



Arab Institute for Human Rights

# Freedom of Association in the Arabian Gulf The case of Bahrain, Kuwait and Yemen

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# **Executive Summary**

The present legal study on the right to freedom of association in three Arab Gulf countries was carried out in preparation of a regional seminar aimed at building civil society's 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 Mrs. Samira Trad to carry out the research in Bahrain, Kuwait and Yemen. The preliminary research started in October 2007 and the field missions took place in January and February 2008.

The report is limited to addressing the current legal and policy framework of the right to freedom of association and considers three 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 elements that constitute the basic and fundamental rights that guarantee an association may freely carry out its statutory activities: 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 was as well a component 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 policy-related perspectives, the legal aspects are still predominant in the analyses.

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 are in conformity with relevant international standards. The field research aimed at analyzing in more depth 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 met with five governmental bodies, six human rights NGOs, three political associations and one alliance of political associations, and six trade unions (see detailed list in Annex

In Kuwait, FIDH delegation met with five different governmental bodies and Parliamentarians; as well as the representative of the International Labor Organization in Kuwait and representatives from four NGOs, three political blocs, one Trade Union, three professors, and one consultant (see detailed list in Annex).

In Yemen, FIDH delegation met with 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 detailed list in Annex).

# 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>. More precisely, freedom of association « involves the right to join, form, and withdraw membership from groups, associations and partnerships of different kinds ». <sup>2</sup>

As regards human rights defenders, 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 specifies the definition of freedom of association as the right, 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>3</sup>.

Organizations that are constituted to actively engage in activities of public or private interest share a common characteristic in that they are non-profit; they are fundamentally distinguished from commercial enterprises by their legal and ethical restrictions on the distribution of profits to owners or shareholders. 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, i.e., civil society is civil institutions that do not practice authority and do not aim at economic profits..."<sup>4</sup>

Social theorists have long since made the argument that mankind cannot survive but in groups.<sup>5</sup> They state 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.<sup>6</sup> 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>7</sup>

<sup>1</sup> 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

<sup>2</sup> Mona Marshy, Freedom of Association with regard to Political Parties and Civil Society in the Middle East, North Africa, and the Gulf: A literature review, International Development Research Centre (IDRC), April 2005, available at : http://www.idrc.ca/uploads/user-S/12018943281Pub\_Mona\_Marshy\_doc.pdf

<sup>3</sup> This appellation refers to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Adopted by General Assembly resolution 53/144 of 9 December 1998.

<sup>4</sup> 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 <a href="http://www.icnl.org/knowledge/ijnl/vol9iss2/special\_1.htm">http://www.icnl.org/knowledge/ijnl/vol9iss2/special\_1.htm</a>

<sup>5</sup> Adam Ferguson, An Essay on the History of Civil Society [1767], Online Library of Liberty, available at <u>http://oll.libertyfund.org/index.php?option=com\_staticxt&staticfile=show.php%3Ftitle=1428&layout=html#chapter\_19</u> 702

<sup>6</sup> Adam Ferguson, An Essay on the History of Civil Society [1767], Online Library of Liberty, available at <a href="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</a>

<sup>7</sup> Adam Ferguson, An Essay on the History of Civil Society [1767], Online Library of Liberty, available at

The need to form associations is thus conceptualized as a natural phenomenon. People enter into associations with the aim of "securing their lives and their possessions".<sup>8</sup> Montesquieu considers that the modern state itself is an association. He says "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>9</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 associations by setting a term to their duration, and to reserve a right of dissolution in every case".<sup>10</sup>

Nevertheless the role of civil society is vital in a democraticy. A flourishing civil society is contingent upon the freedom and commitment of individuals pursuing their chosen ends, whether these are personal or communal.<sup>11</sup> The political component as such, endorsed by many civil society organizations plays an integral role in raising awareness and shaping better informed citizenry, who consequently, make better voting choices, participate in politics, and hold their governments more strictly accountable.<sup>12</sup> The European Court of Human Rights has repeatedly stated that the 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>13</sup>

In modern history, trade unions, political parties, and more recently, human rights organizations, have been prominent models of non-profit associations which aim at promoting, defending and protecting

http://oll.libertyfund.org/index.php?option=com\_staticxt&staticfile=show.php%3Ftitle=1428&layout=html#chapter\_19 702

<sup>8</sup> Henry Home, 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

<sup>9</sup> Charles Louis de Secondat, Baron de Montesquieu, Complete Works, vol. 1 The Spirit of Laws [1748], Online Library of Liberty, available at http://oll.libertyfund.org/index.php?option=com\_staticxt&staticfile=show.php%3Ftitle=837&layout=html

<sup>10</sup> Gustave de Molinari, The Society of Tomorrow: A Forecast of its Political and Economic Organization [1899], Online Library of Liberty, available at <a href="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</a>

<sup>11</sup> Richard Fries, The Legal Environment of Civil Society, available at http://www.lse.ac.uk/Depts/global/Publications/Yearbooks/2003/2003Chapter9.pdf

<sup>12</sup> Wikipedia, Civil Society, available at <a href="http://en.wikipedia.org/wiki/Civil\_Society">http://en.wikipedia.org/wiki/Civil\_Society</a>

<sup>13</sup> European Court for Human Rights, CASE OF CHURCH OF SCIENTOLOGY MOSCOW v. RUSSIA (Application no. 18147/02), available at http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en

their own rights and those of others. They are thus important and critical elements of what is currently known as "civil society".<sup>14</sup>

Today, the right to freedom of association is amongst the main pillars of human rights. Almost all major international human rights treaties guarantee the right to freedom of association. It is important to remark that the right to associate with others and form or join associations is essentially linked to freedom of expression and opinion, freedom of peaceful assembly, freedom of movement and freedom from human rights violations.<sup>15</sup> The legislative protection regarding freedom of association is rendered meaningless if there is no effective protection of the other fundamental human rights in the exhaustive meaning of the term.<sup>16</sup>

The right to freedom of association is strongly enshrined in the principles of international human rights law most basically through the Universal Declaration of Human Rights which is today gaining authority of customary international law,<sup>17</sup> and has been further entrenched in a number of generalist and specific international human rights treaties, such as:

- Articles 22 and 25 of the International Covenant on Civil and Political Rights.<sup>18</sup>
- Article 8 of the International Covenant on Economic, Social and Cultural Rights.<sup>19</sup>
- Articles 5 (d) (ix) and 5 (e) (ii) of the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>20</sup>
- Article 15 of the Convention Relating to the Status of Refugees.
- Article 15 of the Convention Relating to the Status of Stateless Persons.<sup>21</sup>
- Article 26 of the International Convention on the Protection of the Rights of All Migrant Workers

<sup>14</sup> Civil societies are often populated by organizations such as registered charities, development non-governmental organizations, community groups, women's organizations, faith-based organizations, professional associations, trade unions, self-help groups, social movements, business associations, coalitions and advocacy groups: What is civil society? Centre for Civil Society, London School of Economics, available at <a href="http://www.lse.ac.uk/collections/CCS/what\_is\_civil\_society.htm">http://www.lse.ac.uk/collections/CCS/what\_is\_civil\_society?</a>.

<sup>15</sup> Mona Marshy, Freedom of Association with regard to Political Parties and Civil Society in the Middle East, North Africa, and the Gulf: A literature review, International Development Research Centre (IDRC), April 2005, available at <a href="http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org">http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org">http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org">http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org">http://www.idrc.org</astyle="http://www.idrc.org">http://www.idrc.org</astyle="http://www.idrc.org">http://www.idrc.org</astyle="http://www.idrc.org">http://www.idrc.org</astyle="http://www.idrc.org">http://www.idrc.org</astyle="http://www.idrc.org">http://www.idrc.org</astyle="http://www.idrc.org">http://www.idrc.org</astyle="http://www.

<sup>16</sup> Mona Marshy, Freedom of Association with regard to Political Parties and Civil Society in the Middle East, North Africa, and the Gulf: A literature review, International Development Research Centre (IDRC), April 2005, available at <a href="http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org">http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org">http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org">http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org">http://www.idrc.org.sg/uploads/user-style="http://www.idrc.org">http://www.idrc.org</a>, and the Gulf: A literature style="http://www.idrc.org">http://www.idrc.org</a>, and the Gulf: A literature style="http://www.idrc.org">http://www.idrc.org</a>, and the Gulf: A literature style="http://www.idrc.org">http://www.idrc.org</a>, and the Gulf: A literature style="http://www.idrc.org" attractions.pdf</a>

<sup>17</sup> Article 20 of the Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948, available at http://www.un.org/Overview/rights.html

<sup>18</sup> International Covenant on Civil and Political Rights, adopted by the General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, available at http://www.unhchr.ch/html/menu3/b/a\_ccpr.htm

<sup>19</sup> International Covenant on Economic, Social and Cultural Rights adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, available at <u>http://www.unhchr.ch/html/menu3/b/a\_cescr.htm</u>

<sup>20</sup> International Convention on the Elimination of All Forms of Racial Discrimination, adopted by General Assembly resolution 2106 (XX) of 21 December 1965, entry into force 4 January 1969, available at <a href="http://www2.ohchr.org/english/law/cerd.htm">http://www2.ohchr.org/english/law/cerd.htm</a>

<sup>21</sup> Convention Relating to the Status of Stateless Persons, adopted on 28 September 1954 by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 526 A (XVII) of 26 April 1954, entry into force 6 June 1960, available at <a href="http://www2.ohchr.org/english/law/stateless.htm">http://www2.ohchr.org/english/law/stateless.htm</a>

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and Members of Their Families.<sup>22</sup>

 Article 5 of the International Labour Organization C87 Freedom of Association and Protection of the Right to Organise Convention, 1948<sup>23</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 :

- *a) The Right to associate and establish an association* Addresses the right of individuals to 'associate' and as such, establish associations.<sup>24</sup>
- b) The Right of an individual to join or not join an association Individuals should enjoy the right to form and join associations while also be protected from being forced to do so by legislation, the authorities or a specific association.<sup>25</sup>
- *c) The Right to raise financial resources* Addresses the ability of NGOs and trade unions to solicit, receive and utilize resources.<sup>26</sup>
- *d) The Right to affiliate with other national and international organizations* Contact with international human rights organizations is often crucial for local or national human rights groups.<sup>27</sup> Further, ILO Conventions guarantee the right of trade unions to affiliate with international organizations of workers and employers.<sup>28</sup>
- *e) The Right to protection from discrimination based on citizenship* All states should ensure that enjoyment of the rights guaranteed in its provisions is extended to all people under its [state] jurisdiction, with no discrimination as to (...) national origin, except for the political rights.<sup>29</sup>

Workers rights further include:

- **f)** The Right of individuals not to be penalized for belonging to a union Confirms that there should be no denial of employment of a person that belongs to a union, nor should such person be subject to firing if he or she is already in employment.<sup>30</sup>
- g) The Right of organizations to elect representatives and draw up their own rules and

<sup>22</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by General Assembly resolution 45/158 of 18 December 1990, available at <a href="http://www2.ohchr.org/english/law/cmw.htm">http://www2.ohchr.org/english/law/cmw.htm</a>

<sup>23</sup> ILOLEX, Database of International Labour Standards, C87 Freedom of Association and Protection of the Right to Organise Convention, 1948, available at http://www.ilo.org/ilolex/cgi-lex/convde.pl?C087

<sup>24</sup> HREA.org, Human Rights Learning Centre: Study Guide on the Human Right: Freedom of Assembly and Association, available at <a href="http://www.hrea.org/learn/guides/freedom-of-association.html">http://www.hrea.org/learn/guides/freedom-of-association.html</a>

<sup>25</sup> HREA.org, Human Rights Learning Centre: Study Guide on the Human Right: Freedom of Assembly and Association, available at <a href="http://www.hrea.org/learn/quides/freedom-of-association.html">http://www.hrea.org/learn/quides/freedom-of-association.html</a>

<sup>26</sup> HREA.org, Human Rights Learning Centre: Study Guide on the Human Right: Freedom of Assembly and Association, available at <a href="http://www.hrea.org/learn/guides/freedom-of-association.html">http://www.hrea.org/learn/guides/freedom-of-association.html</a>

<sup>27</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms Adopted by General Assembly resolution 53/144 of 9 December 1998, Preamble

<sup>28</sup> ILO Convention 87 "Freedom of association", Article 5, available at http://www.ilo.org/ilolex/cgi-lex/convde.pl?C087

<sup>29</sup> HREA.org, Human Rights Learning Centre: Study Guide on the Human Right: Freedom of Assembly and Association, available at <a href="http://www.hrea.org/learn/guides/freedom-of-association.html">http://www.hrea.org/learn/guides/freedom-of-association.html</a>

<sup>30</sup> ILO Right to Organise and Collective Bargaining Convention 98, 1949, Article 1, para 2 a-b, , available at http://www.ilo.org/ilolex/cgi-lex/convde.pl?C098

### constitutions. <sup>31</sup>

Stressing the principle of non-interference in the internal management of an organization by the authorities<sup>32</sup>.

The Human Rights Committee (HRC or the Committee) General Comment (3) states that "the obligation under the Covenant is 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>33</sup>

Yet, these rights are not absolute. The general rule clearly states that there should be no restrictions to these rights except for reasons of national security and public safety. Further, the right to freedom of association is not generally a "non-derogable" right under international law. It may be suspended, for example, in time of public emergency.<sup>34</sup>

For the International Labour law (ILO conventions), the only exception to the right to form and join an association applies to the police and armed forces who do not have the right to form professional associations if this is contrary to national law.<sup>35</sup>

In all its jurisprudence, the Human Rights Committee stresses that in accordance with ICCPR, article 22 (2), any restrictions or measures should be necessary for the following purposes:

to protect the national security and safety and that they are intended to protect against a real danger thereto;<sup>36</sup>

It 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>37</sup>

The Committee further observes that in order to justifiably interfere with freedom of association, any restriction on this right must cumulatively meet the following conditions of ICCPR Article 22:<sup>38</sup>

<sup>31</sup> ILO Convention 87 "Freedom of association", Article 3 available at http://www.ilo.org/ilolex/cgi-lex/convde.pl?C087

<sup>32 «</sup> Freedom of association requires the non-interference of the state in the formation and in the affairs of associations that function within the scope of law ». Carolina Rodriguez Bello, WHRnet, October 2003, http://www.awid.org/eng/Issues-and-Analysis/Library/Freedom-of-Association/(language)/eng-GB

<sup>33</sup> HRC, General Comment 3 Article 2 (Implementation at the national level), available at http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/c95ed1e8ef114cbec12563ed00467eb5?Open document

<sup>34</sup> See Human Rights Committee, GC 29 Article 4: Derogations during a state of emergency, Adopted at the 1950th meeting, on 24 July 2001, para.7, available at <a href="http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/CCPR.C.21.Rev.1.Add.13.En?Opendocument">http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/CCPR.C.21.Rev.1.Add.13.En?Opendocument</a>

<sup>35</sup> ILO Convention 87 "Freedom of association", Article 9, available at http://www.ilo.org/ilolex/cgi-lex/convde.pl?C087

<sup>36</sup> Human Rights Committee, Communication 1119/2002, Jeong-Eun Lee v. Republic of Korea available at http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/a0b3e37471239a41c1257091002bc2ec?OpenDocument&Highlight=0,asso ciation at 7.2

<sup>37</sup> Human Rights Commutee, Communication 1119/2002, Jeong-Eun Lee v. Republic of Korea available at http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/a0b3e37471239a41c1257091002bc2ec?OpenDocument&Highlight=0,asso ciation at 7.2

<sup>38</sup> Human Rights Committee, Communication 1274/2004, Viktor Korneenko et al. v. Belarus, views of 31 October 2006, available at

(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 measures should be well assessed and emphasizes that proportionality of measures/restrictions to the undertaken activities is crucial.<sup>39</sup> The Committee additionally stresses the need to evaluate the restrictions in bearing in mind the consequences incurring upon the [authors] and their association.<sup>40</sup>

The Committee stated clearly in its General Comments that the reference to "law" [in this context] is to the domestic law of the State party concerned.<sup>41</sup> Its stance, however, is that the relevant provisions of domestic law themselves, must be compatible with the Covenant. While this argument was particularly 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.

The Committee articulates that a country cannot use its internal laws to be relieved from abiding by the Covenant in its General Comment No. (31) which reads: "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>42</sup>

It thus follows, that unless Covenant rights are already protected by their domestic laws or 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.

The critical issue and decisive question highlighted by the Committee is whether the measures of interference with freedom of association were necessary for achieving one of the purposes set out in Article 22, paragraph 2.<sup>43</sup>

http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/58f5d4646e861359c1256ff600533f5f?Opendocument

http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/2fdbcde4a15b6c0dc1257234004ee25d?Opendocument, at 7.3

<sup>39</sup> Human Rights Commutee, Communication 1274/2004, Viktor Korneenko et al. v. Belarus, views of 31 October 2006, available at

http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/2fdbcde4a15b6c0dc1257234004ee25d?Opendocument, at 7.6

<sup>40</sup> Human Rights Committee, Communication 10932001 Boris Zvozskov et al. v. Belarus views of 17 October 2006, and 1274/2004, Viktor Korneenko et al. v. Belarus, views of 31 October 2006, available at http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/4b097910af933d2fc1257234004db127?OpenDocument&Highlight=0,assoc

iation and at http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/2fdbcde4a15b6c0dc1257234004ee25d?Opendocument, at 7.3 41 Communication 058/1979 Anna Maroufidou v. Sweden, available at

http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/0f07be96bf5a7c5bc1256ab20048c2db?Opendocument

<sup>42</sup> HRC, General Comment No. 31 [80] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13. (General Comments), 26/05/2004,, available at

<sup>43</sup> Human Rights Commutee, Communication 1119/2002, Jeong-Eun Lee v. Republic of Korea, at 7.2, available at <a href="http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/a0b3e37471239a41c1257091002bc2ec?OpenD">http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/a0b3e37471239a41c1257091002bc2ec?OpenD</a>

As is implied in the rhetoric put forth by the Committee in Article 22, "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>44</sup>

Remarkably, neither the human rights instruments nor their interpretation by the relevant supervisory bodies have defined the parameters of this right. On the other hand, the most comprehensive definition and exhaustive elaboration regarding this right exists in international labor law, given the link between such right and the ability of workers to secure their economic and social status. The international standards related to workers' rights to form associations and organize are the most elaborated standards.<sup>45</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 law. The protection of these rights is provided for in a wide range of 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 their basic principles.

ocument&Highlight=0,association

<sup>44</sup> Human Rights Communication 1274/2004, Viktor Korneenko et al. v. Belarus, views of 31 October 2006, at 7.3, available at http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/2fdbcde4a15b6c0dc1257234004ee25d?Opendocument.

<sup>45</sup> Articles 2, 3, 5 and 11 of the ILO Convention concerning Freedom of Association and Protection of the Right to Organise, C87 Freedom of Association and Protection of the Right to Organise Convention, 1948, adopted on 9/7/1948, came into force on 4/7/1950; Articles 1 and 2 of the ILO Convention (98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, adopted on 1/7/1949, came into force on 18/7/1951; Article 1 of ILO Convention (135) Workers' Representatives Convention, adopted on 23/6/1971, came into force on 30/6/1973; Articles 4 and 5 of the ILO Convention (151) Labour Relations (Public Service) Convention, adopted on 27/6/1978, came into force on 25/2/1981

# 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>46</sup>

- The Convention on the Elimination of all forms of Racial Discrimination (CERD) ratified on  $27/3/1990^{47}$
- Convention on the Rights of the Child (CRC), ratified on 13/2/1992<sup>48</sup>
- The Convention Against Torture (CAT), ratified on 3/6/98<sup>49</sup>
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified on 18/2/2002<sup>50</sup>
- The International Covenant on Civil and Political Rights (ICCPR), ratified on 20/9/2006<sup>51</sup>
- The International Covenant on Economic, 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>52</sup>

Bahrain also signed:

- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict- CRC-OP-AC.<sup>53</sup>
- 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>54</sup>

On the other hand, Bahrain had earlier joined the International Labour Organization (ILO), specifically,

 49 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
 50 Patified by the law decree E of 2000 dated 2/2/2000 end decreasited with the LNLS

<sup>46</sup> Human Rights Conventions ratified by Bahrain, Available at <u>http://www.unhchr.ch/tbs/doc.nsf/newhvstatusbycountry?OpenV</u>iew&Start=1&Count=250&Expand=13#13

<sup>47</sup> 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 22 of jurisdiction οn Article the Convention regarding the of the ICTJ, available at http://www.legalaffairs.gov.bh/htm/D0890.htm?%C7%E1%CA%E3%ED%ED%D2

<sup>48</sup> Ratified by law-decree 16 of 1991 dated 3 September 1991, available athttp://www.legalaffairs.gov.bh/htm/L1691.htm?%C7%E1%D8%DD%E1

<sup>50</sup> 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

<sup>51</sup> 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 <a href="http://www.legalaffairs.gov.bh/htm/K5606.htm?%C7%E1%DA%E5%CF">http://www.legalaffairs.gov.bh/htm/K5606.htm?%C7%E1%DA%E5%CF</a>

<sup>52</sup> 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 <a href="http://www.legalaffairs.gov.bh/htm/K1007.htm?%C7%E1%DA%E5%CF">http://www.legalaffairs.gov.bh/htm/K1007.htm?%C7%E1%DA%E5%CF</a>.

<sup>53</sup> Human Rights Conventions ratified by Bahrain, Available at <a href="http://www.unhchr.ch/tbs/doc.nsf/newhvstatusbycountry?OpenView&Start=1&Count=250&Expand=13#13">http://www.unhchr.ch/tbs/doc.nsf/newhvstatusbycountry?OpenView&Start=1&Count=250&Expand=13#13</a>

<sup>54</sup> Human Rights Conventions ratified by Bahrain, Available at <u>http://www.unhchr.ch/tbs/doc.nsf/newhvstatusbycountry?OpenView&Start=1&Count=250&Expand=13#13</u>

in the 1970's and has since ratified a number of its conventions.<sup>55</sup> However, to date, it has not ratified the two fundamental ILO conventions, C87- Freedom of Association and Protection of the Right to Organize Convention and C98- Right to Organize Collective Bargaining Convention.<sup>56</sup>

International Conventions have the force of the law once ratified and published in the Official Gazette.<sup>57</sup> Bahrain respects its international obligations provided they: a) are not in contradiction with the Constitution and national laws;<sup>58</sup> b) are not in conflict with other international obligations.<sup>59</sup>

In reality, international treaties do not appear to have the force of the law automatically. Actually the mechanism and procedures for their incorporation in the national legal system is unclear although it should be noted that in practice each ministry is responsible for the implementation of the ratified convention in its relevant area and is expected to request the necessary amendments to bring national law to conformity with the provisions of the Kingdom's international obligations.<sup>60</sup>

### • National laws and regulations

### The Constitution

The Bahraini Constitution of 2002 guarantees the right to freedom of association in several instances.<sup>61</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

<sup>55</sup> See Alphabetical list of ILO member countries, available at http://www.ilo.org/public/english/standards/relm/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 0202/1999; 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 4/5/1981 available 1981 dated 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, http://www.legalaffairs.gov.bh/htm/D0798.htm, available at 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,

<sup>56</sup> 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 to the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and remains at the level of the Governing Body. <u>Applying and promoting ILS</u>. The Committee on Freedom of Association, available at http://www.ilo.org/public/english/standards/norm/applying/index.htm

<sup>57</sup> Constitution, Article 37, Official Translation, available at http://www.election.gov.bh/english/pdfs/e\_constitution.pdf

<sup>58</sup> Constitution, Article 2 stipulates "The religion of the State is Islam. The Islamic Shari'a is a principal source for legislation Official Translation, available at <a href="http://www.election.gov.bh/english/pdfs/e\_constitution.pdf">http://www.election.gov.bh/english/pdfs/e\_constitution.pdf</a>

<sup>59</sup> Interview with Ministry of Social Development, 18/2/2008. The Ministry gave an example of such conflicting principles: for example, the right to receive foreign funding and the duty to control money laundering required by the World Bank.

<sup>60</sup> Interview with Directorate of Legal Affairs, 17/2/2008 According to the Directorate of Legal Affairs, laws would be amended for conformity with the ratified convention upon request of each concerned Ministry directly to the Council of Ministers

<sup>61</sup> Constitution of the Kingdom of Bahrain, 2002, (Official Translation), available at <u>http://www.election.gov.bh/english/pdfs/e\_constitution.pdf</u>

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.<sup>62</sup>

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 join any association or union or to continue as a member<sup>63</sup>

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<sup>64</sup>

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 moral values, Islamic principles and the unity of the people.<sup>65</sup>

The Constitution does not include specific provisions for the constitution of political parties per se. This right is generally addressed through the constitutional tenets of freedom of association

### **National Laws**

Three separate legal frameworks regulate freedom of association. One for political societies, another for associations such as cultural, social etc.; and one for trade unions:

- The *Law of Association, No. 21 of 1989*,<sup>66</sup> amended in 2002 by *Law 44*, <sup>67</sup> and the implementing Ministerial Resolutions (decisions):<sup>68</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>69</sup>

- 63 Constitution of the Kingdom of Bahrain, 2002, Article 27, Official Translation, available at <u>http://www.election.gov.bh/english/pdfs/e\_constitution.pdf</u>
- 64 Constitution of the Kingdom of Bahrain, 2002, Article 31, Official Translation, available at <u>http://www.election.gov.bh/english/pdfs/e\_constitution.pdf</u>

http://www.shura.gov.bh/default.asp?action=Article&ID=400#3-2-g

<sup>62</sup> Constitution of the Kingdom of Bahrain, 2002, Article 1, Official Translation, available at <u>http://www.election.gov.bh/english/pdfs/e\_constitution.pdf</u>

<sup>65</sup> Explanatory memorandum attached to the 2002 Constitution, Section 2 (3-1). (Unofficial translation), available at

<sup>66</sup> Decree No (21), 1989 related to Societies, social and cultural clubs, and private establishments that operate in the field of youth and sports, available at <a href="http://www.social.gov.bh/portal/page/portal/layout/NGOs/21-1989.pdf">http://www.social.gov.bh/portal/page/portal/layout/NGOs/21-1989.pdf</a> and at http://www.legalaffairs.gov.bh/htm/L2189.htm?21

<sup>67</sup> Law decree 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 <a href="http://www.legalaffairs.gov.bh/htm/L4402.htm?44">http://www.legalaffairs.gov.bh/htm/L4402.htm?44</a>

 $<sup>68\,</sup>$  The ministerial Decisions were issued in 1990 and replaced by the current one in force.

<sup>69</sup> Ministry of Social Development, Resolution 27 of 2006 regarding licensing for Societies, social and cultural clubs, and private establishments that

- Resolution No. 4 (2007) on the standard regulations of the basic supervisory rule for societies, and cultural and social clubs <sup>70</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>71</sup>

The resolutions of Law of Association have the force of the law and a violation of any of their provisions is punishable by a penalty not exceeding 50 Dinars.<sup>72</sup>

- The *Law no. 26 of 2005 of political societies*<sup>73</sup> allow the creation of political associations known as "societies" rather than political parties. This was followed by four ministerial resolutions issued on 17 August 2007 that aimed at regulating specific issues stipulated in the Law:
  - Resolution 1 (2005) regarding the procedures for the establishment of a political association.<sup>74</sup>
  - Resolution 2 (2005) regarding the adaptation of status of associations wishing to exercise political activities.<sup>75</sup>
  - Resolution 3 (2005) establishing the register of political associations.<sup>76</sup>
  - Resolution 4 (2005) establishing the rules for communication with foreign parties and political organizations.<sup>77</sup>

There are no provisions regarding the force of these resolutions.

