court must force the employer to compensate the worker with a minimum of two months' salary and a maximum of six months' salary once discrimination against the worker due to his activities for the trade union was proven” (Article 3).*

In addition, Labor Law states:

*“..It is prohibited to dismiss a worker as a result of his trade union activities. If a worker has been dismissed and it has been proved in a court of law that the dismissal is based on his union activities, the court will oblige the employer to return him to his job and pay a compensation for the period out of work” (Article 110 bis).*

175. Supra, note 70.

By virtue of **Article 110** of the Labor Law, a dismissed unionist could challenge the employer's decision by resorting to the mediation with the employer. Once solicited, the Ministry is obligated to take the necessary steps to resolve the labor conflict amicably. If it fails to reach a solution, it is obligated to refer the case to the court the High Civil Court within two weeks from the date of submission of the workers' complaint.

The court decides in favor of the workers if it is proven that the dismissal of the worker was arbitrary and discriminatory and may decide a number of remedial measures. If the dismissed worker is not a unionist, the ultimate remedy is compensation. In the case a worker is found to have been dismissed for his/her union activities, the court orders the reinstating of worker (**Article 110 bis**).

Trade unions have the legal personality and as such may file law suits on behalf of workers before the courts in cases involving collective labor conflicts.<sup>176</sup> When they are faced with individual cases, their role is limited to assigning defense lawyers to legally represent and defend the worker.<sup>177</sup>

## In practice

### Public Sector

Since the creation of the Postal Workers Union in 2003 and following the issuance of the aforementioned Circular 1/2003, members of the union have been frequently subjected to different forms of pressure.<sup>178</sup> The Deputy Head of the union, Najia Abdel Ghaffar, has been subject to harassment at work including disciplinary measures for her membership of a "non recognized trade union and trade union activities."<sup>179</sup> She was suspended from work on several occasions and openly threatened with dismissal. The harassment was based on several accusations such as the violation of the civil service Circular No.1, giving public statements [to Al Wakt daily] without prior approval, or libeling officials, etc.<sup>180</sup> The administrative authorities' Investigation Committee carried out

investigations and interrogated Abdel Ghaffar several times. In one instance, the details of such an interrogation which took place on the 23<sup>rd</sup> of July 2007 were published in a newspaper the following day by the Federation. On September 19<sup>th</sup>, 2007, Abdel Ghaffar was summoned for yet another investigation: she was accused of leaking the minutes of that interrogation.<sup>181</sup> This resulted in another disciplinary measure in the form of a written notice/ reminder and was suspended from work a number of times.<sup>182</sup> The harassment continued unabated.

On 18 January 2007, the case of Najia Abdel Ghaffar was brought to the attention of the ILO by GFBTU in conjunction with the complaint on the Circular 1/2003 (mentioned above). The ILO governing body considered the measures taken against Ms. Abdel Ghaffar to be anti-union and discriminative. In its recommendations [November 2007], ILO reminded the Bahraini authorities that, and until the amendments of article 10 of Trade Union Law are made, the principles governing trade union freedom of association apply to all workers without distinction. It further demanded the government to take the appropriate steps to compensate Ms. Abdel Ghaffar for the period of suspension she endured and to ensure that no further disciplinary action is taken against members of public sector trade unions for activities undertaken on behalf of their organizations.<sup>183</sup>

The Bahraini government did not seem to be considering ILO recommendations. By February 2008, the authorities was continuing their acts of harassment. She was again suspended from her work for 10 days and was once again subject in May to another investigation and suspended for 10 days from work without pay. The grounds for the suspension decisions are rather focusing on her attitude to work, performance and efficiency in order to dilute the issue of union activism.<sup>184</sup>

On 17 February 2008, the Federation raised again the treatment of Ms. Ghaffar in a written communication with ILO and requested their immediate intervention to force the authorities to stop the harassment.<sup>185</sup> Ms. Ghaffar

176. Supra, note 95.

177. Supra, note 80.

178. On 8 July 2003, the union received the first written warning from the Director of the Postal Directorate, in which it order them to stop all activities not in conformity with the civil service regulations that are punished by Article 173 of the Penal Code. (Copy on file)

179. Supra, note 109.

180. Letter of disciplinary measure dated 8/1/2007(copy on file).

181. Al Ayam Newspaper, issue No. 6647 dated 21 June 2007, Letter of Summon dated 15 July 2007, Al Wasat Newspaper, issue No. 1782, dated 24 July 2007, and the letter of summon dated 19 September 2007 (Copies on file).

182. Interview with Vice-President of Postal Workers Union, on 18/2/2008, and copies of these measures (on file).

183. ILO, governing body, Report 348 available at <http://webfusion.ilo.org/public/db/standards/normes/libsynd/LSGetParasByCase.cfm?PARA=8185&FILE=2453&hdroff=1&DISPLAY=INTRODUCTION#INTRODUCTION>

184. Complimentary interview with Najia Abdel Ghaffar on 18/5/2008.

185. Communication dated 17 February 2008 (on File).



fears that the administrative authority seems to be attempting to build a case for her dismissal on grounds other than trade union activities.

## Private Sector

According to GFBTU, harassment leading to dismissal on grounds of union activism takes place in the private sector too. For example, between 2006 and 2007, 11 unionists involving union members of different companies were dismissed from their work for their union related activities.<sup>186</sup> The cases are brought to court and none, but two have so far been settled so far by the court in favor of the unionists.<sup>187</sup> GFBTU added that these cases were brought before the courts after negotiations between the Federation, the Ministry, and the employer failed to reinstate the dismissed workers in their jobs.<sup>188</sup>

The case that was settled in court concerned two Batelco Union members, Faisal Hassan Ghazwan and Majed Sehrab who were dismissed for having organized a sit-in demanding salary increases as a result of the price inflation that started in Bahrain in 2006. The grounds for dismissal given by the employer are that the sit-in was organized in violations of the provisions of the laws, specifically clause (D) of Act No. 49 of 2006:<sup>189</sup> organizing a sit-in during working hours inside the premises of the company and without notifying the direction of the company.

The two Batelco unionists won the case against their dismissal and were reinstated in their jobs by a court decision on March 19<sup>th</sup>, 2008. They also received compensation for the losses and damages they suffered during their time out of work.<sup>190</sup>

Throughout all the procedures, the arguments in their defense put forward by the dismissed unionists, the Union, and the Federation is that they did not violated the laws. The sit-in was called for and organized outside working hours; there was no disruption and the sit-in did not last more than half an hour.<sup>191</sup>

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186. These cases are in DHL company, Dain Corp, Cinema Bahrain, Cars Transportation, Batelco, and Ahmad Mansour Ali Ets. [List of Unionists dismissed for union activities; provided by the GFBTU to FIDH, on file].

187 Supra, note 94. The two cases were decided by the court in March 2008.

188. Ibid.

189. Court Decision No. 5/8013/2007/02 dated 19 March 2008 (On file -Electronic).

190. Ibid.

191. Ibid.

Before the case was brought to court, efforts to resolve the conflict out of court failed. The two workers in question filed a complaint to the Ministry on 25 July 2007 a couple of days after their dismissal with the accusation that the dismissal was due to trade union activities. Both the Minister of Labor and the Under Secretary of the Ministry announced to the media, two days after the dismissal, that the dismissal of these unionists was arbitrary. The Minister not only stood with the workers dismissed for union activities, it is also reported that he raised the issue in the Parliament. However, the Ministry failed to resolve the issue amicably and referred the case to the judiciary.<sup>192</sup>

The Court of First Instance decided in favor of the plaintiffs. The court considered that the union activity neither qualifies as a strike or a sit-in, nor as such did not violate the related legal provisions, particularly Article 21 of the Act No. 49 of 2006 related to strikes. The Court further stated that even if Batelco was listed among the “essential services”, the unionists’ gathering did not disrupt the routine life of the citizens and did not cause disruption to the national security. Furthermore, the gathering did not disturb the functioning of the company and was done outside working hours for a short period of time.<sup>193</sup>

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192. Supra, note 95.

193. Supra, note 189.



# KUWAIT

## The Legal and Policy Framework Relating to Freedom of Association

### International Obligations

Kuwait has ratified six core UN human rights conventions. These are:<sup>194</sup>

- Convention on the Elimination of all forms of Racial Discrimination (CERD), ratified on 15/10/1968;
- Convention on the Rights of the Child (CRC), ratified on 10/12/1991;
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified on 2/9/94;
- International Covenant on Civil and Political Rights (ICCPR), ratified on 21/5/1996;
- International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified on 21/5/1996; Kuwait made a complete reservation on the provisions of Article 8 (1-d) related to the right to strike.
- Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), ratified on 3/8/1996;

Kuwait is a member of the International Labor Organization (ILO),<sup>195</sup> and has ratified the two most important ILO conventions related to freedom of association: C87 on Freedom of Association and Protection of the Right to Organize Convention, 1948 (ratified on 21/9/1961), and most recently, the C98 related to the Right to Organize and Collective Bargaining Convention, 1949 (ratified on 09/8/2007).<sup>196</sup>

Once ratified and published in the Official Gazette, international treaties acquire the force of the national laws and prevail over the existing

194. OHCHR, International Law, Conventions Ratifications By Country and date, available at <http://www.ohchr.org/english/law/index.htm>

195. Alphabetical list of ILO member countries, available at <http://www.ilo.org/public/english/standards/relm/countryb.htm#B>

196. ILOLEX, documents available for Kuwait, ratifications, available at <http://www.ilo.org/ilolex/cgi-lex/countrylist.pl?country=Kuwait>

national laws.<sup>197</sup> In practice, this is not done automatically and national laws that existed pre the ratification of a treaty continue to be in force. The review of national laws to bring them into conformity with the ratified conventions is left to the discretion of each ministry.<sup>198</sup>

### National Laws and Regulations

#### The Constitution

The Constitution of 1962 guarantees the right to freedom of association including trade unions.

**Article 43** states:

*Freedom to form associations and unions on a national basis and by peaceful means shall be guaranteed in accordance with the conditions and manner specified by law. No one may be compelled to join any association or union.*<sup>199</sup>

#### Laws and Regulations

Both public interest associations and trade unions fall under the competence and supervision of the Ministry of Labor and Social Affairs.

Law No. 24 of 1962 (hereafter “Law of Association or Law 24”) and its several amendments regulate the right of freedom of association.<sup>200</sup> Other relevant regulations include:

197. Article 70 (1) of the Kuwaiti Constitution (Unofficial Translation) of 1962 states that: the Emir concludes treaties by decree and transmits them immediately to the National Assembly with the appropriate statement. A treaty has the force of law after it is signed, ratified, and published in the Official Gazette, available at <http://www.majlesalUmmah.net/run.asp?id=8>; and Interview with Constitutional Law professor, Dr. Mohammad Moqatei on 11/2/2008.

198. Interview with the Legal Advice Directorate, 14/2/2008.

199. Constitution of Kuwait, Official translation, <http://www.majlesalUmmah.net/enrun.asp?id=222>

200. Law no. 24 of 1962 was amended several times: law no.28 of 1965; law no. 75 of 1988 (according to the Ministry Law 75 does not exist although it is published in the Official Gazette no. 1804 of year 35 and does not seem to have been abroaate); law no.12 of 1993; law no. 14 of 1994. Some of these amendments were more restrictive than liberal, for example, in 1965, Article 2 stated that “Associations and clubs cannot exercise any activities and have no legal personality before their authorization is proclaimed” while this conditions in Article 2 in the Law of 1962 was limited to the legal personality only. The same goes for the age of the founding members as Law of 1965 raised the age from 18 to 21 years.

- The Ministerial Decision No. 61 of 2005 creating the “Model Statutes” for associations.<sup>201</sup>
- The Council of Ministers Decision 836 of 2004 related to “the basic principles and internal regulations for registration and proclamation of new public interest NGOs.”<sup>202</sup>

There is no specific law addressing trade unions.<sup>203</sup> The right to form trade unions is incorporated under **Chapter Thirteen** of the Labour Law 38 for the Private Sector of 1964 and its amendments<sup>204</sup> (hereafter “Labour Law”). Other related regulations and ministerial decisions seem to exist.<sup>205</sup>

There are no legal provisions for political parties in Kuwait. There are currently several draft laws submitted by various political groups to the parliament with the aim of creating legal framework for the existing de-facto political groups thus giving them legal protection and allowing them to formally participate in political life.<sup>206</sup> However, these proposals are yet to be discussed by the parliament.

201. Ministry of Social Affairs and Labour, Decision No. 61 of 2005 dated 5 April 2005, (on file).

202. FIDH was not able to obtain copy of this resolution despite repeated requests to the relevant governmental institutions and non governmental organizations. However, both the Ministry of Social Affairs and Labour (interview on 12/2/2008) and Kuwait Human Rights Society (interview on 10/2/2008) referred to this resolution. Also referred to in proclamation decisions of a number of NGOs such as KABE, See: Kuwaiti official gazette “Al Kuwait al Yaoum” No. 720 dated 12/6/2005.

203. A draft bill was proposed by the government 18 years ago and is today before the parliament. Both ILO and the Kuwaiti General Federation have presented their comments on the draft project. The outstanding issue of conflict seems to be the right to strike; interviews with Kuwait Trade Union Federation, 11/2/2008. and ILO representative in Kuwait, 12/2/2008.

204. The Private Sector Labour Law 38 of 1964 was amended by law 43 of 1968 regarding the conditions of work in oil sector, law 8 of 1981 regarding the employers unions and arbitration, law 30 of 1995 regarding migrant workers, law 2 of 1997 amending Article 2 to state that the labor law is not applicable on domestic workers and workers who are under the provisions of other laws according to the texts of these laws (Article 2 in its original texts read that workers in the public sector, temporary workers and other types of workers including domestic workers), and by law 11 of 2003 amending Article 69 of Chapter III to add “This Chapter applies on employees and workers in the oil and public sectors as long as its provisions do not contradict the provisions of the laws regulating these workers”; (Unofficial Translation)s. (on file).

205. despite repeated requests to the relevant governmental and non governmental actors, these were not made available for the study.

206. Interviews with Islamic Constitution Movement, 11/2/2008, Omma Party, 14/2/2008, Interview with the administrative secretary of the Parliamentarian Human Rights Committee (Mozaffar Rashed), 13/2/2008. See also for example Political Parties Law Proposal of the Islamic Constitutional Movement, available at [http://www.icmkw.org/art\\_info\\_bayans.aspx?url=\\_redirect&art\\_id=434](http://www.icmkw.org/art_info_bayans.aspx?url=_redirect&art_id=434), MP Ali Rashed political Parties law proposal, available at [http://www.alUmmah.org/home/index.php?option=com\\_content&task=view&id=870&Itemid=200](http://www.alUmmah.org/home/index.php?option=com_content&task=view&id=870&Itemid=200);

## Specific Provisions Related to the Formation, Functioning, and Dissolution of Associations

### *The Right to Establish an Association or a Union*

## NON GOVERNMENTAL ORGANIZATIONS

### The legal framework

The Law of Association defines public interest associations as organizations and clubs that have limited or unlimited duration and are composed of natural or moral persons, do not make profit, and aim to undertake social, cultural, sports or religious activities (**Article 1**).

Associations are required to apply for authorization (**Article 8, para 1**) and may not undertake any activities before they gain the legal personality after the authorization is published in the Official Gazette (**Articles 2 and 3**). There must be at least 10 founding members who are Kuwaiti nationals of at least 21 years old (**Article 4**). The association’s statutes should follow the Ministry’s “Model Statutes” (**Articles 5, last para**); Associations are prohibited from interfering in political or religious conflicts and from evoking partisan, sectarian or racist sentiments or be involved in financial and property speculation (**Article 6**). Founding members are required to acquire “a good conduct” letter from the Ministry of Interior (**Article 8, para 1-d**).

Decision 61 of 2005 stresses that associations should use the “Model Statutes” (**Article 3**); and the latter particularly stipulate that the statute should clearly state the provisions of Article 6 of the Law (**Model Statute, Article 3**).

It appears that Decision 836 of 2004 stipulates rules and conditions that are not in the Law. For example, associations should have 50 founding members; each founding members should be a high school graduate, has an activity in the field of the association and may not be member of another association. Even regular members may not be members of two associations at the same time, and the newly formed association should meet the needs not

already serviced by an existing association.<sup>207</sup>

During the application process, the Administration may make changes in the association's internal rules and regulations if it considers it necessary "for public interest" (**Article 9 para 1**); and has the right to reject the registration of an association. This should be done by a reasoned letter within one month of the date of the application (**Article 9 para 1**). In both situations, the association may file a complaint but only before the same Administration that took these measures and decision (**Article 9 para 2**).<sup>208</sup> The law includes no stipulation for the grounds on which an application may be rejected. Rather, it has been left to the discretion of the administrative authority.<sup>209</sup> As far as the of access to justice against negative decision that is not stipulated in the Law of Association, the administrative authority stated that this right is guaranteed in the general principles of law and thus there is no need to have it in the law.<sup>210</sup>

## In practice

In the 1980's, following some political instability in the country, the Kuwaiti Government took a decision to halt the registration of all associations. This was resumed after the Council of Ministers issued decision 836 dated 25/7/2004.<sup>211</sup>

Currently, there are two human rights organizations registered as socio-cultural organizations, the Kuwaiti Human Rights society (KHRS) and Kuwait Association for Basic Evaluators of Human Rights (KABE).<sup>212</sup> Yet, their registration was not done automatically.

207. Al Qabas Daily, in Kuwait News Agency, date 6 December 2003, available at <http://www.kuna.net.kw/NewsAgenciesPublicSite/ArticleDetails.aspx?Language=ar&id=1787195>; and Al Qabas Daily issue no 11093 of 29/4/2004.

208. It should be noted that amendment Law no. 75 of 1988 "The decision should be notified to the founders not later than 90 days from the date of the application. Rejection is presumed if no reply is given within this time limit (Article 9 (1). The only recourse against the negative decision is an appeal before the Council of Ministers (Article 9 (2). The rejection decision as well as the decision of the Council of Ministers upon the challenge of the rejection could never be challenged in courts (Article 9 (3)". This amendment seems problematic as the Ministry confirmed that it does not exist and that the text in force before it is the text as mentioned above. Further, the Ministry confirmed however that the challenge is before it and subject to judicial challenge (Interview with MSAL, Social Development Directorate, 11/2/2008).

209. Interview with MSAL, 5/5/2008.

210. Interview with MSAL, 12/2/2008.

211. Interviews with the Ministry of Social Affairs and Labour, 11/2/2008. and Kuwait Human Rights Society 10/2/2008

212. Supra, note 198.

They obtained their registration only after external political pressure or lobbying,<sup>213</sup> and after they met the conditions stipulated in Decision 836 of 2004, such as having 50 founders while the Law states that there should be at least 10 founding members only.<sup>214</sup>

KHRS obtained its registration on 6/11/2004 after holding four meetings with the Prime Minister. They initially started their activities in 1983 as a branch of the Arab Human Rights Organization. They recall that they submitted their application for registration but they did not receive an approval nor were they informed of the status of their application, despite repeated inquiries.<sup>215</sup>

KABE applied in December 2004 and their registration was published in the Official Gazette in June 2005 only after lobbying their personal connections to exert pressure on the Council of Ministers.<sup>216</sup>

There have been cases of objection or refusals of applications on grounds of similarity of objectives to existing organizations. For example, KABE claimed that the difficulty or delay in their registration was partially due to the fact that there exist already another registered human rights NGO (KHRS). They argued that in making its decision the Ministry did not look at the specific objectives and activities of the two associations to determine whether in fact they are similar or not.<sup>217</sup> The Popular Committee of Bidoun Affairs (Bidoun Committee) said the ministry informally told them that there is no for them to form an organization as they could join already existing human rights NGOs.<sup>218</sup>

The Ministry explained that in making a decision for registration, it assesses if the association is similar to any existing NGOs, would provide a new service to the society, or would address a new need in order to avoid duplication. The Ministry further justifies this measure on the basis that since Kuwaiti society is small, it does not need more than one association in a specific field and those interested should be able to join existing NGOs. However, the Ministry refuted

213. Interviews with KHRS, 10/2/2008; and KABE, 11/2/2008

214. Supra, note 210, KHRS, 10/2/2008; and See Kuwait News Agency, date 6 December 2003, available at <http://www.kuna.net.kw/NewsAgenciesPublicSite/ArticleDetails.aspx?Language=ar&id=1787195>.

