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## X-Rayed By Best Practices

# The Legal Framework for Not-For Profit Association Working in Libya



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## **Author:**

Khair Smadi.

## **Arab Women Organization (AWO)**

The Arab Women Organization of Jordan-AWO is a feminist civil society organization specializing in women's rights and gender equality.

Established in 1970 by a group of women activists. As of 2000, AWO has been supported by diversified donors and partnered with several international, Euro-Med, Arab and Jordanian networks. In 2005, AWO established a local network for uniting the voice of women local community-based organizations. As of 2011, AWO started pursuing the end of GBV against Syrian women refugees in Jordan, according to UNSCR 1325.

AWO is dedicated to achieving SDGs, especially SDG 5, to increase women's political and economic participation as well as eradicate all forms of violence against women and girls. Additionally, AWO is keen to participate in new topics, such as Climate Change and Gender and localization.

To date, AWO has launched social campaigns and initiatives in all the Jordanian governorates. Locally, AWO is an active player in Himam, an alliance of human rights organizations seeking to stop shrinking space policies against civil society organizations.

## **Information and Research Center – King Hussein Foundation**

The IRCKHF is a non-governmental organization that serves as a catalyst for socio-economic transformation through research, information and the dissemination of knowledge. The IRCKHF was launched in 1995 as part of the National Task Force for Children. Today, IRCKHF works to advance the welfare of children, youth, women, families, local communities, and vulnerable groups by providing objective, multidisciplinary research, and analysis to practitioners and policymakers in Jordan and the region, enabling effective socio-economic planning and decision-making. We use a human-rights-based, gender-sensitive, inclusive, bottom-up approach – involving and engaging with key stakeholders wherever possible. It is one of our strategic objectives to conduct and disseminate international standard quality multidisciplinary research.

## **Arab Institute for Human Rights (AIHR)**

Arab Institute for Human Rights (AIHR) is an independent regional organization, established in March 1989, and works for promoting human rights in the Arab region. AIHR was awarded the UNESCO International Prize in 1992 to honor its efforts in human rights education. For more info please visit the following link. [www.aihr-iadh.org](http://www.aihr-iadh.org)

## **Civic Horizons**

Civic Horizons is a regional consortium present in six countries (Morocco, Tunisia, Libya, Iraq, Jordan and Lebanon). It endeavours to improve conditions for Civil Society (CS) in unique, innovative, and strategic ways. The overall action is piloting a holistic approach that brings together sets of strategies, tools, and knowledge that address the operational space of civil society through policy and legal lenses, as well as social and cultural lenses—with intersectionality and human rights-based approaches as a methodological backbone. This means that the way we seek to create change stands central to the program. The processes we roll out through our activities consider power dynamics and how to share power by creating space at the decision-making table. The values of human rights, transparency, participation and ownership stand central in the governance and management itself of the program.

Women, and marginalized groups (YWM), can participate in enabling a civil society environment that advances human rights, democracy, and fundamental freedoms throughout the MENA region.



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## Introduction: Concept of Legal Framework for Association (a Demarcation)

Although association is an artificial legal person, it enjoys all the rights assigned to human individual<sup>1</sup> that are compatible with its nature. For example, article 3 of Libyan Law No. 65 of 2012 regulating the Right to Peaceful Demonstration acknowledges this fact by asserting that: “**Citizens... civil society organizations ... shall have the right to organize demonstrations**”<sup>2</sup>. Consequently, the legal framework applicable to natural person is also applicable to association, to the extent described before. Nevertheless, for the purpose of this study, the term “**legal framework for association**” shall exclusively refer to the set of relevant legal provisions applicable to not-for profit association, regardless of its source (national or international) and its nature (binding or guiding). This body of provisions enshrines the right to freedom of association and determines the various stages of association’s lifecycle (formation, activities, and dissolution).

Right to Freedom of Association and Right to Freedom of Assembly: In many legal instruments, the right to freedom of association and the right to freedom of assembly are usually underlined together due to their interrelatedness, interdependence, and mutual reinforcing. Yet, practically speaking; “*they are also two separate rights. They are indeed in most cases **governed by two different types of legislation... face different challenges. This implies that each should be treated separately***”<sup>3</sup>. In response to these facts, the focus of this study shall be solely on the right to freedom of association.

National and International Frameworks: The freedom of association is an indispensable right to any democratic society. This indispensability is cherished, without any single exception, by all relevant fundamental human rights instruments<sup>4</sup>, and similarly honored by the consecutive constitutions of Libya<sup>5</sup>. All this veneration on the international and national level, made the right to freedom of association a subject for regulation by both national and international legal frameworks. Thus, any legal study to this right, in any particular country, cannot ignore those two dimensions of the legal framework.

On the ground, the academic duality of national and international frameworks should not lead us into the temptation of having two separate studies. As above is not as on earth and the rope that divides the well does not divide the water. Dialectically speaking, these two frameworks are in fact one; as per to the imperative notion of “*Pacta sunt servanda*” of article 26 of Vienna Convention on the Law of Treaties, which provides that: “**Every treaty in force is binding upon the parties to it and must be performed by them in good faith**” and so, state party like Libya<sup>6</sup> cannot “*invoke the provisions of its internal law as justification for its failure to perform a treaty*”<sup>7</sup>. These two international provisions were internalized by a ruling of the Libyan supreme court states that “**international treaties, state of Libya is member to, shall inter into force immediately upon completing its ratification procedures by the legislative authority of the state and shall have the supremacy in application over internal legislations,**

1. “An artificial person is also known as a juridical person; it has a legal name and has certain rights, protections, privileges, responsibilities, and liabilities in law, similar to those of a natural person.” Website of Legal Information Institute, Cornell Law School, artificial person, last updated Jun 2022, available at: [https://www.law.cornell.edu/wex/artificial\\_person](https://www.law.cornell.edu/wex/artificial_person) (Accessed on March 8, 2023)

2. Civil society organizations are treated as individual natural citizens.

3. Paragraph 4 of Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, Human Rights Council, 2012, (A/HRC/20/27) (hereinafter referred to as Report of Special Rapporteur of Freedom of Association 2012)

4. See footnote no.10.

5. See article 15 of current Constitutional Declaration of 2011, article 6 of Constitution of 1977, article 26 and 38/18 of Constitution of 1951 and most recently articles 42, 43 and 44 of the Draft Constitution, version of July 29, 2017.

6. Libya acceded the VCLT on December 22, 2008.

7. Article 27 of VCLT.

of which, if a contradiction occurs between its provisions and the provisions of the internal legislations, the provision of the treaty shall have the primacy in application<sup>8</sup><sup>9</sup>. This ruling unequivocally erases the mentioned artificial dualism as it reiterates the fact that, in Libya, the international framework is an integral part of the domestic law.

Contents of International Framework Applicable to Libya: All relevant fundamental human rights instruments (Libya member to<sup>10</sup>), enshrine the right to freedom of association either for “Everyone” like in the UDHR<sup>11</sup>, ICCPR<sup>12</sup>, ICESCR<sup>13</sup> and CERD<sup>14</sup> or for certain group of persons, like women in CEDAW<sup>15</sup>, children in CRC<sup>16</sup>, disabled persons in CRPD<sup>17</sup>, persons concerned with enforced disappearance in ICPPED<sup>18</sup>, refugees in 1951 convention<sup>19</sup>, workers in concerned ILO conventions<sup>20</sup> and migrant workers in Convention on the Protection of the Rights of All Migrant Workers of 1990<sup>21</sup>. Furthermore, Libya is a state member to its regional (African and Arab) instruments<sup>22</sup> which also recognize the right to freedom of association. And finally, as an Islamic country whose Constitutional Declaration of 2011 provides that “Islam is the Religion of the State and the principal source of legislation is Islamic Jurisprudence (Shari’a)”<sup>23</sup> Libya is bound to respect the provisions of Islamic instruments on human rights, that all show similar respect to the right to freedom of association<sup>24</sup>.

After a panoramic review to the texts of those instruments, it has been observed that those fundamental binding texts do not go beyond the protracted standing ovation for the right to freedom of association, to provide farther details necessary to answer all legal questions related to the practical manifestations of this right in the lifecycle of not-for profit association. Therefore, the need is for additional sources that can provide such details/answers. One of the capable sources owing to its inclusive and dynamic nature as highlighted by the Special Rapporteur on the Rights to Freedom

8. This ruling was explicitly codified in article 13 of Libya’s Draft Constitution (July 2017): “Ratified international treaties and conventions shall supersede the law but shall be subordinate to the Constitution. The State shall take the necessary measures to enforce such treaties and .“conventions

9. Constitutional petition before the court’s departments, altogether, no. 01/57 (ق) و session dated on 23/12/2013.

« على التطبيق أسبقية لها وتكون الدولة في التشريعية السلطة من عليها المصادقة إجراءات إتمام بمجرد مباشرة نافذة تكون الليبية الدولة بها ترتبط التي الدولية الاتفاقيات أن » الطعن الدستوري لدى دوائر المحكمة مجتمعمة « بالتطبيق الأولى هي الاتفاقية أحكام فإن الداخلية التشريعات وأحكام أحكامها بين تعارض حدث إذا بحيث الداخلية التشريعات 2013\12\23 جلسة. ق. 57/01 الرقم

10. ICCPR on May 15, 1970 (accession), ICESCR on May 15, 1970 (accession), CERD ON Jul 3,1968 (accession), CEDAW on 16 May16, 1989

(accession), CRC on Apr 15, 1993 (accession), CRPD on Feb 13, 2018 (accession), ICPPED not a member, UN Refugee Convention 1951 not a member, Specially convention on Freedom of Association and Protection of the Right to Organize, 1948 (No. 87) on Oct 4, 2000, Convention on Right to Organize and Collective Bargaining, 1949 (No. 98) on Jun 20, 1962. Convention on the Protection of the Rights of All Migrant Workers and Members of their Families Jun 18, 2004 (accession), African Charter on Human and Peoples’ Rights on Jul 19, 1986 (ratification), African Charter on the Rights and Welfare of the Child on Sep 23, 2000 (ratification), Arab Charter on Human Rights 2004 on Aug 7, 2006 (ratification).

11. Article 20

12. Article 22/1

13. Article 8/3

14. Article 5/9

15. Article 7/c

16. Article 15/1

17. Article 29

18. Article 24/7

19. Article 15

20. See convention on Freedom of Association and Protection of the Right to Organize, 1948 (No. 87) and Convention on Right to Organize (and Collective Bargaining, 1949 (No. 98

21. Article 26

22. See article 10 of African Charter on Human and Peoples’ Rights, and article 8 of African Charter on the Rights and Welfare of the Child, .and article 24/5-7 of Arab Charter on Human Rights 2004

.23. Article 17 of Constitutional Declaration of 2011

24. See article 14 of Universal Islamic Declaration of Human Rights 1981 and article 23/b of Cairo Declaration on Human Rights in Islam 1990 .and article 10 of Covenant on the Rights of the Child in Islam 2005

of Association, is the so-called “**best practices**”. According to the Special Rapporteur, “*best practices*” are not limited to “*international human rights law, but also includes principles that go beyond these legally binding obligations. It refers to both legal and institutional frameworks and must be based on an existing or emerging practice, coming from State institutions, intergovernmental organizations, international treaty bodies, international, regional or domestic courts (jurisprudence) or scholars.*”

The above-described contents of “best practices” are well-documented in many international and regional resources. This study resorts to six of the most recent, relevant, and inclusive among them:

- Two reports for the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai. One is comprehensive in 2012 (A/HRC/20/27) the other is mainly focusing on “**Ability of associations to access financial resources**” in 2013 (A/HRC/23/39).
- Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani in 2004, (A/59/401).
- African Commission on Human and Peoples’ Rights (ACHPR) Guidelines on Freedom of Association and Assembly in Africa 2017. These Guidelines have a special authority as it was developed by the commission as part of its mandate under article 45/1/b of the African Charter on Human and Peoples’ Rights<sup>25</sup> which Libya is a member to.
- Joint Guidelines on the Freedom of Association prepared by OSCE (Organization of Security and Co-operation In Europe) and ODIHR (Office for Democratic Institution and Human Rights) 2014.
- Guidelines for Laws Affecting Civic Organizations that was prepared by the Open Society Institute (OSI) in cooperation with the International Center for Non-Profit Law (ICNL), 2004<sup>26</sup>.

For the sake of preserving the promised dialectical approach of this study, those detailed best practices embodied in the abovementioned resources will not be extended in a separate chapter, but along with the relevant Libyan legal provisions in order to have these provisions **x-rayed** by those best practices, so the broken parts (gaps) and contradictions can be detected. It is exceptionally vital, herein, to flag the fact that the heavy reliance on *international standards* and *best practices*’ guidance, in this study, is legally and academically legitimate; as both concepts are not alien to the mandate of CCS’s (Commission of Civil Society<sup>27</sup>)<sup>28</sup> in Libya. According to article 3 of Decree no. 1605 of 2018, it is among CCS’s existential goals to observe “**international rules and general norms**” set out by international instruments, Libya is member to<sup>29</sup>, and to promote “**good practices**” standards in civil association<sup>30</sup>.

25. The abovementioned article states that the African Commission is mandated “to formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples’ rights and fundamental freedoms

26. These Guidelines were drafted by three scholars, Leon E. Irish, Robert Kushen and Karla W. Simon and developed over several years through formal and informal consultations with lawyers, civic organization leaders, and state officials in countries around the world, many of them in developing and transition countries.” page 10

27. Some sources call it CSC (Civil Society Commission), but CCS (Commission of Civil Society) is the way it calls itself on its website. See CCS-Benghazi’s website: <https://ccs.gov.ly/> and CCS-Tripoli’s website: <https://ccs.ly/eng-home.html> (Both accessed on March 8, 2023)

28. «المدن المجتمع مفوضبة»

29. See paragraph 8 of the mentioned article

30. See Paragraph 10 of the mentioned article

# 1. National Legal Framework

**1.1. General Dilemma of Libyan Legislations:** Since its constitution as a modern state, Libya has been witnessing dramatic regime shifts<sup>31</sup> which brought about a legislative mayhem where every successor repealed parts of its predecessor's legislations in nebulous terms<sup>32</sup>; like those of article 35 of the current Constitutional Declaration: "All the provisions prescribed in existing legislation shall continue to be effective in so far as they are not inconsistent with the provisions hereof"<sup>33</sup>. Legally speaking, apart from constitutional judiciary, it is not legally accessible even to other judges (let alone any researcher) to determine which provision is "inconsistent" with the declaration. This uncertainty has created a situation of conflict of laws from time-perspective where there are more than one legislation from different political periods handling the same issue (with legal controversy regarding which is in force, and which is not). For more complication, the political division in July 2014, that had produced two governments with two legislative bodies in west and east of the country, added a territorial perspective to that conflict of laws as some legislations are effective in the east while repealed in the west (Like law no. 19 of 2001). In the backdrop of this time-space conflict of laws, came Decree no. 286 on March 7, 2019<sup>34</sup> that wholistically re-organizes the lifecycle of local and foreign associations in Libya. The rationale behind this decree was to offer a pragmatic deciphering for that legislative puzzle, via:

- Cancelling all provisions previous in time, by the virtue of article 2 which states that "this decree enters into force immediately after its issuance and shall be cancelled all provisions that contradict it". (Unraveling time related conflict of laws).
- Endorsement of GNA (Government of National Accord), the internationally recognized government of all Libya that was jointly formed by the east and the west (under UNSMIL's<sup>35</sup> auspices) and constitutively empowered by the Libyan Political Agreement of December 2015. (Unraveling the territorial conflict of laws).

31. Those shifts/eras are: The monarch (1951-1969), Gadhafi's Republic/Jamahiriya (1969-2011), and 17<sup>th</sup> February Revolution (2011-present) that witnessed the following turning points which also contributed to the above-mentioned legislative mayhem: Political Division of July 2014, Political Agreement of December 2015, Military operation of April 2019, GNU (Government of National Unity) formation in March 2021.

32. See for example article 1 of Law No. (5) of 1991 AD on the Application of the Principles of the Great Green Charter of Human Rights of the Jamahiriya Era, which states that "The legislation in force before the issuance of the Great Green Charter of Human Rights of the Jamahiriya Era shall be amended in conformity with the principles of said Charter. No legislation may be issued in contradiction with these principles." On another example see articles 34 and 35 of Constitutional Declaration of 1969 which state that "All provisions of existing laws and legislation which are not in conflict with the provisions of this Constitutional Declaration shall remain in effect... Decisions, state-ments, and orders issued by the Revolutionary Command Council since September 1969 and before the issuance of the present Constitu-tional Declaration shall have the power of law. Any contrary provisions of laws in force before the issuance of such shall be null and void

33. ٢٠١١ الدستوري الإعلان من ٣٥ مادة "الإعلان هذا أحكام مع يتعارض لا فيما، القائمة سُرِّعاتُ الت في قررةً لم الأحكام بجميع العمل يستمر".

34. Almost one month before the military operation of April 4, 2019, that revived the political and legislative division, after the Political Agreement of December 2015.