• The *Workers Trade Union Law no.33 of 2002*,<sup>78</sup> amended by *law 49 of 2006*<sup>79</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>80)</sup> and several ministerial circulars and resolutions. The main ones are:

operate in the field of youth and sports under the Ministry of social affairs and labor to collect money, available at <u>http://www.legalaffairs.gov.bh/htm/RSOC2706.htm</u>. This Resolution replaced Resolution no. 1 of 1990.

73 Law 26 issued on 23 July 2005 on Political Societies, Unofficial Translation, available at http://www.moj.gov.bh/default.asp?action=category&ID=402

- 75 Resolution 2, issued on 17 August 2005 available at http://www.moj.gov.bh/default.asp?action=Article&ID=1004
- 76 Resolution 3, issued on 17 August 2005 available at <u>http://www.moj.gov.bh/default.asp?action=Article&ID=1005</u>
- Resolution 4, issued on 17 August 2005 available at <a href="http://www.moj.gov.bh/default.asp?action=Article&ID=1006">http://www.moj.gov.bh/default.asp?action=Article&ID=1006</a>
   Workers Trade Union Law no.33 of 2002, Official Translation, available at

<sup>70</sup> Ministry of Social Development, Resolution 4 of 2007 regarding the standard regulations of the basic supervision rule for societies, and cultural and social clubs, available at http://www.legalaffairs.gov.bh/htm/RSOC0407.htm?4

<sup>71</sup> Ministry of Social Development, Resolution 9 of 2007 related to the licensing procedures and conditions for the allocation and the operation of the housing places, and social rehabilitation and welfare establishment centers and homes, available at <a href="http://www.legalafairs.gov.bh/htm/RSOC0907.htm">http://www.legalafairs.gov.bh/htm/RSOC0907.htm</a>?

<sup>72</sup> Article 91 of the law no. 21

<sup>74</sup> Resolution 1, issued on 17 August 2005 available at http://www.moj.gov.bh/default.asp?action=Article&id=1003

http://www.mol.gov.bh/MOL/En/Legislations/ListLaws.aspx?ChnINm=Trade%20Unions%20Law

<sup>79</sup> Law 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

<sup>80</sup> Labour code Law decree 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?ChnINm=Labour%20Law

- Civil Service Board Circular no. 1 (2003) prohibiting the formation of trade unions in the civil service sector <sup>81</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>82</sup>
- Resolution 9 (2005) related to the granting of paid leave to union members to carry out union activities<sup>83</sup>
- Resolution 62 (2006) listing the vital sectors where strikes are prohibited.<sup>84</sup>

There are no provisions regarding the force of these resolutions.

The Ministry of Social Development<sup>85</sup> is responsible for NGOs, the Ministry of Justice, for political societies,<sup>86</sup> and the Ministry of Labour for trade unions.<sup>87</sup>

### 1- <u>Specific Provisions Related to the Formation, Functioning, and Dissolution of non-</u> <u>Governmental Organizations, Trade Unions, and Political Parties.</u>

### • 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.

## I. NGOs

The relevant legislative provisions cover societies, social and cultural clubs, and private establishments that operate in the field of youth and sports. These are the provisions of Law 21 of 1989 and amendments.<sup>88</sup> According to this Law:

- Associations are not formed upon simple declaration. Rather, 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 as stipulated in (**Article 1**); The establishment of an association requires a minimum of 10 natural founding members (**Article 4**). Associations have to submit applications for

http://www.mol.gov.bh/MOL/En/Legislations/ListLaws.aspx?ChnINm=Trade%20Unions%20Law

 $88\$  See above Section II, National Laws

<sup>81</sup> Civil Service Board, Circular 1, dated 10/22003 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, (Unofficial Translation), available at.<u>http://www.csb.gov.bh/laws2/c2003-01.htm</u>

<sup>82</sup> Civil Service Board issues its Directives regarding what is called "Trade unions in the governmental bodies", dated 18/6/2007Unofficial Translation ,Civil Service Board, News, available at http://www.csb.gov.bh/news79.htm dated 18/6/2007

<sup>83</sup> 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

<sup>84</sup> Council of Ministers, Decision 62 of 2006 designating the vital sectors in which strike is prohibited, dated 20 June 2006, available at <a href="http://www.legalaffairs.gov.bh/htm/RCAB6206.htm?%C7%E1%E3%E4%D4%C2%CA">http://www.legalaffairs.gov.bh/htm/RCAB6206.htm?%C7%E1%E3%E4%D4%C2%CA</a>

<sup>85</sup> Decree 73 of 2005, Reorganizing and renaming the Ministry of Social Affairs, dated 23 November 2005, available at http://www.legalaffairs.gov.bh/htm/D7305.htm?73; see also Article 1 of the Decree issuing the law 21 of 1989, supra

<sup>86</sup> 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

<sup>87</sup> Workers Trade Unions Law 33 of 2002, Article 1, available at

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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**). The silence of the authority or the lack of response, is taken to signify an implicit rejection (**Article 11, para 3**).

- 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 (Law 21, Article 3).

- The administrative authority has the right to refuse the registration of an association upon the following cases (Article 11 para 1):

- there is no need for its services;
- another association already exists that fulfills the same objectives;
- its establishment is against state security interests;
- its office/headquarters is considered inadequate;
- the intention behind its creation is to revive another association which has been previously dissolved.

- The applicant has the right to appeal a negative decision or the authorities' silence on two levels: firstly, before the administrative authority itself (**Article 11 para 4**) and later before High Civil Court (**Article 12 para 2**). The appeal to the administrative authorities is to be submitted within 60 days of receiving notification of the negative decision or after the expiry of the response period with no reply (**Article 11 para 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 para 5**). The association 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 Para 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**).

In addition **Resolution no. 4** requires that members should not be less than 18 years of age (Article 11)

Amendment Law No. 44 of 2002 allowed the formation of a federation/ union between three or more NGOs and other types of non-profit making associations.<sup>89</sup>

### Practice

The Ministry of Social Development confirmed that there are currently three registered human rights NGOs.<sup>90</sup> The Bahraini Human Rights Society was the first to register in 2001,<sup>91</sup> followed by the Bahraini Association for Public Freedoms and Support of Democracy, and the Migrant Workers Protection Society in 2004.<sup>92</sup> The Bahraini Human Rights Center registered in 2002 was dissolved in

92 Ministry of Social Affairs and Labour, Decision 10 of 2001 authorizing the registration of Bharain Humna Rights Society, dated 29 May 2001, available at http://www.legalaffairs.gov.bh/htm/RLSA1001.htm; Ministry of Social Affairs and Labor, Decision 42 of 2002 authorizing the registration of the

<sup>89</sup> Article 55 bis of Law decree 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 <a href="http://www.legalaffairs.gov.bh/htm/L4402.htm?44">http://www.legalaffairs.gov.bh/htm/L4402.htm?44</a>

<sup>90</sup> Interview with Ministry of Social Development , 18/2/2008 – The NGOs mentioned by the Ministry did not include the Bahraini Human Rights Center that was dissolved.

<sup>91</sup> Interview with BHRS; website of Bahrain Human Rights Society <u>http://www.bhrs.org/arabic</u>

2004. Yet, when these associations' official proclamation was produced, it did not include, other than their names, any specification that they are human rights associations.<sup>93</sup>

Two human rights organizations stated that they did not obtain their registration except after the direct intervention either of the King or the Prime Minister.<sup>94</sup> This experience is clearly demonstrated in the case of the Bahraini Human Rights Center (BHRC). This Center applied for registration in August 2001. First, the authorities asked them to change their name from "center" to "association" on the grounds that "centers" are not among the categories falling under the competency of the Law of Associations.<sup>95</sup> BHRC complied, adding 'association' to its official title. The authorities followed by informing them that there is no need to establish the center as there already exists a similar human rights organization, the Bahrain Human Rights Society (BHRS).<sup>96</sup> 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>97</sup>

It is also apparent that the administrative authority uses its right to silence to evade giving reasons behind negative decision. The Bahraini Youth Human Rights Society (BYHRS)<sup>98</sup> submitted an application for registration on June 12<sup>th</sup>, 2005. They state that they did not receive an official, formal reply from the authorities despite the expiry of the response period 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.<sup>99</sup> 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>100</sup> In September 2006, the World Movement for Democracy quoted the Al Ayam Newspaper and reported that the administrative authority stated that it: "*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 BYHRS, that has been rejected"<sup>101</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.* 

The Bahrain Women's Union (BWU), on the other hand, did resort to the courts in July 2004 after receiving a written rejection from the administrative authorities for their registration application on grounds that their objectives include women's participation in political affairs. In their defense, BWU invoked Bahrain's obligations under CEDAW and won the case in first instance. It seems that the judgment referred to CEDAW as one of the sources of the national laws. The administrative authority was intending to appeal but the case was resolved out of courts as a result of the King's intervention.

Bahraini for Public Freedoms and Support of Democracy, available at

http://www.legalaffairs.gov.bh/htm/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 <a href="http://www.legalaffairs.gov.bh/htm/RLSA5804.htm">http://www.legalaffairs.gov.bh/htm/RLSA5804.htm</a>

93 Interview with BHRS, 17/22008; See for example Ministry of Labor and Social Affairs, Decision 45 of 2002 regarding the registration of the Association of Bahrain Human Rights Center, dated 6/7/2002, available at <a href="http://www.legalaffairs.gov.bh/htm/RLSA4502.htm">http://www.legalaffairs.gov.bh/htm/RLSA4502.htm</a>

94 Interviews with BHRS,17/2/2008; and BCHR, 20/2/2008

95 Interview with BCHR, 20/22008; see also Ministry of Labor and Social Affairs, Decision 45 of 2002 regarding the registration of the Association of Bahrain Human Rights Center, dated 6/7/2002, available at <a href="http://www.legalaffairs.gov.bh/htm/RLSA4502.htm">http://www.legalaffairs.gov.bh/htm/RLSA4502.htm</a>

- 96 Interview with BCHR, 20/2/2008
- 97 Interview with BCHR, 20/2/2008

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

99 Interview with BYHRS, 16/2/2008

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

<sup>100</sup> Interview with Bahrain Youth Human Rights Society, 16/2/2008

BWU obtained its registration in 2006 without making any changes to their original Statutes and Bylaws.<sup>102</sup>

**Migrants**, as indicated by the Law of Association, theoretically have the right to form or join associations since the law does not limit itself to Bahraini nationals, for it states:

"... the Statutes must include... the nationality of the founding members.." (Article 5 (b))

In practice however, since **Resolution 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>103</sup> For example, the BHRS statutes states that active members must be Bahrainis.<sup>104</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>105</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 among the founding members.<sup>106</sup> The association's By-law opens membership to anyone residing in Bahrain over 18 years of age.<sup>107</sup>

### **II. TRADE UNIONS**

The *Trade Union Law no.* 33 of 2002 *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.\_

According to this Law:

Workers subject to the Labour Law for the Private Sector,<sup>108</sup> the Maritime Code, <sup>109</sup> and workers

<sup>102</sup> Interview with the Bahraini Women's Union on, 17/2/2008: the main objectives of the union are building capacity of Bahraini women in development and political areas, defending Bahraini women's rights, fighting discrimination against women, etc.. please see Ministry of Social Development, Decision 29 of 2006 authorizing the registration of Bahrain Women Union, available at http://www.legalaffairs.gov.bh/htm/RSOC2906.htm

<sup>103</sup> Para 22 of the annex to the standard basic rules 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 "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", Annex. available at

http://www.social.gov.bh/portal/page/portal/layout/NGOs/4-2007.pdf

<sup>104</sup> Statutes of BHRS, (on file)

<sup>105</sup> 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/htm/RLSA5804.htm

<sup>106</sup> Interview with MWPS, 20/2/2008

<sup>107</sup> 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/htm/RLSA5804.htm

<sup>108</sup> Labour Code- Decree Law 23 of 1976, Article 2, Available at http://www.legalaffairs.gov.bh/htm/L2376.htm?%C7%E1%DA%E3%E1

<sup>109</sup> Maritime Code, Decree Law 23 of 1982, dated 2 September 1982, available at

employed according to the rules and regulations of civil service may form trade union organizations while those who fall outside these three codes are not entitled to do so (Article 2). Among those that are not subject to the Labour Law are the domestic helpers and temporary workers (Labour Law, Article 2) and thus these cannot form trade unions .<sup>110</sup>

Only one trade union is permitted per establishment, or any particular sector or particular professional activity, or industry, or profession, or similar or associate industries or professions (Article 10 (1) (2)).

The newly formed trade union gains the status of an independent moral legal personality starting from the date of depositing its statutes with the Ministry of Labor (**Article 4**). The procedures 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>111</sup> There are no procedures for the publication of the proclamation of unions in the Official Gazette.

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 or conditions of membership on ground of nationality not mentioned in the law. For example, prohibiting migrants from joining the union is a violation of the law.<sup>112</sup> In the event the authorities did not notice upon the deposit that the statutes contains illegal articles and a conflict arises with a third party, the legal provisions rather than the statutes are applied. However, the union could challenge the authorities application of the law rather than their statutes before the court.<sup>113</sup> The individual victims (who were refused membership for example) too have the right to seek justice in courts.<sup>114</sup>

### Federation/Confederation

It is permissible, since 2006, for two or more trade unions to form a general trade union federation (**Article 8** (1) as amended by law 49 of 2006). Nevertheless, today there remains only one general trade union federation, the GFBTU.

**Migrant workers** may form or join trade unions. <sup>115</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>116</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

110 Article 2 of the Labour Code of 1976, amended in 1993, available at

http://www.legalaffairs.gov.bh/htm/L2382.htm?%C7%E1%DE%C7%E4%E6%E4+%C7%E1%C8%CD%D1%

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. Interview with Ministry of Labour, 20/2/2008

<sup>111</sup> Interview with Ministry of Labor, 20/2/2008. Also see Annex BH 7

<sup>112</sup> The Ministry stated that no union with such a condition had deposited its documents at the Ministry

<sup>113</sup> Interview with Ministry of Labor, 20/2/2008

<sup>114</sup> Interview with Ministry of Labor, 20/2/2008

<sup>115</sup> Interviews with Ministry of Labor, 20/2/2008, Interview with GFBTU, 18/2/2008

<sup>116</sup> Interview with GFBTU, 18/2/2008

better working conditions and renumeration 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>117</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 Labour states that no union should exclude migrants<sup>118</sup>the reality is that some unions, such as Batelco for example, limit membership to Bahrainis nationals.<sup>119</sup> Batelco 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>120</sup>

### **The Public Sector**

The right of workers/employees 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 (**Article 2 and 10**) in **Trade Union** *Law no.* 33. **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>121</sup> The trade unions in the public sector and GFBTU argue that Article 2 gives them the right to unionize,<sup>122</sup> but the authorities insist that workers in the civil service may not form but only join existing unions in the private sector. <sup>123</sup> The Ministry of Labour 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 lies the main obstacle: actually finding a similar profession in the private sector.

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>125</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>126</sup> These provisions implicitly prohibit unionism in the civil service sector and give the civil service executive circulars and resolutions the force of the law.

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

<sup>117</sup> Interview with GFBTW, 18/2/2008

<sup>118</sup> Interview with Ministry of Labor, 20/2/2008

<sup>119</sup> Interview with Batelco Trade Union, 19/2/2008 ; this has been decided by the Constitutional General Conference of the Union

<sup>120</sup> Interview with Batelco Trade Union, 19/2/2008

<sup>121</sup> this text is omitted in the Official English translation of the law

<sup>122</sup> Interview with Trade Union of the Post, 17/2/2008 and GFBTU, 18/2/2008

<sup>123</sup> Government Communication of 19 July 2005, available at http://webfusion.ilo.org/public/db/standards/normes/libsynd/lsgetparasbycase.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 20/2/208; Court Judgment (On file), Circular No. 1/2003 para 4 available at http://www.csb.gov.bh/laws2/c2003-01.htm

<sup>124</sup> Interview with the Ministry of Labour on 20/2/2008

<sup>125</sup> Interview with Ministry of Labor, 20/2/2008

<sup>126</sup> Civil Service law 35 of 2006, available at <u>http://www.csb.gov.bh/law.htm</u> and at http://www.legalaffairs.gov.bh/htm/K3506.htm?%E3%D1%C7%DD%DE

- Circular No. 1, issued February 10<sup>th</sup> 2003, provides the government's interpretation of Article 10 of the Trade Union Law. <sup>127</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>128</sup>

### **In Practice**

The Trade Union Law is the result of over 40 years of struggle by the Bahraini workers. Before that, the Labour Law of 1976 allowed only the formation of joint worker-employer Committees.<sup>129</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.<sup>130</sup> The first trade union organization was established in 2002.<sup>131</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>132</sup> Unlike Kuwait and Yemen, trade unions in Bahrain are mainly active in the private sector, although their number is not high.<sup>133</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. It has been observed that women are generally discouraged by their husbands from joining trade unions.<sup>134</sup> Finally, migrant workers rarely join trade unions due to the insecurity of their jobs and the threat of repercussions from their sponsors.<sup>135</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

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 <a href="http://www.csb.gov.bh/laws2/c2003-01.htm">http://www.csb.gov.bh/laws2/c2003-01.htm</a>
 Civil Service Bureau Directives 3/2007 regarding what is called "Trade unions in the governmental bodies, available at <a href="http://www.csb.gov.bh/laws2/c2003-01.htm">http://www.csb.gov.bh/laws2/c2003-01.htm</a>

http://www.csb.gov.bh/laws7/G-003-2007.pdf

<sup>129</sup> 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

<sup>130</sup> Not recognized by the competent authorities.

<sup>131</sup> Interview with Ministry of Labor, 20/2/2008

<sup>132</sup> Interview with GFBTU, 18/2/2008

<sup>133</sup> For example, only 765 out of 1200 workers at Batelco were members of their trade union in 2002 Interview with Batelco, 19/2/2008

<sup>134</sup> Interview with GFBTU, 18/2/2008

<sup>135</sup> Interview with MWPS, 20/2/2008

workers who may not form or join trade unions.<sup>136</sup> Previously, the GFBTU and trade unions were engaged in the process of parliamentarian 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 who conceal the permanent positions by recruitung 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>137</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>138</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, six unions were established in the public sector and were recognized by the General Federation despite the refusal of the authorities to do so<sup>139</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>140</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>141</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 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,

<sup>136</sup> Interview with Ministry of Labor 20/2/2008

<sup>137</sup> Interview with GFBTU, 18/2/2008.

<sup>138</sup> Interviews with GFBTU, 18/2/2008, and with Ministry of Labor, 20/2/2008

<sup>139</sup> List of trade unions members of GFBTU (on file). The six 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.

<sup>140</sup> 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 six 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.

<sup>141</sup> Interview with GFBTU, 18/2/2008

the courts affirmed that the Circular has not created new legal grounds and hence is not considered an administrative decision as such. Indirectly, the courts are endorsing the interpretation of Article 10 of Law 33 of 2002 put forth by the Circular.<sup>142</sup>

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>143</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." 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 unionizing in Bahrain is a new phenomenon and thus it is wiser to move forward cautiously in order to secure the continuity of the public sector services.<sup>144</sup> The result is that by the beginning of 2008, the case was still active within the ILO Committee.

In brief, the Federation is not debating such issues 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>145</sup> Still, these unions continue to face a variety of serious difficulties in performing their functions and activities <sup>146</sup> such as the inability to freely hold meetings and elections inside their institutions, and restrictions from making public statements and signing petitions.<sup>147</sup> 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>148</sup>

### • The right of associations to freely carry out their statutory activities

The Bahraini associations cannot freely carry out their statutory activities due to unjustified governmental 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.

### III. POLITICAL PARTIES

<sup>142</sup> Court Case documents (on file)

<sup>143</sup> ILO, Bahrain (Case No. 2433), The General Federation of Bahrain Trade Unions (GFBTU), 13-Jun-05, Report No. 340 (Vol. LXXXVIX, 2006, Series B, No. 1), available at http://webfusion.ilo.org/public/db/standards/normes/libsynd/lsgetparasbycase.cfm?PARA=7819&FILE=2453&hdroff=1

http://webfusion.ilo.org/public/db/standards/normes/libsynd/lsgetparasbycase.cfm?PARA=7819&FILE=2453&hdroff=1 &DISPLAY=INTRODUCTION#INTRODUCTION

<sup>144</sup> 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

<sup>145</sup> Interview with Postal and Electricity and water Unions, 18/2/2008

<sup>146</sup> 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

<sup>147</sup> Interview with Postal and Electricity and water Unions, 18/2/2008: So far, they are holding them at the GFBTU headquarters

<sup>148</sup> Interview with Postal and Electricity and water Unions, 18/2/2008

The Law on Political Societies<sup>149</sup> recognizes the right to form political associations, 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**). Such political association is exclusively restricted to Bahraini nationals. 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 (**Article 11 para 20**) before it submits an application to the competent Ministry (**Article 7**) and acquires legal personality upon the publication of the administrative authority announcement in the Official Gazette. This should be done within 60 days of the date of submission of the application if all the conditions of the establishment are met (**Article 9** (1). If no publishing occurs, then the political association may operate ten days after the announcement or from the date of receiving a positive court decision (**Article 11 para 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 response period and this is to be considered as implicit objection to the establishment of the political society (Article 9 (3)).

The political association may in turn submit an appeal before the High Civil Court in case of an explicit or implicit rejection within 30 days of the receiving the registered letter or upon the expiry of the response period. 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 registered under different 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**). Resolution no. 2 of 2005 details the procedures for such adjustments.<sup>150</sup> 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 (**Article 2**). The adjustment process will follow the procedures prescribed in the

<sup>149</sup> Law 26 of 2005 on Political Societies, Unofficial Translation, available at http://www.moj.gov.bh/default.asp?action=category&ID=402

<sup>150</sup> Ministry of Justice, Resolution 2 regarding the adjustment of status of political associations intending to exercise political activity, issued on 17 August 2005 available at http://www.moj.gov.bh/default.asp?action=Article&ID=1004

new Law of Political Association (**Article 3 para 1**). The response period commences from the date of submission of the application for adjustment (**Article 3 para 2**).

The procedures for adjustment of registration seem to have been subject of numerous objections and negotiations between political groups and the administrative authority.<sup>151</sup> The political associations' main objection stemmed from the fact that their statutes have to include the provisions stipulated in **Article 6** of the Law: 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>152</sup> However, the Ministry insisted that all statutes must include that provision.<sup>153</sup> In essence, the political associations were forced to accept such a stipulation rather than being totally rejected.<sup>154</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". As such, perhaps it is understandable that the political associations opted for the second.<sup>155</sup>

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>156</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>157</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>158</sup> The Haq movement is the only political association to have not applied for registration. 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 such activities.<sup>159</sup>

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

<sup>151</sup> Interview with Ministry of Justice, 18/2/2008

<sup>152</sup> Interviews with National Democratic Action and Islamic Action, 19/2/2008

<sup>153</sup> Interview with Haq Movement, 17/2/2008

<sup>154</sup> Interview with National Democratic Action and Islamic Action, 19/2/2008

<sup>155</sup> Interview with National Democratic Action and Islamic Action, 19/2/2008

<sup>156</sup> Interview with National Democratic Action and Islamic Action, 19/2/2008; and with the Haq Movement, 17/2/2008

<sup>157</sup> Interview with National Democratic Action and Islamic Action, 19/2/2008

<sup>158</sup> Interview with Ministry of Justice, 18/2/2008. Such as National Democratic Action; Wifag; Islamic Action; al Asalah; Democratic Progressive

Tribune; National Democratic Assembly; al Meethaq; al Shura; Arabic Islamic al Wasat

<sup>159</sup> Interviews with the National Democratic Action and Islamic Action, 19/2/2008

## I. NGOs

The provisions of the Law of Association (**Decree No. (21) of 1989**) provide for the interference of the authorities and restrict associations from carrying freely their activities.<sup>160</sup> This can be demonstrated in the following articles:

- 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, rights and obligations of the members; the internal financial control; the process for the amendments of the statutes, merging or separation, or setting up branches; the rules for voluntary dissolution, and the name of the beneficiaries to whom the assets will be donated (**Article 5**);
- In case of closing or dissolution of the association, the indicated beneficiaries in the statutes as per Article 5 should not be other than 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).
- Any amendments of the statutes 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**). This is reiterated in Resolution no. 4 related to the "Model Statutes" that adds that this prohibition must be articulated in their statutes (**Article 5**). <sup>161</sup>

Resolution **No. 4** also includes additional provisions related to the submission of the statutes for registration:

- Associations may include additional provisions in their statutes as long as these do not contradict the law (Annex, para 19);
- The administrative authority could amend the association's statutes if it considers it appropriate (Annex, Para 20);

The interference and the control of the authorities reaches even further. The Law includes:

- The examination of the associations' internal records, documents, and correspondence to ensure their compliance with the provisions of the Law (**Article 15**), this supervision includes the examination of 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**).
- Appointing, through a justified decision and for a limited period of time, a temporary director or board of directors. This may happen in the following cases : 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; 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 other violations but the administrative authorities do not consider

<sup>160</sup> The Law of Association no 21 of 1989, and Decision no 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.

<sup>161</sup> 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", Annex, available at http://www.social.gov.bh/portal/page/portal/layout/NGOs/4-2007.pdf

that they should lead to 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 decide to deprive members from standing for the election of board for a period not exceeding three years. This decision is taken if the members in question were responsible for violations that led to the appointment of a temporary director or executive board (**Article 27**). It may add new conditions for the membership of the board as it sees it necessary for the purpose of the association (**Article 43**).
- If it so judges necessary, the administrative authority may call for a meeting of the General Assembly (Article 30) or of the board of the NGO (Article 45).
- The administrative authority is authorized, and does in fact, 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).
- The administrative authority has the right to halt the execution of the NGO's decisions taken by the board or the general assembly if these decisions violate the law, the statutes of the association, or public order and morals. In this situation, NGOs may challenge the decision before the courts (**Article 28**). Also, if the administrative authority discovers that the election of the board of directors was "illegal" because it violates the bylaw of the association or the law, it may annul the results of the elections. In this case, new elections shall be held within at most, one month of the annulment of the previous election results (**Article 47**)

### Practice

Human rights NGOs may vary in their observance of the aforementioned restrictive legislative provisions, as the below cases will demonstrate.<sup>162</sup>

In drafting their statutes, the founders of MWPS confirmed that they had to follow the ministry's "Model Statutes". The ministry requested amendments of the objectives and other aspects of the association. For example, they had to include in their statutes that they would not engage in politics nor participate or join a society, association, club or federation based outside Bahrain without obtaining prior permission from the Ministry of Labor and Social Affairs. Similar permission is required to obtain all kinds of funding.<sup>163</sup>

On the other hand, BHRS' statutes does not include any of these restrictive provisions.<sup>164</sup> Their statutes do not include notifying the administrative authority of the association's board and general assembly meetings. Nor is it mentioned that the association should send a copy of the minutes of their meetings, annual activity or financial reports. The administration is not authorized to call for a meeting if the board is considered as dissolved and the association is not required to seek the approval of the authorities to obtain funding. The statutes further do not mention the prohibition on any political involvement nor the issue of membership with international organizations.