215. Interview with KHRS, 10/2/2008. The majority of the board members are employees in the public sector

216. Supra, note 213.

217. Ibid.

218. Interview with the Popular Committee for the Bidoun Affairs, 14/2/2008.



NGOs complaint by asserting that the similarity assessment is not rigid. NGOs' respective objectives are considered and compared, and this is evidenced by the fact that it had authorized two human rights organizations, such as the Lawyers Society and the Kuwait Human Rights Society, working on the situation of the Bidoun <sup>219</sup>

The Ministry has confirmed that the "model statute" is not compulsory, but continues by saying NGOs write freely their statutes as long as they comply with the law and regulations. <sup>220</sup> On the other hand, there are instances whereby the legal provisions are not restrictive but in practice organizations stipulate their own restrictions in the statutes. For example, KHRS Statutes requires the recommendation of two existing members for a new application of membership, a condition forbidden in the legal provisions. Yet, KHRS statutes have been approved by the authorities. <sup>221</sup>

The legal restrictions on the involvement in any political or sectarian activities are replicated in the statutes of the two registered human rights associations. <sup>222</sup> The Ministry justified these measures to limit the activities of associations using their 'public interest' activities as a means for political activities and politically motivated objectives. <sup>223</sup>

There seems to be unregistered human rights groups that are able to function without any problems. This is the case of the Bidoun Committee. They have been working on the rights pertaining to nationality for the undocumented stateless people in Kuwait. Their activities included a submission, through some parliamentarians, of a draft law on nationality in early 2008. Their current status has not created problems so far with the authorities and they prefer to remain unregistered in order to avoid all the legal and procedural restrictions such as open membership, organizing general assembly meetings and elections. However, their lack of legal registration is reducing their ability to carry out other activities such as fund raising, attending international meetings in their official capacity, or organizing conferences. <sup>224</sup>

It is difficult to accurately assess the current situation of the right to freedom of association in

Kuwait. There has been no decision of rejection of application for a formation of an association in the last five years. <sup>225</sup> In general terms, NGOs seem to prefer to resolve any outstanding issues and avoid any conflict regarding the registration with the authorities by using "negotiations" or "good offices" in preemptively, prior to receiving the negative decision, rather than challenging it before a court of law.

## Migrants

The Law of Association prohibits migrants from forming associations as founding members are required to be Kuwaiti nationals (**Article 4**); migrants may join associations only as supporting or associate members (**Article 13**); they have no right to vote or sit for elections as the general assembly must consist solely of Kuwaiti members (**Article 13**).

Migrants do not seem to be encouraged to join the existing human rights organizations. Only five migrants are said to be supporting members of KHRS. <sup>226</sup> The statutes of the two human rights organizations set different categories of membership – active member, supporting or honorary member. Both limit active membership to the Kuwaiti nationals as per the law. <sup>227</sup>

## TRADE UNIONS

### The legal framework

The Labour Law, Chapter Thirteen, guarantees the right to all workers subject to this law to form trade unions. In addition, employees and workers in the oil and public sectors, also are subject to Chapter thirteen as long its provisions do not contradict the special legislations of these sectors (**Article 69**). The military, the police, and national guards do not fall under the provisions of the Civil Service Law 15 of 1979 (**Civil Service Law, Article 3**). As a result they are not subject to the provisions of Chapter Thirteen of the Labour Law. Domestic workers and workers

219. Supra, note 210.

220. Ibid.

221. Statutes of KHRS, (on file).

222. Statutes of KHRS and KABE, (on file).

223. Supra, note 210.

224. Supra, note 218.

225. Interviews with Constitutional Law professor, Dr. Mohammad Moqatei, 11/2/2008; and with MSAL, Social Development Directorate, 12/2/2008; and KHRS, 10/2/2008, and KABE, 11/2/2008; and Administrative Secretary of Parliamentarian Human Rights Committee, 11/2/2008.

226. Informal meeting with one member of KHRS, 10/2/2008.

227. Statutes of KHRS and KABE (On file).



who are subject to specific laws are excluded from the scope of Chapter Thirteen as they are entirely excluded from the scope of the Labour Law (**Article 2**).

A newly formed union should hold its constituent general assembly that articulate the union's statutes, and elect an ad-hoc board of directors to be composed of not less than 7 and not more than 21 members. The board should submit the union's constitutional documents to the ministry within 15 days of its election in order to be announced in the Official Gazette.<sup>228</sup> The union is legally recognized and has the right to start its activities upon the deposit of these documents and if all legal conditions for the formation are met (**Article 74 (4)**), otherwise the application can be rejected. The administrative authority has 15 days from the date of the deposit of the application to make its objection. The union then has another 15 days to correct the procedural irregularities to which the authorities objected. If it does not do so, the union will be considered as never having been established (**Article 75**). There are no provisions to challenge the authorities' objection to the formation of the union.

The Labour Law provides a number of restrictions for the formation of a union. The founding members must be at least 15 Kuwaiti nationals (**Article 74(1)**); it should be representing at least 100 workers (**Article 71**); there should not be another union in their occupational trade or establishment (**Article 71**); members should not be under the age of 18 (**Article 72**); the founders must acquire a certificate of a "good character"<sup>229</sup> from the Ministry of the Interior (**Articles 72 and 74 (4)**).

The details that should be mentioned in the union's statutes include the internal and organizational structure and management, the terms and conditions of the membership, their objectives, the sources of funding, the rules and competence of the general assembly, the elections of board members (**Article 74(2)**).

## Federations

The Law of Trade Union state that unions may be formed only in the same sector, industry,

profession or related industries producing goods of similar nature may form federations (**Article 79**); and only one general federation is permitted in the whole country (**Article 80**). The rules and procedures for the creation of federations and the general federation are the same as those for the establishment of trade unions (**Article 81**).

## Migrant workers

Migrant workers are not allowed to form unions or participate in their establishment. As mentioned above, this right is limited to Kuwaiti nationals. Non-Kuwaiti workers are permitted only to join the union, on two conditions: they should have a work permit and have been in the country for five years prior to the issuance of the Labour Law; but do not have the right to elect one of them to represent their views and opinion in the union's board (**Article 72**).

## In practice

As of February 2008, there were 54 trade unions, two sectorial federations, and KGTUF as the only general federation. Trade unionists currently represent 54,000 out of 2.2 million workers of which 300,000 are Kuwaitis and the remaining are foreign workers mostly working in the private sector. Around 95% of Kuwaitis work in the public sector.<sup>230</sup>

The largest trade unions were established in the public sector in the 1960s.<sup>231</sup> This practice ceased between 1979 and 2003 as a result of two conflicting legal provisions in the Labour Law and the Civil Service Law. However, since the amendment in 2003 of Article 69 of the Labor Law trade unions in the public sector witnessed significant growth. Today they are in almost every ministry and public institution.<sup>232</sup>

Trade unions in the private sector is said to be weak. This appear to be due to tree main factors: the pre-requisite of representing at least 100 workers in the establishment appears to be one of the major obstacles to trade unionism in the private sector as most enterprises in the private

228. The constitutional documents include the statutes, the list of the members of the union as well as the ad-hoc board of directors, the minutes of the, general assembly meeting, the bank name, and the «good character» certificate issued by the ministry of interior.

229. According to Kuwait Trade Union Federation, this certificate shows the criminal record of a person: Interview, 11/2/2008.

230. Interview with Kuwait Trade Union Federation , 11/2/2008.

231. Ibid. Around 12000 workers are in the private sector out of around 300000 Kuwaiti workers.

232. Interview with MSAL, Trade Unions Organizations Directorate, 12/2/2008, Kuwait Trade Union Federation, 11/2/2008, ILO representative in Kuwait, 12/2/2008.

sector do not have that number of workers;<sup>233</sup> and if the required number is available the majority would be migrant workers, Kuwaiti workers do not seem to be interested in forming trade unions to defend the migrant workers' rights;<sup>234</sup> employers themselves would make it difficult for the workers to prove that they are at least 100 workers in the establishment; employers may give the ministry a list with a lower number than the actual one.<sup>235</sup> It seems that such cases did not happen frequently so far but it remains an area of concern.<sup>236</sup>

Out of the estimate total of around 2 million migrant workers, domestic migrant workers who cannot join trade unions make up half a million.<sup>237</sup> Migrant workers form 5% of the union membership, mainly in the public sector. Kuwaitis consider that with such high number of migrant workers (excluding domestic workers) presents the risk of take over the representation of "Kuwait trade unions" if they are allowed to be elected as board members. For this, the General Federation considers it fair and necessary to prohibit foreign workers from voting and standing for the elections.<sup>238</sup>

Despite the fact that all stakeholders confirmed that migrant workers union members do not have the right to vote,<sup>239</sup> the provisions of the law clearly only restricted them from sitting for the election of the board members and not from the right to vote.<sup>240</sup>

The KTUF, is violating the legal provisions by restricting membership to only to federations and general unions.<sup>241</sup> A number of trade unions are dissatisfied with this restriction and demanding the right to establish another General Federation.<sup>242</sup>

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233. Interview with ILO Representative in Kuwait 12/2/2008.

234. Supra note 210 and note 233.

235. Supra, note 233.

236. Ibid.

237. Ibid. Interview with the Administrative Director of the Parliamentarian Human Rights Committee 13/2/2008.

238. Supra, note 238.

239. Interview with MSAL, Trade Unions Organizations Directorate 12/2/2008 and KTUF, 11/2/2008; and see ILO CEACR Individual Observations concerning Convention C87, 2002, 2003, 2007 available respectively at <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=6152&chapter=6&query=Kuwait%40ref&highlight=&querytype=bool&context=0>; [www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=9069&chapter=6&query=Kuwait%40ref&highlight=&querytype=bool&context=0](http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=9069&chapter=6&query=Kuwait%40ref&highlight=&querytype=bool&context=0)

240. Article 72 of Labour Law for the Private Sector.

241. Article 7 of the Statutes of Kuwait General Confederation of Trade Unions, available at <http://ktuf.org/constitution/index.php>

242. Interview with MSAL, Trade Unions Organizations Directorate, 12/2/2008.

Trade unions are also restricted at the level of the federation. To be able to join a federation a union should have at least 500 members,<sup>243</sup> a condition not always easy to meet. This restriction is reflected in the fact that the 15 trade unions that were established in 1960's continue to be the only members of the KTUF today. There is no union federation in the private sector yet.<sup>244</sup>

## POLITICAL PARTIES

### The legal framework

There is no specific law governing the formation of political parties.

During the drafting of the Constitution in 1962, there were debates between the Drafting Committee and the Constitutional Council on whether the proposed **Article 43** of the Constitution, related to freedom of organizations, would allow the formation of political parties or not.<sup>245</sup> The final draft of the Constitution opted to the use of the term of associations rather than organizations as the latter term has a broader meaning that includes all type of an association. The Explanatory Memorandum of the Constitution Section 2, related to Article 43 states that the fact that the Constitution does not explicitly mention "political parties" this should not prohibit the legislator from regularizing their existence in the future.<sup>246</sup>

The Constitution refers to the Emir's traditional consultations before the nomination of the prime minister **Article 56**). The Explanatory Memorandum of the Constitution Section 2 interprets "traditional consultations" to be consultations "with political personalities that belong to political groups and ex-prime ministers, and those who have political opinion."<sup>247</sup>

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243. Supra, note 238: These conditions are prescribed by the federations' internal rules and regulations.

244. Ibid.

245. Shafiq Imam, *The freedom to form political parties between the Constitution and the Law*, published in Al Jarida Newspaper, issue No. 116 of 15/10/ 2007, available at <http://www.aljarida.com/aljarida/Article.aspx?id=28107&searchText=%C7%E1%C7%CD%D2%C7%C8%20%C7%E1%D3%ED%C7%D3%ED%C9>

246. Explanatory memo of Kuwait Constitution, art 43, (Unofficial Translation), available at <http://www.majlesalUmmah.net/run.asp?id=51>

247. Ibid.

## In practice

The absence of legal framework does not stop political groups from operating in Kuwait. Before the 1990s, most of them were clandestine movements. Today, the authorities accept this reality.

In 2005, a group of 15 political activists organized a public meeting to announce the creation of a party called “Ommah Party”. After the meeting, the group was summoned and interrogated by the General Prosecutor. They were accused of holding an assembly without authorization and attempting to create a party that aims to change the country’s political system and bring a “popular government.” The case was dropped following the ruling by the Constitutional Court - in a different case - that some Articles of the Assembly Law, including the prior authorization, are unconstitutional.<sup>248</sup>

The Ommah party that had a turbulent experience with the government when it first announced itself is publicly active today.<sup>249</sup> Political groups are quasi full participants in political life.<sup>250</sup> Their activities vary from organizing public events and general conferences to holding internal elections and gathering signatures for petitions. Individual members sit for the legislative elections in their private capacity, but publicly announce their political membership during their electoral campaign.<sup>251</sup> For example, in the legislative elections of 2006, members of the Kuwait Democratic Foundation, the Democratic National Coalition, and the Islamic Constitutional Movement all won seats in the National Assembly, even if their representation in the National Assembly is small.<sup>252</sup>

The Emir consults informally with the existing political groups before nominating a new government, as he did in 2006, with the exception of the Ommah Party.<sup>253</sup> However, considering that there is no legal framework for the political

groups, the identification of ‘political personalities’ remains at the discretion of the Emir.<sup>254</sup>

Nevertheless, the lack of legal recognition hinders these groups from organizing events that require official authorization, or for example, opening a bank account. They carry out their activities but have no immunity or protection.<sup>255</sup> Although the political groups argue that The Explanatory Memorandum of the Constitution affirms their right to exist<sup>256</sup>, and the Department of Legal Advice and Legislation refutes that interpretation and affirms that what is meant by *consultations* in Article 56 refers to only “*consultations with ex prime ministers*.”<sup>257</sup> Despite this difference of opinion, it seems that no interested party has requested from the Constitutional Court an interpretation of these two provisions of the Constitution.<sup>258</sup>

Today, the Kuwaiti political groups are demanding a law pertaining to political parties that would allow them to be more organized, transparent and acquire all the benefits of formal legal personality. The most important consequence that would result from passing a law and the consequent acquisition of legal status would be real representation and presence in the parliament with all the contingent results, mainly the representation of majorities on a governmental level and hence, a clear and effective participation in the political life.<sup>259</sup> This would also ensure financial transparency of the party as opposed to the lack of control presently witnessed which creates opportunities for foreign funding or other sources that may have malicious intentions.<sup>260</sup> Today, and for the first time, there are a number of draft bills for political parties, but none have yet been discussed by the Parliament.<sup>261</sup>

## *The Right of Associations to Freely Carry Out their Statutory Activities*

248. Interview with Ommah Party, 14/2/2008.

249. Ibid.

250. Interviews with Kuwait Democratic Foundation, 10/2/2008, Islamic Constitutional Movement 11/2/2008; For example, the Islamic Constitutional Movement invites the authorities to their public events. The Movement even presented an initiative regarding the relationship between the legislative and executive powers. Political groups have their own sites on the internet, Browse <http://www.alminber.org/alminber/>; <http://www.Ummah.net>; <http://www.icmkw.org>; <http://www.incm.net/new/>

251. Interview with the Kuwait Democratic Foundation, 10/2/2008; Interview with the Islamic Constitutional Movement, 11/2/2008

252. Ibid.: The Islamic Constitutional Movement has six members in the National Assembly among whom is the Vice National Assembly Chairman.

253. Interview with Kuwait Democratic Foundation, 10/2/2008.

254. Interview with the Islamic Constitutional Movement, 11/2/2008.

255. Supra. note 253.

256. Supra. note 251.

257. Interview with the Department of Legal Advice and Legislation, 14/2/2008.

258. Supra note 253.

259. Ibid.

260. Supra. note 254.

261. MP Ali Rashed; Islamic Constitutional Movement; Islamic National Consensus Movement. Copies of these proposals are available at the following addresses respectively [http://www.alUmmah.org/home/index.php?option=com\\_content&task=view&id=870&Itemid=200](http://www.alUmmah.org/home/index.php?option=com_content&task=view&id=870&Itemid=200); [http://www.icmkw.org/art\\_info\\_bayans.aspx?url=\\_redirect&art\\_id=434](http://www.icmkw.org/art_info_bayans.aspx?url=_redirect&art_id=434);



## *1. The Right to be free of Control, interference, and Supervision*

### **NON GOVERNMENTAL ORGANIZATIONS**

#### **The legal framework**

The Law of Association and other related regulations give the authorities a great level of interference in the association's statutory activities: the NGOs' statutes should specify the objectives and details the different aspects of the organization mode of functioning, such as the sources of funding, the finances' control procedures, the rules for amendments of the statutes, the procedures and mechanism for an operation of merger and/or opening branches, the terms and conditions for holding the general assembly meetings and elections of the executive board (**Article 5**). The statutes should also specify, inter alia, the internal rules and regulations of an association in terms of the number and the mandate period of board members; the condition that general assembly and board members must be Kuwaitis, the timing for organizing the general assembly meeting (**Articles 10, 11, 13-17**).

The authorities have direct control over the activities and finances of associations: representatives of the authorities attend the general assembly meetings and investigate the associations' internal records and books (**Article 21**).

The "Model Statutes" goes into further details regarding the above requirements such as indicating the timing of the general elections, how the quorum is realized, and the responsibility of the board of directors and of its members, among others of issues (**Articles 19-48**).

#### **In practice**

Both the ministry and the two human rights NGOs confirmed that the administrative authority exercises the above mentioned. They both stated that the ministry's control is "done through asking the NGOs to submit annual reports to guarantee that they are working within the parameters of their objectives, as well as monitoring the activities, and if needed, by changing the course of such activities in order to insure they are in

line with to the NGO's objectives. In addition, the ministry attends NGOs' general assemblies and elections to ensure that the procedures and rules are fair and transparent. If the ministry detects any violation, it may stop the proceedings and take necessary measures to correct them. Yet, the Ministry confirmed that rarely such incidents happen.<sup>262</sup> The NGOs do not appear to have any objection to these regulations: the Ministry's representative attend their general assembly meetings and elections. Today KABE is preparing for its general assembly and is coordinating with the Ministry for a mutually convenient time for holding it.<sup>263</sup>

### **TRADE UNIONS**

#### **The legal framework**

There are a number of legal provisions that trigger fear of direct and indirect control and interference by the administrative authorities in the internal affairs of trade unions.

The Law of Trade Union states that the ministry must be notified of the general assembly meetings one week before the meeting (**Article 74 (2)**). The board of directors should not count less than 7 members and not more than 21 (**Article 74 (3)**). The ministry has the right to inspect at any time the union's headquarters, the membership and board members' register, as well as the minutes of the general assembly meetings and accounting books (**Article 76**).