35. UNSMIL is the United Nations Support Mission in Libya, founded on September 16, 2011

Unfortunately, in spite of good intents, the Decree that suffers serious legitimacy concerns has only enigmatized the puzzle, instead of offering a real solution.

**1.2. Legal Framework in West of Libya (Dilemma of Decree no. 286):** Though its preamble refers to Law no. 19 of 2001 on “*Re-regulating of Civil Associations*”; and its title labels its own provisions as “*Organizational Regulation*”, the Decree is of undeniable legislative nature, which makes it legally problematic owing to the reasons listed below.

**1.2.1. Lacking Constitutional Support:** According to the Constitutional Declaration of 2011, the “*House of Representatives*”<sup>36</sup> (not GNA’s Presidency Council) shall be the successor of the “*General National Congress*” that succeeded the “*Interim National Transitional Council*”<sup>37</sup> that was the “*supreme power in the State of Libya*” which had the right to “*undertake the works of the supreme sovereignty including legislation*”<sup>38</sup>. Accordingly, when GNA’s Presidency Council, as part of the executive authority (without legislative mandate), issued that legislative Decree, it was acting without any constitutional coverage/delegation.

Another contradiction with the constitutional provisions appears when considering article 15 which provides that: “*The State shall guarantee the freedom of forming political parties, societies and other civil society organizations, and a law shall be promulgated to regulate same.*”<sup>39</sup> Since the “*Organizational Regulation*” in question was issued via an executive decree not a law, it is therefore, in an existential contrast with that constitutional provision.

**1.2.2. Lacking Support from “The Libyan Political Agreement” of December 2015:** In the governing principles of this Agreement, the parties confirm: their “[f]ull commitment to the Constitutional Declaration”<sup>40</sup> that clearly indicates who has the legislative power, and; their “*Commitment to the respect of the principle of separation of the three powers, legislature, executive, and judicial.*”<sup>41</sup>, and; their “*Commitment that the House of Representatives is the only legislative authority in the country during the transitional period.*”<sup>42</sup> While articles 12<sup>43</sup>, 13<sup>44</sup> of the agreement all re-affirm that the “*House of Representative*” elected in June 2014 is the solo legislative authority and shall continue so until “*convening of the first session of the legislative authority as per the Libyan Constitution*”<sup>45</sup>. Additionally, after a careful review to article 8/2 “*Terms of Reference of the Presidency Council of the Council of Ministers*” and article 9 on Council of Ministers’ ToRs, the power to legislate was not among both Councils’ ToRs.

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.36. The “House of Representatives” as mentioned in article 30/11+12

.37. “The interim National Transitional Council ... it shall remain the highest governing authority ... until the election of the General National Congress.” Article 30/1 “The interim NTC shall be dissolved at the first session of the GNC, and all its powers shall be transferred to the GNC.” Article 30/6

.38. Article 17

.39. “تكفل الدولة حرية تكوين الأحزاب السياسية والجمعيات وسائر منظمات المجتمع المدني، ويصدر قانون بتنظيمها”

.40. Principle no. 2

.41. Principle no. 3

.42. Principle no. 10

.43. “The legislative authority of the State, during the transitional period, shall be undertaken by the House of Representatives, which was elected in June 2014; it shall practice its competencies based on the Constitutional Declaration and its amendment as per this Agreement

.44. “The House of Representatives, elected in June 2014, shall undertake the legislation authority for the transitional period

.45. Article 18 of the Libyan Political Agreement

**1.2.3. Contradictions with International Standards:** The main contradiction with the international standards is that article 22/2 of ICCPR requires any restriction to the right of freedom of association to be “*prescribed by law*” not a decree. There are other contradictions with the international standards that will be explained afterward, during the detailed analysis of the Decree’s provisions.

**1.2.4. Contradiction with Other Internal Legislations:** This contradiction is just an exhibition of the previously portrayed legislative mayhem resulted in having more than one legislation organizing the same issue or part of it, at the same time. The following are few examples on those legislations that partially or entirely contradict the current Decree’s provisions:

- Article 80 of the Civil Code (Law) of 1954, which requires that association should be “*regulated by law*” not a decree like the 286.
- Law no. 19 of 2001 on Re-regulating of Civil Associations that regulates the whole same topic in completely different provisions. This law shall be the subject of deep analysis in section 1.3.
- Article 3/4 of Law no. 19 of 2013 on the Re-organization of the Audit Office<sup>46</sup>, states that “*The Audit Office shall exercise oversight over the following entities... Private bodies and associations for public interest supervised or supported by the State, whether directly or indirectly*”<sup>47</sup>. Which is a competency assigned to CCS by Decree no. 286. It is important to note here, that this law is in a higher legislative position (in legislations’ hierarchy) that should be respected when a contradiction happens with the Decree, which is in a lower position.
- Article 4/4+7 of Decree No. 231 of 2012 on Adopting the Organizational Structure and Functions of Youth and Sports Ministry and the Organization of its Administrative Unit<sup>48</sup>, states that the ministry is the responsible about the oversight of the civil society associations concerned with youth<sup>49</sup>. Once more, it is a competency assigned to CCS by Decree no. 286.
- Article 30/1 of Decree no. 300 of 2021 on Approving the Organizational Structure and Competency of Ministry of Environment<sup>50</sup> which states that: “*The office of civil activities shall be responsible about the following: registration of civil associations founded for the sake of protecting and enhancing the environment*”<sup>51</sup>. While according to article 1 of Decree no. 286, CCS is “*the legally competent authority to register associations*”. Moreover, the fact that Decree no. 300 is the most recent, in this comparison, has a certain considerable legal value.

46. «بشأن إعادة تنظيم ديوان المحاسبة» 2013 لسنة (19) قانون رقم.

47. «يمارس ديوان المحاسبة رقابته على الجهات الآتية... الهيئات والجمعيات الخاصة ذات النفع العام التي تُسَرِّفُ عليها الدولة أو تدعمها بطريق مباشر أو غير مباشر».

48. «بشأن اعتماد الهيكل التنظيمي واختصاصات وزار الشباب والرياضة وتنظيم جهازها الإداري» 2012 لسنة 23 قرار رقم.

49. «تتبع وزارة الشباب والرياضة أو تعمل تحت إشرافها - بحسب الأحوال - الجهات الآتية: -٤... جمعية بيوت الشباب. ٧. الجمعيات الأهلية للشباب».

50. «بشأن اعتماد الهيكل التنظيمي واختصاصات وزارة البيئة وتنظيم الجهاز الإداري» 2021 لسنة 300 قرار رقم.

51. «يختص مكتب النشاط الأهلي بما يلي: - القيام بتسجيل الجمعيات الأهلية التي تُشأ بهدف حماية وتحسين البيئة».

**1.2.5. Having no Effect in East of Libya:** In addition to the military operation on April 4, 2019 (less than a month after the issuance of Decree no. 286) that revived the legislative division after the Political Agreement, on July 18, 2022 the department of urgent matters in south Benghazi court of first instance issued a decision (no. 581/2022) suspending Decree no. 286 of 2019 until the substance of the claim being decided by the subject matter (trial) court<sup>52</sup>.

**1.3. Legal Framework in East of Libya (Dilemma of Law no. 19 of 2001 and Decrees no. 1 and 2 of 2016):** The legal framework in the eastern part of Libya is not less ambiguous and confusing from its counterpart in the west. In 2016, CCS's Bord of Administration in Benghazi issued two decrees, no.1 on "Adopting the Regulations for (Local)<sup>53</sup> Civil Organizations" and no. 2 on "Regulations on International Non-Governmental Organizations Working in Libya". These two Decrees by re-organizing local and foreign associations' work in a detailed manner with provisions entirely different from those of Law no. 19 of 2001, are practically repealing that law despite mentioning it in Decree no.1's preamble (to give itself the legitimacy of law implementing regulation).

According to a certain source<sup>54</sup> based on the above-mentioned article 2 of Decree no 286 of 2019, those two Decrees of 2016 were repealed by Decree no. 286 (this means that the latter controversial and suspended Decree, legislatively repealed the Decrees of 2016 that already practically repealed Law no. 19 of 2001). Nonetheless after almost four years, the two Decrees of 2016 are still published on CCS-Benghazi's website<sup>55</sup>, as effective and guiding regulations<sup>56</sup>. The credit for the lack of acknowledgment of decree no. 286 of 2019 in the east should be, of course, attributed to the political division<sup>57</sup>.

Moreover, the complication never ends but worsens, in a very recent Directive issued on October 30, 2022 by the Office of the President of the House of Representatives, law no. 19 of 2001 has been resuscitated. This Directive rules that "*the law is the law until it is repealed or amended, accordingly, Law no. 19 of 2001 on Civil Association is still in force*"<sup>58</sup>. Again, CCS-Benghazi's website still adopting degree 1 and 2 of 2016.

52. وقف قرار المجلس الرئاسي لحكومة الوفاق الوطني رقم ٢٨٦ لسنة ٢٠١٩... إلى حني الفصل في الموضوع من المحكمة المختصة، مع شمول الحكم بالنفاذ المعجل» حكم صادر عن دائرة «  
الأمر الوقتية والمستعجلة (التابعة لمحكمة جنوب بنغازي الابتدائية) في ١٨ يوليو ٢٠٢٢

53. Explanation is added.

54. (Accessed on March 8, 2023) <https://lawsociety.ly/legislation/>

55. CCS-Benghazi's website, Decree no. 1 of 2016, available at: <https://ccsly.demo.ly/wp-content/uploads.pdf>  
<https://ccs.gov.ly/wp-content/uploads/Legal-Regulation.pdf> (Accessed on March 8, 2023)/07/2020/

56. This citation confirms that fact: "decrees 1 and 2 issued by the Civil Society Commission in February 2016. Executive authorities have also directly targeted several associations by dissolving them, denying them legal status, or interfering in their administration. The regional offices of the Civil Society Commission in several cities have threatened to dissolve associations if they do not re-register under the 2016 decrees.", Paragraph 8, CIHRS, Libya Universal Periodic Review: Freedom of Association and human rights defenders, available at: <https://file=EnglishTranslation> (Accessed on March 8, 2023)&7929=uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename

57. "The Civil Society Commission is currently divided between two institutions issuing contradictory decrees", Paragraph 8, CIHRS, Libya Universal Periodic Review: Freedom of Association and human rights defenders, available at: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=7929&file=EnglishTranslation> (Accessed on March 8, 2023). Also, with same meaning, see: "Civil society organizations (CSOs) are required to register with the GNA-affiliated Civil Society Commission (CSC) in Tripoli if they have activities in the west and with an eastern, parallel "CSC" in Benghazi if they have activities in the east." US DoS, Country Reports on Human Rights Practices, Libya Report, 2020, Section B, Freedom of Association, available at: <Libya - United States Department of State> (Accessed on March 8, 2023).

58. " ان القانون هو القانون حتى يُلغى، او يعدل وبما ان القانون رقم (١٩ لسنة ٢٠١٩) بشأن الجمعيات الأهلية، لا يزال ساري المفعول "



Whether it is Law no. 19 of 2001 or the two decrees of 2016, the conundrum continues both ways. Decrees 1 and 2 of 2016 suffer problems of graver magnitude than those listed for decree no. 286 of 2019 (by the virtue of logical/legal doctrine of “*argumentum a fortiori*”); since they were issued by an executive authority (Board of Administration of CCS-Benghazi) lower in the executive hierarchy than GNA’s Presidency Council that issued Decree no. 286. As for Law no. 19 of 2001, it is also in an existential contradiction with the provisions of article 35 of the Constitutional Declaration which provides that: **“All the provisions prescribed in existing legislation shall continue to be effective in so far as they are not inconsistent with the provisions hereof”**<sup>59</sup>.

As per to the preamble<sup>60</sup> of the Constitutional Declaration and its articles<sup>61</sup> the essence of this Declaration is all about democracy, human rights, respecting relevant international standards, guaranteeing the freedom of association, and retrieving “**all the rights looted**” by the former regime. Subsequently, any legislation that is not harmonious with these values, for being repressive, shall be considered “**inconsistent**” with the provisions of the Constitutional Declaration, and accordingly repealed, pursuant to article 35.

Actually, the inconsistency between Gaddafi’s Law no. 19 of 2001 and 17<sup>th</sup> February Revolution’s Constitutional Declaration of 2011, can be easily deduced when considering the below repressive aspects of that Law:

- Crippling provision of article 2 which states that the founding members of an association shall not be less than fifty, combined with the provision of article 45 that obliges all association to settle their status in accordance with the Law, within six months of its entry into force, or be **ipso jure** dissolved. These onerous provisions shall definitely lead to the **retroactive** dissolution of many associations that were founded after February 2011; for not fulfilling the fifty founding members’ requirement.
- Extremely intrusive oversight power that allows the responsible state agency to participate in association’s founding procedures and meeting (art 20), suspend resolutions of association’s governing body (art 30), assign steering committee to lead the association (art 32), take over association’s money and records (art 33), discretionary merge associations with similar purpose, against their will (art 34) and finally, close the association and its branches (art 35).
- Penalties it contains that may reach three months of imprisonment (art 41) and 500 LYD of fines (art 41 + 42).

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59. See the exact Arabic text in footnote no.33.

60. “[F]reedom ... and retrieve all the rights looted by Gaddafi... people’s desire and hopes to achieve democracy, establish political pluralism .“and a state of institutions... justice, equality...where there is no place for injustice, tyranny, despotism, exploitation or dictatorship

61. “Libya is an independent democratic State where the people are the source of authority.” Article 1 “The State shall seek to establish a democratic political regime”. Article 4 “Libyans shall be equal before the law. They shall enjoy equal civil and political rights” Article 6 “Human rights and basic freedoms shall be respected by the State. The State shall commit itself to joining international and regional declarations and charters which protect such rights and freedoms.” Article 7 “The State shall guarantee the freedom of forming political parties, societies and other civil society organizations”. Article 15.

All those aspects are manifestly **inconsistent** with the right to freedom of association as set out in article 15 of the Constitutional Declaration. That is why several sources, considered that law highly repressive and human rights' restrictive. See for instance the following reports:

- *“The legislative framework which governed civil society under Gaddafi’s regime was embodied by the law number 19 of year 2001 which was drastically restrictive and arbitrary.”*<sup>62</sup>
- *“Executive authorities have continued to impede the right to form associations, relying on Law 19/2001 on the reorganization of civic associations”*<sup>63</sup>
- *“Law 19 of 2001 on the Re-Organization of Civil Associations gives the authorities sweeping powers to control civil society associations... it effectively prevents the establishment of independent associations”*<sup>64</sup> Libya (ohchr.org)
- *“The State of Libya must repeal the current law on civil society, Law 19 of 2001, and adopt a law that is consistent with international freedom of association standards.”*<sup>65</sup>

*Ipsa facto*, some experts and reports believe that that law was automatically repealed by the issuance of the Constitutional Declaration of 2011:

- *“Since the uprising of February until now there has been no law that organizes the work of civil society in Libya as the law No 19 of 2001 has been revoked and the current procedures are only regulatory controls.”*<sup>66</sup>
- *“The 2011 Constitutional Declaration guarantees Libyans’ freedom to form CSOs, effectively annulling the restrictive provisions of the Law 19/2001 that had previously regulated CSOs’ formation and registration.”*<sup>67</sup>

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62. Foundation For the Future, Assessing Needs of Civil Society in Libya: An analysis of the Current Needs and challenges of the Civil Society in Libya, November 2011, page 7, available at: [https://www.icnl.org/wp-content/uploads/Libya\\_ASSESSING-NEEDS-OF-CIVIL-SOCIETY-IN-LIBYA.pdf](https://www.icnl.org/wp-content/uploads/Libya_ASSESSING-NEEDS-OF-CIVIL-SOCIETY-IN-LIBYA.pdf) (Accessed on March 8, 2023)

63. Paragraph 8, CIHRS, Libya Universal Periodic Review: Freedom of Association and human rights defenders, available at: <https://upr-doc.ohchr.org/uprweb/downloadfile.aspx?filename=7929&file=EnglishTranslation> (Accessed on March 8, 2023)

64. Human Rights Solidarity, Libya Submission to the UN Universal Periodic Review, Ninth session of the UPR Working Group of the Human Rights Council, November-December 2010, Section B, page 5, available at: <https://www.upr-info.org/sites/default/files/documents/2013-09/hrshumanrightssolidarity.pdf> (Accessed on March 8, 2023)

65. Lawyers For Justice in Libya, Civil Society Organizations Welcome Libya’s UN Human Rights Review And Call On The State Of Libya To Accept And Implement Recommendations, May 19, 2015, available at: <https://www.libyanjustice.org/news/190-civil-society-organisations-welcome-libyaas-un-human-rights-review-and-call-on-the-state-of-libya-to-accept-and-implement-recommendations> (Accessed on March 8, 2023)

66. Mohamed Omran, Civil society legislation in Libya, Democratic Transition and Human Rights Support Center, October 22, 2021, available at: <https://daamdh.org/archives/18003?lang=en> (Accessed on March 8, 2023)

67. USAID, ICNL and FHI 360, 2020 Civil Society Organization Sustainability Index For The Middle East And North Africa, 9th EDITION – OCTOBER 2021, Libya, Legal Environment, Page 48, available at: <https://www.fhi360.org/sites/default/files/media/documents/csosi-me-na-2020-report.pdf> (Accessed on March 8, 2023)



**1.4. De Facto Solution to De Jure Dilemma:** To cut this long analysis short, there are three main legal frameworks theoretically competing over governing association's work in Libya: Law no. 19 of 2001, and; Decrees no. 1 and 2 of 2016 effective in the east, and; Decree no. 286 of 2019 effective in the west. Each one of them suffers serious constitutional problem/s that may affect its very existence at any time. From *de facto* (not *de jure*) point of view, having this study focusing on the Law of 2001 will make it unrealistic for it is not in force neither by CCS- Benghazi nor CCS-Tripoli (it is not even on their websites). Between the other two frameworks, this study opts to focus on decree no. 286 due to these compelling reasons (that should be combinedly considered):

- It is the most recent. This fact does not come without any substantial legal value.
- It was issued by, then, the internationally recognized Government of National Accord before the political and legislative division's revival in April 2019.
- It was issued by GNA's Presidency Council which is a higher authority than CCS- Benghazi's Board of Administration (that issued the two Decrees of 2016).
- Though it is only effective in the west (and some parts of the south) still, it is where the capital city, most of the population and the donors (all UN and EU agencies and foreign embassies) are located/based, and therefore, where most of local and foreign associations work.
- it is a kind of re-finishing/re-writing of the two Decrees of 2016 which means that the analysis of the latter (286) shall be greatly appropriate to the former (1 and 2 of 2016).