<sup>162</sup> Note that Resolution no. 1 of 1990 was in force for those NGOs registered before the issuance of Resolution 4 of 2007.

<sup>163</sup> Ministry of Social Affairs, Decision 58 of 2004, Authorization of Migrant Workers Protection Society, dated 27 December 2004, available at <a href="http://www.legalaffairs.gov.bh/htm/RLSA5804.htm">http://www.legalaffairs.gov.bh/htm/RLSA5804.htm</a>; and Interview with MWPS, 20/2/2008

<sup>164</sup> Statue of BHRS, (on file)

However, the BHRS statutes are in fact violating the law as they restrict membership strictly to Bahraini nationals 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 the organization a warning reminding them that they should communicate to the authorities all documents related to their meetings including the activity and financial reports. <sup>165</sup> Also, BHRS was subject to a law suit before the court because the administrative authority was not present during one election of board members meetings. The law suit was initiated by a number of members of the organization. The court canceled the results and ordered the organization to repeat the elections.

In 2006, the authorities appointed for a period of six months a temporary Director for the Bahraini Transparency Association. It appears that the association violated a number of the provisions of the Law of Association including "amendments of the Statutes" (Article 14) and "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>167</sup>

Thus far, the administrative authority has not been actively harassing NGOs but the control on their daily activities and functioning is extremely tight and therefore restricts their leeway.

### **II-TRADE UNIONS**

Despite the fact that the establishment of a trade union occurs through simple declaration, the legal provisions (law 33 of 2002) allow the administrative authority much intervention in the establishment process. Like NGOs, the statutes of a trade union must include a detailed segment covering most aspects of its internal structure and organization.

Thus, the statutes must include the objectives of the union, the subscription fees, membership and dismissal conditions. They should also state the number of members of the Board of Directors, the method of electing them, the frequency of governing body meetings, the disciplinary procedures, the services and financial assistance that may be offered to the members, the method of maintaining the organization's fund, the financial system and finally, accounting books and records (Law 33 of 2002, Article 5 amended).

The right to collective bargaining is heavily restricted. The minister nominates the most representative federation in terms of number of members- today GFBTU is the only federation( Law 33 of 2002, Article 8 (3).No other criterion is taken into account in the selection process. This may leave many workers unrepresented.

In addition, trade unions cannot engage in any activity beyond the union's purpose or in political activities (Law 33 of 2002, Article 20). Trade unions argue that these provisions are written in broad

<sup>165</sup> Warning letter from the Ministry of Social Development dated 4/2/2008 addressed to BHRS (on file), see annex BH 4

<sup>166</sup> Interview with BHRS on 17/2/2008

<sup>167</sup> 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/htm/RSOC1406.htm

terms and may be interpreted to infringe the freedom of unions to carry out their normal activities.

The right to strike is a legitimate means for workers (Law 33 of 2002, Article 21 (1) amended). According to the law, 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 decree (Article 21 (2d) amended). However, the Prime Minister issued a decree listing an extremely wide range of services and facilities. These include, security services, civil defense, hospitals, educational institutions, air and sea ports, public transportation, telecommunication, electricity and water services, bakeries, gas and oil installations/ companies (Decision 62 of 2006).<sup>168</sup> According to GFBTU the government does not interfere in the running and managing of the internal union's affairs. <sup>169</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 sectors in which striking is prohibited. Upon this amendment, the list of the vital sectors has been expanded to include "almost all sectors".<sup>170</sup>

On 22/2/2007, the GFBTU filed a complaint before the ILO against the Bahraini government regarding Act No. 49 amending Law 33 and Prime Minister's decision no. 62 of 2006.<sup>171</sup> The Federation did not seek to solve this matter through the national courts due to a lack of confidence in the independence of the judiciary.<sup>172</sup> In the complaint, the Federation argued that the "newly adopted amendments to the Trade Unions Law and a decision of the Prime Minister regarding essential services are contrary to the right to strike. The Federation made three main arguments. Firstly, 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. Secondly, the naming of services where strike is prohibited by the Prime Minister is a clear digression from legislative to administrative discretion. Thirdly, the range of services is broader than those allowed by international labour standards.<sup>173</sup>

In its response, the Bahraini government defended itself by stating that international standards leave it to each state to decide the services where strikes are forbidden. Further, the law itself defines what constitutes the "essential" sectors. Lastly, giving the prime minister the authority to decide the "essential" sector allows to avoid the difficulties and delays associated with legislative amendments.<sup>174</sup>

In its conclusions, the ILO 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

<sup>168</sup> Council of Ministers, Decision 62 of 2006 designating the vital sectors in which strike is prohibited, dated 20 June 2006, available at <a href="http://www.legalaffairs.gov.bh/htm/RCAB6206.htm">http://www.legalaffairs.gov.bh/htm/RCAB6206.htm</a>?%C7%E1%E3%E4%D4%C2%CA

<sup>169</sup> Interview with GFBTU, 18/2/2008

<sup>170</sup> Interview with GFBTU, 18/2/2008

<sup>171</sup> 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,IN TRODUCTION,RECOMMENDATION,CONCLUSION#CONCLUSION

 <sup>172</sup> Interview with GFBTU on 18/2/2008. This position was based on their experience with the complaint of the civil service union before the courts
 173 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,IN TRODUCTION,RECOMMENDATION,CONCLUSION#CONCLUSION

<sup>174</sup> ILO, Bahrain Case no. 2552, Government communication of 13&2007, available at <u>http://webfusion.ilo.org/public/db/standards/normes/libsynd/LSGetParasByCase.cfm?PARA=8316&FILE=2576&hdroff=</u> <u>1&DISPLAY=BACKGROUND,INTRODUCTION,RECOMMENDATION,CONCLUSION#CONCLUSION</u>; and Interview with Ministry of Labor, 20/2/2008

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general interests of the population and that the definition set out in section 21 [Article 21 of Law 49] is broader than the definition of essential services in the strict sense of the term. The ILO put for the following recommendations:<sup>175</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 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 Role of the General Federation

While the government 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>176</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. As per **Article 9** of Law No. 33 of 2002, amended by Act 49 of 2006, GFBTU responsibilities include:<sup>177</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.

177 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.

<sup>175</sup> ILO Report no. 349 (Vol. XCI, 2008, Series B, no. 1) available at <u>http://webfusion.ilo.org/public/db/standards/normes/libsynd/LSGetParasByCase.cfm?hdroff=1&file=2576&PARA=831</u> <u>6</u>

<sup>176</sup> Interview with Batelco Trade Union, 19/2/2008, Interview with GFBTU, 18/2/2008

*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 (Law No. 33 of 2002, amended by Act 49 of 2006, Article 18)

In addition to the above, 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>178</sup> For example, Batelco's statutes provide that the elections are held in presence of a representative of the GFBTU.<sup>179</sup>

### **<u>3- Conditions of Funding</u>**

Funding is 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.

### I. NGOS

The authorities tightly control the funding of NGOs and a violation of these provisions is punishable by a maximum of six months' imprisonment and/or fine (<u>Decree No. (21) of 1989, Issuing the Law of Association (...)<sup>180</sup></u>, Article 89).

NGOs should inform and obtain the prior approval of the competent authorities about their financial activities. The Law of Association (provides that in order to receive foreign funding NGOs must obtain prior approval from the administrative authorities( **Article 20** and Resolution no. 4 of 2007, **Article 44**). The authorities regularize the means and methods of collecting funds (Law of Association<u>Article 21</u>). In addition, Resolution No. 4 of 2007 lists sources of funding for which NGOs are required to obtain the prior approval of the administrative authorities including donations, grants and fund raising activities (**Article 43**). Resolution No. 27 of 2006 details the conditions and procedures to be followed of funds raising activities. These include a time frame that is limited to a maximum two months renewable only upon authorization; targeting a specific activity or project; the method of collecting the funds and the beneficiaries of the funds (**Article 3**). The authorities may refuse, explicitly or implicitly, without giving the reasons, the application for authorization for a fund raising activity (**Article 4**). In such situations, NGOs may challenge the decision before a court of law. If the 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 (**Article 14**).

<sup>178</sup> Interview with GFBTU, 18/2/2008

<sup>179</sup> Statutes of Batelco Trade Union, (on file)

<sup>180</sup> Decree No. (21) of 1989, Issuing the Law of Associations, Social and Cultural Clubs, Special Committees Working in the Field of Youth and Sports and Private Institutions.

Once again it appear that the adherence to these restrictions by human rights NGOs will vary. While MWPS states in its statutes that foreign funding only be obtained after the approval of the authorities, the BHRS statutes do not mention awaiting prior authorization from the administrative authority for receiving funding (local or foreign).<sup>181</sup>

Until two years ago, some NGOs received financial support from the government. This was not provided for in legal provisions but followed the request and recommendation of the King. For example, human rights NGOs would have offices subsidized by the authorities. Today however, this support takes the form of partnership with the ministry on specific projects and/or activities.<sup>182</sup>

As for obtaining foreign funding, human rights NGOs state that they do receive foreign funding. However, knowing that they may be punished for receiving funds without prior approval they use different strategies to inform the authorities. For example, the Women's Union obtained foreign financial assistance for a specific activity related to the Civil Status Campaign. They did not request the approval of the authorities. Their argument is that the process of approval is slow and they wanted to establish the principle of non-authorization for fund raising. However, their alternative strategy is to state this funding in their annual financial report.<sup>183</sup> On the other hand the BHRC, before its dissolution, also used to implement projects or activities funded by foreign donors without obtaining prior authorization and their strategy was to inform the authorities by inviting the officials to attend the events related to those activities.<sup>184</sup> BHRS argues that the administrative authority is being informed of their activities through the press coverage including those funded by foreign donors.<sup>185</sup>

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's 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, depending on their policies.

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>186</sup> These conditions are not provided for in any legal provisions. Apparently, this is based on a Council of Ministers' decision.<sup>187</sup> Resolution No. 4 only requires that the organization notifies the ministry of any change in the association's bank details (Resolution n°4,**Article 48**).<sup>188</sup> The legal grounds for this policy could also be **Article 2-2 of Decision 7 of 2001** related to money laundering that requests from the financial institutions to verify the clients' identity.<sup>189</sup>

<sup>181</sup> Statutes of BHRS, (on file)

<sup>182</sup> Interviews with Bahrain Women Union, 17/2/2008, and BHRC on 20/2/2008, and BHRS on 17/2/2008

<sup>183</sup> Interview with Bahrain Women Union, 17/2/2008

<sup>184</sup> Interview with BCHR on 20/2/2008

<sup>185</sup> Interview with BHRS on 17/2/2008

<sup>186</sup> Interviews with BHRS on 17/2/2008, and MWPS and Public Freedoms and Democracy Support on on 20/2/2008

<sup>187</sup> The decision was not made available to us, despite repetitive requests

<sup>188</sup> 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

<sup>189</sup> Interview with GFBTU, 18/2/2008 ; Interview with Batelco trade union, 19/2/2008; Interview with Ministry of Labour on 20/2/2008; Ministry of Finances and National Economy, Decision 7 of 2001 related to institutions obligations regarding money laundering, available at

To conclude, the administrative 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. According to the Ministry of Social Development, 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>190</sup>

### **II. TRADE UNIONS**

The Trade Union Law No. 33 of 2002, amended by Act 49 of 2006, provides that the financial sources of trade unions and federations may include membership fees, proceeds from activities, subsidies, gifts and donations (**Article 15**). Trade unions are exempt from charges prescribed for property owned or rented and from customs duties on goods imported for the benefit of the trade union's activities. The law does not mention anything on the question of foreign funding but there is governmental control for receiving donations and gifts (**Article 16**). The authorities justify this control in order to ensure that these donations have no hidden political agenda.<sup>191</sup> However, in practice, trade unions are usually self-funded.<sup>192</sup> The ministry also stated that as trade unions are financially in need, they support them though this is not a right they are legally entitled to and is not included in the budget of the government.

### III. POLITICAL PARTIES

The provisions of the Law on Political Societies no26 of 2005 regarding the funding of political associations 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**).

However, political associations are prohibited from receiving any donations or gifts or services from a foreign individual or institution, international organization or an anonymous donor (**Article 14 para 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 para 2**).

According to Resolution 30 of 2006, this support aims mainly at encouraging equal competition between the political associations (**Article 1**). <sup>193</sup> There are two types of support on a monthly basis: a)

http://www.legalaffairs.gov.bh/htm/RFNE0701.htm?%DB%D3%E1

<sup>190</sup> Interview with Ministry of Social Development on 18/2/2008

<sup>191</sup> Interview with Ministry of Labour on 20/2/2008

<sup>192</sup> Interview with GFBTU, 18/2/2008 ; Interview with Batelco trade union, 19/2/2008; Interview with Ministry of Labour on 20/2/2008

<sup>193</sup> Resolution 30 of 2006 regarding the government subsidy to political societies, available at

http://www.legalaffairs.gov.bh/htm/RJUS3006.htm?%CF%DA%E3 (unofficial translation)

operational support is given to all registered political associations. This support will cease in five years time from the date of the issuance of this resolution (**Article 2 and 5**); <sup>194</sup> b) political participation support is given to political association that won seats in the parliament. And if the association has a woman member of parliament, the amount of the support is increased (**Article 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 (**Article 4**).

None of the political associations met throughout the course 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 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>196</sup>

Unlike NGOs, political association can open a bank account solely on grounds of their proclamation in the Official Gazette.<sup>197</sup> Thus, the banks do not request a letter from the Ministry of Justice for these political association because they are excluded from the Ministerial Decision no.7 of 2001 mentioned above as they fall under the competence of Ministry of Justice (**Article 4 (7a)**).<sup>198</sup>

### 4- The Right of affiliation to regional and international organizations

### I. NGOs

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 (Article 20 para 1).

As per the "model statutes" **Resolution no. 4**, provided by the government to guide organizations, NGOs must include in their statutes 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 (**Article 7**).<sup>199</sup>

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

<sup>194</sup> Resolution 30 of 2006 regarding the government subsidy to political societies, available at http://www.legalaffairs.gov.bh/htm/RJUS3006.htm?%CF%DA%E3 (unofficial translation)

<sup>195</sup> Resolution 30 of 2006 regarding the government subsidy to political societies, available at http://www.legalaffairs.gov.bh/htm/RJUS3006.htm?%CF%DA%E3 (unofficial translation)

<sup>196</sup> Interview with National Democratic Action and Islamic Action, 19/2/2008

<sup>197</sup> Interview with National Democratic Action and Islamic Action, 19/2/2008

<sup>198</sup> 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

<sup>199</sup> 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

this step.<sup>200</sup> Some said they would inform the ministry through their annual activity report submitted to the authorities or simply through press releases.<sup>201</sup> The two non-registered human rights NGOs are also members of international nongovernmental organizations.<sup>202</sup> To date, none of them has been subjected to harassment on grounds of membership in regional or international organizations without authorization.<sup>203</sup>

#### **II. TRADE UNIONS**

The Trade Unions Law No. 33 of 2002, amended by Act 49 of 2006 adopted 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. This representative federation is to be named by an order issued by the minister of Social Affairs and Labor (**Article 8 (3)**). The affiliation of a trade union to an international organizations requires the approval of its federation after the latter has notified the ministry (**Article 9(e)**). It appears that some unions state in their statutes that they may be members of regional or international trade union organizations such as the case of Batelco Union. According to its statutes, the union has the right to join the General Federation and Arab, local and international federations as well as the unions based on sector.<sup>204</sup>

Today, 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>205</sup>

#### 5- The right to protection from closure, suspension or dissolution

#### I. NGOs

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 (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 (Article 24 (3)). The representatives of the merged association are then to deliver all the assets and documents to the association that has taken

<sup>200</sup> Interviews with BHRS, BCHR, Bahrain Women's Union on 17/2/2008,

<sup>201</sup> Interview with Bahrain Women Union, 17/2/2008, BHRS

<sup>202</sup> Interview with BYHRS, 16/2/2008 and with BCHR, 20/2/2008

<sup>203</sup> Interview with BHRS, 17/2/2008

<sup>204</sup> Statutes of Batelco Trade Union, (on file)

<sup>205</sup> Interview with GFBTU, 18/2/2008

#### over (Article 24 (4)).

Further, the Law permits the authorities to dissolve an association or close it for a temporary period not exceeding 45 days (Article 50 para 1). Such a decision is taken if the association:

- Is no longer able to achieve its aims (Article 50 para 1-1);
- has used its assets for purposes other than the stated purposes of the organization (Article 50 para 1-2);
- has not been able to convene the general assembly for two consecutive years (Article 50 para 1-3);
- has committed a serious violation of the law, public order or morals (Article 50 (4))

In these situations, the administrative authority should inform the association of the decision and publish it in the Official Gazette (**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 (**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 (**Article 54**).

#### Practice

In September 2004, the administrative authority dissolved the Bahrain Human Rights Center on charges of committing serious violations to the law and public order.<sup>206</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 economic rights 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>207</sup> Before these events, the Center had received formal warnings as a result of different events considered to be politically motivated.

#### II. Trade Unions

Regarding the dissolution of trade unions or the board of directors of a union, Law No. 33 of 2002 clearly states this should be in accordance with the provisions of the union's Statutes or by a court judgment (**Article 17**). The law does not spell out the legal grounds for the dissolution. The Ministry of Labor confirmed that it has never requested the dissolution of a union. However, it stated that the grounds for requesting a dissolution would be based exclusively on the violations of the provisions of Article 20 of the Trade Unions Law. 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>208</sup>

#### III. Political Parties

<sup>206</sup> 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 <a href="http://www.legalaffairs.gov.bh/htm/RLSA4704.htm">http://www.legalaffairs.gov.bh/htm/RLSA4704.htm</a>

<sup>207</sup> Interview with BCHR, 20/2/2008

<sup>208</sup> Interview with Ministry of Labor, 20/2/2008

Political associations are better protected in terms of conditions for dissolution. The Law on Political Associations No. 26 of 2005 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 a suspension for a duration not exceeding three months. This request is made if the association has violated the Constitution or any other law. The court is granted a period of 30 days to decide on the request. If the decision is to approve the request, 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 para 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 para 2). The administrative authority can also request the dissolution of a political association if the suspended association seriously violates the Constitution, the Law on 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 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 (Article 23 para 1 and 3).

In 2005, the government suspended the Islamic Action Society for 45 days based on Article 50 Para. 4 of Law No. 21 of 1989 relating to the violation of the law, public order or societal norms.<sup>209</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>210</sup> In contradiction with the text of the law, the decision to suspend was not reasoned.<sup>211</sup>

#### 6-<u>The right to individual security- No Penalization for belonging to a dissolved or unregistered</u> organization or union

#### I. NGOs

The Bahraini laws provides for the prosecution of individuals who belong to a dissolved or unregistered organization.<sup>212</sup> 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 or by a higher penalty provided for in the Penal Code or any other Law.<sup>213</sup>

<sup>209</sup> Interview with National Democratic Action and Islamic Action, 19/2/2008 : 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 <a href="http://www.legalaffairs.gov.bh/htm/RLSA6702.htm?%C7%E1%DA%E3%E1">http://www.legalaffairs.gov.bh/htm/RLSA6702.htm?%C7%E1%DA%E3%E1</a>; see the suspension decision 29 of 2005 regarding the administrative temporary suspension of the Islamic Action Society, available at <a href="http://www.legalaffairs.gov.bh/htm/RLSA6702.htm">http://www.legalaffairs.gov.bh/htm/RLSA6702.htm?%C7%E1%DA%E3%E1</a>; see the suspension decision 29 of 2005 regarding the administrative temporary suspension of the Islamic Action Society, available at <a href="http://www.legalaffairs.gov.bh/htm/RSOC2905.htm">http://www.legalaffairs.gov.bh/htm/RSOC2905.htm</a>

<sup>210</sup> Interview with Islamic Action Society, 19/2/2008

<sup>211</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

<sup>212</sup> Article 92 of Law 21 of 1989

Article 89 para 1 and para 1- 3 and 5 of Law of Association: The penalty not exceeding six months imprisonment and a fine not exceeding 500 dinars or by one of these penalties; The Penal Code issued by Decree 15 of 1976 and amended in 2005 penalizes any persons accused of activities. For example:

The President of the BYHRS – Mohamad Maskati-<sup>214</sup> was subject to systematic harassment by the authorities before the case was brought before the court in 2006. He was accused of the crime of initiating the activities of a non registered association.<sup>215</sup> He was interrogated by the office of General Prosecutor concerning the non registered association. Later, he was summoned to a court hearing on November 27<sup>th</sup>, 2007. During the hearing, he argued that the association is in fact legal because it is based on international human rights standards ratified by the Bahraini state. The court adjourned the decision to January 21<sup>st</sup>, 2008 which coincided with an official holiday. No further sessions were scheduled. On June 4<sup>th</sup>, 2008, Maskati received a summon for an unexpected court session.<sup>216</sup> International human rights organizations issued press releases in his defense.<sup>217</sup>

Members of the dissolved BCHR continue today openly and with the knowledge of the authorities, their human rights activities. However, the activities that need official procedures such as notifying the authorities of the holding of a public meeting are being organized 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 being prosecuted based on various press laws.<sup>218</sup>

#### II. Trade Unions

Trade Union Law No. 33 of 2002, amended by Act 49 of 2006, provides (Article 3) 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".

In addition, (Article 110 *bis*) of Labor Law in Private Sector of 1976, amended by Law No. 37 of 2006 states:<sup>219</sup>

...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 <a href="http://www.legalaffairs.gov.bh/htm/L1576.htm?%E3%E4%D2%E1">http://www.legalaffairs.gov.bh/htm/L1576.htm?%E3%E4%D2%E1</a>

215 Judicial case no. 21741/2006 mentioned in the official Letter of summoning dated 24 September 2007 (on file). Also see Annex BH 3

<sup>214</sup> See above for details, under formation, p. 41.

<sup>216</sup> Interview with BYHRS, 16/2/2008, and complementary interview on 4/6/2008

<sup>217</sup> 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; Front Line, Bahrain: Trial of human rights defender Mohamed Abdul Nabi Al-Maskati, available at http://www.frontlinedefenders.org/node/1312/print

<sup>218</sup> Interview with BCHR, 20/2/2008

Law 37 of 2006 amending some provisions of the law of labor in the private sector (32) of 1976, available at

"...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"

It should be noted that unions, as they have a legal personality, have the right to defend workers in courts whether they are unionists or not.<sup>220</sup> However, unions are not entitled to be party in a law suit involving individual cases; their role is limited to defend them by assigning defense lawyers.<sup>221</sup>

By virtue of **Article 3** of the Trade Union Law, the dismissed unionist has the right to pursue recourse by mandating the Ministry to mediate with the employer, but such negotiation is not mandatory. In case negotiations fail, the ministry will then refer the case to the court (normal civil court, work chamber). The court, if proven that the dismissal was arbitrary, will force the employer to reinstate as well as compensate the worker according to **Article 110** *bis*, on fine penalty. The court judgment will be limited to compensation alone if the worker is not a unionist.<sup>222</sup>

#### A-Anti Union Discrimination: 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>223</sup> The Deputy head of 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>224</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]<sup>225</sup> without prior approval or libeling officials, etc.<sup>226</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 19th, 2007, Abdel Ghaffar was summoned for yet another investigation: she was accused of leaking the minutes of that interrogation.<sup>227</sup> This resulted in another disciplinary measure in the form of a written notice/ reminder. The harassment continued unabated. For example: in work evaluations, unlike previous years, her performance is described as unsatisfactory; she is cited as being investigated for inappropriate behavior at work; and suffered suspension for 10 days without pay.

The case of Najia Abdel Ghaffar was brought to the attention of the ILO in conjunction with the complaint on the Circular 1/2003 on the 18<sup>th</sup> of January 2007. The ILO governing body considered the measures taken against Ms. Abdel Ghaffar to be anti-union and discriminative. It further demanded the

http://www.legalaffairs.gov.bh/htm/K7306.htm?%D8%A7%D9%84%D8%B9%D9%85%D9%84+ (Unofficial translation)

<sup>220</sup> Interview with Batelco Trade Union, 19/2/2008

<sup>221</sup> Interview with Ministry of Labor, 20/2/2008

<sup>222</sup> Interview with Ministry of Labor, 20/2/2008

<sup>223</sup> On 8 July 2003, they 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)

<sup>224</sup> Interview with the Postal Union, 18/2/2008

Al Waqt Newspaper issue 149, dated 19 July 2006 available at http://www.alwaqt.com/art.php?aid=8289

Letter of disciplinary measure dated 18/1/2007(copy on file), also

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)

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>228</sup> However, the government does not seem to be considering the ILO recommendations. On the contrary, The authorities currently continue their acts of harassment . Recently, Abdel Ghaffar was once again subject to another investigation and suspended for 10 days form work without pay.<sup>229</sup>

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

#### **B-** Anti Union Discrimination : Private Sector

FIDH was informed of 11 individual dismissals of unionized workers for union related activities. These cases took place between 2006 and 29/12/2007.<sup>230</sup> According to the GFBTU, the cases were brought to court and by March 2008 only the dismissal of two of them had been settled.

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>231</sup>

This was the case of two Batelco Union member, Faisal Hassan Ghazwan and Majed Sehrab- who won a 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.

The plaintiffs' witnesses recounted to the court that a gathering after the working hours was called. There was no strike or disruption of work and the gathering did not last more than half an hour.

They recalled that the employer tried to prohibit the sit-in despite the fact that it was carried out after the working hours. On the 18<sup>th</sup> of July, the workers resumed their sit-in and insisted to continue it regardless of pressures exerted by company management. The Deputy Head of Union was then called upon by the company board. The board withdrew his company card (the card that allows him to enter the company premises) and gave him a dismissal letter explaining that " by calling for the assembly he did not abide by union work ". The card of Majed, a colleague who tried to support him before the board was also deactivated the same day, a fact Majed became aware of only when he discovered that his card was not working any more.