While the Constitution and the national Laws are silent on the right to strike, Kuwait made a reservation on Article 8.1(d) of ICCESR (pertaining to strikes). Yet, Kuwait has ratified ILO C87 which guarantees the right to strike.<sup>264</sup> In 2007, the Council of Ministers appears to have issued Decision No. 1113 making general strikes unlawful and providing for measures against strikers.<sup>265</sup>

262. Interview with MSAL, Social Development Directorate, 12/2/2008.

263. Interviews with KHRS, 10/2/2008; and KABE, 11/2/2008.

264. FIDH was not able to obtain copy of the Law of Ratification to verify if there are any reservations.

265. Alrai newspaper, Tahous: Government Circular to prohibit strikes is a confiscation of freedoms and violates the Constitution and the conventions, available at <http://www.alraialaam.com/Templates/feSaveArticle.aspx?Id=13238>; Dira News, 10 December 2007: Federation of Kuwait Unions: withdraw the repressive decision otherwise we will recourse to ILO, available at [http://www.deerah.com/index.php?act=Writers&cmd=Show\\_ID&id=22](http://www.deerah.com/index.php?act=Writers&cmd=Show_ID&id=22)



## In practice

According to the KTUF, trade unions enjoy the freedom of running their activities without external interference.<sup>266</sup> The Ministry inspects the trade union books and accounts in order to ensure transparency and upholding the interests of the workers. This takes place periodically or if a union member submit a complaint to the Ministry against the union.<sup>267</sup> On the other hand KTUF itself attends the union's general assembly elections to ensure that the process is democratic and fair.<sup>268</sup> The Ministry may attend, but it is not compulsory. Whether the Ministry attends or not, copies of the minutes of the general assembly meetings should be sent to the ministry.<sup>269</sup>

Any amendment to union's statutes is forwarded to the Ministry for approval. If the Ministry rejects the amendments and the issue is not resolved, the trade union has the right to take the case before the court.<sup>270</sup>

Trade unions complained that the Ministry's regulations (Model Statute and Executive regulations) amount to severe interference in their internal affairs and threatened to take the issue before the ILO. It seems that the Supreme Court issued two decisions stating that the administrative authority has no right to interfere in the internal affairs of the trade unions.<sup>271</sup> The ILO Representative in Kuwait stated there is no problem with the authorities' decisions and measures as long as they conform to the law and international labour standards. Otherwise, such measures are null and void.<sup>272</sup>

Trade unions may submit complaints against the Ministry's measures leading to interference if they are considered to be violating the international standards of freedom of association. The complaint can be addressed to ILO Committee of Freedom of Association through KTUF. The latter revises the country offices' reports and if it finds that there are violations, it reminds the country in question of its obligation under Convention 8. Kuwait was

266. Supra. note 238.

267. Supra. note 210.

268. Supra note 266.

269. Interview with MSAL on 12/2/2008 and complementary interview on 5/6/2008.

270. Interview with MSAL, Trade Unions Organizations Directorate on 12/2/2008 and complementary interview on 5/6/2008.

271. Article in Al Rai dated 3/12/2003, published on Kuwait lawyers website, Unions prepare themselves to file a complaint before ILO, available at <http://www.mohamoon-kw.com/default.aspx?action=DisplayNews&ID=850&ParentID=45&Type=5>

272. Complementary interview with ILO Representative on 5/6/2008.

subject to such warnings in the past.<sup>273</sup>

Another aspect of restriction stems from the legal provisions that prohibit in broad terms trade unions to be involved in politics. The matter is left to the administrative authorities to decide what could constitute a political activity. Trade unions argue that this restriction hinders their union activities as a number of the unions' demands intersect with political issues and the dividing line is not always clear cut.<sup>274</sup> Furthermore, as trade unions are partners in the social and economic policy, their involvement where they have an influencing role, such as debates about globalization and privatization is legitimate and justified.<sup>275</sup>

The trade unions' ultimate legitimate tool to be used to defend their demands, the right to strike, is prohibited in contradiction with Kuwait's international labour rights obligations. In its comment on the proposal draft Labour Law, GFTU has requested to include the right of trade unions to strike as one of the means to defend their social and economic interests.<sup>276</sup> However, strikes in the public sector did in fact take place in 2007.<sup>277</sup>

## 2. The Right to Seek and Receive Funds

### NON GOVERNMENTAL ORGANIZATIONS

#### The legal framework

The Law of Association states that the provisions of Law on licensing public fund raising activities apply to NGOs when it comes to public

273. Interview with ILO representative in Kuwait, 12/2/2008.

274. Interview with Dr. Anwar Al-Fuzaie, Member of ILO CEACR, 12/2/2008.

275. Supra note 238.

276. Copy of proposals submitted by the KTUF obtained during the mission on 11/2/2008 (On file).

277. Jarida newspaper, issue147 dated 20 November 2007, available at <http://www.aljarida.com/aljarida/Article.aspx?id=33641&searchText=????>, and issue 148 dated 21 November 2007, available at <http://www.aljarida.com/aljarida/Article.aspx?id=33851&searchText=????> And issue 149 dated 22 November 2007, available at <http://www.aljarida.com/aljarida/Article.aspx?id=34016&searchText=????>; BBC Arabic, Kuwait 2007: the year of strikes and financial excesses, dated 21 December 2007, available at [http://news.bbc.co.uk/hi/arabic/middle\\_east\\_news/newsid\\_7156000/7156442.stm](http://news.bbc.co.uk/hi/arabic/middle_east_news/newsid_7156000/7156442.stm)

## TRADE UNIONS

fund raising and thus should obtain a permission to carry out public fund raising activities (**Article 22**). NGOs may receive government support (such as low-rent office space, support in the costs of participating in international meetings and conferences) (**Articles 24, 25, 26**).

NGOs are forbidden from receiving, directly or through connections or in any way, money or benefits in the form of contributions or benefits of any kind from a person, association or body or club located outside the State of Kuwait without the prior approval of the authorities (**Article 30**).

### In practice

The status of government support is not clear. Decision 836 made it that newly registered NGOs have to make a formal commitment not to request financial support from the government, and only those registered before 2004 continue to benefit from government support.<sup>278</sup> However, KABE's Statutes mention "governmental support" among the sources of funding,<sup>279</sup> and KHRS receives donations from the Prime Minister but in his private capacity. Also, the official "Model Statutes" for NGOs issued in 2005 mentions government's support for NGOs. Further, it is important to note that no NGO challenged the Council of Ministers Decision No. 836, which seems to contradict the Law of Association that explicitly provides for governmental support to NGOs.

The Ministry had recently submitted a proposal to the Council of Ministers to contribute to the travel expenses for all public interest NGOs, including those established after 2004.<sup>280</sup>

As to receiving foreign funding that requires the ministry's approval, none of the two NGOs had to ask for such permission.<sup>281</sup> NGOs made a declaration that they would not seek foreign funding.<sup>282</sup>

278. Interview with MSAL, Social Development Directorate, 12/2/2008.

279. Bylaw of KABE, (on file).

280. Supra note. 278.

281. Ibid and supra note 215 and note 216.

282. Supra note. 216.

### The legal framework

Trade unions are forbidden from accepting grants and donations without the permission of the Ministry of Social Affairs and Labour (**Article 73**). This permission is required whether the funding is national or foreign.

### In practice

Trade unions are usually self-funded and rely mainly on membership fees and small fund raising activities such as dinners and parties. Donations and gifts are very rare and usually target a specific project or activity.<sup>283</sup>

According to the Ministry, no trade union had asked a permission to accept donations and subsidies.<sup>284</sup>

Although the legal provisions relating to trade unions do not provide for government financial support, trade unions established before 1979 do obtain such support, and in such case the Ministry have the right to direct control over the expenditure of the funds. After the resumption of political life in Kuwait in 2003, the government decided to reduce its support to a onetime grant of 5000 KD given upon the establishment of the union.<sup>285</sup> For some, this support leads to interference and control of the trade union by the government.<sup>286</sup>

## POLITICAL PARTIES

### The legal framework

No legal provisions exist pertaining to political parties as such.

283. Supra note 230.

284. Interview with MSAL, Trade Unions Organizations Directorate, 12/2/2008. These projects include small projects, mainly in the services ministries where the unions run coffee shops and provide other services (photocopies, stamps).

285. Ibid.

286. Interview with ILO Representative in Kuwait, 12/2/2008, and Dr. Anwar al-Fuzaie, Member of ILO CEACR, 13/2/2008.

## In practice

Existing de facto political groups rely mainly on their own resources. Because of the lack of legal status, they collect money but do it in an informal manner.

### 3. *The Right of affiliation to regional and international organizations*

## NON GOVERNMENTAL ORGANIZATIONS

### The legal framework

The Law of Association prohibits NGOs from participating, or affiliating with any association, club or institution outside Kuwait without the prior permission of the Ministry (**Article 30**).

## In practice

The two NGOs that we met during the course of the study stated that they are members of Arab and international non-governmental organizations.<sup>287</sup> The Ministry stated that this control is legitimate in order to be aware of NGOs foreign relations which may harm the country.<sup>288</sup>

KHRS said it had no problem with the authorities, and KABE stated that there was no need to inform the Ministry.<sup>289</sup>

## TRADE UNIONS

### The legal framework

The Law of Trade Union states that federations have the right to join Arab and international organizations with which they share common interests, provided they notify the authorities within one week of their adherence to the international organization (**Article 84**).

287. Supra note 213.

288. Supra note 278.

289. Supra note 216.

## In practice

KTUF is a member of the World Trade Unions Confederation, and of the Asia and Pacific Trade Unions Confederation, and the International Confederation of Arab Workers Trade Unions.<sup>290</sup>

### *The Right to Protection from suspension, closure or dissolution*

## NON GOVERNMENTAL ORGANIZATIONS

### The legal framework

According to the Law of Association, the authorities could take a decision to dissolve an NGO in the following cases, if: the association's membership falls below 10 members; the activities depart from its original objectives of the associations, the association commits a serious violation of its statutes; it cannot meet its financial obligations; or it breaches the provisions of this law (**Article 27 (1)**); The Ministry may decide to opt for the assignment of a temporary executive board instead of dissolution, if it fits in the interest of the members and the objectives of the association (**Article 27 (2)**); In case of dissolution the authorities designate a beneficiary to receive the association's finances if the status do not specify any (**Article 29**). The "Model Statutes" provide that the association's assets and finances shall be given to the Ministry (**Article 49**).

## In practice

The Ministry confirmed that no human rights association was dissolved during the last four years.<sup>291</sup> However, human rights NGOs consistently have to make concessions in order not to displease the authorities and risk dissolution: "We are prudent and act with precaution particularly when it comes to working on sensitive issues in order not to do 'anything that could harm the people or the Constitution'".<sup>292</sup>

290. Supra note 230.

291. Supra note 278.

292. Supra note 215.

## TRADE UNIONS

## *registered Organization*

### The legal framework

Trade unions are subject to compulsory dissolution only by a court decision taken upon request from the administrative authority. The request for compulsory dissolution is initiated when the union is considered to have violated the Labor Law or laws preserving public order and morality. The court decision may be challenged before the Court of Appeal. When the decision is final, the finances of the trade union after liquidation are transferred to the ministry (**Article 77**).

### In practice

The ministry stated that it has not requested the dissolution of any trade union in recent years.<sup>293</sup>

## POLITICAL PARTIES

### The legal framework

There are no provisions pertaining to political parties as such.

### In practice

As a result of their de facto status, political groups could not be dissolved but by their own initiatives; the government does not have any legal means to dissolve what it did not recognize.<sup>294</sup>

### *The Right of Members to Protection from Prosecution and Discrimination*

#### *The Right of Human Rights Defenders not to be penalized for belonging to a non-*

293. Interviews with Kuwait Trade Union Federation, MSAL, Trade Unions Organizations Directorate, 12/2/2008, ILO representative in Kuwait, 12/2/2008.

294. Interviews with the Kuwait Democratic Foundations, 10/2/2008 and with Islamic Constitutional Movement, 11/2/2008.

Violations of the provisions of the Law of Association and the related executive decisions are punishable by a fine not exceeding 50 Dinars and without prejudice of more severe penalty provided for in the Penal Code or any other laws (**Article 31**). Consequently, violation of the provisions relating to the formation of an association is punishable. However, belonging to a dissolved association does not seem to a criminal act.

The Penal Code punishes individuals up to 15 years imprisonment anyone who forms or calls for joining a group or association that disseminates principles which aim at using illegal means to change the fundamentals of the country or which aim at using force against the social and economic mechanisms in place. For those who join such associations could be sentenced up to 10 years (**Article 30**).<sup>295</sup>

### In Practice

There are unconfirmed information regarding two groups that have been subject to arrest and trial on grounds of belonging to prohibited organizations. The level of information does not allow us to determine whether or not they fall under the human rights organizations categories, these are:

- 1) The case of the “Victims of Torture and Arbitrary Detention Association”, a non-registered group of individuals that announced itself in the media in 2003. They demanded the trial of the perpetrators of torture inside and outside Kuwait. Five months later (2004), most of its members were arrested, and the whole group - those arrested and those who escaped- were tried. The charges against them included *disseminating untrue reports and belonging to prohibited organizations*. Some of them were acquitted including the group’s spokesman, Khaled Dousari who later on

295. Law 31 of 1970 amending some provisions of Penal Code 16 of 1960, available at <http://www.gcc-legal.org/mojportalpublic/displaylegislations.aspx?country=1&lawtreesection>



in the same year was accused of recruiting people to fight against the US forces in Iraq.<sup>296</sup> Those who fled the country were sentenced to prison terms in absentia.<sup>297</sup>

- 2) The case of Osama Munawar, a lawyer and apparently member of Al Karama human rights organization (based in Geneva) was arrested and charged with three crimes including “disseminating untrue reports” “belonging to a prohibited organization that works to destroy the public order”, and “defaming the authorities”. Munawar was at that time the defense lawyer of a group called “Lions of the Island” which was accused of terrorism.<sup>298</sup> He was acquitted. But when he tried to file a complaint against his arrest, the General Prosecutor refused to register the complaint.<sup>299</sup> The Special Representative of the UN Secretary General on Human Rights Defenders communicated grave concern to the Kuwaiti authorities that the charges against Munawar may be driven by his human rights activities.<sup>300</sup> The authorities responded that Munawar was charged with membership of a prohibited organization seeking to destroy the basic apparatus of the state by unlawful means.<sup>301</sup>

According to the Labour Law, employers or their substitutes shall be punished (a fine of 100 to 200 KD) in accordance with **Article 97** if they dismiss or punish a worker to force him to join or not to join or to withdraw from a trade union, or for carrying out union activities or executing legitimate union decisions (**Article 78**). The legal provisions do not state that the dismissed worker will be reinstated in his job.

### **In practice**

The KTUF stated that, in case of dismissal of workers on the grounds of their union activities, they will join forces with the union in question to solve the problem amicably until the dismissed workers are returned to their jobs. In most cases, the problem is resolved before legal recourse is pursued.<sup>302</sup> This is also the view of the Ministry of Labour, who based on Chapter 14 of the Labor Law, it uses its intermediary role to solve the conflict amicably, and usually succeeds.<sup>303</sup>

## ***The Right of Trade Unionists to Protection from Anti-Union Discrimination***

### **The legal framework**

Kuwaiti laws provide partial protection for trade union members from harassment or discrimination based on membership or non-membership of a union.

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296. Kuwait targets leading rights activist, Al Jazeera English, News Arabworld, updated on Sunday, July 25, 2004, available at <http://english.aljazeera.net/archive/2004/07/2008410122945144283.html>

297. Phone interview with Me. Osama Monawer, 14/2/2008

298. Accused of the Midan Hawali incident where 2 police man were shot on 2 January 2005, Phone interview with Me. Osama Monawer, 14/2/2008. They were sentenced to death, available at [www.news.gov.kw/files/documents/1-1%20\(22\).doc](http://www.news.gov.kw/files/documents/1-1%20(22).doc)

299. Supra note 298

300. The Special Representative of the Secretary General, Report Promotion and Protection of Human Rights: Human Rights Defenders, Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani Addendum, Compilation of developments in the area of human rights defenders, E/CN.4/2006/95/ad.1 at 299 dated 22 March 2006

301. Ibid.

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302. Supra note 230.

303. Supra note 284.

# YEMEN

## The Legal and Policy Framework Relating to Freedom of Association

### International Obligations

Yemen is party to the main international human rights instruments.<sup>304</sup> Most of these conventions were ratified by South Yemen and then were integrated into the laws of the United Republic of Yemen.<sup>305</sup> Specifically, these conventions are:<sup>306</sup>

- The Convention on the Elimination of All Forms of racial Discrimination (CERD), ratified on 18/10/1972.
- The Convention Related to the status of Refugees, ratified on 18/1/1980.
- The Convention for the Elimination of All Forms of Discrimination against Women (CEDAW), ratified on 30/5/1984.
- The International Covenant for Civil and Political Rights (ICCPR), ratified on 2/9/1987.
- The International Covenant for Economic, Social and Cultural Rights (ICESCR), ratified on 2/9/1987.
- The Convention on the Rights of the Child (CRC), ratified on 1/5/1990.
- The Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), ratified on 5/11/1991.

Today, Yemen is considering ratifying CEDAW's Optional Protocol and the Second Optional

304. OHCHR, Yemen Home page, available at <http://www.ohchr.org/english/countries/ye/index.htm>; OHCHR, International law page, instruments ratification by country and date, available at <http://www.ohchr.org/english/law/index.htm>

305. "The new united republic engaged itself to respect international conventions ratified by both the North and the South", speech of the President of the Republic dated 22/5/1990, available at [http://www.presidentsaleh.gov.ye/shownews.php?lng=ar&\\_nsid=3105](http://www.presidentsaleh.gov.ye/shownews.php?lng=ar&_nsid=3105).

306. Date of ratification available at <http://www.mhryemen.org/reports/org1.php> Yemen made reservations but none are related to freedom of association. Available at <http://www2.ohchr.org/english/bodies/ratification/2.htm>

Protocol of the International Covenant on Civil and Political Rights.<sup>307</sup>

Yemen is a member of ILO and has ratified a number of key Conventions including the C87 related to Freedom of Association and Protection of the Right to Organize (1948), ratified on 29/7/1976, and C98 related to the Right to Organize and Collective Bargaining (1949), ratified on 14/4/1969.<sup>308</sup>

Ratified international treaties have the force of national laws.<sup>309</sup> If a conflict between a national law and an international treaty or convention arises, the Yemeni Civil Code (Law 14 of 2002) **Article 33** clearly states that the latter is applicable provided it does not contradict the Islamic Sharia.<sup>310</sup>

### National Laws and Regulations

#### The Constitution

The Yemeni Constitution guarantees NGOs, political parties, and trade unions the right to freedom of association.

**Article 5** confirms that:

*"...the political system of the Republic of Yemen is based on political and partisan pluralism in order to achieve a peaceful rotation of power. The Law regulates the rules and procedures required for the formation of political organizations and parties, and the exercise of political activity. Misuse of governmental posts and public funds for the special interest of a specific party or Political organization is not permitted."* (Unofficial translation)

307. Interview with Ministry of Legal Affairs, 29/1/2008.

308. See list of ILO Conventions ratified by Yemen on <http://www.mhryemen.org/reports/org1.php>

309. The Constitution of Yemen embodies the principles of the United Nations Charter, the Universal Declaration of Human Rights, Arab League Charter and the generally recognized rules of International Law (**Article 6**). The parliament ratifies the international treaties and the President of the Republic promulgates the conventions and treaties ratified by the Parliament. The President ratifies conventions that do not need the Parliament to approve them (**Article 119, Para. 12- 13**), available at <http://www.yemenparliament.com/content.php?lng=arabic&id=50>

310. Law 14 of 2002, Civil Law, dated 10 April 2002, Article 33, (Unofficial Translation), available at <http://www.yemen-nic.com/contents/laws/detail.php?ID=11767>

**Article 36** states:

“..... No organization, corporation or body, individual, group, political party or organization may establish forces or paramilitary groups for whatever purpose or under any name”. (Unofficial translation)

**Article 40** also states:

”Military, security, police and other forces shall not be employed in the interest of a party, an individual or group. They shall be safeguarded against all forms of partisan, racial, sectarian, regional and tribal differentiation in order to guarantee their neutrality and the fulfillment of their duties in the proper manner. The members of all forces are banned from party memberships and activities according to the law” (Unofficial translation).

**Article 58** stipulates:

“In as much as it is not contrary to the Constitution, citizens may organize themselves along political, professional and union lines, and to form scientific, cultural, social associations and national unions... The state shall... take the necessary measures to enable citizens and associations to exercise this right...” (Unofficial translation)

**Article 120** also states:

“The President of the Republic issues the Executive Bylaws necessary for the implementation of the laws after it has been proposed by the relevant minister and approved by the Council of Minister...The President may delegate ..to issue the Bylaws...The Bylaws could not include provisions that hamper or allow the non-execution of the law... “ (Unofficial translation)

## National Laws

Yemen has three distinct legal frameworks for each the associations, political parties, and trade

unions respectively:

- The Law of Associations and Civil society no.1 of 2001<sup>311</sup> and its Executive Bylaw issued by Decision No. 129 on 10 May 2004 (hereafter Law of Association and its Bylaw respectively)<sup>312</sup> There also exists compulsory ministerial decisions such as the “model statutes”<sup>313</sup> and the “Special Bylaws” related to the different types of associations. These lay down the rules and regulations pertaining to the formation to dissolution of an association.<sup>314</sup>
- The Law No. 35 of 2002 related to the Organization of Labour Trade Unions (hereafter Trade Union Law).<sup>315</sup> The Labour Code<sup>316</sup> also includes specific provisions related to the trade unions’ rights: collective agreements (**Article 33**); the right to establish trade unions (**Article 151**); and protection against anti union discrimination (**Article 152**). There is no Executive Bylaw for the Trade Unions Law yet.<sup>317</sup>
- Law No. 66 of 1991<sup>318</sup> Pertaining to political parties, and its Executive Directive issued by the Presidential Decree No.109 of 1995<sup>319</sup>

The By-laws are legally enforceable regulations created by the competent ministry. Circulars are documents issued for the purpose of explanation

311. Law of Associations and Civil Foundations, 1 of 2001, dated 19/2/2001, published in Official Gazette issue number 4 of 2001, (Unofficial Translation), available at [http:// www.police-info.gov.ye/Laws/Soci01.htm](http://www.police-info.gov.ye/Laws/Soci01.htm). This Law replace Law no 11 of 1963. Before 2001, the Ministry responsible for associations was the Ministry of Culture.

312. Prime Minister Decision No. 129 of 2004 «Executive Bylaw of Law 1 of 2001» dated 10 May 2004, published in Official Gazette issue number 9 dated 15 May 2004. The Executive Bylaw was issued in accordance with Article 86 of the law no 1of 2001 (on file).