**1.5. Structure of the Legal Framework in Libya:** Any comprehensive legal framework for associations shall contain two strata of provisions; the upper, enshrines the right to freedom of association whereas the lower, regulates the different stages of association's lifecycle. The first type is usually of constitutional nature owing to the legal magnitude of the right, while the other usually takes the form of law or executive regulation, owing to the detailed and variable nature of its subject (needs prompt and frequent amendments, which is not affordable under the constitutional type). The legal framework in Libya makes no exception as it enshrines the right to freedom of association in the constitutional declaration and leaves the details to the provisions of Decree no. 286 of 2019.

**1.5.1. Enshrining the Right to Freedom of Association:** According to article 15 of the Constitutional Declaration of 2011 *"The State shall guarantee the freedom of forming political parties, societies and other civil society organizations, and a law shall be promulgated to regulate same. The establishment of clandestine or armed groups, or groups in violation of public order or of public morals and others which may be detrimental to the State or the unity of national territory shall be prohibited."* The right to freedom of association, as per to the second half of that article and the provisions of other Libyan laws, is subject to certain restrictions that need being appraised in the light of the international standards in order to decide its legitimacy. These restrictions are the prohibition of the following:

- Establishing an association that is clandestine or non-peaceful or violating public order, morals, and national security (art 15 of the Constitutional Declaration). Such association is punishable under article 211 of the Penal code of 1954<sup>68</sup> and article 14/2 of the Law No. 3 of 2014 on Counterterrorism<sup>69</sup>.
- Forming and joining associations by military<sup>70</sup> staff. It is worth mentioning, herein, that police members are exempted from this restriction according to article 76/1<sup>71</sup> of Law no. 6 of 2019 on Amending Law no. 5 of 2018 on Police Force.
- Forming<sup>72</sup> and joining<sup>73</sup> foreign association “of a non-political international character” without permission from the government (art 208 of the Libyan Penal code of 1954).

Apart from the last restriction that unjustly sanctions the peaceful exercise of the right and thus, sharply opposes the provision of article 15 of the Constitutional Declaration and article 22/1 of ICCPR<sup>74</sup>, the first two restrictions are not far from the provisions of article 22/2 of ICCPR that accept restrictions made to:

- Protect “national security”, “public safety”, “public order”, “public health or morals” and “rights and freedoms of others”.
- Limit the exercise of the right of association for certain categories of persons. “This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.”<sup>75</sup>

**1.5.2. Regulating Association’s Lifecycle:** Every association has a lifecycle stretches from formation for achieving certain defining goals to dissolution. Consequently, the upcoming sections of this study will focus on analyzing Decree no. 286 of 2019’s relevant provisions that determine these lifecycle’s stages along with other vital signs affecting association’s life and work, such as access to funding, government oversight and taxation. Here, it is time to mention that the abovementioned two-article Decree contains as attachment an “Organizational Regulation for CCS’s Work”<sup>76</sup> (the Regulation, hereinafter) comprises of seventy detailed articles that will be the substance of our intended thorough analysis.

68. “If several persons agree to commit any of the intentional offences set forth in Chapters (1) and (2) of this Part, for which this Code imposes death, life imprisonment or imprisonment as a penalty, or form, establish, or organise an association or armed or unarmed gang to .“commit any of these offences

69. “Anyone that intentionally commits one of the acts listed below shall be sentenced to life imprisonment:…Anyone who, for a foreign state, association, body, organisation, group or gang whose headquarters is outside Libya, or for an association, organised body, group or gang whose headquarters is outside Libya, or for anyone who works for the interest of such state, or any of the said entities, or who corresponds .“with such state or entity, attempts to commit a terrorist act inside or outside Libya

70. “Whoever joins a charity without permission shall be punished by detention not exceeding one month.” Article 85 of Law No. (37) of 1974 on Military Penal Code.

71. “[T]he prohibitions for a police member ... joining any entity that has the constitutional right to partake in the power whether it is a party or organization or coalition or any other political bodies, without prejudice from this prohibition to the right of the police member to join civil society association of charitable and civil work...under the condition of not being in the official uniform”. Article 76/1 of Law no. 6 of 2019 on Amending Law no. 5 of 2018 on Police Force.

72. “Anyone who, within the country, without permission from the government ... establishes, founds, organises, or directs associations, bodies, or organisations of a non-political international character, or branches thereof, shall be punished by a penalty of detention”. Article 208 of the Penal Code.

73. “Anyone who joins the above-mentioned associations, bodies, or organisations shall be punished by detention for a period not exceeding three months and a fine not exceeding LYD 200. Any Libyan living within the country who, in whatever manner, without the permission of the government, joins or takes part in any of these organisation whose headquarters is abroad.” Article 208 of the Penal Code.

74. “Everyone shall have the right to freedom of association with others”

75. Article 22/2 of ICCPR.

76. «قرار المجلس الرئاسي لحكومة الوفاق الوطني رقم ٢٨١ لسنة ٢٠١٩ « بشأن اعتماد اللائحة التنفيذية لعمل مفوضية المجتمع المدني»

## 2. Formation of Association

**2.1. Responsible State Agency:** Historically, state agency responsible about registration of associations in Libya has been constantly moving from ministry to another<sup>77</sup> until recently settled down at the hand of CCS the “Commission of Civil Society” through the following decrees:

- Decree no. 649 of 2013 on “**Altering the Name of a Center and Reorganizing it**”<sup>78</sup>: Renamed the support center<sup>79</sup> to be “**the Commission of Civil Society**”<sup>80</sup> while keeping its affiliation to Ministry of Culture (article 1).
- Decree no. 1160 of 2018 on “**Forming CCS’s Board of Administration and Deciding a Provision**”<sup>81</sup>: Moved CCS’s affiliation to the Council of Ministers (art 2) and nominated its Board’s members.
- Decree no. 1605 of 2018 on “**Re-structuring CCS and Deciding Some Provisions**”<sup>82</sup>: Reaffirmed CCS’s legal and financial independence from other ministries and its affiliation to the Council of Ministers, in addition to defining CCS’ objectives, structure, along with the competencies of the Board of Administration, the Executive Director and the branches.
- Decree no. 286 of 2019 on “**Adopting the Organizational Regulation of CCS’s work**”<sup>83</sup>: Designates CCS and its branches and offices as “*the legally competent authority to register associations formed as per to the Regulation’s provisions*” (art 1).
- Decree no. 1061 of 2019 on “**CCS’s Organizational Structure**”<sup>84</sup> in addition to Decree no 110 of 2020 on “**CCS’s Internal Organizational Structure**”<sup>85</sup>: Detailed the organizational structure of CCS’s different offices, departments and units and the competencies of each entity.

77. See the following decrees that officially narrate the abovementioned movement:

Decree no. 3 of 2002 on “Establishing an Office in the Administrative Unit of the District”: Established a body called [the Office of Civil Associations Affairs] (“مكتب شؤون الجمعيات الأهلية”) in every district (art 1).

Decree no. 58 of 2006 on “Regulating the General People’s Committee of Social Affairs” (“بشأن تنظيم اللجنة الشعبية العامة لقطاع الشؤون الاجتماعية”) which means “Ministry of Social Affairs” by the virtue of article 35 of the Constitutional Declaration of 2011.

Decree no. 12 of 2012 on “Establishing a Center to Support Civil Society Organizations”: Established the mentioned center within the Ministry of Culture (art 1).

78. “بشأن تعديل تسمية مركز وإعادة تنظيمه”

79. See Decree no.12 of 2012 in footnote no. 77.

80. “مفوضية المجتمع المدني”

81. “بتشكيل مجلس إدارة مفوضية المجتمع المدني وتقرير حكم”

82. “إعادة تنظيم مفوضية المجتمع المدني و تقرير بعض الاحكام”

83. “بشأن اعتماد اللائحة التنظيمية لعمل مفوضية المجتمع المدني”

84. “باعتماد الهيكل التنظيمي لمفوضية المجتمع المدني”

85. “باعتماد التنظيم الداخلي لمفوضية المجتمع المدني”

Upon a careful review to all these decrees, it was noticed that:

- Designation of CCS as the solo responsible agency, goes in tandem with best practices that advocate the “*existence of a single agency in order to eliminates all too frequent inter-ministerial conflict and inconsistency*”<sup>86</sup>.
- Though CCS is not under the supervision of any ministry as being directly appointed and supervised by the Council of Ministers, this does not adequately qualify CCS to be up to best practices’ direction that the “*fairness of the registration process*”<sup>87</sup>, requires CCS to be “*independent from the Government ... In particular, members of such bodies should not be directly appointed by Government, nor at its discretion*”<sup>88</sup>.
- As per to Decree no. 286 of 2019, CCS has a huge discretionary authority during registration process. This authority, due to the lack of any judicial review, is made absolute and thus, in contra with best practices that in order to “*eliminate the problem of the agency becoming too heavy-handed and intrusive*”<sup>89</sup>, stress on having the responsible agency’s decisions reviewable by an independent judiciary<sup>90</sup>.

**2.2. Formation Procedures:** Registration procedures vary, in the Regulation, between local and foreign associations, those working before and after the issuance of the Regulation, and finally, between individual association and the “network of associations”<sup>91</sup>.

### 2.2.1. Formation Procedures for Local Association

**2.2.1.1 Steps of Formation:** Four steps (submission, verification, deciding and publicization) need to be fulfilled, according to the provisions of article 3/1-10, before a local association completes its formation and be eligible to work in Libya.

**Step (1) Submission:** The representative (founder’s deputy) of the intended association should submit a request, subject to CCS’ approval or rejection, on a *pro forma* contains the suggested association’s name and type of activities it will assume, in addition to its defining goals and its means of achievement (art 3/1). Which means, rather than accepting best practices’ recommendation of adopting a simple notification regime <sup>92</sup> (under which an association is “*automatically granted legal personality as soon as the authorities are notified*”<sup>93</sup>), the Regulation obligates any association pursues legal personality to apply for CCS ‘s prior authorization<sup>94</sup>.

86. Section 3.2/B of Open Society Institute in cooperation with the International Center for Not-for-Profit Law, Guidelines for Laws Affecting Civic Organizations, 2004 (hereinafter referred to as OSI/ICNL Guidelines).

87. Paragraph 60 Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani in 2004, (A/59/401) (hereinafter referred to as Report of Special Rapporteur on Human Rights Defenders 2004). Also, see section 3.2/b of OSI/ICNL Guidelines which states that “*whose members consist not only of government officials but also of representatives of the public and civic organizations themselves*”

88. Paragraph 82/h of Report of Special Rapporteur on Human Rights Defenders 2004.

89. Section 3.2/B of OSI/ICNL Guidelines.

90. See previous footnote.

91. Paragraph 59 of Report of Special Rapporteur of Freedom of Association 2012.

92. See paragraphs 11-13 of the African Commission on Human and Peoples’ Rights (ACHPR) Guidelines on Freedom of Association and Assembly in Africa 2017 (hereinafter referred to as ACHPR Guidelines). Also, see paragraph 58 of Report of Special Rapporteur of Freedom of Association 2012, and section 2.2/A of OSI/ICNL Guidelines, and paragraph 82/b of Report of Special Rapporteur on Human Rights Defenders 2004.

93. Paragraph 58 Report of Special Rapporteur of Freedom of Association 2012.

94. See article 3/1+5+10 of the Regulation.

## Step (2) Verification: Upon submission, CCS has the authority to verify four elements of the request:

1. Suggested name, to ensure it is not misleading or similar to a name of a person (dead or alive), family, tribe, or forbidden organization; or similar to a judicial, legislative, governmental, or economic and political entity or activity (art 3/2). It is true under best practices that a name *“gives the impression of being an official body or of enjoying a special status under the law, or leads to the association being confused with another association”*<sup>95</sup> or instigating *“hate speech as defined by regional and international human rights law”*<sup>96</sup> should be prohibited, but stretching such prohibition to include names of dead or living figures that is not *“impinge on the rights of others”*<sup>97</sup>, might go against well-established traditions<sup>98</sup>.
2. Defining goals, to check its compatibility with national legislations and international instruments that are fundamental for the state of law, according to the exact wording of the Regulation (art 3/2). The compliance of this procedure with best practices shall be detailed in the next section of this study.
3. Bylaw, to confirm its availability (otherwise application shall be deemed canceled<sup>99</sup>) in one hand, and in the other, to confirm its fulfillment to the criteria of bylaw’s definition in article 1/4 that requires it to contain: association’s name, domicile, logo, goals, membership acquiring/losing requirements, members’ rights and duties, sanctions, association’s entities structure, competencies and its system of work and quorum, in addition to association’s financial and administrative system, and rules for merger, dissolution and liquidation. This procedure to verify the seriousness of association’s founders might be reasonable when considering the fact that the Regulation provides a flexible (accepting amendments and additions) model bylaw (art 41) and consequently, in alignment with best practices’ guidance that *“the establishment of a civic organization should require filing only a small number of clearly defined documents”*<sup>100</sup> and information that may include *“the name of the association, names of founding members, physical address (if any), contact information, and planned aims and activities of the association.”*<sup>101</sup>
4. Number of founding members which should not be less than ten persons as per to article 1/9. Albeit this number might theoretically sound reasonable, best practices afraid that the number *“10 or more...coupled with repressive environments”*<sup>102</sup> can be deterring<sup>103</sup>. Instead, it suggests that this number should not *“be set at a level that would discourage people from engaging in associations.”*<sup>104</sup> Therefore, *“this number should be kept quite small (e.g., three)”*<sup>105</sup> equally, best practices suggest that association should be permitted to *“have fluctuating numbers of members throughout the course of its existence”*<sup>106</sup>.

95. Paragraph 159 of European Commission for Democracy Through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), Joint Guidelines on Freedom of Association, 2014 (hereinafter referred to as OSCE/ODIHR Guidelines).

96. Paragraph 15 of ACHPR Guidelines.

97. Paragraph 159 of OSCE/ODIHR Guidelines.

98. See for example “Bill & Melinda Gates Foundation” in America, “Nelson Mandela Foundation” in South Africa, “Mahatma Gandhi Foundation” in India and “Shiek Taher Azzawi Charity Organization” In Libya.

99. “If the founders’ deputy does not submit the bylaw within ten days from submission date, the application shall be deemed canceled.” Article 3/3.

100. Section 3.1/B of OSI/ICNL Guidelines.

101. Paragraph 14 of ACHPR Guidelines.

102. Paragraph 54 of Report of Special Rapporteur on Human Rights Defenders 2004.

103. Paragraph 54 of Report of Special Rapporteur on Human Rights Defenders 2004.

104. Paragraph 54 of Report of Special Rapporteur of Freedom of Association 2012.

105. Section 4.1 of OSI/ICNL Guidelines.

106. Paragraph 168 of OSCE/ODIHR Guidelines.

By the end of this step, the association's representative shall be provided an attestation (with the name and title of the recipient officer and the date of receipt) proving CCS receipt of registration application (art3/4). This completely adheres to best practices' direction that associations *"shall be provided with official documents confirming their submission"*<sup>107</sup>.