The union started negotiations with the company to try to solve the cases amicably but to no avail. The GFBTU supported these efforts by requesting a meeting with the management of the company, but they refused.<sup>232</sup>

<sup>228</sup> ILO, governing body, Report 348 at 46 available at

http://webfusion.ilo.org/public/db/standards/normes/libsynd/LSGetParasByCase.cfm?PARA=8185&FILE=2453&hdroff=1&DISPLAY=INTRODUCTION#I NTRODUCTION

<sup>229</sup> Complimentary interview with Najia Abdel Ghaffar on 18/5/2008

<sup>230</sup> These cases are in DHL company, Dain Corp, Cinema Bahrain, Cars Transportation, Batelco, ??s??? m and Ahmad Mansour Ali Ets. [List of Unionists dismissed for union activities; provided by the GFBTU to FIDH, on file]

<sup>231</sup> Interview with GFBTU, 18/2/2008

<sup>232</sup> Interview with Batelco Trade Union, 19/2/2008

The union also tried to mobilize public opinion to pressure the company, through the press and a campaign of posters and signatures on the streets requesting returning the dismissed unionists.<sup>233</sup> According to the union their efforts went as far as meetings with the ministry to address these cases. According to Batelco Union, 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. However, the Ministry limited its involvement to making those statements and did not undertake any protective or corrective measure.<sup>234</sup> The Ministry's defense is that it was not obliged to take any protective measure regarding the dismissal as it was was the result of a "strike" in a sector where striking is prohibited. The Minister not only stood with the workers dismissed for union activities, it is also reported that he raised the issue in the Parliament.<sup>235</sup>

Before going to court, the two workers in question filed a complaint to the Ministry on 25 July 2007 a couple of days after their dismissal. The Ministry failed to resolve the issue amicably. After the failure of negotiations, the workers filed a case against the company to the court of first instance, with the accusation that the dismissal was promoted due to trade union activities. The company's management accused them of organizing a sit-in during working hours inside the premises of the company and without notifying the direction of the company. According to management, this was disruptive for the clerical workers who were asking for salary increases as a result of the price inflation that started in Bahrain in 2006. The sit-in took place on July 17<sup>th</sup> and 18<sup>th</sup>, 2007. They continued the sit in the next day despite the fact that Batelco management warned them not to participate.<sup>236</sup>

The plaintiffs' defense argued that the dismissal of the workers was related to their union activities and therefore indicates anti union discrimination. They further argued that all they did was to participate in a union meeting to explain the recent developments in negotiations with the management regarding salary increases and voluntary early retirement schemes.<sup>237</sup>

Batelco's defense maintained that the dismissed workers called for a sit-in during working hours by sending many emails in a threatening tone and insisted on carrying out the sit in despite receiving notification that it was illegal to hold it inside the company, according to clause (D) of Act No. 49 of 2006.<sup>238</sup>

The Court of First Instance decided in favour of the plaintiff. The court considered that the union activity neither qualifies as a strike nor a sit-in and as such did not violate **Article 21** of the Act no. 49 of 2006 related to strikes. Additionally, even if Batelco was listed among the" essential services", the unionists gathering did not disrupt the routine life of the citizens and caused no 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>239</sup>

The Minister of Labor punished Batelco by suspending the issuance of visas for foreign workers it

<sup>233</sup> Interview with Batelco Trade Union, 19/2/2008

<sup>234</sup>Interview with Batelco Trade Union, 19/2/2008

<sup>235</sup> Interview with Ministry of Labor, 20/2/2008

<sup>236</sup> Interview with Batelco Trade Union, 19/2/2008

<sup>237</sup> Court Decision no. 5/8013/2007/02 dated 19 March 2008 (On file -Electronic)

<sup>238</sup> Court Decision no. 5/8013/2007/02 dated 19 March 2008 (On file -Electronic)

<sup>239</sup> Court Decision no. 5/8013/2007/02 dated 19 March 2008 (On file -Electronic)

would like to recruit.<sup>240</sup> This may have come as the result of the non cooperation displayed by Batelco regarding the Ministry's efforts to reinstate the dismissed workers and its policy of recruiting non Bahrainis in exchange for dismissing Bahrainis.<sup>241</sup>

<sup>240</sup> Interview with Batelco Trade Union, 19/2/2008

<sup>241</sup> Manama Voice (electronic news), Ministry of Labor: Batelco not cooperating and we will not deal with it and the dismissal of the two trade unionists is illegal, available at

http://www.manamavoice.com/look/print.tpl?ldLanguage=17&ldPublication=1&NrArticle=219&NrIssue=1&NrSection=4

Freedom of Association in the Arabian Gulf - FIDH/44

## **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>242</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;
- 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>243</sup> Kuwait has also 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>244</sup>

In principle, international treaties have the force of the national laws upon ratification and publication in the Official Gazette.<sup>245</sup> A ratified convention takes priority over existing laws<sup>246</sup> yet, the latter continue to be in force.<sup>247</sup> No proper, adequate measures have been taken by the government or parliament for the implementation of these conventions or for the restructuring and reviewing the relevant national legislations and regulations to bring them into conformity with international human rights and labour standards. Kuwait lacks a clear mechanism for the automatic review of national laws and leaves to the discretion of each ministry the autonomy to implement the conventions.<sup>248</sup>

By February 2008, the extent to which national laws related to freedom of association and trade unions are constitutional and their conformity with the country's international obligations had gone unquestioned.<sup>249</sup>

<sup>242</sup> OHCHR, International Law, Conventions Ratifications By Country and date, available at <u>http://www.ohchr.org/english/law/index.htm</u>

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

<sup>244</sup> ILOLEX, documents available for Kuwait, ratifications, available at <u>http://www.ilo.org/ilolex/cgi-lex/countrylist.pl?country=Kuwait</u>

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

<sup>246</sup> Interview with Constitutional Law professor, Dr. Mohammad Moqatei on 11/2/2008

<sup>247</sup> Interview with the Legal Advice Directorate, 14/2/2008

<sup>248</sup> Interview with the Legal Advice Directorate, 14/2/2008

<sup>249</sup> Interview with Constitutional Law professor, Dr. Mohammad Moqatei, 11/2/2008

#### • National laws and regulations related to freedom of association

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>250</sup>

#### I. NGOs

The Ministry of Labor and Social Affairs is responsible for the control and supervision of public interest associations and trade unions.

Law No. 24 of 1962 and its amendments (hereafter "Law of Association or Law 24")<sup>251</sup> regulate the right of freedom of association for non-governmental associations. Other relevant regulations include the Ministerial Decision No. 61 of 2005 creating the "Model Statutes" for associations,<sup>252</sup> and 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 (unofficial translation).<sup>253</sup> There has been a project for draft bill regarding association for many years before the parliament but this has not been actively considered.

#### **II.Trade** Unions

There is no specific law addressing trade unions.<sup>254</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>255</sup> (hereafter "Labour Law"). In fact, other related regulations and ministerial decisions seem to exist, but despite repeated requests to the relevant governmental and non governmental actors, these were not made available for the study.

<sup>250</sup> Constitution, Official translation, National Assembly, available at <u>http://www.majlesalUmmah.net/enrun.asp?id=222</u>

<sup>251</sup> Law 24 of 1962 was amended by law 28 of 1965, law 75 of 1988 (according to the Ministry this amendment does not exist), law 12 of 1993, law 14 of 1994. Some of these amendments were more restrictive than liberal, for example, in 1965, it was added to Article 2 a provision saying that "Associations and clubs cannot exercise any activities and have no legal personality before their authorization is published in the official gazette", Article 2 in 1962 was read "Associations and clubs have no legal personality before the authorization is published in the official gazette", in 1965 the age to establish association was increased from 18 to 21 years; "objectives contrary to the public morals" was added in 1965 to objectives that could not be aspired by associations (Article 6). On the other hand, some of the amendments added safeguards to associations freedom, such as that of 1988 that added the possibility to challenge the refusal of associations and clubs applications before the Council of ministers while the only available challenge according to the original text of the law as in 1962 was before the Ministry of social affairs and labor (Article 9); Unofficial Translations

<sup>252</sup> Ministry of Social Affairs and Labour, Decision no. 61 of 2005 dated 5 April 2005, (on file)

<sup>253</sup> Interviews with the Ministry of Social Affairs and Labour on 12/2/2008 and Kuwait Human Rights Society on 10/2/2008

<sup>254</sup> Civil Service law 15 of 1979, Labour law in the oil sector 28 of 1969; Interview with Kuwait Trade Union Federation, 11/2/2008; Interview with MSAL, Trade Unions Organizations Directorate, 12/2/2008

<sup>255</sup> 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 arbitrage, 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 Translations. (on file)

A draft bill fwas proposed by the government 18 years ago and is today before the parliament.<sup>256</sup> Both ILO and the Kuwaiti General Federation have presented their comments on the draft project.<sup>257</sup> The outstanding issue of conflict seems to be the right to strike.<sup>258</sup>

#### III. Political Parties

There are no legal provisions on political parties in Kuwait.

During the drafting of the Constitution in 1962, there were debates between the Drafting Committee and the Constitutional Council "?d???B???" concerning the proposed **Article 43** related to "freedom of associations and organizations" and whether it allows the formation of political parties. As a result they eliminated the word *organization* ????" as its inclusion would have explicitly allowed the formation of political parties. Rather, the authorities opted to leave it to the legislator to decide to enact a law on political parties or not,<sup>259</sup> as confirmed by the Explanatory Memo of the Constitution under **Article 43**.

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>261</sup> However, these proposals are yet to be discussed by the parliament.

# 1- <u>Specific Provisions Regulating the Formation, Functioning, and Dissolution of non-governmental organizations, trade unions, and political parties.</u>

#### • The right to establish an association or a union

#### I. NGOs

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**).<sup>262</sup>

<sup>256</sup> Interview with Kuwait Trade Union Federation , 11/2/2008: This project law has been before the parliament since 18 years. It was delayed due to a number of reasons particularly due to problems at the legislative body level itself and due to restudying it in each newly constituted Ministry during these years

<sup>257</sup> Interview with ILO representative in Kuwait, 12/2/2008

<sup>258</sup> Interview with ILO representative in Kuwait, 12/2/2008

<sup>260</sup> Explanatory memo of Kuwait Constitution, art 43, Unofficial Translation, available at http://www.majlesalUmmah.net/run.asp?id=51

<sup>261</sup> 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, MP Ali Rashed political Parties law proposal, available at <a href="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</a>;

Article 1, Unofficial Translation (We will be using an unofficial translation throughout the whole text)

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 (Article 2 and 3). There must be at least 10 founding members who should be Kuwaiti nationals of at least 21 years old (Article 4, para 1-a); (Article 4, para 1-b). The founding members write their own statutes, however, they are required to follow the Ministry's "Model Statutes" (Article 5).

Decision No. 61 of 2005 makes it compulsory to use the "Model Statutes" (Article 3). The statutes should state that the association is 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**). The law further stipulates that the administrative authority has the right to reject the registration of an association within one month of the date of the application (**Article 9**). The administrative authority is also authorized to make changes in the statutes if it considers it necessary "for public interest". The association may file a complaint against these changes before the administrative authority, the body which made the change, and which also has the final decision concerning the complaint! The negative decision can only be challenged before the very ministry (Ministry of Social Affairs and Labor) that makes the final decision (**Article 9**).<sup>263</sup>

#### Migrants

Migrant workers are prohibited from forming associations as founding members are required to be Kuwaiti nationals (Article 4). Migrants may join only as supporting or associate members (Article 13). They have no right to vote or sit for elections, 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>264</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>265</sup>

#### **Trends and Practices**

# 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>266</sup>

<sup>263</sup> However, according to the amendment 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, 11/22008)

<sup>264</sup> Informal meeting with one member of KHRS, 10/2/2008

<sup>265</sup> Statutes of KHRS and KABE (On file)

<sup>266</sup> Interviews with the Ministry of Social Affairs and Labour, 11/2/2008. and Kuwait Human Rights Society 10/2/2008

Currently, the two existing human rights organizations are registered either as social or cultural organizations<sup>267</sup> and both organizations stated that they obtained their registration only after external political pressure or lobbying.<sup>268</sup> It is claimed that conditions requested for their registration were not the rules and criteria stated by the law. For example, while the law stipulates that there should be 10 founders to qualify for establishment, the Kuwait Human Rights Society (KHRS) was required by the Ministry to present 50 founders. Apparently, this is based on a new Council of Ministers decision related to the declaration of public interest NGOs (decision 836).<sup>269</sup>

The KHRS<sup>270</sup> obtained its registration on 6/11/2004 after holding four meetings with the Prime Minister.<sup>271</sup> 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.

The Kuwait Association for Basic Evaluators of Human Rights (KABE) applied in December 2004 and their registration was published in the Official Gazette in June 2005 only after exploiting their personal connections to exert pressure on the Council of Ministers.<sup>272</sup>

The Ministry of Social Affairs' authorizations of both KABE and KHRS, refer to the approval of the Council of Ministers. However, KABE's registration came according to Decision No. 836 and Law of Association no. 24,<sup>273</sup> while KHRS' authorization refers to the Law 24 only.<sup>274</sup>

In general, the procedures of registration appear to be complicated. First, a special committee studies the application and makes recommendations to the minister who will then take the decision. If the minister takes a negative decision, the ministry will notify the applicants. However, if the Minister's decision is positive, the application will be submitted to the Council of Ministers for approval. Formally, the final decision – whether or not approved by the Council of Ministers - is issued by the Minister.<sup>275</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>276</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

<sup>267</sup> Interview with the Legal Advice Directorate, 14/2/2008

<sup>268</sup> Interview with KHRS, 10/2/2008; KABE, 11/2/2008

<sup>269</sup> Interviews with MSAL 12/2/2008, KHRS, 10/2/2008. Kuwait News Agency, date 6 December 2003, available at

http://www.kuna.net.kw/NewsAgenciesPublicSite/ArticleDetails.aspx?Language=ar&id=1787195. According to Kuwait News Agency (KUNA), The Ministry of Social Affairs carried out a study on the number of NGOs that had applied for authorization and not yet registered. The study recommended that the Council of Ministers to approve the associations that have cultural aspects. It defined the rules and criteria for the proclamation of an association. These included association should have 50 founding members; each founding members should be a high school graduate, has an activity in the field of the association, not to be member of another association. Regular members may not be members of two associations at the same time. We should noite that the decision 836 was not made available for us despite promises.

<sup>270</sup> The majority of the board members are employees in the public sector

<sup>271</sup> Interview with KHRS, 10/2/2008

<sup>272</sup> Interview with KABE, 11/2/2008

<sup>273</sup> Decision of proclamation of KABE, (on file)

<sup>274</sup> Decision of proclamation of KHRS, (on file)

<sup>275</sup> Interview with MSAL, Social Development Directorate, 12/2/2008

<sup>276</sup> Interview with MSAL, 5/5/2008

already was another registered human rights NGO (KHRS).<sup>277</sup> Kuwaiti human rights NGOs complain that the Ministry's procedure to assess whether the organizations are in fact similar considers the general framework (human rights for instance) rather than the specific objectives and activities.<sup>278</sup> The Popular Committee of Bidoun Affairs (Bidoun Committee) said the ministry informally told them that there is no need to establish new human rights NGO as they could join already existing human rights NGOs.<sup>279</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.<sup>280</sup> 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.<sup>281</sup> However, the Ministry refuted 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, tworking on the situation of the Bidoun <sup>282</sup>

The Ministry has confirmed that the Model Bylaw is not compulsory. In theory, then, NGOs are free to write their statutes and bylaws as long as they comply with the law and regulations. By virtue of the **Council of Ministers decision in 2004,** membership should not be conditioned (for example, a new applicant should not require the recommendation of two members of the association).<sup>283</sup> Yet, the KHRS Statutes provide such a condition whereby the recommendation of two members is required for the new applicants and those statutes have however been approved by the authorities.<sup>284</sup>

The legal restrictions on the involvement in any political or sectarian activities is replicated in the statutes of the two registered human rights associations.<sup>285</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>286</sup>

There are also unregistered human rights groups that stated that they are able to function without any problems, such is the case of the Bidoun Committee. They have been active on the rights pertaining to nationality for the undocumented stateless people in Kuwait. They have submitted through parliamentarians a draft law on nationality in early 2008 and say that their non-registration has not created problems so far with the authorities. 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. Also, 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.<sup>287</sup>

Bylaw of KHRS, (on file)

<sup>277</sup> Interview with KABE, 11/2/2008

<sup>278</sup> Interview with KABE, 11/2/2008

<sup>279</sup> Interview with the Popular Committee for the Bidoun Affairs, 14/2/2008

<sup>280</sup> Interview with MSAL, 5/5/2008

<sup>281</sup> Interview with MSAL, 5/5/2008

<sup>282</sup> Interview with MSAL, Social Development Directorate, 12/2/2008

<sup>283</sup> Interview with MSAL, Social Development Directorate, 12/2/2008

<sup>285</sup> Bylaws of KHRS and KABE, (on file)

<sup>286</sup> Interview with MSAL, Social Development Directorate, 12/2/2008

<sup>287</sup> Interview with the Popular Committee for the Bidoun Affairs, 14/2/2008

Although there are no known cases of rejection of applications of human rights associations, the law does stipulate the right to challenge a negative decisionbefore the administrative authority. However, the administrative authority stated that the right to access justice is guaranteed for all and needs not be mentioned in the law.<sup>288</sup>

It is difficult to accurately assess the current situation of the right to freedom of association in Kuwait. The Ministry confirmed that they have not refused any application in the last five years,<sup>289</sup> and there does not seem to be cases of challenges against rejection of applications in courts.<sup>290</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.

#### II. Trade Unions

Labour Law No. 38 guarantees the right of workers to unionize in accordance with the provisions of this law. The provisions apply to the employees and workers in the oil and public sectors as long as this right does not contradict the laws of these sectors (**Article 69**).<sup>291</sup> The Civil Service Law 15 of 1979 prohibits the military, the police and national guards from forming unions (**Article 3**).

A newly formed union should hold its constituent general assembly that articulate the union's statutes, and elect an ad-hoc board of directors. <sup>292</sup> This board should submit the union's constitutional documents to the ministry within the 15 days of its election in order to be announced in the Official Gazette.<sup>293</sup> The union is legally recognized and has the right to start its activities upon the deposit of these documents and meeting all the legal requirements (**Article 74 (4**)).

However, if the union does not meet these conditions its 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 such objections made by the authorities.

Trade unions may freely write their own statutes which should address 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, etc (Article 74(2)).

<sup>288</sup> Interview with MSAL, 12/2/2008.

<sup>289</sup> Interview with Constitutional Law professor, Dr. Mohammad Moqatei, 11/2/2008, MSAL, Social Development Directorate, 12/2/2008, KHRS, 10/2/2008, KABE, 11/2/2008, Administrative Secretary of Parliamentarian Human Rights Committee. The proposal was included in the official documents of the Council of Ministers in its name

<sup>290 ,</sup> interviews with MSAL on12/2/2008 and with Constitutional Law professor, Dr. Mohammad Moqatei, 11/2/2008 : both were of the opinion in case of the silence of a legal text , this should be interpreted as allowing the right to challenge negative administrative decisions.

Law no 11 of 2003 amending Article 69

of not less than 7 and not more than 21 members.

these are: the statutes and by-laws, the list of the members of the union, and the ad-hoc board of directors of the trade union, general assembly meeting minutes, the bank name, a the "good character" certificate issued by the ministry of interior. etc

However, the Labour Law provides a number of restrictions for the formation of a union. The founding members of the newly formed union must abide by the following:

Founding members must be at least 15 Kuwaiti nationals (**Article 74** (1)); The union should represent 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" from the Ministry of the Interior (Articles 72 and 74 (4)).<sup>294</sup>

#### Migrant workers

Migrant workers form 5% of the union membership, mainly in the public sector. They are not allowed to form unions or participate in their establishment. The Labour Law limits the founding of a trade union to Kuwaiti workers (**Article 74**). Non-Kuwaiti workers are permitted only to join the union, on two conditions: to have a work permit and to have been in the country for five years prior to the issuance of the labour law (**Article 72**). They are forbidden from standing in positions of leadership or to elect someone to represent them in the union's board to express their views to the union's board. Domestic workers and workers 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**).

It should be noted that the draft Labour Law currently before the parliament, which dates back to 2005 does not mention migrant workers under the "section of trade union organizations." The 2007 ILO report interpreted this as to say that "the new draft Code appears to have eliminated ...the restrictions on trade unions memberships for non national workers...restrictions on the right to vote and to be elected to trade union office for non-nationals...".

#### Federations/Confederation

The formation of federations and general confederation is highly restricted. Only unions 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**).

#### **Public Sector**

Before 2003, trade unions in the public sector fell under Article 69 of the Labour Law of Private Sector. In 1979, the Civil Service Law no15 was enacted and Article 2 defined the subjects that fall under its competence as "employees". As a result, the administrative authorities considered that "employees" of the public sector were no longer allowed to form trade unions. Trade unions in the public sector that

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<sup>294</sup> This is issued by the Ministry of Interior that shows the criminal record of a person.

attempted to be established were considered illegal<sup>295</sup>.However, in 2003, the amendment of Article 69 of the Labor Law of the Private Sector included both the private sector workers and the employees of the civil service. As a result trade unions in the public sector witnessed significant growth. Today there are trade unions in almost every ministry and public institution.<sup>296</sup>

#### **In Practice**

Kuwait adopts thesystem of a single General Federation and a single union per establishment. The authorities justifie this policy by arguing that the country is too small to have two General Federations. There appears that there is general dissatisfaction with the existing General Federation from a number of trade unions who are demanding the right to establish another General Federation. To date, this has not happened yet and the current law does not allow it.<sup>297</sup> According to the Kuwait Trade Union Federation, the Kuwaiti government diversity as a threat to the union work in Kuwait as it divides unions and thus weakens their work. The Kuwait Trade Union Federation stresses that workers should stay united.<sup>298</sup>

As of February 2008, there are 54 trade unions, two sectorial federations, and one general federation, the General Trade Unions Federation.<sup>299</sup> Trade unionists currently represent 54,000 out of 2.2 million workers. Around 95% of Kuwaitis work in the public sector.<sup>300</sup>

The largest trade unions were established in the public sector in the 1960s.<sup>301</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 mentioned above.

Out of approximately 300,000 Kuwaiti workers, only around 12,000 workers are in the private sector. 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 unions in small private enterprise fall substantially short of this number.<sup>302</sup> The second and important reason stems from the fact that the number of migrant workers in the private sector is high and the Kuwaiti workers therein do not seem to be interested in forming trade unions.<sup>303</sup>

It seems that no application to establish a trade union was refused by the Ministry since 2003. However, it seems that some trade unions refused workers to join the union, and the latter resorted to the court. When such cases have occurred, the court decided in favour of the workers and forced the union to accept their membership.<sup>304</sup> The ministry stated that the objections to forming a trade union occur mostly due to duplications which occur within the same establishment or institution. However,

300 Interview with Kuwait Trade Union Federation , 11/2/2008

<sup>295</sup> Interview with ILO Representative in Kuwait, 12/2/2008

<sup>296</sup> Interview with MSAL, Trade Unions Organizations Directorate, 12/2/2008, Kuwait Trade Union Federation , 11/2/2008, ILO representative in Kuwait, 12/2/2008

<sup>297</sup> Interviews with MSAL, Trade Unions Organizations Directorate, 12/2/2008, 12/2/2008; ILO representative in Kuwait, 12/2/2008

<sup>298</sup> Interview with Kuwait Trade Union Federation , 11/2/2008

<sup>299</sup> Interview with Kuwait Trade Union Federation , 11/2/2008

<sup>301</sup> Interview with Kuwait Trade Union Federation , 11/2/2008. Around 12000 workers are in the private sector out of around 300000 Kuwaiti workers

<sup>302</sup> Interview with ILO Representative in Kuwait 12/2/2008

<sup>303</sup> Interview with MSAL, 12/2/208 and ILO representative in Kuwait, 12/2/2008

<sup>304</sup> Interview with MSAL, Trade Unions Organizations Directorate, 12/2/2008, with ILO representative in Kuwait, 12/2/2008

the Ministry said these are rare cases and in all cases the trade union has the right to resort to courts.

This was in fact the experience of the Kuwait University workers. A trade union for University of Kuwait's Workers was established in 2004. They deposited their dossier with the Ministry and its proclamation was published in the Official Gazette in 2005. However, six days after the publication, a second group using the same name and having already proclaimed itself also deposited their dossier with the Ministry. They were forced to form a new trade union as they were not allowed to join the existing one.<sup>305</sup> The authorities refused to register them on the grounds that the law forbids more than one trade union operating in the same establishment. The second group challenged the ministry's decision in court to obtain the right to be proclaimed, claiming that there was a problem with the first group who had successfully proclaimed their status as the union of Kuwait University Workers. One and half years later, a court decision was issued in favour of the second group of applicants. The court also considered that the union activities of the first union remained valid. As a result the authorities decided to dissolve the first group based on the condition that only one union may operate in the same establishment or institution.<sup>306</sup>

As for the private sector, workers face a number of practical obstacles in attempting to unionize. Possibly, employers will not cooperate with the unionists in trying 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>307</sup> It seems that such cases did not happen frequently so far but it remains an area of concern.<sup>308</sup>

Foreign workers constitute a population of 1.9 million workers. Migrant workers who cannot join trade unions make up half a million domestic workers.<sup>309</sup> Kuwaitis consider that with such high rates of migrant workers (excluding domestic workers), allowing foreigners to hold offices at unions risk a take over in the representation of "Kuwait trade unions". Therefore, and in order to protect the rights of Kuwaitis, the Federation of Kuwaiti Trade Unions considers it fair and necessary to prohibit foreign workers from voting in elections as well as stand for elections themselves.<sup>310</sup> Another restriction limiting migrant workers from joining union is the fact that only those who have been legally resident in the country for at least five years may join a union.

In addition, all concerned actors – the Ministry, the ILO, and the General Union- have stated that by law, migrant workers members in union do not have the right to vote.<sup>311</sup> This is contrary to our reading

<sup>305</sup> Interview with MSAL, Trade Unions Organizations Directorate, 4/6/2008; Interview with ILO Representative on 5 June 2008

<sup>306</sup> Interview with MSAL, Trade Unions Organizations Directorate, 12/2/2008. According to Dr. Anwar Al-Fuzaie, Member of ILO CEACR, one of the legislative obstacles for trade unions is the one union system unions per occupational trade or establishment. Interview with Dr. Anwar al-Fuzaie, 12/2/2008

<sup>307</sup> Interview with ILO representative in Kuwait, 12/2/2008

<sup>308</sup> Interview with ILO representative in Kuwait, 12/2/2008

<sup>309</sup> Interview with ILO representative in Kuwait, 12/2/2008, Interview with the administrative secretary of the Parliamentarian Human Rights Committee (Mozaffar Rashed), 13/2/2008. (the government, upon pressures by the international community, adopted measures to protect them, such as a model contract, a minimum wage of 45 KD per month and opened a safe house for runaways (with eight beds while around 1500 domestic workers run from their employers houses on monthly basis).

<sup>310</sup> Interview with Kuwait Trade Union Federation , 11/2/2008

of the provisions of the law, that states that migrant workers members in unions are specifically restricted from sitting for the election of the board members but can vote.<sup>312</sup> For the purposes of this study, the information available was insufficient to assess the reality on the ground.