313. Ministry of Social Affairs and Labour, Decision No. 52 of 2005 (on file).

314. For example, the Ministry of Social Affairs and Labour handbooks 3, 4, 5, 6, 7, 8, 9, 10. (On file).

315. Law 35 of 2002 regulating Trade Unions, dated 14 August 2002, (Unofficial Translation), available at [http:// www.yemen-nic.com/contents/laws/detail.php?ID=11781](http://www.yemen-nic.com/contents/laws/detail.php?ID=11781)

316. Republican Legislative Order to promulgate the Labour Code, Act No. 5 of 1995( (Unofficial Translation)), available at <http://www.yemen-nic.com/contents/laws/detail.php?ID=11439>.

317. Interview with General Federation of Yemen Trade Unions, 30/1/2008.

318. Political Parties and Organizations Law 66 of 1991 , dated 17 October 1991, published in the Official Gazette, issue number 20 dated 31 October 1991, Official translation, available at [http:// www.scer.org.ye/english/politicalpartieslaw.htm](http://www.scer.org.ye/english/politicalpartieslaw.htm)

319. Republican Decree No. (109) of 1995 pertaining to the Executive By-Law for the Parties and Political Organizations Law No.(66) for 1991, dated 21 August 1995, official translation, available at [http:// www.scer.org.ye/english/executiveby-lawforthepartylaw.pdf](http://www.scer.org.ye/english/executiveby-lawforthepartylaw.pdf)

or guidance, on legislation or By-laws.

Non-governmental associations and foundations as well as trade unions fall under the authority of the Ministry of Social Affairs and Labor.

Political parties fall under the authority of a special committee, the Committee for the Affairs of the Political Parties and Organizations (CAPPO).<sup>320</sup>

## Specific Provisions Related to the Formation, Functioning, and Dissolution of Associations

### *The Right to Establish an Association or a Union*

## NON GOVERNMENTAL ORGANIZATIONS

### The legal framework

The Law of Association distinguishes between an organization and a foundation. **Article 2** defines the two type of associations:

An organization is defined as “*Any non-governmental association established, in accordance with the provisions of this law, by at least 21 founding members and has 41 members at the first meeting of its constitution. The primary purpose of the organization is the realization of a common benefit for a specific social group or for the public benefit, and it does not seek to generate from its activities financial profit for its members, and the membership shall be open...*”

While a foundation is “*Any institution established, in accordance with the provisions of this Law, for a limited or unlimited time, by one or more natural or moral person, in order to*

*undertake activities for the public benefit without generating financial profit, and the membership shall be confined to its founders only*”

Also, the founding members of a foundation should invest in the foundation and must provide evidence of a bank deposit of a specific amount when they submit their application for registration (**Bylaw, Article 7b**).

The Law restricts both type of associations the right to carry out activities before the completion of the registration procedures (**Article 84**). An association gains the legal personality only after its proclamation (**Article 12**).

The application for registration should be should follow the ministry’s “Model Statutes” (**Article 8, and Bylaw no.29, Article 8b**). The association’s objectives should not contradict the Constitution and laws (**Article 4-a**). The application must details all the association’s organizational, structural, and financial management (**Article 4-b, and Bylaw, Article 7a**). The association shall not take a name similar or identical to that of an existing association working in the same geographic area (**Article 4 b1**).

When the application is submitted, the ministry gives the applicant an official receipt that shows the date of the submission. This receipts is used to show all the subsequent dates of enquiries/revisions (**Bylaw, Article 8 b**). The authorities have one month to object to an application. If after the one month delay there is no response (negative or positive) from the administrative authority, the application is considered to be approved and the concerned association may request from the ministry to register and announce their proclamation in one of the official state newspapers (**Article 9**).

The ministry may object to an application and request amendments if it considers its provisions to be contrary to the provisions of the law and regulations in force. The ministry makes its objection in writing and the association is requested to make, within a predefined period of time, the necessary changes in order to bring its application into conformity with the legal provisions (**bylaw, Article 13a**).

Further, the ministry may refuse the registration of an application. In that case, the authorities should notify the founders of the association in writing of the reasons for the rejection and post it on the “notice” board of the ministry not later that ten days from the date of

320. The Committee is composed of governmental and non-governmental representatives and is responsible for the registration, supervision, and dissolution of the parties. The members of the Committee are the Minister of Parliament and Shura Affairs, Minister of Interior, Minister of Justice, four independent members made up of non functioning judges and lawyers accredited to the Supreme Court and nominating by the Higher Judiciary Council, providing they are not members of any party or organization. (Articles 2 and 13 of Law 66 of 1991).



the decision (**Article 10**). As the legal provisions do not mention the grounds for rejection, they could include reasons such as the provisions of the statutes violate the Constitution, or the association would be duplicating of an existing organization.<sup>321</sup> The association may appeal against a negative decision before the courts within 60 days from receiving notification of the rejection (**Article 11**).

## In practice

Most of the NGOs interviewed raised concerns about the law of association and the violations practiced by the administrative authorities.

Human rights NGOs or foundations are said to exist in great number in Yemen.<sup>322</sup> The registration of new applications has apparently slowed down since 2006 as the ministry, who is working on a draft law of association, is “freezing” the proclamation of new association until the adoption of the new law.<sup>323</sup>

The new draft amendment of the Law of Association is a subject of debate by the Yemeni civil society. The ministry’s draft amendments increase the latter’s control over the financial resources of the associations. The ministry is also suggesting adding human rights organizations to the list of associations that are subject to the law of association.<sup>324</sup> The civil society is active in drafting project laws. One of them is prepared by a coalition of six Yemeni NGOs with the support of the Danish Institute for Human rights,<sup>325</sup> and a second one by the Initiative to Support Democracy (MADA) in cooperation with the International Center of Non-profit Law. These draft law proposals make the proclamation, rather than authorization, the norm for the formation of an association, and insist on the freedom to receive foreign funding, and make the ministry’s intervention /control a posteriori action and only through the court.<sup>326</sup>

321. Interview with Ministry of Social Affairs and Labour, 27/1/2008.

322. According to the MSAL, NGOs are in thousands, including over 100 Human Rights NGOs. Interview with Ministry of Social Affairs and Labor on 27/1/2008.

323. NGOs reported that the undersecretary for Social Development announced publicly in a conference that the ministry does not intend to proclaim new associations.

324. Interview with the MSAL, 27/1/2008.

325. These are HOOD, Yemeni Observatory for human rights, Women Journalists Without Chains, Taghyeer, Yemeni Organization for Defense of Human Rights, and Democratic Freedoms and Democracy School.

326. Various interviews with Yemeni NGOs.

## Foundations vs. Organizations

Of the ten national human rights NGOs met by FIDH, only three are registered as organizations with open membership<sup>327</sup> and the remaining are foundations formed and run by one or two founding partners.<sup>328</sup> A number of foundations stated that there is less control over foundations compared with associations. In addition, they see open membership to be problematic since it may lead to be “forced” to accept members who do not necessary share the founders’ convictions, ideology and vision for the association. On this issue, the foundations and the ministry agree that open membership may lead to infiltration by politically motivated persons. For all this many prefer to establish a foundation in order to limit the membership to few founders or even only one.<sup>329</sup> The ministry’s leniency in registering foundations appear to stem from their intent to discourage the creation of organizations with open membership, and thus reduce the possibility of having open membership organizations that may have hidden political agendas to reach out to the wide public to achieve their objectives.

## Difficulty of obtaining a deposit receipt

One of the practical problem facing associations during the formation phase is the difficulty of obtaining a receipt of deposit from the administration when they submit their applications. The receipt is used as proof that an application has been submitted, as well as indicates the legal delay period for the authorities to respond.<sup>330</sup> Although the ministry refuted these accusations stressing that it automatically gives the applicants the deposit receipt,<sup>331</sup> this does seem to be always the case. For example, the “Taghyeer” Organization (Change) submitted its application for registration in September 2006 but did not receive automatically the deposit receipt and was not proclaimed. The association made several oral requests to be proclaimed. There was no response from the authorities.

327. These are: the Yemeni Organization for the defense of Human Rights and Democratic Freedom; Taghyeer Organization for Defense of Rights and Freedom; National Struggle for Corruption and Protection of the General Property Organization (NSCO).

328. For example, this is the case of SAF and Democracy School. Interviews with YOHR, 26/1/2008, SAF, 26/1/2008 and Democracy School, 26/1/2008.

329. Interviews with MSAL, 27/1/2008, Democracy School, 26/1/2008; SAF, 26/1/2008; YOHR, 26/1/2008.

330. Interviews with Democracy School, 26/1/2008; HOOD, 27/1/2008, Legal Aid and Formation Center (CLAA), 31/1/2008, Taghyeer, 28/1/2008.

331. Supra note 322.

Finally, Taghyeer resorted to sending a request in writing in December 2007,<sup>332</sup> and only then, the ministry signed the association's letter to prove that it received it.<sup>333</sup>

### **Non-compliance with the regulations that make registration automatic if no response before the expiry of the legal delay, or as a result of a court order**

The authorities are violating the legal provisions, when they does not automatically proclaim an association, if it has taken no decision before the expiry of the legal delay. The same attitude appears to be when a court orders the proclamation of an association.<sup>334</sup> Although the authorities deny such accusations,<sup>335</sup> below are some illustrations.

The Center for Legal Aid and Awareness (CLAA)<sup>336</sup> submitted their application to the office of the Ministry in Aden on 19 March 2007 and obtained the ministry's signature on a copy of their application. Later, CLAA were told that Aden office had approved their application and are awaiting the ministry in Sanaa to complete the registration and proclamation procedures. However, CLAA were never proclaimed nor received a negative decision from the ministry. After the expiry of the legal delay CLAA had requested, but to no avail, from the authorities to be proclaimed.<sup>337</sup>

HOOD, is another association that had the same problem. The association had been operating since 1998. In 2004, it was registered with the Ministry of Culture In 2005 and following the "Fatwa" of the Ministry of Social Affairs and Labour, it had to transfer its registration from the Ministry of Culture to the latter one. HOOD took the necessary steps and submitted a formal request for proclamation,<sup>338</sup> but it was never proclaimed by the ministry of

social affairs nor received a negative response from the administration.<sup>339</sup>

The "National Struggle for Corruption and Protection of General Property Organization" (NSCO) applied for registration on 2/12/2006. Two days later, they received their application with a note stating that the ministry rejects the application. The letter of rejection referred to a ministerial circular forbidding the registration of an association if there exists already a public institution working on the same issue (i.e. corruption).<sup>340</sup> In January 2007, NSCO filed a law suit against the administrative authority and won the case. The court decision ordered the administrative authority to proclaim NSCO in an "official newspaper".<sup>341</sup> Despite the court decision, NSCO said they have not acquired their registration yet.<sup>342</sup>

### **Refusal to register if statutes are not in conformity with the "Model Statutes"**

Many human rights associations raised their concern over the authorities' interference in the writing of the statutes. For example, the founder of the foundation "Democracy School" had to accept the administration request and amend their statutes according to the "Model Statutes" in order to obtain their registration.<sup>343</sup> The "Taghyeer" organization had also amended extensively their statutes following the administration request. The amendments covered the objectives of the association and its name. Despite compliance with the requests made by the administration, al "Taghyeer" is still not proclaimed today.<sup>344</sup>

### **The authorities are actively creating "pro-government" associations to be able to justify refusal of independent association on grounds that there should not be two similar associations.**

332. Interview with Al Tagheer on 28/1/2008. Al Tagheer is an association with open membership. One of its founders is a member in the Parliament. They work on prison conditions. For more info, See: Motamar.Net, Ministry of Social Affairs: Taghyeer Organization is illegal, available at <http://www.almotamar.net/news/54319.htm>

333. Copy of the Letter requesting the proclamation and authorization (on File).

334. Interview with HOOD, 27/1/2008, Taghyeer, 28/1/2008, CLAA, 31/1/2008, YOHR, 26/1/2008

335. Supra note 322.

336. The founders of CLAA are two lawyers. They are based in Aden and aims at providing legal aid and legal training.

337. Interview with CLAA, 31/1/2008; application endorsed by Undersecretary for Social Development Office in Aden (on file); Letter of referral for authorization from Ministry fin Aden to Ministry Sanaa (on file).

338. Copy of letter on File.

339. Interview with Ministry of Social Affairs on 27/1/2008, and HOOD on 27/1/2008, and Taghyer on 28/1/2008. the fatwa confirmed that the Ministry of Social Affairs is the sole competent authority for registration of NGOs, hence, the files of registered NGOs with the Ministry of Culture should be automatically transferred to the Ministry of Social Affairs. In practice, this was not the case. NGOs had to obtain a registration certificate from the Ministry of social affairs.

340. Letter of application date 2 December 2006 showing the rejection in handwriting of the Administration dated 4 December 2006 (On file); Interview with NSCO, 31/1/2008; Interview with Democracy School, 26/1/2008, Taghyeer, 28/1/2008.

341. Copy of Court of First Instance Decision in Atak dated 5 May 2007 (On File).

342. Interview with NSCO on 31/1/2008.

343. Interview with Democracy School, 26/1/2008.

344. Interview with Taghyeer, 28/1/2008.

There is a wide fear among civil society actors that the authorities are creating pro-government associations to justify the refusal of registration of independent association upon the claim that there is already an association with a similar name/function.

This appears to have been the case of the Women Journalists Without Borders (WJWB). WJWB submitted their application for registration in March 2005 but were refused on the grounds that another association with the same name already exists although this one claims to have been the first to apply for registration. The second association having the same name “WJWB” is said to have been created by the government as one of the founding members of the first association is also member of the opposition political party, Al Islah, an Islamic party. In order to overcome this obstacle, the first WJWB changed its name to Women Journalist without Chains (WJWC) and reapplied for registration. But it appears that they had to go to court to obtain their registration.<sup>345</sup>

## Migrants

The law seems to limit the right of migrants to form or join associations to “nationals of friendly countries [who] may set up cultural, sports and social associations through their accredited diplomatic missions and via the Ministry of Foreign Affairs” (**Article 80**). The proportion of the Yemeni members in the board of directors should be at least equal to the number of Yemeni members in the general assembly (**Bylaw no 129, Article 37-1**). Non-Yemenis may participate in the establishment, or become members, of associations. The minister defines by decree the ratio of their representation in the general assembly or the board of directors (**Bylaw, Article 137**).

The “Somali Youth and Students” association was founded by a group of Somali youth in Aden in 2006, and they have several Yemenis as founding members. The association had started the procedures for registration with the relevant ministry but after it negotiated the objectives and methods of work. The association is planning to have their constituent assembly in February 2008.<sup>346</sup> Originally, the ministry was concerned that the establishment of an association by

migrants would encourage all Somalis to establish hundreds of NGOs reflecting all their internal conflicts and divisions. Finally, the ministry agreed on the creation of the association provided that it would be the sole Somali association in Yemen. It seems that the ministry did not impose having a certain ratio of Yemenis in the executive board.

## TRADE UNIONS

### The legal framework

The Trade Union Law stipulate that all workers, except for the armed and security forces and those holding high-level posts in the public sector, the civil associations, cooperatives and professional unions that are established under different laws (**Article 4**), may constitute trade unions(**Article 5**). Individual freedom is respected for no worker should be compelled to join a trade union or be prevented from exercising union rights or to withdraw from a union (**Article 8**).

Fifteen or more workers are required to establish a trade union committee in one or more establishments or businesses in the same or similar profession (**Article 14**).

All legally established trade unions have the legal personality (**Article 6**) after they are registered and proclaimed by the ministry (**Article 7 (b)**). The proclaimed union has the right to represent its members in court (**Article 11**).

The Trade Unions Law, the labor Code and other enforced legislations define the type and scope of trade union activities (**Article 55**).

### Federations

Trade union committees may establish regional trade unions on the Governorate level (**Article 16**). Representatives of trade union committees or of regional trade unions in one or more establishment or businesses in the same or similar professions may proceed to establish a General Trade Union (**Article 17**). The general trade unions form a general federation; today it is called the “General Federation of Trade Unions in Yemen” (GFTUY) (**Article 20 (a)**) whose headquarters is located in Sana’a (**Article 20 (b)**).

345. Interview with Democracy School, and YOHR on 26 January 2008.

346. Interview with Save the Children, 31/1/2008.



## Migrant workers

The Law of Trade Union does not mention the nationality of trade unionists, and thus migrant workers may, in principle, form or join trade unions. This was confirmed by the General Federation.<sup>347</sup> The Federation further confirmed that there are migrant workers who are members of trade unions and have similar rights to Yemeni members: they may vote and stand for elections. On the ground, however, migrant workers themselves do not run for elections. The Federation stated that migrant workers usually join, rather than establish, trade unions, with the only exception of the Palestinian Workers Trade Unions.<sup>348</sup> However, considering that migrant workers are mostly employed in the private sector, their ability to form or join trade unions is made more difficult as they fear losing their jobs.<sup>349</sup>

## In practice

Before unification, trade unions existed in the two parts of Yemen. In general, trade unions seem to have a close relationship with the political parties. Today, there are 857 labour trade unions and 14 general trade unions in the private, mixed and public sectors, and one General Federation.<sup>350</sup>

The General Federation stated that the trade unionists represented in the Central Council in 2007 affirmed their refusal to create more than one General Federation.<sup>351</sup>

Trade unions are most active in the public sector. Workers in the private sector lack sufficient job security to engage in these activities as they could easily be dismissed if the employer does not approve the formation of a union in the establishment.<sup>352</sup> There have been a

few cases where trade unions organizations were not allowed in private companies, such as Ha'el Said a holding company. Still, the GFYWTU plans to activate trade unions in the private sector and intends to initiate dialogue with employers to discuss this right.

The legal provisions do not explicitly stipulate the mechanism for the proclamation of a trade union. According to the Federation, the trade union prepares its statutes and holds a general assembly meeting for the election of its board members, which should be attended by either the Ministry or the Federation, depending on whether the union is intending to join the Federation or not. In both cases, the ministry's role is limited to proclaiming the union.<sup>353</sup>

The formation of more than one trade union in each establishment/sector is allowed. For example, the "Health and Medical Profession Union" and "Medical and Technical Professions Union" operate in the health sector. Both are members of the GFYWTU.<sup>354</sup> The multiplicity of trade unions in one establishment/sector is seen by some unionists to aim to weaken the movement.<sup>355</sup> For example, the teaching sector has today three trade unions.<sup>356</sup> However, two of them have been fighting over their own legitimacy.<sup>357</sup>

## POLITICAL PARTIES

### The legal framework

The Law of Political Parties and Organizations guarantees the citizens' right to enjoy political pluralism (**Article 3**). This is based on Article 39 of the Constitution that states that the political and partisan pluralism is the basis of the Yemeni political and social system.<sup>358</sup>

347. Interview with GFYWTU, 30/1/2008.

348. Ibid.

349. Interview with the Chairman and a member of the Somali Committee, 30/1/2008.

350. Supra note 348. Also GFYWTU Activity Report, published 2007 (on file); Also, see annex YE 13. It should be noted that the figures vary between 857 trade union organizations to 3350 by the same sources, see for example 26 September newspaper, article for the occasion of International Workers Day, published on General Federation of Yemeni Workers Trade Unions website, available at <http://www.gfytu.org/showiteam.php?N=sub&id1=61>; General Federation of Yemen Workers Trade Unions, Activities Report, available at <http://www.gfytu.org/showiteam.php?N=main&id=1>; National Information Center: The President of the Republic announces 100% increase for the support to the General Federation 100%, available at <http://www.yemen-nic.info/presidency/detail.php?ID=17016&PHPSESSID=a4d8359e0d78bde2fd87d2f7e3b03201>

351. Supra note 348.

352. Interview with the General Union of Petroleum, Minerals and

Chemicals Products, 29/1/2008, and supra note 348.

353. Supra note 348.

354. Ibid.

355. Supra note 353.

356. The three teaching unions are: The Yemeni Teachers' Union (Islah/Islamist), The Union of Teaching and education professions (Congress), and the trade union of teaching professions (Yemeni Socialist/South).

357. These are: The Yemeni Teachers' Union, The Union of Teaching and education professions. The legal status of the first union is not clear whether it is a professional union or a workers trade union or else.

358. It must be noted that this law refers to Article 39 of the Constitution of 1991 that was cancelled; the equivalent of Article 39 in the Constitution of 2001 currently in force is Article 58 that recognizes and guarantees the freedom of association.



All Yemenis, except for those deprived of their political rights by a court decision or convicted of a crime for breaching the honour and trust, unless they were rehabilitated, are entitled to form parties and political organizations (**Article 11-c**). They have the right to voluntary affiliate to any political party or organization in accordance with the Constitution and the laws currently in force (**Article 5**).

The Law defines a political party or organization as a group of Yemenis, organized by common principles and objectives not departing from constitutional legitimacy, and who exercise its activities in democratic manner with the aim of achieving the peaceful transfer or sharing of power (**Article 2**) through free and honest general/public elections (**Article 6**). Political parties are national, popular, and democratic and politically they represent the citizens (**Article 7**).