**Step (3) Deciding Registration Application:** CCS should decide the registration application, within ten days of submission (art 3/5). The result of the deciding process shall be one of three:

1. Positive decision (acceptance) leads to the completion of registration (art 3/5).
2. Presumptive acceptance that materialized when CCS fails to decide the application within the given period (art3/5).
3. Negative decision (rejection) that ought to be accompanied with two safeguards: a rationale (statement of reason/s behind rejection) (art3/5) and a chance to submit a petition challenging the negative decision before CCS's Executive Director, within ten days of decision notification (art 3/6). In this case, three scenarios can be identified for petition's outcomes:
  - Scenario (1) and (2): The Director either to overrule the negative decision or fail to decide the petition within a month of its submission. In these two scenarios, the rejection shall be considered cancelled and subsequently, CCS should complete registration and publicization (art 3/7). Which is coherent with best practices' commendation that registration procedures *"should set short time limits within which the responsible state agency must act (e.g., a maximum of 60 days) and should provide that failure to act ... within the required time results in presumptive approval."*<sup>108</sup>
  - Scenario (3): Reaffirming the negative decision, which means the rejection has become final and registration denied. The only safeguard, in this scenario, is to have the petition's decision with its rationale notified to the concerned association's representative within ten days of decision taking (art3/8), with no prospect for a judicial review. Although the substantiation (rationale) of registration-denial decision is consistent with best practices that such decision *"be fully explained"*<sup>109</sup>, the absence of judicial review, the most important safeguard in this regard, goes totally against the teachings of these practices stressing on the right of association affected by denial decision to *"challenge this decision in an independent court"*<sup>110</sup>

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107. Paragraph 16 of ACHPR Guidelines.

108. Section 3.1/E of OSI/ICNL Guidelines. Also, see paragraph 82/c of Report of Special Rapporteur on Human Rights Defenders 2004, and paragraph 60 of Report of Special Rapporteur of Freedom of Association 2012.

109. Paragraph 82/d of Report of Special Rapporteur on Human Rights Defenders 2004.

110. *"All NGOs whose applications have been denied by the registering body should have an opportunity to challenge this decision in an independent court"*. Paragraph 82/j Report of Special Rapporteur on Human Rights Defenders 2004.



**Step (4) Publicization (Statutory Declaration):** Publicization is a state recognition, via CCS, upon which the publicized association shall acquire the legal personality, it shall be realized by the finalization of registration (art 1/6). In this final step, publicization is due in the following cases:

- Acceptance of registration application on first instance level (art3/5).
- Presumptive approval after failure to take a decision on registration within ten days of submission (art3/5).
- Cancellation of the negative decision on petition level (though this case has no textual origin, it can be logically deduced by the virtue of the doctrines of *argumentum a fortiori* and *argumentum e contrario*<sup>111</sup>).
- Presumptive approval after failure to decide the petition of the negative decision within a month of submission (art 3/7).

In all these cases, CCS must complete the publicization within a week from any of the abovementioned dates (after acceptance, cancellation, or presumptive approval). If CCS fails to publicize registration within that week, publicization shall be presumed by the force of the Regulation (art3/9). This presumptive approval serves as a safeguard that is blessed by best practices, as shown before.

Finally, it is noteworthy that, in total accord with best practices<sup>112</sup>, the whole publicization/registration process under the Regulation does not involve any financial charges (contrary to the provision of Law no. 19 of 2001<sup>113</sup>).

**2.2.1.2. Legal and Procedural Consequences of Registration (Formation):** For an association the *magnum opus* sought out of registration/publicization is the acquiring of “**legal personality and consequent benefits**”<sup>114</sup> which shall *inter alia* include “**the ability to have bank accounts and to initiate legal proceedings in their name**”<sup>115</sup>, as best practices highlight. The Regulation makes no exception, in this context, as it acknowledges throughout its provisions the following legal and procedural benefits:

- Legal personality (art 3/10).
- Right to initiate its first general assembly meeting (art 4).
- Right to generate a stamp and having bank account (art 5)
- “**Rights**” listed in article 26 which include the “*right to*”:
- Access information related to association’s activities, as long it does not affect the confidentiality of certain entities and national security requirements.
- Demonstrate and assemble as prescribed in the current legislations.
- Conduct scientific and training meetings.
- Appraise state’s institutions and submit suggestions for its development.
- Publish information and reports.
- Implement activities to achieve its goals via the means prescribed in its bylaw.
- Benefit from the revenues of its activities under the condition of non-distribution among its members.

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111. If failure to decide a petition of a negative decision leads to a presumptive approval, the explicit cancellation of that decision shall a fortiori have the same result. If re-affirming a negative decision leads to publicization denial, the cancellation of that decision shall e contrario lead to acceptance.

112. See paragraphs 57, 60 and 61 of Report of Special Rapporteur of Freedom of Association 2012. Also, see paragraph 13 of the ACHPR Guidelines, and sections 3.1/C, D, E, F and 2.2/D of OSI/ICNL Guidelines.

113. “A fee of fifty dinars shall be payable for announcing the organisation. This fee shall not be returned under any circumstances.” Article 7.

114. Paragraph 12 of ACHPR Guidelines.

115. Footnote 9 of ACHPR Guidelines. Also, see Paragraph 195 of OSCE/ODIHR Guidelines.

## 2.2.2. Formation Procedures for Foreign Association.

**2.2.2.1 Steps of Formation:** Before the commencement of its activities in Libya, and in contra with best practices' orientation that foreign associations *"must be allowed to register and function without discrimination"*<sup>116</sup>, the Regulation obliges them to undergo a discriminatory and extremely discretionary permission-obtaining process (equals registration) of four steps: submission, verification, deciding and permission issuance.

**Step (1) Submission:** Foreign association should submit a request on a *pro forma* combined with an exceptionally long and exhausting list of documents and requirements, as shown in article 45/1-8<sup>117</sup>. Nevertheless, the process of permission-request contains two progressive provisions:

- Provision of article 46 that accepts electronic submission on CCS's email address (under the obligation to submit all the original documents upon communicating that all permission's requirements are met).
- Provision of article 48 that grants the foreign association a receipt confirming CCS's recipient of permission-request, which is something in harmony with best practices as illustrated before.

**Step (2) Verification:** in this step CCS shall conduct two sub-steps:

1. Verifying the existence of the exhausting list of documents requested by article 45 (see footnote no. 117). It is worth to be underscored herein, that best practices advocating against *"burdensome requests for unnecessary documents"*<sup>118</sup> and promoting limiting permission's requirements to those *"strictly necessary to establish bona fide objectives"*<sup>119</sup>. Another important issue, in this regard, is the Regulation's request for disclosure of **"the scale of wages, bonuses"** of association's staff (art 45/5) that may appear in sharp contrast with best practices' emphasis on *"The rights to confidentiality and privacy of associations [and] their members"*<sup>120</sup>. Indeed, best practices accept that **"it might be appropriate to mandate that the salaries of the top five or ten most highly compensated individuals be disclosed."**<sup>121</sup>

116. Paragraph 82/k of Report of Special Rapporteur on Human Rights Defenders 2004. Also, see paragraph 59 of Report of Special Rapporteur of Freedom of Association 2012, and paragraph 20 of ACHPR Guidelines, and section 10.1/A+B of OSI/ICNL Guidelines. Those documents are listed, herein, in an intended literal details to show its exhausting and burdensome nature: "1. Certificate of registration of the organization in accordance with the laws in force in the country where it was established and bears its nationality. 2. A copy of the articles (bylaw) of association of the parent organization, indicating that it is a non-profit organization. 3. The parent organization's decision to agree to open a branch in Libya, including the statement of the branch's legal representative in Libya. 4. A copy of the last budget of the parent organization, accompanied by its activity report for the same year. 5. The proposal of the organizational structure of the branch of the foreign organization in Libya, the proposal of the staffing table, the scale of wages, bonuses, qualifications, and conditions required to occupy jobs in the organization

:The organization's work program to be implemented in Libya, to include a statement of the following .6 Specification of the requirements and components of the project. A statement of the main and subsidiary activities and the start and end date of each activity. The financial value that will be spent on each activity. A statement of the monitoring and auditing mechanisms for the implementation of the project and the achievement of its objectives) 7. A statement of the value of the budget allocated to work in Libya and the value of each time stage." Along with another set of requirements that include: "A statement from the donor for the work of the foreign organization in Libya, addressed to the Commission, indicating the value of the funding, the payment mechanism, and any conditions related to this funding, accompanied by a copy of the project for which the funding was granted, and this condition applies even if the parent organization is the party financing the branch's work in Libya." This translation is from CCS-Tripoli's website: <https://ccs.ly/eng-home.html> (Accessed on March 8, 2023).

118. Paragraph 82/f of Report of Special Rapporteur on Human Rights Defenders 2004.

119. Paragraph 82/k of Report of Special Rapporteur on Human Rights Defenders 2004.

120. Paragraph 48 of ACHPR Guidelines.

121. Section 8.2/D OSI/ICNL Guidelines.

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2. Coordinating with national competent authorities to ensure, as per to the Regulation, that the foreign association's work is coherent with the established and recognized standards (art 52). The best practices' opinion, in this context, encourages the simple notification regime rather than seeking the prior approval of any concerned authority (see section 2.2.1.1 Step (1)).

**Step (3) Deciding:** CCS must decide the request (subject to authorization or denial)<sup>122</sup> within one month of submission (art 48). The result of this deciding process shall be one of three:

1. Negative decision (rejection) that shall be notified to the foreign association's representative with the rejection's rationale, within one month (art 49 and 48).
2. Failure to decide the request within one month of submission (art 51 and 48). The Regulation, herein, completely ignores the rule of presumptive approval encouraged by best practices: **"Failure to provide a response within a clear and short time limit should result in a presumption that associations are operating legally"**<sup>123</sup>. To encounter these two negative outcomes, foreign association can submit a petition to CCS's Board of Administration, within two weeks form notification of negative decision, in case of rejection and after the expiry of one month, in case of failure (art 51). In such context, three scenarios can be deductively envisaged<sup>124</sup>:
  - Scenario (1): Overruling the negative decision, which means the permission shall be granted.
  - Scenario (2): Failure to act within the period of which petition should be decided. The best practices' rule of **"presumptive approval"** is totally ignored, here.
  - Scenario (3): Reaffirming the negative decision, which means rejection has become final. No mention of rationale's statement or the possibility for judicial review, in opposition to best practices as highlighted before (section 2.2.1.1, Step (3) Scenario (3)).

3. Positive decision (acceptance): The permission shall be granted.

**Step (4) Permission Issuance:** In this final step a permission for foreign association to work in Libya shall be issued by CCS. The permission should include association's name, nationality, field of work, name of its legal representative, registration number, and the duration of its work in the country that shall be discretionally assessed by CCS on the ground of association's nature, size, and budget of its program in Libya (art 50).

#### 2.2.2.2. Legal and Procedural Consequences of Permission Obtaining:

- Involuntary limited work period (art 50) which disregarding best practices' instruction that association **"should be allowed to have perpetual existence"**<sup>125</sup>.
- Association, as article 53 provides, should:
  - Appoint a deputy of Libyan nationality.
  - Contract a certified national legal officer (who should not be working with another foreign association in Libya) to follow up procedures by opening files with relevant authorities (Ministry of Labor, Social Security Fund, Tax Authority, Passport Authority, and any other entity that association work requires contact with)

122. See article 49 of the Regulation.

123. Paragraph 60 of Report of Special Rapporteur of Freedom of Association 2012.

124. It is important here to underline the fact that those scenarios were logically/implicitly construed and have no explicit textual support in the Regulation, as it does not elaborate anything, in this regard, apart from the abovementioned time limit to decide the petition.

125. Section 3.1/I of OSI/ICNL Guidelines.

- Within one week of permission issuance, the association should notify CCS about its: HQ’s leasing contract and any other leasing in Libya, working hours and days, vehicle’s purchasing contract, purchasing contracts for all communication devices (wired, wireless and electronic) and the money deposited in its bank account (art 56).
- Association has the right to acquire letters from CCS to open a bank account and generate stamps and publications related to its work (art 54). The conformity of these consequences with best practices will be detailed in the oversight section.

### 2.2.3. Re-registration Procedures (Status Regularization) for Association Working Before the Regulation.

The Regulation contains two articles dealing with re-registration (status regularization):

- Article 44 that obliges local association already “*working*” before the issuance of the current Regulation, to regularize/settle its status within three months. Otherwise, its registration will be “**suspended**”.
- Article 70 that obliges foreign association already “*working*” in Libya before the issuance of the current Regulation to regularize its status within two months. Otherwise, its existence in Libya will be deemed “**illegal**”. The term “**illegal**” may entail the activation of the relevant penal code articles.

By x-raying these two articles via good practices, a clear discrepancy can be diagnosed, as best practices urge that: “**Newly adopted laws should not request all previously registered associations to reregister so that existing associations are protected against arbitrary rejection or time gaps in the conduct of their activities**”<sup>126</sup>. In contexts where re-registration is required, the affected associations shall enjoy two safeguards:

1. Being “*presumed to be operating legally*”<sup>127</sup> during re-registration period.
2. Being “*provided with accelerated procedures to update their registration*”<sup>128</sup>.

Furthermore, “*registration should not be compulsory*”<sup>129</sup>, say the best practices but the provisions of article 44 and 70 that necessitate re-registration under the threat of suspension or being labeled illegal, indicate that registration is compulsory. This fact was confirmed by a reliable report<sup>130</sup>.

### 2.2.4. Formation Procedures for Network of Associations.

The Regulation acknowledges the possibility of having associations working in Libya endeavor to unify their efforts in certain matters by forming networks to achieve their common goals. Accordingly, it includes a detailed definition for such networks in article 1/7 which provides that “**it does not need to be registered/publicized by CCS**”<sup>131</sup>. With regard to this type of associations, the Regulation as it exempts them from registration, supersedes the best practices which request that “*the formation*

126. Paragraph 62 of Report of Special Rapporteur of Freedom of Association 2012. Also, see paragraph 17 of ACHPR Guidelines.

127. Paragraph 60 of Report of Special Rapporteur of Freedom of Association 2012. Also, see paragraph 82/i of Report of Special Rapporteur on Human Rights Defenders 2004.

128. Paragraph 82/i of Report of Special Rapporteur on Human Rights Defenders 2004.

129. paragraph 82/a of Report of Special Rapporteur on Human Rights Defenders 2004.

130. “The regional offices of the Civil Society Commission in several cities have threatened to dissolve associations if they do not re-register under the 2016 decrees. The same threats have been made with regard to new decrees (no. 286) issued in 2019.” Paragraph 8, CIHRS, Libya Universal Periodic Review: Freedom of Association and human rights defenders, available at: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=7929&file=EnglishTranslation> (Accessed on March 8, 2023).

131. The full definitions of the “network” and its “founding instrument” are the following: “The network is the relation that ties more than two legal entities of civil society entities, endeavor to achieve goals in consistence with the bylaws of its founding entities, it gets dissolved by reaching its goals or by impossibility of reaching it for any reason or by reaching its expiry date, it does not need to be registered/publicized by CCS, in case its members wish to publicize it, it will be subject to the provisions of this Regulation” (art 1/7) “The founding instrument is the document that founds the network, it shall include the names of the founding entities, its goals, and achievement means and period, and its organizational provisions” (art1/8).



*of...networks of associations, including at the international level, should be subject to the same notification procedure.”<sup>132</sup> Which is something also made available by the Regulations (though not compulsory) upon the wish of the network founding members: “[I]n case its members wish to publicize it, it will be subject to the provisions of these Regulations”*

### 3. Defining Goals and Objectives

Although best practices call upon authorities to “**refrain from exerting a priori scrutiny into the objectives**”<sup>133</sup> of an association, the Regulation meticulously exerts such “*a priori scrutiny*” by strictly forbidding civic association applies for registration from pursuing the following list of goals:

**3.1. Profit.** This provision is explicitly stated in article 1/2 that defines association as a “**not-for profit**” entity (the same for foreign association in article 45/2) and reiterated in article 27/1 that prohibits association from seeking profit out of its activities. A balanced explanation for this prohibition provided by the last paragraph of article 26 that permits association to benefit from the profits of its activities as long it does not entail “**distribution of profits**” among its members. Such scrutiny over this very primary defining goal of this certain type of associations is very well-accommodated by best practices which stipulate that the not-for profit association “**must not distribute any profits that might arise from its activities among its members or founders, but should invest them in the association and use them for the pursuit of the association’s objectives.**”<sup>134</sup>

**3.2. Politics.** This provision is clearly stated in article 1/2 that defines association as a “**non-political**” entity and article 27/3 that bans direct or indirect involvement in political practices. The same applies to foreign association as per to the provisions of article 66/6+7 that forbid any activities related to political, military and security affairs or incorporating contact with political parties and entities in Libya. “**Such language**”, as per to best practices, puts human rights associations “*working to provide legal aid, advocating for the reform of the judicial system, working on election monitoring or defending the rights of political prisoners at risk of having their activities labelled illegal.*”<sup>135</sup> For this and more, it is impermissible under international law to prohibit civic association “*from expressing policy judgments or political opinions. To do so would be to violate the rights to freedom of expression*”<sup>136</sup> which is, especially for local association, “*an essential adjunct to the rights protected by article 25*”<sup>137</sup><sup>138</sup> of ICCPR. Consequently, association shall be permitted to engage “**in all matters pertaining to public policy and public affairs, including, inter alia, human rights, democratic governance, and economic affairs, at the national, regional and international levels.**”<sup>139</sup>

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132. Paragraph 59 of Report of Special Rapporteur of Freedom of Association 2012.