#### Federations

The statutes of the Kuwait General Confederation of the Trade Unions (KTUF) essentially limit its membership to trade unions that are members of federations and general unions.<sup>313</sup> However, membership in Kuwait Trade Union Federation is not compulsory.<sup>314</sup>

Joining a federation requires that a trade union has at least 500 members.<sup>315</sup> This explains why only the 15 trade unions which were established in the 1960's are members of the KTUF today. Two sectorial /professional federations are also members: the Trade Union Confederation of Oil and Petrochemical Industries and the Trade Union Federation of the Public Sector. Unions in the private sector have not established a federation yet. The new trade unions have observer status.<sup>316</sup>

The conditions for membership in professional federations, mainly the requirement of at least 500 members in each individual trade union, is a great obstacles for unions wishing to join Kuwait Trade Union Federation, since they must access the Kuwait Trade Union Association through their professional federations.<sup>317</sup> The Kuwait Trade Union Federation does not interfere in the conditions of membership of a federation or in its bylaw. It has a supervisory and consultative status only.<sup>318</sup>

#### I. Political Parties

There are no legal provisions governing the formation of political parties. Yet, political de facto groups operate as political parties in Kuwait. Most of these political groups existed as clandestine movements and started to be openly active after the Iraqi invasion of Kuwait in 1990. Today, the authorities accept this reality. The Ommah party that had a turbulent experience with the government when it first announced itself is publicly active today.<sup>319</sup> Political groups are quasi full participants in political life. <sup>320</sup> Their activities vary from organizing public events and general conferences to hold 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>321</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

lex/pdconv.pl?host=status01&textbase=iloeng&document=9069&chapter=6&query=Kuwait%40ref&highlight=&querytype=bool&context=0

Article 72 of Labour Law for the Private Sector.

<sup>313</sup> Article 7 of the Statutes of Kuwait General Confederation of Trade Unions, available athttp://ktuf.org/constitution/index.php

<sup>314</sup> Interview with MSAL, Trade Unions Organizations Directorate, 12/2/2008

<sup>315</sup> Interview with KTUF, 11/2/2008: These conditions are prescribed by the federations' internal rules and regulations.

<sup>316</sup> Interview with Kuwait Trade Union Federation , 11/2/2008

<sup>317</sup> Interview with ILO representative in Kuwait, 12/2/2008

<sup>318</sup> Interview with Kuwait Trade Union Federation , 11/2/2008

<sup>319</sup> Interview with Omma Party, 14/2/2008

<sup>320</sup> 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/

<sup>321</sup> Interview with the Kuwait Democratic Foundation, 10/2/2008; Interview with the Islamic Constitutional Movement, 11/2/2008

Assembly.<sup>322</sup> However, their representation in the National Assembly is small.

Nevertheless, the lack of legal recognition hinders other activities such as organizing events that require official authorization, or for example, opening a bank account.<sup>323</sup>

Political groups in Kuwait argue that the Constitution neither explicitly guarantees the right to form political parties nor prohibits it.<sup>324</sup> They argue that the Explanatory Memorandum of the Constitution affirms the right of political parties to exist through the interpretation of Article **56** of the Constitution that states that: "*the Emir's traditional consultations preceding the appointment of the Prime Minister...* with the 'political personalities who have political groups"...<sup>325</sup> Indeed, the Emir did, before nominating a new government in 2006, informally consult with the existing political groups, with the exception of the Umma Party.<sup>326</sup>

However, this opinion does not go undebated. Considering that there is no legal framework for the political groups, the identification of 'political personalities' i at the discretion of the Emir.<sup>327</sup>

It seems that no one has resorted to the Constitutional Court to request an interpretation of **Articles 43** and 56 of the Constitution as to whether they indicate a recognition and hence, call for regularization, of political parties.<sup>328</sup> The Explanatory Memorandum's Section 2 clarifies that although Article 43 of the Constitution does not explicitly mention "political parties" this should not prohibit the legislator from recognizing their existence in the future.<sup>329</sup>

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 by the General Prosecutor and interrogated. They were accused of holding an assembly without authorization and attempting to create a party that aims to change the political regime of the country. However, the General Prosecutor dropped the charges after the ruling by the Constitutional Court – in a different case- that some Articles of the Assembly Law, including the prior authorization, are unconstitutional.<sup>330</sup>

Today, the Kuwaiti political groups are demanding a law pertaining to political parties. They carry out their current activities with no protection as the group could be considered as "illegal" whenever the

<sup>322</sup> Interview with the Kuwait Democratic Foundation, 10/2/2008; Interview with the Islamic Constitutional Movement, 11/2/2008: The Islamic Constitutional Movement has six members in the National Assembly among whom is the Vice National Assembly Chairman

<sup>323</sup> Interview with Kuwait Democratic Foundation, 10/2/2008

<sup>324</sup> Interview with the Kuwait Democratic Foundation, 10/2/2008; Interview with the Islamic Constitutional Movement, 11/2/2008

<sup>325</sup> Interview with Kuwait Democratic Foundation, 10/22008; Explanatory memo of Kuwait Constitution, art 56, Unofficial Translation, available at http://www.majlesalUmmah.net/run.asp?id=51

<sup>326</sup> Interview with Kuwait Democratic Foundation, 10/2/2008

<sup>327</sup> Interview with the Islamic Constitutional Movement, 11/2/2008

<sup>328</sup> Interview with Kuwait Democratic Foundation, 10/2/2008

<sup>329</sup> Explanatory memo of Kuwait Constitution, art 43, Unofficial Translation, available at

http://www.majlesalUmmah.net/run.asp?id=51

<sup>330</sup> Interview with Ummah Party, 14/2/2008

government wishes to consider it so.<sup>331</sup> Political groups believe that a law 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>332</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>333</sup>

Considering that political groups do not have legal status, they tend to establish associations to hold their meetings to discuss political issues. Considering that association are not supposed to be involved in politics, this could lead to the criminalization of these groups on the grounds that they are undertaking unlawful activities and holding public meetings without prior permission, which is punishable by imprisonment.<sup>334</sup>

For the first time, there are today three draft bills on political parties, but none have yet been discussed by the Parliament.<sup>335</sup> The government itself has not presented any proposal of law on political parties to date.<sup>336</sup>

#### • The right for an association to freely carry out its statutory activities

The right to freedom of association is not limited to the right to form or join an association, but covers also the right to freely carry out the statutory objectives and activities. In this respect, the Kuwaiti laws and regulations related to the right to freedom of association as well as the policy of the government give the authorities discretionary power to interfere in the running of the association to extents which contravene international standards.

335 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.icmkw.org/art\_info\_bayans.aspx?url=\_redirect&art\_id=434;

<sup>331</sup> Interview with Kuwait Democratic Foundation, 10/2/2008

<sup>332</sup> Interview with the Kuwait Democratic Foundation, 10/2/2008

<sup>333</sup> Interview with the Islamic Constitutional Movement, 11/2/2008

Constitutional Court Decision in case no. 223 of 2004, dated March 2006, available at http://www.lawyerah.com/vb/showthread.php?t=58 : Prior to 2006, associations were required to obtain a priori permission to hold public gatherings. However the Constitutional court in its decision in the case 223 of 2004 issued on 1/5/2006 stated that the provisions of the law 65 of 1979 on public gathering regarding the authorization to hold such a gathering are unconstitutional

<sup>336</sup> Interview with Legal Advice, 14/2/2008

Freedom of Association in the Arabian Gulf - FIDH/57

#### 2- The right to be free of Control, Interference and supervision

#### I. NGOs

The Law of Association provides for a number of regulations that authorize great levels of interference in the association's statutory activities.

The legal provisions make it mandatory to include in the statutes of the associations the details of the associations' internal organization such as the conditions of membership in the board and general assembly, general assembly meetings and elections (**Articles 10 and 13-17**). Also, the administrative authority controls 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" which associations are expected to abide by, delves into meticulous details of the mechanisms and procedures concerning the association's internal structure and other organizational aspect such as timing of the general elections, quorum, the responsibility of the board of directors and of its members, among others (Articles 19-48).

Both the ministry and the two human rights NGOs confirmed that the administrative authority exercises severe control over NGOs. The ministry stated it "controls the outcome of the associations' objectives by requesting annual reports, monitoring the activities, and if needed, by changing the course of actions to achieve these objectives.<sup>337</sup> Thus, the purpose of requesting annual reports is to guarantee that they are working within the parameters of their objectives.<sup>338</sup> In addition, the ministry attends NGOs' general assemblies and elections to ensure that the procedures and rules are fair and transparent.<sup>339</sup> If the ministry detects any violation in the meeting, it may stop the proceedings and correct their course.<sup>340</sup> It appears that no such incident ha

#### II. Trade Unions

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.

Trade unions are forbidden from involvement in political, religious, and sectarian issues (Article 73 (1)). 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).

According to the Kuwait Trade Union Federation, trade unions enjoy the freedom of running their activities without interference.<sup>341</sup> In order to ensure transparency and upholding the interests of the workers, the Ministry's inspectors inspect the trade union books and accounts periodically or when they

<sup>337</sup> Interview with MSAL, Social Development Directorate, 12/2/2008

<sup>338</sup> Interview with MSAL, Social Development Directorate, 12/2/2008

<sup>339</sup> Interview with MSAL, Social Development Directorate, 12/2/2008

<sup>340</sup> Interview with MSAL, Social Development Directorate, 12/2/2008

<sup>341</sup> Interview with Kuwait Trade Union Federation , 11/2/2008

receive a complaint from one or more of the union members.<sup>342</sup> The Ministry further requests copies of the trade unions' reports and the minutes for the general assembly meetings.<sup>343</sup> These actions are based on ministerial decisions so that all the information is available in case a member makes a complaint against the trade union.<sup>344</sup> The Ministry further requests to be informed of any project of amendment of the statutes and internal by-laws. The Ministry shall give its approval for these changes. In case the Ministry rejects the amendments and a conflict arises with the trade union, the latter may resort to court.<sup>345</sup>

The Ministry has explained that these measures are based on the ministry's model internal by-law and executive regulations .<sup>346</sup> There was a conflict between the ministry and the trade unions concerning the new regulations issued by the administrative authority requesting the amendment of the statutes and bylaws of trade unions. The unions insisted that this reflects severe interference in their 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>347</sup> The ILO Representative affirmed that the ministry may take decisions or measures as long as they conform with the law and internal labour standards. Otherwise, such measures are null and void.<sup>348</sup>

The Kuwait Trade Union Federation attends the general assembly elections to ensure the democracy of the process.<sup>349</sup> The Ministry may also attend, but it is not compulsory to do so. Nevertheless, copies of the minutes of these meetings should be sent to the ministry.<sup>350</sup>

According to the ILO, the Ministry of Social Affairs and Labor provides the trade unions with a letter confirming the signature of the board members authorized to sign on behalf of the union. This is an interference violating the international standards of freedom of association. However, trade unions may resist the interference by complaining through the Kuwait Trade Union Federation to the ILO Representative Office that will in turn refer the complaint to the ILO Committee of Freedom of Association. The ILO committee will revise ILO country offices' reports three months before the General Conference, and where there are any violations to Convention 87, the Committee will remind the countries of their obligations under the Convention.<sup>351</sup>

Indeed such cases did occur in Kuwait whereby the Ministry of Labor was warned by the Committee about interfering in unions' affairs. There are also confidential reports prepared by ILO experts through field missions. The Committee refers to these reports in formulating its comments and recommendations.<sup>352</sup>

There is a valid concern, however, stemming from the fact that the legal provisions generally prohibit political activity. This leaves it to the administrative authorities to interpret whether or not an activity

<sup>342</sup> Interview with MSAL on 12/2/2008

<sup>343</sup> Interview with MSAL on 12/2/2008 and complementary interview on 5/6/2008.

<sup>344</sup> Interview with MSAL on 12/2/2008

<sup>345</sup> Interview with MSAL, Trade Unions Organizations Directorate on 12/2/2008 and complementary interview on 5/6/2008.

<sup>346</sup> Interview with MSAL on 12/2/2008 and complementary interview on 5/6/2008.

kw.com/default.aspx?action=DisplayNews&ID=850&ParentID=45&Type=5 348 Complementary interview with ILO Representative on 5/6/2008

<sup>349</sup> Interview with Kuwait Trade Union Federation . 11/2/2008

<sup>250</sup> Interview with Kuwait trade Union Federation, 11/2/2006

<sup>350</sup> Interview with MSAL, Trade Unions Organizations Directorate, 12/2/2008

<sup>351</sup>Interview with ILO representative in Kuwait, 12/2/2008

<sup>352</sup> Interview with ILO representative in Kuwait, 12/2/2008

is in fact 'political' thus restricting the freedom of trade unions. This prohibition is a legal obstacle hindering union activities since by definition, trade unions address public issues that may inevitably intersect with political issues although there has been no such cases before the courts.<sup>353</sup> For example, if a person known for his/her anti union attitude is appointed as Minister of Labor, trade unions do not have the right to object the appointment, rather they object after the appointment to any decision taken by the minister against workers and unions interests. 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. Trade unions should not however, be involved in issues related to the State's defense strategy and policy or external relations.<sup>354</sup>

The Kuwaiti government prohibits the right to strike and the government has made a reservation on Article 8.1(d) of ICCESR (pertaining to strikes). <sup>355</sup> Yet, Kuwait has ratified ILO C87 which guarantees the right to strike.<sup>356</sup> The Constitution and national laws however, are silent on this issue. The prohibition of strikes is in contradiction with Kuwait's international labour rights obligations. In its proposal to the parliament concerning the amendment of the Labour Law, the General Federation of Trade Unions has requested to include the right of trade unions to strike as one of the means to defend their social and economic interests.<sup>357</sup> In 2007, the Council of Ministers issued Decision No. 1113 prohibiting strikes and punishing workers who go on strike.<sup>358</sup> The media reported that the trade unions rejected the decision. Also, it was reported that strikes in the public sector did in fact take place in 2007.<sup>359</sup>

#### **<u>3- Conditions of Funding</u>**

#### I. NGOs

NGOs are requested to provide annual financial reports and provisional budgets to the ministry (**Article 21**). They must obtain a special permit to carry out public fund raising activities as per the terms and conditions set forth by the Law on licensing public fund raising activities (**Article 22**).

Associations are forbidden from receiving, directly, 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).

<sup>353</sup> Interview with Dr. Anwar Al-Fuzaie, Member of ILO CEACR, 12/2/2008

<sup>354</sup> Interview with Kuwait Trade Union Federation , 11/2/2008

<sup>355 &</sup>quot;The Government of Kuwait reserves the right not to apply the provisions of Article 8, paragraph 1 (d)", OHCHR, ICESCR, Reservations and declarations, available at http://www.unhchr.ch/html/menu3/b/treaty4\_asp.htm

<sup>356</sup> FIDH was not able to obtain copy of the Law of Ratification to verify if there are any reservations

<sup>357</sup> Copy of proposals submitted by the KTUF obtained during the mission on 11/2/2008 (On file)

<sup>358</sup> Alrai newspaper, Tahous: Government Circular to prohibit strikes is a confiscation of freedoms and violates the Constitution and the conventions, available at <u>http://www.alraialaam.com/Templates/feSaveArticle.aspx?ld=13238</u>; Dira News, 10 December 2007: Federation of Kuwait Unions: withdraw the repressive decision otherwise we will recourse to ILO, available at <u>http://www.deerah.com/index.php?act=Writers&cmd=Show\_ID&id=22</u>

<sup>359</sup> Jarida newspaper, issue147 dated 20 November 2007, available at <u>http://www.aljarida.com/aljarida/Article.aspx?id=33641&searchText</u>=?????, and issue 148 dated 21 November 2007, available at <u>http://www.aljarida.com/aljarida/Article.aspx?id=33851&searchText</u>=????? And issue 149 dated 22 November 2007, available at <u>http://www.aljarida.com/aljarida/Article.aspx?id=34016&searchText</u>=????? 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

Although public funding and other kinds of support (such as low-rent office space, support in the costs of participating in international meetings and conferences) are stipulated for in legal texts (Articles 24, 25, 26), only public interest NGOs registered before 2004 benefit from such assistance.<sup>360</sup> The Council of Ministers Decision No. 836 has set this change of policy. Newly registered NGOs have to make a formal commitment not to request financial support from the government.<sup>361</sup> Human rights NGOs complained about this restriction and said that the administrative authority intention is to make this commitment sound like a voluntary step, when in fact it is not.<sup>362</sup>

However, KABE's Statutes mention "governmental support" among the sources of funding.<sup>363</sup> Also, the official "Model Statutes" for NGOs issued in 2005 includes governmental support for public interest NGOs.<sup>364</sup>

It is important to note that none of the NGOs challenged the Council of Ministers Decision No. 836, which appears to contradict the Law of Association that explicitly provides for governmental support to NGOs.<sup>365</sup>

The ministry announced that it had recently made a proposal to the Council of Ministers in order to contribute to the travel expenses for all public interest NGOs, including those established after 2004.<sup>366</sup> As to foreign funding that requires the ministry's approval, no NGO has asked for such permission.<sup>367</sup> NGOs have on their part, declared that they do not seek foreign funding.<sup>368</sup> KHRS receives donations from the Prime Minister in his private capacity.

#### II. Trade Unions

Trade unions are forbidden from accepting grants and donations without the permission of the Ministry of Social Affairs and Labour (**Article 73**). The Law does not differentiate between national or foreign grants or donations.

The ministry's inspectors investigate the union books on regular basis for transparency or upon a complaint from union members (Article 76). Trade unions should send the ministry copies of their audited financial reports.<sup>369</sup>

Trade unions are usually self-funded and rely mainly on membership fees and small fund raising activities such as dinners and parties.<sup>370</sup> Donations and gifts are very rare and usually target a specific project or activity.<sup>371</sup>

362 Interviews with KHRS, 10/2/2008, KABE, 11/2/2008, and Dr. Mohammad Moqatei, 11/2/2008

365 Interview with MSAL, Social Development Directorate, 12/2/2008

<sup>360</sup> Interview with MSAL, Social Development Directorate, 12/2/2008

<sup>361</sup> Interview with MSAL, Social Development Directorate, 12/2/2008, Interviews with KHRS, 10/2/2008 and KABE, 11/2/2008. Copy of the decision was requested but todate not received.

<sup>363</sup> Bylaw of KABE, (on file)

<sup>364</sup> Model bylaw of public interest NGOs, adopted by the MSAL on 5 April 2005

<sup>366</sup> Interview with MSAL, Social Development Directorate, 12/2/2008

<sup>367</sup> Interview with MSAL, Social Development Directorate, 12/2/2008, KHRS, 10/2/2008, KABE, 11/2/2008

<sup>368</sup> Interview with KABE, 11/2/2008

<sup>369</sup> Interview with MSAL, Trade Unions Organizations Directorate, 12/2/2008

<sup>370</sup> Interview with Kuwait Trade Union Federation, 11/22008. small projects, mainly in the services ministries where the unions run coffee shops

and provide other services (photocopies, stamps, etc...) 371 Interview with Kuwait Trade Union Federation , 11/2/2008

According to the Ministry of Social Affairs and Labor, no trade union had asked a permission to accept donations and subsidies. <sup>372</sup>

The legal provisions relating to trade unions do not provide for government support. despite the fact that, in practice this does occur. The ministry stated that it provides financial support only to trade unions established before 1979. The ministry was unsure but believes that this practice stopped after the enactment of the Civil Service Law in 1979 that defined civil service workers as "employees" while the government budget mentions the financial support for the

"trade unions of workers". Despite this explanation, trade unions established before 2003 continue to receive government financial support. After the resumption of political life in Kuwait in 2003, the government decided to reduce its support to the newly established trade unions – regardless if in the public sectors or private sector – to a onetime grant of 5000 KD presented upon the establishment of the union.<sup>373</sup>

The government support, however, comes with the direct control by the administrative authority. This is considered interference in trade unions affairs.<sup>374</sup> The governmental support to old trade unions on a monthly basis results in their control over how this funding is used. The new trade unions are not receiving such support because the number of the trade unions has increased after 2003 a matter that would make it a high burden on the government budget.<sup>375</sup>

According to ILO the Ministry of Social Affairs and Labor gives trade unions letters that allow them to open a bank account; without that letter, trade unions could not open bank accounts. This practice contradicts international labour standards.<sup>376</sup>

#### III. Political Parties

No legal provisions exist pertaining to political parties as such.

As a result of their non official status, de facto political groups rely mainly on their own resources. If they collect money, they do so informally. In addition, they cannot open bank accounts but open them in individual's names.<sup>377</sup>

<sup>372</sup> 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

<sup>373</sup> Interview with MSAL, Trade Unions Organizations Directorate, 12/2/2008

<sup>374</sup> Interview with ILO Representative in Kuwait, 122/2008, and Dr. Anwar al-Fuzaie, Member of ILO CEACR, 13/2/2008

<sup>375</sup> Interview with ILO representative in Kuwait, 12/2/2008

<sup>376</sup> Interview with ILO representative in Kuwait, 12/2/2008

<sup>377</sup> Interviews with the Kuwait Democratic Foundations, 10/2/2008 and with Islamic Constitutional Movement, 11/2/2008

#### 4- The Right to affiliation to Regional and International Organizations

#### I. NGOs

NGOs may not participate, or affiliate with any association, club or institution outside Kuwait without the prior permission of the Ministry (**Article 30** of the Association Law).

The Ministry stated that this control is legitimate in order to be aware of NGOs foreign relations which may harm the country.<sup>378</sup> In practice, however, operation of NGOs on international and regional levels does occur.

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>379</sup> KHRS said it had no problem with the authorities, and KABE stated that there was no need to inform the Ministry.<sup>380</sup>

#### II. Trade Unions

The General Federation, and other federations have the right to join Arab and international organizations with which they share common interests, provided they notify the Ministry of Social Affairs and Labour within one week of their adherence to the international organization (**Article 84**).

The KTUF is 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>381</sup>

#### 5- The right to protection from closure, suspension or dissolution

#### I. NGOs

NGOs could be dissolved by a decision of the administrative authority in the following cases:

- If membership falls to less than 10 members; if the activities of the association depart from its original objectives or it commits a serious violation of its statutes; if it becomes unable to meet its financial obligations; or if it breaches the provisions of this law (**Article 27 (1**))<sup>382</sup>
- The Ministry has also the option to assign a temporary executive board instead of dissolution if it finds it in the interest of the members and the objectives of the association (Article 27 (2))

The authority decides the way and method of dissolution, and the beneficiary of the documents and finances of the dissolved association - if these are not provided for in the association's statutes (Law,

<sup>378</sup> Interview with MSAL, Social Development Directorate, 12/2/2008

<sup>379</sup> Interviews with KHRS, 10/2/2008 and KABE, 11/2/2008

<sup>380</sup> Interview with KABE, 11/2/2008

<sup>381</sup> Interview with Kuwait Trade Union Federation , 11/2/2008

<sup>382</sup> However, amendment by law 75 of 1988 adds "if it did no effective activity in order to achieve its purposes; if the reasons of public interest or public security so require". The Article adds that the decision could be challenged before the Council of Ministers and is not subject to judicial challenge according to Article 9 (4). The force of this amendment is not clear, and in fact, it seems that the text in force is the text mentioned above.

Article 29). The "Model Statutes" provide that the association's assets and finances shall be given to the Ministry (Model Statutes, Article 49).

Thus, the legal provisions allow the dissolution of an association or the assignment of a temporary board by an Administrative Act. Despite that, the general principle of law gives affected associations the right to resort to court to challenge an administrative decision of that sort.<sup>383</sup>

The Minister confirmed that no association was dissolved during the last four years.<sup>384</sup> However, human rights NGOs consistently have to make concessions in order not to displease the authorities and risk dissolution. As one NGO spokesperson explained: "We are prudent and act with precaution particularly in our activities on sensitive issues in order not to do 'anything that could harm the people or the Constitution'".<sup>385</sup>

#### II. Trade Unions

Trade unions are subject to dissolution in two ways: voluntarily, or compulsorily 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. The finances of the trade union after liquidation are transfered to the ministry (**Article 77**).

The ministry stated that it has not requested the dissolution of any trade union in recent years.<sup>386</sup>

#### **III. Political Parties**

There are no provisions pertaining to political parties as such.

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>387</sup>

## 6- <u>The Right to Individual Security – No penalization for belonging to a dissolved or non-registered organization or union</u>

#### I. NGOs

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 be criminalized.

<sup>383</sup> Interview with MSAL on 12/2/2008

<sup>384</sup> Interview with MSAL, Social Development Directorate, 12/2/2008

<sup>385</sup> Interview with KHRS, 10/2/2008

<sup>386</sup> Interviews with Kuwait Trade Union Federation , MSAL, Trade Unions Organizations Directorate, 12/2/2008, ILO representative in Kuwait, 12/2/2008

<sup>387</sup> Interviews with the Kuwait Democratic Foundations, 10/2/2008 and with Islamic Constitutional Movement, 11/2/2008

The Penal Code punishes individuals who form or call for joining a group or association that disseminates principles which aim at destroying the fundamental system in an illegal manner or which aim at the use of force against the social and economic mechanisms in place. For these actions, perpetrators could be sentenced up to 15 years in prison and those who join such associations could be sentenced to up to 10 years (**Article 30**).<sup>388</sup>

According to KHRS and KABE, there have been no cases of penalization on grounds of belonging to a dissolved or a non-registered association.<sup>389</sup> KHRS stated that they were not penalized when they carried out their activities before their registration while working as a branch of the Arab Human Rights Organization. This may perhaps be explained by the fact that many of its members are close to the authorities as most of them work in the public sector.<sup>390</sup>

Yet, there are scattered 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:

- 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 perpetrators
  of torture inside and outside Kuwait. Five months later (2004), most of its members were
  arrested. The whole group those arrested and those who escaped- were tried. The charges
  against them were: disseminating "untrue reports" and "belonging to prohibited organizations."
  Some of them were acquitted including the group's spokesman, Khaled Dousari who later on in
  the same year was accused of recruiting people to fight against the US forces in Iraq.<sup>391</sup> Those
  who fled the country were sentenced to prison terms in absentia.<sup>392</sup>
- 2) The case of Osama Munawar, a lawyer and member of Al Karama (Geneva) who 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>393</sup> He was acquitted. But when he tried to file a complaint against his arrest, the General Prosecutor refused to register the complaint.<sup>394</sup> The Special Representative of the UN Secretary General on Human Rights Defenders communicated grave concern to the Kuwait authorities that the charges against Monawer may be driven by his human rights activities.<sup>395</sup> The Kuwaiti authorities responded that Munawar was charged with membership of a prohibited

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

<sup>389</sup> Interview with KHRS, 10/2/2008

<sup>390</sup> Interview with KHRS, 10/2/2008

<sup>391</sup> Kuwait targets leading rights activist, Al Jazeera English, News Arabworld, updated on Sunday, July 25, 2004, available at <a href="http://english.aljazeera.net/archive/2004/07/2008410122945144283.html">http://english.aljazeera.net/archive/2004/07/2008410122945144283.html</a>

<sup>392</sup> Phone interview with Me. Osama Monawer, 14/2/2008

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

<sup>394</sup> Phone interview with Me. Osama Monawer, 14/2/2008

<sup>395</sup> 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

organization seeking to destroy the basic apparatus of the state by unlawful means.<sup>396</sup>

#### II. Trade Unions

#### Anti-union discrimination

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

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.