The conditions for the formation of a political party or organizations include that:

- The principles, objectives, programs and means do not contradict the Islam; the sovereignty, independence and integrity of the country; the Yemeni Republican system; the principles of the revolution and of the Constitution; the integrity of the society; fundamental rights and freedoms; and the international declarations of human rights; and the Islamic and Arab belonging of Yemeni Society (**Article 8-1**).
- The political, economic, social and cultural programs and policies should not be a replication of another political parties and organizations (**Article 8-2**).
- The principles, objectives, and means of the political party or organization and their political structures and leadership must be public (**Article 8-8**).
- The membership is nationwide (**Article 8-9**).

To be a member of a political party or association a person must:

- Possess Yemeni citizenship. A naturalized

Yemeni may only join political parties only after the expiry of the delays stipulated in the Law of Nationality<sup>359</sup> (**Article 10-1**);

- be at least 18 years old (**Article 10-2**);
- not be deprived by a court decision of his political rights (**Article 10-3**)
- not belonging to the judiciary, the police or the military forces, or to a diplomatic mission outside Yemen during the duration of assignment (**Article 10-4**)

As for the founders of a political party or organization, founding members must:

- be at least 24 years old (**Article 11-b**) and descendants of Yemeni fathers (**Article 11-a**).

In addition, the Executive Bylaw 109 states that members must:

- not be an active member of the Supreme Commission for Elections (**Article 8 (a-4)**).
- not be a member of the four members appointed to CAPPO (**Article 8 (a-5)**).

In principle, a political party or organization has the legal personality once its documents are published in the Official Gazette. This occurs either the first day after the expiry of the 45 days following the submission of an application for registration, if there was no objection from CAPPO; or on the day following the court decision that cancels the CAPPO's objection (**Article 16**)

However, the procedures for registration are cumbersome. To apply for registration, a newly formed political party must:

- submit a written application signed at least by 75 founding members,

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359. Law No. 6 of 1990 related to the Yemeni nationality, dated 26 August 1990, (Unofficial Translation), available at <http://www.yemen-nic.net/contents/laws/detail.php?ID=11266>. While the Law on Nationality provides in its Article 23 that "Muslim naturalized" needs 15 years in order to enjoy political rights enjoyed by Yemenis, the Political Parties Law does not stipulate any provisions for naturalized non-Muslims.

confirmed by a court of first instance (**Article 14 (a)**);

- must have at least 2500 members from the different geographical provinces of the Republic (**Article 14 (b)**);
- must provide a set of basic documents such as the political program, the statutes, the party's bank details, the statement of financial resources and assets and the resources, the name of the person authorized to complete the establishment formalities (**Article 14 (c)**).

Additionally, registration procedures are far from straightforward. CAPPO has the right to object to the establishment of the party or organization (**Article 14 (d-e)**). CAPPO studies an application and either approves or rejects it within a period of 45 days from the date of receiving the application. The party or organization is implicitly approved if the delay of 45 days expires without the Committee having objected to its establishment (**Article 14 (f)**). In case of objection, the Committee is required to notify the applicants of its decision, provide reasons and request that they complete the procedures correctly. The applicants have the right to respond to the committee's objection. In case conflict arises, both parties have the right to go before the courts which will take a quick decision on the matter. The decision of the court of first instance is subject to appeal (**Article 15**).

It must be noted that Law of Political Parties stipulated that the existing political groups should adjust their situation regarding the membership conditions as per Article 10(4) and according to the Executive Bylaw that would be issued by the Presidential Council within a delay not exceeding 30 December 1991 (**Article 38**).<sup>360</sup> However, existing political parties were not able to make the adjustments procedures until the **Executive Bylaw No. 109** was issued in 1995. Even then, it did not detail the establishment and registration procedures, rather reiterated that political parties and organizations should follow the establishment and registration procedures provided in the Law and this Bylaw (**Article 61**).

360. This meant less than three months of the date of issuance of the Law 66 issued on 17 October 1991.

## In practice

There are today 20 registered political parties. They belong to the different political spectrum of ideologies.<sup>361</sup> The Social Greens Party and the Democratic Federation of Popular Forces were the last to obtain their registration in 2000.<sup>362</sup> It has been observed that some political groups that announce their intentions to establish political parties did not submit their application for registration. This is the case, for example, of the Justice and Democracy group which announced in 1996 its intention to become a political party, but to date has not submitted an application for registration.<sup>363</sup>

Before the unification in 1990, both North and South Yemen prohibited political pluralism.<sup>364</sup> The Constitution of 1991 allowed the formation of political groups. As a result, most of the then underground political groups, publicly declared themselves. The regularization of political groups started in 1995, the same year CAPPO was established.<sup>365</sup> During that period, a number of de-facto political parties challenged before the Constitutional Chamber, the constitutionality of a number of provisions in the Executive Bylaw 109.<sup>366</sup> However, between 1995 and 1999, although around 48 political groups applied for regularization, only 22 were registered as not all met the necessary legal requirements.<sup>367</sup> It seems that the requirement to have a certain number of members was the main reason for most of the rejections of many small political groups. Additionally, the process of regularization did not appear to have been a smooth nor rapid one. Only eight parties, including the pro-government Congress party, obtained the registration within the prescribed legal time period (45 days).<sup>368</sup> Many others

361. Before 2003, there were 22 parties. However, the *Hizb Tashih Al Sha'biya Al Nassiri* merged with the General Popular Congress, and the *Haq Party* was barred from CAPPO's list.

362. Interview with Committee on Political Parties and Organizations Affairs on 29 January 2008; see also list of registered political parties and organizations provided by the Committee to FIDH (On file), annex YE 12.

363. Interview with Federation of Yemen Popular Forces, 31/1/2008.

364. Interview with NPUP on 30 January 2008 representing the Joint Meeting.

365. Interview with Federation of Yemen Popular Forces, 31/1/2008.

366. Building Democracy in Yemen Women's Political Participation, Political Party Life and Democratic Elections, International Institute for Democracy and Electoral Assistance (IDEA) and ANND, published 2005, available at [http://www.idea.int/publications/dem\\_yemen/upload/Yemen\\_country\\_report\\_English.pdf](http://www.idea.int/publications/dem_yemen/upload/Yemen_country_report_English.pdf)

367. Supra note 366.

368. These are the GPC, Islah, the Democratic Nasserist, Democratic National Front, Nasserist Popular Unionist, Yemeni League, The National Social Party, Yemeni Unionist Congregation.

obtained their registration long after the expiry of the delays.<sup>369</sup> It is speculated that this was part of the government policy to delay the decision in order to discourage political parties to apply.

Of those that were newly created, three political parties were rejected on grounds that they did not follow up the proper procedures. Two of them challenged the decisions in courts, but the latter confirmed CAPPO's decision.<sup>370</sup>

Only the Arab Socialist Baath party did not automatically receive registration since the party was split into two groups (Syrian Baathists and Iraqi Baathists) and both groups applied under the same name - the Arab Socialist Baath Party - although they did so at different times. The group that first applied was registered. The second group filed a law suit on grounds that they are the 'real' Arab Socialist Baath Party. The Court decided in favour of the first group who also had applied at an earlier date. As a result, the second group made a few changes to its name and statutes and reapplied, and successfully obtained its registration.

CAPPO also confirmed that it is normal procedure to prohibit political parties from membership in any foreign political party. This however, CAPPO argues, does not mean they cannot have relationship as long as they preserve their independence.<sup>371</sup>

Today, the main opposition parties are said to be working towards an amendment of the legal provisions related to funding and the composition of CAPPO.<sup>372</sup> It is understood that they will demand more governmental financial support and fair representation in the Committee of Political Parties Affairs. The dialogue which commenced in 2007 between these parties and the pro-government party GPC had, by the time of writing this report, come to a halt.<sup>373</sup>

### *The Right of Associations to Freely Carry Out their Statutory Activities*

#### *1. The Right to be free of Control, interference, and Supervision*

369. For example, the Federation of Popular Forces applied for registration in 1997 and got the registration only in 2000, Interview with Federation of Yemen Popular Forces, 31/1/2008.

370. Interview with the CAPPO.

371. Ibid.

372. See Al Motamar.Net, 25 December 2007, available at <http://www.almotamar.net/news/52297.htm>

373. Complementary interview with Joint Meeting, 5/6/2008.

### **The legal framework**

The Law of Association and other related regulations give the administrative authority an extremely wide scope of control and supervision over almost every aspect of the associations' and foundations' affairs (**Article 6 and Bylaw, Article 3**). The Administration's interference extend to:

- Attending the meetings and elections of associations and foundations (**Article 20 and Bylaw, Article 3-2**).
- Calling for a general assembly meeting for the election of board members if the number of the board members falls below than the required number for holding a regular meeting, or if the association/foundation fails to call for an election meeting within a delay of 30 days from the date the required number had decreased (**Article 31**).
- Calling for a general assembly meeting to elect new board in the following case the organization fails to hold the meeting within the six months delay from the date of the expiry of the term of the board (**Law, Article 34**).
- Setting the rules of the associations' general assembly in relation to the competence of the members, manners of holding the meetings, and how decisions should be taken, etc. (**Articles 24 - 29**). The Bylaw further adds that the invitation should be published and sets the content of the invitation. The association should send the ministry a copy of the documents of the general assembly meeting (**Bylaw, Article 31**).
- Setting the regulations of the executive board' terms of references, scheduling the meetings, etc. (**Articles 30 - 34**).
- Informing the ministry of the amendments made to the statutes of the associations or foundations, otherwise these amendments will be considered as null and void (**Article 14**).
- Authorizing associations if they are

executing activities on behalf of a foreign institution (**Article 23, and Bylaw, Articles 18 and 20 (7)**)

The Executive Bylaw adds that the ministry has the right to:

- Inspect and review the administrative and financial documents of associations and foundations' to ensure their conformity with the provisions of the Law of Associations and its executive bylaws and with the statutes of the association itself; and take legal measures if it finds any violation (**Bylaw, Article 3 (3)**).
- Suspend the execution of any decision taken by the board of the association or foundation if it considers it to be violating the Law of Association or its Executive Bylaw, and any board member affected by the suspension has the right to resort to the court (**Bylaw, Article 4**).
- Issue compulsory "special bylaws" covering a wide range of issues, from the procedures for the establishment, registration and announcement of associations and foundations, the process of internal organization and elections, and for their electoral regulations to dissolution, and model contracts and statutes (**Bylaw, Article 3 (4and6)**)
- Receives the associations annual reports (**Bylaw, Article 21-b**)
- Sets the rights and obligations of the members, the rules and conditions for the membership (**Bylaw, Articles 26, 27, 28**).

### The practice

The control of the administrative authority seems to be one of the main motivations for the registration of most human rights associations as foundations rather than organizations. The ministry confirmed that it has the competence to control the associations' general assembly meetings and elections to ensure they are conducted in a proper and adequate manner. It further confirmed that it could stop meetings or elections if there are any procedural irregularities.<sup>374</sup>

374. Supra note 322.

The ministry considers that at present it is unable to carry out thorough daily inspections and control of the associations and foundations as it lacks adequate human resources. It further stated that its policy today is one of tolerance as it does not take any punitive measures against organizations that have not held elections for years such as (YODRDF) or have operated without registration such as (HOOD).<sup>375</sup>

### Unlawful practice of yearly renewal of authorization

The authorities exert extensive control over the associations through the making the submission of the associations' annual reports mandatory. The legal provisions do not stipulate for the renewal of the permit/authorization. This practice seems to have established itself after the Executive Bylaw 129 was issued to insure the compliance with the request to submit their annual reports. The administration decided to use the renewal of authorization as a confirmation of those who have submitted their annual reports. The Yemeni human rights associations do not challenge such illegal practices by the administrative authority. Even international donors seem to require a valid renewal permit for authorization to carry out the activities as a prerequisite to extending financial support to these associations and the authorities are aware of the donors' condition and using it to enforce their control. To illustrate, in 2008, Sisters Arab Forum (SAF) had requested this renewed permit from the ministry but did not obtain it immediately. The administrative authorities informed us that the permit would be given only when the association submits its annual reports.<sup>376</sup>

## TRADE UNIONS

### The legal framework

Trade Unions appear to enjoy substantially more freedom in running their internal affairs. The legal provisions addressing them are protective and guarantee the principle of non-interference. This is demonstrated as follows:

The Law stresses that no one should, directly

375. Ibid.

376. Ibid



or indirectly, interfere in the affairs of the trade union organizations (**Article 8**). For example, trade unions are free to hold their meetings inside the premises of their establishment/facility without the need to obtain permission (**Article 35**). The “granting leave” (time paid for trade unions activities) is one of the basic and fundamental trade unions’ rights (**Article 39**). They have the right to strike but should exercise this right in coordination with the trade union organization at the higher level (**Articles 40, 41, 44**). No confiscation of trade unions assets/funds may be carried out except through a court judgment (**Article 52**). A trade union is only accountable to its general assembly (**Article 54**). Anyone found guilty of influencing the freedom and integrity of the operation of the election, of libeling or threatening a candidate or the trade union is punished according to the laws in force (**Article 56**). However, there are no penalties to protect trade unions from any other interferences whether from the authorities, employers, or the federation.<sup>377</sup> The government interferes in favour of the trade union if an employer refuses to deduct and transfer the union member’s contributions from his/her salaries to the union (**Article 51**).

Trade unions are not required to report to the authorities on activities. Trade unions activities should only be in accordance of the Law and its executive bylaw [not yet issued], and the union’s statutes (**Article 15**). In effect, trade unions may freely adopt their own statutes and thus set the rules and procedures of their functioning, their competence, elections, infraction by the board members, and membership conditions, etc (**Articles 5, 7, 22, 34, 50, 57, 59, 64**).

## The General Federation

There are no specific provisions concerning the General Federation. Its overall role is to lead the trade union movement and set the general policies needed to achieve their objectives (**Article 21**). It also provides technical assistance such as training the union leaders (**Article 30(5)**), preparing a unified model statutes (**Article 58**), and representing its members in courts and in arbitrage (**Article 11**).

377. The following could be the provisions that could be used: Penal Code, Articles 254, 291, 292, available at <http://www.yemen-nic.com/contents/laws/detail.php?ID=11424> and Law No. 13 of 2001 related to General Elections and Referendum , Article 134, available at <http://www.scer.org.ye/arabic/electionlawa.htm>

## In practice

Most of the cases of interference in unions affairs mentioned during the field visit were related to inter-union power struggle. The authorities seem to maintain their control over trade union movement through the creation of pro-government unions and leave it to the unions to fight each other. The politicization of the trade union movement developed more acutely after the unification of Yemen. The conflict between the Yemeni Socialist Party (South) and the General Peoples’ Congress (North) in early 1990s was reflected inside the union movement. This affected the process of holding trade unions conference and the position of the General Federation. The supporters of the two parties had been sharing the control of the union movement. Exploiting the unions to support their political parties contributed to a severe weakening of the union movement and its influence. After the defeat of YSP in the 1994 war and its removal from power, the GPC’s supporting members took power of the union movement and excluded the YSP supporting leaders. Since then, the power struggle has continued inside the union movement.<sup>378</sup> In places where the unions are not pro government, new pro-government unions are created in the same establishment to counterbalance or weaken the existing movement. As one interviewee articulated well, “politics kill the trade union movement in Yemen”.<sup>379</sup>

## 2. The Right to Seek and Receive Funds

### NON GOVERNMENTAL ORGANIZATIONS

## The legal framework

The Law of Association states that the government provides financial and material

378. The situation of the General Federation is a good illustration. The General Federation has not held its general assembly since 1989. After the reunification of Yemen, a General Conference of the GFYWTU was due on 1/4/1990 but it did not due to many reasons including the reunification of the country and the need to adapt together two different legal systems, policies and practices related to unions and later, the 1994 war. However, the General Federation held its General Assembly meeting from 17-19 March 2008 and a new executive office was elected.

379. Interview with Said Abdel Moumen Anam, board member of the General Union of Petroleum, Minerals and Chemicals Products, on 29/1/2008.

support for an organization [not foundations] on the condition that at least one year had elapsed since its establishment and the commencement of its activities. It is also required to present to the ministry a copy of the annual financial report, approved by its General Assembly (**Article 18**). In addition, the revenues of the association or foundation include, among others, the fees, subscriptions and contributions of the members; endowments, and unconditional grants. Both associations and foundations may engage in lawful economic and commercial activities if the objective is to generate profit for the purposes and objectives of the association or foundation (**Article 39**). Associations are exempted from taxes, custom duties and some tariffs (**Article 40**).

Associations or foundations, as long as the ministry is informed, may obtain assistance from overseas or from a foreign person or entity. They may in turn send funds overseas for humanitarian purposes (**Article 23**). An association or foundation should inform the ministry of the details of the received fund, such as the identity of donor, the exact amount, and the purpose and method of receiving it (**Bylaw, Article 17**).

### **In practice**

Human rights foundations admitted to have received foreign funding without informing the Ministry, and the administration did not take any measures against them.<sup>380</sup> They claim that the authorities are usually informed of their financial situation. However, it is not clear if associations provide all the information in their annual reports. The ministry insisted that the annual reports do not accurately convey details about foreign funding.<sup>381</sup>

## **TRADE UNIONS**

### **The legal framework**

The Law of Trade Unions stipulates that the financial resources of trade unions range from

380. Interview with Democracy School, 26/1/2008, YOHR, 26/1/2008, SAF, 26/1/2008.

381. Supra note 322.

membership fees and assistance by the state, to revenues from the union's investment in assets and real estate, unconditioned donations, as well as any other sources of income as long as they do not contradict the relevant and related Laws in force (**Article 48**). The Law is silent about foreign funding.

### **In practice**

While state assistance could be one of the solutions for small and poor trade unions, one fears that the authorities will use it to control and influence the inclinations of the recipient trade union. Today, the government's support is limited to the General Federation and occasionally to some "poor" trade unions.<sup>382</sup> Following the election of a new General Federation Executive Board in March 2007, the President of the Republic promised the Federation 100%, and suggested to the Federation to resolve unions' demands without resorting to sit-ins and strikes.<sup>383</sup>

In general, most trade unions are said to be self-funded through membership and monthly subscription fees. The employer deducts the monthly subscription fees directly from the employee/member's salary. However, it has been noted that the political agenda of some employers has resulted in some "corrupt" behavior whereby employers deduct the fees to the benefit of another trade union that has the same political affiliation rather than to the unions the employees are members of.<sup>384</sup>

## **POLITICAL PARTIES**

### **The legal framework**

According to the Law of Political Parties, the funding of political parties derives mainly from membership fees, government financial support, gifts and donations, and the party's revenues from non-commercial investments (**Article 17**). Foreign funding, gifts, merits, or services are prohibited as well as funding by moral persons

382. Supra note 348.

383. National Information Center: The President of the Republic announces 100% increase for the support to the General Federation 100%, available at <http://www.yemen-nic.info/presidency/detail.php?ID=17016&PHPSESSID=a4d8359e0d78bde2fd87d2f7e3b03201>

384. Interview with Yemeni Teachers Trade Union, 28/1/2008, Interview with GFYWTU, 30/1/2008.

is prohibited, even if the moral person has the Yemeni nationality (**Article 17-d**).

A political party may accept gifts and donations (**Article 17(d)**). However, the Committee [CAPPO] must be informed of any contribution that exceeds YR. 100,000 (US\$ 500) in one donation, or if the total annual donations of one person or party exceed YR.200,000 (US\$ 1000). The donations given to parties or political organizations may not be deducted for income tax purposes (**Article 17- 2**).

Political parties have the obligation to submit annual financial statement (**Article 25**) and declare their assets to CAPPO (**Article 26**).

The government support is divided as follows: 25% of the total in equal installments to all parties represented in the House of Representatives and 75% of the total is pledged in proportion to the votes the candidates of the political parties and organizations obtained in the parliamentary elections (**Article 19**). The political party or organization is not entitled to a share in this amount of 75% if the number of votes obtained was less than 5% of the total votes (**Article 19-2**). The amount granted by the government shall not exceed the total subscriptions of the members of the party (**Article 20**).

The conditions for the Government temporary suspensions of its financial support are set in **Article 22**:

- the activities of the political party have been suspended by a court order, The suspension could also be order b y the court for breaching the provisions of the laws such as breaching Articles 17 or 24 of the law of Political Parties
- the party does not submit copies of its annual financial report,
- the political party or organization suspends voluntarily its activities

The suspension of the financial support is lifted once the reason behind the suspension ceases or is corrected (**Bylaw 109, Article 39-f**).

Government support will cease permanently and completely if the political party or

organization dissolves itself voluntarily or is dissolved by a court order in accordance with Article 34 of the Law (**Article 23**).