133. Paragraph 82/m of Report of Special Rapporteur on Human Rights Defenders 2004.

134. Paragraph 43 of OSCE/ODIHR Guidelines. Also, see section 5 (specially 5.1) of OSI/ICNL Guidelines, and paragraph 40 of ACHPR Guidelines.

135. Paragraph 67 of Report of Special Rapporteur on Human Rights Defenders 2004.

136. Section 6.2/A of OSI/ICNL Guidelines.

137. “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country.”

138. Paragraph 26 of General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25). 12/07/96. (CCPR/C/21/Rev.1/Add.7), General Comment No. 25. (General Comments), 1996.

139. Paragraph 25 of ACHPR Guidelines.

### 3.3. Calling for violence hatred or different kind of discrimination (article 27/2).

This prohibition seems to be in total harmony with international standards set out in article 20 of ICCPR<sup>140</sup>, as long it does not violate the right to freedom of expression enshrined in article 19/1+2 of ICCPR<sup>141</sup>. An important validation for such conclusion comes from best practices' analysis that *"the right to freedom of association protects, inter alia, expression; criticism of state action; advancement of the rights of discriminated-against, marginalized and socially vulnerable communities"*<sup>142</sup>. Hence, exercising these rights; specially criticizing oppressive socio-economic class or ethnic or religious majority's unjust actions/policies against marginalized socio-economic, ethnic, or religious groups, should not be considered a call for hatred or sedition. Equally, the call for quota for women or certain racial or religious group in the legislative bodies or public positions should not be considered a call for discriminatory treatment.

**3.4. Goals/actions (foreign association) contradict "public order and ethics" (art 66/3).** This provision sounds in ostensibly coherence with paragraph 2 of ICCPR's article 22<sup>143</sup>. Nonetheless, since it does not define what it means by **"public order and ethics"**, it does not sound the same with best practices that require any restriction *"on the ground of "public order/morals/ethics ...must be clearly defined"*<sup>144</sup>.

**3.5. Going beyond its defining goals (pursuing different goals) or violating in force legislations or regulations (art 31) a parallel prohibition for foreign organization can be found in article 66/4.** The best practices' directive in this regard is 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>145</sup>. This sharpens the contrast between the Regulation and best practices; as according to the former, CCS has an absolute executive power to scrutinize this issue without any reference to judicial review.

3.6. Receiving gifts and donations as per to article 27/4 for local association and article 66/1+2 for foreign association. The details of these provisions and its correspondence with best practices shall be discussed in the next section.

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140. "1. Any propaganda for war shall be prohibited by law. 2. Any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law

141. "1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice

142. Paragraph 28 of ACHPR Guidelines.

143. "No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others

144. Paragraph 82/o of Report of Special Rapporteur on Human Rights Defenders 2004.

145. Paragraph 82/m of Report of Special Rapporteur on Human Rights Defenders 2004.

## 4. Funding

Association ability to “*access funding and resources is an integral and vital part of the right to freedom of association.*”<sup>146</sup> as best practices righteously indicate. Without access to the various types of funding, the association, as a “**not-for profit**” entity, can never have the resources to achieve its existential goals. Subsequently, for a legislation to be “**enabling**”, as called for by best practices<sup>147</sup>, it ought to enhance association’s ability to access the various type of funding and its ability to manage it in order to have the capacity to implement its activities and eventually, its goals. This section is dedicated to exploring the Regulation’s provisions in this subject that vary between local and foreign associations, and the extent of its harmony and disharmony with the best practices.

### 4.1. Local association

**4.1.1. Local Association’s Ability to Access Funding:** There are multiple provisions that deal with the different dimensions of this issue.

**4.1.1.1. Accessing Funding in General:** The general rule, as set forth in article 27/4, is prohibiting association from accepting gifts or donations prior to obtaining CCS’s permission. This permission (as per to article 37, shall be requested ten days before such acceptance) is at odds with best practices that galvanize governments not to require association to “*obtain authorization prior to receipt of funding.*”<sup>148</sup> This oddness deepens when considering the lack of any safeguards discouraging CCS from power abuse. According to the latter article CCS should answer the request/notification within one week. In case of negative answer because of contradiction with law or association’s goals, the association should fully adhere to CCS’s decision (otherwise, it shall be exposed to suspension and deregistration procedures) that necessitates no rationale, no petition, and on top of all no judicial review.

**4.1.1.2. Public Campaigning for Funding:** Fundraising in public places is forbidden unless two kinds of permissions are obtained by the concerned association:

- CCS’s permission that should be requested a week before the campaign. The request for such permission should define its purpose, period, and targeted places (art 28).
- Competent authorities’ permission (art 29).

Albeit best practices do not favor permission prior to fund receiving, when it comes to public fundraising campaigns; and as far the protection of public interest is concerned, imposing such a prerequisite might be accepted: “*It may be appropriate to require advance registration of public fundraising campaigns with a public agency responsible for issuing permits.*”<sup>149</sup> Still, not-for profit associations “*should generally be permitted to engage in any legitimate fundraising activity, including door-to-door, telephone, direct mail, television, campaigns, lotteries, raffles, and other fundraising events.*”<sup>150</sup> This means that the aforementioned provisions of the Regulation and best practices are

146. Paragraph 67 of Report of Special Rapporteur of Freedom of Association 2012.

147. Fundamental principle no. 2 of ACHPR Guidelines.

148. Paragraph 38 of ACHPR Guidelines. Also see paragraph 82/b of Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 2013 (A/HRC/23/39), (hereinafter referred to as Report of Special Rapporteur of Freedom of Association 2013), and section 7.2/A of OSI/ICNL Guidelines

149. Section 7.2/A of OSI/ICNL Guidelines.

150. Section 7.1 of OSI/ICNL Guidelines.

relatively harmonious, especially if the safeguards attached to permission's denial in article 29 are considered:

- Rationale for the negative decision should be communicated to the association, within a week of decision making.
- Petition challenging the negative decision can be submitted to CCS's Executive Director.
- Failure in deciding the petition, within a week of submission, shall bring about, **"by the virtue of the Regulation"**, the cancellation of the negative (permission denial) decision.

The only safeguard that is missing, in case of permission denial on petition level, is the judicial review that is necessitated by best practices for any restriction to the freedom of association<sup>151</sup>.

**4.1.1.3. Foreign Funding:** The best practices believe that governments must allow association to access **"foreign funding as a part of international cooperation, to which civil society is entitled to the same extent as Governments."**<sup>152</sup> As for the Regulation, foreign association wishes to fund a local association (or another foreign association working in Libya) needs to fulfill two conditions:

- Directing the fund to a local association registered with CCS (art 57/2).
- Obtaining CCS' prior authorization (art 58/5).

As for the legitimacy of these two conditions in the view of best practices, the condition regarding prior authorization is already answered above. With regard to registration condition, best practices are very clear, both registered and unregistered associations, as ICCPR makes no distinction in this regard<sup>153</sup>, **"should have the right to seek and secure funding and resources from domestic, foreign, and ... Governments and international organizations."**<sup>154</sup> That is why best practices negatively underline **"legislation limiting foreign funding to registered associations only"**<sup>155</sup>

**4.1.1.4. Governmental Support:** Though the Regulation does not stick to the best practices' recommendation that **"States should provide tax benefits, and public support where possible, to not-for profit associations"**<sup>156</sup>, other Libyan laws do so by including special provisions of funding/sponsorship for certain types of associations. For examples:

1. Articles 50/h and 63 of Law no. 59 of 2012 on Local Administration that provides sponsorship for provincial associations.
2. Articles 2/3 and 4/9 of Law no.5 of 2019 on Marriage-Support's Fund that provides funding for associations facilitating marriage. The same provision can be found in article 2/3 of Decree no. 119 of 2012.
3. Article 4 of Law no. 4 of 1972 on Additional Tax for the Benefit of Blind<sup>157</sup> Persons that provides funding for associations whose main purpose is to take care of blind persons, from the revenues of entry tax/fees of public horse houses (ranches).

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151. "[T]hat said restriction can be subject to an independent, impartial and prompt judicial review". Paragraph 81/c of Report of Special Rapporteur of Freedom of Association 2013

152. Paragraph 82/L of Report of Special Rapporteur on Human Rights Defenders 2004.

153. Paragraph 17 of Report of Special Rapporteur of Freedom of Association 2013.

154. Paragraph 68 of Report of Special Rapporteur of Freedom of Association 2012.

155. Paragraph 17 of Report of Special Rapporteur of Freedom of Association 2013.

156. Paragraph 41 of ACHPR Guidelines.

157. The term "blind" is used here as it is officially used by article 24/3/c of the Convention on the Rights of Persons with Disabilities (CRPD).



Although these provisions are not of general nature for the benefit of all not-for profit association, yet, since it is favoring certain categories of persons (blinds and low income) and associations (provincial), it is perfectly responding to the vision of best practices that “[p]ublic support shall promote the equal ability to participate of all groups and individuals in society through support for associations working with and for marginalized, socially-vulnerable and discriminated-against communities.”<sup>158</sup>

**4.1.2. Local Association’s Ability to Manage its Resources:** It is very important for association not only to be able to access funding, but also to be enabled by all means necessary to preserve and manage such fund, like having a bank account. This fact was recognized by best practices that promote association right to be “able to manage and use their income and assets with the assistance of their own banking accounts”<sup>159</sup>

**4.1.2.1. Resources’ Management:** According to the Regulation’s article 42, association’s financial resources comprise of members contributions, revenues of its activities, state subsidies and non-conditional gifts and donations or those whose conditions not in contradiction with law or association’s goals.

As for financial resources management, in the last paragraph of article 26 the Regulation acknowledges association right to benefits from the revenues of its activities as long it does not distribute these revenues among its members. This is consistent with association’s definition as not-for profit entity in article 1/2 and the provision of article 27/1 that prohibits association from making profits out of its activities (the concordance of these provisions with best practices highlighted in section 3.1). This non-distribution principle extends after the end of association’s legal personality as the money and assets remain after association’s liquidation shall go, not to its members, but to another association chosen by the liquidated association or CCS’s Board of Administration (art 34). Which is also in concord with best practices’ instruction that no not-for profit association “should be permitted to distribute assets to its founders, officers, board members, employees, donors, or members upon its liquidation.”<sup>160</sup>

Additionally, according to the provision of article 38, association should deposit its cash money in a bank account not in anywhere else. The rationale behind this provision can be easily understood as it enhances association’s money safety and facilitates its auditing/oversight and accountability.

**4.1.2.2. Opening Bank Account:** Echoing best practices’ statements that one of the benefits of registration/acquiring legal personality is association “ability to have bank accounts”<sup>161</sup>, the Regulation allows association to have such account upon registration based on a letter from CCS (addressing the intended bank in Libya) after being notified of the first general assembly meeting (art 5/2). If the association wishes to open another account, it should obtain CCS’s permission (art 38).

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158. Paragraph 43 of ACHPR Guidelines.

159. Paragraph 195 of OSCE/ODIHR Guidelines.

160. Section 5.4/A of OSI/ICNL Guidelines.

161. Footnote 9 of ACHPR. Also, see paragraph 195 of OSCE/ODIHR Guidelines.

## 4.2. Foreign association.

### 4.2.1. Foreign Association's Ability to Access Funding.

**4.2.1.1. Accessing Funding in General:** The ability of foreign associations to access funding in Libya is fundamentally restricted by CC's absolute power. This power manifests in the need to secure CC's discretionary prior authorization before receiving any kind of money, cash or non-cash (art 58/1). Such authorization, as shown above, is not advised by best practices<sup>162</sup> that instead, backing association's right to *"seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments"*<sup>163</sup>

**4.2.1.2. Public Campaigning for Funding:** When it comes to foreign association's right to campaign for funding, the Regulation's provisions take a rather prohibitive attitude as article 66/1+2 completely prohibits foreign association from fundraising not only inside Libya but also outside it (for its Libyan branch). This prohibition that utterly negate the right in question is in fact disproportionate to any interest it may protect and thus, unnecessary, and before all discriminatory; since it is only related to foreign association (local association still can apply for permission, though discretionary). All this, makes it in total dichotomy with international standards and good practices' demands that any restriction to the freedom of association should be in compliance *"with international human rights norms and standards, in particular in line with the strict test of necessity and proportionality in a democratic society, bearing in mind the principle of non-discrimination"*<sup>164</sup>

### 4.2.2. Foreign Association's Ability to Manage its Resources.

**4.2.2.1. Resources' Management:** Foreign association's ability to manage its resources is shadowed by CCS's oversight power that necessitates a two-week-notification before foreign association makes any donation to any local (or foreign) association that should be registered with CCS to be qualified for such donation (art 57/2). Furthermore, foreign association must secure CCS's discretionary prior approval in order to be allowed to transfer its money outside Libya (art 58/2). This latter provision sounds rather restrictive as it may lead to restrain foreign association's ability to re-use its own money for its own projects/purposes outside Libya. And rather absurd, in the light of the fact that this money is inevitably must have been generated outside the country since receiving funding and fund raising is utterly forbidden for foreign association in Libya, as illustrated in the previous paragraphs.

Finally, foreign associations cannot deposit money in any account other than the one accredited by CCS which should be a bank working in Libya (article 59).

**4.2.2.2. Opening Bank Account:** Although Foreign association has the right to open a bank account upon securing its permission to work in Libya (article 54/1), it needs CCS's authorization before opening another account to deposit money intended to its work in the country (article 58/3). As for these provisions compatibility with best practices, see relevant parallel paragraphs in local association section.

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162. Paragraph 38 of ACHPR Guidelines. Also, see Paragraph 82/b of Report of Special Rapporteur of Freedom of Association 2013.

163. Paragraph 82/b of Report of Special Rapporteur of Freedom of Association 2013.

164. Paragraph 81/b of Report of Special Rapporteur of Freedom of Association 2013.

### 4.3. Funding and Fraud Combating (Local and Foreign Associations).

In the light of the detailed analysis to Regulation's provisions related to funding, it was observed that those provisions are rather restrictive and sometime prohibitive. This restrictive approach ("**restrictions to funding**"), as per to best practices might be "*justified by the need to ensure greater transparency and accountability ... **Combating fraud, embezzlement, corruption, money-laundering***". Nevertheless, according to this same best practices "*it is **not sufficient to simply pursue a legitimate interest... limitations must be proportionate to the interest to be protected and must be the least intrusive means to achieve the desired objective.***"<sup>165</sup> The general rule, in the context of fraud and corruption combating, is that association "*shall be subject to the same general laws governing money laundering<sup>166</sup>, fraud, corruption...as **individuals and for-profit enterprises***"<sup>167</sup>. This rule is exactly followed by other Libyan laws to an extent that makes those restrictions imposed by the current Regulation, for the abovementioned purposes, completely unnecessary. Two examples of those laws should be given special attention:

- Law No. (2) of 1979 on Economic Crimes:
- Article 2 considers associations employees as "**public servant**"<sup>168</sup>
- Article 3 considers association fund as "**public funds**"<sup>169</sup>.
- Law No. (19) of 2013 on Re-organization of the Audit Office:
- Article 3/4 enlists associations under the auditing /oversight of the Audit Office<sup>170</sup>.

## 5. Oversight of Association's work

**5.1. Responsible State Agency:** When it comes to the nature and characteristics of the state agency responsible about association's oversight, the best practices have certain preferences:

- Preference (1): To have the body responsible about association registration being "**separate from the government body or bodies in charge of their oversight**"<sup>171</sup>, in spite of this preference, in Libya, CCS is responsible about both registration and oversight.
- Preference (2): To have the oversight activities being performed "**by a single body**"<sup>172</sup> as the existence of "*a single agency eliminates all too frequent interministerial conflict and inconsistency*"<sup>173</sup>. Nonetheless, in Libya, because of the different competing legislations, the oversight agency varies depending on the nature of association's work and the nature of oversight activities. (See section 1.2.4)

165. Paragraph 35 of Report of Special Rapporteur of Freedom of Association 2013.

166. Same meaning can be found in paragraph 32 of OSCE/ODIHR Guidelines.

167. Paragraph 39 of ACHPR Guidelines.

168. "In the implementation of the provisions of this law, "public servant" shall refer to anyone who has been entrusted with a public function in committees, congresses, secretariats, municipalities, local administrative units or bodies, public institutions, unions, syndicates, leagues, "associations, private public-interest bodies

169. "In the implementation of the provisions of this law, public funds shall refer to funds that are owned by or subject to the administration "or supervision of one of the bodies mentioned in the previous Article

170. "The Audit Office shall exercise oversight over the following entities...Private bodies and associations for public interest supervised or supported by the State, whether directly or indirectly, and public trade unions and political parties". Article 3/4.