According to the Kuwait Trade Unions Federation, in case of dismissal of workers on the grounds of their union activities, the union in question, along with the Kuwait Trade Unions Federation will join forces to solve the problem amicably until the dismissed worker is returned to his job. In most cases, the problem is resolved before legal recourse is pursued.<sup>397</sup> This is also the view of the Ministry of Labour. Based on Chapter 14 of the Labor Law in the Private Sector, the ministry uses its intermediary role to solve the conflict amicably, and usually succeeds. Amicable solutions are more effective particularly in terms of time, unlike the lengthy judicial procedures.<sup>398</sup>

<sup>396</sup> 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

<sup>397</sup> Interview with Kuwait Trade Union Federation , 11/2/2008

<sup>398</sup> Interview with MSAL, Trade Unions Organizations Directorate, 12/2/2008

### Yemen

#### The Legal and Policy Framework relating to freedom of association

#### • Yemen's International Obligations

Yemen is party to the main international human rights instruments. Most of these conventions were ratified by South Yemen and then were integrated into the laws of the United Republic of Yemen.<sup>399</sup> Specifically, these conventions are: <sup>400</sup>

- The Convention for Elimination of All Forms of racial Discrimination (CERD) on18/10/1972.<sup>401</sup>
- The Convention Related to the status of Refugees on 18/1/1980.<sup>402</sup>
- The Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) on 30/5/1984.<sup>403</sup>
- The International Covenant for Civil and Political Rights (ICCPR) on 2/9/1987.<sup>404</sup>
- The International Covenant for Economic, Social And Cultural Rights (ICESCR) on 2/9/1987.<sup>405</sup>
- The Convention on the Rights of the Child (CRC) on 1/5/1990.<sup>406</sup>
- The Convention Against Torture (CAT) on 5/11/1991.<sup>407</sup>

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

"The People's Democratic Republic of Yemen does not consider itself bound by the provisions of Article 22 of the Convention, under which any dispute between two or more States Parties with respect to the interpretation or application of the Convention is, at the request of any of the parties to the dispute, to be referred to the International Court of Justice for decision, and states that, in each individual case, the consent of all parties to such a dispute is necessary for referral of the dispute to the International Court of Justice.

"The People's Democratic Republic of Yemen states that the provisions of Article 17, paragraph 1, and Article 18, paragraph 1, of the Convention on the Elimination of All Forms of Racial Discrimination whereby a number of States are deprived of the opportunity to become Parties to the Convention is of a discriminatory nature, and holds that, in accordance with the principle of the sovereign equality of States, the Convention should be opened to participation by all interested States without discrimination or restriction of any kind.", available at http://www2.ohchr.org/english/bodies/ratification/2.htm

<sup>399</sup> 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 in the occasion of the announcement of the Yemen Republic, dated 22/5/1990, available at http://www.presidentsaleh.gov.ye/shownews.php?lng=ar&\_nsid=3105.

<sup>400</sup> OHCHR, Yemen Home page, available at <u>http://www.ohchr.org/english/countries/ye/index.htm</u>; OHCHR, International law page, instruments ratification by country and date, available at <u>http://www.ohchr.org/english/law/index.htm</u>;

<sup>401</sup> Date of ratification available at <u>http://www.mhryemen.org/reports/org1.php</u>; With the following reservation: "The accession of the People's Democratic Republic of Yemen to this Convention shall in no way signify recognition of Israel or entry into a relationship with it regarding any matter regulated by the said Convention.

<sup>402</sup> Date of ratification available at http://www.mhryemen.org/reports/org1.php

<sup>403</sup> Date of ratification available at <u>http://www.mhryemen.org/reports/org1.php</u>; With the following reservation: The Government of the People's Democratic Republic of Yemen declares that it does not consider itself bound by Article 29, paragraph 1, of the said Convention, relating to the settlement of disputes which may arise concerning the application or interpretation of the

Convention, available at http://www2.ohchr.org/english/bodies/ratification/8.htm

<sup>404</sup>Rafified by the South Yemeni Parliament on 29/2/1987Date of ratification available at <a href="http://www.mhryemen.org/reports/org1.php">http://www.mhryemen.org/reports/org1.php</a>405Date of ratification available at <a href="http://www.mhryemen.org/reports/org1.php">http://www.mhryemen.org/reports/org1.php</a>

The accession of the People's Democratic Republic of Yemen to this Covenant shall in no way signify recognition of Israel or serve as grounds for the establishment of relations of any sort with Israel, available at http://www2.ohchr.org/english/bodies/ratification/3.htm

<sup>406</sup> Date of ratification available at http://www.mhryemen.org/reports/org1.php.

<sup>407</sup> Date of ratification available at <u>http://www.mhryemen.org/reports/org1.php</u>

of the International Covenant on Civil and Political Rights.<sup>408</sup>

Yemen is a member of ILO<sup>409</sup> 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>410</sup>

Ratified international treaties have the force of national laws.<sup>411</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>412</sup>

#### • National Laws and Regulations Related to Freedom of Association

#### The Constitution

The Yemeni Constitution guarantees the right to freedom of association and trade unions.

#### 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."<sup>413</sup> (Unofficial translation)

#### 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".<sup>414</sup> (Unofficial translation)

#### Article 40 also states:

"Military, security, police and other forces shall not be employed in the interest of a party, an

<sup>408</sup> Interview with Ministry of Legal Affairs, 29/1/2008

<sup>409</sup> ILO Alphabetical list of members, available at http://www.ilo.org/public/english/standards/relm/countryb.htm#B

<sup>410</sup> See list of ILO Conventions ratified by Yemen on http://www.mhryemen.org/reports/org1.php

<sup>411</sup> 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).

<sup>412</sup> Law 14 of 2002, Civil Law, dated 10 April 2002, Article 33, unofficial Translation, available at <u>http://www.yemen-</u>nic.com/contents/laws/detail.php?ID=11767

 <sup>413</sup> Yemeni Constitution, 2001, Article 5, available at <a href="http://www.yemenparliament.com/content.php?lng=arabic&id=50">http://www.yemenparliament.com/content.php?lng=arabic&id=50</a>
 414 *Ibid*

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"<sup>415</sup> (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..." <sup>416</sup> (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... "<sup>417</sup> (Unofficial translation)

#### National Legislations

Yemen has three distinct laws and regulations for associations and foundations, political parties and trade unions:

- Pertaining to Non Governmental Organizations: The Law of Associations and Civil society (No.1) of 2001<sup>418</sup> and its Executive Bylaw issued by Decision No. 129 on 10 May 2004.<sup>419</sup> There also exists compulsory ministerial decisions such as the "model statutes"<sup>420</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.<sup>421</sup>
- Pertaining to trade unions: The Law No. 35 of 2002 related to the Organization of Labour Trade Unions.<sup>422</sup> The Labour Code<sup>423</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>424</sup>
- Pertaining to political parties: Law No. 66 of 1991<sup>425</sup>, and its Executive Directive issued by the Presidential Decree No.109 of 1995<sup>426</sup>

<sup>415</sup> Ibid

<sup>416</sup> Ibid

<sup>417</sup> Ibid

<sup>418</sup> 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 <a href="http://www.police-info.gov.ye/Laws/Soci01.htm">http://www.police-info.gov.ye/Laws/Soci01.htm</a>. This Law replace Law no 11 of 1963. Before 2001, the Ministry responsible for associations was the Ministry of Culture.

<sup>419</sup> 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)

<sup>420</sup> Ministry of Social Affairs and Labour, Decision no. 52 of 2005 (on file)

<sup>421</sup> For example, the Ministry of Social Affairs and Labour handbooks 3, 4, 5, 6, 7, 8, 9, 10. (On file)

<sup>422</sup> Law 35 of 2002 regulating Trade Unions, dated 14 August 2002, Unofficial Translation, available at <u>http://www.yemen-nic.com/contents/laws/detail.php?ID=11781</u>

<sup>423</sup> Republican Legislative Order to promulgate the Labour Code, Act No. 5 of 1995 (Unofficial Translation), available at http://www.yemennic.com/contents/laws/detail.php?ID=11439.

<sup>424</sup> Interview with GFYWTU, 30/1/2008

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

<sup>426</sup> Republican Decree No. (109) of 1995 pertaining to the Executive By-Law for the Parties and Political Organizations Law No.(66)

The By-laws are legally enforceable regulations created by the competent ministry. Circulars are documents issued for the purpose of explanation 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.<sup>427</sup> Political parties fall under the authority of a special committee, the Committee for the Affairs of the Political Parties and Organizations (CAPPO).<sup>428</sup>

## <u>1- Specific Provisions Regulating the Formation, Functioning, and Dissolution of Non-Governmental Organizations, Trade Unions, and Political Parties.</u>

#### o The Right to Establish an Association

#### I. NGOs

The legislative provisions relating to non-governmental associations regulate associations, foundations, clubs, federations and confederations of associations.<sup>429</sup>

The Law **No.1 of 2001** distinguishes between an association and a foundation. Thus, it defines an organization 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; does not seek to generate from its activities financial profit for its members; the membership shall be open... " (Article 2)

While it defines a foundation as:

"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" (Article 2)

for 1991, dated 21 August 1995, official translation, available at <u>http://www.scer.org.ye/english/executiveby-lawforthepartylaw.pdf</u>

<sup>427</sup> According to Article 2 of Law no. 1 of 2001 related to association and Article 2 of Law 35 of 2002 related to trade unions, the competent ministerial department is the General Directorate of Associations and Federations.

<sup>428</sup> 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)

<sup>429</sup> 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 <a href="http://www.police-info.gov.ye/Laws/Soci01.htm">http://www.police-info.gov.ye/Laws/Soci01.htm</a>. This Law replace Law no 11 of 1963. Before 2001, the Ministry responsible for associations was the Ministry of Culture; 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 1 of 2001 (on file); Ministry of Social Affairs and Labour, Decision no. 52 of 2005 (on file); For example, the Ministry of Social Affairs and Labour handbooks 3, 4, 5, 6, 7, 8, 9, 10. (On file)

#### **Formation**

The same legal provisions are applicable for the establishment of both the associations and foundations, with the exception that foundations are for a limited or unlimited period (Law, **Article 50**) and founding members should invest in the foundation and must provide evidence of a bank deposit of a specific amount when they submit their application for registration (**Executive By-law 129, Article 7-b**).

The Law further states that an association or foundation may not carry out any activity before the completion of the registration procedures (**Article 84**). It gains a legal personality only after its registration and proclamation (**Article 12**).

The founders should submit an application for authorization/registration to the competent ministry; The application should follow the ministry's "Model Statutes" (Law Article 8 and Executive By-law 129, Article 8-b). The association's statutes should include the purposes and objectives that would not contradict the Constitution and laws (Law Article 4 Para a). It must also specify full details about the association's organizational and financial aspects such as the terms and conditions of the membership, the conditions and procedures for the liquidation or dissolution, and/or merger with another association or foundation (Law, Article 4 b, and Executive Bylaw, Article 7(a)). The association shall not take a name similar or identical to that of an existing association working in the same geographic area (Law Article 4 (b1)).

After submitting the application, the ministry gives the applicant an official receipt that shows the date of the application and the dates of subsequent enquiries/revisions (Executive By-law, Article 8 (b)). The application is deemed approved after a one month period if there is no response (negative or positive) from the administrative authority. The concerned applicant may request of the ministry to take the necessary steps to register and announce it in one of the official state newspapers (Law Article 9).

However, the ministry may object if it considers the application inconsistent with the provisions of the laws and regulations. The objection is to be made in writing and the association is requested to make the necessary changes in conformity with the legal provisions within a predefined period of time (Executive bylaw, Article 13 (a)).

The ministry has the authority to refuse to register an application. 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 within ten days of the date of the decision (Law, Article 10). However, the legal provisions do not specify any grounds for such rejection. The ministry said that the grounds could include that the provisions of the statutes violate the Constitution, or the association would be duplicating of an existing organization.<sup>430</sup> However, the association may appeal against a negative decision before the courts within 60 days from receiving notification of the rejection (Law, Article 11).

#### Migrants

The law seems to limit the right 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

<sup>430</sup> Interview with Ministry of Social Affairs and Labour, 27/1/2008

the Ministry of Foreign Affairs" (Law, Article 80). The proportion of the Yemeni members in the board of directors should be at least equal to the number of Yemeni general assembly members (Executive By-law 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 (Law, Article 137).

#### **In Practice**

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. FIDH was informed that the association has started the procedures for registration with the Ministry of Social Affairs and Labor but had to negotiate with the ministry about the objectives and methods of work. 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. At the time of writing this report, the group had not yet submitted its application for registration but was planning to have their constituent assembly on February 13<sup>th</sup> 2008.<sup>431</sup>

Apparently, there are many human rights NGOs or foundations in Yemen.<sup>432</sup> However, since 2006, the ministry seems to have stopped registering new applications and is in the process of drafting a new law of associations. This could explain the "freezing" policy witnessed today.<sup>433</sup>

The Law of Association is currently a subject of heated debate for the Yemeni civil society. The ministry believes that the law in force is very advanced but is currently preparing a draft for some amendments to ensure that, among others things, more control is guaranteed over the financial resources of the associations. Throughout the course of the study, the ministry confirmed that they are also considering including human rights organizations as a special category within the list of associations.

The Yemeni civil society has prepared two draft laws. One is formulated by a coalition of six Yemeni NGOs<sup>435</sup> with the support of the Danish Institute for Human rights, and the second one is by "the Initiative to Support Democracy (MADA)" in cooperation with International Center of Non-profit Law. The proposals in the draft bills include a proclamation, rather than authorization, system for establishing NGOs; the right to challenge negative decisions in courts; and freedom to freely access foreign funding. The organizations have actively been lobbying parliamentarians to adopt their proposals.<sup>436</sup>

<sup>431</sup> Interview with Save the Children, 31/1/2008

<sup>432</sup> Interviews with National Organization for Defending Rights and Freedoms (HOOD)on 27/1/2008); and with Taghyeer Organization for Defense of Rights and Freedoms (Taghyeer) on 28/1/2008; with Yemeni Organization for Defense of Rights and Democratic Freedoms (YODRDF, 28/1/2008. According to the Ministry of Social Affairs and Labor, NGOs are in thousands, including over 100 Human Rights NGOs. Interview with Ministry of Social Affairs and Labor; see also list of human rights NGOs provided by the Ministry to FIDH in annex YE 9.

<sup>433</sup> According to one association, the new policy is based on a order/ decision taken by the Prime Minister . NGOs reported that the undersecretary for Social Development announced publicly in a conference that they do not want to have new associations)

<sup>434</sup> Interview with undersecretary of social development at the Ministry of social affairs and labor, 27/1/2008

<sup>435</sup> 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

<sup>436</sup> Interviews with Yemeni NGOs

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

#### **Foundations vs. Organizations**

Of the ten national human rights NGOs met by FIDH for the purpose of this study,<sup>437</sup> only three are registered as organizations with open membership<sup>438</sup> while the remaining are foundations and are run exclusively by one or two founding partners.<sup>439</sup> The ability to form a foundation with only one founder seems to be an incentive for pursuing that option. A number of representatives of foundations stated that there is less control over foundations compared with associations. In addition, they see open membership problematic since it may lead to including members who do not share the the same convictions and ideology as the founders and their vision for the association. They also shared a fear with the ministry: that of infiltration by politically motivated persons.<sup>440</sup> The ministry stated that many individuals prefer to establish a foundation in order to limit the membership to few founders or even only one. <sup>441</sup> Therefore, it looks like if the ministry's leniency in registering foundations stems from their intent to discourage the creation of organizations, which may have hidden political agendas achievable through the mobilization of the public through the membership.

#### Difficulty of obtaining a deposit receipt

The administrative authority seems to refuse to give the organizations the receipt of deposit for their applications. NGOs insist that obtaining these receipts on time is crucial as they can prove the date of submittal for applications and from which commences the period for their recognition in case no response is received from the authorities.<sup>442</sup> The ministry denied such allegations and stressed that it consistently gives the applicants the deposit receipts.<sup>443</sup> However, this appears not to be the case. For example, the "Taghyeer" Organization (Change)<sup>444</sup> said that it submitted its application for registration in September 2006 but has not received a receipt to date of writing this report and claims that the administrative authority continuously refuses to provide it. This lack of a receipt was not, however, an obstacle to follow up with the authorities concerning the status of their application. It appears that the authorities requested from the association to amend their statutes, particularly the objections were related to the name of the organization and to their proposed activity of monitoring prisons.<sup>445</sup>

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Organization for Defense of Rights and Freedom; National Struggle for Corruption and Protection of the General Property Organization (NSCO)

<sup>437</sup> See List of Interviewees - Section National NGOs, annex YE 16.

These are: the Yemeni Organization for the defense of Human Rights and Democratic Freedom; Taghyeer

<sup>439</sup> 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 440

Interviews with Democracy School, 26/1/2008; SAF, 26/1/2008; YOHR, 26/1/2008;

<sup>441</sup> Interview with Ministry of Social Affairs and Labor, Undersecretary of Social Development, 27/1/2008

<sup>442</sup> Interviews with Democracy School, 26/1/2008; HOOD, 27/1/2008, Legal Aid and Formation Center (CLAA), 31/1/2008, Taghyeer, 28/1/2008.

<sup>443</sup> Interview with Ministry of Social Affairs and Labor, 27/1/2008

<sup>444</sup> AI Tagheer is an open membership human rights non-governmental organization that aims at promoting and defending, inter alia, human right in Yemen. See their Statutes (On file). One of the founders is a member in the Parliament. In practice al Tagheer works on prison conditions: interview with AI Tagheer on 28/1/2008. According to a recent Article in the Yemeni press "The Conference" ??????? date 20 February 2008, the Administration officially stated that it had never accomplished the authorization process of what is called "Taghyeer Organization for Defense of Rights and Freedoms". The Ministry stated to Motamar newspaper it had indeed refused the application of the association as it lost its right of being authorized as a result of its violation of the legal standards regulating such organizations and its name that represents not more than an "invented movement". Motamar.Net, Ministry of Social Affairs: Taghyeer Organization is illegal, available at http://www.almotamar.net/news/54319.htm

Interview with Taghyeer on 28/1/2008 abd Democracy School on 26/1/2008 445

# Disregarding legal provisions to register an organization after the elapse of the prescribed period or after issuance of positive judicial orders

The administrative authority, and contrary to the legal provisions, seems to deny non-governmental associations or foundations to be automatically proclaimed to have legal personality when the delays for a response had expired. The same allegation is made against the authorities for failing to recognize the legal status of a previously rejected application after the issuance of positive judicial orders..<sup>446</sup> The authorities deny such accusations.<sup>447</sup> However, the existence of several such cases are described here forth: <sup>448</sup>

The Center for Legal Aid and Awareness (CLAA)<sup>449</sup> stated that they submitted their application to the office of the Ministry in Aden and obtained a countersigned copy of their application dated 19 March 19<sup>th</sup> 2007. CLAA were told by the Office of the Ministry in Aden that their application had been approved and sent to the Ministry in Sanaa for completion of registration and proclamation procedures. In fact, this never occurred, nor did they receive a negative decision for their application. After the expiry of the prescribed delay from the date of the application, CLAA requested their automatic proclamation. The administrative authority did not respond to their request. Regardless, the founders of CLAA argue that they are "legal" on the basis of Article 9 of the Law of Association (silence of the administrative authority).<sup>450</sup>

As for the Organization for Defending Rights and freedoms (HOOD), they have operated since 1998. In 2004, HOOD obtained their registration from the Ministry of Culture and were carrying out their activities freely. Following the enactment of Law No.1 (2001), and the 2005 "Fatwa" of the Ministry of Legal Affairs, the registration of all non-governmental associations was to be transferred to the mandate of the Ministry of Social Affairs and Labour,<sup>451</sup> HOOD started the procedures of transferral on 26/11/2005 and submitted the request for the renewal of their registration to the Ministry of Social Affairs.<sup>452</sup> The Ministry's signature on the letter of request is dated 10/12/2005. However, HOOD has not received the desired certificate nor a negative response from the administrative authority despite the fact that it had submitted a formal request for proclamation to which it is entitled.<sup>453</sup> HOOD, like CLAA, considers itself to be "legal" according to the "silence" clause of the Law.<sup>454</sup>

<sup>446</sup> Interview with HOOD, 27/1/2008, Taghyeer, 28/1/2008, CLAA, 31/1/2008, YOHR, 26/1/2008

<sup>447</sup> Interview with Ministry of Social Affairs and Labour on 27 January 2008

<sup>448</sup> Interviews with HOOD, 27/1/2008, Taghyeer, 28/1/2008, CLAA, 31/1/2008

<sup>449</sup> The founders of CLAA are two lawyers. They are based in Aden and aims at providing legal aid and legal training.

<sup>450</sup> Interview with CLAA, 31/1/2008; application endorsed by Undersecretary for Social Development Office in Atak (on file); Letter from founders to Minister of Social Affairs and Labor (on file); Copy of Court of First Instance Decision in Atak dated 5 May 2007 (On File)

<sup>451</sup> 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.

<sup>452</sup> Most of the time, the Ministry of Culture would give an authorization valid for one year renewable. As a result, NGOs had to renew their "license".

<sup>453</sup> Interview with HOOD, 27/1/2008 and complementary interview June 2008

<sup>454</sup> Interview with HOOD, 27/1/2008

The "National Struggle for Corruption and Protection of General Property Organization" (NSCO)<sup>455</sup> applied for registration on 2/12/2006. Two days later, they received a written rejection from the administrative authorities. The letter of rejection referred to a circular issued by the Prime Minister forbidding the registration of the association as there exists already a public institution working on the same issue (i.e. corruption).<sup>456</sup> NSSCO filed a law suit against the administrative authority in January 2007 and won the case on the grounds that the negative decision is in violation of the Constitution and the Law of Association No.1 and the Anti-Corruption Law No. 39 of 2006, as well as Yemen's international obligations. The court decision ordered the administrative authority to proclaim NSCO in an "official newspaper".<sup>457</sup> Despite the court decision, NSCO said they have not acquired their registration yet.<sup>458</sup>

## Refusal to register unless the statutes conform with the "Model Statutes"

A prominent cause of concern raised by many human rights foundations addresses the interference displayed by the authorities in the writing of the associations' statutes. The experience of "Democracy School" was a case in point. The founder of the foundation had agreed, upon the request of the administrative authorities, to amend the statutes of the foundation in accordance with the "Model Statutes" in order to secure the registration.<sup>459</sup> The "Taghyeer" organization that has not yet obtained its registration, said that the authorities also requested extensive amendments to their statutes. They were asked to make changes in some of their objectives as well as their name. Although "Taghyeer" agreed to make the recommended changes, it has still not succeeded at acquiring registration.<sup>460</sup>

#### Authorities involvement in actively creating pro-government associations

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 was said to be 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 is in operation, although they were first to apply. The second "WJWB" seems to have been created by the government after the first had applied. It appears that the authorities' refusal was politically motivated: one of the founding members is also member of the opposition political party, Al Islah, an Islamic party. In order to overcome this obstacle deliberately created by the administrative authority, the first WJWB changed its name to Women Journalist without Chains (WJWC) and reapplied for registration. The account holds that they had to go to court to obtain their registration.<sup>461</sup>

<sup>455</sup> NSCO is a non-governmental organization aims at combating corruption.

<sup>456</sup> 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

<sup>457</sup> Copy of Court of First Instance Decision in Atak dated 5 May 2007 (On File)

<sup>458</sup> Interview with NSCO on 31/1/2008

<sup>459</sup> Interview with Democracy School, 26/1/2008

<sup>460</sup> MSAL, Model statutes of associations; statutes of Taghyeer, 28/1/2008, (on file)

<sup>461</sup> Interview with Democracy School , and YOHR on 26 January 2008

### II. Trade Unions

The Law 35 of 2002 relating to the labour trade unions<sup>462</sup> stipulate that all workers may constitute trade unions except for the armed and security forces and those holding high-level posts in the public sector (**Article 5**). Also excluded are civil associations, cooperatives and professional unions that are established under different laws (**Article 4 and Article 15**). 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**). The legal provisions articulate in detail the prescribed organizational structure of trade unions and General Federation and as such, heavily restricts the ability of workers to organize and administer their union freely.

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 or similar professions (Article No. 14). Trade union committees may also establish a regional trade union 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 similar professions may proceed to establish a General Trade Union (Article 17). The general unions form a federation called the "General Federation of Trade Unions in Yemen" (GFTUY) (Article 20 (a)) whose headquarters is located in Sana'a (Article 20 (b).

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

No trade union activities may be initiated outside the provisions of the Trade Unions Law, The labor Code and other enforced legislations (Article 55).

The legal provisions do not explicitly stipulate the mechanism for the proclamation of a trade union. However, according to the Federation, the mechanism is simple and straightforward. 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>463</sup>

There is no minimum age for membership mentioned in the Law. According to the Federation, the minimum age is 16 years as prescribed by the Labor Code.<sup>464</sup>

#### **Civil Servants**

The legislative provisions do not prohibit workers/employees in the public sector from forming or join trade unions, except for those in the armed and security forces or holding high-level posts in the public sector. The GFYWTU had raised its concern about the prohibition placed upon high-level employees with the authorities, and suggests and amendment to that particular stipulation.<sup>465</sup>

# **Migrant Workers**

<sup>462</sup> Law 35 of 2002 regulating Trade Unions, dated 14 August 2002 (Unofficial Translation), available at <u>http://www.yemen-nic.com/contents/laws/detail.php?ID=11781</u>; Republican Legislative Order to promulgate the Labour Code, Act No. 5 of 1995(Unofficial Translation), available at <u>http://www.yemen-nic.com/contents/laws/detail.php?ID=11439</u>. Interview with GFYWTU, 30/1/2008

<sup>463</sup> Interview with General Federation of Yemen Workers Trade Unions

<sup>464</sup> Interview with General Federation of Yemen Trade Unions

<sup>465</sup> Interview with GFYWTU, 30/1/2008

It seems migrant workers are permitted to form or join trade unions as there is no condition addressing nationality for establishing a trade union organization. The General Federation confirmed that all workers not excluded by the Trade Unions law, including migrant workers who are subject to the Labour Code may form or join trade unions.<sup>466</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>467</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>468</sup>

#### **In Practice**

Trade unionism existed in the two parts of Yemen before unification. 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>469</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>470</sup>

Trade unions are most active in the public sector.<sup>471</sup> 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>472</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.<sup>473</sup>

The formation of more than one trade union in each establishment/sector is allowed. In fact, this has occurred in certain sectors. Two unions, the "Health and Medical Profession Union" and "Medical and Technical Professions Union" operate in the health sector. Both are members of the General Federation of Yemen Workers Trade Unions.<sup>474</sup> The multiplicity of trade unions organizations in one establishment/sector is seen by some unionists as encouraged by the government to weaken the movement.<sup>475</sup> Another profession, teaching, currently has three trade unions.<sup>476</sup> However, two of them

<sup>466</sup> Interview with GFYWTU, 30/1/2008

<sup>467</sup> Interview with GFYWTU, 30/1/2008

<sup>468</sup> Interview with the Chairman and a member of the Somali Committee, 30/1/2008

<sup>469</sup> Interview with GFYWTU, 30/1/2008, 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.cfutu.org/chowite.am.php?Nl=sub2id1\_cf1\_Ceneral Federation of Yemeni Workers Trade Unions and Activities Depart, available

<sup>470</sup> Interview with GFYWTU, 30/1/2008

<sup>471</sup> Interview with the General Union of Petroleum, Minerals and Chemicals Products, 29/1/2008; Yemeni Teachers Trade Union, 28/1/2008; HOOD, 27/1/2008

<sup>472</sup> Interview with the General Union of Petroleum, Minerals and Chemicals Products, 29/1/2008, Interview with GFYWTU, 30/1/2008

<sup>473</sup> Interview with GFYWTU, 30/1/2008

<sup>474</sup> Interview with GFYWTU, 30/1/2008

<sup>475</sup> Interview with the General Union of Petroleum, Minerals and Chemicals Products, 29/1/2008

<sup>476</sup> 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).

have been fighting over legitimacy and which is the "real representative" of the teaching profession.<sup>477</sup> The government has since 1994 been attempted –unsuccessfully- to merge these two teaching unions or persuade them to unify.