### The practice

Out of the 22 [now 20] political parties who participated in the last elections, only two (General Popular Congress and Islah) obtained more than 5% of the total votes. As they are also represented in the parliament they are receiving its share from the 25% of the total budget along with the three other parties that won in the elections.<sup>385</sup>

It is worth noting here that some political parties consider that the support (total of 500 million YR, (equivalent to US 2,500.000) is not sufficient to even cover the parties' operational costs.<sup>386</sup>

A member of the "Joint Meeting" described the requirement of declaring donations exceeding a certain amount, as well as the prohibition on investing in commercial projects, as excessively restrictive provisions that limit the growth and development of a party.<sup>387</sup> On the other hand, CAPPO considers that the control of the finances of a political party is limited to receiving the yearly financial reports, and the prohibition of funding by Yemeni moral persons aims to limit the possibility of any suspicion of interference or dependency.<sup>388</sup>

The project amendment to the Law of political parties proposed by the political parties recommends that the government's financial support is distributed to all the political parties that participate in the elections, regardless they win or not.<sup>389</sup>

### *The Right of affiliation to regional and international organizations*

385. Supra note 371.

386. Interview with Nasserite Popular Unionist party representing the Joint Meeting, 30/1/2008 (a coalition of five opposition Parties: Islah, the Yemeni Socialist Party, Haq, Federation of Popular Forces and the Nasserite Popular Unionist party).

387. Interview with Joint Meeting, 30/1/2008.

388. Supra note 371.

389. Ibid; see also Political Parties to discuss the amendments and the local authorities tomorrow, Al Motamar.Net, 25 December 2007, available at [http:// www.almotamar.net/news/52297.htm](http://www.almotamar.net/news/52297.htm); 26 September Newspaper, issue No. 1313 available at [http:// www.26sep.net/newsweekArticle.php?lng=arabic&sid=31666](http://www.26sep.net/newsweekArticle.php?lng=arabic&sid=31666)

## NON GOVERNMENTAL ORGANIZATIONS

### The legal framework

The Law of Associations does not tackle the issue of affiliation to regional or international organizations. This is rather regulated by the **Bylaw Article 132** that states:

*Associations, foundations and their federations may participate/ join any Arab, regional or international organization, association or federation outside the republic in accordance with the following conditions:*

- 1- That its activities and objectives are in harmony with those of the organization, association or federation it seeks to join*
- 2- That the objectives of the organization, association or federation it seeks to join are harmonious with the principles of Islamic law (Sharia), the constitution and the laws in action.*
- 3- That it officially notifies the ministry of the desire to participate or join*
- 4- That thirty days pass after the notification without the Ministry issuing a justified objection.*

### The practice

Effectively, the ministry seems to be lenient on this issue. A number of Yemeni human rights foundations stated they are affiliated to international organization and did so without the prior approval of the authorities.

## TRADE UNIONS

### The legal framework

According to the Law of Trade Union, only the

General Federation is permitted to participate in the establishment of and/or affiliate to Arab, regional or international union confederations (**Article 66**). There are no requirements for the approval or notification of the authorities.

### The practice

The General Federation is member of the World Federation of Trade Unions and of the International Confederation of Arab Trade Union.<sup>390</sup>

However, there are reportedly cases of general trade unions affiliated with regional and international trade union organizations. This is the case for example, of the Petroleum, Minerals and Chemicals General Trade Union who are member of the Arab Federation for the Petroleum, and Mines, and Chemicals workers respectively.<sup>391</sup> The General Federation confirmed that general trade unions are entitled to join international trade union federations.<sup>392</sup>

### *The Right to Protection from suspension, closure or dissolution*

## NON GOVERNMENTAL ORGANIZATIONS

### The legal framework

The wide reaching power of the administrative authorities may undermine the security and sustainability of an association. According to Law of Associations, the authorities may seek a judicial dissolution of an organization if the latter is considered to have seriously breached the provisions of the laws in force (**Article 44 (a)**). Acts considered to be grounds for dissolution include violation of the conditions for funding, the misuse of funds, and affiliation with foreign associations, (**By-law no 129, Article 124**). Before a decision of dissolution is taken, the administration gives the association in questions three written notices stretched over a period of six months. The associations is expected to take

390. Supra, note 348.

391. Interview with the General Union of Petroleum, Minerals and Chemicals Products, 29/1/2008.

392. Supra note 348.



the necessary steps to eliminate the violation (**Article 44 (b)**). If a decision of dissolution is taken, members of the dissolved association are forbidden from continuing their activities and from using its funds or properties (**Article 46 (b)**).

### In practice

There were no reported cases of dissolution of a human rights association or foundation in recent years.<sup>393</sup> The ministry confirmed that although it has not requested the dissolution of any NGO yet, it has in its possession a list of around 1,400 associations that it considers should be dissolved. Today, the administration does not have the capacity to take to court all these NGOs, but will look into the best course of action in the future.<sup>394</sup>

Yemeni human rights associations argue that the ministry follows the strategy of not taking a decision on applications for registration submitted by associations, and let them commence their activities after the legal delay expires to be able to dissolve the association on grounds that it is operating “illegally”. For example, HOOD was informally informed by one of their lawyers that the ministry was intending to start in 2007 the procedure to dissolve it after they defended in court a murder case.<sup>395</sup> They were told that the ministry planned to use the argument that they are active without a license or registration.

## TRADE UNIONS

### The legal framework

The Law of Trade Union states that in the event that a trade union organization is dissolved voluntarily or judicially, the general assembly decides of the usage of the assets of the union

393. Interview with HOOD, 27/1/2008, YOHR, 26/1/2008, Taghyeer, 28/1/2008, YODRDF, 28/1/2008, Democracy School, 26/1/2008.

394. Interview with MSAL, 27/1/2008. The Ministry's decision is based on the survey that the Ministry carried out in 2002. The findings of the survey showed that these 1400 either are inactive or had not held the elections for a number of years. It gave them two months to correct their status, then extended the delay for 6 months and then for a year and now the delay is open.

395. HOOD was defending a woman accused of murdering her husband.

(**Article 65**). However, the Law does not specify the procedures or the grounds for a judicial dissolution. This creates the space for arbitrary proceedings against trade union organizations.

### In practice

No judicial decision for the dissolution of a trade union organization is said to have taken place since early 1990s.<sup>396</sup> However, trade unionists report that the authorities do not need to resort to court to dissolve a trade union organization. The policy of hegemony, political control, and different types of pressure and restrictions exercised by employers on trade unions already forces small and “poor” organizations to dissolve “voluntarily”.<sup>397</sup>

## POLITICAL PARTIES

### The legal framework

According to the Law of Political Parties, a party may be suspended or dissolved either voluntarily or by a court decision. The CAPPO may submit to the court a request for dissolution of a political party. The arguments are either the association stopped meeting one of the conditions of Article 8, or if it carried out any of the prohibited activities stipulated in Article 33 of the Law (**Article 34**). The grounds mentioned in Article 33 are:

- assaulting the beliefs of Muslim people;
- endorsing the former regimes of the Imam or the Sultans or any activities contrary to the objectives of the Revolution, the Republic, the Unity and Democracy;
- disturbing the public security and order;
- using, directly or indirectly, the public service position or the public funds for the party interest;
- carrying recruitment of members in the forbidden sectors – police, army, judges in violation of Article 10 Para 4;

396. Interviews with GFYWU, 30/1/2008, the Yemeni Teachers Trade Union, 28/1/2008, the General Union of Petroleum, Minerals and Chemicals Products, 29/1/2008.

397. Interview with the General Union of Petroleum, Minerals and Chemicals Products, 29/1/2008.

- using the mosques, and other educational and governmental facilities to exercise political activities or for promoting the party;

In addition, the violation of the conditions of membership could entail, in addition to the direct punishment of the person in question, the suspension or dissolution of the political party itself (**Bylaw, Article 8 (b)**).

The procedures to be followed for the dissolution of a party appear to be speedy. CAPPO files a request for dissolution to the court and the President of the political party should be informed within a period of 48 hours of the action. The court must issue its decision within 90 days of the date of the president's notification of the filing of the request of dissolution. During that period, CAPPO may deposit an urgent request with the appropriate court to freeze the activities of the party or any of its decisions while awaiting the final court decision. The court must decide on this subsequent request in a period not exceeding 15 days (**Article 34 -2, and Bylaw, Article 58 (2)**).

Apart from the above mentioned conditions, CAPPO may resort to the court in the event of a violation of provision of the Law. However, the procedure would be different. Here, CAPPO would first warn the concerned political party. If the violation in question is a crime, it also refers the case to the general prosecution (**Article 36, Bylaw, and Article 59**).

### The practice

CAPPO said that thus far it had not requested the dissolution of any political party. It had, however, issued warnings to two political parties for publishing articles on the Sa'ada war. However, the Committee said that two parties were voluntarily dissolved: the *Hizb Tashih Al-Sha'biya Al-Nassiri and the Haq Party*<sup>398</sup>

### The Haq party refuted CAPPO's claims and

398. Interview with CAPPO, 29/1/2008. However according to alsharq al awsat newspaper issue dated 30 June 2004, a warning was issued to all the parties members of the joint meeting on grounds related to supporting Sa'ada war, alsharq awsat, available at <http://www.asharqalawsat.com/details.asp?section=4&issueno=9346&article=242212&feature=>;

said that it did not dissolve itself voluntarily; but rather they learnt of their dissolution when CAPPO announced it in the "Al Thawra official newspapers" on March 18<sup>th</sup> 2007.<sup>399</sup> They further claim that CAPPO's justification was based on a letter dated March 13<sup>th</sup> 2007 from the former general secretary of the party in which he states that the party had decided to dissolve itself for not being able to meet the requirements of the Political Parties Law. The party challenged the content of the letter stating that no such decision had been taken in conformity with the party's internal rules and procedures. They affirmed to CAPPO that the Haq Party is indeed still active.

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The Joint Meeting which include al Haq party, protested against the announcement of the dissolution of al Haq party. They argued that CAPPO's decision was illegal and the real motives behind the decision are because al Haq is suspected to be behind the violent events in Sa'ada.<sup>401</sup>

Despite this decision, al Haq did not take the case before the courts. Their argument is that CAPPO's announcement is null and void, to challenge it in court would give it a legal value.

Although observably, severe actions such as dissolution are uncommon, there is a fear among opposition political parties that the different forms of harassment may push them sometimes to dissolve themselves.

This was the experience of the Federation of Yemeni Popular Forces (FYPPF) that was created in the 60s in South Yemen. When they applied for registration in 1997, pro-government groups infiltrated the Party aiming to dominate it. Internal conflicts over the party's policy arose between the "veterans" and the new, pro-government members. Eventually the pro-government group filed a case in court which resulted in the pro-government member creating a new party - the Democratic Federation of Popular Forces.

399. Interview with Haq Party, 31/1/2008 (Al Haq is a shiite party said to be close to Al Huthi Shiite movement. The Haq is suspected to be supporting the Sa'ada movement and The Southern Cessation movement);. See also, Al Thawra Newspaper issue No. 15467 dated 18 March 2007 (On file); see also 22 May news site, CAPPO announces the dissolution of Haq Party, available at <http://www.mayonews.net/ad/showdetails.php?id=4180>

400. Interview with Haq Party, 31/1/2008; letter by "Executive Committee" of Haq Party to the Committee on Political Parties and Organizations Affairs, (on file).

401. Press release dated 18 March 2007 issued by the Joint Committee, (On file).

Both parties obtained their registration in 2000. In 2004, the FYPF newspaper “Al Shoura” was closed down for six months upon a court decision for a published insulting the President of the Republic. Consequently the Chief Editor was imprisoned for six months. In 2005, the party documents were stolen by the security guards “bought off” by the authorities and the newspaper was “confiscated” by force. To date, the party documents and headquarters have not been reinstated to the founders.<sup>402</sup>

### ***The Right of Members to Protection from Prosecution and Discrimination***

#### ***The Right of Human Rights Defenders not to be penalized for belonging to a non-registered Organization***

#### **The legal framework**

The Law of Association provides that founders and members of organizations are not allowed to start the organization’s activities before its registration (**Article 84**). Any violation of the legal provisions is punishable by a maximum of three months or of a maximum of 30.000YR (**Article 70**). Anyone who belongs to, or participates in, the continued activities of a dissolved association or foundation is subject to punishment of a maximum of one year or a fine of a maximum of YR 100,000 (**Article 68**)

#### **In practice**

Today, there seems to be no cases of penalization for belonging to a non-registered or a “dissolved” association.

### ***The Right of Trade Unionists to Protection from Anti-Union Discrimination***

#### **The legal framework**

According to the Trade Union Law, a unionist may not be punished, transferred, dismissed

<sup>402</sup>. Supra note 366.

or suspended on the grounds of his/her union activities or membership (**Article 10**).

According to the Labor Law the punishment of trade unionist because of their union activities is prohibited (**Article 152**); and any employer who hires new workers to replace workers engaged in a lawful strike is punished with a fine of not more than 15.000 YR fine without prejudice to the employers’ obligation to reinstate the striking workers in their jobs (**Article 156 (4)**).

#### **In practice**

Dismissal and suspension of union members for their trade union activities occur systematically in Yemen. The protection mechanisms include, at the trade union level, negotiations with the employer, if negotiations are unsuccessful; they resort to the right to strike and finally the right to judicial recourse. The General Federation essentially has the right to represent and defend trade unions and trade unionists before the courts. It has a cooperation agreement with the Bar Association for that purpose. The General Federation has previously represented the workers in many cases and received positive courts orders returning workers to their jobs. The General Federation is on the board of the Committee of Labor Conflicts, along with a representative for employers and the Ministry of Labor (legal department or a consultant judge).<sup>403</sup>

Due to the limited scope and time of this report, FIDH was not able to obtain detailed reports on individual cases.

The Yemeni Medicines Company, a public enterprise, dismissed union members because of their union activities. The General Federation filed a legal request to the court after it failed to resolve the conflict through direct negotiations with the employer. By February 2008, the case was still before the court.<sup>404</sup> In another incident, dismissed workers of the Yemeni Medicines Companies Union filed complaints and the courts ordered that they be returned to their jobs, but the employer did not abide by the court order.<sup>405</sup>

In another instance, the president and member of the union board of the Sana’a Airport Airways

<sup>403</sup>. Supra note 348.

<sup>404</sup>. Interview with the General Union of Petroleum, Minerals and Chemicals Products, 29/1/2008.

<sup>405</sup>. Interview with HOOD, 27/1/2008.

Engineers Trade Union were dismissed for initiating a strike and a new board was “elected” to replace them. The new union board and president were in turn dismissed after they also started a strike against withholding the salaries from employees. This time, the company filed a complaint to the court against the trade unionists on grounds that they are disrupting the work. However, the conflict was settled out of court and the dismissed workers returned to their jobs.<sup>406</sup>

On yet another occasion, the President of the Trade Union of Catering Department of Sanaa Airport was dismissed after he was accused of not carrying out his national duties - a crime punishable with penalties as serious as the death penalty. This dangerous accusation was included in the letter of dismissal. Interviews with the Yemeni Teachers Union claims in fact that he was “defending workers rights and combating the corruption at the company”, their account is that after negotiations with the company, the accusation was dropped and the President returned to his job, but was demoted to a lesser position.<sup>407</sup>

It should be noted that no Yemeni union – including the GFYWU- has ever approached the ILO regarding violations and harassment against the union or its members.

## **COMPARATIVE ANALYSIS OF FREEDOM OF ASSOCIATION IN THE THREE COUNTRIES**

Bahrain, Kuwait, and Yemen share common characteristics in terms of freedom of association. The respective government policies are largely restrictive rather than liberal, and are nationalistic rather than universal. These policies reflect a severely controlling environment starting by prohibiting the formation of an association without governmental approval to openly interfering in their internal management and maintaining conditions that may lead to dissolution at will. Therefore, the ability of associations to be formed and function freely is seriously impaired.

406. Supra note 348.

407. Interview with Yemeni Teachers Union, 28/1/2008.

Despite the fact the three countries have become members of the international human rights community, none of them has initiated the process of law adaptation and reforms to bring the national laws, including those related to freedom of association, to be in conformity with international standards.

### **Governmental Policies Leading to Serious Violations of the Right to Associate**

#### **Absence of provisions related to all type of associations**

While the Constitutions of three countries recognize and guarantee the right to freedom of association, Bahrain and Kuwait limit this right to NGOs and trade unions only. The Yemen recognizes that right to the three categories – NGOs, trade unions, and political parties. Bahrain only accept the concept of “political associations” while Kuwait does not have any legal framework for political parties, though political groups exist and publicly carry out political activities.

The lack of provisions that guarantee and protect political parties in Bahrain and Kuwait raises concern as to what extent their citizens are enjoying real political freedom. The existence of political parties is one important indicator of the existence of a healthy political life. Political parties are recognized as means of enjoying political rights. The HRC’s General Comment no 25 regarding Article 25 of ICCPR states that “in order to ensure the full enjoyment of rights protected by Article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. (...). It also implies the full enjoyment and respect for the rights guaranteed in Articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations; freedom to debate public affairs; to hold peaceful demonstrations and meetings; to criticize and oppose; to publish political materials; to campaign for elections and to advertise political ideas”. The General Comment adds “[t]he right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential



adjunct to the rights protected by Article 25. Political parties and membership in parties play a significant role in the conduct of public affairs and the election process. States should ensure that, in their internal management, political parties respect the applicable provisions of article 25 in order to enable citizens to exercise their rights there under”.<sup>408</sup>

Another common characteristic is the fact that the laws of association in the three countries do not envisage human rights organizations, and today, those working in the field of human rights are registered either as social or cultural associations, unless registered as civil companies.

### ***Prior Authorization is a prerequisite***

The three countries have, with the exception for the trade unions, the system of prior authorization before an association may carry out any activity.

This is in violation of Articles 22 and 25 of the ICCPR. The Special Representative of the Secretary-General on Human Rights Defenders states clearly that “registration should not be compulsory. NGOs should be allowed to exist and carry out collective activities without having to register if they so wish”.<sup>409</sup> The Special Representative recommends that States should ‘adopt regimes of “declaration” or “notification” whereby an organization is considered a legal entity as soon as it has notified its existence to the relevant administration by providing basic information, including the names and addresses of the founder(s) and the name, address, statutes and purpose of the organization”.<sup>410</sup>

### ***Exclusion of categories from forming or joining trade unions***

Although the legal provisions of trade unions in the three countries comply with international

408. HRC, General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25), 12/07/96, CCPR/C/21/Rev.1/Add.7, General Comment No. 25 available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument)

409. General Assembly, Fifty-ninth session, Human rights defenders, Note by the Secretary-General, report submitted by the Special Representative of the Secretary-General on human rights defenders, 1 Oct 2004, at III, 82, [Good practices and recommendations in conformity with the Declaration, recommendations of the Special Representative of the Secretary-General on Human Rights Defenders] <http://daccessdds.un.org/doc/UNDOC/GEN/N04/533/18/PDF/N0453318.pdf?OpenElement> [ Special representative Report 2004], at III.

410. 2004 Special Representative Report 2004, at III, 82, Good practices and recommendations in conformity with the Declaration, recommendations of the Special Representative Report of the Secretary General on Human Rights Defenders at (b).

labour standards as far as the deposit system for the formation procedures, unless the administrative authority object its formation, some categories of workers are excluded from this right.

This is the case of workers in the public sector in both Yemen and Bahrain the formation of trade unions in the public sector is restricted. In Bahrain, all the public servants are prohibited from forming unions, in Yemen, are only excluded those holding high level ministerial posts. This is in violation to ILO standards that considered this exclusion to be a violation of the right to freedom of association. The ILO Committee on Freedom of Association reiterated that “[t]he standards contained in Convention No. 87 apply to all workers “without distinction whatsoever”, and are therefore applicable to state employees. It is indeed considered inequitable to draw any distinction in trade union matters between workers in the private sector and public servants, since workers in both categories are entitled to organize themselves for the defense of their interests”. The only accepted exceptions under ILO standards are the armed forces and the police forces.<sup>411</sup>

### **Setting repressive standards to hinder the establishment of associations.**

The three countries also share common repressive standards for the formation of an association such as requiring a certain number of founding members, age, nationality, the prohibition of the establishment of more than one trade union per establishment, etc..