171. Paragraph 229 of OSCE/ODIHR Guidelines.

172. Paragraph 31 of ACHPR Guidelines.

173. Section 3.2/A of OSI/ICNL Guidelines.

- Preference (3): Oversight agency “*should be adequately staffed with competent professionals.*”<sup>174</sup> Holding “*expertise (such as in the case of financial Regulations, which may require accountants)*”<sup>175</sup>. After reviewing decrees no. 1061 of 2019 on “CCS’s Organizational Structure” and no. 110 of 2020 on “CCS’s Internal Organizational Structure”, it appears that CCS, pertaining to professional staffing, is in theoretical accordance with best practices’ preference.

## 5.2. Oversight Activities: Types and Nature.

The cornerstone, in this context, is that an association “*should generally be self-governing*”<sup>176</sup> as best practices underpin. On this ground, all oversight activities should take “*as a starting point the principle of minimum state interference...should not be invasive*”<sup>177</sup>; should respect association right to privacy<sup>178</sup>; and be carried out “*based on the presumption of lawfulness of the association and of its activities.*” Additionally, any restrictions on an association capacity to govern itself shall only be admissible if they have “*a legal basis, serve a legitimate purpose recognized by international standards and are not disproportionate in their effect.*”<sup>179</sup> Eventually, where concern arises regarding the activities of an association, “*such concern must be brought before a fair, impartial and independent judicial authority*”<sup>180</sup>. Contrary to all that, CCS’s oversight power stretches all over association’s lifecycle from formation to dissolution in an invasive fashion with almost no judicial supervision. The following is a detailed explanation for CCS’s oversight power in terms of type and nature.

### 5.2.1. Types of Oversight Activities.

**5.2.1.1. Notifications’ Receiving:** Notifications reporting certain activities should be submitted to CCS by the concerned association, within different time limits, in the following cases:

- General assembly’s first meeting along with its minutes, within one month of registration’s publicization (art 4). This provision is in a clear disharmony with best practices that urges the oversight body to “*respect the right of associations to privacy as stipulated in article 17 of the Covenant on Civil and Political Rights.*”<sup>181</sup> The right to privacy according to these best practices “*applies to an association and its members*”<sup>182</sup>, in particular, associations “*shall not be required to transmit detailed information such as the minutes of their meetings, lists of their members, or personal information of their members to the authorities.*”<sup>183</sup>
- Decisions of general assembly’s meetings, within a week of decision’s taking date (art 11).
- Failure to conduct the general assembly meeting twice (art 11). This provision and the one before might contradict best practices’ course that responsible state agency “*should be legally barred from interfering with the management structure and activities*”<sup>184</sup>.

174. Section 3.2/A of OSI/ICNL Guidelines.

175. Paragraph 229 of OSCE/ODIHR Guidelines.

176. Paragraph 169 of OSCE/ODIHR Guidelines.

177. Paragraph 171 and 228 of OSCE/ODIHR Guidelines. Also, see paragraph 47 of ACHPR Guidelines.

178. See section 8.2/D of OSI/ICNL Guidelines. Also, see paragraph 65 of Report of Special Rapporteur of Freedom of Association 2012, and paragraph 228 of OSCE/ODIHR Guidelines, and paragraphs 33/a, 34/c, 35 and 48/c of ACHPR Guidelines.

179. Paragraph 169 OSCE/ODIHR Guidelines.

180. Paragraph 82/p of Report of Special Rapporteur on Human Rights Defenders 2004. Also, see paragraph 228 of OSCE/ODIHR Guidelines.

181. Paragraph 65 of Report of Special Rapporteur of Freedom of Association 2012.

182. Paragraph 228 of OSCE/ODIHR Guidelines.

183. Paragraph 33/a of ACHPR Guidelines.

184. Paragraph 82/p of Report of Special Rapporteur on Human Rights Defenders 2004. Also, see paragraph 228 of OSCE/ODIHR Guidelines.

- Foreign association’s leasing contract for its HQ in Libya and any other leasing contracts in addition to working hours and days, vehicle’s purchasing contract, purchasing contracts for communication devices and the money deposited in its bank account. In this case, the notification should be submitted within one week from work-permission’s granting-date (art 56).
- Execution of foreign association’s activities (workshops, conferences, campaigns, publications). In this case, the notification should be submitted within at least two weeks before the activity execution and should include **“in details”** activity’s date, place, description, targeted groups, selection criteria and publications’ content (art 57/1).
- Execution of foreign association’s donation program to local associations (within at least two weeks before execution) along with program’s description, donation amount, names of targeted associations and selection criteria (art 57/2).

It is important at this point to highlight local activists’ complaints from this notification system as it reveals its real nature in practice, which is according to those activists **“amount to prior approval rather than just a notification and involve long delays in the approval processes”**<sup>185</sup>

**5.2.1.2. Petitions’ Deciding:** CCS has not only the power to take first instance decisions regarding local and foreign associations’ different issues (from registration and permission’s granting to receiving fund and fund-raising campaigns to de-registration and suspension), but also the power to decide petitions submitted by the concerned associations challenging those first instance decisions. All this, accompanied with the lack of judicial review (available only in local association’s dissolution) leave associations local and foreign under the absolute control of CCS all over their lifecycle. CCS oversight power in these issues are completely detailed in the relevant sections of this study.

**5.2.1.3. Reports’ Receiving:** As per to the Regulation, reporting requirement differs between local and foreign association.

**A. Local Association’s Reporting:** Local association is only required to submit one annual report to CCS, facilitated by a proforma/template (art 39). Relatively speaking, this practice is in agreement with best practices that association **“should be required at least annually to file appropriate reports on its finances and operations”**<sup>186</sup> and this filing shall be facilitated via the **“provision of templates, information technology tools, and other measures”**<sup>187</sup>. The missing consistence between the Regulation and best practices, in this regard, is that the latter differentiate between big association and small one that may be **“allowed to file simplified reports or none at all”**<sup>188</sup>, while the former does not offer such differentiation, which has been the subject of Libyan activists’ complaints who believe that the **“financial reporting requirements... surpass the capacity of modest-sized organizations.”**<sup>189</sup>

185. HRW, Libya: Draconian Decree Would Restrict Civic Groups, June 4, 2021, available at: <https://www.hrw.org/news/2021/06/04/libya-draconian-decree-would-restrict-civic-groups> (Accessed on March 8, 2023)

186. Section 8.2/A of OSI/ICNL Guidelines. Also, see paragraph 48/d of ACHPR Guidelines.

187. Paragraph 48/d of ACHPR Guidelines.

188. Section 8.2/C of OSI/ICNL Guidelines.

189. HRW, Libya: Draconian Decree Would Restrict Civic Groups, June 4, 2021, available at: <https://www.hrw.org/news/2021/06/04/libya-draconian-decree-would-restrict-civic-groups> (Accessed on March 8, 2023)

**B. Foreign Association's Reporting:** For foreign association, the reporting requirements are rather complicated, detailed and consequently, cumbersome. According to the Regulation, foreign association must submit two types of reports:

- Four periodic reports that should be submitted within two weeks from the following dates March 31, June 30, September 30, December 31. Each of these reports should contain:
- Activity report on activities (completed or in progress) in addition to evaluation for these activities by the association and participants alike (art 61/1/a+ b+ c).
- Financial report on its funding and expenditures (art 61/2).
- Annual or final report whichever appropriate, on a pro forma, within a month of the end of the fiscal year or upon closing work in Libya, whichever comes earlier. This report should contain:
  - Authorization by legal accountant and auditor, accredited by the Libyan association for accountants and auditors (art 62).
  - Following details and documents (art 63):
    1. Legal accountant's report on association's accounts.
    2. Bank and treasury's accounts.
    3. Expenditures' sheet.
    4. Cash fundings' sheet.
    5. Bank memo on account's settlement and pending instruments.
    6. Bank account's sheet.
    7. Accounting sheets of financial trusts, loans, underpayments for others, and any other financial information needs to be explained according to the principle of full disclosure and transparency.
    8. Statement of settling social security payments and taxes for its workers, and fees and taxes due to the state of Libya by the virtue of law.

Given the frequency of the periodic reports and all exhausting requirements of periodic and annual/final reports, it can be ruled that reporting requirements for foreign association in the Regulation are in total contra with best practices which advise that *“reporting requirements shall be simple and shall not be overly burdensome... shall not require extensive details, but shall rather be aimed at ensuring financial propriety.”*<sup>190</sup>

**5.2.1.4. Auditing Foreign Association:** The general rule in auditing, as per to best practices, is that in *“no circumstances shall an audit of a not-for-profit association be more burdensome than an audit of a for-profit association of comparable means,”*<sup>191</sup>. As per to the Regulation, sudden inspection, without a notice, at **“anytime”**, even when no violation is reported, is its general rule. Which is not how **“for-profit”** associations (businesses) are treated according to Law No. 23 of 2010 on Commercial Activities<sup>192</sup> and Law No. 11 of 2010, on Money Market. Delving into the details of this issue, the Regulation, differentiates between two types of audits:

**A. Non-Violation Based Audit:** Pursuant to the provisions of article 60 of the Regulation, foreign association must keep in its premises, all records, deeds, and financial and administrative documents related to its work in Libya. Most importantly, CCS has the right to inspect and report all these records and documents at **“anytime”** without a prior notice. Though best practices acknowledge responsible agency's

190. Paragraph 48/a+b and 49 of ACHPR Guidelines.

191. Paragraph 49 of ACHPR Guidelines. Also, see paragraph 233 of OSCE/ODIHR Guidelines.

192. See chapter 3 of this Law.

“right to examine the books, records, and activities”<sup>193</sup> of an association, it does not leave this right without safeguards in favor of the concerned association and the right to freedom of association. The most important among these safeguards are:

- Audit that is not based on suspicion of association wrongdoing “*should be truly random. It is wholly inappropriate, for example, to select organizations for audit based on political criteria.*”<sup>194</sup>
- Audit should be “**during ordinary business hours, with adequate advance notice**”<sup>195</sup> not “*anytime*”, as per to article 60 of the Regulation.
- Audit should not “*be tantamount to an inspection*”<sup>196</sup> or result in the “**harassment of an association.**”<sup>197</sup> If a concern that might justify the need for inspection arises, such concern must be based on “*well-founded evidence...of a serious legal violation*”<sup>198</sup> and brought before “*a fair, impartial and independent judicial authority*”<sup>199</sup> which is neither the case under article 60 where there is no violation and no judicial permission, nor under article 64 (discussed below).

**B. Violation Based Audit (Assigning Internal Auditor):** If the reports submitted by a foreign association reveal serious financial violations, CCS may mandate a financial expert to work as internal reviewer/auditor in the given association with authority to co-sign its financial documents (art 64). This intrusive provision as it leaps directly from violation to punitive oversight (leaving no space for association’s self-correction) without any judicial permission<sup>200</sup>, does not totally conform to best practices’ commandments that in case of non-compliance, the responsible agency “*should provide associations with a reasonable amount of time to rectify any oversight or error. Sanctions should only apply in cases where associations have committed serious infractions and should always be proportional*”<sup>201</sup>. In all cases, according to best practices, such inspection should respect the “*right to privacy of associations and shall not subject them to undue surveillance.*”<sup>202</sup> Surveillance may only be pursued in cases “*where reasonable suspicion of an infraction of the law has led to a court-issued warrant authorizing such*”<sup>203</sup>.

Finally, CCS has the authority to:

- Sue foreign association in Libya or abroad in case it does not commit to its promises/commitments or in case of discovering any violation after the end of its work in the country (Art 68).
- Ban foreign association from leaving Libya before settling all its financial and administrative obligations and closing its file with CCS (art 69).

Despite the theoretical reasonability of these provisions, it can be easily abused due to the lack of judicial supervision over CCS’s authority in this regard, which may lead to a clash with best practices’ cautions.

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193. Section 8.2/E +F of OSI/ICNL Guidelines.

194. Section 8.2/F of OSI/ICNL Guidelines.

195. Section 8.2/E of OSI/ICNL Guidelines.

196. Paragraph 233 of OSCE/ODIHR Guidelines. Also, see paragraph 49 of ACHPR Guidelines.

197. Paragraph 233 of OSCE/ODIHR Guidelines. Also, see paragraph 49 of ACHPR Guidelines.

198. Paragraph 34/b of ACHPR Guidelines.

199. Paragraph 82/p of Report of Special Rapporteur on Human Rights Defenders 2004. Also, see paragraph 228 of OSCE/ODIHR Guidelines, and paragraph 34/a of ACHPR Guidelines.

200. See best practices in the previous paragraph.

201. Paragraph 234 of OSCE/ODIHR Guidelines.

202. Paragraph 35 of ACHPR Guidelines. Also, see paragraph 231 of OSCE/ODIHR Guidelines.

203. Paragraph 35 of ACHPR Guidelines.

### 5.2.2. Nature of Oversight Activities (The Ministerial and Discretionary in CCS Oversight Power): Administrative actions are either ministerial or discretionary<sup>204</sup>:

- Ministerial *“if it is imposed by law and its performance is not dependent on the employee’s judgment.”*<sup>205</sup> it is *“imperative, involving merely execution of a specific act arising from fixed and designated facts.”*<sup>206</sup>
- Discretionary *“if the government actor is required to exercise his or her judgment or discretion in performing the duty.”*<sup>207</sup> It entails *“personal deliberation, decision, and judgment.”*<sup>208</sup>

In order to fully understand CCS’s oversight power under the Regulation, it is important to identify the nature of this power whether it is ministerial or discretionary in every oversight activity. Consequently, the study provides, below, an exhaustive list of CCS’s oversight activities under those two types of power. This listing is of very significant nature as it will facilitate the detection of CCS’s violation when applying discretionary power to a ministerial duty.

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204. Khare, Shubham Manoj, “Administrative Discretion & Limitation on Administrative Discretion By Article 14 & 16 of the Indian Constitution”, September 1, 2009. Available at SSRN: <https://ssrn.com/abstract=1465519> or <http://dx.doi.org/10.2139/ssrn.1465519> (Accessed on March 8, 2023)

205. Section C page 17 of *Browning v. Edmonson County*, 2021 U.S. App. LEXIS 34090 (6th Cir. KY Nov. 17, 2021). Available at Justia US Law: <https://law.justia.com/cases/federal/appellate-courts/ca6/20-6078/20-6078-2021-11-17.html> (Accessed on March 8, 2023)

206. Section C page 17 of *Browning v. Edmonson County*, 2021 U.S. App. LEXIS 34090 (6th Cir. KY Nov. 17, 2021). Available at Justia US Law: <https://law.justia.com/cases/federal/appellate-courts/ca6/20-6078/20-6078-2021-11-17.html> (Accessed on March 8, 2023)

207. “Ministerial Versus Discretionary and How They Affect Qualified Immunity”, 07/05/2022, available at DLG Learning Center: <https://dlglearningcenter.com/ministerial-versus-discretionary-and-how-they-affect-qualified-immunity> (Accessed on March 8, 2023)

208. Section C page 17 of *Browning v. Edmonson County*, 2021 U.S. App. LEXIS 34090 (6th Cir. KY Nov. 17, 2021). Available at Justia US Law: <https://law.justia.com/cases/federal/appellate-courts/ca6/20-6078/20-6078-2021-11-17.html> (Accessed on March 8, 2023)



Local Association		
Issue	Ministerial	Discretionary
Registration	<ul style="list-style-type: none"> <li>- Receiving of registration request (art 3/1).</li> <li>- Canceling registration request if association's representative ("founders' deputy") does not submit its bylaw within ten days from submitting registration request (art 3/3).</li> <li>- Providing association's representative with an attestation proving the receipt of registration request (art3/4).</li> <li>- Deciding registration request within ten days of submission (art 3/5). (What is ministerial is the period within which the decision should be taken, not the decision's content that is discretionary).</li> <li>- Notifying association's representative with registration rejection-decision (art 3/5).</li> <li>- Providing rationale for registration rejection-decision (art3/5).</li> <li>- Receiving petition challenging registration rejection-decision (art 3/6).</li> <li>- Deciding the petition within a month of submission (art 3/7). (What is ministerial is the period within which the decision should be taken, not the decision's content that is discretionary).</li> <li>- Canceling registration rejection-decision, in case of failure to decide the petition within one month of submission; and accordingly, completing publicization procedures (art3/7).</li> <li>- Providing rationale for petition rejection-decision (art 3/8).</li> <li>- Notifying petition rejection-decision to association representative, within ten days of issuance (art 3/8).</li> <li>- Publicization of registration within a week after the completion of registration (publicization shall be by the force of the Regulation, if CCS fails to act within the aforementioned period) (art3/ 9).</li> <li>- Issuance of registration/publicization certificate (art 4).</li> <li>- Receiving of status-regularization (re-registration) request for association established before the issuance of the current Regulation (art 44).</li> </ul>	<ul style="list-style-type: none"> <li>- Content of registration request's Pro forma (art 3/1).</li> <li>- Verification of registration request (art3/2).</li> <li>- Registration rejection or approval's decision (though rejection should be reasoned/with rationale) (art 3/5).</li> <li>- Deciding petition challenging registration rejection-decision, by reaffirmation or overruling (art 3/7+8).</li> <li>- Deciding status-regularization (re-registration) request for association established before the issuance of the current Regulation (art 44).</li> </ul>