# III. Political Parties

The Law of Political Parties and Organizations guarantees citizens' right to enjoy political pluralism (**Article 3**).<sup>478</sup> This is based on Article 39 of the Constitution that that states that the political and partisan pluralism is the basis of the Yemeni political and social system.<sup>479</sup>

All Yemenis are entitled to form parties and political organizations. 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**). This is with the exception of those deprived of their political rights by a court decision or convicted of a crime for breaching honour and trust, unless they were rehabilitated (**Article 11 (c)**).

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). A political party or organization should use peaceful and democratic means to achieve their declared political, economic, social and cultural programs, through participating in the political and democratic life to ensure the peaceful transfer or sharing of power through free and honest general/public elections (Article 6).

Further description states that political parties and organizations are national, popular, and democratic. They organize the citizens and represent them politically (**Article 7**)

The Law sets the preconditions for the formation of a political party or organization. These are:

- Their principles, objectives, programs and means do not contradict the following: 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)).
- Their 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<sup>th</sup>).
- It must have membership nationwide and should not be limited to a certain geographic region (Article 8 (9<sup>th</sup>).

<sup>477</sup> 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.

<sup>478</sup> Law of Political Parties and Organizations no 66 of 1991, dated 17 October 1991, published in the Official Gazette, issue number 20 dated 31 October 1991, Official translation, available at <u>http://www.scer.org.ye/english/politicalpartieslaw.htm</u>; 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 <u>http://www.scer.org.ye/english/executiveby-lawforthepartylaw.pdf</u>

<sup>479</sup> 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

The legal preconditions for the membership of a political party or association state that a person must:

- be a Yemeni national. Naturalized Yemenis may only join political parties only after the expiry of the delays stipulated in the law of Nationality<sup>480</sup> (Article 10 Para 1);
- be at least 18 years old (Article 10 Para 2);
- not be deprived by a court decision of his political rights (Article 10, para 3)
- not belong to the judiciary, the police or the military forces, or to a diplomatic mission outside Yemen during the duration of their assignment (Article 10, para 4)

To this, the Executive Bylaw 109 adds:

- 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).

As for the founders of a political party or organization, the legal provisions stipulates they must:

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

In principle, a political party or organization obtains legal personality upon the publication its documents 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 (Law, **Article 16**)

However, the procedures for registration are cumbersome:

To apply for registration, a newly formed political party must:

- submit a written application signed by at least by 75 founding members, 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: the political program, the Statutes, the name of the bank where they hold their account, a 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)). The Committee studies an

<sup>480</sup> Law no. 6 of 1990 related to the Yemeni nationality, dated 26 August 1990, unofficial translation, available at <a href="http://www.yemen-nic.net/contents/laws/detail.php?ID=11266">http://www.yemen-nic.net/contents/laws/detail.php?ID=11266</a>. 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

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 No. 66 of 1991 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>481</sup> However, **Executive Bylaw No. 109** was issued only in 1995 and 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 66 of 1991 and this Bylaw 109 of 1995 (**Article 61**). Therefore political parties were not able to go through the adjustments procedures before 1995.

#### Practice

There are currently 20 political parties with various political ideologies registered with CAPPO.<sup>482</sup> The Social Greens Party and the Democratic Federation of Popular Forces were the last to obtain their registration in 2000.<sup>483</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, with the Justice and Democracy group which announced in 1996 its intention to become a political party, but to date has not submitted an application.<sup>484</sup>

Before the unification in 1990, both North and South Yemen prohibited political pluralism.<sup>485</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>486</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>487</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>488</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

<sup>481</sup> This meant less than three months of the date of issuance of the Law 66 issued on17 October1991

<sup>482</sup> Before 2003, there were 22 parties. However, the *Hizb Tashih AI Sha'biya AI Nassiri merged* with the General Popular Congress, and the *Haq Party* was barred from CAPPO's list

<sup>483</sup> 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.

<sup>484</sup> Interview with Federation of Yemen Popular Forces, 31/1/2008

<sup>485</sup> Interview with NPUP on 30 January 2008 representing the Joint Meeting.

<sup>486</sup> Interview with Federation of Yemen Popular Forces, 31/1/2008

<sup>487</sup> 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

<sup>488</sup> Interview with Federation of Yemen Popular Forces, 31/1/2008

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>489</sup> Many others obtained their registration long after the expiry of the delays.<sup>490</sup> It is speculated that this was part of the government policy to discourage political parties. Of those that were newly created, three political parties were rejected on grounds that they did not follow up the proper procedures.<sup>491</sup> Two of them challenged the decisions in courts where the CAPPO's decision was confirmed.<sup>492</sup>

According to CAPPO, however, 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, reapplied and successfully obtained its registration.<sup>493</sup>

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>494</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>495</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, has come to a halt.<sup>496</sup>

#### 2- The right to be free of Control, Interference and supervision

# I. NGOs

Legal provisions currently enforced allow the administrative authority an extremely wide scope of control and supervision over almost every aspect of the associations' and foundations' affairs under the banner of ensuring "the enforcement of the legal provisions" (Law, Article 6 and By-law 129, Article 3). The large array of interference is described below:

- Attending the elections of associations and foundations (Law, Article 20 and By-law, Article 3(2).
- Calling for a general assembly meeting to elect board members in the following case: the

<sup>489</sup> These are the GPC, Islah, the Democratic Nasserist, Democratic National Front, Nasserist Popular Unionist, Yemeni League, National Social, Yemeni Unionist Congregation.

<sup>490</sup> 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

<sup>492</sup> Interview with the CAPPO

<sup>493</sup> Interview with the CAPPO

<sup>494</sup> Interview with the CAPPO

Political Parties to discuss the amendments and the local authorities tomorrow, Al Motamar.Net, 25 December 2007, available at <a href="http://www.almotamar.net/news/52297.htm">http://www.almotamar.net/news/52297.htm</a>; Interview with the Joint Meeting 30/1/2008 and complementary interview 7/6/2008

<sup>496</sup> Complementary interview with Joint Meeting, 5/6/2008

number of the board members falls to less than the required number for holding a regular meeting and the association/foundation fails to call for an election meeting within a delay of 30 days from the date the required number had decreased (Law, Article 31).

- Calling for a general assembly meeting to elect new board in the following case: the association/ foundation 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 (3))
- 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. (Law Articles 24 to 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 (By-law, Article 31).
- Setting the specific regulations of the board of the association regarding its specialization, its meetings, its term, etc. (Law, Articles 30 to 34)
- Approving the amendments of the statutes of the associations or foundations, otherwise they will be considered as null (Law, Article 14, By-law, Article 20(2))
- Authorizing associations if they are executing activities on behalf of a foreign institution (Law, Article 23, and By-law, Article 18 and 20 (7))

The Executive By-law 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 bylaw and with the statutes of the association itself. The ministry also has the right to take legal measures if it finds any violation from the provisions of the law of association and its executive bylaw and other related laws in force (Executive By-law, Article 3 (3)).
- Has the right to 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. The board has the right to petition to the ministry, and any board member affected by the suspension has the right to resort to the court (Executive By-law, Article 4).
- Issue compulsory "special bylaws" thoroughly covering a wide range of issues, from the procedures for establishment, registration and announcement of associations and foundations, the process of internal organization and elections, and for their electoral regulations to dissolution (Executive By-law, Article 3 (4), and model contracts and statutes (Executive By-law, Article 3(6))
- Sets the rights and obligations of the members, the rules and conditions for the membership (By-law, Article 26,27,28).
- Receives the associations annual reports (Bylaw, Article 21-b)

In addition, the Law provides for penalties, fines and imprisonment (not exceeding three months) for any violation of the provisions of the Law and its executive By-law (Article 70).

#### **In 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. However, this issue is not relevant to foundations since they are not required to hold general assembly meetings nor elections.<sup>497</sup>

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>498</sup>

#### Unlawful practice of permit/ authorization renewal

The authorities exert extensive control over the associations through the annual reports and the annual renewal of activities permit. The legal provisions as they currently exist require extensive reporting, but do not include stipulations for the renewal of the permit. Rather, it seems that this practice was initiated after the issuance of the Executive By-law 129 to insure receiving the annual reports. <sup>499</sup> What makes the situation even more critical is that the Yemeni human rights associations do not challenge the administrative authority's illegal practices. This practice appears to have gained legitimacy and a number of 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. <sup>500</sup> 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 presented only once the association submit its annual reports.<sup>501</sup>

#### II. Trade Unions

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 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

<sup>497</sup> Interview with MSAL, 27/1/2008

<sup>498</sup> Interview with MSAL, 27/1/2008

<sup>499</sup> Interview with MSAL, 27/1/2008

<sup>500</sup> Interview with SAF, 26/1/2008, Democracy School, 26/1/2008, YOHR, 26/1/2008, MSAL, 27/1/2008

<sup>501</sup> Interview with MSAL, 27/1/2008

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).<sup>502</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). However, there are no penalties to protect trade unions from any other interferences whether from the authorities, employers, or the federation.

According to the legislative stipulations, government control and interference in trade unions affairs is almost non-existent.<sup>503</sup> They are not required to report to the authorities on activities, for example. 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 of union leaders (Article 30(5)), preparing a unified model statutes (Article 58), and representing its members in courts and in arbitrage.

#### **In Practice**

Most of the cases that may be regarded as "interfering" that were presented for the consideration of this study appeared to be mainly linked to conflicts and struggles for political power inside the unions themselves which do in fact affiliate to different political tendencies.<sup>504</sup> 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 political struggle has continued inside the union movement. <sup>505</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".

# 3- Conditions of Funding

# I. NGOs

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

<sup>502</sup> The following could be the provisions that could be used: Penal Code, Articles 254, 291, 292, available at http://www.yemennic.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

<sup>503</sup> The word "Ministry" is mentioned only three times in the Law

<sup>504</sup> It should be noted that we did not do an in-depth research on trade union movement as this is not part of our legal study.

<sup>505</sup> 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.

The Law states that the government provides financial and material 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**).

## **Foreign funding**

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). The Executive Bylaw 129 states that an association or foundation should inform the ministry of the details of the received fund, including such details as the identity of donor, the exact amount, and the purpose and method of receiving it (Executive Bylaw, Article 17).

#### **In Practice**

The Yemeni legal provisions pertaining to funding seem to be quite liberal with regard to raising funds locally and engaging in activities that generate profit for the association.

On the ground, human rights foundations admit to receiving foreign funding without informing the Ministry.<sup>507</sup> They claim that they inform the authorities through submitting their annual report.<sup>508</sup> They further confirm that the administrative authority has not taken any measures against them for this practice.<sup>509</sup> The ministry confirmed this but insisted that the annual reports do not accurately convey details about foreign funding.

#### II. Trade Unions

The Law of Trade Unions stipulates that the financial resources of trade unions range from membership fees and assistance by the state, to revenues from investing union assets and real estate as well as any other sources of income that do not contradict the Law regulating Trade Unions, its Executive bylaw [not issued yet] and the laws in force.(Article 48 (1-8)).<sup>510</sup>

The Law is silent about foreign funding and about the financial reporting on state financial assistance.

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.

#### In practice

Today, the government's support is limited to the General Federation and occasionally to some "poor" trade unions.<sup>511</sup> Following the election of a new General Federation Executive Board last March, the President of the Republic promised the Federation 100% support, including providing a public premises to use as their office. The President suggested to the Federation that unions' demand are to be resolved without the need to resort to sit-ins and strikes.<sup>512</sup>

<sup>507</sup> Interview with Democracy School, 26/1/2008, YOHR, 26/1/2008, SAF, 26/1/2008

<sup>508</sup> Interview with Democracy School, 26/1/2008, SAF, 26/1/2008

<sup>509</sup> Interview with Democracy School, 26/1/2008, YOHR, 26/1/2008

<sup>510</sup> Law no. 35 of 2002

<sup>511</sup> Interview with the General Union of Petroleum, Minerals and Chemicals Products, 29/1/2008.

In general, most trade unions are self-funded through membership and monthly subscription fees. The employer deducts the monthly subscription fees directly from the member's salary. However, it has been noted that the political agenda of employers has results in some corrupt behavior whereby some employers deduct the fees to the benefit of another trade union that is of their same political affiliation rather than the worker's actually trade union.<sup>513</sup> This unlawful and illegitimate practice could well discourage the establishment of more independent trade unions.<sup>514</sup>

#### **Foreign Funding**

In terms of foreign funding, while it is not prohibited by the law, trade unions do not appear to pursue such sources of funding.<sup>515</sup>

#### **III. Political Parties**

According to the Law of Political Parties, the funding of political parties derives mainly from membership fees, donations from members, government financial support, gifts and donations, and the revenues of the party or organization's non-commercial investments (Article 17).

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 parliamentarian 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 para 2**). The amount granted by the government shall not exceed the total subscriptions of the members of the party (**Article 20**).

The Government suspends its financial support temporarily upon the following conditions as per (Article 22):

- the activities of the political party have been suspended by a court order, <sup>516</sup>
- the party does not submit a copy of its annual financial report,
- the party or organization accepts funding contrary to Article 17 of the Law 66 of 1991. A court order is needed to suspend the support,
- the party or organization breaches Article 24 of the law 66 of 1991.<sup>517</sup> A court order is needed to suspend the support,
- 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 (Executive Bylaw 109 of 1995, 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).

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, Para 2**).

nic.info/presidency/detail.php?ID=17016&PHPSESSID=a4d8359e0d78bde2fd87d2f7e3b03201

<sup>513</sup> Interview with Yemeni Teachers Trade Union, 28/1/2008, Interview with GFYWTU, 30/1/2008

<sup>514</sup> Interview with the General Union of Petroleum, Minerals and Chemicals Pro ducts, 29/1/2008

<sup>515</sup> Interview with Yemeni Teachers Trade Union, 28/1/2008, interview with Petroleum, Minerals and Chemicals General Trade Union

<sup>516</sup> Law no. 66 of 1991, Article 34 relates to the violation of Article 8 (conditions of establishment of a political party or organization); violation of Article 33 (prohibited activities).

<sup>517</sup> regarding the ways of expenditures and the financial books of the party or organization

Political parties have the obligation to submit annual financial reports (Article 25) and declare their properties to CAPPO (Article 26).

Foreign funding, gifts, merits, or services are prohibited as well as funding by moral persons is prohibited, even if the moral person has the Yemeni nationality (Article 17(d)).

Political parties or organizations that take part in the elections are eligible for government support. Each of the 22 [now 20] political parties participated in the elections however only two (General Popular Congress and Islah) obtained more than 5% of the total votes. These are also represented in the parliament thus also receiving its equal from the 25% of the total budget along with the three other parties that won in the elections. Parties that do not participate in the elections do not obtain a share of the government grant.<sup>518</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 party's operational costs.<sup>519</sup>

It should also be noted that the projects proposing amendments of the Law suggest a change to the mechanism of government financial support, distributing it instead to all parties that participate in elections, regardless of whether or not they manage to obtain 5% of the total votes.<sup>520</sup>

A member of the "Joint Meeting"<sup>521</sup> 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>522</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>523</sup>

#### 4-<u>The Right to affiliation to Regional and International Organizations</u>

#### I. NGOs

This issue is mentioned only in Article 132 of the Executive By-law: <sup>524</sup>

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* 

<sup>518</sup> Interview with CAPPO on 29/1/2008

<sup>519</sup> Interview with Joint Meeting, 30/1/2008

<sup>520</sup> Interview with the CAPPO, 29/1/2008; see also Political Parties to discuss the amendments and the local authorities tomorrow, Al Motamar.Net, 25 December 2007, available at <a href="http://www.almotamar.net/news/52297.htm">http://www.almotamar.net/news/52297.htm</a>; 26 September Newspaper, issue no. 1313 available at <a href="http://www.26sep.net/newsweekArticle.php?lng=arabic&sid=31666">http://www.almotamar.net/news/52297.htm</a>; 26 September Newspaper, issue no. 1313

<sup>521</sup> Joint Meeting is a coalition of five opposition Parties: Islah, the Yemeni Socialist Party, Haq, Federation of Popular Forces and the Nasserite Popular Unionist party.

<sup>522</sup> Interview with Joint Meeting, 30/1/2008

<sup>523</sup> Interview with the CAPPO, 29/1/2008

<sup>524</sup> Executive Bylaw 129 of 2004, Article 132, Unofficial Translation, (on file)

4- That thirty days pass after the notification without the Ministry issuing a justified objection.

Effectively, the ministry seems to be lenient on this issue. All Yemeni human rights foundations examined during the course of this study stated they are affiliated to international organization and did so without the prior approval of the authorities.<sup>525</sup>

#### II. Trade Unions

According to the Law, 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 General Federation is member of the World Federation of Trade Unions and of the International Confederation of Arab Trade Union.<sup>526</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 teachers union and the Petroleum, Minerals and Chemicals General Trade Union who are members of the International Federation of Education Trade Unions "Education International" (USA) and the Arab Federation for the Petroleum, and Mines, and Chemicals workers respectively.<sup>527</sup> The General Federation confirmed that general trade unions are entitled to join international trade union federations.<sup>528</sup>

# 5-<u>The right to protection from closure, suspension or dissolution</u>

#### I. NGOs

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 or foundation if the former considers that they have seriously breached the provisions of this Law or other laws in force (**Article 44 (a**)). However, the administrative authorities may not take any legal action before it gives the concerned association or foundation three written notices within a six month period requesting them to eliminate the violation (**Article 44, (b**)).

A violation of the legal provisions that may be considered as grounds for dissolution are listed in the Executive Bylaw. These cover issues such as contravening the conditions of funding, the misuse of funds, and affiliation with foreign associations, or the commitment of a serious breach of the Law (Executive By-law no.129, Article 124).

Members of a dissolved organization or foundation are forbidden from continuing their activities and from using its funds or properties (**Article 46 (b)**).

<sup>525</sup> This is the case, for example, of SAF, Democracy School

<sup>526</sup> Interview with GFYWTU, 30/1/2008

<sup>527</sup> Interview with the Yemeni Teachers Trade Union, 28/1/2008, GFYWTU, 30/1/2008, General Union of Petroleum, Minerals and Chemicals Products, 29/1/2008

<sup>528</sup> Interview with GFYWTU, 30/1/2008

#### **In Practice**

There have been no reported cases of dissolution of a human rights association or foundation in recent years.<sup>529</sup> The ministry confirmed that although it has not requested the dissolution of any NGO yet, it possesses a list of 1,400 associations that may be dissolved in the future.<sup>530</sup>

Yemeni organizations and foundations interviewed for this study argued that the functioning of NGOs on the condition that no response is received from the ministry regarding their applications, and its refusal to register the NGOs after the expiry of the month prescribed in the law, is a strategy that can be manipulated at any time by the government to dissolve the NGO later on and accuse them of operating "illegally". For example, HOOD was informally informed by one of their lawyers that the ministry was intending to start the procedure of its dissolution in 2007 as a result of their defense for a high profile murder case.<sup>531</sup> They were told that the ministry planned to use the argument that they are active without a license or registration.<sup>532</sup> The Yemeni Organization for Defense of Human Rights and Democratic Freedoms also feels the threat of dissolution for not holding its conference and elections for several years. For this reason, they are planning to hold their general assembly meeting and elections as soon as possible.<sup>533</sup>

The same organizations and foundations claim that although the ministry is not currently taking measures to suspend or dissolve associations they consistently make indirect and informal threats, for example by accusing particular associations from time to time in "official" newspapers of having suspicious external relationships. <sup>534</sup> There is an eminent fear amongst organizations that suspension and dissolution could happen anytime under the pretext of "any violation of this law". <sup>535</sup> This policy keeps NGOs anxious and discourages them from informing the ministry of all their activities, particularly their affiliations with international organizations.<sup>536</sup>

<sup>529</sup> Interview with HOOD, 27/1/2008, YOHR, 26/1/2008, Taghyeer, 28/1/2008, YODRDF, 28/1/2008, Democracy School, 26/1/2008

<sup>530</sup> 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.

<sup>531</sup> HOOD was defending Anisa Al Shuaibi who was accused of murdering her husband. She was taken as a hostage by her in-laws.

<sup>532</sup> Interview with HOOD, 27/1/2008

<sup>533</sup> Interview with YODRDF, 28/1/2008

<sup>534</sup> Interview with Democracy School, 26/1/2008

<sup>535</sup> Interview with Democracy School, 26/1/2008, HOOD, 27/1/2008, Taghyeer, 28/1/2008

<sup>536</sup> Interview with HOOD, 27/1/2008, Taghyeer, 28/1/2008

#### II. Trade Unions

The Trade Union Law does mention the issue of dissolving a trade union organization. It 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 (**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.

No judicial decision for the dissolution of a trade union organization is said to have been taken since early 1990.<sup>537</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 the employers on trade unions already forces small and "poor" organizations to dissolve themselves "voluntarily". <sup>538</sup>

### III. Political Parties

According to the Law no 66, political parties and organizations may be suspended or dissolved either voluntarily or by issuance of a court judgment. The CAPPO may submit a reasoned request for dissolution to the court in situations where the political party stops meeting one of the conditions of **Article 8** related to the establishment of political parties<sup>539</sup> or if it carries out any of the forbidden activities stipulated in Article 33 of the Law (**Article 34**)

Thus, the grounds for filing a request for dissolution includes undertaking prohibited activities such as:

- assaulting the beliefs of Muslim people (Article 33 (1));
- 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 (Article 33 (2));
- disturbing the public security and order (Article 33 (3));
- using, directly or indirectly, the public service position or the public funds for the party interest (Article 33(4));
- carrying recruitment of members in the forbidden sectors –police, army, judges in violation of Article 10 Para 4(Article 33 (5));
- using the mosques, educational and governmental facilities to exercise political activities or for promoting of the party (Article 33 (6)).

The violation of the provisions of the Executive Bylaw no 109. related to the conditions of membership stipulated in Article 10 of the Law no 66 and the additional conditions stipulated in Article 8(a) of the Bylaw could entail, in addition to punishing the person in question, to the suspension or dissolution of the political party itself (**Executive By-law, Article 8 (b**)).

The dissolution procedures appear to be speedy. CAPPO files a request for dissolution to the appropriate court. The President of the political party should be informed within a period of 48 hours of

<sup>537</sup> Interview with GFYWTU, 30/1/2008, Interview with Yemeni Teachers Trade Union, 28/1/2008, Interview with General Union of Petroleum, Minerals and Chemicals Products, 29/1/2008

<sup>538</sup> Interview with the General Union of Petroleum, Minerals and Chemicals Products, 29/1/2008

<sup>539</sup> See supra under Political Parties Formation, page 111

the request informing the grounds on which the request was based. The court must issue its decision within 90 days of the date of the president's notification of the request. 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 (Law, Article 34 ( $2^{nd}$ ) and Executive By-law, 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 (Law, Article 36, Executive By-law, Article 59). The Executive Bylaw no 109 adds that if the political party subject to the warning continues committing the violation, CAPPO has the right to take all the necessary measures including referral of the case to court (Executive By-law, Article 60).

#### **In Practice**

When CAPPO was approached for the purpose of this study, spokesperson explained that thus far CAPPO 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.<sup>540</sup> However, the Committee said that two parties were voluntarily dissolved: the *Hizb Tashih Al Sha'biya Al Nassiri* which dissolved by joining the General Popular Congress, and the *Haq Party*.<sup>541</sup>

Disputing CAPPO's account, the Haq party claims it did not in fact dissolve voluntarily.<sup>542</sup> According to the party, they only learnt of the dissolution of their party after CAPPO announced it in the "Al Thawra official newspapers" on March 18<sup>th</sup> 2007. <sup>543</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.<sup>544</sup> The party had then challenged the letter's implication of voluntary dissolution as the decision had not been taken in conformity with the party's internal rules and procedures. They affirmed to CAPPO that the Haq Party is indeed still active.

The political parties member to the Joint Meeting, which include al Haq party, raised an appeal protesting against the announcement of the dissolution that they consider as an attack on political parties and political pluralism. They further argued that CAPPO's decision was an illegal and void measure.<sup>545</sup> The Joint Meeting believes that the real motives behind the dissolution of al Haq is because they are suspected to be behind the violent events in Sa'ada.<sup>546</sup>

The party did not file a complaint before the courts because they consider the announcement null and that challenging it in court would recognize it as a legal existence.<sup>547</sup>

Although observably, severe actions such as dissolution are uncommon, there is a fear among opposition political parties subject to different forms of harassment that they may be pushed to dissolve

<sup>540</sup> Interview with the Committee on Political Parties and Organizations Affairs, 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=; This was confirmed by a complementary interview with Joint Meeting, 7/6/2008

<sup>541</sup> Interview with the Committee on Political Parties and Organizations Affairs, 29/1/2008

<sup>542</sup> 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.

<sup>543</sup> 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

<sup>544</sup> 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)

<sup>545</sup> Press release dated 18 March 2007 issued by the Joint Committee, (On file)

<sup>546</sup> Interview with Joint Meeting, 30/1/2008

<sup>547</sup> Interview with Haq Party, 31/1/2008

#### themselves.

This was the experience of the Federation of Yemeni Popular Forces (FYPF) that was created in 60s in South Yemen.<sup>548</sup> When they applied for registration in 1997, pro-government groups infiltrated the Party aiming to dominate it. Internal conflicts over the party policy arose between the "oldies" and the new, pro-government members. Eventually the new pro-government group even filed a case in court which resulted in the pro-government member creating a new party - the Democratic Federation of Popular Forces. Both parties obtained their registration in 2000. In 2004, the FYPF newspaper "Al Shoura" was closed down for six months upon a court decision on the allegation that an article was 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.