Considering that it is not always possible to meet such requirement, one can approve that such provisions are “tool to impose a serious obstacle for the establishment of trade unions”. ILO stated that although the registration procedure may often constitute a mere formality, there are a number of countries in which the law endows the relevant authorities various degrees of discretionary power in deciding whether or not an organization meets all the conditions required for registration. In essence, this creates a situation similar to that in which previous authorization is required and as such is used as a tool to impose a serious obstacle for the establishment of trade unions.<sup>412</sup>

411. International Labour Organization, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition 2006, at 216, available at <http://www.ilo.org/ilolex/english/23e2006.pdf>

412. Ibid, at 296, available at <http://www.ilo.org/ilolex/>

## *The right to establish federations and confederations*

Membership in federations is not compulsory in any of the concerned countries in line with ILO jurisprudence which considers that forced membership in federations is a violation of trade unions' right to freedom of association.<sup>413</sup>

The right to form federations and confederations is a manifestation of the right to organize recognized by Article 2 of the Convention 87. Unlike Bahrain, Kuwait and Yemen allow for one federation only. That contradicts Article 5 of Convention No. 87.<sup>414</sup>

ILO expressed concerns regarding the Yemeni law which names the General Federation of Trade Unions of Yemen (GFTUY) and impedes the establishment of a second federation in the country.<sup>415</sup> ILO Committee on Freedom of Association considers that unification of the trade union movement by the law is contrary to the principles enacted in Articles 2 and 11 of the Convention. The Committee therefore requests of the government to amend the Law on Trade Unions so as to repeal specific reference to GFTUY. There is a marked difference, according to the Committee, between a legally imposed monopoly and a voluntary grouping of workers.<sup>416</sup>

As for Kuwait, the ILO had considered that "the requirement of an excessively high minimum number of trade unions to establish a higher-level organization conflicts with Article 5 of the Convention No. 87 and with the principles of freedom of association."<sup>417</sup> It added that the current law does not allow for the establishment of more than a Federation, so it recommended that the Kuwaiti government takes necessary measures to include in the new draft law the right of workers to establish trade union organizations and federations of their own choosing.<sup>418</sup>

english/23e2006.pdf

413. Ibid.

414. The ILO Committee states that "[w]hen only one confederation of workers may exist in a country, and the right to establish federations is limited to such federations as may be established by the unions mentioned in the law... This is incompatible with Article 5 of Convention 87" International Labour Organization, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition 2006, at 716, available at <http://www.ilo.org/ilolex/english/23e2006.pdf>

415. CEACR: Individual Observation concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Yemen (ratification: 1976) Published: 2007, available at <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=9114&chapter=6&query=Yemen%40ref&highlight=&querytype=bool&context=0>

416. Ibid.

417. Supra, note 412.

418. ILO, CEACR: Individual Observation concerning Freedom

## *Prohibiting undefined "political" activities*

The three countries prohibits NGOs and trade unions (except Yemen) to be involved in political activities without defining and determining what exactly they consider to be "political". The Special Representative stresses that such prohibitions should be clearly specified to avoid arbitrary decisions taken by the authorities and recommends that no restrictions should be imposed on activities in the defense of human rights, provided that they respect the basic principles of transparency and non-violence. Any restriction on the ground of "public order/morals/ethics" and any criteria limiting the right to freely associate must be adequately detailed and any human rights-related activities must be definitely excluded from these restrictions.<sup>419</sup>

Furthermore the Special Representative considers that "the legality of an organization's purposes and its conformity with the law should be reviewed only when a complaint has been lodged against the organization. Only an independent judicial body should be given the authority to review an organization's purposes and determine whether they are in breach of existing laws."<sup>420</sup>

The prohibition placed on trade unions from engaging in any political activity is considered a violation of Article 3 of Convention 87.<sup>421</sup> The ILO affirmed that "*legislative stipulations prohibiting all political activities for trade unions give rise to serious contradictions with regard to the provisions of the Convention. Therefore, some degree of flexibility in legislation is desirable so that the appropriate balance can be achieved between, on the one hand, the legitimate interest of organizations expressing their viewpoint on matters of economic and social policy affecting their members and workers in general, and the separation of political activities*

of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Kuwait, Published: 2007, available at <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=9069&chapter=6&query=Kuwait%40ref&highlight=&querytype=bool&context=0>

419. Special Representative Report 2004, at III, 82, Good practices and recommendations in conformity with the Declaration, recommendations of the Special Representative of the Secretary-General on Human Rights Defenders.

420. Special Representative Report 2004, at III, 82, Good practices and recommendations in conformity with the Declaration, recommendations of the Special Representative of the Secretary-General on Human Rights Defenders.

421. CEACR: Individual Observation concerning Convention No. 87, Freedom of Association and Protection of the Right to Organise, 1948 Kuwait, published: 2003, available at <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=6712&chapter=6&query=Kuwait%40ref&highlight=&querytype=bool&context=0>

from trade union activities in the strict sense of the term, on the other hand.”<sup>422</sup>

### **Refusal or Rejection of Registration**

The three countries give the Administration the right to object to, or refuse altogether, the registration of an association in a variety of ways. In Bahrain, the laws stipulate that the silence of the administrative authority on an application for registration is an implicit rejection. Conversely, in Yemen, the silence of the administrative authority is an implicit approval. In Kuwait, there is no provision regarding the silence of the administrative authority.

The UN Special Representative on human rights defenders emphasized that where a registration system is in place, the law must set short time limits for the state to respond to the applications. Additionally, the decisions to deny registration should be fully explained and cannot be politically motivated. Failure to provide a response should result in the NGO being considered as legally operative.<sup>423</sup>

In each of the countries, the criteria for approving or rejecting an application use vague, general wording that gives the authorities t broad discretion in interpreting the provisions concerned and thus in making the final decision regarding the registration. This clearly contradicts Article 22 of ICCPR which states that in a democratic society “*the restrictions should be prescribed by law and in interest of national security or public safety, public order, the protection of public health or morals or the protection of the rights of freedoms of others.*”<sup>424</sup> the Special Representative who notes that “*criteria for registration included in national laws, where they exist, are frequently ambiguous enough to allow authorities broad discretion in their interpretation, resulting in arbitrary denial of registration for human rights organizations. In one country, registration can be denied based*

422. ILO, CEACR: Individual Observation concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Kuwait, Published: 2007, available at <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=9069&chapter=6&query=Kuwait%40ref&highlight=&querytype=bool&context=0>

423. Special Representative Report 2004, at III, 82, Good practices and recommendations in conformity with the Declaration, recommendations of the Special Representative Report of the Secretary General on Human Rights Defenders at (c).

424. ICCPR, Article 22 para 2.

on an assessment that an NGO’s activities do not strive towards the “public interest”, without defining what that means. In other countries, authorities are granted wide powers to decide whether a new NGO is needed in a given field and can require organizations to change their objectives. In yet another country, registration can be denied if the applying organization is deemed to be “undesirable” by the registration authorities, once again not providing a definition of this notion or that its proposed activities are “illegal”.<sup>425</sup>

### **Possibility of Appeal against Rejection**

While the ability of NGOs to challenge a negative decision before an independent court is considered a main guarantee for freedom of association,<sup>426</sup> only Bahrain and Yemen allow for appeals against a negative decision before a judicial court. However, the process appears to be lengthy, particularly in cases where the rejection was implicit.

### **Control and interference over authorized associations**

#### ***Interference in internal management***

The authorities interfere in the internal affairs of associations by imposing comprehensive regulation of the internal management of associations, setting rules for general assemblies and board meetings, attending the general assemblies and retaining the right to hold elections and entire meetings, requesting annual reports and copies of management decisions. This blatantly violates international standards relating to freedom of association. The Special representative notes in this respect that:

*Where State authorities are given the right to monitor and interfere in the management of NGOs, defenders have seen their independence and work threatened. In one State, the law grants the authorities the right to monitor the election of an organization’s board members and to request that an internal decision be withdrawn when it*

425. Special Representative Report 2004, at III, 57.

426. Ibid, at III, 59.



*is deemed to be in conflict with national regulations.*<sup>427</sup>

The Special Representative recommends that States should be legally barred from interfering with the management structure and activities of NGOs. In particular, the Representative encourages States to repeal legal provisions allowing for any State control of activities carried out in defense of human rights. Where concern arises regarding the activities of a particular organization, such concern must be brought before a fair, impartial and independent judicial authority through proceedings that are transparent and conducted in accordance with the principles of due process, open to public and international scrutiny.<sup>428</sup>

The executive authorities should issue regulations or executive by-laws to explain the implementation of legislature. But it appears that these by-laws set rules and conditions that are not actually in conformity with the laws. For example in Yemen, the by-law of the Law of Association gives the administrative authority the right to halt the execution of the decisions taken by the associations' board. Another example is the practice of renewal of authorization, a condition neither foreseen in the law nor in the bylaw.

### ***Control over foreign funding***

In the three countries, the level of control over foreign funding depends on the categories of association. In Yemen, associations are required to inform the authorities of such transactions, while in Bahrain and Kuwait the authorities have to give their prior approval for such operations.

The HRC and the Committee of Social, Economic and Cultural Rights as well as the Special Representative have stressed that foreign funding should be accessible and unrestricted. The Special Representative argues *that governments have to permit NGOs to access foreign funding as part of international cooperation, to which civil society is entitled like governments.* Transparency is the only legitimate requirement for NGOs.<sup>429</sup>

427. Ibid , at III, 63.

428. Special Representative Report 2004 , at III, 82, Good practices and recommendations in conformity with the Declaration, recommendations of the Special Representative of the Secretary-General on Human Rights Defenders

429. Special Representative Report 2004, at III, 82, Good

Both Bahrain and Kuwait restrict trade union access to foreign funding. The Committee on ECSR considers that the control on foreign funding available for associations infringes their right to freedom of association and the right to form trade unions.<sup>430</sup> The ILO Committee considers that it is to the “organizations themselves to decide whether they shall receive funding for legitimate activities to promote and defend human rights and trade union rights”.<sup>431</sup>

In addition ILO states that “trade unions should not be required to obtain prior authorization to receive international financial assistance in their trade union activities.”<sup>432</sup> The ILO further states, that “[a]ll national organizations of workers and employers should have the right to receive financial assistance from international organizations of workers and employers respectively, whether or not they are affiliated to the latter.”<sup>433</sup>

Foreign financial support of political parties is strictly prohibited. In Yemen, even donations from moral persons are not allowed. Prohibiting political parties from receiving foreign funding does not contradict international law. The draft General Comment on Article 25 of the ICCPR<sup>434</sup> (participation in public affairs) mentions that to ensure transparency in funding, paragraph 25 obligates States parties to require political parties to disclose all sources of contributions they receive from individuals, corporations and organizations. However, the last version of the GC omitted any mention of the funding issue.<sup>435</sup>

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practices and recommendations in conformity with the Declaration, recommendations of the Special Representative of the Secretary general on Human Rights Defenders at (f)

430. CESRC, Summary record of the 11th meeting : Egypt. 08/05/2000, E/C.12/2000/SR.11. available at <http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/4c8bd7213e4a804c802568dc005755e9?OpenDocument>

431. International Labour Organization, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition 2006, at 494, available at <http://www.ilo.org/ilolex/english/23e2006.pdf>

432. International Labour Organization, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition 2006, at 744, available at <http://www.ilo.org/ilolex/english/23e2006.pdf>

433. Ibid, at 743, available at <http://www.ilo.org/ilolex/english/23e2006.pdf>

434. HRC, , Summary record of the 1493rd meeting, 20/10/96, CCPR/C/SR.1493, Draft general comment on Article 25 of the Covenant, available at <http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/59022f96612ed335802565d200574169?OpenDocument&Highlight=0,funding>

435. HRC, General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25), 12/07/96, CCPR/C/21/Rev.1/Add.7, General Comment No. 25 available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?OpenDocument)



## ***Right to Strike***

Only Yemen respects the right to strike. Bahrain and Kuwait have made reservations correspond with the non-respect of the right of strike in both countries national laws.

The right to strike is considered as “necessary to safeguard the exercise specifically of trade union rights such as (...) the right to strike in non-essential services.”<sup>436</sup> The right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services which, if interrupted, would endanger the life, personal safety or health of the whole or part of the population.<sup>437</sup>

## **Repression that may lead to dissolution**

The Bahraini legal provisions allow for the suspension of NGOs whereas Kuwaiti and Yemeni laws are silent on this issue. In some cases, as noted by the Special Representative, governmental bodies such as ministries and territorial administrations have the authority to suspend the activities of NGOs without prior judicial review, for example, suspensions on grounds of “disturbance to public order”. In such cases, ministers are granted the authority to dissolve any association seen to depart from its original objective or whose activities seriously undermine public order or state security. While this ministerial decision may be challenged before an administrative court, the provisions give state apparatus discretionary power sufficient to end the operations of NGOs.<sup>438</sup>

As such legal proceedings, even when they do not result in the actual closure of human rights organizations, constitute a serious constraint on the time, financial and human resources of human rights defenders,<sup>439</sup> the Special Representative recommends that the power to suspend the activities of human rights groups should be granted exclusively to judicial courts, only in situations of a clear and imminent threat

that may directly result from such activities and when this situation is objectively ascertained.<sup>440</sup>

The Yemeni legal provisions entitle only a judicial court to order the dissolution of NGOs. It is unclear if court’s decision is subject to appeal. Alternatively, although Bahraini law does provide for administrative dissolution, such dissolution may be challenged before a judicial court. Slightly more restrictive, the Kuwaiti law allows for administrative dissolution and includes no possibility to appeal against the decision. Also problematic for associations are the declared grounds for dissolution: such as “serious breach of the provisions of the law; the violation of the stipulated conditions regarding foreign financing and for joining foreign entities”. These are ambiguous enough for various interpretations and thus may be manipulated arbitrarily by the administrative authorities. In all events, the three countries prohibit members from continuing activities during court proceedings.

The HRC notes that the requirements of paragraph 2 of Article 22 of the ICCPR indicate that the reasons justifying the dissolution of an NGO must be prescribed by law, such as is necessary in a democratic society and for the interest of national security or public safety, public order and the protection of public health or morals or the protection of the rights of freedoms of others. The Special Representative expressed concern over the possibility of misusing provisions regarding the suspension and dissolution of organizations and noted that “In a number of countries, the law grants the Ministry of Security, or its equivalent, the right to issue warnings to organizations. (...) Authorities, in particular ministries have abused their power to issue warnings as a means of intimidating and threatening human rights NGOs. A significant number of NGOs have been sued or shut down under this procedure”. It was further elaborated that the actions taken by the government against NGOs must be proportionate; as such, administrative irregularities or non-essential changes in the specifics of an organization can never be considered as sufficient grounds for closing down an organization. Also, such decisions should necessarily be subject to appeal and judicial review.<sup>441 442</sup>

436. ILO, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition 2006, at 388 -395, available at <http://www.ilo.org/ilolex/english/23e2006.pdf>

437. Ibid, at 500, available at <http://www.ilo.org/ilolex/english/23e2006.pdf>

438. Special Representative Report 2004, at III, 72.

439. Ibid, at III, 74.

440. Ibid, at III, 82, (r) Good practices and recommendations in conformity with the Declaration, recommendations of the Special Representative of the Secretary General on Human Rights Defenders.

441. Special Representative Report 2004, at III, 71.

442. Ibid, at III, 82, (s) Good practices and recommendations in conformity with the Declaration, recommendations of the Special Representative of the Secretary General on Human Rights Defenders.

In conformity with the previously mentioned principles, the dissolution of political parties or associations in Bahrain and Yemen can be decided only by a judicial decision. The same applies for the dissolution of trade unions in the three examined countries, in conformity with the declaration of the ILO Committee on Freedom of Association.<sup>443</sup>

### **Penalization for Membership of Non Registered or Dissolved Associations**

The three countries punish by prison and fine associations for starting activities before registration. The Special Representative considered this issue and noted that a common feature of many laws that restrict freedom of associations is the criminalization of non-registered entities.<sup>444</sup> The Special Representative recommends in this respect that NGOs should be presumed to be operating legally until it is proven otherwise, in particular, during the entire registration process.<sup>445</sup>

### **Inadequate Protection against anti-union discrimination**

National laws contain provisions protecting trade unionists from anti-union discriminatory measures. However there are identifiable shortcomings. Both Kuwait and Yemen do not specify the consequences for acts of anti-union discrimination and fails to protect the worker from losing his/her job. Only Bahrain provides effective protection and remedies through compensation and reinstating workers to their positions if an act of dismissal was taken due to their trade union activities. These provisions contained in the Bahraini laws comply with ILO directives regarding anti-union discrimination protection which constitutes one of the most essential guarantees of workers' freedom of association, including protection against

443. This declaration states that dissolution of unions is "a measure which should only occur in extremely serious cases; such dissolutions should only happen following a judicial decision so that the rights of defense are fully guaranteed" International Labour Organization, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition 2006, at 699, available at <http://www.ilo.org/ilolex/english/23e2006.pdf>

444. Special Representative Report 2004, at III, 51.

445. Ibid, at III, 82, Good practices and recommendations in conformity with the Declaration, recommendations of the Special Representative of the Secretary General on Human Rights Defenders.

discrimination in hiring and dismissal for trade union related activities.<sup>446 447</sup>

### **Discrimination between Nationals and Non-Nationals**

The three countries have demonstrated various degrees of discrimination between nationals and non-nationals in terms of the right to form or join associations or trade unions, in contravention to their international human and labour rights obligations.

In Bahrain and Yemen, migrant workers may form or join NGOs and/or trade unions provided that they are not exclusively composed of foreigners. In Kuwait they may join associations only as supporting members deprived of the right to vote or stand for elections. As for trade unions, they can join on the condition of having resided in Kuwait for at least five years.

The HCR General Comment (15) recalls that (...) State party must ensure the rights in the Covenant to "all individuals within its territory and subject to its jurisdiction" (ICCPR art. 2, para. 1). In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness.<sup>448</sup>

ILO stresses that all workers should have the right to form or join trade unions without discrimination. The discrimination against migrants' rights in terms of full membership and member rights violates the basic principle of non-discrimination between nationals and non-nationals.<sup>449</sup> Similarly, ILO considers that all workers regardless of race, nationality or other factors should be permitted to access trade union posts and stand for elections, at least after a reasonable period of residence in the host country.<sup>450</sup> The ILO Committee on Freedom of Association noted that "[w]ith regard to the

446. International Labour Organization, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition 2006, at 769 et s., available at <http://www.ilo.org/ilolex/english/23e2006.pdf>

447. ILO, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition 2006, at 813, available at <http://www.ilo.org/ilolex/english/23e2006.pdf>

448. HRC, General Comment 15 adopted on 22/7/1986 at para.1, available at <http://www1.umn.edu/humanrts/arabic/hrc-gc15.html>

449. International Labour Organization, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition 2006, at 216, available at <http://www.ilo.org/ilolex/english/23e2006.pdf>

450. Ibid, at 420, available at <http://www.ilo.org/ilolex/english/23e2006.pdf>

denial of the right to organize for migrant workers in an irregular situation, the Committee recalled that all workers, with the sole exception of the armed forces and the police, are covered by Convention No. 87,” and it therefore requested that the government take the terms of Article 2 of Convention No. 87 into account, in considering the legislation in question.<sup>451</sup>

## RECOMMENDATIONS

The International Federation for Human Rights and the Arab Institute for Human Rights urge

### The Bahraini, Kuwaiti and Yemeni authorities:

## CONCLUSION

Restrictions on freedom of association of trade unions, political parties and human rights NGOs subsist in Bahrain, Kuwait and Yemen, to various levels. Undue restrictions in the three countries include the refusal of registration, sometimes on vague grounds; the interference in the internal management of associations; and discrimination against non-citizens. Other restrictions vary between the three countries. For example, the lack of protection against anti-union discrimination (Yemen and Kuwait); the widespread power of the authorities to suspend (Bahrain) or dissolve NGOs (Bahrain and Kuwait); the control over foreign funding (Bahrain and Kuwait); and undue restrictions on the right to strike (Bahrain and Kuwait).

The willingness of the governments in each of the three countries to allow for participation of civil society in public affairs is a fairly recent development and as a result, this relationship seems to lack a sense of mutual trust. On the one hand, the government regards these entities as a threat, having hidden political agendas. On the other hand, civil society organizations regard the government's declaration to maintain an open, pluralist society as only cosmetic, illusory one, the real intention of the government being to maintain power in its own hands.

As Bahrain, Kuwait, and Yemen are currently amending several of their respective laws of association, the effective participation of the civil society in the elaboration of more liberal laws that would guarantee freedom of association in theory and in practice would indeed be seen as a positive and encouraging sign of greater cooperation.