Local Association		
Issue	Ministerial	Discretionary
Funding	<ul style="list-style-type: none"> <li>- Receiving permission request for fund raising campaign, a week before the campaign (art 28).</li> <li>- Verifying the availability of competent authorities' approvals in the permission request for fund-raising campaign (art 29).</li> <li>- Deciding permission request for fundraising campaign, within a week of submission (art 28+29). (What is ministerial is the period within which the decision should be taken, not the decision's content that is discretionary).</li> <li>- Notifying concerned association with the content of the decision regarding permission request for fundraising campaign, within a week of decision issuance (art 29).</li> <li>- Providing rationale for the denial of permission request for fundraising campaign (art 29).</li> <li>- Receiving petition challenging the denial of permission request for fundraising campaign (art 29).</li> <li>- Deciding petition of the denial of permission request for fundraising campaign, within a week of submission (art 29). (What is ministerial is the period within which the decision should be taken, not the decision's content that is discretionary).</li> <li>- Canceling denial decision for fundraising campaign by the virtue of the Regulation, in case of failure to decide the petition within one week of submission (art 29).</li> <li>- Receiving notification/request for accepting donation or sponsorship before ten days of acceptance (art 37).</li> <li>- Answering donation and sponsorship request for authorization, within one week of the request submission according to article 37. (What is ministerial is the period within which the request should be answered, not the answer's content that is discretionary).</li> </ul>	<ul style="list-style-type: none"> <li>- Authorization or denial of:</li> <li>- Campaigning for fund raising (art 28 +29).</li> <li>- Donation or sponsorship acceptance (art 27/4 +37).</li> <li>- Deciding petition challenging the denial of permission request for fundraising campaign, by reaffirmation or overruling (art 29).</li> <li>- Assessing whether a donation or fund intended for local organization is consistent with in force legislations and association's goals (art 37).</li> </ul>



Local Association		
Issue	Ministerial	Discretionary
Dissolution	<ul style="list-style-type: none"> <li>- Accepting voluntary dissolution by general assembly in an extraordinary meeting (art 25/3).</li> <li>- Suspending association for six months due to pursue different goals (going beyond defining goals) (art 31).</li> <li>- De registration because of committing one of the violations mentioned in article 32. Though assessing violation's occurrence is by <i>de facto</i> a discretionary assessment.</li> <li>- Providing rationale for de-registration decision for reasons mentioned in article 32.</li> <li>- Publication of the deregistration decision. Though it is within CCS discretion to decide the method of publication (art 33).</li> <li>- Receiving petition challenging de-registration decision according to article 32 (art 36).</li> <li>- Deciding petition for de-registration decision within two weeks of submission (art 36) (What is ministerial is the period within which the decision should be taken, not the decision's content that is discretionary).</li> <li>- Cancellation of dissolution decision if CCS/petition committee fails to decide the petition within two weeks of submission (art 36).</li> <li>- Publication of the overruling of the dissolution decision by the court or the petition committee by the same method as dissolution decision (art 36).</li> <li>- Suspension and de-registration of association for receiving donation/fund without CCS authorization (art 37).</li> </ul>	<ul style="list-style-type: none"> <li>- De-registration and liquidation due to failure to reach the quorum twice (art18).</li> <li>- Assessing whether an association goes beyond its goals (pursues different goals) that may lead to suspension, deregistration, and liquidation (art 31).</li> <li>- De-registration, and liquidation due to pursue different goals (going beyond defining goals) (art 31).</li> <li>- Deciding the method of publication of de-registration decision (art 33).</li> <li>- Determining the association to receive the remnant of a liquidated association's assets and money (art 34).</li> <li>- Deciding petition challenging de-registration decision, by reaffirmation or overruling (art 36)</li> </ul>
Miscellaneous Issues	<ul style="list-style-type: none"> <li>- Providing association's representative with a letter addressing the competent authority to provide it with a stamp.</li> <li>- Providing association's representative with a letter addressing one of the banks working in Libya to facilitate opening bank account (art 5).</li> <li>- Accepting voluntary extension of association work period as per to its members' decision (art 25/1).</li> </ul>	<ul style="list-style-type: none"> <li>- Approving amendment/s to the bylaw (art 23/2).</li> <li>- Notifying competent authorities to close a bank account for an association that does not secure CCS's authorization to open additional bank account (art 38).</li> <li>- Deciding disputes among associations upon request from the concerned parties (art 40)</li> <li>- Content of the <i>pro forma</i> for the annual report (art 39).</li> </ul>

Foreign Association		
Issue	Ministerial	Discretionary
Permission Granting/ Renewal	<ul style="list-style-type: none"> <li>- Receiving requests for work permission (art 45) and permission renewal(art50+51).</li> <li>- Accepting electronic submission of the permission request, as long it is accompanied with commitment to submit original copies of the requested documents upon communicating that all the permission's requirements are met (art 46).</li> <li>- Providing association's representative with attestation proving receipt of permission request (art 48).</li> <li>- Deciding permission request within a month of submission (art 48) (What is ministerial is the period within which the decision should be taken, not the decision's content that is discretionary).</li> <li>- Providing rationale for rejection-decision of permission granting/renewal request (art 50+51+49+48).</li> <li>- Notifying association's representative with permission rejection-decision (art 49).</li> <li>- Information that should be included in permission granting-decision (art 50).</li> <li>- Deciding renewal request, within a month form submission (art 50+51+48+49) (What is ministerial is the period within which the decision should be taken not the decision's content that is discretionary).</li> <li>- Notifying association's representative with the rejection of permission renewal (by deduction from art 50 +51).</li> <li>- Deciding petition challenging rejection of permission granting/renewal, within two months of submission (art 51) (what is ministerial is the period within which the decision should be taken not the decision's content that is discretionary).</li> <li>- Coordination with national competent authorities before granting foreign association a permission to work in Libya (art 52).</li> <li>- Receiving of status-regularization (re-registration) request for association working before the issuance of the current Regulation (art 70).</li> </ul>	<ul style="list-style-type: none"> <li>- Content of permission request's <i>Pro forma</i> (art 45).</li> <li>- Verification of permission request (art 45+47+49).</li> <li>- Decision of permission's granting or rejection (art 45 +49).</li> <li>- Decision of permission's renewal or rejection (art 50).</li> <li>- Deciding permission's duration/span based on nature, size, and budget of association's program in Libya (art 50).</li> <li>- Deciding petition challenging rejection of permission granting/renewal, by reaffirmation or overruling (art 51)</li> <li>- Deciding status-regularization (re-registration) for associations working in Libya before the issuance of the current Regulation (art 70).</li> </ul>
Funding		<ul style="list-style-type: none"> <li>- Authorization or denial of:</li> <li>- Receiving any money either cash or non-cash (art 58/1).</li> <li>- Making donation or providing cash or non-cash support to any local or other foreign association in Libya (art 58/5).</li> </ul>

Local Association		
Issue	Ministerial	Discretionary
Dissolution	<ul style="list-style-type: none"> <li>- Banning association from leaving Libya before settling all its financial and administrative obligations and closing its file with CCS (art 69).</li> </ul>	<ul style="list-style-type: none"> <li>- De-registration of association for violations mentioned in article 67.</li> <li>- Suing association (HQ or Libya branch) for violations of Libyan laws and the current Regulation before Libyan or foreign judiciary (art 68).</li> </ul>
Miscellaneous Issues	<ul style="list-style-type: none"> <li>- Providing the permitted association with a letter to open bank account in Libya (art 54/1).</li> <li>- Providing the permitted association with letter to issue stamps related to its work (art 54/2).</li> <li>- Providing the permitted association with letter to enable printing of publications related to its work (art 54/3).</li> </ul>	<ul style="list-style-type: none"> <li>- Authorization or denial of:</li> <li>- Transferring money outside Libya (art 58/2).</li> <li>- Opening additional bank account to receive money allocated to work in Libya (art 58/3).</li> <li>- Changing authorized persons' signatures on bank instruments (art 58/4).</li> <li>- Contracts between association and others to perform work for the association (art 58/6)</li> <li>- Hiring a non-Libyan/local expert (art 65).</li> <li>- Assessing whether an expertise requested by foreign association is available in Libya (before requesting it from outside) (art 65).</li> <li>- Inspecting association financial and administrative records, any time (art 60)</li> <li>- Content of the final report's <i>Pro forma</i> (art 63).</li> <li>- Mandating a financial expert, in case of serious financial violation, to work as internal reviewer/auditor authorized to co-sign association's financial documents (art 64).</li> </ul>

## 6. Taxation

Despite best practices' recommendation that *"States should provide tax benefits, and public support where possible, to not-for profit association"*<sup>209</sup>, the Regulation says nothing about it for local association while for foreign, it only hints about taxes that should be paid to the state (not about non-taxation or preferential treatment).

### 6.1. Taxation of Local Association.

The gap that was created by the Regulation's silence in this regard, fortunately, can be bridged by other relevant Libyan laws, highlighted below.

**6.1.1. Income Tax:** As per to article 33 of Law No. (7) of 2010 on Income Tax: *"The following shall be exempt from the tax: 1. Income of public legal entities funded by the general budget, income of religious and other charitable associations, institutions and bodies recognized by the state and other bodies based on charitable purposes, social reform or sporting, cultural and social activities, as set out in the implementing Regulations of this Law....3. Income from charitable endowments...13. Development activities that the General People's Committee has decided to encourage by offering tax exemptions...14. Any other income exempted from tax under the Law or based on an international treaty or agreement."*

209. Paragraph 41 of ACHPR Guidelines. Also, see paragraph 72 of Report of Special Rapporteur of Freedom of Association 2012, and in more detailed manner see chapter 9 of OSI/ICNL Guidelines.

This article provides provisions perfectly correspond to best practices' orientation that not-for profit association *"should be exempt from income taxation on money or other items of value received from donors or state agencies (by grant or contract) and regular membership dues...interest, dividends, or capital gains earned on assets or the sale of assets"*<sup>210</sup>. The only missing provision, in this context, is the tax deductions/benefits that should be made available not only to association receiving donation but to the donor itself, as best practices elaborate: *"To encourage philanthropy and good citizenship, individuals and business entities should be entitled to reasonably generous income or profits tax preferences with respect to donations made to PBOs (Public Benefit Organizations)"*<sup>211</sup><sup>212</sup>

**6.1.2. Sale/ Value Added Tax and Custom Fees:** According to best practices, not-for profit association *"should be given preferential treatment under, or exemption from, customs duties and import VAT on imported goods or services that are used to further their public benefit purposes"*<sup>213</sup>. Despite this reasonable recommendation, Libyan laws have no clear provision in this regard. Yet, if the institutional will along with proper advocacy exist, the following articles in Law No. (10) of 2010 on Customs can be effectively utilized to meet such recommendation.

- Articles 5 and 185 make the exemption possible by a discretionary decision issued by competent authorities.
- Article 184/10 exempts from fees, goods imported for developmental purposes<sup>214</sup>. As not-for profit association usually serves similar purposes, it can apply for such exemption.
- Article 187 exempts the imports of bodies funded by the public treasury<sup>215</sup>. This can be especially useful for association receiving subsids from the public treasury.

**6.1.3. Other Taxes:** Since best practices designed to provide environment most favorable to association's work, it endorses any other benefits under any available tax law: *"Exemption from or preferential treatment under other tax laws should be considered for civic organizations"*<sup>216</sup>. Fortunately (again), other Libyan taxation laws contain generous provisions in this direction. For example:

- Article 69/2 of Decree no. 627 of 2018 on Amending the Executive Regulations for Law no. 17 of 2010 on Real Estate Registration and State Properties<sup>217</sup>, exempts endowments and recognized associations of purposes related to education, charity, social reform, and sport and culture from the real estate registry fees<sup>218</sup>.
- Article 21/2 of Law no. 12 of 2010 on Stamp Tax<sup>219</sup>, exempts documents and acts of association recognized by the state from the stamp tax.

210. Section 9.1 of OSI/ICNL Guidelines.

211. Explanation is added.

212. Section 9.2 of OSI/ICNL Guidelines.

213. Section 9.4/B of OSI/ICNL Guidelines.

214. "[T]he following shall be exempted from customs duties and other fees and taxes, subject to inspection...Goods that are imported for the purpose of contributing to agricultural, industrial, or economic development

215. "The imports of bodies funded by the public treasury shall be exempted from customs duties and fees and other taxes and fees

216. Section 9.5/A of OSI/ICNL Guidelines

217. اللائحة التنفيذية للقانون رقم ١٧ لسنة ٢٠١٠ بشأن التسجيل العقاري وأملاك الدولة.

218. In a very close wording article 8/b of Decree no. 26 of 1989 of "Regulation Regarding Socialist Real Estate Registry" (اللائحة التنظيمية)

للـسـجـل العـقـارـي الـاشـتـرـائـي).

219 «ضريبة الدمغة»

- Article 70/3 of Law No. (11) of 1984 on Traffic Regulations<sup>220</sup>, exempts relief and red crescent associations and any other associations, upon decision by the competent authorities, from traffic related fees.
- Article 4 of Law no. 39 of 1968 on Entertainment Tax<sup>221</sup>, exempts entertainment activities designed to benefit charitable, cultural, and social purposes from this tax.

**6.1.4. Social Security:** Due to the nature of the beneficiaries and the right protected under social security laws, the best practices advise that *“Civic organizations generally should not be exempted or given preferential treatment under generally applicable social security taxes (including levies for health and retirement funds).”*<sup>222</sup> In response to this advice, article 31/First/3 of Law No. 13 of 1980 on Social Security considers *“a beneficiary from social security...those working by work contract”* and since the relation between an association and its workers is regulated by contracts (written or oral<sup>223</sup>) as association is not among those exempted from Law No. (12) of 2010 on Labor Relations<sup>224</sup>, association’s workers shall be benefited from the provisions of social security law.

## 6.2. Taxation of Foreign Association.

Once more, foreign association is a subject of a discriminatory treatment by the Regulation which states nothing on local association’s taxation (benefiting from the generosity of national taxation laws) while ordering the foreign to *“open files at the following: ...tax authority”* (art 53/2/3) and to include in its final accounts to CCS a *“statement of paying ... fees and taxes due to the states of Libya according to the law”*(art 63/8).

Pertaining to social security for foreign association’s workers, the Regulation obliges those association to *“open files at the following... social security fund”*(art 53/2/2) and to include in its final accounts to CCS a *“statement of settling social security payments and taxes for its workers”* (art 63/8).

220. «بشأن المرور على الطريق العام».

221. «ضريبة الملاهي».

222. Section 9.5/B of OSI/ICNL Guidelines

223. “Work contract: Any agreement between the employer, under which the worker undertakes to work for the employer and under its management and supervision for a share in the production or service or for monetary remuneration.” Article 5 of Law No. (12) of 2010 on “Labor Relations

224. See those exempted at the end of article 4 “The provisions of this law shall apply to all labour relations in the Great Jamahiriya, whether regulatory, contractual, or by participation, whether the remuneration for labour is a share of the revenue of the economic activity or a monetary sum, except for workers whose status is regulated by special laws or Regulations, as well as those engaged in family activities “(spouses, parents, and children

## 7. Dissolution

It is true that best practices stress on association's right to *"be allowed to have perpetual existence"*<sup>225</sup>, notwithstanding, it is completely cognizant that this existence may come to an end voluntarily, upon the wish of association's founders or involuntarily, by the action of the state's responsible agency. In this regard, the law that regulates association's dissolution will be deemed harmonious with best practices if it permits voluntary dissolution and makes the involuntary its last resort<sup>226</sup> and safeguards it by all necessary guarantees to avoid arbitrariness and power abuse by the responsible agency. As for the current Regulation, it recognizes both ways of dissolution and regulates them as shown below.

### 7.1. Dissolution of Local Association.

**7.1.1. Voluntary Dissolution:** In accordance with paragraphs 1 and 3 of article 25, voluntary dissolution may be due:

- If an association reaches the end of its time limits (goals have been met) as prescribed in its bylaw, unless its members decide otherwise (para 1). This provision echoes the terms of best practices that voluntary termination *"may occur when the association has met its goals and objectives"*<sup>227</sup>
- Upon a decision of association's general assembly in an extraordinary meeting (para 3). Logically speaking, the right to freedom of association is an act of will that has two inseparable faces; the will to associate and disassociate. This logical conclusion is acknowledged by best practices when explain that the highest governing body of an association *"should be permitted to terminate the organization's activities voluntarily"*<sup>228</sup>

### 7.1.2. Involuntary Dissolution and Suspension: Reasons and Procedures.

**7.1.2.1. Reasons for Dissolution and Suspension:** CCS has the power to terminate association's work by de-registration/dissolution or suspension, pursuant to the following reasons.

#### A. Reasons for Dissolution:

- Administrative irregularity in association's governance/work:
- General assembly meeting fails to reach the quorum (two third in the first, one third in the second) specified in article 17 for the second time (art18).
- General assembly fails to assemble for two consecutive years (art 32/4).