In 2007, the authorities are said to have hacked the party website "shoura.net".<sup>550</sup> In 2008, the party remains outside its headquarters and continues to suffer harassment by the authorities.<sup>551</sup> Recently, CAPPO issued a press release warning the FYPF to submit their financial reports and register their properties. This warning was also addressed to two other political parties, the Yemeni League Party and the Liberation Front Party.<sup>552</sup>

# 6. <u>The Right to Individual Security – No penalization for belonging to a dissolved or non-registered organization or union</u>

#### I. NGOs

The Law **no.1 of 2001** 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**). The prohibition may be extended to cover the situation of an association that has submitted its statutes and consider itself "legal" since it did not receive any response from the administrative authorities within the prescribed response period of one month from the date of receiving the application, or if the authorities refuses to register it despite the request of the association.<sup>553</sup>

<sup>548</sup> Known to be an islamist party calling for the application of shura as the sole democratic political system

<sup>549</sup> Interview with Federation of Popular Forces, 31/1/2008

<sup>550</sup> Interview with Federation of Popular Forces, 31/1/2008

<sup>551</sup> Interview with Federation of Popular Forces, 31/1/2008 and complementary interview, 7/6/2008

<sup>2008,</sup> available at http://www.almishkah.net/blocks/main.css

<sup>553</sup> Both the Law of Associations and the Law of political parties and organizations refer to the possibility of seeking more severe punishment available in the Penal Code for the violations of any provision of the law. Further, the Yemeni Penal Code contains provisions that may undermine citizens' freedom of association, freedom of expression and assembly. While some of these provisions deal directly with the freedom of expression and assembly, they could be used to oppress associations, political societies and trade unions such activities, particularly that provisions contain broad and open to interpretation by the authorities. For example: ...anyone who commits an act undermining the independence of the Republic or unity or territorial integrity is punished by the death penalty... (Article 125). ... is punished by a maximum of three years of imprisonment any person who deliberately disseminates false reports, statements or malicious rumors, or produces any publicity seeking to damage public security, terrorize the population or cause damage to the public interest.. (Article 136). ... is punished by a year of imprisonment or by fine anyone who offends or threats a public worker during the performance of his job or because of it, either orally, in writing or through communication the (Article 172).... is punished by imprisonment not exceeding three years or by fine anyone who mocks religion or commit any incite to undermine the public order(Article 194). ... is punished by a maximum of two years of imprisonment or a fine not exceeding 4000 YR anyone who offends publicly the Head of State or any governmental bodies. (Article 197). ... is punished by a maximum of one year of imprisonment or a fine not exceeding 1000YR the publication of "untrue reports" that "undermine the public peace or cause damage to the country's supreme interest or to the State's creditworthiness." (Article 198). ... is punished by a maximum of two years of imprisonment or a fine any person who produces or possesses, for purpose of sale, distribution or exposition, pictures that would cause damage to the country's (Article 200)

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 "illegally" dissolved association.

#### **Anti Union Discrimination**

According to the Trade Union Law, a trade union member may not be punished, transferred, dismissed or suspended on the grounds of his/her union activities or membership (**Article 10**). The Law does mention the legal consequences of this prohibition (reinstatement in the job or compensation).

The Labor Law prohibits punishing trade union representatives for their union activities in accordance with the provisions of the Labor Law and the Law regulating Trade Unions and its bylaws and regulations [the bylaws not yet issued] (Labour Law, Article 152).<sup>554</sup>

Any employer or employer representative who hires new workers to replace workers engaged in a lawful strike in accordance with the conditions and rules provided for in this Law is to be punishable 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 (Labour Law, **Article 156 (4)**).<sup>555</sup>

#### **In Practice**

According to the GFYWTU, dismissal and suspension of union members due to their trade union activities in general, and for participating in strikes in particular, 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 by virtue of the union's legal personality. 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>556</sup>

Due to the limited scope and time of this report, FIDH was not able to obtain detailed reports on individual cases. Below is a brief illustration of the trends:

The General Federation filed recently a complaint against the Yemeni Medicines Company, a public enterprise, for the dismissal of the union board members for trade union activities. After unsuccessful negotiations with the government, the federation resorted to the court. By February 2008, the case was still before the court.<sup>557</sup> In other 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

<sup>554</sup> Republican Legislative Order to promulgate the Labour Code, Act No. 5 of 1995, (Unofficial Translation) available at <u>http://www.yemen-nic.com/contents/laws/detail.php?ID=11439</u>

<sup>555</sup> Republican Legislative Order to promulgate the Labour Code, Act No. 5 of 1995, Unofficial Translation, available at <a href="http://www.yemen-nic.com/contents/laws/detail.php?ID=11439">http://www.yemen-nic.com/contents/laws/detail.php?ID=11439</a>

<sup>556</sup> Interview with GFYWTU, 30/1/2008

<sup>557</sup> Interview with the General Union of Petroleum, Minerals and Chemicals Products, 29/1/2008, and with Interview with the General Union of Petroleum, Minerals and Chemicals Products, 29/1/2008

not abide by the court order.558

In another instance, the president and member of the union board of the Sana'a Airport Airways Engineers Trade Union were dismissed for initiating a strike and a new board was "elected". 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 of the disruption of work. However, the conflict was settled out of court and the dismissed workers returned to their jobs. <sup>559</sup>

On yet another occasion, the President of the Trade Union of Catering Department of Sana 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>560</sup>

It should be noted that no Yemeni union – including the GFYWTU- has ever pursued approaching the ILO regarding violations and harassment against the union or its members.

<sup>558</sup> Interview with GFYWTU, 30/1/2008 about Yemeni Medicines Companies Union, 2007

<sup>559</sup> Interview with HOOD, 27/1/2008

<sup>560</sup> This case happened in , 2007, interview with Yemeni Teachers Union, 28/1/2008

# Comparative analysis of the respect of freedom of association in the three countries

Bahrain, Kuwait, and Yemen share common characteristics in terms of freedom of association. Their state policies and regulations are largely restrictive rather than liberal, and are nationalistic rather than universal. Their policies reflect principles of 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 function freely is consistently impaired.

None of the three countries has undertaken the necessary steps, in accordance with its constitutional and international obligations, to adopt laws or other measures necessary to give effect to the right to freedom of association in conformity with international standards.

# • The right to associate and establish an association: restrictive vs. liberal policies

While the national laws in each country recognize the right to form NGOs and trade unions, only the Yemeni legislation properly recognizes and regulates political parties as such. The Bahraini laws regulate "political associations" in Bahrain and in Kuwait, there is no legal framework at all, although in practice, political groups exist and publicly carry out activities.

The operation of political parties is recognized as a means of enjoying political rights, as stated in the HRC's General Comment, Article 25 which 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.<sup>561</sup> (...). 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".<sup>562</sup> The General Comment adds "[t]he right to freedom of association, including the right to

http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument

<sup>561</sup> Communication No. 138/1983, Democratic Republic of the Congo, views of 26/03/86, available at http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/e9f0f26f43d66777c1256ab9004d24fb?Open Document (It seems that the HRC assimilates in its jurisprudence the freedom of forming political parties with Article 25 of the ICCPR on participation in public affairs. In Communication No. 138/1983, Democratic Republic of the Congo, the complaint was about 13 Parliamentarians who were stripped of their membership of parliament and deprived of their civil and political rights for a certain period; later they were arrested on the grounds of trying to establish a new political party in negotiation with representatives of the president of the republic, in addition to other subsequent sanctions. The complaint considered that the rights violated included Article 22 of the ICCPR: "The criminal proceedings before the State Security Court resulted from the defendants' attempts to establish a political party (a right implicit in the right to freedom of association)"; the committee after considering the case concluded that the State violated Article 25, as the applicants were deprived of the right equally to take part in the conduct of public affairs)

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>563</sup>

The laws of association in Bahrain, Kuwait and Yemen, identify various categories of NGOs, but does not include a specific reference to human rights organizations, which are consequently registered as social or cultural organizations.

#### The registration policy.

With the exception of trade unions, it is usually required to get authorization prior to carrying out an association's activity, in violation of Articles 22 and 25 of the ICCPR.<sup>564</sup> The Special Representative of the Secretary-General on Human Rights Defenders states 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>565</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>566</sup>

The laws on trade unions of the three countries comply with international standards. <sup>567</sup> The trade union is constituted and has legal personality upon the deposit of its constitutive documents with the relevant authorities, though the administrative authority may object to its constitution.

However, the exclusion of some categories of workers from forming trade unions, such as public servants in Bahrain, is considered by the ILO as 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".<sup>568</sup> The only accepted exceptions under ILO

<sup>563</sup> 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), 1207/96, CCPR/C/21/Rev.1/Add.7, General Comment No. 25 available at
but the the test of the right of the

http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument

<sup>564</sup> International Covenant on Civil and Political Rights, adopted by the General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976

<sup>565</sup> 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] <u>http://daccessdds.un.org/doc/UNDOC/GEN/N04/533/18/PDF/N0453318.pdf?OpenElement</u>, [Special representative Report 2004] at III

<sup>566 2004</sup> 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)

<sup>567</sup> 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 272, available at http://www.ilo.org/ilolex/english/23e2006.pdf

<sup>568</sup> 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 218 available at http://www.ilo.org/ilolex/english/23e2006.pdf

standards are the armed forces and the police forces. <sup>569</sup>

Domestic workers should not be excluded from the application of Convention No. 87.<sup>570</sup> Kuwait was criticized by the ILO Committee on the Application of Conventions and Recommendations and accused of violating article 2 of the ILO Convention 87, as domestic workers are excluded from the scope of the Code, and thus from the protection afforded by the Convention. The ILO Committee also denounced other provisions of the Code and in particular, the requirement of at least 100 workers represented by a union in order to allow its establishment; the prohibition of joining a trade union for individuals under 18 years of age; the prohibition of the establishment of more than one trade union per establishment, enterprise or activity; the requirement that a certificate be obtained from the Minister of the Interior stating that he has no objection to any of the founding members before a trade union may be established; and the requirement of at least 15 members to found a trade union.<sup>571</sup> Such provisions can be considered "as a tool to impose a serious obstacle for the establishment of trade unions".<sup>572</sup>

The requirement of a large number of founders (such as Kuwait's 50 members minimum) in addition to the generally repressive environment dampens individuals' willingness to form human rights organizations. The UN Special Representative noted that "while many laws require a newly created group to have a minimum of two to five founders, others require 10 or more, a requirement that has proven to deter individuals from forming human rights organizations".<sup>573</sup>

#### **Refusal or Rejection of Registration**

The laws of the three countries extend to the authorities 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>574</sup>

<sup>569</sup> 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 <a href="http://www.ilo.org/ilolex/english/23e2006.pdf">http://www.ilo.org/ilolex/english/23e2006.pdf</a>

<sup>570</sup> 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 267, available at <a href="http://www.ilo.org/ilolex/english/23e2006.pdf">http://www.ilo.org/ilolex/english/23e2006.pdf</a>

<sup>571</sup> CEACR: Individual Observation concerning Convention No. 87, Freedom of Association and Protection of the Right to Organise, 1948 Kuwait, Published: 2003

<sup>&</sup>lt;u>http://www.ilo.org/ilolex/cgi-</u> <u>lex/pdconv.pl?host=status01&textbase=iloeng&document=6712&chapter=6&query=Kuwait%40ref&highlight=&queryt</u> vpe=bool&context=0

<sup>572</sup> 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. 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 296, available at http://www.ilo.org/ilolex/english/23e2006.pdf

<sup>573</sup> Special Representative Report 2004, at III, 54

<sup>574</sup> 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)

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>575</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>576</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.

# <u>Imposing restriction on the objectives of the associations and unions</u>: a limit to registration and a first step in the authorities' interference .

The authorities' interference appears at early stage and often during the pre-formation period. With the exception of Yemen, governmental authorities practice a priori scrutiny into the objectives of NGOs.

In Kuwait and Bahrain, registration can be refused on the grounds of similarity of objectives. In Yemen, the Executive By-law of the Law of Association give the authorities the right to refuse the registration of an association due to "anything (...) contrary to the law". This gives the authorities discretionary power to discard an application, thus, once again, violating the founders' right to freedom of association. Such practices are criticized by 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 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>577</sup>

The countries' restrictive list of what constitutes authorized activities, often leads to the prohibition of NGOs or trade unions from carrying out "political activities" without any definition of the term. The

<sup>575</sup> ICCPR, Article 22 para 2

<sup>576</sup> Special Representative Report 2004, at III, 59

<sup>577</sup> Special Representative Report 2004, at III, 57

lack of clear definition is a violation of the right to freedom of association and puts human rights NGOs providing legal aid, advocating for reform of the judicial system, monitoring election or defending the rights of political prisoners, at risk of having their activities labeled illegal.<sup>578</sup> 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>579</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>580</sup>, and asserts that negative decisions "should be reasoned and written and must be fully explained and cannot be politically motivated. Failure to provide detailed grounds for the decision should result in the NGO being considered to be operating legally"

The prohibition placed on trade unions from engaging in any political activity is considered a violation of Article 3 of Convention 87.<sup>582</sup> The CEACR 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 from trade union activities in the strict sense of the term, on the other hand.<sup>583</sup>

#### The right to establish federations and confederations

Membership in federations is not compulsory in any of the concerned countries in line with ILO

http://www.ilo.org/ilolex/cgi-

<sup>578</sup> Special Representative Report 2004, at III, 67

<sup>579</sup> 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

<sup>580</sup> 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

<sup>581</sup> 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

<sup>582</sup> CEACR: Individual Observation concerning Convention No. 87, Freedom of Association and Protection of the Right to Organise, 1948 Kuwait, published: 2003, available at

<sup>&</sup>lt;u>lex/pdconv.pl?host=status01&textbase=iloeng&document=6712&chapter=6&query=Kuwait%40ref&highlight=&querytype</u> <u>=bool&context=0</u>

<sup>583</sup> ILO, CEACR: Individual Observation concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Kuwait, Published: 2007, available at <u>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</u>

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jurisprudence <sup>584</sup> which considers that forced membership in federations is a violation of trade unions' right to freedom of association.<sup>585</sup>

The right to form federations and confederations is recognized as a manifestation of the right to organize as 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, according to the ILO Committee.<sup>586</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. The Committee 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.<sup>587</sup> There is a marked difference, according to the Committee, between a legally imposed monopoly and a voluntary grouping of workers.<sup>588</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>589</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, without such a limitation and at all levels.<sup>590</sup>

<sup>584</sup> ILO, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition 2006, at 710 et s., available at <a href="http://www.ilo.org/ilolex/english/23e2006.pdf">http://www.ilo.org/ilolex/english/23e2006.pdf</a>

<sup>585</sup> ILO, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition 2006, at 319, 320, 321, available at http://www.ilo.org/ilolex/english/23e2006.pdf

<sup>586</sup> 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 <u>http://www.ilo.org/ilolex/english/23e2006.pdf</u>

<sup>587</sup> 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

<sup>588</sup> CEACR: Individual Observation concerning Convention No. 87, Freedom of Association and Protection of the Right to Organise, 1948 Yemen (ratification: 1976) Published: 2003, available at <u>http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=6753&chapter=6&query=Yemen%40ref&highlight=&queryt ype=bool&context=0</u>

<sup>589</sup> ILO, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition 2006, at 714, available at <a href="http://www.ilo.org/ilolex/english/23e2006.pdf">http://www.ilo.org/ilolex/english/23e2006.pdf</a>

<sup>590</sup> ILO, CEACR: Individual Observation concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Kuwait, Published: 2007, available at <u>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</u>

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# • 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.<sup>591</sup> This blatantly violates international standardsrelating 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 is deemed to be in conflict with national regulations.<sup>592</sup>

The Special Representative therefore 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>593</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 norin the bylaw.

#### **Control over foreign funding**

The level of control over foreign funding depends on the categories of association, in the three countries. The Yemeni authorities request to be informed of such transactions while Bahrain and

<sup>591</sup> Special Representative Report 2004, at III, 68

<sup>592</sup> Special Representative Report 2004, at III, 63

<sup>593</sup> 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

Kuwait take it a step further by making their prior approval a legal prerequisite. However, in practice, the authorities are not strictly exercising such control over foreign funding. The NGOs themselves do not abide by the aforementioned legal provisions and do not inform the authorities when foreign funding is received. However, those repressive stipulations do exist and can be used when it suits the authorities.

The HRC<sup>594</sup> and the Committee of Social, Economic and Cultural Rights<sup>595</sup> as well as the Special Representative<sup>596</sup> 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>597</sup> To that end, access to funds including those from foreign sources, for the purpose of defending human rights should be ensured and facilitated by law.<sup>598</sup> 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>599</sup> The ILO Committee considers that it is to the

of associations and the right to form trade unions.<sup>599</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>600</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>601</sup> The Committee 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>602</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 (participation in public affairs) mentioned 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,

<sup>594</sup> HRC, Concluding observations of the Human Rights Committee : Egypt. 28/11/2002, CCPR/CO/76/EGY, available at http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/89189f6057f03fdec1256c68002f1ec4?Open Document

<sup>595</sup> 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?Ope nDocument

<sup>596</sup> Special Representative Report 2004, at III, 75

<sup>597</sup> 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 at (I)

<sup>598</sup> 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 at (f)

<sup>599</sup> 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?Ope nDocument

<sup>600</sup> 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 <a href="http://www.ilo.org/ilolex/english/23e2006.pdf">http://www.ilo.org/ilolex/english/23e2006.pdf</a>

<sup>601</sup> 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 743, available at <a href="http://www.ilo.org/ilolex/english/23e2006.pdf">http://www.ilo.org/ilolex/english/23e2006.pdf</a>

<sup>602</sup> 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 <a href="http://www.ilo.org/ilolex/english/23e2006.pdf">http://www.ilo.org/ilolex/english/23e2006.pdf</a>

corporations and organizations.<sup>603</sup> However, the last version of the GC omitted any mention of the funding issue.<sup>604</sup>

In addition, the United Nations General Assembly Resolution entitled "Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes" appealed to all states "to refrain from financing or providing, directly or indirectly, any form of overt or covert support for political parties or groups and from taking actions to undermine the electoral processes in any country".<sup>605</sup>

# • Right to Strike

Only Yemen legislation respects the right to strike. Bahrain and Kuwait have made reservations on Article 8 of ICCESR. These reservations correspond with the non-respect of the right of strike in both countries national laws. Bahrain prohibits trade unions' right to strike in "essential sectors" which have come to include almost all operating sectors. Kuwait does not recognize the right to strike at all.

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."  $^{606}$  "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).

# • Affiliation to regional or international organizations

As per the stipulations of law, affiliation of a NGO to regional or international organizations is contingent on the approval of the administrative authority. However, this does not seem to be enforced in practice. A number of NGOs, members of international organizations, did so without informing the administration or obtaining its prior authorization.

Trade unions' affiliation with international workers organizations is contingent upon either the approval of the Trade Union Federation and/or due notification of the relevant authorities. In Yemen, although this right is extended to the General Federation only, a number of trade unions appear to be members of international organizations. Bahraini regulations entail that the most representative federation, that is, the one having the largest number of members, may attend international events.

<sup>603</sup> 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?Ope nDocument&Highlight=0,funding

<sup>604</sup> 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), 1207/96, CCPR/C/21/Rev.1/Add.7, General Comment No. 25 available at http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument

<sup>605</sup> United Nations General Assembly, Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes, General Assembly resolution 48/124 of 20 December 1994, available at

http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/A.RES.48.124.En?Opendocument

<sup>606</sup> 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 388 to 195, available at <a href="http://www.ilo.org/ilolex/english/23e2006.pdf">http://www.ilo.org/ilolex/english/23e2006.pdf</a>

<sup>607</sup> ILO, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition 2006, at 500, available at <a href="http://www.ilo.org/ilolex/english/23e2006.pdf">http://www.ilo.org/ilolex/english/23e2006.pdf</a>

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ILO stresses throughout its jurisprudence that federations and confederations of workers unions should enjoy all the rights allowing them to effectively defend the interests of their members.<sup>608</sup> Furthermore, it recognizes the right of organizations, federations and confederations to affiliate with international workers associations, according to Article 5 of Convention 87.<sup>609</sup> Such a right should go unhindered by the political authorities"<sup>610</sup> and unions should be able to enjoy the full benefits that derive from this affiliation, including support by the international organization and communication with it.<sup>611</sup>

# • Protection against anti-union discrimination

National laws contain provisions protecting trade unionists from anti-union discriminatory measures. However there are identifiable shortcomings. Yemen does not specify the consequences for acts of anti-union discrimination, vis a vis the employer, such as punishments or resolutions for the workers. Kuwait does provide for punishment for the employer, 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<sup>612</sup> which constitutes one of the most essential guarantees of workers' freedom of association,<sup>613</sup> including protection against discrimination in hiring and dismissal for trade union related activities.

#### Repression that may lead to dissolution

The Bahraini legal provisions allow for suspension by the administrative authority 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>615</sup>

<sup>608</sup> ILO, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition 2006, at 319, 320, 321, available at <a href="http://www.ilo.org/ilolex/english/23e2006.pdf">http://www.ilo.org/ilolex/english/23e2006.pdf</a>

<sup>609</sup> 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 733, available at <a href="http://www.ilo.org/ilolex/english/23e2006.pdf">http://www.ilo.org/ilolex/english/23e2006.pdf</a>

<sup>610</sup> ILO, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition 2006, at 733, available at <a href="http://www.ilo.org/ilolex/english/23e2006.pdf">http://www.ilo.org/ilolex/english/23e2006.pdf</a>

<sup>611</sup> 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 739 and 746, available at <a href="http://www.ilo.org/ilolex/english/23e2006.pdf">http://www.ilo.org/ilolex/english/23e2006.pdf</a>

<sup>612</sup> 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 <a href="http://www.ilo.org/ilolex/english/23e2006.pdf">http://www.ilo.org/ilolex/english/23e2006.pdf</a>

<sup>613</sup> 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

<sup>614</sup> 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 <a href="http://www.ilo.org/ilolex/english/23e2006.pdf">http://www.ilo.org/ilolex/english/23e2006.pdf</a>

<sup>615</sup> Special Representative Report 2004, at III, 72

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>616</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>617</sup>

The Yemeni legal provisions entitle only a judicial court to order 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 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".<sup>618</sup> 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.<sup>619</sup> Also, such decisions should necessarily be subject to appeal and judicial review.

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>620</sup>

<sup>616</sup> Special Representative Report 2004, at III, 74

<sup>617</sup> Special Representative Report 2004, 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

<sup>618</sup> Special Representative Report 2004, at III, 71

<sup>619</sup> Special Representative Report 2004, 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

<sup>620</sup> 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 <a href="http://www.ilo.org/ilolex/english/23e2006.pdf">http://www.ilo.org/ilolex/english/23e2006.pdf</a>

# • Discrimination between Nationals and Non-Nationals

The three countries have demonstrated various degrees of discrimination between nationals and nonnationals 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. Only Yemen secures domestic workers (nationals and non-nationals) their right to form and join trade unions.

The ILO Committee on Application of Conventions criticized the discriminatory Kuwaiti provisions, particularly that requiring 5 years' residency considered as discriminating on grounds of nationality and limiting the right of migrants and as such, violatingarticle 2 of Convention 87. The Committee also denounces "the ban on the right to vote and to be elected to trade union office for workers not of Kuwaiti nationality [as] a violation of Article 3 of the Convention." <sup>621</sup> The Committee argued that the 5 years' residency condition restricts migrant workers from their entitlement to defend their interests, especially in sectors where they are the main source of labour. Thus, the Committee requested the government of Kuwait to indicate the measures envisaged, or currently underway, that would ensure foreign workers in Kuwait are guaranteed the right to organize and that they may be eligible for trade union office, at least after a more reasonable period of residence.

Generally speaking, 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>623</sup>

Moreover, it states that once aliens are allowed to enter the territory of a State party they are entitled to the rights detailed in the Covenant. Foreigners enjoy the right to peaceful assembly and freedom of association.<sup>624</sup> This is subject to the exception articulated in Art. 25 indicating that some of the rights recognized in the Covenant are expressly applicable only to citizens (ICCPR, Art. 25).<sup>625</sup>

<sup>621</sup> CEACR: Individual Observation concerning Convention No. 87, Freedom of Association and Protection of the Right to Organise, 1948 Kuwait, Published: 2003, available at <u>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</u>

<sup>622</sup> CEACR: Individual Observation concerning Convention No. 87, Freedom of Association and Protection of the Right to Organise, 1948 Kuwait, Published: 2002, available at <u>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</u>

<sup>623</sup> HRC, General Comment 15 adopted on 22/7/1986 at para.1, available at http://www.unhchr.ch/tbs/doc.nsf/8e9c603f486cdf83802566f8003870e7/d0b7f023e8d6d9898025651e004bc0eb?OpenDocument#1%2F%20Adopte d%20by

<sup>624</sup> HRC, GC 15 at 6, 7

<sup>625</sup> HRC, GC 15 adopted at para.2

ILO stresses that all workers should have the right to form or join trade unions without discrimination.<sup>626</sup> 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. Similarly, ILO considers that all workers regardless of distinctions 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>627</sup> The ILO Committee on Freedom of Association noted that "[w]ith regard to the 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>628</sup>

This was articulated again when the Committee stated : "[w]ith regard to the granting of trade union rights to aliens, the requirement of reciprocity is not acceptable under Article 2 of Convention No 87".<sup>629</sup>

At times, however, one is confronted with a duality of rhetoric within international standards. While the Convention related to Refugees and Stateless persons associates the right to freedom of association for migrants to the lawfulness of their presence in the country,<sup>630</sup> the Convention on Migrant Workers and Members of their Families provides that the right to form and join associations and trade unions is for both legal and illegal migrant workers (articles 26, 40).<sup>631</sup>

<sup>626</sup> 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 <a href="http://www.ilo.org/ilolex/english/23e2006.pdf">http://www.ilo.org/ilolex/english/23e2006.pdf</a>

<sup>627</sup> 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 420, available at http://www.ilo.org/ilolex/english/23e2006.pdf

<sup>628</sup> 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 214, available at <a href="http://www.ilo.org/ilolex/english/23e2006.pdf">http://www.ilo.org/ilolex/english/23e2006.pdf</a>

<sup>629</sup> 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 215, available at <a href="http://www.ilo.org/ilolex/english/23e2006.pdf">http://www.ilo.org/ilolex/english/23e2006.pdf</a>

<sup>630</sup> Convention relating to the status of refugees, supra

<sup>631</sup> Convention on Rights of Migrant Workers and the Members of Their Families, supra

# Conclusion

Restrictions on freedom of association of trade unions, political parties and human rights NGOs subsist in the three countries concerned – Bahrain, Kuwait and Yemen, to various levels. Undue restrictions include the refusal of registration, sometimes on vagues grounds (Bahrain, Kuwait and Yemen) ; 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); the interference in the internal management of associations (Bahrain, Kuwait and Yemen); the prohibition of affiliation to regional or international organizations ; discrimination against non-citizens (Bahrain, yemen 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.

# Recommendations

The International Federation for Human Rights and the Arab Institute for Human Rights urge

# The Bahraini, Kuwaiti and Yemeni authorities:

- 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 their 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, as strongly recommended by the UN Special Rapporteur on Human Rights Defenders;

- 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 in conformity with ILO case law which recognizes the right of workers to create unions of their choice, independent of those already existing even within the same occupation.

-to enact more liberal laws pertaining to political parties

- <u>regarding the right of an individual to join or not an association, including the protection against</u> <u>discrimination based on citizenship:</u>

-to amend their legislation to guarantee the right to freedom of association to nationals and nonnationals residing and working in the country without any discrimination;

-to amend their trade union laws in order to be in line with international standards, ILO guidelines and jurisprudence and in particular, 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;

- <u>regarding the right to raise financial resources:</u>

- 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.

- *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.

- <u>regarding the respect of the principle of non-interference in the internal management of</u> <u>associations by the authorities</u>:
  - 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;

#### - <u>Regarding the right of individuals not to be penalized for belonging to an association:</u>

• 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.