451. Ibid, at 214, available at <http://www.ilo.org/ilolex/english/23e2006.pdf>

- to ratify all international human and labour rights instruments pertaining to the right to freedom of association and to lift all reservations made at the time of ratification of these instruments ;
- to amend the relevant national laws accordingly and in particular,
  - Regarding the right to associate and establish an association:
    - to suppress from their legislation pertaining to freedom of association all vague provisions allowing for discretionary interpretation and broad restrictions undermining the right to freedom of association;
    - to adopt a policy of “declaration” or “notification” rather than an *a priori* authorization
    - to encourage the formation of human rights NGOs and more generally, not to restrict the establishment of associations because of the presence of another association with similar objectives and/or the limitation to one association only; and to allow the creation of more than one trade union per establishment.
  - to enact more liberal laws pertaining to political parties
- Regarding the right of an individual to join or not an association, including the protection against discrimination based on citizenship:
  - to amend their legislation to guarantee the right to freedom of association to nationals and non-nationals residing and working in the country without any discrimination;

- to amend their trade union laws in order to be in line with international labour standards to ensure to all workers , including domestic workers, workers in the public sector and migrant workers, (with the exception of the armed forces and the police as permitted by the international standards) the right to organize;

- Regarding the right to raise financial resources:

- to ensure and facilitate associations' access to funding, including from foreign sources, (particularly for the purpose of defending human rights) as access of NGOs to foreign funding is considered as an integral element of international cooperation, provided that transparency is guaranteed.

The law may establish restrictive conditions for the funding of political parties.

The law may also provide for the establishment of a control mechanism over foreign financial movements in order to prevent terrorist activities.

- Regarding the right to affiliate with other national and international organizations:

- to amend their legislation in order to ensure that the right of organizations, federations and confederations to affiliate with international entities is not subjected to prior administrative authorization.

- Regarding the respect of the principle of non-interference in the internal management of associations by the authorities:

- to enact laws preventing the administrative authorities from interfering whatsoever in the managerial structure and activities of NGOs and associations in general. In particular, legal provisions allowing for State control of activities carried out in defense of human rights should be abolished. Where concern arises with the activities of a particular organization, such concerns must be brought before a fair, impartial and independent judicial authority through proceedings that are transparent, conducted in accordance with the principles of due process, open to public and international scrutiny.

- to remove the general prohibition of

political activities by trade unions for the promotion of their specific objectives as they are contrary to the principles of freedom of association.

- to clearly define what constitute “unauthorized activities” and in particular “political activities” for NGOs as the absence of definition of the term often leads to the prohibition of NGOs from carrying out activities in their mandate, in violation of the right to freedom of association;

- Regarding the right of individuals not to be penalized for belonging to a non registered association:

- to ensure that dissolution of associations strictly resorts to the competence of a Judiciary that guarantees a fair and due process.

Furthermore, fundamental freedoms which follow from the right to freedom of association such as the right to strike and to peaceful assembly should be fully guaranteed.

**The Bahraini, Kuwaiti and Yemeni civil societies :**

- to work jointly on a draft law and/ or provisions pertaining to freedom of association which comply with the international human and labour rights standards; and to participate in initiatives launched by the authorities in the process of amending or elaborating new laws related to freedom of association ;
- to monitor the effective implementation of freedom of association at the national level;
- To comply with international standards in their internal structure, in particular with regard to the principle of non discrimination between nationals and non nationals.

**The international community:**

- The Office of the UN High Commissioner for Human Rights (OHCHR) and the ILO Committee on Freedom of Association should be more active in providing technical assistance to these countries for the elaboration of appropriate legislations and training on human rights. They are also



requested through all their mechanisms available (Treaty Monitoring Bodies, Special Procedures as well as the Universal Periodic Review) to duly monitor the practical implementation of freedom of association in the three countries;

- The UN Special Rapporteur on Human Rights Defenders should be solicited in order to: examine the situation of freedom of association more closely; promote and protect this basic and fundamental freedom; establish cooperation and conduct dialogue with governments and other interested actors on the promotion and effective implementation of the right to freedom of association;
- The ILO Committee of Experts on the Application of Conventions and Recommendations is requested to follow up on the observations and other direct requests addressed to Kuwait and Yemen in order to ensure that appropriate measures have been taken to curb infringements to provisions of ILO conventions.
- FIDH recommends to the European Union, based notably on its Guidelines on human rights defenders of 2004, to address the issue of freedom of association in the framework of its dialogue with the members of the Gulf Cooperation Council.

## ANNEXES

### ANNEX 1 : WORKSHOP CONCLUSIONS

#### **The Arab Institute for Human Rights and The International Federation for Human Rights in cooperation with the Kuwaiti Association for Human Rights with the support of the European Union**

#### **Regional Seminar: “Freedom of Creating Association in the Gulf Countries: NGOs, Trade Unions and Political Parties”**

#### **Kuwait**

**17-19/11/2008**

### **The Final Recommendations of the Seminar**

The participants of a regional seminar titled “The Freedom to create associations in the Gulf Countries: NGO’s, unions and political parties” convened as representatives for organizations, unions, parties, governmental bodies and experts from 11 different Arab and non-Arab states. Taking as a point of departure the field study prepared by the International Federation for Human Rights (FIDH) and the Arab Institute for Human Rights entitled “Freedom of Association in Bahrain, Kuwait, and Yemen”, the participants arrived at the following recommendations:

#### ***I. Concerning Trade Unions***

1. The Right of Establishment: Every group of workers or employees in the public and private sectors may establish or join trade unions to defend their interests- material or otherwise. This right is for all individuals without discrimination between nationals and non-nationals and is contingent only upon announcement without requiring prior permission.

2. Trade unions enjoy a juristic personality, their activities and functions are stipulated in formative statutes and internal system.

3. Trade unions are entitled to create or joining federations and organizations freely, on national, regional and international levels.

4. The right to strike is an inherent right extended to trade unions and should not be restricted by procedures that limit it in practice.

5. Trade unions collect their finances from:

- Membership fees
- Donations
- Income raised from activities

The union has is free to invest and expand these funds. It also has the right to collect finances from national and international organizations that do not compromise its independence.

6. The trade union’s finances are subject to the monitoring of its general assembly.

7. Workers must be protected from union-based discrimination and cannot under any circumstances be dismissed or punished for union activities; unionists are entitled to paid leaves of absence to partake in union activities and union

leaders should enjoy particular immunity.

8. It is the right of a worker who has been dismissed due his/her union activities to return to their position following a judicial decision and receive compensation for the duration of the dismissal.

9. A union may only be dissolved:

- Upon a decision is issued from the general assembly
- Upon a judicial decision issued in abidance with the conditions of a fair and impartial hearing.

## ***II. Non-Governmental Organizations and Political Parties***

1. An NGO is formed upon proclamation and announcement in official publications.

Membership in NGOs is open to nationals and non-nationals and should not be restricted by a numerical limit. Non-nationals have the right to establish NGOs given that they respect national sovereignty and avoid partisan activities. If conflict occurs regarding the legality of its creation, the judicial authority is the body responsible for resolving the conflict.

2. NGOs may freely undertake the activities their field without acquiring prior permission to do so.

3. NGOs collect their finances from:

- Membership fees
- Donations and gifts
- Income raised from activities.

NGOs have the right to acquire funding from private or foreign sources that do not compromise their independence and in abidance with regulations of transparency and the submittal of periodical reports to the general assembly of the NGO.

4. NGOs are entitled to freely join international organizations and create national, regional or international networks.

5. NGO activists enjoy the legal protections stated in the relevant international declarations and covenants.

6. An NGO may be dissolved upon a voluntary

decision made by the members of the NGO and may not occur according to a decision made by the executive authority. Involuntary dissolution is the responsibility of the judicial authorities and the reasons must be those included in the Law of Associations.

## ***III. Political Parties***

1. A political party is formed upon proclamation and announcement in official publications. Membership is open for nationals and should not be restricted by a numerical limit. Political parties should not be established on religious, ethnic, sectarian or regional or lingual grounds. If conflict occurs regarding the legality of its creation, the judicial authority is the responsible body to resolve the conflict.

2. Political Parties are free to undertake their activities without acquiring previous permission to do so.

3. Political Parties collect their funds from

- Membership fees
- Donations and gifts
- Income raised from activities

Political parties have the right to acquire funding from private or foreign sources, that do not compromise their independence and in abidance with regulations of transparency and the submittal of periodical reports to the relevant body.

4. The dissolution may be a voluntary decision made by the members and may not occur according to a decision made by the executive authority. Involuntary dissolution is the responsibility of the judicial authorities and the reasons must be those included in the Law of Political Associations

## **ANNEX 2: LIST OF INTERVIEWS, BAHRAIN**

Interview with Directorate of Legal Affairs, 17/2/2008

Interview with General Federation of Bahrain Trade Unions, 18/2/2008

Interview with Ministry of Foreign Affairs, 18/2/2008

Interview with Ministry of Justice, 18/2/2008

Interview with Ministry of Labour, 18/2/2008

Interview with Ministry of Social Development, 18/2/2008

Interview with National Action Society on 19 February 2008

Interview with the Islamist Action Society on 19 February 2008

Interview with the Constitutional Conference Chairman, 19/2/2008

Interview with Bahrain Human Rights Society, 17/2/2008

Interview with Bahrain Center for Human Rights, 20/2/2008

Interview with Bahrain Youth Human Rights Society, 16/2/2008

Interview with the Bahraini Women's Union, 17/2/2008

Interview with Migrant Workers Protection Society, 20/2/2008

Interview with Ministry of Justice, 18/2/2008

Interview with Haq Movement, 17/2/2008

Interview with Ministry of Labor, 20/2/2008

Interview with Batelco Trade Union, 19/2/2008

Interview with Trade Union of the Post, 17/2/2008

Interview with a member of Electricity and water Union, 21/2/2008

Interview with Electricity and water Unions, 18/2/2008

Complementary interview with Bahrain Youth Human Rights Society, 4/6/2008

## **Interviewees:**

### **GOVERNMENT**

Ministry of Social Development, Fatima Al-Balooshi, Minister  
Ministry of Justice, Khalid Bin Ali Al Khalifa, Minister

Ministry of Foreign Affairs, Dr. Nazar Baharna-  
Minister of State for Foreign Affairs

Ministry of Labor, Abd Karim Al Fardan, Labor  
Organizations, Director

Directorate of Legal Affairs, Abdulla Bin  
Hassan Al Boainain, Head

### **NGOs**

Bahrain Youth Human Rights Society,  
Mohammad Maskati, President

Bahrain Human Rights Society, Abdulla Darazi,  
President

Bahrain Women Union, Mariam Rowaie,  
President

Bahrain Center for Human Rights, Abdulhadi  
Al-Khawaja, President

Migrant Workers Protection Society, Mehru  
Cyrus Vesuvala, General Secretary

Public Freedoms Scoeity, Nizar Qare'

### **POLITICAL ASSOCIATIONS**

Haq Movement, Hassan Msheima', Chairman

Islamic Action Society, Radwan Mosswi and  
Fahmi Abd Saheb, Board members

National Democratic Action Society, Ibrahim  
Sharif, Chairman

Constitutional Conference, Ibrahim Kamal  
Eddine, Chairman

### **TRADE UNIONS**

Postage Trade Union, Najia Abd Ghaffar- Vice

Chairman	Interview with MSAL, Trade Unions Organizations Directorate, 12/2/2008
Electricity and Water Trade Union, Salman Sayyed Hashem, President	Phone interview with Me. Osama Munawer, 14/2/2008
Journalists Union, Mohammad Fadel, Chairman	Interview with the Kuwait Democratic Foundation, 10/2/2008
General Federation of Bahrain Trade Unions, Abdul Qaffar Abdulla, General Secretary and Abdulla Hussein - AGS/ Arab and Int'l Relations	Interview with Islamic Constitutional Movement, 11/2/2008
Batelco Trade Union, Makki Issa, President	Interview with Kuwait Association for Basic Evaluators of Human Rights, 11/2/2008
Electricity and Water Trade Union, Mohammad Habib, Member	Informal meeting with one member of KHRS, 10/2/2008
	Interview with the Popular Committee for the Bidoun Affairs, 14/2/2008

### **ANNEX 3: LIST OF INTERVIEW, KUWAIT**

Interview with ILO Representative in Kuwait, 12/2/2008 and complementary interview on 5/6/2008

Interview with the administrative secretary of the Parliamentarian Human Rights Committee (Mozaffar Rashed), 13/2/2008

Interview with Dr. Anwar Al-Fuzaie, Member of ILO CEACR, 12/2/2008

Interview with the Legal Advice Directorate, 14/2/2008

Interview with Constitutional Law professor, Dr. Mohammad Moqatei, 11/2/2008

Interview with the Ministry of Social Affairs and Labour, Social Development Directorate, 12/2/2008 and complementary interviews on 5/5/2008 and 5/6/2008.

Interview with Kuwait Human Rights Society, 10/2/2008

Interview with Islamic Constitution Movement, 11/2/2008

Phone interview with Omma Party, 14/2/2008

Interview with Kuwait Trade Union Federation, 11/2/2008

### **Interviewees**

#### **GOVERNMENT**

Legal Advice Directorate, Walid Bu Rabba

Parliamentarian Human Rights Committee, Mozaffar Rashed

Ministry of Social Affairs and Labour, Trade Unions Organizations Directorate, Nabil Baloul

Ministry of Social Affairs and Labour, Social Development Directorate, Mansour al Mansour

Ministry of Justice, Mohammad Ansari

#### **NGOs**

Kuwait Association for Basic Evaluators of Human Rights, Dr. Adel Damkhi

Kuwait Human Rights Society, Board members

Popular Committee for the Bidoun Affairs, Mosa'ed Shommari

#### **TRADE UNIONS**

Kuwait Trade Union Federation, Khaled Azimi and Awad Motairi



## **POLITICAL GROUPS**

Islamic Constitution Movement, Nasser Sane'  
Kuwait Democratic Foundation, Abdalla Nibari  
Ommah Party, Sajed Abdali

## **INTERNATIONAL ORGANIZATIONS**

ILO Representative in Kuwait, Thabet Haroun

## **EXPERTS**

Dr. Anwar Al-Fuzaie  
Dr. Mohammad Moqatei  
Dr. Ghanem al Najjar

## **LAWYERS**

Me. Osama Monawer

## **ANNEX 4 : LIST OF INTERVIEWS, YEMEN**

Interview with Ministry of Legal Affairs,  
29/1/2008

Interview with MSAL, 27/1/2008

Interview with the Supreme Commission of  
Elections and Referendum, 28/1/2008

Interview with Ministry of Human Rights,  
27/1/2008

Interview with Yemeni Observatory for Human  
Rights, 26/1/2008

Interview with Democracy School, 26/1/2008

Interview with Yemeni Teachers' Union,  
28/1/2008

Interview with Petroleum union, 29/1/2008

Interview with HOOD, 27/1/2008

Interview with Ministry of Social Affairs and  
Labour, 27/1/2008

Interview with Save the Children, 31/1/2008

Interview with National Organization for  
Defending Rights and Freedoms (HOOD),  
27/1/2008

Interview with Taghyeer Organization for  
Defense of Rights and Freedoms, 28/1/2008

Interview with Sisters Arab Forum, 26/1/2008

Interview with Yemeni Organization for Defense  
of Rights and Democratic Freedoms, 28/1/2008

Interview with Legal Aid and Formation Center  
(LFC), 31/1/2008

Interview with NSCO, 31/1/2008

Interview with Committee on Political Parties  
and Organizations Affairs on 29 January 2008

Interview with Nasserite Popular Unionist Party,  
representing "Joint Meeting" of opposition  
parties, 30/1/2008 and complementary interview  
7/6/2008

Interview with General Federation of Yemen  
Workers Trade Unions, 30/1/2008

Interview with the Chairman and a member of  
the Somali Committee, 30/1/2008

Interview with Haq Party, 31/1/2008

Interview with Federation of Popular Forces,  
31/1/2008 and complementary interview,  
7/6/2008

## **Interviewees**

## **GOVERNMENT**

Ministry of Justice, Dr. Yahya A. Al-Khazzan,  
Vice President of Technical Office

Ministry of Human Rights, Dr. Huda al Ban,  
Minister

Ministry of Social Affairs and Labor, Ali  
Saleh Abdalla, Undersecretary for Social  
Development

Ministry of Legal Affairs, Nadia Hasheri, Human  
Rights Officer

Ministry of Foreign Affairs, Department of International IGOs (UN) and Conventions, Ahmad Haddad, Director

Committee of Political Parties and Organizations Affairs, Mohammad Al Ammari, General Secretary

Committee of Elections and Referendum, Shayef Husseini, Secretary

## **NGOs**

Sisters Arab Forum for Human Rights, Amal Basha, Chairwoman

Democracy school, Jamal Chami, Chairman

Yemeni Observatory for Human Rights, Mohammad Mektari, President

National Organization for Defending Rights and Freedom (HOOD), Ahmad Arman, Executive Director

Yemeni Organization for the Defence of Human Rights and Democratic Freedom, Ali Dailami, Executive Director

Taghyeer Organization for Defense of Rights and Freedom, MP Ahmad Saif Hashed, President

NSCO, Faysal Mobarak Khalifi, President

Legal Aid and Formation Center, Me. Rakhsana Wali, Founding Member

Radfan Association, Mohammad Mohsen, President

Safe Childhood Center, Hiyam Mobarak

Committee for the Somali Interest, Conservation and Community Affairs, Mohammed Ali Hersi, Chairman, Yousef Diri, Member

## **INTERNATIONAL NGOS**

Save the Children Yemen (Regarding Somali Youth and Students), Walid Bashir

## **TRADE UNIONS**

General Federation of Yemen Workers Trade Unions, Mohammad Jadri, Chairman

General Trade Union of Petroleum, Chemicals and Mineral Products, Said Abd Mo'omen, Member of board

Yemeni Teachers Trade Union, Ahmad Rabahi, Member of board

## **POLITICAL PARTIES**

Joint Meeting- Opposition Political Parties, Sultan Atwany, Member of Nasserit Party

Haq Movement, Hussein Mohammad Zein - Ali Chari'I, Members of board

Federation of Yemeni Popular Forces, Abd Salam Razzaz- Vice Chairman

## **JOURNALISTS**

Yemen Times, Nadia Saqqaf

## **LAWYERS**

Me. Yahia Ghaleb

## **ANNEX 5 : List of ACRONYMS**

BHRC – Bahrain Human Rights Center

BHRS – Bahraini Human Rights Society

Bidoun Committee- Popular Committee of Bidoun Affairs

BYHRS – Bahraini Youth Human Rights Society

CAPPO – Committee for the Affairs of Parties and Political Organizations

CLAA – Center for Legal Aid and Awareness

FYPF – Federation of Yemeni Popular Forces

GFBTU – General Federation of Bahraini Trade Unions

GFYWTU – General Federation of Yemeni Workers Trade Unions

HOOD – National Organization for Defending Rights and Freedoms

HRC – Human Rights Committee

ILO - International Labor Organization Standards

KABE – Kuwait Association for Basic Evaluators of Human Rights

KHRS – Kuwait Human Rights Society

MSAL – Ministry of Social Affairs and Labor

MWPS – Migrant Workers Protection Society

NSCO – National Struggle for Corruption and Protection of General Property Organization

WJWB – Women Journalists Without Borders

## Establishing the facts

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis. FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

## Supporting civil society

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

## Mobilising the international community

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

## Informing and reporting

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

**The Arab Institute for Human Rights** was founded in 1989 at the initiative of the Arab Organization for Human Rights (AOHR), the Arab Lawyers Union (ALU) and the Tunisian League for the Defense of Human Rights (LTDH). The headquarters of the Institute is based in Tunis and since 2002 the Institute opened an office in Bierut.

## Mandate and Mission of the Arab Institute for Human Rights

The AIHR is a regional NGO, whose mandate covers geographically North Africa, the Middle East and the Gulf regions.

The fundamental mission of the Institute is the dissemination of the culture of human rights in Arab society, in accordance with the principles of the Universal Declaration of Human Rights in particular and the related international Human Rights instruments.

## Objectives

- Promoting human rights education as a tool to fight against intolerance, extremism and violence and a means to disseminate the principles and concepts of peace and tolerance, justice and democracy.
- Develop the thinking on issues related to human rights training and education and on the answers that will help the Arab Institute of Human Rights and the various actors in the Arab region, to process strategies and implement programs, and to monitor and measure their impact.
- Develop scientific research and academic programs specialized in the field of human rights education.
- Strengthen the expertise and methods of integrating human rights in the curricula and formal education.
- Develop the collection and analysis of local, regional and international experiences on human rights education and make them widely available to different users and beneficiaries - individuals and institutions concerned.
- Develop educational and training tools in the field of human rights education to provide the largest number of users and beneficiaries.

## Programs

The activities of the Institute cover the four main areas:

- Training and Education on Human Rights and Democracy
- Information and documentation
- Studies and research
- Communication

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PAO: Céline Ballereau



# FIDH represents 155 human rights organisations on 5 continents



International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection

of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention. ILO Conention 87 (1948) Article 2: Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing  
Article 3: organisations

without previous authorisation.  
1. Workers' and employers' shall have the right to draw

## About FIDH

- FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

- A broad mandate  
FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

- An universal movement  
FIDH was established in 1922, and today unites 155 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

- An independent organisation  
Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

*Find information concerning FIDH 155 member organisations on [www.fidh.org](http://www.fidh.org)*