The best practices guidance, in these two situations, is that *"[a]dministrative irregularities or non-essential changes in the specifics of an organization should never be considered as sufficient grounds for closing down an organization"*<sup>229</sup>

- Association's failure to reach its goals (art 25/2 and 32/2). Dissolution, as a severe sanction, *"must be proportionate"*<sup>230</sup> to the violation it sanctions, as best practices require. Therefore, this reason for dissolution is not coherent

<sup>225.</sup> Section 3.1/I of OSI/ICNL Guidelines.

<sup>226.</sup> Paragraph 58 of ACHPR Guidelines. Also, see paragraph 234 of OSCE/ODIHR Guidelines.

<sup>227.</sup> Paragraph 243 and 242 of OSCE/ODIHR joint Guidelines.

<sup>228.</sup> Section 3.7 of OSI/ICNL Guidelines. Also, see paragraph 242 of OSCE/ODIHR joint Guidelines.

<sup>229.</sup> Paragraph 82/s of Report of Special Rapporteur on Human Rights Defenders 2004.

<sup>230.</sup> Paragraph 82/s of Report of Special Rapporteur on Human Rights Defenders 2004.

with best practices due to the lack of violation element (let alone the lack of the mentioned proportionality) and considering the principle of presumption in favor of the right to freedom of association<sup>231</sup>.

- Committing a violation to any provision of in force legislations or repeating violation to its bylaw (art 32/1). To justify dissolution of an association under this reason, the best practices demand two conditions to be equally fulfilled:
- “[S]erious violation of national law”<sup>232</sup>
- This law should be in “compliance with regional and international human rights law”<sup>233</sup>. Thus, if the violation is not serious or the law is not in compliance with the international human rights law, dissolution under this reason might not be due.
- Using fund for objectives other than those predetermined (art32/3).
- Receiving funds or donations without CCS’s permission (art 32/5 and 37 suspension and deregistration). For best practices’ stance in these two cases see related paragraphs in funding section.

## B. Reasons for suspension:

- Acting beyond association’s goals (pursuing different goals) or committing acts violating in-force legislations and regulations (art 31). In this case, CCS can take the following procedures:
- Warning the concerned association to stope such act.
- If the warning is ignored (act continues or repeated) CCS can suspend association up to six months.
- If the act continues during/after suspension period, CCS can de-register the association and seek court permission to initiate liquidation procedures (art 31).

These provisions with the harsh sanctions it contains, entirely go against best practices’ belief that an association should not be sanctioned “*merely for altering their activities in relationship to the objectives they originally set out*”<sup>234</sup>.

- If an association already working in Libya before the issuance of the current Regulation does not regularize its status (re-register) with CCS within three months from that issuance (art 44). In addition to best practices mentioned in section 2.2.3, it is written that “*courts alone should be entitled to order a suspension, and only in situations of clear and imminent danger that could result directly from such activities, and that is objectively ascertained*”<sup>235</sup>.

## 7.1.2.2. Procedures for Involuntary Dissolution (article 36).

### A. Responsible Agency:

- CCS that issues the dissolution decision.
- Petition Committee that reviews the petition challenging the dissolution decision<sup>236</sup>.
- Competent court that reviews the negative decision of the petition committee (the Regulation does not specify a certain court).

231. Fundamental principle no.1 of ACHPR Guidelines.

232. Paragraph 58 of ACHPR Guidelines.

233. Paragraph 58 of ACHPR Guidelines.

234. Paragraph 48/e of ACHPR Guidelines.

235. Paragraph 82/r of Report of Special Rapporteur on Human Rights Defenders 2004. Also, see paragraph 58 of ACHPR Guidelines.

236. “By a decision of the Bord of Administration of CCS, a committee shall be constituted to review dissolution petitions, one of its members shall be with a specialty in law and the other shall be a civil society activist”. Article 35 of the Regulation.

## B. Procedures:

- Issuance of dissolution decision that should be reasoned/with a rationale (art 32) for one of the above discussed reasons.
- Publishing of dissolution decision on CCS's website or by any other publication method, immediately after the issuance of the decision (art 33).
- Petition Submission: A petition challenging dissolution decision can be submitted to the Petition Committee, within a week from decision's notification (art 36).
- Petition Deciding: The committee shall decide the petition, within two weeks of submission. The outcomes of this process shall be one of three (art 36):
  1. Overruling dissolution decision (association back to work). The overruling decision shall be published by CCS in the same method as dissolution decision.
  2. Failure to decide the petition within the given period ("two weeks"). The dissolution decision shall be presumed cancelled.
  3. Re-affirming dissolution decision. The reaffirming decision should be justified by a rationale and be appealable before a competent court (not specified by the regulation).
    - Court Review: The court review shall go according to one of two logically imagined scenarios:
      - Scenario (1): Court overrules the reaffirmed dissolution (negative petition) decision. In this scenario, CCS must publish the court ruling within a week, in the same manner as the dissolution decision (art 36).
      - Scenario (2): Court re-affirms the negative petition decision. Dissolution becomes final.
    - Liquidation Process: In case of the second scenario, a liquidation process, as per to the relevant accounting rules, for association assets shall be initiated upon a court permission (art 31). After settling association's obligations/debts, the remnant shall be transferred to another association selected by the general assembly of the liquidated association or CCS's Bord of Administration (art 34).

Apart from the defects of the above discussed reasons for involuntary dissolution, the procedures are adequately responding to best practices demands that the "[d]eterminations to involuntarily terminate or dissolve a civic organization should be ordered by or be appealable to independent courts."<sup>237</sup> The only missing part, herein, is the "right to a remedy"<sup>238</sup> in case of legally inappropriate dissolution. Such right is not acknowledged by the Regulation though it is still available under the general provisions of tort in civil law and other administrative laws related to abuse of authority.

## 7.2. Dissolution of Foreign Association.

**7.2.1. Voluntary Dissolution:** The Regulation provides no specific or clear provisions regarding this issue, Nevertheless, some provisions can be deduced from article 62 and 69. According to the provisions of these articles, foreign association can voluntarily terminate its work in Libya under the following conditions:

- Submitting a final financial report (extended in article 63) to CCS within one month from the end of the fiscal year or once it finishes its work in Libya, whichever comes earlier (art 62).

237. Section 3.7 of OSI/ICNL Guidelines.

238. Fundamental principle no. 9 of ACHPR Guidelines. Same meaning can be found in principle 11 (paragraph 36) of OSCE/ODIHR Guidelines.

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- Settling all its administrative and financial duties before the relevant entities and closing its file with CCS. Otherwise, it may be banned from leaving Libya (art 69) and sued by CCS, inside the country or abroad (art 68).

## 7.2.2. Involuntary Dissolution: Reasons and Procedures.

**7.2.2.1. Reasons for Involuntary Dissolution:** Article 67 of the Regulation specifies the reasons for dissolution (permission cancelation) as follows:

- Obtaining “*publicization*”/permission in an incorrect manner (para 1).
- Using association’s money/fund for objectives other than those predetermined (para 2).
- Conducting activities, programs or projects in a manner breaching the provisions of the work permission (para 3).
- Conducting activities after permission’s expiry (para 4).
- Violating provisions of the current Regulation (para 5) such like the prohibitions of article 66.
- Violating provisions of in force laws, decrees, and regulations (para 6).
- Rejection of renewal request by CCS within the given period (para 7). This period according to article 50 is thirty days before the expiry of the active permission (see Section 2.2.2.1, Step (3))
- If an association already working in Libya before the issuance of the current Regulation does not regularize its status (re-register) with CCS within two months from that issuance (art 70).

**7.2.2.2. Procedures for Involuntary Dissolution:** Procedures vary between permission cancelation and renewal rejection.

- In case of cancelation for one of the reasons mentioned in article 67 or article 70, neither a rational nor a petition or a judicial review are available.
- In case of rejecting the renewal (art 51) (see Section 2.2.2.1, Step (3)).

In both cases, the conditions of articles 68 and 69 mentioned in section 7.2.1. are also applicable here.

## 8. Conclusion

**8.1. When Legal Analysis Meets Factual Observations:** Although Libya is a member to almost all fundamental international and regional human rights instruments<sup>239</sup> that cherish the right to freedom of association; and despite the ruling of the Libyan supreme court that gives those instruments the “**supremacy in application over internal legislations**”<sup>240</sup>; and albeit the fact that it is among CCS’s existential goals to observe “**international rules and general norms**” and to promote “**good practices**”<sup>241</sup>, It was analytically observed that Decree no. 286 of 2019 suffers a serious lack of commitment to Libya’s obligations under those international standards and best practices. This conclusion has received a factual substantiation from myriad hands-on observations. For instance:

- Since its issuance, Decree no. 286 of 2019 received a theoretical criticism by local activists and international human rights watchdogs predicting its negative impact on Libyan civil society. In its report of 2019, the US Department of State predicted that: “**if implemented, the decree would seriously limit space for civil society to operate independently and freely in the country. The decree regulates the work of local and foreign organizations in terms of their establishment, registration, and assembly in a restrictive manner and grants the executive authority broad powers to limit or suspend organizations.**”<sup>242</sup>
- Couple of years later, the anticipated concerns by US DoS had materialized and documented briefly by HRW in two separate reports and by the DoS itself (2020 and 2021 reports): “**Decree 286 ... includes burdensome registration requirements**”<sup>243</sup> and “**stringent regulations on funding. Fundraising inside and outside Libya is prohibited**”<sup>244</sup>. “**The decree mandates onerous advance notification for group members wanting to attend events**”<sup>245</sup>. With regard to CCS’s intrusive oversight power, it was noticed by HRW that “**Tripoli-based Commission of Civil Society... has sweeping powers to inspect documents and cancel the registration and work permits of domestic and foreign organizations**”<sup>246</sup>

**8.2. Road Map for Advocacy Endeavors:** Considering the stagnant *cul-de-sac* crisis in Libya, with all its pressing humanitarian, political, military, security and socio-economics’ priorities that push the issue of re-regulating civil society harmoniously with international standards to the remotest back of the scene and accordingly, to the bottom of the societal and governmental agenda, it is not envisioned, in such context, to have the government taking a change of heart step to re-prioritize this issue.

.239. See the dates of Libya accession/ratification to those instruments in footnote no. 10

240. Constitutional petition before the court’s departments, altogether, no. 01/57 (ق ٥٧) session dated on 23/12/2013.

٢٠١٣/١٢/٢٣ جلسة ٥٧/١ ق. الطعن الدستوري لدى دوائر المحكمة مجتمعة الرقم ٥٧/١ ق.

241. See paragraphs 8 and 10 of article 3 of Decree no. 1605 of 2018 “on Re-structuring CCS and Deciding Some Provisions”.

242. US DoS, Country Reports on Human Rights Practices, Libya Report, 2019, Section B, Freedom of Association, available at: [Libya - United States Department of State](#) (Accessed on March 8, 2023)

243. Also see “Registration obstacles included: 1) ad hoc preapproval processes that required interfacing with formal and informal security forces, 2) restrictions and approvals for routine meetings, 3) inordinately detailed requests for financial and human resource information, and 4) direct harassment in some cases.” US DoS, Country Reports on Human Rights Practices, Libya Report, 2020, Section B, Freedom of Association, available at: [Libya - United States Department of State](#) (Accessed on March 8, 2023)

244. Also see “[P]rohibited CSOs from receiving funding from these entities absent prior CSC approval. CSOs highlighted these restrictions significantly hampered their local operations.” US DoS, Country Reports on Human Rights Practices, Libya Report, 2021, Section B, Freedom of Association, available at: [Libya - United States Department of State](#) (Accessed on March 8, 2023)

245. Also see “a pledge that no communication or meetings (physical or online) could take place with any foreign government or embassy or any international organization unless the CSC provided prior and explicit permission.” US DoS, Country Reports on Human Rights Practices, Libya Report, 2021, Section B, Freedom of Association, available at: [Libya - United States Department of State](#) (Accessed on March 8, 2023)

[/2022/HRW, World Report 2022, Events of 2021, Libya, Freedom of Association, available at: https://www.hrw.org/world-report-2022/04d1d2](#) 246  
Also, see HRW, Libya: Draconian Decree Would Restrict Civic Groups, June 4, 2021, available at: [https://#country-chapters/libya-libya-draconian-decree-would-restrict-civic-groups](#) (Accessed on March 8, 2023)/04/06/2021/www.hrw.org/news



Instead, it is highly likely that any attempt to issue a new law or executive regulation will not depart the flesh and blood of Decree no. 286, if not be worse. Such attempt was initiated in July 2021, as per to Freedom House, when the GNU (Government of National Unity<sup>247</sup>) proposed a new regulation that came as foreseen above since it required *“existing NGOs to reregister with the government. The regulation also includes provisions that would give the government the authority to reject such registrations and to prevent NGOs from opening bank accounts; NGOs would also be required to obtain prior permission before accepting donations and communicating with international NGOs, including the United Nations”*<sup>248</sup> This proposed regulation of July 2021 was criticized by Clément Nyaletsossi Voule, the UN Special Rapporteur for Freedom of Association, who asserted that *“the Regulation only reaffirmed many of the restrictions imposed by Decree 286”*<sup>249</sup>.

A counter attempt was suggested by the Libyan civil society in October 2021 when *“CSOs from across the country have come together, putting aside divergent political views, to advocate for a new law that would recognize, protect, and support CSOs. The bill, known as the Associations Law, was referred to the House of Representatives in October 2021.”*<sup>250</sup>

Realistically speaking, given its weakness, Libyan civil society is not in a position to impose its vision for the freedom of association on any government, neither in the east nor in the west. This weakness was proved by indexes in the *2021 Report on Civil Society Organization Sustainability Index for the Middle East and North Africa*, which assessed the Libyan civil society as *“continued to have the lowest level of overall sustainability”*<sup>251</sup>. Additionally, it seems that Decree no. 286 and its Regulation will survive all the above-mentioned criticism, at least on the short run, as Amnesty International had bitterly observed: *“A case against undue restrictions to the right to freedom of association in Decree No. 286/2019 regulating NGOs, remained pending at a Tripoli administrative court.”*<sup>252</sup>

In front of such challenges, what is more feasible is having Libyan civil society unifying its endeavors and starting lobbying for a step-by-step amendment of the Regulation of that Decree to be more consistent with best practices. This study, since it details most of the gaps between the Regulation and best practices, can serve as a road map for that lobbying and advocacy endeavors. With it, activists are empowered by a detailed charting for each legal problem along with the relevant best practices that will be the content of their advocacy’s demands.

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247. Formed on March 10, 2021, as one of the outcomes of Libyan Political Dialogue Forum on February 5, 2021.

248. Freedom House, Freedom In The World, 2022, Libya, E Associational and Organizational Rights, [Libya: Freedom in the World Country Report | Freedom House](#) (Accessed on March 8, 2023)

249. Defender Center For Human Rights, Libya: Authorities must roll back repressive regulation on civil society and support new legal (Accessed on March 8, 2023) [5596/framework](#), November 12, 2021, available at: <https://defendercenter.org>

250. Francesca Folda, ICTJ (Justice. Truth. Dignity), A Path for Hope in Libya Through Civil Society, November 21, 2022, available at: <https://www.ictj.org/latest-news/path-hope-libya-through-civil-society> (Accessed on March 8, 2023). Also documenting the same event “[I]n October 2021, 16 Libyan organizations and 4 public figures drafted and presented an alternative law intended to guarantee NGOs’ independence and operational freedom.” Freedom House, Freedom In The World, 2022, Libya, E Associational and Organizational Rights, [Country Report | Freedom House](#) (Accessed on March 8, 2023). [2022 Libya: Freedom in the World](#)

251. USAID, ICNL and FHI 360, 2020 Civil Society Organization Sustainability Index For The Middle East And North Africa, 9th EDITION [-org/sites/default/files/media/documents/csosi-mena-](#) OCTOBER 2021, Libya, Legal Environment, Page 5, available at: <https://www.fhi360-report.pdf> (Accessed on March 8, 2023) For more details on that weakness see Libya Chapter, Page 47-55.-2020

252. Amnesty International, Libya 2021, Freedom of Association and Expression, available at: [Everything you need to know about human rights in Libya - Amnesty International Amnesty International](#) (Accessed on March 8, 2023)

Finally, in this evaluative conclusion, an unobserved fact must be made visible: It is true that Decree no. 286 by necessitating a rationale for almost all CCS's negative decisions; accepting petitions challenging most of those decisions; adopting the rule of presumptive approval in case of CCS's failure to act within short periods of time; and adhering to judicial review in dissolution of local association, has only made mediocre steps approaching best practices. Nonetheless, by including all that, and by decreasing the number of association's founders from fifty to ten and by canceling registration fees, all penalties of fines and imprisonment and many other suppressive provisions of Law no. 19 of 2001, it has made a huge stride away from that notorious Law which recently has re-emerged <sup>253</sup>to cast its long grim shadow over Libya's civil society.

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253. As mentioned at the beginning of this study, a recent Directive, issued on October 30, 2022, by the Office of the President of the House of Representatives, rules that "the law is the law until it is repealed or amended, accordingly, Law no. 19 of 2001 on Civil Association .is still in force







